

# On the Presumption of Equality

## **Abstract**

According to the presumption of equality, cases should be presumed to be similar when it is not known whether they are similar or different. When an allocative agent is unaware either of the appropriate distributive criterion or people's relevant features (or both) and she cannot postpone the allocation, then she should distribute goods equally. I explore the nature and justification of the presumption of equality and bring out how commentators have confused it with the claim that all people are relevantly similar and therefore deserve similar treatment, unless there is a specific reason for different treatment. The claim of *prima facie* equality concerns substantive criteria of justice and should not be confused with the presumption of equality. I will also argue that in some cases an allocative agent can easily justify the use of the presumption of equality and equal distribution by referring to the relative costs of potential errors. However, I conclude with a discussion of the overall significance of the presumption of equality by considering cases that reveal some important limitations on its use.

**Keywords:** equality; presumption; justice; moral relevance

## **1. Introduction**

According to the formal principle of justice, similar cases should be treated similarly and different cases differently. The formal principle does not tell which cases are similar and

which are different. In order to know that, we need a substantive criterion or criteria of justice. However, even a substantive criterion is insufficient, if we do not know whether cases are similar or different according to the appropriate criterion. Here the *presumption of equality* may help. According to the presumption of equality, similarity of the cases should be *presumed* when it is not known whether they are similar or different. When an allocative agent is unaware either of the appropriate distributive criterion or people's relevant features (or both) and she cannot postpone the allocation, then she should distribute goods equally, given that the relevant information is not easily available and that her ignorance is not her own fault.<sup>1</sup> Or this is what the presumption of equality demands.

Is the presumption of equality justified? Is it not as arbitrary to presume similarity as to presume difference, if we do not have a clue whether the cases are similar or different? The fact that a person does not have a reason for believing that people are relevantly different does not imply that therefore she has a reason for believing that they are similar. Surely a similar treatment of different cases is as wrong as a different treatment of similar cases (Katzner 1973, 92). In what follows, I will argue that the presumption of equality can be justified. It seems that the reliance on the presumption of equality tends to be simply *less risky* than the reliance on a lottery or on the presumption of *inequality*. Like many other presumptions, the presumption of equality helps us to avoid costly errors. I reject the claim that the presumption of equality is an acceptable principle because people are similar in many morally relevant respects, and that therefore they should be treated similarly when the allocative agent does not have a specific justification for differential treatment (Westen 1990, 253; Gosepeth 2015, 182). The claim that people are similar in morally relevant respects may or may not be true, but people's alleged similarity cannot ground a *presumption* of their

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<sup>1</sup> Peter Stone (2007) writes about "allocative justice" instead of distributive justice.

similarity. Reasons that support the idea of people's morally relevant similarity should not be confused with reasons that support the contention that, in some situations, people should be presumed to be similar. At the end of the paper I will point out that, although the presumption of equality can be defended, the presumption has limited practical relevance. The allocative agent who must make distributive decisions without appropriate information may find the presumption quite useless.

Let us start by looking briefly what presumptions are.

## **2. Presumptions**

Presumptions are meant to guide decisions concerning the proper course of actions. They instruct us how to act when the presumption has not been rebutted. Relatively often the content of the presumption also tells us how to act when the presumption has been rebutted (Katzner 1970, 256-257). Presumptions determine who has the burden of proof. Our reasons to *presume* that p is true need not be considerations that encourage us to *believe* that p is true. Familiar examples of presumptions are the presumption of innocence, the presumption of death, and the presumption of discrimination.

