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A DEFENSE OF BASIC EQUALITY

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1 Introduction

1.1 Knowersville[1]

In the far away city-state of Knowersville, philosophers, psychometricians and entrepreneurs have collaborated to achieve something unprecedented. Philosophers have identified the one true property that makes an individual morally considerable. They called the property "P". Perhaps P is rationality, or agency, or subjectivity, or virtue, or something else. The arguments of the philosophers were so good, that no one had any doubt that they identified the one true basis of moral status. Psychometricians, on their part, achieved another unprecedented victory: they devised a perfectly reliable and valid test for P. Talented entrepreneurs then created an affordable version of this test: they devised a cheap chip that can be painlessly attached to the body, and give a quick and accurate indication of the extent to which the carrier possesses P.

Following these incredible discoveries, the people of Knowersville gathered to discuss how they should shape their society in light of the new developments. Up to this point the people of Knowersville had treated all citizens equals. All citizens had equal political rights; their interests counted for the same; they had a democracy that reflected the principle of one vote for one person. Now a number of philosophers propose to change this system in favor of a more rational one.

[1] The inspiration comes from (Feinberg 1970).

Professor Rush, for example, said in the gathering: "People of Knowersville! We lived in darkness for centuries. Our ignorance of what makes an individual truly worthy and dignified, our inability to measure such a property accurately, and the costs of measurement stood in our way of making accurate moral judgments. Instead of giving each person her due, we went for a crude system of equal rights and equal consideration of interests; but today we can finally move forward. We can measure P accurately and affordably. Let us all be measured! If we turn out to be equal in P, then by all means, let us continue with our current system. But if we turn out to be unequal in P, then let us make all the changes required by reason. Instead of equal rights, let the rights of citizens reflect the extent to which they have P. Of two people, if we can save only one person from pain or death, save the one whose P is higher. Let she with a higher P have voting power greater than those whose P is lower. If violating the rights of some is necessary for the implementation of an indispensable government program, let us, when possible, violate the rights of those with the least P. Enough of equality of opportunity: the claim of those with high P for opportunity is much stronger. The best schools to the highest in P! The best hospitals! The best roads! The best response from state-officials! Let us, at last, be guided by reason!"[2]

The people of Knowersville were somewhat puzzled by the blunt proposal. Professor Rush's argument seemed cogent, though. No one denied that P is indeed the basis of moral status; the Knowersvillians realized that P can now be measured accurately; they understood that measurement will not be financially burdensome. But something did not feel quite right. Some individuals (whom Professor Rush called "equality dogmatists") said that if Professor Rush's proposal is accepted, they will emigrate. But even they were struggling to argue in favor of their position. They couldn't quite point out where Professor Rush is wrong.

[2] A description of a society similar to this can be found in Lloyd Thomas, quoted in (Nathan, 2015, 14).

Eventually, Professor Rush's proposal got accepted and implemented. The egalitarian dogmatists emigrated (to the satisfaction of all), and the happy citizens of Knowersville decided to open the gates of the city-state to whomever wanted to immigrate.

Assume you live in a liberal society, and you care deeply about justice. For you, living in a just society is an important consideration when deciding where to live. Will you move to Knowersville? Do you find the principles the Knowersvillians now live by to be an improvement, in terms of justice, over the principles that are supposed to guide your society? If, on the other hand, you believe that Professor Rush got something wrong, what exactly is it?

1.2 Does Modern Moral and Political Philosophy Rest on a Mistake?

This essay is about basic equality, the idea that human beings are one another's equals. According to basic equality, human beings are equal in "moral status" and deserve to be treated as the equals that they are. They have equal moral rights, deserve equal consideration of their interests, and equal concern and respect. My aim is to respond to a simple yet powerful objection to basic equality, the one put forward by Professor Rush. We all know that human beings are different. They are not equally intelligent, equally polite or equally talented in playing the piano. In fact, there seems to be no interesting respect in which human beings are equal. So why should we treat them as equals? Why not treat them as the unequals that they really are? My aim in what follows is to answer these questions.

Most central figures in modern moral and political philosophy endorse some version of basic equality.[3] The French and American revolutions, democracy, abolitionism, universal human rights,

[3] For example:

nondiscrimination, egalitarianism, socialism, the civil rights movement, feminism, gay rights, disability rights — all of these movements and ideas owe something to the idea of basic equality.

Relatedly, basic equality has been described as a rare point of agreement among contemporary philosophers who otherwise agree on very little. It has been claimed that all modern political philosophies worthy of discussion agree on basic equality, that we reached an "egalitarian plateau" in political philosophy, that when it comes to basic equality, we are all egalitarians.[4] A number of examples can help illustrate these claims.

Think, for example, of the divide between utilitarians and Kantians that has so deeply shaped philosophical debates in the last two hundred years. While the two camps differ on many key points, their adherents typically subscribed to some version of basic equality. On the utilitarian front, Mill famously quoted Bentham as saying that "each is to count for one and none for more

Hobbes: "Nature hath made men so equal in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he." (*Leviathan*, Ch. 13. (Hobbes 1968, 183)).

Locke: "A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection." (*Second Treatise on Government*, Ch. 2. (Locke 2003, 101)).

Goethe: "In society all are equal. No society can be founded upon anything but the concept of equality, never upon that of freedom. It is equality that I want to find in society. … The society which I enter is therefore bound to tell me: You shall be equal with all the rest of us." (Quoted in (Spiegelberg 1944, 101)).

Mill: "Society between equals can only exist on the understanding that the interests of all are to be regarded equally." (Utilitarianism, Ch. 3, in Mill and Bentham 1987, 304).

Hegel: "For while human beings are certainly equal, they are equal only as persons, that is, in relation to the source of their possessions. Accordingly, everyone ought to have property. If we therefore wish to speak of equality, it is this equality which we should consider." (*Elements of the Philosophy of Right*, §49. (Hegel 1991, 80-1)).

[4] (Dworkin 1983, 24-5, Kymlicka 1990, 3-4, Waldron 2008, 27).

than one," (with the uncomfortable wrinkle that other sentient beings are also included).[5] In the 20th century, Hare argued that utilitarianism offers the best interpretation of the principle that equal interests deserve equal consideration.[6] And Harsanyi developed utilitarianism in a direction that more explicitly incorporates basic equality as foundational.[7] There are also exceptions among utilitarians. The notorious Hastings Rashdall developed a utilitarian theory that explicitly rejects basic equality. But he is in the minority, and perhaps the fact that he has been so thoroughly forgotten is partly due to his rejection of basic equality, so inconsistent with the deep convictions of other utilitarianism.

On Kant's side, central to his theory is the equality of the citizens of the Kingdom of Final Ends (which includes all human beings and other rational beings). Perhaps more than any other philosophical figure, Kant is responsible for the key ways in which we tend today to interpret the ethical prescriptions of basic equality, like the demand for universalization, and justifiability, not treating others merely as means to our ends, the centrality of agency and autonomy to the equal standing of persons, and the centrality of respect to the understanding of basic equality. These egalitarian themes have been developed by contemporary Kantians like Rawls,[8] Scanlon,[9] Korsgaard,[10] and Darwall.[11]

Another, perhaps more surprising, divide that basic equality cuts across is the egalitarian/non-egalitarian divide in distributive justice, and more generally the right/left divide in politics. People

[5] (Utilitarianism, Ch. 5, in Mill and Bentham 1987, 336).

[6] (Hare 1963).

[7] (Harsanyi 1982).

[8] (Rawls 1971).

[9] (Scanlon 1998).

[10] (Korsgaard 1996).

[11] (Darwall 1977, Darwall 2006).

on both sides pledge their allegiance to basic equality. Perhaps the most surprising case is philosophers who do not endorse equality as a distributive ideal yet endorse basic equality. Think of Hobbes, Locke and Kant in this context. All endorse some version of basic equality, and none endorses distributive egalitarianism. In contemporary times, Nozick's libertarianism, while not explicitly affirming basic equality, is perfectly consistent with it.[12] Margaret Thatcher, no friend of distributive equality, affirmed her belief in the equal "importance" of all human beings in her speech to the Conservative Party in October 1975:

> Some Socialists seem to believe that people should be numbers in a State computer. We believe they should be individuals. We are all unequal. No one, thank heavens, is like anyone else, however much the Socialists may pretend otherwise. We believe that everyone has the right to be unequal but to us every human being is equally important.[13]

If Thatcher endorses some form of basic equality, the idea can hardly be accused of being tied to leftism or distributive egalitarianism.

Even central advocates of identity-politics, care ethics, and difference-politics embrace prescriptive equality.[14]

Of course, not everybody subscribes to basic equality. Nietzsche is perhaps the central figure that comes to mind. Plato and Aristotle count here too, although some read them through egalitarian lens.[15] I have mentioned Hastings Rashdall.[16] And a number of contemporary analytic

[12] (Nozick 1974).

[13] The speech can be found in the Margaret Thatcher Foundation website: <http://www.margaretthatcher.org/document/102777> emphasis mine.

[14] For example, (Gilligan 1993 [1982], 62-4, Young 1990, 14).

[15] See (Charvet 2013)

[16] (Rashdall 1907).

political philosophers follow suit.[17] The latter are the currently-iconoclastic minority, and their positions are provocative exactly because basic equality is otherwise so central to the common understanding of what it is we are trying to do these days in ethics and politics. A belief foundational to modern moral and political philosophy is at stakes.

1.3 Descriptive Equality, Axiological Equality, Prescriptive Equality

"Basic equality" is ambiguous among three claims. One is that human beings are, in some empirical or non-evaluative sense, equal. Their equality is, so to speak, part of the furniture of the world.[18] I shall refer to this claim as descriptive equality. For example, to say that all human beings are equally endowed with reason and conscience is to make a claim of descriptive equality.[19] A second claim is that human beings are equally valuable, or worthy, or precious, or dignified. Call this axiological equality. A third claim is that human beings should be treated as equals, that they deserve an equal consideration of their interests, that they have equal moral rights, or equal "moral status". Call this claim prescriptive equality.

[17] (Angier 2015, Friday 2004, Husi 2017, Kekes 1988, Lloyd Thomas 1979, McMahan 2008, Pojman 1992, Steinhoff 2015).

[18] An expression I borrow in this context from (Brennan 2002, 110).

[19] Things are somewhat more complicated. For the purposes of this essay, we will have to complicate the definition to include claims like "all human beings are equally virtuous" as claims of descriptive equality, but this is clearly an evaluative claim. The precise definition of descriptive equality is: equality in whatever property is thought to ground moral status, whether evaluative or not.

Of the three claims, I believe that only prescriptive equality is of real importance to moral and political philosophy.[20] Descriptive equality and axiological equality matter only to the extent that they are needed for the defense of prescriptive equality. This is important because in what follows, I will argue that prescriptive equality is defensible independently of descriptive equality and axiological equality, so the question of whether these two claims are true is less urgent than philosophers have hitherto tended to believe. Even though I will not defend two of the three claims that traditionally are included in the idea of basic equality, I take myself to be defending basic equality in defending prescriptive equality, because I think I defend the one claim that is really central to moral and political philosophy.

This strategy puts me in a minority position. Most philosophers writing on basic equality either accept all three claims as true, or believe that none is. They believe the three claims rise and fall together. Part of the contribution of this current essay is to show that this is not so.

1.4 Moral Status

I have occasionally said that prescriptive equality affirms that all human beings are equal in moral status. But what is moral status? Here is how I understand the term.

Human beings (and other beings) have interests. There are things they need and things they want. There are things that are good for them and things that are bad for them. According to various moral and political theories, these interests sometimes give rise to moral reasons or valid moral

[20] Coons and Brennan would disagree. They think that prescriptive equality is a false and unattractive doctrine, but that descriptive equality is of itself an important insight worth defending. See (Coons and Brennan 1999).

claims or moral duties. For example, I have an interest in not having unnecessary pain; that gives you a moral reason (it imposes a duty on you) not to cause me unnecessary pain.

Perhaps this is all we need in our moral discourse, in which case, our interests would directly give rise to moral claims. But someone might claim that something is missing. Assume I have an interest in avoiding pain and my dog has an equal interest in avoiding pain. A certain pain, say, is equally unpleasant to both of us, and has equal effect on our future. It is at least possible that my interest in avoiding this pain, even if equal to that of my dog, gives rise to a stronger reason to alleviate it, or a stronger claim on others to alleviate it. In other words, it is at least possible that for an equal pain my dog and I have, the duty others have to relieve my pain is more stringent than the duty they have to relieve my dog's pain. This possibility cannot be explained by differences in our interests, for our interests, in this case, are equal. Yet my pain might matter more from the moral point of view. To explain this possibility, we would have to appeal to something like "moral status", which would convey the thought that despite having equal interests, some individuals can be the source of stronger moral claims than others. If X has a higher moral status than Y, X's interests matter more, morally, than the equal interests of Y.

Further, attending to moral reasons can have all kinds of consequences. It might be the case that relieving my pain would not be the action contributing most to general utility. Perhaps it requires too many resources that could be used elsewhere to create more welfare. Still, it could be the case that my moral claims trump considerations of general utility, at least to some extent (probably never absolutely). But how much general utility can be sacrificed in order to address my moral claims? This, one might think, is just a question about the interests in question: the stronger the interest, the more general welfare can be sacrificed to attend to it. But once more, one can think that more should be sacrificed to alleviate my pain than should be sacrificed to alleviate the equal

pain of a dog. If one believes this, one needs a term that goes beyond mere interests, and that term is moral status. If X has a higher moral status than Y, the moral claims that arise from X's interests trump more general welfare compared with the moral claims that arise from Y's interests.

We can therefore think of the "weight" (or "stringency") of a moral claim as a function of two things: the interest that gave rise to the claim, and the moral status of the individual whose interest it is. When a claim is weightier than another, then if we can attend only to one claim, we should attend the stronger claim. If a claim is weightier than another, we can sacrifice more to attend to the stronger claim. And whether a claim is weightier than another will be decided by two factors: the interests of individuals and the moral status of individuals.

Of course, the weight of one's moral claims is not the only consideration in determining what should be done. We can always also ask questions like: would this action maximize general utility? Would it pass the test of universalizability? Would it respect contracts and promises? Would it be consistent with permissible personal projects and with relations of love and care? Is attending to this interest consistent with the law? But these questions are asked in a moral space that includes moral claims individuals make on each other, claims that are generated by the interests individuals have, and these claims come in varying weights. The question of whether it would be legitimate to break the law to attend to someone's moral claim cannot be answered prior to knowing how weighty that moral claim is. And for that, we need to know not just what interest the moral claim serves, but also the moral status of the individual whose interest is under discussion. This is how I understand the role of moral status in ethical reasoning.

Not everybody accepts this picture. According to Peter Singer, interests matter, but not due to any further fact about their bearer.[21] Comparable interests matter equally simply because they are

[21] (Singer 1986)

interests and because they are equal interests. On Singer's view, it is true that generally one should save a human being and not a rat when one cannot save both, but this is because humans have a greater interest in living than rats, not because humans have a greater moral status. According to Singer, the weight of a moral claim is a direct function of the interest that gave rise to that claim. There is no room for an additional consideration of moral status. When Singer says that all animals are equal, what he really intends to say is that moral status is nonsense.[22] Singer's response to the Knowersvillians would be that there just is no property P that makes a difference to the moral weight of one's interests.[23]

I will make use of something similar to Singer's idea later.[24] But Singer's approach, as advocated by him, has certain unattractive features. First, his view is too egalitarian. I, for one, believe that the interests of human beings matter more than the equal interests of many other animals. If one can alleviate only the comparable pain of a rat or a child, I believe that one should alleviate the child's pain. I might be wrong about my moral judgment here, but it would be one thing if someone showed me I am wrong by using the concept of moral status and by claiming that humans and rats have equal moral status, and quite another when someone legislates against using the concept of moral status altogether. The former would win my respect more than the latter,

[22] Singer does not deny that every interest belongs to someone. Nor does he deny that for someone to have interests, that someone needs to have certain features, like sentience (only sentience, in fact, according to Singer). But these personal features, according to Singer, should not play any role in *weighing moral reasons*. They are merely the necessary conditions for the *existence* of interests. Once interests come into being, degrees of sentience do not play any further role in weighing the moral significance of the interests to which they give rise, and a creature with more sentience than another does not get to enjoy a stronger moral standing compared to a creature with less sentience.

[23] I think Nussbaum comes close to endorsing this general picture in (Nussbaum 2004) and (Nussbaum 2006).

[24] When I discuss vulnerabilities in §6.1.3.

because the latter builds its case on an impoverished moral language, which does not bode well with the richness of moral judgments we actually make.

In another sense, Singer's view is not egalitarian enough. One thing that equal moral status could achieve, perhaps, is a certain egalitarian check against difference in interests, so that those whose interests are weaker are not unduly neglected. For example, perhaps not all people have an equal interest in free speech (some just have nothing they want to say), yet all people should have equal claim over the use of free speech. The strength of one's claim to free speech should not simply reflect the intensity and quality of one's interest in it. Of course, sometimes differences in the intensity and quality of interests should be reflected in our reasoning, but equal moral status can serve as an egalitarian check for that: it moderates the differentiating effect of having different interests. A function that takes both moral status and interests might yield a more egalitarian weight of moral claims compared with a function that takes only interests into account. This will be the case if the individuals under consideration have equal moral status. This is what I mean when I say that Singer's view is not egalitarian enough. Singer, who wishes to use the language of equality of humans and animals,[25] and definitely other philosophers who defend the equality of humans and other animals, could use such egalitarian check on differences in interests. In other words, for someone who wishes to advocate for the moral equality of humans and other animals, it is wise to take the route that speaks in terms of equal moral status. This would yield a more satisfying equality for an equality advocate than simply ditching the concept of moral status.

There is another sense in which Singer's view seems to many not egalitarian enough. Normally functioning people have, on some accounts, a stronger interest in living than severely cognitively

[25] As is clear by the title of his paper. For other philosophers who believe that interests alone determine moral weight see: (DeGrazia 1996, Regan 1989).

disabled persons. This implies, in Singer's system, that lives of normally functioning adult human beings give rise to stronger moral claims than the lives of cognitively disabled persons. This is a result many would like to resist. But a moral language devoid of a concept of moral status would be ill-equipped to respond to such views.

In what follows, I will assume that moral status can be understood and used in moral reasoning. Without it I do not know how to state the thesis of prescriptive equality and how to ask whether it is true or not. For a reader who believes there is no such thing as moral status, the question of this essay does not even arise.

1.5 Prescriptive Equality

With the concept of moral status in mind, we can turn to define prescriptive equality. On my account of moral status, prescriptive equality means that the comparable interests of all human beings count equally: they give rise to valid claims of equal force, to reasons to actions of equal weight, to duties of equal stringency.[26] What constitutes an interest, and whether all interests or only some deserve consideration is naturally a matter of dispute. George Sher believes there is only one relevant interest in this context, the interest every person has in living her life effectively.[27] Thomas Christiano mentions interests in correcting for cognitive bias, in being at home in the world, in knowing the truth, and in being recognized as an equal.[28] Martha Nussbaum speaks of the interests each living thing has in flourishing in the form of life of the species to which

[26] (Benn 1967, Christiano 2008, 12). For an interesting contemporary elaboration of the equal consideration of equally important interests, see (Scheffler 2015).

[27] (Sher 2014).

[28] (Christiano 2008).

it belongs.[29] Dworkin speaks of the higher-order interest each person has in having a good life.[30] These are attempts to delineate the interests that give rise to moral claims. It could also be the case that all interests matter from a moral point of view (a view I find attractive, despite its difficulties).[31]

This being as it may, for those interests that should matter morally, prescriptive equality as equal moral status implies the following claims about any pair of individuals under its scope:

a) These individuals have at least some interests that give rise to moral claims.

b) Among these interests, equal interests give rise to equal moral claims (claims of equal "weight" or "stringency").

c) Where interests are not equal, prescriptive equality checks for this gap, and requires that treatment will not reflect the gap in interests in its entirety. Since the individuals are equal in moral status, their treatment should be more egalitarian than what we would get by only weighing their interests.

This is how I understand prescriptive equality, the claim that human beings have equal moral status.[32]

There are other claims one finds in the literature about what prescriptive equality requires:

a) Prescriptive equality implies that all human beings have equal rights.

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[29] (Nussbaum 2006).

[30] (Dworkin 1983, 26).

[31] I discuss this topic some more in §5.13.

[32] This way of understanding basic equality is different than the gloss early modern philosophers gave to the idea. When they discuss basic equality, they usually do so with the narrower ambition of arguing for freedom and against natural aristocracy. This is partly explained by the fact that when they wrote, monarchy was not yet abolished and neither was slavery. But the egalitarian agenda has widened since, and I believe my presentation incorporates these developments (while still having resources to explain why slavery is bad and democracy is good). If human beings are *equal*, that must mean more than that they should not be slaves and be able occasionally to vote.

b) Prescriptive equality implies that human beings deserve an egalitarian distribution of some good or goods.[33]

c) Prescriptive equality implies that differences due to brute-luck should be compensated.[34]

d) Prescriptive equality recommends democracy as the best political system.[35]

e) Prescriptive equality implies that individuals must pass a certain threshold in their capabilities.[36]

f) Prescriptive equality implies that the requirements of justice are cosmopolitan.[37]

g) Prescriptive equality explains what is wrong with wrongful discrimination.[38]

h) Prescriptive equality implies that human beings should relate to each other as equals.[39]

I think some of these claims are true, and follow from my definition of prescriptive equality. About those that do not follow from the definition, those that are true would require some adjustment to my definition, which I will not attempt here. To keep discussion manageable and relatively neutral, I opted for the definition just presented. What should be clear is that prescriptive equality has some substantive content, and it matters whether it is true or not. It is not an empty moral idea.[40]

[33] Dworkin and Rawls build distributive equality in a sophisticated way from basic equality. Some say that distributive equality is a self-standing ideal, not related to basic equality, others are not so convinced. The latter say that if there is a distributive ideal of equality, it has to be based on basic equality (Charvet 2013, 16-7).

