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Waldron on the “Basic Equality” of Hitler and Schweitzer: A Brief Refutation

The idea that all human beings have equal moral worth (with equal *moral worth* or “basic equality” being distinguished from potentially unequal *merit*) seems to have been an almost unchallenged assumption in post-Rawlsian political philosophy. “Almost” because a few anti-egalitarian philosophers have always unflinchingly insisted on the absurdity of this very idea, not least by asking a question that cannot but suggest itself: how could a genocidal maniac like Adolf Hitler, for instance, possibly have the same moral worth as a life-saving philanthropist like Albert Schweitzer?

Egalitarian philosophers, however, have by and large ignored the challenge posed by this question. As far as I can see, the only egalitarian who actually tries to confront it head-on is Vlastos.¹ Yet in light of Pojman’s relentless and rather convincing criticism of Vlastos’s reasoning this very same reasoning cannot be credibly relied on in defense of the egalitarian claim – unless someone demonstrates where Pojman goes wrong, which, alas, no egalitarian has ever even tried to do.² Another strategy, chosen more often in personal conversations than in writing,³ is to claim that Darwall’s concept of recognition respect can somehow deal with the challenge.⁴ Yet this is clearly *not* the case, as I have demonstrated elsewhere (and again, no egalitarian has even *tried* to show where my argument against “recognition respect” goes wrong).⁵ Thus, given the *prima facie* absurdity of the egalitarian claim that Hitler and Schweitzer have the same moral worth and lacking any convincing attempt to explain that *prima facie* absurdity away, the only rational option would be to simply give up on the idea of equal moral worth.

Enter Jeremy Waldron. Unlike many other egalitarians, he is acutely aware that more needs to be offered than merely dogmatic insistence. Accordingly, he does try to meet the challenge head-on; and he takes it up precisely in the form in which I have recently put it. In the following I will demonstrate that Waldron’s response is inadequate.

Let us take this step by step. Waldron first quotes me at length, and it is necessary to repeat the quote here:

Albert Schweitzer certainly has a higher moral standing and greater moral worth

¹ Gregory Vlastos, “Justice and Equality,” in Jeremy Waldron (ed.), *Theories of Rights* (Oxford: Oxford University Press), pp. 41-76.

² Louis P. Pojman, “On Equal Human Worth: A Critique of Contemporary Egalitarianism,” in Louis P. Pojman and Robert Baxter Westmoreland (eds.), *Equality: Selected Readings* (Oxford: Oxford University Press, 1997), pp. 282-299, esp. at 286-287 and 294.

³ Sometimes one does find it in writing though. See Cécile Fabre, “Rights, Justice and War: A Reply,” *Law and Philosophy* 33 (2014) 33: 391-425, p. 405, n. 12.

⁴ Stephen L. Darwall, “Two Kinds of Respect,” *Ethics* 88(1), pp. 36-49.

⁵ Uwe Steinhoff, “Against Equal Respect and Concern, Equal Rights, and Egalitarian Impartiality,” in Uwe Steinhoff (ed.), *Do All Persons Have Equal Moral Worth? On “Basic Equality” and Equal Respect and Concern* (Oxford: Oxford University Press, 2015), pp. 142-172.

than Adolf Hitler. This is so obvious as not to require argument. (Imagine Hitler and Schweitzer are hurled by some cosmic fluke into your space-time continuum, into the ocean next to your lifeboat, and you can save only one of them. Suppose you know for a fact that Hitler will for some reason that has nothing to do with repentance never again hurt anyone. Even then, is there really any question as to whom of the two you ought to save? Egalitarians, it would appear, would have you be impartial and throw [toss] a coin. But pretty much everybody apart from egalitarians themselves will rightly find this silly. ... Genocidal dictators and altruistic doctors are simply not moral equals, and apart from a small number of liberal egalitarians everybody knows that.⁶

And this is Waldron's reply:

Some of this concern can be allayed by pointing to moral principles that operate outside the realm of basic equality (though under its discipline) and permit all sorts of differentiation, like denunciation of Hitler but not Schweitzer, punishment of Hitler but not Schweitzer, maybe even targeted killing of Hitler but not Schweitzer. (150-151)

Setting aside the issue that this reference to principles that "operate outside the realm of basic equality," yet, allegedly, nevertheless "under its discipline" is rather obscure – what do denunciation, punishment, and targeted killing have to do with the example under discussion? Nothing, it would appear. After all, the challenge is that intuitively it is clearly preferable to let Hitler drown and thus die instead of Schweitzer. However, first, letting a person *die* is obviously dramatically different from merely "denouncing" him. Second, walking around punching people in the face is not the same as punishing them, even if one of them should turn out to be Hitler and actually deserve punishment. For an act to be an act of punishment it must be *intended* as punishment; yet nothing in the example suggests that letting Hitler drown would be intended as punishment here. Vary the example by replacing Hitler with a cat. Intuitively you should save Schweitzer instead of the cat. If you do so, however, it would be quite bizarre if others inferred from this your intention to "punish" the cat. What it is reasonable to infer, in contrast, is that you considered the cat's life to be less valuable than Schweitzer's. So it is in the case of Hitler and Schweitzer. The intuitive response to the example does not change even if we explicitly stipulate that the decision will not be based on ideas regarding punishment. Intuitively you are justified in preferring Schweitzer's life to Hitler's and in acting accordingly even in the absence of any intention on your part to *punish* Hitler by letting him drown. And finally, third, letting die simply isn't killing and therefore also not targeted killing.

One might object that this third reply, while technically correct, might be a bit uncharitable since Waldron discusses "targeted killing" in the context of *preventive* force, notably using the example of "preventative strikes aimed at killing members of terrorist organizations" (151). And while letting Hitler drown is not an act of killing, it could still

⁶ Steinhoff, "Against Equal Respect and Concern, Equal Rights, and Egalitarian Impartiality," pp. 168 and 170. Waldron adduces this quote in Jeremy Waldron, *One Another's Equals: The Basis of Human Equality* (Cambridge and London: The Belknap Press of Harvard University Press, 2017), p. 150. All page numbers in brackets in the text refer to this publication.

be an act of *prevention* (of course not of preventive force but of the preventive withholding of help), could it not?

No, it could not. Given that Waldron correctly quotes me as saying that the agent in the example “know[s] for a fact that Hitler will for some reason that has nothing to do with repentance never again hurt anyone,” Waldron’s two-page discussion of prevention is a red herring. In fact, I have of course included said clause for the very purpose of excluding ideas about prevention in the context of the example.⁷ In any case, an agent cannot intend to prevent harm by means of withholding help from someone if the agent knows for a fact that withholding help is not instrumental for preventing harm since the harm will not occur anyway. Accordingly, withholding help from Hitler here cannot be justified on grounds of prevention. Waldron’s invocation of prevention, therefore, has absolutely no bearing on the example.

So far I have argued that Waldron’s attempts to explain away our non-egalitarian intuitions about the example fail. The example therefore stands unrefuted. However, he also has a second strategy, namely to suggest that inequality would itself lead to counterintuitive results. This strategy cannot do anything to *refute* the example. Instead, it seems to be designed to convince readers that egalitarianism might, in the end, be correct *in spite* of our intuitive reactions to the example and their natural (and so far unrefuted) interpretation in terms of unequal moral worth.

Waldron proceeds by making a number of claims. To wit, he claims that “[t]he work that basic equality does for us and among us includes the work that it has to do for terrorists, dictators, mass murderers, and so on” (151). “Confronted with [Hitler’s] evil, some of us may be tempted to inflict upon him if we can a hideous and torturous death.” (161) But: “Applying the principles of basic equality and human dignity just reminds us of the human status of the wrongdoer, and it demands that we resist every temptation to deploy any sort of concept ... of the subhuman.” (163) For: “The terrorist may be an evil and dangerous man, but he is also man-created-in-the-image-of-God, and the status associated with that characterization imposes limits on what may be done to him.” (153) “The principle [of basic equality] limits what we can do to terrorists.” (154)

