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Moral Equality: Article of Faith

A thesis submitted by

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to

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Abstract

In the first part of this thesis I demonstrate that the best arguments we have for the equal moral worth of all human beings are incorrigibly defective. This is a problem because many people hold that equality between persons in the political, legal and social realms depends on and is justified by their equal value in the moral realm. I solve the problem in the second part of my thesis by developing an account of human worth which cuts the chain of dependency so that political, legal and social equality needn't hang on moral equality. The result is an account of human value as neither equal nor unequal and which preserves and satisfies the spirit of moral and political egalitarianism. What is that spirit? That everyone matters and no-one more than any other.

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I would like to blame others for the many defects of this thesis. Regrettably their fingerprints will be found on only its merits and to all of those who have contributed I owe not blame but gratitude.

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Jon was condemned to stick with me from the outset. In consequence he has had to read and comment upon everything I have written including the many thousands of words not in these pages. Jon and Derek's often extensive written comments were brilliant and slightly depressing at the same time. Brilliant because they would open new avenues of argument and express ideas with crisp lucidity in ten words which I fumbled to express foggily in thirty. It can be depressing to find in others a brilliant clarity of thought and expression I will always struggle to match. More prosaically I should recognise Jon and Derek's delicate attention to the smallest typographical details which shamed my clumsy inattention. I am grateful too for their kindness, patience and judicious guidance through the several difficulties I may have only imagined myself to be facing in my final year.

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Finally I owe more than I can express to my daughter Alva Jean and my partner Helena Boman. Alva for making me want to be better and for inquiring each day, “have you done good work today Daddy?” and being never deterred by my shamefully self-absorbed all too regular reply that I had not done good enough work that day. And to my partner Helena I’m grateful for not abandoning me as I must often have seemed to have abandoned my family for the solitude of my office and the click of a computer keyboard. This thesis is dedicated to Alva and Helena.

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For every atom belonging to me as good belongs to you

(Whitman)¹

Egalitarians base claims to social and political equality on the fact of universal moral equality.

(Anderson)²

Preface

We are among the entities for whom it matters what happens to us. To be such an entity is to have moral value or worth. My “for whom” is important: it is intended to signify that it matters *to us* what happens to us. This means that we have intrinsic value, value independent of anything else in this world, value even if there were nothing else in the world. We could have more or less of this kind of moral value. Plausibly the lives of other animals matter too in this way – it matters to your dog to eat and drink and to avoid pain. If any other animal’s life matters somewhat but matters less than ours, then there are degrees of moral value, degrees of mattering. That being so, if human moral value rests on us having certain natural capacities and we are not all equally endowed with these capacities then it is hard to see how the case can be made that our moral value is, and can be, equal. Recent debate has locked on this difficulty and struggles to move forward. In this thesis I move the debate forward.

In a seminal article from the early 1960’s Bernard Williams³ pointed to a defect in Kant’s account of equal human value. Kant thought that the value of each human being, a value his translators called *dignity*, is grounded in our capacity for morality.⁴ Williams observed that people have “different degrees of responsibility and different degrees of rational control over action”⁵ from which it follows that our capacity for morality cannot, without some

¹ Whitman, *Song of Myself*, line 3.

² Anderson, 1999, p.313.

³ Williams, 1962.

⁴ Kant, 1993, pp.434-436. All page references to Kant use the standard Prussian Academy edition pagination.

⁵ Williams, 1962, p.116.

further but so far absent argument, serve as the ground of a conception of human moral worth as *equal* worth. Williams's objection is now the stock challenge to Kantian moral egalitarianism; I shall call it *the unequal properties objection* (or *UPO*).

In the early nineteen-seventies John Rawls formulated a response to Williams's UPO.

Rawls argued that human moral equality can indeed rest on a morally significant property which most humans possess; Rawls labelled this kind of property a range property (RP).⁶ Rawls's work was the immediate and unceasing subject of voluminous critique but it took two decades for critics to notice the defects in Rawls's range property argument (RPA) in virtue of which they reject it.⁷ I shall argue that these critics misinterpret RPA and consequently reject it too summarily. Only two recent writers, Jeremy Waldron and Ian Carter, appear to interpret RPA as Rawls appears to have intended. Both are wholly persuaded by RPA and install the concept of a range property as the central pillar of their own theories of moral equality. The first part of my thesis gives several new analyses of RPA. I show that the structure which to his considerable credit Rawls made fully explicit, is implicit in all Kantian egalitarian arguments from Kant up to and after Rawls.⁸ I show that RPA entails absurdities.

Thesis map

My thesis divides into two parts. Part 1, from chapter one to chapter eight inclusive, contains my negative thesis. My positive thesis is in Part 2 from chapter nine to the end.

Chapter one is primarily background with little original argument. I introduce some of the conceptual territory and give a probably too brief and too tendentious story of the genetic roots of equality as a moral and political idea. I notice that the central tool of the Kantian

⁶ Rawls, 1999b, pp.443-444.

⁷ Pojman (1992), Singer, (1993), Arneson (1999), Cupit (2000), Knapp (2007) and McMahan (2008).

⁸ I show how the argument is implicit in Gewirth, 1978 and 1982, Donagan, 1977 and 1982, Regan, 1983. It is explicit in Carter, 2011, and in Waldron, 2015.

arguments, the valorising of the human capacity for morality, has survived unchanged since Hesiod in archaic Greece almost three millennia ago. I trace the idea forward via Thales in Asia Minor and consider the proposition that the real roots are found in the Pentateuch in the Levant or more recently in the early European enlightenment.

In chapter two I describe a family of positions which I characterise collectively as soft scepticism about egalitarianism. One such position, I call it *the equivalence thesis*, maintains that universally quantified principles do the same normative work as egalitarian principles, which are therefore redundant. A second soft sceptical position, traceable to Isaiah Berlin (Berlin, 1955), I call it *defaultism*, holds that egalitarianism is the presumptive default position and justification is necessary only for departures from egalitarianism. I show that defaultism is untenable. There is some original argument in this chapter. Of particular interest (to me at least) is my demonstration in the formal language of first-order predicate logic (or quantificational logic, 'QL') that the equivalence thesis is false: universally quantified principles do not mimic egalitarian principles. I show also that when we cast in QL the stock Kantian argument for equal worth we confirm Stanley Benn's (Benn, 1967) and J.R. Lucas' (Lucas, 1965) observations that mere membership of a class does not fix position on an ordering of that class; ergo, it's not the case that 'all X are Y' entails that 'all X are equal Y.' This has ramifications for the extensive argumentation in chapters five and six.

In chapter three, moving from background to foreground, I begin my substantive critique of Kantian arguments for moral equality. I describe and reject the view of the origin and nature of human value shared by most Kantian egalitarians and which Christine Korsgaard called *the valuable property view*. I plot the four main features of human value on the Kantian view (human value is intrinsic, infinite, equal, and inviolable) and introduce what I call *the substitutability thesis*: if *A* and *B* are equal with respect to *X* then *A* and *B* are inter-substitutable without loss of *X*. I show that this combination of features generates hitherto unremarked upon puzzles and indicate how the puzzles can be solved.

Chapters four to eight contain the core of my negative thesis. **Chapter four** expounds John Rawls' range property argument for equality (RPA) in preparation for the critique in chapter five. RPA is Rawls's refinement of Kant's argument, intended to defend Kantian egalitarianism against an objection by Bernard Williams (Williams, 1962). I consider others' responses to RPA and show that it has been interpreted in two ways. I call these the *threshold invariant* and the *binary property* interpretations. I show that the threshold approach misinterprets Rawls and therefore those who so interpret it, all of whom dismiss RPA, dismiss it too hastily. In contrast the two philosophers who correctly interpret RPA find it persuasive (Carter, 2011; Waldron, 2002, 2008 and 2015).

Chapter five is fully occupied with original analysis of RPA. I identify the underlying form of Rawls' argument and name that form *the binary property move* (BPM). I give nine challenges to BPM (5.1.1 to 5.1.9) four of which (5.1.4 to 5.1.7) amount to a *reductio*. In so doing I fulfil my commitment in the Preface to move the debate on moral equality forward. I consider arguments from Waldron (Waldron, 2002) and from Carter (Carter, 2011) intended to buttress a structural weakness in RPA. If successful their arguments would neuter the two weakest of my nine challenges (5.1.8 and 5.1.9). I show why their arguments fail. I conclude that my nine arguments demonstrate that the binary property move is fallacious.

In **Chapter six** I propose that having isolated the active ingredients in BPM and familiarised ourselves with its structure we recognise another of its features: omnipresence. We notice it being called upon more or less covertly to prop up egalitarian arguments wherever they appear. I show it at work in several arguments for moral egalitarianism, covertly in the theories of Alan Gewirth and Alan Donagan and overtly in Tom Regan's theory.

In **chapter seven** I turn to a very recent kind of argument for equal human moral worth which I call *the infrastructural argument* (found in Liao, 2010 and Waldron, 2015). Infrastructural arguments display two stock Kantian features: they assign to human beings primacy at the top of the moral tree, and they do so in virtue of our possession of valuable

properties. But they are unlike traditional Kantian arguments in that the relevant valuable properties are not psychological abilities but concrete physical matter, the physical infrastructure thought to be causally or teleologically related to valuable psychological abilities. I show why such accounts fail as accounts of what makes human beings matter at all, and therefore, *a fortiori*, fail as accounts of why we matter equally.

In **chapter eight** I consider so-called (by McMahan, 2005) *nature of the kind* arguments for equality which purport to evaluate the moral status of human beings *as* members of a certain kind. The two candidates I consider are the rational kind and the human kind. I distinguish between evaluable and non-evaluable kinds and argue that *rational* is and *human* is not an evaluable kind. I conclude that it is not clear precisely what kind of moral evaluation is going on in nature of the kind arguments which purport to find that human beings are equally valuable. My exploration in this chapter is more tentative and exploratory than in the other chapters.

Chapter nine takes up my constructive task. I begin by giving a substantially Korsgaardian account of the origin and nature of human value according to which our value follows from our practices of valuing (9.1 to 9.6). I argue that a clear way to understand what it is for us to have moral value is to jettison the terms ‘moral’ and ‘value’ and instead ask what makes true the proposition that it matters what happens to us. I argue that this proposition is made true if it matters *to us* what happens to us (9.6). I show that on this alternative account we cannot make coherent the claim that everyone matters equally or unequally.

I note that in taking human value to be fixed for all times, all persons and all currencies moral egalitarianism appears to presuppose a form of objectivism about human value.

In **Chapter ten** I consider how the account in chapter nine fares against three objections from an objectivist perspective. The first of these objections (10.1) proposes that without objective reasons since all reasons are private, because each of us matters only because we matter to ourselves, we have no reason to take other people to matter. Without such

reasons there is no morality. Second, (10.2) our personal standpoint affords only a partial view of the world. A proper view of the world, requires that we take up the impersonal standpoint from which we see that everyone's value is equal. Third (10.3) we must take our own life to have objective importance not just importance for us. When we do this, we must take everyone's life to be equally important.

In **chapter eleven**, I try to persuade you that followed faithfully where their premises lead, several other philosophers' views should arrive at a set of conclusions congruent with mine, namely, that human value is not the kind of thing which can coherently be reckoned up and accounted so that we find that everyone has exactly the same value.

Chapter twelve briefly states my main conclusions and gives reasons why Kantian egalitarians should prefer the incommensurabilism.

Introduction

Moral equality and political equality

There are three distinct but related conceptions of equality as an important moral or political value. One of these, moral egalitarianism, the focus of this thesis, is perfectly expressed by Samuel Scheffler's "...all people everywhere are of equal worth."⁹ The other two conceptions understand equality as a political or social value or aim. One incarnation of political equality is expressed by the view that a necessary condition of just government is that it treats those under its governance as equals. The second conception of political equality is one which distils that more general political value into one or more particular institutional policies the aim of which is to satisfy the condition of just government by creating a more equal distribution of important social goods. Candidate goods include rights, opportunities, liberties, welfare, or more concretely, resources.¹⁰

The moral claim and the political claims are importantly different in structure and content. The moral claim will have normative implications (it is a moral claim after all), but the structure of the assertion that people are equally valuable is declarative, propositional; its content is our worth in moral terms, how much we matter. In contrast the political egalitarianism claims are expressly normative, not on their face asserting that something is true of all people, but rather making a claim about what ought to be done: people ought to be treated in a certain way and this may require bringing about a more equal distribution of some of the goods and burdens of cooperation. Furthermore, the conception of equality as a moral value is often taken to be a necessary basis for the political conception so that equality as a political value "needs to be shown to have roots in a more general conception of equality as a moral value or normative ideal."¹¹ Moral egalitarianism supplies that normative ideal.

⁹ Scheffler, 2001, p.5.

¹⁰ Among these only welfare doesn't feature among John Rawls's well known 'primary goods' (Rawls, 1991b). Sen would add 'capabilities' to the list. Sen, 1992.

¹¹ Scheffler, 2003, p. 203.

The connection between the moral and political is often understood in terms of rights. For Gregory Vlastos, our equal moral worth provides the moral justification for the whole body of human rights. For Martha Nussbaum, who understands the basic egalitarian moral conception as *equal dignity*, to “give some people unequal voting rights, or unequal religious liberty, is to set them up in a position of subordination and indignity vis-à-vis others. It is to fail to recognise their equal human dignity.”¹²

This posited dependence relation between the moral and political is not a twentieth century innovation. It is implicit in Thomas Rainsborough’s speech during the Putney Debates of 1647:

For really I think that the poorest he that is in England has a life to live as the greatest he, and therefore...I think it’s clear that every man that is to live under a government ought first by his own consent to put himself under that government...¹³

That we all have “a life to live” is for Rainsborough the moral force underpinning the political right to consensual government, Rainsborough here giving the banal factual claim that we each have a life to live a potent moral resonance, making the moral depend on the natural.

A century later Thomas Jefferson traces the moral imperative for equal political rights to a supernatural source:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights...¹⁴

And two centuries later, Jefferson’s words, now in secularised form, are echoed in the 1948 Universal Declaration of Human Rights:

¹² Vlastos, 1984, pp.41-76; Nussbaum, 2006, pp.292-293.

¹³ Abernethy, 1959, p.101.

¹⁴ Preamble to the US Declaration of Independence, 1776.

All human beings are born free and equal in dignity and rights.¹⁵

Although not directly legislative, the Declaration is frequently cited in the preambles or first articles of particular international legal conventions serving to constrain their content and interpretation. It also functions as a guide to judicial interpretation of The Charter of the United Nations, the chief source of international human rights law.¹⁶ But, and this seems to me significant,¹⁷ the great theme of the Charter is not justice or peace or prosperity, but equality between individuals and between nations, its Preamble affirming “the equal rights of men and women and of nations great and small.”¹⁸ Thus the Charter and 1948 Declaration mark something momentous in human history: explicitly, directly and quite deliberately, they export egalitarian morality out of the personal and the national domains and into the domain of international law; moreover they do this in the distinctly Kantian language of equal human dignity.

Leaving equality aside for a moment, why should the moral be prior to and govern the political in this way? I think the relation derives from an implicit and sometimes explicit conception of morality as that domain of each of our lives in which we do things which affect other beings who matter. Since our social institutions, including our political institutions, are just more ways in which we affect each other, that after all is their purpose, they fall into the domain of morality and are governed by it. Thus we can say that politics matters only because people matter. Indeed we can say the same for morality itself: morality matters only because people matter. That seems to me to put the fact that it matters what happens to people at the foundation of morality, and our moral challenges are all concerned with how to accommodate the fact that it matters what happens to people.¹⁹ Thus if it did not matter what happens to people there would be no room for morality or for

¹⁵ Article 1, UN Declaration of Human Rights, 1948

¹⁶ Brownlie and Goodwin-Gill, 2002, p.18.

¹⁷ Anticipating Dworkin’s argument that the sovereign political value is not liberty, but equality.

¹⁸ Brownlie and Goodwin-Gill, 2002, p.160. The veto power held exclusively by the five permanent members of the Security Council causes the not unreasonably to wonder whether the Charter’s egalitarian rhetoric is mere cant.

¹⁹ I develop and defend this idea in chapter 9.

politics, and no consideration would count as a moral consideration. But it does matter what happens to people, and morality faces us in the personal domain each day in the form of a question: how should we accommodate the fact that people matter? Politics is an attempt to give an institutional rather than interpersonal answer. So egalitarianism in the political domain hangs both historically and dialectically on some kind of moral egalitarianism.

Some political egalitarians take an equal distribution to be an intrinsic good, as something worth bringing about without regard for its further consequences.²⁰ Others argue that even if a more equal distribution of some good is desirable, it need not be the equality which we care about but something else “the hunger of the hungry, the need of the needy, the suffering of the ill.” That some are worse off than others is relevant “not as an independent evil of inequality” but in “showing that their hunger is greater, their need more pressing, their suffering more hurtful.”²¹

T.M. Scanlon gives five reasons why we should aim to reduce inequalities none of which, he claims, depends on equality being a good in itself.²² Such views about equal distributions have *prima facie* plausibility. The United Nations trucks tasked with feeding those displaced by war don't distribute equality, they distribute food and water. We can't eat equality. Even so, while the good at which we aim may not be equality, we can ask what reasons we have to distribute a good equally (any good, whether abstract liberties or solid food). Among those reasons we will find that the recipients' lives count equally in some fundamental moral sense, Scheffler's sense. If there are other good reasons political egalitarianism may not need to be rooted in moral egalitarianism.

²⁰ Cf. Larry Temkin's intrinsic (or telic) egalitarianism according to which greater inequality is a moral worsening of a state of affairs even if there is no-one for whom it is worse. Temkin, 1993, pp.255-256.

²¹ Raz, 1986, p.228 and p.240. Frankfurt, 1987.

²² Scanlon, 2002, pp.41-59.

I said that although the moral claim that people are equal is descriptive in structure it also has a normative component. Its normative character is commonly expressed as a requirement to treat people with equal consideration (or concern) and equal respect. The earliest formulation I can find in such terms is Herbert Spiegelberg's,

Regardless of their contributions to a larger whole men have a certain common rank by virtue of which they possess a claim to equal respect and consideration.²³

The two attitudes of respect and consideration to which each person of "common rank" lays claim are sometimes understood as responses to two distinct human attributes. From Kant we get the idea that respect is owed to you in virtue of your autonomy, that is, your freedom to act not just for reasons,²⁴ but for moral reasons by using reason. Kant connects this capacity with dignity, so that the respect you are owed is a response to your dignity, a kind of value which the other animals lack in virtue of their lack of the dignity conferring capacities. Where respect is owed you in virtue of your capacity to act for reasons, concern or consideration is owed you in virtue of your capacity to feel pain or pleasure.²⁵ On this account we will have a wider range of duties to autonomous beings than to merely sentient beings.

²³ Spiegelberg, 1944, p.105, later taken up by Dworkin as equal concern and respect, Dworkin, 2009 (1977) pp.272-273; Blake 2011, p.555.

²⁴ On some accounts of what it is to act for a reason infants and non-human animals act for reasons when they act to bring about something which is good for them as when they drink for the reason that it relieves their thirst. Quinn 1993, p.234. MacIntyre argues that in maturing from infancy into rationality humans don't acquire reasons which did not exist before, they recognise reasons which they did not recognise before. MacIntyre, 1999, p.56.

²⁵ Dworkin made this distinction in 1977, Dworkin 2009, p.272; Darwall at Darwall, 2006, pp.126-130. In Darwall's story people are owed care (concern) as beings with welfare, care being directed at greater welfare; they are owed respect as beings with dignity. Dignity is mutual equal accountability (equal arising somewhat *ex nihilo*) a power to make and respond to moral demands (pp.119-121). Darwall makes overmuch of the distinction seeming to take it to be morally fundamental – reasons for care are 3rd personal, agent-neutral, concerned with achieving better states of affairs for the world (e.g. less pain), reasons for respect are 2nd personal agent-relative, owed in direct 2nd personal relations, I-thou, not he-she. On Darwall's example, we care for our children in forcing them to eat broccoli for their own good, setting aside their own values and preferences, but to similarly force them in adulthood would be culpably to fail to respect their autonomy or dignity. Two points: 1 we owe it 2nd personally to our children to compel healthy choices; we owe it to strangers 2nd personally as *you*, and 3rd personally as *they*, not to drop bombs on them. We don't owe it to the world, we owe it to the individual. 2: Darwall's story is one of unequal dignity between fully autonomous agents and children.

Terminology: moral status, value or worth

Throughout this thesis I shall use the following terms synonymously: ‘moral status,’ ‘moral considerability,’ ‘moral standing,’ ‘moral value’ and ‘moral worth’.²⁶ I defend taking these to be synonymous by proposing that if they are not synonymous then we would have intractably many ways in which we matter morally. We would have moral value as well as moral worth and moral standing and moral considerability and moral status, each of these five terms picking out a different way in which we matter morally. Some would happily add *dignity* as a sixth kind of moral worth possessed only by individuals with certain higher cognitive capacities. If each term picks out a different way in which we and other animals matter morally then this significant fact is gone unnoticed by all of the philosophers writing in this field. There is no evidence that writers here have more than one or two conceptions in mind –one for humans which recognises our autonomy and one for humans and other animals which recognises our capacity for suffering. Often these are smudged together. My own view which I expound in chapter nine is that one conception can do all the work we need for humans and other animals who value themselves.

There are other uses of ‘moral value’ and ‘moral worth’ from which this use should be distinguished. These other uses denote moral appraisal, appraisal of the merit of acts or intentions or desires or character traits or dispositions or states of affairs. We could say that Smith is morally more worthy than Jones by which we mean morally admirable; that benevolent acts and intentions have more moral value, are more morally meritorious than malevolent acts and intentions; that some states of affairs, the elimination of poverty for example, have more moral worth than others, for example, the elimination of athlete’s foot. But acts, intentions, states of affairs cannot have the kind of moral worth or value which is also called moral status, moral considerability or moral standing. We owe a certain kind of treatment to things with moral status, we should take care about what we do to them, but

²⁶ Goodpaster, 1978, uses “moral considerability”, DeGrazia, 2008 and Warren, 1997 use variously “moral status”, “moral considerability”, “moral worth” and “moral standing”, Raz 2008, like Scheffler 2001 above, uses “moral worth”.

we don't owe any such care to morally valuable acts or intentions or states of affairs – these things don't count morally in the way that things with moral status count morally.

What does Scheffler mean when he writes that all people everywhere are of equal worth? We understand the notion of equality as not simply sameness, but sameness of position on an ordering; any obscurity lies in what is meant by "worth." On one reading, I venture the most natural reading, we don't all have equal worth. The good, kind, loving, industrious, compassionate and generous, are of more moral worth than the evil, cruel, hateful, lazy, callous and selfish. The virtuous are worth more, more worthy, than the vicious. This is worth as merit along some dimension. Moral egalitarians know this reading and know that, so understood, egalitarianism is false. This can't be what they mean.

I think Whitman is closer: "For every atom belonging to me as good belongs to you." If we judge poetry as philosophy or as science then it is a category mistake to assert goodness of atoms. There is no such thing as a good atom, nothing it would be like to be a good or better or worse atom; there are only atoms. This might be part of Whitman's meaning, that we too are just atoms like leaves of grass, hydrogen, mountains, none better and none worse, but just *there*.

Another way to think about our moral equality is as consisting in the fact that nature has made no-one more important than anyone else. This is certainly true as a negative proposition about what nature has not done, but it doesn't entail that everyone is equal. Analogously, that the Russian president has not made all men unequal (since he didn't make all men *anything*) doesn't entail that all men are equal, and nature failing to make everyone equally important is compatible with some being more important than others for reasons which are nothing to do with nature. The Prime Minister is more important than I am in at least one way: her actions influence more lives for better and for worse than my actions.

A common way to characterise having moral status is in terms of owing and obligation. To say that X has moral status is to say that

(1) moral agents have obligations regarding X, (2) X has interests, and (3) the obligations are based at least partly on X's interests.²⁷

I find that it aids clarity to express the idea of moral worth without using the terms *moral* and *value* and *worth* and their cognates, instead thinking in less philosophical language in terms of something *matter*ing or being *important*. Thus I would say that if you value a person then it matters or is important to you what happens to that person. We may also value happiness liberty and equality but these matter to us only derivatively, if our happiness liberty or equality matter, they do so only because we matter. It doesn't matter to happiness liberty and equality what happens to them. We value happiness, liberty and equality by desiring that they are more often instantiated or by pursuing them as objects of action. These different practices of valuing give meaning to the two different ways of having value: X having value as it mattering what happens to X; and Y having value as a desideratum. My concern in this thesis is with X having value understood as it mattering what happens to X.

Some kinds of equality

Benn identifies three kinds of equality: evaluative, as when two essays are judged to be equally good; descriptive, as when two things are equal in weight; and distributive, as when people have equal amounts of something, such as wealth, rights or entitlements.²⁸ They have in common that in each case equality "presupposes an ordering of objects according to some common natural property or attribute that can be possessed in varying degrees."²⁹ If Benn is right, equality names a special kind of sameness relation, sameness of position on an ordering. We can begin to define what it is to be equal using the biconditional:

$$S = J \text{ iff } S \text{ and } J \text{ occupy the same position on an ordering}$$

²⁷ DeGrazia, 2008, p.183. Warren, 1997, pp.3-4 and Benn, 1967, *passim*, also understand moral status in terms of having interests which moral agents have obligations to respect.

²⁸ Benn, 1967, pp.62-63.

²⁹ Benn, 1967, p.62.

Smith and Jones are equal in mass; mass is an ordering, are Smith and Jones equal? No, that can't be right. I neglected Benn's "...according to some common natural property..."

I should refine the biconditional to add the property in respect of which Smith and Jones are equal, mass (M):

$M_s = M_j$ iff s and j occupy the same position on the M ordering.

This definition is not innocuous. It entails that two things are not equal with respect to a property M merely in virtue of possessing property M in common.³⁰ If we grant that two things are equal in virtue of both possessing a property in common, we would have to allow that two things having the property *mass*, are equal with respect to mass even if one has less mass than the other. This contradictory looking notion is not remedied by introducing another type of equality in M, call it type 2 equality: being equal with respect to *having* M. If we grant type 2 equality then equality no longer marks a distinction between things which have unequal mass and things which have the same mass. Rather it marks a distinction between kinds of things, namely, kinds of things which have mass and things which don't have mass. That is a difference in property, it is not inequality in the same property.

Degrees of moral value

Are there degrees of moral standing? I suspect that most people, philosophers and non-philosophers alike, believe that dogs have some moral standing but less than human beings. Their moral standing explains why we ought to rescue both from the sinking ship and the greater moral standing of human beings explains why we should give priority to human interest in survival than the dog's similar interest. This is just one way in which we can understand degrees of moral standing.

David DeGrazia identifies two ways to understand degrees of value. First we might believe that both dogs and humans have interests, for instance in avoiding pain and in continued

³⁰ Lucas notes this at Lucas, 1965, pp.297-298; Benn, 1967 at p.63.

survival, but the human interest in survival and avoiding pain is greater than that of dogs. Alternatively human and dog interests in survival and avoiding pain might be equal, but we owe more consideration to humans than to dogs.³¹

Peter Vallentyne proposes a third way: the degree of moral standing of an individual is the expected average capacity for well-being over the course of her life with future capacities discounted for probability.³² The greater one's capacity for well-being, the greater one's moral standing.

Each of these three conceptual models of degrees of moral value cashes out finally in different entities occupying unequal positions on an ordering of moral standing or value or worth, such that, *ceteris paribus*, if we cannot bring about the equal good of entity X and of entity Y, then we should give priority to the good of that which has greater moral standing.

An assumption

I have found no discussion in the literature of the following question: can it be that the basis of our moral standing is fact X and the basis of the extent of our moral standing is a different fact, fact Y? Another way to ask this: could one fact about us place us on the ordering, say M, mass, and a different fact about us determine our position on the ordering, how much mass we have? For instance in Kant's philosophy human value vests in our capacity for morality. Given our widely acknowledged unequal capacities could we say that while our value derives from those capacities, how much value we have is determined by a different fact about us, say that we are all human? I am not aware that any philosopher has made this case but I suppose it can't be ruled out *a priori*. In any event, I hereby declare my default position to be that barring good argument to the contrary I shall take the facts which make it the case that we have value at all to be the same facts which fix how much value we have.

³¹ DeGrazia calls these the unequal interests and the unequal consideration views respectively. DeGrazia, 2008, pp.186-187. Kamm allows different degrees of moral value as well as different kinds. Kamm, 2006, pp.227-228.

³² Vallentyne, 2007, pp.232-237. Note that unless coupled with the premise that all humans have equal expected capacity for well-being, unequal moral standing would follow.

PART 1

Chapter 1

Early Precursors

Here I want to show that the few basic components of the Kantian arguments for moral equality have been with us with only modest refinement from the beginning of the western philosophical tradition in archaic Greece.

1.1.1 Hesiod and Thales

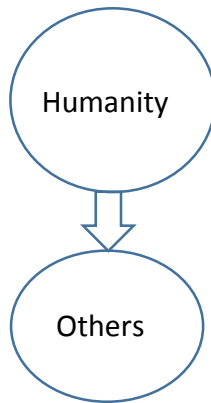
For the son of Cronos has ordained this law for men, that fishes and beasts and winged fowls should devour one another, for right is not in them; but to mankind he gave right which proves far the best.³³

In the Hesiodic myth Zeus gives the capacity for conceive of right and wrong action to humanity as a gift³⁴ to be prized for it “proves far the best.” Hesiod, peasant farmer, eight centuries before the Christian era, thus inaugurates a distinction between humans and other animals in which the capacity for morality raises humanity to a privileged status above the other animals. Zeus divides Hesiod’s world into a hierarchy of the elevated class of moral beings, humanity, and the others, the fishes, beasts and winged fowls who lack moral capacity.

³³ Hesiod, 1914, *Works and Days*, 276-280. Porphyry translates ‘right’ (*dike*) as ‘justice’. Porphyry, 1823, *Abstinence*. Bk.1. S5; also Sorabji, 1993, p.117.

³⁴ Contrast with the God of Genesis who forbade Adam and Eve to acquire moral knowledge by eating from the tree. “Behold, the man is become one of us, to know good and evil.” Genesis, 3, 22. So translated the fall is the acquisition of moral capacity whereby humans “become one of us” (note the plural - God was a polytheist). There is no scriptural explanation of why becoming “one of us” should incur divine punishment. Was God angry because he was usurped as the source of moral knowledge?

Hesiod's Moral Hierarchy



Hesiod's world is still with us. We discover it in the standard style of argument of modern egalitarians who single out humanity as a special moral class all equal within the class and elevated above the beasts. The hierarchy is important. The modern argument has four steps and runs like this. First, comparing humans and other animals we notice a property exclusive to human beings. Second, we declare this property to have an especially high value. Next, the high value inherent in the property is transmitted beyond the property itself, to that which possesses the property. Finally the modern egalitarian refinement: there can be no property more valuable than this and, since there can be no higher than highest, all who have the valuable property have equal value, a value which flows from our capacity to act rightly. So while John Rawls may seem to rehearse an innovation of Kant's when he writes that "the sense of justice is a necessary part of the dignity of the person, and it is this dignity which puts a value on the person...",³⁵ he is at the same time re-presenting the ancient argument for mankind's special place in the world, an argument inaugurated by Hesiod.

It is sometimes mentioned that the final step was an innovation of the eighteenth century³⁶ and it seems correct to say that as a political ideal equality appears to have gained popular traction in western Europe only after the English revolutionary period of the mid-

³⁵ Rawls, 1999a (1963), p.115.

³⁶ "...until the eighteenth century it was assumed that human beings are unequal by nature – i.e. that there was a natural human hierarchy." The Stanford Encyclopaedia of Philosophy at www.plato.stanford.edu/entries/equality/; see also White 2007, p1.

seventeenth century. Darwall also mentions that the idea of the equality of man arose only in very recent history and was not even conceivable to the Hittites.³⁷ Darwall may be right about the Hittites, but it was not long after their disappearance and only a few hundred miles away on the coast of what is now modern Turkey that Thales proposed a moral principle which we will find congenially familiar. In response to the question

How shall we live the best and most righteous life?

Thales is reputed to have responded,

By refraining from doing what we blame in others.³⁸

Thales's injunction prefigures the better known version attributed to the troublesome gadfly wandering in Palestine six hundred years later: "whatsoever that ye would men do to you, do ye even so to them."³⁹ In locating the concept of blame at the heart of how we should treat others Thales implicates a more sophisticated and modern⁴⁰ moral theory than Christ's golden rule the governing idea of which is what we want others to do or not do to us.⁴¹ Thales's maxim is governed not by what we might want but by which acts we would blame. To ask what you would blame in others is to demand serious inward and outward looking deliberation. It admits to the moral community at least those who can blame and those who can be blamed. It implicates autonomy, a necessary condition for choosing to refrain from doing what we blame in others. It is egalitarian in spirit by inviting the thought that others matter as much as we do, thereby in a sense locating all of us in the same class: we could say the same moral class. Thales doesn't specify the criterial properties for membership of that class; he needn't, the concept of blame does all the work. And note that it's a secular moral doctrine. Had he instead replied that we live best by living according to the wishes of

³⁷ Darwall, 2006, p.24.

³⁸ Diogenes Laertius, 1925, Bk 1, 37. See also Barnes, 1987, pp.15-16.

³⁹ Matthew, 7, 12. And not, 'do to others as they *do* to us', for as we know from Matthew 5, 38-39 Jesus opposed the Mosaic 'eye for an eye' retributivism of Leviticus, 24, 17-21.

⁴⁰ Cf. Scanlon, Darwall, Skorupski, and those who see Strawsonian reactive attitudes, like blame, as essential, and centrally, moral concepts.

⁴¹ In Matthew it is positive – we should do what we would want others to do to us; in Hobbes it is negative, we should not do what we would not have others do to us. Hobbes, 2008 (1651), Part1, XV, 35, p.104. Hobbes presents the golden rule as a simplifying heuristic to make the laws of nature intelligible even to the least rational.

the Gods it would probably have been singularly unremarkable for his *milieu*.⁴² I don't want to overstate its sophistication: the Thalean maxim won't supply a criterion with which to distinguish the blamed from the justly blameworthy. Its significance is as a prophylactic against moral solipsism and as a heuristic with which to enter moral deliberation. It invites us to comprehend ourselves and others as alike in ways which are fundamental to how we should act. Shorn of its later Kantian accretions it is this idea which lies at the nucleus of the egalitarian notion that nature has not invested any one of us with special importance.

My claim here is that the basic form of modern Kantian moral egalitarianism was born long before the enlightenment, at the same time as the earliest recorded western thought about how we should act toward each other, that is, which actions are right or just and which wrong or unjust. What about political egalitarianism? I mentioned earlier that the demand for equal political rights in the choice of government seems to have acquired some traction outside the study in the mid-sixteen hundreds in England. But as a demand for a socially guaranteed equal distribution of socially important goods it too has its ancient precursors. At the end of the first year of the Peloponnesian war⁴³ in his funeral oration for the first Athenian's to be killed, Pericles praises the egalitarian values of the Athenian polity:

Our constitution is called a democracy because power is in the hands not of a minority, but of the whole people. When it is a question of settling private disputes, everyone is equal before the law; when it is a question of putting one person before another in positions of public responsibility, what counts is not membership of a particular class, but the actual ability which the man possesses. No one, so long as he has it in him to be of service to the state, is kept in political obscurity because of poverty.⁴⁴

Pericles's talk of the "whole people" having equal political power, equality before the law, and equal opportunity, rings hollow; slaves, women and immigrants did not share equally

⁴² Diogenes Laertius places Thales around 640bc to circa 562 – 550bc. *Lives* Bk. 1, 38. Barnes, 1987, places him at 625bc-545bc.

⁴³ The war lasted from 431bc to 404bc.

⁴⁴ Thucydides, 1972, Bk.2, 37, p.145.

with free male citizens in these important goods. It is not until the later Stoics that we find articulated the idea of truly universal human equality:

“If mind is common to us all, then so is the reason which makes us rational beings; and if that be so, then so is the reason which prescribes what we should do or not do. If that be so, there is a common law also; if that be so we are fellow-citizens; and if that be so, the world is a kind of state.”⁴⁵

Without alteration, this might be Kant, or with only minor stylistic adjustment, it could be any modern political cosmopolitan writer arguing for equality across national boundaries, indeed for the erasure of national boundaries. But it is Marcus Aurelius in the late second century A.D. articulating a Stoic vision of the whole body of humanity as fellow citizens bound together under a common law given to us not by monarch, emperor or tradition, but by reason, and therefore having jurisdiction over all beings capable of reason.

1.1.2 Biblical roots

Several writers propose that the idea of humanity as a community of equals has its roots in the Hebrew-Christian tradition. This is a different proposal from the proposal that the basis of equality is to be found in ancient Hebraic thought. Louis Pojman finds both the historic and metaphysical basis in us all being God’s children. For Pojman those foundations are as much dialectical as historical; a supernatural source “or some metaphysical idea which will support equal and positive worth” being, Pojman claims, “a root necessary for the bloom of rights.”⁴⁶ Pojman thus excludes the possibility that secular morality has the metaphysical resources to furnish the foundations of human equality. Joshua Berman traces the moral and political egalitarian prototypes to the Pentateuch which “asserted the equality of all Israelites by virtue of the fact that all of them were liberated from bondage and all entered into covenant with the Almighty.”⁴⁷ Berman is unclear whether this historic source is also the rational ground of equality in contemporary Judaism.

⁴⁵ Aurelius, 1997, *Meditations*, 4.4.

⁴⁶ Pojman, 1997, p.295.

⁴⁷ Berman, 2008, p.174.

There are two other Old Testament candidates as the source of human equality. One is our common descent from Adam. The claim here is that no-one can claim superiority over others “because of his genealogy.”⁴⁸ The final biblical source of the idea of humanity as a single status moral community is the idea that we are all made in God’s image.⁴⁹

These ideas or some of them might lie near the historic source of the modern idea of equality, but they are unpersuasive as rational bases of equality. Pojman and Berman assign insufficient weight to the unequal concern of the Pentateuch God for his creation. This is the God who endowed men with dominion over women,⁵⁰ who favoured the Israelites as the chosen people, “supreme above all nations”⁵¹ and forbade lending “upon usury to thy brother” while permitting it with strangers.⁵² Those are the marks of a partial God no more inclined to universal human equality than the framers of South Africa’s apartheid legislation. Moreover, on Berman’s account the great majority of mankind who choose not to enter the covenant with God are not to be counted among the equals. And nor will our being all the children of God or the descendants of Adam suffice; for either evolution gets in the way of the anthropocentric aims since evolution attributes a common origin to all animals, or, abjuring evolution, Adam and Eve share a common origin with the other animals, all having been created by God.

What about the *imago Dei* argument, that we are all created in God’s image and it is in this respect that we are equal? It’s not an easy argument to comprehend. Resemblance is variable: are we to understand the argument as propounding that the greater our

⁴⁸ Rackman, 1967, p.155

⁴⁹ Genesis, 1.26.

⁵⁰ Genesis 3, 16. Berman acknowledges the difficulty of squaring the subordination of women with his insistence that the ancient Israelite polity was egalitarian. Berman, 2008, pp.13-14.

⁵¹ Deuteronomy, 26, 19.

⁵² Deuteronomy, 23, 19-20. Although Leviticus contradicts this prescribing one law for citizen and stranger alike. Leviticus, 24, 22,

resemblance with God the greater our equality with each other? We don't resemble God in our capacities for universe creation and miracle making, nor in our corporeality, we being bounded, mutable, decaying arrangements of matter, God being infinite and immutable. Waldron interprets our sharing God's image as likeness in having the capacity for morality, to know the difference between good and evil.⁵³ Genesis 3.22 describes exactly one respect in which humanity resembles the deity,

And the Lord God said, Behold, the man is become as one of us, to know good and evil...

But whereas Hesiod's Zeus gave us this moral knowledge as a gift, Adam and Eve had to take it in defiance of God's will and be cast out of the Garden as punishment. The God of Moses would have had us as innocent as Hesiod's beasts. And even if we all have the same relation to God we need not be in the same relation to each other: though we are all subjects of the Monarch, some are lords and dukes and duchesses and some are mere peasantry. Finally, the glaring weakness of each of the biblical accounts, taken not as history but as philosophy, is that none of them can get going without a particular kind of God: the personal God to whom we are especially dear and whose will and vision and values and beliefs we purport to understand notwithstanding the necessary strangeness to us of an entity with the ability to create matter, time, and the universe. If we believe, like Vlastos, Scheffler and Anderson, that moral equality is the necessary basis of equality in the political and juridical domains then we will not want to moral equality to rest on an untestable supernatural thesis of this kind.

1.1.3 Hobbes

Hobbes begins his discussion of equality by affirming a falsehood which he immediately contradicts:

Nature hath made men so equall, in the faculties of body and mind; as that though there be found one sometimes manifestly stronger in body, or of quicker mind than another; yet when all is reckoned together, the difference between man, and man, is not so considerable,

⁵³ Waldron, 2015, Lecture 5.

as that one man can thereupon claim to himself any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himself.⁵⁴

Here Hobbes posits a relation between our mental and physical powers and the “benefits” which we may justly claim. The argument is that despite inequalities in power, the weakest either alone or in concert with others can devise some mechanism to kill the strongest. We are therefore all vulnerable to the “mortal threat”⁵⁵ which others pose. But are we all equally vulnerable? As a tiger is harder to kill than a hedgehog, Smith, a paranoid martial arts expert poised at all times to resist attack, will be harder to kill than Jones, a disabled octogenarian living alone. That makes Smith and Jones unequally vulnerable although each being vulnerable to some extent each has a compelling prudential reason to enter into the Hobbesian social contract.