[34] (Dworkin 2000).

[35] (Christiano 2008).

[36] (Nussbaum 2006).

[37] (Beitz 1983).

[38] (Hellman 2008).

[39] (Anderson 1999, Scheffler 2015).

[40] *Contra* Westen (Westen 1982).

1.6 The Extension of Prescriptive Equality

Is prescriptive equality true of anyone? Whom is it true of? We can consider various possible answers:

A Humanistic Extension: all human beings are equal in moral status, and no other animal is equal to any human being in moral status.

A Restricted Extension: a proper subset of human beings is equal in moral status, and no other animal is equal to any human being in moral status.

An Extended Extension: all human beings are equal in moral status, and some animals are equal to human beings in moral status.

A Restricted/Extended Extension: Many, but not all, human beings are equal in moral status, and some nonhuman animals are equal to them in moral status.

An Aristocratic Extension: Few human beings are equal in moral status, and no one else is their equal.

The Super-Refined Chain of Moral Being: No two individuals are equal in moral status.

All views except the last two can be described as some version of prescriptive equality. The humanistic extension is historically the most influential view, at least as far as our political documents attest (think of The Declaration of Independence,[41] the French Declaration of the Rights

[41] "We hold these truths to be self-evident, that all men are created equal…"

of Man and of the Citizen,[42] and The Universal Declaration of Human Rights[43]). But this extension is also the one most difficult to defend. This takes us right into the heart of the problem of this essay, to which I now turn.

1.7 Skepticism and Correlationism

Skepticism about prescriptive equality arises from a certain attractive picture regarding moral status. On this picture, the moral status of individuals is grounded in certain properties such as reason, autonomy, consciousness, virtue, and the like.[44] We can call such property or properties, whatever they may be, the basis of moral status. It is then said or implied that the moral status of individuals varies with the extent to which they possess the basis of moral status. In other words, moral status is correlated with the basis of moral status. If this is true, to have equal moral status individuals must possess the basis of moral status to an equal degree. I call this picture of prescriptive equality Correlationism.[45]

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[42] Article 1: "Men are born and remain free and equal in rights."

[43] Preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world… "

Article 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood."

[44] "… [M]any of us believe that this business of respecting one another as equals might have to be referred, in turn, to the idea of something important in or about human nature. That is a possibility reckoned by with by all who engage in modern philosophical thinking about equality." (Waldron 2002, 9). Similarly, Christiano notes that, "What is due a person is grounded in some quality of the person that gives the person a certain status or merit. … There is a kind of bond, a bond of fittingness, between the features of the person and the treatment justice requires, which is characterized as what the person is due" (Christiano 2008, 20). And Lloyd Thomas, in similar spirit: "There must be some property (or properties) of a 'factual' kind upon which the possession of 'human worth' supervenes" (Lloyd Thomas 1979, 540).

[45] To appreciate how prevalent Correlationism is, consider the following quotes:

- "Such views, I claim, require an account of why individuals have the same status; if it turns out that we have different levels of the status-conferring property, then they will entail that our status varies correspondingly" (Nathan 2011, 213).
- "If the source of moral value varies in degrees among its possessors, then moral value must likewise vary" (Friday 2004, 66).
- "The general strategy of my criticism is by now clear: Given any value-endowing property P that persons have, it makes sense to ask whether having more of that property would be even better for one. If P constitutes human worth, then it would seem that the more of P that a person has, the better he or she is. The valuable trait is transferred to the person in a way that endows him or her with value to the exact proportion of the quantity of the trait" (Pojman 1991, 485).
- "If a given empirical property is the basis of a person's moral standing, and if all persons are moral equals, then it seems that all persons must possess that property to the same degree" (Sher 2015, 17).
- "If the fact that I possess greater rational agency capacity than a normal cat or a chimp justifies my claim to have a more status and accompanying moral entitlements greater than they possess, by the same token it would seem that the fact that I possess less rational agency capacity than many other humans would seem to show that I am less morally considerable than they are" (Arneson 2015, 36).
- "If one person has a greater capacity for rationality and self-determination than another, and one thinks that advancing well-being or the opportunities for well-being are a fitting response to the rationality and self-determination of persons, one might think that it is fitting to give more weight to the well-being of the more rational than the well-being of the less rational" (Christiano 2015, 68).
- "But what is critical to the definition of human equality is that each person has the same natural *capacity* (in reason and will)…" (Coons and Brennan 1999b, xx).
- "Were all human beings not equal in their common humanity, did they not all equally have the dignity of persons, they would not all be entitled to equalities of condition" (Adler 1981, 165).
- "Grounding an egalitarian theory of individual entitlements must involve identifying a morally relevant property that is possessed equally by all of the individuals covered by that theory. The morally relevant property of those individuals serves to justify the *equality* of the entitlements specified by the theory" (Carter 2013, 22).
- "It is evident, I think, that almost any argument for the acknowledgment of any rights as human rights starts with the factual assertion that there are certain respects in which all persons are alike or equal" (Wasserstrom 1964, 633).
- "Certain factual characteristics are thought to be relevant to the rights people ought to enjoy. If it is conceded that possession of the characteristic is the ground for the right in the case of one person, then reason requires that possession of that characteristic is similarly a ground for the right in the case of any other person who possesses it. Thus, if all people possess the characteristic, we are committed to the conclusion that this right is owed equally to all people. But are there any characteristics that are possessed by all people, and that plausibly may serve as grounds for certain equal rights?" (Lloyd Thomas 1979, 539).

This picture quickly leads to skepticism about prescriptive equality in its humanistic extension. Using the terminology just introduced, we can interpret "descriptive equality" as the claim that all human beings have the basis of moral status (whatever it may be) to an equal degree. It seems that for any suggested basis of moral status, human beings do not possess it equally: human beings are not equally rational, equally autonomous, equally conscious, or equally virtuous. Descriptive equality is false. Therefore, prescriptive equality is false, or at least more likely than not to be false.

This line of reasoning is in no way new,[46] but a growing number of philosophers have been impressed with it. Some of them are happy to say that prescriptive equality is false.[47] Others are not happy to learn that prescriptive equality is false but cannot resist the force of the skeptical argument.[48] A third group of philosophers do not reject prescriptive equality but reject its humanistic extension. Peter Singer, as mentioned, concludes that prescriptive equality is a free-standing moral principle, applying to anything it can intelligibly apply. This leads him to the conclusion that all sentient animals, rather than all humans, are equal.[49] Similarly, Jeff McMahan suggests that we either give up on prescriptive equality or understand it as applying to what I called above a restricted/extended extension.[50]

Philosophers who defend prescriptive equality in its humanistic extension tend to be Correlationists too, and they have come up with a number of tactics that are intended to show that

[46] For example, in 1907, Hastings Rashdall, a utilitarian who denied the assumption of prescriptive equality shared by earlier utilitarians, wrote: "Everyone is to count equally, so long as he is equal" (Rashdall 1907, I 240).

[47] Examples include (Angier 2015, Friday 2004, Husi 2017, Lloyd Thomas 1979, Pojman 1992, Steinhoff 2015).

[48] (Arneson 2015, 52), and to some extent (McMahan 2008).

[49] (Singer 1986). But as I said, I think Singer is not really entitled to the equality claim that he makes, as he ditches the idea of moral status.

[50] (McMahan 2008).

despite appearances to the contrary, descriptive equality is true, or that we should act as if it is. These tactics include the claim that empirical inequalities are undeserved and should not count toward one's moral status,[51] that it is disrespectful to count them,[52] or that they simply cannot be measured and so cannot, for any practical matter, count.[53] Other proposals are that the basis of moral status is a binary property,[54] a range property,[55] a relational property,[56] or a non-empirical property[57]. I shall discuss some of these Correlationist tactics for defending prescriptive equality in Chapters 2 and 3. The skeptic, of course, denies that any of these tactics work, and the skeptic seems to me to be correct in most of these cases. I say more about that in Chapter 2.

There are really two skeptical arguments against prescriptive equality that need addressing. According to the first argument, if descriptive equality is false, that fact itself is a complete reason to believe prescriptive equality is false (or more likely than not to be false). The argument has the following shape:

1) If descriptive equality is false, prescriptive equality is false (or more likely than not to be false).
2) Descriptive equality is false.[58]

   Therefore:

3) prescriptive equality is false (or more likely than not to be false).

[51] (Spiegelberg 1944).

[52] (Carter 2011).

[53] (Christiano 2008).

[54] (Sher 2015).

[55] (Rawls 1971, 504-12, Waldron 2017).

[56] (Delon 2014).

[57] For a secular version, see (Sher 2015). For theistic variants, see (Pojman 1991, 497, Waldron 2002).

[58] Why this premise is attractive will be discussed in much detail in Chapter 2.

According to a different skeptical argument, if descriptive equality is false, one prominent reason to believe in prescriptive equality does not obtain. This turns into a skeptical argument only with the further premise that no other justification of prescriptive equality could be found. This argument has the following structure:

1) If descriptive equality is false, one possible reason to believe in prescriptive equality is refuted.
2) Nothing besides descriptive equality could make prescriptive equality true (or: it is not likely that anything besides descriptive equality could make prescriptive equality true).
3) Descriptive equality is false.

   Therefore:

4) Prescriptive equality is false (or more likely than not to be false).

Correlationism supports both skeptical arguments. If Correlationism is correct, the basis of moral status is correlated with moral status, and if human beings differ in the basis of moral status, they are likely to differ in moral status. Seen in this way, the falsity of descriptive equality is itself a reason to believe that human beings are unequal in moral status. This is how Correlationism supports the first argument. Further, if Correlationism is correct, the only possible justification of basic equality could be found in the equal possession of the basis of moral status. If human beings have the basis of moral status unequally, there is no reason to believe that they are equal in moral status, and we get the second skeptical argument.

On the other hand, if moral status is not correlated with the basis of moral status (that is, if Correlationism is false), the fact that human beings are unequal in the basis of moral status would

not itself show that they are unequal in moral status, and the first skeptical argument would fail. Second, if moral status and the basis of moral status are not correlated, we should be less inclined to believe that the only possible justification of basic equality resides in the fact that human beings have equally the basis of moral status. The second skeptical argument would thus fail as well.

Importantly, if Correlationism is false, the premises in the skeptical arguments that will be refuted are not those premises that assert that descriptive equality is false. Thus, the skeptical arguments against prescriptive equality would fail even if descriptive equality were in fact false. If Correlationism is false, prescriptive equality is consistent with descriptive inequality.

So one promising strategy for responding to the skeptic would be to show that Correlationism is false. This is the strategy I take in this essay. In Chapter 4, I discuss what is initially attractive about Correlationism, and I present my argument against Correlationism.

1.8 The Respect View

After presenting my argument against Correlationism in Chapter 4, I develop a non-Correlationist account of what makes prescriptive equality true in Chapters 5 and 6. My account builds on an analysis of the attitude of respect. In Chapter 5, I argue that a certain kind of respect (similar to what Darwall calls "recognition respect")[59] has egalitarian implications: to respect two individuals, we should not treat the interests of one as less important than the equal interests of the other. This implies that if we have to respect a group of individuals, we should give equal weight to the equal interests of all of them. Importantly, I argue that descriptive equality is not a condition

[59] (Darwall 1977).

for deserving respect of this kind. To deserve respect (and so equal treatment) individuals do not need to be descriptively equal. I call this the respect view of prescriptive equality.

Then, in Chapter 6, I argue that all human beings deserve respect, or deserve to be treated in accordance with norms of respect. Together with the argument of Chapter 5, this establishes prescriptive equality with a humanistic extension. In Chapter 6, I also touch on the issue of nonhuman moral status, and the problem partiality poses to prescriptive equality.

1.9 Quick Chapter Outline

In Chapter 2, I survey Correlationist attempts to defend prescriptive equality, and show why they fail. I also mention the few non-Correlationist attempts to defend prescriptive equality, and I say why they are not satisfying either. This chapter contains much of the "literature review" of this dissertation, and in this sense continues this introductory chapter.

In Chapter 3 I develop what is, to my mind, the most promising way of defending prescriptive equality on Correlationist grounds. I develop an idea first proposed by Rawls, that the basis of moral status is a range property.

While I think that the Correlationist defense of prescriptive equality I offer in Chapter 3 works as far as Correlationist defenses of prescriptive equality do, I ultimately reject Correlationism. In Chapter 4, I say why.

Then, in Chapters 5 and 6, I develop my respect view of prescriptive equality.

1.10 Methodological Remarks

This aspires to be a work in analytic philosophy. From the analytic toolbox, I make quite an extensive use of thought experiments. There is a debate about whether thought experiments are a reliable tool for advancing our thinking. I belong to the optimistic camp, but the arguments of the other camp are weighty, so let me say how I see the role of thought experiments in my dialectic. This is a quick exposition of how I view philosophy, and what philosophical moves one can expect to find in what follows.

First, I am influenced by David Enoch's approach to philosophical argumentation, according to which what we often do when arguing for a philosophical position is not to offer a knockdown argument for it (as if we could); rather, we try to show that the view we defend has more "plausibility points" than its rivals.[60] Seen in this light, thought experiments should appear less objectionable. One way for a theory to gain plausibility points is to be able to offer an account of our existing judgments and intuitions, and thought experiments give us access to such intuitions. That does not give them any final say, but it gives them some say.

Second, from Socrates I take the following approach to philosophical reasoning. I often argue in the following manner: "If you believe this, you should believe that." Thought experiments can be used in this context to show the interlocutor what she actually already believes. It is always open to an interlocutor to retract her commitment to her initial set of beliefs and to deny the validity of her intuitive responses, but there is a cognitive cost to that, and it would be ad hoc for her to do so just to refute an argument presented to her. In any case, I prefer this approach to an approach which starts from general thin moral truths with which few would disagree, and then attempt to deduce something substantial from them. I am not optimistic about grand deductive models in ethics, and as I argue below, one problem with existing treatments of basic equality is exactly their

[60] (Enoch 2011).

attempts to deduce prescriptive equality from a very general norm of rationality. My approach, if you like, is bottom-up rather than top-down. Thought experiments help gather some data to work our way up.

Third, the epistemic credentials of what I have to offer are often of the form: "X is a confused way of thinking about certain issues. Y is superior to X in thinking about the same issues without the X confusion. This is a reason for you to believe in Y".[61] I think thought experiments can be useful in pointing out possible confusions to be avoided.

Fourth, I think that the most promising way of defending basic equality is to offer a rich description of what those committed to prescriptive equality are actually committed to. I argue below that once we carry out this task in some detail, a certain picture of prescriptive equality emerges which is immune to the central skeptical worries against prescriptive equality. Thought experiments can help advocates of prescriptive equality realize what it is they already believe.[62]

I occasionally help myself to the supposition that the reader and I share certain judgments and intuitions, and I try to show the reader what can be constructed from these shared assumptions. This means that I am under no illusion that what I propose here can convince everyone. The reader Friedrich Nietzsche does not share any of the commitments I appeal to, and I cannot imagine him seeing any progress in what is offered here. As is typically the case, one will benefit most from a conversation if she agrees to join it in *medias res*.

[61] See (Taylor 1997).

[62] See the helpful introduction of (Sangiovanni 2017).

2 (Mostly) Correlationist Defenses of Basic Equality

2.1 Six Desiderata

Correlationism is the view that moral status is correlated with the basis of moral status, whatever it may be. Assuming that one wishes to defend prescriptive equality with a humanistic extension, what would a satisfying Correlationist defense look like? In the literature, six desiderata emerge:

1) **Significance (or Relevance):** The basis of moral status should be a morally significant property, or a property that is relevant for the determination of moral status.
2) **Double-Equality:** Individuals that are equal in their moral status should not merely possess the basis of moral status but should also possess it to an equal degree.
3) [1]
4) **This-Worldliness:** The basis of moral status should not be metaphysically controversial or sectarian, and there should be some valid way to determine to what extent the basis of moral status is possessed by individuals who possess it.
5) **Comprehensiveness:** For individuals to be equal in moral status, they need to possess equally all of their morally significant properties. They should not possess unequally any property that is relevant to their moral status. When we say that human beings have

[1] I borrow this terminology from (Coons and Brennan 1999a).

the basis of moral status equally, we should understand this to mean that they possess equally all the properties relevant for the determination of moral status.

6) **Universality:** The basis of moral status should be possessed equally by all human beings.
7) **Uniqueness:** Only human beings should possess equally the basis of moral status.

Let me say more in defense of each requirement (from a Correlationist perspective). Significance is important because the basis of moral status is doing heavy duty (in a Correlationist account of moral status): it explains why the interests of human beings matter the way they do. It better be a significant property, or else we would have no explanation why the property in question carries such great normative implications.[2] Intuitively, Significance would exclude properties like "having an X chromosome" or "being shorter than ten feet tall" as bases of moral status. More controversially, Significance excludes the property of being human as a basis of moral status.[3]

Double-Equality is the idea that merely possessing a basis of moral status is not enough. The extent to which one possesses it matters as well. The Correlationist says the following in defense of this requirement: No one denies that there is a sense of "equality" that can be attributed to two things merely in virtue of them having some property, even in unequal degrees. This is the kind of equality Coons and Brennan call "single equality". A person of average outcome and Bill Gates, for example, both have money, so they are equal in merely having money. But it would be no consolation to the egalitarian to be told that since they both have money, there is an important

[2] For the importance of significance, see (Brennan 2002, 107, Christiano 2008, 21, Coons and Brennan 1999a, 40-43, 46-51, Cupit 2000, 109, Nathan 2015, 9-10) has a helpful discussion of the two kinds of relevance. What I call significance Waldron calls comprehensiveness, a term I reserve for a different desideratum. See (Waldron 2017, 141-2).

[3] See §2.2.1.

sense in which they are financially equal. They are clearly financially unequal, because they have money in different amounts. If individuals merely have the basis of moral status, but have it to different degrees, single equality is not strong enough to ground a substantive claim of moral equality. Note that Double-Equality implies that even if all human beings were "endowed with reason and conscience" (in the words of the Universal Declaration of Human Rights), that would not be enough to ground their prescriptive equality.

This-Worldliness is the idea that we should not offend too much against our empiricist or naturalist or scientific sensibilities.[4] This is probably true for any belief one forms, but it has special value in political discourse: we should, as much as possible, not be partial to sectarian metaphysics or particular religious outlooks.[5] For this reason, bases of equality such as having a soul, noumenal will, or a Buddha nature, should be excluded from discussion, as well as bases of equality such as being loved equally by God, being God's children, or being created in the image of God. While there is no problem that people believe in prescriptive equality because of one of these outlooks, philosophers cannot help themselves to such outlooks.

The demand for Comprehensiveness comes from the thought that a judgment of moral status is an all-things-considered judgment.[6] If more than one property is relevant for the determination of moral status, and individuals have some but not all of these properties equally, why should we attend to the properties these individuals have equally and ignore those they have unequally? Clearly, to be equal in moral status, individuals need to have all of their Significant properties to an equal degree. Comprehensiveness can be most easily satisfied if there is only one property that

[4] (Carter 2011).

[5] See (Nussbaum 2015). See (Pojman 1991, Waldron 2002) for the opposing view.

[6] (Carter 2011, Cupit 2000, Husi 2017).

is relevant for moral status, a property that also happens to be a property human beings have equally. But if there is more than one basis of moral status, the Correlationist would sensibly require Double-Equality in all of them. In other words, she will require Comprehensiveness.

Universality and Uniqueness are requirements for any Correlationist who believes in the humanistic extension of prescriptive equality (See §1.6). If all human beings are equal in moral status and only them, and if their moral status is correlated with the basis of their moral status (as the Correlationist believes) then all of them should have the basis of moral status to an equal degree, and no creature besides them should have it to that same degree.

These are the six desiderata for a satisfying Correlationist account of prescriptive equality with a humanistic extension.

2.2 Existing Correlationist Accounts

Let us go over some suggested bases of moral status and see how they fare as grounds of prescriptive equality, given the six desiderata just mentioned.

2.2.1 Being Human

In the Meno, Socrates says that bees do not differ in being bees but differ from one another only in other respects.[7] One can follow his lead and say that "being human" is a property that all humans, and only them, have, and have equally. If being human is an appropriate basis of moral status, it would justify prescriptive equality with a humanistic extension.

[7] *Meno* 72b (Plato 1981, 60).

Many philosophers, however, believe that "being human" fails the Significance test.[8] The species homo-sapiens, like all other species, developed through a blind process of evolution, and unless we say something about why belonging to this species rather than another is morally significant, the Significance test would not be passed. Usually, once we try say something about what makes the members of the homo-sapiens species morally important, we do not appeal simply to species membership, but to properties humans typically have (say, rationality, or agency, or virtue). But these properties vary among humans.

Some philosophers even think that taking "being human" as a Significant property is "speciesist", a term that is supposed to carry a similar negative force as "racist" or "sexist".[9] These philosophers point to similarities between the speciesist position and the racist/sexist: both take membership in a group, rather than some more substantial individual property, to be relevant to moral status. Further, both take membership in their own groups as morally relevant, and so their theories are clearly self-serving, which threatens their credentials. And both find their views intuitive, natural and commonsensical.[10]

A different concern about the property of "being human" comes from certain counterexamples. Imagine we met an intelligent, conscious, agential alien. Wouldn't we think that alien is our equal? Many would say that we would. Or imagine that a certain mutated dog has somehow advanced to the cognitive level of an adult human being — wouldn't that dog be our equal? Again, the intuitive answer (to some) is yes. This indicates that species membership is not the correct basis of moral

[8] (Cupit 2000, 108-9, Singer 1986).

[9] (Singer 1986).

[10] For a response, see (Nussbaum 2006).

status, but some other property, a property that in principle can be shared by members of other species.