Presumption of innocence is probably the most well-known presumption. According to it, an accused person should be treated as not guilty unless sufficient evidence about guilt has been presented. The evidence has to be of certain kind. A judge may very well know, without any doubt, that the accused person really is (say) a burglar, but if the prosecutor is unable to provide sufficient and formally acceptable evidence in support of that view, the judge should not give up her presumption that the accused person is not guilty. This shows that the use of

presumptions is not always related to situations where a decision-maker has “insufficient information” (Ullmann-Margalit 1983, 159) and must make her decisions “in the face of degrees of conviction that are less than certain” (Hahn and Oaksford 2007, 45). In many cases, the refutation of the presumption must follow certain procedures, and if it does not, the presumption holds (Raz 2007, 2). Psychological uncertainty has nothing to do with this. The presumption of innocence is based on the importance of avoiding costly errors. The presumption makes the worst possible mistake (that an innocent person is adjudged guilty) less likely than the alternative mistake (that an offender is found not guilty).

The presumption of death (or death *in absentia*) concerns persons who have been absent for years without an explanation and persons who have probably died in massive accidents. Most legal systems allow that a person can be declared to be dead even if her body has not been found. The presumption is useful as it helps to take care of a missing person’s property, marital affairs and insurances, for example. The presumption can be refuted by showing that, actually, the person is alive. In these cases (that happen every now and then) the property of the person (who was temporarily dead) should be returned to her, at least partly. This is often a complicated process, and some legal systems require that a person should be missing for tens of years before she can be declared to be dead. This is understandable, but surely it is not the best possible solution from the point of view of the missing person’s family. The presumption of death is partly based on inductive-probabilistic considerations ( Rääkkä 2014, 54). The fact that a person has been absent for years without any explanation makes it just more likely that she is dead than that she is alive and drinks Campari in some distant island. As Wlodek Rabinowitz (2008, 4) writes, “some presumptions may have to do not so much with the differential acceptability of potential errors but rather with the differential probability of errors”.

The presumption of discrimination is a legislative rule which is quite frequently included in antidiscrimination laws. The purpose of the presumption of discrimination is to ensure that the principle of equal treatment between persons can be effectively enforced by law. The principle of equal treatment prohibits different treatment of persons on the basis of their religion, age, and sexual orientation, for instance (Eur-Lex 2015). The principle applies not only to direct discrimination but also to indirect discrimination, that is, to situations in which an apparently neutral criterion in fact discriminates against certain kind of people, say, people with disabilities. The presumption of discrimination requires the respondent (such as an employer) to prove that she has not violated the principle of equal treatment, if the complainant (such as a jobseeker) has first managed to show that there is a reason to presume that the principle of equal treatment has not been applied to her. To rebut the presumption of discrimination, the respondent must show that the decisions and actions are attributable to a justifiable factor not connected to the features prohibited by the principle of equal treatment (cf. Allen 2009, 579-605). If the respondent fails to rebut the presumption, she is responsible for the violation of the principle of equal treatment between persons – whether or not it can be shown that she has in fact violated it. The presumption of discrimination is based on procedural convenience. It is much easier for the respondent to explain her reasons for her decisions than for the complainant to prove that those reasons were discriminatory and prohibited by the principle of equal treatment. It is usually difficult for the complainant to obtain evidence that would prove that she was treated unfairly.

The presumption of innocence, the presumption of death, and the presumption of discrimination have different grounds, but they all are rebuttable presumptions and legal principles that can be used by judges and courts. The presumption of equality differs from

these well-known presumptions, as it is not supposed to be a tool of courts. Although the presumption of equality is a rebuttable presumption, it is meant for all of us.

### **3. *Prima Facie* Equality**

The presumption of equality suggests that we should presume the similarity of cases and treat them equally if we do not know whether they are similar or different. This suggestion should not be confused with the claim that all people are relevantly similar and therefore deserve similar treatment, unless there is a specific reason for different treatment. The claim of *prima facie* equality concerns substantive criteria of justice and should not be confused with presumptions. If people *are* similar in morally relevant respects, then there is no need to *presume* their similarity. If the claim of *prima facie* equality is true, then allocative agents always have a *prima facie* obligation to treat people similarly. An allocative agent who notices a difference between the cases should abandon her *prima facie* obligation and treat the cases differently – given that the observed difference is morally speaking more important in the context than the similarity of the cases. This follows from the formal principle of justice that requires us to treat different cases differently.