While Waldron is not explicitly saying it, let alone *arguing* it, these claims tend to suggest to an impressionable reader that rejecting “the principle of basic equality” by claiming that Hitler has more moral worth than Schweitzer amounts to declaring Hitler a “subhuman” on whom one may impose harms without limits. Fortunately for anti-egalitarianism, however, such a suggestion has no basis whatsoever. First, just as the claim that a hundred-dollar bill has more value than a ten-dollar bill does not imply that a ten-dollar bill has no value at all, the anti-egalitarian claim that Schweitzer has more moral worth than Hitler does not imply that Hitler has no moral worth at all. (Of course, it might well be the case that he indeed has no moral worth at all or even negative worth, but this question is not yet prejudged by the rejection of egalitarianism – nor is it prejudged by the acceptance of “basic equality”: Hitler and Schweitzer, after all, could be equals by way of *both* having *no* moral worth). Second, the claim that Hitler has *less* moral worth than Schweitzer is perfectly compatible with imposing limits on how he can be treated. Third, the claim is also compatible with recognizing Hitler as human. After

⁷ Actually, the example should be amended by stipulating that it is also known that Hitler and Schweitzer will never again *benefit* anyone.

all, to be human, one simply has to be – human. We must simply face the fact that some humans, like Hitler, are evil, but they are no less human for that – they only have lesser moral worth than most other humans. Fourth, claiming that someone is subhuman actually does *not* imply that he or she has no moral worth or value. (In fact, there is no reason to simply speciecistically assume that an upstanding subhuman – for example a cross between a human and a bonobo – cannot have *more* moral worth than a genocidal human.)

Let us illustrate these four points with the help of the already introduced variation of the example under discussion, namely the variation where you are confronted with the choice of either saving Schweitzer or a cat. You should save Schweitzer because the life of the cat is not as valuable as Schweitzer's. The cat has less moral worth. Does this imply that you can do whatever you want to the cat? Clearly not. Given that Waldron discusses me, it should perhaps be noted that while I endorse the position that cats do not have rights, I nevertheless deny that you can do with them what you want, for example kill them for the mere fun of it.⁸ Other people arguing against animal cruelty without granting animals rights would appear to agree. And in fact, this seems to be a rather reasonable stance to take. Even things without rights and things with *lesser* worth than human beings can still have *some* intrinsic worth or value, and such value should not simply be ignored in one's moral considerations.⁹ Moreover, in order to deny that one may, for example, torture cats for the mere fun of it, one obviously need *not* deny that they are *subhuman* – and one need most certainly not, conversely, claim that a cat is a “cat-created-in-the-image-of-God.” If Waldron thinks that limits on how sensitive beings can be treated can only be imposed by seeing them as equal to humans and as being created in the image of God, then this would imply a rather *inhumane* – for lack of a better word – position regarding the proper treatment of animals. Anti-egalitarianism, in contrast, is free of such problems. In particular, and for the reasons given, it does not come with the counter-intuitive implications Waldron suggestively would like to burden it with. Thus, Waldron's attempt to overcome the challenge posed by the counter-example by demonstrating the moral indispensability of egalitarianism fails.

One final point needs to be noted, however. I argued that Waldron's attempts to overcome the counter-examples by appeals to “denunciation,” punishment, and prevention, respectively, are non-starters. Yet there may be a deeper underlying point. To wit, in his discussion of preventive force against terrorists, Waldron claims that they are “justly liable ... to deadly force” (153). As the term “liability” is used in present-day just war theory and self-defense ethics, it implies that someone who is liable to deadly force has *no right* that such force not be directed against him. He has *forfeited* such a right.¹⁰ Obviously (as already shown above), preferring Schweitzer's life over Hitler's in the example cannot be justified by appeal to liability to preventive or punitive force: first, because there is no *force* applied to Hitler, and second, because the omission to save him is *neither punitive nor preventive*. However, there is of course the possibility that Hitler

⁸ Uwe Steinhoff, “Self-Defense as Claim Right, Liberty, and Act-Specific Agent-Relative Prerogative,” *Law and Philosophy* 35(2) (2016), pp. 193-209, at 195-196.