There are more sophisticated ways of appealing to species membership than the speciesist way. Martha Nussbaum believes, for example, that species membership may serve to determine both moral status and the fundamental interests of individuals, what it means for them to flourish.[11] To combat the charge of wrongful speciesism, Nussbaum argues that belonging to the species homo-sapiens is not the only species-membership that matters for moral status, but rather, belonging to any species matters to moral status. She argues that all members of each species should be treated equally to each other, as they have the same moral status. Across species, however, we do not apply a norm of equality but a different nonhierarchical norm, that of incommensurability.

The skeptic is likely to push back: why should species membership ground moral status? Nussbaum mentions the awe that we feel toward various species. But this is not entirely satisfying. We feel awe at the workings of atoms, forests, planets, paintings. Species are not the unique object of awe, so more needs to be said about why in the case of species awe is related to moral status. In addition, some people have more awe of human beings than of other creatures.[12] Would they be entitled to believe human beings have a higher moral status than other animals? Within humanity,

[11] For Nussbaum's view, see (Nussbaum 2006).

[12] A good example is the Ode of Man from Sophocles's Antigone, in which many things give rise awe, but man gives rise to more awe than all:

"There is much that is strange, but nothing / that surpasses man in strangeness. / He sets sail on the frothing waters / amid the south winds of winter / tacking through the mountains / and furious chasm of the waves. / He wearies even the noblest, / of the gods, the Earth, / indestructible and untiring, / overturning her from year to year, / driving the plows this way and that with horses. / And man, pondering and plotting, / snares the light-gliding birds / and hunts the beasts of the wilderness / and the native creatures of the sea. / With guile he overpowers the beast /that roams the mountains by night as by day, / he yokes the hirsute neck of the stallion / and the undaunted bull. (and so on) (Ralph Meheim's translation).

See also Dawkins in footnote 76.

people generally have more awe of Isaac Newton than Nethanel Lipshitz, does that justify giving the former a higher moral status? Why not?

2.2.2 Theoretical Rationality

Typically, philosophers try to ground moral status in some sophisticated psychological capacity or behavioral disposition that is typical to humans. Theoretical rationality, the capacity to apply concepts, to believe, know and guide one's thinking by epistemic norms, has often been mentioned as a basis of moral status.[13] Human beings have been frequently defined as rational animals, suggesting rationality is both unique to them and essential to what they are, which would make it appropriate to serve as a basis of their moral status.[14] Relatedly, a central part of human self-image has to do with that strand of theoretical rationality that is science and technology. We, and no other animals, came to understand the universe we inhabit, discovered Pythagoras theorem, created vaccines for smallpox, and (everybody's favorite example) made it to the moon.[15] We take pride in these achievements that are grounded in theoretical rationality.

[13] Cicero: "But the most marked difference between man and beast is this: the beast, just as far as it is moved by the senses and with very little perception of past or future, adapts itself to that alone which is present at the moment; while man — because he is endowed with reason, by which he comprehends the chain of consequences, perceives the causes of things, understands the relation of cause to effect and of effect to cause, draws analogies, and connects and associates the present and the future … Above all, the search after truth and its eager pursuit are peculiar to man." (*De Officiis*, Book 1, IV., Walter Miller tr.)

Pascal: "All our dignity then consists in thought" (*Pansées*, §161).

[14] For a contemporary argument that human beings are essentially rational see (Boyle 2012).

[15] Richard Dawkins: "We have big brains. Other species are marked out by other qualities. Swifts and albatrosses are spectacularly good at flying, dogs and rhinoceroses at smelling, bats at hearing, moles, aardvarks and wombats at digging. Human beings are not good at any of those things. But we do have very big brains; we are good at thinking, remembering, calculating, imagining, speaking. Other species can communicate, but no other species has true language with open-ended grammar. No other species has literature, music, art, mathematics or science. No other species makes books, or complicated machines such

Theoretical rationality also makes possible other aspects of human life that seem significant. Through the ability to conceptualize, we can have a concept of ourselves as persisting in time. We have a rich understanding of means to ends, an essential part of our agency. We can come to conceptualize rules, and we can come to learn and be concerned with the conditions of others remote from us. Theoretical rationality thus also enables our agency and morality. The Significance of rationality is, then, relatively easy to defend.

But human beings are clearly unequal in theoretical rationality. We know that some human beings are smarter, wiser, sharper, and more knowledgeable than others. If we want to take IQ as a correlate (even if not a perfect correlate) of theoretical rationality, people certainly differ in IQ, and we have a way of roughly measuring such differences. There is no Double-Equality in theoretical rationality.

Further, some human beings might lack theoretical rationality, although the number of human beings of which this is true is probably smaller than many people believe. Even human beings with severe cognitive disability do not completely lack theoretical reason. But it seems clear that anencephalic babies lack theoretical reason for the entire duration of their lives, and that people in irreversible vegetative states will lack theoretical reason for the rest of their lives. So theoretical reason does not pass the test of Universality. It is an interesting question, which I will not take up here, whether theoretical rationality passes the test of Uniqueness, or whether other animals are theoretically rational.[16]

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as cars, computers and combine harvesters. No other species devotes substantial lengths of time to pursuits that don't contribute directly to survival or reproduction."

From: The New Statesman, January 4, 2014. <http://www.newstatesman.com/2013/12/apes-big-brains>

[16] For a helpful discussion, see the Introduction in (Hurley and Nudds 2006).

Theoretical rationality does not seem like a promising candidate for the basis of moral status if one is interested in defending prescriptive equality with a humanistic extension.

2.2.3 Agential Capacities

Freedom of the will, or autonomy, or moral responsibility. These capacities, like theoretical rationality, are an important element in the traditional humanistic account of prescriptive equality. In fact, agency and theoretical rationality have often been linked together as a single basis of moral status, a unified "reason" with theoretical and practical branches. Kant is the name most connected with this view.[17] Before Kant Pico Della Mirandola famously espoused a view that locates the dignity of man in his freedom.[18]

For some humanistic thinkers, freedom of the will in its libertarian sense is dignifying because it signifies the aspect of human beings that is beyond nature and its mechanistic laws. Freedom thus makes man something quite out of the ordinary (Pico and Kant held such view), and so deserving dignity. The idea of freedom of the will as completely outside the world has lost much of its appeal in our time. Even contemporary libertarians would refrain from describing the will as something quite like that. It offends too much against This-Worldliness.

But perhaps a naturalized version of moral agency can be an appropriate basis of moral status and pass the This-Worldliness test. I explore a version of this idea in Chapter 3. On naturalized accounts of free will, the capacity to do actions for which one is morally responsible, or the

[17] See the references in §3.2.

[18] (Pico della Mirandola 2012).

capacity to lead one's life in accordance with one's conception of the good, are the bases of moral status. The hope is that such capacities admit of a naturalized explanation.

The Significance of moral agency can be defended even for a naturalized account of agency. Most basically, the thought goes, there is dignity in a creature who can act for reasons, and specifically moral reason. I say more on that in Chapter 3.

But agency, like theoretical rationality, seems to vary among human beings. For one thing, since people vary in their theoretical rationality, they will inevitably vary in their capacity to deliberate successfully. And once people have chosen a course of action, they will differ in their ability to carry it to completion. And not all human beings are agents. Infants, arguably, are not. So are, on some views, the severely cognitively disabled. This introduces the problem of Universality. It is also debatable whether other animals can be described as agents, which introduces the problem of Uniqueness.[19]

Agential capacities, too, it seems, do not help in defending prescriptive equality.

2.2.4 Sentience and Consciousness

A major alternative to the sophisticated-psychological-capacities approach to the basis of moral status is appealing to cruder psychological capacities, like sentience, understood as the capacity to feel pain and pleasure. One attractive feature of sentience is that it includes nearly all

[19] For a denial of animal agency, see (Davidson 2001 [1982]). For an affirmation, see, for example, (Aguilar and Buckareff 2015, DeGrazia 1996, Dretske 1999).

human beings. Even people with severe cognitive disability are sentient. Even some people in coma seem to be able to feel pain.[20]

Bentham is famous for advancing sentience as the basis of moral considerability.[21] However, as we have seen, for Bentham (and Singer), the possessors of sentience do not have moral status. The interesting question is whether a more substantive Correlationist theory of moral status can be constructed on the basis of Bentham's suggestion. It would have something like the following structure: whatever interest is in question, the weight of the moral claim it gives rise to is proportional to how much the being in question is sentient.

Presented in this way, however, sentience as a basis of moral status loses much of its attractiveness. It is not a coincidence, I think, that neither Bentham nor Singer, two prominent advocates of the moral importance of sentience, did not employ a concept of moral status at all in their reasoning.[22] To the extent that there is a distinct concept of moral status, grounding it in sentience would be odd. Why tie the moral weight of all of our interests to the capacity to feel pain and pleasure? Doing so seems too reductive: it ignores much of what we actually value in human life, like our rationality and morality. It would stress the elements of our psyche in which we are passive, rather than active, and it would limit our interests to hedonistic interests.[23] In other words, it is not clear that sentience passes the Significance test.

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[20] "Some coma patients 'feel pain'", by Andy Coghlan *The New Scientist*, Oct. 7, 2008. <https://www.newscientist.com/article/dn14891-some-coma-patients-feel-pain/>

[21] "the question is not, Can they *reason*? nor, Can they talk? but, Can they *suffer*?" (footnote for Ch. XVII, Sec. IV in (Bentham 1988, 310-1f)).

[22] For this reason, "everyone to count for one and nobody for more than one" is not really an egalitarian thesis. All it says is to count mental states and ignore the identity of their bearers.

[23] For other considerations against sentience, see (Shepherd 2017)

Perhaps a more plausible view is that sentience is just one part of the basis of moral status. But then, equality in the possession of it would not be sufficient for equal moral status, and the problem of Comprehensiveness would arise.

I mentioned that sentience is very close to passing the Universality test. But what we gain in Universality, we lose in Uniqueness, as many nonhuman animals are sentient. This, of course, is exactly the point of Bentham and Singer. But for someone who believes in the humanistic extension of prescriptive equality, this is bad news.

It is interesting to ask whether sentience passes the Double-Equality test. It is sometimes said that sentience is binary: either one has it or one does not. If this is true, then all sentient beings are equally sentient. But I am not sure that sentience is binary, although here I venture beyond my safe space. If we equate sentience with sensitivity to pain, then there are medical conditions, like hyperalgesia, that change one's sensitivity to pain. Depression and Alzheimer's might do so as well. Correlation has been found between sensitivity to pain and brain structures, like the amount of gray matter in the brain, and such amounts could vary.[24]

This being as it may, it is clear that for anyone interested in a basis of moral status for prescriptive equality with anything even remotely close to a humanistic extension, sentience is too generous, so cannot serve as a basis of moral status.

[24] http://www.medscape.com/viewarticle/819556.

2.2.5 Subjectivity/Self-Narration/Sense-of-Self

People who believe nonhuman animals do not have the same rights as humans often appeal to the alleged fact that nonhuman animals do not have a sense of their own selves as enduring over time. This implies that the capacity to have a sense-of-self gives humans their moral status. It is having a subjectivity, rather than mere sentience, that matters. Human beings are not just conscious: they are conscious of who they are. Bernard Williams suggests that this should command our respect.[25] Sher agrees.[26] Somewhat similarly, MacLeod suggests that self-narration (which requires understanding myself as the central character of the ongoing story of my life) is the basis of human moral status.[27]

The proposal faces the now familiar problems of Universality and Double-Equality: individuals with autism are speculated to have diminished sense of self, and similar concerns exist regarding infants, people in permanent vegetative states, and certain conditions of schizophrenia. Even regarding normally functioning adults, it has been suggested that they differ in these properties.[28]

In fairness to Williams, he never says that we have subjectivity equally. He does not think that it is the equal possession of subjectivity that accounts for its egalitarian implications. Rather, given that each person has an inner point of view, each person is owed some measure of identification, says Williams, and of seeing that person as distinct from the external markers to which differential

[25] (Williams 1973).

[26] (Sher 2015).

[27] (Macleod unpublished).

[28] See (Carter 2011, Husi 2017).

social status tends to attach. Since social inequalities often attach to such external markers, in identifying with a person's inner point of view we press against some forms of inequality. I think Williams is onto something true here, but his argument is also quite limited in its egalitarian implications: it covers only inequalities that attach to external markers, like job titles or aristocratic family names or what one wears or how one speaks. But inequalities in moral status are not like that: according to the skeptic, they attach primarily to rationality, agency, sentience and even subjectivity itself. These are not external markers of inequality, and there is nothing in Williams's suggestion to explain why differences in these properties should be ignored.

George Sher recently argued that human subjectivity has a special structure, and that it is a property that human beings have equally.[29] Sher argues that human subjectivity is arranged around certain key "assumptions", as Sher calls them, which are shared by nearly all human beings, assumptions like "the external world exists," "the self persists over time," and "we have reasons to do certain things and refrain from others." Furthermore, Sher argues, those assumptions are true.[30] These assumptions "channel" our consciousness to the specifically human life that we live, and account for the foundational interests that we have.[31] For these reasons, our subjectivity is an appropriate basis of moral status, according to Sher. In favor of the equal possession of this property, Sher offers two claims. One is that subjectivity is a non-empirical property, and so empirical observations cannot show that we have it unequally: no psychological test could be

[29] (Sher 2014, ch. 5). For Williams, see (Williams 1973).

[30] (Sher 2014, 82).

[31] (Sher 2014, 83).

devised to show we have subjectivity unequally.[32] The other is that subjectivity is a binary, all-or-nothing property, and so all those who have it have it equally.[33]

While non-empirical, Sher's preferred basis of moral status does not necessarily offend against This-Worldliness. By non-empirical, Sher means that we cannot directly observe the subjectivity of others, and that first-personal point of view is not something that a third-personal science can directly study.[34] That we have a first-personal perspective is not controversial in the way the possession of a soul, or being created by God, is. It is non-empirical, but not out of this world. Even if one accepts such claims, however, there are problems with Sher's account.

First, if a given property cannot be measured, it is not clear how we can affirm that people have it to an equal degree: how can we show that without measuring? Second, Sher seems to believe that being non-empirical somehow implies that a property is binary or cannot be measured, but both assumptions are false. Non-empirical properties can vary. The property "good" is non-empirical, yet some things are better than others and we can sometimes know what these things are. Sometimes, a non-empirical property covaries with an empirical one, and we can definitely measure differences in the empirical property, thus having an indirect measure of the non-empirical property. I think Sher would like to say in response that it is confused to think that we could measure subjectivity, because measurement implies an objective scale on which the measured things could be placed, and this is exactly what is ruled out by the lack of third-personal access to subjectivities. But if that is the case, I am not sure what saying that human beings are equal in subjectivity amounts to. Doesn't equality require we put things on a scale and find them

[32] (Sher 2014, 80-1).

[33] (Sher 2014, 86)

[34] See also (Nagel 1974).

to be in the same location on that scale? And is it logically impossible that first-personal phenomena are correlated with third-personal phenomena (such as certain brain structure) and vary with them?

On the background of these questions, it is unclear what warrants Sher in saying that subjectivity is an all-or-nothing property. Further still, Sher characterizes human subjectivity by appealing to the assumptions around which it is organized. These assumptions include the belief in a continuous self, in an external world, in their being reasons for action, and so on. Against this background Sher makes the claim that subjectivity is an all-or-nothing matter. But once we add content to the assumptions that organize our subjectivity, it is quite easy to see how subjectivity could admit of degrees, for arguably people vary in their ability to understand these assumptions and in their degrees of belief in them.

One might want to say that the binary nature of "having a subjectivity" follows from the logic of "having". It is like having a car: either you have it or you do not. But this is not always true of "having". It is consistent with having money that some of us have more of it than others.

One might appeal to the unity or indivisibility of subjectivity, a unity in virtue of which it is more like a car than like money. But I can have a unified and indivisible pain that is greater than your unified and indivisible pain. Some indivisible things are bigger than others.

Maybe we get the all-or-nothing nature of subjectivity if we speak about "being a subjectivity" rather than "having a subjectivity"? One dog cannot be more of a dog than another dog, said Plato, so maybe no subjectivity can be more of a subjectivity than another subjectivity? But some people can be smarter than others, or bigger than others. Where does subjectivity belong? It is definitely not a natural kind, so it is not obviously analogous to dogs.

Subjectivity does not seem like a promising basis of moral status for defenders of prescriptive equality.

2.2.6 Other Capacities

The discussion so far does not exhaust the possible candidates for bases of moral status. Linguistic capacities come to mind as possible candidates. In some scholastic writings, human beings are defined not as rational beings but as speaking beings. Alternatively, Christiano locates the basis of moral status in being what he calls "an authority in the realm of value" , the unique ability rational beings have to "recognize, appreciate, engage with, harmonize with, and produce intrinsic goods".[35] Actual virtue has also been proposed as a basis of moral status.[36]

I do not wish to devote a section to each proposed property, because the worries should by now be familiar and widely applicable: human beings do not seem to have any such property to an equal degree (and indeed some such properties, like virtue, have been proposed as bases of moral status in order to refute prescriptive equality). Properties that belong to the natural world have the annoying tendency to vary. The few properties that do not seem to vary (like "being human") are of questionable significance. Some properties perhaps cannot be measured, but that means we cannot determine that we have those properties equally. Further, for those who hold a humanistic extension of prescriptive equality, there is a recurring concern about Universality: some human beings lack any suggested basis of moral status altogether. And there is a recurring concern about Uniqueness: as we learn more about the cognitive capacities and social lives of nonhuman animals,

[35] (Christiano 2008). See also (Jaworska 2007, Raz 2001).

[36] (Kekes 1988, McMahan 2008, Steinhoff 2015). All three deny or doubt prescriptive equality.

and as we take to heart that human beings are themselves animals, claims of Uniqueness are harder to sustain.

There is no simple defense of prescriptive equality (in its humanistic extension) on Correlationist grounds. But maybe there can be some tactic a Correlationist can employ in defense of prescriptive equality?

2.3 Correlationist Tactics

2.3.1 Similarities

A Correlationist might want to relax the Double-Equality requirement. She might say: "Treat similar cases equally and non-similar cases unequally". She might then say that while human beings are not equal in any of their properties, they are similar.

Strictly speaking, this would not satisfy a supporter of prescriptive equality. If we believe that human beings are equal in moral status and not just similar, then it is a mystery how being similar can ground equality.[37]

Consider: if similarity of moral status is all we wanted, maybe giving similar yet unequal votes would appropriately respond to our similar yet unequal moral status? To some adults, we will give zero votes, to others we will give one vote, and two votes to the rest. These are quite similar numbers of votes, aren't they? Brennan nicely puts it: "Of the idea of human equality, it is a salient but often overlooked aspect that it is first of all an idea of equality. No hero has fought the good fight and offered himself on what he regards as the altar of human similarity."[38]

[37] (Carter 2011, Cupit 2000, 108-9).

[38] (Brennan 2002, 106).

Moreover, the claim of human similarity seems descriptively false. Galileo wrote the following letter to his patron:

> Most Serene Grand Duke:
>
> Though the differences between man and the animals is enormous, yet one might say reasonably that it is little less than the difference among men themselves. … Such differences depend upon diverse mental abilities, and I reduce them to the difference between being or not being a philosopher; for philosophy as the proper nutrient of those who can feed upon it, does in fact distinguish that single man from the common herd in a greater or less degree of merit.[39]

One might disagree with the high regard Galileo has for philosophers, but the skeptic could agree with the gist: it is not just that human beings are not equal; it is that they are really very different. They are not similar.

There is also a tricky conceptual issue here. While claiming that all human beings have an equal degree of some property is a clear statement, the claim that human beings have the property to similar degrees is not. I take it that the claim of similarity is that the variance in the distribution of the property is relatively small. But compared to what? To whom? Differences among individuals are not absolutely big or small. I think that saying that all human beings are similar in their possession of some property is, as it stands, meaningless, unlike the claim that they are equal. This is especially true if this is a property only they have, so their variance cannot be compared to the variance in any other population.

Moving from equality to similarity does not seem to help.

[39] Quoted in (Coons and Brennan 1999, 77).

2.3.2 Single Equality

One might want to retract our commitment to Double-Equality and propose that single equality is good enough. Human beings vary greatly in rationality, one can concede to Galileo, but they are still all rational. Since they are all rational, they should all be treated as equals. Historically, and even today, this seems to be a pretty prevalent move.

I do not think a Correlationist can be satisfied with single equality, though. She believes individuals are equal in moral status only if they are equal in the basis of moral status, and single-equality is offered as an interpretation of what it is to have the basis of moral status equally. But if the Correlationist is right and moral status is correlated with its basis, then we cannot simply ignore the extent to which we have the basis of moral status.

Consider the following scenario, that was mentioned above. I have middle-class income. Bill Gates has a few billions in the bank. I decide to join the Occupy movement and protest the inequalities in our society, taking myself as a member of the "ninety-nine percent". Now imagine that a representative of the "one percent" comes up with an ingenuous reply to our protests. Rather than saying that economic inequalities are justified (because of trickling down effects, Wilt Chamberlain stories, the American spirit, and so on) he tells us that there is actually no inequality between the ninety-nine percent and the one percent. After all, while the one percent and the ninety-nine percent differ in the amount of money they have, they both have money. "We are all equal in having money" says the representative. This response would be astonishing, crazy. Why should financial equality require different standard of equality than moral equality?

2.3.3 Thresholds

In response to the observation that there is no property that human beings have equally, a Correlationist can appeal to a threshold in the basis of moral status and claim that all those who pass this threshold are equal in moral status. A threshold, among other things, can guarantee Uniqueness, for if the threshold is high enough, only human beings pass it. The downside is that some human beings probably fall below the threshold, which introduces the problem of Universality. In fact, a threshold introduces a trade-off between Universality and Uniqueness: the higher the threshold, the more likely it is that only humans pass it, but the less humans pass it. A threshold also introduces a trade-off between Significance and Universality: the higher the threshold, the more morally significant it is to pass it, but fewer humans pass it.