Leaving the body and turning to the mind, Hobbes continues,

And as to the faculties of the mind (setting aside the arts grounded upon words and especially that skill of proceeding upon general, and infallible rules, called science, which very few have, and but in few things; as being not a native faculty, born with us; nor attained (as prudence) while we look after somewhat else,) I find yet greater equality amongst men, than that of strength.⁵⁶

Still on the natural equality of men, Hobbes again vacillates. “Setting aside” our inequalities in reasoning and linguistic ability, we find that we are equal with respect to other unnamed mental faculties. This amounts to the suggestion that in order to regard each other as equal we need only ignore our inequalities. Hobbes equivocations on natural equality extend into his list of the “laws of nature.”

The question who is the better man has no place in the condition of mere nature, where, as has been shown before, all men are equal...If nature therefore have made men equal, that equality is to be acknowledged; or if nature have made men unequal, yet because men think

⁵⁴ Hobbes, *Leviathan*, 2008, (1651) Part 1, Chapter XIII, 1, p.82.

⁵⁵ This is how Waldron puts it. Waldron, 2002, p.74 and Waldron 2017, p. 121.

⁵⁶ Hobbes, 2008, XIII, 2, p.82.

themselves equal will not enter into conditions of peace but upon equal terms, such equality must be admitted. And therefore for the ninth law of nature, I put this: *that every man acknowledge another for his equal by nature*. The breach of this precept is pride.⁵⁷

Hobbes continues to vacillate on man's natural equality, seeming not to have fully persuaded himself that he has "shown before" that all men are equal. For he then gives vent to the doubt "or if nature have made men unequal" and urges that we should not acknowledge such inequality since men "think themselves equal" and will not engage peaceably with each other as unequals. I don't think Hobbes arrives at a settled position on natural human equality – we are equal in body, we are unequal in body; we are equal in mind, we are unequal in mind. What remains finally is a pragmatic argument: we should treat each other as equals not because we are in fact equal in any meaningful sense, but for mutual protection and advantage. Our (unequal) vulnerability in the state of nature gives everyone compelling prudential reasons to enter into a social compact, but it is no basis for the kind of Kantian moral egalitarianism which affirms that each of us matters equally.

1.1.4 Pufendorf

Pufendorf must be thinking of Hobbes when he writes

Now this *Equality* of Mankind does not alone consist in this, that Men of ripe age have almost the same *Strength*, or if one be weaker he may be able to kill the stronger.⁵⁸

Pufendorf's positive account resembles some contemporary conceptions of the basis of equality:

Since then Human Nature is the *same* in us all, and since no Man will or can cheerfully join in Society with any, by whom he is not at least to be esteemed equally as a Man and as a Partaker of the same Common Nature: it follows that, among those *Duties which Men owe*

⁵⁷ Hobbes, 2008, XV, 21, p.102.

⁵⁸ Pufendorf, 2003, Bk.1, Ch. VII, p. 101. Capitals and italics are original in all my Pufendorf's quotes.

*to each other, this obtains the second Place, That every Man esteem and treat another as naturally equal to himself, or as one who is a Man as well as he.*⁵⁹

We can discern two different kinds of argument here, one foundationalist, the other is a Hobbesian pragmatic. The foundationalist argument says that if our equality consists in our sharing a common nature that we ought to treat each other as equals. The pragmatic argument proposes that we should esteem others equally with ourselves because otherwise society will be fractured, inharmonious. Pufendorf expounds:

The Inference we ought to make from hence is, that we do not over-value ourselves with regard to others, considering that *they* equally with us are endowed with a *free Use of their Understanding*, which they are also capable of managing to as *good Purpose*; the *regular Use* whereof is that alone which a man call *his own*, and upon which the *true Value* of Himself depends.⁶⁰

Here Pufendorf spells out that the particular aspect of our nature upon which our “true value” depends is our “understanding.” Note how the placement of ‘equally’ creates ambiguity between the two quite distinct propositions: the proposition that everyone has the capacity for understanding and the proposition that we all have equal capacity.

1.1.5 Locke

Where Pufendorf’s basis of equality is naturalistic, Locke’s is supernaturalistic. In an early section of his *2nd Treatise* he writes

...that being all *equal and independent*, no-one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent and infinitely wise maker; all servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another’s pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such *subordination* among us, that may

⁵⁹ Pufendorf, 2003, Bk.1, VII, p.100.

⁶⁰ Pufendorf, 2003, Bk.1, VII, p.103. Italics and capitalisations original.

authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours.⁶¹

Locke's inferential sequence runs like this. The negative duties not to harm our "health, liberty or possessions" follow from our "being all *equal and independent*" which in turn follows from our being the workmanship of one God. The basis of Lockean equality then is that we are all the creation of one God and the equality it grounds is our equal freedom from subjection to the will of others. Later in the *Treatise* Locke admits inequalities between persons, as Hobbes did, but asserts without argument (again as did Hobbes) that these are consistent with equal freedom from the will of others.

...*age or virtue* may give men a just precedency: excellency of parts or merit may place some above the common level: *birth* may subject some, and *alliance or benefits* others, to pay an observance to those 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.⁶²

Inequality enters in the form of "just precedency" which places the more fortunate "above the common level." These inequalities may arise from birth. Leaving aside the larger and obvious difficulty attending a theological grounding of equality, there are clear counterexamples to any shared origin basis for equality whether secular or sacred which show that X and Y sharing their origin has no bearing on their equality in any dimension. One man may make many cheeses, many poems and many mistakes, but the cheeses, poems, and mistakes are not thereby going to be equal in any respect. Nor will their sharing a creator be sufficient for any kind of equality between poem and poem and cheese and cheese. And even if we grant the theology, the argument to equality from a common creator will entail

⁶¹ Locke, 1721, §6, p.191, italics are original in all quotes from Locke except where indicated.

,⁶² Locke, 1721, §54.

consequences unpalatable to the anthropocentric theism: if the sea, the serpent, and the lamb are also the workmanship of our one God they too must be our moral equals.

1.2 Chapter conclusion

To close this survey of the precursors to the modern Kantian arguments I invite you to notice the general structure of the argument in Locke, Hobbes and Pufendorf. It is in virtue of falling under the same description or sharing a predicate or property that we are all equal. For Hobbes it is that we are all vulnerable to mortal threat; for Pufendorf it is that we all have understanding; and for Locke it is that we are all the workmanship of the one God. Notice the structure: we all share property X, therefore we are all equal with respect to X. Analysis of this structure lies at the heart of my negative thesis starting in the next chapter and reaching full maturity by chapter six.

Chapter 2

Soft scepticism about equality

As between male and female, the former is by nature superior and ruler, the latter inferior and subject...It is clear then that by nature some are free, others slaves, and that for these it is both just and expedient that they should serve as slaves. (Aristotle)

Mankind must work continually to produce individual great men – this and nothing else can be the task...for the question is this: how can your life, the individual life, retain the highest value, the deepest significance? ...Only by your living for the good of the rarest and most valuable exemplars. (Nietzsche)

It is becoming tolerably obvious at the present day that all improvement in the social condition of the higher races of mankind postulates the exclusion of competition with the lower races. That means that, sooner or later, the lower Well-being - it may be ultimately the very existence – of countless Chinamen or Negroes must be sacrificed that a higher life may be possible for a much smaller number of white men. (Rashdall)⁶³

Aristotle, Nietzsche and Rashdall deny that humanity constitutes a single class of moral equals. They see humanity as differentiated into a hierarchy of the naturally superior and inferior, master and subject, higher and lower races. The views of Nietzsche and Aristotle probably no longer surprise us, but it is not a view we would expect to associate with the drafters of the US Declaration of Independence the central premise of which declares human equality to be self-evident. In 1813 John Adams wrote to Thomas Jefferson

We are now explicitly agreed, in one important point, that there is a natural Aristocracy among men; the grounds of which are Virtue and Talents.⁶⁴

Moral egalitarians deny that there is a natural aristocracy among men. They believe that

⁶³ The quotes are from Aristotle, 1981, *Politics*, 1254b; Nietzsche, 1997, *Untimely Meditations*: §6, Schopenhauer as Educator p.161 and p.162; Rashdall, 1907, *A Theory of Good and Evil*, Vol. 1, pp.237-238. For similar hard inegalitarian views see Hitler, 1992, p.391 and Moore 1982, Chapter 6, 113§ and §120.

⁶⁴ Letter from John Adams to Thomas Jefferson, 15 Nov. 1813 (Available at <http://press-pubs.uchicago.edu/founders/documents/v1ch15s62.html>).

The status of ultimate unit of concern attaches to every living human being equally - not merely to some subset such as men, aristocrats, Aryans, whites, or Muslims.⁶⁵

And they extend these moral beliefs into the political sphere.

Egalitarians base claims to social and political equality on the fact of universal moral equality.⁶⁶

There are softer sceptical positions about the claims of moral and political egalitarianism which are compatible with a rejection of the hard inegalitarianism of Aristotle and Nietzsche and Rashdall. The sceptical views I consider in this section are of this softer kind.

2.1 Universalization and equality

One soft sceptical position about equality holds that egalitarian normative⁶⁷ principles are redundant; they play no distinctive role in moral principles since the same prescriptive outcomes are achieved by universally quantifying the relevant principle. I'll call this position *the equivalence thesis*. Waldron labels this "the Raz approach" after Joseph Raz to whom he attributes the view.⁶⁸ Waldron invites acceptance of the equivalence thesis by asking why we should

...not simply insist that all moral principles or major premises of moral argument be universally quantified without any restriction at all on their range, and let the content of the principle do any necessary further work?⁶⁹

⁶⁵ Pogge, 1992, p.48.

⁶⁶ Anderson, 1999, p.313.

⁶⁷ I'll follow G.A. Cohen in taking a normative principle to be a general directive which states what ought to be done. Cohen, 2008, p.229. An egalitarian normative principle then will be a general directive which explicitly prescribes that equality of something ought to be brought about.

⁶⁸ Waldron, 2008, p.11. Actually Waldron misattributes the equivalence view to Raz. Raz denies that "all universal principles can be regarded as egalitarian" for the reason that "though they all guarantee some benefit to all, they do not entitle all to the same benefits." Raz, 1986, p.222. In this section I try to flesh out what makes Raz's general view correct. As my example below shows, Raz considers at least one universally quantified principle, I name it *RAZ*, to be equivalent to an equality principle. In this section I try to show that he is mistaken in this case.

⁶⁹ Waldron, 2008, p.11.

Waldron's answer is that there is "no particular reason not to take the Raz approach and no particular compulsion to take it either."⁷⁰ Waldron therefore accepts the equivalence thesis. Here I explore this thesis from two directions: first by example and second, by examining the formal relations implied by such normative principles when expressed in the formulae of universal quantification. I show that the equivalence thesis is false.

A test by example

One test of the equivalence thesis is by setting examples of universalised principles against their explicitly egalitarian counterparts. I'll use Waldron's and Raz's own examples of universalised principles

WAL: All are entitled to have their interests respected.⁷¹

And,

RAZ: Being human is sufficient grounds for respect

And the egalitarian rendering:

EGAL: All humans are entitled to equal respect.⁷²

WAL is Waldron's example of a universally quantified principle which he considers to be equivalent to an egalitarian principle stating the requirement for equal respect – a principle like *EGAL*. *RAZ* is not explicitly universally quantified but it is implicitly so since the population over which it ranges is all humans. *EGAL* is Dworkin's equal respect principle. Raz considers *RAZ* to be a "more perspicacious rendering" of *EGAL* and therefore equivalent to it.⁷³ All three principles prescribe that all humans shall be respected; *EGAL* adds that the respect shall be equal respect. We want to know whether the normative prescriptions of *RAZ*, *WAL* and *EGAL* are equivalent or whether *EGAL* prescribes or permits a different set of

⁷⁰ Waldron, 2008, p.12.

⁷¹ Waldron, 2008, p.11 citing Raz, 1986, p. 221. The propositions are theirs, the names mine.

⁷² To tie *RAZ* and *EGAL* to *WAL*, let it be assumed that in *RAZ* and *EGAL* the respect is respect for the interests of those who fall within the range of the principle, viz. all human beings.

⁷³ Raz, 1986, p.228.

actions or outcomes from *WAL* or *RAZ*. If these are different then the principles are not equivalent and Waldron's equivalence thesis should be rejected.

Does egalitarian *EGAL* add anything substantive to universally quantified *WAL* and *RAZ*? I believe it does. *WAL* and *RAZ* would permit that in lifeboat situations we take the interests of slaves and womenfolk into consideration but give less weight to their interests than to the similar interests of the male citizens of Athens. We satisfy *WAL* and *RAZ* if we prioritise all male citizens over women in the allocation of lifeboat spaces, we show respect for the interests in survival of women by giving them priority over slaves, and we show respect for the interests in survival of the slaves by giving them priority over livestock.

Contrast these substantive consequences for action with those of the expressly egalitarian principle *EGAL*. By dint of the equality constraint absent from *WAL* and *RAZ*, *EGAL* prohibits the unequal respect which *WAL* and *RAZ* permit. *EGAL* thus differs from *WAL* and *RAZ* in narrowing the range of permissible action by prohibiting allocations of lifeboat spaces which the universally quantified principles would sanction.

2.1.1 Binary and spectrum predicates

Waldron claims that the universal quantifier ranging over all humans does the same normative work as an explicit equality principle governing the same population and distribuendum. The foregoing examples show this not to be the case for Waldron's *WAL* and Raz's *RAZ*. I shall now subject *the equivalence thesis* to a more formal test.

The universally quantified formula *URAZ* represents universalised *RAZ* with the antecedent predicate H standing for 'human' and the consequent predicate R standing for 'due respect'.

$$URAZ: \forall x[Hx \rightarrow Rx]$$

Which states that for any x, if x is human, H, then x is due respect, R.

URAZ is therefore equivalent to *RAZ* and *WAL*.

If there are no degrees of being human then we can say that being human is a binary property and H is the corresponding binary predicate. The predicate R 'due respect' is not a

binary predicate: we can be more or less respectful: indifference or disdain at one end of the spectrum up to worshipful reverence at the other. Raz will have in mind something closer to worshipful reverence than indifference – but respect is the kind of attitude which allows Raz that latitude. Thus *being due respect* is a spectrum property and R a spectrum predicate which can take one of a range of values in the spectrum. In standard form, the logical notation of the quantificational formula *URAZ* doesn't accommodate spectrum predicates. We can fix this by adding a range signifier. Let's specify that range as $R_{x_1...R_{x_n}}$. The values are to be understood as signalling ordinality not as assigning cardinal values,⁷⁴ the purpose here being only to mark that the respect one is due, R, can vary in value along a spectrum from lower to higher. The universally quantified formula expressing being human as sufficient for being due respect within a range then becomes

$$RANGE: \forall x[Hx \rightarrow (R_{x_1...R_{x_n}})]$$

Which states that for any x, if x is human, H, then x is due respect within the range $R_{x_1...R_{x_n}}$.

We want to know whether, given *RANGE*, all x's take the same value on the R range; that is, we want to know whether all x's are due equal respect in virtue of all being x's. We should see right away that the mere fact that *RANGE* is universally quantified over all x's is insufficient to determine the value taken by any x in the range of the consequent predicate, R. Therefore while *RANGE* is equivalent to *RAZ* and *WAL* in making being human a sufficient condition of being due respect, it is not equivalent to *EGAL* since, by stipulating equal respect, *EGAL* determines that the value of R is equal for every x. Again, the equivalence thesis is shown to fail.

This result formally demonstrates that in a universalised conditional in which the consequent is a spectrum predicate (the spectrum nature of predicate R here signified by $(R_{x_1...R_{x_n}})$), the value on the spectrum taken by the consequent predicate is not determined

⁷⁴ This prescription is to sidestep the conceptual difficulty of attaching cardinal values to an attitude, the attitude of respect.

by the antecedent predicate. This finding explains why it is true that the equality of any two things is

... implied neither by their possessing their property in common nor by their common membership of a larger class of which all members possess the property.⁷⁵

Thus, if being human is sufficient for being due respect, since the respect one is due can take a range of values along a spectrum it doesn't follow that all humans are due equal respect merely in virtue of being human, even if all humans are due respect. To produce equal value in the consequent range predicate we need an additional condition expressing either an equality principle (such as Dworkin's principle of equal respect), or which fixes the value in the predicate range by means other than an equality principle. Any such principle requires its own justification and cannot simply be read off from the universality of the conditional. Moreover, and as is well known, an equality principle won't fix the absolute value on the scale ($Rx_1...Rx_n$); to fix that value will require a further principle.

Waldron affirmed the equivalence thesis: that universalised principles can do the same normative work as explicit equality principles; they issue the same prescriptions, permissions or prohibitions, as principles which contain an explicit requirement for equal treatment or equality of condition. I showed that the equivalence thesis should be rejected.

2.2 Egalitarian defaultism

Another form of soft scepticism toward egalitarianism maintains that unequal treatment does but equal treatment does not require justification. I shall call this position *egalitarian defaultism*. Gewirth puts it like this:

It is a principle of reason that all men ought to be treated alike unless there is a good reason for treating them differently.⁷⁶

⁷⁵ Benn, 1967, p.62.

⁷⁶ Gewirth, 1971, p. 331. Actually Gewirth's restriction of this principle to humans is unjustified. Why not: 'all things ought to be treated alike unless there is good reason to treat them differently.' If Gewirth was a

Possibly the best known statement of the defaultist position is Isaiah Berlin's:

If I have a cake and there are ten persons among whom I wish to divide it, then if I give exactly one tenth to each this will not, at any rate automatically, call for justification; whereas if I depart from this principle of equal division I am expected to produce a special reason.⁷⁷

Ronald Dworkin's shipwreck survivors washed ashore on an uninhabited island appear to espouse a version of egalitarian defaultism in accepting that

No-one is antecedently entitled to any of these resources, but that they shall instead be divided equally among them.⁷⁸

We should reject egalitarian defaultism, for several reasons. Here are some of those reasons.

A brute claim

Notwithstanding Gewirth's "it is a principle of reason...", defaultism looks like a substantive and not a conceptual claim. If it were a conceptual claim we should sniff incoherence in the inegalitarian defaultist's rejoinder:

It is a principle of reason that all men ought to be treated differently unless there is good reason for treating them alike.

This does not look any less coherent than Gewirth's egalitarian version. On the face of it, both propositions look like brute substantive claims neither of which is obviously more plausible than the other. Being just brute claims, to refuse to give a defence of one of them is to refuse to engage in the business of philosophy.

defaultist in 1971, by 1978 in *Reason and Morality*, he has abandoned defaultism giving arguments in defence his egalitarianism.

⁷⁷ Berlin, 1955. p.305.

⁷⁸ Dworkin, 1981.p. 285. If there are resources to which I have no entitlement on what grounds can I complain if you claim more of them than I?

Special pleading

In refusing to provide a positive account of egalitarianism while insisting that a positive account be given of inegalitarianism, the defaultist requires of the inegalitarian opponent a higher standard of justification than they demand of themselves. Assymmetric justificatory standards surely demand their own justification. This is the weaker argument against egalitarian defaultism because it leaves open the possibility that there might be good grounds for differential standards of justification. However, insofar as the defaultist gives no account of such grounds, defaultism looks like special pleading.

The No Negative Reasons Thesis

As it is obscure what work it does, it pays us in clarity if we excise the phrase 'It is a principle of reason that...' Gewirth's maxim then becomes

All men ought to be treated alike unless there is a good reason for treating them differently.

Call this the *Particular No Negative Reasons Thesis* since it is particular to how we should treat humans. It's not clear why that thesis should be true if the *General No Negative Reasons Thesis* is not true:

We ought to do X unless there is good reason not to do X.

The General No Negative Reasons Thesis should surely be rejected. A good reason to spontaneously dance a highland fling in the busy town square is that it would entertain everyone present. There are many things I might do, I could also dance a tarantella, or proceed on my way without dancing at all. Let's suppose that we are unable to name one good reason *not* to spontaneously dance a highland fling at that time and place. Now, not only do we have no good reason not to do X, we have a good reason to do it. Still, even this *a fortiori* case isn't strong enough to yield that we ought to do X. It is not always clear what someone means by a particular use of 'ought', but it is clear that Gewirth wants his 'ought' to signify that if we don't do what he claims we ought to do, namely, treat people alike in the circumstances specified, then we are in some way wrong, mistaken or blameworthy or

all three.⁷⁹ On that normative reading we don't want to be thereby committed to it following that we *ought to* dance a highland fling, for then we would be in some way wrong or mistaken or blameworthy were we to refrain from so dancing. And that can't be right. So we should reject the *General No Negative Reasons Thesis*. And if the general thesis is false, then it is hard to see what can be said for the *Particular No Negative Reasons Thesis*.

Cross-Species Egalitarian Defaultism

More compelling considerations weighing against defaultism emerge by asking why the hamster, the cat and the pet budgie should not enjoy equally large slices of Berlin's cake. To ask that question is to demand a justification of cross-species inequality, a demand which, *qua* defaultist, the egalitarian defaultist should embrace. But cross-species equality is too radical a position to possess the natural comfort we expect of a default position; default postures are like resting postures: they should be easy to assume and comfortable to maintain. So the defaultist will deny cross-species egalitarianism and in so doing will be required by his defaultist commitment to defend his position. That defence will necessarily involve an account of the morally relevant differences between humans and the other species which draws attention to certain properties which set human beings apart from other animals.

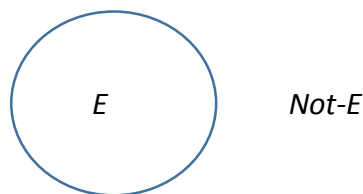
The first defence argument might make reference to the greater depth and complexity of human interests compared to the interests of other species. The second points to there being only very weak ties of kinship or none at all across the species divide. And the third refers to the fact that exclusion of the hamster, cat and budgie from equal fellowship with humans will not cause them to have feelings of exclusion and inferiority while it would cause humans to have those feelings.

⁷⁹ The uses of 'ought' span many domains. Some examples: if you believe 'if a then b' and you believe 'a', then you ought not believe 'not-b' (you would be mistaken to believe not-b); we ought to reject egalitarian defaultism; a racing car ought to be fast; it's raining, you ought to take an umbrella; it ought to be sunny when we arrive; and the more familiar ethically flavoured: you ought to be kinder to your sister.

Suppose then that those are the three arguments against cross-species equality to justify an unequal division of Berlin's pie. The first argument takes similarity and difference in depth and complexity of interests as marking a morally significant boundary, suggesting that similarity in these properties is grounds for equal treatment. The second argument supposes that intra-species ties of kinship between humans are positive grounds for their equal treatment. The third argument suggests that avoidance of feelings of exclusion and inferiority are further positive grounds for equal treatment of humans. Either the defaultist concedes that egalitarian defaultism spans the species divide, or he must give a positive account of the morally relevant differences between humans and other animals. In giving that account he also gives a set of justifying reasons for intra-species egalitarianism. The defaultist therefore cannot defend inegalitarianism without abandoning his defaultism. Therefore defaultism (egalitarian or inegalitarian) is not tenable.

Everyone is an egalitarian

Consideration of cross-species egalitarianism reminds us that to define a class *as* a class of equals, call it class *E*, is implicitly to affirm inegalitarianism between the class of equals, *E* and the others, *Not-E*.



The apparent banality of this observation conceals something worth noticing, namely: all egalitarians will be inegalitarian over some pair of populations, *E* and *Not-E*, because no sane person holds that everything under the sun is due equal concern or respect – humans and cats? Quite possibly; but humans and rainfall? The morally salient divide then is not strictly between moral egalitarians and moral inegalitarians, but about the scope of one's egalitarianism, that is, over membership of *E* (and given the general gist of this section, the former could call the latter *immoral egalitarians* rather than moral inegalitarians). The

salient disagreements between political egalitarians will be very different and will not typically centre on which class constitute the class of moral equals, E, but on which political structure most faithfully respects the equal moral worth of the class of moral equals.

State and Citizen

Even if egalitarian defaultism between Berlin's cake eaters is untenable as a fundamental moral principle, nevertheless there may be room for egalitarian defaultism in other domains. One such domain, so the argument might go, is the relation between state and citizens. Political egalitarianism is the view that the state ought to arrange its economic, social and legal institutions in a way which takes equal account of the interests of all its citizens. The defaultist would add that this should be the default assumption to be departed from only if there are good reasons to give greater weight to the interests of some in certain special circumstances.⁸⁰ Defaultism is appropriate here, we might argue, because we conceive the state as a limb of the body of citizens whose function is solely to serve that body. This conception of the state as a limb of the people, the thought could proceed, remains true even of dictatorships, for insofar as the dictatorship fails to conceive of itself as a limb of the citizens and fails to act in service of its body, the citizens, then it is not acting *qua* state and so fails, in such moment, to *be* a state just as a doctor not engaged in healing isn't a doctor-not-healing but a just a man not doctoring.⁸¹ Given this conception of the state as a limb in service of the body, the citizens, the default treatment of its citizens ought to be a form of equal treatment⁸² because no citizen is more nor less part of the body than any other citizen

⁸⁰ The policy of affirmative action is an example of justified unequal treatment, the justification being that unequal treatment is sometimes necessary for treatment as an equal.

⁸¹ The doctor metaphor is from *The Republic*, 342d: "...it follows that the doctor, *qua* doctor, prescribes with a view not to his own interest but that of his patient" from which Socrates proceeds to "and therefore my dear Thrasymachus, no ruler, *qua* ruler, exercises his authority, whatever its sphere, with his own interest in view, but that of the subject of his skill...", 342e.

⁸² Or *treatment as an equal* which is not a right to an equal share of some good but a right for one's interests to be given equal consideration in the political decision about how goods shall be distributed. The distinction is Dworkin's in *Taking Rights Seriously*, Dworkin, 1977, p 273.

I think there are at least two good replies to this defaultist position. In discussions about distributive equality it is often remarked that to make one group more equal in respect of one good, wealth for instance, causes them to be made less equal in respect of another good, welfare, for instance. This occurs because some people need more resources than others to achieve the same level of welfare. If, as seems plausible, treatment as an equal by the state involves the state in (among other things) seeking to make its citizens more equal in respect of some good, they will simultaneously be made less equal in some other respect. The consistent defaultist should insist that the resulting inequality in other respects must be justified and this justification will take the form of justification of the equality it brings about.⁸³

There is another view which looks like a kind of moral egalitarian defaultism. Baier wrote that

Morality is intrinsically egalitarian and universalist so that it follows from the meaning of ‘moral’ that moral rules must be for the good of everyone alike.⁸⁴

If we take “good of everyone alike” to mean “equal good of everyone” Baier’s position is a kind of egalitarian defaultism since it makes moral egalitarianism part of the meaning of moral. On Baier’s view the following moral rule, P, wouldn’t be a merely mistaken substantive moral assertion, it would not be a moral rule at all:

P: One should act so as to favour the good of one’s own family over the good of others.

I have not researched the question but I am confident that P is not an especially rare view and might even be the most common view. Leaving aside whether or not it’s the correct view is there any reason to want to understand what morality is in such a way that P is to be excluded from the class of moral rules? Suppose Kurt Baier tells us that while P is indeed a

⁸³ This point is from Joseph Raz, 1986, p.230, note 1.

⁸⁴ Baier, 1958, pp. 200-201. Baier doesn’t mean the good of every-one which has a good, he means every human being who has a good.

rule about what we should or should not do he insists that it's not a *moral* rule because it doesn't count the good of everyone as equally important.⁸⁵ Suppose we then accept that our former view that it is a moral rule is mistaken, what follows? Not very much. Baier, first of all, cannot complain about the principle P as an objectionable moral principle since he asserts that it is not a moral principle at all. But he would still want to object, to persuade us that we ought not endorse principle P, and that we would be blameworthy and should feel guilty if we did endorse it. In so objecting Baier would thereby find himself in a paradigmatically moral discussion. Non-philosophers would find this all very peculiar, thinking that P was exhibit A of a moral rule because it's about how we ought to treat others and about what is or is not blameworthy and shameworthy.

2.3 Closure principles

Another form of soft scepticism about equality as an important moral value is suggested by Joseph Raz. Raz claims that principles often regarded as paradigmatically egalitarian are not egalitarian at all but are just 'closure principles' which are common to all moral or political principles. If that is correct then they cannot be egalitarian principles because then every moral or political theory would be egalitarian. His particular target is Ronald Dworkin's principle that government must treat everyone with equal concern and respect.⁸⁶ What is to be said for Raz's view?

Some terminological clarifications. I shall mean by 'principle' a statement which prescribes a general rule of treatment or action.⁸⁷ 'All citizens of school age shall have the right to attend a state school' is a principle since it stipulates in general terms how citizens shall be treated,

⁸⁵ The good of dogs, pigs and frogs too?

⁸⁶ Dworkin, 2009, pp.272-273.

⁸⁷ What I am calling just a principle, Cohen calls a normative principle at Cohen 2008, p.229.

namely, they shall be permitted to attend a state school. In prescribing some actions a principle will rule out others. A right to attend a state school rules out exclusion from state schooling. I shall treat two principles as substantively equivalent if they prescribe and rule out the same actions or treatment even if they differ in their form. 'Being a citizen of school age is sufficient for having a right to attend a state school' and 'no citizen of school age may be excluded from state school' and 'all citizens of school age shall have the right to attend state school' all differ in form but are substantively equivalent because they prescribe and rule out the same class of actions.

I propose to call principles, *formal egalitarian principles* just if they prescribe an equal distribution of anything, X, between members of a population where an unequal distribution is a possible distribution. It's irrelevant (to my proposed naming convention) what kind of thing X is and over whom or what X is to be distributed equally; to qualify as a formal egalitarian principle it is sufficient that the principle prescribes an equal distribution of X.⁸⁸

The egalitarian character of such principles is conferred by the equality requirement. Not so, thinks Joseph Raz. Consider the following two principles:

(4.1) All F's are entitled to equal G

(4.2) All F's are equally entitled to G.⁸⁹

⁸⁸ In section 2.3.1 of this chapter I make further distinctions between formal egalitarian principles, humanist egalitarian principles, and moral egalitarian principles. These distinctions are important, but not for my aims in this section.

⁸⁹ The principles and their numbering are from Raz, 1986, p. 220. Raz may have taken the distinction between a right (Raz's "entitlement") to equal G and an equal right to G from Wollheim. Wollheim says that a right to equal G (4.1) guarantees an egalitarian distribution of G while an equal right to G (4.2) does not. Wollheim, 1956, pp. 282-283.

Note that (4.1) differs from (4.2) since ‘equal’ and ‘equally’ modify different nouns in each case. An equal entitlement to G is not the same entitlement as an entitlement to equal G. Take ‘equal entitlement’ to mean something like *equally strong*⁹⁰ entitlement such that

All F’s have equal entitlement to G if no F shall be given priority over any other in the allocation of G’s.

Suppose that in (4.2) the F’s are legal residents of a country and G is government owned housing. All legal residents might have an equal entitlement to government owned housing so that no-one has priority over anyone else in the allocation of state housing, but unequal entitlement remains a genuine possibility. The government could, for example, operate a weighting system whereby citizens who are residents are given a points weighting over residents who are not citizens and those with the highest points are given priority in the queue for the allocation of available housing. This would constitute one kind of unequal entitlement. That such a system is possible means that unequal entitlement is one possible way to allocate entitlement but which is ruled out by the equal entitlement requirement in (4.2). Hence (4.2) satisfies my description of a formal egalitarian principle.

Similarly for (4.1). Suppose the government has a stock of modern, well-built and spacious houses close to the beach and in the loveliest corner of the city. This is their best housing stock. They also have old, cramped and badly maintained houses in run-down areas on the city outskirts with few amenities. This is their worst housing stock. Residents in need of housing who are also citizens may find that they tend to be offered the best quality housing, while similarly needful non-citizens find that they tend to be offered the lower quality housing. Only when one type of housing is no longer available is the other type offered to all. This allocative approach could, but needn’t, reflect any differential entitlement to better housing, it may only reflect that the form of the entitlement doesn’t preclude such differential treatment by the housing administrators. Citizens and non-citizens would have

⁹⁰ This is how Raz sees the distinction: equal entitlement refers to “strength of one’s right” and equal G refers to “the amount or quality of the benefit to which one is entitled.” P. 219.

an equal entitlement to housing, the entitlement being fully met by providing housing, but they would not have an entitlement to equal housing. Such a system of allocating better and worse housing is possible but is ruled out by (4.1) which requires equal housing. Since (4.1) rules out possible unequal distributions it satisfies my description of a formal egalitarian principle.

Despite the presence of 'equal' and 'equally' and the distributive inequality they proscribe Raz denies that (4.1) and (4.2) type principles are egalitarian principles. Principles of this kind are, he claims, "nothing but closure principles."⁹¹ By 'closure principles' he appears to mean principles which fully determine the basis of an entitlement. So "every human being is equally entitled to education" is a closure principle since it states that "nothing else counts for the justification of moral or political action over education."⁹² Raz next argues that since every moral and political theory which claims to be "complete" contains principles of this kind, then these cannot be egalitarian principles, for if they were then every moral or political theory would be egalitarian simply in virtue of being or stating closure principles. This brings Raz to his main target which is Dworkin's claim that the dominant guiding principle of the liberal state is not liberty but equality. Government, Dworkin claims,

...must not only treat people with concern and respect, but with equal concern and respect.⁹³

Call this *Dworkin's principle*. For Dworkin this is the defining condition, the "sovereign virtue" of the just state.⁹⁴ According to Raz, Dworkin's principle

...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.⁹⁵

⁹¹ Raz, 1986p.220. Note that Raz's closure principles are not the same as epistemic closure principles.

⁹² Raz, 1986p.220.

⁹³ Dworkin, 1977, pp.272-273 and pp.356-357.

⁹⁴ He calls it the "abstract egalitarian thesis", Dworkin, 1983, p 24.

⁹⁵ Raz, p220.

Raz here seems to misidentify type (4) principles, including Dworkin's, as "nothing but" closure principles. His slip seems to be not to notice that even if they are intended as closure principles, they are also substantive principles of another distinctive kind, the egalitarian kind. They are substantive egalitarian principles in virtue of the normative work done by the modifiers 'equal' and 'equally' which prohibit unequal distributions which other differently formulated, indeed inegalitarian, closure principles would permit if it were possible for government to show some concern and respect for all but more concern and respect for some.

Is it possible for a government in its actions to show concern and respect for all while showing less concern and respect for some? In other words, is unequal concern possible? It surely is possible. I described one way in which it is possible in the example of the government granting entitlement to state housing differentially between resident citizens and resident non-citizens.⁹⁶ Unequal entitlement is one way to embody unequal concern even if not every unequal entitlement reflects unequal concern. Dworkin's principle that all people are entitled to equal concern and respect is a type (4.1) principle in which the F's are those whom the government governs and G is a manner of treatment by the government, namely, treatment with concern and respect. The unequal housing example above showed how (4.1) type principles rule out possible inegalitarian distributions of G and thus count as formal egalitarian principles. Since Dworkin's principle is of the (4.1) form, ruling out possible unequal distributions of G, it too is a formal egalitarian principle. This might seem to make my disagreement with Raz a merely verbal disagreement about the most apt use of the predicate 'egalitarian.' But I shall show that it is not merely verbal and that the kinds of principles which Raz claims are not distinctively egalitarian in fact satisfy Raz's own conditions which a principle must satisfy in order to qualify as egalitarian.

⁹⁶ As I write in 2015, many states within the EU allocate rights to state benefits, the right to work and the right to housing, differentially between resident citizens and some resident non-citizens. One method of doing so under a principle is by withholding residence as a legal status from some persons who are *de facto* resident.

Raz's inconsistency

In denying that Dworkin's principle in particular and all (4.1) and (4.2) type principles generally are egalitarian principles, Raz is inconsistent. There are, he grants, some principles which are properly thought of as egalitarian, two examples of which are:

(5.2) In scarcity each who has equal entitlement is entitled to an equal share.⁹⁷

And

(6) All F's who do not have G have a right to G if some F's have G.⁹⁸

For Raz, (5.2) type principles are principles of equality because "equality is not only their result but their purpose" they are "designed to achieve equality between their subjects with respect to their subject matter. They are (one kind of) principles of equality."⁹⁹ Type (6) principles are "paradigmatic (strictly) egalitarian principles because they are sensitive to the existing inequalities among members."¹⁰⁰ But Raz cannot consistently assert that (5.2) and (6) type principles are egalitarian while denying that type (4) principles are egalitarian. Compare a type (5.2) principle, (5.2a), with type (4) principle, (4.3):

(5.2a) In scarcity of health care each who has an equal entitlement is entitled to an equal share of health care.

(4.3) All citizens are equally entitled to equal health care.

⁹⁷ Raz, p. 223. Again the principles and their numbering are Raz's own.

⁹⁸ Raz, p. 225

⁹⁹ Raz, p. 225

¹⁰⁰ Raz, p. 226. Something's amiss in Raz's formulation here. Merely being sensitive to inequalities isn't sufficient for being an egalitarian principle. A principle such as 'ensure that X always has twice as much as Y' is sensitive to inequalities but is not egalitarian. Surely Raz refers here to a principle which seeks to reduce inequalities. If so then type (4) and Dworkin's principle would qualify as egalitarian and Raz wishes to exclude these.

Since all citizens may be entitled to some health care while immigrant citizens are entitled to less (as measured by, let's say, the cost of the health care paid by the state)¹⁰¹ and (4.3) and (5.2a) both rule out such unequal allocations, the purpose of (4.3) and (5.2a) is equality in health care. However the two principles are substantively different for they don't rule out or guarantee the same actions. (4.3) entitles all citizens to equal health care without qualification, and therefore to equal health care whether in abundance or in scarcity. In (4.3) 'equal' could mean equal share, as with (5.2a) or equal amount. But since the total amount of health care (as measured let us suppose, by the total health care budget) is the same for all citizens, an equal share for each will be equivalent to an equal amount (again measured, let us suppose, by the cost of the health care). The result is that (4.3) achieves equality of shares of health care wherever (5.2a) does, but also achieves it where (5.2a) does not, namely, in conditions of abundance. Raz therefore cannot consistently hold (5.2a) to be but (4.3) not to be a genuinely egalitarian principle. If (5.2a) is, and I agree it is since it meets my definition of a formally egalitarian principle, then (4.3) is and since (4.3) is a type (4) principle then (4) is egalitarian if (5.2a) is.

Raz's principle (6) makes the right to G depend on whether any other F has G. So if any F has state housing, then all F's are entitled to state housing. Compare (4.1) above and let G be state housing. In (4.1) all F's are entitled to state housing whether or not any F happens to have state housing. (4.1) therefore guarantees housing to all F's whenever (6) does. Thus if (6) is an egalitarian principle then (4.1) must also be an egalitarian principle. Furthermore, (6) is egalitarian with respect, as Raz puts it, to the subject matter only if unequal housing is not a possible distribution of housing. But since not all housing is equally good, unequal housing is possible. As (6) doesn't rule out unequal housing it is not egalitarian in subject matter since it doesn't rule out a possible unequal distribution. In this respect (6) is less

¹⁰¹ In Sweden everyone with a social security number pays for non-dental health care at point of use up to an annual limit (circa £120 as I write in 2015) after which further care for the remainder of the year is free. In this kind of system there is room for an unequal distribution. Health care could be allocated unequally by the unequal allocation of social security numbers, or by setting different annual payment limits for different classes of residents, or by leaving the allocation of the some expensive treatments, say MRI scans and operations, to the discretion of staff whose decision may be influenced by facts other than pure medical need.

egalitarian than (4.1) and if Raz holds that (6) is an egalitarian principle consistency requires that he allow that (4.1) is also an egalitarian principle.

2.3.1 Formal and substantive egalitarian principles

Clearly some formal egalitarian principles are inequalitarian under another description and would be rejected by those who regard themselves as moral or political egalitarians. In this section I make a distinction between three kinds of egalitarian principle: formal egalitarian principles, humanist egalitarian principles and moral or political egalitarian principles.

Consider the principle

Immigrants - all non-immigrant residents are equally entitled to ten hours of free labour each week provided by immigrant residents

Immigrants qualifies as a formal egalitarian principle because it prescribes an equal distribution of something, ten hours of free labour, between members of a population, non-immigrant residents, where an unequal distribution of labour is a possible. Although it is formally egalitarian, there is a sense in which it is inequalitarian between immigrants and non-immigrants. That it is so, suggests that there is a narrower class of egalitarian principles than merely formal egalitarian principles. Perhaps this narrower class is that which specifies that the population over which the equal distribution shall range shall be all human beings. Call these *humanist egalitarian principles*. Such principles are egalitarian not because the population over which they range is all human beings but because they prescribe equality between all human beings. This distinguishes them from merely universal principles which range over all human beings but may not prescribe equality. Consider the two principles:

Prime Minister: All humans who pay fifty thousand pounds to the Conservative Party are equally entitled to dine with the Prime Minister.¹⁰²

And

¹⁰² In 2015 the website of the UK party in government, The Conservative Party, provided membership of its 'Leadership Club' for a £50,000 fee. Leadership Club members were invited to dine with the then Prime Minister, David Cameron. It need hardly be said that this commodifies political influence as a luxury item available only to the super-rich. See https://www.conservatives.com/donate/Donor_Clubs.

Kick: All humans (including Jones) are equally entitled to kick Jones once each week.

