



University
of Glasgow

Knight, C. (2009) *Describing equality*. Law and Philosophy, 28 (4). pp. 327-365. ISSN 0167-5249

<http://eprints.gla.ac.uk/49957/>

Deposited on: 22 March 2011

DESCRIBING EQUALITY*

The most basic feature of equality is probably its *comparative* or *relative* character.[1] Whether equality, in whatever regard, holds or not is a matter of whether a particular state of affairs holds between two or more entities. Where those entities are persons – as they will be in all cases considered here – equality of x is a state of affairs in which all persons hold the same (amount of) x . Theories which aim to justify such a situation, or one which is as close an approximation of it as is possible, are, in a weak sense, egalitarian. Often this egalitarianism-as-equality-of- x is supplemented with the demand that, where decisions affecting persons are made, each person is accorded *equal concern and respect*.[2] All are worthy of consideration, and all are to be treated as equals.

The demand that theories or principles of justice be egalitarian in these senses is not empty. Some possible and actual theories and principles fail to meet this demand.[3] The principle that William be given more x than Mary is clearly non-egalitarian. Similarly, theories that insist that members of one group – be they white people, or Christians, or men, or the middle class – be given more x than another group are excluded by the minimal egalitarian demand, unless this inequality is justified as a means to the end of equalizing something else. Even if we state that we are treating all people equally who are equal in the relevant respect, where that respect is possession of light skin colour, we are not treating all with equal concern and respect, since some persons are excluded from consideration. In general, the suggestions that some persons are entitled to more than others, or that some are to be disregarded altogether, is ruled out. If a state were to act on such ideas it would fail to recognize the impartiality that is implied by equality,[4] and perhaps even by justice itself.[5]

Nevertheless, the stated definitions of equality and egalitarianism do not get us very far. The suggestion that everyone should be equal in some respect is uncontroversial until the relevant respect is specified. Very few would dispute that persons should be treated equally, or that all legitimate claims should be taken into account, whoever might make them.[6] As Amartya Sen notes, “every normative theory of social arrangement that has at all stood the test of time seems to demand equality of *something* – something that is regarded as particularly important in that theory.”[7] All the most familiar theories of justice would qualify as egalitarian in this weak sense, including some which are typically viewed as rivals to egalitarianism.[8] Utilitarianism, for instance, has “an insistence on equal weights on everyone’s utility gains in the utilitarian objective function,” while right libertarianism offers “equality of libertarian rights – no one has any more right to liberty than anyone else.”[9] Utilitarians and libertarians equally distribute particular sets of rights whose value to particular individuals varies with natural, social and personal circumstances. Any definition which describes such theories as egalitarian appears to be too weak to be descriptively adequate. We need more discriminating ways of identifying egalitarian positions if we wish to avoid Bernard Williams’ conclusion that “when the statement of equality ceases to claim more than is warranted, it rather rapidly reaches the point where it claims less than is interesting.”[10]

In this article I will suggest how *substantively* egalitarian views might be distinguished from those theories which are merely weakly, or uninterestingly, egalitarian. In each of the next three sections I will set out a condition for substantive egalitarianism. The three conditions are, I believe, individually necessary and jointly sufficient for describing a theory or principle as

substantively egalitarian. In two subsequent sections I examine whether two arguably egalitarian approaches to justice can satisfy the three conditions. A concluding section suggests some ways in which the three conditions reflect intuitive notions of equality.

Each of the conditions has made previous appearances in the literature on equality. But some parts of that literature have remained quite detached from others. Indeed, while close relatives of the first condition have been debated in law reviews, it may seem quite alien to political philosophers. According to the view advanced in this paper, this is a particularly unfortunate state of affairs, since it is maintained that the key aspects of our egalitarian intuitions are explained by the combination of the first condition with the staples of political theory that are the second and third conditions.

Treating like cases alike

The starting point for my presentation of the first condition for egalitarianism may appear less than promising. A quarter of a century ago, Peter Westen published an article aiming “to establish two propositions”:

(1) that statements of equality logically entail (and necessarily collapse into) simpler statements of rights; and (2) that the additional step of transforming simple statements of rights into statements of equality not only involves unnecessary work but also engenders profound conceptual confusion. Equality, therefore, is an idea that should be banished from moral and legal discourse as an explanatory norm.[11]

By “equality,” Westen meant “the proposition in law and morals that ‘people who are alike should be treated alike’ and its correlate, ‘people who are unlike should be treated unalike.’”[12] This proposition is, I think, implied by the weaker sense of equality mentioned in the previous section. One cannot be treating persons with equal concern and respect if one refuses to acknowledge that, in relevantly similar cases, each person should receive the same treatment. Equality of x cannot be secured where the bases on which x is given to different people vary interpersonally.

Given the fit between Westen’s sense of equality and my weak sense of equality, it is unsurprising that the former is not much help in identifying substantively egalitarian theories. The ambiguity inherent in x – is it welfare? Or is it some complex set of libertarian rights? – is transferred into the notions of (un)alikeness and treatment in Westen’s formulation. The substantive content of a theory depends on which features of persons it takes to be *relevantly* alike and unlike and what it takes to be the appropriate responses to such features.[13] As Westen’s proposition (1) emphasizes, this content may be stated quite simply in terms of individual rights; the egalitarian form itself tells us nothing.

More recently, Christopher Peters has claimed that Westen overlooked “true prescriptive equality [which] is the principle that *the bare fact that a person has been treated in a certain way is a reason in itself for treating another, identically positioned person in an identical way.*”[14] This differs from Westen’s definition of equality by focusing on the actual treatment that a person (or a group of persons) has received, and treating *exactly that* as a reason for treating another person (or group of persons) in a certain way, rather than simply stating that all members of a certain class *ought to* receive certain treatment. We treat likes alike *because* they are alike, rather than for some other reason (typically to do with individual rights) that may be established without any need to look at the relative treatment of different persons. In this way, true prescriptive

equality “supplies a substantive, comparative treatment rule to apply apart from any noncomparative treatment rule that applies in a given case.”[15]

My proposed first condition for a theory or principle to count as substantively egalitarian is derived from Peters’ true prescriptive equality.

First Condition: the theory or principle considers the bare fact that a person is in certain circumstances to be a conclusive reason for placing another relevantly identically entitled person in the same circumstances, except where this conflicts with other similarly conclusive reasons arising from the circumstances of other persons, in which case a compromise must be reached.

The simplest example of a conflict between “similarly conclusive reasons” would be if William and Mary are relevantly identically entitled, and they are circumstanced differently. This generates a reason both for Mary to be circumstanced as William is, and for William to be circumstanced as Mary is. The appropriate compromise is a straightforward matter, or at least is if the circumstances are quantifiable – each receives the mean of the two sets of circumstances. This treatment can be extended to cases involving more than two persons readily enough.

More complex cases of conflict involve some persons who are relevantly identically entitled and some persons who are not relevantly identically entitled. The circumstances of each of the relevantly identically entitled persons provides a reason for each of the other relevantly identically entitled persons to be identically circumstanced, as described above. There is, however, the added complication that these circumstances, as a minimum, must be less favourable than those enjoyed by any persons with greater entitlements, and more favourable than those enjoyed by any persons with lesser entitlements. Accounts of equality that describe relevant entitlements cardinally (not merely ordinally) might further specify the extent to which the circumstances of those with particular greater relevant entitlements should be better than those with particular lesser relevant entitlements. The first condition therefore allows for the Aristotelian kind of equality, according to which “there is proportion between the things distributed and those to whom they are distributed.”[16] Of course, the condition does not presume that justice is proportionate in this way. It just says that, *if* the theory in question does identify multiple relevant entitlements, equality requires a certain kind of relationship between those entitlements and the circumstances persons face.

The first condition for substantive equality incorporates the insight behind the principle of true prescriptive equality – it treats likes alike because they are alike. It captures the intrinsically (that is, not merely contingently) comparative nature of egalitarian justice by basing each person’s treatment on that received by other persons. But it is, as the name suggests, a condition that may be met by a theory or a principle instead of a principle itself. It differs from Peters’ prescriptive equality in three other ways.

First, by shifting from the language of ‘position’ to the language of relevant entitlements, it makes more explicit that the positions of the persons under consideration need only be *relevantly identical according to the egalitarian theory in question* in order for the stated response to be triggered. The fact that Mary is a woman and William is a man, or that that the two have different shoe sizes, need not affect how they are treated by the substantive egalitarian. The mechanism for identifying relevant entitlements is a key part of every putatively egalitarian

theory. Entitlements may depend on the empirical situation, since many theories give rights to certain things only where certain material conditions hold. I use the language of *relevant* entitlements in order to exclude any entitlements persons may have that are not recognized by the egalitarian theory. In doing so, I leave open the question of whether such ‘non-relevant entitlements’ (for instance, entitlements due under the law, or on some other, possibly non-egalitarian, theory) exist or not.