Thresholds might help in solving the problem of Comprehensiveness. While it is unlikely that many human beings are equal in all morally significant properties (if there is more than one), it is possible that at least a large number of humans pass a given threshold in each relevant property. In other words, many human beings are sufficiently rational, sufficiently agential, sufficiently conscious, and so on.

The central concern about thresholds, though, is Double-Equality. What happens above the threshold? Individuals continue to vary above the threshold, and the question arises: why ignore such variations? If this question cannot be answered, the mere introduction of a threshold does not help solve the problem of Double-Equality. Passing a threshold is just single-equality, and that, we have seen, is not enough.

A Correlationist might want to say that those who pass the threshold possess equally the property of "passing this specified threshold", and they possess it equally as a matter of Double-Equality, because passing a threshold is an all-or-nothing matter. But one wonders why the

property of passing a threshold in a given property is more important than that given property itself.

Further, passing a threshold is not an all-or-nothing matter. Think of the concept "tall". Let us say there is some threshold for this property. Let us say it is somewhere around 190cm. We can define "tall" as anyone above 190cm. One could still meaningfully say that while both Johnny (195cm) and Veronique (207cm) are tall, Veronique is taller than Johnny. They are not equally tall. This is so even though there is a threshold of tallness, and "tall" is predicated only on those who cross this threshold. The mere existence of a threshold does not equalize the values of those who pass it.[40]

Another concern about thresholds is their arbitrariness. Imposing a threshold on otherwise continuous properties seems completely ad-hoc. Why think there is a significant threshold at all? What is so special about this rather than that threshold? Why one threshold and not a number of thresholds, creating a few moral "castes" within humanity?

One last problem concerns a threshold that is sharp and well-defined. In such case, there can be people who are slightly below the threshold while some others will be slightly above it. These two individuals will be quite similar in their possession of the basis of moral status, but they will be treated as having radically different moral statuses: one will be an equal, the other not. That does not seem right.[41]

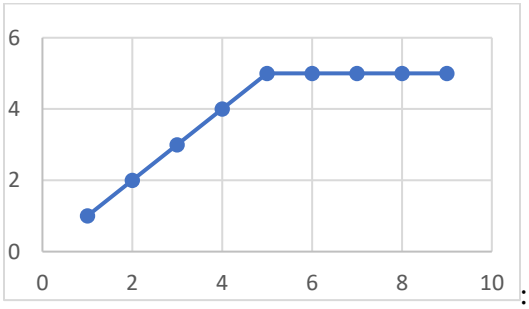
There is a more sophisticated way of thinking about thresholds, however. Imagine that there is some property A that is not the basis of moral status, but there is another property, B, that is the basis of moral status, and B is a function of A. A, we can assume, is a continuous, scalar property.

[40] If the "tall" example does not work for you, see if predicates like "wise" or "interesting" do a better job at driving this point home.

[41] (Arneson 1999, McMahan 2008).

B, however, is a many-to-one function over A: for more than one value of A, B gets one and the same value. More specifically, we could imagine that above a certain threshold in A, while the values of A vary, the values of B do not.[42] In such case, Double-Equality in B is satisfied above a certain threshold in A, because the values of B do not vary above that threshold. B is an example of what Rawls calls a range property.[43] If B is a range property and is the basis of moral status, individuals who pass a certain threshold in A will be each other moral equals (in virtue of having B equally). This strategy is quite promising, and I will develop a version of it in Chapter 3. But notice that much needs arguing for. Why believe that the basis of moral status is a range property? Why think the basis of moral status is a function of some other property, and that it is this kind of function? Where would we non-arbitrarily locate the relevant threshold? And what should be done with all the human beings below the threshold? Without further argument, the mere possibility that the basis of moral status is a range property does not help much.

[42] B would relate to A in something like the following manner:



:

[43] (Rawls 1971, 504-12). A number of philosophers follow Rawls in grounding prescriptive equality in a range property, see (Carter 2011, Darwall 2006, 75f, Waldron 2002, 75-81, 2017).

2.3.4 Binary properties

As we have seen, one Correlationist strategy for dealing with the problem of Double Equality is to identify a binary (all-or-nothing) property as the basis of moral status. If two individuals have an all-or-nothing property, they have it equally, or so the thought goes. Sher, for example, argues that subjectivity is an all-or-nothing property.

The most immediate problem is that most (if not all) properties that are traditionally taken as bases of moral status do not naturally presents themselves as binary.[44] Even in the case of properties like subjectivity, it is questionable whether it is all-or-nothing.[45] Even the potential for these capacities does not seem to be an all-or-nothing matter.[46]

We can of course simply choose a binary scale by which to measure any property we like. This procedure is often innocuous and exemplifies the inevitable fact that all claims of equality and inequality are made in comparison to some scale that it is up for us to choose or construct.[47] But if we choose a binary scale in order to yield the judgment that human beings are equal, that is ad hoc.[48] What would stop a skeptic from choosing a nonbinary scale and deny human equality?

In the most systematic attempt I know of to answer this question, Jeremy Waldron says that in some contexts "We are struck by the similarity even in the midst of their differences. And it's our being (justifiably) struck by the similarity, together with our refusal to be distracted by the differences, which constitutes the use of a range property. [which Waldron understands as a binary

[44] See (Arneson 1999, 119-21).

[45] (Arneson 2015, 42-4, Carter 2011, 544-5).

[46] See (McMahan 2008).

[47] For a helpful discussion, see (Westen 1990, 33-8).

[48] (Charvet 2013, 41).

property, N.L.]"[49] But how the fact that we are justified in attending to similarities makes it unjustified to attend to differences? Why are the differences in the basis of moral status seen as distractions?[50] It is true we might refuse to look at differences, but what stops a skeptic to not refuse? I do not think Waldron answers these thorny questions.

Two more worries. If a binary property grounds our moral status, those who lack the binary property lack this moral status completely. If you are not all, you are nothing: that is what having an all-or-nothing basis of moral status amounts to. While I think it is true that nonhuman animals have lower moral status than human beings, they do not simply lack moral status.[51]

A different worry is that a binary property is not a property that individuals can have equally.[52] This is because there is no sense in which individuals can have a binary property unequally. The idea here is somewhat similar to Wittgenstein's claim that pain is not something we know, since we cannot make sense of having pain and not know that we do. I am conflicted about the force of this particular worry, so I will just flag it here.

2.3.5 Infinite Value

It is sometimes said that each human being has infinite value. Imagine that Joe has infinite value and so does Jane, but Jane has a few extra good-making features that Joe lacks. Despite the

[49] (Waldron 2017, 134).

[50] Waldron's discussion of scintillation between the range and the scalar properties is helpful, but does not, as far as I can tell, explain what is morally wrong with attending to scalar properties at *any* time. See Ch. 4 of (Waldron 2017).

[51] For a systematic development of this objection, see (Knapp 2007). See also (McMahan 2008, 95).

[52] See (Coons and Brennan 1999b, 10-11, 110, Cupit 2000, 109). Bernard Williams probably has something similar in mind when he says: "Now, to this it might be objected that being men is not a respect in which men can strictly speaking be said to be *equal*.", (Williams 1973, 230). Westen attributes to Aristotle the view that equality cannot be predicated on binary properties. See (Westen 1990, 16). See also Westen's reference to Elizabeth Wolgast, who holds a similar view. Westen himself disagrees.

difference in good-making properties between Jane and Joe, Jane does not have a higher value than Joe, because their value is infinite. Their infinite value would have, so to speak, equal cardinality, despite Jane having extra good-making features that Joe lacks. If each human being has infinite value, human beings are equal in value.

However, it strikes me as hyperbolic to say that human beings have infinite value. It is a little like saying that we will love someone forever. We are, after all, finite beings, and our good-making properties are finite as well, both in number and degree. Infinity is quite a lot of value to have.

Most defenses of the infinite value of human beings come from religious sources, and are common among religious bioethicists in arguments against euthanasia, for example.[53] From a religious framework, claims of infinite value can make sense, for the existence of a being of infinite value (God) is presupposed, and it is presumably in the power of such being to confer infinite value on His creation. But clearly, this would not pass the This-Worldliness test.

I know of one attempt within secular analytic philosophy to defend the infinite worth of human beings. Within the course of a short ten-pages paper, Robert Hartman offers no less than four proofs (!) for the infinite value of each human being.[54] I shall leave these proofs for the sympathetic reader to assess.

2.3.6 Incomparable Value

When we are measured and compared, we turn out to be unequal. But there is a strand in our humanistic tradition according to which our dignity lies exactly in the fact that we cannot be

[53] See quotes and references in (Kuhse and Singer 1985)

[54] (Hartman 1964).

compared, that there is no measure for man, that each person is a "world unto himself". According to Kant, things that have dignity cannot be replaced, and there is no price for them. This suggests the non-comparability of human beings. Being incomparable has the sound of being equal.

The main problem with this proposal is that incomparable values do not imply equal value. In fact, since equality itself implies a comparison, incomparability denies equality.[55] Geoffrey Cupit, a contemporary proponent of incomparability as an account of equality, is aware of this. He offers an ingenuous way of arriving at equality from incomparability. He begins by observing that we sometimes legitimately compare human beings and act in accordance with such comparisons, often resulting in legitimate unequal treatment. Such comparisons are often legitimate, Cupit says, because people are indeed different. But if this were the only way in which we treated people, that would express the view that people's worth can be compared. By treating persons equally despite their known differences, we express the thought that there is more to people's worth than that which can be compared. Equal treatment in the face of unequal capacities is justified as a gesture toward incomparability: "We have no choice but to treat people as both unequal and equal, and by this equivocation to express their incomparability."[56]

But Cupit's ingenuous proposal runs into a problem in the following kind of case. Imagine that we lived in a world in which we were, as a matter of fact, equal in all of our morally significant properties. We decide, based on this fact, to treat all human beings as equals. If we follow Cupit, we should worry at this point that people will take this to mean that their worth is comparable: we compared them and found them to be equal. If we then wished to express the incomparability of people's worth, we would have, following Cupit, to introduce an equivocation, that is, to treat

[55] And see Cupit (2000, 115) for further criticism.

[56] (Cupit 2000, 120)

people unequally! We would have to do that as a gesture to their incomparability. But wouldn't it be strange and artificial to introduce unequal treatment for a group of people who are equal, just for the sake of incomparability? Analogously, wouldn't equal treatment of people who are unequal be a strange and artificial way to convey the same point?

2.3.7 Non-Empirical Properties

A Correlationist might want to relax the demand for This-Worldliness. She might appeal to some property unknown to us but known (say) to God, and that we all have equally.[57] She might appeal to a non-theistic metaphysical outlook as well, perhaps the idea that we have all been each other's mothers in some previous incarnation, or that we all equally have Buddha natures (both, I am told, are affirmed in Tibetan Buddhism).

One issue that is raised by these proposals is whether they have any place at all in a philosophical inquiry, not to mention in a political decision-making process in pluralist and liberal societies. Another issue is whether we can make sense of some of these claims. For example, if God creates everything and begets nothing, how is it that human beings, and they alone, are his children? A third issue is the extent to which religious traditions really affirm these claims. At least as far as the Jewish tradition goes, the idea that souls can come in degrees is not unfamiliar, nor the idea that being created in the image of God comes in degrees. A fourth issue has to do with the egalitarian implications of some of these beliefs. Take the claim that God loves all human beings equally. Does it follow that all human beings have equal moral status? Is being loved, even by God, a good basis of moral status? And why would God love all humans equally? Isn't it because

[57] (Pojman 1991).

there is something equally lovable about us? And if that is the case, what is it? And if His equal love to us has nothing to do with us but more with His loving nature, why is His loving nature egalitarian? Is it just a brute fact about His love, or is there a deeper ethical explanation for it? And what would the deeper ethical explanation be?

I shall not take up these questions here, although I do not think philosophers should shy away from taking them up. I raise them to illustrate some initial difficulties that would be encountered by any serious development of a theistic or religious account of prescriptive equality.

2.3.8 Ignorance, Unmeasurable Properties, Opacity

One might want to say that we should treat people as having equal moral status, because, while their basis of moral status is comparable, we cannot measure it, and so we are ignorant as to the exact distribution of the basis of moral status in society. If we cannot measure a property, we should assume people have it equally.[58] If measurement is impossible, the thought goes, the most justifiable belief for us to work with is the belief that human beings have the relevant property equally, a little like the way in which, on some subjectivist accounts of probability, the lack of reason to believe that some event is more likely to happen than another is a reason to assign equal probabilities to the two events.

There is another way of understanding this proposal. If we know that Isabel and Ahab have the basis of moral status to different degrees, but we do not know whether Isabel has more of the basis of moral status than Ahab or vice versa, we do not have a reason to choose a policy that prefers Isabel to Ahab or Ahab to Isabel. In such a case, we should opt for a policy that treats Isabel and

[58] (Christiano 2008, ch. 1, and especially p. 17 for the measurement argument).

Ahab as equals. This is our situation in relation to humanity at large: we know that human beings do not have the basis of moral status equally, whatever it may be. But we also do not know who has how much, and so cannot defend any particular inegalitarian policy. For this reason, we should opt for an egalitarian policy.

I do not think this is a promising move, for a number of reasons. First, the case of Knowersville with which I started stipulates our ignorance away, and yet a supporter of prescriptive equality would want to say that the people of Knowersville deserve to be treated as equals.

Second, epistemologically speaking, it is false that if we do not know who has more of a property, we should believe they have it equally. Let us say I have been informed (correctly) that Cohen and Smith are not of the same height. Either Cohen is taller than Smith or Smith is taller than Cohen. I do not know Cohen and Smith, but I know this fact about them. It is then arranged for me to see them, and I notice that indeed one is taller than the other, but they were not introduced to me yet, so I do not which is Cohen and which is Smith. So I do not know whether the one that is taller is Cohen or Smith, and I clearly see that one person in front of me is taller than the other. I have no more reason to affirm that "Cohen is taller than Smith" than "Smith is taller than Cohen." Yet it would be crazy to infer that they are equally tall. Something similar is happening when thinking about the basis of moral status. We have general theoretical reasons to believe that people are unequal in the basis of moral status, whatever it may be. The fact that we cannot identify how the basis of moral status is distributed does not license the belief that human beings have the basis of moral status equally.

Let us say I am told (correctly) that either Cohen has more of the basis of moral status than Smith or Smith has more of the basis of moral status then Cohen. So I know I should either choose an inegalitarian policy that prefers Cohen, or an inegalitarian policy that prefers Smith, but I do

not know which. In such case, one might say, I should opt for an egalitarian policy. But this is questionable. My position is like that of Buridan's Ass: given that I know that Cohen and Smith differ in the basis of moral status, from a Correlationist point of view the two inegalitarian policies are equally attractive. So instead of opting for an egalitarian policy, I can toss a coin to choose among the two inegalitarian policies, or simply pick any inegalitarian policy I like.[59]

The reason tossing a coin or picking an inegalitarian policy seem objectionable here is not that they are irrational, but that we believe human beings are equal, and so that there is something ethically objectionable about not opting for the egalitarian policy. But this is the assumption we need to justify. Ignorance of differences does not single out prescriptive equality as a superior policy.

A different "ignorance" proposal is given by Ian Carter. According to Carter, we owe human beings what he calls "opacity respect". Opacity respect implies that we should not measure the basis of moral status, and should not act on such measurements if they have been performed.[60] The reason, Carter says, is that respect to persons requires we treat them with opacity, that we do not intrude them with measurements.

Fair enough. But all that has been said so far applies here as well: morally required ignorance is just ignorance motivated by moral reasons. Such ignorance does not license treating human beings as equals: it is consistent with opacity respect, for example, that we draw a lottery among competing inegalitarian proposals. No intrusive measurements would be involved in that.

Ignorance or inability to measure, even when supported by moral reasons, would not yield the desired equality.

[59] (Ullmann-Margalit and Morgenbesser 1977).

[60] (Carter 2011).

2.3.9 Group Equality

Despairing of the possibility of finding a property that all individual human beings have equally, a Correlationist might want to take a step back, and consider why we are interested in prescriptive equality to begin with. Historically, prescriptive equality was introduced to resist feudal and monarchic political systems, to resist slavery, to eliminate discrimination and oppression against groups like blacks, women, gays and Jews. If all we want is a theoretical principle to answer the aristocrat, the racist, the sexist, the anti-Semitic and the homophobic, all we need is to point to a morally significant property that groups have to an equal degree, as measured, for example, by the average and variance of the basis of moral status in each group. There is something initially attractive about this suggestion. False generalizations about groups do fuel racism and sexism. Part of fighting such evils involves correcting these false beliefs, and one might propose that this is all we need to do when defending prescriptive equality. But I do not think we should choose this route.

First, even if the strategy works with racial, sexual, ethnic and religious groups, it will not work for all disadvantaged groups in our society. The differences between the able and the cognitively disabled are real and touch on some suggested bases of moral status. So is the difference between adults and infants.[61] Second, while the differences between social groups are rarely as dramatic as the racist believes, there is an open empirical question as to whether they exist to some extent.[62] Fighting racism should ideally not be contingent on the results of these empirical inquiries.

[61] See (Singer 1986).

[62] The infamous case here is The Bell Curve debate in the 90s. See (Herrnstein and Murray 1994) and (Jacoby and Glauberman 1995).

There is another problem. If groups are equal because of the equal possession of a certain morally significant property, then possessing a property equally matters for equal moral status. But if it matters in the case of groups, it should matter also in the case of individuals. They too are equal only if they have equally some morally significant property. There is nothing special about groups such that Correlationism applies only to them. What justifies, then, ignoring the distribution of such properties among individuals? We are back to square one.

2.4 Non-Correlationist Defenses of Prescriptive Equality

As we have just seen, it is hard to defend prescriptive equality on Correlationist grounds. It is hard to find a significant property that all human beings have, and have to an equal degree. At this point, the reader might wonder whether a non-Correlationist defense of prescriptive equality is called for. And indeed, in the second part of this dissertation, I shall propose one such defense. For now, let me note that existing non-Correlationist attempts to defend prescriptive equality are not satisfying.

We have already seen Cupit's non-Correlationist proposal, that prescriptive equality can be inferred from incomparability of worth rather than from equality of worth. I said above why I think his approach is not likely to succeed.

A different approach would say that the idea that we should treat human beings as equals does not require justification at all. According to Singer, the idea that equal interests require equal

consideration is a "free standing" moral principle, requiring no empirical correlates.[63] Or one can believe, together with the Founding Founders, that the idea that human beings are created equal should be taken as self-evident,[64] what Plantinga calls a properly basic belief. Dworkin seems to hold such a view when he says: "The principle [of prescriptive equality] is too fundamental, I think, to admit of any defense in the usual form."[65]

This, however, is not a very satisfying theory of prescriptive equality. Proponents of this strategy will probably agree. They would acknowledge that their view might be frustrating to their readers, but they will say that in asking for a non-frustrating defense of prescriptive equality, one is asking for too much, or one is asking for an explanation where there isn't any. If prescriptive equality is indeed properly basic, it would be wrongheaded to look for justifications for it.

Still, I do not think that prescriptive equality is properly basic. We do, as part of our ethical reasoning, justify the different moral status of human beings and other animals based on properties human beings have and other animals lack, or human beings have to a greater degree. Such justifications make sense to us.

It would be strange if there would be a self-evident truth that human beings are equal. Why should we suppose that human beings, a natural kind, can figure at all in self-evident truths? In saying that the equality of human beings is self-evident, one might be saying that we know a priori that "being human" is itself the basis of moral status, but as we have seen above, not only is this

[63] (Singer 1986).

[64] Contemporary philosopher who comes close to this view is (Feinberg 1973, 93-4), and more explicitly Brian Barry: "I do not know of any way of providing a justification for the premise of fundamental equality: its status is that of an axiom. I will point out, however, that it is very widely accepted, at least in theory, and attempts to provide a rationale for unequal treatment at least pay lip service to the obligation to square it with the premise of fundamental equality. Moreover, it seems to me that there is a good reason for this in that it is very hard to imagine any remotely plausible basis for rejecting the premise." (Barry 1997, 46).

[65] (Dworkin 1983, 31).

not evident, it is possibly false. Singer's proposal is more promising, because his view is not limited to human beings. But exactly for that reason it cannot be offered as a defense of prescriptive equality in its more traditional, humanistic, form.

Moreover, that a proposition is an axiom or self-evident does not mean that it admits of no justification. In a given axiomatic system, we begin with certain axioms which we do not defend in that system. This does not mean those axioms could not be defended in some other axiomatic systems, systems in which they do not have the status of axioms. In fact, anything that we can prove from axioms alone in an axiomatic system is a self-evident truth. For example, in some simple axiomatic system we prove rather than assume that "p → p". So it does not follow from a proposition being self-evident that it is unprovable. Analogously, even if prescriptive equality is self-evident, and serves as an axiom in some ethical systems, that does not mean that we should not try and defend it from an ethical outlook that does not yet presuppose it as an axiom.

A different non-Correlationist strategy would argue that prescriptive equality is implied by the moral point of view.[66] The idea is that if this could be shown, then while arguing for the validity of the moral point of view might be hard, it is not the job of a supporter of prescriptive equality. A proponent of prescriptive equality can help themselves to the moral point of view. If they can show that that point of view vindicates prescriptive equality, they have completed their defense. The ethical problem of prescriptive equality has shifted to metaethics, to the question of the validity or authority or existence of the moral point of view.