Prime Minister is universally quantified in form and yet the population enjoying the equal entitlement is not all humans but the sub-population ‘all humans who pay fifty thousand pounds to the Conservative Party.’ It seems to me then that not only is *Prime Minister* not egalitarian between all humans, its universal form is made counterfeit by its content. In contrast *Kick* prescribes an equal entitlement to all human beings to an equal amount of something, kicking Jones and is therefore a formal egalitarian principle. Unlike *Prime Minister*, the population in *Kick* is the whole class of humans and its universal form is authentic. It therefore qualifies as what I earlier called a humanist egalitarian principle. But in singling out Jones for special mistreatment *Kick* should be rejected by those who consider themselves moral or political egalitarians because of its content not its form. This suggests that we should recognise an additional sub-category of egalitarian principle, one which a moral or political egalitarian would embrace. The moral egalitarian holds that all people matter equally.¹⁰³ I take the political egalitarian to hold a narrower position. The political egalitarian holds that a government should construct its institutions to reflect that all of its citizens matter equally. A moral egalitarian principle then will be one that prescribes action consistent with the recognition that all people matter and matter equally. A political egalitarian principle will be a principle governing public institutions requiring that they act in such a way as to recognise that “the interests of the members of the [political] community matter and matter equally.”¹⁰⁴ Such principles would rule out *Immigrants*, *Prime Minister* and *Kick*.¹⁰⁵

But things are not so straightforward. Consider,

Blind: the blind shall be entitled to 20% more state benefits than sighted people.

¹⁰³ I’ll just say ‘people.’ The nuances of the contestable cases are irrelevant here.

¹⁰⁴ Dworkin, 1983, p. 24.

¹⁰⁵ Dworkin rules out as inconsistent with the requirement of equal respect principles like *Prime Minister* because they confer unequal political influence deriving from wealth rather than the “...powerful mind or infectious idealism” of a Thomas Jefferson or Martin Luther King. Dworkin, 2003, p.196.

Blind favours the blind over the sighted. It is explicitly inegalitarian. Yet it may not only be consistent with political egalitarian principles, it may be required by them. To provide the blind with extra resources to meet their greater needs may be one way of showing equal concern for them. So while *Immigrants* is a formal egalitarian principle which would be ruled out by a political egalitarian principle of equal concern, *Blind* is a formal inegalitarian principle which may be required by the political egalitarian principle. This is an instance of the fact, often remarked upon, that to be made equal in one domain is to be made unequal in another domain. How should the moral egalitarian politicise his moral egalitarianism? By choosing only those principles which treat people not equally, but as if they matter equally.

2.3.2 Section conclusion

Raz didn't misidentify the defining feature of egalitarian principles. He agrees that "equality is not only their result but their purpose," that they are "designed to achieve equality between their subjects with respect to their subject matter." So he spotted that equalising something is their purpose and not a mere side effect. His slip was to fail to notice that type (4) principles in general, and Dworkin's principle in particular, satisfy this condition. Thus Raz's 'nothing but closure principles' form of soft scepticism doesn't misidentify the nature of egalitarian principles, it misidentifies the nature of the type (4) principles and of Dworkin's principle which is a type (4) principle. Raz's chief target is Dworkin's principle: that all are owed equal concern and respect. I have shown that Dworkin's principle and type (4) principles as a typology satisfy a plausible sufficient condition for being egalitarian principles, namely, they seek to prohibit possible unequal distributions. Moreover, they satisfy Raz's own sufficient condition for a principle being an egalitarian principle. Hence they are not 'nothing but' closure principles common to all political principles, for even if they are properly called closure principles, they are distinctively egalitarian closure principles.

2.4 Chapter Conclusion

In this chapter I sought to describe a family of positions which I characterised as *soft scepticism*. Soft scepticism is scepticism about egalitarian principles which does not imply

endorsement of the hard scepticism about egalitarianism exemplified in the inegalitarianism of Aristotle, Nietzsche and Rashdall. I examined some of the claims made by these soft sceptical positions. I demonstrated by two methods, counter-example and formally, by quantificational logic (QL), that one soft sceptical doctrine, *the equivalence thesis*, is false. This thesis asserts that universally quantified principles do the same normative work as egalitarian principles. I also demonstrated that when we cast in QL the off-the-shelf Kantian argument for equal worth we confirm Stanley Benn's (Benn, 1962) and J.R. Lucas's (Lucas 1965 and 1967) observations that 'all X are Y' doesn't entail that all X are equal (or equally) Y. I showed that a second soft sceptical position, egalitarian defaultism, which holds that egalitarianism is the presumptive default position for which justification is therefore unnecessary, is untenable. My work in this chapter here has ramifications for the more extensive argumentation to be found in chapters five and six.

Chapter 3

Kantian valuable properties

In the kingdom of ends everything has either a price or a dignity. Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above price, and therefore admits of no equivalent, has a dignity...That which constitutes the condition under which alone something can be an end in itself has not merely a relative worth, i.e., a price, but has an intrinsic worth, i.e., a dignity. Now morality is the condition under which alone a rational being can be an end in himself, for only thereby can he be a legislating member in the kingdom of ends. Hence morality and humanity, insofar as it is capable of morality, alone have dignity.¹⁰⁶ (Kant)

3 Kantian valuable properties

In this chapter I move from background to foreground. I begin in earnest my engagement with the arguments which populate the literature on Kantian moral egalitarianism. A curiosity about Kant is that he doesn't mention equality in the famous passages in his *Groundwork* (Kant, 1993) which are thought to signal his egalitarian credentials. Sullivan writes that it is in Kant's second formula, the "formula of respect for the dignity of persons"¹⁰⁷ that we find the "stress...on the intrinsic equal value of each person."¹⁰⁸ This is the relevant passage

"Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."¹⁰⁹

This single sentence gives the formula for treating people with respect but there is no

¹⁰⁶ Kant, *Groundwork*, 1993, 434 – 435, and Rawls's "each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override." Rawls, (1999) p.3

¹⁰⁷ Terminology varies. Korsgaard calls it the 'formula of humanity' and Kant calls it "the principle of humanity" Kant, 1993, 431.

¹⁰⁸ Sullivan, 1994, p.65

¹⁰⁹ *Groundwork*, 429.

mention of equality. Perhaps history has presumed that the domain of the directive, the whole of humanity, is sufficient to entail some kind of equality. Schneewind tells us that in Kant's political theory

...the structure of society must reflect and express the common and equal moral capacity of its members.¹¹⁰

Pace Schneewind's standard Kantian trope - mankind's "equal" moral capacity - Kant was not deluded that every member of humanity is endowed with an equal capacity to comport themselves according to the categorical imperative, to recognise their duty under the moral law and with the self-command to obey it. There is always room in Kant's inn for more respect for some than others. He thought the man more estimable who resists inclination and acts well from duty than he who acts well from inclination. What of the Eichmann who does evil not from inclination but from a sense of duty? Is he *pro tanto* estimable? In his earlier writings Kant thought women "incapable of abstract reasoning" and admits he can "hardly believe that the fair sex are capable of principles" pausing graciously to observe that principles "are also extremely rare in the male."¹¹¹ Only a great ironist would affirm the infinite dignity and worth of all men and, in full control of his faculties, write

I feel the whole thirst for knowledge and the eager unrest to move further on into it, also satisfaction with each acquisition. There was a time when I thought this alone could constitute the honour of humanity and I despised the know-nothing rabble. Rousseau set me straight. This delusory superiority vanishes, I learn to honour men, and I would find myself *more useless than a common labourer if I did not believe this observation could give everyone a value which restores the rights of humanity.*¹¹²

But Kant isn't known as an ironist, and in singing in self-praise of his new-found honour for all men perhaps he simply forgot that the "useless common labourer" is a man too. It often seems that it's the abstractions of morality itself, the ideas of duty, dignity, personhood, the

¹¹⁰ Schneewind, 1992, p.310

¹¹¹ Kant, 1960, p.60. Fairness demands that I recognise that these writings precede Kant's egalitarian epiphany upon reading Rousseau which he describes in the passage quoted at note 112, immediately following.

¹¹² From Kant's notes on his reading of Rousseau's *The Social Contract* and *Emile*, quoted in Schneewind, 1992, p.336, note 16. I have added the italics.

moral law itself, which impress Kant and not the individual human being made of flesh and blood. This tendency in Kant might be a symptom of his conception of the origin of human value as lying in our possession of a valuable property. I turn to this way of thinking of human value in the next section.

3.1 The valuable property view

The *valuable property view*, so christened by Christine Korsgaard,¹¹³ is a view about human value according to which human beings have value because they possess valuable properties. It is the story of how human beings come to have value favoured by most Kantian egalitarians for whom the valuable properties are usually psychological capacities.¹¹⁴ Thus McMahan writes that “if some individuals are owed a higher form of consideration than is owed to any other animal that must be because they have certain higher psychological capacities.”¹¹⁵ Jeremy Waldron endorses this off-the-shelf Kantian view in his 2015 Gifford Lectures: “...that we can be moral confers great value upon us” it “makes us in and of itself creatures of infinite worth and dignity.”¹¹⁶ In such views the properties themselves are understood as the bearer of value and human beings come to acquire their value by acquiring the valuable properties. Thus since the value runs with the properties not with the species such views are not necessarily species-centric although they may contingently become so by the attribution of the highest value to properties which are thought to be exclusive to the human species.

What’s wrong with the valuable property view?

¹¹³ In Korsgaard, 2011, p.27.

¹¹⁴ Kant, Rawls, Gewirth, Donagan, Warren, Carter and Waldron all present egalitarian theories in which possession of a capacity under one or more of these descriptions raises the moral standing of man above that of the other animals but equal with one another. Regan, 1983 is unusual in holding our value based on valuable properties to be equal between humans and other animals.

¹¹⁵ McMahan, 2008.

¹¹⁶ Waldron, 2015, at lecture 3, 21 minutes. Available from www.giffordlectures.org/lectures/one-another's-equals-basis-human-equality.

I believe that the valuable property view is not the correct view of the source and nature of human value, that is, of the reasons that we should care about what happens to human beings. I shall begin with Korsgaard's diagnosis of its defects.

Korsgaard believes that there are two possible readings of Kant on the origin and nature of human value. She calls these the *valuable property view* and the *normative standing view*.¹¹⁷ She sees trouble with the valuable property view:

Merely saying that our ability to determine our ends through reason is a valuable property would do nothing whatever to explain why we take our ends themselves to be valuable.¹¹⁸

So Korsgaard rejects the valuable property view because it cannot explain "why we take our ends themselves to be valuable." The correct explanation, Korsgaard thinks, is given by the normative standing view, a view she now attributes to Kant.

In virtue of the power of rational choice we assign ourselves a normative standing –the standing to legislate the value of our own actions and ends. That commits us to assigning the same standing to every other rational being, and so to respecting his choices, and to helping him to pursue his ends.¹¹⁹

Korsgaard's "standing" is moral standing or status, which Kant calls variously "intrinsic worth" and "dignity."¹²⁰ We assign ourselves this standing to determine value just as we assign to legislators the normative standing to make law. Korsgaard's analogy is especially apt for Kant for whom our value consists in our being metaphorical legislators in a "kingdom of ends."

¹¹⁷ Korsgaard, 2011, pp.27-28. Prior to this article Korsgaard interpreted Kant as holding the valuable property view. She now thinks the normative standing view both the correct view and the correct reading of Kant. Even if Korsgaard is correct about Kant, the valuable property view seems to me the dominant view about human value among egalitarians.

¹¹⁸ Korsgaard, 2011, p. 29.

¹¹⁹ Korsgaard, 2011, p.31.

¹²⁰ 'Dignity' at Kant 1993, p.434, 'intrinsic worth' at p.435. All page references to Kant's works are to the Academy pagination.

That is Korsgaard's criticism of the valuable property view and her more favourable re-interpretation of Kant. I share Korsgaard's belief that the valuable property view misidentifies the source of human value but I am not persuaded that the source of human value lies in an act by us which assigns to ourselves normative standing to legislate the value of our ends. I doubt this because I doubt that there is a further psychological act or event involved over and above that which moves one to pursue an end and the act of choosing which end to pursue. The further event which I disclaim is the act of assigning to ourselves normative standing to choose values. And even if there were any such assignation we would want a further account of why an assignation by me of value to end X should make it true that *I* have value, that *I* matter. Does the end, X, have anything to do with my mattering? Does the mere pursuit of an end explain *why* we take the end to be valuable? Isn't it rather that we are moved to pursue an end by our valuing of it?¹²¹ Perhaps that is all that Korsgaard means – that simply in virtue of valuing an end we assume a kind of legislative authority to pursue it. I'm not sure what that legislative authority amounts to if, for example, the end I aim at is murder. Still, my assumption of my own authority to do X doesn't seem to me to underwrite why it should matter what happens to *me*.

I wonder here if either Korsgaard is too impressed by Kant's metaphor of the moral being as legislator in the kingdom of ends. In any event, I'm inclined toward a different view, one which is evoked by asking for a different explanation from that which Korsgaard seeks: the source of our value must explain not why we take our ends to be valuable, but why we are valuable, that is, why it matters what happens to us. I shall now explain why the valuable property view doesn't succeed in this latter explanatory role either.

More worries about the valuable property view

If you have value, the value which moral egalitarians assign to human beings, then it matters what happens to you in the way that it doesn't matter what happens to your worn out

¹²¹ I develop this more fully from a Korsgaardian starting point in chapter 9.

shoes or your original Picasso. Of course it may matter what happens to your shoes and to your Picasso: it matters whether your shoes are flung at evil presidents or innocent bystanders or that they aren't dumped in someone's garden, but it doesn't matter *for or to* the shoes and for the Picasso what happens to them; they don't matter the same way you do. How could human beings have the kind of value which Kantians customarily call inherent worth or dignity in virtue of possessing properties which don't themselves possess the same kind of value?

This thought suggests two lines of inquiry. First, if the valuable properties have that kind of value, how do they acquire it? Do *they* have it in virtue of having other valuable properties? Clearly there's a regress looming. So no, that can't be how they acquire the intrinsic value they confer on their possessors. The valuable properties therefore must have their value without it being conferred by possession of other properties. But if the valuable properties can acquire value in this direct and unmediated way without it being transmitted by other valuable properties, it's not at all obvious why we and other entities cannot also acquire our value directly, unmediated through other valuable properties.

The other line of enquiry addresses not how the valuable properties acquire their value but the nature of their value. Since they are putatively the source of the kind of value which Kantians assign to persons we should naturally think this must be the kind of value they themselves possess for how could they transmit to us a kind of value they themselves don't possess? The valuable properties must themselves have the intrinsic worth which we acquire upon acquiring the properties. Kant does make several claims in the *Groundwork* which evince the view that the abstract moral concepts themselves have Kantian inherent worth and dignity.¹²² Iris Murdoch thinks Kant fetishizes abstract reason in this way by making the object of respect not human persons but "universal reason in their breasts."¹²³

¹²² At Kant, 1993, *Groundwork*, 435, Kant writes that morality, fidelity to promises, benevolence based on principles rather than desire or inclination, and dispositions to act on duty all have dignity. At *Groundwork*, 436, "nothing can have worth other than what the law determines" and attributes dignity to legislation itself.

¹²³ Murdoch, 1999, p. 215.

Allen Wood interprets Kant similarly but apparently without Murdoch's adverse judgement.¹²⁴

But the moral properties and capacities cannot have the kind of value which we human beings have. It is human beings who pursue and care about realising ends and for whom the frustration of our aims is a kind of suffering and for whom it matters what happens to us. The capacity for morality doesn't pursue ends, and so doesn't itself care about realising anything. Nothing matters to our psychological capacities. Properties of persons can't have this kind of value because nothing can matter to our properties - things can't go better or worse *for* them and so they don't have intrinsic value in this sense.

More plausibly, the valuable properties have instrumental value. Our possession of rationality is valuable *for us*, as a tool to enable us to more effectively pursue our aims, to be successful agents. And the capacity for morality is valuable too, I suggest, because in acting morally by taking care to respect each other's good, we (tautologically) make life better for the person whose good it is. This is true also for the good and the betterment of non-human life. The lives of cows are improved by their better treatment, the motivation for which treatment arises only because we have a moral capacity, the capacity to recognise that it matters what happens to cows. We needn't therefore deny that the standard Kantian valuable properties are valuable, but if their value is instrumental in this way, if their value is value as a means, then they cannot be the origin of *our* intrinsic value, our value which under Kant's influence we tend to call our value as ends. That would be to get the origin story in reverse. For if the properties have instrumental value for us, they are not the source of our value, we are the source of their value.

¹²⁴ For Kant "It is personality (the capacity to give universal law and obey it) rather than humanity (the capacity to set ends according to reason) that has dignity." Wood, 2011, p.64, n.19.

The valuable property view therefore doesn't connect the dots between the value of the properties and why human beings matter. It doesn't explain the origin and nature of the kind of value human beings are supposed to have – intrinsic value, value in ourselves and for our own sakes. Having thus concluded, I draw a further inference: if the valuable property view can't account for the origin and nature of human value then it is hard to understand how it might be the basis of the equal human value. I make this argument early in my thesis as a smoke signal to put us on guard against such views.

3.2 Basis property pluralism

Further worries emerge if, as several theorists propose,¹²⁵ more than one valuable property is the basis of human value. Such positions can be called *basis property pluralism*. What should the egalitarian basis property pluralist worry about? Suppose each of the following properties is thought sufficient to confer value on its possessor: moral agency (MA), being rational (R), being autonomous (A), having a life of one's own to lead (LO); having the physical infrastructure for moral agency (PI).¹²⁶ Suppose moral worth can vary on a range from the lowest level of the barely sentient (MV_1) to whom we owe some but little consideration, up to the infinite value of Kantian inviolability (MV_n) to whom we owe the highest level of consideration, so that we have the basis property pluralist disjunction:

$$\mathbf{BPPD}: (MA \vee R \vee A \vee LO \vee PI) \rightarrow (MV_1 \dots MV_n)$$

BPPD says that: having either MA or R or A or LO or PI is sufficient for having moral value on the range from MV_1 to MV_n .

True, it is contingently possible that all of the independent conditions of value (MA, R, A, LO, PI) might happen to fix human moral value at the same position on the moral value ordering

¹²⁵ Rawls, Gewirth, Regan, Warren and Waldron all propose a disjunction of valuable properties as the basis of equal human value.

¹²⁶ Waldron advances this view in Lectures 3, 4 and 6 of his 2015 Edinburgh University Gifford Lectures. Waldron, 2015.

($MV_1...MV_n$) but this is going to be an extremely ambitious hypothesis, indeed, so ambitious as to arouse suspicion that the cards are marked in advance in favour of the egalitarian.

I think the over-ambition of the basis property pluralist's hypothesis is obvious but some may not. Let me vivify with an analogy. The conditions for causing an injury are plural and disjunctive. To suffer an injury we could slip on ice (SL), fall from a high place (F), or be shot in the head (SH). The seriousness of our injury runs from the lowest extent of seriousness S_1 to the highest, say death, S_n . So we have the injury causing pluralist disjunction **ICJD**

$$\mathbf{ICJD}: (SL \vee F \vee SH) \rightarrow (S_1...S_n)$$

The egalitarian hypothesis is that each of the three independent conditions SL, F and SH will fix an injury at exactly the same point on the seriousness scale $S_1...S_n$, and this is obviously an over-ambitious hypothesis.

3.3 The distinctive features of Kantian egalitarianism

In this section I describe what I understand to be the defining features of Kantian egalitarianism and draw attention to some puzzles which appear to follow from those features. I don't wish to suggest that the mere presentation of these puzzles amounts to a refutation of Kantian egalitarianism I aim only to suggest that these puzzles may be signals of defects in the model of human value which informs not just Kant's but the Kantian egalitarian doctrine. These defining features are that human value is: intrinsic; infinite; equal; and inviolable. I describe the puzzles and propose a solution. The solution involves the abandonment of one of the defining features.

3.3.1 Human value is intrinsic

It is facts about us, not about others, which make it true that we have value. We matter not only to or for others, but in ourselves and for our own sakes. In Kant's now familiar expression in one of his most famous passages (reproduced in the epigraph to this chapter) we matter as ends and not merely as means. Kant calls this kind of human value *intrinsic*

worth and also *dignity*, contrasting it with value understood as *price*. Although humanity has this dignity only, according to Kant “insofar as it is capable of morality” it is the orthodoxy among contemporary interpreters of Kant to hold that the capacity for morality is shared equally by all of humanity so that “even the worst human beings” have no less intrinsic worth or dignity than the best.¹²⁷ It is mysterious how these two propositions, that we have dignity insofar as we are capable of morality and that even the most evil among us have it equally with us, can be meshed into coherence. Some commentators consider it an incorrigible incoherence,¹²⁸ others are more charitably sanguine about its mystery as just part of the fuller mystery of life’s preciousness.¹²⁹

3.3.2 Human value is infinite

Kant uses several terms to signify the great magnitude of human value. Human value is above all price, it is beyond comparison, absolute, unconditional, incomparable, and infinite.¹³⁰ These don’t all mean the same thing. Incomparable does mean beyond comparison, but if my worth is infinite and so is yours, then our worth is comparable in at least one respect – scale. And if we wish to say that your value and mine are equal, then we must presuppose that your value and mine are comparable. I read the terminological and conceptual variety here as signalling that Kant hadn’t fully distilled his idea of human value, so, as with the equal dignity of the evil, the idea of infinite and absolute value remains somewhat obscure. The best I can make of it is that Kant intended only to indicate that there can be no higher value, that is, that nothing can matter more than humanity in their capacity as beings capable of morality.

3.3.3 Equal value

¹²⁷ See Parfit, 2011a, p.240 and Gaita, 1991, p.4 and 2000, pp.9-11.

¹²⁸ This motivates Williams’s rejection of Kantian egalitarianism in Williams 1962, p.115-117.

¹²⁹ Gaita, 1991 at p.4 observes that equal respect being owed even to those who do great evil “...is an acknowledgement of its profound unnaturalness, of indeed, its mystery.” One aim in this thesis, in Chapters 9 and 10, is to lift the mist from the mystery.

¹³⁰ Kant, 1993, *Groundwork*, 434, 435 and 436. Allan Wood’s description of Kant’s conception of human dignity: “the absolute, hence equal, worth of all rational beings.” Wood, 1999, p. xiv.

I mentioned above (at section 3) that Kant doesn't use the word 'equal' in the passages usually cited as expressing his egalitarian credentials.¹³¹ However if your value and mine are both infinite then our value reaches to the same extent on the value ordering and, unless there can be unequal infinities,¹³² human value is going to be equal.

3.3.4 No equivalence/ Inviolability

Not only is our human value the highest value, it is infinite and absolute and has "no equivalent." I said that Kant's idea of infinite value is obscure. What is clear is that Kant was striving for a characterisation of human value which undergirds the inviolability of the individual, a conception fundamental to the absolutist, deontological character of his ethics. And with inviolability of the individual, there follows inviolable rights, absolute duties, and the now orthodox contrast of absolutist Kantian deontology with teleological consequentialism.

3.4 Kantian puzzles

Together these four features generate several puzzles.

3.4.1 Infinite worth and its loss

There is hubris in humanity appropriating infinite value for our exclusive use. But there is not only hubris; our infinite value delivers some conceptual puzzles as unfathomable as a sea without a sea bed.

Since there can't be more value than infinite value, the loss of Smith ought to be a loss of as much human value as there can be. Such a loss ought to be devastating, irremediable. But it is not, for we still have the infinite value of everyone else besides Smith.

¹³¹ He mentions it elsewhere: each man "...can measure himself with every other being of this kind [the rational kind] and can value himself on a footing of equality with them." *Metaphysics of Morals*, 6: 434-435.

¹³² I understand that some mathematicians believe in unequal infinities. This won't make the Kantian position any easier.

And, as a being of infinite value, we shouldn't sacrifice Smith to save the world's population of elephants, for no matter how great their value in the aggregate, it remains finite value and falls short of the infinite value of a single human life.

If Jones and Brown also have infinite value then having lost Smith the overall stock of human value remains infinite. Smith's loss therefore appears not to have reduced our stock of value at all for we still have infinite human value. And if Jones and Brown each have infinite value, their combined value should be $\{Smith \times 2\}$. It ought thus to be possible to replace infinitely valuable Smith without suffering any loss – we simply replace Smith with two others who have the value $\{Smith \times 2\}$. The infinite value of each moral being won't after all guarantee non-equivalence and inviolability.

3.4.2 Universality and supererogation

Allow the oddity that $\{infinity \times 2\}$ is not greater than infinity so that $\{(the\ value\ of\ Jones\ +\ the\ value\ of\ Brown)\}$ is not greater than the value of Smith.¹³³ The Kantian conception of human value as infinite and of each human being as inviolable entails the impermissibility of sacrificing Smith to save the nation.¹³⁴ It's a common view among Kantians, and not only Kantians, that morality is universal in its scope; like justice, it is blind between individuals. Thus, it is thought, genuinely moral rules make no reference to named individuals so that if an action is right for me then it is also the right action for any other person similarly situated.¹³⁵ If we combine these two features, the universality of moral prescription and Kantian inviolability, then, since I would do wrong to sacrifice Smith to save the nation, Smith would also do wrong to sacrifice Smith to save the nation. Kantian inviolability and

¹³³ I am aware that the idea of infinite sequences is indeed thought to have odd results including unequal infinities. The class of positive integers and the class of even numbers both being infinite although there are half as many even numbers as positive integers. My knowledge here is too rudimentary for confidence but my sense is that the apparent paradoxes arise from treating infinity as if it were itself a number (a member of the set of integers) rather than a property of a set.

¹³⁴ Wood, 2011, pp.66-68 discusses such accountings from the Kantian perspective and Williams from the utilitarian perspective in Williams, 1973, pp.98-99.

¹³⁵ Hare, 1952, pp.154-156 endorses the universalist position. Williams, 1981, p.2 finds it an unappealing characteristic of Kantianism. For the opposing particularist view, that similarly situated an act can be right for me and wrong for you, see Winch, 1972, pp.151-170 who approaches it via the psychology of the protagonist in Melville's *Billy Budd*, and Gaita, 1991, pp.106-107.

moral universalism here combine to transform Smith's supererogatory self-sacrifice into an act as wrongful as if I had sacrificed her.¹³⁶

In reply the Kantian might hope to appeal to Smith's autonomy, arguing that each autonomous individual has a special responsibility for her own life so that Smith's self-sacrifice, autonomously made, is both permissible and morally heroic. But I'm not sure this secures the necessary reconciliation. Autonomy consists in our capacity virtuously to respect or culpably to violate the moral law, a condition of our moral agency which makes morality possible; it is not a license to set aside the Kantian deontic constraints of Kantian moral law which are supposed to place an absolute prohibition the sacrifice of one as a means to save the many.

These considerations bear on traditional trolley style problems. The Kantian holds that we must not sacrifice one to save five; the consequentialist holds that we must sacrifice one to save five. Both *musts* conjoined with the thesis of the universality of morality leave no room for supererogatory self-sacrifice by the one since it is not supererogatory if it is either obligatory or prohibited. With respect to supererogation a thoroughgoing universalist Kantianism can therefore find itself sharing an uncomfortable bed with maximising consequentialism.

3.4.3 The Substitutability Thesis

Let V_x and V_y represent the value of x and y respectively and call the following the substitutability thesis:

The substitutability thesis:

If $V_x = V_y$ then x and y are inter-substitutable without gain or loss of value V .

I think the substitutability thesis exposes a serious weakness in Kantian egalitarianism.

¹³⁶ My claim is not that all supererogation is ruled out, only that which violates one's infinite worth.

Bernard Williams and Immanuel Kant both believe that human beings are not substitutable without loss. For Williams, “differences of character give substance to the idea that individuals are not inter-substitutable.”¹³⁷ For Kant, it is not our differences but something generic to all of us, the capacity for morality, which confers upon us worth “which admits of no equivalent.”

A packed school bus skids off the icy road; several passengers die. The bus driver survives and, though faultless, is haunted by guilt. Taking consolation in philosophy he discovers he can expunge his guilt and ease the suffering of the bereaved parents by substituting the lost children with replacements from the local orphanage. He reasons thus: if our equal value supervenes on our being moral persons, or potential purposive agents, or being fundamentally rational¹³⁸ then we should be indifferent if one lost child bearing the appropriate value conferring property is replaced by another child bearing the same value conferring features and therefore having exactly equal value. The lost *value* is fully redressed without remainder. The bereaved parents should reject the offer because Kant and Williams are right: people are not inter-substitutable. Why not?

Consistent utilitarians whose psychology is in full harmony with their theory should feel no regret at replacing a depressed child with a happy one, a sick child with a healthy one, the aggregate value being thus increased. But presumably not even utilitarians truly believe that people are substitutable without loss. The difficulty for Kantian egalitarians is to reconcile non-substitutability with equal value.

According to Williams, the reason we can't substitute Smith for Jones is rooted in their differences of character, but don't think that is the whole story (nor do I think Williams thought so). Uniqueness alone is insufficient for non-substitutability. Non-substitutability is

¹³⁷ Williams, 1981, p.15.

¹³⁸ According as he has been reading Kant, Rawls, Gewirth or Donagan.

a thesis about what we have reason to care about, about what matters, and we have no reason to rue the loss of Smith's unique toenail or fingerprint. These particular individuating features have no value. Williams must have in mind characteristics of Smith which are not only individuating but which are valuably individuating such as to rationalise regret at their loss. For this regret to be rational that which is irreplaceably lost must be part of the value of Smith, part of what makes it true that Smith matters. Moreover, non-substitutability requires that the irreplaceably valuable parts will have to be something particular to Smith, something *sui generis*, for if they are generic properties shared by others then they will be substitutable. If our intuitions signal that something is amiss with calling that which we value in Smith either equal or unequal with that which we value in Jones, this seems to me to comport with how we actually value people. When we lose someone we love we don't mourn the loss of a set of generic properties, their moral or rational capacities, we mourn the loss of the individual.

3.4.4 Solving the puzzles

The foregoing is intended to draw attention to the difficulty of meshing together these few defining ideas of Kant's, and Kantian, egalitarianism. Minimally what is revealed is that the Kantian has more work to do to make coherent the formula which underwrites Kantian individual inviolability. The puzzles may not be irresolvable; one can't rule out a priori the possibility of a fix which preserves all three terms of the formula – infinite value, equal value, non-substitutability. Part of the trouble is the obscurity of the idea of infinite value, doubtless a symptom of the intrinsic obscurity in the idea of infinity not the idea of human value. Still, Kant and modern Kantians proclaim the inviolability of the individual and need to make both the idea and its grounds intelligible. Obscurity is no cause for applause.

I believe there is a way to solve the puzzles but not one which preserves equal and infinite value alongside what is most important to the Kantian, non-substitutability. But if we are willing to jettison equal and infinite value and in their place affirm and make intelligible Kant's less prominent *incomparable value*, we preserve non-substitutability and meritorious self-sacrifice while prohibiting other-sacrifice. Substitutability, which I believe to be an

implication of equal value, is avoided if human value is not comparable between different persons. This thought is not alien to Kantian scholars. Reflecting on the bearing on so-called trolley problems of Kant's Formula of Humanity (FH) Allen Wood writes that

We would be right to conclude from FH, for instance, that we should be reluctant to treat human lives as having the sort of value that can be measured and reckoned up.¹³⁹

Wood doesn't, not there anyway, follow this where it leads. If human lives don't possess a value which can be "measured and reckoned" up then we needn't worry about the substitutability thesis, but we shall have to renounce equal value. A corollary of the incomparability of human value is that traditional trolley problems are unsusceptible to solution by easy arithmetical formulae. This matches our sense that they are so unsusceptible, a sense borne out by the interminable irresolution of trolley problem philosophers.

¹³⁹ Wood, 2011, p.68.

Chapter 4

Range Properties

One may hold that the sense of justice is a necessary part of the dignity of the person, and that it is this dignity which puts a value on the person...¹⁴⁰

4 Range Properties

This chapter is chiefly exposition in preparation for the critique which will occupy the following chapter. I expound John Rawls's range property argument (RPA), his Kantian argument for the equal standing of all moral persons. RPA was Rawls's response to an objection advanced by Bernard Williams to Kant's argument for human equal moral worth. I shall try to show that RPA has been misinterpreted by those who repudiate it, and properly interpreted by the two philosophers who find it persuasive. I show that, properly interpreted, RPA suffers several incorrigible defects. Thus RPA fails, and those theories which rely on it also fail.

First, a crucial distinction in what follows is that between a binary property and a spectrum (or scalar) property.¹⁴¹ A spectrum property is a property which can vary along a spectrum or scale. An object can have more or less mass, so mass is a spectrum property; a person can be more or less rational, so rationality is a spectrum property. In contrast a binary property is a generic property which admits of no differences, one either has a binary property or one does not. One is either a British citizen or one is not, so being a British citizen is a binary

¹⁴⁰ Rawls, 1999a, p.115.

¹⁴¹ The terms 'binary' and 'scalar' to describe properties are from Waldron, 2002, pp.76-77, 'spectrum' property is from Mulgan, 2004, p.459. I introduced these terms in Chapter 2 in connection with their use as predicates in first order predicate logic. Here I want to show them at work outside formal logic.

property; one is either a convicted criminal or one is not, so being a convicted criminal is a binary property. This distinction is pivotal to what follows.

Second I think it would be fair to say that Rawls can plausibly be read as not intending RPA as a foundational account of human moral value. Rather his aim may be only to formulate a principle reconcilable with his conviction that a government is just if and only if it gives equal justice to all its citizens. The way to do that is to ensure that in choosing the principles which structure our political institutions no-one can influence the decision in a way which favours their own unique circumstances. This gives rise to Rawls's *veil of ignorance* which is designed to deprive those in the original bargaining position of knowledge of their own circumstances. Why should Rawls should suppose that the state owes equal justice to everyone under its governance? Why not more for the good, kind and industrious, as Hesiod tells us Zeus has arranged the world, and less for the evil, cruel and lazy? After all, in the Rawlsian polity justice is unequally distributed between those who can reciprocate and those who cannot. Rawls answers thus: people are owed equal justice because they are equal in respect of their possession of two moral powers – the capacity for a sense of justice and the capacity for a conception of the good. Rawls is quite explicit that the unusual conditions of the original position are designed to reflect this equality.¹⁴² I suggest that this can be read as Rawls's foundational moral account of the human equality in virtue of which we are owed equal justice. But my criticism of RPA is robust on either a foundationalist or a coherentist reading.

4.1 The unequal properties objection

In an influential article from the early 1960's Bernard Williams pointed to a defect in Kant's account of human equality. Williams observed that Kant's conception of the intrinsic worth of human beings as grounded in the human capacity for moral or rational agency

¹⁴² At Rawls, 1999b, p.17.

...cannot provide any solid foundation for the notions of equality among men, or of equality of respect owed to them...It seems empty to say that all men are equal as moral agents, when the question of men's responsibility for their actions is one...which receives answers in terms of different degrees of responsibility and different degrees of rational control over action. To hold a man responsible for his actions is presumably the central case of treating him as a moral agent and if men are not treated as equally responsible there is not much left of their equality as moral agents.¹⁴³

In drawing attention to inequalities in the Kantian value conferring properties upon which Kant claims that human moral worth supervenes, the force of Williams's objection derives from the Aristotelian idea that there should be proportion between how we treat people and the basis of or reason for that treatment.¹⁴⁴ I think it fair to say that Williams's objection is now the stock challenge to egalitarian arguments which seek to make natural properties the basis properties of equal human worth.¹⁴⁵ I call Williams's objection the 'unequal properties objection' (UPO).

In the early 1970's John Rawls, devised a novel reply to UPO. Rawls sought to demonstrate that human equality can indeed rest on a natural property which most humans possess; Rawls named this kind of property a "range property"¹⁴⁶ (RP).

4.2 The two moral capacities

Rawls's work dominates the field of political philosophy but it is an artefact of manifestly Kantian moral thought which sets his political theory in motion. Kant enters right at the beginning in Rawls declaration that he sees himself engaged in constructing a political theory shaped by respect for the inviolability of each person the well-being of whom may

¹⁴³ Williams, 1962, p.116.

¹⁴⁴ Aristotle, 1976, 1131a, 20-30. Before Aristotle, in *The Republic*, Plato has Polemarchus advance the view attributed to the poet Simonides, "that it is just to give every man his due." Plato, 2007, 331e. Gewirth endorses it as "the principle of proportionality" at Gewirth, 1978, p.121 and 1984, p.226. Knapp, 2007 endorses it as the "ideal of proportionality".

¹⁴⁵ The objection is repeated in Ben-Zeev, 1982; Singer, 1993; Arneson, 1999; Cupit, 2000; Knapp, 2007; Mulgan, 2004; McMahan, 2008; Waldron, 2008 and Carter, 2011.

¹⁴⁶ Rawls, 1999b, pp.443-444.

not be sacrificed for the general welfare.¹⁴⁷ At its root lies a claim about the essential nature of the human person, a claim which serves as the basis of what Rawls calls a moral conception of human beings as free and equal moral persons. This moral ideal shapes the principles of justice which are to govern relations between citizens mediated through the political structures we would choose in the notional original position. It is not the institutional imperatives which Rawls derives from the moral claims that are the centre of my attention here, but the basis of the moral claim itself, that we are free and equal moral persons.

Rawls claims that moral persons are distinguished by their possession of two natural properties:

...first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree.¹⁴⁸

These two capacities, Rawls also calls them ‘moral powers’, are the “basis” of human equality. It is in virtue of our possession of them that we are “free and equal moral persons.”¹⁴⁹ Rawls’s two moral capacities correspond to Kant’s conception of human beings as moral and rational agents having the ability using reason to formulate ends and to comprehend, and by our own will to live by, the moral law.¹⁵⁰ It is not only Rawls’s obvious debt to Kant which explains why he should make these two capacities the basis of human equality. He doesn’t prominently advertise the reason but we find it in an article which appeared in 1975, four years after the first edition of his book,¹⁵¹ and later in his preface to the revised edition. In the preface of the revised edition Rawls explains that the function of the chief primary goods, the “basic rights and liberties and their priority” is to

¹⁴⁷ Rawls, 1999b, p.3.

¹⁴⁸ Rawls, 1999b, p.442.

¹⁴⁹ Rawls 1999b, pp. xii-xiii; p.17, p.442 and Rawls 1999c p.255, p.259, p.265.

¹⁵⁰ Schneewind, 1992, pp.309-310.

¹⁵¹ Rawls, 1999c.

...guarantee for all citizens the social conditions essential for the adequate development and full and informed exercise of the two moral powers – their capacity for a sense of justice and their capacity for a conception of the good.¹⁵²

Rawls then clarifies that whether something's being a 'primary good' depends

...solely on the natural facts of human psychology or whether it also depends on a moral conception of the person that embodies a certain ideal. The ambiguity is to be resolved in favour of the latter: persons are to be viewed as having two moral powers and as having higher-order interests in developing and exercising those powers. Primary goods are now characterized as what persons need in their status as free and equal citizens and as normal and fully cooperating members of society over a complete life.¹⁵³

The 'natural facts of human psychology' to which Rawls refers are our possession of the two moral powers, that is, the two capacities which constitute our moral personality. It is by dint of the two capacities being natural features of human beings and the sole basis of "the rights that justice protects," that Rawls considers his theory a natural rights theory.¹⁵⁴ The 'moral ideal' is that which is given expression in his claim that moral persons have higher-order interests in developing and exercising the two capacities. These are fundamental interests shared by all moral persons and the primary goods are those goods which moral persons need in order to satisfy those higher-order interests. Thus Rawls concludes that liberty is a primary good since it is a necessary condition of the pursuit of one's own conception of the good. The two capacities which together constitute our equal moral personhood thus act as a kind of genotype, investing the theory from the outset with a Kantian moral foundation. Nussbaum notices that without equality the two capacities and

¹⁵² Rawls, 1999b, p. xii. Rawls is responding here to Hart, 1975.

¹⁵³ Rawls, 1999b, p. xiii.

¹⁵⁴ Rawls 1999b, p.442, n.30: The rights claims "depend solely on certain natural attributes." Cohen challenges Rawls's 'solely', arguing that in order for any normative implications to emerge at the end of a piece of reasoning it is necessary to invoke a non-natural purely normative principle. See Cohen, 2008, Chapter 6. I read Cohen here as denying reductive naturalism. What is missing, Cohen would claim, is a more fundamental purely normative principle - something like: moral persons ought to be permitted to pursue their fundamental or higher order interests.

our moral equality in virtue of that natural equality, Rawls's theory "doesn't get off the ground."¹⁵⁵ The two moral capacities form

...the basis of equality, the features of human beings in virtue of which they are to be treated in accordance with the principles of justice.¹⁵⁶

Thus possession of the two capacities secures entry into the realm of justice - "those who can give justice are owed justice."¹⁵⁷ Furthermore the austerity of the conditions imposed by the veil of ignorance on the parties in the original position is designed "to represent equality between human beings as moral persons"¹⁵⁸ that is, just as creatures possessing the two capacities and having higher order interests in their development and exercise. It is precisely those interests which the primary goods provide the tools to pursue which is why the parties in the original position are assumed to seek to maximise their share of the primary goods.

4.3 The range property argument

Conscious of our unequal endowments in the two natural capacities Rawls squares up to Williams's unequal properties objection:

This account of the basis of equality calls for a few comments. First it may be objected that equality cannot rest on natural attributes. There is no natural feature with respect to which all human beings are equal, that is, which everyone has (or sufficiently many have) to the same degree.¹⁵⁹

Rawls's response is the idea of a 'range property', a term his parenthetical "as I shall say" tells us is his own invention. He writes,

It is not the case that founding equality on natural capacities is incompatible with an egalitarian view. All we have to do is to select a range property (as I shall say) and to give

¹⁵⁵ Nussbaum, 2006, p.31.

¹⁵⁶ Rawls, 1999b, p.441.

¹⁵⁷ Rawls, 1999b, p.446. This question of whether reciprocity is a condition of justice has a long pedigree but seems to me a perverse basis for *owing* in general. We wouldn't say that those who can give charity are owed charity, or who receive charity owe charity. Justice as reciprocity would prevent me treating my profoundly disabled child justly simply because her disability prevents reciprocation.