There have been some difficulties in understanding the difference between the presumption of equality and the claim of *prima facie* equality. Peter Westen (1990, 253) argues that R.M Hare's argument in favor of equal distribution is based on the presumption of equality. In the paragraph where Westen cites Hare (1963, 118-119), Hare argues as follows:

Suppose that three people are dividing a bar of chocolate between them, and suppose that they all have an equal liking for chocolate. And let us suppose that no other

considerations such as age, sex, ownership of the chocolate, etc., are thought to be relevant. It seems to us obvious that the just way to divide the chocolate is equally. And the principle of universalizability gives us the logic of this conclusion. For if it be maintained that one of the three ought to have more than an equal share, there must be something about his case to make this difference – for otherwise we are making different moral judgements about similar cases.

Hare's claim that an "equal liking for chocolate" suffices to entitle a person to an equal share of chocolate in the absence of good reasons to the contrary may or may not be acceptable. However, the claim is not related to the presumption of equality. Hare's aim is not to provide grounds for presuming the relevant similarity of the three persons. The assumption is that persons *are* similar in morally relevant respects, when they have equal liking for chocolate. Therefore they are entitled to similar treatment, given that they do not have in mind a difference between them that is more important in that context than their similarity, that is, the fact that they like chocolate similarly. Westen (1990, 253) confuses the presumption of equality with the claim of *prima facie* equality when he writes that Hare defends the presumption of equality.

In his discussion of equality, Stefan Gosepath (2015, 182-183) has argued that "if there is no reason for unequal distribution that can be universally and reciprocally justified to all, the equal distribution is the only legitimate principle of distribution". According to him, this "is based on the assumption that all are, by and large, equal in the relevant sense; otherwise, their apparent differences in the relevant sense would provide reasons for unequal treatment or distribution" (Gosepath 2015, 182, fn 36). Gosepath (2015, 184) writes that he defends the presumption of equality, but what he has in mind seems to be the claim of *prima facie*

equality. In his view, people *are* “by and large” similar. An important similarity between them, in many cases, is their equal inability to show that they deserve more than others. “If none of the concerned persons can lay claim to a relevant difference, then all cases are, in this respect, *prima facie* equal and must be treated equally in order to be treated adequately and justly” (Gosepath 2015, 184). According to Gosepath, this applies even to small children. They are *prima facie* similar, if none of them has sufficient argumentative skills to show any relevant difference *and* if they have an equal liking for the object of the distribution:

The example of the distribution of a cake is frequently used in this context and shows how obvious this principle is: a parent wishes to share a cake among his or her children – how should he or she do this if we assume that all children would like their slice to be as large as possible? If no child can advance a convincing reason why his or her slice should be larger than everyone else’s, then the cake must be divided into equally large pieces. (Gosepath 2015, 177.)

Perhaps Gosepath has a point here, although it sounds rather odd to assume that people (let alone children) should be able to show what they deserve. Why would it not suffice that an allocative agent is able to justify her decisions, and why would anyone need to be able to *convince* others that she has a justification? Be that as it may, it is clear that Gosepath’s discussion does not concern the presumption of equality, or any other presumption. It concerns the claim of *prima facie* equality.<sup>2</sup>

Any claim of *prima facie* equality can be contested by showing that the feature that is said to characterize all relevant parties, that is, *the claimants*, is not morally relevant. For instance,

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<sup>2</sup> In common parlance (that is, in ordinary language) people may say that certain *prima facie* assumptions are “presumptions”. The point here is not to say that this is wrong.



the fact that people have “an equal liking” of this or that may be irrelevant, if the claimants’ preferences do not have an equal weight (say, because rational preferences count more than irrational preferences). However, the presumption of equality cannot be refuted by showing that a particular criterion of substantive justice is actually irrelevant. The presumption of equality is not based on claims about our similarities, and it does not claim that people are similar, but only that they should be presumed to be similar.