Second, it explicitly extends the area of reference beyond *prior treatment by the first person*. It may be substantively egalitarian to place Mary in certain circumstances because relevantly identically entitled William is in those circumstances no matter how William got into those circumstances. It makes no difference whether William *was* treated in a certain way or *is* being treated in a certain way; nor does it matter whether that treatment came from the first person (in distributive justice this means the state or other distributive body) or from some of other party, or if it has not resulted from something properly described as “treatment” at all, but rather from a “doing of nature.” This final possibility accounts for the reference to “circumstances” rather than “treatment.” These changes are, I believe, justified because telling a distributive body how to treat somebody, *given that it has already treated somebody else*, is not the only way for a distributive theory to be egalitarian. Exemplars such as equality of welfare take a distinctively egalitarian line even where there has been no prior distributive action. Nevertheless, the key contrast between circumstances (concerning the physical and/or mental conditions facing a person) and relevant entitlements remains much the same as that between treatments and positions under true prescriptive equality. A person’s treatment or circumstance is not a matter of how they are positioned, in terms of the rights assigned to them by a normative theory, but is rather concerned with their real world situation.

The final difference between the first condition and true prescriptive equality is perhaps the most significant. This is the way the former takes the circumstances of one person as *sufficient* grounds for placing another relevantly identically entitled person in the same circumstances, excepting conflicts with other grounds of circumstance. Peters, by contrast, is quite clear that someone who is egalitarian in his sense treats the reason generated by prior treatment as potentially overridable.[17] The change here is required to remove the possibility of essentially non-substantively egalitarian hybrid theories counting as substantively egalitarian simply because they have some minor comparative component. Consider, for example, the theory that social utility ought to be maximized, but that in the event of two courses of action producing the same utility, that which produces the most equality (in the sense of the circumstances of persons being extended to relevantly identically entitled persons) should be selected. Where the reason offered by others’ circumstances can be less than conclusive, any theory which states that, “*all things being equal*, the particular circumstances of a person must be matched by the circumstances of other relevantly identically entitled persons,” would count as egalitarian, even if “things” were rarely or never “equal” in the way required by that theory, and even if in the vast majority of cases the theory was manifestly inequalitarian.

Despite his innovation, Peters draws conclusions that are similar to Westen’s: “even nontautological equality unavoidably butts up against emptiness – inescapably becomes merely an aspect of some wholly non-egalitarian norm – or, where it cannot be said certainly to be empty, collapses into incoherence.”[18] Can such an apparently flawed principle really be used, in revised form, to do the work I want it to do? I think so. This is not on account of the revisions I have suggested, but rather on a divergence between the perspective shared by Westen and Peters and that which we ought to take.

Both Westen's and Peters' conclusions seem to be shaped by a (for their purposes, wholly appropriate) legalistic presupposition that, where a norm might be stated in comparative (usually, egalitarian) terms, or in terms of noncomparative rights, it is the latter that is to be preferred; the egalitarian statement "necessarily collapses into" a statement of rights. In the cases in which Peters claims that his form of equality is empty, the reasons offered are that it does not offer reasons that are independent of nonegalitarian justice.[19] But nonegalitarian justice is defined in such a broad way that it includes many typically egalitarian norms, simply rendered in terms of rights. For instance, it is considered nonegalitarian to state that two ill people, Smith and Jones, are each entitled to 75 out of 150 available units of medicine, where the justification can be explained in terms of their identical individual claims.[20] Westen and Peters argue that equality itself – the bare relative positions of different persons – does not add any normative value to a form of treatment (such as a distribution). Whether this is true or not is irrelevant to the present descriptive task of identifying which theories are substantively egalitarian; it is not, of course, irrelevant to broader questions about justice. Likewise, for present purposes little rides on the fact that we can describe recognizably egalitarian norms in nonegalitarian ways. Although, contrary to Westen's proposition (2), it will surely often be as simple and clear (or even simpler and clearer) to state such norms in egalitarian terms rather than in rights terms – that is, as "equality of x ," rather than as "each has a right to the total x divided by the number of persons" or even "Mary has a right to the total x divided by the number of persons, William has a right to the total x divided by the number of persons ..." – either way is valid. The question at hand is, how do we recognize them as egalitarian in the first place? True prescriptive equality gives us part of the answer to this question.

To see how the first condition can help us start to distinguish between egalitarian and nonegalitarian theories and principles, consider equality of welfare, utilitarianism and libertarianism. Suppose William holds a certain level of welfare and Mary holds a different level of welfare (i.e. they are each in certain differing circumstances). Equality of welfare weighs the demand that Mary holds William's level of welfare precisely because he holds that level of welfare against the demand that William holds Mary's level of welfare precisely because she holds that level of welfare. It satisfies the first condition, for it makes persons' circumstances entirely dependent upon the circumstances of relevantly identically entitled persons – and for equality of welfare, this means the circumstances of all persons, since all have rights to an equal amount of welfare. But neither utilitarianism nor libertarianism satisfies the condition, for neither of them takes persons' circumstances to be grounds for placing relevantly identically entitled persons in identical circumstances. In both cases, two persons may be relevantly identically entitled – i.e. have identical rights as the situation is such that each unit of their utility contributes to the social calculus in the same way (utilitarianism) or their historical entitlements are identical (libertarianism) – and therefore be entitled to identical circumstances. *But the circumstances due to each person are fundamentally independent of the circumstances the others are in.* The circumstances of other persons do not enter the libertarian moral calculus at all, and only enter the utilitarian's moral calculations instrumentally. Mary would receive the same treatment whether or not William existed, provided that the background facts (to do with social utility and historical entitlement) stayed the same. They are treated alike only because they are alike in terms of relevant entitlements, not because they are alike in their circumstances. Similarly, when persons are treated unalike, this is solely on account of their differing relevant entitlements. Mary's and William's circumstances will directly reflect their individual abilities to convert resources into utility, or the set of libertarian rights each has acquired. They will have nothing directly to do with

each others' circumstances.

Now it may be objected that the first condition for substantive equality would permit some evidently unjust policies.[21] Suppose that, in treating William, we violated his basic rights, without even so much as a justification from utility maximization or other consequentialist considerations. To make this vivid, suppose that we have falsely imprisoned and tortured him, for our own obscure reasons, or for no reason at all. Surely egalitarian justice does not give any support to the demand that we treat Mary likewise, just because that is how we treated William.

Egalitarian justice makes no such demand. As indicated at the outset, the first condition for substantive egalitarianism is necessary but not sufficient. It reflects the inherently comparative nature of egalitarian justice, and nothing else about it. But there is more than this to substantive equality. In particular, the third condition specifies which circumstances are appropriate bases for the future circumstances of others.[22] Suffice to say, our treatment of William would not qualify. First, however, we must turn to the second condition.

Full and equal consideration

The first condition for egalitarianism helps to filter out some theories and principles of distributive justice theories that are (at least intuitively) nonegalitarian. But as we have just seen, satisfaction of the first condition is insufficient grounds for calling a theory or principle egalitarian. Consider the following principles:

- a) equality of welfare *among men*.
- b) equality of welfare *among men*, equality of welfare *among women*, *higher levels of welfare for men*.

Both (a) and (b) are substantively egalitarian if the first condition is the only condition for substantive egalitarianism. The fact that a man/woman holds a certain amount of welfare is treated as grounds for another man/woman (i.e., someone who is relevantly identically entitled on account of gender and age) holding that level of welfare, the fact that the second man/woman holds a certain amount of welfare is treated as grounds for the first man/woman holding that level of welfare, and so on, until a compromise is reached. (a) admits no other reasons, while (b) adds that, since men have greater relevant entitlements, their circumstances should be better than women's, as the first condition allows. But neither principle can sensibly be thought to be substantively egalitarian. If either were the sole distributive principle for a society, it could give rise to many instances of significant social inequality. In the case of (a), there would be no limit to the inequality, in any dimension, between men and women, or between women and women. (b) deals with this latter problem, but not the first; it also adds a particularly grievous inter-gender inequality. In neither case is any justification for these particular types of (possible) inequality presented, and none presents itself. At least one further necessary condition for substantive egalitarianism is needed.

A candidate is suggested by the weak egalitarianism mentioned in the opening of the paper. There it was noted that such egalitarianism is strong enough to ensure that all persons are considered, and that none are of more concern than others. In other words, it ensures *full and equal consideration*. But the italicized portions of (a) and (b) implicitly disregard or disadvantage

all persons who do not meet certain less than compelling criteria. An obvious solution therefore presents itself.

