

The Basis of Equality

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## **Abstract**

This thesis provides an organising framework for the recent and growing debate on 'the basis of equality'. This debate is concerned with the question of whether there is any empirical feature that people possess, in virtue of which they count as equals, and are due an equal share of goods. Liberal writers, especially, appeal to the claim, as a grounding premise, 'Each person has the same basic moral status'. Does this statement serve as a platitude, or is it a substantive truth that forms the foundation of our ideas about a just society? Certain non-egalitarian positions deny it altogether, and instead emphasise the descriptive differences between persons. I argue that there is a problem in justifying 'basic equality', and that appeals to religion, humanity and respect are unsuccessful in this regard. However, I show how the successful resolution of this debate lies in a more thorough understanding of the concept of what makes a person's life go well. The principal finding of the project is that scepticism about equality can be assuaged if we give central importance to a more sophisticated understanding people's interests.

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# The basis of equality

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**Christopher Nathan**

## Short table of contents

<b>1</b>	<b>Introduction .....</b>	<b>9</b>
<b>2</b>	<b>What is basic equality? .....</b>	<b>27</b>
<b>3</b>	<b>The problem .....</b>	<b>65</b>
<b>4</b>	<b>Need there be a defence of basic equality? .....</b>	<b>102</b>
<b>5</b>	<b>Religious ideas.....</b>	<b>130</b>
<b>6</b>	<b>Humanity .....</b>	<b>156</b>
<b>7</b>	<b>Respect and equality .....</b>	<b>178</b>
<b>8</b>	<b>Fuller interest theories and rough equality.....</b>	<b>214</b>
	<b>Works Cited .....</b>	<b>257</b>

## Long table of contents

<b>1</b>	<b>Introduction .....</b>	<b>9</b>
1.1	The subject matter .....	9
1.2	The problem .....	10
1.3	Relevance, significance and arbitrariness .....	17
1.4	Relevance combines .....	22
1.5	Structure of the thesis .....	24
<b>2</b>	<b>What is basic equality? .....</b>	<b>27</b>
2.1	Equality: formal and substantive .....	27
2.2	That equality may be trivial .....	38
2.3	First reply: relevance is prior to rule .....	42
2.4	Second reply: Equality and constructed values.....	46
2.5	Equal consideration is not sufficient for basic equality .....	52
2.6	The justification of the practice qualifies it as appealing to basic equality .....	58
2.7	The egalitarian plateau: Equality as premise and equality as outcome .....	61
<b>3</b>	<b>The problem .....</b>	<b>65</b>
3.1	We must possess some significant feature equally, if moral egalitarianism holds.....	65
3.2	A basis as a reason.....	69
3.3	Incomparability.....	71
3.4	Unbased basic equality.....	73
3.5	A trivial basis for non-trivial equality?.....	78
3.6	Types of basis.....	80
3.7	Variable and binary properties.....	83

3.8	The difficulty .....	88
3.9	Universalizability.....	91
3.10	Is the difficulty greater for distributive egalitarians?.....	99
<b>4</b>	<b>Need there be a defence of basic equality? .....</b>	<b>102</b>
4.1	The intuited range property response .....	102
4.2	When is a further explanation required?.....	109
4.3	Incorrigible equality I: Denial of basic equality is not absurd .....	114
4.4	Incorrigible equality II: An intuited threshold is curious .....	118
4.5	Does vagueness provide a counterexample?.....	123
4.6	Quietism in political theory .....	128
<b>5</b>	<b>Religious ideas.....</b>	<b>130</b>
5.1	The tradition of appealing to religious ideas.....	130
5.2	<i>A deus ex machina</i> is inadequate .....	132
5.3	The Locke-Waldron solution.....	135
5.4	A reconstruction of Waldron's argument, and a distinction.....	138
5.5	God creates normative significance .....	139
5.6	God identifies normative significance .....	142
5.7	Does the moral significance of the divine will arise from its unique epistemological status? .....	144
5.8	A less ambitious view: God's intentions ground equality, but little else .....	146
5.9	Objections to the less ambitious view.....	149
5.10	A reinforced version of the less ambitious view, and some objections to it .....	152
<b>6</b>	<b>Humanity .....</b>	<b>156</b>
6.1	The value of humanity .....	156

6.2	The biological view .....	157
6.3	The ‘comparison class’ view .....	159
6.4	Two problems with the comparison class view .....	162
6.5	Capacities.....	168
6.6	Loyalty to humanity.....	174
<b>7</b>	<b>Respect and equality .....</b>	<b>178</b>
7.1	Introduction.....	178
7.2	Opacity respect as explicating the basis of equality .....	179
7.3	Two ways in which a form of respect could be appropriate.....	186
7.4	External criteria: What makes it appropriate is not what makes it respect .....	191
7.5	Internal criteria: What makes it appropriate is fixed by what makes it respect..	195
7.6	A requirement of respect with specific content.....	198
7.7	Neither external nor internal .....	201
7.8	The harm of disrespect.....	204
7.9	Priority and grounding.....	206
<b>8</b>	<b>Fuller interest theories and rough equality.....</b>	<b>214</b>
8.1	A model of people’s equality that appeals to people’s interests.....	214
8.2	A conception of ‘interests’ could itself imply that a theory counts individuals as equals.....	220
8.3	Discrimination and interests .....	226
8.4	Egalitarianism and interests .....	234
8.5	Conclusion .....	254
	<b>Works Cited .....</b>	<b>257</b>



# 1 Introduction

## 1.1 The subject matter

The subject of this thesis is 'basic equality'. This is the idea that each of us has equal value. We ought to treat one another as equals; the state should treat us as equals. It is sometimes said that contemporary political theory involves developing the basic egalitarian premise that each of us counts for the same.<sup>1</sup> The libertarian argues that each individual has the same basic set of rights; the egalitarian that each is due the same share of goods; the utilitarian that the interests of each be counted the same. Those – and many other – accounts of justice implicitly accept that it would be mistaken to fail to count individuals as fundamentally equal.

This is an extremely abstract idea, in several senses. Its meaning is contested, and it is contested whether it has a meaning. Even if there is agreement on its meaning there is room for disagreement about its implications. It is such an abstract idea, that one might suspect that more useful inquiry would be directed at questions one notch closer to the ground. Chapter 2 is devoted to assuaging that suspicion directly. The argument of this thesis itself provides further argument for the view that the concept is worth examining directly. In any case,

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<sup>1</sup> Ronald Dworkin, "Comment on Narveson: In Defense of Equality," *Social Philosophy and Policy* 1, no. 1 (1983): 24–40; Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, 2nd ed. (Oxford: Oxford University Press, 2002); Thomas Nagel, "Equality," in *Mortal Questions* (Cambridge: Cambridge University Press, 1991); Amartya Sen, *Inequality Reexamined* (Oxford: Clarendon Press, 1992).

there is a unifying theme running through the discussion here. This theme is described, in another context, as the effort "...to combine a naturalistic, broadly Humean, picture of a world where continuous properties come in degrees, with a set of Kantian intuitions that clearly require sharp boundaries between persons and non-persons. This is an essentially unstable combination, as demonstrated by the ever-present threat of spectrum arguments."<sup>2</sup> 'Spectrum' arguments are arguments that emphasise the natural variation of some empirical feature by matters of degree; they show how what is supposed to be a qualitative distinction rests upon a quantitative distinction, and is thereby less well-justified. I will describe spectrums in several contexts, including spectrums of rationality, capacity, and group membership.

## 1.2 The problem

If political theory is dependent upon a basic egalitarian premise, then it seems to face a difficulty, since we are manifestly not the same. Briefly, the difficulty is this:<sup>3</sup>

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<sup>2</sup> Tim Mulgan, "Review of *The Ethics of Killing: Problems at the Margins of Life* by Jeff McMahan," *Canadian Journal of Philosophy* 34, no. 3 (2004): 458.

<sup>3</sup> A brief note about the way the problem is phrased: it is framed to apply to 'individuals.' The intention with the use of this term is to leave open different possibilities for filling in what, finally, counts as a condition for inclusion in the group of equals. It might be objected that the problem would more helpfully be reworded so that it applies to 'humans' or to 'persons' instead of 'individuals'. However, to do this would be to prejudge, unnecessarily, the scope of the group of moral equals. If that group consists in the group 'persons', then this needs to be defended (so I will claim).

Individuals vary enormously, and often profoundly, on any conceivable scale: there is no significant feature all have exactly in common.

However, *all count for the same*: all are equal. If all count for the same, then all must share some significant feature in virtue of which they count for the same. But this is a contradiction. Individuals vary, and we call them equal.

The liberal instinct that is impressed by our individual uniqueness is also an instinct that must assert equality across our differences. There is a small but growing recent literature that addresses the problem directly.<sup>4</sup> The items in this literature vary in which sense of ‘all count for the same’ they put forward. Some are quite narrow, discussing only theories that demand an egalitarian distribution of some good.<sup>5</sup> Others are very broad, not giving much specific direction, but leaving it to the reader to interpret ‘individuals count for the same.’<sup>6</sup>

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<sup>4</sup> Significant contributions include: Richard Arneson, “What, If Anything, Renders All Humans Morally Equal?,” in *Singer and His Critics*, ed. Dale Jamieson (Oxford: Blackwell, 1999), 103–128; Jeff McMahan, “Cognitive Disability, Misfortune, and Justice,” *Philosophy & Public Affairs* 25, no. 1 (January 1, 1996): 3–35; Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke’s Political Thought* (Cambridge: Cambridge University Press, 2002); Bernard Williams, “The Idea of Equality,” in *Problems of the Self* (Cambridge: Cambridge University Press, 1973).

<sup>5</sup> E.g., Ian Carter, “Respect and the Basis of Equality,” *Ethics* 121, no. 3 (April 1, 2011): 538–571; Peter Vallentyne, “Of Mice and Men: Equality and Animals,” in *Egalitarianism: New Essays on the Nature and Value of Equality*, ed. Nils Holtug and Kasper Lippert-Rasmussen (Oxford: Clarendon Press, 2006).

<sup>6</sup> E.g., Geoffrey Cupit, “The Basis of Equality,” *Philosophy* 75, no. 01 (2000): 105–125; Vinit Haksar, *Equality, Liberty, and Perfectionism* (Oxford: Oxford University Press, 1979).

My approach falls into the latter camp. One of the central aims of the next two chapters is to explain this approach. I am interested in our basic equal status as a premise of our thinking. That premise is often linked to conclusions about discrimination, rights, or distributions of goods. Although I shall discuss those conclusions, the focus will at first be on the premise. Normative theories explain why some things matter, and some don't; a strong theme is that each of us matters, equally.<sup>7</sup> For example, we might say that everyone ought to have an equal voice in a hypothetical contract theory *because* everyone counts for the same. Or, we might say that a set of institutions that systematically disadvantages one group of people is unjust *because* it does not treat people as equals. Or, following Locke, we might hold a version of the following position:

Though I have said above...*That all Men by Nature are equal*, I cannot be supposed to understand all sorts of *Equality*: *Age* or *Virtue* may give Men a just Precedency: *Excellency of Parts and Merit* may place others above the Common Level: *Birth* may subject some, and *Alliance* or *Benefits* others, to pay an Observance to those to whom Nature, Gratitude or other Respects may have made it due; and yet all this consists with the *Equality*, which all Men are in, in respect of Jurisdiction or Dominion one over another, which was the *Equality* I there spoke of, as proper to the Business in hand, being that *equal Right* that every Man hath, *to his Natural Freedom*, without being subjected to the Will or Authority of any other Man.<sup>8</sup>

The challenge is to identify what confers this basic equality upon us, whether it is understood as a basis for deriving contractarian principles, as a grounding for

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<sup>7</sup> Following Jeremy Waldron, I focus on the "basic equality of all humans as a premise of moral and political thought," and expressly leave aside, for the time being, "discussion of equality as an economic or social aim." Waldron, *God, Locke, and Equality*.

<sup>8</sup> John Locke, *Second Treatise of Government*, sn 54.

the injustice of discriminating among us, as the source of our equal right to freedom, or otherwise.

One kind of response to the problem that I have described would be to deny that all individuals count for the same, in any sense that would require that individuals share some significant feature. I shall mention such a view here. We can distinguish at least two broad accounts of moral status.<sup>9</sup> The *interest-based* account of moral status says that a being's moral status depends on how much good there is in its life. The *intrinsic value* account of moral status says that possession of certain characteristics is sufficient to confer a status which irreducibly applies to the being itself, as a singular entity, persisting over time. I will argue below (in section 2.3) that interest-based accounts need not require that we count individuals as basic equals. Instead, they treat interests as equals. Thus they need not face the problem I have described: they do not necessarily require a feature that individuals share. In the final chapter of this thesis I return to such views. There, I propose a programme that would account for our commonly-held prescriptions that seem to relate to equality, without appealing to persons' equal basic status. Chapters 2-7 are concerned with interested in intrinsic value views that begin with persons' equality. These take moral status as something which is conferred directly upon the individual. Such views, I claim, require an account of why individuals have the same status; if it

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<sup>9</sup> Allen Buchanan, "Moral Status and Human Enhancement," *Philosophy and Public Affairs* 37, no. 4 (2009): 346–381.

turns out that we have different levels of the status-conferring property, then they will entail that our status varies correspondingly.<sup>10</sup>

What makes it tricky for such a view to say that there is a significant feature that individuals share, in virtue of which they are equal? A parent who refuses to discriminate between her children will say, ‘all have it in them to achieve the best, at anything they put their minds to.’ But as applied to persons in general, taken very literally, this is groundless. In any area, it seems more than likely that some can achieve more than others. We vary enormously in our capacities to achieve.

Perhaps, though, we should peel away a layer, and look beyond actual capacities to achieve. Instead we might consider some more abstract capacities. It might be claimed that we share some underlying equal intelligence, or sympathy, or resoluteness. However, once again, it does not ring true that we are equal in some such respect. We might respond that ‘the inequalities in abilities we see in the world around us are almost entirely the

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<sup>10</sup> An intrinsic value view might also entail that the scrutiny under which a being can be held responsible becomes more intense as that being possesses the property to a greater degree. Intrinsic value can be cashed out in a number of different ways. It may involve there being certain things no one can do to another, without their consent. But it may also be softer: it may require priority to be given to the individual who is worse off. It may involve the necessity of the rules being justifiable to each. It may even involve a utilitarian principle, justified as the outcome of treating individuals as equals (as in John Harsanyi, “Can the Maximin Principle Serve as a Basis for Morality?,” *American Political Science Review* 69, no. 2 (June 1975): 594–606.). Each of these views, unlike the interest-based account, involves irreducibly assigning normative status to individuals: on each of these views, unlike the interests-based account, there is a non-trivial sense in which individuals count as equals, that is to say, a sense of equality in which it is also not the case that two count for the same as one.

result not of difference in capacity but in external circumstances'.<sup>11</sup> In this case our basic equality becomes hostage to an empirical claim which is both contestable, and which only establishes we are 'almost' equal. We might abstract yet one more level higher, away from any empirical characteristic.<sup>12</sup> Now what are we left with? Must we suppose equal possession of a soul? It would be a considerable embarrassment for many (though not all) if our belief in individuals' equality turned out to presuppose a full-blown religious or traditionally Kantian metaphysics. Even then, the difficulties would not be over. It would still be necessary to offer an epistemology of equality: how could we come to recognise that a being possesses this non-empirical property?<sup>13</sup>

One kind of theory says that the feature we possess equally is our autonomy as moral agents. Kant says that autonomy is "the ground of the dignity of the human and of every rational nature."<sup>14</sup> This is not an empirical feature. It attaches to persons by virtue of some account of what exists beyond the natural world. We would be reluctant to stand by this position today. Admittedly, there remains a sense that moral worth couldn't be determined by a mere empirical

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<sup>11</sup> Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008), 18.

<sup>12</sup> Such a move might be motivated by the 'powerful strain of thought that centres on a feeling of ultimate and outrageous absurdity in the idea that the achievement of the highest kind of moral worth should depend on natural capacities, unequally and fortuitously distributed as they are' Williams, "The Idea of Equality," 234.

<sup>13</sup> See section 5.2.

<sup>14</sup> Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. Allen Wood (Yale University Press, 2002), 53–4.

feature. Thus, Bernard Williams alludes to the “powerful strain of thought that centres on a feeling of ultimate and outrageous absurdity in the idea that the achievement of the highest kind of moral worth should depend on natural capacities, unequally and fortuitously distributed as they are.”<sup>15</sup> Nonetheless, it would be better, because it would be more metaphysically parsimonious, if we could explain our egalitarian ideas without appealing to supernatural capacities.

Perhaps we can say that we all possess some morally significant feature to some minimum, sufficient threshold. However, such a position is problematic, for two reasons. First, there are difficulties in justifying the selection of any particular level on some given scale. It would not be satisfactory to justify some level simply because we want to reach an egalitarian conclusion. That would be circular. And it would not be satisfactory to justify some level with the reason that what matters is the possession of the variable property on which the threshold sits. This would not tell us what is special about the threshold, as opposed to the varying property. Second, even if the first problem can be avoided, we would need to explain why all the other features of individuals do not count in our assessment. Even if we do possess to an equal degree some morally important property, it remains the case that we possess many other important things unequally. An explanation of our basic equality must explain why we should ignore many features of individuals which do seem to have moral significance.

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<sup>15</sup> Williams, “The Idea of Equality,” 234.



### 1.3 Relevance, significance and arbitrariness

The challenge can be put in the following way. A basis for equality must be a significant feature that we share, but it is exceptionally difficult to describe such a feature. A defender of any particular basis owes us an account of what makes it the feature *in virtue of which* an individual can count as equal to others. It must be a feature that we are prepared to deem as something that affects an individual's status, in a way that is fundamental. An example of a property that is not itself normatively significant is the property of naturally having four limbs. This is a property shared by most of the beings which we would typically consider members of the group of equals. But it does not seem to matter that a being naturally has four limbs; it seems normatively irrelevant. More generally, an unsatisfactory account would be one that defines the property simply as membership of some given group. The trouble with both of these positions is that they fall to counterexample, even if they fit with current beings. It is not enough to deny the problem of equality to show that there is some characteristic shared by all individuals. The characteristic can't be arbitrary; it must be a characteristic we are prepared to apply to further cases.

The concepts of 'relevance', 'significance' and 'arbitrariness' should be fleshed out further. I treat 'arbitrary' as the contradictory of 'relevant', and I treat 'significant' and 'relevant' as equivalent. One view of the source of relevance is this: 'to treat a feature of an action or situation as morally relevant is to apply to the action or situation a moral principle which mentions the feature'.<sup>16</sup> The most fundamental thing is the principle, not the feature. We don't work one by one

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<sup>16</sup> R. M. Hare, *Moral Thinking: Its Levels, Method and Point* (Oxford: Oxford University Press, 1981), 89.

through all the features of the situation, deciding which are and aren't relevant. Our goal is, rather, to identify the applicable principles. To be sure, our method might begin by finding features and not principles. At the outset, we don't know which are the correct moral principles to apply, and since we have to start somewhere, we might begin by proceeding by 'guesswork'.<sup>17</sup> That is, we begin by identifying some possibly relevant features, accompanied by principles, and we reason about how plausible those principles are. Regardless of our method of reasoning, the principle has conceptual priority; the principle makes the feature relevant. This is a *post-moral* conception of the source of the moral relevance of features. Features are relevant only in virtue of their being mentioned by valid principles.

The opposite view is a *pre-moral* conception of the source of moral relevance, whereby principles are valid only in virtue of their referring to relevant features. This view is exemplified by Bernard Williams, in saying it is 'quite certainly false' that 'the question whether a certain consideration is *relevant* to a moral issue is an evaluative question'.<sup>18</sup> He thereby holds that to say that race is irrelevant to a hiring decision does not thereby commit one to an evaluative or moral principle about hiring decisions. That race is irrelevant is a truth, says Williams, that is independent of or prior to moral considerations. To act against such a truth would involve 'a purely arbitrary assertion of will, like that of some Caligulan ruler who decided to execute everyone whose name contained three

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<sup>17</sup> Ibid.

<sup>18</sup> Williams, "The Idea of Equality," 232–3 (italics his).

'R's'.<sup>19</sup> As Williams notes, those uncomfortable with running from fact to value will be suspicious of his view.

A book-length development of Williams' thought is provided by Michael Walzer.<sup>20</sup> The theory's guiding principle is the requirement that like cases are treated alike. The precise implications follow from the account of what counts as relevant in considering one case to be like another. Although he draws egalitarian implications, he defends what he describes as 'complex equality', which does not ascribe, across the board, the same basic privilege to each individual. Walzer approvingly cites Pascal, who writes: "Tyranny is the wish to obtain by one means what can only be had by another. We owe different duties to different qualities: love is the proper response to charm, fear to strength, and belief to learning."<sup>21</sup> According to complex equality, the standing of an individual in one sphere cannot be undermined by her standing in another. Walzer doubts, further, that, in fact, there will be some who rightly have high standing in all spheres. He can thus be described as egalitarian, although he does not consider individuals as having equal basic moral status; his egalitarianism

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<sup>19</sup> *Ibid.*, 233. It is unclear how to fit the practice of positive discrimination into this schema. Williams might say that race *can* be relevant to a hiring decision, prior to normative considerations, if one takes the hiring decision not in isolation, but as part of a wider social context that includes historical and institutional injustices.

<sup>20</sup> Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1984).

<sup>21</sup> *Ibid.*, 10.

arises once his theory is run through the empirical claim that no one dominates everywhere.<sup>22</sup>

It is sometimes suggested that relevance is an instrumental concept. For a consideration to be relevant in some context, the consideration furthers or hinders some desirable state of affairs. Relevance is always relative to purpose. Is this true for *moral* relevance? In this spirit, one writer on the subject claims: "To say 'x is relevant,' when we are speaking about the treatment of persons, means 'x is actually or potentially related in an instrumentally helpful or harmful way to the attainment of a given end and consequently ought to be taken into consideration in the decision to treat someone in a certain way'." <sup>23</sup>

We can distinguish two ways in which 'relevance' might be instrumental. It may refer to an actual intention, or it may refer to a function. That is to say, the 'desirable state of affairs' may be actually desired, or it may be something to which we ought to work towards. In the first case, relevance is really relative to actual intentions. This may be relevance, but it is not moral relevance. We can distinguish rational from moral relevance. We might say: it may be relevant to

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<sup>22</sup> Robert Nozick replies to Williams by arguing that activities have their own meanings, depending upon how the participants choose see them. (*Anarchy, State and Utopia* (New York: Basic Books, 1974), 233–235.) Relatedly, Jeremy Waldron objects to Walzer that it is unlikely that "at some point, social and individual meanings disentangle themselves into neat and unequivocal principles of distribution". ("Money and Complex Equality," in *Pluralism, Justice, and Equality*, ed. David Miller and Michael Walzer (Oxford University Press, 1995), 154.)

<sup>23</sup> W. T. Blackstone, "On the Meaning and Justification of the Equality Principle," *Ethics* 77, no. 4 (July 1, 1967): 241. See also Peter Westen, *Speaking of Equality: An Analysis of the Rhetorical Force of "Equality" in Moral and Legal Discourse* (Princeton University Press, 1992), 30–31.

*you in particular* that this tax cut will benefit you, but that is not a special consideration for the legislature in general; what is properly relevant to the general decision of whether to make the tax cut is whether it benefits *everybody*, or whether it is *just*. Self-interested considerations are relevant only insofar as they feed in to those more general considerations.<sup>24</sup> If I want to be bigoted, then I (rationally) ought to discriminate. My goals don't themselves make the cleavage on which I would discriminate a morally relevant consideration.

Alternatively, the instrumental account of moral relevance may refer to a function of the action. On this view, a consideration is relevant if it furthers (or hinders) a purpose that is defined independently of the norm. In this case, it seems that we are really discussing a version of what I described as 'pre-moral' relevance. Whether a consideration is significant or not is something that is understood prior to the moral principles that we ought to apply.

This distinction between different conceptions of relevance or significance may be of great consequence, and I will refer back to it in what follows. For the moment, note that identifying a basis for equality seems to be a challenge whichever idea of 'relevance' one follows. In either case, the sorts of features that we appeal to in explaining our significance are the sorts of features that vary on a scale between us. That is the central reason for saying that it is a

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<sup>24</sup> On this point, Alan Gewirth writes: "Since, however, these purposes may be such as we ordinarily regard as unjust or otherwise immoral, to distinguish between qualities of persons or acts on the basis of these purposes would promote injustice rather than justice." Alan Gewirth, "The Justification of Egalitarian Justice," *American Philosophical Quarterly* 8, no. 4 (October 1, 1971): 336.

problem to justify basic equality: what is relevant or significant about us seems to vary on a continuous scale.

#### 1.4 Relevance combines

There is another reason for saying that it is a problem to justify basic equality. We have said that identifying a basis for equality would involve identifying a shared feature. This should be a relevant or significant feature. And I have suggested that we might construe that requirement in one of two ways: either a feature is significant in virtue of being referred to by a valid principle ('post-moral relevance'), or a principle is valid in virtue of responding to significant features ('pre-moral relevance'). If we accept the second possibility, it seems that there is an extra challenge in identifying a basis for equality. This is because, even if we do possess equally some significant feature, we possess many other apparently significant features unequally. Thus, Aristotle suggests: "It is possible to argue that offices and honours ought to be distributed unequally on the basis of superiority in any kind of goodness whatsoever—even if those concerned are similar, and do not differ, in any other respect."<sup>25</sup> It would be unsatisfactory to argue that our basic equality flows from our equal capacity to make claims on one another, if it is also thought that it matters in a similar way

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<sup>25</sup> *Nicomachean Ethics*, 1282b14

whether a person is able to engage in abstract reasoning, form a conception of the good, use language, or reciprocate.<sup>26</sup>

One could respond by saying (i) we are in fact equal in each significant respect; (ii) our inequalities in significant respects balance out to an overall equality; or (iii) the dimension on which equality matters is qualitatively different from the dimension on which individuals matter in other ways. The first two look unlikely, empirically: why would we expect our value to balance out? The third, then, seems the most hopeful route for a defender of basic equality.<sup>27</sup> So, an explanation of our basic equality must not only explain how there is some morally significant feature which we do share; it must also explain why we should ignore other features of individuals which do, apparently, have moral significance. For example, in assessing political and moral status, we look to one dimension, and in assessing the person's contribution to humanity, we look to another. Why is one dimension suitable for one kind of assessment, and another for another? Why don't they all meld into one overall assessment? The challenge in responding to this question is to explain why one dimension of assessment can crowd out the others.

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<sup>26</sup> Similarly, Matt Cavanagh writes: "We could argue...that everyone has an equal claim on a job because we are all equally human...Even if we agree that being human is a morally significant fact, it is at most one aspect of anyone's claim on anything. The full list of factors relevant to the distribution of any given good will also include some factors—like need, merit, or desert—which do admit of degrees." Matt Cavanagh, *Against Equality of Opportunity* (Oxford University Press, 2002), 104. Douglas W. Rae and Douglas Yates, *Equalities* (Harvard University Press, 1981), 46–48.

<sup>27</sup> Cupit, "The Basis of Equality," 112–4.

Notice that this concern about how relevant features might combine together seems not to apply if we understand ‘relevance’ in the other way that I described. That is, we understand relevance as ‘post-moral’; as something that follows from our equality principles. With post-moral relevance, to assert that it matters that we vary in a number of different respects is just to assert that some rules that compete with equality rules are in play. And that is to prejudge the entire issue: it is to assert that we are not basic equals.

Nonetheless, the post-moral-relevance-combines argument might have something left in it if it is construed as epistemic. The thought is that our natural variations give us reason to think (in the light of uncertainty about the sorts of rules that apply) that the correct rules will treat us differently. We notice some shared relevant feature, that is, some feature that qualifies all of us to fall under a rule. We suggest that we are thereby equal. The relevance-combines thought arises: we notice other features that might qualify us to fall under different possible rules. We’re left unsure what rules apply. So the initial certainty about equal status is undermined.<sup>28</sup>

## 1.5 Structure of the thesis

The next chapter examines what ‘basic equality’ is. I consider the suggestion that it is a ‘trivial’ idea; that is to say, it adds nothing to our discourse. I argue against such a view, and conclude that a commitment to basic equality carries

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<sup>28</sup> I shall return to this point in sections 2.1, 2.3, and 3.6.



with it a commitment to one of a series of claims about the status of our normative theorising.

Chapters 3 and 4 establish the claim that there is a problem in identifying a basis for equality. I argue that if we are to affirm 'basic equality', then we should identify a shared, relevant feature, in virtue of which we count as equals. I consider several arguments against this view, and several arguments that accept it, but assert that it is not problematic to answer the challenge it poses. The problem of offering a basis for equality would vanish if what I call the 'intuited response' is successful. According to this response, there is no further explanation of the significance of the feature in virtue of which an individual matters, beyond the bare fact that it is the feature in virtue of which an individual matters. I argue against this claim, and conclude that if the problem of identifying a basis for equality is to be resolved, it is necessary to defend a substantive account of the independent significance of some feature.

In chapter 5 I go on to consider the view that persons' basic equality depends upon theological or religious premises. This seems a hopeful idea, and it is not uncommon – but, I argue, despite the historical connection between equality and religious (and, in particular, Christian) ideas, there is not a good philosophical connection between them. Chapter 6 explores several different ways in which 'humanity' supplies the basis for equality, and chapter 7 examines the role of the concept of respect. Again, these positions are found wanting. The exploration of both of these concepts is illuminating, but we are left looking for a basis for equality.

The final chapter offers a positive view. I argue that we can ground prescriptions that we describe as 'egalitarian', without making appeals to 'basic equality'. Instead, we can justify those prescriptions by appealing to the rough equality of people's interests. This conclusion is illustrated with two central cases: non-discrimination, and distributive egalitarianism. Those two ideals are typically very closely connected to the idea of basic equality; if there is hope for justifying them without an appeal to basic equality, then the negative results of the preceding chapters should not leave us in a state of pessimism about the prospects for justifying egalitarian prescriptions.

## 2 What is basic equality?

### 2.1 Equality: formal and substantive

I suspend discussion of a ‘problem’ of identifying as basis for equality for the duration of this chapter. Here the task is to identify what this fundamental equality—or ‘basic equality’—is.<sup>29</sup> What place does the idea of people’s basic equality occupy in our discourse? Some assert that it is fundamental: the acceptance of this idea is a necessary condition for entry into decent debate, and it is also a (or the) central precept from which our normative political theory flows. Others see basic equality quite differently. They hold that, insofar as it is in any way plausible, it is a claim whose scope for meaning is so broad that it is rendered virtually meaningless or trivial. Furthermore, they argue that its deployment ought to arouse deep critical suspicion, since any residual meaning that it does possess is merely rhetorical or oblique. Against this background, the purpose of this chapter is draw out a conceptual framework for the application of the idea that persons are of equal value. I argue that a commitment to persons’ basic equality reveals a commitment to one of a series of possible claims about the proper method of political theory. I argue, further, that since there is room for disagreement about those methods, there is scope for disagreement about basic equality, even within a framework of justice that does not depend upon a prior idea of desert or merit.

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<sup>29</sup> I am using ‘basic’ in the sense, ‘that which bases’, rather than (necessarily) as ‘fundamental’, or, ‘that which bases, and is not itself based’.

In this section I will consider the relationship between basic equality and some formal ideas of equality. These do not prove to be fruitful; section 2.2 builds upon the resulting scepticism and considers the idea that basic equality is entirely trivial. Sections 2.3 and 2.4 offer different ways to deny this ‘triviality’ thesis. Sections 2.5 and 2.6 then discuss how we can identify whether a theory appeals to basic equality. The final section concludes by using those possible denials as providing a way to distinguish between ‘basic equality as a premise of a theory’, and ‘equality as a way of describing a theory’s prescriptions’. This is a distinction to which I return at several points in the thesis.

Basic equality is usually described as a highly abstract idea.<sup>30</sup> Can we say anything concrete about it? The idea that we are fundamentally equal arises in number of different ways. Here is a selection: ‘All are created equal’; ‘all should be equal’; ‘all should be treated equally’; ‘all should be treated as equals’; ‘each should count for one and no more than one’; ‘equals should be treated equally (and unequals should be treated unequally)’; ‘apply the same rules equally to everybody’; ‘consider interests equally’; ‘all are due equal concern and respect’; ‘persons have equal moral worth or status’.<sup>31</sup>

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<sup>30</sup> Dworkin, “Comment on Narveson”; Kymlicka, *Contemporary Political Philosophy*; Sen, *Inequality Reexamined*.

<sup>31</sup> For a shorter list, see Kai Nielsen, *Equality and Liberty: A Defense of Radical Egalitarianism*, Reprint (Rowman & Littlefield, 1984), 15.

The idea that we are moral equals is, intuitively, consistent with the idea that we sometimes ought to be treated unequally.<sup>32</sup> There would be no clear offence to our moral equality were I to receive more state assistance than you in virtue of my having suffered some debilitating injury that affected my ability to work. Our equal moral status as persons may also be thought (pending the outcome of a debate about the form of our rights) to be consistent with our having vast differences in wealth, so long as our equal rights to our bodies and our property are fully respected.<sup>33</sup> The distinction between 'equal treatment' and 'treatment as equals' expresses this difference between offering people the same treatment, and acting in accordance with the fact that they are moral equals.<sup>34</sup> Equal status does not constrain us to a set of identical actions regardless of our differences.

So basic equality is not equal treatment. Beyond this, basic equality seems elusive. If it is consistent with very different prescriptions, does it say anything? We might consider it an unhelpful concept that says nothing; an unworthy subject of inquiry. Nonetheless, it is a part of our discourse, and for this reason

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<sup>32</sup> Thomas Douglas, "Human Enhancement and Supra-personal Moral Status," *Philosophical Studies* (August 26, 2011).

<sup>33</sup> Nozick, *Anarchy, State and Utopia*, 49–51. See also Kymlicka: "It is unclear whether Nozick himself would accept the claim that treating people as 'ends in themselves' is equivalent to treating them 'as equals', or whether he would accept Dworkin's egalitarian plateau...All that matters, for my purposes, is that Nozick defends libertarianism by reference to some principle of respect for the moral status and intrinsic worth of each person." Kymlicka, *Contemporary Political Philosophy*, 161. For a clear discussion of the possibilities, see Douglas, "Human Enhancement and Supra-personal Moral Status."

<sup>34</sup> Ronald Dworkin, *Taking Rights Seriously* (Harvard Univ Pr, 1978).

we ought to examine it more closely. It is part of our discourse in at least two ways. First, there are paradigm cases of denials of basic equality. The outrage we feel at an overt and aggressive discriminatory practice is usefully described as a feeling that there has been an offence against equality. Wrongful discrimination diminishes those it harms by failing properly to respond to their status as equals with others.<sup>35</sup> An appeal to equality in public debate is at least as likely to refer to the purview of the Equality and Human Rights Commission, as it is to an equitable distribution of resources. Second, we sometimes positively argue from our equal status to more specific political conclusions. We might argue that there is a right to free speech on the grounds that none has the authority over others to limit their expression; all are equal, so far as viewpoints are concerned.<sup>36</sup> Or, we might claim that our equal status entails that our interests ought to be considered equally, and that our political and ethical

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<sup>35</sup> Richard Arneson puts the idea this way: "All humans have an equal basic moral status. They possess the same fundamental rights, and the comparable interests of each person should count the same in calculations that determine social policy. Neither supposed racial differences, nor skin color, sex, sexual orientation, ethnicity, intelligence, nor any other differences among humans negate their fundamental equal worth and dignity." Arneson, "What, If Anything, Renders All Humans Morally Equal?," 103.

<sup>36</sup> For a related argument for freedom of speech see Ronald Dworkin, "Is There a Right to Pornography?," *Oxford Journal of Legal Studies* 1, no. 2 (July 1, 1981): 177–212.

systems ought therefore to be utilitarian.<sup>37</sup> Given these common uses of the language of basic equality, it would be hasty to dismiss it.<sup>38</sup>

I have said that basic equality is consistent with prescriptive inequality. And I have said that there is a problem in giving a justification for basic equality, since we all seem to be (in any relevant sense) descriptively unequal. Let us distinguish basic equality from these other sorts of equality more clearly.

When we describe two things as equal, we refer to some respect in which they are equal. It is possible for two things to be equal in every respect. Referring only to mathematical entities, we might say that 'seven plus six' is identical in every respect to 'thirteen'.<sup>39</sup> Is it necessary for descriptive equality that the two individuals are equal in every respect? It cannot be, since this would run against our practice: it would mean that we can never correctly say that two physical objects are descriptively equal. Two perfect replicas of a painting differ at least

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<sup>37</sup> Will Kymlicka, "Rawls on Teleology and Deontology," *Philosophy and Public Affairs* 17, no. 3 (Summer 1988): 173–190; Peter Singer, *Practical Ethics* (Cambridge University Press, 1993).

<sup>38</sup> Equal status means that there is no priority in the claims that we can make upon one another. If rights matter, then equal status then means that none have more forceful rights than others; if interests matter, then equal status means that none have interests that ought to be counted more heavily than others.

<sup>39</sup> This might be doubted. Some may say that the property of having three (and only three) sides is not identical to the property of having three (and only three) angles, even though those two properties are perfectly coextensional.

in respect of the space that they occupy. Two individuals are descriptively equal when, in some respect (but not necessarily all respects), they are identical.<sup>40</sup>

Claims of equality can also be prescriptive: we sometimes say that two persons ought to receive the same treatment, and by this we mean that they should be treated equally. Crucially, prescriptive equality consists both of an idea of descriptive equality, *and* a claim that there is some principle that refers to that description. When I claim that all citizens ought to have equal access to healthcare, I invoke the idea of citizenship as a relevant mode of comparison, and I also invoke a principle holding that citizens, *qua* citizens, ought to receive access to healthcare.

It becomes clear that prescriptive equality invokes a principle when we consider cases with similar descriptions but different principles. An assertion that you should not jump ahead but must wait your turn in a queue may be expressed with the assertion:

‘Nobody is special here: all equally must wait their turn.’

This assertion involves an appeal to a rule that all must receive their turn in accordance with the order in which they joined the queue. Permitting you to jump ahead would violate the prescriptive equality at hand because it would violate that rule. Compare this to a queuing system that is run on different terms. A system of triage might also be explained with prescriptive equality:

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<sup>40</sup> Thus: “Descriptive equality...is the *identity* (as opposed to similarity) that obtains among things that are indistinguishable in *relevant* respects (as opposed to all respects), as measured by relevant *standards of measurement* (as opposed to all relevant dimensions).” Westen, *Speaking of Equality*, 33.



‘Nobody is special here: all are equally entitled to receive priority of treatment according to the urgency of their need.’

This assertion involves an appeal to an equality that is attached to a different rule. If your need is greater than those who arrived earlier, then a failure to permit you to jump ahead in the queue would violate the prescriptive equality at hand, because it would violate that rule. To repeat, these examples illustrate how prescriptive equality involves an appeal to a rule, along with a descriptive equality.<sup>41</sup>

Since prescriptive equality can be established with the presupposition of a variety of different principles, it is distinguishable from basic equality, which asserts our equal worth, value, or status. To treat a set of individuals prescriptively equally, it is sufficient merely to treat them in accordance with a rule. And some rules are manifestly inconsistent with our equal worth. Talking of prescriptive equality, Sidgwick writes: “So much equality...is invoked in the very

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<sup>41</sup> Furthermore, claims of prescriptive equality can have precisely the same grammatical form as claims of descriptive equality. The assertion ‘men and women are equal’ can, depending upon the context, be taken to mean that there is some relevant descriptive respect in which they are identical, or (more likely) it can be taken to mean also that men and women have the same rights or otherwise fall under the same rule. Some say that the fact that there is a purpose in describing individuals as equals is enough to show that descriptive equality must also make an appeal to the prescriptions that the speaker has in mind. Jeremy Waldron argues, “Any assertion of descriptive equality has some point to it, and that point is a matter of what, prescriptively, we are to do with the things we are comparing in the light of our comparisons.” (“The Substance of Equality,” *Michigan Law Review* 89 (1991 1990): 1353.) However, it is possible to make comparisons without intending to do anything with the things that we are comparing. I might be entirely purposeless in saying that two wispy clouds are equal in length. At least insofar as we can distinguish fact and value, we can distinguish descriptive and prescriptive equality.

notion of a law: and it is plain that laws may be equally executed and yet unjust.”<sup>42</sup> For example, to conscript only red-haired men would be unjust, and, intuitively, inconsistent with people’s basic equality, even were it consistently applied as a rule. A general requirement of prescriptive equality itself says very little: it says that we should apply the principles that we should apply.

To be sure, nothing I have said rules out the possibility that there is some *specified* principle (or set of principles) that is appropriately identified with basic equality. I shall discuss this possibility later on. We can distinguish prescriptive equality in general, from particular prescriptive equalities that appeal to particular principles. For now I am interested in how (or whether) basic equality might be identified with a more formal idea; in particular, I have suggested that it cannot be identified with the formal idea of prescriptive equality in general, since prescriptive equality in general says almost nothing, while basic equality seems to say more.

In continuing to consider formal possibilities, if basic equality is not equal treatment in general, we might go on to say that it is the requirement *treat equals equally*, or the requirement *treat like cases alike*, or the requirement of *formal equality*. (I take these three italicised formulations to be equivalent.) The ‘equal treatment of equals’ has both the force of logic, and the sound of an independent moral reason. It suggests that it is an extra injustice to fail to consider like cases to be alike. It appears unjust for two defendants to receive different sentences, if they have the same histories, and are tried together for the same crime in which they had the same portion of involvement. This seems

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<sup>42</sup> Henry Sidgwick, *Methods of Ethics* (Hackett, 1981), 267.

to be true even if a judge has a good public policy reason to experiment with longer sentences for randomly chosen convictions. Perhaps a principle of 'equal treatment of equals' would take us further: perhaps it is similarly unjust for people's prospects over their lifetimes to depend on matters that are beyond their control; our upbringing and our talents are as arbitrary as any other factor in determining our prospects.

This variety of possible implications shows that 'treat likes alike' is incomplete as a guide without an account of what counts as a like case. But to show that it is incomplete is not to show that it is empty. It might be argued that it has content in the sense that it gives an *extra reason*. According to this view, a failure to treat like cases alike is a further wrong, beyond whatever else is at stake. Suppose that two people both receive welfare support on account of a severe difficulty they have in walking. Both have a similar difficulty, but one receives significantly greater support, on account of having gone to a different claims office, or having filled out the application forms in a certain way, or having had her application smiled upon because the assessor identified with her personally. There *seems* to be an extra injustice in this sort of case, beyond the injustice involved in the fact that at least one of the two people has not received the fair level of support. They are like cases, and they are treated unlike. Regardless of whatever else we owe, and regardless of whether owing is conditional upon a disability having been proved, this unequal treatment seems to be an extra wrong.<sup>43</sup> According to this view, the correct way to conceive of

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<sup>43</sup> See also Joel Feinberg, "Noncomparative Justice," *The Philosophical Review* 83, no. 3 (July 1, 1974): 297–338.

this extra wrong is that it is a failure to treat equals equally, and respect for 'basic equality' is identical with the recognition and avoidance of this wrong.

However, let us look more closely at the formula of treating equals equally.