¹⁵⁸ Rawls, 1999b, p.17.

¹⁵⁹ Rawls, 1999b, pp.443-444.

equal justice to those meeting its conditions. For example, the property of being in the interior of the unit circle is a range property of points in the plane. All points inside this circle have this property although their co-ordinates vary within a certain range. *And they equally have this property*, since no point interior to a circle is more or less interior to it than any other interior point. Now whether there is a suitable range property for singling out the respect in which human beings are to be counted as equal is settled by the conception of justice. But the description of the parties in the original position identifies just such a property.¹⁶⁰

The property of *being in the interior of the unit circle* is intended to be analogous with the property of *being a moral person*. Just as points inside a circle occupy different positions in the circle, so moral persons occupy different positions on the scales of the two capacities. If their position within the spectrum of the range varies, and Rawls recognises that position on the spectrum does vary, nonetheless all individuals on the scale are within the range, and, Rawls claims, they are equal in respect of all being within the range just as all points in the circle are equal in respect of being in the circle. In Rawls's analogy the points in the circle possess the property of being points in the circle. Given that we started with two actual properties of persons both of which Rawls acknowledges to be scalar properties with each person occupying a different point on the scale, we want to know precisely what is this other property which all moral persons have equally - the Rawlsian range property RP.

4.4 The threshold invariant interpretation

There are two distinct interpretations of RPA at work in the literature. I label these the *threshold invariant interpretation* and the *binary property interpretation*. The two interpretations depend on a distinction between binary and spectrum properties.

Richard Arneson begins his critique of RP by noticing that the two Rawlsian properties of which provide the basis of equality are scalar properties. The sense of justice is

¹⁶⁰ Rawls, 1999b, p.444, my emphasis.

...a steady disposition to conform one's conduct to what one takes to be the basic norms of fairness along with some ability reasonably to identify these fairness norms. But the disposition to be fair obviously admits of degrees; one can be more or less committed to behaving as one thinks fair. And the ability to deliberate about candidate norms of fairness and select the best of them also varies by degrees.¹⁶¹

Given that the natural properties upon which Rawlsian moral personhood supervenes vary by degree, we need an account of why moral personhood should not also vary by degree.

Arneson complains that

...no plausible reason is given for regarding the possession of more or less of the Rawls features, once one is above a certain threshold, as irrelevant to the determination of one's moral status.¹⁶²

Here Arneson is rehearsing Williams's UPO, an objection repeated by most other critics.¹⁶³

Arneson's second reason for scepticism about the range property argument is the *arbitrariness objection*: the position of the threshold is arbitrary.¹⁶⁴ Other critics invoke the *ad hoc objection*: suggesting that the threshold is not arbitrary but *ad hoc*: no explanation is given why just that particular point on the scale of psychological capacities should carry such normative significance.¹⁶⁵ The suspicion is that the *ad hoc* purpose is anthropocentric, designed to exclude non-humans. Others cite the *vagueness objection*, pointing out that it is incoherent to conceive of a sharp threshold line on a vague property.¹⁶⁶ Finally there is the *proportionalist objection*: the great difference in moral consideration afforded those who

¹⁶¹ Arneson, 1999, p.109.

¹⁶² Arneson, 1999, p.109.

¹⁶³ Many deploy the UPO but only Carter credits it to Williams at Carter, 2011, pp547-548. Singer uses it against Rawls in Singer, 1993, p.19: "nor is it intuitively obvious why, if moral personality is so important, we should not have grades of moral status." It appears again in Cupit, 2000, p 110; Mulgan, 2004, p. 459; Knapp, 2007, pp 179-202; and McMahan, 2008, p.95, in which McMahan concedes Mulgan's 2004 point that McMahan's own theory has no defence to UPO.

¹⁶⁴ Arneson, 1999, p.109, and Singer 1993, p.19. Singer also objects that moral personality as a criterion excludes children and the mentally disabled from the moral and political community. One of Nussbaum's central aims in Nussbaum 2006 is to remedy this defect of social contract theories based on reciprocity.

¹⁶⁵ Cupit, 2000, directs this complaint against Rawls, at p.110; Knapp, 2007, at pp.184-185; and McMahan, 2008 against threshold invariantist views generally, at p.96.

¹⁶⁶ Knapp, 2007, pp. 187- 192. Rawls acknowledges that the capacities that constitute moral personality are vague but finds that fact unthreatening. Rawls, 1999b, p.445.

are placed just above and those just below the threshold, offends the well established ideal that there should be proportionality between differences in treatment and differences in the reasons for that treatment.¹⁶⁷

How should Rawls respond? Rawls should reply that each of these objections betrays a misunderstanding of RPA. Each interprets the basis property as a scalar or spectrum property and hence interprets RPA as if it were a threshold invariant theory. Threshold invariant theories of human value posit a spectrum natural basis property with a threshold on the scale. If one is below the threshold one has either no moral value at all or one's moral value varies with one's position on the scale up to the threshold which marks an upper limit of moral value. Above the threshold moral value is fixed since the threshold defines an upper limit, above which moral value does not vary with position on the natural property scale.

Recall that Rawls anticipated the unequal properties objection when he wrote that there is ...no natural feature with respect to which all human beings are equal, that is, which everyone has (or sufficiently many have) to the same degree.¹⁶⁸

RPA is intended to rebut the UPO by positing the binary range property as the basis of equality. Since one cannot have more or less of a binary property, RPA is invulnerable to the unequal properties objection. Rawls could similarly dispose of the *ad hoc* objection, the arbitrariness objection and, with some qualifications, the vagueness objection by pointing out that the only threshold on a binary property is the threshold between having the property and not having it and moreover the location of the threshold dividing those who have from those who don't have a property need be neither arbitrary nor *ad hoc*. Nor therefore need there be any objectionable disproportion between the treatment of those on one side of the threshold who have the property and those on the other side who don't have it. All of this follows because the threshold between having and not having a property

¹⁶⁷ The tension between moral egalitarianism with the ideal of proportionality is the general theme of Knapp, 2007.

¹⁶⁸ Rawls, 1999b, pp.443-444.

marks a difference in kind while each of these objections to the threshold invariant interpretation supposes that the threshold marks a difference in degree.

4.5 The binary property interpretation

Arneson and the other critics appear successfully to rebut RPA only because they interpret it as positing the basis of equality, moral personality, as a spectrum property. One can see why: the two capacities which in RPA constitute moral personality are capacities which different people have to different degrees. In contrast, Jeremy Waldron and Ian Carter interpret the basis property of moral personality in RPA as a binary property. This interpretation is more naturally congruent with Rawls's geometric model of points in a circle than the linear scalar property interpretation. Here is the crucial section of Rawls' passage which favours the binary property interpretation:

...the property of being in the interior of the unit circle is a range property of points in the plane. All points inside this circle have this property although their co-ordinates vary within a certain range. And they equally have this property, *since no point interior to a circle is more or less interior to it than any other interior point.*¹⁶⁹

Waldron finds Rawls's model in need of considerable exposition. He unpacks it thus:

The idea is that although there is a scale on which one could observe differences of degree, still once a range has been specified, we may use the binary property of *being within the range*, a property which is shared by something which is in the centre of the range and also by something which is just above its lower threshold....In Rawls's own use of the idea the relevant range property is *the capacity for moral personality.*¹⁷⁰

In a later work¹⁷¹ Waldron devotes almost three pages to exposition of RPA, recasting *being in the interior of the unit circle* as *being in Ohio* and finally fixing on this definition of a range property:

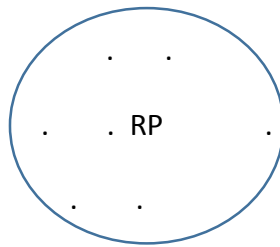
¹⁶⁹ Rawls, 1999b, p.444. My emphasis.

¹⁷⁰ Waldron, 2002 pp.76-77.

¹⁷¹ Waldron, 2008, pp. 31-32.

the picture. Rawls's solution is to propose that being a moral person is a binary rather than scalar property. The geometric image of the points in the unit circle and Waldron's analogue of spatial location, *being in Ohio*, combine the two separate scalar properties into a single property, the range property, which is modelled as a co-ordinate range rather than a scalar range. Rawls's range property would look like this:

A co-ordinate range with Rawls's interior points



Rawls acknowledges that we are unequally endowed with the two moral powers, but his phrase “and they equally have this property” signals that he considers equality to now be squarely in the picture. So we want to know which property the points interior to the circle possess equally? That is, which property is indexed by the word ‘this’ when Rawls writes “and they equally have this property”? The answer is that all points in the interior of the unit circle equally have the property of “being in the interior of the unit circle.” The analogy between the points and moral persons is that having the two capacities places one in the interior of the circle, that is, in the range. Moreover “...and they equally have this property”. Which property? The binary range property of being in the range. So, by RPA, all moral persons equally have the property of being moral persons since all moral persons fall into the range which includes all and only moral persons, and since all moral persons “equally have this property” they are “equal moral persons.”¹⁷⁵

It should be noted that the difference between the two interpretations is that on the threshold invariant interpretation, the basis property of moral worth is understood as a

¹⁷⁵ Rawls 1999b, pp. xii-xiii; p.17, p.442, and Rawls 1999a, p.255, p.259, p.265.

spectrum property and differences on the spectrum above a certain threshold are dismissed as morally irrelevant. On the binary property interpretation, the basis property of moral worth is stipulated to be a binary rather than spectrum property and so there are no differences between persons in the basis property which might underwrite variable moral worth. I'm going to name this stipulative manoeuvre *the binary property move* (BPM). In the next chapter I undertake a detailed critical examination of RPA as an instance of the binary property move I conclude that RPA in particular and BPM in general have several intolerable implications.

Chapter 5

Nine arguments against binary range properties

In this chapter I give nine objections to RPA. Some rigorous peeling away might reveal that three of the objections are in fact just one objection made in different dimensions. Even if there is some duplication I think the objections are successful in revealing in what respects the binary property move in general and RPA in particular are fatally defective.

5.1 *Nine arguments*

RPA begins with the claim that human beings possess two morally significant properties, the capacity to form a conception of one's own good and the capacity for a sense of justice. Each of these is a scalar property and different individuals possess each of them in different degrees. Rawls grants all this - indeed it's his story, not mine. To possess these two properties is to be what Rawls calls a *moral person*. Rawls then adds a further property, the range property. This is the property of having the other scalar properties. I labelled this move *the binary property move* (BPM). It is BPM which is uncovered by the binary property interpretation of RPA. I shall show in the next chapter that it's a move made more or less furtively in all stock Kantian egalitarian arguments as a defensive manoeuvre against Williams's unequal properties objection.

Here I offer nine arguments against RPA. The target of my several objections is not RPA in particular but the general template of the argument, BPM, of which RPA is an instance. The first seven arguments aim to demonstrate that there is no binary property in addition to the two scalar properties; it's a phantom property, it doesn't exist. Rawls's RPA is a delicate sleight of hand, metaphysical magic. Of my nine objections, the first (5.1.1) points to an evidential deficit, it argues that there is no empirical evidence that this empirical property exists. The next two (5.1.2 and 5.1.3) are semantic arguments in which I try to show that RPA requires a radical re-interpretation of what it means to be equal. The next four (5.1.4 to 5.1.7) are metaphysical objections illuminating the challenging metaphysical terrain into

which RPA/BPM leads us. The final two arguments notice that the facts and logic alone wouldn't lead one to postulate the binary property.

5.1.1 The no phenomena objection

My first complaint against RPA is that there are no phenomena which give us reason to believe that there is a binary range property over and above the two scalar properties. Rawls argues, and Waldron and Carter agree, that in addition to the two scalar properties, J (justice) and G (good), human beings have a third property, the binary property of being in the range of the two scalar properties. I agree that when we look at Smith we will see her treating people justly and choosing her own path in life. These phenomena reveal Smith's two scalar properties J and G in action on the basis of which phenomena we attribute the two properties to Smith. We don't encounter any further phenomena in Smith's biology or activities which indicate the presence of a third property, the property of *having J and G*, or of *being in the scale of J and of G*. The absence of further phenomena to indicate the presence of a third property doesn't demonstrate that there is no third property but it does mean that any reasons to attribute the third property to Smith are not based on what we notice about Smith.

The trouble here might be connected with the abstruse matter of whether every predicate names a property. I wonder if Rawls, Waldron and Carter rely tacitly on some such supposition. No one of them attends to it. I shall do so now.

We can predicate of Smith 'being on the G scale' and also 'being at value v on the G scale.' Does this mean that Smith has two properties? I don't think so. I can also predicate of Smith 'younger than one hundred years old' and 'younger than one hundred and one years old' and 'younger than one hundred and two years old.' Does that mean that Smith really has these three distinct properties? If so we can continue up to 'younger than n years old' and we find ourselves in a world full of people stuffed to the brim with properties. To paraphrase Quine, who was talking about entities and not properties, if we allow this

multiplication of properties each individual becomes an overpopulated slum of properties, something offensive to “the aesthetic sense of us who have a taste for desert landscapes...”¹⁷⁶ The metaphysical minimalism Quine commends is not a mere preference for a sparser beauty, it’s an enjoinder not to clutter our world with illusions, epistemically and metaphysically to get by with what we need. I return to this thought in the infinite properties objection below.

5.1.2 The if not *unequally* then not *equally* objection

This objection recalls and invites reliance upon Benn’s necessary condition for predicating equality: equality “presupposes an ordering of objects according to some common natural property or attribute that can be possessed in varying degrees.”¹⁷⁷ You're near the centre of London, in Westminster, I'm in Enfield just inside the northern boundary. We're both in London, but are we *equally* in London? Being in London, like Rawls's being a point in the interior of a circle, is a matter of being on one side of an imaginary line and that’s a binary property: you are either in London or not in London. And since being in London is an all or nothing matter, neither of us is more or less in London than the other. It’s easy to see why this might tempt us to conclude that we are equally in London. But being in London is not something we can *unequally* be - just as the points in Rawls’s circle cannot *unequally* be points in the circle. And if we can’t *unequally be* in London then we can’t *equally be* in it either. And if we can’t *equally be* in London then we can’t *equally be* points in the interior of the unit circle.

Does this objection point to a trivially odd locution rather than a substantive conceptual error? I do not think it trivial, I think it substantive. I chose *being in London* because it is a familiar notion which happens to be perfectly analogous to Rawls’s *being points in the interior of the circle* and Waldron’s *being in Ohio*.¹⁷⁸ Try another binary property, being

¹⁷⁶ Quine, 1963, p.4.

¹⁷⁷ Benn, 1967, p.62.

¹⁷⁸ Waldron, 2008, pp.31-32.

pregnant.¹⁷⁹ The oddity of describing two pregnant people as *equally pregnant* should trigger our semantic alarm bells that something is amiss. If I tell you that two people are equally pregnant, you will, I propose, first find something odd about the word *equally*. After brief reflection on the ways in which people might be equally or unequally pregnant you will take me to mean that both are at roughly equal points in the gestation term. If that were my meaning then I wouldn't have expressed it well. In casual conversation we could let the oddity pass, but if we wish to draw out of obscurity a precise distinction, loose talk won't do. If I then tell you that one mum-to-be has been pregnant for six and the other for three months then you will, I submit, struggle to find another way to understand how they can be equally pregnant in contrast with just being pregnant. One way we can test this is to do what I suggest you would naturally do if told that two people are equally pregnant: you ask yourself how two pregnant people can be unequally pregnant. Pregnancy being a binary property, you will find that we cannot make intelligible the proposition that two people are unequally pregnant.

All this oddness is not merely linguistic. It seems to me the smoke of an authentic conceptual error caused by trying to get *equally* or *equal* into the supervenient moral property by imposing it into the natural basis property. The more general issue is just whether we can equally be something which we cannot unequally be. Given the conceptual intimacy of equally and unequally I don't see how to pull the two apart. To say that entities A and B are 'equally X' is intended to convey something about how A and B relate to X - that both have it equally but might have had it unequally. It depends on it being true of X that X is the kind of thing or property or predicate which one can have equally or unequally. And this *something* would be left out if we leave out the word 'equal'. This suggests the inert modifier objection.

5.1.3 The inert modifier objection

¹⁷⁹ I am assuming that fertilisation is all or nothing.

Is proposition P1 the same proposition as P2?

P1: you and I are in London.

P2: you and I are equally in London.

I believe they are the same proposition. Although different sentences, P2 and P1 express the same proposition because 'equally' doesn't add any new content to P1. It doesn't modify 'in London' by marking a distinction with a different way of being in London. We get the same answer if we work by subtraction. If we subtract 'equally' from

You and I are equally in London

to get

you and I are in London

we haven't lost any content. The meaning is unchanged. Again, 'equally' here isn't doing any work – it's an inert modifier. On the other hand if we were inclined to show that equally in London marks a genuine distinction in the proposition

you and I are unequally in London

we find that 'unequally' is a serious obstacle to understanding what the proposition means. We cannot understand it to mean that we are unequally things within the London boundary line (points in the circle). To make sense of it we must interpret it either as something like the poorly expressed claim that I am in London less often than you are, or as metaphor, that I was physically there but my heart was elsewhere, while you were fully invested, heart and soul. Or it one might joke that since I am much fatter than you, there's more *of me* in London.¹⁸⁰ "Unequally" just there in that position seems so odd because being in London is not something we can unequally be. It *feels* as if it adds meaning, content, because it adds a word, but it does not. However we see it, in the case of a co-ordinate range property of being one of a class of things all within a common boundary, 'equally' adds and 'unequally' subtracts no semantic content. Similarly for RP.

¹⁸⁰ I am grateful to Jon Phelan for the joke.

In defence of RP one could reply that *equally* in P2 does add something which is missing from P1: it adds something distinctive about the property *being in London*, signalling that if two things have the property they have it in the same way, namely, equally.

I do not think this defence works. For two reasons. First, for Smith and Jones to have something equally is not a way of having something. Recall again that ‘equal’ signifies not just any old sameness, but sameness of a special kind, the same position on an ordering. On a binary property no ordering is possible; indeed this is a defining characteristic of a binary property by which it is distinguished from a scalar property. This thought is connected with the second reason. If *equally* signals that they instantiate the property in the same way, then there must be another way to instantiate the property with which having it equally contrasts. That contrast can only be with having the property *unequally*. The challenge then is to show in what way any two things can be unequally in London or unequally pregnant. That amounts to a challenge to show in what way two things can unequally instantiate a binary property. I cannot see how one could meet that challenge since the very nature of a binary property rules out it being instantiated unequally. Indeed if a binary property could by a miraculous undoing of logic be instantiated unequally, this would likely deliver a mortal wound to the attempt to base equality on the binary range property rather than the underlying scalar properties. It’s that binary nature which rules out other ways of instantiating the property. The mistake here is to think that because we don’t unequally possess a binary property then we must equally possess it. This is a category mistake akin to maintaining that since my thoughts are not blue then they must be another colour.

5.1.4 All properties are binary properties

The binary property move transforms any scalar property into a binary property. Mass is a scalar property – some things have more mass than others. We make the binary property move by declaring that all things with mass equally have the binary property, *having mass*, or, which is the same thing, equally have the property of *being on the mass scale*. Since we can make this move with any scalar property then we get the result that for every scalar property P in respect of which X and Y are unequal, there is a binary property *having P* in

respect of which X and Y are equal. This idea also underlies the next objection to the binary property move.

5.1.5 The universal equality objection

If X and Y are equal in respect of both having the same binary property, and for every scalar property there is a corresponding binary property, then all things sharing any properties at all are equal in respect of their shared properties. I want to show that it follows that all things with moral value have equal moral value. If we reject this conclusion, as I believe most of us do, then we must reject RPA.

Suppose our moral view is the now commonplace one that all mammals have moral value, and we mean by this that it matters what happens to them, and therefore it matters how we treat them. Suppose we also believe that what happens to adult humans matters more than what happens to adult rats. We could put this another way: a human being's interest in continued life is greater than that of a rat. We are thus furnished with a conception of moral value as admitting of degrees, that is, as a scalar property. Let's grant that the property of having moral value is a scalar property, and that humans are higher on the scale than rats. Call this property *MVs* where *s* stands for scalar. This gives us a general conception of unequal moral value and a particular conception of the unequal moral value of rats and humans. Rats and humans both have *MVs*. They are both on the *MV* scale, in Rawls's model, both are in the interior of the circle. Now, with Rawls, Waldron and Carter we can say that in addition to having the scalar property *MVs*, they *equally have this property*. Which property? The property of being in the interior of the circle, which is just the binary range property of being in the scalar range. According to RPA, therefore they *equally* have the property *MV*, the property of being on the *MVs* scale. Recall the starting hypothesis: rats and humans are unequally morally valuable. Something appears to be amiss. Let's take Rawls's range property argument, RP, premise by premise.

RP1: The property of being in the interior of the unit circle is a range property of points in the plane.

RP2: All points inside this circle have this property although their co-ordinates vary within a certain range.

RP Conclusion: And they equally have this property, "since no point interior to a circle is more or less interior to it than any other interior point."¹⁸¹

And here is my range property argument to universal equality: RPU

RPU1: The property of having moral value is a range property of all humans and rats (= a range property of points in the circle).

RPU2: All humans and rats in this range have this property although their co-ordinates vary within the range.

RPU Conclusion: And they equally have this property since no human or rat within the range is more or less within it than any other human or rat.

Rawls makes the move from "equally have this property" to *equal moral persons*. Just as Rawls names humans with the two capacities *moral persons*, let's also call humans and rats with moral value *moral creatures*. So, with Rawls, we conclude that all moral creatures are equal moral creatures. If this argument, which precisely mirrors the logical structure of RP, doesn't yield the moral equality of humans and rats as equal moral creatures then nor does RP yield the moral equality of Rawlsian moral persons as equal moral persons. Counterwise, if RP works then it licenses the above analogy and there is then a binary property, the property of *being moral creatures*, which is just the property of having moral value, and humans and rats have this property equally. If there is such a binary property which humans and rats equally have, then moralists must get to work explaining why it's the unequal spectrum property which should govern our treatment of rats and not this other binary property we have equally with them.

¹⁸¹ Rawls, 1999b, p.444.

The preceding version of the argument concludes that humans and rats are morally equal. The following version concludes that if all moral persons are equal in respect of being moral persons then all imaginable things are also equal in some respect. This follows because all things share some properties. The mistake is to hold that all members of the same kind (or class) are equal in virtue and in respect of all being members the same kind (or class). It is a mistake because equality is not sameness of kind but sameness of a special kind, sameness of position on an ordering. The mistake has absurd consequences, including that everything is equal since everything is at least a member of the kind *thing*.

And finally to heavily over-egg the omelette take the property P,

P: being an object of thought

P is a property of anything we can think of and therefore two things are equal in virtue of having a property in common everything about which we can think is equal. That is a gross overabundance of equality, much more than we can handle, metaphysically speaking.

5.1.6 The infinite properties objection

This objection supports the *no phenomena objection* by giving what I believe is a sound argument for the denial that there is any such property RP over and above the scalar properties J and G. I aim to show that the binary property RP cannot be a property of human beings for if it were then real human beings would have infinitely many properties. Since real human beings don't have infinitely many properties, by *modus tollens*, they don't have the binary property, RP.

Rawls, Waldron and Carter all agree that the range property is the binary property of having the underlying scalar properties P1 and P2:

P1: property of having a conception of the good.

P2: property of having a sense of justice.

It is common ground that these are the two properties which actual adult human beings possess and that they are scalar properties. RPA adds the third property, the binary property P3:

P3: property of having P1 + P2

P3 then is a different *kind* of property from the first two. P1 and P2 are actual properties of Smith to whom we attribute the properties on the basis of Smith's behaviour – formulating plans, acting justly and so on. If P3 is just the property of having P1 and P2 this explains the absence of further phenomena associated with P3 over and above the phenomena which evidence Smith's P1 and P2. There are no phenomena because P3 is just a conjunction of P1 and P2. Rawls, Waldron and Carter hold that P3 is an additional property distinct from P1 and P2. Grant them this and what follows? What follows is that if P3 is an additional property distinct from P1 and P2 then we have:

P4: the property of having P3.

P5: the property of having P4.

Iterated infinitely to: P_{∞} : the property of having $(P1...P_{\infty-1})$

My conclusion is by *reductio*: if we have P3, then we have infinitely many properties. By *modus tollens*, since we finite material things, human beings, don't have infinitely many properties then, as a matter of logic, we cannot have the binary property P3.

The infinite properties objection derives its force from the implausibility of the proposition that a finite material entity made of atoms, a human being, possesses infinitely many properties. Enthusiastic metaphysicians with a taste for infinity paradoxes might refuse to let me help myself to that implausibility. But we should be reminded that I am not talking about the mere metaphysical or logical possibility of there being infinitely many properties in some conceivable world, a matter on which I have not expressed a view. Rather my claim is about particular human beings, physical things limited in space and time, having infinitely many properties in this actual world.

If there were not two underlying scalar properties but only one, the same result follows because the two scalar moral properties which constitute Rawlsian moral personality might have been just one scalar property. Rawls would still have to recast it into binary form to produce his basis for equality. So we could have:

(i) Smith has the property P1, intelligence - a scalar property.

From which we derive

(ii) Smith also has the property P2 the binary property of being on the intelligence scale P1.

From which follows

(iii) Smith has the property P3, the property of having P1 and P2.

Again this sequences iterates without end so that if anyone has any scalar property it follows that they have a corresponding binary property and, by conjunction, infinitely many binary properties. I see no reason why this same multiplication of properties shouldn't follow also from an initial binary property simply because the binary property has no scale. Why can we not say that Smith has the following properties:

(iv) the binary property of being male

(v) the binary property of having (iv)

(vi) the binary property of having (iv) + (v)

And so on, again infinitely iterated. Again we should remember that these properties are supposed to be natural, empirical properties,¹⁸² properties of real persons occupying a finite region of space-time. Empirical properties of actual persons aren't going to be like positive integers: we can't just add another and another and another.

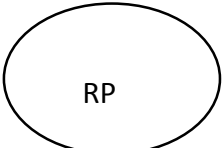
¹⁸² Williams so calls them in his critique of Kant. Carter and Waldron also say the binary range property is an empirical property.

The success of the infinite properties objection depends on: (a) Rawls' RPA entailing infinite properties and (b) human beings not possessing infinite properties. If RPA doesn't entail infinite properties then my objection falls. The thought here is to deny (a). That denial might be informed by the view that one can grant some conjunctive properties without thereby being committed to infinitely re-iterated conjunctions. An example runs thus. Smith is a typist; hence *being a typist* is a property of Smith. All typists are eligible to join the office workers' union. Having the property of *being eligible to join the union* is a property of having the property *being a typist*. This shows that properties which are properties of having other properties are unproblematic.¹⁸³

I think the example is not analogous because the property *being eligible to join the union* is not a property of a property; it is a property of Smith in virtue of certain facts over and above the fact that Smith is a typist. The additional fact is the fact that there exists a union with membership conditions which Smith satisfies. If there were no such union with eligibility conditions then there would be no property *being eligible to join the union*. In Rawls' RPA there are no corresponding additional facts about Smith in addition to the properties of having the sense of justice and having a conception of one's own good which correspond to the property of being eligible to join the union.

5.1.7 The transformation objection

This objection to the RPA and the binary property move invites you to notice another metaphysical mystery. The binary range property RP is the product of the conjunction of two scalar properties: the scalar property J, justice, plus the scalar property G, good. In conjunction we are to accept that they produce a binary property.

So we have: scalar J: \longrightarrow plus: scalar G \longrightarrow = binary 

¹⁸³ My thanks to Derek Matravers for the objection and my apologies if I inadequately represent it.

A kind of metaphysical alchemy has occurred: two base metal scalar properties have combined to produce the moral egalitarian gold of a single binary property. As Rawls's model of points in the circle aptly illustrates, this is akin to obtaining a circle by combining two straight lines. Proponents of the binary property move give no account of how this paradoxical looking result is possible.

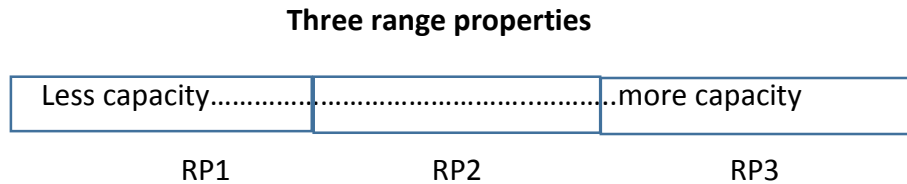
5.1.8 The prior commitment objection

It is common ground (among the named disputants herein and the author) that the two moral powers are spectrum properties of persons and that different persons occupy different positions on the spectrum. It is disputed ground that there is a third property, the binary property. Moral personhood can supervene on the two spectrum properties, and we shall then be unequal moral persons; or it can supervene on the (semantically, metaphysically, logically, and evidentially problematic) binary property, and we shall then be equal moral persons. Why select the precarious latter, and its minefield of philosophical challenges, rather than the robust former, on common and solid ground? Given that background, the selection of the latter as the basis for something as important as the liberal egalitarian political structure, demands a solid justificatory foundation. Absent any reasoned support it is hard not to conclude that the selection is driven by a prior commitment to the egalitarian result.

5.1.9 The triple range objection

This objection proposes that having granted the moral significance of one threshold on a natural range property, Rawls offers no reason not to posit further thresholds dividing the single range property into several ranges to provide moral foundation for a pluralistic status system. Inegalitarians could agree that possession of the two capacities within a given range is sufficient for membership of the moral community, but why not, they might wonder, posit additional thresholds dividing the single Rawlsian range property into three smaller range properties, RP1, RP2 and RP3 with equality within each range and inequality between the

ranges. Borrowing Rawls's reasoning we could then say that all persons in RP1 equally have the binary property being in RP1. Similarly for those in RP2 and RP3.¹⁸⁴



All in RP3 are equally so and all members would enjoy the greatest privileges: preference for high office, political influence, access to expensive Cretan offshoring procedures to reduce their effective rate of taxation, and the best seats at the wrestling. Those in RP2 are equal with each other, but enjoy fewer privileges than those in RP3, and generally have control over fewer resources. RP1 endure the worst education, they do the dirty work for bare subsistence pay, and exert little influence over the shape of public policy. They can't have lunch with the president, or call him to offer their counsel.¹⁸⁵ All three classes of persons may rub shoulders through employment, but there is little inter-group social interaction. And these ranges are fully institutionalised by state recognition.¹⁸⁶

The first thing one might want to say in reply is that dividing the single scale RP into three smaller scales doesn't look like disinterested observation. We are trying to formulate a clear picture of the structure of the basis properties of moral worth. Are those properties binary

¹⁸⁴ Gregory Vlastos sees no reason why such a triple cast system shouldn't be stable. Vlastos, 1984, pp.41-76. That a battle against such systems has had to be fought by independence movements in the former empires, by civil rights movements in the USA, by anti-apartheid movements in South Africa and modern Israel (and not yet altogether won), demonstrates their durability.

¹⁸⁵ In 2014 Mark Zuckerberg, a US billionaire, telephoned then US President Barak Obama to share his views on US cyber security policy. In 2016, the Conservative Party in the UK offers dinner with the British Prime Minister to members of their Leadership Club, for £50,000.

¹⁸⁶ Who might be the members of RP1? The natural slave class. "Those men therefore who are as much inferior to others as the body is to the soul, are to be thus disposed of, as the proper use of them is their bodies, in which their excellence consists; and if what I have said be true, they are slaves by nature, and it is advantageous to them to be always under government." Aristotle, 1981, 1254b.

or scalar? Is there something like a natural threshold or are all thresholds tainted by arbitrariness? Is there more than one? If we contemplate the basis property with the spirit of disinterested observation the additional thresholds look like an *ad hoc* expedient to serve a prior inegalitarian commitment. If this were Rawls's reply it would be a good reply, but it is just my prior commitment objection to RPA.

This argument is an invitation to question whether the focus on one's membership in the overall Rawlsian range rather than one's membership of a sub-range is merely a matter of emphasis or of where to focus one's attention. The idea that there might be a latent prior commitment at work surfaces again here. Why, so the question would go, would we be motivated not to divide the scale into multiple distinct and unequal scales if we were not already gripped by a prior commitment to a single scale?

The weakest conclusion these nine objections warrant is that Waldron and Carter's acceptance of RPA is too uncritical: there are compelling reasons for deep suspicion of RPA and the binary property move. My view is that the first seven objections warrant the stronger conclusion that the binary property move has manifestly absurd implications and therefore they deliver a compelling *reductio*.

5.2 Waldron's special interest defence

The prior commitment and triple range objections appeal to the apparently unmotivated focus on the binary and not the underlying scalar properties. They suggest that in absence of independent reasons the binary property looks like an *ad hoc* device to justify ignoring the differences between people in those very properties which are thought to be value conferring.

Waldron proposes that the focus on the binary property can be supported by a "fundamental purpose" which supplies a reason to focus our attention away from the scalar

property on to the binary property. Waldron's proposal can also serve as a response to the *arbitrary* and *ad hoc* objections which Arneson and others thought decisive against RP on the threshold invariant interpretation of RPA. Those objections point out that the absence of independent reasons makes it seem either arbitrary or *ad hoc* precisely where the morally significant threshold should be on the scale of the natural property. Waldron proposes that,

Relative to the interest driving the specification of the range property, the precise location of an entity on the scale is uninteresting. That it is *within the range* is all we need to know. Without such an interest, of course, a range property seems merely arbitrary. One might stipulate it but it would be hard to see the point...the interest shapes the range property and makes it intelligible.¹⁸⁷

Waldron calls upon Hobbes and Locke to illustrate. Locke doesn't pretend that all people are equally well endowed with the power of reasoning or abstraction, what matters is that human beings "have Light enough to lead them to Knowledge of their Maker and the sight of their own Duties."¹⁸⁸ Locke's "light *enough*" evokes a threshold invariant argument and marks where the threshold should be. The threshold is given by our fundamental interest in entering a moral relation with God. All who cross that threshold are "*...equal and independent*" so that "... no-one ought to harm another in his life, health, liberty, or possessions..."¹⁸⁹ What matters then for Locke is that by virtue of our mental powers, our God given intellect, we can reason from what we see in the world to the existence of our Maker and to the moral duties with which He burdens us. Those whose powers of reason are adequate to this end thereby enter into a special relation with God. Understanding our God given moral duties is the special interest served by focus not on the spectrum properties, the differential capacities for abstraction between different individuals, but on the binary range property, the bare fact of having sufficient capacity adequate for a given purpose.

¹⁸⁷ Waldron, 2002, p.78.

¹⁸⁸ Waldron, 2002, p.79.

¹⁸⁹ Locke 1721, §6, p.191, italics original.

In Hobbes, Waldron sees another range property doing the work: that of “being a non-dismissible mortal threat.”¹⁹⁰ The interest driving the specification of Hobbes’s range property being man’s interest in survival. Likewise, in Waldron’s own example, it is the administrative interest in which jurisdiction one falls under which drives the choice of *being in New Jersey* as the relevant range property.¹⁹¹ Let’s call Waldron’s argument the *special interest argument*, since it is a special interest which is thought to justify the focus on the binary and not the scalar property.

5.2.1 Rejecting special interests

Recall, RPA is a response to the unequal properties objection. Waldron accepts RPA, believing that human beings have both the scalar property and the binary range property RP, and that our equal and high worth is conferred by our possession of the binary range property. The prior commitment objection pointed to an explanatory gap in RPA, the lack of any account of which property we should take to be the basis of human value - the scalar property which suggests unequal value or the binary property which suggests equal value? Waldron needs to find a reason to rest our evaluation of persons on the binary property and he thinks this reason might be supplied by a special interest. My nine arguments give decisive reason to dismiss the binary property as a phantom property. I conclude that there just is no such property in addition to the two scalar properties. So even if we have a special interest in taking the binary property as the basis of our equal value, and egalitarians do have such interest, those interests will be thwarted by the absence of the property.

But for those who remain unpersuaded by the nine arguments, or who think the special interests argument might be an adequate response to the objections to Arneson *et al*’s

¹⁹⁰ Waldron, 2002 p. 77 and Waldron, 2015, Lecture 4.

¹⁹¹ Waldron, 2002, p.78,

threshold invariantist interpretation of RPA, I shall engage directly with Waldron's special interests argument.

There's nothing inherently problematic about threshold criteria, and special interests have a role in justifying their use. When issuing driving licenses we have a special interest, safety, in ensuring that drivers reach a minimum threshold of competence. The threshold is justified by answering to that special interest. The sufficientarian approach here is purely instrumental, a way of meeting particular ends, of serving those special interests. We might also develop an interest in reducing high speed car accidents by having a second threshold, higher on the driving competence scale, such that only those who pass this higher skill threshold are permitted to drive the most powerful cars. That too would serve a special interest. So the use of threshold criteria as a decision procedure is commonplace, familiar and unproblematic. Their use doesn't reflect any underlying equality, indeed it's *because* there are underlying inequalities that we use threshold criteria. If all of us were equally good drivers we wouldn't need to set a pass threshold.

But there are several reasons to think that the special interests argument doesn't hit the target in this instance. The Kantian project to which Williams's UPO is a response seeks to give a reasoned account of the special and equal moral worth of humanity, an account of why human beings matter and matter equally. The Kantian story is that we should value humanity for a special kind of reason, not just any reason. That reason can't be that valuing humanity equally serves a special interest, for valuing persons unequally may serve a different interest. It must be because humans have an especially valuable property in respect of which they are equal. For Kantians this property is the capacity to reason, morally and non-morally, about what to do, and to discipline our actions according to our reasons. The special interest argument then seems to miss the point of Kantian egalitarian project which is to give a foundational account of the basis of our high and equal worth.

Waldron tells us that that special interest served by Locke's range property is that we can enter a relation with God; Hobbes's was peaceful coexistence, survival. Hobbes at least has truth on his side: we do all have an interest in survival, and we are all vulnerable (although it is contestable that we can be said to be equally so) and these facts supply us with good reasons to enter a social contract and place ourselves under the governance of law.

Returning to the Kantian project, which of our special interests is served by ignoring the unequal distribution of the value conferring properties? If it is our interest in treating people equally, or in finding a principle which meshes into reflective equilibrium with our egalitarian intuitions, then this would not count as an adequate answer to the prior commitment argument nor would it rationalise any particular position on the threshold nor heeding differences below and dismissing them above the threshold. The interest would itself be an expression of that prior commitment.

Whatever that interest may be, only those who share it and who have no overriding competing interest will be persuaded to focus on the binary property - should such exist. Perhaps you enjoy the benefits of empire, or monarchy, or apartheid, or the system whereby you value boys more than girls; each of these hierarchical systems built on immanent structural social, legal, political and economic inequality has proven to be stable over centuries. If so, then you may have a special interest in ignoring the binary property and focussing on the scalar properties. Against that background, even if it might sometimes give reasons to act as if everyone is equal, the special interest argument doesn't give reasons to *believe* that human beings are equal; we can come to believe that human beings are equal only by wilfully averting our eyes from the opposing evidence. That can't satisfy any philosopher.

5.3 Opacity Respect

Ian Carter shares Waldron's view that with one small addendum Rawls's RPA can rescue Kantian equality from Williams's unequal properties objection. And, like Waldron's, Carter's addendum aims to rebut the prior commitment objection. From the human

capacities which Carter installs as his basis of equality, to the idea that it is the equal dignity in humans which we must equally respect, Carter's basic materials are borrowed directly from Kant and Rawls.¹⁹² The range property is

a binary property: it is either possessed or not possessed. To possess a range property is to possess some other, scalar property, within a specified range.¹⁹³

To be sure we are talking about something real and not one of Kant's transcendental properties, Carter is confident that the range property is

certainly an empirical property and is certainly possessed equally by all those who do possess it.¹⁹⁴

He also thinks RP a "necessary step in the search for the basis of equality," but it is not sufficient.¹⁹⁵

Carter then rehearses the worry to which Waldron's special interests argument is a response. We have the binary range property and the "agential" scalar properties on which the binary property supervenes. We need a reason to take the binary range property as the basis of moral worth and to dismiss as irrelevant the unequally possessed scalar properties. Waldron's reason was that doing so served a special interest. Carter's reason is that we are under an "independent moral requirement"¹⁹⁶ to ignore the differences between people in the underlying scalar properties and make our evaluative judgements on the binary range property. This moral requirement flows from a "particular sense of respect for human dignity"¹⁹⁷ which Carter labels *opacity respect*. Holding an attitude of opacity respect toward a subject involves "adopting a perspective that avoids evaluation of the agential capacities on which moral personality supervenes."¹⁹⁸ Hence Carter also calls the attitude one of

¹⁹² Carter follows Darwall in adopting the standard Kantian co-relation of equal respect for equal dignity in Darwall, 2006, especially Chapters 6 and 10.

¹⁹³ Carter, 2011, p.548.

¹⁹⁴ Carter, 2011, p.549.

¹⁹⁵ Carter, 2011, p.550.

¹⁹⁶ Carter, 2011, pp.550

¹⁹⁷ Carter, 2011, p.550.