Second condition: the theory or principle can be stated as ‘equality of x for all persons’, making no explicit or implicit exclusion of persons or individuals and showing no greater concern and respect for some rather than others.

The second condition recognizes simple equality of welfare as egalitarian while ruling against the two more discriminatory formulations. (a) excludes everyone who is not a man, while (b) clearly pays greater regard to the interests of men, with no available explanation as to why that greater regard is justified. But the first and second conditions together are still insufficiently demanding. Consider another principle:

(c) equality of *hair colour*.

This principle satisfies the first condition as it considers persons’ circumstances (here=hair colour) to be sufficient conditions for relevantly identically entitled persons (here=any other person) to be in those circumstances (here=have that hair colour). It satisfies the second condition as it does not place limits on which individuals or groups the equality is to hold between. However, the trivial nature of that equality makes a mockery of the principle’s claim to be egalitarian. With (a) and (b) we found that many notable social inequalities would go unaddressed; with (c), *all* major inequalities are ignored.

One response to this problem which naturally presents itself is to focus on those equalities which seem *valuable*. Egalitarians are not concerned with just any kind of inequality; rather, they “are concerned with how *bad* a situation’s inequality is.”[23] This enables us to cope with principles like (c), which, if taken as the sole distributive principle for a society, are inegalitarian by virtue of the triviality of the equality they secure. But while this is part of the solution, it cannot be the whole of it. Reconsider right libertarianism, which pursues equality of rights to appropriate unowned resources, to retain all profits from free trade, and so forth. Insofar as it pursues equality, it does so in a dimension which is not considered particularly important by egalitarians; indeed, they may consider these kinds of rights to be pernicious given likely economic and social conditions. But the right libertarian may genuinely believe that he is pursuing equality in that dimension which is most valuable.

Two variations on this initial suggestion also fail, but in telling ways. The first holds that the initial suggestion was insufficiently demanding, in allowing a variety of different equalities to all count as substantively egalitarian. Ronald Dworkin states that “it is necessary to state, more exactly than is commonly done, what form of equality is finally important.”[24] But this approach faces two fatal objections. First, it is far too exacting. We are, I think, quite convinced that there is more than one substantively egalitarian theory – equality of income, of resources, and of welfare are all clearly identifiable as theories (or groupings of theories) of equality, whatever else they might be. If it turned out that, say, welfare was the most valuable thing that could be equalized it would not follow that that was the only substantive equality to be had. It might be a *better* theory

of equality than the others on offer, but it seems to abuse the language to describe it as the only theory that achieves substantive equality, and to thereby describe the others as egalitarian in the same kind of way that right libertarianism or utilitarianism are. Second, it actually aggravates the problem that gave rise to it in the first place. Suppose that it turns out that equality of libertarian rights was, after all, the most valuable kind of equality – which is just to say that it is more important that people have these kinds of “rights” respected than other kinds of “rights” (rights to equal welfare, for instance). It is patently absurd thereby to suggest that right libertarianism is the only theory of substantive equality, and that the various varieties of equality of outcome are actually *less* egalitarian than it. I do not see how this kind of result can be ruled out without knowing all that there is really worth knowing about distributive justice; but we ought to be able to identify egalitarian theories even without such extraordinary knowledge.

The second variation on the “valuable equalities” suggestion seeks to limit both the kinds of value and the type and pattern of distribution that are admissible in egalitarian theories. The examples of typically egalitarian theories mentioned so far all put the spotlight on how well off (in some regard) people end up. In particular, they might be interpreted as attempting, with varying success, to equalize a certain conception of *individual prudential value* – that is, to make each individual’s life go just as well as every other individual’s life.[25] We might say, then, that substantively egalitarian theories are *prudential outcome egalitarian*, or at least try to be so (income may not be a particularly good measure of prudential value, but equality of income may be a genuine attempt to approximate prudential outcome egalitarianism). Faced with this new requirement, the libertarianism which we have been trying to exclude from our definition falls at the first hurdle – it focuses on historical events (usually individuals’ actions) rather than end-states.[26] Utilitarianism is an end-state theory, and focuses on prudential value (utility), but the desired end-state is not one of equalization.

So far so good. Unfortunately, the new requirement allows far too little to count as substantive equality. Often committed egalitarians will favour a situation of increased prudential outcome inequality. This reflects the fact that they have a broader range of concerns than the new requirement permits. To see this consider the case of professional baseball players. Suppose that, at a certain point in time, the two largest racial groups of players were not, on the average, equally paid. The question is this: is this prudential outcome inequality – where one racial group of players are advantaged relative to others – a sufficient ground, *and* the sole ground, for a substantive egalitarian to oppose this distribution?[27] Definitely not. Many other factors are relevant. I will mention three possible scenarios that bring out a few of them. In the first case, suppose that we know that the sole source for the inequality is the fact that the better paid group performs, on the average, more effectively than the other – that they are more productive. This may go at least some way to justifying the inequality. In the second case, suppose that both groups have an identical level of performance, and that we know that the source of the disadvantaged group’s disadvantage is the blatant racial discrimination that they are subject to (to give an extreme example, that the teams place a salary cap on one group’s players that is lower than the minimum salary for the other group). Or, alternatively, suppose that there are no official discriminatory policies, but that one group’s players are more marketable than the other group’s owing to the racism of fans, and that results in the income inequality. Would the existence of such circumstances really make no difference whatsoever to the egalitarians’ response to the situation? The egalitarian may well oppose this distribution more strongly than in a case where the distribution is the result of non-racially influenced market forces.

Finally, let us bring together the considerations the first two cases highlight with a real

world example.[28] In 1970 the average black Major League baseball player earned more than the average white player. However, the average black player of a certain level of productivity (as measured by performance averages) actually earned less than the average white player of the same level of production. It appears, then, that “blacks, on the average, earn less than whites of equal ability.”[29] This led some to suggest “that widespread racial discrimination still exists in baseball, and that this racism becomes clear only when salaries are compared *at each level of performance.*”[30] I do not think that the substantive egalitarian is compelled to demand an equal distribution of prudential outcome in this case, where black players have not only outperformed their white counterparts, but outperformed them so much that, despite evidence of continuing racism (whether it be on the part of the teams or fans), they have managed to surpass them in salary terms. In cases like this, the would-be substantive egalitarian may find her intuition that there is more to a distribution than equal prudential outcome supported in a number of ways. As we shall see, she may think that, to some extent, productivity or merit should themselves be rewarded, or (in my view, more plausibly) that they are a useful rough guide to other things which are not equally spread among the population – desert and responsibility may be particularly significant considerations here.

The object of egalitarian concern

Much can be learned from the shortfalls of the three versions of the view that substantive egalitarians seek to secure equality of those things which seem valuable. The first variation is both too weak, in potentially admitting what are at heart non-egalitarian theories, and too strong, in requiring a theory to be the best account of *justice* in order to count as a theory of *equality* (and remember, we are not even trying to define *good* theories of equality here!). The second variation is much too narrow, in reducing substantive equality to one particularly obvious kind of substantive equality. In the end, I think the original version comes closest to succeeding, in making equality something worth caring about. The problem is just that it is not something worth caring about *for egalitarians in particular*.

These final points are the most significant. But I do not think there is any “quick fix” for the problem posed by cases of type (c). The objection to it is just that it is not worth caring about. But there seems to be no unproblematic way of filtering unworthy entries to the formula “equality of x” in the pleasingly formal way that the first and second conditions filter the particular non-egalitarian elements that they tackle. It is, I think, necessary to adopt a final condition for a theory or principle to count as egalitarian that leaves more scope to intuition.

Third condition: the theory or principle pursues equality in a dimension that is valuable to egalitarians.

This condition is vaguer than the others, but necessarily so. We have seen that we have to accept a variety of theories as egalitarian, and I think one of their distinguishing features has to be that they pursue a type of equality that is valuable – but not necessarily *most valuable* – to egalitarians. It may strike the reader that there is an obvious circularity here: what I am really saying, it might be alleged, is that substantive egalitarian theories are those which pursue substantive equalities. But that would be an inaccurate description. In the first place, observe that

this condition has been adopted precisely because theories which equalize substantively are, paradoxically, neither uniquely nor even necessarily egalitarian in the required sense. Those theories which equalize prudential value are only one kind of substantive egalitarian theory, while those which equalize all-things-considered value need not be substantive egalitarian at all. A substantively egalitarian theory must equalize a particular kind of value – an *egalitarian* kind of value. In this way, the egalitarianism of substantive egalitarianism comes in both in the pattern of distribution and in what is distributed. It also must be reiterated that this is not supposed to be a sufficient condition for substantive egalitarianism. It is to be used alongside the first two conditions, which we have seen can narrow down the range of candidate theories. Later it will be shown that some positions which may appear to be substantively egalitarian, and which many people assume are consonant with the usual understandings of egalitarianism, are ruled out by the first condition. First, however, let me say a little about “usual” understandings of equality and egalitarianism.