Should we interpret the word 'equals' as descriptive or prescriptive? (Note that the word 'equally' in the sentence 'treat equals equally' is unambiguously prescriptive: the sentence is a command, and it prescribes that something shall be treated in a certain way.) Consider first the possibility that the word 'equals' in that formula is descriptive; it says that we should treat descriptive equals prescriptively equally. That is, those identical according to *any* standard of measurement ought to fall under the same rule. This cannot be correct, and also, it is a contradictory requirement. Two people demand a passport; both are descriptively people; must it follow that both (or neither) are due passports? Clearly not. Descriptive equality in one dimension is consistent with (and may imply) descriptive inequality in another.

So in the formula 'treat equals equally', it is better to understand the word 'equals' as prescriptive. Recall, prescriptive equality refers to a principle. In this case, 'treat equals equally' says: treat those who fall under a rule according to that rule. And then, the requirement 'treat equals equally' does not itself tell us very much. This is something it shares with the requirement 'treat people equally'. Furthermore, it is clear that formal equality is not basic equality. Basic equality is substantive; it expresses our equal worth. Formal equality is not

substantive, and it is consistent with practices that (intuitively) fail to respect persons' equal worth.<sup>44</sup>

Consider again the case of the unequal claimants on page 35 above. That was a case in which we are inclined to think that there is an injustice in the unequal application of a rule. However, the apparent extra wrong inherent in the unequal treatment described there can be accounted for with a background principle that tells us not to offer differential payments in such cases. It seems doubtful that 'treat likes alike' has independent force; it tells us to follow the rules we should follow. It does appear plausible that, insofar as we fail fully to apply our rules, we should fail to apply them in ways that do not adversely affect some more than others. But that is just another of the rules that we should follow, and there does not seem reason to identify it as a separate, 'basic equality' principle, especially if we are looking to understand it as a central or fundamental norm.

Where have we got to? I have distinguished descriptive, prescriptive, and formal equality. None is a suitable understanding of 'basic' equality. Many things are descriptively equal in some respect, and it is a further claim that two individuals

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<sup>44</sup> Note that the above argument assumes that there are only two ways of understanding the word 'likes' as a descriptive idea in the formulation 'treat likes alike'. The first reading says: 'descriptive likes in *some* respect should be treated alike. The second reading says: descriptive likes in *all* respects should be treated alike. The first is implausible, and the second has little scope of application, and so here we conclude that the word 'likes' in that formulation must be prescriptive. However, there is a third possibility. This says that 'treat likes alike' means that those that are descriptively alike in some *given* respect should be treated alike. This has content; it remains to explore whether there is an appropriate descriptive equality that would fill out this formula. This understanding is substantive. It is not consonant with the present discussion: why would a bare formula *mean* something that it does not expressly refer to? In sections 2.3-2.6, I suggest ways in which our reasoning about norms may do so.

are equal in some important respect. Prescriptive equality is consistent with intuitive violations of basic equality. Formal equality ('treat equals equally') collapses into a kind of prescriptive equality, and does not seem to provide us with independent reasons.

## 2.2 That equality may be trivial

The foregoing discussion gives rise to the thought that 'basic equality' says almost nothing. Many different theories – egalitarian, libertarian, and more – appear committed to basic equality. If theories that are so divergent all endorse this apparently central claim, one may begin to wonder whether it plays any role at all. Relatedly, one may wonder whether it is a single, unified claim, as it appears to be when it is baldly asserted. Rather, it may be a catch-all abbreviation for a series of unspecified and unworked-out ideas that we have about what the proper outcome of a theory should be; it is not the more interesting claim that it seems to be, that is, it is not some shared central premise that any plausible theory ought to begin with. Call the following idea the 'triviality charge':

We all should equally treat one another in accordance with the rules that we ought to follow. But the word 'equally' neither adds to nor detracts from that sentence. Claims that we 'all count for the same' say very little at all; they are either empty, or oblique ways of referring to other principles without stating them expressly.

In this section I shall bring out the triviality charge further; the following sections will suggest a series of responses to it. An understanding of how to respond to

the triviality charge furnishes us with a better understanding of what is defended in a defence of basic equality

The triviality charge is associated with Joseph Raz and Peter Westen.<sup>45</sup> Westen writes:

Equality will cease to mystify - and cease to skew moral and political discourse - when people come to realize that it is an empty form having no substantive content of its own. That will occur as soon as people realize that every moral and legal argument can be framed in the form of an argument for equality. People then will answer arguments for equality by making counterarguments for equality. Or simpler still, they will see that they can do without equality altogether.<sup>46</sup>

The central claim that motivates this thought is the claim that I focused on in the previous section. The idea that two persons are prescriptively equal presupposes a standard for treatment that both satisfy. Prescriptive equality supposes a principle.<sup>47</sup> What, then, do we make of 'equal status' or 'equal

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<sup>45</sup> Joseph Raz, *The Morality of Freedom* (Oxford University Press, 1988); Westen, *Speaking of Equality*. See also Felix E. Oppenheim, "Egalitarianism as a Descriptive Concept," *American Philosophical Quarterly* 7, no. 2 (April 1, 1970): 143–152.

<sup>46</sup> Peter Westen, "The Empty Idea of Equality," *Harvard Law Review* 95, no. 3 (January 1982): 61. Raz writes: "R. M. Dworkin regards political morality as resting on one fundamental right of everyone to equal concern and respect. This seems to mean that everyone has a right to concern and respect and that there is nothing else which may count in justifying political decisions. It is nothing but a closure principle to a political theory putting forward a right to concern and respect, and not a right to equality, as the foundation of all political morality." Raz, *The Morality of Freedom*, 220.

<sup>47</sup> "To say that two persons are the same in a certain respect is to presuppose a rule – a prescribed standard for treating them – that both fully satisfy. Before such a rule is established, no standard of comparison exists. After such a rule is established, equality between them is a "logical consequence" of the established rule." Westen, "The Empty Idea of Equality," 548. See also Kent Greenawalt, "Prescriptive

value'? 'Status' involves no more than the fact that the thing falls under a principle. We need only identify the rules, and not the prior value of individuals, in order to have a full account of what we ought to do and why. The claim that individuals have 'equal status' appears only to be a way of abbreviating a set of ideas about what we ought to in a very wide range of cases. To have a full account of what we ought to do, what we really require, it seems, are the rules and the principles.

On equal value, Joel Feinberg writes: "If two things or two persons have the same worth...they must have in common some other characteristic—a nonvalue characteristic—that is the basis of their equal worth."<sup>48</sup> In the light of the above discussion, it seems that 'equal worth' means nothing more than 'falling under the same rule'. If so, Feinberg's claim is misleading, since two individuals may fall under the same rule in virtue of complexes of different features that they possess. And the search for a nonvalue characteristic shared by two individuals with the same worth will not return an interesting result: its answer will be best expressed by referring directly the 'characteristic' of falling under the relevant rule.<sup>49</sup>

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Equality': Two Steps Forward," *Harvard Law Review* 110, no. 6 (April 1, 1997): 1265–1290; Christopher J. Peters, "Equality Revisited," *Harvard Law Review* 110, no. 6 (April 1, 1997): 1210–1264.

<sup>48</sup> Joel Feinberg, *Social Philosophy* (Prentice-Hall, 1973), 96.

<sup>49</sup> The idea is expressed with the following analogy (due to John Broome, in conversation): Karl Marx thought that if, say, a tonne of coal and a horse have the same monetary value, they must have some further feature in common, in virtue of which they have the same monetary value. He concluded that this shared feature must be labour time. But Marx was in error. The coal and the horse need have nothing in common, except the same answer to a complex function that goes from people's preferences and interactions in the market, to price. Similarly, if persons are due something equally, the only shared



Even if talk of equality is translatable into other rules, it might nonetheless be objected against the triviality charge that talk of equality remains worthwhile: perhaps the language of equality provides a useful way to *refer* to those rules. However, the triviality charge holds not just that equality-talk is redundant. It is also holds that it is oblique or misleading. For instance, despite the fact that any particular claim about equal status supposes its own particular rule, there is a rhetorical tendency to suggest otherwise. By putting a claim into equality-language, and thereby implicitly deploying the idea that different equalities are connected, the speaker can, as Raz says, “gain from the good name that equality has in our culture”.<sup>50</sup> Furthermore, non-egalitarian claims can be translated into the language of equality. For example, an aristocratic view might be translated into the claim that each is equally due that which his or her station provides. According to the triviality charge, these points together suggest that talk of basic equality is best left behind.<sup>51</sup>

Some argue that basic equality is meaningful on the following grounds. When we make appeals to equality we point towards a whole catalogue of reasons. It is sometimes highly pertinent to say we are all basic equals: in some contexts,

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property we must attribute to them, logically, insofar as it can be called a property at all, is the property of being due something equally.

<sup>50</sup> Raz, *The Morality of Freedom*, 228.

<sup>51</sup> The point is made with regard to ‘equal status’ by David DeGrazia in the following terms: “While we could summarily collect morally interesting differences by speaking of unequal moral status, this language is so likely to be misunderstood and misused that it might be best to drop it.” (David DeGrazia, *Taking Animals Seriously: Mental Life and Moral Status* (Cambridge: Cambridge University Press, 1996), 252.) On DeGrazia’s usage, ‘different moral status’ is consistent with ‘equal consideration of interests’.

to say this is to assert that some descriptive difference ought not to play a role that it does.<sup>52</sup> For example, it can be a way of expressing a criticism of a distinction between combatants and non-combatants in the calculus of the justification of a war. Nonetheless, a signpost towards a reason is not a reason itself, and if the most that we can say for equality's value is that it is a useful way of referring to other values, then it is not the value that we thought it was in the first place.<sup>53</sup> From the point of view of the triviality charge, the rules of treatment are what matter; 'equal worth' and 'equal status' are merely ways of summarising those rules. And they are clumsy summaries, at that, since they hint at a standard of comparison that can appear independent of, but is merely a corollary of, the rule. In short, the view under discussion holds that 'equal worth' and 'equal status' add nothing to our principles, and that insofar as they say anything, they carry with them a worked-out account of our principles that is in need of fuller expression.

### 2.3 First reply: relevance is prior to rule

Having put forward the view that basic equality lacks content, I shall devote some space to outlining some responses to it. The responses have one thing in

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<sup>52</sup> For examples of this position, see Williams, "The Idea of Equality"; Nicholas Mark Smith, *Basic Equality and Discrimination* (Ashgate, 2011).

<sup>53</sup> Sen replies: "the general requirement of the need to value equality *in some space that is seen to be particularly important* is not an empty demand," since that requirement is *at least* a requirement of scrutiny." (Sen, *Inequality Reexamined*, 24.) This should not trouble the advocate of the triviality charge, whose central point is not one about how we should proceed in applying our principles (it is not about how we should direct our scrutiny); it is a point is about what our principles actually look like.

common: they all make appeals to the nature of our norms, and thereby, about the proper role of our theorising. My aim here is not to mount comprehensive defences of these responses, but to argue that assertions of 'basic equality' are best understood as carrying with them a claim about how we ought to engage in normative theory. That is to say, the best, or most charitable, interpretation of a claim that people are basic equals is that it involves a claim about method. Thus, an argument about one thing ('are we equals?') depends on argument about something else ('how should we reason about value?'), and there is a concomitant possibility that we will talk at cross-purposes.

The triviality charge says that prescriptions of equal worth presuppose rules of equal treatment. One kind of reply to the charge argues that this gets things backwards. Instead, equal worth entails rules of equal treatment, and this entailment works without the premise that equal worth logically supposes equal treatment. How could this work? It may be the case that the fact that we share some *significant* or *relevant* feature itself entails that (for example) we have the same basic rights, or ought to receive, *prima facie*, equivalent allocations of some kinds of goods.

This view supposes something about what it means for one thing to be 'significant' or 'relevant' (I treat the two concepts as equivalent). In section 1.3 I described two ways we might understand those ideas, and this view adheres to the less widely held understanding. The more common understanding of the source of 'relevance' is this: 'to treat a feature of an action or situation as morally relevant is to apply to the action or situation a moral principle which

mentions the feature'.<sup>54</sup> The opposite view – the view that is of interest for the moment here – is a *pre-moral* conception of the source of moral relevance, whereby principles are valid only in virtue of their referring to relevant features. How might one use this thought to give meaning to 'basic equality'? It is not an idea that refers to equality itself. Nonetheless, one might claim that there is a meritorious feature that each individual possesses to the same extent, and that this equal merit has implications for how we should understand people's entitlements. On such a view, basic equality is *constituted* by some valuable characteristic that persons share equally – a characteristic whose value arises prior to any equality principle. Basic equality is thus not a trivial idea. It refers to this characteristic, to the fact that it is possessed equally, and to the fact that it is significant (in the sense that it guides our norms). This reply supposes what I have called 'pre-moral significance'. It denies that there is some ethical principle that demands that we respond to people's worth. Rather, our response to worth is guided by a non-moral consideration: by what is *fitting*.<sup>55</sup> 'People are equals' is, on this view, a meaningful statement, since it is a descriptive truth that *makes it the case that* certain prescriptions hold.

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<sup>54</sup> Hare, *Moral Thinking*, 89. Ibid.

<sup>55</sup> In this spirit, Thomas Christiano writes: "The properties of persons in virtue of which they are to be treated similarly or differently from others may not be incidental or merely relational properties of those persons. They must be qualities or features that display a distinctive worth or status in the persons. What is due to a person is what ought to be done or ought to be had by a person by virtue of meritorious features or features that display the worth or status of the person that are relevant to the ownership. What the person is due is a fitting response to the worth of the person in question." (Christiano, *The Constitution of Equality*, 19.)

Does this move avoid triviality at the cost of downright implausibility? One wonders how one comes to know that one thing is relevant to another, or that one action a fitting response to an individual (do we just feel the wind?). Moreover, one wonders what mechanism there could possibly be for determining relevance or fittingness. However, it is too quick to reject the view out of hand. There are defences of the approach. For instance, we might make appeal to our actual practices in order to answer those questions.<sup>56</sup> Furthermore, parity of scrutiny should urge us to ask the equivalent difficult questions of the 'post-moral' relevance views, and it would prejudge a debate to assert its outcome within the conceptual framework that I am setting out here. If an assertion of basic equality can be meaningfully made by appealing to such ideas, we should say that one's assertion of basic equality can involve a commitment to such ideas.

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<sup>56</sup> See section 1.3 above and Walzer, *Spheres of Justice*. Walzer's position holds up our practices as the source of the criteria of a fitting response. What persons are owed runs in proportion to the particular practices in which they are engaged. On this view, the pattern by which a practice endows different persons with different entitlements itself flows from our own collective interpretation of that practice. In some sphere, you may be due great respect and high standing, while in another, you may rightly be placed lower down. If we believe, as Walzer does, that none will in fact rightly dominate all (or even most) spheres of our social life, then we will have a view that can be called egalitarian. This 'complex egalitarianism' depends partly upon an interpretation of our nature, but does not require an assertion of an equally important feature that each of us possesses. While this view holds a 'pre-moral' conception of significance, it does not hold to a significant feature that each of us shares equally, and so does not seem to be committed to 'basic equality'.

## 2.4 Second reply: Equality and constructed values

We have seen one way in which ‘basic equality’ would not be a trivial claim. There are at other kinds of view that give a non-trivial meaning to the idea of basic equality. I shall describe these in this section.<sup>57</sup> The triviality charge assumes that whether a theory appeals to basic equality is dependent upon whether that theory is set up so that its scope of application assigns the same to each of a set of beings, and ‘scope’ has been taken as a purely formal term. If we abandon this account of a principle’s scope, ‘equal moral status’ may be non-trivial. If we can algorithmically derive the status from the prescription, then it is natural to wonder what use it is to talk of ‘status’. Recall Peter Westen’s argument: “After [a rule that two individuals both fully satisfy] is established, [equal status] between them is a ‘logical consequence’ of the established rule.”<sup>58</sup> In contrast, the reply that I shall now explore denies that we can always derive the status from the rule.

There are ways in which the claim that individuals are equal may say something that is irreducible to any claim about the rules governing how they ought to be treated. Will Kymlicka writes:

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<sup>57</sup> Here I follow through a view put forward in Jeremy Waldron, “Does ‘Equal Moral Status’ Add Anything to Right Reason?,” *SSRN eLibrary* (July 29, 2011), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1898689](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898689). Elsewhere, Waldron summarises his view in saying that ‘status’ “is not just mnemonic, it is dynamic”. (Jeremy Waldron, *Dignity, Rank, and Rights*, ed. Meir Dan-Cohen (Oxford: Oxford University Press, 2012), 73.)

<sup>58</sup> Westen, “The Empty Idea of Equality,” 548.

[P]olitical philosophy is not like logic, where the conclusion is meant to be already fully present in the premises. The idea of moral equality is too abstract for us to be able to deduce anything very specific from it. There are many different and conflicting kinds of equal treatment...All of these particular forms of equal treatment are logically compatible with the idea of moral equality. The question is which form of equal treatment *best captures* that deeper ideal of treating people as equals. This is not a question of logic.<sup>59</sup>

How do we understand the place of 'basic equality' in such a schema? One might believe that basic equality plays a role in the way our moral and political principles are constructed. Thus, one may hold, with Aquinas, Hobbes, and Kant, that morality is itself indeterminate, and that we need some authority (God, a leader, humanity) to render it determinate.<sup>60</sup> In such cases, the equal status of persons may be a part of the indeterminate structure of morality that

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<sup>59</sup> Kymlicka, *Contemporary Political Philosophy*, 44 (italics added). See also Albert Weale: "not only the value of equality but also its exact meaning will depend upon an understanding of the relevant cultural norms." ("Equality, Social Solidarity, and the Welfare State," *Ethics* 100, no. 3 (April 1, 1990): 287.) Also, see Waldron: "'Equality,' like 'liberty' and 'fraternity,' is a shorthand slogan but not an abbreviation. It evokes a particular range of moral considerations and a particular set of complex arguments, and it does that, not by virtue of its meaning, but because every political theorist is familiar with a tradition of argumentation in and around certain texts and doctrines and knows that colleagues can be alerted to the possible relevance of that tradition by using that simple word. In some contexts, the precise formulation of a principle is important. But often in political theory, that is less important than the open-ended exploration of ideas and intimations, pinned down no more precisely than is necessary to allow discussion to proceed." ("The Substance of Equality," 1352.)

<sup>60</sup> See Aquinas, *Summa Theologica*; Hobbes, *Leviathan*; Kant, *Political Writings*. For contemporary versions of this kind of view, see Robert Merrihew Adams, *Finite and Infinite Goods: A Framework for Ethics* (Oxford and New York: Oxford University Press, 2002); John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 2011); M. C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Belknap Press, 2006); Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Harvard University Press, 2009).

must be made precise. Since there is no programmed way in which we reach our final rules of treatment, it is not possible to derive, with bare logic, our rules from the claim of equal status, or vice versa. But equal status plays a role, since it is a part of the material with which we begin. Alternatively, equal status may be an intermediate interpretive principle that guides the correct selection of rules from our indeterminate, ground-level morality. Again, this is a way in which equal status says something informative and not trivial.

Relatedly, we may accept a constructivist or an incrementalist position. On a constructivist view, the manner of generation of our rules forms a significant aspect of our norms. For an incrementalist, our norms can only be developed from positions that we have already reached. Neither position, if it says something substantive, permits a full derivation of its rules from its methods. In each case, fully understanding, for example, a norm surrounding a just war, would involve more than seeing a set of rules of application: it would require seeing how those rules are justified, and thereby how they ought to be extended to new cases. The rules surrounding new cases are formed as the cases arise, and so it is misleading to suggest that there is some objective form-bound rule guiding each unimagined situation. Basic equality, then, can be construed as a general norm that informs the development of our rules. It may demand that the procedure according to which we should generate our rules ought to be one in which each counts for the same. Or, it may demand that, in fully understanding, say, the contract between generations, we ought to take into account the idea that no one individual has a greater say in determining the outcome of the contract.



Yet further, some hold that we have a class of concepts that do not necessarily have clear referents with fully determinate sets of necessary and sufficient conditions for their application. Instead we notice, step-by-step, relevant similarities in new cases, and build up our use of words by noticing families of resemblances. The same, once again, may be applicable, normatively.<sup>61</sup> This suggests a way in which people's basic equal status can be a meaningful claim: it is a claim of the sort that is applied (fully and determinately) in the creation of our rules, but an assertion of equal status still irreducibly adds something to the normative structure that we are dealing with, by altering the way in which our rules ought to be applied. On this view, basic equality is an open concept; it is a concept for which necessary and sufficient conditions cannot be identified, and whose application can be altered. Our task is to interpret the concept, and the fact that our interpretations differ does not entail that we are talking about a different concept, since disagreements about interpretations of moral terms need not be semantic disagreements.

This thought is given further force by a distinction drawn by Ronald Dworkin concerning the workings of laws.<sup>62</sup> The law contains legal rules, such as the rules concerning what constitutes a theft. These rules are expressible in programmatic terms. But the law also contains what Dworkin refers to as 'legal principles'. Especially in hard cases, judges appeal to non-decisive, general

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<sup>61</sup> See, e.g., W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56, New Series (January 1, 1955): 167–198; Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press, 2011); Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach*, New Ed (Clarendon Press, 1998).

<sup>62</sup> Ronald Dworkin, *Law's Empire*, New edition (Hart Publishing, 1998); Dworkin, *Taking Rights Seriously*.

considerations. These are distinguishable from 'rules', since legal principles do not offer precise prescriptions of what the law should decide, but rather, are general ideas that ought to be taken into account, and balanced or integrated appropriately, in interpreting the law. Perhaps something similar applies in the case of ethics. This is of interest here, because if our normative world is not rule-bound, then there is a way in which the triviality charge can fail: 'status' may refer to something other than the rules under which an individual falls. The claim of 'equal status' corresponds to a 'legal principle' (as opposed to a 'legal rule'): it is a claim within our normative system that is not reducible to the rules governing particular cases.

In rationality, some reasons are of the sort that weigh against one another, and the same may be true in morals: there are principles holding that each ought to be taken into account, but aren't reducible to sets of rules. In morality, we possess a norm that tells us not to lie. One way of understanding this norm is that it is a consideration that must be taken into account: it is a reason that weighs against others when considering how one ought to act. If a proposed action involves lying, this norm tells against it. It is a consideration that might be outweighed by others. If many would be greatly harmed if one did not lie, then it may be permissible to lie. Now, it may be replied that there is an overarching priority principle that tells us, for any given circumstance, whether the norm against lying is outweighed by the norm in favour of beneficence. The kind of view that I am sketching here must deny this. It is able to deny this if it accepts one of the constructivist theses that I have just sketched out. The view holds that the value of equality between persons is a consideration with separate

force that must be integrated into our norms in the appropriate way, and balanced correctly.<sup>63</sup>

If basic equality is like this, then it is not reducible to the prescriptions it makes in particular cases.<sup>64</sup> The equality principle can be a reason in favour of, or against, some action or law, in the same way that the truth-telling principle is a reason in favour of telling the truth, to be interpreted in the right way, and potentially to be outweighed by other considerations. In any given case, it may be difficult to say how far the equality principle prevails, and indeed, it may be difficult to say how much of the work it has done. This does not detract from its status as a genuine, general reason.

Let us take stock. What is basic equality? I have considered the idea that it is an empty or trivial claim. I have suggested that the idea that 'basic equality' is non-trivial depends upon the idea that there is more to an assertion of 'value' or 'status' than the relevant rules and prescriptions. And I offered two ways in which there may be more to an assertion of 'value' or 'status' than rules and prescriptions. We may understand the relevance of some facts about us as

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<sup>63</sup> C.f. the notion of *phronesis* in virtue ethics.

<sup>64</sup> For example: "If we understand that reasons for action can relate to each other in this way [i.e., as balancing against one another], we can also understand that sometimes the norm against lying will be strong enough to determine that one should be truthful, even though the balance of other reasons tips in the opposite direction. If the principle of prescriptive equality has normative force, it 'reinforces' and 'pulls against' independent reasons in the same manner as the norm against lying." Greenawalt, "Prescriptive Equality," 1269–1270. See also Albert Weale, *Equality and Social Policy* (Routledge & Kegan Paul London, 1978), 11–29.

something that naturally gives rise to our principles. Or, basic equality is a meaningful idea if it is a consideration that is constructed in the light of others.

Once one accepts this, a series of questions lingers. How can we talk about basic equality? How can we identify a theory that holds to it? The claim that it is somehow abstract makes it seem difficult to grasp. The next two sections of this chapter are devoted to addressing these questions. I shall argue for two claims. In 2.5 I argue that showing that a theory counts equally some *aggregative* aspect of people is not sufficient for a correct identification of an appeal to basic equality to. In 2.6 I argue that the justification of a theory displays its commitment to basic equality.<sup>65</sup> My purpose in making these claims is to show how we can sensibly build and develop a discourse around the idea of basic equality. I will show how one can identify a claim of basic equality by looking at how a theory is justified. And I will show how one can see that a theory does not appeal to basic equality by looking at how the grammar of equality functions.

## 2.5 Equal consideration is not sufficient for basic equality

Consider what I earlier described as the ‘interest-based’ view of moral status (see section 1.2). This says that it is because of their *interests* that people matter. We value persons because they have interests, and, *a fortiori*, we value persons as a logical consequence of our valuing interests. The value of persons

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<sup>65</sup> Furthermore, in section 3.9 I argue that a commitment to the universalizability of our norms is not a version of basic equality, but plausibly presupposes it.

is reducible to the value of interests, and interests, not persons, are the atoms of the system.<sup>66</sup>

The interest-based account does not necessarily require that we count individuals as basic equals. Instead, it begins by treating interests as equals. It need not involve a claim about basic equality. Nonetheless, some writers have used slogans of equality in connection with interest-based accounts of status.<sup>67</sup> On the face of things, this is an oddity. In the sense in which ‘count interests equally’ can be called treating individuals as equals, it is also the case that two individuals are treated as equal to one individual. Each interest possessed by a set of any two individuals taken together is counted as equal. In the interest-based account, it is really only interests that count as equals; individuals play an incidental part, as carriers of interests.

Jean Hampton makes a similar point in the following terms:

Although utilitarians grant people value, and can even be called “egalitarians” about value insofar as they allow each person to count equally in the utilitarian calculation, this way of “counting” still isn’t good enough for the contractarian, who would note that each person appears in the utilitarian calculation as a number representing how much he contributes to the total good. This means that it is not really the individual so much as the summable units of good that he

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<sup>66</sup> A paradigm of the interest-based account of status is the tentative utilitarian argument put forward in Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1986). I do not mean to suggest here that interpersonal comparisons of interest-satisfaction are unproblematic; I mean only to say that insofar as an interest-based account of status can get around those problems, it will not count individuals as equals.

<sup>67</sup> Peter Singer, “All Animals Are Equal,” in *Unsanctifying Human Life*, ed. Helga Kuhse (Oxford: Wiley-Blackwell, 2001), 83.

contributes...that the utilitarian takes seriously. Each individual is therefore valued by that theory (only) to the extent that he will respond to any resources by contributing units of good to the total. In contrast, the contractarian gives each person the ability to veto an arrangement that he believes will unreasonably disadvantage him relative to the others, and this reflects the contractarian's view that each of us has a value that resists aggregation...<sup>68</sup>

To illustrate: the interest-based account treats the interests of individual A, whatever they are, and however forceful they may be, with no greater or lesser consideration than it treats the interests of individual B. Does this mean that the interest-based account treats individuals A and B as equals? It does not. The interest-based account also treats the interests of the set {A and B}, whatever they are, and however forceful they may be, with no greater or lesser consideration than it treats the interests of individual B. And it is empty or perverse to say that the set {A and B} is equal to B. If we are to say that we count *individuals* as equals, we must have some principle that does not at the same time and in the same sense treat amalgams of individuals as equal to individuals. A declaration of the equality of individuals necessarily picks out something that delineates individuals.<sup>69</sup> The interest-based account of status need not do so.<sup>70</sup>

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<sup>68</sup> J. Hampton, "Feminist Contractarianism," in *The Intrinsic Worth of Persons: Contractarianism in Moral and Political Philosophy* (Cambridge University Press, 2006), 27.

<sup>69</sup> In section 2.6 I argue that it is not sufficient for an appeal to basic equality, that a theory delineates individuals.

<sup>70</sup> Spelled out more fully, this is the argument that I am making:

I shall now discuss some objections to this line of reasoning. Must an interest-based account really give the same weight to each interest of each set of individuals, in the same way that it gives the same weight to each interest of each individual? One might deny this on the grounds that, necessarily, interests are always interests *of* individuals; interests are not (in the same sense of 'of') necessarily interests *of* amalgams of individuals. Interests are always attributable to *someone*; they are interests of someone. This is not an accidental truth. It is a conceptual truth. Thus, interest-based accounts do, conceptually, have a sense in which they treat individuals as equals, and it is

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1. (Assume for rejection.) It is a sufficient condition of a theory treating an entity as a member of the community of equals that it gives the same weight to each interest of that entity to each interest of each other entity.
2. Interest-based theories give the same weight to each interest of each person.
3. Therefore (from 1, 2), interest-based theories count persons as members of the community of equals
4. Interest-based theories give the same weight to each interest of each set of persons.
5. Therefore (from 1, 4), interest-based theories count each set of persons as a member of the community of equals.
6. No two members of the community of equals have different status.
7. Therefore (from 3,5,6), interest-based theories count each person as having the same status as (or as not having different status to) each set of persons.
8. This (7) is absurd (or, at best, a trivial sense of 'status'). Therefore, we should reject (1).

different from the rules that they apply to sets of individuals.<sup>71</sup> Amalgams of individuals are made-up entities that don't exist, and are posited just for the sake of an argument.

However, an individual can have conflicting interests at different points in time. If we can still talk of the individual's overall interests, then we are already comfortable with the idea of a system of competing interests becoming reconciled and, thereby, attributable to, an overarching entity. If we can make sense of this, then, at least for the purposes of argument, why not also talk of the overall interests of a set? If, alternatively, interests are always and only attributable to individuals-at-points-in-time, then the interest-based account would entail that 'individuals at points in time' are treated as equals. In this sense of treating individuals as equals, it is also the case that I am counted as equal to myself earlier on. This is still not really treating individuals as equals: we want to say that I'm equal to you in a different way to the way in which I'm equal to my future or past self.<sup>72</sup>

Here is another objection. It may be held that the correct account of interests *presupposes* persons' equal value. For example, we may say that the only way to make sense of comparisons of welfare between individuals is to see the overall success of any individual as worth the same as the success of any other individual. However, such a view would appeal to basic equality, but not

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<sup>71</sup> This position is a denial of premise (4) in the argument as it is laid out in footnote 70 above. This position denies that premise by saying that the interest-based theory does not give weight to the interests 'of' sets of persons.

<sup>72</sup> C.f. Dennis McKerlie, "Equality," *Ethics* 106, no. 2 (January 1, 1996): 274–296.



because it considers interests equally. The claim that I am denying is that equal consideration of interests is *sufficient* for basic equality.<sup>73</sup>

A different sort of objection says that – contrary to what I have claimed – it is not absurd to say that basic equality allows that individuals are equals in the same sense that amalgams of individuals are equals.<sup>74</sup> There are examples that suggest it is not absurd. Joint goods (goods that are held either by everybody in a group, or not at all) are sometimes provided by principles that respect basic equality. And, these are principles that apply both to individuals and sets. For example, if all are entitled to the defence of the realm (a joint good), then any amalgam of any two or more is also entitled to defence of the realm. The entitlement of all to defence of the realm can be construed as a principle of equality. Someone who receives less of the good of defence – perhaps an area that is poorer or is populated by a cultural minority is given a lower priority in the assignment of emergency protections – rightly has a complaint that she is not being treated as an equal. This objection to my argument thereby says that a requirement that a set of individuals together receive a joint good can be a principle of equality.

However, this objection does not consistently supply a genuine principle of equality. In order to shift to talk of equality, the example shifts to talk of a non-joint good. Emergency protections are individualised goods, even if the overall

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<sup>73</sup> I shall further discuss the idea that a conception of interests presupposes basic equality in section 8.2.

<sup>74</sup> This is a denial of premise (8) of the argument as stated in note 70 above. The objection proposes a way in which it is not absurd to say that equality-entitlements can in just the same way be entitlements of sets of persons.

protection of the realm is not. Gas masks and water are limited in their supply and can be redistributed among a set of people. In fact, the example reinforces the root claim that I am making. It is only when we shift to talk of individualised goods that we find ourselves able to draw upon the language of equality.<sup>75</sup>

As an equality concept, one thing that 'basic equality' cannot imply is that two are counted in just the same way as one. It follows that it cannot be a sufficient condition for a theory treating individuals as equals, that it treats equally some combinable or aggregative aspect of those individuals. For example, it cannot be a sufficient condition for a theory treating individuals as equals, that it treats interests equally.

## **2.6 The justification of the practice qualifies it as appealing to basic equality**

What qualifies a theory as one that appeals to basic equality? Prioritarianism is of particular interest here. This is because prioritarianism is a distributive theory, but it is not, strictly, a theory of equality. Prioritarianism holds that the worse off somebody is in absolute terms, the better it is that that person receives a given

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<sup>75</sup> Note the relationship between 'combinable' and 'comparative'. Comparative principles say that I should get this on condition that others have it. The argument I am making here says that any equality principle must treat an amalgam of two in a different way to how it treats a single individual. It is clearly possible for a principle to meet the amalgamation-condition for being egalitarian, and for it to be a noncomparative principle. Any comparative principle will meet the amalgamation-condition.

increase in welfare.<sup>76</sup> Prioritarianism is not an egalitarian theory because it is not comparative: it does not hold that equality between persons is itself good. However, its defenders put it forward as an explanation of egalitarian ideas: it suggests that the worse-off should have priority in the distribution of goods, and it is thereby likely to yield some of the policies that we describe as egalitarian. Given that prioritarianism is a distributive theory whose principles are not principles of equality, but seems nonetheless to be motivated, in some sense, by egalitarian ideas, it is useful to consider whether it appeals to basic equality. Answering this question ought to give us some insight into what aspect of a theory entails that it faces the problem of identifying a shared significant feature possessed by members of a group of individuals. Is it the distributive aspect, the contents of the principles, or the motivation?

Here is a faulty reason to think that prioritarianism rests upon basic equality. Prioritarianism counts individuals as equals, because it has to have an account of what it is about individuals that makes them matter, separately. It says: it is better to benefit one who is worse off than one who is better off. There must be something in virtue of which an object can count as a “one.” This must be something significant. Thus, prioritarianism counts as equals the members of some group, because it needs a way to identify separate individuals.

What is wrong with the line of reasoning sketched in the previous paragraph? There is a problem with the view that any theory that requires a way to identify separate individuals must count those individuals as moral equals. Consider the position that we can call ‘reverse-prioritarianism’. This view holds that it is better

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<sup>76</sup> Derek Parfit, “Equality and Priority,” *Ratio* 10, no. 3 (1997): 202–221.

to benefit one who is *better off* than one who is worse off. Reverse-prioritarianism also needs to identify what it is in virtue of which an object can count as a “one.” So that elitist view *also* counts individuals as equals, if identifying separate individuals is sufficient for doing so. Must the investigation of basic equality therefore expand to cover such theories? It seems absurd to suggest that it should, because reverse-prioritarianism does not seem to be a case of treating individuals as equals.

One might claim that the investigation of basic equality need not be expanded to include reverse-prioritarianism, on the grounds that the *motivation* for believing prioritarianism, and not reverse-prioritarianism, comes from a prior commitment to equality. Prioritarianism might be understood as deriving from the idea that equality matters. However, this is not a good understanding of prioritarianism. Prioritarianism is expressly not a theory of equality; it merely entails that equal distributions tend to be better. Indeed, one of its purported attractions is that it is not a theory of equality: it does not imply that making everybody worse off is better, in any respect.<sup>77</sup> So it is not well-understood as deriving from the idea that equality matters.

Here is what I think is going on. Prioritarianism might, plausibly, be justified through a contractarian apparatus, whereas reverse-prioritarianism would not plausibly be justified with such an apparatus. When we recoil from the idea that reverse-prioritarianism is a theory of our basic equality, this is because it is not a theory that we can imagine us all agreeing to. Prioritarianism, on the other hand, is not an obviously impossible outcome of a process of forming

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<sup>77</sup> Ibid.

agreement between individuals. This suggests that it is the nature of its justification, and not the structure of the theory itself, that qualifies it as counting persons as basic equals.<sup>78</sup> To be sure, reverse-prioritarianism also needs a way of picking out the individuals to which it applies, and those beings must share some significant feature. But since it isn't plausibly a contractarian theory, the kind of 'significance' possessed by the shared feature isn't very constraining.

## 2.7 The egalitarian plateau: Equality as premise and equality as outcome

I have offered two illustrations of ways in which we can argue about whether a view appeals to basic equality: first, it is not sufficient for basic equality that a theory counts interests equally; second, an appeal to basic equality is made in the justification of a theory. One of the goals of this chapter is to demonstrate that a denial of basic equality, on its best interpretation, permits a broader range of views than is sometimes supposed.

In this light, what is a denial of basic equality? A number of writers describe an 'egalitarian plateau'. This is a position that is assented to by any decent political theory. For example:

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<sup>78</sup> An example of a writer who comes to identify (distributive) egalitarian principles according to their justification is Raz. He identifies one kind of principle of equality: those requiring that, in scarcity, each who has equal entitlement is entitled to an equal share. These, argues Raz "are principles of equality because it is their *purpose* to ensure equality within their sphere of application. Equality is part of the *ground* on which such principles are based." Raz, *The Morality of Freedom*, 225 (italics added). See also Carl Knight, "Describing Equality," *Law and Philosophy* 28 (November 18, 2008): 327–365.

This fundamental idea of equal respect for all persons and of the equal worth or equal dignity of all human beings...is accepted as a minimal standard by all leading schools of modern Western political and moral culture. Any political theory abandoning this notion of equality will not be found plausible today.<sup>79</sup>

On this view, denying basic equality is nasty. It is characterised by unfairness, or bias, or partiality, or worse. I will conclude this chapter by suggesting that the space occupied by theories that do not depend on basic equality is wider than this. (In chapter 8, I return to this theme.) I have argued that an assertion of basic equality involves more than just equal prescriptions. It invokes one of a series of possible claims about how our norms work. With this tool in hand, we can distinguish, further, between basic equality as a premise of a theory, and the accordance of a theory's prescriptions with our egalitarian instincts about what those prescriptions should be. The latter instinct is typically associated with the wrongness of discrimination, or the entitlement of all individuals to rights, or the fairness of an equal distribution of goods, welfare, or opportunities. The former idea is the claim that I have been focusing on here: people's basic equality as a premise of a theory, a fundamental idea from which other norms must be derived. It might be objected that so long as a theory has acceptable prescriptions, we should not be concerned with its other commitments. However, as Waldron says in another context, "the bottom line is not

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<sup>79</sup> Stefan Gosepath, "Equality," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2011, 2011, <http://plato.stanford.edu/archives/spr2011/entries/equality/>. In conversation, Gosepath is no longer committed to this claim. The phrase 'egalitarian plateau' is associated most with Dworkin, "Comment on Narveson." See also Deborah Hellman: "In attempting to answer the question posed by the discrimination puzzle, I begin with what I consider a bedrock moral principle—the equal moral worth of all persons." Deborah Hellman, *When Is Discrimination Wrong?* (Harvard University Press, 2008), 6.

everything”.<sup>80</sup> We should be concerned if our apparently incorrigible commitments depend on other ideas that we do not ultimately accept, and we should be cheered if those commitments can be given a stronger foundation. The structure of this thesis will establish that narrative: chapters 3-7 provide the pessimistic part, while chapter 8 gives reason for optimism.

This distinction between equal value as a *premise*, and equality as *descriptive of a theory's outcome*, opens the logical space for a theory that is not overtly inegalitarian, but also does not appeal to basic equality from the outset. Such a view would have an outcome that satisfies our egalitarian instincts, but would not depend upon the claim that basic equality functions in any of the ways I have described. Thus, we can distinguish between an assertion of basic equality, and a denial of basic inequality. It is possible to deny both. To do so, one would hold that neither equality nor inequality is ‘basic’. One would follow through the thinking behind the ‘triviality charge’. There are two possible approaches. First, one may deny basic equality by denying that norms work in any of the two ways that I have sketched in the sections 2.3-2.4. Second, one may believe that some norms do work in one of the ways that I have outlined, while denying that equality is one of those norms. Both approaches hold that insofar as basic equality is plausible, it is trivial and oblique. An ‘egalitarian plateau’ may thereby occupy a larger area than the rhetoric would suggest, encompassing more scope for disagreement. This is because there is a difference between asserting that equality should be a starting premise of one’s theory, and asserting that equality is an outcome by which we can legitimately

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<sup>80</sup> Waldron, *God, Locke, and Equality*, 235.

judge the validity of a theory. A commitment to the 'egalitarian plateau' is best understood as a commitment only to the latter.<sup>81</sup>

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<sup>81</sup> C.f. John Kekes, who seems to assume that ridding ourselves of the first is enough to rid ourselves of the second. John Kekes, *The Illusions of Egalitarianism* (Cornell University Press, 2007). (Though, too, his society might not be as abysmally nasty as the basic-egalitarian would fear, leaving yet more space for the possibility of an abandonment of basic equality.) See also Alexander Brown, "An Egalitarian Plateau? Challenging the Importance of Ronald Dworkin's Abstract Egalitarian Rights," *Res Publica* 13, no. 3 (2007): 255–291. I return to this idea in the following chapters, and provide the outline of a view that asserts neither basic equality nor basic inequality in chapter 8.



### **3 The problem**

#### **3.1 We must possess some significant feature equally, if moral egalitarianism holds**

In the previous chapter the subject was what basic equality is. I investigated what it means to say that we have equal value or are basic equals. I outlined how basic equality can be understood as a substantive, non-trivial idea. First, we may understand ‘relevance’ or ‘significance’ as something that arises naturally and prior to our moral ideas (section 2.3). Second, basic equality may be a norm that we must interpret in the light of our other norms (section 2.4). In this chapter I discuss what a commitment to basic equality requires; that is, I am interested in what else one must be committed to, if one is committed to basic equality. I show how basic equality itself requires a basis: in order for basic equality to hold, there must be something we have *in virtue of which* we count as equals. I will refer to such a feature as the ‘basis for equality’. Fully written out, this is the *basis for basic equality*; the term ‘basis for equality’ is an abbreviation. The first half of the chapter (comprising sections 3.1-3.5) is devoted to establishing the claim that ‘basic equality’ requires a basis; the second half of the chapter (comprising sections 3.6-3.10) is devoted to establishing the view that there is a difficulty in identifying such a basis.

Thus, the following claim is a central concern here:

*There is a Basis.* If we are basic equals, then there is some significant feature each of us possesses to an equal degree or in an equal manner, in virtue of which we are basic equals.

The thought behind that claim is this: If we have the same value, there is an explanation of this, and, the *best sort of explanation* would be one that involves the equal possession of some feature.<sup>82</sup> The feature might be individual: a level of intelligence, or a capacity for language, or an ability to reciprocate. Or it may be social: inhabitation of a certain kind of society or culture. The feature may be metaphysical, either in the sense that it involves a potential for some other feature, or in the sense that it refers to a being's natural type. And it may be disjunctive: it could be the feature of having one of some set of features.