¹⁹⁸ Carter, 2011, p.552.

evaluative abstinence – a refusal to evaluate persons’ varying capacities, or perhaps a refusal to evaluate the individual in respect of their varying agential capacities. Opacity respect then, is respect for an agent’s “outward dignity.” Unlike Kantian dignity, which attaches to us inalienably simply in virtue of our possession of the bare minimum agential capacities, outward dignity can be taken from us by a kind of public “exposure” to the evaluations by others of certain of our features. Carter invites us to think of this exposure as analogous to being stripped naked or being placed in concentration camps.¹⁹⁹

We want to know the source of the moral requirement to adopt the attitude of opacity respect by attending to persons’ binary range property and not to the underlying scalar properties. The answer is that we

have reason to adopt this attitude...when two (jointly necessary)²⁰⁰ conditions obtain: first, that a being possesses *dignity as agential capacity* (which is to say, it possesses at least a certain absolute minimum of the relevant capacities); second, we stand in a certain relation to that being such that it is appropriate for us to view that being *simply as an agent*.²⁰¹

There is at least one area, Carter claims, in which opacity respect is appropriate: in the relation between political institutions and citizens.²⁰² Thus, he claims, the moral requirement is supplied by the conjunction of two ideas:

... first that political institutions should guarantee basic entitlements to citizens considered simply as agents and, second, that those institutions should hold back from evaluating citizens’ agential capacities.²⁰³

These two ideas

¹⁹⁹ Carter, 2011, pp.554-555.

²⁰⁰ I wonder if Carter means that they are singly necessary and jointly sufficient.

²⁰¹ Carter, p. 556. The second condition looks circular- it is appropriate to adopt opacity respect when it is appropriate to view an agent simply as an agent – which is just to treat the agent as opaque.

²⁰² Carter, 2011, p.560.

²⁰³ Carter, 2011, pp. 557-558.

are endorsed in conjunction by political liberals, and this conjunction can be seen as *grounding the equality of persons* considered as bearers of basic political entitlements.²⁰⁴

With all that in place, Carter helpfully summarises the steps in his argument

(i) The only empirical property that is possessed equally is the range property which we can take to be standard common or garden Kantian /Rawlsian personhood.

(ii) We should base our evaluations of the moral worth of persons on the binary range property and not on the underlying scalar properties if we have reasons to treat people as opaque.

(iii) We have reasons to treat people as opaque if we have reasons to respect their outward dignity.

(iv) We have reasons to respect their outward dignity “in the context of relations in which it is appropriate to view them simply as agents.”

(v) Finally, one such relation is that between political institutions in their role as guarantors of basic political entitlements and citizens considered as bearers of those entitlements.²⁰⁵

5.3.1 Circularity of the opacity respect argument

The thrust of the prior commitment challenge is that the decision to base our evaluations of the moral worth of persons on the binary property rather than the scalar property is unmotivated save on the presumption of a prior commitment to equality. Carter answers that the moral requirement flows from the treatment which liberal political institutions owe to citizens. It should treat citizens simply as agents and “hold back from evaluating their agential capacities.” They should do this in order to respect the outward dignity of each person simply as undifferentiated agents.

²⁰⁴ Carter, 2011, pp. 557-558, my emphasis.

²⁰⁵ Carter, 2011, pp. 559.560.

This looks circular. Carter begins by asking “in what sense are persons equal, such that it is appropriate to treat them as equals.”²⁰⁶ Notice the order of the relation he sets up here: it is the fact that people are equal in a morally relevant way which underwrites us treating them as equals. This is a well-founded basic proposition, an axiom of practical normativity: it is the fact that a fish is a fish that underwrites our treating it as a fish. It is the fact that people are equal that underwrites our treating them as equals. Carter positions his theory as improving upon Kant’s basic framework by taking up Rawls’s binary property as a response to Williams’s UPO. What was Kant’s project to which Williams’s UPO is a response? Kant was engaged in constructing the foundation of human moral worth, of showing why we matter at all (our valuable moral capacity) and how much we matter (infinitely, equally), designating the special kind of value beyond price which is human value, ‘dignity’. Kant’s (and Rawls’s) conception of the person as having equal dignity is traditionally thought to be a significant formative constituent, perhaps the most significant constituent, of the moral justification of the political liberal view that a just state is one which affords its citizens equal concern and respect. It owes this to its citizens in virtue of their equal worth or dignity. The ailment which Williams illuminated in Kant’s account was that his premises, certain human capacities, aligned better with the inequality rather than equality of human worth. Carter’s project is to remedy the ailment which Williams exposed and he purports to do that by supposing that we are under an independent moral requirement to respect persons’ equal dignity. The source of that independent moral requirement is the relation between state as guarantor of citizens’ equal entitlements and citizens as bearers of those entitlements. This independent moral requirement then already presupposes what the Kantian argument is designed to show: that people have equal dignity. Carter’s solution then is circular, reversing the order of justification by making the egalitarian political institution prior to the equal worth of persons.

I conclude that Carter’s account fails, for two reasons. First, in taking the success of RPA to be a “necessary step in the search for the basis of equality” it inherits the full panoply of

²⁰⁶ Carter, 2011, p.538.

fatal genetic defects of its parent. Second, even if RPA were successful in establishing that there is such a property as the binary range property in addition to the scalar properties, Carter's argument to defend taking the binary rather than scalar properties as the basis of equal human worth presupposes equal dignity and is to that extent circular.

Chapter 6

The Binary Property Move

In this chapter my aim is to show that either in response to or in anticipation of a version of Williams's unequal properties objection (UPO), the stock defence invoked by the moral egalitarian is the binary property move. I shall show how Alan Gewirth, Alan Donagan and Tom Regan each try to establish the egalitarian character of their respective theories using BPM.

6.1.2 Gewirth's moral egalitarianism

Gewirth derives "egalitarian universalism"²⁰⁷ as Rawls does, by aggregating several natural properties into a single property which is then designated as the sufficient, and in Gewirth's case necessary, condition for entry into the realm of moral equals. For Rawls that criterial property is being a moral person, for Gewirth it is being a prospective purposive agent ('P').

To be P, that is, a prospective purposive agent, requires having the practical abilities of the generic features of action: the abilities to control one's behaviour by one's unforced choice, to have knowledge of relevant circumstances, and to reflect on one's purposes.²⁰⁸

The *agent* component of the prospective purposive agent is to be interpreted as a rational agent. Gewirth's rationality here involves only "minimal" deductive and inductive reasoning abilities. The deductive rationality required is the ability to avoid self-contradiction "in ascertaining or accepting what is logically involved in one's acting for purposes and the associated concepts."²⁰⁹ The minimal inductive rationality requires that the agent "grasps or accepts...simple and direct" calculation-transfers and value-transfers."²¹⁰ One performs calculation-transfers when one does simple means-end calculations about which results follow from which actions. One performs value-transfers when, for example, assuming that

²⁰⁷ Gewirth, 1978, p.127.

²⁰⁸ Gewirth, 1978, p.122.

²⁰⁹ Gewirth, 1978 p.46.

²¹⁰ Gewirth, 1978.46.

one values X, if Y is a means to X, one recognises that one is rationally bound to value Y. Such calculation transfers “will be so minimal that they can be safely attributed to the rational agent.”²¹¹

How then do we arrive at the equality of all purposive agents so characterised? Gewirth’s argument begins with certain premises to which all purposive agents are committed simply in virtue of their nature as purposive rational agents. Each purposive agent

...must hold or accept, at least implicitly, that he has rights to freedom and well-being.²¹²

The agent is understood as being committed to claiming these rights to freedom and well-being because freedom and well-being are the proximate necessary conditions of all action.²¹³ Thus the agent’s commitment is not to this or that particular action or purpose, but to the necessary conditions for all and any action.

Moreover it is not as this or that particular individual, not as *me*, but just as a generic purposive agent that one claims the rights to the necessary conditions of action, one is thereby logically committed to the same rights of all purposive agents. Hence each purposive agent is logically committed to the equal moral rights to freedom and well-being of all purposive agents.

Thus Gewirth arrives at what he calls “egalitarian universalism.” Since the agent must hold that he has the generic rights for the sufficient reason that he is a prospective purposive agent, he must admit that all prospective purposive agents have these rights.²¹⁴ What interests me here is how Gewirth defends his egalitarian conclusion against the standard UPO.

6.1.3 Ben-Zeev’s unequal properties objection

²¹¹ Gewirth, 1978 p.46.

²¹² Gewirth, 1978 p.78

²¹³ Gewirth, 1978, p.109.

²¹⁴ Gewirth, 1978, p. 127.

Ben-Zeev detects an obstacle in the way of Gewirth's moral egalitarian conclusion. The property of being a purposive agent can be seen either as a "status – attribute" or an "attainment-attribute." There are two salient distinctions between these two sorts of attribute. A status-attribute is

gained by the fulfilment (usually passive) of certain necessary and sufficient conditions. The fulfilment of these conditions is not a matter of degree; one either fulfils them or does not. Hence there are no degrees of membership of having such status.²¹⁵

Ben Zeev's examples of a status-attribute are human being, veteran, Jewish, and eligible to vote.²¹⁶ In contrast, an attainment-attribute is something one achieves through an activity.

One has to achieve certain things in order to gain the attribute, and he must continue to achieve these things in order to keep the attribute...Since the attainment attribute applies to activities, there are different degrees of success in performing the activity.²¹⁷

Bez-Zeev's examples of attainment attributes are humourist, dancer, religious, wild, wise and fat.²¹⁸ The second important distinction between status and attainment attributes relates to the border between those who have the attribute and those who don't.

Fulfilling the necessary and sufficient conditions of a status-attribute clearly designates the exact borderlines of the attribute...An attainment-attribute does not have such definite borderlines; the different degrees of membership in the attainment group make the borderlines fuzzy.²¹⁹

He sums up the two relevant distinctions: status-attributes have definite borders and don't admit of degrees of having the attribute, while attainment-attributes have fuzzy borders and do admit of degrees. Equipped with his distinction between status and attainment-

²¹⁵ Ben-Zeev, 1982, p.648.

²¹⁶ Ben-Zeev, 1982 p.647.

²¹⁷ Ben-Zeev, p.648. I doubt that it is the *activity* that entails fuzzy borders and degrees of attainment. To use Ben-Zeev's own examples, dancing is an activity: one needs merely to engage in the activity of dancing to be a dancer. One can dance more or less well and more or less often, professionally or for pleasure, but can one sensibly be thought to be more, less or equally a dancer? I don't think so. Even if there are degrees of being Jewish, that Jewishness is achieved or lost by activities doesn't seem make it the case that there are degrees of being Jewish. This doesn't undermine Ben-Zeev's critique, since he is correct in holding that rationality is attained by activity, has fuzzy borders, and admits of degrees.

²¹⁸ Ben-Zeev, 1982, p.648.

²¹⁹ Ben-Zeev, 1982, p.649.

attributes, Ben-Zeev attacks Gewirth's moral egalitarianism, fixing his attention on just one of the several natural properties which constitute the prospective purposive agent, the rational abilities.

Since, according to Ben-Zeev, rationality is an attainment-attribute it comes in degrees and there is no definite borderline between the rational and non-rational. Ben-Zeev's point presumably (he isn't explicit) is that the fuzzy borders around rationality entail fuzzy borders between rightholders and non-rightholders. Gewirth in any case could grant this and grant equal rights to those in the fuzzy border zone.²²⁰ But my attention here is on Ben-Zeev's central objection.

Any moral theory which claims the dependence of moral attitudes on *the degree of rationality* would also have to claim that a higher degree of rationality renders a higher degree of moral respect.²²¹

I hope it is clearly recognisable this what Ben-Zeev is doing in this passage is rehearsing his Williams's UPO.

Ben-Zeev then considers another approach to rationalist moral egalitarianism, one which admits degrees of being rational but maintains that only a minimum level of rationality is sufficient for equality.²²² Ben-Zeev rejects the 'minimal threshold' view as insufficient to establish moral egalitarianism because "the minimal typical characterisations are not enough for establishing a basic moral unit." I take Ben-Zeev to mean that if minimal rationality were a condition of equal moral standing this would entail human equality with non-human, psychologically primitive creatures. Ben-Zeev goes on to observe that on this second interpretation, the characterisation of the purposive rational agent remains "vague" and the borderline between those who have and those who have not the necessary purposiveness and rationality remains "fuzzy".²²³ Concluding, Ben-Zeev notes that Gewirth's explicit affirmation of the principle of proportionality is "not an easy-going claim

²²⁰ As the sorites argument illustrates, eventually there's no more fuzziness, there's a pile or no pile. Notice (chap.4) that the fuzzy borders argument reappears in 1999 as Arneson's vagueness argument against Rawls's RPA.

²²¹ Ben-Zeev, 1982, p. 656, my emphasis.

²²² Ben-Zeev, 1982, p 656.

²²³ Ben-Zeev, 1982, p.656. Recalling Arneson and Knapp's vagueness challenge to threshold theories.

for the rational moral theories...” the inescapable consequence of which is that if “rationality is the basic factor in determining moral rights, differences in degree of rationality should result in differences in having moral rights.”²²⁴ Ben-Zeev’s concluding objection here again restates Williams’s UPO.

6.1.4 Gewirth’s binary property move

I now want to show how Gewirth defends his egalitarianism against the UPO. Gewirth asks whether the properties which constitute purposive agency vary by degree. The properties are

The practical abilities of the generic features of action: the abilities to control one’s behaviour by one’s unforced choice, to have knowledge of relevant circumstances and to reflect on one’s purposes.²²⁵

Recall that the UPO draws attention to our inequalities in respect of the natural abilities upon which the moral status is posited to supervene. Gewirth responds (as Rawls did) by recognising those inequalities.

Most obviously some persons are superior to others in practical intelligence; hence they are superior agents, since they can act more effectively to achieve their purposes and can also achieve a wider range of purposes. This superiority bears at last in part on the same characteristics – ability for self-control, knowledge of relevant circumstances, reasoned reflection on purposes, whose lack was held to exclude animals from the class of agents, actual or prospective.²²⁶

In response to Ben-Zeev’s UPO objection Gewirth insists, as Rawls did, that there is another sense in which the natural abilities admit of no degrees:

The exercise of the abilities may indeed vary from one agent to another. But the generic having of the abilities does not; this generic feature pertains alike to all prospective agents....Hence...the egalitarian basis of the moral principle is maintained: all prospective

²²⁴ Ben-Zeev, 1982, p. 659.

²²⁵ Gewirth, 1978, 122.

²²⁶ Gewirth, 1978, p.120.

Gewirth's story: rights, R , vary proportionally with NP up to threshold T . Left of T , the natural properties of marginal agents instantiate AP , a scalar property. T represents the threshold point at which the natural properties instantiate being a purposive agent P . To the right of T , in the range of P , rights no longer vary. Why? Gewirth's answer is that although the exercise of the abilities varies "the generic having of the abilities does not."

There are several salient points I want to recognise. First Figure Z presents a threshold invariantist model of a single scalar basis property. That seems appropriate because NP to the left of T looks like a perfect model of approaching being a P .

But if that were Gewirth's intention, trouble follows. For Gewirth's argument to go through, the property AP which marginal agents have in varying degrees cannot be the same property as P because Gewirth tells us that P is a binary property "the generic having" of which does not vary, while AP is obviously a spectrum property which does vary. If to have property AP is to occupy a lower position on the spectrum of the property P ,²³² then T would not signify a threshold on a spectrum, rather it would signify a transformation from a scalar property AP to the binary property, P . Gewirth gives no explanation of the transformation in the structure of the basis property for having rights. Absent that explanation, the single spectrum model seems a more apt description of the relation between approaching being P and being P and we can then understand the relation between the natural property and the moral rights which flow therefrom, as a threshold invariant relation with proportionality up to the threshold T and invariance thereafter.

So understood, Gewirth's argument is vulnerable to the four challenges which Arneson and others posed to Rawls's RPA understood on the threshold invariant model. These were the *ad hoc* objection, the vagueness objection (Ben Zeev's fuzzy borders) the significance objection and the proportionality objection. displays the force of those objections. It does

²³² Actually it's not a single simple property but a conjunction of properties under a collective title. Just as Rawls's being a moral person conjoins two distinct properties. The single property model oversimplifies by supposing that the component properties share the same structure. Drop that assumption and the relationships between moral and natural properties become too messy for easy egalitarianism.

look *ad hoc* that the natural property scale extends beyond T to T3 but the rights scale halts at T rather than T3. Thus there is less proportionality than there could be. Alternatively the R scale could halt to the left of T so that there is less proportionality and more individuals have the full suite of rights.

What is of greater interest here is Gewirth's response to the threat to equality from the UPO. Gewirth grants, as did Rawls, that the basic capacities or abilities which are criterial for falling into the moral range and so for having moral rights, vary along a spectrum. He thus acknowledges that the several capacities which together constitute purposive agency, are spectrum properties. As with RPA, we are to ignore the differences in the range and to take as morally relevant only the property which he calls "the generic having of the abilities." Gewirth's "generic having of the abilities" is doing the same work in the argument as Rawls's binary property of "being a point in the interior of the circle." Since one either has the abilities or one does not, the having of the abilities is not a spectrum property, it's a binary property. So Gewirth argues. In so arguing we recognise Gewirth to be making the binary property move to rebut Ben-Zeev's version of William's UPO. That is the main point I wish to mark here. There are other elements of Gewirth's argument which are worth noticing each exhibiting the hallmarks of the binary property move.

Consider Gewirth's move from "pertains alike", to "equally have". Marginal agents are considered to have the scalar property AP and their rights vary in direct proportion to the degree to which they have this property. But Gewirth doesn't want to say that the generic property of having AP "pertains alike" to all who have AP so that they "equally have" AP. He wants to say that they unequally have the property in virtue of which they have unequal rights. There seems to be no reason not to make the binary move with scalar property AP and assert that all individuals who approach being a purposive agent *equally have* the abilities which constitute approaching being a purposive agent. Of course we would be

mistaken in asserting this since the arguments of chapter five showed that they don't equally have these abilities.²³³

Finally on Gewirth's version of BPM, look also at the phrase "equally have rights to the necessary conditions of action." Here it is Gewirth's "equally have" which gets its hands dirty doing the work of the binary property move. Gewirth's "equally have" the abilities means nothing more than to "have" the abilities – the "equally" here functioning as an inert modifier (see §5.1.3). In Gewirth's argument as with Rawls's range property argument, *equally* does no work.

6.2 Donagan's binary property move

Alan Donagan also hauled up his defences against Ben-Zeev's version of Williams's UPO. In this section I show that Donagan's defence is also a version of the binary property move.

Donagan moral theory aims to establish a rational basis for a traditional and roughly Judeo-Christian morality which takes all humans, from the zygote and morula to the final journey, to be precious, investing in each of us the highest, and equal, moral worth. This high worth, elevating us above the other animals, attaches to us in virtue of our rationality. So far Donagan's position looks like the off the shelf Kantian valuable property argument.²³⁴ He then introduces a kind of Aristotelian essentialism,²³⁵

I describe as rational any animal belonging to a species the mature members of which come to possess certain derivative rational powers by a process of development natural to its normal members.²³⁶

Thus one is rational if one is a member of a species the normal adult members of which are rational. By this means Donagan warrants the description of every human being as rational from conception to death, and escapes the criticism levelled at Rawls that the two moral

²³³ Hill, 1984, notices Gewirth's inconsistent approach and concludes that the corrective is to deny any rights at all to marginal agents – those below the T threshold.

²³⁴ Described in Chapter 3.

²³⁵ Donagan, 1982, p.663.

²³⁶ Donagan, 1982, pp.664-665 and Donagan, 1977, p. 171.

powers which are Rawls's criterion for being entitled to equal justice exclude large classes of humans who, for various reasons, fail to meet Rawls's criterion.

Like Rawls and Gewirth Donagan anticipates the threat from the unequal properties objection. Recognising that human beings are "more or less rational according as they control how far their thinking is distorted by their desires or emotions,"²³⁷ Donagan introduces the first stage of his defence:

We have an adjective 'rational' which in at least one use (as in the phrase 'rational animal') appears to stand for an attribute having no degrees, and in others for a variety of attributes having degrees.²³⁸

With Rawls's RPA in the rear view mirror we can anticipate where Donagan must go next. In distinguishing between one meaning of rationality as a binary property of human beings, "an attribute having no degrees" and a second meaning standing for "a variety of attributes having degrees", that is, a variety of scalar properties, he has given his argument a new resource, as Rawls gifted his own argument a new resource in minting the binary range property. Donagan now has two properties not one. They look very similar, they share a name – rationality. One is scalar, one is binary. One is evinced in the observable behaviour of rational persons, the other is invisible but we know it's there because, we add, it's the precursor of the former, its necessary condition. Which of these two properties shall we take to be that which confers the highest value on its possessors? Or, which of these two properties *should* we (do we have most reason to) take as value conferring? The visible or the invisible? The property we see or the property we can only infer? Donagan chooses the latter, the "fundamental power" of rationality which all human entities share from conception and which we infer but don't see and which, crucially, he asserts has no degrees.²³⁹ This is Donagan's version of the binary property move. Since we all have this fundamental property of rationality which confers upon its possessors the highest moral

²³⁷ Donagan, 1982, p.665.

²³⁸ Donagan, 1982, p. 664. I consider this part of Donagan's thought from a different perspective in Chapter eight.

²³⁹ Donagan, 1982, p.665

worth, and it moreover has no degrees, then we all have both the property and the moral worth equally.

6.3 Regan's binary property move

My final example of a theory of moral equality which makes the binary property move to establish equal value is Tom Regan's. Regan's approach is radically unorthodox in holding that there can be no degrees of value. Thus, on his view, moral worth itself is a binary property. A second curiosity is that Regan gives an argument for this conclusion which appears to make it a matter of preference - we ought to interpret inherent value as a binary property or else our theory won't be an egalitarian theory (and we want an egalitarian theory). One suspects circularity. So Regan's approach has interesting peculiarities.

Regan's main aim is to establish a set of Kantian animal rights grounded in the "inherent value" of what he calls "subjects of a life." In arguing that inherent value is binary, his theory entails cross-species moral egalitarianism²⁴⁰ and to that extent Regan is both more coherent and more courageous in following the argument where it leads than the other Kantian egalitarians who batten down all the criterial hatches to keep the animals out of the upper apartments of high human moral status. My concern is only his argument for the equal value of human beings. Since normal adult humans fall within Regan's subject-of-a-life category, according to that theory, all normal adult humans have equal inherent value.

6.3.1 Value is a categorical concept

I want to show that Regan gets his egalitarian conclusions through on the binary property move with a twist. His argument goes like this:

Premise 1: Being a subject-of-a-life is sufficient for having inherent value.

²⁴⁰ The introduction of differential considerations for treatment in terms of the differential value of what is lost by death restores a more orthodox order of human lives being worth more than other animals' lives. This is not relevant for my purpose here.

Premise 2: Inherent value is a 'categorical concept,

Premise 3: Categorical concepts do not admit of degrees.

Conclusion A: therefore all subjects-of-a-life have equal inherent value.

Regan's claim that 'subject-of-a-life' is a categorical concept could figure as a premise in a second argument to the equality of all subjects-of-a-life although this is not an argument Regan himself pursues. That second argument would proceed in this way:

Premise 4: 'Subject-of-a-life' is a categorical concept, that is, it does not admit of degrees.

Conclusion B: Therefore all subjects-of-a-life are equally subjects-of-a-life.

Premise 1 again: Being a subject-of-a-life is sufficient for having inherent value

Conclusion C: Therefore all subjects-of-a-life have equal inherent value.

There's an important difference between the two arguments. In the first, Regan argues that inherent value is equal value because inherent value is a binary property. In the second, the argument is that value is equal because the natural basis property is a binary property. The first argument, Regan's, is novel; the second appropriates Regan's premises to serve in the orthodox Kantian form of argument which derives the equality of value from the binary nature of the basis property. I want to show that both arguments turn on the binary property move. I shall therefore accept all premises except the second and fourth.

6.3.2 The concept of 'subject-of-a-life'

For Regan to be a subject-of-a-life (henceforth shortened to 'subject') is to have beliefs, desires, perceptions, an emotional life, feelings of pleasure and pain, preferences, welfare, the ability to pursue goals, memory, a sense of the future, and a psycho-physical identity

over time.²⁴¹ Regan asserts that being a subject is a 'criterion of' and a 'sufficient condition' for having inherent value.²⁴²

Regan doesn't spell out whether these eleven different properties are singly necessary and jointly sufficient to be a subject with inherent value or whether each is separately sufficient. It will not be controversial that at least some of them are scalar properties admitting of variability and that in more than one dimension. Humans differ in the content and number of beliefs. Moreover content too can vary in complexity: the beliefs of a particle physicist about a Higgs Boson will be more complex than mine. Similarly for preferences, desires and goals. No one among these properties is a simple all or nothing property. Plausibly, variability will be greater between different species. Still, Regan concludes that his subject criterion is a categorical concept and that all subjects "are equally so". Here is the complete argument:

This criterion does not assert or imply that those who meet it have the status...to a greater or lesser degree, depending on the degree to which they have or lack some favoured ability or virtue...One either is a subject of a life... or one is *not*. All those who are, are so equally. The subject-of-a-life criterion thus demarcates a categorical status shared by all moral agents and those moral patients with whom we are concerned.²⁴³

The argument here is that since one either is a subject or one is not, then subject doesn't come in degrees. But one either has mass or one does not - photons don't, equations don't, dogs do. Either one is a thing with mass or one is not. There are no in-betweens. Nonetheless mass is a scalar not a binary property. My interest here is to show that this is another instance of the binary property move - taking some scalar properties and re-describing them as binary properties.

6.3.3 Inherent value

²⁴¹ Regan, 1983, p.243.

²⁴² Regan, 1983, p.xxii; pp.243-246.

²⁴³ Regan, 1983, pp.244-245.

Regan makes a more interesting binary property move with inherent value. Things possessing inherent value are to be understood as having value “in themselves.”²⁴⁴ Such value is “conceptually distinct from, not reducible to, and incommensurate with” the “intrinsic value” of their experiences, their utility, and, to distinguish it from “perfectionist” value, the value that may be attached to their merits or excellences.²⁴⁵ Illustration is by analogy: utilitarianism sees the individual as a 'mere receptacle' that is, as a cup containing intrinsically valuable experiences, but for the utilitarian it is the experiences contained by the cup, not the cup itself, which have value.²⁴⁶ In contrast, inherent value recognises value in the cup itself as distinct from its contents.²⁴⁷

Regan then constructs the main pillar of his egalitarian conclusion.

Two options present themselves concerning the possession by moral agents of inherent value. First, moral agents might be viewed as having this value to varying degrees so that some may have more of it than others. Second, moral agents might be viewed as having this value equally. The latter view is rationally preferable.²⁴⁸

Regan is talking only about moral agents- subjects who are not moral agents are not yet in the picture. We want to know why it is “rationally preferable” that the inherent value of moral agents is equal. The answer is that if we regard “moral agents” as having different degrees of inherent value, then

...this would pave the way for a perfectionist theory of justice: those with less inherent value could *justly* be required to serve the needs and interest of those with more....Such an interpretation of justice is unacceptable. Equally unacceptable, therefore, is any view of the inherent value of moral agents that could serve as the basis for such a theory. We must reject the view that moral agents have inherent value in varying degrees.²⁴⁹

²⁴⁴ Regan, 2004, p.235.

²⁴⁵ Regan, 2004, p.236

²⁴⁶ Regan, pp205-206; p.236.

²⁴⁷ Aside, I'm not persuaded. Regan lists eleven properties possession of which confers inherent value. Why should it not be the case that I am the cup and my properties are some of my contents – properties of me?

²⁴⁸ Regan, 2004, p.236

²⁴⁹ Regan, 2004, P.237. Italics original.

Regan's argument in the passage reverses the order of justification. If the subjects of justice have unequal value then inegalitarian justice may be just justice. Recall Aristotle's conception of equality as proportionality: if the persons are not equal, they will not have equal shares, that is, they are not *due* equal shares. It's the basic worth of people, the fact that they matter, that makes their just treatment matter. That's why it is only things that have moral status with whom justice is and ought to be concerned. Justice has no dealings with stones. Human value sets the conditions for justice, but Regan here takes it that justice sets the conditions for human value.²⁵⁰

But I want to proceed to the next stage of the argument that inherent value itself is a binary property, so let's grant Regan that unequal value of moral agents is unacceptable. Regan then takes the equal value of moral agents as a premise in his argument for the equal value of "moral patients" – by which Regan means subjects of a life who are not moral agents.

If we postulate inherent value in the case of moral agents and recognise the need to view *their* possession of it as being equal, then we will be rationally obliged to do the same in the case of moral patients. *All* who have inherent value thus have it equally. All animals *are* equal...Inherent value is thus a categorical concept. One either has it, or one does not. There are no in-betweens. Moreover all those who have it have it equally. It does not come in degrees.²⁵¹

This argument is heavily freighted with fallacies. The first premise is: we recognise the need to regard the inherent value of moral agents as equal. He concludes: therefore we are rationally obliged (logically obliged?) to recognise the need to regard the inherent value of non-moral agents as equal. Without further premises this clearly doesn't follow, but Regan gives no other premises. Still, again let's concede Regan this and move to the next step.

²⁵⁰ Somewhat as Carter does – see Section 5.3.1.

²⁵¹ Regan, 2004, pp.240-241.

Regan then concludes that since moral agents and moral patients have equal inherent value, and no other things have inherent value, then “inherent value is a categorical concept...it does not come in degrees.”

Again this is fallacious. If two different things have equal value, this in no way entails that another third thing cannot have more or less of that same kind of value. Every pair of trousers in my wardrobe might be the same size, but that doesn't make the size value of trousers a categorical concept. Just look in someone else's wardrobe. If we find that everyone's trousers are the same size, that neither entails nor will persuade us that trouser size is a categorical concept, that all trousers are either this size or they are not really trousers at all. Regan is free to define a conception of inherent value as he sees fit, but this is not what he claims to be doing, he's trying to persuade us that he derives the categorical nature of inherent value from the foregoing premises.

And finally, Regan's “all who have it have it equally” makes the mistake to which Lucas and Benn²⁵² drew attention and, drawing upon their insights, I elaborated (in Chapter 5) as the universal equality objection. The mistake is to hold that all members of the same kind (or class) are equal in virtue of and in respect of all being members the same kind (or class). It is a mistake because equality is not sameness of kind but sameness of a special kind, sameness of position on an ordering. The mistake has absurd consequences, including that every single thing is equal with every other thing since everything is at least a member of the kind *thing*. I suspect this mistake is the super-virus of Kantian egalitarian arguments, the nucleus of the metaphysical, semantic and logical errors afflicting the binary property move.

6.3.4 Addendum on Regan

Perhaps my summary judgement on Regan's dislike of perfectionist (inegalitarian) justice was too quick and his objections are the conclusion of other, better arguments. Regan does

²⁵² Lucas, 1965, pp.297-298; Benn, 1967, pp.63-64.

give other arguments for the rejection of perfectionist theories of justice. Such theories are ...morally pernicious, providing...the foundation of the most objectionable forms of social political and legal discrimination.²⁵³

This is the full argument. Again, a crucial step is lacking here. To explain the 'morally pernicious' and the 'objectionable' is the task of substantive, first order ethical theory, these moral ideas acquiring shape and content only within a moral theory. Regan's theory presupposes the moral perniciousness of practices that may follow from unequal value, and so presupposes some other moral theory, one we don't have, and not Regan's which demonstrate the perniciousness of unequal value. We may share his sentiments about perfectionism, his worry about its consequences, but our moral theory can't just be grounded in our particular sentiments, about what we intuit as 'morally pernicious'. If we take *this* as a datum, a foundational premise, why not take all our other sentiments and preferences as foundational premises? We may just as well short-cut to our desired conclusion and declare it to be our deepest intuition that all moral agents and patients are of equal inherent value.

6.3.5 Section Conclusion

Regan's binary property move on value itself is impressively idiosyncratic but it's a bad argument. The standard approach, we saw it in Rawls, Gewirth and Donagan, and in Waldron and Carter's adoption of Rawls' RPA, is to claim that the natural basis property of value is a binary property and assume that value falls out the other end as equal value. Regan takes a radically different approach by arguing that value itself is binary and is willing to accept the cross-species egalitarianism which appears to follow. My aim here is just to notice the binary property move at work again in service of another member of the Kantian egalitarian family.

²⁵³ Regan, 2004, p.234.

6.4 Chapter conclusion

With BPM now identified I predict that we shall find its DNA at the scene of every argument for moral equality. In chapter one I showed its handiwork in the underlying structure of argument found in Hobbes, Pufendorf and Locke the basic skeleton of which is

All X are equally X

For Hobbes we are all vulnerable to mortal threat, and equal in that respect; for Pufendorf we all have understanding, and are equal in that respect; and for Locke we all share the same origin as the workmanship of God, and are all equal in that respect. Advancing three centuries we find it again in Michael Walzer's influential *Spheres of Justice*. Arguing for a culturally sensitive conception of "complex equality" he asks

By virtue of what characteristics are we one another's equals?

And answers,

...we are (all of us) culture producing creatures; we make and inhabit meaningful worlds.

Since there is no way to rank and order these worlds with regard to their understanding of social goods, we do justice to actual men and women by respecting their particular creations.²⁵⁴

Whether we agree or disagree that there is no way to "rank and order" the cultures we make,²⁵⁵ and we can hardly deny that we make cultures (who else would make them?), we can see that to be Walzer's X, a culture producer, is not to be equally X.

²⁵⁴ Walzer, 1983, p.314.

²⁵⁵ Aside, I think we can: we can rank cultures as we can individual human actions – does this culture make more lives better than that culture? We can do this because cultures direct individual human attitudes and actions.

Chapter 7

Infrastructural Accounts of Human Value

A feature common to Kantian valuable property views is that they make the capacity for rational or moral activity the basis of human value. An implication of this approach is that many human beings, pre-nates, infants, and the profoundly mentally impaired fail to satisfy the conditions. In this chapter I consider *infrastructural* accounts of human value which hope to remedy that exclusion. These views argue that possession of the physical infrastructure for certain capacities is sufficient for the highest moral status.²⁵⁶ Since moral value comes in degrees (these views assume) and all who have the highest degree occupy the same position on the value scale, infrastructural accounts assign the highest moral worth to all rational beings while denying that status to other animals. Infrastructural accounts also assign that same status to non-rational beings possessing the relevant physical structures. They thus share the main features of Kantian egalitarianism. Infrastructural accounts are very recent; I am aware of only two. Matthew Liao proposes that possession of the genetic basis for moral agency is sufficient for the highest status. Jeremy Waldron proposes a disjunctive account whose independent conditions for the highest moral worth are possession of the physical infrastructure either for language or for autonomy or for rationality or moral agency. I focus on Liao's account since Jeremy Waldron's is yet to be published, however several of my arguments target the general infrastructural approach and are no less germane to Waldron's account.

7.1 The physical infrastructure account

Sharing the Kantian conviction that all humans have the highest moral worth, but sceptical of speciesist arguments which make membership of the human species criterial, Matthew

²⁵⁶ Liao, 2010 and Waldron, 2015, lecture 6.

Liao proposes a criterion of moral status according to which all humans enjoy the highest moral status, a status Liao designates as *rightholder*. On its face the argument looks simple:

My proposal is as follows: all human beings are rightholders because they have the genetic basis for moral agency; and it seems that having this genetic basis is sufficient for one to be a rightholder.²⁵⁷

This parses neatly into the two premises,

P1: All human beings have the genetic basis for moral agency.

P2: Having the genetic basis for moral agency is sufficient for one to be a rightholder.

Granting P1 and P2, the conclusion follows

All human beings are rightholders.

Liao argues that the criterion is neutral between humans and other species since it allows that the genetic basis for moral agency can be possessed by non-humans and indeed may also be instantiated in non-genetic material which is “functionally similar to the genetic basis for moral agency.”²⁵⁸ As it is the function and not the physical material which matters Liao points out that although his discussion concentrates on the genetic conditions for moral agency and he calls it a genetic account, his proposition is rather that having the physical infrastructure for the development of moral agency is sufficient for rightholding. Accordingly I’ll call it the physical basis account, PB, for short.

So understood, PB shares its main premises and conclusion with Jeremy Waldron’s account of the equal human worth of the profoundly disabled, those

²⁵⁷ Liao, 2010, p.164. Liao’s “...it seems that...” is curious. It suggests that what follows is a description of something Liao has observed and not a statement of Liao's thesis.

²⁵⁸ Liao, 2010, p.165 and pp.168-169, and Liao, 2012, p.2 and p.11. Recent work by noted primatologist Frans De Waal found that some higher mammals act as if they have a sense of justice, fairness and empathy, all constituents of a moralised understanding of social relations.

cases which involve radical failure of one or more of the capacities that clustered together add up to the basis of human equality.²⁵⁹

The capacities Waldron mentions are the stock Kantian properties of rationality, moral capacity or the capacity to act for reasons. Having borrowed, with due credit, Rawls's concept of the range property to ground the equality of all humans within the normal range of these Kantian capacities, Waldron turns to how those human beings who fall outside the margins of the range property might nonetheless also be accorded the highest moral status.

If we focus on what we have reason to regard as a key range property, then for these cases we are dealing with the condition of a human being which falls radically short of the capability that would otherwise have dignity conferring significance. The condition they are in may be understood affirmatively as a condition which blocks or damages or supersedes the key range property or it may be understood as just the absence of the key range property though in either case we are never really dealing with simple absence for there are always the organic structural rudiments and remnants of the range property present, and that will be quite important for our argument.²⁶⁰

The "organic structural rudiments" are signs of the physical infrastructure which "entitle us to say that this being had or has a potential" which has "heartbreakingly not been realised"²⁶¹ and the presence of which is sufficient for full moral status. The difference between the two accounts is that whereas Liao proposes a single criterion, Waldron proposes a disjunction of multiple criteria each of which is independently sufficient for the highest moral status. In what follows, "genetic basis" or "genetic codes" for moral agency can be read more broadly as the infrastructural or physical basis for moral agency.

Liao's first premise, P1, looks like a straightforward empirical premise affirming that all humans have the genetic basis for moral agency. Liao subsequently strengthens the premise to "virtually all"²⁶² so I shall not cavil with scope of the claim.

²⁵⁹ Waldron, 2015, Lecture 6, at 5 minutes.

²⁶⁰ Waldron, 2015, Lecture 6, at 5 minutes.

²⁶¹ Waldron, 2015, Lecture 6, at 6 minutes.

²⁶² Liao, 2012, p.2.

For Liao, 'rightholder' is one kind of moral status but not the only kind. We can, he says, have duties to non-rightholders too, but the interests of rightholders trump the comparable interests of non-rightholders.²⁶³ He doesn't explicitly specify that all rightholders have equal moral status, but I think this implicit:

Many people believe that all human beings have the same, basic moral status, that is, they are all rightholders.²⁶⁴

I take the phrase, "the same, basic moral status" as equivalent to 'equal' moral status. What we end up with is a conceptual framework that looks something like this: beings with moral status can be either rightholders or non-rightholders. The interests of rightholders trump the comparable interests of non-rightholders. Since all rightholders have the same, basic moral status, all rightholders have equal moral status.²⁶⁵ Since their interests trump the comparable interests of non-rightholders, and all rightholders have equal moral status, all rightholders have the highest level of moral status.

7.1.1 The basis for agency

What exactly does one have when one has the genetic basis for moral agency? It might mean having the genes without which moral agency could not arise, in other words the genes that are necessary for moral agency. Or it might mean having the genetic conditions that are 'sufficient for' moral agency. Alternatively the relation 'basis for' may be like the relation between a punch on the nose and a nose bleed: the punch is a causal precursor, but is neither necessary nor sufficient for the nose bleed to occur. Liao elaborates,

The genetic basis for moral agency is the set of physical codes that generate moral agency.²⁶⁶

²⁶³ Liao, 2010, p.172.

²⁶⁴ Liao, 2010, p.159.

²⁶⁵ My argument is not that they have equal moral status because they 'equally have' the genetic codes, a phrase which I have argued (chapter 5) is meaningless. Rather they have equal moral status because a) moral status comes in degrees and b) Liao's claim is that all rightholders occupy the highest point on the ordering.

²⁶⁶ Liao, 2010, p.164.

“Generates” is causal. If X generates Y then, given X, Y follows. But ambiguity remains: Y might always follow regardless of other conditions, and so X is sufficient for Y, or it may follow only sometimes, when other necessary conditions are present. We know that the genetic codes alone cannot generate moral agency because many non-genetic conditions are also necessary for actual agency to arise. Liao acknowledges that other “non-genetic factors are also necessary” for moral agency.”²⁶⁷ Thus by 'basis for' moral agency Liao cannot mean 'sufficient for' moral agency. His phrase “...non-genetic factors are also necessary for...” suggests that the genetic factors he has in mind are those that are necessary for moral agency. This interpretation is supported elsewhere:

It seems that some genes may be necessary not only for the genetic basis for moral agency but also for some other general capacities. But we can talk about a genetic basis for moral agency as long as there are genes that definitely play no role in forming the genetic basis for moral agency.²⁶⁸

Liao again refers to genes which are “necessary for” agency. He expounds further: the relevant genes are the genes other than those that play no role in agency. We can therefore exclude the genes for eye colour.²⁶⁹ Do we have the genetic basis when we have all of the genetic codes which “play a role” in agency or only some of them? The genes for the development of the respiratory system are necessary for the development of moral agency since if one doesn’t have a functioning respiratory system one will not survive to develop any cognitive abilities. If one has the genetic basis for agency if one has only some of the genetic necessary conditions, then beings having only the genes for the respiratory system would thereby be full rightholders. While some animal rights advocates would embrace that conclusion, since Liao doesn’t take that route presumably he would find it uncongenial that every animal with a respiratory system would be a full rightholder. His use of the words 'set' and 'necessary for moral agency ' suggest that Liao intends that one has the genetic basis if and only if one has the full set of genetic codes without which moral agency cannot arise, not the full set of necessary conditions.

²⁶⁷ Liao, 2010, p.165.

²⁶⁸ Liao, 2010, p.164.

²⁶⁹ Liao, 2010, p.165.