I do not think this is very promising. A Correlationist, I suspect, would say that the idea of treating equal cases equally and unequal cases unequally is also implied by the moral point of

[66] For example, (Wilson 1971).

view.[67] And it is exactly for this reason that human beings, who are unequal in the basis of moral status are not equal in moral status. Second, as Kai Nielsen pointed out, what are often taken to be the most basic components of the moral point of view, namely, prescriptivity, universalizability, and overridingness, are consistent with a moral outlook that rejects prescriptive equality, as long as that outlook is careful to speak about properties and types of human beings, rather than particular human beings.[68]

One traditional way of occupying the moral of point of view is to occupy the position of an omniscient impartial spectator. But oh dear if we did! That spectator would know exactly what our differences are and might quite reasonably come to the conclusion that we are not each other's equals. Seeing oneself "from the outside", as one among many, detached from one's point of view and projects and egoism, still does not guarantee that what one would see is equals. Moral discourse has been preoccupied with the problem of egoism, and prescriptive equality has often been presented as a corrective for egoism. But prescriptive equality is not just a thesis against egoism. It is the thesis that all human beings are equal. A distanced, scientific, uninvolved perspective could come to the conclusion that human beings are unequal in the basis of moral status and so in moral status.

Another possible non-Correlationist strategy is minimalism. Martha Nussbaum suggests that when prescriptive equality is proposed as a principle for political institutions, it should be proposed on thin or "minimalist" grounds, so as to be as nonsectarian in its metaphysical or religious grounding as possible.[69] Prescriptive equality is a good working hypothesis for a liberal pluralist

[67] More on that in Chapter 4.

[68] (Nielsen 1985, 17-8).

[69] (Nussbaum 2015).

society, she says, and one that might garner overlapping consensus among reasonable adults. Individuals and groups are free to come up with their own explanation of why prescriptive equality is true, or with none at all, as long as they agree to it as a reasonable guiding principle for society. Another minimalist tack would say something like the following: "Look, maybe people are equal and maybe they are not. It is not worth our time and resources to try and measure persons' exact abilities, and there are all kinds of moral dangers associated with such measurements (like mistakes, intrusiveness, abusiveness, over-interpretation of results, creation of self-fulfilling prophecies, and the like). We should therefore opt for a system of equal rights: it is simple, parsimonious, and sufficiently just. It is a satisfying and relatively clear working political hypothesis for finite creatures like us."[70]

I have nothing in principle against such moves. In fact, if everything else fails, they should probably be our fallback approaches. But I object to thinking in advance that these are our only available reasons for believing in prescriptive equality. People who are not treated as equals feel like they have been wronged, and wronged in a deep way. The depth of the injury that is involved in treating someone as inferior is not captured in such minimalist accounts. Nussbaum argues convincingly that going deeper into a defense of prescriptive equality might not respect pluralism of views in a liberal society, and that therefore there is an advantage to a minimalist account. The "deeper" explanations, she thinks, should be left to various metaphysical outlooks, outside of the political conversation. But this, as far as I can tell, does not mean that secular humanists should not do their best to find a deep grounding for prescriptive equality. They are also a group in society with a comprehensive outlook. What can their comprehensive outlook tell them about prescriptive equality? Philosophers of a secular bent should take the time to think hard on the possibility of a

[70] I thank Dan Brudney for alerting me to this possibility.

non-minimalist defense of prescriptive equality. This level of deep theorizing is consistent with political liberalism, and it is important in its own right.

This was a long and detailed discussion, but I wanted to generate a thorough sense of despair. Correlationism seems like an initially plausible view of moral status; but it seems ill equipped to defend prescriptive quality, especially in its humanistic extension. There simply is no morally significant property that all human beings have equally. There are a number of moves a Correlationist defense of prescriptive equality can try, but they face serious concerns. It is hard to avoid the conclusion that Correlationism leads to skepticism about prescriptive equality, and that there is not much that can be done from a Correlationist perspective to defend prescriptive equality. Before turning to my own case against Correlationism, let us give it one last chance.

3 Looking (Once More) for a Range Property

3.1 Introduction

In §2.3.3, I introduced Rawls's idea of a range property: a property that is a function of some other properties, and that does not vary within a certain range (above a certain threshold) of the properties it takes as arguments. If the basis of moral status is a range property, then it could support prescriptive equality from a Correlationist framework. Range properties, are, I believe, the most promising route for a Correlationist who wishes to defend prescriptive equality. But many questions need answering: how can we show that the basis of moral status is a range property? Where would we non-arbitrarily locate the threshold above which values do not vary? What should we do with the human beings who are outside the range?

In this chapter, I show one way in which these questions can be answered. In §3.2, I develop what I call a two-tier approach for the defense of prescriptive equality. This approach is intended to address human beings who are outside the "range". In §3.3, I propose a basis of moral status that has already been mentioned above—moral agency[1]—and say more to motivate the thought that it is an attractive basis of moral status for a Correlationist account. Then, in §3.4, I argue that moral agency is a range property. In §3.5, and §3.6, I take stock and reply to some objections. As far as Correlationist defenses of prescriptive equality goes, I believe that the account I propose in this chapter works. I do not end up endorsing this account, however, because I end up rejecting

[1] See §2.2.3.

Correlationism altogether (in Chapters 4-6). That said, I think there is much to be said for the account proposed in the current chapter. If my critique of Correlationism fails, this would be my go-to account.

3.2 A Two-Tier Approach

In constructing a two-tier approach to prescriptive equality, one starts by identifying a significant property that some human beings have equally (and establish that there is no other property relevant to moral status that they have unequally). This establishes equal moral status for these human beings. This is the first tier. Then, in the second tier, one identifies moral reasons to include other human beings (but, presumably, not other animals) within the scope of equal moral status. This established equal moral status to all human beings.

One way of making sense of this two-tier approach is by distinguishing two reasons for which moral status can be predicated of an individual. Some individuals have the moral status that they do for constitutive reasons (having the basis of moral status to a certain degree). Others have the moral status they do because it has been ascribed to or conferred on them.[2] When an individual has moral status for constitutive reasons, the tests of Significance, Double-Equality, This-Worldliness and Comprehensives apply. But these constitutive reasons do not exhaust the possible grounds for having a certain moral status. There might be moral reasons to extend equal moral status beyond those individuals who have it equally for constitutive reasons.

[2] I borrow the distinction from (Wittwer 2015, 82).

This strategy is familiar from the contractarian literature.[3] In contractarian theories, only those who can consent to a hypothetical contract can be said to be parties to it. But this does not mean that no other individuals can be protected by the social contract and protected to an equal degree. For example, it is open to the contractors to build into the contract equal protection of children, cognitively disabled people, and people in permanent vegetative states (who, presumably, cannot sign the contract).[4] And on some contractarian views, like Scanlon's, it would be impermissible for them not to do so. Something of this spirit is motivating the two-tier approach to defending prescriptive equality.

One does not have to be a contractarian to believe there are reasons for extending equal moral status beyond those who have it for constitutive reasons. Let us say we have identified a group of people who have the basis of moral status equally. Call them "Persons". Persons, in other words, have equal moral status for constitutive reasons. We can then think of a number of moral reasons to extend Persons' equal moral status to other human beings.

For example, perhaps one who has the potential of being a Person has the moral status of the Person one has the potential to become. This idea has some intuitive appeal. To the extent that it can be defended, one moral reason to ascribe equal moral status beyond the group of Persons can be identified.[5] Alternatively (or additionally), one can claim that those whose actual future or actual past involves being a Person have the moral status of Persons.[6] In other words, anyone who is numerically identical to a Person has that Person's moral status.

[3] (Scanlon 1998, 183-188).

[4] See (Nussbaum 2006, 16-17) for the "by whom" and "for whom" distinction in contractarianism.

[5] For the problems raised by the idea of potentiality, see (McMahan 2008).

[6] Following leads from (Harman 1999, Vallentyne 2005).

A different strategy is to appeal to the misfortune, for some human beings, in not being a Person. There is a moral reason to rectify misfortunes when we can. If someone is not a Person and that is a misfortune for her, there are two options morality can recommend. One is to help the human in question to become a Person. This might involve certain medical interventions, for example. But we cannot always do that and maybe have good reasons not to do that. But we can always do something about the lower moral status of the human being in question. Since not having the moral status of a Person would be part of the misfortune in not being a Person, we can prevent this misfortune by ascribing the moral status of Persons to those to whom not being a Person is a misfortune. Who those are would depend on the correct theory of misfortune.[7]

A fourth strategy for extending equal moral status to human beings who are not Persons would be to appeal to their relations to Persons. Even without contractarian assumptions, it could be plausibly argued that one does not treat Persons as equals if one does not treat their family members and close friends as equals, including non-Person family members and non-Person close friends. If the interests of my cognitively disabled mother receive less consideration compared to your cognitively able mother, some of my interests are not given equal consideration as yours.[8]

Each of these four reasons illustrate a certain aspect of a possible two-tier approach, a certain extension of the moral status of Persons beyond Persons. Perhaps not all of these reasons are valid, definitely all of them require more conceptual clarification, and perhaps other reasons could be proposed in addition them. The important point is that on a two-tier approach, the scope of prescriptive equality would be the union of those who have the basis of moral status to an equal degree and those to whom there are moral reasons to extend the moral status of the former. In other

[7] Not an easy topic. See (McMahan 1996, Vallentyne 2005).

[8] See also the suggestions in (Kittay 2005, McMahan 1996, 34-5). There is another possibility here, that one's moral status directly supervenes on relational properties, see (Delon 2014).

words, we are Correlationist in the first tier, and go beyond Correlationism in the second tier. Since we abide by Correlationist norms in the first tier, I would call such a two-tier approach a Correlationist approach.

There are several advantages to a two-tier approach. By starting with a proper subset of humanity, the likelihood of finding a morally significant property that all the members of this set have equally increases. We can focus, in the first tier, on a property we genuinely believe to be morally significant, a "high" or relatively sophisticated psychological capacity (say), rather than go for a watered-down property the only virtue of which is that it covers a larger number of human beings. The pressure to achieve Universality is postponed to the second tier. In so doing, the likelihood that we will identify as a basis of moral status a property that is unique to humans and truly significant increases. But with the advantages, come concerns. Let me briefly address some of them.

Stephen Darwall objects to the very idea of ascribing moral status.[9] He worries that if we are granted the authority to ascribe moral status, we would also be granted the authority to refuse to ascribe it to individuals, or to ascribe it away of individuals. Moral status should not be up to us in this way, says Darwall. However, the idea behind a two-tier approach is not that the ascription of equal moral status is up to us, like some voluntary gift that Persons bestow on non-Persons. Rather, the four mentioned reasons attempt to identify moral reasons for the extension of equal moral status beyond those individuals who have it for constitutive reasons. It is morally wrong not to ascribe equal moral status when there is a moral reason to do so, and this is not up to us.

[9] "Equal dignity is nothing anyone can bestow, so neither is it anything any person or group can remove through disrespect." (Darwall 2006, 144).

A different worry is that the idea of ascribing moral status is inconsistent with the idea that moral status should reflect the inherent value of a being. It is sometimes said that a being with moral status is a self-originating source of valid moral claim and that it has inherent worth. If moral status is ascribed to one, one's moral status is at best derivative. A two-tier strategy seems to distinguish between first-class and second-class members of the moral community, and in effect defeats the equality it is meant to secure.

However, when we look at the four moral reasons mentioned above, only the fourth appeals to relation to other human beings. The first three are about the individual herself: her potential, her numerical identity (over time), her misfortune. While these reasons appeal to conditions different from the ones in which a non-Person finds herself, the moral reasons in question directly involve her. Even the fourth reason could perhaps be saved from this criticism if we say the following: to be a self-originating source of valid moral claims just is to have moral status, regardless of how one got the moral status one now has. There is no contradiction in saying that individuals have the moral status that they do for a reason that is located outside themselves, but that, once they have this moral status, its possession alone gives rise to valid moral claims.

What about the human being who was born without the potential to become a Person, and will never be numerically identical to a Person, and for whom it is not a misfortune not to be a Persons, and who was neglected by all her relatives? Of course, on some views, there cannot be such a person. If to be a Person is the norm for human beings, and if deviating from the norm is a misfortune, then there would be a misfortune for this human being to be born to this conditions. If one does not accept such claims, then perhaps this child will not be the equal of other human beings, and the scope of prescriptive equality would have to be qualified to some extent. It would

still be an achievement of a theory to defend the equal moral status of nearly all human beings. Such theory will make progress toward Universality.

More needs to be said, but I hope the reader has a sense of the resources supporters of a two-tier approach have for responding to these criticisms. I will leave the second tier to one side at this point and focus in the remainder of the chapter on the first tier, for without it, no second tier could get off the ground. It is futile to discuss the prospects of the second tier if one is skeptical about the possibility of vindicating the first tier of the theory.

And one should be skeptical about the first tier. If the mysterious group of Persons is supposed to represent any large enough number of human beings, one will again probably find that they have the basis of moral status to unequal degrees. Addressing this concern will occupy me in the rest of the chapter.

To keep the idea of a two-tier approach general, I have so far used the term Persons without saying who I think Persons are and what basis of moral status I believe they have equally. But now I want to argue for a more specific version of a two-tier theory. In this specific version, I propose a basis of moral status which I call "moral agency" and argue that all normally functioning adult human beings have it equally. This makes them equal in moral status for constitutive reasons, and establishes the first tier of this defense of prescriptive equality.

If we can show that all normally functioning adult human beings are equal in moral status for constitutive reasons, we have made some progress toward defending prescriptive equality. It is a large group of individuals, cutting across distinctions of gender, race and class. Further, arguably, nearly all human beings are potentially, or will be, or were, normally functioning adult human beings. This helps with laying the foundation for the second tier of the theory. Further, it is arguably a misfortune for at least some human beings to not be a normally functioning adult human

being. And many human beings who are not normally functioning adults are related to them in ways that could be significant for their moral status. So we can see how, if the equality of this specific group of individuals can be defended in the first tier of the theory, there is some hope in proceeding to a second tier that will reach far enough into the rest of humanity.

3.3 Moral Agency

I want to propose moral agency as the basis of moral status. I define "moral agency" as a capacity to perform actions for which one is morally responsible or for which ascriptions of moral responsibility are appropriate. In proposing this property as a basis of moral status, I stay relatively uncommitted as to any specific approach in the free-will debate. I say "relatively uncommitted", because moral agency can be a morally significant property only on the hefty assumption that hard incompatibilism is false.[10] However, hard incompatibilism is the only view in the free-will debate with which the current proposal is inconsistent. Otherwise, my proposal is neutral between various versions of libertarianism and compatibilism, and can also live peacefully with views that flirt heavily with hard-incompatibilism, like Smilansky's illusionism.[11] As long as moral responsibility is allowed into our metaphysics or ascriptions of moral responsibility are allowed into our ethics, moral agency can be a legitimate candidate for a basis of moral status.

[10] Hard incompatibilism is the thesis that no matter whether determinism is true or not, human beings are not morally responsible for their actions, and aside from consequential considerations it is inappropriate to attribute moral responsibility to them. The term is introduced in (Pereboom 2001).

[11] See (Smilansky 2008, pp. 248-52).

Given these assumptions, I will assume moral responsibility could be reconciled with a naturalistic view of the world. Moral agency would, in such case, pass the This-Worldliness test. But why think that moral agency so defined passes the Significance test?

The Significance of moral agency can be most straightforwardly defended within contractarian and contractualist approaches. In such approaches, what is owed to us (and so our moral status) is determined by what we can consent to. Arguably, only someone who can be morally responsible can meaningfully consent.[12] But regarding moral agency as a basis of moral status is not limited to contractarianism. There is a long tradition in humanistic thought that grounds human dignity in freedom of the will,[13] or autonomy, or relation to the moral law.[14] Traditionally, this has been married to a libertarian theory of free will, but I take it that what is morally significant about such free will is not simply that it is not part of a causal nexus (what is morally significant about that?) but, presumably, that it supports the possibility of moral responsibility and a relation to the moral law. I therefore think that a plausible reinterpretation of this humanistic tradition would contend that the capacity to perform morally responsible actions, whether grounded in libertarian free will or not, is what grounds human moral status.[15]

Some contemporary perspectives can be brought to bear here as well. In Darwall's theory of respect, for example, human dignity is implied in personal relations of second-personal address,

[12] For a helpful discussion of responsibility in the context of contractarian theories, see chapter 6 of (Scanlon 1998).

[13] For example (Pico della Mirandola 2012).

[14] "Now, morality is the condition under which alone a rational being can be an end in itself, since only through this is it possible to be a lawgiving member in the kingdom of ends. Hence morality, and humanity insofar as it is capable of morality, is that which alone has dignity." (*Groundwork of the Metaphysics of Morals*, 4:435 (Kant 1996, 84)).

[15] On Kant, Roger Sullivan remarks: "It is because of being under the moral law that each and every person has an intrinsic, inalienable, unconditional, objective worth or dignity (Würde) as a person. … By virtue of that law we are elevated above being merely part of the natural world." (Sullivan 1989, 197). For contemporary followers, see (Brennan 2002, Coons and Brennan 1999b).

which in turn are essentially definable in terms of the capacity for moral responsibility (and define that capacity in turn).[16] An attitude of respect is also implied in what Strawson famously calls reactive attitudes,[17] and in what Wallace understands as being someone that can be held to expectations.[18] In all of these related philosophical projects, respect in our relations to other human beings arises from (or with) the recognition that they can be held accountable for their actions.[19]

Perhaps most importantly, there seems to be an intimate relation between one's ability to consent (which arises with the capacity to be morally responsible for one's consent) and one's inviolability. Following Kant, the moral status that humans are said to have is often understood as involving the status of being an "end in itself", being someone whose interests cannot be sacrificed for the welfare of others, being a separate, inviolable, being.[20] If one has high moral status, for example, it is impermissible to sacrifice one's interests for securing the interests of others, and very strong consequential considerations must be brought to justify such sacrifice. But "sacrifice" typically involves a case in which something is done to the agent without her consent. If an agent consents to have her interests sacrificed for the welfare of others, then her inviolability has not been breached. Even if one is not allowed to do to me something to which I have consented (which is questionable) one would not violate my moral separateness in so doing and one would not simply

[16] (Darwall 2006).

[17] (Strawson 1982).

[18] (Wallace 1994).

[19] Compare Korsgaard's remark: "For holding one another responsible is the distinctive element in the relation of adult human beings. To hold someone responsible is to regard her as a *person*—that is to say, as a free an equal person, capable of acting both rationally and morally." (Korsgaard 1996, 189).

[20] See (Jaworska 2007). Above, prescriptive equality was mentioned to be a point of agreement between utilitarians and Kantians. Notice, however, that if one cashes out this idea in terms of inviolability, as I and others do, one moves in a clear Kantian direction.

use me as means. To ask for consent is to respect someone as an end in herself. This at least suggests that the boundary of our inviolability is largely shaped by our ability to consent.

These considerations are intended to motivate the idea that moral agency passes the Significant test, and indicates how it might pass the Comprehensiveness test as well. The thought is that even if moral agents vary in many properties (as they surely do), that variation, so long as it does not affect their capacity to be responsible for their actions, will not alter their authority to sign a moral contract, to be involved in relations of second-personal address and reactive attitudes, or to be the framers of the boundary of their inviolability. If this is correct, then it is a sufficient condition for individuals to be equal in moral status to be equal in moral agency.[21]

Also, with an eye to the second tier of the theory, there is some promise in the following set of claims: nearly all human beings are potentially moral agents, were moral agents, or will be moral agents; for some human beings, it is a misfortune never to be moral agents; and many human beings who are not moral agents are related to moral agents in such a way that, if the interests of the former are not treated with equal consideration, neither are the interests of the latter. But also: no nonhuman animal is a moral agent. Whatever sophisticated agential capacities nonhuman animals have, they are not morally responsible for their actions. Most of us would be reluctant to punish them (unless as part of training, in which case it is not really a punishment), or resent them, or take signs of their consent to be relevant to the extent to which their interests could be sacrificed for the welfare of others. And further: no nonhuman animal is potentially a moral agent, will be a moral agent, or was a moral agent. For nonhuman animals, unlike at least some human beings, it is not a misfortune not to be moral agents, on any account of misfortune. And most nonhuman

[21] There is another possibility for saving Comprehensiveness, suggested by (Carter 2011). According to Carter's proposal, people who pass a certain threshold of personhood deserve, as a matter of respect, that differences in their other capacities be ignored. I have some worries about this proposal, see §2.3.8.

animals are not related to moral agents in such a way that, if we treated the interests of these nonhuman animals unequally, we thereby would treat the interests of moral agents unequally. So moral agency passes the Uniqueness test, and might continue to support Uniqueness in the second tier of the theory.

The hard question remains: do all normally functioning adult human beings have moral agency to equal degrees? Do they pass the Double-Equality test in relation to moral agency? Can the first-tier be vindicated?

3.4 Who has Moral Agency Equally?

3.4.1 The Doubt

Being able to do actions for which one is morally responsible is a function of certain other properties: intelligence, capacity for second-order reflection, sanity, age, willpower, and the like. Human beings differ in these properties. Shouldn't we assume, therefore, that humans differ also in moral agency? Bernard Williams thinks so:

> … [T]here is the obstinate fact that the concept of 'moral agent', and the concepts allied to it such as that of responsibility, do and must have an empirical basis. It seems empty to say that all men are equal as moral agents, when the question, for instance, of men's responsibility for their actions is one to which empirical considerations are clearly relevant, and one which moreover receives answers in terms of different degrees of responsibility and different degrees of rational control over action. To hold a man responsible for his action is presumably the central case of treating him as a moral agent, and if men are not treated as equally responsible, there is not much left to their equality as moral agents.[22]

[22] (Williams 1973, pp. 235-6).

The premises of Williams's argument are quite compelling. He takes ascriptions of moral responsibility to be the central case of moral agency, and this is in line with my preferred definition of moral agency. Williams correctly observes that empirical considerations are relevant to ascriptions of moral responsibility. He further claims that these empirical considerations, as well as our ascriptions of responsibility, are matters of degree. And this is true. Yet, Williams's inference is too quick.