Any prescriptive equality requires a basis. A basis of X is a property *in virtue of which* X, a property which *makes it the case that* X. Prescriptive equality, recall, is descriptive equality, plus a rule, or a principle.<sup>83</sup> 'All citizens are equally entitled to a passport' is a prescriptive equality. It contains a description ('citizen'), and rule about their entitlements (each is entitled to a passport). As a *plausible* prescription, this requirement demands an account of something that citizens have in common. (In this particular case, it may be enough to say that they have citizenship in common.) Basic equality is a form of prescriptive equality, and so basic equality's demand for a basis is an instance of the more

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<sup>82</sup> This is so whether our same value is understood as pre-morally relevant or as a normatively interpreted concept. In the case of pre-moral relevance, an assertion of our basic equality is *identical* to an assertion that we share some significant feature that makes it the case that we are equals.

<sup>83</sup> See section 2.1.

general demand that prescriptive equalities have a basis. Offering a basis for *basic* equality is a particular challenge because it is hard to see what the feature could be.<sup>84</sup>

It might be objected that the '*There is a Basis*' claim involves an unwarranted move from an 'is' to an 'ought'. That is, it unjustifiably asserts the normative import of this feature to entitlement, since normativity cannot be present just in things themselves. But *There is a Basis* is neutral on this issue.<sup>85</sup> The feature may make it the case that the individual has status, but it may do so in tandem with some other norm.

I am claiming that if there is a prescriptive, moral equality, then there must be some significant shared descriptive feature. It is widely asserted that the moral supervenes upon the natural: there cannot be a moral difference without a natural difference. (I shall call this 'the supervenience claim'.) This idea has, on the face of things, an affinity with my claim that equality requires a basis.

However, the idea is not the same as the one that I am explicating here, and it is worth bringing out the contrast. The claim that the moral supervenes upon the natural does not itself imply anything about the explanatory or justificatory relationship between the moral and the natural. The supervenience claim simply asserts that where one kind of property varies, another kind of property must

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<sup>84</sup> And, further, because relevant factors may combine together (see section 1.4).

<sup>85</sup> Robert Nozick suggests that 'having a meaningful life' may form the basis of (equal) rights. "This notion [of meaningfulness], we should note, has the right 'feel' as something that might help to bridge an 'is-ought' gap; it appropriately seems to straddle the two." *Anarchy, State and Utopia*, 50. One tends not to ask whether one's life should be meaningful.

also vary. I am saying that there is something *in virtue of which* people count as basic equals (if they do); there is something that people possess that justifies or makes it the case that they count as equals. The supervenience claim asserts no such justificatory relationship. To be sure, where there is any sort of supervenience, we typically ask for an explanation.<sup>86</sup> The point is that the supervenience claim contrasts with the claim I am making here, since I am asserting that need for an explanation.

There is a further contrast. The supervenience idea runs in the other direction. In *There is a Basis*, we have a moral equivalence that entails a descriptive equivalence; the supervenience claim says that a descriptive equivalence entails a moral equivalence. Supervenience says: if there is a prescriptive difference, then there is a descriptive difference; that is, if there is no descriptive difference, then there is no prescriptive difference. I am offering an instance of the converse of this claim: I say, if individuals are prescriptively alike, then there must be a significant descriptive similarity.

So *There is a Basis* is not a quasi-logical idea, as the supervenience claim is. In this spirit, Jeremy Waldron says, “that descriptive equality should underlie prescriptive equality is a substantive thesis in morality, not just a logical one.”<sup>87</sup> In particular, the need to identify a basis does not simply follow from the supervenience thesis. It does not follow from the supervenience thesis that

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<sup>86</sup> Terence Horgan, “From Supervenience to Superdupervenience: Meeting the Demands of a Material World,” *Mind* 102, no. 408, New Series (October 1, 1993): 555–586.

<sup>87</sup> Jeremy Waldron, “Basic Equality,” *NYU School of Law, Public Law & Legal Theory Research Paper Series Working Paper* 08, no. 61 (2008): 24, <http://ssrn.com/abstract=1311816>.

descriptive equality must underlie prescriptive equality. However, *pace* Waldron, what I have said in this section suggests that it is better to understand *There is a Basis* as an argument from *best explanation* rather than a substantive moral thesis.

### 3.2 A basis as a reason

I have said that basic equality itself requires a basis: a commitment to it carries a requirement to show a significant feature that we possess equally. We can distinguish a reason *to believe* that we are equals, from a reason *that* we are equals. A basis for equality takes the latter form. A ‘reason to believe’ offers evidence; a ‘reason that’ explains.<sup>88</sup> It would be unsatisfying to have a reason to believe that we are moral equals, without having the reason that we are moral equals. For instance, a fruitful, coherent and rich theory that depends upon our moral equality may constitute a reason to believe that we are equals. Since this theory fulfils (better than others) the criteria of a successful theory, we have reason to hold it, and since it depends upon moral equality, we have reason to hold moral equality.<sup>89</sup> But this is not itself a basis for equality, in the sense that I am using the term, insofar as it does not offer what it is in virtue of which we count as equals.

At the end of the previous chapter, I drew a distinction between equality as an outcome of a theory, and equality as a premise. If a theory has equality as an

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<sup>88</sup> But c.f. S. Kearns and D. Star, “Reasons: Explanations or Evidence?,” *Ethics* 119, no. 1 (2008): 31–56.

<sup>89</sup> I have in mind Rawls’ ‘Justice as Fairness’.

outcome, then it has certain kinds of prescriptions, such as egalitarian distributions or non-discrimination. If a theory has equality as a premise, then it is of direct concern here: it asserts people's basic equality as a central idea from which other norms are meaningfully derived. This latter is the sort that requires a basis; the former could follow – in myriad ways – from a theory, and there is no prior reason to think that the only sort of theory that would entail it is the kind that begins with basic equality. However, in the light of the present discussion, and in particular the claim that we require an explanatory and not merely an epistemic basis for equality, there arises a doubt about the meaningfulness of the distinction between equality-as-premise and equality-as-outcome. Outcome equality can sound like premise equality if it is asserted at the outset as a basic constraint on what conclusion shall be reached. The sorts of prescriptions associated with treatment as equals are so basic, and their denial so bigoted, that outcome equality seems like a premise itself.

However, if one's theorising begins with an incorrigible assertion of one's desired conclusion, then one performs an uninteresting sort of theorising. This is not to say that we do not or should not begin theorising with our target conclusion in mind. The point is that any theory that says something interesting about why we think what we think, will not simply say that we think it just because we think it. Of course it may be said that there are spheres in which there is no need to give a theory: outrageous cases of discrimination are offensive, and some would say that anyone who wishes to know why these cases are offensive would more usefully spend energy on something else. But that is just an absence of interest in philosophy. (It is a further question whether this absence is a flaw.) The question why discrimination is wrong, for example,

is interesting in itself (is it because it shows disrespect? a character defect? a misrepresentation? or is it wrong because it harms people?), worth understanding because this will help us to understand difficult instances (affirmative action), and worth investigating because this will better inform our understanding of our normative world more generally.<sup>90</sup>

An incorrigible assertion of what sort of egalitarian prescription should be reached is a kind of equality-commitment, and a relatively uninteresting version. In chapter 4 I talk more about whether equality needs a defence, although in that case I am interested in the view that *basic* equality needs a defence (rather than, in this case, outcome equality).

### 3.3 Incomparability

In this section I consider a way of denying *There is a Basis*. This denial involves emphasising not only the value that each life has, but also the deep differences between people's lives. This provides a possible way to defend basic equality without the existence of a shared a feature: according to this position, it is the differences between us that render us equal, if anything does. For example, it may be argued that the relevance of the fact that we all have a capacity for abstract thought or an ability to form our own ends is not just that rationality is good by itself, but that when such capacities are exercised, they are exercised in an *incomparable* way. In this spirit, Geoffrey Cupit writes, "we should understand the claim that we are to be treated as equals as following from the

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<sup>90</sup> See also section 4.6 below on this point.

claim that we are to be treated as incomparable.”<sup>91</sup> Perhaps there isn’t a single, clear scale on which we can rank relevant features. People’s projects and aims form complex wholes, and aren’t reconcilable in a calculus. Thus in any sense in which one might sensibly compare the degree to which people have the feature relevant to entitlement, one must say that people possess it equally, since they possess it incommensurably.

The claim is that there is no principled way of differentiating between us, and so we should be considered equals. The argument can be summarised as follows:

1. We are separate and complete wholes
2. Separate and complete wholes are incomparable

Therefore,

3. We are incomparable

But,

4. Incomparables should be treated as equals

Therefore,

5. We should be treated as equals

This argument forms only part of a denial of *There is a Basis*. The ‘we’ in question is not expressly stated. The argument needs to pick out a set of beings which are generally incomparable with one another, but are comparable in the sense that they all share the feature of being separate and complete wholes, in a way that other things (such as ants, or mountain ranges) aren’t. I will leave

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<sup>91</sup> See Cupit, “The Basis of Equality,” 120.



aside the difficulties with providing such an account which would warrant (1) and (2). Even if it can be established, the claim (4) is suspect, for two reasons.

First, without further normative premises it is obscure why a set of incomparable beings should be treated equally. In situations in which people are faced with a set of apparently incomparable options, they do not always select an equal measure of each of the options. Sometimes it is normal to plump for one almost at random, or to follow a path that is consistent with previous practice, or with other people's expectation. If the claim is that incomparability entails that there is no reason for selecting unequally, it also entails that there is no reason for selecting equally. Equality is not a default starting point. It needs a defence.

Second, the notion of being 'treated' in a certain way will be measured partly on the individual's own subjective, incomparable scale. If these are incomparable then one can't 'treat' people as equals, since they remain incomparable all the way down. The claim of incomparability undermines the coherence of any measure on which one might judge equality or inequality. For these two reasons, it seems unlikely that the notion of an incomparable good will provide a rebuttal to *There is a Basis*.

### **3.4 Unbased basic equality**

One might suspect that there is an earlier stage at which one may simply assert basic equality. One needn't get as far as talking about 'features' of individuals. Rather, one asserts that the members of "*this group*" are moral equals, and that there is no further explanation of that. According to this view, talk of 'features'

advances the discussion further than it should be advanced. One asserts direct commitment to the group.<sup>92</sup>

One way to refer to a group is *extensionally*. One gives a list of all the individual members that are included, like a school register. This suggests a way in which it is possible to assert that it is basic that some given group is the group of equals. We might name, individually, all the members of some political community, assert that they are equals, and claim that no reason need be given to count them as equals. They may possess all kinds of properties in equal manner or to an equal degree, but those sharings of properties are not reasons to think that they are equals. The reason that they are equals is that they just are equals. They are all on the list. For instance, one might construe the practice of citizenship in modern states along these lines. Citizenship is extensionally specified: it is not enough to meet the official criteria for membership. You are only a member when you are officially and individually named as a member.

Does this provide a way of denying *There is a Basis*? A view of equality that engages this manner of referring to a group is implausible. Consider how such a view would apply to further cases. Would it include in the group of equals some newly-discovered individual, an individual whose existence was not known about when the initial membership list was drawn up? There is no way of telling. If we could identify a pattern in what the position says about new cases, then we would have identified a reason why individuals are included in the group in the first place. But the position expressly denies that there is a reason, and so it

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<sup>92</sup> Another way to understand this view would be to take the 'intuited' line that I address in chapter 4.

denies that there is a pattern. Patternlessness suggests capriciousness, and seems difficult to defend. (Does the philosopher stand by each newborn, hold his finger in the air portentously, and proclaim the child a member – or not – of the community?) If the group is extensionally specified, then there is some reason, and thereby, some shared feature possessed by those in the group.<sup>93</sup>

There is a different way of referring to a group. One refers *intensionally*: one gives a rule for inclusion, such as, ‘all the people in this room,’ or, ‘all citizens who have reached the age of majority.’ Bernard Williams might be interpreted as holding such a position in defending the ‘human prejudice.’<sup>94</sup> His view is that humanness just matters. He expresses distaste towards attempts to explore what it is about humanness that matters, and a reason for that distaste is that there is no property of humans (even a property that is necessarily coextensive with humanness) which gives any better reason than bare membership of the group ‘humanity’. To someone who needs more reason than this, he asks, ‘Which side are you on?’<sup>95</sup>

Does this provide a way of offering unbased basic equality? It seems doubtful. This is because this view does appear to refer to some feature shared by the individuals it asserts are equal. All of those who are referred to by the assertion of equality of the sort ‘all those capable of forming a conception of the good are

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<sup>93</sup> A comparable argument against particularism in general is provided in Frank Jackson, Philip Pettit, and Michael Smith, “Ethical Particularism and Patterns,” in *Moral Particularism* (Oxford: Clarendon Press, 2000).

<sup>94</sup> Bernard Williams, “The Human Prejudice,” *Philosophy as a Humanistic Discipline* (2006): 135–152.

<sup>95</sup> *Ibid.*, 152. I discuss different readings of Williams’ view in chapter 6 below.

equal' necessarily share a significant feature, namely, the property of being capable of forming a conception of the good. If the given group is specified intensionally, the one reason for any individual member's entitlement to an equal share is their possession of some property. On this way of specifying a group, the members share a significant feature.

It may be objected that this is too quick. Sometimes, when one replaces a reason in one's argument with some claim equivalent to that reason, one's position changes. For example, take the statement, 'what makes this thing a triangle is that it is a closed shape with three sides.' By replacing the reason with a necessary equivalent, that statement can become, 'what makes this thing a triangle is that it is a triangle.' Whether or not that is a useful or true statement, the point here is that it seems to be a *different* statement.

Analogously, the defender of the position currently under consideration might argue as follows. While it is the case that, necessarily, all and only those in the given group possess property P (since the group is defined by the possession of P), the possession of P is *still* not the reason that those in the given group are to count as moral equals. The reason for the entitlement to moral equality is membership of the given group.<sup>96</sup>

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<sup>96</sup> An important (for our purposes) subset of intensional ways of specifying groups does not refer to any property of the individual members. For example: 'all those on this register, whoever they are.' We might say, all of *these people* are moral equals, where 'these people' refers to some list (rather than the actual contents of that list). *These people* are defined as: those who fall within the community. No further reason can be given. Perhaps it is of great importance whether somebody turns out to have the same blood as me, since I am committed to affirming extra support for, and loyalty to, those with the same blood, whomever they turn out to be. Even in this case, they all possess the feature of having the same blood, and a further explanation is possible (in this case, the explanation is: they have the same blood).

However, it seems strained to insist so forcefully upon a distinction between “membership of the group ‘those with P’”, and, “possession of P.” Even if such a distinction can be maintained, this position also depends upon the idea that it is possible for the first of those properties to provide a reason while the second does not. Again, that seems difficult to defend. Someone might just bang the table and assert that the former is the reason, and the latter is not. This seems to be a strange point at which to bang the table: if membership of some group matters, then we would expect that what qualifies an individual for membership of that group matters too.

I shall restate this discussion in different terms. The argument I have made regarding intensionally specified groups is this:

1. Suppose, for the sake of argument, that the only reason why any individual member of the given group of individuals should be counted as an equal is: that member *is* a member of the given group.
2. If a given group is specified intensionally, then to be a member of that group is to fall under some rule.
3. To fall under some rule is to possess some feature.

Therefore,

4. The only reason why any individual member of the given group of individuals should be counted as an equal is: that member possesses some feature.

The response that I considered challenges the inference from the premises (1)-(3) to the conclusion (4). It says: that two terms are replaceable in logical

relations does not entail that they are replaceable in reason-giving relations.

Redescription can upset an explanation. Redescriptions can invoke new properties, and explanations do not always hold across redescribed properties.

My reply was that the replaceability of such terms seems to apply in this particular case, even if it does not apply generally.

To summarise the central idea of this section, equality is at least a two-place predicate: equality is equality between x in respect of y. In applying the predicate, the unbased basic equality position becomes implausible or incoherent. It must refer to a group for its application. If it refers to a list by name, it has no real account for how it applies. If it refers to a list by rule, then in doing so it abandons its claim to avoid an appeal to a basis.

### **3.5 A trivial basis for non-trivial equality?**

I am considering how one could accept basic equality, but deny that basic equality involves an underlying descriptive equality. In the last chapter I discussed the idea that 'basic equality' is an empty or trivial idea: insofar as it says anything substantive, it summarises or abbreviates another set of principles, and we ought to be directly interested in those principles. I offered a reply to that objection. A new version of that objection arises at this juncture.<sup>97</sup>

One might accept basic equality as a non-trivial idea, but use some of the thinking behind the triviality charge in order to undermine the need to offer a

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<sup>97</sup> I'm discussing here whether the explanation of our basic equality must take the form of a single unified feature. In chapter 4, I discuss whether there needs to be an explanation at all.

basis for equality. A complex of considerations might together yield basic equality, but refer nowhere to some shared feature.<sup>98</sup> Basic equality does not arise *in virtue of* some important characteristic. According to this view, we meaningfully and usefully talk of basic equality, but not of some feature that grounds this equality. In other words, the rule itself could be so complex that it is not usefully or meaningfully described as being such that, for any individual who falls under it, that individual must possess some 'feature'. Analogously, a surface is red in virtue of its reflecting and absorbing light in a certain sort of way. It does so in virtue of the state of its surface. Is there a 'feature' of the surface in virtue of which it is red? We might reply negatively: there is only a complex of factors that together lead it to reflect light in that way; there is no single *unified* factor in virtue of which it is red.

In reply, I can offer a series of considerations that should make us expect that this thought does not present a strong threat to the *There is a Basis* claim. Whether a feature is understood as a single, unified idea, or is better seen as a set of distinct ideas, seems partly indeterminate: sometimes a collection of features can usefully be understood together. It is also unclear whether the possibility of a multiplicity of features undermines the thrust of *There is a Basis*. It remains the case that something bases moral equality, if moral equality is true. Indeed, the fact that it is what bases moral equality makes us more likely to consider it as a unified idea. The argument for *There is a Basis* is an argument from best explanation, and insofar as better explanations are simpler, we should be inclined towards looking for a single feature. Finally, there is no

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<sup>98</sup> We might construct such a view from Walzer, *Spheres of Justice*. See section 1.3.

overt defence of a set of complex of features that ground basic equality. Despite these considerations, we should bear in mind that the possibility is open.

### 3.6 Types of basis

I have argued that, if basic moral equality holds, then there is a need to identify a significant feature that we share, in virtue of which we are basic equals. For the remainder of this chapter, I shall focus on a different claim: I shall offer reasons to think that there is not a significant feature that we share.

I said in section 1.3 that the basis of equality must be a *relevant* or *significant* feature. There I distinguished two different kinds of source of significance. I said that the source could be conceptually prior to the moral principle, or could exist as a result of the moral principle. We can make another distinction with respect to normative significance. It can follow different kinds of pattern. One kind of pattern I shall call *value-making*. A property is value-making when its manifestation just is good. It constitutes an aspect of what counts as a good outcome. The more of it, other things equal, the better. For instance, Bentham's hedonistic calculus offers a value-making account of the significance of happiness. A different sort of pattern of normative significance is *qualitative* significance. In this case the property's significance does not apply at every level at which it is possessed. Rather, it is significant not because of the manifestation of the property itself, but because some appropriate level, or kind, of it is manifested. On the value-making pattern, but not on the qualitative pattern, the following is true:



*Additive significance*: Any account of why  $n$  amount of  $X$  in a single individual is normatively significant will imply that  $n+1$  amount of  $X$ , if it were possible to have more  $X$ , would be yet more significant.

This distinction is relevant to the next issue to be discussed, whether the property is variable.

What sort of shape could the property which identifies equals take? A *binary* property is one that is not possessed by an individual on a variable scale: a being either possesses it, or does not. These are contrasted with *variable* properties. A variable property can be possessed more and less, whereas a binary property can only be possessed, or not possessed. Variable properties can vary discretely or continuously. Examples of discretely variable properties are: the gear my car is in, and the number of sisters I have. An example of continuously variable properties is the time it takes me to run five kilometres. A discretely variable property must involve at least two distinct options (alongside the option of not possessing the property at all). Otherwise it would be a binary property. The *options* in a discretely variable property must fall into a natural hierarchy. Otherwise, again, we would typically understand the property as a *set* of mutually exclusive binary properties, with each of that set being the possession of one of the options.

A variable property,  $X$ , might be offered as a basis for equality in the following way:

(a) All possess, to the same degree: *property X*

A variable property can be modified into a binary property, creating a different sort of basis for equality, which is the property placed in italics:

(b) All possess: *property X to exactly degree n*

In (b), the property of concern, namely, 'property X to exactly degree n', is binary. A being either possesses property X to degree n, or it does not. In (a), the property is variable because beings can possess it more and less. A variant of (b), again with the pertinent property placed in italics, is this:

(c) All possess: *property X to at least degree n*

The property, 'property X to at least degree n', is a *range property*: a range on a scale is set, and anything that falls within the range possesses the property. It is binary, just as the property in (b) is.

The difference between the variable property (a), on one hand, and the binary properties (b)-(c), on the other hand, as proposed bases for equality, is in their response to this question: Is what matters for individuals' basic equality that they all possess a variable property to the *same* level, or is it that individuals possess some variable property to, or above, some *specified* level? A variable property as a basis for equality selects the first option; a binary property on a scale selects the second.

The rationale for the normative significance of a basis for equality of variable properties [type (a)] would thus be different from that of binary properties of types (b) or (c). The case for a variable property would involve no appeal to specific levels, whereas the latter would. In type (a), what matters is that individuals possess the property to an equal extent. All could simultaneously increase, or decrease, in the level to which they possess the property, and the justification of the basis would be the same. In types (b) and (c), what matters is that they possess a property (X) to, or beyond, some specific level. This specific

level in turn requires justification. In (b), if all increase in the level to which they possess the property X, then the proffered basis would no longer hold, since individuals would not possess the property to the exact degree n. In (c), if all lost the property X to the same degree, in a way which took them across the threshold n, then the basis would, again, no longer hold.

### 3.7 Variable and binary properties

I will argue in this section that, with one set of exceptions, we would tend to object to a variable property as a basis of equality. I will argue, first, that if a variable property is normatively significant, it is normatively significant in the value-making sense described above, in section 3.6. And, second, I will argue that a basis for equality that is normatively significant in the value-making sense gives implausible results.

Recall, a variable basis of equality is of the form:

(a) All possess, to the same degree: *property X*

Value-making is the only sort of normative significance that could apply to a variable basis of equality. To see this, suppose the contrary. The variable property can be possessed more and less. Assume that possession of property X stops being normatively significant beyond some given level. Now if individuals all possess property X to the same degree, but above this given level, then (a) does not provide a normatively significant basis for equality. But it purports to provide a basis for equality whenever the possession of the property is equal. Thus the normative significance in (a) must be of a kind that is

significant for any level of possession of the property. If possession matters at each and every level, then how much it matters either consistently increases, or consistently decreases, as the level of its possession increases. This is because scales are additive: an amount is made up of its constituent amounts, and if the constituent amounts each matter, then the compound amount must matter more. If the normative significance of the property consistently increases as the level of its possession increases, then its significance is value-making: the more, the better. If the significance consistently decreases as the level of its possession increases, then a trivially correlative property, the *absence* of the property in question, is value-making. Thus we can say that any variable basis of equality must be value-making.

Since a variable property as a basis for equality must be significant in the value-making sense, it will imply that were any being to possess the property to a greater degree, it would deserve higher status than the group of equals. This threatens to lead to some odd results. For example, suppose we accept that the possession of some set of natural capacities is the basis for equality. Suppose further that this is taken as a variable property: no specific level of natural capacity is appealed to; the property forms a basis for equality because, it is asserted, individuals in fact possess the capacities to the same degree. This position must answer the question 'what is normatively significant about those capacities?' Since no particular levels are appealed to, the response could not entail that possessing greater cognitive capacities *stops* being normatively significant beyond some given degree. But now the position implies that beings with the capacities to a greater level must have a higher status. We reach the counterintuitive result that, were we to come across a being with higher natural

capacities, then we ought to accord it higher status. Furthermore, were we to discover that individuals vary in this capacity, then we ought to accord them different status. If differences are identified, then this position would not identify a set of equals. It would identify divisions within the supposed set of equals. It therefore may not count as a theory that counts individuals as equal at all. To be sure, this is not a decisive objection: our intuitions regarding our duties towards beings higher than us are inchoate, to say the least.<sup>99</sup> Let it be said that a variable property as a basis for equality seems to be in tension with the goal of establishing basic equality at the outset.<sup>100</sup>

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<sup>99</sup> For an exploration of the possibilities, see Douglas, "Human Enhancement and Supra-personal Moral Status." The outcome may be made less counterintuitive if the property is variable, but discrete, and is in fact possessed in the same way by all normally functioning humans. In this case, all those who we normally consider as equals would be so. It would only be the eventuality of the appearance of beings that possess the discrete feature a grade higher than normal humans that would raise the above problem. Still, we would be committed to a problematic view that would lead us to face the practical question of how to deal with variations among us. It is sometimes argued that testing on animals is legitimate because humans have more sophisticated interests than members of lower species. If the property is discrete in the way described, then this line of argument would also suggest that it would be equally permissible for members of higher species to utilise humans in a similar way. This result is also counterintuitive. Alternatively, the outcome might also be made less counterintuitive if we reinterpret what duties would follow from the presence of different status.

<sup>100</sup> A different argument to the same conclusion is put forward by Jonathan Friday: "If the property that makes its bearers moral beings is relative [i.e., variable] and therefore exemplified in different degrees, the possession of it could never satisfactorily underwrite a belief in moral equality. If the source of moral value varies in degree among its possessors, then moral worth must likewise vary." (Jonathan Friday, "Moral Equality and the Foundations of Liberal Moral Theory," *The Journal of Value Inquiry* 38, no. 1 (2004): 66.) This argument supposes that *any* variable property must be exemplified in different degrees by those we might count as moral equals. That supposition is unwarranted. The argument I have put forward supposes that any variable property *could* be exemplified in different degrees, notwithstanding the exception that I

This result would not occur if the property has a natural limit, so that it would not be possible for any one individual to possess it beyond some level. An example of a naturally limited concept is that of roundness: things can be more round and less round, but once a thing is perfectly round, it cannot be any rounder. Such a property could provide an exception to the argument above that a variable property would be problematic as a basis for equality. That argument appealed to the idea that it would be counterintuitive if we had to treat individuals who possessed the property more, better. But if the property is in fact possessed to its maximum level by all, then its variability does not imply this possibility. It would not be possible for a being to possess the property to a greater degree. The troubling result would not arise if all those we would consider as equals possess the property at its limit level. Analogously, one might argue that there is a natural threshold in generosity, along the following lines: 'It is good to be generous, and the more generous individuals there are, the better, but it is not the case that the more generosity any one individual has, the better; there is a natural limit to its goodness in any individual.' It is less clear whether the sort of property which could serve as a basis for equality could have a natural threshold. Some conception of rationality might permit this.

Consider now the binary properties put forward in positions (b) and (c). Those views assert the normative significance of given points on some scale. Would the normative significance of these sorts of basis for equality be value-making? The answer is 'no.' Recall that for significance that follows the value-making pattern, the following holds: any account of why n amount of X in a single

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discuss in the following paragraph. The real problem is the counterfactual: if some being did possess the property to a higher degree, then it would turn out that that being has a higher moral status.

individual is normatively significant in the value-making sense will imply that n+1 amount of X, if it is possible to have more X, would be even more significant. If this holds, then the theory would reduce to an account of the value of X. And in this case, it no longer justifies a threshold, and the theory refers to a variable property. A binary property might be significant in the *qualitative* sense. No claim about it being better the more the property is manifested need be made; it is not possible, within any one individual, for the property to be manifested more or less.

In summary: The basis for equality could be variable but naturally limited, in which case its justification would be value-making. Alternatively, the same property might have a range placed upon it, and the significance of this new property could be justified in a way other than value-making. In general, the property could be binary. The normative significance of binary properties might be value-making, if there are natural thresholds in goodness: it could be that the more beings who possess the property, the better. But unlike the case of variable properties, the normative significance of binary properties need not be value-making.

The distinction between a naturally limited property, and a variable property which has had a range placed upon it, is not hard and fast. Some cases clearly fall into the former camp, such as roundness. Some cases clearly fall into the latter camp, such as being able to run five kilometres in less than twenty minutes. The distinction depends upon whether the property extends in a natural way, or whether people make the limit. It is not obvious what is next in the hierarchy after roundness, but it is obvious in the case of running five kilometres (the distance could be run quicker). A possible in-between case is

the property of 'safety'. Whether any given building is safe to live in can be construed as a naturally limited property, or a variable property with a range upon it. Once this building is safe for normal habitation, it doesn't get any safer (in that regard), but the standards of 'safety for normal habitation' might be determined by people's natural needs, or by group legislation. One might even say that there are no naturally limited properties, since people make words and concepts, and so people always construct the limits. I won't pursue this thought further here.<sup>101</sup>

In this section I have outlined several sorts of property, and I have argued that a basis for equality would be normatively significant, and either binary, or naturally limited. In the next section I go on to argue why identifying such a property is difficult.

### 3.8 The difficulty

I suggested in section 1.2 that there is a problem in identifying a basis for equality of the following form:

Individuals vary enormously, and often profoundly, on any conceivable scale: there is no significant feature all have exactly in common.

However, *all count for the same*: all are equal. If all count for the same, then all must share some significant feature in virtue of which they count for the same. But this is a contradiction. Individuals vary, and we call them equal.

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<sup>101</sup> See also section 4.4 below.



In the light of the preceding discussion, let us see why this is a *problem*. First, consider *variable, naturally limited* properties. (These concepts are defined in sections 3.6 - 3.7. A variable property can be possessed more and less, and a naturally limited property has a natural limit upon how much it can be possessed.) It is difficult to identify a variable, naturally limited property which may serve appropriately here. One possibility is *rationality*. One version of this concept allows that individuals can be more and less rational, but also that there is a natural limit to how rational one may be: once one is perfectly rational, it is not possible to be any more rational.

Another possible limited variable property is that of *personhood*. A child growing up might be thought of as not fully a person, but on her way to becoming one. Upon reaching full adulthood she may be deemed fully a person, and at this point cannot be any more a person. However, the natural limit of personhood is contested. It is a concept that tends to be adapted for its particular purposes. For example, whether we count the ability to form a plan for one's life as an aspect of personhood is a contested issue. Anybody's ruling on this will be dependent upon (i) whether one believes personhood matters, and (ii) whether one believes the ability to form a plan for one's life matters. These are just the issues that we would expect a basis of equality to go on to explain. Thus, insofar as personhood is itself taken to be the basis of equality, it is better understood it as a variable property which has had a limit placed upon it.<sup>102</sup> (A similar point applies with rationality.)

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<sup>102</sup> For Vlastos, personhood is a measure of merit, and does not come by degree. Gregory Vlastos, "Justice and Equality," in *Theories of Rights*, ed. J. Waldron (Oxford University Press, 1984).

This does not rule out the relevance of rationality or personhood to moral status. It only tells us that, insofar as they are relevant, we should not take them as naturally limited variable concepts. If they are to pick out the sorts of beings we want to pick out as equals, it will be necessary to place thresholds upon them.<sup>103</sup> Having considered these two, it seems that it would be a difficult task to identify a *naturally limited* property which picks out a plausible set of equals. This is because we quickly lurch from identifying the concept, to justifying a particular conception of it. Consider, instead, *binary* properties. The task in justifying such a property as a basis of equality seems significant. If the property is significant because the variable property upon which it places a threshold is significant, then it becomes obscure why a threshold is relevant: the relevant property becomes the variable property. So there must be some significance to the particular threshold. Sometimes an argument for a variable property can seem like an argument for a threshold. Any defence of a particular threshold will be open to the question, Why *this* threshold, and not another? And also, Why not *several* thresholds, creating several grades of status, rather than one general equality?

It might be argued that there is no need to justify a threshold against these sorts of questions. I shall discuss that position in chapter 4. Recall that what makes offering a threshold on a normatively significant property as the basis for equality especially difficult is the possibility that other properties of beings are also, in the same context, normatively significant (see 1.4 above). A defence of

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<sup>103</sup> For a different argument for this claim, see Friday, "Moral Equality and the Foundations of Liberal Moral Theory," 66.

a property needs not only to show why that property is relevant; it also needs to show why all other properties are irrelevant. Otherwise even if individuals do share some property, they may have unequal status because they vary in their possession of some other property.

### 3.9 Universalizability

Some suggest that there are certain formal features that normative requirements necessarily possess. It may be thought that such a feature can be regarded as describing basic equality. In this section I take one such feature, 'universalizability', and argue that while it does not describe or offer a basis for basic equality, it presupposes it. This argument casts more general doubt on such formal solutions to the problem of identifying a basis for equality, and illustrates further what a solution to that problem would involve.

The universalizability requirement says that if you make a moral judgement in one sort of case, you are committed to making the same moral judgement in relevantly similar sorts of cases. A connection between universalizability and basic equality is suggested by R.M. Hare: "The 'right to equal concern and respect' that can be established by appeal to purely formal considerations is nothing but a restatement of the requirement that principles be universalizable."<sup>104</sup> This is because universalizability involves giving equal weight to all interests and aims. For Hare, utilitarianism, which derives from the requirement of universalizability, is a reading (and the only plausible reading) of

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<sup>104</sup> Hare, *Moral Thinking*, 154.

the view that individuals each count for the same.<sup>105</sup> I have already discussed the identification of basic equality with the equal consideration of interests (see section 2.5). Here I will discuss a different reason for finding a connection between ‘individuals count for the same’ and the requirement that principles be universalizable.

The line of reasoning I follow is strongly hinted at in the following parenthetical remark from Mackie:

Hare infers that [what is morally right, which is what would be chosen from the point of view that amalgamates all points of view] will be equivalent to the output of a preference-utilitarianism, in which the ‘utility’ that is to be maximized is the balance of satisfactions over frustrations of all the preferences of all the persons concerned. (The range covered by this phrase ‘the persons concerned’ is indeterminate: it presumably includes all actually human beings, present and future, but it is not clear whether it includes merely possible people, nonhuman animals, and perhaps all sentient beings whatever. But a right-based theory suffers initially from the same indeterminacy. This is a problem common to the two approaches and therefore irrelevant to the choice between them; so I shall leave it aside.)<sup>106</sup>

This indeterminacy, I suggest, is resolved, by those who appeal to universalizability, with an appeal to basic equality. First, I will argue that any implementation of universalizability must presuppose a set of individuals to which it applies. Second, I will argue that the reason that it does so makes it an apt reading of basic equality.

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<sup>105</sup> R. M. Hare, “Reply to Mackie,” in *Essays on Political Morality* (Oxford: Oxford University Press, 1989).

<sup>106</sup> J. L. Mackie, “Rights, Utility, and Universalization,” *Utility and Rights* (1984): 90–91.

The universalizability requirement leaves open what counts as a relevantly similar or relevantly different sort of case.<sup>107</sup> I discussed earlier different possible sources of relevance (1.3). Whatever the source, an understanding of ‘universalizability’ will appeal also to some actual content of relevance; it will assert that some sorts of thing are not relevant. In carrying out such a further specification, Mackie describes three ‘stages’ of universalizability.<sup>108</sup> What Mackie calls ‘stage one’ can be put this way:

*Stage one.* A difference is irrelevant if it is *numeric* (as opposed to generic).

This captures the idea that a principle is not universalizable if it refers to the mere fact that some thing *is* that thing. For example, a principle that fails this test would be one that grants special favour to CN, just in virtue of his being CN. Whether a principle is universalizable in this way does not vary from individual to individual. Either a principle contains some numeric reference, or it does not. This sort of universalizability is a one-place predicate: we could say that principle P is universalizable, and principle Q is not.

The notion of a generic difference does not exhaust our intuitive idea of universalizability. Stage one leaves open the possibility that a general principle will favour individuals who have the initials “CN”. Such a principle may not make a rigid reference to any particular individual, but it does not seem to fit our idea

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<sup>107</sup> “Anyone who says, meaning it, that a certain action (or person, or state of affairs, etc.) is morally right or wrong, good or bad, ought or ought not to be done (or intended, or imitated, or pursued, etc.) is thereby committed to taking the same view about any other *relevantly similar* action (etc.)” J. L. Mackie, *Ethics: Inventing Right and Wrong* (Harmondsworth: Penguin, 1977), 83. Italics added.

<sup>108</sup> Mackie, *Ethics*.

of universalizability, since it seems unfair. Similarly, the first stage does not rule out principles which discriminate on grounds of race, or gender. This suggests a stronger kind, whereby: "Differences can fairly be regarded as relevant if they look relevant from whichever side you consider them."<sup>109</sup> Thus:

*Stage two.* A difference is irrelevant if (and only if) there is some possible individual, *x*, such that, were the speaker to possess *x*'s *mental and physical qualities, resources, and social status*, then he would find it irrelevant.<sup>110</sup>

A principle that discriminates on the grounds of social status would not pass this universalizability test, since individuals would not endorse this principle were they on its receiving end.<sup>111</sup>

This second stage of universalization is a predicate of three things: a principle, an individual, and a set of possible individuals. It asks whether the individual

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<sup>109</sup> Ibid., 91–2.

<sup>110</sup> We can say 'only if', since stage one is subsumed under stage two: somebody will find reason to object to any principle that picks out particular individuals.

<sup>111</sup> As a brief aside, it should be noted that some argue that even stage one -type universalizability can be read in a way that is inconsistent with these kinds of unfairness. This would make discussion of further stages superfluous. On this view, features can count as irrelevant on purely formal, non-normative grounds. The *universal* properties of a state of affairs can be identified separately from its *individual* properties, and two states of affairs are relevantly similar if and only if they share universal properties. This is the view of Wlodek Rabinowicz in *Universalizability: A Study in Morals and Metaphysics* (Kluwer Academic, 1979). Hare also suggests it. (*Freedom and Reason* (Oxford University Press, 1965), 107, <http://www.oxfordscholarship.com/view/10.1093/019881092X.001.0001/acprof-9780198810926>.) This also leads to an odd position, in which Hare *does* seem committed to pre-normative relevance; c.f. section 1.3 above.

would still endorse the principle in a set of specified circumstances. It is not guaranteed at the outset, as it is with the first stage, that if a principle is universalizable for one individual, it is universalizable for any other individual. Placed in some position, one individual could accept a given principle, while another rejects it, because they have different preferences.

The range of what counts as a 'possible variation in an individual's mental or physical qualities, resources, or social status' must also be specified for this sort of universalizability. What individuals are possible? What counts as an individual, and what counts as possible, is both contestable and dependent upon the circumstances of application. In order to count as irrelevant, must a difference seem irrelevant were the speaker to have the qualities of a person with a severe cognitive disability? Of an anencephalic infant? Of a non-human animal? The set of possible individuals could be construed in different ways, and no particular construction is implied by stage two of universalizability. There is some domain being set on 'possible individuals'. Any application of this sort of universalization will involve a presumption of – or an argument for – some domain of possible individuals.

Hence this sort of universalizability is a three-place relation: a *principle* is universalizable for *an individual*, with respect to a *set of possible individuals*.

Stage two removes the possibility of a principle favouring some just in virtue of certain qualities about the individual. There is, intuitively, an even stronger sort of universalizability:

*Stage three.* A difference is relevant if (and only if) each possible individual, *x*, is such that, were the speaker to possess *x's mental and physical qualities*,

*resources, social status, desires, tastes, preferences, and ideals*, then he would find it relevant.

A principle which is universalizable in this sense will, unlike stage two, avoid unfairly favouring some with particular desires, tastes, preferences or ideals. For example, the teetotaler may be happy to prescribe the rule that no one drink; of the sorts of universalizability discussed here, only stage three rules out such a principle.

This kind of universalizability differs from the second kind, since in this case the principle must be endorsed whatever the individual's preferences or judgments. It was variations in judgment or preference that meant that the second sort of universalizability was a predicate of an individual: if tastes (etc.) differ in the right way, a principle could be universalizable, in the second sense, for one person, but not another. To be universalizable in the third sense, it is necessary that a principle is endorsed regardless of different tastes (etc.). The speaker's own tastes are not allowed any special relevance. Hence the third sort of universalizability is not relative to an individual. A principle is universalizable, in this sense, regardless of the speaker.

In common with stage two, this sort of universalizability is relative to – that is, predicated upon – a set of individuals. Just as the set of possible variations in mental and physical qualities (etc.) can be read in different ways, so can the set of possible variations in tastes (etc.). Do we count as members of the possible set those with different external preferences? Offensive preferences? Outlandish values? Incoherent ideals? The possible set might be interpreted in different ways, and no particular reading is implied by the bare concept of



universalization. In any case, the third sort of universalizability incorporates the second, and so the third sort is relative to a set of possible individuals for the same reason that the second sort is.<sup>112</sup>

Thus the third sort of universalization is a two-place relation. A *principle* is universalizable, with respect to a given *set of possible individuals*.<sup>113</sup>

Despite these stronger sorts of universalizability being two- and three-place relations, we nonetheless sometimes talk of principles as universalizable per se. This may be because in typical discussions, individuals often do not differ about what they would want: it would be bad for me to live in a political system which discriminates against those with the physical features I happen to possess. Also, it may be because there is often an implicit assumption in moral discussion that the issue of to whom principles apply is uncontroversial. Or, it may be because a parameter is placed upon the discussion explicitly leaving aside the question of to whom the principles apply.

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<sup>112</sup> Theories that endorse this sort of universalizability usually involve a restriction that individuals must be motivated to find agreement. Without some restriction, no principle would be universalizable, since each principle is such that some possible set of ideals will reject it. See, for example, Brian Barry, *Justice as Impartiality* (Oxford University Press, 1995), chap. 7.

<sup>113</sup> Although Mackie places a clean separation between the second and third stages of universalization, we might be more accurate were we to think of them as referring to groups of sorts of universalization. A principle might be universalizable in a way that takes only part of the second stage: it takes account of mental or physical qualities, but not resources or social status. Or, a principle might be universalizable in a way that takes a mix of parts of the second and third stages: it might take account just of mental or physical qualities, and preferences but not ideals. Whether a particular conception of universalizability is relative to a particular individual or not will depend on whether that conception allows that the individual's preferences and ideals (etc.) which affect what principles he would accept count as relevant.

The reading of universalizability I have given leaves the possibility of a very un-universal, parochial, kind of universalizability. A principle might be universalizable with respect only to the members of some given social club, or ethnic grouping. It allows that a principle of assigning human rights only to inhabitants of rich nations can be called 'universalizable', with respect to the domain of inhabitants of rich nations. This observation does not undermine the reading of universalizability given here; it only undermines the usefulness of those particular domains for universalizability. It also motivates the claim that we require independent reason to account for any particular group of individuals with reference to which a principle must be universalizable. Some domains for universalization will be more interesting than others: universalizability among all members of the nation may be important, while universalizability among the right handed may not.<sup>114</sup>

When we appeal to universalizability rules ('how would you like it if others did that to you?'), we explicitly or implicitly appeal to some comparison set, and we assign an equal importance to each, in the sense that each gets equal consideration. What would justify the assignment of such equal consideration? A prominent answer to that question must be: *a prior idea of persons' equal worth*. Any plausible defence of a universalizability principle would account for

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<sup>114</sup> Another example of a claim of substance for universalizability while at the same time alluding to the central premise of basic equality: "To say 'X is right for A because P' is not simply to describe X: it is to say that A ought to do X. And hence, under the logical rule of [the generalisation principle], it is to say that every A ought to do X." (R.E. Flathman, "Equality and Generalization: A Formal Analysis," in *Equality*, ed. JR Pennock and JW Chapman (New York: Atherton Press, 1967), 105.) The issue, of course, is what counts as an 'A'; insofar as the claim at hand is an interesting one, 'A' generalises.

the equal status of the set of individuals it is predicated upon. Thus, some understand basic equality as a kind of universalizability requirement. I have objected to that association of ideas. I have said that a universalizability requirement *presupposes* basic equality. Any defence of it needs to give an account of why it universalizes over the group that it does; if it does not specify a group, it amounts to formal equality.