In both philosophical and non-philosophical discourse, “equality” is used to refer to something (an idea or a practice, for instance) which stands in a certain relation to the work of particular prominent writers and to particular social arrangements (which have more often than not been influenced by those writers). Jeremy Waldron puts the point quite succinctly:

“Equality,” like “liberty” and “fraternity,” is a shorthand slogan but not an abbreviation. It evokes a particular range of moral considerations and a particular set of complex arguments, and it does that, not by virtue of its meaning, but because every political theorist is familiar with a tradition of argumentation in and around certain texts and doctrines and knows that colleagues can be alerted to the possible relevance of that tradition by using that simple word.[31]

A substantively egalitarian theory is characterized by giving an answer to the question “equality of what?” that falls within a certain range of the possible answers. As is shown by imaginary principles such as (c), and also by established theories such as right libertarianism (with their particular complex understandings of what it means to treat persons as equals), the x in equality of x cannot be just anything if that theory is to be egalitarian. The position of this range is informed both by the history of moral and political thought and by contemporary scholarship. Any claim that Nozickian historical entitlement was substantively egalitarian, or even as egalitarian as equality of welfare, simply in virtue of its formal structure, would not be taken seriously by the vast majority of philosophers, including Nozick himself.[32] That theory firmly belongs to a different tradition, one which is opposed to the egalitarian tradition.[33] Realizing equality in one regard will destroy equality in another, and these equalities hold different levels of significance within different traditions. Which of these equalities seem to really matter to the egalitarian?

The kind of comprehensive egalitarian theory of distributive justice which is most familiar to members of the general public is economic equality. Equality of income and equality of wealth are the best known theories in this field, and two of the simplest. But these theories and their close relatives have little currency as fundamental objectives with political philosophers, for the simple reason that money is not, after all, what matters; or at least, not all that matters. Some people can *do* more with a given amount of money than other people. According to philosophers, the exemplary egalitarian theories are equality of resources (construed quite broadly) and equality of welfare. Of the two, a given philosopher will choose that theory which accords with their own view about whether it is resources or welfare which are the appropriate objects of distribution. It is

highly likely, of course, that equality of income would lead to greater equality of welfare or that equality of wealth would lead to greater equality of resources than present distributive regimes would, but even this instrumental value is diminished where we might bring about patterns of distribution that are tailored to the needs of the more complex equalities.

The point of this is not to dispute the substantively egalitarian nature of economic egalitarianism, even as an account of what justice ultimately requires. Income and wealth are fields in which equalization is both valuable – though not, as philosophers note, most valuable – and valuable in an egalitarian way – in a way that, say, right libertarian rights are not. Undoubtedly, a large part of the explanation here is the prudential value that can be realized with money. But that is not the whole part. Economic egalitarians usually hold individuals at least partially responsible for what they do with their money. Wealth egalitarianism is not usually construed as requiring that equality of wealth holds at every moment of time, regardless of choices – if I win at the dog track, the resulting inequality is likely to hold long enough that I will have time to spend my winnings. Income egalitarianism certainly would not step in if I lost my money at the track, whereas a welfare egalitarian government would do, assuming, as is likely, that my welfare will drop as a result of my actions. The dispute here really is an intramural one: the choice is not between substantive egalitarianism and something else, but between two different kinds of substantive egalitarianism.

I say all this on the assumption that the theories in question satisfy the first two conditions for substantive egalitarianism. As already shown, this is true of welfare egalitarianism, and the same demonstration could easily be extended to economic egalitarianism. These are paradigmatic theories of equality, even if they are not ultimately the best theories of equality all things considered. If equality of resources is construed as a kind of halfway house between these other two theories – it equalizes a range of goods such as basic liberties, income, wealth, basic opportunities and maybe talents – it qualifies just as easily. Someone who proposed to equalize Rawlsian social primary goods would fall into this category, although this is not what John Rawls himself suggests. In each of these cases, the circumstances of persons set the entitlements of relevantly identically entitled persons, all are considered to be relevantly identically entitled, and hence none are favoured or excluded.

If equality of resources is construed in the rather more complicated Dworkinian fashion, things are much less straightforward. The same is true of equality of opportunity for welfare and similar luck egalitarian positions, though for different reasons. Furthermore, these complexities are not limited to elaborate philosophical theories. Some social policies that are more commonplace (in discussion, at least) than even the most familiar comprehensive egalitarian theories appear to be far less obviously egalitarian than popular opinion might hold. Let us begin with the last of these topics.

Application to prioritarianism

In contemporary developed countries there is consensus that there should be a certain minimum level of income, education, and healthcare for all persons. People who wish to set these minimum levels at significantly higher levels than those that presently exist are popularly known as left wingers, social democrats, or (in the US) liberals. Let us call this view “contemporary egalitarianism.” Now consider the following social policies:

- 1) Where the levels of income, education, and healthcare of the worst off can be increased by making a disproportionately larger increase in the levels of income, education, and

healthcare of the better off, make these changes.

- 2) All things being equal, increase the levels of income, education, and healthcare of the better off.
- 3) Where the levels of income, education, and healthcare of the worst off reach a certain level that is still below the average level, maximize the total societal levels of income, education, and healthcare.

Each of these policies is quite consistent with the defining attitude of a contemporary egalitarian (assuming that the “certain level” in [3] is appropriate). One may even adopt contemporary egalitarianism and *all* of these strategies. I will not speculate about how common this might be, but I am sure that each of these views is held by some people who are contemporary egalitarians. With equal certainty, I can say that each of these strategies is inconsistent with equality of income, with equality of education, and with equality of healthcare. This is simply because each strategy promotes (or, in the case of [3], may promote) inequality in the specified fields – it increases the percentage difference in income, education, and healthcare levels between the better-off and the worst-off. Contemporary egalitarianism is consistent with such strategies because it does not equally distribute the goods in question. Income, education, and healthcare are distributed without reference to the comparative circumstances of persons.[34] The main focus is on the absolute amounts of these goods that find their way into the hands of the worst off.

If contemporary egalitarians are not egalitarian by virtue of demanding equality in the dimensions with which they are explicitly concerned, how might the characterization of them as egalitarian be explained? It might just be that it is mistaken. Maybe people are just generally confused about the different strategies available to the left. If the characterization is not mistaken, it might reflect the fact that these persons endorse equality in some other dimension – welfare, say – and simply endorse the policies that are supportive of that goal that have the best chance of political acceptance. The most interesting possibility, though, is that their focus on the absolute position of the worst off is fundamentally egalitarian in a broader sense.

This last possibility might be fleshed out with any of several distributive principles. The most famous of these is Rawls’ “difference principle,” which combines a focus on “relevant social positions” (rather than individuals) with a *maximin* strategy, thereby maximizing the condition of the worst off group. [35] The closely related *leximin* strategy maximizes the condition of the worst off group (or, alternatively, person), then maximizes the condition of the next worse off group (or person), and so on.[36] The radical priority to the worse off granted by leximinism may be restrained by some kind of utilitarian or other maximising principle, such that the commitments to the worse off and to the overall good are both conditional. This *limited priority* strategy would imply that, though an improvement for the worse off is always more weighty than an equivalent improvement for the better off, a minor gain for the worse off may be outweighed by a larger gain for the better off.[37] Finally, a *sufficiency* strategy would ensure that the worst off held a certain minimum of whatever it is that is being distributed, but would say nothing once this minimum had been secured.[38]

Each of these positions is consistent with the bare statement of contemporary egalitarianism and with (1) and (2). Sufficiency is consistent with (3) while maximin, leximin and

limited priority are not. This reflects the fact that the latter three strategies, as forms of prioritarianism, always grant some priority to the worst off, whereas sufficiency is a different kind of principle altogether – one which makes the priority to the worst off conditional. Of the two kinds of principle, the case for sufficiency as a form of egalitarianism is much weaker; indeed, its advocates typically present it as an alternative to egalitarianism (Elizabeth Anderson is a notable exception). Furthermore, the one criticism of prioritarianism-as-egalitarianism that I will present is, mutatis mutandis, applicable to sufficientarianism.