Variations in moral responsibility do not always indicate variations in moral agency, that is, in the capacity to do actions for which one is morally responsible. Moral responsibility can vary on the basis of two broad kinds of empirical considerations. One such kind involves those empirical considerations that excuses show an agent to lack.[23] Excuses show that an agent is less responsible for a particular action than she otherwise would have been because something in the circumstances of the action prevented her from realizing what she was doing or from controlling her action. For example, I mistake petrol for water and let you drink it; I am less responsible for poisoning you than someone who knows this is petrol and lets you drink it. I have an excuse (ignorance) that the other poisoner lacks, and this diminishes my responsibility. That, however, does not show me to be less of an agent than the person who knows this is petrol. It does not show that I have a weakened capacity for responsible action, nor does it weaken the demand on me not to serve petrol to others. All it shows is that for this particular petrol-serving action, I have reduced responsibility. Differences in ascriptions of responsibility that are based on excuses do not generally indicate differences in moral agency, that is, in one's capacity to do actions for which one is morally responsible.

[23] For the distinction between excuses and exemptions, see (Macnamara 2011, McKenna 2008, p. 202, Strawson 1982, pp. 64-6, Wallace 1994ch. 5 and 6, Watson 2008, pp. 118-9).

Unlike excuses, exemptions show that an agent lacks what belongs to a second kind of empirical considerations. Exemptions include such conditions as childhood, cognitive disability and insanity. Other conditions, like being drunk or drugged or under significant stress might temporarily exempt, indicating episodes of reduced agency in between periods of normal agency. When exemptions apply to someone, we see that person as generally less capable of understanding and acting in accordance with norms, demands and expectations, and we see less point in addressing such demands to her. Exemptions, unlike excuses, license the claim that those exempted have moral agency to a lower degree. This reflects the reasonable thought that it is empirical properties like intelligence, age and sanity that constitute one's agency, one's capacity for responsible action.

Since not all differences in ascriptions of moral responsibility are attributable to differences in moral agency, one cannot infer differences in moral agency from differences in ascriptions of moral responsibility alone. To arrive at the conclusion that individuals differ in moral agency, one would have to show that differences in moral responsibility are due to differences in agency-constituting properties.[24] When we examine ascriptions of moral responsibility in light of variations in agency-constituting properties, a more nuanced picture than Williams proposes emerges.

[24] Agency-constituting properties correspond to what Wallace calls A-properties, which make an agent accountable, and they are defeated by exemptions. He distinguishes them from B-properties, which ground blameworthiness for a specific action, and are defeated by excuses. See (Wallace 1994, 84).

3.4.2 Variations in Moral Agency

Let us take a case of ascription of moral responsibility and hold the excuses and other details of the case fixed, but vary the properties that constitute moral agency — properties like age, intelligence and sanity. We will then check whether variations in these properties give rise to varying degrees of responsibility. Compare the following three cases:

Case 1: Susie is sitting on a park bench, and quickly finishes a sandwich. She is in a slight hurry (nothing awful will happen if she is late to her subsequent destination, but it will be inconvenient). As she stands up to leave, she notices a purse left on the bench in front of her by a woman (Ms. Purse) who left a minute ago, and is walking in an opposite direction to that of Susie's destination. Ms. Purse is now too far away to shout for, but if Susie goes after her, she can return the purse. Susie instead walks toward her own destination, doing nothing to return the purse to Ms. Purse or alert her that she left it behind. Susie's intelligence is normal. She is 25 years old.

Case 2: Dan is sitting on a park bench, and quickly finishes a sandwich. He is in a slight hurry (nothing awful will happen if he is late to his subsequent destination, but it will be inconvenient). As he stands up to leave, he notices a purse left on the bench in front of him by a woman (Ms. Purse) who left a minute ago, and is walking in an opposite direction to that of Dan's destination. Ms. Purse is now too far away to shout for, but if Dan goes after her, he can return the purse. Dan instead walks toward his own destination, doing nothing to return the purse to Ms. Purse or alert her that she left it behind. Dan's intelligence is normal. He is 12 years old.

Case 3: Tamara is sitting on a park bench, and quickly finishes a sandwich. She is in a slight hurry (nothing awful will happen if she is late to her subsequent destination, but it will be

inconvenient). As she stands up to leave, she notices a purse left on the bench in front of her by a woman (Ms. Purse) who left a minute ago, and is walking in an opposite direction to that of Tamara's destination. Ms. Purse is now too far away to shout for, but if Tamara goes after her, she can return the purse. Tamara instead walks toward her own destination, doing nothing to return the purse to Ms. Purse or alert her that she left it behind. Tamara has mild mental disability.[25] She is 25 years old.

How responsible is each of these characters for not returning the purse to Ms. Purse? In Case 1, the protagonist (Susie) is a normally functioning adult human being. Cases 2 and 3 hold fixed most details of the case, including the excuses that might obtain (for example, the slight hurry). But in each of the latter two cases an agency-constituting property is diminished compared to Case 1: in Dan's case it is age, and in Tamara's case it is cognitive functioning. If one is not a hard-incompatibilist, one would probably judge that Susie is morally responsible for not returning the purse to Ms. Purse. Also, one would probably judge that Dan and Tamara have reduced moral responsibility in comparison to Susie. Differences in agency-constituting properties across the divide of adult normal functioning are reflected in different ascriptions of moral responsibility. These differences in ascriptions of moral responsibility indicate that Susie is more of a moral agent than either Dan or Tamara. She is more capable than they are to be morally responsible for her actions. We can provisionally infer that not all human beings are equal in moral agency, because the extent of their responsibility for a given action varies with variations in agency-constituting

[25] "Approximately 85% of the mentally retarded population is in the mildly retarded category. Their IQ score ranges from 50-75, and they can often acquire academic skills up to the 6th grade level. They can become fairly self-sufficient and in some cases live independently, with community and social support."

From: http://medical-dictionary.thefreedictionary.com/Mild+mental+retardation

properties. This is not breaking news, but it reflects well on our method that our thought experiments can show this to be the case.

Next, let us examine a set of cases in which there are differences below the threshold of adult normal functioning.

Case 4: Louis is sitting on a bench in a park, and quickly finishes a sandwich. ... Louis's intelligence is normal. Louis is 9 years old.

Case 5: Barbara is sitting on a bench in a park, and quickly finishes a sandwich. ... Barbara has moderate mental disability.[26] She is 25 years old.

How does Louis's moral responsibility compare with that of Dan, and Barbara's with that of Tamara? I think we will judge that even if we take Dan and Tamara to have diminished responsibility for not returning the purse (compared to Susie), we would take Louis and Barbara to be even less morally responsible for not returning the purse (assuming Dan and Tamara do not have zero moral responsibility). This suggests that below the threshold of normal adult functioning, the degree of properties like cognitive functioning and age matters for agency. This attests to the (unsurprising) fact that moral agency is not an all-or-nothing property. At least below the threshold of normal adult functioning moral agency varies. This yields the provisional conclusion that 12-year-olds have more moral agency than 9-year-olds, and that persons with mild cognitive disability have more moral agency than persons with moderate cognitive disability. This, again, is not

[26] "About 10% of the mentally retarded population is considered moderately retarded. Moderately retarded individuals have IQ scores ranging from 35-55. They can carry out work and self-care tasks with moderate supervision. They typically acquire communication skills in childhood and are able to live and function successfully within the community in a supervised environment such as a group home."

From: http://medical-dictionary.thefreedictionary.com/Mild+mental+retardation

breaking news, but once more, these results are encouraging for the aptness of the suggested thought-experiments. If we do not detect similar differences above the threshold of normal adult functioning, it would be less plausible to attribute this to the inability of our method to detect differences in moral agency. Let us now consider such cases.

Case 6: Joao is sitting on a bench in a park, and quickly finishes a sandwich. ... Joao's intelligence is normal. He is 55 years old.

Case 7: Dorothy is sitting on a bench in a park, and quickly finishes a sandwich. ... Dorothy is a genius. She is 25 years old.

What is our judgment here? Do we judge Dorothy and Joao to be more responsible than Susie for not returning the purse? My intuition here is that they are not more responsible. The fact that age and intelligence matter for moral responsibility, and the fact that Joao and Dorothy have more of these attributes than Susie, do not make Joao and Dorothy more responsible than Susie for not returning the purse.

The following questions might help elicit this intuition: should Dorothy and Joao apologize more than Susie for not returning the purse? Should they assume a greater responsibility than Susie for not returning the purse? The answers seem to be no.

If the reader does not share my intuition, perhaps considering her intuitions in response to different possibilities for one and the same person (rather than for different persons) can help see why Joao, Dorothy and Susie are equally responsible for not returning the purse. To do so, consider the following case:

While sitting on the bench, Ms. Purse mishears a conversation between Susie and a friend, and she wrongly infers that Susie is a genius (Susie makes a joke about mysterious phone calls she has been getting from Mensa). When Ms. Purse later confronts Susie about her missing purse, she discovers that Susie is in fact of regular intelligence. Should she now decrease her resenting or blaming attitude? The answer seems to be no, and not because intelligence should never figure in apportioning blame — for if Ms. Purse discovered that Susie was cognitively disabled, decreasing her resentment would be appropriate — but being a genius does not make a difference in apportioning blame compared to normal cognitive functioning.

Or assume Susie, who is 25 years old, dresses up in her mother's clothes. While still sitting with her purse and looking at Susie from the other bench, Ms. Purse forms the belief that Susie is in her 50s. After Ms. Purse realizes her purse is missing and goes to confront Susie (feeling a healthy amount of resentment), she realizes that Susie is actually in her 20s. Should she reduce her resentment upon that discovery? The answer, again, seems to be no. But if she realized Susie was 12, the answer would be yes.

Or assume that Susie is 25 years old and of regular intelligence, and Ms. Purse has no misconception about Susie. And assume Ms. Purse is very angry. When Ms. Purse confronts Susie, Susie says: "Why are you so angry? It's not like I am in my 50s!" or "Why are you so angry? It's not like I am a genius!" These should strike us as pretty strange responses, but they would not be strange if people in their 50s were more responsible than people in their 20s for similar actions, and if geniuses were generally more responsible than people of average intelligence.

If the reader shares my intuitions, I think these intuitions should be trusted. The differences between Joao and Dorothy on the one hand and Susie on the other are not subtle: Dorothy is much smarter than Susie, and Joao is thirty years older than Susie (more than twice her age). Given these

striking differences, if the reader's intuitions here are that the three do not differ in moral responsibility, these intuitions are probably not due, for example, to a failure to notice differences too subtle in the agency-constituting properties. My suggested thought experiments detected differences in responsibility where they clearly exist. We have good reasons, I believe, to trust our intuitions here as well.

I also think that the purse case is pretty representative, and that we can generalize from it. It does, after all, have the power to reveal differences in moral agency when they clearly exist. And nothing remarkable is happening in it: there is an action that is morally called for, and the agent does not act as she is supposed to, even though the sacrifice that would be required of her is not great.

I did not consider all the scalar properties that constitute moral agency. The method, however, would be the same for each proposed agency-constituting property: we need to be able to describe what it would be like for an agent to have that agency-constituting property above normal levels, so that a comparison to normal levels could be attempted. We cannot do that for every agency-constituting property. Some philosophers, for example, take the capacity for second-order reflection to be agency-constituting,[27] but it is not easy to imagine what it is like to have this property to a higher-than-normal degree. Perhaps a person who goes to psychoanalysis, writes poems, reads Frankfurt, and every night reflects on what she did that day develops over time higher-than-normal second-order reflection capacities. But then the purse thought experiment would work with such a person as well: such a person would not be more responsible than Susie for not returning the purse (assuming Susie has a normal capacity for second-order reflection). If, on the other hand, we cannot imagine what it is like to have this capacity to a higher-than-normal

[27] The *locus classicus* is (Frankfurt 1971).

degree, it is also impossible to argue that differences in this capacity above normal functioning are or should be reflected in differing ascriptions of moral responsibility. We just do not have a way to tell.

Something similar is true of sanity: I do not know what being saner than average amounts to. But if what we have in mind is someone who is happier than average, more resilient than average, and so on, that person would not be more responsible than Susie for not returning the purse. Susie, recall, does not have any mental illness.

We are now in a position to turn Williams's argument on its head. If differences in agency-constituting properties among normally functioning adult human beings are not reflected in different ascriptions of moral responsibility, there is not much left to their inequality as moral agents. Normally functioning adult human beings have moral agency equally. Moral agency is a range property in the range of normally functioning adults.

3.5 Taking Stock

Williams's insight that differences in agency should be reflected in different ascriptions of moral responsibility, when carefully followed through, supports conclusions quite different than his. All normally functioning adult human beings have moral agency equally, and so have equal moral status for constitutive reasons. This established the first tier of the Correlationist defense of prescriptive equality. If the second tier is defensible, we can then ascribe equal moral status to all, or nearly all, human beings, and perhaps to no other animal.

The range within which human beings are equal in moral agency has been specified here with the use of a threshold: the threshold of adult, normal functioning. We have observed that threshold

accounts of prescriptive equality face the worry that the proposed threshold would be arbitrary, ad hoc, stipulated for the purpose of defending prescriptive equality. My proposed threshold is not vulnerable to these charges. The threshold of normal adult functioning corresponds to our intuitions about moral responsibility. It is a threshold we discover, not stipulate, and the process of discovery proceeds from intuitions about moral responsibility and does not presuppose a commitment to the equal moral status of human beings.

Another possible advantage of the current account is that while it appeals to a range property, it does not present the range property as a binary (all-or-nothing) property. In this it differs from other existing range-property accounts.[28] Problems specific to binary-properties accounts of prescriptive equality do not arise here (See §2.3.4).

One might be surprised to discover that there is a property that all normally functioning adult human beings have equally. After all, there are many normally functioning adult human beings out there, and they are different from one another in many ways. Something must have gone wrong in the reasoning above if it yielded the conclusion that it did. But my conclusion is not as mysterious as it might seem. Rather, moral agency exhibits the quite common phenomenon of capping.

Consider a teacher who gives her students a relatively easy exam. Let us assume that the grades in the exam are a function solely of students' knowledge of the material. Since the exam is easy, we would expect there to be a "ceiling effect": Some students would get the same, top, grade. The grades of those students do not reflect differences in knowledge of the material among them, which surely exist. So differences in the property which the grades reflect — namely, knowledge — are not reflected in different grades throughout the entire spectrum of this property. The grades are

[28] Such as (Carter 2011, Waldron 2008).

capped. But the exam — if it is reliable and valid — can still detect differences below the top grade. The exam can detect differences in knowledge among the weaker students, those who cannot reach the top grade. The above thought experiments suggest that while agency is a function of agency-constituting properties, and these do vary, moral agency is capped at the level of normal adult functioning.

One can still wonder why moral agency shows this capping phenomenon. Having some story to tell here could very much help in securing our confidence in the above conclusion. I am not sure, however, what is the best explanation to this phenomenon, nor do I think we strictly need an explanation, but here is a tentative suggestion. Daniel Wikler argues that tasks have thresholds of competence that are required for succeeding in them, such that, among those who pass those thresholds, there are no differences in competence.[29] Following this suggestion, one might think of moral agency as competence in succeeding in the task of acting as morality requires. For example, a normally functioning adult person might be just as competent as a child or a person with mild cognitive disability in, say, the task of brushing one teeth. They are equally competent as far as brushing one's teeth is concerned. But if there were a moral demand attached to brushing one's teeth, the normally functioning adult would be more morally responsible for not brushing her teeth than a child or a cognitively disabled person, because she, and not them, have the competence that is required to succeed in the task of acting as morality requires that we now assume is involved in brushing one's teeth. She and not them can be expected to respond to the moral demand to brush one's teeth, if there were such a demand. But someone more intelligent than she would not be more responsible for failing to brush one's teeth. As far as the moral task is

[29] (Wikler 1979, 384).

concerned, the normally functioning adult and the genius are equally competent. That being as it may, let me end this chapter by responding to some objections.

3.6 Objections

The very last remarks (the test analogy and the task analogy) might show a weakness in the above reasoning. Easy tests tend to show a ceiling effect. One can worry that the purse case is an easy test of moral agency, and this explains the cap that was observed. In the purse case, the facts are simple and observable, and the right choice is easy to see. If this is true, the purse case would not be representative of all cases in which moral agency is concerned. Perhaps some cases are harder than the purse case, and require higher-than-normal competence to succeed in them. Perhaps the facts involved in them are harder to process, or the right thing to do is not obvious. Wouldn't some human beings be better positioned to respond appropriately to such cases, and, accordingly, would exhibit greater moral agency than that of other normally functioning adult human beings?

Let us take a case in which the facts are harder to see compared with the purse case. Imagine that Sherlock, a highly intelligent person, notices some subtle signs that indicate that a murder happened in Baker Street. He chooses to ignore these signs. Other people see the same signs, but they cannot understand their significance. These people are normally functioning adults, but they are not as bright as Sherlock. Sherlock is clearly more responsible than these people are for ignoring the signs. And, the objection continues, the only difference between Sherlock and these people is his intelligence, an agency-constituting property. So, the objection continues, if we

follow the method used so far, we should infer that Sherlock is more of a moral agent than most other people.

In response, consider an analogy. A person whose eyesight is much better than mine might notice aspects of a situation that I might miss, even though my eyesight is normal. For example, she but not I can see a child drowning far away. She can then ignore what she sees and be morally culpable for doing so, whereas I would be excused. Arguably, such differences do not constitute differences in moral agency between us. Rather, the person with the better eyesight is in a better epistemic position than I am in some situations (those involving sight), and so, in those situations, she has access to a certain piece of information that I lack. I am not exempted but rather excused for my failure to save the child. If I were told about the drowning child, I would have been just as responsible as the eagle-eyed woman for not trying to save him.

Similarly, I want to say, Sherlock is in a better epistemic position than others to notice some aspects of some situations and so is more responsible for his actions in those situations.[30] If Sherlock told other persons of the significance of the signs he had seen, they would be just as culpable for ignoring them as he would.[31] The fact that merely a reliable act of telling equalizes the responsibility shows Sherlock and normally functioning adults to be equal in agency.

The reason a cognitively disabled person is not as responsible as a normally functioning adult for similar actions is not that certain facts are not known to her. Even if someone pointed out to a cognitively disabled person (or a child) that someone forgot her purse (and should return it) or that someone was murdered (and that this should be reported), they would be less responsible than a normally functioning adult for not acting as they should. Our test can be: if all it takes to equalize

[30] I thank David Enoch for a helpful discussion of these points.

[31] Assuming he is known to be a reliable witness, and so on.

two individuals with respect to moral responsibility is to point out the details of the case to the one who knows less, we are in the "excuses" sphere, and the two are equally moral agents, as they are presumed equally capable of responding to the facts once they become known to them.

We could imagine a case in which the difficulty is not in ascertaining the facts, but in deliberating about what needs to be done. Here, it might seem, some normally functioning adult human beings would have some advantage of others. They would be better moral reasoners and so have more agency. But if all such reasoners have is easier epistemic access to moral truths, their case is not different from that of Sherlock. All it takes to bring other normally functioning adults to their level of responsibility is to inform these other people about these moral truths. But if children or cognitively disabled people were similarly informed, they would still be less responsible than normally functioning adults for not following the correct normative recommendation.

A different kind of putative counterexample to my argument is that of persons from whom we might have high moral expectations, like moral philosophers, priests and rabbis. Some people hold them more accountable for moral failings than they hold regular folks. When confronting them, people might say things like "How could someone like you do that?" This might suggest that they have higher moral agency than other normally functioning adult human beings. Personally, I do not have higher expectations of the groups of people just mentioned, and I am rarely surprised to discover their moral failings. Be that as it may, to discover that a moral philosopher or a priest or a rabbi noticed a woman leaving her purse behind and did nothing about it might enrage us in a way that is irreducible to epistemic access. After all, knowing that one should return an item to its owner is not moral rocket science, and moral philosophers, priests and rabbis do not have better

access to it than regular folks. Still, I do not think this indicates greater moral agency on their part, for two reasons.

First, this could be a case in which blameworthiness and responsibility come apart for a special reason. Think of the following case. If a close friend of mine wronged me, I might blame him more than a stranger, and use locutions like "How could you do this to me?" In saying this, I am not saying that he is more responsible for his action than a stranger would have been, but that I have a reason to blame him that I lack with a stranger. While blame-worthiness is generally correlated with responsibility (or so I have assumed so far), there are other factors that can shape it. As a friend, I have higher expectations of him not to wrong me. It is this higher expectation, which is a product of a certain relationship — not greater agency — that explains the heightened blame. Something similar might explain the heightened blame of moral philosophers and priests and rabbis. We stand in certain special relations to them: they serve as models to some of us; we know that some people might emulate them, and so we recognize the social role such persons play. This explains why we blame them more when we learn of their moral failings. We do so without believing that they are more responsible than the regular person for their moral failings.

Alternatively, we can say that they are in a sense more responsible than a regular person for similar failings, but not in a way that threatens the thesis that they have agency equal to that of garden-variety sinners. In the purse case, for example, a certain motivational excuse applies to my above participants: some uncomfortable consequences would ensue if they return the purse, and it is not "their fault" that they were around when a stranger lost her purse. We expect people not to be swayed by such considerations and temptations, but if they are, as all of my participants are, these excuses mitigate something of their responsibility. However, from priests and rabbis (and perhaps moral philosophers) we expect a higher resistance to temptation. They do not get to use

spurious moral considerations and temptations as excuses as much as regular folks do. Moral philosophers, priests and rabbis have a higher responsibility for their moral failings not because they are agents to a greater degree than other normally functioning adults, but because they have fewer valid excuses.