### **3.10 Is the difficulty greater for distributive egalitarians?**

Let us consider for a moment the scope of the problem. Some have suggested that the problem of identifying a basis for equality is faced more acutely by theories that are distributively egalitarian. On one such view, the mere fact that a theory allocates persons equal rights does not mean that it faces a problem in identifying a basis of equality, while the allocation of comparative rights implies that the theory does face the problem.<sup>115</sup> Such views hold that there is a special problem in identifying a basis for equality insofar as we see basic equality as implying a comparative principle. A comparative principle asserts that what one individual is due depends upon what others have. For example, ‘if any Fs have G, then all Fs should have G’. A non-comparative principle does not make reference to others in this way. It might say, ‘all Fs should have G’.<sup>116</sup>

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<sup>115</sup> Cavanagh, *Against Equality of Opportunity*, 105–108. See also Alexander Brown, “Does Every Normative Theory of Social Arrangement Demand Equality of Something? Re-examining Amartya Sen’s Writings on Equality,” *Imprints* 9 (2006): 211–249.

<sup>116</sup> Feinberg, “Noncomparative Justice.”

Compare the comparative and non-comparative principles:

- i. I am owed at least the same goods that you are owed (whatever that amount of goods turns out to be)
- ii. I have the set of rights X, and you also have the set of rights X.

Suppose all rights are of type (ii). Any case for the view that it is better if I have the same that you have must appeal to some important feature we share, just as much as any case for the view that I have the basic rights that you do.<sup>117</sup>

There does not seem to be a reason to be concerned about a basis for equality in one case, and not the other. Thus, Robert Nozick also looks to identify a shared property between persons that grounds their natural rights.<sup>118</sup> If any argument for the view that it is better if I have the same goods that you have must appeal to some important feature we share, then so must any argument for the view that I have the basic rights that you do, since the best explanation for my having the set of rights that you do is that we share some important feature.

This chapter has been devoted to establishing the idea that there is a problem in justifying basic equality. The first half of the chapter argued for *There is a*

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<sup>117</sup> Furthermore, consider how we ought to act in a case in which not all rights can be satisfied.

<sup>118</sup> Nozick, *Anarchy, State and Utopia*, 48–51. Samuel Black sees this point, and asserts that “libertarian writers have been quickest to grasp” the implications of grounding a theory on universal attributes of persons. “Individualism at an Impasse,” *Canadian Journal of Philosophy* 21, no. 3 (1991): 357n22. C.f. John Broome: “Since Nozick never allows rights to be valued in comparison with each other, he cannot attach equal value to each person’s rights. A nonconsequentialist theory such as Nozick’s has no place for equality.” (John Broome, “Review of Sen,” *The Economic Journal* 103, no. 419 (July 1, 1993): 1068.)

*Basis*, the claim that if we are basic equals, then we share a feature in virtue of which this is the case. The central argument for this claim is an argument from best explanation. The second half of the chapter discussed what sort of feature could be referred to by *There is a Basis*, and revealed some of the challenges involved in identifying it. In the next chapter, I go on to discuss a view that *accepts* that there is a basis for equality, but argues that there is not a difficulty in justifying it, since it can be asserted into place.

## 4 Need there be a defence of basic equality?

### 4.1 The intuited range property response

Isaiah Berlin says: “Like all human ends, [equality] cannot be defended or justified, for it is itself which justifies other acts.”<sup>119</sup> I have argued that equality faces a heavy justificatory burden, because we seem to differ empirically, in any way that might matter. Nonetheless, it might be suggested that Berlin’s idea can explain away this burden. That idea is the topic of this chapter.

Earlier I mentioned the idea of a range property.<sup>120</sup> Might we simply *assert* that such a property forms the basis of equality? A range property is a property which is possessed in virtue of the possession of some level of a variable property.<sup>121</sup> Waldron usefully defines a range property in this way: “R is a range property with respect to S if R is binary and S is a scalar property, such that R applies to individual items in virtue of their being within a certain range on the scale connoted by S.”<sup>122</sup> This definition makes clear that in saying that some property is a range property, we must also be able to offer the scalar property

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<sup>119</sup> Isaiah Berlin, “Equality,” in *Concepts And Categories: Philosophical Essays*, ed. Henry Hardy, New edition (Pimlico, 1999), 102.

<sup>120</sup> See section 3.6.

<sup>121</sup> John Rawls, *A Theory of Justice*, Revised edn. (Cambridge, Mass.: Harvard University Press, 1999), sec. 77.

<sup>122</sup> Waldron, “Basic Equality,” 33.

with respect to which we are claiming it is a range property. This kind of property would be suitable as a basis for equality because all of us (or most of us) are rational to some degree, or are autonomous to some degree. It seems natural, then, to suggest that the basis of equality is that all of us possess the characteristic of passing a threshold on a given scale of cognitive capacities (even if there are variations in how far each of us passes it).<sup>123</sup>

How can the defender of such a feature as the basis of equality claim to be offering a significant feature? A range property as the basis of equality faces a series of questions that seem to make a response to this question especially difficult: Where does the threshold get its force; what reason is there not to select a slightly higher threshold, or a slightly lower threshold? Why should possession of more than the minimum be redundant; isn't it arbitrary and unjust to assign the same moral status to beings that are so different, while at the same time assigning vastly different moral status to beings that are so similar? It is as though height were offered as the determinant of moral status, but that it is also claimed that a being barely over six feet has much greater status than a being barely under six feet. We are owed an account of why that particular height makes so much difference.<sup>124</sup>

One way of answering this set of questions would be to offer a *substantive* response that appeals to a range property. This would give an independent

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<sup>123</sup> For simplicity, I will continue to discuss scalar properties which have one dimension, with a single threshold. But it is possible to have a multi-dimensional range property, with several thresholds, the passing of any one of which would qualify an individual as possessing the property.

<sup>124</sup> Arneson, "What, If Anything, Renders All Humans Morally Equal?".

account of the significance of some threshold. In this case, we give an explanation of the significance of the threshold beyond the (proffered) fact that we do accept it. For example, a Hobbesian contractarian might argue that some threshold is significant because it marks the point beyond which an individual is capable of being a mortal threat to others, and is also able to cooperate in the light of the mutual recognition of this threat. This position would need to explain why variations in the capacity to be a mortal threat above the threshold don't affect the being's status in the resulting scheme of cooperation. Apart from the Hobbesian response, one could speculate about how substantive responses would run on constructivist, or Kantian, or theological lines.

However, I am interested for the time being in a different kind of response to this set of questions.<sup>125</sup> I will call this the *intuited* range property response. This says that there just is some particular level or set of cognitive capacities which forms the threshold above which an individual can rightly claim to be a moral equal. There is no more to say in justification of the importance of this level than 'this is our practice,' or 'these are our values.' Hence, complaints about the theoretical adequacy of the response are wide of the mark; the first requirement of a theory is that it does not lead us into such a bizarre position as an abandonment of basic equality. It says that the feature is significant, *because it is the feature in virtue of which individuals count as equals*.<sup>126</sup>

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<sup>125</sup> I discuss substantive responses in chapters 5-7.

<sup>126</sup> We might attribute this position to McMahan "Cognitive Disability, Misfortune, and Justice.". However, in other work, McMahan seems alive to the problems of specifying a threshold, and stops short of defending one Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002), 253. Allen Buchanan asserts, axiomatically, that the "concept of human rights is a threshold



For example, the range property that Rawls suggests as the basis for equality is the passing of some threshold of moral personality.<sup>127</sup> Rawls does not make any sustained attempt to explain the location of this threshold. It seems extremely difficult to defend a location. Moral personality is composed of a sense of justice, and the capacity to form a conception of the good. The first of these varies from barely redeemed depravity, to sainthood; the second from animalistic urge, to celestial masterplan. How should we choose the relevant points on these scales? Rawls says that we “*take* moral persons to be characterized by two moral powers,” and we “*assume* that the parties represent developed moral persons”.<sup>128</sup> We might interpret Rawls’ preparedness in this matter to ‘take’ and to ‘assume’, and his general silence on this issue, as an implicit acceptance of the intuited range property response. On this view, we simply do know, at least roughly, where the threshold is, and there is not the urgent theoretical need to explain its basis that would exist, were it supposed to be the case that the location of the threshold derives from the broader theory.<sup>129</sup>

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concept, not a scalar one” Buchanan, “Moral Status and Human Enhancement,” 357. In a similar spirit, John Baker writes: “I don’t know any way of arguing for [the equal fundamental worth of all human beings]...but there don’t seem to be any arguments against it, either.” (Baker, *Arguing for Equality*.) See also Nielsen, *Equality and Liberty*.

<sup>127</sup> Rawls, *A Theory of Justice*, 441–450.

<sup>128</sup> John Rawls, “Kantian Constructivism in Moral Theory,” *Journal of Philosophy* 77 (1980): 525, italics added.

<sup>129</sup> Further evidence for this interpretation: Rawls allows that the members of the original position may be trustees or representatives of those to whom justice applies. This severs a possible way in which the basis for equality, and the contractarian apparatus, could be tied together. This is that the contractors must actually be capable of contracting.

Note that the fact that a response is 'intuited' rather than 'substantive' does not entail that it must be a range property response. It would be possible to defend the view that some particular non-range-property is the basis of equality, and that the fact that this is so cannot be defended except through direct intuition. There are two reasons I focus on the range property claim. First, it presents an important aspect of the intuited response more starkly, and therefore more clearly. That is to say, on this position, since no reason for the threshold needs to be offered, no reason not to accept minor alterations need be offered. And this is so, even if it is natural to ask why a slightly higher, or lower, level is not selected. Second, many properties can be presented as range properties. For example, while we do sometimes describe people as acting either rationally or irrationally, we also describe people as acting more and less rationally; we might understand the first of these usages as depending upon particular models of, or thresholds on, the second.

Note also that the distinction I have drawn between 'intuited' and 'substantive' responses is not hard and fast. A defence of equality could be shallowly substantive. It could offer an explanation of a threshold for equality, but the reasons that back up this explanation might themselves run out quickly. For example, it might be argued that we shouldn't treat individuals merely as means to other ends, and that therefore our ethical principles should be acceptable to anyone who can use reasons, no matter how well they can use reasons. To this position it might be asked, 'if reason-responsiveness carries such value, why not give greater priority to those who respond to reasons more effectively?' If it is now replied that the wrongness of treating agents merely as means is a basic principle which cannot be explained any further, then this position will count as

a substantive account of basic equality, but will still be a case in which reasons quickly run out. In this kind of case, the arguments I present below may still be applicable, since we can still ask why reasons run out at the point they are claimed to.

When explanations run out, we just assert the truth of the thing. This is one sort of intuition. What else could make the thing true? This resort to assertion in the place of reasons, at the point at which explanations run out, I am calling 'intuited'. This is not to say, however, that intuitions are only appealed to where explanations run out. It might be said that a position should be called 'intuited' just because it refers to a series and range of different supporting intuitions, even if it does not also assert that explanations run out in those intuitions. In that case, the position is not purely intuited, since it says that something else also supports it. (For example, it may make a claim about how the set of intuitions fit into a certain justificatory procedure, and accords also with certain facts about human nature.) If it's not purely intuited, we need not call it an 'intuited response'; I'm reserving that name for a position that depends on nothing else. The full name of the response is, 'the intuited-only-range-property-response.'

The intuited range property response to the problem of identifying a basis for equality can apply whichever of the two senses of 'significant' or 'relevant' (described in section 1.3) is in operation. If significance is post-moral, then the standard of 'significance' varies, by definition, between theories. Precisely what a theory is, is a specification of what is relevant, and where it is relevant; to be relevant is nothing more than to be referred to by a principle. For the intuited response, now, the *principle* of basic equality is fundamental, and once it is

revealed we can do little to defend it except delineate it more carefully. Alternatively, if significance is pre-moral, then a failure to see that a given *feature* warrants basic equality involves a failure to understand how the normative world fits together. There is little we could do to defend the significance of the feature in virtue of which we count equally, except to describe it more carefully. Whichever of the two conceptions of 'significance' is in play, explanations run out in equality. Thus, we can leave aside this distinction here.

To summarise: Analogously to the intuited response, some things just are funny, and there is no more that can be said or done by way of explanation, except repetition or more careful illustration. Justifications come to an end somewhere. In the same spirit, Mill writes:

There are many persons for whom it is not enough that the inequality [between the sexes] has no just or legitimate defence; they require to be told what express advantage would be obtained by abolishing it. To which let me first answer, the advantage of having all the most universal and pervading of all human relations regulated by justice instead of injustice. The vast amount of this gain to human nature it is hardly possible by any explanation or illustration to place in a stronger light than it is placed in by the bare statement to anyone who attaches a moral meaning to words.<sup>130</sup>

On the present view, moral equality is basic, and in arguing with someone who denies it, we quickly run out of reasons, but since this principle is so fundamental, we should be more troubled by the person who denies it than by the fact that we have run out of reasons.<sup>131</sup>

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<sup>130</sup> John Stuart Mill, *On Liberty and the Subjection of Women* (Penguin Classics, 2006), 220.

<sup>131</sup> Feinberg, *Social Philosophy*, 90ff.

## 4.2 When is a further explanation required?

I will spend the rest of this chapter discussing that response. Supposing that there are cases in which explanations do come to an end, is this one of them?

In an aside, Robert Nozick suggests the opposite view:

It would appear that a person's characteristics, by virtue of which others are constrained in their treatment of him, must themselves be valuable characteristics. How else are we to understand why something so valuable emerges from them?<sup>132</sup>

Although Nozick expressly mentions only the characteristics by virtue of which others' treatment is constrained, we can think of this claim as applying to basic status in general. The thought is that some independent explanation must be offered in order for us to understand how value works so as to produce moral status. Otherwise status seems arbitrary. The key idea denied by the intuited range property response, then, is this:

*Further explanation:* There must be an explanation of the normative significance of the property in virtue of which an individual counts, other than the fact that it is the property in virtue of which an individual counts.

I shall proceed as follows. In this section I outline and reject three objections to the *further explanation* claim. Sections 4.3 and 4.4 are devoted to rejecting what I consider to be a more forceful objection to it. The subsequent section considers a reply to my view, and the final section concludes.

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<sup>132</sup> Nozick, *Anarchy, State and Utopia*, 48.

One objection to the *further explanation* claim is this. If Nozick is right to think that the characteristics in virtue of which individuals count as equals must themselves be valuable, one is led to wonder whether characteristics must be valuable all the way down. That is to say, the characteristics in virtue of which the characteristics in virtue of which an individual counts must themselves be valuable. Put in terms of explanations, the implication is that there must be an explanation why the property in virtue of which the property in virtue of which an individual counts is itself significant.<sup>133</sup> This leads to the absurd situation in which explanations regress infinitely. If it seems problematic that explanations spring from fundamental, foundational starting points, or from coherent loops of some specified sort, then it seems doubly problematic that they spring from infinity, with one end of the chain to be grasped by us, but its source unknowable.

However, we do not need the general postulate that explanations go on forever in order to support the *further explanation* claim. We need only argue that explanations do not come to an end here, in basic equality. It is sufficient to support the claim merely to show that there must be a further explanation of the significance of the property in virtue of which an individual counts. The claim says nothing about where else explanations may be required. It is neutral on that question. It is a claim only about how we account for individuals' status, not about how we account for things in general.

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<sup>133</sup> Put yet another way: in order to understand why something valuable emerges, it is always necessary to identify some independent value among the things from which it emerges.

Where explanations come to an end, they take on a seemingly circular aspect. In the intuited range property response, the answer to the question, 'what is the significant feature which makes an individual count?' takes the form, 'possession of capacities beyond degree X.' And in answer to the question, 'why is possession of cognitive capacities beyond degree X so significant?', no more can be said, ultimately, than, 'because it is what makes an individual count.' My claim will not be that explanations never follow the pattern just described; it will merely be that this particular instance of the pattern is unsatisfying.

In the light of this, a second way to understand the intuited range property response would be to take it that it denies the *further explanation* claim by asserting that it is enough to justify ethical ideas to restate unreflectively our bare practice. The final reason is, 'this is what we do.' This position has some attraction. When we are unable to explain a claim further, we often do resort to appeals to our practice. For example, we just do define bachelors as unmarried men. Might such appeals apply to the normative sphere, and, in particular, to the sphere of basic equality?

The problems with this position are manifold. It is not clear that our practice does involve the same, consistent notion of equality: the issues surrounding the boundaries of moral status are some of the most controversial, both in philosophy and the public domain.<sup>134</sup> Moreover, even if we do in fact share a

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<sup>134</sup> This point should arouse our suspicion, but I do not claim it is decisive. It may be objected (i) we have a consistent notion of equality which has a fuzzy or vague border, and that the controversy is explained by this; (ii) the existence of controversy does not prove the existence of different practices – there may be

consistent practice of equality, this position makes it difficult to say what is wrong with a departure from the practice, since the departure may itself be deemed a new, self-justifying, practice. In general, it does not seem satisfactory to say ‘the practice of treating as equals is self-justifying because practices in general are self-justifying.’ We would want to say that the content of the practice is self-justifying. Some practices do not justify themselves. If we allow that reasons need to be offered for our practices, then we should not allow the *further explanation* claim to be denied on the ground that practices self-justify. The intuited range property response thus understood is in violation of our normal justification method.

Furthermore, one could argue that this method does not meet its own standards. It asks that we appeal to *what we do*, but following the procedure of asking what we do is not, generally, *what we do*, in asking for justifications. We appeal to reasons beyond bare practice. The position would need to explain why ‘what we do’ is significant, for a further reason; it would need to explain why one standard is applied to the practical level of analysis, and a different standard to the justificatory level. It is difficult to see what makes the levels relevantly different.

Where there is an absence of further explanation, intuition is very strong. Nonetheless, our intuitions can’t all be taken at face value; they need to face some scrutiny. This gives rise to a third way in which the *further explanation* claim might be denied, suggested in the following thought:

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agreement on normative ideas beneath apparently intractable debate (see, e.g., Dworkin, *Life’s Dominion* (New York: Knopf., 1993).).



...even if nothing in particular follows from equal human worth outside a context of assumed values and a scheme of mutual obligations or established institutional arrangements, it does seem to have the potential to act as a common denominator from which the analysis of globalised equality might proceed.<sup>135</sup>

This position begins with the claim that even if we disagree about the particular threshold above which an individual counts as a member of the community of equals, we agree that there is such a threshold. As I mentioned in section 2.7, one may hold the view that there is an 'egalitarian plateau,' a view of basic equality held by a range of views that differ substantially in other respects. It may then be argued that, since we all accept some kind of equality, equality is a fundamental value, and so it must be possible for us all to settle on some particular threshold above which individuals count equally. This threshold itself does not need explanation beyond its derivation from the more basic claim that each accepts some version of basic equality.

However, that each accepts some kind of equality does not entail that all accept the same kind of equality, even after working through a process of trying to find a settlement of differences. It remains open, on this position, that our differences may be settled by agreeing on a rejection of equality. The defender of the intuited view needs to give an account of why we do finish with a consensus about a threshold. If we disagree in some respects and agree in others, we cannot *ex ante* assert which respects would be *ex post* agreed upon.

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<sup>135</sup> Thomas Campbell, "Globalising Equality: The Equal Worth Project," in *Globalisation and Equality*, ed. Keith Horton and Haig Patapan (Routledge, 2004), 33.

### 4.3 Incurrigible equality I: Denial of basic equality is not absurd

Here is a better way of understanding the intuited response. In contrast to the view that practices are self-justifying, we accept that the value of equality is accessible only through reflection upon our practices, in a way that tries to make them coherent. But we add to this the claim that the process of thinking through our practices will in fact lead to the selection of some range property as the basis of moral status. This is because great weight should be put on the intuition that individuals (roughly construed as persons) are fundamentally of equal value. That intuition is so forceful that it is hardly necessary to call it to account. It has, largely, a vetoing force: principles which contradict it should thereby be rejected.

There may be intuitions which have this kind of vetoing power in our ethical thinking. For example, if we discover that a theory demands that (absent further considerations) some be tortured for the trivial gain of others, we will have found a forceful reason to reject that theory. Alternatively, the idea might be necessary to the way we normally live and conceive of ourselves: if a theory has the outcome that none of us is ever morally responsible, then to accept it may involve such a revolutionary change in one's self-understanding, that it would be better to reject it. That is, basic equality is not just part of our practice, but it is inconceivable that it is not part of our practice.

Does the intuition about basic equality have this kind of power? It seems unlike other intuitions which might have this power, in two ways. The remainder of this section, and the following section, are devoted to elaborating these two differences.

First, the denial of such vetoing intuitions is typically obviously preposterous. This does seem to be the case with the intuition that torture in exchange for trivial gain is impermissible. Some discussions of egalitarianism offer a similarly stark portrayal of a world without basic equality.<sup>136</sup> They invoke fascist and racist ideologies, and Friedrich Nietzsche's emphasis on the "abysmal disparity in order of rank and abysm of rank between man and man,"<sup>137</sup> along with their troubling ethical implications. These positions involve the combination of an intrinsic value account of moral status, with a denial that individuals have the same intrinsic value.

However, I mentioned in the previous chapters (sections 1.1 and 2.7) the possibility of an interests-based account of moral status. This does not count individuals as equals; it counts interests as equals. On its present interpretation, the intuited range property response must say that these views are not just implausible, but *obviously* implausible. It is far from obvious that an interests-based account of status is so obviously implausible that it must be rejected out of hand. It may be possible to defend the view that individuals have *roughly* the same interests. Alternatively, it may be possible to defend an account of interests that gives the result that individuals' interests ought to be counted in a way that roughly corresponds with what we would call treating individuals as equals. If successful, such accounts would sate our strong anti-discriminatory

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<sup>136</sup> Examples include Dworkin, "Comment on Narveson"; Louis Pojman, "Are Human Rights Based on Equal Human Worth?," *Philosophy and Phenomenological Research* 52, no. 3 (1992): 605–622; Waldron, *God, Locke, and Equality*.

<sup>137</sup> Friedrich Nietzsche, *Beyond Good and Evil*, trans. R. J. Hollingdale (Harmondsworth: Penguin, 1990), para. 62.

intuitions, without irreducibly supposing the existence of individuals of equal status.

In doubting those 'rough equality of interests' positions, some consider it to be basic that if our ethical thought is about anything at all, it is about persons. Will Kymlicka argues that morality necessarily involves concern for persons, and equal concern, at that, if at all plausible; to abandon such a view in favour of taking 'states of affairs' as the basic bearers of value is "to abandon the moral point of view entirely,"<sup>138</sup> which must involve "spell[ing] out an ideal of fairness or equality for distinct individuals."<sup>139</sup> On this account of the moral point of view, the value of the overall interests of a person cannot be the conflation of the value of all the interests of the person at particular points in time. The value of the interests of a person irreducibly applies to the person, taken as one atomic being. In the language introduced at the beginning of this chapter, the status of individuals arises through their intrinsic value; status is not merely interest-based. For the purposes of the argument I am making here, it is sufficient only to show that this is not obviously correct. There is a growing set of arguments making just this point. I shall outline one here.

First, suppose we accept what Derek Parfit calls a *reductionist* account of personhood.<sup>140</sup> That is, a body counts as the same, persisting person just in virtue of some relational property between each point in time. For example, I am

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<sup>138</sup> Kymlicka, "Rawls on Teleology and Deontology," 190.

<sup>139</sup> Ibid., 178.

<sup>140</sup> Parfit, *Reasons and Persons*.

the same person I was five years ago because there is a psychological continuity between my consciousness five years ago, and my consciousness now. If we accept this account of personhood, then in order to believe that ethics must be about (equally important) persons, we must think that there is something valuable about this relational property, in virtue of which persons exist. That is, whatever *unites* time-slices into a whole being must itself be valuable. Against this, consider the following case, due to John Broome.<sup>141</sup>

Imagine that all the amounts of good for some individual are the same at each time. But also suppose that there is a break in personhood: some condition that is necessary for the continuation of the existence of one single person fails to hold. Perhaps the person is swept out of existence, and replaced with a perfect replica, possessing the same memories and plans. Now, the view that there is a good for the person that is independent of the good of each stage in time seems problematic: it implies that had this break in personhood not occurred, we should entirely reconceive this individual's good. We are led to wonder how this good emerges, given the premise that the good of each stage is exactly the same. Its emergence seems mysterious. Is it obvious that it is worth sacrificing other goods in order to prevent this break in continuing personhood?

To repeat, I do not claim that this case decides the question of how we should understand moral status, but I do claim that it undermines one way of arguing that the interest-based account of moral status is *obviously* implausible. Some may reply that they consider the interest-based view to be obviously flawed. In reply, we should emphasise that this reply asserts that the higher principles are

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<sup>141</sup> *Weighing Goods: Equality, Uncertainty and Time* (Oxford: Blackwell, 1991), 233–237.

flawed, not (merely) that the outcomes that they directly prescribe are flawed. Saying 'it's absurd to deny basic equality' is not saying just that it's absurd that certain outcomes obtain; it's saying that a certain structure of theory is absurd. I claim that – whether or not we accept this – a denial of it does not offend any incorrigible intuition. In chapter 8, I follow through the 'interest-based' possibility more fully. I also sketch a series of 'status-based' views that, while not depending on basic *equal* status, do not obviously offend our egalitarian instincts in their prescriptions. As I argued in section 2.7, the 'egalitarian plateau' is philosophically broader than some suggest; this broadness causes difficulties for the 'intuited response' that I have criticised in this section.

#### **4.4 Incorrigible equality II: An intuited threshold is curious**

In the previous section, I considered an argument for the view that basic equality is 'incorrigible'. This view holds that there need be no defence of basic equality because it is a fundamental idea in our normative discourse. I have criticised this position on the grounds that fundamental ideas in our discourse tend to be such that their denial is unthinkable; a denial of 'basic equality' as a premise of our theories is not unthinkable, once we are clearer about what such a denial would involve.

Even if this challenge can be answered, there is a second reason to think that it is a peculiar claim that it is a fundamental intuition that a range property is the basis of equality. This is that other kinds of threshold require a further explanation for their significance, whereas the intuited response denies that a

further explanation is necessary.<sup>142</sup> We use range properties in many different circumstances. For example, as Jeff McMahan suggests, competence is a range property. Whether an individual is competent to perform some task is a range on the scalar property measuring the individual's overall ability to perform it. One might be more or less competent to some task, but once one is competent to do it, one can't be more competent; any more capabilities are surplus to requirements, so far as competence is concerned.<sup>143</sup> The threshold in competence is derived from the nature of the task on which it is predicated. Competence is necessary for the achievement of a given goal, from which the threshold follows. More straightforwardly, a cup has a threshold, beyond which it will overflow. The reason the cup overflows at the point it does follows from the capacity of the cup. However, basic worth, understood as a purely intuited threshold, is not instrumental in either of these ways. The intuited range property response, on the present understanding, specifically denies that there is anything to be said in explanation of the level of the threshold. This is peculiar. Normally, when there is a threshold, we can explain its level.<sup>144</sup>

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<sup>142</sup> McMahan, *The Ethics of Killing*, 250.

<sup>143</sup> We sometimes say that someone is 'extremely competent' to some task. If competence is a range property, then either 'extreme competence' is a play on words; or there is a separate concept of competence at work in that phrase; or when that phrase is used, there is a task involved which has a very high threshold of competence, before an individual can be said to be competent to perform it.

<sup>144</sup> This particular objection concerns the way we understand thresholds, and so does not apply to an intuited non-range property response. However, as I have said, many purported bases for equality turn out to be range properties. For example, the property of 'being human' can, as outlined in the following paragraph, be understood as a range property.

This point can be brought out further by considering one argument against the claim that 'being human' is the characteristic in virtue of which an individual counts as one of the group of equals.<sup>145</sup> There is some intuitive attraction to the following idea: humanness is what qualifies an individual for basic moral status, and there is nothing more that can explain this; the importance of humanness is basic and *sui generis*. This position loses a portion of its attraction once it is established that 'being human' is a range property. Evolution occurs gradually, providing us with a continuum of cases up to *homo sapiens*. Why exclude the individuals which have powerful cognitive capacities, but narrowly fail to be human? Any specification of a line between human and non-human begs an instrumental justification: we naturally ask what purpose there is for the concept, and in the light of this purpose, whether the threshold might be located elsewhere.<sup>146</sup> As soon as humanness is understood, as it is here, as a range property, it becomes far less satisfying as an intuited basis for equality. This is because, as urged in the previous paragraph, wherever we establish a threshold, we look for a justification for its location. Perhaps humanness is a relevant characteristic, but if it is, we need an explanation. It is not self-evidently significant.

I have argued that an intuited range property as the basis for equality would be peculiar. That is to say, it would be unlike other 'intuited' positions and unlike other range property positions. Unlike other intuited positions, its denial is not obviously preposterous. And unlike other range properties, its threshold is not

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<sup>145</sup> For further discussion of the following position, see DeGrazia *Taking Animals Seriously*, 57 ff.

<sup>146</sup> See chapter 5 for further discussion.



instrumental. It might be responded that this is no threat to the position: it is no surprise that this tenet, which is fundamental to our ethics, is peculiar. The fundamental is often peculiar. This tenet is the foundation on which other attitudes are based, and so it cannot be called into question in the way that other attitudes can. This response is reminiscent of foundationalism about religious beliefs.<sup>147</sup> Just as it may be argued that beliefs about God provide the framework for whatever other beliefs a person has, so it may be argued that beliefs about human equality play a similar role within the secular liberal conscience.

A general challenge to these foundationalisms is to explain why the given belief is basic, and not others. What are the criteria for basicness?<sup>148</sup> It may be suggested that it is sufficient for a belief to be basic that it is fundamental to our overall system of beliefs. However, this is an inadequate response, at least in the case of the claim that individuals matter equally. This is because it begs the question against the two peculiarities of the intuited range property response discussed above. Those peculiarities showed that the intuited response is not fundamental to our overall system of beliefs; indeed, they show that it involves a

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<sup>147</sup> Alvin Plantinga, "Is Belief in God Properly Basic?," *Noûs* 15, no. 1 (March 1981): 41–51.

<sup>148</sup> Jonathan Friday argues that this challenge is especially difficult to meet in the case of justifying moral equality: "Since...there is no reason to suppose that in gathering together putative examples of basic beliefs there will be agreement about what the genuine examples are, the door is opened to highly disputable beliefs being claimed to have the status of proper basicity...Indeed, what is to prevent both an egalitarian and a non-egalitarian from claiming that the belief in moral equality is basic and the belief in the determination of worth by merit are properly basic? In such circumstances no relief is found from the demand to justify egalitarianism." Friday, "Moral Equality and the Foundations of Liberal Moral Theory," 70.

challenge to them. It demands that we abandon the idea that the rejection of unchallengeable intuitions is always preposterous, and the idea that the level of any threshold can be justified. In the absence of any other criteria for basicness, I leave aside this response.<sup>149</sup>

I shall now briefly run through the four positions I have discussed in this and the previous two sections. To reject the *further explanation* claim, we do not need to assert, or deny, that reasons go on forever. If, alternatively, we say basic equality requires no explanation because, as one of our practices, it is self-justifying, then we open ourselves up to saying that seemingly unjustified practices are self-justifying. The argument that some particular threshold is basic, because all accept that there must be a threshold somewhere, does not explain why the result will not be reached that equality will be rejected. Finally, the argument that basic equality is an iron-cast intuition could not explain why this intuition lacks features of other such intuitions: its denial is not obviously preposterous, and its threshold is not instrumental.

The general tension is this: Insofar as the intuited range property response claims that the basic equality intuition is subject to little or no scrutiny, it requires an abandonment of the way we normally justify. Insofar as the intuited range property response permits scrutiny of the basic equality intuition, it ceases to become an intuited response, requiring a further explanation of the location of the threshold.

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<sup>149</sup> See chapter 5 for further discussion.

#### 4.5 Does vagueness provide a counterexample?

In this section I discuss a response to a part of the reasoning I have followed so far. I offer reasons to doubt the second of the two ‘peculiarities’ of the intuited response that I have identified. I claimed in section 4.4 that all threshold concepts demand an explanation of the level of their threshold. The *intuited response* to the problem of basic equality asserts a threshold but does not explain its level. I concluded that the intuited response is inadequate. As Arneson suggests, the intuited response is comparable to demanding that we treat those over six feet differently from those under six feet, without an explanation of the relevance of six feet. It may be responded that this is misleading. Sometimes the thresholds we use are fuzzy, and where they are fuzzy, we cannot offer accounts of their exact location. ‘Baldness’ and ‘heaps’ are both concepts that do not easily fall to precise specification. This does not mean that we doubt the existence of baldness or heaps. Similarly, the property in virtue of which an individual counts as a member of the community of equals may be a vague property. It does not permit precise specification. It is not absurd to deny some particular location of its threshold, and its precise location may not be instrumental. It just exists. We still – continues the objection – use the idea of moral equality. In this section I explore whether the idea of vagueness could aid a defence of a basis for equality.

I shall consider metaphysical vagueness, and then epistemic vagueness. We may believe that the sort of personhood that qualifies an individual as a full

member of the moral community is a *metaphysically vague* concept.<sup>150</sup> There is no specific point at which moral status suddenly changes. There can be distinctions that are gradual, and an inability to draw one line does not entail the absence of a difference. To develop this thought, take one sort of metaphysical vagueness: it is neither true nor false that some given individual falls within the full community of equals. The ‘intuited response’ to the problem of basic equality need not assert a single simple threshold at all. According to this view it is possible to accept my premise that all threshold concepts demand an explanation of the level of their threshold, but at the same time deny that the intuited response asserts a threshold. Rather than a simple threshold, it asserts a complicated and vague distinction. To be clear, this position does not assert that there are gradations of moral status.<sup>151</sup> It asserts that there are indeterminacies concerning the truth of whether some individual falls within the community of equals. (In the same way, some accounts of vagueness hold that the truth of the statement ‘this is a heap’ can be indeterminate.)<sup>152</sup>

That view does not present a serious challenge to the *further explanation* claim. On any account of metaphysical vagueness, if it is the case that all simple thresholds demand explanations, it is also the case that complicated and vague distinctions demand explanations. The vagueness itself is either vague, or not.

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<sup>150</sup> Perhaps along the lines described in Kit Fine, “Vagueness, Truth and Logic,” *Synthese* 30, no. 3–4 (1975): 265–300; David Lewis, “Logic for Equivocators,” *Noûs* 16, no. 3 (1982): 431–441.

<sup>151</sup> I discuss such an idea in chapter 8.

<sup>152</sup> This means that there is literally no correct answer to some moral questions. The idea that morality is vague has some pedigree. See section 2.4.

If it is not vague, then we would demand an explanation for the boundaries of the vagueness, just as much as we would demand an explanation for the boundaries of any other non-vague concept. An explanation of the boundaries of the vagueness is itself, in effect, an explanation of the threshold of the vagueness. If the grey area ends sharply, then we demand an explanation for the sharp line.

On the other hand, if the vagueness itself is vague, then it can be neither true nor false that it is neither true nor false that an individual has full moral status. In this case, wouldn't we demand an explanation for that whole construct? We do demand such an explanation in the cases of metaphysically vague heaps and baldness. Even if it is metaphysically vague whether or not it is metaphysically vague whether or not this is a heap, it is still the case that we can (assuming full knowledge) say what it is about the concept of being a heap that gives it this structure. Heaps involve certain amounts, and arrangements, of things. The very facts that some things definitely are not heaps, and that some things definitely are, means that we are able to say something explanatory about them. Similarly, even if a basis for equality is a second-order-vague concept, this would not be sufficient to show that its application does not demand further explanation. We would ask for an explanation of this more complex application.

More interestingly, vagueness may be *epistemic*. According to this idea, our difficulty in saying whether a concept applies in some particular case is a result of difficulties in knowing all of the relevant facts, and of knowing the precise criteria that would satisfy the concept.<sup>153</sup> The precise criteria of our language

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<sup>153</sup> Timothy Williamson, *Vagueness* (Routledge, 1994).

continually fluctuate. The point is not just that we can't know the facts in order to apply our concepts precisely; it is that we can't know which facts we need to know in order to apply our concepts precisely. The truth of the application of a concept is dependent upon a complex set of interactions between our uses of it, and our uses of it vary, develop and grow. This complexity does not entail that there is no truth of the matter about baldness or heaps (or equality); it entails only that there is no way that we can know about that truth, at the margins.

If this account of vagueness is accurate, then there is a possible counterexample to the central argument that I have made in this chapter (see section 4.3). I have said that successful 'range property' positions would offer explanations of their thresholds. It may be argued that, at least in the case of vagueness, this claim is false. We use the concept 'heap', and (if the epistemic account of vagueness is correct) we do so without being able to know exactly how it should apply. Since we can't know the exact criteria of its application, we could not ask for a justification of the exact criteria of its application.<sup>154</sup> Now, continues the objection, if that can be the case with an everyday concept such as 'heap', it may also be the case with a normative ideal such as 'basic equality.'

Of course, vagueness might not be an epistemic phenomenon. But for the sake of argument here, we should allow the possibility that it is. If the argument that I

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<sup>154</sup> Note that only criteria-based epistemic vagueness provides the counterexample. Purely fact-based epistemic vagueness still leaves in place an explanation for the threshold. We can ask for an explanation of why the threshold is where it is, even if we are aware that we can never obtain the facts necessary for its application.

have made in the previous sections is to stand against this possibility, it is necessary to identify a relevant difference between the intuited range property, and the epistemically vague heap. This task seems difficult, because there seems to be no reason to deny that the intuited range property may be epistemically vague itself. I have also said that successful intuited positions are absurd to deny. An epistemically vague property provides a challenge to that claim. It seems reasonable to accept a variety of different possible thresholds on what counts as a 'heap'. There is one clear difference between basic equality and heaps: one is a normative idea, and one is descriptive. But this observation does not immediately solve the puzzle. The argument I am making says: (1) thresholds demand explanations; (2) the intuited response asserts a threshold; therefore (3) the intuited response is internally contradictory, since it denies a need for an explanation, but requires one. That first premise generalises across normative and descriptive cases. A factual counterexample to it should make us question our allegiance to its application in the normative sphere.

It seems that we must make an exception to my general claim that thresholds demand explanations. If vagueness is understood epistemically, then cases of vagueness are cases of unexplained thresholds. However, this is an exception to the rule. It makes sense for our concepts to work in that way, if we accept the case for epistemic vagueness in the first place: the precise level of application does not demand a further explanation *because* the threshold falls outside of our epistemic powers. There remains, now, a way in which the intuited range property response may be defended. It may be defended by holding that the range property is epistemically vague. Such a position is insured against the

two criticisms I have raised: it need neither show that its denial is absurd, nor that there is an explanation for its threshold. Therefore, it provides a particular counterexample to the general claim that I have made. There is now the logical space to defend basic equality by arguing that it is an epistemically vague idea, whose criteria are unknowable.

However, there are strong reasons to doubt that this position can be successfully developed. The claim that we could not know the criteria of our moral concepts is in tension with, for example, contractarian ideas about the publicity of morals. In particular, the idea of publicity puts pressure on the range of vagueness to be smaller, and all agree that the range of vagueness itself demands explanation. I won't pursue this possibility further.

#### **4.6 Quietism in political theory**

It may seem I have achieved little in this chapter: all I have done (if successful) is to have shown that something needs defending. Isn't everything open to questioning, and thereby defence, anyhow? I have merely hinted, and not attempted to show, that a defence would be difficult.

Against this, some accept the central claim I have argued for – that a further explanation of equality is, in the final analysis, necessary – but would emphasise that we are not, here and now, dealing with the final analysis. One version of this position holds that it is not part of the proper vocation of political theorists, or political philosophers, to offer a basis for equality; this is the job of metaphysics, or of some more theoretical and less practical branch of philosophy. Practical philosophers have enough to do. They can work with



rough-and-ready conceptions of persons that have been derived from a political consensus. Alternatively, a less concessive version of this position holds that it is *no one's* proper vocation to inquire into these questions: there are great risks to our reasonably decent, if perhaps imperfect, ways of relating to one another, if we begin prodding at their foundations. Human equality is a shibboleth. And the idea of human inequality is, if it is in the wrong hands, a dangerous weapon.

My argument has been about a thesis that our culture represents both as an expression of a deep truth, and as platitudinous; acceptance of the thesis is sometimes insisted upon as a starting premise for participation in decent conversation. It is of consequence that such a thesis can't be asserted into place, and is subject to important challenges. If, furthermore, as I believe but have not argued here, there are diverse and divergent possible substantive defences of the thesis, then an understanding of how to argue for it becomes crucially important. We would do better to understand how to defend it, than to assert it as a matter of faith. If a further explanation cannot be offered, we would do well to understand how we can give an account of a decent normative system that has neither basic equality, nor the dramatic practical implications of its abandonment that some fear.

## 5 Religious ideas

### 5.1 The tradition of appealing to religious ideas

It is common to see the idea of equality between persons as a religious idea. In this chapter I explore that connection. We can distinguish the historical and philosophical association of religious ideas with equality. At least within Christianity, it is clear that there is a historical association. For example, Sanford Lakoff argues that its commitment to abstract equality made Christianity popular amongst the masses. In order to prove the absence of a natural hierarchy, it was no longer necessary to prove that members of the lower classes were as rational and as capable as members of the higher class; rather, “[w]hat mattered was that every man had a soul and that in the eyes of God all souls were equally worthy”.<sup>155</sup> If, furthermore, equality rests *philosophically* upon a religious or theological idea, then one may suspect that equality is an illegitimate part of our thinking, an heirloom to which we are not entitled, now that we are no longer collectively committed to these theological foundations.

The philosophical association of religious ideas with basic equality has been made in varying forms and with varying degrees of strength. In his diaries, R. H. Tawney writes: “In order to believe in human equality it is necessary to believe

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<sup>155</sup> S.A. Lakoff, “Christianity and Equality,” *Equality: Nomos IX. Yearbook of the American Society for Political and Legal Philosophy*. New York (1967): 118.

in God.”<sup>156</sup> In an encyclical letter, Pope Leo XIII writes: “[All] men are equal: there is no difference between rich and poor, master and servant, ruler and ruled, ‘for the same is Lord over all.’”<sup>157</sup> The American Constitution asserts that all men are made equal by their creator. Taking this as his cue, G.K. Chesterton claims that, in abandoning its religious grounding, while retaining its commitment to equality in creation, “the Republican theory will turn out to be another form of romance; and will be classed with the illusion of the too idealistic lover”.<sup>158</sup>

Given the weight and diversity of thought behind the idea that equality rests on a religious idea, we should give it serious consideration. The attraction of the theological solution resides in the fact that the world of non-empirical properties that a theistic viewpoint opens up might include an important characteristic of persons that cannot otherwise be accounted for. Thus Louis Pojman argues, “you need some metaphysical explanation to ground the doctrine of equal

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<sup>156</sup> J. M. Winter and D. M. Joslin, *R. H. Tawney's Commonplace Book* (Cambridge University Press, 2006), 53. Cited in Anthony Wright, *R.H. Tawney* (Manchester University Press, 1987), 20.