The general form of prioritarianism might be described in this way: moral value, ranging from 0 (no value) to 1 (most value), is assigned to each unit of whatever it is that is being distributed. Maximin is “binary,” in the sense that the only values will be 0 and 1. Units held by the worst off have absolute value; units held by those who do not fall into this category have no independent moral value (although they may be required to improve the position of the worst off). Limited priority, by contrast, will make full use of the range from 0 to 1, with the exception of 0 itself. Moral value is assigned to every unit, with the specific value of each unit being proportional to how badly off its bearer is: the worse off the bearer, the greater the value. For all prioritarian principles, the best distribution is that which yields the highest moral value. (Leximin is a bit more complicated as it would need a series of calculations. The first of these would be exactly the same as maximin’s calculation; thereafter maximin’s binary model would be followed, but with absolute value being given to improvements for the *worse* off rather than the *worst* off.) Individuals would then have rights to whatever units they have under the optimum prioritarian distribution.

Many writers have supposed that prioritarianism is one form of egalitarianism, or even *the* kind of egalitarianism worth caring about. This latter supposition is particularly common in economics, where maximin and leximin are often taken to be the standard egalitarian strategies.[39] This is no doubt linked to the commonplace acceptance of the Pareto principle (the view that a change improves a distribution where someone benefits and no one loses out) in economics, but several philosophers have held similar beliefs.[40] While Nagel allows that the difference principle is less egalitarian than a principle which would prohibit inequalities even if they benefited the worst off, he mentions a “very strong egalitarian principle ... which is constructed by adding to the general value of improvement a condition of priority to the worst off.”[41] Such a principle may not be strong enough to satisfy “pure impartiality,” which “is intrinsically egalitarian ... in the sense of favoring the worse off over the better off.”[42] Rawls himself is more cautious, suggesting that “the difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off (limiting ourselves to the two-person case for simplicity), an equal distribution is to be preferred.”[43] He adds that this principle achieves some but not all of the objectives of the more obviously egalitarian principle of redress.[44] Even so, G. A. Cohen has suggested that the so-called “Pareto argument” for the difference principle “has often proved irresistible even to people of egalitarian outlook,” and that its “persuasive power ... has helped to drive authentic egalitarianism, of an old-fashioned, uncompromising kind, out of contemporary political philosophy.”[45] However many of these theorists continue to describe themselves as egalitarians, it seems clear that prioritarianism is at the least such an attraction to those of an egalitarian persuasion that it is worth asking whether it is itself a form of egalitarianism.

How well does prioritarianism meet the three conditions for egalitarianism? I will start with the second condition: *The theory or principle can be stated as “equality of x for all persons,” making no explicit or implicit exclusion of persons or individuals and showing no*

greater concern and respect for some rather than others. This can be done easily enough by the prioritarian: “equality of rights to whatever they would receive under the best prioritarian distribution for all persons.” No individuals are excluded or picked out for especially good or bad treatment, and although some will gain and others will lose out on this principle, compared to how they would fair under other norms, prioritarianism provides a principled justification of this.

Next, the third condition: *the theory or principle pursues equality in a dimension that is valuable to egalitarians.* As just noted, the prioritarian’s favoured dimension of equality is prioritarian rights. As I have loosely characterized it, prioritarianism does not actually specify what is to be distributed according to these rights. But this is no ground for thinking that it fails to meet the condition. The space that is left open can be filled in in any way. It is, furthermore, typically filled in with just the kind of individual prudential value that I have said egalitarians are largely concerned about. The Rawlsian maximizing of income and wealth is one kind of prudential value prioritarianism; other kinds may involve welfare or a broader conception of resources (Rawls himself thinks that income and wealth are only a subgroup of social primary goods, which are themselves a subgroup of primary goods).

Two hurdles may seem to remain in the way of prioritarianism satisfying the third condition. First, and as already observed, prudential value is not the only thing that egalitarians care about. Although this is true, we have already accepted some theories as egalitarian that only refer to prudential value, such as equality of resources and equality of welfare. Such theories are egalitarian, even if they do not say all there is to be said about egalitarianism. Furthermore, there is little difficulty in building other considerations into the prioritarian’s conception of moral value.[46] These can in principle be tailored to exactly reflect egalitarian values, whatever those may be.

Second, it might be observed that no form of prioritarianism distributes whatever it is that it distributes in an egalitarian fashion. It is, like libertarianism or utilitarianism, egalitarian only in the sense that it equally distributes a certain package of rights – a package of rights that is inegalitarian in content. There is some truth in this objection, but it does not tell the whole story. While the objective of prioritarianism is explicitly to distribute in nonegalitarian fashion, that is insufficient grounds for saying that it does not actually achieve equality in a space that is valuable to egalitarians. As noted above, some have refused to distinguish between equality and priority for the worst off as objectives, and many egalitarians have been moved to accept prioritarianism. The kind of egalitarian value that is of importance here is, I must reiterate, fairly loose, and defined largely by practice and tradition. Prioritarianism is a view of fairly recent vintage, having only really been examined and advocated as an alternative view to egalitarianism in the last twenty years or so.[47] Before then, egalitarianism largely subsumed it: prioritarian concerns were treated as a kind of egalitarian concern. As the discussion of contemporary egalitarianism at the start of this section might suggest, prioritarianism might better – or at least more directly – explain many views that go under the label “egalitarian.” The same could hardly be said of libertarianism. Utilitarianism would fare better than libertarianism here, but largely on account of empirical factors such as diminishing marginal utility and envy.[48] Its refusal to give any special precedence to the claims of the worse off places it at odds with egalitarian attitudes in many cases. Although the kind of precedence to the worse off or worst off that prioritarianism gives may, in the case of limited priority, be less than total, and in any case concerns their absolute position rather than their relative position, the fact that it gives precedence puts it much more in line with underlying egalitarian values. For this reason, the rights that prioritarianism assigns on an equal basis may plausibly be valuable to egalitarians.

This is enough, I believe, to suggest that prioritarianism satisfies the third condition. But the first condition is another matter altogether. This is the condition: *the theory or principle considers the bare fact that a person is in certain circumstances to be a conclusive reason for placing another relevantly identically entitled person in the same circumstances, except where this conflicts with other similarly conclusive reasons arising from the circumstances of other persons, in which case a compromise must be reached.* Imagine that, this time, William and Mary hold certain amounts of whatever our favoured prudential value is (i.e., they are in certain differing circumstances), and that they are relevantly identically entitled. Since William and Mary are relevantly identically entitled, prioritarianism of whatever stripe obviously requires that they be identically circumstanced. *But the reasons for this have nothing to do with William's and Mary's circumstances.* Prioritarianism treats likes (i.e. those with equal potential under present conditions for furthering priority-weighted welfare) alike, but it does not treat likes alike because of their alikeness of circumstance.[49]

In the case of simple prioritarianism, where it is the case either that priority to the worst/worse off is the only value (maximin and leximin) or it is supplemented with overall prudential value (limited prioritarianism), the circumstances of relevantly identically entitled individuals do not matter at all when deciding how to treat somebody. All that matters is the position of the individual relative to *everybody else* – whether they are the worst or worse off or not – and how treating the individual in certain ways will affect the overall picture – whether the worst or worse off are benefited. Simple prioritarianism treats William in exactly the same way whether Mary is rich, poor, happy, or depressed, except insofar as Mary's circumstances happen to affect the condition of the worst or worse off (which may be Mary or William).

It is true that the more complex kind of prioritarianism that admits further kinds of moral value may treat Mary's circumstances as relevant to establishing the appropriate circumstances for William. For instance, part of their being relevantly identically entitled could be their having behaved equally responsibly. As we shall see in the next section, where two individuals are equally responsible, and distributions reward the responsible, the circumstances of each individual can become relevant to establishing the others' entitlement. But with complex prioritarianism these kinds of considerations are not conclusive, as the first condition requires. There will sometimes be the potential for prudential value gains that can only be achieved through circumstancing persons in ways that do not reflect responsibility or other non-prudential values. Such circumstancings will fail to correspond to the circumstances of other persons. Although a reason for basing persons' circumstances on those of relevantly identically entitled persons may be present in one of the component values of complex prioritarianism, the fact that complex prioritarianism as a whole takes that reason to be conditional means that that theory cannot satisfy the first condition for egalitarianism.

Application to luck egalitarianism

Like prioritarianism, luck egalitarianism comes in several varieties. The common idea underlying them is that persons' situations should to be equalized in some important regard except where their choices or responsible acts justify inequality. This section begins with a brief discussion of Dworkinian equality of resources, which may be construed as a form of luck egalitarianism. What I take to be the standard form of luck egalitarianism, equal opportunity for prudential value (or equality of opportunity, as I will call it), is then examined at a little more length. In both cases the focal point will be the three conditions for substantive egalitarianism.