3.7 Conclusion

In this chapter, I explored some resources a Correlationist has for defending prescriptive equality. She can try a theoretical division of labor, where Correlationism is essential in the first but not in the second tier of her theory. This separation could allow her to identify a morally significant property that a good number of human beings have to an equal degree, and use that discovery to vindicate the first tier of the defense. The discovery of the relevant property would probably have to appeal to a range property. But unlike what some skeptics have believed, the threshold does not have to be arbitrary, and differences above it do not need to be ignored. Rather, the threshold can be discovered, and differences above it simply do not exist (in the range property). This is the case when moral agency is considered as the basis of moral status.

The Correlationist theory presented in this chapter, then, is pretty resourceful. It has what to say in response to traditional skeptical concerns about Correlationist defenses of prescriptive equality. I believe that insofar as one looks for a Correlationist defense of prescriptive equality, the theory I presented in this chapter works. But now I will argue that one should not look for a Correlationist defense of prescriptive equality at all, because Correlationism is false.

4 An Argument Against Correlationism

> For example, justice seems to be equality, and it is, but not for everyone, only for equals. Justice also seems to be inequality, since indeed it is, but not for everyone, only for unequals. (Aristotle, Politics)[1]

4.1 Why Correlationism?

Let us recall the two skeptical arguments this essay attempts to refute (See §1.7):

First Argument:

1) If descriptive equality is false, prescriptive equality is false (or more likely than not to be false).
2) Descriptive equality is false.

   Therefore:

3) Prescriptive equality is false (or more likely than not to be false).

Second Argument:

1) If descriptive equality is false, a possible reason to believe in prescriptive equality is refuted.

[1] *Politics* III.9.1280 a11-15. (trans. Reeve (1998)).

2) Nothing besides descriptive equality could make prescriptive equality true (or: it is not likely that anything besides descriptive equality could make prescriptive equality true).
3) Descriptive equality is false.

Therefore:

4) Prescriptive equality is false (or more likely than not to be false).

In this chapter, I want to focus on the first premise of the first skeptical argument and on the first two premises of the second skeptical argument. Why would one be inclined to believe these premises?

One might be attracted to these propositions because one believes that evaluative properties (such as "moral status") supervene on other properties (such as "the basis of moral status").[2] If moral status supervenes on the basis of moral status, then if individuals are equal in the basis of moral status, they are equal in moral status. But the converse does not follow. From supervenience alone it does not follow that if individuals are unequal in the basis of moral status, they are unequal in moral status, or that the only way for individuals to be equal in moral status is to have the basis of moral status equally. From supervenience alone we cannot even infer that beings that are different in the basis of moral status are more likely than not to be unequal in moral status. The skeptic needs something different than mere supervenience. She should believe that moral status and the basis of moral status mutually supervene on one another, or covary, or are correlated with one another. She should believe that the more one possesses the basis of moral status, the higher

[2] I follow throughout the following definition: "a set of properties A supervenes upon another set B just in case no two things can differ with respect to A-properties without also differing with respect to their B-properties." From McLaughlin, Brian and Bennett, Karen, "Supervenience", *The Stanford Encyclopedia of Philosophy* (Spring 2018 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/spr2018/entries/supervenience/>.

one's moral status. In other words, she should be a Correlationist. But why think that moral status is correlated with the basis of moral status? While a good number of philosophers assert the Correlationist thesis,[3] few argue for it.

One might think that the correlation follows from the fact that moral status is grounded in or constituted by the basis of moral status. But this is false. Imagine that property X constitutes or grounds property Y. We can express this relation by saying that the values of Y are a function of the values of X. But functions come in infinitely many forms. If the function is strictly increasing, then indeed the more X the more Y. But simply from knowing that Y is a function of X we cannot infer that it is more likely than not to be strictly increasing. If the basis of moral status grounds or constitutes moral status, at most we know that moral status is a function of the basis of moral status. This alone would not show Correlationism to be true. To put it differently, the constitution or grounding relation is consistent with mere supervenience; it does not require mutual supervenience. The defense of Correlationism must lie elsewhere.

Ian Carter makes an illuminating remark in this respect:

> We ought to be exercised by this last question [the question of the justification of prescriptive equality. N. L.] if we endorse the Aristotelian principle that equals are appropriately treated equally whereas unequals are appropriately treated unequally. Assuming the validity of this formal principle, we must find some morally relevant respect in which persons are equal if we are to justify according them equality of some good, be it moral authority or consideration or respect or some material benefit.[4]

This Aristotelian Principle, also known as "formal equality", offers a plausible rationale for Correlationism. After all, prescriptive equality is the claim that human beings should be treated

[3] See *supra* note 44.

[4] (Carter 2011, 541). For a similar view, see (Christiano 2008, 20-4). See also (Pojman 1991, 488).

equally in a certain sense, the sense related to their moral status. And in the case of moral status, the basis of moral status is the relevant property. For individuals to be "equal cases" in relation to the basis of moral status is for them to have it equally, that is, to an equal degree. But formal equality says more: if individuals are "unequal cases" in relation to the basis of moral status, then they would have unequal moral status. Unlike supervenience, constitution, and grounding, formal equality explains why moral status and the basis of moral status mutually supervene on one another. Formal equality is what the skeptic needs.

Further, formal equality implies that it matters how much and in what direction cases are unequal. That is, the more different cases are, the more different their treatment should be. And the direction of the difference matters: if one has more of the relevant property compared to another, one should be given more of the treatment rather than less. If prescriptive equality instantiates the more general principle of formal equality, that is a significant reason to believe in Correlationism.

Formal equality can also explain why Correlationism not only seems true but also commonsensical and intuitive. Formal equality is a formal principle — and so not a principle anyone would wish to deny. It has been described by John Rawls as "the least controversial element in the common sense idea of justice."[5] Appealing to formal equality when determining the moral status of individuals speaks to a basic and strong ethical intuition: the way things should be treated (as determined by their moral status) should be a fitting response to the way these things are. The moral status of things should mirror how these things are. Formal equality gives voice to this intuition, for it seems fitting to treat equal cases equally and unequal cases unequally.[6]

[5] (Rawls 1971, 505).

[6] As Christiano observes: "What is due a person is grounded in some quality of the person that gives the person a certain status or merit. … There is a kind of bond, a bond of fittingness, between the features

In addition, it has been suggested by J. R. Lucas that formal equality is the only possible justification of equal treatment of any kind.[7] If this is the case, then prescriptive equality could be true only if it is an instance of formal equality. There simply is no other general ethical principle from which equal treatment could be derived. As far as I can tell, Lucas does not offer any argument for this substantive claim, but I believe Lucas is right in the following sense: there is no normative principle other than formal equality that takes "equal cases" as descriptive input and generates "equal treatment" as normative output. Formal equality is the only normative bridge from equal cases to equal treatment. Importantly, supervenience cannot serve as such a bridge. If two things are descriptively equal in all the relevant senses, supervenience is perhaps enough to conclude that they are of equal value or worth (what I called above "axiological equality"). But that leaves open the question how things that are equal in value or worth should be treated ("prescriptive equality"). If one wanted to appeal to equality of value or worth to justify equal treatment, one would still need formal equality to make that move: things equal in value should be treated equally. So formal equality is the only normative principle that justifies equal treatment by appealing to descriptive equality or axiological equality. But it should be left open whether formal equality is the only normative principle that could justify equal treatment of any kind.

My diagnosis, then, is as follows. The reason philosophers do not typically question Correlationism is that they take prescriptive equality, if true, to arise from the combination of descriptive equality or axiological equality (which shows human beings to be equal cases) and formal equality (which requires treating equal cases equally). Prescriptive equality, according to Correlationism, is what you get when you apply formal equality to descriptive equality or

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of the person and the treatment justice requires, which is characterized as what the person is due." (Christiano 2008, 20).

[7] Aside from promises to treat equally, and other general ways of justifying pretty much anything.

axiological equality. If this diagnosis is correct, one possible strategy of refuting Correlationism is to show that prescriptive equality, if true, is not an instance of formal equality. This is the strategy I adopt in this chapter.

4.2 Normatively Symmetric and Non-Symmetric Reasons

I now want to distinguish between two kinds of normative principles or reasons. Let us use the letter Φ to designate some action or attitude, and P to designate a fact that is a reason for some agent to Φ.[8] Let "not-Φ" stand for refraining from Φ-ing or for doing an action that is inconsistent with Φ-ing. Let "not-P" designate a state of affairs in which P does not obtain.

P gives an agent a reason to Φ. What about not-P? Here we should distinguish two cases. In one case, not-P is itself a reason to not-Φ. In other cases, it is not. Less technically, some reasons tell one to do a certain action (or have a certain attitude) if certain circumstances obtain and to refrain from doing that action (or refrain from having that attitude) in all other cases. Others just tell one to do a certain action (or have a certain attitude) if certain circumstances obtain, and these reasons imply nothing about the case in which the circumstances do not obtain.

Examples of the first kind include reasons to go through a medical procedure with grave side-effects: one has a reason to go through it if one has some serious illness this procedure can treat, but one would have a reason not to go through such procedure if one did not have the illness in question. An example of the second kind of reason is the reason that tells one to not eat gluten if one has celiac. This reason does not imply that one should eat gluten if one does not have celiac.

[8] My terminology follows Raz (1975).

One interesting subset of the first group of reasons involve those reasons that, in addition to telling one to Φ if P and to not-Φ if not-P, imply that both conjuncts are of equal importance or equal normative weight. According to such reasons, it is just as important that one Φ-es if P as it is that one refrains from Φ-ing if not-P. Less technically, according to this group of reasons, it is just as important that an agent does a certain action if certain circumstances obtain as it is that she refrains from it in all other cases. I call such reasons "normatively symmetric reasons."

Take classical act utilitarianism as an example. Classical act utilitarianism says that one should do an action if it maximizes expected utility and refrain from doing it otherwise. According to act utilitarianism, if one does an action that does not maximize expected utility one is at fault just as much as someone who refrains from doing an action that maximizes expected utility.

Here, then, is a definition: Two reasons (P and not-P) are normatively symmetric, iff

1) P is a reason to Φ and the not-P a reason to not-Φ;
2) it is equally wrong (or bad) to not-Φ if P as it is to Φ if not-P.

We can use this definition to define a normatively symmetric principle as a normative principle that, in relation to P and not-P, gives rise to normatively symmetric reasons. All other normative principles are non-symmetric.

It might look like this rather technical distinction between symmetric and non-symmetric reasons and principles never matters for deliberation, for it is never the case that both P and not-P obtain. But this is not quite right. In situations of risk, in which one knows that there is an equal chance that P or not-P obtains, it matters whether one's deliberation should be guided by symmetric or non-symmetric principles. Imagine one deliberates with a normatively symmetric principle and knows that there is an equal chance that P obtains as there is that not-P obtains. Should one Φ? As

far as the symmetric principle is concerned, one is stuck. Whatever one chooses to do, one has an equal chance of violating the principle in question. In such a case, perhaps one should consult other principles to break the deliberative tie. Perhaps one should toss a coin, simply pick one of the options, or stare at one's options until one dies.

Imagine, however, that one is deliberating with a normatively non-symmetric principle, and there is equal chance that P obtains as there is that not-P obtains. If all a person is deliberating with is this non-symmetric principle, a person should Φ in this case. If P obtains and one did not Φ, one would violate the normative principle in question. If, however, not-P obtains and one nonetheless Φ-es, one would do nothing wrong (as far as the principle in question is concerned), or nothing that is as wrong as not doing Φ if P obtains.

Two examples might help illustrate these claims.

The New Yorker (1)

Imagine that I find a nice collection of the New Yorker magazines on campus, and there is an equal chance that they belong to someone as there is that they belong to no one. I want the magazines for myself. What should I do? Let us say I am guided by the following principle.

Ownership: One should not take or use that which belongs to another without permission.

According to Ownership, if the magazines actually belong to someone, I should not take them without permission. However, if the magazines belong to no one, Ownership itself does not tell me what I should do, or even what I have a reason to do. Presumably, if the magazines belong to no one, I am permitted to take them for myself, but I do not have to take them or even have a

reason to take them, insofar as Ownership is concerned. For this reason, Ownership, in the terminology just suggested, is normatively non-symmetric.

Ownership being non-symmetric matters for my deliberation in the following way: there is an equal chance that the magazines belong to someone as there is that they belong to no one. So there is an equal chance that I am under an obligation not to take them as there is that I am under no such obligation. One might say that in such case I might as well act as if I am under no obligation and take the magazines for myself, because if there is an equal chance that I am under an obligation as there is that I am under no obligation, then I might as well pick the option that suits me best (which is that I am under no obligation). But this reasoning misses something important. If I decide not to take the magazines, I frustrate a desire of mine, but I do not wrong anyone, whether the magazines belong to someone or not. If, on the other hand, I choose to take the magazines, I have a 50 percent chance of wronging someone. A choice to take the magazines is riskier in terms of justice than the choice not to take them. It involves a greater chance of wrongdoing. The morally cautious thing to do in such a case is to refrain from taking the magazines, and for this reason I should prefer this option.[9] Other things being equal, one should do an action that is less likely to be an act of wrongdoing than an alternative available course of action.

Compare to the following case:

The New Yorker (2)

Assume that you are an act utilitarian *à la* Bentham and that this form of utilitarianism is correct. Now imagine that, like before, you find a nice collection of the New Yorker on campus,

[9] At least when the normatively non-symmetric principle mentions the entire class of things to which it applies.

and there is an equal chance that taking them to yourself will increase expected utility as there is that it will not. If you take them to yourself and they belong to no one, you will increase your pleasure (and if you do not, you will feel some pain of disappointment). If, however, they belong to someone, the owner will find pleasure in finding them where she left them (and some pain of disappointment if not). Assume that the expected utilities are such that taking the magazines to yourself is as likely to maximize expected utility as refraining from taking them. What should you do?

Here, the principle that should guide your deliberation is classical act utilitarianism, which is normatively symmetric. According to classical act utilitarianism, it is just as wrong to do an action that does not maximize expected utility as it is to refrain from doing an action that does. While in The New Yorker (1) one choice is riskier than another in terms of justice, in The New Yorker (2) there is equal risk of wrongdoing in whatever choice one makes. This is what we would expect when the normative principle governing a certain case is symmetric.

What should one do in such a case? Classical act utilitarianism will not break the tie. Maybe one should appeal to other normative principles to break the tie, if there are other valid normative principles (something an act-utilitarian might deny). Maybe one should toss a coin, pick one of the options, or stare at one's options until one dies. The normative principle itself, being normatively symmetric, will not offer any guidance in such case.[10]

There is, then, deliberative significance to whether one should be deliberating with a symmetric or a non-symmetric principle in cases involving risk. With this distinction in mind, let us look at formal equality.

[10] Unless it has tie-breaking clauses built into it, a topic I shall return to.

4.3 Formal Equality is Normatively Symmetric

Formal equality reads: "treat equal cases equally and unequal cases unequally." It has at least the superficial form of a normatively symmetric principle. And if it is indeed normatively symmetric, then it expresses the thought that treating unequal cases equally is just as wrong as treating equal cases unequally. And I think this is indeed the implication. I will start with an intuitive argument for this claim, followed by a somewhat more technical consideration.

If formal equality is indeed purely formal, then from a formal point of view it would be hard to see the advantage of equal treatment of equal cases over the unequal treatment of unequal cases. Presumably, from a purely formal point of view, equal cases require equal treatment because we care about how cases compare. But if what we care about is how cases compare, we should care about unequal treatment of unequals just as much as equal treatment of equals. So treating equal cases unequally is just as wrong as treating unequal cases equally.

I said above that part of the appeal of formal equality is that it seems to reflect the intuitive thought that our behavior toward things should be a fitting response to them, or should mirror, in some sense, how those things are. But there is nothing more fitting in treating equal cases unequally than there is in treating unequal cases equally. Either violation of formal equality results in an equally distorted mirror of how things really are. It is plausible to infer that formal equality is normatively symmetric.

For a more technical consideration: In Aristotle, from whom we inherited the principle of formal equality, the principle explicates the idea of proportional equality: The proportion between

treatments should match the proportion between merits. If Joe and Lisa have equal merit, they should receive equal treatment. If Joe's merit is twice as Lisa's, he should be treated twice as well, and so on. More precisely, if M_1 is the merit of $Person_1$, M_2 is the merit of $Person_2$, T_1 is the treatment (or goods) we should give $Person_1$, and T_2 the treatment (or goods) we should give $Person_2$, then according to proportional equality the just treatment (or just distribution of goods) follows the formula: $T_1/T_2 = M_1/M_2$.

This formula does not prefer equal treatment of equal cases to unequal treatment of unequal cases. If what matters is that the proportion of merit and treatment match, there is nothing special about treating equal cases equally compared with treating unequal cases unequally. If the merits of two individuals are equal, so should be their treatments. If, however, their merits vary, they must be treated unequally, or else the proportion of merit and treatment would not match. There is no preference to equal treatment or to unequal treatment in a system governed by this formula.[11] And indeed, in Aristotle, one can find objections to the equal treatment of unequals that are no less pronounced than objections for the unequal treatment of equals.[12] Aristotle's formula of

[11] Imagine Joe's merit is 2 (of whatever units you use to measure merit) and so is Lisa's merit, but you give 4 units of treatment to John and 8 to Lisa. You have violated formal equality. While the ratio between their merits is 1, the ratio between their treatment is ½. Now imagine that Joe's merit is 2 and Lisa's merit is 4, but you give both 4 units of treatment. You have violated formal equality again. While the ratio between the merits is ½ , the ratio between the treatments is 1. As far as the formula of proportional equality goes, these two cases seem indistinguishable. Note that this is consistent with treating equal cases *very* unequally being more wrong than treating slightly unequal cases equally.

Note that when Aristotle calls this principle "proportional equality", he does not show preference to equal treatment or distribution, only preference to the equality of the proportions, which in itself is neutral as to whether there should be equal or unequal distribution or treatment.

[12] As the preamble to this chapter indicates. The normative symmetry of Aristotle's principle of proportional equality has been recognized in the secondary literature. See, for example, von Leyden: "For, as Aristotle said, injustice arises as much from treating unequals equally as from treating equals unequally" (von Leyden 1985, 10).

prescriptive equality thus offers another reason to believe that formal equality is normatively symmetric.

One might say that the normative symmetry of Aristotle's formula does not generalize to all uses of formal equality. For example, proportional equality is not applicable in cases in which merit or treatment cannot be represented in cardinal values, but formal equality, one might think, could be applicable in such cases. But I think Aristotle's formula is instructive. First, in the case of prescriptive equality, suggested bases of moral status could in principle admit of cardinal values, as they do seem to denote a quantity of something (like intelligence, agency, consciousness, and the like). Second, it also looks like it is proportional equality that Correlationists have in mind when they describe their position.[13] Third, Aristotle's version of formal equality is a plausible specification of formal equality for a case in which merits and treatments can be given cardinal values, and the fact that when it comes to cardinal values the formula is normatively symmetric is something to be expected from a specification of formal equality. Aristotle's formula of formal equality inherits its normative symmetry from the more general principle of formal equality of which it is a specification. It is because generally equal cases should be treated equally and unequal cases unequally — and that no side of this prescription is more important than the other — that when we apply it to cardinal values what we get is proportional equality.

[13] For example (emphasis mine):

"Or why is it not more sensible to abandon equality and take as the basic premise of moral and political philosophy the idea of a *proportionate* response to each entity's particular location on the scale?" (Waldron 2002, 72).

"We surely don't want to conclude that persons are owed different degrees of consideration and respect *in proportion* to their capacity for rational agency, but how is this conclusion to be resisted?" (Arneson 1994, 391)

"The valuable trait is transferred to the person in a way that endows him or her with value *to the exact proportion* of the quantity of the trait." (Pojman 1991, 485).

How does all this relate to prescriptive equality? If we could show that as far as prescriptive equality is concerned it is worse to treat human beings unequally than it is to treat nonhuman animals as the equals of humans, then prescriptive equality would be shown to be normatively non-symmetric. And if that is the case, prescriptive equality would be shown to not be an instance of formal equality. I shall now argue that the latter is in fact the case.

4.4 Prescriptive Equality is Normatively Non-Symmetric

Assume prescriptive equality is true.[14] Now consider the following case:

Creature

There is a creature in the other room. The creature can be either a human being or a chimpanzee. Some scientist flips a fair coin to determine which creature will be put in that room, but the result of the coin-flipping is kept a secret from you. You know, then, that there is an equal chance that the creature will be human or chimpanzee. You are now asked to decide whether the creature in the other room should be treated as the equal of human beings or of chimpanzees for the rest of the creature's life. What do you choose?

I assume that you do not take chimpanzees to be equal to human beings in moral status. If you do, replace the chimpanzee with a dog or a cow. If you think they are equal to human beings as well, replace the chimpanzee with an animal you believe is not equal to human beings in moral status. If you believe all animals are equal in moral status, try for the purpose of this thought

[14] An innocent assumption. I am interested in seeing what prescriptive equality would be like if it were true, to determine its normative structure.

experiment to anticipate what a sympathizer of prescriptive equality in its traditional form would say about the case. What do you choose?

You might want to learn more about what having the moral status of a human or a chimpanzee would involve before you make your decision. When we say that a chimpanzee will be treated like the equal of human beings, we mean at least the following: we would give the interests of the chimpanzee the same weight that we would give to the comparable interests of human beings. If we treated a human being as having the moral status of a chimpanzee, we would give that human's interests lesser weight than comparable interests of other human beings, and similar weight to comparable interests of chimpanzees. For example, if we could alleviate the similar pain of two people, (1) a human being who has been accorded the moral status of a chimpanzee and (2) any other human, we would give priority to alleviating the pain of the latter.

What do you choose? Do you flip a coin, pick whatever alternative you like, or stare at your options until you die? Do you need the help of some other normative principle besides prescriptive equality to make a choice? I do not think so. I think that at least as far as prescriptive equality is concerned, this problem has a determinate solution: to deny a human being equal moral status to other human beings is worse than granting a chimpanzee equal moral status to human beings.