<sup>157</sup> “Encyclical of Pope Leo XIII on Capital and Labour,” 1897, [http://www.vatican.va/holy\\_father/leo\\_xiii/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum\\_en.html](http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html).

<sup>158</sup> G. K. Chesterton, “Romance and the Romantics,” in *The Collected Works of G. K. Chesterton: The Illustrated London News, 1932-1934* (Ignatius Press, 2011), 137. For further connections, see J. E. Coons and P. M. Brennan, *By Nature Equal: The Anatomy of a Western Insight* (Princeton University Press, 1999); Duncan B. Forrester, *On Human Worth: a Christian Vindication of Equality* (SCM, 2001).

worth.”<sup>159</sup> Such an explanation is not consonant with a modern secular understanding of how the world behaves: we are hesitant to posit the existence of some abstract realm, connected to—but somehow separate from—the phenomenal world.

## 5.2 *A deus ex machina* is inadequate

The first claim I will make about any theological solution is that such a solution cannot be constituted by a mere assertion of the kind, ‘God makes us equal’, or ‘God commands (or otherwise wills) that we are equal’. That is to say, a simple *deus ex machina* will not solve the problem of identifying a basis for equality.

The problem is a problem for divine command theorists too. Even in the light of a command ‘treat persons as equals’, we still need to fill out the content of the concept of ‘person’. That is to say, what counts as a person constitutes a contested area in our ethical thought.<sup>160</sup> A rule that uses that concept without filling it out leaves us needing to explain persons’ equality ourselves.<sup>161</sup>

Suppose that there is a divine command that goes further, and fills out the content of what counts as a person. In this case, this conception of personhood

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<sup>159</sup> Louis Pojman, “On Equal Human Worth: A Critique of Contemporary Egalitarianism,” in *Equality: Selected Readings*, ed. Robert Westmoreland and Louis Pojman (Oxford University Press, 1997), 296.

<sup>160</sup> For a case of this thought played out in the Christian context, see Waldron, *God, Locke, and Equality*, 64–66. There, Waldron (speaking through Locke) notes that the clearest biblical indication of the specialness of the human species derives from the descent from Adam, but that being descended from Adam is not a necessary and uncontroversially necessary and sufficient condition for being a human.

<sup>161</sup> See section 3.2 for further discussion of this point.

must not seem arbitrary; a divine command would not seem arbitrary. And thus, there is more to be said than ‘God makes us equal’: we also need to see that God’s making us equal is not arbitrary.<sup>162</sup>

It may be responded that ‘possessing a soul’ seems to be a non-arbitrary account of ‘person’, and is unavailable to non-religious views. But this simply repeats the point. Why care about souls, unless God’s will (or, perfection, more generally) leads us to do so? Consider an analogy. A purported divine command that we treat those taller than six feet radically differently from those shorter than six feet presents a puzzle, and it is exactly the same sort of puzzle as that which is presented by a purported (non-divine) *moral* rule that those taller than six feet should be treated radically differently from those shorter than six feet. The puzzle is to supply an account of what is significant about six feet.

To be sure, there are limits to the requirement that divine commands should not seem arbitrary. As Hume says, “It is very safe for us to affirm, that whatever we know the deity to have actually done is best; but it is very dangerous to affirm that he must always do what to us seems best.”<sup>163</sup> God’s intentions—if God exists—are not directly planted in our minds; it is possible for us to be mistaken about them. And it is possible for them to be contrary to what seems best to us. Nonetheless, given the argument of the previous chapter, it is inadequate to assert equality without offering a further explanation, since this is an area where

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<sup>162</sup> In section 5.8 below, I suggest that *loyalty* to a theistic authority might provide a non-arbitrary grounding of equality.

<sup>163</sup> David Hume, “Of the Immortality of the Soul,” in *Selected Essays*, ed. Stephen Copley and Andrew Edgar (Oxford University Press, USA, 2008), 325.

we do demand such an explanation. The divine command theorist, too, must face the challenge of giving a non-arbitrary basis for equality.

Some may respond to this claim by arguing that it is not necessary for a defensible egalitarianism that we can find an account of God's commands; instead, we place our *faith* in those commands. There is a common refrain that holds that secular liberals themselves arbitrarily limit their imagination and their faith, by investing it in human equality but refusing to permit it to flower into other spheres (in particular, expressly religious spheres).<sup>164</sup> Call the faith in human equality 'liberal fideism'. Would it help in a defence of basic equality? It faces the same challenging questions that religious fideism faces. The fideist may assert that there is no need to fill out any content to his claim that people are basic equals, but even if fideists do not state content in their claims, they in fact tend to perform it. That is to say, we are prepared to assert (somewhere) that we can defend our views. The fideist "shows, in his very behavior...though not his talk *about* his behavior, that he does not even take anything to be properly called 'God' unless he has already made a moral judgment about that being. He says that he takes God as his ultimate criterion for good on faith...[H]is protestations notwithstanding, he clearly has a criterion for good and

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<sup>164</sup> For example: "Secular egalitarian arguments for equal rights seem, at best, to be based on a posit of faith that all humans are of equal worth or that it is useful to regard them as such. They have not offered plausible reasons for their thesis, and, given the empirical consideration, inegalitarianism seems plausible. If my analysis of the subject is confirmed by fuller arguments, then there are only two choices for egalitarians and the rest of us: either secular inegalitarian moral/political systems or religious (or comparable metaphysical) systems." Louis Pojman, "On Equal Human Worth: A Critique of Contemporary Egalitarianism," 296.

evil that is *logically independent* of his belief in God.”<sup>165</sup> In a similar manner, the liberal fideist may claim a faith in equal value, but one suspects that there is a moral judgment in the background—and with it, an implicit acceptance of a need for further explanation.

### 5.3 The Locke-Waldron solution

The association of equality with religious ideas is persistent. Is there more to say for it? Jeremy Waldron claims the kind of solution he puts forward requires a theological basis.<sup>166</sup> He thereby suggests that *only* a theological position could account for persons’ basic equality. I will spend the bulk of this chapter engaging with that claim. I will argue that on one interpretation, the solution offered by Waldron is very difficult to sustain. And on another interpretation, it has a non-theistic counterpart. I then focus on a more sophisticated version of the argument. I conclude (with some small caveats) that a belief in a divine being would not help us to account for persons’ moral equality.

Waldron’s argument follows a delicate dialectic; a path between, on one hand, making an argument that could just as well be made without the theological baggage, and, on the other hand, appealing to the theological component in a way that renders it implausible as a foundation for any normative idea. I shall argue that the position Waldron describes does not successfully steer between

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<sup>165</sup> Kai Nielsen, “God and the Basis of Morality,” *The Journal of Religious Ethics* 10, no. 2 (October 1, 1982): 343 (italics in original). See also the discussion of basic beliefs in section 4.4.

<sup>166</sup> *God, Locke, and Equality*.

these two pitfalls. In short, I will bring the argument Waldron presents into contact with the Euthyphro dilemma.<sup>167</sup> I shall also connect the view with some resolutions to that dilemma, and shall argue that, whatever the independent merits of those solutions, they face further problems in applying to the case of equality in particular.

I attribute the argument to Waldron. In fact, Waldron only tentatively endorses it, and non-tentatively attributes it to Locke. It is not universally accepted as a reading of Locke.<sup>168</sup> Herein, I will refer to it as the Locke-Waldron position.<sup>169</sup> The Locke-Waldron position is more sophisticated than a *deus ex machina*. It begins with the premise that God's existence can be derived using reason. It adds (plausibly) that knowledge of God's existence involves knowing that one is obliged to follow a set of laws. It continues in the following way:

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<sup>167</sup> The general Euthyphro problem applies no less to the divine command 'treat people as equals'. If 'treat people as equals' should be followed *just* because it is commanded, then it has an amoral backing; if it should be followed (partly) because it is independently right, then it has a non-theological backing. In what follows, I apply the challenge to one of the premises of the Locke-Waldron argument, namely, 'God intends that we serve him equally'.

<sup>168</sup> C.f. Timothy Stanton, "Christian Foundations; or Some Loose Stones? Toleration and the Philosophy of Locke's Politics," *Critical Review of International Social and Political Philosophy* 14, no. 3 (2011): 323–347.

<sup>169</sup> Waldron writes "Equality cannot do its work unless it is accepted among those whom it consecrates as equals. Locke believed this general acceptance was impossible apart from the principle's foundation in religious teaching. We believe otherwise. Locke, I suspect, would have thought we were taking a risk. And I am afraid it is not entirely clear, given our experience of a world and a century in which politics and public reason have cut loose from these foundations, that his cautions and suspicions were unjustified." Waldron, *God, Locke, and Equality*, 243. He also writes: "I am inclined to believe...that a commitment to human equality is most coherent and attractive when it is grounded in theological truths, truths associated particularly with the Christian heritage." *Ibid.*, 236.



a being with the power of abstraction can recognize that it has an obligation to act in accordance with God's purposes; and when it sees the same power of abstraction manifested by others, it can recognize that they too have been sent into the world about God's business, and so they must be respected – equally with oneself – as beings commissioned by the purposes of God.<sup>170</sup>

This is a defence of why a particular threshold of rationality is morally significant. On this account it is not always the case that, morally speaking, if rationality matters, the more, the better. Rather, it matters that a being has enough rationality to be capable of knowing God's existence. Here is a further illustration:

When I catch a rabbit, I know that I am *not* dealing with a creature that has the capacity to abstract, and so I know that there is no question of this being one of God's special servants, sent into the world about his business. But if I catch a human in full possession of his faculties, I know I should be careful how I deal with him.<sup>171</sup>

Such an approach is, allegedly, unavailable to a non-religious position. Absent an appeal to God's purposes, there is no way in which to account for the independent moral significance of some threshold of rationality. So liberal secular thinkers have tended, implicitly, to *assert* human equality. And they have tended to explain the significance of some threshold of rationality by appealing to human equality. But then human equality itself lacks any justification. "At best, [the atheist] will have to stake his rationality threshold on an already accepted principle of human equality rather than the other way

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<sup>170</sup> Waldron, *God, Locke, and Equality*, 95.

<sup>171</sup> *Ibid.*, 80.

round, leaving the principle itself bare of any rationalization.”<sup>172</sup> Modern secular thinkers illegitimately piggy-back on Locke’s position, wrongly thinking that they can shed it of its religious elements while retaining its liberal commitment to equal status.

#### **5.4 A reconstruction of Waldron’s argument, and a distinction**

Waldron’s solution can be reconstructed this way:

1. All and only those capable of reasoning that God exists are intended by God to serve him.
2. Those intended by God to serve him are intended to serve him equally.
3. That God intends an individual to serve him is a morally significant feature of that individual.

Therefore,

4. All beings that possess the capacity to reason that God exists possess to an equal extent and in an equal way a morally significant feature that is not possessed by other beings.

We can add that knowledge of God’s existence can be acquired through reason by normal humans with the ability to think abstractly. In this case, we can also conclude that normal humans with the ability to think abstractly are morally equal. So, persons are moral equals. Note that persons are moral equals, according to this argument, whether or not they have exercised their capacity to

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<sup>172</sup> Ibid., 81.

reason that God exists. Atheists (who, *ex hypothesi*, are mistaken) are equals alongside theists.

Premise (2) comes from the claim that knowing God's existence entails knowing one is under an obligation. One can ask Euthyphro-type question of the third premise of the argument. That premise said that God's intention for an individual to serve him is a morally significant feature of that individual. The question is this: Why exactly should we think that the contents of God's intentions are morally significant? The contents of God's intentions might be morally significant for one of two general reasons:

- (a) That God intends something is itself constitutive of a thing's being morally significant.
- (b) God is perfect at identifying what is, independently, morally significant.

I will argue that the first response falls into trouble on its own standard, and the second permits a non-theist counterpart.

## 5.5 God creates normative significance

The first response, (a), says that God's intentions make things normatively significant. In this case, we wonder *why* God has the intentions laid out in premises (1) and (2) of the argument. That is, why does God intend that those who can reason that he exists serve him, and serve him equally? Even allowing that God's intending something constitutes its normative significance, it must still be the case that what God intends does not seem arbitrary (see section 5.2

above). Otherwise, the claim that God's intentions are themselves significant loses plausibility.

This is related to a more general element of the Euthyphro objection, which requires that we deny that murder would be right, even if God commanded murder. Here, I am saying that, just as God's intentions can't seem obviously immoral, they can't seem arbitrary. If, absent God, we can ask why unequal beings should nevertheless be treated as equals, then surely we can ask why God's intention is not arbitrary in commanding that unequal beings are to be treated equally.

I am objecting to a possible defence of premises (1) and (2), using the claim that God's intentions can't seem arbitrary. Here is a possible response. God's intention that 'all and only those capable of reasoning that he exists should serve him' might be defended as non-arbitrary on the grounds that beings that lack the sort of capacity necessary to reason that a higher being exists are also not the sort of beings which are able to serve in any sensible sort of way. If you can't reason, you can't serve. So, the capacity to reason that God exists is significant, since it is indicative of a capacity to behave in moral ways (that is, to serve God).

However, in this case, the capacity to serve is what counts, morally, not the capacity to reason that God exists. And if so, the intention in premise (2) loses support, that is, God's intention that those who serve him should serve him equally. This is because it seems plausible that some can serve God better than others. We have landed upon an empirical property, even though we aimed at a non-empirical one. We vary in our capacities, including our capacities to serve.

An appeal to a capacity to serve leaves us none the wiser with regard to our quest to identify a significant, shared feature.

Waldron responds to this kind of concern by drawing on the following passage from Locke.

[T]here being nothing more evident than that creatures of the same species and rank...should...be equal among one another without subordination or subjugation, *unless* the lord and master of them all should, by any *manifest declaration of his will*, set one above another, and confer on him, by an *evident and clear appointment*, an undoubted right to dominion and sovereignty.<sup>173</sup>

Thus, claims Waldron, there is no clear indication – no ‘manifest declaration of his will’, or ‘evident and clear appointment’ – that God intends some to serve in ways that permit them dominion over others.<sup>174</sup> If there is no clear indication that God intends some to dominate, then we must fall back on the default of equality, and assume that God intends we serve him equally.

Here are three problems with this response. First, we can dispute the evidence itself. Some have considered themselves to have found evidence in religious texts for the greater moral status of some humans over others. Second, we can dispute the location of the burden of proof: why, prior to the argument for equality that Waldron offers, is equality a default position? The argument is supposed to explain or justify the value of equal status, but if it depends upon equal status being a default, then it presupposes it. Third, we can dispute the

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<sup>173</sup> John Locke, *Two Treatises of Government*, ed. Peter Laslett, 3rd ed. (Cambridge: Cambridge University Press, 1988), 287.

<sup>174</sup> Jeremy Waldron, “Response to Critics,” *The Review of Politics* 67, no. 3 (Summer 2005): 495–513.

standard of proof. Why is it necessary that dominion exists only where there is a evident and clear appointment by God? Why select full equality in the face of an almost, but not fully, clear declaration? Once again, it is difficult to see how this can be answered without an appeal to the prior value of equality.

## 5.6 God identifies normative significance

Let us consider instead the other answer to the question, ‘Why are the contents of God’s intentions are morally significant?’ – that is, answer (b). That answer said that God successfully identifies and intends what is independently morally significant. Such a response invites a counterpart non-theist argument. If the fulfilment of God’s intentions is good for reasons other than the bare fact that they are God’s intentions, then we can strip out talk of God’s intention that individuals serve him, and instead talk of individuals’ capacity to do good. That is, we can remove the two references to God in premises (2) and (3). The argument becomes this:

5. All and only those capable of reasoning that God exists are able to do good.

6. Those able to do good are able to do good equally.

7. That an individual is able to do good is a morally significant feature of that individual.

Therefore,

8. All beings which possess the capacity to reason that God exists possess to an equal extent a morally significant feature which is not possessed by other beings.

This argument still has reference to the capacity to reason that God exists. It says that those who can reason that God exists are able to do good. However, this reference to God can be taken as a place marker for a certain degree and kind of rationality. It could be replaced by whatever sort of reasoning ability permits an individual to follow the line of reasoning involved in the proof of God's existence—suppose, the capacity to reason abstractly. Thus, we could retain the idea behind the argument by replacing premise (5) with an alternative:

5a. All and only those capable of reasoning abstractly are able to do good.

This makes clear how the theological reference is extractable. (Premise 8 is also altered accordingly.)

My central claim on this point is not that the argument (5)-(8) is, or is not, a sound argument. I note that it bears some resemblance to some metaethical positions in the literature. For example, Thomas Nagel writes: "the general form of moral reasoning is to put yourself in other people's shoes. This leads to acceptance of an impersonal concern for them corresponding to the impersonal concern for yourself."<sup>175</sup> We might add that the capacity to put oneself in others' shoes is the qualifying threshold on an individual's capacity for reasoning for membership in the group of equals. It might be objected that (5)-(8) cannot provide an adequate account of our duties to moral patients: those unable to do good aren't members of the group of equals. However, if (5)-(8) cannot provide

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<sup>175</sup> Nagel, "Equality," 126.

such an account, neither can (1)-(4), and my aim here is only to establish discursive parity between the two.<sup>176</sup>

My central claim on this point is that if Waldron's argument is shored up with the view that God's intentions are morally significant because they track goodness, then we could just as well reconstruct his argument by identifying the relevant threshold of rationality as the level at which an individual is able to do good. In short, if premise (3) is defended on the grounds that God identifies the good but does not constitute it, and if the argument (1)-(4) is sound, then the argument (5)-(8) is also sound. This is because, if the point of including God's intention in the argument is that it tracks good rather than constituting it, then God's intention is in principle extractable from the argument.

### **5.7 Does the moral significance of the divine will arise from its unique epistemological status?**

Here is a possible objection to the line of reasoning I have presented so far. I offered two different, competing reasons why God's intentions might be morally significant – that is, for premise (3) of the argument as I constructed it. The first reason was (a) God's intentions constitute goodness; the second was (b) God's intentions track goodness. It might be claimed that there is a third option, and thus, a different way to hold that God's intentions are morally significant. This is:

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<sup>176</sup> I outline some doubts about the type of argument Nagel offers in section 3.9.



(c) What God intends is independently significant, but we can only *know* what is significant through knowing God.

Here, we assign moral significance to God's will not through a metaethical claim about the structure of value, but through an epistemological claim about how we come to understand value.<sup>177</sup> We can only ever learn about value, so the claim goes, by making direct or indirect contact with religious texts, or in divine revelation, or from a personal relationship with God.

I offer here a minor, and then a major, response to the inference from (c) to (3). The minor response denies (c). There is much reason to be sceptical about purported sources of knowledge that take the form of texts, revelations, or personal relationships with deities. Reason for scepticism is especially clear when we notice that there is great temptation to equivocate between presenting such sources as, on one hand, direct sources of knowledge, and, on the other hand, useful but defeasible guides to knowledge. This temptation is exemplified by an ambiguity that often arises in the purpose of interpretations of religious texts. Sometimes a line of text is offered as a clear command or expression of divine will; at other times interpretation is guided by whatever seems, independently, reasonable.

But moreover, even if we accept (c), there is a greater problem for the position currently under consideration. This problem is that (3) does not follow from (c). That an idea is only knowable through some given method does not entail that the idea has any other relationship to the method. It is consistent with persons

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<sup>177</sup> Such a view is outlined in Mackie, *Ethics*, chap. 10.

being moral equals for reasons independent of God, that we can only know that we are equals through knowing God. If both these propositions hold, it doesn't follow that God's existence, or decisions, make it the case that persons are equals. Perhaps the only way to know the exact location of a ship is to look at it through a telescope. Neither the telescope, nor my acts of looking, affects, explains or causes the location of the ship. (See the discussion in chapter 3 above on the distinction between reasons that we are equal, and reasons to believe that we are equal.) The claim that persons are equals is the claim that I am focusing on here. I therefore take it that (c) does not really establish that God's intentions are normatively significant; it only establishes that they can track what is normatively significant. As I argued above in the discussion of (b), that position permits a non-theistic account of persons' equality.

Position (c) may pose an issue for any general claim that morality and religion are fully separable. But, by itself, it does not present a challenge to the particular point at stake here. The immediate concern of the argument is with what gives a reason for basic moral equality among us, not with how we know that it exists.

## **5.8 A less ambitious view: God's intentions ground equality, but little else**

In this section I will consider a stronger theological grounding of basic equality. This view escapes the substance of the objection I have been making in this chapter. It appeals to a different version the first horn of the dilemma I have proposed. I proposed that dilemma in asking how premise (3) could be

defended; that is, in asking why we should think that God's intention that a individual serve him equally is a morally significant fact. Horn (a) answered that the intention is morally significant because God's intentions, in general, are morally significant. God's intentions infect things with normativity: they make things good, or obligatory, or noble, or virtuous, etc. The central problem with that position was that it seemed to allow that our normative concepts are, or could be, arbitrary.

That charge of arbitrariness might be avoided in the following way. The significance of God's intention that someone serve him could be defended with a much less ambitious claim than the claim that God's intentions all carry independent moral significance. That is, premise (3) could be defended with a much less ambitious claim than that of (a). Instead of claiming that *all* morality stems from God's intentions, it would be sufficient to support (3) to offer a reason to think only that a *subset* of morality stems from God's intentions. That part of morality that picks us out as equals stems from God's intentions *with regard to individuals' serving him*. God's intention that someone serve him creates value, but not all value is created by God's intentions.

Such a position works within the spirit of recent movements in divine voluntarist theories of ethics that attempt to explain only a *part* of our normative world. For example, R.M. Adams argues that *moral obligations* constitute the section of ethics that result from divine commands.<sup>178</sup>

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<sup>178</sup> Adams, *Finite and Infinite Goods*. See also P. L. Quinn, *Divine Commands and Moral Requirements* (Oxford University Press, USA, 1978); Richard Swinburne, *The Coherence of Theism*, 2nd Revised edition (Clarendon Press, 1993).

I shall make some points that motivate this view. I have assumed, thus far, that God's will might be of interest because, either, it is in our interests to follow it, or, because it tracks independently valuable ideals. Against that assumption, Bernard Williams argues, "It is a grotesque product of theory and strenuous moralism to suppose that 'moral' and 'prudential' sufficiently divide up the justifiable motives or reasons a man can have for doing something; they leave out, in fact, almost everything."<sup>179</sup> Williams' thought makes available the position that God's will accounts only for a part of morality, and thereby, threatens to render false the dilemma I presented. One might argue that God's intentions with respect to those serving him are morally significant, though not all morality is created by God's intentions; that aspect of morality is brought into existence not because it is *prudent* to follow the command (which would permit the possibility of a rampant, anything-goes morality), but because one feels special attachments towards God. This provides a genuinely distinct position.

This move provides a way out of the arbitrariness charge. There are reasons to attach significance to God's intentions that arise from God-independent values. Perhaps one has reason to be grateful to God for creating the world, and one thereby acquires a duty of reciprocity. Or perhaps one has independent reason to love God, or to respect him, or to feel loyalty. Perhaps, *in extremis*, were God to command something clearly reprehensible, the God-independent reason would trump the God-created value. But in a range of cases, God decides what is morally significant. One's special attachment to God—motivated neither by independent universalistic moral reasons, nor by fear or calculation, but by

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<sup>179</sup> Bernard Williams, *Morality: An Introduction to Ethics* (Cambridge University Press, 1993), 75.

something in between: loyalty, love, attachment, respect, awe—accounts for a *part* of the moral universe.

## 5.9 Objections to the less ambitious view

The general family of positions that I am discussing posits two kinds of value: the God-independent, and the God-created. Can this framework succeed in presenting an account of the basis of equality? Is there a plausible position according to which *basic equality* falls into the ‘God-created’ category of norms?

A filled-out version of this kind of view has two features. First, it must offer an account of what distinguishes the two different kinds of value; an account of why any value falls into one category and not the other. Why think that there are these two categories? What is special about the realm of value that is supposed to be willed by God? Why think that one part of our normative world depends on God’s commands, but that another part is an objective, independent value?<sup>180</sup> Second, a filled-out version of this view must allow that the God-created values are *contingent*; they could be different. Otherwise, the independent goodness of what is commanded does the work, not the fact that it has been commanded by God. That is to say, if a supremely good God could only command one thing, then one’s account of what counts as supremely good accounts for goodness; God’s will does not play a genuine role. Aware of this, Adams writes:

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<sup>180</sup> Acknowledging the need to address these questions, Adams argues that moral obligations are distinct because they can lead to there being less good overall; this is why we depend on a theistic authority to determine what our obligations are. But goodness or value in general does not depend upon such an authority. Adams, *Finite and Infinite Goods*, chap. 10–11.

I do not believe that there is a unique set of commands that would be issued by any supremely good God...there are some things that such a deity might command and might not command...It is not obvious to me, for example, that there is not a diversity of principles regarding euthanasia that could have been commanded by a supremely good God....<sup>181</sup>

God might also will other matters that he could have willed differently: the details of how one ought to worship him, for example.<sup>182</sup>

In the light of these criteria, can it be that *rational individuals should serve God equally* constitutes the section of ethics that is commanded by God? It may be argued that the answer to the first set of questions—those asking what is distinctive about equality in a way that makes it a plausible candidate for being among the values given to us by God—is that basic equality is *otherwise unaccountable for*. On this view, the arguments that I made in the previous chapter motivate the thought that if equality is to be mandated at all, it requires theological ideas. For example, it may be argued that basic equality must be accounted for by God's will (if it is accounted for at all) *because* basic equality posits a threshold without a purpose for it, and, absent divine intervention, this is unjustified.

However, this position seems difficult to motivate. Whereas we might, on one hand, accept that the correct principles governing euthanasia could be different from what they are, it is, on the other hand, harder to accept the idea that while persons are moral equals, they might not have been. The equality idea is too centrally embedded in our discourse. It is often touted as a basic requirement of

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<sup>181</sup> Ibid., 255–6.

<sup>182</sup> Swinburne, *The Coherence of Theism*, chap. 11.

decent conversation; unlike the euthanasia issue, it does not have the character of a fraught question that needs careful discussion. Basic equality is a strong candidate for membership of the category of God-independent, unalterable values, if there are any such values. Take someone who says, 'But for my love of the creator and my consequent willingness to submit myself to divine authority, I would not treat this person as an equal.' The person who says this should strike us as having an inadequate commitment to people's equality. Given the centrality we give to basic equality, it would be particularly difficult to construct a defence of the view that God's commands with respect to equality are normatively significant.<sup>183</sup>

I suggested in the previous chapters that basic equality might not be the fundamental or inalienable idea that some claim it to be.<sup>184</sup> If this is the case, then the objection that I have just tendered to the idea of equality as a divinely-mandated norm loses its force. This objection depends upon basic equality

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<sup>183</sup> This point is connected to the liberal fideist that I discussed earlier, in section 5.2. If the love is unconditional enough, then it is faith. One suspects, once more, the machinations of independent values. The love described by this position is better described as *love-struck*: it involves a love for the creator that would continue regardless of one's better judgment. A more accurate and realistic description of love for the creator retains the possibility of asking the question, 'should I really be doing this?'. And in that case, we *are* appealing to an outside moral code. The position that I am considering escapes this problem, since we understand our special attachments as working within some limits; an attachment to a deity provides only some particular guidance, but does not make the whole moral universe. But insofar as the position I am discussing escapes this problem, it must permit that very basic values are independent of a deity. C.f. Osmond G. Ramberan, "Nielsen, Ethics and God," *Religious Studies* 14, no. 2 (June 1, 1978): 205–216.

<sup>184</sup> See also sections 2.7 and 4.3.

being very difficult to reject. However, if basic equality is not a fundamental norm, then we are left wondering why we would think that it must be mandated at all, divinely or otherwise.

### **5.10 A reinforced version of the less ambitious view, and some objections to it**

The story does not end here. The problem I have just described can be allayed by making a distinction between a general and a specific claim of people's equality. The general claim asserts "we are equals" or "there is a group of equals"; the specific claim offers the precise criteria for membership in the group of equals. This distinction is useful because it may be argued that the view that God grounds persons' equality need only invoke God specifying the particular location of the *threshold* at which an individual becomes a member of the group of equals. That does seem to be a fraught question that could be answered in different ways by a supremely good being, if there are any such questions. The general claim that there is a group of equals, on the other hand, remains, on this view, a norm that is mandated independently of a divine will.

In the previous chapter I canvassed the 'somewhere' argument.<sup>185</sup> This held that there must be some level at which we become equals, since we agree on equality, even if we disagree on its criteria. I argued that that position is inadequate, since, given that there is disagreement, there is no prior reason to think that we will agree on equality at all; the nature of the agreement can be

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<sup>185</sup> See section 4.2.



framed in different ways, and equality is simply one way of framing it. Now we are provided with an authority that *does* provide a reason to think that we will land upon agreement about equality. The ‘somewhere’ argument is supplemented with a theological authority that determines *where*. The argument needed a focal point, and now it seems to have one. The form of the problem of giving a basis for equality—an apparently arbitrary point on a continuous scale—lends itself to the kind of position I’m now canvassing, whereby God makes morals determinate. On this view, absent an external, non-empirical authority, our morals make a general demand of equality, but we lack any way of making that demand precise and specific; our morals are left incoherent.

I will describe three problems with this position. First, this view faces one of the challenges I have already mentioned. If God decides the threshold of equality, why does God not account for everything else? It is so far only a useful coincidence for the God-grounds-equality view that God grounds the controversial. If the only reason we can find for thinking that God determines *this* area of morality and not *that* one, is that such a construction accords with our ideas about how our politics should function, then we ought to suspect that what is really doing the work is our account of how politics should function, and not an argument about prior theological ideas.

Second, on this view, if there is no God in the picture, then our morals are incoherent. They demand equality but cannot supply the justifying level; we cannot fill out our norms and they remain indeterminate. This may be used as an argument against the entire construction, since it permits this incoherent possibility—unless the view carries with it the claim that God exists necessarily, a claim that not all will want to hold.

Third, the position depends upon loyalty, which requires us to substitute our own judgment for that of some other authority, and to tailor our actions in accordance with another's requirements, without needing (too much) to know the reasons for those requirements. Crucially, the argument does not depend upon the object of loyalty being perfect; it need only be worthy of loyalty. This suggests that insofar as this kind of view can provide what is significant about the special set of values, so can a secular liberal view. The religious grounding draws authority from loyalty; why not, similarly, draw upon loyalty to community, or loyalty to a traditional liberal conception of the person?<sup>186</sup> (I discuss such positions further in sections 6.6.) Once we realise that the argument from loyalty to a religious authority does not depend upon God's perfection, we are able to invoke arguments from loyalty to other entities; the argument appears to be an argument about loyalty in general, not God in particular.

I conclude that we do not have reason to think that moral equality requires theological premises. The Locke-Waldron position has theological premises, but in order to be plausible it must be understood in a way that detaches it from claims about God's existence and intentions. From what I have argued here it is left open whether moral equality cannot be justified at all. But we do not have

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<sup>186</sup> In particular, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 18–20. Strikingly, Waldron draws an analogy “between John Locke on God and John Rawls on moral personality...[M]oral personality has to be able to do by itself in Rawls's theory all of the work for equality that is done, for Locke, by the notion of our status in the eyes of God.” (Waldron, *God, Locke, and Equality*, 239–240.) Waldron says he is not claiming that Rawls is therefore wrong; only, that Rawls' theory depends on a similar sort of claim, and just as Rawls excludes the unreasonable, Locke excludes the atheist. Note also that the loyalty that this position invokes runs up against the need that we have for a further explanation of our equality that I described in the previous chapter.

reason to think that we are better off with regard to the problem of offering a basis for equality if we accept God's existence.

## 6 Humanity

### 6.1 The value of humanity

It is common for theorists to refer to ‘humans’ as the set of beings to which their theories apply. Could ‘being human’ be the basis for equality? It has the right form. An individual is either human, or is not, so ‘being human’ is a binary property.<sup>187</sup> It also seems to be a normatively significant property. In a political context—say, a protest against a war—someone who says that the victims of so-called ‘collateral damage’ are *human* makes no mere descriptive claim. An assertion of humanity can be an assertion that someone possesses some other relevant characteristic. Sometimes people persuade themselves into ignorance of the capacity of some group of people to suffer. In such cases, as Bernard Williams says, “it is certainly to the point to assert the apparent platitude that these men are also human.”<sup>188</sup> Rather than asserting arbitrary distinctions based on class, ethnicity, or nationality, we embrace humanity as a whole as the group of equals. Humans matter, and they matter equally. This is a powerful sentiment, and my purpose here is not to undermine it. Instead, my aim is to challenge the idea that this sentiment alone can provide a basis for equality. My topic is what Williams calls the ‘human prejudice’: “there are certain respects in

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<sup>187</sup> See section 3.6 above.

<sup>188</sup> Williams, “The Idea of Equality,” 233.

which creatures are treated in one way rather than another simply because they belong to a certain category, the human species.”<sup>189</sup>

## 6.2 The biological view

One might understand the claim that ‘being human’ constitutes the basis for equality as the claims (1) it matters whether one is dealing with a human (and there is no further explanation of this), and (2) ‘human’ is to be understood as a biological category, specifically, as a species. This is not a persuasive view. The definition of ‘species’ is contested and pluralistic. Arguably, this branching of meaning arises out of our (relatively recently constructed) idea that the form of each biological organism is explainable without reference to a telos, or a Creator’s intentions. The idea of species is now a way of grouping together sets of individuals, rather than a way of referring to an essence.<sup>190</sup> Biologists appeal to a variety of species concepts. The boundaries of species can be defined according to the possibility of the production of fertile offspring. They can, alternatively, be defined according to the ecological niche, or according to the line of provenance. Some working definitions of species include Neanderthals as a kind of *homo sapiens*, while others do not. Since biologists disagree about

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<sup>189</sup> Williams, “The Human Prejudice,” 142. See also Gerald Lang, “Discrimination, Partial Concern, and Arbitrariness,” in *Luck, Value, and Commitment: Themes From the Ethics of Bernard Williams*, ed. Ulrike Heuer and Gerald Lang (Oxford University Press, 2012).

<sup>190</sup> John Dupré, *Humans and Other Animals*, New edition (Clarendon Press, 2006). Compare Samir Okasha, who argues that ‘species’ does refer to a natural kind. However, the sort of natural kind that he describes is not the sort that would be appealed to by an ethicist. (Samir Okasha, “Darwinian Metaphysics: Species and the Question of Essentialism,” *Synthese* 131, no. 2 (2002): 191–213.)

the most useful way of classifying species, we would expect ethicists to disagree about it, too, if they consider it important. Furthermore, it would be surprising if the best way of classifying species for the purposes of biological explanation (if there is just one) turns out to be the best way of classifying species for the purposes of ethics.

I shall put the point a different way. If a definition of species is offered as ethically relevant, then the question arises why a different definition is not selected. Suppose that we think an ecological definition is the relevant kind of definition, not the capacity to interbreed, or the evolutionary lineage. Why think this? Some might say that the ecological definition captures the sort of society that is relevant to ethical concerns: those within the grouping share some kind of society. As soon as that answer is given, one invites the charge that species is no longer really the issue, but that some given sort of society is. The exercise of engaging in a defence of a particular definition of species goes against the view that I am canvassing here, which holds that species itself is a final, relevant category. And once we realise how pluralistic the concept of species is, we are drawn to defend a particular definition of it in our arguments. Even if we deny the claim that species is itself a protean concept, the resources of the science of biology are not conducive to solving the problem of offering a basis for equality. The accounts of species that are asserted as definitive of the concept do not seem to be morally relevant properties, and the debates amongst biologists about the most useful categories of evolutionary explanation do not seem to track the debates amongst ethicists about what it is in virtue of which an individual being is owed anything.

### 6.3 The 'comparison class' view

There are somewhat better ways of understanding the relevance of 'being human'. The group 'humans' could be understood as a relevant *reference class* for our assessment of how well an individual's life is going.<sup>191</sup> When we make assessments and evaluations, we refer to a domain of comparison. 'This is a large rock' suggests a set of other possible or actual rocks; 'you were lucky' suggests a set of states of affairs in which you might have existed, but do not. These statements depend for their truth or falsehood upon a reference class, whether implicit or explicit. Similarly, it seems that the notion of welfare is not all we use in deciding whether a being's life is going well; we also make reference to other similar beings and make a comparison. Someone who is satisfied, whose plans are coming into fruition, who has material wealth, we would tend to think has greater welfare and therefore has a life that is going better than a person whose plans are not coming into fruition, who does not have material wealth, etc. Welfare could be measured hedonistically, according to preferences, or by an objective scale; but whatever is taken to be the proper way to understand it, the more of it an individual has, the better his or her life is going. But when making comparisons of welfare, we also, in fact, make reference to sets of possibilities. A fully developed person with normal capabilities is likely to have higher overall welfare than a person who has suffered a terrible accident, and is restricted in her capacities to those of, say, an infant. We might say that it follows that the person with normal capabilities

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<sup>191</sup> Here I follow through an idea put forward in McMahan, *The Ethics of Killing*, 159–161. For further discussion of comparisons of welfare, see section 8.2.

has a life that, overall, is going better. Suppose we compare the person with normal capabilities to a creature of another species with capabilities and welfare similar to that of a typical human infant – say, a healthy bonobo which is living a normal life for its species.<sup>192</sup> In this case there seems to be something odd in saying that the person’s life is going better than that of the bonobo, simply in virtue of the person having greater welfare. The bonobo, we want to say, is doing fine, and so is the person. The bonobo is in no way unfortunate for not having the capacities that typically come with being a human; it is getting just what it could reasonably expect, and so is the human, but the human who has suffered a debilitating accident is, in contrast, unfortunate.

This suggests that what really counts for measuring how well a life is going is not just the welfare that it does contain, but also the welfare that it might have contained. A development of this view holds that the welfare a being might have had is relative to the welfare that is *normal* for that being’s species. We use reference classes for these judgments. The average for the reference class, species, forms the relevant benchmark for an evaluation of a being’s welfare.<sup>193</sup>

This insight about how our assessments of how well a being’s life is going varies with species generalises. Our assessments of a being’s moral status also vary with species. This provides a way of understanding the relevance of ‘being human’, with regard to basic status. It matters that the individual that I am dealing with is a human, because, even if that individual does not have the

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<sup>192</sup> C.f. D. VanDeVeer, “Interspecific Justice,” *Inquiry* 22, no. 1–4 (1979): 55–79.; Paola Cavalieri and Peter Singer, eds., *The Great Ape Project: Equality Beyond Humanity* (St. Martin’s Griffin, 1994).

<sup>193</sup> C.f. Vallentyne, “Of Mice and Men: Equality and Animals.”



highest capacities, that individual, as a human, *could* have had the highest capacities. And humans, valuable as they are, all equally fall within a relevant reference class ('humans'), whose members, on the whole, have certain sorts of important capacity, such as the capacity for rational thought and self-awareness.

I should emphasise that, on the view I am considering here, 'normal' is construed statistically. A being's status is determined by reference to the statistical class it falls within. Humans are assessed by reference to the class 'humans'. Variations within the group do not confer a higher or lower status: all falling within the group are to be compared to its norm, and humans are 'equals' in the sense that they equally fall within this relevant grouping. On this view, what I owe an individual is understood with regard to what I owe the exemplar of that individual's species.

On this view, unlike the biological version of the species view, there is not a direct challenge to give an account of the intrinsic importance of species membership. We do not need to say that the capacity to interbreed, or some other biological definition of species, itself marks special significance; we say that species marks out the relevant reference class for making an assessment of how well an individual's life is going, or what moral status the individual possesses.<sup>194</sup> The biological view faced the problem that the boundaries of 'species' may be contested amongst biologists. This does not seem to be a problem for the reference class view. Contestation over the concept extends to non-specialist users of the concept, but disagreement about the penumbral

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<sup>194</sup> Buchanan, "Moral Status and Human Enhancement"; McMahan, *The Ethics of Killing*.

cases does not undermine the tenet that there is a core to the idea. On the view I am sketching here, there just are relevant reference classes, and these do usefully track what we normally see as species boundaries. Assessments of how I should be treated should respond to whatever I might have been, and in a morally meaningful sense, I could have been a difference person, but in the same sense, I could not have been a cat, or a God.<sup>195</sup> In short: a being's status depends on the normal capacity for its species, where 'normal' is understood in frequentist terms, not teleological terms.

#### 6.4 Two problems with the comparison class view

I will offer two objections to this 'species as comparison class' view. First, it involves a departure from 'moral individualism'. Second, insofar as we are inclined to deny moral individualism, this view does not deny it in a plausible way.<sup>196</sup>

'Moral individualism' holds that how a being ought to be treated depends only on features of that being. Thus, James Rachels claims, "How an individual should be treated depends on his or her own particular characteristics, rather

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<sup>195</sup> I discussed earlier, in section 5.6, Nagel's view that "the general form of moral reasoning is to put yourself in other people's shoes. This leads to acceptance of an impersonal concern for them corresponding to the impersonal concern for yourself." (Nagel, "Equality," 126.) The point I am pressing arises here again with the following question: How do we decide what kind of being can wear shoes?

<sup>196</sup> Note that this discussion also applies to the 'biological' species view that I discuss in section 6.2.

than on whether he or she is a member of some preferred group...".<sup>197</sup> Why would the duties owed by me to you depend on the nature and existence of individuals about whom we will never know anything? This thought is illustrated and given force by McMahan's imagined Superchimp, a chimpanzee who develops a mutation that brings its cognitive capacities up to those of a normal seven-year-old human.<sup>198</sup> Should our assessment of what the chimp is owed depend upon whether the mutation has spread throughout the species? According to the reference class view, it seems that it should. Were all chimpanzees capable of what Superchimp can do, then the average chimpanzee would be highly capable. Imagine an undiscovered or unstudied ecological niche that contains an extremely large number of such chimpanzees, enough to increase the average capacity for the species. Would the discovery of this niche lead us to reassess wholesale the moral status of heretofore 'normal' chimpanzees? If the niche is suddenly wiped out, or if a disease reduces the cognitive capacities of its members, do other normal chimpanzees have a reduced status? It would be a strange view that considered it relevant to one being's status whether some other set of beings it will never come into

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<sup>197</sup> The idea is proposed and defended in James Rachels, *Created from Animals: The Moral Implications of Darwinism* (Oxford University Press, 1990), 5. See also Jeff McMahan, "'Our Fellow Creatures'," *The Journal of Ethics* 9, no. 3 (October 28, 2005): 353–380.

<sup>198</sup> McMahan, *The Ethics of Killing*, 217. See also Jeff McMahan, "Challenges To Human Equality," *The Journal of Ethics* 12, no. 1 (June 2007): 81–104, doi:10.1007/s10892-007-9020-9.

contact with has received an injury.<sup>199</sup> This suggests that we cannot appeal to the norm of species for the purposes of working out what an individual is owed.