To simplify greatly, Dworkinian equality of resources comes in two forms: the hypothetical insurance market version which appears to be closest to Dworkin's own settled view in "What is Equality?" and an "unofficial" version which plays down the significance of hypothetical insurance market decisions, instead giving the central role to another of the distributive devices described in that paper, the envy test. The official version falls at the first hurdle. The appropriate circumstances for any given person are not based on the circumstances of relevantly identically or non-identically entitled persons; rather, they are based on the fact that they are part of the optimal expected outcome for the average member of society in conditions of limited information. The second condition creates no problems – equality of resources (in the particular sense intended) is extended to all persons. The third condition is, however, problematic. The equality of rights that is created is similar to that under utilitarianism, being set on the basis of maximizing assumptions; this dimension may well not be considered valuable enough by egalitarians. In any case, given its failure to meet the first condition, official equality of resources is not substantively egalitarian.

The unofficial version of equality of resources, "envy test equality," fares little better. Suppose that William's circumstances differ from those of Mary, who is relevantly identically entitled (that is, that they are due the same resources under an envy free distribution). There is, according to envy test equality, a reason for placing Mary in William's circumstances, and a reason for placing William in Mary's circumstances. But that reason does not concern either person's circumstances. Mary's circumstances could improve without William's entitlement changing since one need not prefer to have more of anything rather than less.[50] The second condition is met as equality of resources (as construed here) holds between all persons. The third condition is, I think, less obviously troublesome for envy test equality than it is for the official variant, as the maximizing tendency of the latter is not present in the former.

The Dworkinian position with the best claim to be luck egalitarian is a variation of the unofficial view that takes into account Dworkin's concern with making distributions reflect choice but not mere circumstance. On this view distributions must be either envy free or non-envy free in some way that is justified by persons' choices. This choice-sensitive envy test equality cannot satisfy the first condition, satisfies the second one, and may or may not satisfy the third one. The reasons for this are almost exactly the same as for envy test equality, the sole difference being that the reference to choice may or may not create extra problems regarding the third condition. Relevant considerations are given in the discussion of equality of opportunity that follows.

With the failure of choice-sensitive envy test equality to meet the first condition, luck egalitarianism's claim to be egalitarian rests with equality of opportunity.[51] This view's core prescription – which may be combined with or weighed against other prescriptions – is that variations in individual prudential value are justified only where they reflect differential exercises of responsibility. One important variant of this view holds that total lifetime opportunities for welfare must be equal (or minimally unequal) for each individual.

The first condition, though the bane of several theories, including prioritarianism and both kinds of Dworkinian equality of resources, creates no difficulties for this theory. Suppose that William holds a certain amount of whatever our favoured prudential value is, that Mary holds a different amount, and that they are relevantly identically entitled (that is, that William and Mary have conducted themselves equally responsibly). Unlike any form of prioritarianism, equality of opportunity takes Mary's being in those circumstances as grounds for putting William in those circumstances, and vice versa. The circumstances of a third person who is more responsible or less responsible than William and Mary would also be relevant, were such a person present.

Whether or not that is the case, individuals' entitlements are entirely dependent upon the circumstances of other persons. In spite of its reference to responsibility, equality of opportunity meets the first condition just as effortlessly as outcome egalitarian ideals such as equality of welfare.

The second condition is also met comfortably by equality of opportunity. It guarantees equality of opportunity for all persons, and shows no person any more concern than any other.

The third condition is a more complicated matter. My favoured formulation of prudential value is the present mood conception of welfare, but some other conception of welfare, or some conception of resources, would also function perfectly well for present purposes, since these are all things of sufficient importance to egalitarians. However, the complication comes in since prudential value is not to be distributed in strictly equal fashion, but rather proportionately – specifically, in a responsibility-sensitive fashion. This commitment to responsibility may appear to cut into equality. It might be thought that, wherever the two come into conflict, it must be equality that yields; that is, wherever one person acts more responsibly than another, inequality is established.

Although in one sense correct, I believe that this is to oversimplify the situation. For one thing, we have seen that some weak notion of equality is at the heart of virtually every account of justice, and that there is little difficulty in describing theories we would usually think of as alternatives to egalitarianism in terms of equality. Equal outcomes may be upset by responsibility-sensitivity, but that is not sufficient grounds for saying that equality is compromised, for equality in one dimension almost always requires inequality in others. The question is whether a decrease in outcome equality is an acceptable price for the egalitarian to pay for increasing the responsibilitarian version of equal treatment.

As has been hinted already, I think egalitarianism is itself often construed as involving considerations of responsibility. We do not typically view real world equal opportunity as a rival to equality, but rather as one conception of equality (which may of course conflict with rival conceptions). If a first child makes the genuine choice to eat her apple while a second chooses to save hers for later, and a parent then divides the remaining apple between the children, the second child can, one would think, sensibly complain of being treated not only unfairly but *unequally*. There is perhaps some substantive idea of equality that recommends considerations of attributive responsibility.

Unsurprisingly, many (at least nominally) egalitarian critics of luck egalitarianism feel that the benefit afforded by its association with responsibility is illusory. Here I will refer to two counterexamples from such critics that I think actually suggest that responsibility is, at the very least, compatible with egalitarianism.

In the first case, the reasons for this have been alluded to above, but are particularly well illustrated by the critic's counterexample. Timothy Hinton has this to say about the apartheid regime formerly found in South Africa: "What made the system evil, surely, was the way that black people were forced to live ... The evil did not consist in the fact that the color of one's skin is largely a matter of brute luck."^[52] If black people had (somehow) freely chosen to be oppressed, "that would surely not ameliorate the evil of the unequal conditions that they would have to endure."^[53] But the biggest part of the evil surely is that the disadvantages suffered by the black population are disadvantages for which they are not responsible. Contrast an apartheid era township with a settlement identical to it in every regard except for the fact that the subordinated population have all committed serious crimes for which they are, by their presence in the penal colony, paying the pre-established penalty. It is an affront to justice to suggest that the

two cases are equivalent: here at least attributive responsibility matters.

If egalitarianism suggests that the township and the penal colony are equally morally wrong I think the sensible conclusion to reach would be that egalitarianism should be rejected. But I do not think that this is actually what egalitarianism suggests. Egalitarianism is certainly not committed to that claim, even if it may be consistent with it (as I think must be allowed if outcome egalitarianism is to count as egalitarian). The moral difference between the township and the penal colony can be identified as a difference of equality – specifically, as a difference in equality of opportunity. Provided a society has reasonably just laws, most egalitarians would not have much time for someone who had committed a serious offence and then complained that he was being treated unequally. They would be much more sympathetic to the complaint of someone who was being treated unequally on the basis of their skin colour and/or the status of their family. This is because there is an inequality of opportunity in the second case but no inequality of opportunity in the first. If the inequality between an irresponsible person (such as an offender) and averagely responsible members of society was very extreme – and in particular, if basic needs are going unmet or suffering exceeds certain levels – the egalitarian may then start to be concerned by it. But even if the egalitarian's concern here is directly related to end-state equality – rather than the absolute position of the negligent or malicious person – it is clear that that is not all there is to her thinking, and that something else plays a very significant role in it.

It might still be denied that it is specifically responsibility that is doing the work here. This is where the second counterexample comes in. Samuel Scheffler asks us to think about occupational talent and success:

[I]f I have a less successful career as a philosopher than you do because your superior philosophical gifts enable you to refute all my arguments, then, contrary to what the generalized claim might lead us to expect, most people would not regard that as unfair. Nor would most think it unfair if a naturally gifted professional athlete were offered a more lucrative contract than his less talented teammate.[54]

The underlying idea here seems to be that some conception of productivity or merit is the “something” that explains why egalitarians do not focus only on end states.[55] In some cases responsibility and merit coincide, but where they come apart it is merit that captures the egalitarian intuition.

Scheffler's examples are messy because it is probably difficult for the majority of the population to conceptualize cases where the difference in ability is purely a factor for which no one is responsible. Those who are successful in their fields have generally tried harder than the average, and this is reflected in a general scepticism about the importance of the “gifts” that are central to Scheffler's examples. What the majority would say were they to accept the existence of clear cut examples is pure speculation.

But suppose for the sake of argument that the majority of persons in existing societies would not side with the luck egalitarian if clear cut cases could be identified. Even then the luck egalitarian need not be concerned. In the first place, the differential career success and income in the examples are, I hold, manifestly instances of substantial social inequality. I do not think that the majority would want to deny this, even if they wanted to defend these distributions. They might say, coherently enough, that there was justice but not equality. If an outcome is both unequal and derived from differential opportunities then there is no morally significant way in

which it is equal – no part of our egalitarian intuitions recommend such an outcome. Luck egalitarianism is a theory of equality and responsibility, and it is no argument against its egalitarian (or, for that matter, responsibilitarian) credentials that it does not capture non-egalitarian (and non-responsibilitarian) principles. A principle of merit allows persons with unequal talents, which they maybe take no credit for, to exploit them for unequal rewards. Yet Scheffler characterizes his criticism as an egalitarian one.