#### **4. In Defense of the Presumption of Equality**

Arguably, there are many different ways to justify the presumption of equality. Factual uncertainty can be resolved in favor of equal treatment when equal treatment is believed to carry the lesser risk of error (cf. the presumption of death). As argued by Joel Feinberg (1973, 101) the “presumption in favor of equal treatment holds when the individuals involved are believed, assumed, or expected to be equal in the relevant respects”.<sup>3</sup> Also, we could possibly say that unequal treatment of cases that are conceived as equal makes people *angrier* than equal treatment of cases that are conceived as unequal, and that therefore, in some cases, it is morally appropriate for an allocative agent to choose equal treatment instead of unequal treatment, even if she is unaware of whether the cases are similar or different (cf. Greenawalt 1983). However, a more general justification refers to the relative costs of potential errors.

Suppose that a wealthy person hires two builders (A and B) to restore her summer house, located in a small island. They agree that the payment for the work will be four paintings that

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<sup>3</sup> Edna Ullmann-Margalit (1983, 157-158) argues that the inductive-probabilistic considerations “cannot by themselves provide the ground on which a presumption is justified”. In her view, if “the sole rationale of the proceed-as-if-q injunction of a presumption rule expressed by the formula ‘pres (P,Q)’ were the fact that P probabilizes Q, then we would have on our hands just a piece of practical advice in accordance with some canons of inductive reasoning, not a presumption rule properly so called”.

will be distributed among the builders on the basis of their relative contributions. The paintings are of equal worth. (Both builders intend to sell them and make good money.) Soon the job is done and it is time to distribute the paintings. To her disappointment the owner of the summer house realizes that she does not have a clue of the builders' respective merits. This is not her fault though. She fell ill when the job started and despite her hard efforts she was unable to get anyone to the island to check how the work proceeds. Moreover, she was unable to stop the work. She decides to ask builders about their progress, but receives rather conflicting reports. Both builders claim that the other did nothing. They both say that the other of them does not deserve a single painting. After mulling this over a couple of minutes the owner decides to give two paintings to each worker and expresses her thanks to them.

If we suppose that the builders' (A and B) equal liking for the valuable paintings is a morally relevant feature that makes them *prima facie* similar cases, then the owner's decision can be justified on that basis. However, even if we do not suppose that an equal liking for the paintings is morally relevant, the equal distribution of the paintings can be defended. There is a good reason to *presume* the similarity of the builders and distribute the paintings equally on the basis of the *presumption* of equality. Notice that there are five different ways (D1-D5) to distribute four paintings:

D1. A gets four paintings and B does not get a single painting.

D2. A gets three paintings and B gets one painting

D3. Each builder gets two paintings.

D4. B gets three paintings and A gets one painting

D5. B gets four paintings and A does not get a single painting.

The owner (who does not know how many paintings the builders in fact deserve) can make four kinds of mistakes (M1-M4). The smallest mistake is M1 and the worst mistake is M4:

M1. One builder is overpaid one painting and the other underpaid one painting.

M2. One builder is overpaid two paintings and the other underpaid two paintings.

M3. One builder is overpaid three paintings and the other underpaid three paintings.

M4. One builder is overpaid four paintings and the other underpaid four paintings.