Liao adds a final prescription. Mere possession of the full set of genetic codes is not to have the genetic basis for agency; the codes must be “...activated and co-ordinating with each other in an appropriate way.”²⁷⁰ This caveat prevents a cabbage from acquiring the moral worth conferring infrastructure by being injected with a cell containing the human genetic code. In only a misleading and attenuated sense would it be true to say that such a cabbage *has* the genetic codes. It is only when integrated into a biological system that the genetic codes can be said to be necessary conditions of agency. So a cabbage may 'have' the genetic codes in this loose un-integrated sense, yet not possess the genetic conditions for agency. Such a cabbage would not be a rightholder according to PB. After these clarifications this is where are:

X has the genetic basis for moral agency if and only if:

a) X has the full set of genes necessary for moral agency.

And

b) These genes are integrated into its biological systems.

PB affirms:

Premise 1: If a) and b) are true of X, then X is a rightholder,

Premise 2: a) and b) are true of all humans

Therefore all humans are rightholders.

7.1.2 Merits

Liao defends the empirical premise that virtually all humans have the genetic basis for moral agency but offers no defence of the claim that this is sufficient for rightholding. Persuasion is to come solely from advertising its two chief merits: that it supports the “widespread conviction” that all humans are rightholders,²⁷¹ and that it does so without being speciesist

²⁷⁰ Liao, 2010, p.165.

²⁷¹ Liao, 2010, p.168.

because it grants rightholder status to any individual of any species found to have the genetic basis for moral agency.

7.2 Objections

7.2.1 The multiple conditions objection

On the most plausible reading of PB to have the genetic basis for moral agency is to have the set of genetic codes necessary for the development of moral agency. This is to have the genetic necessary conditions for moral agency. Thus the second premise of GA can be rendered as

P2: Having the full set of genetic conditions necessary for moral agency is sufficient for rightholding.

The genetic conditions are necessary but not sufficient for moral agency; other non-genetic conditions are also necessary. It is necessary to be alive, and so a further necessary condition is to have all of the physiological structures necessary for survival. Call these collectively the survival conditions. It is also likely that if environmental factors, such as social interaction, are necessary for the development of actual agency then in order to play their developmental role, the environmental factors have to be perceived by the prospective moral agent and so perceptual apparatus will also be necessary. Call these the perceptual conditions.²⁷² It is a further condition for agency that we are not afflicted by other conditions which impede our development into fully fledged agents. Call such impediments '*blocking conditions*.' Without any one of the conditions human moral agency is impossible.²⁷³ Thus there are at least three further sets of necessary conditions:²⁷⁴

P3: Having the survival conditions for moral agency is sufficient for rightholding.

²⁷² Liao recognises the necessity of non-genetic and environmental factors at p165.

²⁷³ The impossibility I refer to is empirical not logical impossibility.

²⁷⁴ I am focusing only on those necessary conditions which are intrinsic properties of the potential rightholder and I ignore extrinsic conditions for human agency such as the presence of a breathable atmosphere.

P4: Having the perceptual conditions for moral agency is sufficient for rightholding.

P5: Being free of blocking conditions of moral agency is sufficient for rightholding.

These considerations present a difficulty for PB. Given these multiple necessary conditions, all being necessary and none being more necessary than any other, it is obscure why possession of just some of the necessary conditions, P2, is sufficient for rightholding, but possession of the other necessary conditions is not sufficient. PB seems unable to explain why we should accept P2 but reject P3, P4 and P5.

It is open to PB to accept P3, P4 and P5 but radical cross-species moral egalitarianism follows. For P3 and P4 entail that any entity which possess the physical structures necessary for survival, or the structures necessary for perception, or which is free of the blocking conditions will be a rightholder.

It is not open to PB to claim that what is sufficient for rightholding is possession of the full set of necessary conditions, not just the set of genetic necessary conditions. To possess the full set of necessary conditions for agency is to possess the sufficient conditions for agency and thus to be an actual agent. Thus revised, PB would not solve the problem it is designed to solve for it would then exclude all non-agents, and the class of rightholders it licenses would be coextensive with the class of moral agents.

To resuscitate PB it needs to be shown that all necessary conditions are not equal. We could try to do this by showing that the *genetic* conditions uniquely possess a property lacked by the other necessary conditions, and, furthermore, this property (call it the 'sufficiency property') renders the genetic conditions sufficient for rightholding. Is there a property or characteristic possessed by the genetic conditions but lacked by the other necessary conditions which might plausibly serve as the sufficiency property?

The genetic codes are not only necessary for agency, they are also necessary for the organs that are necessary for agency. We need the genes for lungs to breathe, and the genes to make brain cells to think. And we need both of these to be moral agents. So the genetic conditions are causally as well as a temporally prior to the other necessary conditions. Might the causal priority of the genetic conditions constitute the sufficiency property?

This response suggests an initial response to Christopher Grau's question "what is the morally relevant feature of the genetic codes."²⁷⁵ PB might answer that the genetic codes carry this moral weight because they are the ultimate, or original, necessary conditions for agency which are empirically observable features of an organic entity, and without which none of the other intrinsic physical necessary conditions can arise.

Is this distinction between the necessary conditions enough to show why the PB genes are sufficient for rightholding but their causal successors, which are also necessary conditions for agency, are not? I think that the distinction doesn't show why we should accept P2 but reject P3, P4 and P5. Being an earlier causal precursor, whilst marking a real distinction, does not render the PB genes any more necessary for agency than their own causal successors. All necessary conditions remain equally necessary. This defence draws us into an endless regress of causal precursors. My physical conditions for moral agency didn't arise *ex nihilo*. Their own causal precursors are the genes inherited from my parents, from whom I couldn't inherit the genes if they had not possessed the necessary conditions for survival. Thus the *causal precursor* distinction between the genetic and the other conditions collapses.

7.2.2 Covert speciesism

Liao claims as a merit of PB its neutrality between species. It is neutral, he claims, since it assigns the status of rightholder to any individual with the physical basis of moral agency

²⁷⁵ Grau asks this question at Grau, 2010, p.395.

and does so without reference to species.²⁷⁶ But this is not a sufficient condition of species neutrality. Suppose the country club rules require a minimum size ten shoe size as a condition of membership. Speciously this has the appearance of a gender neutral criterion yet it restricts female membership with great efficacy and may therefore discriminate culpably against women. The test of culpability will be the justifiability of the membership rules on independent grounds. We would have reason to be sceptical about the neutrality of the criteria of membership if they are determined by people with some awareness, even anecdotal awareness, of the normal distribution of shoe sizes between genders.

Analogously, we have reason to be sceptical about the species neutrality of PB proposed by those who know that its conditions are met by their preferred constituency. The independence test of a criterion is whether we would have reason to select the criterion if we didn't ourselves satisfy its conditions. That PB has nothing to commend it to any species other than human beings a criterion of rightholding points toward its covert speciesism.

Liao's refusal to supply any positive reasons at the front end to take the genes for moral agency to confer the highest moral status seems to me a curious refusal in the discipline of philosophy the essence of which is not the propounding of assertions but in constructing good arguments for its assertions. There doesn't appear to be any reason to propose PB or Waldron's infrastructural account other than the desire to find a criterion to match the intuitions of those who believe that humanity occupies the highest point on the value scale. That desire is surely connected with the fact that the anthropocentric elements of the Aristotelian and Kantian traditions stretching back to Hesiod elevate humanity above other species on the wings of moral capacity. In other words, absent independent reasons for advancing an exclusively human physical property as sufficient for the highest moral status, we should refuse to grant any such infrastructural accounts the honorific *species-neutral*.

7.2.3 Multiple realizability

²⁷⁶ Liao, 2010, p.168 and 2012, p.2.

Liao proposes that the genetic basis is species neutral because it is multiply realizable in two respects. First the genetic basis can be realized in any physical substance which has the same function as the genes for agency. Second it can be realized in different genes in the same individual in different environments.²⁷⁷

The multiple realizability of the genetic basis entails epistemic limitations which threaten its usefulness as a criterion or as a decision rule. Suppose creature Z is not a moral agent and we wish to know if she has the genetic basis for agency. Suppose we have good reason to believe that in other individuals of the same species the genetic basis for agency is realized in genes 1, 2 and 3. However, creature Z developed in a different environment from her conspecifics from whom we gathered our data and her genetic basis is realized in genes 1, 2 and 4. On testing we find that Z has genes 1, 2 and 4. She is therefore a rightholder but moral agency has failed to develop for other reasons. However as we don't know that 1, 2 and 4 are the functional codes, we will infer a false negative, denying a rightholder her proper status. If instead we had found genes 1, 2 and 3 we would infer a false positive. In either case multiple realizability entails that the genetic test on non-moral agents will be inconclusive, while on moral agents it is redundant.

7.2.4 PB and Intuitions

Another merit Liao claims for PB is that it “practically supports the widely held intuition that all human beings are rightholders.”²⁷⁸ That may be so, but this gives PB no advantage over the view that possession of the genetic basis for sentience, or vision, or speech, or fingers, is sufficient for being a rightholder. On the same assumption to which Liao avails himself, namely, that all humans have the relevant necessary physical infrastructural conditions, any one of these views will support that same intuition. Liao offers no reason to prefer the genetic basis for agency to the genetic basis for sentience although it is not hard to think of a speciesist reason. Again, the suspicion hovers obstinately that criteria which elevate too

²⁷⁷ Liao, 2010, p.165 and p.168.

²⁷⁸ Liao, 2010, pp.168-169.

many other species to the same status as humans offends the off the shelf Kantian intuitions from which Liao and Waldron's infrastructural theses begin.

7.2.5 The genetic fallacy

It is a conspicuous lacuna in PB that it ventures no explanation of the moral significance of the agency genes such that they confer rightholding status while, for example, the genes for fingers or sentience have no such value conferring power. That the physical basis for agency is realizable in any material serving the same function as the genes for agency implies that the rightholder conferring power lies not in the physical nature of the genetic codes themselves²⁷⁹ but in their function. Since their function is to enable moral agency, possible explanations narrow in on the physical basis for agency being thought value conferring only because their causal successor, actual moral agency, is thought to be value conferring. Attribution of the value conferring property to the conditions for moral agency on those grounds commits the so-called genetic fallacy.²⁸⁰

Liao anticipates this worry.²⁸¹ His reply is curious and, if I understand it correctly, unsuccessful. He argues that in life-saving dilemmas our intuitions tell us that "it is permissible...to give infants preference over adults" from which Liao concludes that "actual moral agency cannot be the sole ground of rightholding."²⁸²

I find this reply both circular and irrelevant. That actual moral agency is not the sole ground of rightholding is consistent with mistakenly attributing to the causal precursors for moral agency features, including rightholding conferring features, which we might mistakenly or correctly attribute to moral agency itself. Thus Liao's reply is irrelevant. It seems to me to be circular, and not innocently, in the following way: to support his denial that he attributes the features of agency to its causal precursors, Liao helps himself to the conclusion that he is

²⁷⁹ And therefore the discussion of the aesthetic value of strings of code in Grau, 2010, p.395, is otiose.

²⁸⁰ Or it commits the genetic fallacy in reverse by attributing the features of the descendent to its origin.

²⁸¹ Liao, 2010, p.172.

²⁸² Liao, 2010, pp.172-173.

trying to establish: that human infants are rightholders and therefore that moral agency cannot be the sole ground of rightholding.

The infrastructural thesis is not merely that the physical conditions for the allegedly valuable capacities are in some respect valuable, it is that their value is such as to confer rightholder status on their possessor. One can grant that they have instrumental value, as the necessary conditions for a capacity which we value, while denying that they have the rightholder conferring value.

It's worth recalling from chapter three that I repudiate the valuable property view as a general framework for understanding the origin and nature of human value. Infrastructural theses are instances of the valuable property view. One of my reasons for rejecting the whole approach is that the properties themselves cannot have the kind of value we (correctly) attribute to human beings, the kind of value Kantians typically characterise as intrinsic value, or being an end and not a mere means. It is therefore mysterious how the properties might confer value which they themselves don't possess. Parts of our bodies are not ends in themselves, nor are they rightholders, so only by a kind of moral alchemy will a being become an end in itself or rightholder by virtue of acquiring the valuable body part or, in the orthodox Kantian valuable capacity views, the valuable capacity.

7.2.6 Counter-intuitions

Other objections to PB appeal to its counter-intuitive implications in allowing that a cabbage or lawnmower might have rightholder status by possession of the genetic codes. The offending implication is that the rights of the cabbage or modified lawnmower "would appear to trump a human being that possesses sentience but lacks the relevant genetic material for moral agency..."²⁸³ The theoretical possibility of this weighs decisively against PB.

Liao has two replies both of which aim to show that the scenario may not be even a theoretical possibility. The first is to argue that the absence of the agency genes may entail

²⁸³ From Grau, 2010, p.393.

that one is not a member of the human species and so the example would not be one in which the rights of a sentient human were trumped by a lawnmower.²⁸⁴ Liao's second reply is to repeat that PB is only a sufficient condition and the human being lacking the genetic basis might yet be a rightholder on other grounds.²⁸⁵

Both replies seem to me flimsy. The predicates with which we delimit the necessary and sufficient conditions for being a member of the human species might be contestable in extreme cases, for example, in the case of a creature created by fusion of genetic material from human and other species, but it would be an extremely eccentric conception of species which would deny a creature of human parentage membership of the human species in virtue of lacking the genes for moral agency.

Turning to Liao's second response. According to Liao the chief merit of PB is that it fills a gap in Kantian capacity based accounts of rightholding by providing a species neutral theoretical basis to assign rightholding status to humans who don't have the Kantian capacities. While it might be true, indeed it is true, that humans are rightholders on other grounds, it is no defence of Liao's thesis that someone else out there might have another theory of rightholding to fill a hole in Liao's theory.

A better reply to Grau is to deny the possibility that lawnmowers and cabbages could undergo the changes to acquire the necessary physical conditions for agency whilst preserving their identity as cabbages and lawnmowers. I mentioned before that the necessary physical conditions for moral agency in humans are many, the genetic codes being only one, the brain with which to do the conceptualising, being another. To possess the physical conditions for agency the cabbage and lawnmower would also need to develop a functional analogue of the human brain with which to do the conceptualising. But while I think it a better reply, I couldn't propose it with conviction because PB is in any case beyond rescue for the several other reasons given earlier.

²⁸⁴ Liao, 2012, p.8.

²⁸⁵ Liao, 2012, p.8.

7.3 Conclusion

Liao's sole defence of PB amounts to pointing to its consistency with the intuition that all or virtually all humans are rightholders. Consistency with intuitions seems to me one of the weakest methods of argument in support of controversial general propositions.

Unpersuasive to those with conflicting intuitions and redundant or merely comforting to those who already share the intuitions, the method forsakes the disinterested pursuit of the argument wherever it may lead for pushing the argument to the place where we are most at ease. Just as the observation that most objects fall to earth is consistent with but offers no support for the proposition that the purpose of objects is to fall to earth, consistency with intuitions lends no support to general propositions. The result is that general propositions shaped by the intuition method, of which PB is an example, are defenceless against the constant threat from conflict with other intuitions. It is easy to propose criteria of human moral value which accommodate one's own intuitions. The philosophically hard work is to show why anyone who doesn't share our intuitions should be persuaded. Liao proposes the criteria but does none of the hard work.

Chapter 8

Nature of the kind arguments - what are we evaluating?

8.1 Introduction

If we think value is out there, independent of us, we discover it. If we think value is dependent on us, on our responses, or attitudes, we don't discover it we ascribe it. In either case the value we discover or ascribe is the outcome of some sort of evaluative process. The claim that all humans are of equal moral value, usually accompanied by the claim that they are of the highest value, would look to be the outcome of a perfectly typical exercise of evaluation which goes something like this: we examine some humans and notice in them an attribute or attributes in respect of which we evaluate them. Our evaluation issues in our judgement that they have equal value. Finally, the fitting response is to treat them in ways which reflect the value which our evaluation either discovers or assigns.

Sometimes the evaluation which leads to this conclusion is one which purports to evaluate all human beings as equally valuable in virtue of all being members of the same *kind*.

Following McMahan I'll call such arguments *nature-of-the-kind arguments*.²⁸⁶ Two approaches to human value which make their evaluations in this way are rational kind arguments and human kind arguments. I'll call these the rationalist and humanist.²⁸⁷ The humanist maintains that all human beings have the highest and therefore equal value in virtue of all being members of the human kind. Likewise the rationalist maintains that all rational beings are of the highest moral value in virtue of all being members of the rational kind. A third position is discernible, barely distinguishable from the rationalist. This is the

²⁸⁶ McMahan opposes nature of the kind arguments with his own moral individualist thesis, viz. that "how an individual may be treated is determined not by considering his group memberships, but by considering his own particular characteristics." McMahan, 2005, p.354. Here I pursue a different line of criticism.

²⁸⁷ The rationalist: Benn, 1967; Donagan, 1977 and 1982. The humanist: Timothy Chappell, 2011, and 2014b, chapter 6; Kumar, 2008. Kumar calls the view the 'species membership is sufficient for respect' position at P. 74. Kumar refers only to the human species.

species- norm account according to which human beings are accorded the highest moral status “not *insofar* as they are rational, but because rationality is the human norm.”²⁸⁸

The differences between the three positions are rather fine-grained. The humanist account says that being human is sufficient for highest moral status. It says nothing about kinds other than the human kind. The rationalist nature of the kind account says that being of the rational kind is sufficient and so if mammals are a rational kind, they qualify. The rationalist species-norm account says that being of a species whose norm is to be rational is sufficient. Hence even if mammals were a rational kind they would not qualify because mammal is not a species. But in practise these criterial differences have no import because proponents of all three accounts aim at the same target: all humans having the highest status.

A fourth approach to the evaluation of humans as members of a kind follows Aristotle in conceiving of human beings as having a function just as shoemakers have a function. Is it likely, asks Aristotle, “that whereas carpenters and shoemakers have certain functions or activities, man as such has none but has been left by nature a functionless being?”²⁸⁹

Aristotle answers that it is not likely and proceeds to find that the human function is a kind of practical rationality, “an activity of the soul in accordance with or implying a rational principle.”²⁹⁰ Understood thus as members of a functional kind, the rational kind, individual human beings can then be evaluated in relation to that function. A good thing of its kind is one which has those properties which enable it to perform its function well.²⁹¹

These four approaches have in common that they evaluate individuals *qua* the kind of thing

²⁸⁸ Benn, 1967, p.71, emphasis original.

²⁸⁹ Aristotle, 1976, 1097b. Doesn't his “left by nature” evoke the cosmic scale of Aristotle's teleological assumptions?

²⁹⁰ Aristotle, 1976, 1098a.

²⁹¹ Plato has Socrates advance this claim at *The Republic*, Plato, 2007, 352d-354. For contemporary examples of this sort of evaluation of human beings see Foot, 2001, Hursthouse, 1999, and Thomson, 2008.

they are, and not in virtue of their individual properties. My purpose in this chapter is to explore precisely what is the object of moral evaluation in nature of the kind arguments. My special interest is in what respect if any such approaches can issue evaluative judgements of humans as all being equal. I conclude that it is difficult to make coherent the idea that, as an outcome of this manner of evaluation, two members of a kind might be found to be equal in value *as* the kind of thing they are. I thus come to doubt that equal value claims can be the outcome of evaluating human beings as members of the kind *human* or the kind *rational*. With equality as the outcome of such evaluation being so elusive, a corollary finding is that ethical theories which conceive of species as an Aristotelian functional kind have difficulty accommodating equal human value. This may explain why such views are silent on equality.

8.2 Humanist and rationalist

Chappell advances a version of the humanist position. Being human is sufficient for membership of “the primary moral constituency.” The primary moral constituency is that

...class of creatures who all alike, and all equally, share in the highest level of moral rights and privileges.²⁹²

Chappell uses ‘persons’ to denote all members of the primary moral constituency. So used it doesn’t indicate possession of the properties often thought criterial of personhood - rationality, autonomy, self-determination among others. Chappell uses it here as Tooley did, as a purely moral category, “free of all descriptive content.”²⁹³ Thus, whatever other properties they may or may not possess, all human beings at all stages of the life cycle are members of the primary moral constituency which is to say that they have the highest and therefore equal moral worth. In fact Chappell disdains and disavows what he calls “criterialism,” the philosophical habit of propounding rigid criteria for attributing primary moral status. Chappell commends instead that we take ‘*being human*’ not as a criterion but

²⁹² Chappell, 2014b, p.132.

²⁹³ Tooley, 1972, p.40. Airbrushing over any qualms about independence of the moral and the descriptive. .

as a decision rule.²⁹⁴ That seems to me a considerable merit of Chappell's strategy; less ideological than rigid criterialism and more faithful to our best instincts to invest not equal but greater concern in those who may not fully realise the functions that those of an Aristotelian bent consider essential for a fully human life. But one wonders if behind the decision rule lies the discarded wrapping of Chappell's own less rigid and more forgiving criterialism.

Chappell's decision rule is direct: if human, then highest status. Donagan's less direct account involves further stages of argument and demands more exposition. This is because Donagan's account purports to make human value depend on particular properties and not on the mere fact of being human. Donagan gives a version of the rationalist position which contends that even if this or that individual human does not develop the ability to exercise rationality, nonetheless she is properly described as rational in virtue of being a member of a rational species.

I describe as rational any animal belonging to a species the mature members of which come to possess certain derivative rational powers by a process of development natural to its normal members.²⁹⁵

This wide descriptive latitude warrants Donagan's conclusion that a human zygote is rational. Donagan believes he can avail himself of this latitude because 'rational' can refer to two different human attributes, one of which is possessed by the zygote and the other possessed by the mature human. Donagan asks,

Do we have a single attribute before us...? I see no reason to think so. We have an adjective 'rational' which in at least one use (as in the phrase 'rational animal') appears to stand for an attribute having no degrees, and in others for a variety of attributes having degrees.²⁹⁶

²⁹⁴ Chappell, 2014b, p.133.

²⁹⁵ Donagan, 1977, p. 171, and 1982, pp.664-665.

²⁹⁶ Donagan, 1982, p. 664.

I think Donagan misidentifies the ambiguity which warrants the description of the zygote as rational. The rationality of the zygote, as Donagan makes plain, is that rationality of the human species denoted by 'rational' in the description of man as a rational animal. The 'rational' in 'rational animal' must denote the same attribute in 'Smith is more rational than Jones' just as the words 'four' and 'legs' denote the same attribute when we say that dogs have four legs and when we say that Fido has four legs. The rationality of the rational animal *is* the rationality which human adults exhibit. So Donagan's "rational" doesn't refer to two distinct attributes. Nor can he intend by describing the zygote as rational that it has the potential for actual rationality, for he wants to predicate rationality of all human zygotes including those which for genetic or other reasons are not potentially rational. So it isn't a potentiality account.

Donagan's account is most charitably understood as predicating rationality as what Foot calls an 'Aristotelian categorical.'²⁹⁷ Attributions of that kind are supposed to make possible the joint truth of the following two propositions:

(i) Dogs have four legs.

(ii) Fido the dog has three legs.

These can both be true only if (i) is not understood as a poorly expressed version of the universally quantified

(iii) All dogs have four legs

which falsely predicates four leggedness of all dogs and, unlike (i) cannot be jointly true with (ii).

We learn whether (ii) and (iii) are true or false by examining Fido. If Fido has three legs then (ii) is true and (iii) is false. Given that (i) is compatible with Fido having three or four legs, what would we do to show that (i) is true or false? As with testing the truth of (ii) and (iii) one thing we must do is examine some dogs. If we fail to find any dog with four legs we

²⁹⁷ Foot, 2001, p.29. Foot claims that one important logical feature of Aristotelian categoricals is that they are unquantifiable. But don't they entail quantified propositions: 'Dogs have four legs' implies at least A: 'all dogs are members of a four legged kind' and B: 'some dogs are four legged.'

would be justified in questioning the truth of (i) or at least of wondering why anyone should think it true. Unlike (iii), (i) is not made false by finding some dogs with only three legs, nor is it made true by finding that most dogs have four legs. Suppose it's true that most Swedes have blonde hair. If (i) were true as a statistical generalisation about most dogs, then 'Swedes have blonde hair' would also be true. But 'Swedes have blonde hair' doesn't say something which rings true in the way that (i) does say something which rings true even if we can't easily say why. The way in which it is true undergirds our sympathetic reaction when, on coming across three legged Fido we perceive straightaway that something is wrong and think *poor thing*. Notice how naturally the perception of three-legged Fido comes to us already normatively loaded with the signal that something, the dog, is not as it ought to be. While we wouldn't have the same thought about the dark haired Swede, we would of the adult human being who hasn't in maturity developed into a fully rational member of the human kind and in whom we also perceive straightaway that something is not as it ought to be. Again, the perception comes to us already bearing normative weight. If there is some way, state or condition which a dog or a human ought to be, that is, if their nature is specified as an Aristotelian Categorical, then this is significant for the evaluation of humans *as humans* and of rational beings *as rational beings*.

8.2.1 Essences

Donagan avows his debt to Aristotelian essentialism.²⁹⁸ I want to say what this *doesn't* commit him to. Affirming (i) above doesn't entail a commitment to four-footedness as an essential property of the species *canus* where an essence of a species is understood as a defining characteristic of a species. If Fido's three-leggedness is the result of a genetic inheritance that would seem to make false the proposition that it is Fido's essential nature to be four-legged. If (i) entailed quadruped essentialism then Fido's canine essence would have disappeared along with his leg. A single stray dog leg doesn't possess the metaphysical

²⁹⁸ Donagan, 1982, p.665.

strength to carry off the whole dog. So even if we grant the still unsatisfactorily, and needlessly, obscure Aristotelian

(i) Dogs are quadrupeds.

We shouldn't infer

(iv) Being a quadruped is the essence of being a dog.

And just as we can keep (i) and (ii) above, we can also give Aristotle

(v) Humans are rational

along with

(vi) Some humans are not rational

where we take (v) to mean that humans are a rational kind of thing and not to mean that rationality is an essential property of being human.

8.2.2 Donagan's moral conclusions

Donagan then draws his moral conclusion. He argues that the treatment which is owed to all members of the rational kind which reach the state of rationality is also owed to members of the rational kind which don't reach that state.

If there are beings who reach that state by a process of development natural to normal members of their species, given normal nurture, must not respect logically be accorded to them whether they have yet reached that state or not? The principle underlying this reasoning is: if respect is owed to beings because they are in a certain state, it is owed to whatever, by its very nature, develops into that state. To reject this principle would be arbitrary if indeed it would be intelligible.²⁹⁹

Donagan's next step is to establish the moral equality of all humans, zygote and professor alike. He does this by specifying that the rationality which all humans possess as a 'fundamental power' is a binary property which doesn't come in degrees.

²⁹⁹ Donagan, 1977, p. 171.

Rationality, considered as a fundamental power by virtue of which an animal develops in maturity various characteristic derivative powers, is not conceived as having degrees according as the animal is more or less proficient in exercising those derivative powers.³⁰⁰

I want to open up three wounds in Donagan's move here. First, Donagan argues that the same treatment is owed to "beings" who are in "a certain state" and "whatever by its very nature develops into that state." Grant this and curious consequences follow: mortal things are owed the same treatment as dead things; caterpillars as butterflies. The natural trajectory of life bears us through various states: if not the final state then which of our several states anchors the treatment we are due?

Second, Donagan relies on the binary property move³⁰¹ in proposing that "rational" refers to two different properties. One, a "fundamental power" which all human's possess and which doesn't have degrees (which we recognise as the binary property), and another the "derivative power" which all readers of these words possess and exercise to varying degrees. I showed earlier that 'rational' doesn't have these two meanings – it means the same in "man is the rational animal" and "Smith is rational", just as "legs" means the same when we say "dogs have four legs" and when we say "Fido has three legs."

Third, Donagan's argument turns on the distinction between a derivative power and a fundamental power out of which the derivative power develops. We know what it is to have the derivative power – if I can now today actually perform X then I have the derivative power to X. But it is obscure what it is to have a fundamental power. Do we have a fundamental power to run 100 metres in under ten seconds because some others can? If we have the fundamental power to X only when X is characteristic of the life form of the species then those who can actually run 100 metres in under ten seconds don't have the fundamental power. Yet clearly they do have the derivative power which Donagan claims is derived from the fundamental power. Does Donagan want to say that if any human can do X

³⁰⁰ Donagan, 1982, p. 665. Readers may recall this 'binary property move' from chapter six.

³⁰¹ First described in chapter 4.

then all humans have the fundamental power? This would imply that an anencephalic child with massive portions of the brain missing and condemned to die shortly after birth possesses the same fundamental powers as Einstein or Olympic sprinters. This is only going to be true on a radically misleading use of the word 'power.'

In any event, by this more complicated series of steps and missteps, Donagan reaches for the same conclusion as Chappell: that it is in virtue of being members of the same kind that each individual human has the highest and equal status. For Donagan it's the rational kind and for Chappell it's the human kind.

8.3 Evaluating evaluable kinds

What seems to me to be missing from the nature-of-the-kind accounts is an evaluation of the *individual qua* human or *qua* rational being, an evaluation which both reflects upon and reflects what we should care about in that individual. I'm therefore not sure that I understand the kind of evaluation at work when nature-of-the-kind accounts issue judgements about the moral worth of an individual *as* a member of their kind. At any rate, it isn't obvious to me that there is any kind of evaluation going on. I am open to the possibility that I am missing something which ought to be in plain sight. I'll try to illustrate what I mean with an analogy with other familiar modes of evaluation of things as members of a kind. Let me propose that the following represents a standard model of evaluation:

Proposal:

Evaluation of an individual X *as an* X (or *qua* X) is conceptually possible only if X is the kind of thing which can be evaluated. A kind can be evaluated if there is an evaluative base in respect of which it is evaluable. Call such kinds, *evaluable kinds*. If X is an evaluable kind then there is such a thing as a good or bad, better or worse X, a model or paradigm or exemplar X, or if any X can be or more or less an X.

Compare the umbrella kind with the rational kind and the human kind:

Umbrella kind - evaluative base: success at dryness. Some umbrellas are better than others at dryness. Umbrella is therefore an evaluable kind.

Rational kind - evaluative base: (loosely) success at drawing inferences. Some rational things are better than others at drawing correct inferences. Rational is therefore an evaluable kind.

Human kind – evaluative base?

The rational kind is like the umbrella kind in having an evaluative base and therefore in being an evaluable kind, but it is not at all obvious that the human kind has an evaluative base and is therefore an evaluable kind. Is there success at being human? Success at doing what humans are for? Can one be more or less human? Can there be such a thing as an exemplar, model or paradigm, or a better or worse specimen of the human kind? I don't believe so, and therefore don't believe that human is an evaluable kind. But Aristotle thought so and so do contemporary neo-Aristotelians who, as I understand them, evaluate individual humans as more or less good or defective exemplars of their kind according some ideal or paradigm of the kind. If we share the Aristotelian conception of human species as a functional kind then we are conceiving of the human kind as an evaluable kind. The characteristically Aristotelian way to do that is to take *humans are rational* as an Aristotelian categorical which makes a normative assertion about how a human ought to be. In so understanding the human kind, human is an evaluable kind sharing the same evaluative base as the rational kind.

Is the human kind an evaluable kind? I do not think so but I needn't enter on either side of that controversy to fulfil the aims of this chapter.³⁰² Suppose the human kind is an evaluable kind. This spells trouble for evaluations of all human beings as equal *as* members of the human kind. For in evaluating an individual it will be a contingent matter whether any

³⁰² To clarify, I do believe there are human beings who are ethically good, good at football, good friends, but not good human beings simply. Similarly there are objects that are good for cutting, good for skittering across water, good as weapons but no good objects simply. Hence human being and object are not evaluable kinds. When we, quite properly, say that Smith is simply a good human being, we always mean that Smith is an ethically good human being.

two members of the kind are equally good or defective instances of the kind. In short, if the human kind and the rational kind are evaluable kinds, only contingently and rarely will two instances of the kind be correctly evaluated as equal as members of the kind.

On the other hand if the human kind is not an evaluable kind, as I believe, then this too spells trouble for the evaluation of humans as equal *as* members of the human kind. For if human is not an evaluable kind, then evaluation as a member of the kind is not conceptually available; and if evaluation is not available, then evaluation as equal is not available.

What this points to is that it is obscure precisely which model of evaluation is in play, and what is being evaluated by that model, in those nature-of-the-kind accounts of human value which claim that all humans are equal in virtue of being members of the same kind, the human kind. Similarly for the evaluation of members of the rational kind. We know that these accounts assert that we ought to afford equal respect to all members of the same kind, but this just makes the evaluation of the individual a matter of judging whether she is a member of this or that kind, and this is not to make an *evaluative* judgment at all.

I now want to propose what might really be going on. Let's be reminded of the earlier analysis of Donagan's nature-of-the-rational-kind argument. That analysis suggested that we best understand Donagan by taking him to assert an Aristotelian categorical with its attendant implicit normative conception of humanity as *essentially* rational.³⁰³ That being so, Donagan's rational kind is an evaluable kind and the Aristotelian (neo or classical) evaluative model will not judge every individual to be equal *qua* member of the rational kind.

³⁰³ I noted above that he uses essence not as a necessary defining condition but as an Aristotelian categorical.

In a parallel case another nature-of-the-kind theorist, Rahul Kumar, this time of the species-norm variety, writes that

...claims about species are not statistical generalisations. Rather what they concern is the essential nature of a living kind, revealing facts about the *normal life cycle* of that kind of living thing. The use of “normal” here is unashamedly normative.³⁰⁴

The idea of *kind* at work here is again the Aristotelian normative conception of the human species. Like Donagan, Kumar wants to say that kind membership is the basis for our moral evaluations, thereby licensing the claim that all members of the species-kind are due equal respect. But the Aristotelian normative conception of the human species makes human being an evaluable kind and on that model no evaluative judgement will yield universal kind equality. It seems the only way to get to equality is to withhold evaluation of the individual members of the species, to choose wilful blindness to the possibility of finding value in the individuality of the individual, their individuating characteristics. But if we don't evaluate the individual, we can't ascribe, or for the objectivist, discover, the value of the individual. Does Kumar propose refraining from evaluating the individual as the unique thing that he or she is? He writes,

Just as certain ways of responding to the value of *The Last Supper* are required as a matter of respect for its value, there are requirements that are demanded by respect for the value of human life. It seems to me that what respect for the value of a living thing requires will depend on the characteristic life cycle or nature of members of that species.³⁰⁵

Kumar's analogy is revealing. In coming to our evaluative judgement on Leonardo's *Last Supper*, the judgement which commends respect for its value, we don't direct our evaluative attention at the generic properties of the artwork kind or the painting kind or the Italian Renaissance painting kind; we attend to the particular individuating properties of *The Last Supper* itself.

³⁰⁴ Kumar, 2008, p.73. Italics original. It's otiose but I disagree. I think they are statistical generalisations and are shown to be so by imagining that 99% of dogs have six legs not four. The species norm would be six legs, the 1% would be defective specimens, abnormal. The reversal of the norm would follow the reversal of the statistics. Kumar would have to hold that the species norm was four legs and 99% are defective.

³⁰⁵ Kumar, (2008) p.75.

That is also how the Aristotelian normative conception of the human species evaluates human beings – individual by individual. The evaluative base in respect of which each of us is evaluated is how we measure up as individuals against the ideal, the paradigm, the norm for the species. That nature-of-the-kind and species norm accounts don't evaluate the individual might simplify thought about how we must treat someone. It is harder to know how to treat someone and hence harder to find ethical answers if we apprehend her as a disunified scatter of heterogeneous individuating characteristics. It is correspondingly easier if we receive and understand her generically as a member of a value conferring class under which we can denote her as *X* in a moral formula. Theorising about trolley problems is made easier since the moral variables are fewer. Perhaps that is why several thinkers of the criterialist strain which Chappell abjures (in the works cited) homogenise multiple properties under a generic category (and not only a generic category, a binary category) – moral person, purposive being, rational being, human being. This of course is all conjectural.

8.4 Chapter Conclusions

If the kind *human* is a non-evaluable kind like the kind *object*, then there is no evaluation to be done of individual humans as members of the kind *human being*. Evaluation is not conceptually available. Hence if human is a non-evaluable kind then we cannot intelligibly evaluate all human beings as equal *as* human beings. The same would be true of rational beings if the kind *rational* were a non-evaluable kind. But the kind *rational* is an evaluable kind because rationality is an activity which one can perform more or less well. On the other hand, if the kind *human being* were an evaluable kind then the judgement that all humans are equal is conceptually available, that is, such a judgement is intelligible. That being so whether any two humans are equal as members of the kind will turn on the facts of each individual case and the proposition that *all are equal* will certainly be false. Similarly for rational kinds. Hence both the evaluable and the non-evaluable cases spell trouble for the claim that all humans are equal as members of the human or the rational kind. I conclude that nature-of-the-kind arguments of whatever stripe, rationalist or humanist, and which deploy an Aristotelian normative conception of human beings (as Donagan and Kumar do -

Chappell's position being less clear to me) must either conclude that all humans are not equal or refrain from the evaluation of individual humans.

END OF PART 1

In Part 1 my task was destructive. I sought to demonstrate that the arguments for equal human value from Pufendorf, Hobbes, Locke and Kant through to Kant's contemporary followers Rawls, Gewirth, Donagan, Carter and Waldron are all, without exception, fatally defective.

In Part 2 my task is constructive. I shall give an account of human value which is compatible both with the rejection of these moral egalitarian arguments and with the rejection of inegalitarian accounts of unequal human value which might be invoked underwrite monarchic, feudal, slave or apartheid social structures.

PART 2

Chapter 9

Value and valuing

“Good has the *ratio* of a goal.”³⁰⁶

In choosing objects, in conferring value on things that answer to our nature in welcome ways, an agent is affirming her own value. She takes what matters *to her* to matter *absolutely* and so to be worthy of her choice.³⁰⁷

Value begins to find its way into the world when the world comes to contain entities that function by means of actively seeking and promoting their own well-functioning.³⁰⁸

In this second part of my thesis my task is constructive. I construct and defend an account of the origin and nature of human value according to which our value originates in our valuing of ourselves. This view of value stands in contrast to the valuable property view described in chapter three according to which we have value because we possess certain valuable properties. I conclude that to have the kind of value which philosophers call intrinsic value or worth is for it to matter *to us* what happens to us. I show that on this alternative account we cannot make coherent the claim that everyone matters equally or unequally.

In the first sections (9.2 to 9.6) I give a Korsgaardian origin story of human value as originating in the valuing we do. I describe what it is to do this valuing and argue that valuing ourselves is necessary if we are to be moved toward what is good for us. My account borrows from Korsgaard these three ideas: that value originates in valuing; that our valuing

³⁰⁶ Aquinas, *Summa Theologica*, L.15, 3-5.

³⁰⁷ Korsgaard, 2009. p.123.

³⁰⁸ Korsgaard, Christine, *Moral Animals: Human Beings and the Other Animals*, p.36. Available at: www.people.fas.harvard.edu/~korsgaard/CMK.MA.Abstract.pdf.

is driven by and hence relativised to our individual nature; and that valuing ourselves is necessary if we are to engage in action to sustain ourselves. I then depart from Korsgaard (section 9.7) to describe and defend my own account of what it is to have moral worth. I argue that to have such value is for it to matter to us what happens to us. I then examine (section 9.8) how we might answer the question how much of this value we have, a question which it is necessary to answer if we are to say that two human lives matter equally. What emerges is that how much a human life matters is not a constant but a variable which takes different values across different times, currencies and persons. I therefore conclude that we cannot make coherent the view that everyone matters either equally or unequally; rather human value is incommensurable. This conclusion has several attractive implications.

I should make plain now that my positive account of value is only partly original. It opposes Kantian moral egalitarianism, yet is rooted in Christine Korsgaard's Kantian account of human value. My own view is that Korsgaard's account is not one Kant would endorse (and all the better for it.) I depart from Korsgaard's account at several places and try to signal these departure points as I proceed.

9.1 Introduction

The relation of value to valuing is analogous to the relation of love to loving. Human value, I claim, arises through the valuing that humans do just as love and hate arise through the loving and hating that humans do. Thus as loving is prior to love, valuing is prior to value, the verb being prior to the noun, the act constituting the object. Having the capacity to love is a necessary condition for actual loving, but it is the loving and not the capacity which brings love into the world. Similarly for valuing.

With that account of human value in place I then ask the question at the centre of my thesis: does this account of human value support the view that all humans matter equally? My conclusions are that if this is a correct account of what makes it true that human beings

matter then we cannot make coherent the idea that different human beings matter either equally or unequally. That incoherence drives us toward a third position which is neither egalitarian nor inegalitarian but which preserves two appealing features commonly ascribed to Kantian egalitarianism: the idea that individuals are not inter-substitutable, and that the conception of human value so formulated can serve as the moral foundation for political, legal and social egalitarianism. I call my developed position *incommensurabilism*.

9.2 Human value originates in valuing

Action aims at a goal or end. What is it that moves animals toward their goals? This is to ask what moves animals to action, to acting for a purpose. We are creatures for whom consciousness is coloured by a welcome or unwelcome character.³⁰⁹ The unwelcome character of hunger moves us to action the goal of which is to eat; being moved to eat, we find eating welcome. The unwelcome character of thirst moves us to action the goal of which is to drink; being moved to drink we find drinking welcome. By means of our consciousness being in this way positively or negatively charged so that we find ourselves attracted or repelled by its objects, we are moved to seek food when we are hungry and to drink when we are thirsty. We could say that being hungry *is* the valuing of eating and being thirsty *is* the valuing of drinking. A better way to put this which enjoys the merit of eschewing talk about values is to say that eating and drinking matter to us. These activities are among those that matter to us because they determine the character of our consciousness, and the character of our consciousness matters to us. (For the impatient - I say more about what it is for something to matter to us in section 9.7.)