More importantly, however, equal opportunity does not stand or fall with the volume of support for its dictates among the general public. Distributive justice is not a popularity contest.[56] Even if the majority did claim that the philosopher and athlete cases reflected equality, that would not make it so. If most ancient Greeks or early twentieth-century Southern state Americans described the master-slave arrangement as one of equality that would not and should not satisfy egalitarians. The emphasis on merit in particular is woefully unreflective, relying in large part on the scepticism about natural variations in ability (certain disabilities excepted) mentioned above and a confused notion of responsibility (with which merit is often conflated). A sounder, fuller conception of responsibility, taken together with equality, reveals the natively untalented, with their disadvantages for which they are not responsible, to be the closest thing to slaves in developed countries in the twenty-first century. Little surprise, then, that the population of those countries sees no injustice in their treatment. Here luck egalitarianism's anti-conservatism is especially evident.[57]

Concluding remarks

In satisfying both of the first two conditions for substantive egalitarianism, equality of opportunity succeeds where utilitarianism, right libertarianism, prioritarianism and both versions of Dworkinian equality of resources fail. The remarks at the end of the previous section do, I hope, give some plausibility to the suggestion that the equality pursued by conventional equality of opportunity luck egalitarians may be truly valuable in an egalitarian way. But they are really only the beginning rather than the end of the assessment of luck egalitarianism's ability to meet the third condition.[58]

I will end with some comments regarding the status of substantive egalitarianism and the three conditions. My intention is to capture our intuitive sense of those theories or principles that are properly worthy of the description “egalitarian.” Further general specification is, I think, hard to give, given both the ubiquity of the rhetoric of equality,[59] and the need to steer clear of effectively offering a list of “certified egalitarian” stances in advance. But a little can be said about the intuitive underpinnings of the three conditions.

The first condition captures something which I think is often assumed, but less often said, by egalitarians.[60] An egalitarian theory's distribution is one which is not only equal, but also equal for *egalitarian reasons* – reasons, that is, to do with the intrinsic moral value of persons standing in a certain position relative to others. Utilitarians and others are keen to point out that their theories will, given plausible empirical circumstances, return equal distributions, but egalitarians have always been suspicious about the egalitarianism of such theories, even if such circumstances were to hold. This condition explains that suspicion.

The second condition reflects the typically egalitarian notion of *inclusiveness*. The formal property of equality says nothing at all about which entities the equality should hold between. But egalitarians insist that all persons are to be considered, and considered equally, merely by virtue of their humanity. This universalist and humanist idea is incorporated in the second condition.

The third and final condition provides the space in which all the egalitarian values not accounted for by the first two conditions may be expressed. As such, little justification needs to be given for its intuitive importance. If the first two conditions describe the form of substantive equality, the third condition describes its substance. The relevant values may demand that persons have the means to live their lives, and/or that their lives are actually lived well; it may or may not make provision for responsibility or desert. This is roughly what Dennis McKerlie means when he discusses “substantive equality in the conditions of people’s lives: not just political equality, or equality in the sense of having the same set of basic rights, but equality with respect to the opportunities open to them, or the resources available to them, or in the quality of their lives themselves.”[61] The third condition allows debate over these issues to proceed, and for several satisfactory accounts to emerge. But I reserve the description “substantive egalitarian” for accounts which also meet the first two conditions, ensuring that the potentially vast scope of that debate stays in strictly egalitarian territory.

* An earlier version of this article was presented to the Historical, International, Normative Theory (HINT) group at the University of Glasgow. I would like to thank the participants on that occasion, and also Richard Arneson, Jonathan Quong, Hillel Steiner, Stephen de Wijze and an anonymous referee for their helpful written comments. Research for the article was supported by the Arts and Humanities Research Council. This is the final draft of an article that appeared in *Law and Philosophy* 28 (2009): 327-65. The original publication is available at www.springer.com.

[1] See Antony Flew, *The Politics of Procrustes* (London: Temple Smith, 1981), pp. 29, 59; Larry S. Temkin, *Inequality* (Oxford: Oxford University Press, 1993), p. 13; “Equality, Priority or What?” *Economics and Philosophy* 19 (2003): 61-87, p. 62. But cf. Shelly Kagan, “Equality and Desert,” in *What Do We Deserve?* ed. Louis J. Pojman and Owen McLeod (New York: Oxford University Press, 1999), p. 299.

[2] Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), pp. 180-2, 227, 272-3; “Liberalism,” in *Public and Private Morality*, ed. Stuart Hampshire (Cambridge: Cambridge University Press, 1978), p. 125.

[3] See Jeremy Waldron, “The Substance of Equality,” *Michigan Law Review* 89 (1991): 1350-70, pp. 1358-62.

[4] Amartya K. Sen, *Inequality Reexamined* (Cambridge, MA: Harvard University Press, 1992), p. 24; Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990), pp. 4-5.

[5] John Rawls, *A Theory of Justice*, revised ed. (Oxford: Oxford University Press, 1999), pp. 112-8; R. M. Hare “Justice and Equality,” in *Equality: Selected Readings*, ed. Louis P. Pojman and Robert Westmoreland (Oxford: Oxford University Press, 1997), pp. 219-221; Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 218.

[6] Eric Rakowski, *Equal Justice* (Oxford: Oxford University Press, 1991), p. 19.

[7] Sen, *Inequality Reexamined*, p. 12. See also Ronald Dworkin, “Comment on Narveson: In Defense of Equality,” *Social Philosophy and Policy* 1 (1983): 24-40; *Taking Rights Seriously*, pp. 179-83; Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979), ch. 8.

[8] Ronald Dworkin, “Comment on Narveson: In Defense of Equality,” *Social Philosophy and Policy* 1 (1983): 24-40; *Taking Rights Seriously*, pp. 179-83; Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979), ch. 8.

[9] Sen, *Inequality Reexamined*, p. 13.

[10] Bernard Williams, “The Idea of Equality,” in *Philosophy, Politics and Society, Second Series*, ed. Peter Laslett and W.G. Runciman (Oxford: Blackwell, 1962), p. 111.

[11] Peter Westen, “The Empty Idea of Equality,” *Harvard Law Review* 95 (1982): 537-96, p.

542.

- [12] Westen, “The Empty Idea of Equality,” pp. 539-40, footnote suppressed.
- [13] Peter Westen, *Speaking of Equality: An Analysis of the Rhetorical Force of “Equality” in Moral and Legal Discourse* (Princeton, NJ: Princeton University Press, 1990), p. 127.
- [14] Christopher J. Peters, “Equality Revisited,” *Harvard Law Review* 110 (1997): 1210-64, p. 1223, original emphasis. See also Christopher J. Peters, “Foolish Consistency: On Equality, Integrity, and Justice in *Stare Decisis*,” *Yale Law Journal* 105 (1996): 2031-2115, p. 2062; Raz, *The Morality of Freedom*, p. 225; Westen, *Speaking of Equality*, p. 74.
- [15] Peters, “Equality Revisited,” p. 1224. See also Peters, “Foolish Consistency,” pp. 2063-4.
- [16] Aristotle, *The Politics*, tr. Ernest Barker (Oxford: Oxford University Press, 1995), p. 103; see also *The Nicomachean Ethics*, tr. David Ross (London: Oxford University Press, 1954), bk. 5, ch. 3.
- [17] Peters, “Equality Revisited,” p. 1227.
- [18] Peters, “Equality Revisited,” p. 1212.
- [19] The cases in which it “collapses into incoherence” are (for our purposes) uninteresting cases involving infinite supply; see Peters, “Equality Revisited,” pp. 1245-54.
- [20] Peters, “Equality Revisited,” p. 1232.
- [21] This was put to me by both Jonathan Quong and Richard Arneson.
- [22] It will also specify which temporal points of view may be taken by substantively egalitarian theories. Hence, while it might be true that a view that is just concerned with welfare levels at one moment in time cannot be substantively egalitarian, it would be a mistake to reject the first condition on the basis that it can be satisfied by such a view. What distinguishes that view from substantively egalitarian views – views that seek to equalize persons’ whole life welfare levels, or to equalize persons’ welfare levels at regular intervals, for example – is whether they can satisfy the third condition.
- [23] Temkin, “Equality, Priority or What?” p. 63.
- [24] Ronald Dworkin, “What is Equality? Part One: Equality of Welfare. Part Two: Equality of Resources,” *Philosophy and Public Affairs* 10 (1981): 185-246, 283-345, p. 185. Dworkin probably thinks that this is a necessary task for anyone who is interested in devising a theory of justice, as opposed to merely a task for the egalitarian, as he explicitly refuses to draw a distinction between egalitarianism and non-egalitarianism here.
- [25] On prudential value, see James Griffin, *Well-Being: Its Meaning, Measurement and Moral Importance* (Oxford: Oxford University Press, 1986).
- [26] Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974), pp. 150-5.
- [27] Of course, the egalitarian may well hold that the most arresting inequality concerning baseball players is the (undeservedly) huge economic inequality between them and the vast majority of the rest of the society. But that is a separate issue.
- [28] The case is from Gerald W. Scully, “Discrimination: The Case of Baseball,” in *Government and the Sports Business*, ed. Roger Noll (Washington, DC: Brookings Institution, 1974).
- [29] Scully, “Discrimination,” p. 261.
- [30] Douglas Rae, *Equalities* (Cambridge, MA: Harvard University Press, 1981), p. 9, original emphasis.
- [31] Waldron, “The Substance of Equality,” p. 1352. See also Sen, *Inequality Reexamined*, p. 16.
- [32] Nozick of course styles his theory as an alternative to patterned theories such as equality; see Nozick, *Anarchy, State and Utopia*, chs. 7 and 8. A Nozickian might nevertheless present his theory as weakly egalitarian in the way I mentioned earlier, without thereby diminishing his commitment to historical entitlement.
- [33] Some theories – left libertarian theories – may be less wedded to this libertarian tradition – or