In the smallest mistake (M1) the overall quantity of misallocation is two and in the worst mistake (M4) the overall quantity of misallocation is eight. By presuming that the cases are similar and choosing to distribute the paintings equally (as suggested by D3) the owner insures that the worst that can happen is mistake M2, in which two paintings are in the wrong hands (and the overall quantity of misallocation is four). All the other ways to distribute the paintings among the builders can cause more serious mistakes, namely mistakes M3 or even M4, in which four painting are in the wrong hands. In other words, D3 is preferable to all alternatives as far as the owner wants to avoid overpaying and underpaying as effectively as possible. Since both overpaying and underpaying are unjust, the owner's decision to rely on the presumption of equality and use D3 is the best possible solution from the point of view of justice.<sup>4</sup>

In some cases it may be difficult to say what an "equal treatment" means. For instance, the goods that are distributed may be so various that it is not clear which distribution is an equal

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<sup>4</sup> Suppose that there are ten workers and ten paintings, and that one worker does all the work. Again, the equal distribution would prevent the worst mistake (in which the person who deserves all the paintings does not get any of them and all the paintings are in the wrong hands). Arguably, we may also claim that, in this case, the equal distribution is an acceptable solution just because it is correct to make an empirical generalization that "usually people tend to do at least something".

distribution. But the owner of the summer house does not face this problem. It is clear that she distributes the paintings equally when she gives two paintings to each builder.

The owner could use lottery and let Fortune decide. But that would not be a good solution. Lottery would make possible mistake M4, that is, the most unjust distribution in which the builder who does not deserve a single painting gets them all and the builder who deserves all four paintings does not get a single one. As far as the owner is responsible and wants to avoid such risk she opposes lottery. (Cf. Goodwin 1992.)

The owner could say to the builders: “Look, unfortunately I have no clear picture of your merits and I just cannot distribute the paintings according to the merits. Therefore you can distribute the paintings yourself. I give you four paintings as agreed, and now you are free to do whatever you want.” This solution may sound fair, but it is not. Again, the risk is that mistake M4 comes true. A responsible employer does not give salaries as a lump sum to her employees. The owner is in the position to limit the possible wrongs of the distribution, and she should use her power, if she wishes to further justice.

Perhaps the owner should not give any painting to the builders, as she cannot guarantee that the distribution will be fair? If the owner does not distribute the paintings at all, then there is no risk that the builder who possibly deserves more paintings than the other builder gets fewer paintings than the builder who possibly deserves fewer paintings. *Comparative injustice* is avoided. (Cf. Feinberg 1974.) But this solution is poor. If the owner does not give any paintings to the builders she violates the contract *and makes sure* that four paintings are in the wrong hands. By giving two paintings to each builder the owner avoids the risk of

comparative injustice and the worst that can happen is that two paintings are in the wrong hands. (Perhaps the paintings won't end up in wrong hands at all.)

Now, suppose that the owner of the summer house has a sizeable collection of art and, in principle, she could give four paintings to each builder without any sense of loss. Should she give eight paintings as a salary and distribute them equally among the builders whose merits are unknown to her? Perhaps she should. After all, this solution would guarantee that neither of the builders gets fewer paintings than he deserves. The owner is not culpably ignorant of the builders' respective merits, but maybe she still has an obligation to take care that no worker gets less than he deserves. Although she is not (morally) culpable, she can possibly be liable (cf. McMahan 2005; Ferzan 2012.). In any case, giving four paintings to each builder would be a great move from the owner.<sup>5</sup> However, the question whether the owner should pay eight paintings instead of four is irrelevant here. Our problem is how she should distribute *four paintings*, given that she is completely unaware of the builders' merits. For the present purposes, we can simply skip the question whether she should somehow compensate the builders for her ignorance.

The owner makes a correct decision when she just presumes the similarity of the cases, now that she understands that she does not know whether the cases are similar or different.

The presumption of equality is justified, as it reduces the risks and guarantees that the worst mistakes will be avoided. The analysis here is not limited to the desert-based views of justice, although the builders' "merits" are important. Many other accounts of justice would provide

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<sup>5</sup> One might argue that the overpayment would constitute a poor example for the future conduct of the builders and the larger society, encouraging organized fraud on the part of workers.

us with similar suggestions, although the equal distribution does not guarantee that justice will be done.<sup>6</sup>