The force of what I have said so far in this section pushes us towards accepting moral individualism. However, not all accept moral individualism. It faces several difficulties. First, its meaning is unclear in several ways. It is unclear what it means for something to be a feature 'of' an individual, rather than for that feature to be a matter of group membership. It may be that it involves only intrinsic properties, properties that, if this individual did not possess them, then the individual would be a different individual. (This may be somewhat too strong: I would be a different person were my brain radically different, and my brain could be radically different while still rational, but the instinct behind moral individualism seems to view matters like my rationality as relevant features of me.) This suggestion highlights a second difficulty with moral individualism: we do seem to refer to non-individual properties in moral argument. Kinship and friendship relations can often make a difference to how you can or should act

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<sup>199</sup> McMahan also argues the point using the concept of fortune. If the Superchimp later suffers an injury that brings it back to the level of a normally functioning chimp, then, he argues, views that relate fortune to the norm of an individual's species face difficulties in giving plausible accounts of the misfortune of the chimp. This is because, the injured Superchimp is, compared to the average chimp, just average, but our intuition is that it has suffered a misfortune. However, we can distinguish between 'event' misfortune, and 'overall' misfortune. The former refers to the misfortune involved in a particular change in welfare, and the latter refers to how fortunate the being is, overall. The injured Superchimp suffers an event misfortune, but, all things considered, is, plausibly, not an unfortunate being: it was, after all, lucky to have the mutation in the first place. I suggest that the intuition regarding the latter claim is not a solid one, but McMahan rejects it out of hand, asserting instead that the injured Superchimp is unfortunate in suffering the reduction in capacities, and that, after the injury, it exists in an unfortunate state. For a similar view, see Lang, "Discrimination, Partial Concern, and Arbitrariness," 312. C.f. McMahan, *The Ethics of Killing*, 247.

towards others. Furthermore, the relation between you, me, and an item of property can be altered by the decision of a third party whom neither of us know of or will meet. That third party may legitimately make a decision about who is entitled to some item of property, and that decision affects the network of property relations. (An anonymous benefactor decided to donate a gift to my ancestors, rather than your ancestors.) The challenge is that moral individualism fails to reflect our substantive norms.<sup>200</sup> If other relational properties, such as kinship, loving relationships, membership of a solidaristic community, or assignments of property can be relevant, why not species? Why not say that being within a certain species set is a relevant property?<sup>201</sup>

The apparent force of the reference class view derives from its denial that we need to provide normative reasons for the selection of the class 'human'. It just is, statistically, a relevant mode of comparison. Thus it seems to avoid the problem of the biological interpretation. However, note that insofar as we depart from moral individualism, we do offer reasons for the relevance of the features we are appealing to beyond their statistical relevance. We can ask why kinship

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<sup>200</sup> Furthermore, one might argue that moral individualism fails to take proper account of the sources of our norms: our norms arise out of communities, and it would be surprising if the content of our norms make no reference to these groups. See Cora Diamond, "Eating Meat and Eating People," in *Animal Rights: Current Debates and New Directions*, ed. Cass R. Sunstein and Martha C. Nussbaum (Oxford University Press, 2004).

<sup>201</sup> McMahan responds by limiting the remit of moral individualism: "our fundamental moral reasons not to kill or harm other individuals derive from...individuals' intrinsic properties." On his view, other moral reasons may still derive from relational properties. McMahan, "'Our Fellow Creatures,'" 544.

alters one's relationship to others.<sup>202</sup> Moreover, the appeal to reference classes is indeterminate, and in order to make it determinate, we appeal to other values. Let me give an example. An influential definition of 'health' appeals to the normal functioning of a being, where 'normal' is construed according to the typical functioning of members of the species, relative to age and gender.<sup>203</sup> This is offered as a way of defining health that is independent of people's values. The question arises why species, age, and gender are provided as the reference classes. Clearly, without those classifications, we would have an odd idea of health: we make assessments of an individual's health relative to those categories. But why not include other categories? For example, if the individual's sexual orientation is not included as a relevant reference class, then the definition of health that I have sketched seems to suggest that homosexuality is a disease: it is a way in which an individual will reproduce less, compared with the statistical norm, and reproduction is a function that falls under biological functioning.<sup>204</sup> A natural way to avoid this outcome is to include sexual orientation as a further reference class: rather than comparing the typical reproductive rate of thirty-five year old men, we compare the typical reproductive rate of thirty-five year old homosexual men. But the question of

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<sup>202</sup> C.f. Williams, "The Human Prejudice."

<sup>203</sup> Christopher Boorse, "Health as a Theoretical Concept," *Philosophy of Science* 44, no. 4 (December 1, 1977): 542–573; Christopher Boorse, "A Rebuttal on Health," in *What Is Disease*, ed. James M. Humber and Robert F. Almeder (Springer, 1997), 1–134. See also Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge University Press, 2007).

<sup>204</sup> This example is put forward in Elseijn Kingma, "What Is It to Be Healthy?," *Analysis* 67, no. 294 (April 2007): 133.

whether to include sexual orientation as a reference class seems to involve an appeal to values. An appeal to the 'statistical norm' involves a declaration of relevant reference classes, and the declaration of relevant reference classes is backed up with an argument about which kinds of descriptions of humans count as good for them, which count as bad for them, and which are neutral.

I have illustrated how the selection of reference classes within human cases involves an appeal to values. I suggest that, for equivalent reasons, a selection of the reference class 'human' also involves such an appeal. The relevance of the class cannot be naturalistically derived, since there will be a set of different possible classes (should we include higher primates and young foetuses?), and a defence of a particular class will involve an argument about what matters. In this case, we might return to the biological definition of species described in section 6.2, but this was inadequate. The claim that special ties are relevant does not give us reason to think that species is a relevant reference class. The ideas of kinship and solidarity and agent-relative reasons may provide challenges to moral individualism, but they are not defences of the practice of appealing to reference classes of any given kind.

Commitment to the idea that species is a relevant comparison class seems to run against one of the attractions of moral individualism, and it does so even if we are not committed to moral individualism outright. This attraction is a bare intuition that appeals to a kind of consistency. It holds that individuals are to be respected for what they are, and not for what group they happen to belong to. The appeal to statistics made by the reference class view thereby seems inadequate. There are numerous reference classes for different situations, depending on the policy at hand. The question remains unanswered, why is this

class relevant in an overarching way? We do not need to rule out the relevance of all nonindividualistic properties in order to rule out the relevance of this one.

## 6.5 Capacities

A different kind of view accepts that we need to say something further about what is relevant about the category 'human', and attempts to say what it is. I turn now to this type of view.

The trouble with the species-norm accounts was that that they make our status depend, in an implausible way, upon third parties. The advantage of the species-norm accounts was that they account for our idea that all humans have a special status. Can we adapt the view in a way that avoids the weakness, but preserves the strength? Instead of being led back to the biological definitions of species, we may understand the appeal to humanity as an oblique way of referring to our *capacities*. Such a view has the benefit of being individualistic. We examine whether the individual we face has the relevant capacities, and not, for instance, whether the individual displays the statistical average for its species. And, such a view has the advantage of permitting us to say that persons (as persons) are equal: they have the same potential, even if they manifest their potential in different ways. On this view, humanity refers to a set of capacities. It refers to them because it is likely that no being other than a human has ever displayed these capacities, and that all humans do have them, though it does not conceptually rule out the possibility that some other being may have this set of capacities. In the meantime, before surprising



technological advances or extraterrestrial visitors, we can call this set of capacities 'human'.<sup>205</sup>

In order to build this position, it is necessary to find a way of holding that there is some relevant capacity that in fact picks out humans. I shall outline a particularly forceful version of the 'capacity' view. This account addresses the issues that I have just described. According to this view, there is a *genetic* basis of equality:

all human beings are rightholders because they all have the genetic basis for moral agency...The genetic basis for moral agency is the set of physical codes that generate moral agency. In human beings this set of codes is located in their genome.<sup>206</sup>

The genetic structure that generates an individual is the basis of the individual's status. The kind of complexity that the human genome can create is importantly unique. It alone can develop into a being that responds to reasons, creates long term life plans, is self-aware, and has agency.

This view has one of the advantages of the view described in the previous sections (6.3-6.4). How well off we might expect an individual to be, is relative to the possibilities manifested by the individual's genes. Wherever there is a set of physical codes that can generate agency, we ought to pay a special kind of respect to its possessor. What an individual is due – for example, whether the

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<sup>205</sup> Thus, S. Matthew Liao, whose position I discuss below, does not say that 'being human' is the relevant property. He says that all and only humans are the beings that, as far as any of us knows, have manifested this property. "The Basis of Human Moral Status," *Journal of Moral Philosophy* 7 (February 2010): 159–179.

<sup>206</sup> Ibid.

individual is a rightholder – is relative to that individual's inherent capacities.

This contrasts with the species-norm account, which focused on the capacities within some overall reference class or a biological category. I refer to this as a 'capacity' view, though I use the term 'capacity' in a broad sense, to refer also to the basis for the development of a trait. For instance, one may have the genetic basis, and thereby the 'capacity' in the broad sense, to have legs, even if one's legs have been lost in an accident.

This position has several attractions. It is consistent with moral individualism.

The species-reference-class view uses reference classes to account for potential, but this led us to the position in which potential depends, in a implausible way, on matter that are external to the individual at hand. The type of view I'm considering here, of which Liao's is a paradigm, is different. It supplies a way in which 'potential' or 'capacity' can be ascertained by examining the individual in isolation. It also has the attraction of providing a framework for dealing with challenges to our intuitions about individuals who are human but will not develop normal human cognitive capacities: such individuals still possess the genetic basis for agency, and thereby have an enhanced status, compared to a non-human animal. We are equal in virtue of the possession of this basis for agency, even if not all of us will, or can, develop it.

This position involves giving an account of what an individual's *capacity* is.<sup>207</sup>

There are a series of difficulties in doing so. The notion of a capacity itself is

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<sup>207</sup> Jeff McMahan's take on this is the 'Individual Possibilities Account', according to which, whether a being is well or badly off is determined by how its level of well-being compares with the range of level of well-being made possible by the highest cognitive and emotional capacities with which that being might in

difficult to grasp: if it is something that one *could* do, what constraints on 'could' are we supposing, and what is the source of the criteria for an answer to that question?<sup>208</sup> One sort of explanation would involve specifying a threshold. This kind of individually-based explanation would open the theory up to the problem anew: why is *this* degree of capacities relevant, and why do such capacities stop being relevant above this degree? We remove the need to justify one sort of threshold only by introducing a similar need to justify another. Claiming the relevance of humanness in this manner seems merely to push the problem up a level. Sometimes capacities can be developed, or reduced.

We need to say that an individual either has the capacity for moral agency, or does not. It seems difficult to say this, because capacities come in degrees. Internal directedness toward a rational nature is not all-or-nothing, but is a matter of degree. Can we have degrees of physical codes and what they can lead to? Suppose that I should respect the physical codes that can lead to X; should I thereby also respect the physical codes that can lead to the physical codes that can lead to X? What gives rise to the boundaries of the value of some kind of capacity? Would our duties to mice change were it possible, expensively, to enhance mice so that they possess significant rational capacities, even if we decided never actually to carry out the procedure? (It may

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principle have been congenitally endowed. And species is (contingently, unlike the Species Norm Account) relevant because "it fixes the limits to the psychological capacities and potentials with which an individual could have been natively endowed." McMahan, "Cognitive Disability, Misfortune, and Justice," 14.

<sup>208</sup> Relatedly, in chapter 5, I considered the idea that there an individual is marked as a member of the group of equals in virtue of having the capacity to deduce that God exists.

be replied that an enhanced mouse would not be the same individual, but such a solution puts a great deal of pressure on one's conception of personal identity and its value.)<sup>209</sup> The challenge is to define capacity as binary without selecting an arbitrary threshold.

The attraction of the genetic view, according to which the genetic basis for agency is sufficient for membership of the community of equals – is that it permits us to examine the individual in isolation. But this is less clearly an attraction when it is made explicit that capacities are understood against a hypothetical set of possibilities. Suppose there is a natural process that quickly turns some forms of carbon, certain sorts of diamonds, into other sorts; it transforms them into the genetic basis for agency. The challenge is to explain why these diamonds do not also receive the status of rightholder. Finally, one might wonder, if the physical code is valuable, why we should not value more a physical code that generates a deeper, more aware sort of moral agency. And similarly, why not value more a physical code that is more likely (in some environment somehow derived) to generate moral agency?<sup>210</sup>

To clarify, there are three kinds of variability involved. First, capacity can come by degrees; second, empirical features also come by degrees; third, our

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<sup>209</sup> Vallentyne, "Of Mice and Men: Equality and Animals."

<sup>210</sup> C.f. Elizabeth Harman's reply to these worries: "Potentiality has a particular kind of significance: it is significant to how harmful a particular harm is, but not to whether that particular harm matters morally." Elizabeth Harman, "The Potentiality Problem," *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 114, no. 1/2 (May 2003): 194. This is consonant with the approach I sketch in chapter 8, where I discuss ways in which concern with basic equality can be reduced to a concern for individuals' interests.

valuations of empirical features come by degrees. 'Capacity for X is morally significant' can be read as 'capacity-to-degree-A for X-to-degree-B is significant-to-degree-C'.<sup>211</sup> In order to offer a grounding of basic equal status that appeals to capacity, it remains necessary to offer thresholds on each of these dimensions, and to offer justifications for these thresholds. It may be responded that the 'capacity' account simply gives an account of our actual sentiments. In this case, it should be emphasised that we have other sentiments that compete with that one, sentiments that make us wonder why physical codes matter. Liao suggests: "At present, we do not know exactly which set of genes is necessary and sufficient for the genetic basis for moral agency (though rapid advances in genomic technologies might mean that we could have this knowledge sooner than we think)."<sup>212</sup> This displays optimism about technological advances, but it also displays optimism about philosophical advances. It supposes that we will be able to identify a clear property of a capacity for moral agency, one that an individual either possesses, or does not possess, and that is unambiguously morally relevant in a way that similar capacities are not. The points I have offered here cast doubt on the grounds for that sort of optimism.<sup>213</sup>

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<sup>211</sup> More fully, each of these 'degrees' may also involve a variation of kind. Thus, we might add that features can be significant both to different degrees, and on different dimensions: features can matter in qualitatively different ways.

<sup>212</sup> Liao, "The Basis of Human Moral Status."

<sup>213</sup> It may also be objected that the genetic basis view repeats the 'marginal cases' problem in an invisible way. We can construct cases in which some humans don't have full status, and some non-humans do. Would we wait on genetic testing to discover whether a friend has full moral status? And might a cabbage be injected with the code that creates the basis for agency, thereby giving it greater status than the friend? (See Christopher Grau, "Moral Status, Speciesism, and Liao's Genetic Account," *Journal of Moral*

## 6.6 Loyalty to humanity

In this section I consider a view that holds that these attempts to look at the essence referred to by ‘humans’, or at the *reference class* it picks out, miss the point. Why can’t we construct an idea of species loyalty that is not statistical, one that works in just the same way as other, acceptable versions of partiality? There could be an overarching partiality: humanity. The only further reason is: they’re human. There’s no more to be said, once we have recognised that this is a human, in the same way that there’s no more to be said, once you have recognised that the individual you are dealing with is your kin. Robert Nozick suggests the idea in the following terms: But perhaps it will turn out that the bare species characteristic of simply being human...will command special respect only from other humans – this is an instance of the general principle that the members of any species may legitimately give their fellows more weight than they give members of other species...Lions, too, if they were moral agents, could not then be criticized for putting the interests of other lions first.<sup>214</sup>

I doubt the prospects of success for such a project, for two reasons. The first relates to the kind of reason partiality provides, and the second refers to the way we normally justify partiality.

First, certain types of partiality are less common and thereby more difficult to justify, and the kind of partiality that would ground ‘humanity’ as a basis for equality has these more difficult-to-justify features. These features include

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*Philosophy* 7, no. 3 (2010): 387–396.) Liao responds by doubting such cases can be constructed (S. Matthew Liao, “The Genetic Account of Moral Status: A Defense,” *Journal of Moral Philosophy* (forthcoming).) The limit case for Liao is a being that has the genetic basis for agency, and nothing else; no chance of actually having agency, and no community connecting it to anyone with agency. Do we expend resources on finding such beings? Do we owe them anything at all? Liao may reply that such beings are moral equals, but, since they have no interests, we need not alter our behaviour in order to account for them. This reply threatens to remove the need to talk about rightholding, or equality, in the first place.

<sup>214</sup> Robert Nozick, *Socratic Puzzles* (Harvard University Press, 1997), 307.

partiality that is mandatory, and partiality that reduces the duties one has to other beings. Regarding mandatoriness, it would be a weak sort of 'human equality' that established only a permission for us to favour humans. But partiality more typically establishes a permission, rather than a requirement, and so we should have doubts about the idea that we are positively required to favour our own species.<sup>215</sup> Regarding the baseline, it is normal for a special relation to increase what one can, or should, do for those with one whom has the special relation; it is less typical for it to lower the barriers against those with whom one lacks the relation. (An exception may be a relation in which one has a justified grudge; this idea, presumably, is not at stake here, unless we consider ourselves to be at war with nature.) Put positively: if humans have special relations with one another, it remains to be argued that this lowers the basic status of non-humans. It thus seems unlikely that partiality will establish a general equality for humans.<sup>216</sup>

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<sup>215</sup> For further discussion of this point see Arneson, "What, If Anything, Renders All Humans Morally Equal?," 124. Insofar as partiality does yield a requirement rather than a permission, it tends to arise in virtue of relations of cooperation, coordination, coercion, reciprocity, or membership of the same institutions. Such arguments are applicable in the context of nationhood and culture, but they do not seem applicable in the context of humanity as a whole, for two reasons. First, it is difficult to identify, non-arbitrarily, a relation of this kind that covers humanity as a whole, that does not at the same time include some animals. Second, even if such a relation can be established, it yields the seemingly fragile position that people are equals only insofar as some institutional framework continues; such a view is in tension with the universalist rhetoric of the claim that all humans are equals.

<sup>216</sup> McMahan argues: "The effect of a special relation is not to lower the moral barriers with respect to those to whom one is not specially related. So, for example, even if membership in the same race is a special relation, the effect may be to require that one do marginally more for members of one's own race than one would be required to do by a proper respect for their intrinsic properties alone; it is not to permit

Second, when applied as a basis for equality, loyalty to species has the form of some more arbitrary and less attractive kinds of partiality. Suppose we accept that there is a duty of partiality towards one's own species. Such a position must, if it is to offer an account of *equality*, explain why this duty of partiality does not continue to increase in force as the being at hand becomes biologically closer: if one has stronger duties to beings that are of the same species, why does one not have yet stronger duties to beings of a more similar genome? What makes species a special kind of biological distinction, and relevantly unlike phenotypic similarity, or, unlike genus? Such questions raise the suspicion that those who assert that humanity is the relevant class are not offering a solution to the problem of identifying a basis for equality, but are emphasising in strong terms what a problem it is.<sup>217</sup>

'Humanity', then, does not provide a good basis for equality. I will conclude by setting out some of the central distinctions I have provided. Species-membership might be considered intrinsically relevant, or extrinsically relevant.

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one to do less well by members of other races than is demanded by a proper respect for their intrinsic natures. The baseline for respect for persons—the set of minimal requirements for treating others decently—remains the same. Thus, even if membership in the human species is a special relation, the upshot is only that we may be required to do marginally more for severely retarded members of our own species than we are required to do for comparably endowed animals." McMahan, *The Ethics of Killing*, 227.

<sup>217</sup> Indeed, species has some of the arbitrariness of unacceptable bases of partiality. Thus, Paola Cavalieri suggests we can reject Nozick's view as quoted on page 177 by rewording it in the following way: "But perhaps it will turn out that the bare racial characteristic of simply being white...will command special respect only from other whites..." Paola Cavalieri, *The Animal Question: Why Non-Human Animals Deserve Human Rights*, trans. Catherine Woollard (Oxford University Press, 2004), 80. See also Rachels, *Created from Animals*, 133–134.



One version of the intrinsic view holds that species is relevant as a biological category; another holds that it is intrinsically relevant as a statistical reference-class. The biological view is unsuccessful because the biological concept of species is contested; the statistical view is unsuccessful because, in order to be justified, it depends upon something like the biological view implicitly. A view that holds species as extrinsically relevant says that 'humanity' tracks a genetic capacity that is sufficient for a special moral status. This view faces difficulties in explaining, in a non-arbitrary way, the contours of the 'capacity' to which it refers. Finally, I considered a more sanguine view that holds that species is relevant (whether intrinsically or extrinsically does not matter) because it is a source of agent-relative reasons, such as partiality or loyalty. I argued that this view is unlikely to succeed, on the grounds that the kind of partiality it proposes is different from any other kind of permissible partiality with which we are familiar.

## 7 Respect and equality

### 7.1 Introduction

The idea of equal respect has a special purchase on the imagination, and especially, the liberal imagination. The idea that a departure from basic equality is disrespectful also seems to be a forceful charge against a denier of basic equality. In this chapter I explore this idea in some detail. There is an element of the literature on respect that is sceptical about the ability of that concept to do, by itself, much normative work. I continue this tradition by arguing that one particular kind of respect is unable to perform the particular normative work of grounding basic equality. This is of central interest because this form of respect provides, on the face of things, a forceful grounding of equality; the course of the argument will lead us to doubt the prospects for the concept of respect in this role. The particular sort of respect I am concerned with is that which involves abstaining from making specific judgements about the persons with whom one is dealing. Instead, one is respectful by responding *only* to the fact that the person one is dealing with is a person. We sometimes say that one should respect the office, and not the office-holder. We might think that personhood forms, in many contexts, an office that commands such a response. For example, in determining my basic entitlements, it seems disrespectful for a state to pay direct attention to my cognitive capacities. In that context, the state shows respect by responding only to the fact of my personhood, and not to the kind of person I am.

One view holds that this kind of respect is especially apt in a justification or explanation of the widespread liberal-egalitarian idea that persons have equal moral status. Such respect asks that we ignore what might otherwise seem to be morally important capacities. From the perspective of this sort of respect for persons, it is not possible to distinguish between persons, even if we might admit that there are important differences between them. So all must be counted as equals.

I will argue that this view is ultimately unsuccessful. A challenge to such an explanation of equal status arises from the need to say just where this sort of respect is appropriate. In this chapter I distinguish two ways in which we talk of the appropriate kind of respect. First, we sometimes say that some behaviour displays too much, or the wrong sort, of respect. Second, we sometimes say of some behaviour that, *because* it aims at showing the wrong sort of respect, it is *not truly, or all things considered, respectful*. In the first sense, true respect can be of the inappropriate sort; in the second, it cannot. I argue that, on neither of these two versions of the appropriate sort of respect, can respect ground our fundamental egalitarian concerns.

## **7.2 Opacity respect as explicating the basis of equality**

The idea that people have equal moral status is sometimes grounded with a claim about the respect that is due to all persons. But why are persons due equal respect? In trying to explain equal status with an appeal to the requirement that we respect one another, there is a danger that we only push the problem up a level, without any gain in insight. However, a recent argument

by Ian Carter gives an account of why a requirement that we respect one another might indeed ground our basic egalitarianism.<sup>218</sup> In this chapter I argue that the concept of respect cannot do all the work Carter claims for it. I also try to show, along the way, why it might often be tempting to think that the requirement that we respect one another is more fundamental than it really is. My view is not that respecting one another is unimportant. And it is not that we can learn nothing useful from thinking about respect. It is that this particular kind of respect – a kind that seems closely related to equality – is not the reason we should consider one another as equals.<sup>219</sup>

The solution offered by Carter to the problem of providing a basis for equality is compelling. His position is that “equality of certain entitlements is justified because those entitlements should be assigned on the basis of personhood, and... it is appropriate to treat personhood as a range property because it is appropriate to show opacity respect toward beings that meet a certain absolute standard of moral agency.”<sup>220</sup> We show ‘opacity respect’ to individuals when, once they reach a certain level of aptitude, we refuse to consider further their

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<sup>218</sup> Carter, “Respect and the Basis of Equality.”

<sup>219</sup> Strictly, Carter’s direct concern is not with *any* egalitarian theory, but only with egalitarian theories that have deontological justifications. Such theories presuppose the equal value of each of the persons to whom goods ought to be distributed equally. Carter also says that contractualist theories also face the problem, since in the structure of their justification they must presuppose the equal importance of the contractors. (Ibid., 540.)

<sup>220</sup> Ibid., 554.

capacities and internal endowments.<sup>221</sup> This is an independently justified threshold, and so it provides a way to answer the question of which range property we should select.<sup>222</sup> The threshold is determined by what counts, independently, as respectful behaviour. I will discuss below the different ways in which our concept of respect could determine this threshold. A requirement of opacity respect also gives a direct reason not to take account of other properties of individuals, namely, we positively ought to ignore individuals' internal capacities. It thereby steers around one of the other central difficulties identifying a basis for equality.<sup>223</sup>

Opacity respect is also a plausible description of a type of respect. When an authority arranges its rules so that it responds to our specific abilities, we feel invaded. We ask, 'who are they to judge us?' Arguably, workfare requirements have met with especially stiff opposition due to a sense that it is disrespectful to require persons who are entitled to state benefits to prove that, for example, they are clinically depressed according to a predetermined points scale, or are 'virtually unable to walk' for reasons of physical and not psychological disability. These requirements force public revelations about matters that a respectful attitude would keep private. When we say that an authority is respectful, we

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<sup>221</sup> Supposing for the sake of argument that rationality is the relevant kind of aptitude, Carter writes: "There would continue to be interpersonal variations in (what we might call) *the basis of the basis* of equality (in this case, rationality). However, we would pay no attention to variations in the basis of the basis of equality as long as such variations occur above the established minimum threshold." *Ibid.*, 548–49.

<sup>222</sup> See section 1.2. To use the parlance of section 4.1, it is thereby a 'substantive' rather than an 'intuited' range property response to the problem of supplying a basis for equality.

<sup>223</sup> See section 1.4 for a discussion of this difficulty.

may take this to mean that it treats persons as persons. It responds to persons without regard to further facts about their specific capacities. Sometimes we say that a post carries with it a requirement of respect. In many contexts, one is supposed to respond to the head of state, or one's work colleagues, simply as holders of those positions. Once their basic appropriateness for the role, beyond some minimum threshold, is established, the position carries with it a requirement of respect that does not vary with the holder's competence for the position. One has an obligation to respect the office, rather than the office-holder.

Similarly, on this view, a state should respect the office of personhood. Once it is established that an individual is competent to some degree, it becomes disrespectful, in many contexts, for a state to respond in ways that are sensitive to variations beyond that threshold. It is up to persons to construct how to live their own lives. It can't matter what kind of person is under consideration; the person should be treated as opaque. We show *opacity respect* to individuals when, once they reach a certain level of aptitude, we refuse to consider further their capacities and internal endowments.

This explains persons' basic equal status because it gives a reason to think that there is a significant threshold, above which it is inappropriate to respond to persons' specific capacities. Carter's claim that the basis of opacity respect is also the basis of equality is forceful. There is an impressive congruence between whatever it is that would provide a basis for equality, and the basis of opacity respect. Drawing on the discussion of chapter 6, consider the following question:

What seems to distinguish us morally from non-human animals is our possession of various higher order cognitive capacities: self-consciousness, rationality, autonomy, and so on. But for each capacity that we have and animals lack, or that we have to a significantly higher degree than animals, some possess that capacity to a higher degree than others...If these differences are so important in distinguishing us from animals, how could they fail to distinguish us morally from one another?<sup>224</sup>

That question is aptly addressed if we believe that there is an obligation to display opacity respect towards other beings. We draw distinctions between those below the threshold; we think that a more complicated animal has a higher moral status than a less complicated animal. But we do not draw such distinctions between persons. In respecting animals, we distinguish between them on account of their capacities, because their capacities do not surpass a crucial threshold. By respecting persons, however, we do *not* draw distinctions between them on account of their capacities. This is because, once a being has crossed some threshold level of capacities, it becomes disrespectful, in the relevant contexts, to respond to variations in their capacities. Perhaps we seem different, but respectfulness asks that we treat one another as equal.

Carter's position also has an advantage over one other, common, attempt to answer McMahan's question. Some answer that question with the view that we have special duties to other humans because there is a duty of partiality towards one's own species. Such a position must explain why this duty of partiality does not continue to increase in force as the being at hand becomes biologically closer: if one has stronger duties to beings that are of the same species, why does one not have yet stronger duties to beings of a more similar

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<sup>224</sup> McMahan, *The Ethics of Killing*, 235.

genome? What makes species a special kind of biological distinction?<sup>225</sup>

Carter's view avoids this difficulty by building in a way of defending a threshold. Once a being has crossed a certain level, it is disrespectful to respond to particular capacities. It may be more valuable to have greater capacities, but respect demands that, in many circumstances, one does not respond to variations in those capacities.

Despite the strengths of this view, I will argue that there is reason to doubt that the concept can do all of this work. There is reason to doubt that the basis of respect grounds persons' equality. When we should show opacity respect, why should we show it? It might be thought that we should display opacity respect because doing so expresses our basic egalitarian concerns. By refusing to make evaluations of individuals above a threshold, we guarantee that most of us are evaluated as equals. However, as an account of the basis of equality, this position falls to the first of the two of the problems that motivated the issue at the start of this chapter, in section 7.2. If the reason that persons are equals is that we ought to show them opacity respect, and the reason that we ought to show persons opacity respect is that they are equals, then the position is circular. Carter expressly avoids this pitfall. Instead, his position is that "the justification for [a refusal to evaluate persons' varying capacities] can be said to derive from a particular sense of respect for human dignity".<sup>226</sup> Spelled out more fully, the position on offer is this:

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<sup>225</sup> See section 6.6 above.

<sup>226</sup> Carter, "Respect and the Basis of Equality," 550 (see also pp. 559-60).



(1) Respect individuals' dignity simply as agents (in certain contexts),

so, (2) treat persons as opaque (in those contexts),

so, (3) persons equally possess a morally relevant property, namely, the range property the possession of which makes opacity respect appropriate (in certain contexts).

This position does not fall to the problem of positing a threshold property just on the grounds that an egalitarian conclusion should be reached. It posits a threshold property on independent grounds, namely, that of people's dignity. We hold (1) because, as Kant says, the value of a person consists in a dignity and not a price.<sup>227</sup> The value of persons is as irreplaceable ends themselves, and not merely as ways of achieving other ends. The appropriate ways of responding to persons implies that they are incomparable to one another. From the requirement that we respond appropriately to this dignity, we conclude that we should respect persons, and this involves, as (2) says, a refusal to evaluate persons' capacities. Why does this follow? Since persons have dignity, they should be respected just as persons, and this means that they are to be responded to in ways that take account only of the fact of their personhood. To take account of other features, such as the particular capacities of the person involved, would be to fail to give irreducible consideration to personhood. This contrasts with the kind of respect that one shows when one respects a lesser creature: in respecting animals we always respond to their particular capacities;

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<sup>227</sup> Kant, *Groundwork for the Metaphysics of Morals*, 93.

we always show 'transparency respect'. We conclude, with (3), that the property that makes a being count, morally, is a threshold property. Respect involves a blindness to individuals' internal capacities as persons, and so once a being has reached the threshold of personhood, her moral personality is established, and does not vary further.

I will offer a challenge to this line of reasoning in the following section of this chapter. It involves a tension between, on one hand, the grounds for holding (1), and, on the other hand, the reasoning from (1) to (2). The discussion will revolve around the role that the phrase 'in certain contexts' plays in the argument as I have framed it.

### **7.3 Two ways in which a form of respect could be appropriate**

The argument will proceed as follows. I distinguish two different ways in which it might be argued that our duties of respectfulness imply that people should be treated as opaque for matters of their basic entitlement. The first of these holds that some independent principle implies such treatment. This turns out to be an abandonment of the view that respectfulness is the fundamental principle. The second holds that respectfulness itself implies such treatment. This position struggles to explain why respectfulness is a fundamental principle, and at the same time has substantive implications.

It would be inhuman always to treat persons with opacity respect. Any friendly relationship between persons requires judgments of capacities. Friends know one another, and to know one another other they must know far more about one other than the fact they are both persons. They must accept, or enjoy, the

process of being judged. Opacity respect is also inappropriate in many formal relationships. For example, states have to decide whether somebody is the best candidate for a job, how competent he is to adopt a child, or whether to accept the testimony of a character witness at his trial. Since opacity respect is not *always* the right attitude to display, we must, in understanding how it could ground persons' equality, understand where it is the right attitude. When is opacity respect appropriate? It is appropriate when we are dealing with a being who has crossed the threshold necessary for being a candidate for opacity respect, and, "we stand in a certain relation to that being such that it is appropriate for us to view that being *simply as an agent*".<sup>228</sup> Individuals should be considered opaque wherever they should be considered simply as agents. One such sphere is the sphere of a political institution's assignation of basic entitlements.

Why should we consider individuals only in their capacity as persons in discussions of basic entitlements? One purported answer is purely formal. We consider individuals in their capacity as persons when deliberating the question of their basic entitlements, because the question is one about persons. What are *persons'* basic entitlements? That is a question about *persons*. And opacity respect is the kind of respect that takes account only of personhood. Thus, the form of the question logically determines the subject of the answer. However, this answer faces a problem. Sometimes it seems correct for an authority to consider agents in roles other than their mere agency, and it can be appropriate to do so, even when the question at hand refers only to agent. Whether a

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<sup>228</sup> Carter, "Respect and the Basis of Equality," 556 (italics his).

person should be hired, or permitted to adopt a child, must involve internal judgments about her capabilities to perform specific roles. Conversely, sometimes it seems correct for an authority to consider agents merely as agents, even when the question at hand does not refer to agents at all. The question, “what are the basic entitlements of those who have the star sign ‘Aquarius’?” is just a smaller version of the question “what are individuals’ basic entitlements?”, and not a question that calls on us to respect the Aquarians *qua* Aquarians. So, there must be some criteria that determine the appropriate sort of respect to show in a given situation. There are two different ways these criteria might arise. First, the criteria could be *external* to the concept of respect: whether a given instance of respect is of the appropriate kind is a different issue to whether it is respectful. Not all respect is appropriate. Alternatively, the criteria could be *internal* to the concept of respect: an apparent show of respect of an inappropriate kind is not, in the final analysis, respectful. All respect is appropriate.

To bring out this distinction, consider the following question. Is it always disrespectful to fail to show opacity respect in cases where opacity respect is inappropriate? The answer could be ‘yes’ if the appropriateness of some form of respect is a separate issue to whether it *is* a kind of respect. One’s behaviour might show opacity disrespect, and at the same time be respectful in some other way, and overall, be the respectful way to behave. Such an understanding is at work in the following dialogue:

- You were disrespectful, in sense X.
- That may be so, but it doesn’t matter; I was respectful in sense Y, and that was the appropriate kind of respect to show.

The respondent admits disrespect of type X. To ask whether it is appropriate is not to ask whether it is respect. The criteria of appropriateness are external to the criteria of respect.

On the other hand, it may never be disrespectful to fail to show opacity respect in cases where opacity respect is inappropriate. This is because true respect is always appropriate. For example:

- You were disrespectful, in sense X.
- I disagree: to have attempted to show respect in sense X would have been to attempt to show the inappropriate kind of respect, and so wouldn't have been *truly* or *all-things-considered* respectful.

The respondent denies that respect of type X was possible. On this conception of the appropriateness of respect, it is, in the end, always erroneous to say that somebody has displayed the wrong kind of respect. It is like saying that this triangle I have drawn has the wrong number of sides. On this usage, 'inappropriate respect' is a play on words or an oxymoron. Sometimes respect calls on us to ignore others' capacities, and sometimes it does not. On this reading, opacity respect is not well-described as a kind of respect; we could more usefully say it is a *kind of manifestation* of respect. It is one of the ways in which the overarching requirement of respect asks us to act. The criteria of appropriateness are internal to the criteria of respect.

Neither the internal nor the external account of the appropriateness of respect fully captures our use of the concept. We sometimes use one, and sometimes the other. Sometimes we criticise people for being excessively respectful. We might say that a skilful batsman in cricket is being too respectful towards the

famous bowler he is facing: if only he would be less diffident and more arrogant and play a riskier shot. And playing a riskier shot would be the *proper* way to respect a bowler's talent. The best way to respect great bowling is to outwit it. This is a case in which there is a kind of respect that is inappropriate. The criteria of the appropriate form of respect are external to the concept of respect in play.

On other occasions it seems more correct to say that somebody has been disrespectful, than to say that the wrong kind of respect has been displayed. It would be disrespectful in many circumstances to treat one's boss as one's kin: to do so would be to fail to take proper account of the position one's boss holds. Of course, this is not because acting according to a familial instinct can never be a way of being respectful. The person who says to a casual acquaintance, 'It is because of the high esteem in which I hold you that I am responding only to the fact of your personhood,' can be justifiably rebuffed with the reply, 'You don't really respect me.' Acting on a familial attitude towards one's boss *could* be considered a kind of respect (albeit inappropriate), but we're more likely to use internal criteria for appropriate respect in this case, and instead say that the employee's behaviour is, outright, disrespectful. One's boss would say, or think, 'how dare *you* give me such advice?'

Is one form of the concept of respect more correct than the other? Which kind of criteria for appropriateness – external, or internal, to the concept of respect – must be at work in the argument that respectfulness explains our basic egalitarian commitment? I think we use both. And crucially for the argument I shall make below, in the particular case of opacity respect, we tend to equivocate. Here is an example. Prospective adoptive parents endure a lengthy

and intrusive application process. Do they feel disrespected? They may say that they do, but that the disrespect is justified because the application process protects children. On this view, the intrusion involves disrespect, even if it is appropriate. Alternatively, the prospective adoptive parents may say that, ultimately, they do not feel disrespected by the process, *because* the intrusion is justified. On this view, the appropriateness of the intrusion renders it respectful (or at least, non-disrespectful). Neither of these two responses seems incorrect, and both may be offered by the same person in the same conversation, but the two responses involve different ways in which a form of respect can be deemed appropriate. The fact that we commonly equivocate between the 'external' and 'internal' criteria ought to put us on our guard against equivocating in our arguments. Which kind of criteria for appropriateness must be at work in the argument that the requirement that we respect one another explains our basic egalitarian commitment? In section 7.4, I argue that it isn't the former. In section 7.5, I argue that it isn't the latter.

#### **7.4 External criteria: What makes it appropriate is not what makes it respect**

Can we explain basic equal moral status with an external account of the source of the appropriate form of respect? To repeat, such a view says that whether some act is respectful is a separate question to whether it is the appropriate form of respect to show in the circumstances. It might be thought that this approach would be fruitful in justifying equality. Such an argument would say that one ought to show opacity respect, when guided to do so by some other given directive or value. This other principle thereby makes it the case that

opacity respect is appropriate in matters of basic entitlements; the concept of respect itself does not carry this burden.

However, on the external account, it becomes unclear why the requirement that we respect one another by itself entails that we should consider persons as opaque for the purposes of working out their basic entitlements. That is, the inference from (1) to (2) becomes problematic.<sup>229</sup> A further premise is required, explaining why opacity respect, and not some other kind of respect, is appropriate when considering matters of basic entitlements. Whatever that premise is, it becomes one of the things in virtue of which we count as equals. In this case, the basis of respect is not the basis of equality. The further principle seems to be doing the work.

To see this, consider what principle could require that the correct sort of respect to show, in matters of basic entitlement, is opacity respect. As noted above, Carter says that we should show opacity respect in matters of basic entitlement because, in such matters, people should be considered just as persons. *When* should people be considered just as persons? One answer is that we should consider persons only as persons whenever it is just to do so. In this case, the principle of justice really explains our basic equal status, if anything does, and

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<sup>229</sup> See page 188. The argument was:

- (1) Respect individuals' dignity simply as agents (in certain contexts),
- so, (2) treat persons as opaque (in those contexts),
- so, (3) persons equally possess a morally relevant property, namely, the range property the possession of which makes opacity respect appropriate (in certain contexts).



not the requirement that we respect one another. This principle of justice, if it is itself well-founded, gives an account of why persons are ever things worth considering in themselves. It is difficult to see why persons would be worth considering in themselves without a presumption of their equal value. So, the requirement that we respect one another, on this view, is subordinate to the requirement that we be just. The fact that the egalitarian attitude is respectful adds nothing to the justification of the claim that we be egalitarian; the justification is that egalitarianism is just.

Moreover, insofar as there is a problem of giving an account of our basic equal status, it applies to the principle of justice just described: *why* should persons be considered only as persons? What important feature do they share? It seems that in order to say that respect is the basis of equality, where the appropriate sort of respect is determined by an external principle, we need to give a different account of the basis of equality that is appealed to by that further principle. We might therefore say that our concern with opacity respect, in matters of basic entitlements, is not justificatory; it is epiphenomenal. It turns out that we are interested in respecting persons in *this* way and in *these* contexts, but when we understand why, we realise that it's justice, or some other value, that moves us, and not the independent value of respect.

A different sort of answer to the question 'When should persons be considered just as persons?' is this: we should consider persons only as persons whenever it is *respectful* to do so. Such a position avoids the problem just discussed: it keeps respect as the central focus. However, it would be an *internal* account of the appropriate manifestation of respect. It holds that the notion of respectfulness itself involves an account of its appropriate application. I discuss

such positions in the next section. Here, we say that some other principle decides when persons should be considered just as persons, and when they shouldn't.

It may be responded that, nonetheless, the principle 'show respect' is still doing some work. That we must appeal to a different principle does not itself entail that the respect-principle is entirely irrelevant. However, it should be emphasised what work a further principle must do. It is necessary to appeal to a further principle in order to explain the application of the first principle. In this case, our norms can be described without it. If 'respect' is interpreted in such a way that we require an outside principle to determine what sort of respect is appropriate, regardless of whether it is respect, then the requirement 'show respect' does not tell us what to do; the real work is done by the criteria that determine which kind of respect ought to be shown.

It may be responded, now, that the requirement 'show respect', interpreted with external criteria for appropriateness, can still provide *some* guidance over what we ought to do, even if it does leave indeterminacy. The requirement 'show respect' serves the role of ruling out some actions. That is, some actions are not respectful in *any* sense, regardless of whether they are the appropriate kind of respect for the given circumstances. So it is not correct to say that the respect-requirement adds nothing. However, on any plausible interpretation of what counts as respectful behaviour (regardless of whether it is behaviour that shows the appropriate form of respect), some actions will count as respectful that do not display opacity respect. So even if it is correct to say that the respect-

requirement, on the present reading, rules out some actions, it does not rule out opacity disrespect and so does not explain our egalitarian concerns.<sup>230</sup>

## **7.5 Internal criteria: What makes it appropriate is fixed by what makes it respect**

I will consider in this section the case in which the standards of appropriate respect are internal to the concept of respect.

Although Carter talks of 'opacity respect' as a type of respect, it should be clear that treating persons as opaque could not be sufficient for respecting them. To treat persons as opaque is to fail to respond to persons' internal capacities; one could fail to respond to internal capacities by failing to respond to any capacities, or any other features, of persons. The negative requirement of opacity must be supplemented with a positive account of how persons *should* be responded to, in order for them to be respected. A requirement that one refuse to consider one thing can't be sufficient for a requirement that one consider something else. We need to develop the idea of opacity if opacity is to be a kind of respect. My argument in this section runs as follows. The idea of opacity respect can be developed in one of two directions. It can be understood as taking the correct account of persons, whatever the 'correct account' may be. In this case, it is difficult to see when opacity is appropriate. Or, it can be understood as taking the correct account of persons, where the 'correct

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<sup>230</sup> I discuss a reply to this argument in section 7.9.

account' is specified. In this case, it remains to be explained (absent a presumption of equal moral status) why we ought to hold this attitude.