more accurately, less wedded to particular interpretations of Lockean libertarianism; see, for example, Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994); Michael Otsuka, *Libertarianism without Inequality* (Oxford: Oxford University Press, 2003). They might be viewed as drawing from both the libertarian and egalitarian traditions. Nozick's theory obviously does not fall into this category. For discussion of left libertarianism, and its relation to egalitarianism, see Barbara H. Fried, "Left-Libertarianism: A Review Essay," *Philosophy & Public Affairs* 32 (2004); "Left-Libertarianism Once More: A Rejoinder to Vallentyne, Steiner, and Otsuka," *Philosophy and Public Affairs* 33 (2005): 216-2; Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism is Not Incoherent, Indeterminate, or Irrelevant: A Reply to Fried," *Philosophy & Public Affairs* 33 (2005): 201-15.

[34] See Flew, *The Politics of Procrustes*, pp. 29-31.

[35] Rawls, *A Theory of Justice; Political Liberalism*, paperback ed. (New York: Columbia University Press, 1996).

[36] Thomas Scanlon, "Rawls' Theory of Justice," in *Reading Rawls*, ed. Norman Daniels (New York: Basic Books, 1975), p. 197; Philippe Van Parijs, *Real Freedom for All* (Oxford: Oxford University Press, 1995).

[37] Paul Weirich, "Utility Tempered With Equality," *Nous* 17 (1983): 423-39; Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press), pp. 68, 73; Derek Parfit, "Equality and Priority," in *Ideals of Equality*, ed. Andrew Mason (Oxford: Blackwell, 1996). An alternative way of combining leximinism and utilitarianism is suggested by Peter Vallentyne in "Equality, Efficiency, and Priority to the Worse Off," *Economics and Philosophy* 16 (2000): 1-19.

[38] Harry Frankfurt, "Equality as a Moral Ideal," in *The Importance of What We Care About* (Cambridge: Cambridge University Press, 1998); Elizabeth Anderson, "What is the Point of Equality?" *Ethics* 109 (1999): 287-337; Roger Crisp, "Equality, Priority, and Compassion," *Ethics* 113 (2003): 745-63.

[39] See Bertil Tungodden, "The Value of Equality," *Economics and Philosophy* 19 (2003): 1-44.

[40] The Pareto principle – or the "principle of efficiency," as Rawls names it – plays a key part in Rawlsian arguments for the difference principle. See Rawls, *A Theory of Justice*, ch. 2; cf. Brian Barry, *Theories of Justice* (London: Harvester-Wheatsheaf, 1989), ch. 6; Kymlicka, *Contemporary Political Philosophy*, ch. 2; G. A. Cohen, "The Pareto Argument for Inequality," *Social Philosophy and Policy* 12 (1995): 160-85; Patrick Shaw, "The Pareto Argument and Equality," *The Philosophical Quarterly* 49 (1999): 353-68.

[41] Nagel, *Mortal Questions*, p. 110; *Equality and Partiality*, ch. 7.

[42] Nagel, *Equality and Partiality*, pp. 68-9.

[43] Rawls, *A Theory of Justice*, pp. 65-6.

[44] Rawls, *A Theory of Justice*, pp. 86-7.

[45] Cohen, "The Pareto Argument for Inequality," p. 160. Note that Cohen construes the Pareto argument, "as suggested by John Rawls and elaborated by Brian Barry," to encompass the move from equal opportunity to equality as well as the move from equality to the difference principle. Given that this first move is an argument for equality, I assume that Cohen thinks that it is the second move – involving a Pareto optimal shift of attention from relativities to absolute conditions (and particularly those of the worst off) – that might make egalitarians rethink their position.

[46] For example, in his later work Arneson incorporates responsibility considerations into a prioritarian view. See Richard J. Arneson, "Equality of Opportunity for Welfare Defended and Recanted," *Journal of Political Philosophy* 7 (1999): 488-97; "Luck Egalitarianism and Prioritarianism," *Ethics* 110 (2000): 339-49. I have defended similar positions; see Carl Knight, "A Pluralistic Approach to Global Poverty," *Review of International Studies* 34 (2008): 713-33 and *Luck Egalitarianism: Equality, Responsibility, and Justice* (Edinburgh: Edinburgh University Press, 2009), ch. 6.

[47] For early examples of this see Weirich, “Utility Tempered With Equality” and Dennis McKerlie, “Egalitarianism,” *Dialogue* 23 (1984): 223-38.

[48] Nagel, *Mortal Questions*, p. 107; Hare, “Justice and Equality”, pp. 224-5.

[49] Note, however, that prioritarians may be partially motivated by substantively egalitarian considerations. They may be discomforted by some having more than others, and were that discomfort to be taken as the basis for a theory, the resulting theory would satisfy the first condition. However, what makes them prioritarians is the fact that they resist that move, and instead resolve their discomfort by insisting that inequalities may persist so long as the interests of the worse off or worst off are given special weight. An anonymous referee drew this and several other important issues to my attention.

[50] An alternative way of understanding envy test equality also shows it to fail the first condition. Suppose the circumstances in question are the presence or absence of envy. In that case, the fact that William envies someone else’s resources is no reason for the resources of relevantly identically entitled Mary to be altered such that she envies someone. Even if William is envy free, the reason for making Mary envy free has nothing to do with William’s envy freeness.

[51] Important statements of this kind of view are Richard J. Arneson, “Equality and Equal Opportunity for Welfare,” *Philosophical Studies* 56 (1989): 77-93; “Liberalism, Distributive Subjectivism, and Equal Opportunity for Welfare,” *Philosophy and Public Affairs* 19 (1990): 159-94; G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906-44; John E. Roemer, *Theories of Distributive Justice* (Cambridge, MA: Harvard University Press, 1996).

[52] Timothy Hinton, “Must Egalitarians Choose Between Fairness and Respect?” *Philosophy and Public Affairs* 30 (2001): 72-87, p. 79.

[53] Hinton, “Must Egalitarians Choose Between Fairness and Respect?” p. 80.

[54] Samuel Scheffler, “What is Egalitarianism?” *Philosophy and Public Affairs* 31 (2003): 5-39, p. 33. See also Samuel Scheffler, “Choice, Circumstance and the Value of Equality,” *Politics, Philosophy and Economics* 4 (2005): 5-28.

[55] For a similar view see Gregory Vlastos, “Justice and Equality,” in *Social Justice*, ed. Richard B. Brandt (Englewood Cliffs, NJ: Prentice-Hall, 1962).

[56] Scheffler seems to implicitly concede this when venturing the distinctly ivory tower ‘libertarian assumption objection’; see Carl Knight, “The Metaphysical Case for Luck Egalitarianism,” *Social Theory and Practice* 32 (2006): 173-89, pp. 176-7.

[57] For countervailing considerations on the relationship between luck egalitarianism and conservatism see Fleurbaey 2001.

[58] Further assessment can be found in Knight, *Luck Egalitarianism*, ch. 4.

[59] Westen, “The Empty Idea of Equality”; *Speaking of Equality*.

[60] Cf. Peters, “Equality Revisited,” p. 1224 n 30; Kent Greenawalt, “‘Prescriptive Equality’: Two Steps Forward,” *Harvard Law Review* 110 (1997): 1265-90, p. 1268.

[61] Dennis McKerlie, “Equality,” *Ethics* 106 (1996): 274-96, p. 274.