Those who have criticized the presumption of equality seem to have misunderstood the nature of the presumption. Richard Norman (1987, 58) writes that equality “is just as arbitrary as inequality, unless some positive reason can be given for it”, and that he cannot see “how, in the absence of such reasons, there can be any positive ‘presumption of equality’”. But the reasons for the presumption of equality need not be reasons that support the conviction that the cases are equal, i.e. similar. D.E. Browne (1975, 52) thinks that when “our knowledge” of the cases is “so meagre that there is no inductive warrant for presuming either that they will probably deserve equal treatment, or that they will probably deserve unequal treatment”, then “the only reasonable thing to do is not to presume at all”. But in many cases the solution “not to presume at all” is less reasonable than presuming similarity. The owner of the summer house is very reasonable, when she presumes that the builders are similar. She is also morally responsible when she presumes similarity. This is the way how she avoids the most oppressive mistakes.<sup>7</sup>

To defend the presumption of equality is to present reasons for presuming that the cases are relevantly similar when it is not clear whether in fact they are or when pointing out which cases differ from one another is difficult. There may be (say, utilitarian) reasons for treating cases similarly even when we can easily show relevant differences between them, but such

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<sup>6</sup> Assume that one worker did all the work and the other none. The owner distributes the paintings equally. The industrious worker has a good reason to be depressed, but she cannot really blame the owner. She should blame the inefficient worker who lies and does not want justice to be done.

<sup>7</sup> Many philosophers have found the presumption of equality quite plausible. They include Henry Sidgwick (1962) and William Frankena (1966), for instance. See also Benn and Peters (1959).

reasons are not reasons that support the presumption of equality. Their purpose is to *override* the Aristotelian principle that similar cases should be treated similarly and different cases differently. The presumption of equality does not override the Aristotelian principle, but complements it.

## 5. The Limits of the Presumption of Equality

The presumption of equality seems plausible when an allocative agent distributes a bar of chocolate (Hare's example), or a cake (Gosepath's example), or a set of paintings (my example). When she knows who the claimants are, she can easily justify the equal distribution by referring to the relative costs of potential errors. However, as we consider situations that are more complex, the presumption of equality may have only a limited practical relevance.<sup>8</sup> An allocative agent who must make distributive decisions without appropriate information may find the presumption quite useless. Consider three different cases.

Case 1. Suppose that an absent-minded professor leaves the exam papers somewhere and is unable to find them anywhere. (Inadvertently she left the papers in the fireplace of her apartment's living room and burned them.) Suppose also that she cannot organize another exam, but has to grade her students on the basis of the first exam, that is, the only exam that took place. The grading is obligatory, and she cannot decide not to grade at all. She ponders whether she should rely on the *presumption of inequality*, now that the situation is what it is. According to the presumption of inequality, the difference of the cases should be *presumed*

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<sup>8</sup> The question of how often the presumption of equality can be used is partly an empirical matter that may look unworthy of investigation. However, as far as political philosophers are willing to analyze concepts and principles that are politically relevant, the matter is important.

when it is not known whether they are similar or different. The professor rejects the presumption of inequality, as she notices that the presumption is *indeterminate* (cf. Ullman-Margalit 1983, 161). The presumption of inequality does not tell which grades the students should have, although it tells that the grades should be different. The professor decides to rely on the presumption of equality, and thus presumes similarity of the cases (although she is almost sure that there must be some differences between the students). But that does not solve the problem. Now she knows that all the students should have the same grade, but again she is unaware which grade they should have. The problem here is that the presumption of equality concerns comparative justice (how people should be treated in comparison to each other), but it does not say anything about non-comparative justice (how well people meet certain external standards).