A healthy animal will find that the welcome or unwelcome character of its consciousness moves it to pursue that which sustains it as eating and drinking sustain us. But sometimes what sustains us and what is good for us come apart: if one's life is a hell of unremitting pain with no prospect of relief then our good may be best served by being put out of our misery.

³⁰⁹. This way of putting it is from Korsgaard, 2013, p. 17.

What is good for an animal and what it is moved to pursue are settled by its nature as the kind of thing it is: cattle are not moved to pursue antelope and humans are not moved to graze in pasture. There will probably be an evolutionary fitness story informing the relation between our biological and psychological nature and what we are moved to pursue and avoid. It is upon the occurrence of this inchoate, pre-reflective valuing that value comes to exist. Our valuing brings value into the world.

9.3 Valuing as choosing

What is needed is to connect human valuing and human value. Aristotle connected our actions with the valuable, with that which is good: "...every action and pursuit is considered to aim at some good."³¹⁰ Korsgaard attributes the same thought to Kant who "started from the fact that when we make a choice we must regard its object as good."³¹¹ In this section I want to draw a distinction between choosing which is valuing and choosing which is not. This view seems to invest in the mere making of a choice a value conferring magic, as if choosing were in itself a seed from which value springs up wherever the seed is scattered. Choice alone surely has no such power. A card-trickster asks you to choose a card; you choose the six of spades. The automatic lawn mower 'chooses' to turn this way and that. You choose the card without valuing it, the automatic lawn-mower is 'choosing' by algorithm. In contrast, going to the cinema, joining a political party, drinking when thirsty, are chosen because the chooser values what is chosen: in these cases it matters to the chooser what is chosen. That we make some choices which don't matter to us tells us that there can be choosing without valuing and without taking that which we choose to be good. So choosing in itself doesn't bring value into the world. Aristotle and Kant must have known this and so this can't be what they meant.

³¹⁰ Aristotle, 1976, *Nicomachean Ethics*, 1094a, 1097a.

³¹¹ Korsgaard, 1996. p. 122 citing Kant's argument for the Formula of Humanity in the *Groundwork*, 427-428. Note also Gewirth's claim that there is logical entailment from 'I do X for purpose E' to 'E is good,' Gewirth, 1978, p.102, such that in choosing purposes we "implicitly judge the ends we choose to be good." Gewirth, 1978, p.41 and *passim* as a premise in his derivation of the 'supreme principle of morality.' Williams objects that a further step is needed to move from choosing X to taking X to be good. Williams, 1985, pp.58-59. Agreeing with Williams I argue below that not all choosing is value originating nor implies a judgement about the value of the chosen.

9.4 Valuing as post-reflective endorsement

For Korsgaard it is not choice simply which brings value into the world but choice as an outcome of reflective endorsement of candidate reasons for action. I mentioned earlier my view that value enters the world with the activity of valuing which is more primitive than reflective endorsement. Here I say why I do not think that reflection is either necessary or sufficient.

Suppose that when hanging the newly washed clothes up to dry my first inclination is to hang them randomly on the drying rack. I pause and ask myself if this is *really* what I should do, or should I instead arrange them in some other way. I reflect on it. But what does *that* mean? Presumably it's not just a pause, but a pause with reflective content, an internal review of the reasons to hang the socks on the left and the rubber underwear on the right. Following this review of the reasons to do one thing or another I decide to place all the socks together on the left side of the drying rack. This is now my choice by post-reflective endorsement. Now, is the fact that my choosing follows a pause and reflection sufficient to make my choosing an act of valuing? I don't think it is sufficient. I may have made the post-reflective choice for the reason that I could find no particular reason to do anything else. A different post-reflective choice may also have been unmotivated by good reason. So I can both choose without valuing the object of my choice, and I can *post-reflectively* choose after deliberating over reasons, without valuing the object of my choice. What I want to bring out here is that something is missing from the post-reflective account of choosing. What is missing is that which makes it matter what I choose to do. If it doesn't matter whether I choose the left or right side of the drying rack then in making a post-reflective choice I'm not valuing that which I choose and therefore I am not bringing value into the world.

In holding that it is not choosing-as-reflective-endorsement which makes it true that human beings matter my story diverges from Korsgaard's. If value were accessible only from the reflective standpoint then animals and young children who don't yet enter that standpoint but for whom the value laden character of their consciousness moves them to

action would be valuing themselves yet they would not have value and we would have no reason to care about them. Non-reflective animals value drinking when thirsty, eating when hungry, the company of their kind rather than solitude, and so on. We know they value these activities because they are moved to do them and yet they are not Cartesian automata. These are more rudimentary, inchoate valuing than our reflective valuing, but valuing nonetheless. By choosing unreflectively that which answers to their nature, animals constitute themselves as the kind of animals they are.³¹² Perhaps that sounds more profound than it is; it means only that an animal is what it is not merely because it has certain physical properties, being a vertebrate and a mammal, but also by its behaviour. If that is so, then our having value arises prior to our reflective choosing for reasons; our value arises in the fact that it *matters* to us what we choose, reflectively or unreflectively.

Warren Quinn said that a reason is something good in itself toward the realisation of which one acts.³¹³ Put in that way, “something good in itself” it is ambiguous between being morally good and being good in a non-moral way. I prefer the greater clarity of the non-moral interpretation which takes a reason to be something good *for* the agent and which moves the agent toward her goal, thereby serving, as Aquinas put it in the epigraph to this chapter, as the *ratio* of the action. But to move you, to pull you toward it, the good must exert some force on you. How does it do that? That a certain kind of protein found in antelope meat is good for the lion isn’t sufficient to move the lion to pursue the antelope. Lacking our conceptual capacity to recognise the good in that which presents in our consciousness as unwelcome, as when we choose to go to the dentist, the lion needs some other force to move her to action toward what is good for her. That force enters as the *to-be-pursuedness*³¹⁴ which the antelope has in the consciousness of the lion.

³¹² Borrowing a distinctively Korsgaardian way of putting it.

³¹³ Quinn, 1993, p.234.

³¹⁴ This especially apt phrase is from Mackie, 1977, p. 40. However Mackie denied that a state of affairs could possess the property *to-be-pursuedness*. He is right: the state of affairs ‘antelope on the plain’ lacks to-be-pursuedness. That property enters the scene along with the hungry lion’s consciousness of the antelope.

I turn to Korsgaard again to explain why the to-be-pursuedness of the antelope in the consciousness of the lion marks the difference between the choosing which signals valuing by a valuer and the choosing which does not. When we choose in the manner which constitutes valuing, when the lion chooses to pursue the antelope, we and the lion choose those things which “answer to our nature in welcome ways.”³¹⁵ So it is not choosing *simply* which is that valuing which brings value into the world, but choosing that which presents in our consciousness as welcome. My claim is that this can be either inchoate valuing, or Korsgaardian post-reflective valuing.

9.5 Why value is value-for

From the foregoing significant implications follow. If the value we find in the world, and note that I’m saying that we find it and don’t manufacture it, is that which answers to our nature, then the value of X will always be value-*to* or value-*for* a valuer. That does not mean that all value is ‘merely’ subjective, where ‘merely’ carries its customary pejorative resonance. For although pursuit of the antelope has no value for me or for the hedgehog, because it doesn’t answer to our natures in welcome ways, we can still say that it is objectively true, true from all perspectives, that pursuit of the antelope is valuable-for or good-for the lion. Another way to put this is to say that there are objective truths about what is subjectively good-for us.

Our flourishing, our valuing, and our good together form a tight conceptual family. What is good-for us is what is valuable-for us and is what constitutes our flourishing – and here again I hope it is evident that my use of *good* and *valuable* are not intended to bear a moral halo. When Aristotle says that every action is considered to aim at some good and Aquinas says that good has the *ratio* of a goal and Quinn that a reason is something good towards the realization of which we act, I don’t take them to mean that whatever we choose thereby

³¹⁵ Korsgaard, 2009, p123.

either is or is taken to be a morally good thing to choose (the mistake for which Williams criticized Gewirth). I take them rather to mean that X being good-for us is always a reason to choose X. We have standing but defeasible reasons to choose what is good for us and at the ground of those reasons and choices is the fact that it matters to us what happens to us.

This conferring of value by which we affirm our own value is not, for Korsgaard, the pre-reflective kind of valuing of the lion, the kind which we share with other animals. For Korsgaard human consciousness has a “reflective structure” and so it sets us “normative problems” – the problem of deciding what to do.³¹⁶ Animals whose consciousness lacks this reflective structure don’t face the normative problem. Rather, in unreflectively responding to their pre-reflective valuing these animals are pulled toward what sustains them, toward what is good for them. In contrast, the reflective structure of human consciousness opens up for us a space between impulse and action, a space in which we can ask ourselves what reasons we have to do this or that. We must either endorse or reject our pre-reflective impulses. The reasons we endorse constitute for us our “practical identity.” Korsgaard identifies our practical identity with the self. We thus constitute ourselves by constituting our practical identity and we do this by reflective endorsement of candidate reasons for action.

For Korsgaard our practical identity is a momentous construction. It establishes who we are taken as the totality of our reflective choices, of the reasons we act upon. Through the activity of constructing our practical identity by acting for reasons, we value ourselves and find our “life to be worth living and actions to be worth undertaking.”³¹⁷ Thus

Since you cannot act without reasons and humanity is the source of your reasons, you must value your own humanity if you are to act at all. It follows from this argument that human beings are valuable.³¹⁸

³¹⁶ Korsgaard, 1996, pp.122-123.

³¹⁷ Korsgaard, 1996, p.123

³¹⁸ Korsgaard, 1996, p.123

It is in virtue of reflectively choosing what to do that we confer value on that which we choose and in so doing “an agent affirms her own value.” Korsgaard’s conclusion is that human value originates in our valuing ourselves. We instantiate this valuing in our taking our aims to be worth pursuing and in acting in pursuit of those aims by taking them as reasons to act. In choosing between different aims we constitute our practical identities. Given that origin, if anything has value for us, if anything matters to us, then we matter.

In describing Korsgaard’s view and my departures from it, the shape of my own view should begin to emerge. My view borrows from Korsgaard the idea that human value originates in our valuing. In conferring value on what she finds welcome

...an agent is affirming her own value. She takes what matters *to her* to matter *absolutely* and so to be worthy of her choice.³¹⁹

Korsgaard’s “*absolutely*” hints at an objectivist reading such that what matters to the agent thereby also matters simply, independently of it mattering to the agent. That may not be Korsgaard’s intended meaning. There’s an alternative reading thus: in committing to our choices each of us must act as if what matters to us matters *simpliciter* in order that our goals rationalise our pursuit of them, that is, to be worthy of our choice. And our goals can matter only if we matter. Therefore since we must act we necessarily value ourselves and this is the source of our value.

9.6 Valuing is necessary for action

I said that we necessarily matter to ourselves. What kind of necessity is at work here? Not logical necessity. If we sustain ourselves by action the effect of which is to secure what is good for us, then, if we are to sustain ourselves, we cannot *not* engage in action which takes us toward what is good for us. We are also sometimes pulled toward what is not good for us drawn by anticipated satisfaction into indulgent self-destruction. Nonetheless, action remains necessary if we are to sustain ourselves, and if action is necessary, then it is

³¹⁹ Korsgaard, 2009. p. 123.

necessary to be moved to action. Finally, we are moved to action by it mattering to us what happens to us.

How well one's life goes is almost completely determined by the character of our felt experience and this is substantially a matter of our having more welcome and fewer unwelcome experiences. One should construe 'welcome experiences' here not as merely pleasurable experiences in the narrow hedonic sense, but in the widest sense which encompasses our experience of other people's lives going well. Many of us welcome the betterment of others' lives not for the pleasure it gives us so that we might have been equally satisfied by reading a life affirming fictional tale. We don't want others lives to be better because of the satisfaction their betterment affords us; we want their betterment (or so one hopes) because it's better for them. Thus we can say that one constituent of a better life for us is being aware that others' lives are going well for them.

This sharing of the value of lives can have posthumous reach. My own consciousness now is made brighter if I have good reason to believe that after I die those whom I care for will have good lives. One could say then that to have a better life is for our lives to have more value. Given the relation between welcome experiences and what is good for us, in which it is the welcome character of the experience which pulls us toward what is good for us, our having better lives will in turn be a matter of the extent to which we achieve the goals we pursue.³²⁰ This is just to affirm what may be a banality: our lives are usually made worse when we are unsuccessful agents and made better when we are successful agents.

I said that how well our lives go is *almost* fully determined by the character of our experiences, "almost" only to leave room for our lives being made better or worse by conditions or events of which we are unaware and so which don't enter our experience. Some people believe that our lives could be made worse both by events during our lifetime

³²⁰ Joseph Raz puts something like this view at Raz, 1986, Chapter 11.

of which we are unaware and by post mortem events so that, for example, someone's life is made worse if he is despised by those whom he falsely imagines care for him.³²¹ Even if there are such non-experiential elements of a better life, it remains true that the character of experience is the primary carrier of what makes a life valuable to the person whose life it is. The life of the man who feels himself despised and is not deluded looks like a worse life *for him* than the life of the despised man who imagines himself loved and of the man who imagines himself despised but is in fact loved. The felt quality of his experience makes that difference.

Is this account of valuing nothing more than valuing as desiring? After all, thirsty animals desire water and suffer if they don't get water, hungry animals desire food and suffer if they starve, and I have said that being thirsty is to value drinking and being hungry is to value eating. My claim is not that the object of my desire is made valuable because I desire it, but rather that if I value *anything at all*, this is sufficient to make it true that it matters to me what happens to me. Hence it would be true also that if any entity is in a state which we know as the state of desiring something then it matters to that entity what happens to itself - it's a valuer engaged in valuing. Hence this is not a desire based account of value because it doesn't hold that X is valuable because X is desired, rather the claim is that if a creature desires anything then what happens to that creature matters to it.

In the next section I depart from my Korsgaardian starting point and develop and defend a distinctive account of the source and nature human value.

9.7 On it mattering what happens to us

I take the two statements 'it matters what happens to human beings' and 'it's important what happens to human beings' to express more clearly the proposition 'human beings have

³²¹ Aristotle, 1976, 1110a, 18-30.

moral value.’ Following the standard distinction between intrinsic and instrumental value,³²² when I write ‘it matters what happens to human beings’ I mean that human beings have intrinsic value, that is, they matter in themselves and for their own sakes, and not for the sake of some other thing. Expressing the idea that humans have value in terms of it mattering what happens to them aids clarity because we all know what it means for something to matter to us, but there is more controversy on what it means for a human being to have value. I shall not try to define what it means for something to matter to us by stipulating a set of necessary and sufficient conditions. Instead I invite you to take “...matters to...” to mean what we mean in the following examples:

(i) You answer “yes” when your psychiatrist or the mafia extortionist asks “does what happens to your children matter to you?”

(ii) When thirsty, it matters to you that you drink.

(iii) It matters to you that your excruciating headache should cease.

(iv) It matters to you that you treat people kindly and be treated kindly.

Those examples should make clear that my subject is not a special class of mattering which could be called ‘moral’ mattering. The mattering I refer to is plain, common or garden mattering and this will be sufficient to capture what others might want to call moral mattering. With those preliminaries complete, let me now enter the argument.

If we are interested in whether Smith has value we want to know what would make proposition P true.

P: ‘it matters what happens to Smith’

Whatever else might make P true, I believe P is made true by fact F1:

³²² I refer to the twofold distinction between that which is good or valuable in its own right and that which is valuable only instrumentally. Aristotle, 1976, 1096b, 15-20. Plato has three categories of value: (a) that which we prize for its own sake (pleasure), (b) for its consequences (work and medical care), and (c) both for its own sake and its consequences (sight and justice). *The Republic*, 357b.

F1: 'it matters *to Smith* what happens to Smith.'

Why does F1 make P true? We can answer this question by reversing back from a position which we cannot seriously doubt. Leave aside whether P is made true by F1 what other fact could make P true? Try fact F2

F2: when Smith feels pain everyone else feels pain. Therefore what happens to Smith matters to everyone because it matters to everyone what happens to them.

I believe we must accept that F2 makes P true. For if F2 were insufficient to make it matter what happens to Smith then what happens to Smith would not matter notwithstanding that it matters to everyone. The notion that something could matter to everyone and yet not *really*³²³ matter impoverishes the idea of what it is for something to matter at all. Something that matters to everyone must matter for if it did not then it is hard to see how anything could matter. We should accept that F2 makes P true.

Since F2 makes P true I think F1 must also make P true. Why? It can't be necessary that Smith matters to everyone for F2 to make P true, for then what happens to us would have to matter to everyone in order for us to matter at all. If that were a necessary condition then it wouldn't matter what happens to any of us. Hence something else about F2 makes P true.

The difference between F1 and F2 lies only in the numbers. In F2, if the aggregated weight of each individual mattering to themselves makes P true that can only be because it matters what happens to each individual. Since Smith is just another of those anonymised individuals then Smith's mattering to herself is sufficient to make P true. Therefore F1 makes P true. Therefore it matters what happens to Smith if it matters to Smith what happens to Smith.

³²³ This *really* is entered here in italics to signal my doubt that it adds any weight to the proposition.

What about F3

F3: "it matters to me what happens to you."

Does F3 make P2 true?

P2: "it matters what happens to you."

I think F3 does make P2 true. If it matters what happens to me and I care about you so that what happens to you affects me, then it matters what happens to you in virtue of it mattering what happens to me. So even if it were possible for it not to matter to you what happens to you, (and it almost impossible since our animal nature makes our self-valuing necessary for action) it would still matter what happens to you in virtue of F3. Of course if you are a conscious human being it will already matter to you what happens to you and that will establish P2 without you mattering to me.

Suppose P is true; which new facts could arise to make P false? In particular would F4 make P false?

F4: what happens to Smith no longer matters to Smith nor to anyone else.

Care is needed here. A chronic depressive, Smith might declare that it doesn't matter to her what happens to her. That would almost certainly be false. Smith may have no care about whether she goes sailing or to the opera, but she'll probably want to be left alone. That matters to her. She'll want you to stop torturing her, to disconnect the electrodes, not to kill her dog or her mother. That will matter to her. In a sense, simply being depressed matters to her, the suffusion of her consciousness with a colourlessness will be unwelcome. Smith's actions in avoidance and pursuit of anything will betoken that something does matter to her, otherwise she would no longer be moved to action at all: "You must value your own humanity if you are to act at all."³²⁴ My concern here is only to show that whatever else may make it true that Smith matters, it is sufficient to make it true that what happens to Smith matters to Smith. Since there are many people sufficiently philanthropic to care that

³²⁴ Korsgaard, 2009, p.123.

everyone's life goes well it will always be true that each of us matters to someone who matters to themselves. Therefore, it matters what happens to each of us. each of us.³²⁵

Now an anticipated objection. I argued from 'Smith matters to Smith' to 'Smith matters.' But 'Smith matters' is equivalent to 'Smith matters, *period*' and this way of putting it is susceptible to an objectivist reading such that what happens to Smith matters even if it doesn't matter to or for anyone. So I need to be clearer. I deny that anything can matter yet not matter to or for someone; I therefore repudiate the objectivist construal of "Smith matters, period." My view is that it is only by mattering to or for an entity for whom things can matter that anything can matter. I find a useful analogy in the relation between loving and being loved. The proposition P2

P2: Smith is loved (=Smith matters)

Is made true by the fact F2

F2: Smith is loved by Jones (=Smith matters to Smith)

But P2 says no less than P3:

P3: Smith is loved, *period*. (= Smith matters, period)

Although I disavow the objectivist reading, there is something here which we can safely call objectively true, truth which is independent of what you or I believe. I'll try to explain. Returning to the analogy with being loved, the fact that Jones loves Smith is sufficient to make it true that Smith is loved and that there is love in the world. While this is wholly dependent on a subjective state of Jones, viz. that she loves Smith, it is nonetheless a fact to which any of us can bear witness simply by observing Smith and Jones. There is therefore nothing amiss with the question 'Is Smith loved?' The answer, 'yes Smith is loved,' is made true if someone loves Smith. Adding '...by Jones' doesn't make an indeterminate or false answer determinate or true, rather it reports the facts which make the answer a correct

³²⁵ I'm grateful to Jon Pike for this observation.

answer. If 'Smith is loved' means the same as 'Smith is loved, period' as I think it does, then 'Smith is loved, period' is made true by Smith being loved by Jones.

Similarly, everyone can agree that what happens to Smith matters to Smith and any of us appropriately situated can bear witness to that fact simply by observing Smith. This objectivity is not independent of the actions or states of mind of agents; it is dependent on Smith mattering to someone, in this case, Smith. So, just as we can bear witness to the fact that Smith is loved (*period*) and that there is love in the world (*period*) because Smith is loved by someone, we can also bear witness to the fact that Smith matters (*period*) and that something in the world matters (*period*) because Smith matters to Smith. 'Smith matters' is not to be given what I call a hard objectivist reading as Smith mattering but not mattering to or for anyone. It should be read more modestly as 'Smith matters in the only way that anything can matter - by mattering to or for someone.'

One could complain that there is a disanalogy between Smith being loved, and Smith mattering. To say that Smith is loved *period*, is not generally thought to give any weight to the notion that people who do not love Smith ought to love her. In contrast in saying that Smith matters *period* am I not illicitly trying to give weight to the proposition that what happens to Smith ought to matter to others?

My answer is that I am not *trying* to do that. I am just trying to show by analogy how, from Smith mattering to Smith we get to Smith mattering, *period*. We get there because *mattering to or for* some entity for whom things can matter is the only kind of mattering we know, just as being *loved by* is the only kind of loving we know. Those who feel themselves moved to take Smith to matter by the normative gravity emitted by the fact that Smith matters in the only way something can matter are simply responding appropriately to that fact. That Smith matters is an excellent reason to act as if Smith matters just as an excellent reason to act as if water boils at one hundred degrees Celsius is the fact that water does boil

at that temperature.³²⁶ But the question was whether others *ought to* act as if Smith matters. *Ought to* is too muddy to let pass without some abrasive scrubbing so let me quickly scrub some off some muddiness with an example.

It's pouring outside, we have an important appointment across town in fifteen minutes. It's a thirty minute walk and a long wait for the bus. A taxi is passing. Summing these several considerations we find that all count for taking the taxi and none count against. We would naturally say that we ought to take the taxi. *Ought to* here means the same as *have a decisive reason to*. Having a decisive reason to do X is one ordinary non-moral sense of *ought to do X*.³²⁷ Where we are then is with the question: does the fact that Smith matters in the only way that something can matter give us a decisive reason to act as if Smith matters? If the answer is that this fact does give us decisive reasons then we can say that we ought to take Smith to matter.

This section and the remainder of chapter nine are vital organs of my positive thesis. Let me summarise the important conclusions of this section. I argued that if anything matters, anything in the universe, then we must matter because the conditions under which anything other than us can matter are already satisfied for us: namely that we matter to someone. Therefore we matter. Thus from the same starting point but by a different route (and without using the slippery terms *value* and *moral*) I arrive at the same conclusion as Korsgaard: our valuing of ourselves brings our value into the world, therefore we have value.

That's my account of what it means to have human value and of one fact which makes it true that we have that value. It comes to this: if it matters what happens to us then we have

³²⁶ This is a particular instance of the generalisation that we have standing but defeasible reasons to make our acts track facts. I return to this point in the next chapter.

³²⁷ Thomson, 2008, describes several common and perfectly legitimate uses of 'ought': a toaster ought to toast, a beefsteak tomato ought to be big and fat; we ought to show our respects.

value. This condition is satisfied by at least one fact: that it matters to us what happens to us. There is another question we must answer if we are to affirm or deny moral egalitarianism: how much does it matter what happens to us? I answer this question in section 9.8.

9.8 How much we matter

If for you to have moral value is for it to matter what happens to you, our equal moral value will consist in it mattering equally what happens to each of us. In this section I argue that when we flesh out the idea of how much something matters we cannot make intelligible the claim that all human beings matter equally.

9.8.1 The problem of multiple currencies

Suppose I have three apples (a) and you have three mangoes (m); we want to measure how much we value these objects - how much they matter or how important they are. We measure how important something is to us, how much it matters to us, by what we would give up for it.³²⁸ Suppose I would give up one apple for two oranges (o), and you would give up all three mangoes for one kitten (k). I appear to value one apple as equivalent to two oranges, and you value three mangoes as equivalent to one kitten. Our values are:

$$\text{Me: } 1a = 2o; \text{ You: } 3m = 1k.$$

Superficially that looks fine, we now know the value to me of apples relative to oranges, and the value to you of mangoes relative to kittens. Lacking a common currency however we have insufficient information to determine whether you value your mangoes more or less than I value my apples. A natural approach is to ask is how many apples I would give up for your mangoes. Suppose I would give up two apples for one mango but you wouldn't accept less than four apples for one mango. So we now have:

³²⁸ It is not only in economic valuing that we do this. How important is it that you finish your PhD? What would you sacrifice for it? How important are your children? What would you sacrifice for them?

$$\text{Me: } 2a=1m; \text{ You: } 4a=1m$$

If we want use these valuing to discover a real value of apples/mangoes, since equality is transitive we get the contradiction $2a=4a$. Have we now fixed upon a value of mangoes and apples? We have not. We have learned that you and I value mangoes/apples unequally and there is no commensurating of these into a single value. Suppose I would also give my three apples for one kitten: $3a=1k$. We now have a common currency, kittens, in which we value our fruits equally at

$$\text{Me: } 3a=1k; \text{ You } 3m=1k$$

Since equality is transitive, we ought now to have

$$3a=3m=1k$$

Something is amiss, for we have already established that we value our mangoes and apples unequally, (me: $2a=1m$; you: $4a=1m$). This failure of transitivity is a sign of something more philosophically interesting than the banal fact that different people value different things differently. It reflects an incoherence of values across currencies as well as incoherence of values across persons.

9.8.2 The problem of time

There's another complication. You valued your mangoes at $3m=1k$. Suppose you then trade your three mangoes for a kitten. I now offer you four mangoes for your kitten. If your valuing is $3m=1k$ then your valuing should be $1k=3m$, equality being a symmetric relation. But now you won't give up your kitten even for four mangoes, so your valuing is $1k>3m$. This is not a symptom of defective rationality; it is not irrational to value the same thing differently at different times. Suppose my brother offers you another kitten for only one of your mangoes. Since you already have a kitten, you have no interest in giving up even one mango for another kitten.

There's room for arbitrage to exploit value differentials. You could take my four mangoes for your kitten, and then exchange one of them for my brother's kitten and acquire three

mangoes for nothing. This is what happens in a market economy. You might trade like this with mangoes or motor cars but, unless your business is animal trading, we would think something deficient with your judgement were you to trade thus with your kitten, evincing a callous insensitivity to something about the kitten and lacked by mangoes and motor cars.

Our valuations differ in different currencies and times, and in a market economy the pervasive underlying intransitivities may be obscured by the expression of value in a single currency, money. There are three salient points to observe about these values: first, they are not values (noun) which we discover, they are our *valuings* (verb). Second, they are fleeting: yesterday I gave six mangoes for a kitten, today I now own a kitten so I won't give even one mango for another kitten. Third, they are intransitive across different currencies and times.

9.8.3 Objective value of mangoes

What would it mean for any one of those three preceding claims to be false? It would mean that the values of apples and mangoes are values we discover, not valuing we do; that they are constant, not fleeting; and that they are transitive and commensurable across different currencies and different times. If objectivism about value is true then there are truths which we can discover about the value of mangoes and which stand independent of the actual valuing of agents. If we want to make such a case, we need to explain how we discover these constant, transitive values. How do we do that? Reflection reveals that we can't discover the value of apples and mangoes by going to the fruit counter at the supermarket. There we find that apples are £2 per kilo and mangoes are £3 per kilo. One apple is worth 2/3rds of a mango. I won't pay more than £2.50 for a mango and some people would pay up to £3.50. We can't say that £3 is the mean price taking account of all market actors' decisions, for in the supermarket across the road mangoes and apples are both £2.50 a kilo. Tomorrow the prices change; in another store in another country mangoes today are less than £1 a kilo. Actually, I hate mangoes and wouldn't accept one for free. On my trip to the supermarket have I *discovered the* value of apples and mangoes? I have not. I discovered that mangoes and apples have different values at different times for the same agent (the

supermarket) and different values at the same time for different agents. I discovered also that in different supermarkets an apple is simultaneously worth one mango and worth 2/3rds of a mango, so it is simultaneously equal to and less than the value of a mango.

The supermarket example illustrates that if I put aside my personal valuing in order to discover the impersonal value of mangoes, I discover only what other people are willing to give up for mangoes. I have neither discovered the real objective value of mangoes nor what it would mean to discover the objective value of mangoes.

Suppose you assure me that the real value of apples and mangoes is £1.50 and £2.50 per kilo respectively. What would the world have to be like for your claim even to have *prima facie* truth? It would have to be some kind of error for someone to refuse to pay more than £1.40 for apples. What kind of error could that involve? An error about the value of apples?

We would be more tempted to call it a mistake if I refuse to pay more than £1.40 to release my daughter from kidnappers. That would be a failure properly to value the life of my daughter, a moral failure, and in putting like that I seem to presuppose that there is a proper valuing of my daughter which stands independently of my valuing. I return to this point in the next chapter.

This diversion into what it means to value some objects more than others is intended to illuminate how even in the mundane cases in which we attribute value to apples and mangoes, we face intractable conceptual challenges. We must decide upon a common currency in which to express the value of that which we take to have value. In so doing we find as many currencies as there are things to care about with no single currency enjoying special claim to authority. Moreover the values we attach in any one currency will be unstable over time, fleeting. Finally, the value we ourselves place on objects in one currency can be inconsistent with the value we place on the same object in a different currency. This generates intransitivities, endemic and inescapable, which arise because

apples and mangoes are different things, although they are fungible, tradeable, and we can treat them as equally valuable, as when we are willing to trade at $1a=1m$. Trading notwithstanding, still they are incommensurable: we can't add two apples plus three mangoes just as we can't subtract 2 apples from 3 mangoes. With those considerations about value in mind, I want to turn to the relation between our valuing of human beings and the value of human beings.

9.8.4 How much humans matter

The questions hovering over this section are this: what would the equal value of two human beings or their mattering equally look like? How do we discover how much someone matters? We might start by asking how important it is that their lives go well and order those values on a scale and discover that they occupy the same position on the ordering. But what do we mean by 'how much'? How much of *what*? We need a currency. The natural place to start for human value is with human lives. You would probably give up your life to save your own child, but would you give up your life to save the life of one stranger? Or if not for only one stranger, then for two or three? Or would it take nothing less than saving a school bus packed with children for you to give up your own life? And then if you would give your own life to save an airliner of children would you give up your daughter's life?

What we want to get to here is not the value you find in the lives of others, but the value you find in your own life. The example expresses that value in others' lives only because we need some currency with which to measure the subject's valuing of herself. And since we are talking about the subject's life it seems appropriate that the currency in terms of which we measure that value should be other lives.

Suppose you would give up your life to save no less than two strangers and I'd give up my life to save no less than three. That's one way of measuring how much we value our own lives. We might think that this could be interpreted in either of two ways. On one interpretation you value your life less than I value mine so that you attach a worth to your

own life of two other lives, and I attach a value to mine of three other lives. On the alternative interpretation you value your life and I value mine equally, but you value others' lives more highly than I do, at $\frac{1}{2}$ of yours while I value others' lives at $\frac{1}{3}$ rd of mine. Further reflection should show that this second interpretation in which we value our lives equally and others' lives unequally, is not available. If I value your life equally with mine, then, since you are one of the others, it's not true that I value others' lives at $\frac{1}{3}$ rd of mine. Similarly if you value your own life equally with mine, then it would not be true that you value others' lives at $\frac{1}{2}$ of your own, since I'm one of the others.

Perhaps you're not just one of the anonymous others, you're a special other, one of my three brothers. So we both value ourselves as equal to one brother, but more than non-brothers. Does that mean that we value ourselves equally, or unequally? Again the answer is currency dependent: we value our own lives equally with that of our brothers, but we value our own lives more highly than that of non-brothers.

9.8.5 Intransitive and incommensurable value

Talk about the valuing of others' lives makes it easy to forget that we are using other's lives as the currency with which to express how much it matters to us what happens to us, that is, how much we value ourselves. Others' lives saved or lost is only one of many possible currencies. The availability of multiple currencies with which to measure and express the value we place on something introduces ineradicable intransitivities. Trapped alone in an isolated mountain gully, would you cut off your own arm to save your life?³²⁹ If you would but I wouldn't, then, measured in this macabre currency, we value our lives unequally. Now, suppose that you're my brother from the earlier example in which you value your life less than mine at two strangers' lives and I value mine at three strangers' lives. Granting all this, then we simultaneously value our lives equally in the currency of brother's lives. The resulting set of values is that I value my own life more than yours in the currency of

³²⁹ As the climber Aron Lee Ralston did on May 1st 2003. See: https://en.wikipedia.org/wiki/Aron_Ralston.

strangers' lives, less than yours in how much self-inflicted physical pain I'm willing to endure, and equally with yours as my brother.

It is not obvious how to characterise this result. I incline toward thinking of it as an instance of incommensurability. Raz said that a mark of incommensurability is failure of transitivity and that X and Y are incommensurable when X is neither more than nor less than nor equal to Y.³³⁰ Chappell spells out incommensurability of values in terms of the phenomenon of reasonable regret for what is sacrificed.³³¹ It is reasonable to regret having to give up a day with one dear friend for a day with another dear friend, but not reasonable to regret having to give up a half hour with a dear friend for a half day with the same friend. Another proposal, my own, is

If $(X > Y)$ and $(Y > X)$ or we cannot deduct one from another (as we can't deduct five ants from four elephants) then X and Y are incommensurable.

That I appear intelligibly to assert disjunctively that I value my life more or less or equally with yours suggests commensurability of your value and mine. But that I assert conjunctively, that I value my life more *and* less *and* equally with yours suggests that even if your value and mine were commensurable, our value is afflicted by some other incoherence which is at least as fatal to equality claims as incommensurability. For in saying that I value my life more than yours I deny that I value it equally or less than yours. Each conjunct denies the other two and therefore the conjunction is a contradiction. Since we can deny each of the conjuncts, it meets the conditions of incommensurability – that your value is neither more nor less than nor equal to my value. The set of human valuing I describe meets all three of these tests. If those are possible valuing then human value is incommensurable.

If this analysis of how much what happens to us matters to us seems artificial that's probably as it should be. We don't truly answer the question of how important something is

³³⁰ Raz, 1986, p.325. Raz was concerned only with the value of choices or outcomes, not the value of persons. Similarly concerned are Chappell, 2001 and 2003, and Griffin, 1977.

³³¹ Chappell, 2003, pp.163-164. Chappell credits the thought to Williams, 1973.

to us by assertion; valuing isn't a speech act. We answer it decisively in action, when we are faced with exclusive alternatives and are required to sacrifice something for something else. That which we give up is the currency in which we express how much something matters to us, its importance or value. In making choosing what to give up we don't stably fix how important it is: we fix it only at that moment and in that currency. In a different mood, in different company, in a different time and place, I might have laid down my life for you, but right now, today, with my ageing mother and young children in need of care, I would not give my life for an airliner stuffed full of monarchs and presidents.

9.8.6 Chapter conclusion

I have argued that the importance of X is given by how much Y or Z we are willing to give up for X and this is true in the case of the value we place on ourselves as in the value of commodities. There's something to be said for refusing to countenance any such comparative economics in the human case save where such comparisons are inescapable.³³² Having already discovered that each human being is worth exactly the same, refusal isn't available to the Kantian egalitarian. The examples showed that there is no single currency with which to express how much it matters that we live well or live at all and that our valuing vary across different currencies and different times. I showed how these facts give rise to ineliminable intransitivities and that our possible valuing meet Raz's, Chappell's, and my own, conditions of incommensurability. Therefore, on the conception of the value of a life as its importance for the person whose life it is, we cannot coherently assert that one life is more or less than or equally important with another life. Human value is incommensurable.

My claim is not that I have met an epistemic barrier preventing the discovery of how much we matter. It is rather that we discover how important something is, including our own

³³² As when allocating scarce resources for safety and medical care. Some such computations will value each life equally, but not all. The allocation of public medical resources unpalatably but faultlessly might allocate more scarce resources to improving the survival chances of a twenty five than an eighty five year old cancer patient.

lives, by discovering how important it is to entities for whom things can be important. We do that by entering their shoes, as Tom Nagel felicitously puts it (and whose putting of it thus I shall turn to in the next chapter.) If this is indeed how we discover the importance of something it doesn't preclude us valuing Smith more than Jones by being willing to sacrifice more to save Smith than to save Jones. It precludes fixed values, values which endure across currencies, times and persons; and in precluding fixed value it precludes equal value. It is worth recording explicitly that this conclusion seems to follow for all subjectivist views about value, that is, views which locate value in the valuing practices or attitudes or responses of valuers. If we want to say that human value is equal value then we must abstract from our own actual valuing, and find a fixed set of values which are not the actual valuing of any individual. We must make value prior to valuing.

Chapter 10

Objectivist objections

Despite its great post-war popularity as rhetoric if not as fully developed doctrine, moral egalitarianism demands ambitious metaphysical commitments. It requires that the moral worth of a human being is fixed for all times, for all persons, and for all currencies - a kind of moral Planck's constant. I think that fixity of value presupposes a hard core value objectivism.

In contrast, subjectivist accounts of value which locate our value in our valuing practices, attitudes, or responses, as my (Korsgaardian) account does, are less metaphysically demanding. Objectivists and egalitarians will worry that such minimalist metaphysics carry a too heavy price. Moral egalitarians, who must also be value objectivists, will not wish to give up egalitarianism, and objectivists will worry that if Smith matters only because Smith matters to Smith, then others have no reason to take Smith to matter at all.

In this chapter I explore three considerations which may seem to give the egalitarian objectivist accounts of Tom Nagel and Ronald Dworkin an advantage over my view. These are:

- 1) Nagel: the private reasons objection.** Without objective reasons to care about Smith, there is no morality. On my view all reasons are private, because each of us matters only because we matter to ourselves.
- 2) Nagel: equality in the impersonal standpoint.** Our personal standpoint affords only a partial view of the world. A proper view of the world, requires that we take up the impersonal standpoint from which we see that everyone's value is equal.
- 3) Dworkin: Universal or special importance.** We must take our own life to have objective importance not just importance for us. When we do this, we must take everyone's life to be equally important.

I defend my account by addressing each of the three objections. I then try to show that Nagel and Dworkin's objectivism faces metaphysical challenges which my view does not.

10.1 Nagel's private reasons objection

Given the following three facts:

- (i) it matters to Smith what happens to her;
- (ii) Smith has an excruciating headache;
- (iii) I have the headache pills;

do I have any reason to give Smith the pills? According to Nagel, I only have that reason if Smith's headache isn't just a bad or unwelcome experience for her, to count as a reason for me, her headache must be objectively a bad thing. For Nagel,

...my headache seems to me to be not merely unpleasant, but a bad thing. Not only do I dislike it, but I think I have a reason to try to get rid of it. It is barely conceivable that this might be an illusion, but if the idea of a bad thing makes sense at all, it need not be an illusion, and the true explanation of my impression may be the simplest one, namely that headaches are bad, and not just unwelcome to the people who have them.³³³

Nagel says that "everything depends on whether the idea makes sense" that is, the idea of a headache being a bad thing and not just "unwelcome to the people who have them." Only if that idea makes sense will it not be "an illusion" that there is a reason which extends to others to relieve Smith's headache. Nagel's worry is that if all we have is that Smith and her headache matter to Smith this gives reasons which have force only for Smith, that is, subjective or private reasons; others will have no reason to take Smith and her headache to matter, and if we have no reason to take Smith to matter, then morality can't get going.

³³³ Nagel, 1986, pp.145-146.

If all this goes through then on my account of Smith mattering because Smith matters to Smith, there is no reason for anyone else to take Smith to matter. That would be a fatal defect in any account of human value. According to Nagel the solution is an objective realist view of values or reasons (Nagel equates values and reasons) according to which “propositions about what gives us reasons for action can be true or false independently of how things appear to us.” We get access to these reasons by “transcending appearances and subjecting them to critical assessment” and by so doing we discover “the truth about what we and others should do and want.”³³⁴

My claim is that Smith’s reason to take the headache pills is that her pain is unwelcome, unpleasant, a bad state of consciousness for her, not “a bad thing” simply or objectively or as a separate fact in addition to its badness for her. It is not going to be an “illusion” that this is a reason for Smith; to be an illusion it would have to be an illusion that her pain is unwelcome or unpleasant or bad for her. Try telling that to someone with an excruciating headache.

Finding it inadequate that it matters to Smith to be rid of her headache, Nagel thinks that to have a reason to relieve her pain we need to add that Smith’s headache is an objectively bad thing, the objective disvalue of badness providing the reason to relieve Smith’s pain. That additional requirement gives Nagel a metaphysical challenge he doesn’t need. For others to have a reason to give Smith the painkillers Nagel now has to give an account of some entity or state or condition or concept of the objective badness of pain over and above the metaphysically unproblematic fact that it matters to Smith to be rid of her pain. Talking about the “reality of values” Nagel admits that “it is very difficult to argue for such a possibility except by refuting arguments against it.”³³⁵

³³⁴ Nagel, 1986, p.139.

³³⁵ Nagel, 1986, p.143.

If showing that values are out there independent of our valuing is what we need for morality then morality dangles by a fragile metaphysical thread. I deny that reasons to act for the good of others are such epistemically mysterious entities. We find them with minimal theorising and artifice. I'll do it now.