One natural way of developing the idea of opacity into an account of respect is to interpret the requirement that we respect persons as the claim that persons should be recognised just as persons. By this it is meant that the fact of personhood commands an irreducible respect. This kind of respect is often described using an accounting metaphor: we pay due to, or take account, of persons. We give regard to the person in our considerations. Stephen Darwall dubs this 'recognition respect': "the sort of regard involved in recognition respect is a regard for a fact or feature as having some weight in deliberations about how one is to act."<sup>231</sup> For example, a failure to respect the tide can be a failure to recognise the deleterious effect that the tide could have on one's evening walk along the beach. To respect the tide is to give the tide the right weight and place in one's deliberations.

If respect is interpreted in this way, the requirement 'respect persons' does not itself tell us what to do. To show respect for persons is to give the correct kind of weight to the fact that one is dealing with a person. What determines the correct weight? It must be whatever is the right way to treat the person. On this account, I respect you if I treat you rightly, and I disrespect you if I treat you wrongly. But now, to find out how to respect you, I need to know what is right, and what is wrong.<sup>232</sup> In this case, the content of a requirement of respect

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<sup>231</sup> Stephen Darwall, "Two Kinds of Respect," *Ethics* 88, no. 1 (October 1977): 41.

<sup>232</sup> As William Frankena argues: "The principle that we are to respect persons in this sense says only that there are morally right and wrong, good and bad, ways of treating or relating to persons." It does not say

depends upon a set of requirements about how we ought to act. So, the rightness of our decision to ignore persons' capacities cannot derive from that principle of respect, since that principle of respect presupposes what one should, and what one should not, ignore. Hence, on this reading, it is not legitimate to conclude (2) from (1).<sup>233</sup> The appropriate standards for treating people remain to be argued for.

On the 'recognition respect' interpretation of (1), with the standards of appropriateness internal to the standards of respect, we are left lacking an account of which kind of respect is appropriate for any context. Perhaps a state shows respect by distributing income in a way that is sensitive to persons' internal capacities. Perhaps it does not. The demand 'show respect' does not, on its present interpretation, give us any guidance on that issue. In order to conclude that people ought to be treated as opaque, just from the premise that people ought to be respected, it is necessary to understand the requirement that people be respected as a requirement that itself guides our actions.

There is a temptation to conclude that the requirement that people ought to be respected leads to the requirement that people, in many circumstances, be

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which ways of treating or relating to persons are right, wrong, good, or bad. (W. K. Frankena, "The Ethics of Respect for Persons," *Philosophical Topics* 14, no. 2 (1986): 157.)

<sup>233</sup> Again, see page 188. The argument was:

(1) Respect individuals' dignity simply as agents (in certain contexts),

so, (2) treat persons as opaque (in those contexts),

so, (3) persons equally possess a morally relevant property, namely, the range property the possession of which makes opacity respect appropriate (in certain contexts).

treated as opaque, on the grounds that, in those circumstances, persons count as equals. But this creates the position, canvassed at the end of section 7.2, in which people's moral equality follows from people's moral equality.

## 7.6 A requirement of respect with specific content

A natural response to that line of reasoning is to give some specific content to the sort of behaviour that is involved in showing recognition respect for persons. Thus, to the requirement of opacity we add some more specific claims about our intuitive notion about the attitudes involved in respecting people. Here is an example of the sort of specific content I have in mind. Jonathan Wolff argues that the views of some egalitarian writers are unsuccessful, on their own terms. His sights are turned on luck egalitarianism, which holds, roughly, that people's prospects ought to be dependent only upon their choices, not their circumstances:

If we accept that egalitarianism derives from the thought, at least in part, that others are generally equally as deserving of respect as I am, then, by parity, I should also trust others, in the relevant areas, at least to a degree... That is, there are areas in which the moral egalitarian is prepared to give the benefit of the doubt, at least at first.<sup>234</sup>

Wolff argues that luck egalitarianism is a poor account of egalitarianism, because egalitarianism is partly based in respect, and luck egalitarianism implies that a state will demean people, which is disrespectful. A state that makes people's level of advantage dependent only upon their choices will

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<sup>234</sup> Jonathan Wolff, "Fairness, Respect, and the Egalitarian Ethos," *Philosophy and Public Affairs* 27, no. 2 (Spring 1998): 97–122., . 108

inevitably lead people to make demeaning revelations about themselves. And forcing such revelations implies a lack of trust, which is disrespectful.

With this interpretation of 'respect', we can make out a case that we ought to take account of persons only as persons, for matters of their basic entitlements; that is to say, that (2) follows from (1). The intuitive appeal of the claim that, for matters of basic justice, it is disrespectful for a state to inquire into the particular lives of individuals, reveals a conception of respect that precludes judgments of persons' capacities.<sup>235</sup> It is appropriate to show this manifestation of respect when dealing with matters of basic justice.

However, we are left asking, 'why show this kind of respect?' That is, we are left searching for an independent ground for (1), to display such respect in general. Recall, from section 7.2, that an inadequate answer to that question is, 'persons are equals'. That answer would be inadequate, because it would render circular the purported basis for equality. In the case of the undeveloped recognition respect described in section 7.5, it was easy to see how that question could be answered. We ought to respect persons' dignity, and this just means that we ought to respond appropriately to persons, whatever 'appropriate' might mean. How could one deny that one should do whatever is appropriate? In the present case, it is far from obvious what it is about human dignity that demands we play blind to person's capacities. In this spirit, Carl Cranor writes: "If to respect another is to concede that I *ought* to take account of how he is affected by my actions, why ought I to do this? The respect principle does not explain or justify

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<sup>235</sup> E.g., *Ibid.*

the 'ought' claim, but an independent moral principle must do this."<sup>236</sup> In the same way, if to respect one another is to concede that, in some contexts, I ought not to take account of persons' internal capacities, then the requirement of respect is not the fundamental basis of equality that it first seemed; there is something else behind it.

Another response to the question 'why show this specific kind of respect?' is: 'persons are equals'. That response is tempting, but inadequate in the present context. It is tempting because we might reason that, because persons are equals, we ought to treat them just as persons, for matters of basic entitlements. However, that move is inadequate because it would render circular the purported basis for equality. It amounts to saying that people's moral equality follows from their moral equality.

In short, we are placed in the same discursive situation as that applying to the conception of respect with an external account of its appropriate application.<sup>237</sup>

One sort of justification of the requirement that we show such respect appeals to our equality. This renders circular the grounding of equality. A different sort of answer openly appeals to what is just. This amounts to an appeal to justice, not respect.

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<sup>236</sup> Carl F. Cranor, "On Respecting Human Beings as Persons," *The Journal of Value Inquiry* 17, no. 2 (June 1, 1983): 109.

<sup>237</sup> See section 7.4. I discuss a reply in section 7.9.



## 7.7 Neither external nor internal

In this section I will summarise and further illustrate the foregoing argument. On the internal account of appropriate respect, the derivation of (2) from (1) is, at first, mysterious. What is it about the concept of respect that entails that to respect persons is to treat persons as opaque in matters of basic entitlement? One answer could be that treating persons as opaque in such contexts is simply inherent in the proper understanding of respect. In this case, we are left wondering what reason we have to hold that we are bound by such a specific conception of respect. In other words, (1) seems difficult to uphold. Insofar as we can grasp independent reasons for the claim that we ought to show respect, we lose sight of why we should show *this* kind of respect in *these* matters. And insofar as we are clear that respectfulness involves opacity, in these matters, we lose sight of why we face a general and basic requirement to show this specific working-out of respect. In short, the respect-requirement is either basic, or substantive, but not both. This tension could be resolved with an appeal to the independent value of equality. But then we would be no better off, with regard to explaining persons' equal basic moral status, than we were before any appeal to the requirement that we show respect.

This tension is evident in some of the interpretive discussions of Kant. He writes: "All respect for persons is properly only respect for the law (of uprightness, etc.) of which the person gives us the example."<sup>238</sup> One way of understanding 'the law', in that passage, is as 'the law's force'. That is, we ought to take due account of the rational force that the moral law has over us.

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<sup>238</sup> Kant, *Groundwork for the Metaphysics of Morals*, 17.

This corresponds to the position described in section 7.5. It is plausible that we ought to respect the moral law, but the requirement that we do so does not by itself tell us how to act. A different way of understanding ‘the law’ in that passage from Kant is as ‘the law’s content’.<sup>239</sup> That is, we ought to take due account of the particular guidance that the moral law gives us. This corresponds to the position described in section 7.4. The particular rules of some account of the moral law will guide our actions. But we are left needing a substantive defence of the requirement that we respect the law.

In summary, on either account of ‘appropriateness’, the claim that opacity respect motivates equality faces problems. If the appropriate sort of respect is determined by an external principle, then the external principle explains equality, not the requirement that we respect one another. If the appropriate sort of respect is determined by the concept of respect itself, then it is difficult to hold that the respect-requirement is both basic and substantive.

That we do use both of these accounts of how the appropriate kind of respect is determined makes it tempting to slide, illegitimately, from one to the other in an argument. This can make the concept of respect seem more foundational in our egalitarian thinking than it really is. First, in defending (1), the basic requirement that we show respect, we might adopt what I have called an external account of the appropriate form of respect. This version of the concept of respect does not carry with it the baggage that would require a complicated defence; that is, an account of its appropriate application. Thus, it is plausibly asserted into place as

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<sup>239</sup> For a discussion of this distinction, see J. D Velleman, “Love as a Moral Emotion,” *Ethics* 109, no. 2 (1999): 338–374.

a binding principle. Second, in arguing (2) [i.e., that it follows from (1) that showing respect involves considering persons as opaque in matters of basic entitlements], we adopt an internal account of the appropriate form of respect. On this account, the opacity requirement is simply an application of respecting persons more generally. It should be clear, however, that these moves involve different conceptions of respect, and so the argument thus described is unsound.

For example, for Thomas Hill, we must respect all human beings because such respect is an essential aspect of the moral framework for deliberation to which we are in fact, he argues, committed. And so, “for practical purposes, our morality of respect presumes, until proved otherwise, that virtually all human beings, except perhaps the severely brain-damaged, have *enough potential for developing* the capacities for reciprocity and self-restraint to qualify for human dignity.”<sup>240</sup> In the context of this thesis, a difficulty with this position arises naturally. The position leaves insufficiently explained what counts as ‘enough’. (We also wonder count as the parameters on ‘potential for developing’.). If we understand ‘respect’ as something that tells us what to do, then this level remains unclear. If we understand ‘respect’ as something that justifies the level, then the requirement that we show respect doesn’t naturally follow from humans’ dignity.

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<sup>240</sup> T. E Hill, *Respect, Pluralism, and Justice: Kantian Perspectives* (Oxford University Press, 2000), 69 (italics added).

## 7.8 The harm of disrespect

One response to this argument begins by defending the view that to respect persons is to treat them in accordance with the *relevant reasons*, whatever these may be. It adds that the relevant reasons, in the context of deciding persons' basic entitlements, do not include variations in particular capacities. On the face of things, this response seems to be threatened by the dilemma I have described in this chapter. Without an account of what reasons are relevant to the treatment of persons, the requirement that we respect persons tells us nothing; with an account of what reasons are relevant to the treatment of persons, the requirement that we respect persons is controversial and in need of a further defence beyond the fact that it is respectful. However, Harry Frankfurt provides a challenge to the first horn of this dilemma.<sup>241</sup> He argues that the respect-requirement is not vacuous, and does give us further reasons, because a failure to treat persons in accordance with the relevant reasons, whatever they may be, naturally causes them to feel diminished and humiliated. This is an inescapable feature of persons. To fail to respond to the relevant situations of individuals, and thereby to treat them irrationally, causes them to feel diminished. We therefore have reason to treat persons in accordance with reasons, over and above the force of those individual reasons. To treat others in accordance with relevant reasons is necessary for respectfulness, and people naturally respond badly to disrespect.

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<sup>241</sup> Harry Frankfurt, "Equality and Respect," *Social Research* 64, no. 1 (1997): 3–15. Relatedly, Nir Eyal argues that respect is a 'moral booster' that adds to the value of a state of affairs. (Nir Eyal, "Distributing Respect" (Doctoral thesis, University of Oxford, 2003).)

This position will not help the argument that the basis of respect is the basis of equality. Suppose that it is the case that, for matters of determining basic entitlements, persons' particular capacities do not give relevant reasons. Does the requirement that we respect persons give us equal further reasons to ignore those capacities? People will naturally feel diminished if these irrelevant reasons are taken into account. Some will feel more diminished than others. It is an empirical claim that people feel diminished by disrespect. And we would expect that a failure to treat one person in accordance with reasons could have a different effect to that which it would have on another person. Thus, this position does not give the importance to respecting others that basic equality requires of it. If it is possible that some people feel more, or less, easily diminished than others, then it could become more, or less, urgent to show them opacity respect. Furthermore, if the reason we should show respect follows only from its good consequences, then the derived equality would be superseded when other good consequences are possible, and the strength of the reason we have to show opacity respect would vary from person to person. This makes dubious a derivation of equal moral status from a requirement that we show this kind of respect.

Alternatively, we could take a much stronger line. We might be required to show opacity respect to persons just because, as we might say: 'That's what you ought to do; they're persons, and that's how you treat persons. You respect them. You don't go around judging them.' Respect is basic, and there is no more to be said. Some may find such a position convincing. But it is not an attempt to give an explanatory basis for equality of persons. We could just as well abandon talk of respect and say that persons' equality is basic, and

foundational, and itself beyond explanation. It would be more philosophically satisfying if we could defend equality, and talk of respect now seems to be a spare wheel in the argument.

## 7.9 Priority and grounding

At a couple of points in this chapter, I have arrived at the position that the basis of a certain version respect can't be the basis of equality, because we shouldn't *always* show the sort of respect that grounds equality, and whatever the principle is that tells us *when* to show the kind of respect that leads us to treat one another as equals, is really what is telling us to treat one another as equals. That is, respectfulness coincides with treating one another as equals, but is not an independent principle that commands us to treat one another as equals. (See sections 7.4 and 7.6.) A response to that line of argument runs as follows. We do have a seemingly very basic notion that opacity-respect is appropriate in some circumstances. The way we recoil when presented with violations of such respect is guttural and strong enough for us to suppose it is central to our normative world. This response could follow one (or both) of the two routes I have described. It could follow an external account of the appropriate form of respect, and say that there is an important sense in which the requirement that we respect one another is doing normative work, in combination with the criteria for appropriateness. Alternatively, it could assert an internal account of the appropriate form of respect, and say that there is some further principle dictating that we ought to show this kind of respect, and that on this position it still makes sense, *contra* the argument of this chapter, to say respect is the basis of equality, where respect itself is demanded by a yet deeper principle. In

the ensuing discussion I will not distinguish between these two routes, since the question is the same in either case. That question is whether 'respect' can meaningfully be placed as a value that grounds 'equality', within a broader context of values in which 'respect' itself is not fundamental.

The response I consider here holds that, just because there is a further principle determining *where* opacity-respect is appropriate, we don't say that the value of opacity-respect fails to form the basis of equality. Strictly, the position is: the criteria of appropriateness *plus* the basis of opacity respect form, together, the basis of equality, and it is reasonable to summarise this by saying that opacity-respect is the basis. Respect still plays a role, and so can still usefully be described as the basis of equality, alongside a further principle. The role it plays is epistemic. The best we can do is to explain, so far as possible, what could justify our egalitarian ideas. Our investigation ought to be focused on squaring up our intuitions. The challenge in identifying a basis of equality is better conceived as an epistemic problem. The fact that we distinguish recognition respect for persons from appraisal respect for persons, and the fact that we have a concept of the appropriateness of opacity respect in some situations, is strong evidence for the position that only personhood is relevant for matters of basic entitlement. Realising that we have this concept of respect should bring out a strong intuition that we ought to ignore persons' capacities in matters of basic entitlement. If the claim is that the fact that we have this concept of respect provides strong evidence for the view that persons should be treated as equals, then there is nothing wrong with holding onto the view that we should respect people on the grounds that we see people as equals. Reasoning about evidence considers this kind of circle as virtuous.

However, in giving evidence for the claim that such respect is really very basic to our thought, we should be careful about which kind of ‘basicness’ we are demonstrating. If it is basic in a merely epistemic sense, then I suggest that this still leaves us with the problem of identifying a basis of equality, which is a problem about what makes it the case that we are equals.<sup>242</sup> That is to say, ‘x is a, or the, reason to believe y’ does not entail that ‘x makes it the case that y’, and in searching for a basis for equality, we are searching for what makes it the case that we’re equal; a reason to think that we’re equal is not, by itself, a solution. It should be emphasised what central work the further principle must perform. It must show how it is useful to say that the basis of a certain kind of respect is that basis of equality, where there is another principle determining the circumstances in which one ought to show such respect, and it must do so against a background in which there is a problem in providing a basis for equality.

In addressing these concerns, Carter suggests that a driving concern of the liberal is that close examinations of our inner workings lead us to explain away our agency; for instance, we struggle to make sense of agency when we focus on how it is caused. We have an “ethical commitment” to avoid such examinations.<sup>243</sup> Evidence that this concern exists is the liberal's traditional concern with negative liberty. Given that driving concern,

No appeal need be made to the equality of persons, or to the equality of their basic entitlements, in explicating this particular interpretation of the

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<sup>242</sup> See section 3.2 above.

<sup>243</sup> Carter, “Respect and the Basis of Equality,” 558.



ideal of respect for persons. Rather, equality is best thought of as *entailed by* that ideal. If I introspect as a political liberal in the light of the above considerations, I find that my commitment to taking the agent as given (my aversion to “problematizing the subject”) is respect-based rather than equality-based; I find, indeed, that my commitment to opacity respect in the context of a political conception of justice allows me to account for my otherwise groundless belief, within that same context, that all persons are equal. I therefore conclude that it is perfectly plausible to see the commitment to outward dignity as independent of, and indeed as grounding, the commitment to treating persons as equals.<sup>244</sup>

The aim of this passage is to dispel the objection that persons’ basic equality might be more fundamental than the requirement that people should be respected. I distinguished above between something making it the case that we are equals, and, something providing evidence for our equality. Carter’s argument is that he has shown how respect has a ground that equality does not, and how respect yields equality. Respect gives a reason for equality that was not there before. Equality is ‘entailed by’ respect, because there is a general liberal sentiment that shuns problematizing the subject.

The following thought leads to doubts that this makes the requirement that we respect one another more basic. One could consistently hold (i) my commitment to respecting persons gives me reason to commit to persons’ equality; and at the same time (ii) that persons are equals makes it the case that, or explains why, persons are due respect. Similarly, one could consistently hold (iii) the footprints give me reason to think that a fox was here; and (iv) the fox’s having been here makes it the case that there are footprints. Even if our commitment to respecting persons provides good evidence for persons’ basic equality, and so

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<sup>244</sup> Ibid., 559.

reason to believe in it, it remains possible that persons' basic equality is more fundamental, in the sense that it explains why we ought to respect persons. Perhaps it is the case that psychologically, when we introspect as liberals, the resistance to 'problematizing the subject' occurs to us right away, and leads us, in fact, to believe persons are equals. And perhaps it is also the case that our resistance to 'problematizing the subject' is firmer and more widely held than our commitment to persons' equality. And perhaps it is the case that our resistance to 'problematizing the subject' has implications for many other aspects of our political and ethical thought, such as our attitude towards liberty. But none (nor any combination) of those claims is sufficient for respect being explanatorily prior. They are all cases of evidential reasoning, which do not establish explanatory priority, just as the fox made the footprints, and not vice versa.

It may be considered relevant that the wrongness of 'problematizing the subject' actually *entails* a requirement of a kind of respect, which in turn entails a significant property that persons share. The position says: Ignore variations, therefore, consider people as equals. Persons' equality results from the requirement that we respect them in an argumentative sense. Does this mean that the respect-requirement is more basic? Granting that the entailment is sound, it is less clear that a demonstration of its existence is enough to display the priority of respect. An argumentative entailment is not sufficient for explanatory basicness. If another argument could be constructed, that had among its premises the claim 'we have reason to posit a property possessed equally by persons', and as its conclusion 'resist problematizing the subject', would it follow that respect, and the resistance to problematizing the subject,

are less basic than equality? Or equally basic? It is not the case that being the premise of a possible valid argument for X is sufficient for being more fundamental than X.

There is a further possible reason to think that the existence of this entailment from respect to equality establishes, for liberals, that the requirement that we respect one another is more basic than basic equality. This reason is that, by accepting that entailment, a commitment to respect accounts for the liberal's *otherwise groundless* commitment to equality. If it accounts for what cannot otherwise be accounted for, it seems more fundamental. Once again, however, it is possible to run this line of reasoning in the opposite direction. It may be possible to construct an argument that those in possession of a given minimum are equals, and so, we must avoid looking inside them; we must respect them. Accounting for an otherwise groundless commitment can't be sufficient for explanatory priority. That X accounts for the otherwise groundless commitment Y does not rule out that Y accounts for the otherwise groundless commitment X. Alternatively, we can abandon the idea of a grounding for equality altogether. On this view, the most that reflection on the idea of respect will establish is a wider reflective equilibrium, taking on board dignity and respect's groundings, as well as the value of equality. In this case, the problem that I have been pursuing remains unsolved: we require a basis for respect just as we require a basis for equality. I should add that this is no trivial matter, in the context here, where it seems that there is a direct positive challenge to the idea of basic equality.

In this chapter, I have been considering the argument that a certain sort of respect grounds persons' equality. The sort of respect I have been discussing is

the kind that requires us not to inquire into individuals' particular capacities. It seems to ground equality because such respect leads us to ignore persons' differences, and thereby to respond only to their personhood: persons are, equally, persons. However, the justificatory force of this sort of respect is called into question once we are clear that such respect should not always be displayed. What could determine the appropriateness of such respect? The appropriateness of opacity respect might be determined by an external principle. In that case, it seems that the external principle explains equality, not the requirement of respect. Alternatively, the appropriate sort of respect for any given circumstances could be determined by the contents of the concept of respect itself. In this case, opacity respect can be developed in one of two directions. It can be understood as taking the correct account of persons, whatever the 'correct account' may be. In this case, we do not learn when opacity is appropriate, and when it is inappropriate, and so learn nothing of equality. Or, respect can be understood as taking the correct account of persons, where the 'correct account' is specified so as to lead to egalitarian justice. In this case, it remains to be explained (absent a prior assumption of equal status) why we ought to hold this attitude. In this final section I considered a series of ways in which respect may ground equality, even if respect itself is not fundamental; I have found these positions unable to meet the problem at hand.



## 8 Fuller interest theories and rough equality

### 8.1 A model of people's equality that appeals to people's interests

What does a denial of the claim that we are basic equals look like? Earlier, I suggested that a denial of basic equality permits a broader range of views than is sometimes supposed.<sup>245</sup> This chapter develops that idea. I begin by outlining some 'status-based' denials of basic equality. I then focus on the idea that the rough equality of the functioning of our interests can avoid a commitment to 'basic equality', but can supply prescriptions that are consistent with our egalitarian ideas. In order to establish this case, I focus on two kinds of egalitarian prescription: non-discrimination, and distributive egalitarianism. The reason I discuss these is that they are often taken to rest upon a premise of basic equality.<sup>246</sup> If we can defend even those prescriptions without an appeal to basic equality, then the prospects of theorising without basic equality look more hopeful than many have intimated.

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<sup>245</sup> See section 2.7. For a clear overview of the breadth of possibilities, see Paul Kelly, "Why Equality? On Justifying Liberal Egalitarianism," *Critical Review of International Social and Political Philosophy* 13, no. 1 (2010): 55–70.

<sup>246</sup> A third prescription of this sort, which I do not discuss in this chapter, is political equality.

Some take the paradigmatic case of a denial of basic equality to be an assertion of a natural hierarchy between persons.<sup>247</sup> In this vein, Nietzsche advocates a “good healthy aristocracy...that...accepts with a good conscience the sacrifice of untold human beings who, *for its sake*, must be reduced and lowered to incomplete human beings, to slaves, to instruments.”<sup>248</sup> Scepticism about the idea that each person has a prior equal value is a part of the view that there is a clear ranking between persons, and that some are destined to dominate the rest, and to use them as instruments.

This is not the only sort of view that denies basic equality. There is a strand of thinking that places emphasis on distinctions of merit between persons. This viewpoint rejects the idea that we have equal unearned worth. It emphasises our attitudes towards evil acts, and towards the proper reward of desert. Those who act malevolently forfeit their right to be treated in the ways in which the more benign have a right to be treated. This forfeit of right is constituted by a reduction in their worth; this is what ‘worth’ means. What one is due comes in proportion to one’s worth, and by acting evilly or malevolently, one becomes less worthy. There is no meaningful sense in which the bad are equal to the good; all value is earned, or deserved, or forfeited.<sup>249</sup> According to this position,

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<sup>247</sup> For example: "What most clearly unites all failures to respect basic equality is the presence of bias, or the absence of impartiality." Smith, *Basic Equality and Discrimination*, 77.

<sup>248</sup> Friedrich Nietzsche, *The Basic Writings of Nietzsche*, trans. Walter Kaufman, New edition (Random House Inc, 2001), 392.

<sup>249</sup> Kekes, *The Illusions of Egalitarianism*; John Kekes, *A Case for Conservatism* (Cornell University Press, 1998). See also J. R. Lucas, "Against Equality," *Philosophy* 40, no. 154 (October 1965): 296–307. C.f.

the clear inequality in our worth undermines any position that could be called egalitarian.

In a related strain, David Lloyd Thomas suggests that if (contrary to his own view) “we did come to have a well-grounded belief in human inequality...[i]t is not clear that our current beliefs would have to be changed very much.” He continues:

It could be argued...that the existing system...could accommodate unequal rights corresponding to an unequal possession of rational nature. Those who possessed rational nature to a superior degree would, in a well-ordered society, come to acquire positions to which special rights attached. The special rights would give them greater opportunities for purposeful and constructive rational action than those enjoyed by most, and this would correspond to their superiority in respect of rational nature.<sup>250</sup>

It appears that Lloyd Thomas’ thought is that this system of ‘unequal rights’ would be defended with some of the arguments that purport to meritocracy in our current system. Perhaps those who can achieve more with their capacities are rightly given more room to utilise their capacities, since this matches, in a teleologically appropriate way, capacities with opportunities; and anyhow, unequal rights yield a better state of affairs in which all benefit, since more will be achieved.

There are yet more moderate views that abandon basic equality. Jonathan Friday highlights a “type of non-egalitarian who agrees with an egalitarian that there is an important distinction between intrinsic and merited worth, but which

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Vlastos, “Justice and Equality.” Vlastos argues that, while people may differ in their merit, they do not differ in their worth.

<sup>250</sup> David Lloyd Thomas, “Equality Within the Limits of Reason Alone,” *Mind* 88, no. 352 (1979): 533.



holds in opposition to the egalitarian that the nature and assessment of merit has priority in the structure of moral theory.<sup>251</sup> An acceptance of the idea of intrinsic worth does not by itself commit one to any particular working-out of the implications of persons' intrinsic worth. The liberal view, as exemplified by Gregory Vlastos, sees people as having both earned and unearned worth, and provides an account of how both kinds of worth play out in our normative political theory. The possibility remains in which one might see people as having both earned and unearned worth, but in which the latter category has relatively slight practical weight. On this view, in general, considerations of merit have greater significance, but it is still the case that people have equal worth. Those who are without any merit are not entirely without worth, but our response to merit takes priority. This view pays philosophical due to ideas about equal worth, but pays less practical due to them.

Yet further, instead of asserting that persons' value comes in proportion to their merit (whether or not this is mitigated by some other dimension of their worth), one may abandon the idea that what a person is owed is proportional to some transferrable scale of merit. Instead, one may argue, with Michael Walzer, that what persons are owed runs in proportion to the particular practices in which they are engaged.<sup>252</sup> On this view, the pattern by which a practice endows different persons with different entitlements itself flows from our own collective interpretation of that practice. In some sphere, you may be due great respect and high standing, while in another, you may rightly be placed lower down. If we

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<sup>251</sup> Friday, "Moral Equality and the Foundations of Liberal Moral Theory," 72.

<sup>252</sup> Walzer, *Spheres of Justice*.

believe, as Walzer does, that none will in fact rightly dominate all (or even most) spheres of our social life, then we will have a view that can be called egalitarian. This 'complex egalitarianism' depends partly upon an interpretation of our nature, but does not require an assertion of an equally important feature that each of us possesses.

I have just sketched several status-based theories that deny basic equality. These have ranged from the deeply anti-egalitarian to those that can make reasonable claim to the label 'egalitarian'. I want now to spend some time delineating another kind of approach that does not hold basic equality. This abandons status-based views altogether. Instead of taking individuals as the basic units of consideration, one takes interests as the basic units of consideration. As we shall see, such an approach is another way in which one might give up on the project of looking for a basis for equality, where the costs of doing so are not as great as they may first appear. This is a deflationary approach, according to which there are important interests that we roughly share, which ground egalitarian ideas. Capacities, whether physical or mental, all vary. But we may consider ourselves as roughly equal in what makes our lives go well. We are equal because we share interests. This is to say, we are *in fact* such that similar sorts of resources will satisfy our interests. We may differ on any scale, but we are all roughly the same in what would make our lives go better. Although the shape of our interests may not be precisely identical, perhaps they are similar enough that we can still supply the normative results that basic equality is more commonly taken to provide. This would permit us to sidestep the problem of identifying a basis for equality. The central goal of the present chapter is to clear the theoretical space for such a position.

I emphasise that this position does not claim a precise equality of some significant interest. It claims a rough equality of overall interests. We are similar kinds of beings, with similar factors that would improve our lives. There is no claim that we are precisely the same in what would improve us, or that there is an overriding shared significant feature; rather, there is an observation about how our similarities are more impressive than our differences. In the light of the argument of the preceding chapters, a set of objections naturally arises. If we are not precisely equal in the respect that is claimed to be important (in this case, interests), how can we reach a view that renders us normatively precisely equal? A focus on our approximate factual equality will only yield our approximate normative equality, and approximate equality is not equality. According to this objection, the more competent among us gain priority. And some resources should be invested in discovering the relevant sorts of natural differences between people. These results are counterintuitive and distasteful; they threaten the set of ideas that a claim to 'basic equality' defends. I shall not attempt to give a general response to this objection here; rather, I shall deal with this concern under the two specific headings of discrimination and egalitarianism in the ensuing discussion. The pattern of a more general response will emerge from these particular cases.

Before embarking on this part of the project, it will be necessary to identify the sorts of interests that can be in play. Some ways of construing our interests contain or presuppose an idea of our basic equality; such approaches would,

evidently, be unsuitable for the kind of position that I am adumbrating here, which aims to avoid appeals to basic equality.<sup>253</sup>

## 8.2 A conception of 'interests' could itself imply that a theory counts individuals as equals

Some conceptions of interests presuppose equal status, so some theories that count interests equally also count individuals as basic equals. Some methods of interpersonal comparison of welfare make essential reference to individuals. Insofar as such views are used as a basis for an account of moral status, they will not, despite first appearances, be interest-based, since they relativise and subordinate interest-satisfaction to the equal status of the individuals in question. For these things to be good, it is necessary to say that persons have equal importance, and so there must be some important feature that persons share, aside from any rough factual equality of interests.

For example, consider the zero-one method of interpersonal comparisons of utility. Two individuals rank possible states of affairs, with the most favoured at one, and the worst at zero, with every in-between state of affairs ranked in order between zero and one.<sup>254</sup> Rawls says of this method: "Offhand this seems fair,

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<sup>253</sup> This avoids a central difficulty with the Rawlsian approach, which asserts that we have a 'higher order' interest in being just. The challenge for that approach is to show why we have this interest in just the same way. Here, we can give up on trying to find an *overriding* interest, and instead permit all interests to be relevant to equality.

<sup>254</sup> One should avoid the error of conflating preference-satisfaction with 'feeling satisfied'. If we are talking, fundamentally, about feelings of satisfaction, we are using a hedonistic account. On a preference account,

perhaps expressing in another way the idea that each is to count for one and no more than one.” However, such proposals “postulate in effect that all individuals have similar capacities for satisfaction, and this seems like an unusual price to pay merely to define an interpersonal measure.”<sup>255</sup> The method assigns the same value to each person’s most favoured state of affairs, and the only way that this is a plausible view is if people are similarly capable of gaining from resources; a natural way to make that assumption is to assert the same value of persons’ full preference satisfaction. Thus, we can see how a conception of comparisons of interests could presuppose equal intrinsic value of persons by invoking one kind of way of measuring utility between persons.

This problem is not confined to that method of comparing welfare. Harsanyi proposes we compare welfare by considering ‘extended’ preferences. One asks oneself what one would prefer, with the other person’s circumstances and preference set. Harsanyi claims he eschews any assumption of moral equality in his account of interpersonal comparisons of utility. His rules are “not value judgments based on some ethical or political postulates but rather are factual

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what matters fundamentally is whether the preference is satisfied, not whether the person is satisfied (except insofar as the person prefers to feel satisfied).

<sup>255</sup> Rawls, *A Theory of Justice*, 284. Daniel Hausman argues that Rawls “fails here to take a preference-satisfaction view of well-being literally...[H]e reveals that he is conflating preference satisfaction and mental state views of well-being” (Daniel Hausman, “The Impossibility of Interpersonal Utility Comparisons,” *Mind* 104, no. 415 (July 1995): 484.) The idea Hausman has is that Rawls’ claim here *presupposes* that the zero-one rule is aiming to track a mental state idea of welfare, since it switches to talk of preferences being satisfied, to feelings of satisfaction. But of course the zero-one view doesn’t aim to track the mental state theory: it’s a whole different theory of wellbeing. However, a better reading of this passage is that Rawls is really presupposing that a system of interpersonal comparisons of wellbeing yields some morally plausible outcome.

propositions based on certain principles of inductive logic.”<sup>256</sup> Harsanyi here is expressly committing himself to that of which Rawls complains.<sup>257</sup> Note that such theories count individuals as equals not *because* they count interests equally, but because of the particular content of the interests that they claim ought to be counted equally. (We saw earlier, in section 2.5, that counting interests equally is not sufficient for treating individuals as equals. The argument there was that, in the sense in which we might say that to count interests equally is to treat individuals as equals, it is also the case that to count interests equally is to treat amalgams of individuals as equals.) The difficulties in identifying a way of making comparisons have led some to claim that *any* view of welfare comparisons will carry with it ideas of the right, of fairness, or justice, and by implication, a premise about our equal basic status. For example, Scanlon writes:

when we set out to compare two...conflicting interests with the aim of supporting a moral judgment as to which should be allowed to prevail, what we do is not compare how strongly the people in question feel about these interests (as determined, perhaps by what they would be

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<sup>256</sup> John Harsanyi, *Essays on Ethics, Social Behavior, and Scientific Explanation* (Springer, 1976), 18.

Furthermore, “the assumption that different individuals have the same susceptibility to satisfaction often expresses only the egalitarian value judgment that all individuals should be treated equally rather than a belief in a factual psychological equality between them” (Ibid.). Harsanyi commits himself to the latter and not the former.

<sup>257</sup> See also John Broome, “Can There Be a Preference-Based Utilitarianism?,” in *Justice, Political Liberalism, and Utilitarianism*, ed. Marc Fleurbaey, John A. Weymark, and Maurice Salles (Cambridge University Press, 2008).

willing to sacrifice to get their way) but rather inquire into the reasons for which these benefits are considered desirable.<sup>258</sup>

Ronald Dworkin develops this problem at length, and in particular, he uses this thought in order to argue that all accounts of the concept of 'welfare' contain or presuppose some idea of a fair distribution.<sup>259</sup> It is therefore circular to use 'welfare' as the currency of a just distribution. If this is correct, then the 'rough equality of interests' view that I am developing here will not be successful: an idea of a fair distribution will depend upon an idea of people's basic equality.

Why think that accounts of the concept of 'welfare' contain or presuppose some idea of a fair distribution? Consider the various possible ways of achieving interpersonal comparisons of welfare. Some kind of metric is required. If this is not standardised for all individuals, then the amount of welfare that we calculate

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<sup>258</sup> Thomas Scanlon, "Preference and Urgency," in *The Difficulty of Tolerance: Essays in Political Philosophy* (Cambridge University Press, 2003), 75. Relatedly, Rawls argues that the problems with defining a metric for interpersonal comparisons of utility make utilitarianism unintelligible. (Rawls, *A Theory of Justice*, 81, 150–152.)

<sup>259</sup> Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass. and London: Harvard University Press, 2000), chap. 1. A different kind of defence of the priority of the right to the view that I explore here focuses not on the unacceptability of some preferences or pleasures, but on the unjustifiability of certainty about which pleasures or preferences are the most acceptable. For instance: "[The priority of the right]...follows from the lack of commitment of justice as fairness with respect to the independence from the right claim: if there is no last word to be said about what is ultimately of value, the right should be prior because a sound moral theory can *only* say authoritative things about the right...The realm of the right identifies an area of morality that concentrates on *constraints* (how far our conduct can be justified to others), rather than on *goals* (which values we should aim for)...The right is prior to the good...precisely *because* we cannot decide what the good is." (Miriam Ronzoni, "Teleology, Deontology, and the Priority of the Right: On Some Unappreciated Distinctions," *Ethical Theory and Moral Practice* 13, no. 4 (October 13, 2009): 468.) C.f. Thomas Hurka, *Perfectionism* (Oxford University Press, 1996).

they have depends as much upon their absolute preference-satisfaction as upon which particular parameters they choose for the scale. If, for example, one person believes much is possible, while another believes little is possible, their measures of their own welfare relative to what they possibly could have are likely to be quite different. What a person happens to believe is possible is not the kind of thing we want to include in a measure of welfare. What is needed is some kind of external comparison that rules out unreasonable expectations. To decide what is 'unreasonable', we need an idea of what one is reasonably owed. An idea of what one is reasonably owed also goes by the name of a theory of distributive justice. And hence we are led to the aforementioned circle. Accounts of welfare comparisons presuppose ideas about what would be fair, and thereby, ideas about people's prior (equal) value.<sup>260</sup>

*Pace* Dworkin, we can be more optimistic about the possibility of accounts of interests that do not suppose ideas of equality. Dworkin's argument is not persuasive if we are prepared to allow a more perfectionist account of the good. Objective list accounts do not necessarily have the feature I have thus far described, of supposing fair distributions. They simply propose a series of goods for persons. They can be pluralistic, including feelings of satisfaction,

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<sup>260</sup> A further way in which a theory of good might itself require an account of basic equality would involve an account that counts features of the distribution of the good as themselves individual harms or benefits. For example, John Broome discusses a form of egalitarianism which "embeds the value of equality within the good of individuals" (Broome, *Weighing Goods*, 240.) On this view, people have a non-instrumental interest in equality. People are better off, all other things equal, if their shares of goods are equal. This seems to be an odd suggestion: the idea of an equal distribution naturally falls into the category of the right, not the good. Broome expresses scepticism about our intuitive distinction between those two categories, and thereby permits possibilities such as this one.



preference satisfaction, and achievements. The key point for our purposes here is that if we are prepared to brook the possibility of this kind of view of a person's good, then we will also be prepared to brook an account of measurement that does not refer to a prior idea of a fair distribution.<sup>261</sup> If we can suppose the goods, we can suppose their objective measurement too. And so there is no presupposition of a fair distribution. Dworkin turns to other reasons for rejecting the objective list account (he holds that it usurps people's choices in deciding what is good).<sup>262</sup> It is telling, for our purposes here, that he leaves behind the claim that it must depend on an idea of a fair distribution. I shall proceed with the assumption that we can conceive of (at least some) of our interests without supposing the value of equality.

The foregoing discussion establishes the kind of view of interests that the 'rough equality of interests' will require. It will be an objective list, a set of values that describe a life going well – but they must also be values that do not thereby make essential reference to persons' basic equality. What prospects are there

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<sup>261</sup> Thus, I endorse the following claim: "A full specification of the entries on the list indicates what weight any level of achievement on any dimension of achievement of any entry should get". Richard Arneson, "Cracked Foundations of Liberal Equality", in *Ronald Dworkin and His Critics*, ed. Justine Burley (Wiley-Blackwell, 2004), 94.

<sup>262</sup> "It is wholly inconsistent with the challenge approach that such decisions [about what is good] should be made collectively for all." Ronald Dworkin, "Ronald Dworkin Replies," in *Dworkin and His Critics*, ed. Justine Burley (Oxford: Wiley-Blackwell, 2004), 357. In reply: one can adopt the challenge approach in such a way that one adds to one's account of the good the point that having chosen one's life is a precondition for the value of one's life, or enhances whatever values it manifests. See Raz, *The Morality of Freedom*, chap. 14; James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance* (Oxford: Clarendon Press, 1986), chap. 7, 9.

for such a view? I will argue for optimism about these prospects by demonstrating the consistency of an interests-based view with our own views of two areas that are characteristically taken to fall within the remit of 'basic equality'. If I am right that these areas can be understood by an interests-based view, then my account calls for a development of our understanding of what is in each person's interests (and, correspondingly, less immediate focus on fairness or equality as our primary concern).

### 8.3 Discrimination and interests

Basic equality is commonly linked to non-discrimination.<sup>263</sup> Discrimination is the differential treatment of someone in virtue of their (perceived) membership of some given group, in a way that makes them worse off.<sup>264</sup> A central philosophical argument against discrimination rests on the idea of basic

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<sup>263</sup> See sections 2.7, 8.1, and Waldron's discussion of Hastings Rashdall, in his "Basic Equality," 7ff.

<sup>264</sup> We can classify wrongful discrimination in several ways. Kaspar Lippert-Rasmussen provides a useful framework ("The Badness of Discrimination," *Ethical Theory and Moral Practice* 9, no. 2 (May 25, 2006): 167–185.). Discrimination can be direct or indirect, depending upon whether the differential treatment refers specifically to the socially salient group, or only to factors that correlate with membership of the socially salient group. Direct discrimination can be cognitive or non-cognitive, according to whether the actor overtly identifies the factor, or only exhibits a bias. It can be accompanied by a negative reaction to the discriminated-against group, but it need not be. It can also be valuation-based, or not, according to whether it involves an evaluation, or only a preference. Valuation-based discrimination can be hierarchical (superiority of a particular group) or non-hierarchical (that separation is better). Non-valuation-based can also be hierarchical or not, according to whether there is a desire that some group prosper, or only a desire that some group is separate. Finally, discrimination can be formal or informal, according to whether the differential treatment follows a public rule, or a social norm.

equality. In *When is Discrimination Wrong?*, Deborah Hellman makes this assumption explicit from the outset:

I begin with what I consider a bedrock moral principle—the equal moral worth of all persons. I take it that this bedrock moral principle is comprised of two sub-principles: First, there is a worth or inherent dignity of persons that requires that we treat each other with respect...Second, this inherent dignity and worth of all persons does not vary according to their other traits.<sup>265</sup>

Such a position on discrimination is also expressed by Richard Wasserstrom, who expounds it in the following terms:

Whether it is the phenomena of racially segregated bathrooms, restaurants, swimming pools, golf courses, public transportation, schools, or the housing or the job market, the problem is not one of understanding how the facilities or the material opportunities involved might not have been equal in terms of some crude sense of what was materially provided (although it never was equal), but rather one of understanding how the ideology that informed and gave meaning to these practices and arrangements could ever be thought compatible with any morally defensible position concerning *the claims of all persons, as persons, to fundamentally equal membership and standing*.<sup>266</sup>

On this view, acts and practices of discrimination carry with them erroneous ideas about the inferiority of those they harm. For instance, a requirement that women wear cosmetics in the workplace is demeaning, and offends basic equal status, because of what that requirement expresses about the status of women.