Case 2. Suppose that an owner of a flower shop hires three summer employees. Their job is to pack flowers into boxes that are then sent to stores in the nearby town. The employer negotiates about the wages with the new employees and they decide that the basis of their payment is the number of the boxes packed. Those who pack more boxes in a day will get more money than those who pack fewer boxes. The wages are paid every day. After the first day it turns out that one employee has packed a huge number of boxes while another only a few and, moreover, that (for some reason) it is completely unclear how many boxes the third employee has packed. The owner decides to rely on the presumption of equality, as she has heard that it may be a good distributive principle when there is not sufficient information available. But the presumption of equality does not help her. The presumption does not tell whether the employee whose merits are unknown should be treated on a par with the hard-working employee or rather with the inefficient employee. (Cf. Westen 1990, 248-249.) The problem is that the presumption of equality works properly only in circumstances where there



is no information *at all* about the relevant differences (or similarities) between the cases. In the real world, such cases may be rare.<sup>9</sup> If they are rare, the practical relevance of the presumption of equality is insignificant.

Case 3. An allocative agent can use the presumption of equality if she is unaware either of the appropriate distributive criterion or people's relevant features (or both). However, it is difficult to say exactly when an allocative agent is "unaware" of the appropriate distributive criterion. Suppose we make the following assumption: An allocative agent is "aware" of the distributive criterion only if she is able to provide a relatively uncontroversial philosophical justification for the criterion she aims to use. That would mean that allocative agents are hardly ever aware of distributive criteria, and that they are free to rely on the presumption of equality almost always. This can't be right. But suppose that we make another kind of assumption and contend that an allocative agent is "aware" of the distributive criterion if she is able to offer at least some reasons in defense of the criterion she personally finds plausible. (Cf. Dixon 1986, 51.) This sounds better, but the likely implication is that allocative agents are almost always aware of distributive criteria. If so, then the only cases where there is space for the use of the presumption of equality are cases in which the allocative agents are

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<sup>9</sup> In the real world, hourly wages can be used and then pay on the basis of them to workers whose merits are unknown. This practice can be defended, but not on the basis of the presumption of equality, if someone's merits are known. The practice can be criticized too. It tends to create a great deal of injustice (for the workers who work hard) and it encourages people to work slowly rather than quickly (as the payment is always the same).

unaware of people's relevant features.<sup>10</sup> The presumption of equality may have limited practical relevance also in this respect.<sup>11</sup>

## 6. Concluding Remarks

The presumption of equality suggests that we should presume the similarity of cases and treat them equally if we do not know whether they are similar or different. I have argued that this suggestion should not be confused with the claim that all people are relevantly similar and therefore deserve similar treatment, unless there is a specific reason for different treatment. The claim of *prima facie* equality concerns substantive criteria of justice and should not be confused with presumptions. I have also argued that in some cases an allocative agent can easily justify the use of the presumption of equality and equal distribution by referring to the relative costs of potential errors. Still, as we consider more complex cases, we find that the value of the presumption to serve as a guide ranges from marginally useful to useless.

However, there is a countervailing matter of interest to consider. Many of us think that an equal distribution is the correct and fair way to distribute goods when the distributive criteria or people's relevant features are unknown. Not all share this intuition, but those who do may have it *because* they think that, at the end of the day, people are somehow similar and deserve similar treatment – if there is no reason for different treatment. That is to say that the best *explanation* of their intuition may be the claim of *prima facie* equality. However, this does

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<sup>10</sup> Generally speaking, whether the reliance on the presumption of equality is appropriate depends largely on (1) what is meant by unawareness, (2) whose unawareness is supposed to launch the presumption, and (3) what the proper object of unawareness is supposed to be.

<sup>11</sup> Legislation concerning speed limits, drug laws, universal vaccination, and so on treats people as if they were similar. However, the question is not about the presumption of equality. For instance, the suitable speed limit in certain highway can be settled merely on the basis of a cost-benefit analysis that takes into account people's average driving skills.

not mean that the best possible *justification* of their intuition is the claim of *prima facie* equality. Possibly, the best justification is the presumption of equality. If so, then the explanation of the intuition differs from the justification of the intuition. From an individual point of view, the situation is intriguing. Arguably, we have acceptable moral convictions for wrong reasons.

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