⁹ See also *ibid.*, pp. 200-201.

¹⁰ For a typical and influential statement, see Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009), p. 8.

has not only forfeited his right that his life not be sacrificed *for* punitive or preventive purposes but that he has simply (because of his crimes) *forfeited his right to life, period*. Thus, if Hitler is floating in the ocean without a right to life that could compete or conflict with Schweitzer's, then this difference in rights alone might be able to explain why we should save Schweitzer, not Hitler. Given, moreover, that I myself argue that someone can lose his right to life (for example by waiving it) without thereby diminishing the intrinsic *value* of his life,¹¹ it is now possible, at least in principle, to argue that the example suggests nothing about unequal *worth* or *value*.

While this is a fair point to be pressed against me, it cannot really fairly be pressed by Waldron himself. He claims that "basic equality ... mandates equal rights and human rights" (52), and that it "has to ground the equal basic rights we have" (142). This "grounding" relation would then, however, suggest that massively unequal rights (and one person having a right to life while the other does not is certainly a dramatic difference) must be based on differences of moral worth. In other words, Waldron should not be able to keep rights and value apart.¹²

Be that as it may, independently of what point Waldron himself can or cannot consistently press, it has certainly to be asked whether the anti-egalitarian may have a reply to the challenge just mentioned, namely that the intuitively compelling preference of saving Schweitzer over Hitler can be explained without assuming that the moral worth of the two persons is unequal. It seems he does, namely by combining the example under discussion with precisely one of the examples I use to argue that the right to life does not exhaust the moral value of life, so that someone who waives his right to life therefore does not diminish the worth or value of his life and hence cannot be killed for the mere fun of it but only with a very good justification.¹³ The details of this particular example need not concern us, we only need the idea of a rights-waiver. So imagine there is one more thing you, the potential rescuer, know about the situation in the example, namely that Schweitzer has waived his right to life under such circumstances. He has declared: "If ever someone needs to desist from saving me in order to be able to save someone else, then he may do so. I hereby waive my right to life under such circumstances." In fact, let us go even further and assume that in the very situation (floating in the ocean) Schweitzer *consents* to not being saved, telling you: "I respect other people's freedom of conscience. So if you are an egalitarian believing in 'basic equality' and think that you should toss a coin to decide whether to save me or Hitler, then I am fine with you letting me drown in case the coin comes up to my disadvantage." Assume further (quite reasonably) that as a man of his word Schweitzer would not withdraw his consent in case you really tossed a coin and it indeed came up to his disadvantage.

So now we have a situation where both Hitler (as we assumed for the sake of this argument) *and* Schweitzer do *not* have a right to life. But if anything, it seems now even *clearer* that you should save Schweitzer, not Hitler, for someone who is willing to

¹¹ Steinhoff, "Self-Defense as Claim Right, Liberty, and Act-Specific Agent-Relative Prerogative," pp. 202-203.

¹² This statement is necessarily tentative since Waldron, while invoking this "grounding" relation, has actually nothing informative to say about how it works.

¹³ Steinhoff, "Self-Defense as Claim Right, Liberty, and Act-Specific Agent-Relative Prerogative," pp. 202-203.

sacrifice his life for the sake of others and for your freedom of conscience is certainly an individual *particularly* worthy of being saved – quite unlike a genocidal dictator. Thus, given that the intuitive preference for saving Schweitzer instead of Hitler, which is perhaps even stronger now, cannot be explained by an appeal to unequal rights in this variation of the example, the only explanation that remains is one in terms of unequal moral worth. Yes, you should save Schweitzer, and yes, that is so because philanthropist doctors have greater moral worth than genocidal dictators.

I conclude that the anti-egalitarian challenge posed by the example has not been met.¹⁴

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