I shall argue below that the project Wasserstrom describes is in one way too wide, and in another way too narrow. According to the family of views of which

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<sup>265</sup> Hellman, *When Is Discrimination Wrong?*, 6.

<sup>266</sup> Richard Wasserstrom, "Preferential Treatment, Color-Blindness, and the Evils of Racism and Racial Discrimination," *Proceedings and Addresses of the American Philosophical Association* 61, no. 1 (1987): 35 (italics added).

his is a member, the wrong of direct discrimination lies in its inherent denial of people's equal moral status.<sup>267</sup> The wrong of a policy that directly discriminates flows from its expression of a falsehood—the falsehood that people have different inherent value—and from the fact that the expression of this falsehood demeans and denigrates. In short, a natural and powerful account of the wrongness of discrimination flows from what we may call an *expressive* theory. The distinct wrong of discriminatory acts and practices lies in what they express, namely, the natural inferiority of those discriminated against. What such acts and practices express is false: none are naturally inferior; all are equal.<sup>268</sup> A denial of basic equality seems to be a way of undermining this view, and, in turn, of justifying what we regard as discriminatory practices. And so a denial of basic equality is closely connected with a defence of discriminatory practices.

But things need not be this way. We have seen that one set of theories of the wrong of discrimination rest upon basic equality, and I suggest that the prominence of such arguments is part of the reason why a denial of basic equality is associated with discriminatory philosophies and practices.<sup>269</sup> In this section I shall lay out the way for a theory of wrongful discrimination that does

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<sup>267</sup> For another instance of this kind of view, see Ronald Dworkin, "The Forum of Principle," in *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985).

<sup>268</sup> For an extended discussion and critique of 'essentially expressive' views of ethics, see Eyal, "Distributing Respect."

<sup>269</sup> Another reason is the tendency to elide the language of equality as a way of describing our prescriptions, and equality as a way of announcing our basic philosophical commitments. See sections 2.7, 3.2.

not depend upon basic equality. The purpose of this exercise is to demonstrate further how we can construct and defend liberal egalitarian norms without appealing to a prior idea of persons' equal basic worth. There are two parts to the theory of discrimination that I shall set out. First, an interest-based account of discrimination is available. Second, the expressive account can be constructed in a way that does not depend on basic equality.

The first part of the view says that discrimination is wrong when and because it harms. In Lippert-Rasmussen's words, "An instance of discrimination is *pro tanto* bad, when it is, because it makes the discriminatees worse off."<sup>270</sup> The wrong of discrimination lies in the harm it does. We usefully refer to its wrongness (unlike the wrongness of typically benign acts that may or may not cause harm) *because* it is so typically harmful, and because the paradigms of it that we refer to in our discourse are cases that are harmful.<sup>271</sup>

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<sup>270</sup> Lippert-Rasmussen, "The Badness of Discrimination," 174.

<sup>271</sup> The view that discrimination is bad because it makes people worse off needs to be clarified by way of answering the question, 'Worse off compared to what?' It could be 'worse off compared to what would be just', or it could be 'worse off compared to what would have happened had the discriminatory act not occurred'. The former option suggests a dependence on a prior account of fairness. Perhaps the relevant standard is an equal distribution, or a prioritarian one. This suggests a way in which the view may make an implicit appeal to basic equality: it may refer to a baseline that depends upon people's basic equality. If the latter option is chosen, according to which discrimination is wrong because it makes people worse off than they were, then the immediate question is how this view offers an account of the distinct wrong of *discrimination*, as opposed to the wrong of harming people in general. The answer to this objection is that discrimination is a useful way of *naming* certain harms. It refers to a particular set of harms, and it is useful for us to retain this category. A slightly different possibility is that discrimination is (*prima facie*) wrong *because* it harms, while it is also the case that not all cases of differential treatment that harm are wrong. Analogously, see Andrew Mason on equality: inequality is bad when it makes some worse off, but it is bad

Within such an approach, there are some indirect ways in which an account of the wrong of discrimination can appeal to basic equality. Sophia Moreau provides an example, whereby discrimination is wrong in part because it harms interests: “[T]he interest that is injured by discrimination is our interest in a set of what I call deliberative freedoms: that is, freedoms to have our decisions about how to live insulated from the effects of normatively extraneous features of us, such as our skin color or gender.”<sup>272</sup> In the parlance of section 8.2, this is an interest-based account of the wrongness of discrimination, but it has a conception of interests that presupposes basic equality. Moreau’s view does stem from persons’ basic equality; it runs via interests, but it is rooted in an idea that people have an equal right that certain of their interests are respected. To be sure, Moreau is clear that the entitlement to the deliberative freedoms she describes is non-comparative: “...although it may be true that each of us is equally entitled to the same freedoms, this is not because each of us is entitled to as much as others happen to have. Rather, it is because each of us has an equal independent entitlement to these freedoms.”<sup>273</sup> This does not mean that her view avoids a commitment to basic equality. I argue in section 3.9 that assertions of non-comparative entitlements can still involve claims of basic equality. The basic idea is that our having an equal basic entitlement seems to involve some equal natural feature. It would be a coincidence if equal

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in itself. Such a conditional view seems to suppose basic equality, and so I leave it aside here. (Andrew Mason, “Egalitarianism and the Levelling Down Objection,” *Analysis* 61, no. 3 (July 1, 2001): 246–254.)

<sup>272</sup> Sophia R. Moreau, “What Is Discrimination?,” *Philosophy & Public Affairs* 38, no. 2 (2010): 147.

<sup>273</sup> *Ibid.*, 152–3.

prescriptions arose from difference: a logical possibility, but one that is ruled out by the likely best explanation.

To reiterate, I have suggested that the wrong of discrimination can be understood in terms of its offence against people's interests; it causes harm. This provides a way in which we can account for the wrong of discrimination without appealing to basic equality (so long as we do not follow Moreau, in conceiving of the interests harmed by discrimination as concepts that themselves appeal to basic equality). This harm-based account of wrongful discrimination contrasts with what I referred to as the 'expressive' account of discrimination, according to which discriminatory acts are wrong in virtue of what they express. In any case, it is unlikely that the wrong of discrimination is reducible to what I have called its expressive element. Some wrongful discrimination expresses a prejudicial preference rather than an evaluation concerning the superiority of a group. And some wrongful discrimination is subconscious or indirect and does not 'express' any further ideas.<sup>274</sup> Given that there is at least an element of harm involved in the wrong of discrimination, and given that it seems possible to describe the harms without appeal to basic equality, the connection between basic equality and non-discrimination is loosened. We can loosen it in the other direction, too. I said at the outset of this

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<sup>274</sup> It may be replied that discrimination (including non-evaluational and indirect discrimination) is wrong because it reflects or expresses incorrect moral judgments. And so it is wrong whether or not it harms anyone. However, suppose someone has false beliefs about the status of some group, but cannot be blamed for these false beliefs. Discriminatory acts based upon these beliefs are wrong, but they seem less wrong than cases in which the person lacks those beliefs; it is worse to act wrongly knowingly than unknowingly. This thought presents a serious challenge to the expressive theory of discrimination. (Lippert-Rasmussen, "The Badness of Discrimination," 183–4.)

discussion that Wasserstrom's approach is in one way too broad, and another way too narrow. I have argued that it is too broad in the sense that we can understand the wrong of discrimination in terms of its effects on individuals (although this is not here understood as its effect on equality). I shall now outline how it is too narrow. Discrimination is at least partly a wrong because of what it expresses, but, *contra* Wasserstrom and Hellman, the relevant part of what it expresses with respect to its wrongness is not something to do with persons' prior equal basic status.

This view shares with Wasserstrom and Hellman the idea that the wrongness of discrimination lies in an expression of an attitude, and that it is what the attitude expresses that is the deeper wrong. It holds that discriminatory acts reveal weaknesses in people's character, a failure fully to develop themselves. The mappings between differing capacities and the traditional cleavages of discrimination are notoriously inaccurate, if not fabricated outright; those who maintain beliefs in them do so by engaging in psychological processes that permit them to ignore plain facts.<sup>275</sup> An awareness of this tendency ought to render us suspicious of any such mapping. In short, there is in fact a set of common psychological weaknesses that lead people to discriminate wrongfully, and acts of discrimination reveal a broader character flaw, a lack of virtue.<sup>276</sup>

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<sup>275</sup> Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 2011).

<sup>276</sup> In a similar spirit, Richard Arneson writes: "Discrimination that is intrinsically morally wrong occurs when an agent treats a person identified as being of a certain type differently than she otherwise would have done because of unwarranted animus or prejudice against persons of that type...One person may fail to respond to another in the right way given the circumstances, or respond by treating the other in ways that fail to adequately respond to the reasons that dictate how the other ought to be treated, without the failure



This view differs from the expressive accounts that I have described so far in one central respect: this view holds that insofar as we look to the expressive element of discriminatory practices, we can look more broadly than their expressions on the matter of equal status. The views of Wasserstrom and Hellman depend upon basic equality: part of the claim that an act or practice of wrongful discrimination *expresses* something, and that what it expresses is false, since it is a denial of the truth of basic equality. The expressive view that I'm offering is related but different. An act or practice of wrongful discrimination is indicative of other flaws, namely, a tendency to submit to or revel in some common human errors, such as a tendency to project one's own personal struggles onto some other group, or to group people together according to simplistic or fatuous archetypes. A wrong of discrimination is a failure of personal development.

I have supplied an account of wrongful discrimination that contains two central elements: the harm it causes, and its expression of the character of the discriminator. Both elements depart from the expressive views of Wasserstrom, Hellman and Dworkin. These points present a case against what we intuitively regard as wrongful discrimination, and while they carry with them an understanding of people's psychology and what makes them flourish, they do not depend upon a prior idea of persons' basic equality. It may be objected that this view does not fully capture what is wrong with discrimination, since it

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amounting to wrongful discrimination. The extra bit that when added...constitutes wrongful discrimination is the fact that one is led to defective conduct towards the other by unjustified hostile attitudes toward people perceived to be of a certain kind or faulty beliefs about the characteristics of people of that type." Richard Arneson, "What Is Wrongful Discrimination?," *San Diego Law Review* 43 (2006): 779.

doesn't build in the wrongness of making arbitrary distinctions between persons at its base; in leaving out talk of equality it misses the real offence of discrimination. However, the argument I am presenting here does permit that we can talk of equality as a way of summarising our prescriptions. For example, we can usefully categorise a set of behaviours as falling under the wrong of failing to treat people equally, without thereby committing ourselves to the view that the *reason* such behaviours are wrong is that they fail to treat people equally. The target is basic equality as a premise of our thought, not equality as the outcome of our theories.<sup>277</sup> Furthermore, the force of talk of moral equality seems deeper when it is open to the facts of our differences, as it is on the view that I have outlined here. It is not a faith or a noble lie, but a reminder, especially, of the laziness of the thinking to which we are prone, and of the harms that our attitudes and laws can cause.

#### 8.4 Egalitarianism and interests

I now move on to a discussion of a second sort of prescription that is often associated with basic equality. The argument here mirrors the argument of the previous section: I show how we can yield the prescription without a dependence on a premise of basic equality. The kind of prescription I am concerned with is an egalitarian distribution of goods. The apparent connection between this prescription and basic equality is strengthened by the fact that a denial of basic equality also often provides a central argument against

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<sup>277</sup> See section 2.7 for further discussion of this point.

egalitarian distributions. Thomas Christiano asserts that the imperative of equal distributions flows from our equal natural circumstances; Ronald Dworkin and Will Kymlicka argue that egalitarianism is the best interpretation of the premise of our basic equality; Bernard Williams defends a version of egalitarianism with the idea that each of us has a separate, inward-looking, internal aspect.<sup>278</sup> On the other hand, J.R. Lucas, John Kekes, and Matt Cavanagh, all argue against egalitarian distributions by emphasising our natural differences.<sup>279</sup>

However, there are arguments for egalitarian distributions that do not involve an appeal to basic equality. One cluster of this kind of argument is instrumental. There are several possible such grounds. We may have an interest in distributive equality because it prevents poverty, or it protects our interest in recognition, in not being subservient, in not being forced to sell ourselves to others, or in being part of a cooperative enterprise.<sup>280</sup> Furthermore, more equal distributions of resources may tend to be socially optimal, because one gains less from an additional resource the more one already has.<sup>281</sup> Do these

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<sup>278</sup> Christiano, *The Constitution of Equality*; Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*; Kymlicka, *Contemporary Political Philosophy*; Williams, "The Idea of Equality."

<sup>279</sup> Lucas, "Against Equality"; Kekes, *The Illusions of Egalitarianism*; Cavanagh, *Against Equality of Opportunity*.

<sup>280</sup> See Thomas Scanlon, "When Does Equality Matter?" (unpublished manuscript).

<sup>281</sup> There are also interest-based arguments *against* egalitarianism. For example, Lucas argues that social equality undermines our sense of self-respect, and that social inequality suits us better since each of us would have a clear place, and thereby each of us would feel irreplaceable. J. R. Lucas, "Against Equality Again," *Philosophy* 52, no. 201 (July 1, 1977): 255–280. More directly, it is often argued that equality is not

instrumental arguments for distributive egalitarianism count as genuinely *egalitarian* arguments? It is commonplace to define them as not properly egalitarian, since egalitarian arguments must be concerned fundamentally with equality.<sup>282</sup> This is a very strict definition of ‘egalitarian’; it is stricter than our general usage. The argument that we should redistribute and aim for greater equality on the grounds that greater equality will lead to more happiness will, in the political context, be called an egalitarian argument.<sup>283</sup> This definition of ‘egalitarian’ is also in one way *wider* than our general usage. Take somebody who believes that equal distributions are intrinsically more desirable, but who also believes that both government intervention and personal action in favour of equality is in most circumstances self-defeating. It is possible to value equality while, for instrumental reasons, disvaluing political action in its favour. The general user of the term ‘egalitarian’ would hesitate to apply it to this person.

Furthermore, this philosophical definition of ‘egalitarian’ engages in a stricter practice of definition than is typical in other philosophical debates. For example, we do in fact tend to call ‘impartial observer utilitarianism’ a utilitarian view. The same goes for ‘hypothetical-contractual utilitarianism’.<sup>284</sup> Such views value

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valuable because it may warrant making everyone worse off, and nothing that is good would ever warrant that, since anything good must be in at least one person’s interest. Parfit, “Equality and Priority.”

<sup>282</sup> For example, see Raz, *The Morality of Freedom*; Parfit, “Equality and Priority”; Knight, “Describing Equality.” C.f. Martin O’Neill, “What Should Egalitarians Believe?,” *Philosophy & Public Affairs* 36, no. 2 (2008): 119–156.

<sup>283</sup> Wilkinson and Pickett, thus, provide an egalitarian argument, in the usual sense of the word. Richard Wilkinson and Kate Pickett, *The Spirit Level: Why Equality Is Better for Everyone* (Penguin, 2010).

<sup>284</sup> Hare, *Moral Thinking*; Harsanyi, *Essays on Ethics, Social Behavior, and Scientific Explanation*.

utility, but they value it because it is what would be selected by an idealised process. The process, at base, is what matters; the value of utility (and its maximisation) follows from this – but ‘utilitarian’ remains an appropriate label. Analogously, I suggest that we should not shy away from describing as ‘egalitarian’ views that observe broad, systematic ways in which more equal distributions are beneficial, just on the grounds that they offer further reasons for the value of equality.<sup>285</sup> This terminological point matters, since a misconstrual of it can lead us into an exaggerated sense of a need to talk of basic equality.

I have said that we can call ‘egalitarian’ some views that value equality instrumentally. We can go further. For the remainder of this chapter I will put under scrutiny the view that equality is non-instrumentally valuable. I will argue that the cases that suggest that it is non-instrumentally valuable are not all they seem. And once we see this, it becomes possible to account for the philosophical value of egalitarianism without basic equality. The key claim I shall argue for is that examples that motivate our intuitions about the fairness of equal distributions function by appealing to our commitment to the separateness of persons, and that latter idea can be accounted for with a more sophisticated understanding of our interests. The idea of the separateness of persons suggests that we should, other things being equal, favour an intra-personal

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<sup>285</sup> I am only claiming a rough equality of interests. How can we value egalitarianism with only an approximate factual basis? Shouldn't this imply an approximate egalitarianism? However, to say that people generally benefit under a system that ensures there are no major discrepancies in power, or no cultures of overall subservience, does not commit one to any claim about the precisely identical nature of people's interests.

trade-off over an inter-personal trade-off. Utilitarianism does not do so: it demands more of whatever is good, whichever person happens to experience it. Its failure to respect the separateness of persons is commonly taken to be a forceful objection to utilitarianism. In a recent article, Voorhoeve and Fleurbaey argue that egalitarianism falls to the same objection.<sup>286</sup> It too does not respect our intuitions about the extra resistance we have to the idea of interpersonal redistributions, as compared with an equivalent intrapersonal redistribution. This is a surprising result, since egalitarianism is often framed as a tonic to this problem, and the problem is framed as one that is faced most characteristically by utilitarianism.<sup>287</sup>

How do egalitarian views face this problem too? Consider the following case.<sup>288</sup> You can allow something to be added to the water supply, or you can prevent it from being added. If you allow it to be added, then each member of half of some population will *either* suffer a small loss in their wellbeing, *or* will benefit very significantly. (This half of the population has a certain genetic condition, and we are unsure about the effect the water treatment will have upon it). It seems that you may allow the water to be treated. For individuals, we justifiably take these small risks in exchange for the possibility of significant benefits; indeed, for

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<sup>286</sup> Alex Voorhoeve and Marc Fleurbaey, "Egalitarianism and the Separateness of Persons," *Utilitas* 24, no. Special Issue 03 (2012): 381–398. See also Michael Otsuka and Alex Voorhoeve, "Why It Matters That Some Are Worse Off Than Others: An Argument Against the Priority View," *Philosophy & Public Affairs* 37, no. 2 (March 1, 2009): 171–199.

<sup>287</sup> E.g., Rawls, *A Theory of Justice*.

<sup>288</sup> Here I set out the position put forward in Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons."

individuals, in many cases,<sup>289</sup> we are utility-maximisers. Now suppose that the circumstances are altered a little: the potential benefit is lower. Imagine that you still consider that it is better to permit the water to be treated, but only just. Suppose the expected benefit is as low as it could be, consistently with your believing that the water should still be treated. The benefit outweighs the burden, marginally sufficiently to justify the risk. This is a limit case, and it is the case that is worth comparing to a second case that is structurally different. In this second case, if you allow the substance to be added to the water, then (given an uncertainty about its nature and about the genes of the population) either half the population will suffer a small loss in their wellbeing, or, the *other* half of the population will enjoy a benefit. Now suppose that the potential benefits and burdens are exactly the same as they were at the end of the previous case: it is worthwhile, only just worthwhile, to permit the treatment of the water for the sake of any single individual. In this new case, even though the benefits and burdens are the same, isn't there a new consideration? Instead of leading some into a risk that is rational for them – a risk that they ought to select – we are risking some for the sake of benefitting others. Depending upon the size of the probabilities and the size of the potential benefits and burdens, it may be worth taking the risk. Still, it remains the case that there is an extra consideration against the risk (namely, that some are being put at risk in order to attain the potential to benefit others). And at the limit, we would expect cases in which this extra consideration is enough to tip the balance of the scales. It may be permissible to risk some for the sake of themselves, but this should not

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<sup>289</sup> Or, by definition – depending on your definition of 'utility'. For discussion of this point, see John Broome, "Utility," *Economics and Philosophy* 7, no. 01 (2008): 1–12.

commit us to holding that it is permissible to impose the same risk on some for the sake of others.

Utilitarianism does not allow for this extra reason. Keeping constant probabilities and utilities, it is indifferent between a risk that might benefit one person, and a risk that might benefit another. More strikingly, prioritarianism also does not respect the extra consideration. (Recall, prioritarianism holds that the worse off somebody is, the better it is that that person receives a given increase in welfare. See section 2.6 for further discussion.) The prioritarian seems committed to warranting the same action in both cases, if the levels of benefit and burden are the same.<sup>290</sup> Yet more strikingly, egalitarianism seems not to respect the extra consideration. Whatever the outcome, the level of inequality is exactly the same.

The point can be put in the following way. In Case I, you can either prevent the risk, in which case all remain as they are, or you can permit the risk, in which case half face either the small burden or the large benefit. In Case II, the situation is the same, except that if you permit the risk, half face the chance of the small burden, while the other half face the chance of a large benefit.

**Case I risk**

	<b>Bad outcome (.5)</b>	<b>Good outcome (.5)</b>
A	Small burden	Large benefit
B	-----	-----

**Case II risk**

	<b>Bad outcome (.5)</b>	<b>Good outcome (.5)</b>

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<sup>290</sup> Whichever of the two cases is at stake, the following two facts are true: (i) if the risk does not pay off, then one group will be slightly worse off than the other; (ii) if the risk does pay off, then one group will be better off than the other.



A	Small burden	-----
B	-----	Large benefit

In each case one can either leave all as they are, or permit the risk. Both Good outcome and Bad outcome are the same in respect of utility, priority, and equality, in Cases I and II. So if there is an extra reason against permitting the risk in Case II, something other than utility, priority or equality must explain it. What kind of view can accommodate this idea? One view that can accommodate it holds that one thing that matters is differences in people's *expected* outcomes. It is better if people's expectations are more equal. The expected equality view will favour distributing a possible burden and a possible benefit to the same person, over distributing a possible burden to one person and a possible benefit to another. Another view that can accommodate the extra reason against making interpersonal sacrifice is a 'competing claims' view.<sup>291</sup> This asks what claim each affected individual has on the choice, where people have stronger claims if they are made worse off than the others affected by the outcome. Those who would be risked for the sake of others have a claim against the taking of the risk that has no equivalent in the case where some are risked only for the sake of themselves.

How could we motivate either the expected outcomes view, or the competing claims view? They seem naturally to involve appeals to a kind of basic equality:

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<sup>291</sup> Voorhoeve and Fleurbaey state it in these terms: "...we decide between alternatives by considering the comparative strength of the claims of different individuals, where (i) a claim can be made on an individual's behalf if and only if his interests are at stake; and (ii) his claim to have a given alternative chosen is stronger: (iia) the more his interests are promoted by that alternative; and (iib) the worse off he is relative to others with whom his interests conflict." Voorhoeve and Fleurbaey, "Egalitarianism and the Separateness of Persons," 397.

each can be justified by an appeal to an idea of fairness between individuals. I am going to suggest that we might instead motivate them with an appeal to certain of our interests. These two views (expected outcomes, and competing claims) have something in common: they depend upon the path travelled, unlike the outcome equality view, and utilitarianism, and prioritarianism. That is to say, they depend upon the process by which the distribution has been reached, rather than only the distribution itself. This would suggest that one of the lessons we ought to draw from the cases I am discussing here is that we ought to consider the process and not just the outcome. I will argue that an interest-based model can *also* account for process. It can do so if we have interests in processes, and not just interests in outcomes. Thus, it may be in our interests, *ex ante*, that we face some sorts of prospects and not others. Alternatively, we may have interests in existing within a system that responds to a complaint we might reasonably make against a proposed change.

For the remainder of this section I will sketch a way in which the non-instrumental value of distributive egalitarianism can be grounded in our interests. Suppose you have an interest in living under decisions or policies that recognise your own unity (insofar as you must live under any decisions at all). We might say that it disrespects you, or fails properly to recognise you, if an authority takes a decision which treats you as though the distinction between you and your future self is just like the difference between you and another person; it disrespects you to treat you as though you are not a separate

person.<sup>292</sup> Suppose that the risk is chosen in Case II, and the Good outcome occurs: even in this case, you are in one respect harmed. Why? The fragility of your position has been known, underlined, and exploited by another. This usurps your interest in guiding your own life. That is, you have an interest in your life running in approximately the sort of way in which you conceive of it, and a pertinent instance of this interest, here, is your interest in your life being something that you guide. You could not conceive of it otherwise. Decisions that risk you for the sake of another make your life go worse, they harm you, *even if* you never know what the decision was, or that there was a decision. Other of our interests are such that we need not be conscious that they are satisfied, whether preference, achievement, or life narrative.<sup>293</sup> Here, I suggest, is one more such interest. We each have an interest in having our lives treated in the sort of way that we conceive of them. Indeed, one's interest in having one's life treated in accordance with the way one conceives of it can be construed as an instance of some other interests. For example, one might argue that each of us *prefers* that our life be treated in the way that we conceive of it. Whatever its provenance, the claim for which I am arguing is that this interest establishes a reason for equal distributions.

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<sup>292</sup> C.f. Nir Eyal, who argues that disrespect is wrong when and because it harms; my suggestion is that certain kinds of decision can usefully be described as disrespectful, and that such decisions constitute one kind of harm. Eyal, "Distributing Respect."

<sup>293</sup> David DeGrazia, *Human Identity and Bioethics* (Cambridge University Press, 2005); C. Taylor, *Sources of the Self: The Making of the Modern Identity* (Harvard University Press, 1989); Alasdair MacIntyre, "The Virtues, the Unity of a Human Life, and the Concept of a Tradition," in *Liberalism and Its Critics*, ed. Michael Sandel (New York: New York University Press, 1992).

The argument is this:

1. The idea of the separateness of persons underlies the motivation of egalitarian positions
2. Simple egalitarianism also fails to respect the separateness of persons (though this is only clear when we consider risky prospects)
3. More complex egalitarian positions (such as the complaints view and the expected equality view) can be grounded in an interest in being treated in accordance with one's self-conception (while simple egalitarianism cannot)
4. One's interest in being treated in accordance with one's self-conception does not suppose basic equality, and thus, given the above claims, an egalitarian position can be justified without an appeal to basic equality.

I have defended claims (1) and (2), and I have sketched the interest referred to in (3). The argument holds that a certain interest can ground egalitarian ideas. In particular, this is people's interest in being treated in accordance with the way that they conceive of themselves. We could construe this as a separate interest that people have, or as an instance of a more general interest, such as people's interest in having their preferences satisfied; it does not matter which, for the purposes of this argument. I now go on to defend (3) and (4).

How could this interest be egalitarian? One way in which we do in fact conceive of ourselves is as continuing persons, who can choose and be responsible and

who live whole lives; regardless of any sceptical arguments, we find it impossible to think of ourselves in any other way.<sup>294</sup>

Treatment that sacrifices what one has for the sake of another, or that risks what one has for the possible benefit of another, fails to treat individuals as having whole lives. Thus, it makes people's lives go worse, in one way, to treat them in ways that might use them for the sake of others. This is a harm that exists over and above the outcomes of any risks. How can we cash out people's interest in being treated in accordance with the fact that they conceive of themselves as continuing persons? Both the 'expected equality' and the 'complaints' view provide interpretations of the implications of this idea. The former provides a prima facie reason in favour of equality; the second requires good justification be given to those whose interests are at stake. Thus, the very thought that motivates the egalitarian (people's interests can't be sacrificed for the sake of others') *also* motivates the idea about process (people can't be *risks* for the sake of others), and, it can be understood as a claim that flows from people's interests. What appeared to be a consideration in favour of distributions (that maximising utility is inadequate) is actually a consideration against using some for the sake of others. Once we see this, the way is open to account for some of our ideas about distributions by looking instead to our interests, because we have an extra interest against being used for the sake of others.

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<sup>294</sup> Related ideas have been deployed for a number of argumentative purposes. See, for example, P. F. Strawson, *Freedom and Resentment and Other Essays* (Routledge, 1974); Stephen Darwall, *The Second-person Standpoint: Morality, Respect and Accountability* (Cambridge, Mass.: Harvard University Press, 2006); Gewirth, "The Justification of Egalitarian Justice."

I will consider three objections to the argument I have made. First, it might be argued that we lack the interest that I have described. Second, the practical implications of the interest may be indeterminate. Finally, it may be argued that we possess the interest in different ways or to different degrees.

The first objection doubts whether we have an interest in our lives going in accordance with our own self-conceptions. It may be argued that, under the risk in Case II, those in Group A would (rightly) *feel* that they had not been given due recognition or respect, and that this feeling amounts to a harm that should be added to the thought experiment. Thus there would be an extra reason not to permit the risk in Case II. Our attribution of this feeling explains the response that we have toward the case.

However, we can adjust the case so that those in each group do not know that there is a decision being taken, or that there is ever a gamble, if the gamble is selected. Even with this adjustment, we still tend to think that there is an extra reason against the risk in Case II that is not present in Case I: regardless of the experiences of those at stake, it seems worse to risk some for the sake of others, than it is to risk some for the sake of themselves (strictly: there is an extra reason not to risk some for the sake of others). The difference cannot be fully accounted for with an appeal to the psychological states of those affected by the decision, since we can hold constant the psychological states and a difference remains. Some accounts of what matters for a person overtly hold that a person's life narrative is a necessary part of what matters in survival, so that a psychological change that does not carry with it a continuation of a

person's life narrative does not continue what matters in survival.<sup>295</sup> Some hold that what matters in survival can be present, even while personal identity does not persist.<sup>296</sup> Given these disconnects, we should not be surprised that one thing that matters is something of which one need not be conscious. There may be other reasons to doubt that we have this interest. I suggest for the moment that, if it has the implications I show for it here, we have more reason to understand whether or how we do possess it. We might proceed by connecting further our ideas to the work of those who have argued along analogous lines.<sup>297</sup>

A second objection argues that the implications of the interest are indeterminate. What is the connection between how someone is treated, and what this 'expresses'? Can't it be entirely abstract or open to interpretation? My argument depends upon a claim about how we treat people 'as if' they are people – whence the content of this? Indeed, the interest that I have identified might even be given a libertarian spin. One could argue that the interest that

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<sup>295</sup> See note 293 above.

<sup>296</sup> Derek Parfit, "The Unimportance of Identity," in *Identity*, ed. H. Harris (Oxford: Oxford University Press, 1995), 13–45.

<sup>297</sup> In offering the foundations for his own view, Ronald Dworkin endorses the view that our interests have this kind of structure. His position, the 'challenge model', "...rejects the root assumption of critical paternalism: that a person's life can be improved by forcing him into some act or abstinence he thinks valueless. Someone who accepts the challenge model...may think that an active homosexual blights his life by a failure to understand the point of sexual love. But he cannot think that a homosexual who abstains, against his own convictions and only out of fear, has therefore overcome that defect in his life." Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, 269. See also Raz, *The Morality of Freedom*.

each of us has in being treated in accordance with our conception as a unified individual has the implication that there is a prima facie reason against any redistribution. To take resources from some and to give it to others is to use some for the purposes of others; it is to fail to respect the fact that each lives a separate life. The fact that there are such diverse possibilities might lead one to suspect that the interest itself tells us relatively little. However, I suggest we should draw the opposite conclusion: the fact that we can give this interest such different spins, in accordance with our own political debates, counts in its favour as a determinant of our status. The expectation that we can derive our prescriptions from this interest without argument rests on an overambitious view of how political theory functions; that we are left to interpret the norm is a signal that we are on the right track.

A third and final challenge to the argument that I have made arises particularly forcefully within the paradigm I have been drawing out in this thesis, according to which we should take seriously the empirical differences between persons. The challenge says: 'If we vary on any significant scale, aren't we variable in the interest that makes it the case that there is an extra moral reason against interpersonal sacrifice, over intrapersonal sacrifice?' If some have a less forceful complaint than others, then we appear to be back where we started: with a counterintuitive basic inequality between persons. The objection says that the proper conclusion of the position I have presented is not that there is a reason for equality; it is that there is a greater reason to respect the integrity of the unity of some lives than that of others. Furthermore, continues this objection, our self-conceptions vary qualitatively, and it seems inegalitarian to respond to some of these variations. For example, take someone who



conceives of himself as naturally superior to others. Must we honour, to any degree, this aspect of his interest in being treated in accordance with his self-conception (perhaps by supplying him with some of the trimmings of traditional aristocracy)?<sup>298</sup>

One kind of reply to this challenge emphasises out how difficult it would be to institute practices that are sensitive to these factors. It is extremely hard to know how strong persons' interests in certain matters are, or how they conceive of themselves. This response may assuage the concern, but it is unlikely to make it vanish. If there were clear cut cases of people who conceive of themselves from moment to moment, instead of as possessing whole unified lives, then there would be less reason to assign them equal shares of goods. (Should there be an extra tax on psychological reductionists?) This reply may leave it incumbent upon the state to find new ways in which to respond to people's self-conceptions, whether by researching ways to find out about them directly, or through implementing new institutional designs that lead to results that reflect them without direct investigations; this is the kind of odd implication that should lead us to go back and check our reasoning.<sup>299</sup>

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<sup>298</sup> There are really two possible, related versions of this challenge, and both might be put forward at the same time. First, it might be argued that we vary in the strength of our interest (or in the value of its satisfaction) in our lives going roughly as we conceive of them. Second, it may be claimed that we in fact conceive of our lives as unified to different degrees.

<sup>299</sup> A note on what might make it the case that we should check our reasoning: some, such as Derek Parfit, give the question of personal identity a certain priority (see Parfit, *Reasons and Persons*.) Once we have understood what 'persons' are, we can go ahead and work out how we ought to behave towards them. This view faces the challenge of reconciling its metaphysics with our ethics more forcefully than a more conservative writer like Hume does, since Hume retains a social ascriptivist view of desert. Parfit, on the

We can go further in response to this challenge. One's sense of superiority is not a core part of one's self-conception, in the way that one's perception of oneself as a continuing consciousness is. The self-fashioned aristocrat does have an interest in being treated as superior, but there will be reasons not to pay much due to this interest. At the margins, with nothing else in play, perhaps this would be enough to alter how we ought to treat him (though it is difficult to imagine a case where nothing else is in play, since much else is more significant). This interest is peripheral because it is changeable.<sup>300</sup> This raises the question, 'what self-conception is it in my interests to possess?' Independently of its other consequences, I can ask whether it is in my interests to have a self-conception as falsely inferior, or falsely superior, but it seems doubtful that I can ask whether it is in my interests to have a self-conception as *a self*.

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other hand, as a liberal egalitarian, cannot be satisfied with the idea that our everyday practices are philosophically incorrect. For the reductionist, it seems that punishing the later self for the crimes of the earlier self seems like punishing the son for the crimes of the father. (We identify strongly with our earlier selves, but we also identify strongly with our families.) The alternative to both approaches is to abandon the priority of metaphysics. Thus, Mark Johnston argues that the reverse priority holds: in order to understand properly how we ought to conceive of a person and of personal identity, we must look to our values (see Mark Johnston, *Surviving Death* (Princeton University Press, 2011)). This latter kind of view provides more support to the argument I am making here.

<sup>300</sup> It might be responded that stability and centrality do not run together. For example, somebody might have a deeply baked-in false conception of themselves as destined to serve others, but this does not mean that it is in their interests to serve others. However, my claim is not that insofar as a self-conception is more changeable, it is more peripheral. Rather, I claim that if a self-conception is entirely unchangeable, it is central. (And, I add, our conceptions of ourselves as continuing persons *is* unchangeable, against the parameter that we remain the same person.)

There is one other kind of reply that limits the force of these cases. One has interests in being treated in accordance with one's self-conception, and there is no reason to think that this interest ceases when one ceases to be fully aware of oneself. Thus, it might be asked whether the view I have described here commits us to holding that those with degenerative cognitive diseases, such as Alzheimers, should receive less, on the grounds that such people lack the kind of self-conception upon which the interest-based view of equality depends. Such people are rendered in a state in which they conceive of their lives as less of a unified whole. We may now respond that it is better for those suffering from this condition to receive an equal share, because it is in the interests of their earlier selves, and even if the former self is no longer present, there are still interests of the former self that we ought to honour.

The argument I have made here holds that it makes a difference how we conceive of ourselves; we have an interest in the state of the world responding to this. There are different ways of understanding what is referred to by 'how we conceive of ourselves': it may be understood cognitively, or it may be understood as revealed by our practices. That is, it may be that we are concerned with people's explicit beliefs about the nature of their identity, or with the way that they reveal that they think of themselves through their behaviour. The way in which we ought to understand this depends upon why it would matter that we are treated in accordance with the way that we conceive of ourselves. Which matter: the ideas or the practices? If it is the latter, then the interests-based defence of egalitarianism that I am describing here gains more ground. This is because it seems plausible that we do in fact behave in very

similar ways, with regard to an expression of our overall idea that we are complete persons to be respected.

One of the virtues of the approach is that it does not depend upon a perfectly shared interest, and the flex at the edges can count in its favour rather than against it. The goal is to establish only a defeasible interest among a constellation of other interests; it is not necessary that this one would systematically crowd out the others. This approach also does not depend on the claim that we *are* whole persons of any particular version, only, that we see ourselves as such in our day to day lives.<sup>301</sup>

The problem I have been discussing is this. We distinguish between the separateness of persons and the unity of individuals; we judge cases differently where one sacrifices for another, instead of one sacrificing for herself. The point of the separateness of persons is that certain patterns in our prescriptions are manifestly unacceptable. In particular, it is unacceptable to give the same weight to a case in which one person must bear a cost for another's gain, and a case where one person must bear a cost for his or her own gain. This is an idea about *outcomes*. One can discover whether a view respects the separateness of persons by examining what prescriptions it makes. On the other hand, basic equality is a claim that I am demarcating as a matter of the *justification* of a

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<sup>301</sup> C.f. the Rawlsian position. The Rawls of *A Theory of Justice* expressly construes people so that they have a 'higher order' interest in complying with the right. (Rawls, *A Theory of Justice*, 508.) A challenge for Rawls' approach is to explain why this interest is identical across individuals; on the approach I am describing here, we need not do so.

theory.<sup>302</sup> It involves the theory appealing to a normatively significant descriptive equality of persons. By implication, the theory must contain an irreducible reference to individuals at its base. However, I have suggested that the prescriptions that are commonly and easily associated with the value of an equal distribution can instead be associated with the value of the unity of the individual. This allows us to ground those prescriptions without appealing to a prior basic equal value between persons. Rather, we aim to give an account of the value of the unity of the individual in terms of the interests that are typically manifested in persons. People have interests not only in outcomes; they also have interests in the paths by which the outcomes are reached, and the decisions that others make that form those paths. The value of distributive egalitarianism can be accounted for in these terms.

Furthermore, the view can supply a *plausible* egalitarianism. The claim is not that it is always wrong to risk some for the sake of others. The point is that the interest I have described accounts for the extra reason that we have against permitting the risk of some for the sake of others, compared to the reasons we have for permitting the same risk of some for the sake of themselves. Insofar as some interests can trump others, it is possible for others' interests to outweigh one's interest in having one's life treated in the sort of way one conceives of it (insofar as it is 'treated' by anybody). It is also possible for one's *own* other interests to outweigh this interest. Finally, it is not always the case that equality is better: if it makes all worse off, then this view does not demand equality. It demands attention to another dimension on which to measure when someone is

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<sup>302</sup> See section 2.6 above.

worse off. These points leave in place the central idea that there is an interest that each of us plausibly has, that would ground egalitarian ideas.

## 8.5 Conclusion

I will conclude by reiterating and extending my application of the distinction between basic equality as a premise of our social or political thought, and equality as a way of referring to or describing certain sorts of prescription; that is, between ‘equality as a premise’ and ‘equality as an outcome’.<sup>303</sup> I suggested in chapter 2 that the ‘egalitarian plateau’ asserted by liberal egalitarians such as Ronald Dworkin and Will Kymlicka is a way of referring to ‘outcome equality’, and is not the same as asserting in a meaningful way ‘equality as a premise’.

Let me illustrate further. Thomas Scanlon writes:

There is one important idea of equality that I will presuppose but not argue for. This is what might be called basic moral equality—the idea that everyone counts morally, regardless of differences such as their race, their gender, and where they live. This idea is extremely important, and has not always been accepted. Perhaps the most significant form of moral progress over the centuries has been the increased acceptance of the idea of basic moral equality and the expansion of the range of people it is acknowledged to cover.

Basic moral equality is now widely accepted, even among people who disagree about more substantive egalitarian claims. When Nozick, for example, writes that “Individuals have rights,” he means *all* individuals.<sup>304</sup>

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<sup>303</sup> See section 2.7 for the earlier statement of this distinction; see section 3.2 for further discussion.

<sup>304</sup> Scanlon, “When Does Equality Matter?,” 2.

In this passage, Scanlon hints (by 'presupposing' it) that he is referring to basic equality as a premise of his argument. It is consistent with this that Nozick is included among those who affirm basic equality: he too explicitly acknowledges a need to identify a basic shared feature that grounds our (libertarian) rights.<sup>305</sup> However, it is more doubtful that we usefully label the idea that everyone matters regardless of difference as 'basic moral equality'. This is because, as I have argued in this chapter, an interests-based view can account for our ideas about equality as an outcome, without appeal to equality as a premise. I have offered two cases where there are strong prospects for a view that is consistent with outcome-equality, but does not require premise-equality, and thereby steers around the problems that go with premise-equality. Those cases are the wrong of discrimination, and the value of distributive egalitarianism. If there are hopes for *even those* cases without appeal to basic equality, being two of the kinds of prescription that are most strongly associated with it, then there is hope for understanding other norms without basic equality.

That is to say, my strategy in this concluding chapter has been to offer defences of values that fall into the category 'outcome equality', without making appeal to basic equality. One of the central motivations for this strategy is the conclusion of the preceding chapters: basic equality is difficult to justify. I have argued that 'basic equality' requires a justification; we cannot simply assert it. I have suggested that while it may, historically, be connected with religious or theological ideas, such ideas do not offer the philosophical grounding for basic equality that some would hope. Two secular positions, the special status of

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<sup>305</sup> See sections 3.9 and 4.2.

humanity, and the value of respect, also leave in place a problem for justifying basic equality. Given these problems, if we can understand and justify our egalitarian norms *without* basic equality, then we are left in a stronger position. Thus, in this final chapter, I have defended non-discrimination on the grounds that wrongful discrimination is harmful, and that discriminatory acts express flaws in character. I have defended the view that instrumental defences of egalitarian conclusions deserve the name 'egalitarian'. Finally, I have argued that non-instrumental distributive egalitarianism can be grounded in people's interest in being treated in accordance with the way that they conceive of themselves, and in particular, in accordance with the fact that they conceive of themselves as continuing persons. What these arguments have in common is that they find ways in which our interests are similar, and demand closer examination of them. We have seen that some writers have assumed that abandonments of 'basic equality' must lead to inegalitarian positions. The weight of argument in this chapter shows that that assumption is not correct. We can instead draw away from the political strand of liberalism that has become powerful, if not dominant, in recent decades, and pay closer attention to and respond to our conceptions of what makes people's lives go well.



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