I presume that it is uncontroversial that Smith has a reason to take the pills, namely, that they'll make her life better by relieving her pain. To paraphrase Aquinas, good-for has the *ratio* of a goal.³³⁶ We have standing reasons to direct our action toward what is good for us.³³⁷ It's hard to conceive of something better able to rationalise doing X other than it being good for me to do X. Don't reply "that X is good-for someone else", for that's precisely my claim: we are all someone else.

So, that it's good-for her and not good absolutely (or objectively) to be rid of her headache is Smith's reason for taking the pills. What reason do I have for giving her the pills? We needn't add more reasons; Smith's reason is sufficient for both of us: Smith's good-for can have the ratio of a goal for me too. My reason to give her the pills can be the same reason, namely, that it matters *to Smith* to take the pills, that it makes her life better, that it's good for her.³³⁸ These are all reasons we can unproblematically attribute to Smith or to anyone else with the appropriate change of name or pronoun. The customary terminology of normativity would call Smith's reason a prudential reason.³³⁹ My reason to give her the pills

³³⁶ And not just Aquinas. Recall from the previous chapter the consensus among Aristotle, Aquinas, Quinn, Korsgaard and MacIntyre that something being good-for us is itself a reason for action directed toward securing that thing. I accept this with the proviso that it being good for us is always a defeasible reason.

³³⁷ Not to be confused with two other claims: that we have decisive reasons to do whatever we want to do; and that we always have decisive reasons to do what is good-for us. Both are mistaken.

³³⁸ Cavillers might niggle that Smith's reason is "it's good for *me*" not that it's good for *Smith*, and I can't share that reason. I wouldn't care much to debate the semantics of reference, since I'd lose to any competent semanticist. My rudimentary argument would be to say that "me" when used by Smith refers to Smith and so do I when I say "good-for Smith."

³³⁹ In Nagel, 1970 he calls them both 'prudential' and 'self-interested' reasons. In Nagel, 1986, pp.152-153 he calls them agent-relative reasons: "if it is a reason for anyone to do or want something that would be in his interests that is an agent-relative reason."

we would call a moral reason.³⁴⁰Crucial for my defence of my view is that Smith's action and mine are directed to the same end, the relief of her headache, for the same reason, that it's good-for her to be rid of her pain.

It should be no surprise that we commonly share each other's reasons for action; we do it whenever we do something for someone else. Starving people have prudential reason to eat, refugees have prudential reason to seek safe haven. Their reasons are that it's good for them, it makes their lives better. Their reasons to eat and to find safe haven are the same reasons for others to offer food and safe haven. From the first person perspective of the starving and homeless, their reasons are prudential reasons, from our second or third person perspective we call our reasons moral reasons, but they are the self-same reasons. The label *moral* is just signalling that the reasons for acting are others' first person prudential reasons. This relation between moral and prudential reasons, that in fact they are one and the same reason apprehended from different perspectives, is an outcome of what is now old philosophical ground that, as Sidgwick put it, "all valid moral rules have ultimately a prudential basis."³⁴¹

Because he sees no reason for others to be moved by Smith's preference to be free of pain, Nagel must attach an objective reason to every subjective reason: "values must be objective and any which appear subjective must be associated with others which are not," and "there are objective reasons corresponding to all subjective ones."³⁴² I deny that values "must" be objective and that every subjective reason is accompanied by an objective one. We can be metaphysical minimalists about reasons because our subjective reasons are shareable. To become a moral agent is to acquire an other-directed cognitive capacity, the capacity to recognise that it matters to others what happens to them. Notice that this capacity can be characterised without using moral terms. It is by non- moral cognition that I

³⁴⁰ I don't wish to suggest that the prudential and the moral exhaust the reasons we have for action.

³⁴¹ Sidgwick, 1884, p.27. Nagel is pithier: "altruistic reasons are parasitic on self-interested ones." 1970, p.16.

³⁴² Nagel, 1970, p.90, and postscript to the preface of the 1978 edition.

comprehend that it matters to you what happens to you. I learn this fact about you as would the zoologist, through empirical observation not moral intuition. The recognition that it matters to you what happens to you propels me into the moral domain by presenting me with a question: shall I take the fact that it matters to you what happens to you as a reason for me to take account of what matters to you? That is just to ask if I have reason to recognise and act on your prudential reasons. I'm going to propose that there is always a reason for an affirmative answer to that question but I must enter the qualification in advance that there is some distance between the reason I shall propose and a reason which has the heavy normative weight of a moral obligation.

A moment ago I casually asserted that X being good for us gives us standing reasons to pursue X. I shall now make a more controversial claim about what we have reasons to do, which again touches on our reasons for acting as if Smith matters.

Just as the fact that water boils at one hundred degrees Celsius gives us reasons to act as if water boils at this temperature, we have reason to act as if it matters what happens to Smith if it matters to Smith what happens to Smith. We have such a reason because we have standing, permanent reasons to make our acts track facts. In the matter of the boiling point of water our reasons can be explained by our interest in being successful agents, that is, in our actions being more rather than less successful at securing what we aim at. If we want to boil water we should heat it to one hundred degrees. Often more is at stake. If we act as if the train is not coming when it is coming then we'll seldom get to where we want to go and we might get run over by a train. My claim here is that since we have standing reasons to act as if the world is as it is, these standing reasons being defeasible by counter-reasons, we have reason to act as if Smith matters if indeed Smith does matter. In section 9.7 I showed that Smith matters if certain conditions are met, one of which is that Smith matters to Smith.

The qualification I entered earlier should now be put to work. I said that our standing reasons to make our acts track facts are underwritten by our standing reasons to be successful agents. My successful agency cannot therefore be the basis for acting as if Smith matters unless either

a) Smith's actions can affect me, and moreover, my own aims are best served by acting as if Smith matters,

or

b) I have already made Smith's good a *ratio* of my goals by making Smith's prudential reasons my moral reasons.

Condition a) takes Smith to matter only in service of my good and this isn't to recognise that Smith matters in the appropriate way required for morality. Condition b) renders the *acts should track facts* based reasons otiose since I have already chosen to take Smith's prudential reasons as reasons for me. Therefore *the acts should track facts* reasons to take Smith to matter won't in itself generate what we would recognise as a moral obligation to take Smith to matter. Something other than the *acts should track facts* axiom is required.

10.2 Equality in the impersonal standpoint

The duality of standpoints from which to view the world, the personal or subjective and the impersonal or objective, is a dominant theme in Thomas Nagel's work. For Nagel, only objective values, values which are independent of the standpoint of any particular individual, can provide reasons to care about others. Morality depends on the existence of such reasons.³⁴³ Nagel's view is that not only do we need objective reasons for morality, we actually have such reasons. We come into contact with them when we prescind from our own personal standpoint and enter the impersonal standpoint from which we discover that everyone matters equally. We enter the impersonal standpoint when we

...put ourselves in each person's shoes and take as our preliminary guide to the value we assign to what happens to him the value which it has from his point of view. This gives to

³⁴³ In Nagel 1970 and 1986 he uses 'values' and 'reasons' synonymously.

each person's well-being very great importance, and from the impersonal standpoint everyone's primary importance, leaving aside his effect on the welfare of others, *is the same*.³⁴⁴

We learn of the value of others by imaginatively entering their shoes and when we do this we assign to everyone the same value. It's with Nagel's "the same" that equal value gets into the picture.³⁴⁵ Nagel rehearses the point elsewhere about the value we discover when we take up the impersonal standpoint. When we step into others' shoes,

...the content and character of the different individual standpoints one can survey remain unchanged.³⁴⁶

And in his 2015 Dewey Lectures Nagel calls it "the moral point of view," a way of valuing people impartially which we do by

...putting oneself in everyone else's shoes and taking the separate point of view of each individual into account in deciding what to do.³⁴⁷

So for Nagel, in entering your shoes we don't take up a standpoint which prescind from all actual points of view, Spinoza's (and Rawls's)³⁴⁸ *sub specie aeternitatus*, rather we imaginatively enter your actual standpoint. And since the values or reasons we recognise there "remain unchanged" and are the values your life has "from his own point of view" then everyone's value will be "the same" in that standpoint only if you actually value everyone the same. So we can agree with Nagel that in the impersonal standpoint everyone will value themselves greatly – Smith doesn't just matter to Smith, he will matter greatly to Smith – but it will not be true that everyone's value will be the same.

10.3 Universal or special importance

For Dworkin, human lives have value in two dimensions, "performance value" and "product value." Performance value is the value of our actions. To create a great work of art is to give

³⁴⁴ Nagel, 1991, p.65, my italics.

³⁴⁵ Note that Nagel doesn't follow the assorted Kantians and Rawlsians canvassed earlier by arguing that we are equally valuable because we all have a valuable property.

³⁴⁶ Nagel, 1991, p.10.

³⁴⁷ Nagel, 2015 Dewey Lecture, at 48-50 minutes at <https://www.youtube.com/watch?v=MwYZURDU6dA>.

³⁴⁸ The final page of his *A Theory of Justice*.

one's life performance value, the creation itself having value even if the work were destroyed. The product value of a life is "the way the world is better because that life was lived."³⁴⁹ Dworkin recognises that these two ways of valuing our lives will not yield equal value. The ordering upon which different lives have equal value is that of *importance*, the importance that each life goes well.³⁵⁰ I expressed the idea of human value in terms of it mattering what happens to us; Dworkin expresses it as the importance of our living well:

It is important that we live well; not important just to us or to anyone else, but just important.³⁵¹

We agree that it's important to us that our lives go well, it's less easy to agree that it's just important. As Nagel sought the equal importance of our lives in the impersonal standpoint, Dworkin finds it in the objective importance of our lives. It's not just important to us that our lives go well but

...important, from an objective point of view,...and this is equally important, from that objective point of view, for each human life.³⁵²

Dworkin sets up the problem as an exclusive disjunction. Either you think

...the objective importance of your life reflects a universal importance – your life has that value only because it is a human life - or a special importance because you have some property that some other people do not have.³⁵³

He makes explicit the contrast with subjective values:

Subjective value is in its nature special. Coffee has value only for those who like coffee...Objective importance is independent of taste or belief or desire...³⁵⁴

Dworkin's disjunction characterises the opposing view as a straw man. Either my life has a universal objective importance, as Dworkin believes, or else I believe I have some property others lack and in virtue of which my life has value which yours doesn't. It would be

³⁴⁹ Dworkin, 2011, pp.197-198.

³⁵⁰ Dworkin, 2011, pp.197-198.

³⁵¹ Dworkin, 2011, p.196 and pp.204-205.

³⁵² Dworkin, 2000, p.5.

³⁵³ Dworkin, 2011, p.256.

³⁵⁴ Dworkin, 2011, p.256.

delusional self-regard, moral solipsism in the vicinity of insanity, to believe that I possess a property which marks me out *to others* as more important than anyone else. Monarchs and some religious groups may formerly have believed that God endowed them with special properties when he anointed them as his chosen ones. Perhaps some still do. Contemporary monarchism and Kantian moral anthropocentrism may be remnants of such thinking.

Dworkin tries to win the argument by withholding a third disjunct which would state my subjectivist position: that my life has special importance *for me* because it's my life, its pains and pleasures are mine and not any other person's, it's the only life I have and without it *for me* there is nothing at all, no world, no value, nothing. This looks like a subjectivist position toward the importance of my own life, but that my own life has special importance for me is compatible with me also taking your life to have special importance for you. This third position, the position I advance here is the third disjunct which Dworkin doesn't entertain even to rebut. It needn't postulate my objective importance in order for you to recognise and act on my importance; all that it requires is that my life has special importance to me, and since to you I am just one among others, then this is also just to say that others' lives have special importance for them. None of this implicates a concept of objective importance.

10.4 Metaphysical challenges

Nagel calls his view *normative realism* but it is not of the Platonic school which posits an immutable order of mysterious entities. Creditably repudiating the Platonic dismissal of subjective consciousness of the world as illusory Nagel admits the ineliminable subjectivity of consciousness, its essential perspectival nature. Since it is only through consciousness that we have a world, the difficulty Nagel wrestles with is to transcend our subjectivity in order to construct a perspectiveless or objective understanding of that world which is reconcilable with the subjective world of our consciousness. Science represents the paradigmatic effort to describe the domain of concrete materiality in such objective perspectiveless terms. In the domain of morality Nagel and Dworkin hope that the challenge

is met and our moral commitments grounded and explained by postulating that our lives are objectively important, they matter greatly not only to us, they also matter independently of what matters to us, they just matter.

I confess to imaginative paralysis when trying to conceive of how something might have importance independent of a consciousness for whom it is important. I try to explain some of my difficulties now. My aim in doing so is not to try to refute objectivism about what matters but to advocate for my account by showing that Nagel and Dworkin's objectivism about importance faces some metaphysical challenges which my view does not.

10.4.1 The Objective Price List

We have two propositions:

P1: Jones matters to Jones.

P2: Smith matters objectively (whether or not she matters to herself.)

How to learn if P1 or P2 are true? For P1 it's easy, we observe Jones's behaviour as he goes about avoiding pain, choosing this rather than that action directed toward this rather than that goal, and generally evincing that it matters to him how his own life and others' lives go. Indeed, knowing what we know about animals we needn't study Jones, we can assume that if Jones is conscious then Jones matters to Jones. How do we learn that P2 is true? Do we observe how the universe behaves, how solicitous it is toward Smith, protecting her from harm and assisting her in her projects? P2 is a metaphysical and epistemic black hole from which no light escapes. That's the first epistemic challenge for objectivism about what matters: to show how we can learn what matters independent of what matters to some entity for whom something can matter.

The second epistemic challenge is related to the first. Importance is an ordering, it's more important to cure my cancer than my athlete's foot. On the view I advanced in the previous chapter the importance of X is given by reference to what someone is willing to give up for

X: I would chop off my foot to be cured of brain cancer but not to be cured of athlete's foot. The objectivist wants to say that if I would chop off my foot to be cured of athlete's foot but not to be cured of brain cancer then my values are defective. If X is objectively important then, importance being an ordering, how much importance X has must be discoverable by some means other than by asking to or for whom it is important. Perhaps we discover this by reference to what we *ought* to give up for X and there exists some discoverable ordering of the relative importance of everything which has any importance. This won't just be importance for particular human beings – it's not importance to or for anyone, it's *just* importance from the objective point of view –perhaps from Sidgwick's point of view of the universe.³⁵⁵ The relative importance of human lives, dolphin lives, diseased and healthy lives, young and old lives, loaves and fishes, wet shaving versus dry shaving versus luxuriant facial hirsuteness will be fixed across all times and all currencies and all individuals, like Parfit's Objective List³⁵⁶ but with prices attached. Neither Dworkin nor Nagel give any hint about how we might discover this Objective Price List; it is epistemic dark matter.

Since we are all to be governed by these objective values we should see the danger of a kind of value totalitarianism in the offing. The revealed truth of the Objective Price List tells us both what should matter to us and how much it should matter. It dominates and quashes that which actually matters to us, our own valuing. Shall we learn from the Objective Price List that we ought to give up four apples for two mangoes or for one kitten and that this is the case even if we love apples and hate kittens and mangoes? If the example seems frivolous is that because it is only our lives which have objective importance, the value of everything else being set by a kind of free market of our valuing? Any such asymmetric axiology would require explanation. I have affirmed that there is a radical discontinuity between human value and the value of artefacts consisting in the fact that while Monsieur Picasso matters to Monsieur Picasso, the Picasso on the wall matters to aesthetes and

³⁵⁵ Sidgwick, 1884, p.381.

³⁵⁶ Parfit, 1984, Appendix C.

billionaires but not to itself; nothing matters *to* the Picasso. This difference in kind doesn't explain why Monsieur Picasso but not *the* Picasso is on the Objective Price List.

But now don't I face my own metaphysical challenge: that my view rubs against a powerful intuition which can't easily be shaken off: that some things *just are* more important than others independent of how important they might seem to someone?³⁵⁷ Suppose I claim that it is more important *to me* to go to the cinema than to take my seriously ill daughter to the hospital, and since this is the only kind of importance there is, I have good reason to go to the cinema. We might think that only an objectivist account of importance can license the denial D:

D: You are mistaken. It ought to matter more to you that you take your daughter to the hospital than that you go to the cinema.

Let's take it that D is in some way the correct view. The puzzle is how D can be true on my subjectivist reading of what it is for something to matter. The puzzle generalizes to: how on a subjectivist reading can we be mistaken about how much something matters? In calling upon the notion of a mistake, such puzzles appear at first to redound in favour of an objective understanding of importance. But I think there is a resolution which comports with my subjectivist account. It turns on recognising what D rightly presupposes, that there are objective conditions under which our lives go (subjectively) better or worse for us. The resolution runs thus: my daughter's life is made worse for her by illness than mine is made worse for me by not going to the cinema. To fail to recognise this would be a cognitive not a moral mistake. If I recognise the importance *for her* of going to the hospital, a cognitive feat beyond the compass of infants and the pet dog, my non-moral cognition places me squarely in the moral realm so that I am faced by what Korsgaard called the normative problem of deciding what to do: shall I take what matters greatly to her to matter greatly to me and therefore take her to hospital? Having recognised that her health matters more to her than

³⁵⁷ Lurking behind all this is the Platonic Socrates: "is the pious being loved by the gods because it is pious, or is it pious because it is being loved by the gods." *Euthyphro*, 10. Does something matter because it matters to someone, or does it matter to someone because it matters simply?

the cinema does to me, if I don't take her to hospital then I make a different kind of mistake, a make a moral mistake by failing to give proper consideration to the her good, that is, by failing to take account of the fact that it matters to her what happens to her.

10.5 Redundancy, minimalism and Ramsey's ladder

In the preceding sections I tried to show that Smith needn't matter objectively for us to take her to matter; she need only matter to herself and we need only notice this about her. That is just to notice that she has reasons from her own point of view to pursue what is good for her. Having noticed this about Smith we are now in the position to ask ourselves what to do. Shall we take Smith's subjective prudential reasons as reasons for us? That is shall we act as if it matters what happens to Smith?

Suppose that along with Nagel and Dworkin we posit a further layer of objective reasons in addition to Smith's subjective reasons, and we express this by adding that Smith's pain is not just subjectively bad for her but objectively bad, or that Smith matters objectively as well as to herself. What follows from adding this further layer of objectivity? Actually, nothing. We face the exactly the same question as we face in the ontologically minimalist position in which all we have is Smith and the fact that it matters to Smith what happens to her. The question we face remains: shall we take these (now so-called *objective*) reasons as reasons for us to give Smith the pain killers? That is, shall we act as if it matters what happens to Smith?

The corollary of this is that Nagel's attachment to every lazy subjective reason an industrious objective companion in order to give us reasons to care about Smith is redundant. There's no work left over to be done by adding a further rung of objective reasons.

Blackburn calls the addition by objectivists of further reasons, descriptions, judgments and propositions “climbing Ramsey’s ladder,” but Ramsey’s ladder is “horizontal.”³⁵⁸ Here, as with the binary range properties, we ought to adopt Quine's (and Ockham’s) taste for metaphysical minimalism and do without Smith’s objective importance. That being so, it is no argument against my account of human value as it mattering to us what happens to us that it deprives us of reason to act for the good of others. The reason to act for the good of others is that it matters to others what happens to them.

³⁵⁸ Blackburn, 2000, p.78 and pp.294-298. Blackburn’s Ramsey refers to F.P. Ramsey’s ‘Facts and Propositions.’

Chapter 11

Other paths to incommensurable value

Moral egalitarianism is sometimes said to be an unshakeable foundation of modern moral and political thought which spans the ideological divide from the egalitarian left of Rawls to the libertarian right of Robert Nozick.³⁵⁹ This might explain why my account of human value has delivered me to what feels like a deserted place in which am unaware of any other account of human value which affirms conjunctively, as I do:

a) That human beings have value, that is, it is a matter of the greatest importance what happens to us.

b) That we can easily specify at least one condition which makes the proposition at a) true – namely, that it matters *to us* what happens to us.

c) That we cannot make coherent the claim that we matter either equally or unequally.

a) is a perfectly commonplace view. It is proposition c) which probably discourages other travellers. In this chapter I want to show that if they were to follow their arguments where they lead then several other philosophers would arrive at a set of conclusions congruent with mine, namely, that human value is not the kind of thing we can measure and reckon up³⁶⁰ and find through this accounting that everyone has exactly the same value.

11.1 Scanlon's two accounts of human value

T.M. Scanlon gives two accounts of value, one of which is justly influential, the other curiously unremarked upon. I first consider his more influential 'buck-passing' account of value.

³⁵⁹ For this view see Kymlicka, 2002, pp.3-4; Sen, 1992, p4, and p.17.

³⁶⁰ To co-opt Allen Wood's phrase.

Earlier I claimed that the lion values drinking when thirsty. I suspect Scanlon's buck-passing account of value would disparage the lion's putative valuing as an instance of a mere urge. Scanlon gives the example of someone who feels the urge to turn on every radio. Such a person is in a purely "functional state", a state which "lacks the power to rationalise actions."³⁶¹ In contrast, the desire to drink when thirsty involves "taking this consideration, that drinking would feel good, to count in favour of drinking."³⁶² In the latter case having the desire involves an evaluative consideration namely that of taking the pleasantness of drinking as a reason for drinking, is that which, according to Scanlon, gives the thing valued its value. Scanlon concludes that

...to value something is to take oneself to have reasons for holding certain positive attitudes toward it or for acting in certain ways in regard to it.³⁶³

Let's grant that in desiring to drink adult human beings take the consideration that drinking would feel good to be a reason to drink so that on Scanlon's account when I'm thirsty I value drinking. What about the infant and the lion, do they value drinking when they are thirsty? The infant and the lion also desire to drink when thirsty but on Scanlon's account they will not value drinking unless they enter that complex mental state in which they take themselves to have reasons for holding positive attitudes toward drinking. This more demanding conception of what is to value something threatens the notion that infants and lions can engage in valuing behaviour.

Scanlon's description of what it is to value X suggests the following conception of the value of X: for X to have value is for X to have other properties (e.g. pleasantness) that provide reasons to hold certain positive attitudes toward X and for acting in certain ways toward X. This is Scanlon's buck-passing account of value, the reason giving buck being passed to the natural property – the pleasantness of drinking.³⁶⁴

³⁶¹ Scanlon, 1998, p.38. He borrows the example from Quinn, 1993.

³⁶² Scanlon, 1998, p.38.

³⁶³ Scanlon, 1998, p.95.

³⁶⁴ Scanlon, 1998, pp.97-100.

Understood as an account of human value, on the buck-passing account, for Smith to have value would be for Smith to have properties that provide reasons to hold certain positive attitudes toward Smith. What would this entail for how much value persons possess? Suppose Smith and Jones each have the standard Kantian dignity conferring properties, and, let's agree that on the Scanlonian account these properties are properly thought of as dignity conferring because they provide reasons to have positive attitudes toward their possessors. In stock Kantian vocabulary the positive attitude would be the attitude of respect. For the Kantian egalitarian the dignity they possess and the respect owed are equal between Smith and Jones. Now let's add that Smith is kind hearted, honest, hard-working and loving, while Jones is violent, lazy, dangerous and criminally predisposed. If these properties provide us with reasons for further positive attitudes toward Smith and negative attitudes toward Jones (and I aver that they do) then, on the buck-passing account, Smith will have more value than Jones. If we understand the buck-passer's value as a single unitary category *reasons for positive (or negative) attitudes*, then all of the diverse reasons we might have for our positive and negative attitudes dissolve into a single solution of overall value. It is unclear how we might commensurate the diverse reasons for our valenced attitudes, and even if we could, the equal value of Smith and Jones would be a very unlikely outcome given the diversity of reasons we have for positive and negative attitudes.

11.2 Human value as one's reasons for living

Roughly, that's Scanlon's 'buck-passing' view of value and valuing. Applied to human beings it won't yield equal value. Scanlon tells another story of the value of human lives. He writes

We all agree that human life is of great value. The question is how that value should be understood.³⁶⁵

He folds his question in two: how to understand the value of a human life, and how to act in response to that understanding. Scanlon first considers human value understood thus:

³⁶⁵ Scanlon, T.M. *What We Owe To Each Other*, Harvard, 1998, p. 103

...from the point of view of the person whose life it is, the value of a life may be identified with the reasons one has for living it.³⁶⁶

This leads Scanlon to the worry that to properly respect the value of a human life would require that we “recognise the force of all of the reasons that human beings have” something which would be “impossibly unwieldy” since we cannot “respond to or contemplate all of these reasons at once;”³⁶⁷ and that seems to me correct. If the value of a life is “identified with” the agent’s reasons for living it then our incomplete knowledge of other minds entails limits to our knowledge of the particular reasons they see themselves as having. But I don’t see that this picture of human value requires anything so demanding as a comprehensive apprehension of the reasons you have for living your life. I can respect you by trying to respect what matters to you and this may require no more than that I respect those of your reasons which I reasonably can respect while respecting everyone else’s reasons – including my own.

Actually something like that is the view about how we should respect human value on which Scanlon finally settles – I respect you by taking what is important to you to be important. The unwieldiness Scanlon detects is that of responding appropriately to each others’ value not how to understand that value – we should understand human value as reasons for living it or for wanting it to go well. What is salient about Scanlon’s view for my purpose is that if the value of our lives is identified with our reasons for living it, a different sort of unwieldiness assails us: if we want to say that your life and mine have equal value then we would first need to construct some intelligible notion of the *equality* of reasons for living. To succeed in that constructive endeavour we would need reasons to be the kinds of things which are conceptually susceptible to summation. We would then need to compare the sum of all of your reasons for living with the sum of all of mine. Finally, we would have to hope

³⁶⁶ Scanlon, 1998, p.105.

³⁶⁷ Scanlon, 1998, p.105.

that the product of that comparison was equality. Call this the *summation problem*. It is a problem only if we want to assert that the value of one life is more than or equal to or less than the value of another life.

Are reasons the kinds of things which we can sum in this way? For Scanlon, reasons are facts understood as one relatum in a four part relation, the other three relata being *agents* for whom the fact is a reason, *conditions* which the agent is in, and *acts* or *attitudes* which the reason is a reason to do or have.³⁶⁸ So the fact that throwing a rope will save my child from drowning is a reason for me, the agent, in the conditions in which my child has fallen overboard, to perform the act of throwing the rope. Under this conception of a reason as one term in a four part relation,³⁶⁹ and of the value of a life as the reasons one has for living it, the summation problem looks intractable. So the value of a human life understood as one's reasons for living it cannot yield equal human value.

Scanlon thinks that since we cannot take account of each one of each person's reasons in deciding how to act, the identification of the value of our lives with the sum of our reasons for living is "unwieldy." But he doesn't reject it as an account of what it is to have human value and indeed he goes on to endorse the basic idea. An adequate account of the reasons that give value to a human life

...needs to say more about the claim that these reasons have on us.³⁷⁰

We get a little more about the nature of these reasons. They are

...reasons that every human creature has for wanting his life to go well.³⁷¹

Scanlon doesn't give us any reason to believe that that the reasons one has for wanting one's life to go well are less unwieldy than the more expansive set of reasons one has for

³⁶⁸ Scanlon, 2014, pp. 30-31.

³⁶⁹ Skorupski adds more terms and more complexity: a reason relation holds between facts, times, degrees of strength, actors and acts. Skorupski, 2010, p. 37.

³⁷⁰ Scanlon, 1998, p.105.

³⁷¹ Scanlon, 1998, p.105. Aside: no part of Scanlon's account precludes excising his "human."

living one's life. But let's grant that they are.³⁷² If the value of one's life is identified with the reasons each of us has from, as Scanlon puts it, "the point of view of the person whose life it is" then Scanlon's view shares with mine the Korsgaardian feature of taking human value as originating in and constituted by our valuing acts, states, practices and dispositions. On the other hand if the reasons which constitute human value are thought to subsist independently of the point of view of the person whose life it is, so that they can be reasons but not necessarily reasons-for anyone, then Scanlon's view of human value is inconsistent with my Korsgaardian account. However I think this latter interpretation isn't available on Scanlon's conception of a reason as a four part relation in which one relata is the agent for whom it is a reason. For Scanlon, reasons are always reasons-for an agent. Whichever of these two interpretations is most faithful to Scanlon's intentions, if the value of a life is to be identified with the reasons each individual has for living it or for wanting it to go well then that value will be equal between different individuals only if reasons are the kinds of things that can be commensurated, summed and located on an ordering. But reasons are not such things; they are too disparate, too heterogeneous for commensuration.

11.3 Nozick's value seeking I

"Being myself, a property no one else has, is the ground of my value" is Robert Nozick's first pass at locating the origin of human value. I'm not sure that's right: doesn't everyone have the property *being myself*? The property which Nozick has exclusively is the property of being Nozick (perhaps I'm cavilling here and that's what he means.) His second pass refines this to "being a value seeking I."³⁷³ Different selves seek value in different ways and degrees - our unique self-ness sees to that.³⁷⁴ If this is the basis of value it won't be equal value

³⁷² I'm not persuaded that they are less unwieldy. Contrast your reasons for living with your reasons for wanting your life to go better: Reasons for living: it's everything there is for you the only one you have, you want to see your children grow up, others depend on you. Reasons for wanting your life to go well: because that's better than it going badly? That's not an answer it's a tautology: I want it to go better because that's better. To look for reasons to want one's life to go better seems to me to look at the end to find the beginning. It reverses the order of reasons: that I want my life to go better is the reason I do those things which I hope shall make it better.

³⁷³ Nozick, 1981, p.454.

³⁷⁴ Nozick, 1981, p.454.

unless Nozick makes the binary property move and claims that since we are all value seekers we are all equally value seekers. But by now we should easily recognise that move and know its mortal vulnerabilities. In fact Nozick does make the binary property move. He notices that value seeking is a kind of activity, a pursuit:

People who alike are value-seeking I's...and who therefore are alike in value in this way, can differ in the value they exhibit. They can pursue value with differing degrees of diligence, aim differently, and give different shape and texture to their lives as they express themselves as value seeking and value weighing selves.³⁷⁵

This is Nozick's anticipation of the UPO and his response should now be familiar (from Chapter 6). All who engage in this pursuit of value are "alike in value" yet differ in *exhibited* value. The value they exhibit is given by the different ways in which they pursue value. Nozick then asks whether in virtue of these differences in exhibited value are we to behave differently to different people. He answers that since

...all people share being value-seeking selves...we are to behave the same to everyone; the general part of ethics specifies responsiveness to this value that all people have equally.³⁷⁶

Notice how Nozick sneaks his "equally" into the description of value seekers despite having already acknowledged that value-seeking is a pursuit which by some value seekers do better than others presumably by finding more value whether by diligence, intelligence or luck. So value seeking is not binary, it involves diligence, a scalar property, having aims, a scalar property (one can have more aims or more complex aims.) Out of this Nozick conjures the property in which all value seekers are equal: they are equally value seekers. This is Nozick's binary property move.

I chose not to put Nozick's binary property move with the other examples in chapter six because those were all valuable property views and therefore besides being wrong about the *equality* part of the 'equal moral value' claim they are also wrong about the *value* part. Nozick may get the value part right if his view is that in seeking value we are moved to

³⁷⁵ Nozick, 1981, p.472. Christiano, 2007, p.54 uses similar but more obscure language "...the [moral] status of humanity derives from the fact that humanity is a kind of authority in the realm of value."

³⁷⁶ Nozick, 1981, p.472.

action by the value laden character of experience. I think this is precisely what Nozick is getting at and followed through without the binary property move leads to your value and mine being incommensurable.

11.4 The valuer's unique value

In a well-known article Gregory Vlastos develops an account of human equality from his reading of Kant's conception of persons as ends in themselves. Vlastos interprets Kant in this way:

Everything other than a person can only have value *for* a person. This applies not only to physical objects, natural or man-made, which have only instrumental value, but also to those products of the human spirit which have also intrinsic, no less than extrinsic value: an epic poem, a scientific theory, a legal system, a moral disposition. Even such things as these will have value because they can be (a) experienced or felt to be valuable by human beings and (b) chosen by them from competing alternatives. Thus of everything without exception it will be true to say: if X is valuable and X is not a person then X will have value for some individual other than itself. Hence even a musical composition or a courageous deed, valued for their own sake, as 'ends' not as means to anything else, will still fall into an entirely different category from that of the *valuers*, who do not need to be valued as 'ends' by someone else in order to have value. In just this sense persons, and only persons, are 'ends in themselves'.³⁷⁷

In adding a new category of value, the "value of the valuer" Vlastos expands on Plato's tripartite and Aristotle's bipartite distinctions which divided the categories of value into that which we value in themselves, intrinsically, and that which we value as means, instrumentally (Plato's third form of value just being the conjunction of these).³⁷⁸ Even if we value pleasure for its own sake our own value as valuers is only partly captured by that description of something being valuable for its own sake. That which makes human value *intrinsic* value is altogether different from the intrinsic value we find in pleasure. As I put it

³⁷⁷ Vlastos, 1984, pp.55-56, italics original.

³⁷⁸ Plato, 2007, *The Republic*, Bk 2, 357b. Aristotle, 1976, *Nicomachean Ethics*, 1096b, 15-20.

earlier, the value we have, intrinsic value, consists in it mattering *to us* what happens to us. But nothing matters *to* an epic poem, or a scientific discovery or moral disposition. This is Vlastos's value of the valuer. I think another surface of meaning is evoked by

Thus of everything without exception it will be true to say: if X is valuable and X is not a person then X will have value for some individual other than itself.

I take this to mean not that X contingently has value for a valuer, but that in order for X to have value it necessarily has *value-for* a valuer, that having *value-for* a valuer is a *sine qua non* of having value at all.

(a) and (b) jointly “describe the value of the valuer” and provide “a translation of ‘individual human worth.’”³⁷⁹ Thus our value lies in (a) our felt experience of value and (b) our choosing between such experiences. We have this value in virtue of the “enjoyment of value in all the forms in which it can be experienced by humans.”³⁸⁰ He calls this enjoyment of value ‘well-being’ and our choosing between such sources of value is our ‘freedom.’ Our freedom to choose what we value is to be construed widely to include both reflective choice of the Korsgaardian/Kantian kind and “spontaneous expressions of individual preference”³⁸¹ of the pre-reflective, inchoate kind. Moreover an individual’s well-being and freedom “are aspects of his individual existence as unique and unrepeatably as that existence itself.” Being thus individuated, our valuing is, as he repeatedly stresses, “individual” and “unique” to each of us and it is in virtue of that uniqueness that he calls our worth as human beings *individual* worth. His “individual” here intended to mark the distinction between a kind of worth which is generic and worth which is *sui generis*, unique to each individual.³⁸²

³⁷⁹ Vlastos, 1984, p. 56.

³⁸⁰ Vlastos, 1984, p.56

³⁸¹ Ibid.56

³⁸² Vlastos makes this same point elsewhere that value lies in what is unique to us our individuality as a locus of value when talking about human love as love for someone “in the uniqueness and integrity of his or her individuality.” G. Vlastos, 'The Individual as an Object of Love', *Platonic Studies*, Princeton University, Princeton, 1973, p.31.

If we pause with Vlastos at this point in his argument, his view resembles substantially the view I presented and defended earlier (§9.1 to 9.8.6), namely, that value is posterior to and flows from our valuing. Moreover, since, according to Vlastos, our valuing is not generic but “absolutely unique” and individual,³⁸³ then our value will also be unique and individual. Thus on Vlastos’s account of human value it is hard to see how we might fix once and for all our value and mine at the same position on single value ordering and it is therefore hard to see how our value might be equal. All of this coheres with my account in chapter nine.

But Vlastos doesn’t stop there. He takes a further step from human worth as unique and individual to “the equality of human worth.”³⁸⁴ Vlastos shifts from the value of human beings to the value of their freedom and well-being: “one man’s freedom is as valuable as any other’s and one man’s well-being is as valuable as any other’s.”³⁸⁵ This equality then grounds equal human rights.³⁸⁶ This final step in his argument is warranted only if our valuing which grounds our value as valuers is equal valuing. Since there is no sense in which it is equal valuing, there is no inferential path to equal value from Vlastos’s conception of human value understood as our choosing of valuable felt experiences. Notice the shift from talk of the value of human beings to talk about the value of freedom and well-being. He has in this final move migrated from what Korsgaard called the normative standing view, human value lies in our valuing of ourselves, to a valuable property view – humans are valuable because they are in some relation to the valuable things freedom and well-being. True, freedom and well-being are valuable, but they are valuable *for us*, if they matter they matter only because what happens to human beings matters. But it’s the basis of the mattering of human beings that we look for when we look for the basis of human worth.

I describe Vlastos, Scanlon, and Nozick’s accounts of human value here because I believe they begin with the same set of observations as I do, noticing that value, like love (one form

³⁸³ Cupit, 2000, also tentatively proposes that it is in virtue of being unique individuals, complete, separate worlds, that we are equal. By now the response should be familiar: to be the same kind of thing is not to be equal it’s just to be the same kind of thing. Equality needs same position on an ordering.

³⁸⁴ Vlastos, 1984, p.68.

³⁸⁵ Vlastos, 1984, p.68.

³⁸⁶ Vlastos, 1984, p.57.

of value) doesn't exist until a valuer values or a lover loves. From that starting point they should arrive at the same destination as I do and conclude that if value is fixed by valuing, then human value is fixed by our valuing ourselves, that is, by it mattering to us what happens to us.

Chapter 12

Thesis conclusions and why we should be incommensurabilists

12.1 Thesis conclusions

Here I summarise my main conclusions.

Negative Conclusions

Kantian moral egalitarianism is diseased throughout its corpus, suffering a profusion of paradoxes, antinomies and confusions. I introduce these in chapter 3 and uncover the full extent of the morbidity in chapter 5. The most sophisticated argument for Kantian egalitarianism is John Rawls' range property argument, RPA. RPA rests on the binary property move, BPM. I showed that BPM is fallacious. I also showed that BPM is the main active ingredient in moral egalitarian arguments, all of which therefore fail.

Positive Conclusions

I argued that to have the kind of moral value philosophers refer to as intrinsic value or intrinsic worth is for it to matter to us what happens to us. It must matter to us what happens to us otherwise we will not be motivated to action which is necessary for successful agency. On this account of human value there is no fixed and non-intransitive ordering of human value which makes true the proposition that all humans have either equal value or unequal value. Our value, understood as it mattering what happens to us, is incommensurable.

12.2 Why we should be incommensurabilists

In closing I'll summarise why egalitarians should favour incommensurabilism over Kantian moral egalitarianism.

(i) Incommensurabilism resolves the Kantian puzzles. Recall the three markers of incommensurability (§ 9.8.5) one of which was:

If $(X-Y > 0)$ and $(Y-X > 0)$ or we cannot deduct one from another (just as we can't deduct five ants from four elephants) then X and Y are incommensurable.

And recall the substitutability thesis (3.4.3) which says that two things of equal value are inter-substitutable without loss of value.

If $V_x = V_y$ then x and y are inter-substitutable without gain or loss of value V.

If our value is incommensurable then it will not be true that $(V_x = V_y)$ because either $\{(V_x - V_y > 0)$ and $(V_y - V_x > 0)\}$ or we cannot deduct one from another. Thus incommensurabilism precludes substitutability. It therefore preserves the Kantian holy grail of inviolability, something Kantian egalitarians achieved only by insisting that value is infinite thereby entangling themselves in paradoxes connected with taking infinity to be a position on an ordering rather than an ordering without limit. Egalitarians have no defence to the substitutability thesis. Hence if Kantians get their equality claim through, they do so at the cost of substitutability thereby sacrificing inviolability. Utilitarians might accept that price, but Kantians cannot.

(ii) The account of intrinsic human value as it mattering to us what happens to us is a better account of value than the valuable property view which is the standard Kantian basis of human value. It is better because it gives a clear answer to the questions of the origin, ontology and epistemology of human value. Origin? Value comes into the world through the front door, in plain view, in the fact that it matters to us what happens to us. Ontology? What exactly do you have when you have moral value? You don't have anything, it's not a property that you can possess; that's the wrong way think of it. To have value, intrinsic value, value you would have even if there were nothing else in the world, is for it to matter to you what happens to you. Epistemology? We know that we have such value because we know that it matters to us what happens to us. We know that others have that value because we see that it matters to them what happens to them.

(iii) Kantian egalitarianism cannot accommodate differences in natural basis properties of moral worth. Incommensurabilism is unthreatened by such differences and indeed fully reflects those very differences between people.

(iv) Kantian egalitarianism doesn't but incommensurabilism does reflect our actual valuing practices. When we lose someone we love we don't mourn the loss of the valuable property, their morality or rationality, we mourn the loss of the individual in all her uniqueness. Incommensurabilism makes room for this valuing of each person in all their uniqueness and individuality and so coheres more completely with our actual valuing practices.

(v) Kantian egalitarianism is defeated by Williams's UPO and the nine arguments against range properties in chapter five.

(vi) Insofar as it requires a fixed ordering of objective comparative values which remain fixed across all times and currencies, egalitarianism presupposes objectivism about human value. Thus non-objectivists about human value cannot be egalitarians. The only serious alternative is something like incommensurabilism.

(vii) Gaita observes that equal respect being owed even to those who do great evil "...is an acknowledgement of its profound unnaturalness, of indeed, its mystery."³⁸⁷ The mist lifts from the mystery if we de-commit to equal moral worth grounded in Kantian moral capacity and commit to incommensurabilism.

Incommensurabilism concludes that we cannot make intelligible the claim that Smith matters more than or equally with Jones. A corollary of this conclusion is that our faith in

³⁸⁷ Gaita, 1991, p.4.

moral equality is precisely and only that – a matter of faith. By denying that Smith matters more than Jones, incommensurabilism preserves the spirit of egalitarianism so that we can cling to equality as an article of faith even if not as strict truth about our value. Therefore we should be incommensurabilists, not egalitarians.

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