Here is why. Let us say you choose to give the creature in the other room the equal moral status of humans. If the creature turns out to be human, it will get what it deserves. But what if it turns out to be a chimpanzee and you gave it the moral status of humans? Arguably, no great wrong has been done. All human beings still have their equal moral status compared with one another. And the chimpanzee would not be wronged either. To the contrary: the chimpanzee stands to benefit from having its interests weighing as much as the comparable interests of humans. By contrast, if you decide that the creature in the other room should be treated as having the moral status of

chimpanzees for the rest of its life, then this decision is riskier in terms of justice. If the creature in the other room turns out to be a chimpanzee, all is fine and you wrong no one. But if the creature in the other room turns out to be human, you wrong her by giving her interests lower weight than the weight you give to the equal interests of other human beings. If prescriptive equality is true, to do so would be to wrong her.

I suggest that as far as prescriptive equality is concerned, there is a solution to the Creature case: one should decide that the creature in the other room will be treated like the equal of human beings. That decision is less risky in terms of justice. As far as prescriptive equality is concerned, when it comes to human beings, treating them unequally relative to one another is worse than treating nonhumans as their equals. But if prescriptive equality were symmetric, there would be no such solution. Therefore, prescriptive equality is normatively non-symmetric. Prescriptive equality is not an instance of formal equality. Correlationism — which is founded on the belief that prescriptive equality, if true, is an instance of formal equality — is false. So the skeptical arguments against prescriptive equality fail.

There are many objections one might raise to this line of reasoning. Let me address some of them.

4.4.1 Wrongs to Humans in Promoting a Chimpanzee

One might want to say that there is an equal wrong in treating a chimpanzee as the equal of human beings as there is in treating a human being as the equal of chimpanzees, because humans will be wronged by promoting the moral status of a chimpanzee to their level in a way similar to the wrong they would incur by being treated unequally to other humans. One might propose cases like the following to illustrate this point:

Boat 1

Five people and one chimpanzee are drowning, and I can save only one of them with my tiny boat. One of the five people has been the victim of the above thought experiment and was demoted to the moral status of a chimpanzee (let us call him Ron). In order to act as if the remaining human beings have a higher moral status than Ron and the chimpanzee, I give priority to the survival of the other four humans. I perform a fair lottery to decide whom to save, but the chimpanzee and Ron get no chance of surviving, or a lower chance than each of the humans. This clearly wrongs Ron, as now I do not give equal weight to his life interest compared with the other humans.

Now consider the following case:

Boat 2

Five humans and a chimpanzee are drowning, and I can save only one of them with my tiny boat. The chimpanzee is the beneficiary of the last thought experiment and its moral status has been promoted to that of humans. In order to treat the five humans and the chimpanzee as having equal moral status, I draw a fair lottery among these six individuals. This lowers the chances of each of the humans to survive compared with a case in which I attend to the fact that the chimpanzee really has lower moral status than humans. This seems to wrong the humans.

One might present these cases and say that in Boat 2 I do a wrong equal to the wrong I do in Boat 1. It seems like in Boat 2 I wrong each of the five people by increasing the moral status of the chimpanzee, and that wrong is equal to the wrong that would result when lowering the moral status of each human being compared with the others. This, one might want to say, shows that

prescriptive equality is symmetric after all. Treating equal cases unequally and unequal cases equally both result in equal wrongs.

In response, I think that prescriptive equality actually implies that in Boat 2 I did a lesser wrong compared to Boat 1, and that whatever wrong exists in Boat 2 is explained not by the violation of prescriptive equality, but by the violation of some other moral principle. First, in Boat 2, while the inclusion of a chimpanzee lowers the chances of the humans to survive, and thus harms them, it does not affect their equality relative to one another, and thus does not necessarily wrong them insofar as prescriptive equality is concerned. This should give a clear advantage to my action in Boat 2 over my action in Boat 1, in which a human being is treated as unequal to other human beings. To support this assertion further, consider the following case:

Boat 3

I see that five people are drowning, and I can save only one of them with my tiny boat. To respect their equal moral status, I go about to draw a fair lottery among them, thus giving each a 1/5 chance of survival. Just before starting the lottery, I discover that there is a sixth human on the boat whom I did not notice before. I now adjust my lottery, and to respect the equality of all individuals, each one now has a chance of 1/6 of being saved.

In this case, there is clearly no loss in justice as far as prescriptive equality is concerned. No person is wronged by the sudden inclusion of a sixth person. The initial five people are clearly harmed by the lowered chance of being saved, but none of them is wronged, and this is because their interests are given equal weight. Prescriptive equality does not legislate against a person having 1/6 chances of surviving, so giving that weight to all the humans Boat 2 is not inconsistent with prescriptive equality.

But Boat 2 clearly contains some wrong that does not exist in Boat 3. And the question is how that wrong could be best explained. I suggest that it is not explained by a violation of prescriptive equality, as in both cases the equal interests of humans get equal consideration (unlike Boat 1, in which prescriptive equality is clearly violated). Rather, some other ethical principle is violated in Boat 2. Consider the following case:

Boat 4

I see that five people are drowning, and I can save only one of them with my tiny boat. I go about to draw a fair lottery among them, giving each a chance of 1/6 of being saved, with a 1/6 chance that I will save no one and simply sail away.

I do something wrong in Boat 4, because my lottery includes the option of not saving any human being. But clearly this wrong cannot be explained as a violation of prescriptive equality. No other creature, whether human or not, is involved in Boat 4, and all the humans in it get an equal chance of surviving. What goes wrong in Boat 4 is not that some human being is treated unequally to others, but, rather, that something like the following principle has been violated:

No-Waste Principle: If there are resources available to address a moral claim and these resources are not used, all individuals whose claims have been ignored are wronged. If, however, these resources have been used to address some moral claim of equal urgency, no one is wronged, even if their claims have not been satisfied.[15]

[15] See (Anscombe 2005 (1967)).

This principle nicely explains what goes wrong in Boat 4. By taking the risk of wasting resources to address a moral claim made on me by each of the five human beings, I risk violating the No-Waste Principle, and it wrongs all the humans on the boat for me to take that risk. In Boat 3, by contrast, there is no wrong, since there is no waste: by including the sixth person, and by being committed to the equal moral status of the six people, I am committed to wasting no resources that could be used to address a moral claim. Boat 2 is somewhere in between Boat 3 and Boat 4. Unlike Boat 4, I do not simply waste a resource, since I am committed to saving at least one life, whether a chimpanzee life or a human life. But it is also unlike Boat 3, because if chimpanzees have lower moral status than human beings (as we assume), then their moral claim to be saved is also weaker than the human claim to be saved. By saving a chimpanzee I would to some extent waste my resources: I would use them to address a moral claim (the claim of the chimpanzee) that I could have used to address a stronger moral claim (the claim of each of the humans). Such action, I suggest, is a violation of the No-Waste Principle; it is not a violation of prescriptive equality.

4.4.2 The Bumping Up Objection

A different objection would go as follows. What accounts for the intuition that we should give the creature in the other room the moral status of humans is that, as it happens, being equal to human beings has benefits creatures not morally equal to human beings lack. To be an equal of human beings means that one's interests are taken very seriously, and this is something from which any creature could benefit. Having a moral status equal to that of humans would promote the chimpanzee, while being unequal to human beings would demote a human being. This is what

makes treating a human being unequally compared with other humans worse than treating a chimpanzee as equal to humans. It is better for anyone to be promoted rather than demoted, and this is the source of the non-symmetric intuition, but if this reason explains our reasoning in the Creature case, prescriptive equality might be symmetric after all. According to this objection, nothing about the special goodness or rightness of equal treatment does any work in explaining our solution to the Creature case. Rather, we should evoke something like the Bumping-Up Principle: when in doubt about the moral status of an individual, give that individual the higher of the moral statuses of which she is a candidate.

I think that the Bumping-Up Principle can explain some of our non-symmetric intuition in the Creature case, but not all. Consider the following variation:

Angel

Let us stipulate that angels exist and that they have a higher moral status than human beings. The interests of angels matter more than the interests of human beings. To treat an angel like the equal of a human being would wrong the angel, while treating a human being like the equal of an angel would benefit the human being. Now imagine that there is a creature in the other room, and there is an equal chance it will be a human being or an angel, and you need to decide whether to give the creature a moral status equal to that of human beings or to treat it as having the moral status of angels. What do you choose? More precisely, what would prescriptive equality require that you choose?

If you believe that prescriptive equality is normatively symmetric and that the only explanation for the non-symmetric intuition in the above thought experiments is the Bumping-Up Principle, then without hesitation you would give the creature in the other room the status of an angel.

But notice: If the creature in the other room is given the moral status of an angel but is in fact a human being, then according to prescriptive equality all other human beings are wronged if that human being will be treated as their superior. This must serve as a powerful consideration against according the creature in the other room the moral status of an angel, and it is a consideration that comes from prescriptive equality. So it is not just the benefit of bumping up that explains our preference for equality of treatment for humans, but, rather, a direct preference for equal treatment of humans relative to other humans over the unequal treatment of humans relative to non-humans.

Note that the intuition here does not have to be that we would give the creature the moral status of a human. Perhaps we think there is a tie here between the right of other humans not to be inferior to any human and the right of an angel not to be treated as a human. But a tie in this case shows that the Bumping Up Principle does not do all the explanatory work in the original Creature case, for if it did, it would unequivocally recommend that we give the creature in the other room the moral status of an angel.

Here is a different example. Imagine that some human beings could be genetically enhanced such that they would possess the basis of moral status to such a high degree, and to such higher degree than regular humans, that their moral status would be higher than the equal moral status we now accord to humans.[16] Now imagine we are in the in-between phase of our scientific development: we have enhanced some human beings quite a bit, but we are not sure if we enhanced them enough to make them superior in moral status to other humans. We are in doubt. If we reason with the Bumping-Up Principle alone, then once we hit doubt, we should give the enhanced humans a superior moral status compared to other humans. But I think most would find this implausible. To the contrary, a commitment to prescriptive equality implies that until we are

[16] See (Douglas 2013).

absolutely sure one is of a higher moral status compared with human beings, we should treat that person as an equal. This gives a distinctive moral weight to equal treatment, distinct from considerations coming from the Bumping Up Principle.

4.4.3 Wrongs to the Promoted Chimpanzee

One might think that the chimpanzee might be wronged if it is treated as the moral equal of humans, and that there is just as much wrong in treating a chimpanzee as having the moral status of humans as there is in treating a human as having the moral status of chimpanzees. If this is so, prescriptive equality is normatively symmetric after all.

Perhaps one imagines that if we give a chimpanzee the moral status of humans we will force the chimpanzee into a human community. Perhaps we will start punishing this chimpanzee for its bad behavior in the retributive way we do with humans. Or we will start taxing the chimpanzee. These behaviors could indeed wrong the chimpanzee. That, however, misconstrues what it would mean for a chimpanzee to be the moral equal of human beings. Prescriptive equality, if applied to a chimpanzee, would not mean that we should treat it in all respects as if it were human. It means, rather, that we give its interests the same weight we give to the comparable interests of humans. We would understand its life, pains, and freedom of movement as giving rise to equal moral reasons as the moral reasons these interests give rise to in humans. It is hard to see how a chimpanzee can be wronged by such a move.

After all, if prescriptive equality is correct, many human beings are such that they are the moral equals of other human beings but should not be punished or taxed. Think of babies and severely

cognitively disabled in this respect. There is no reason why the chimpanzee cannot be the moral equal of humans based on a similar model.

4.4.4 Other Chimpanzees are Wronged?

Perhaps we wrong other chimpanzees by treating one of them as superior to others? This would be the case only if chimpanzees, like human beings, are owed equal treatment to one another. Nussbaum, for example, argues that this is in fact the case.[17] Notice that the thesis adduced here to attack my thought experiment is not that all animals are equal, but that all members of each species are.

If to treat one chimpanzee unequally to another is just as wrong as treating one human being unequally compared to other human beings, then our judgments about the above thought experiment must change in a symmetric direction. But remember that the argument assumes that human beings have a higher moral status than other animals, and it does so in order to discover something about the nature of the idea we call prescriptive equality. If all members of other species are equal and their equality is morally just as important as ours, then indeed my argument collapses. But if their moral status is lower, then even if they have a right to equal consideration of interests (among each other) that right has less moral weight than the comparable right in humans. So treating a human being unequally (compared to other humans) would still be morally worse than treating a chimpanzee unequally (compared to other chimpanzees).

It would be ideal if I could do without cross-species comparisons, and compare just human beings with each other. The methodological problem lurking here is that most of us already believe

[17] (Nussbaum 2006).

that all human beings deserve equal moral status, so the only unequal moral status we can think of will be with members of some other species.

If, however, one believes that prescriptive equality allows that some human beings do not have equal moral status, then our current concern can be answered with a variation on the above thought experiment that does not involve cross-species comparisons. Some philosophers who believe in prescriptive equality might find it intuitive, for example, that an anencephalic baby or a person in permanent vegetative state do not have equal moral status to other human beings. If one shares their intuition, we can try the following variation on the above thought experiment:

Imagine there is an equal chance that there is a healthy adult in the other room as there is an anencephalic baby. You are asked to determine whether to treat the human being in the other room as if he had the moral status of a normally functioning adult human beings or the moral status of an anencephalic baby. I suspect that, once more, you would agree that the right choice here is to treat the person in the other room as having the moral status of other, normally functioning, human beings. It is riskier in terms of justice to weigh the interests of a healthy adult human being like the interests of an anencephalic baby, than it is to weigh anencephalic babies' interests like the interests of normally functioning adults.

Another possible variation would go as follows. There is a person in coma in front of you, and there is an equal chance that this state is permanent (and so, let's assume, the person does not have equal moral status to other human beings) as there is that the person will "wake up" for the coma (in which case the person does have an equal moral status to other human beings). You should decide which moral status to accord this person. Again, in such a case of doubt, it seems that you should err on the side of equal moral status.

4.4.5 The Problem of Risk

One might think that none of the cases above shows anything generalizable about prescriptive equality, because all these cases involve risk. One might think that there is not much to learn about ordinary cases from cases of risk, given the special epistemic condition of risk. For example, one might believe that prescriptive equality is normatively symmetric but that we have a tie-breaking rule according to which when in doubt we should prefer equality of human beings to their inequality.[18]

There are a few things to say in response. First, I think we can learn something valuable about a normative principle from cases involving risk. If something about the nature of a normative principle entails something about how it would operate in cases of risk, those cases are the relevant cases to consider.

Second, if prescriptive equality really is normatively symmetric (because it is just an instance of formal equality), we should wonder why there is a rule in cases of risk to prefer equality to inequality. Wouldn't flipping a coin between an egalitarian and a non-egalitarian policy be a better rule of thumb in such cases?[19]

Third, there is a version of the thought experiments that does not involve risk. Consider the following variation: there are now two rooms, and you know that in one of them there is a human being and in the other a chimpanzee. You can choose that the two creatures will be treated as having moral status equal to that of human beings, or that the two creatures will be accorded the moral status of chimpanzees. What do you choose? Whatever you choose, you know with certainty

[18] Notice that this is not the same as the Bumping-Up Principle.

[19] The same concern arises for utilitarian theories that hold that among distributions that equally maximize expected utility, one should favor the more egalitarian one.

that one creature will not be treated according to its real moral status. If prescriptive equality is symmetric, it wouldn't matter what you choose, for it would be just as wrong to treat a human being as having the moral status of chimpanzees as it would be to treat a chimpanzee as having the moral status of human beings. But for reasons similar to the those presented above, it seems better to give the two creatures the moral status of human beings, than to give both the moral status of chimpanzees. But here, no risk has been stipulated to evoke the non-symmetric intuition.

4.4.6 Valid Non-Symmetric Version of Formal Equality?

One might argue that there exists a valid non-symmetric version of formal equality. The non-symmetric principle reads as follows: "treat equal cases equally". It lacks the counterpart "and unequal cases unequally". For example, in political philosophy, it is sometimes said that one should have a good reason when one wishes to treat persons unequally, whereas one does not need to have a reason to treat persons equally. There is a special burden of proof on the one who wishes to give unequal treatment, and so the justification of equal treatment is different from the justification of unequal treatment: whereas the latter requires a demonstration that the cases are in fact unequal, the former requires no such justification. This might be taken as a non-symmetric version of formal equality.

It is questionable how useful such a formal principle would be for the skeptic or the Correlationist. As mentioned above, to defend Correlationism, and so the two skeptical argument, it is not enough that one treats equals equally. One should have some rule about how to treat unequals. The main advantage of a non-symmetric formal-equality principle is related to another claim I mentioned, which is that if Correlationism is false, then even if human beings were equal

in the basis of moral status, that would not ground prescriptive equality. If there is a valid non-symmetric principle of formal equality then this claim I made is wrong.

But we should be careful here. As a first stab, we should note that there is sometimes an epistemological presumption of equality. Consider three cases:

1) On some subjectivist understandings of probability, if I do not have a reason to believe the probabilities of p and q are different, I have a reason to take them to be of equal probability. This might be grounds for believing of two cases that they are equal cases.
2) In some cases, if I do not have a reason to believe that p, I have a reason to believe that not-p. And so in some cases, if I do not have a reason to believe that p and q are "unequal cases", I have a reason to believe that they are equal cases.
3) One use of the average function is the following: if I know nothing particular about the extent to which p and q possess some property A, but I know p and q belong to a population in which the average extent of possessing A is X, the safest judgment I can make about p and q is that both possess X. If I have to make decisions based on the extent to which one possesses A, it might be safest for me to assume they have it equally.

All these cases can be fully explained by formal equality in its normatively symmetric form. What happens in them is that the lack of reasons to believe p and q to be unequal cases provides a reason to believe that they are equal cases, and so should be treated equally. These cases do not indicate the existence of a non-symmetric principle of formal equality. They are just cases in which the likelihood that the cases are equal is our safest epistemological bet. If, when political thinkers say that without further evidence for differences we should treat people equally they mean that we should believe they are equal, and they rely on one of the above strategies, they are still using the

same normatively symmetric principle of formal equality I was working with throughout Governments are in fact ignorant of many individual differences in large populations, so the safest epistemological assumption for them might be to take cases to be equal. But such epistemological considerations cannot explain the non-symmetric intuition in the case I have been discussing, where one does not have a better reason to believe cases to be equal rather than unequal.

Despite the existence of some (controversial) epistemological example, I have not seen the non-symmetric formal-equality principle evoked anywhere outside ethical and political philosophy. But in these contexts the idea that human beings are equal is often taken for granted. It is likely, then, that in these contexts it is the usual normatively symmetric formal-equality principle that is being evoked, with the additional thesis that all human beings really are equal cases. The "presumption of equality" of political philosophy is not formal, but substantial: it is because human beings are taken to be morally equal that there is a strong presumption of equality in treating them. No additional formal principle is needed to explain this preference for equality.

As I see it, the presumption of equality can be derived either from descriptive or prescriptive equality. If it is derived from descriptive equality, it does so by the application of the regular symmetric principle of formal equality, applied to descriptive equality. If it is derived from prescriptive equality, as part of what it means to treat persons as equals, it actually helps us to argue for the non-symmetric nature of prescriptive equality, for the following reason. The presumption of innocence, for example, comes from the belief that incriminating an innocent person is worse than pardoning a guilty person. Similarly, the presumption of equality, if it is an aspect of prescriptive equality, might come from the belief that equal treatment of unequals is better than the unequal treatment of equals. If it takes that preference from prescriptive equality, this is a further indication that prescriptive equality is non-symmetric.

4.5 Conclusion

I have argued that if prescriptive equality is true, it is worse to treat humans unequally compared with one another than it is to treat non-humans as the equals of humans. Thus, prescriptive equality is normatively non-symmetric. Formal equality, by contrast, is normatively symmetric. So prescriptive equality is not an instance of formal equality. So Correlationism is false, and the skeptical arguments against prescriptive equality fail.

There is another consequence to this conclusion. I mentioned above that to my knowledge, formal equality is the only principle that takes equal cases as descriptive input and generates equal treatment as normative output. If formal equality is not what account for prescriptive equality, then even if all human beings had the basis of moral status to an equal degree, that would not explain why they should be treated as equals. Even if descriptive equality were true, that would not explain why prescriptive equality is true.

Descriptive equality, if true, could perhaps show that human beings are equal in value or worth (axiological equality) given the assumption of supervenience. But even for this purpose descriptive equality is not necessary, and its falsity does not indicate that human beings are unequal in value or worth. Further, even if human beings were equal in value or worth, we should still ask why beings equal in value or worth should be treated equally, and the only answer, I think, could come from formal equality. So axiological equality also cannot ground prescriptive equality.

Surprisingly, if prescriptive equality is not an instance of formal equality, then equality of value or worth is irrelevant to prescriptive equality. This is important, because philosophers are fond of describing prescriptive equality as the thesis that all human beings are equal in moral status, where "moral status" is taken to be equivalent to something like value or worth.[20] But this linguistic practice rests, I believe, on a mistake.

To avoid confusion, I think that rather than saying that prescriptive equality is the thesis that all human beings are equal in moral status (thought of as something like value or worth), we better understand prescriptive equality as the claim that human beings have the moral status of equals. How that moral status is to be justified is the topic of the next two chapters. What is clear is that we must look for a non-Correlationist defense of prescriptive equality. And it is also clear that what we must confront, rather than deny, is that prescriptive equality requires that we treat unequal cases equally.

[20] The locus classicus is (Vlastos 1997)

5 Respect and Equality

5.1 Where we are

In the last chapter, I argued against Correlationism. I claimed that, if prescriptive equality is true, it is not because descriptive or axiological equality are true. The interesting upshot is that even if human beings were equal in all of their morally significant properties, that would not ground prescriptive equality. This is because no normative principle besides formal equality takes equal cases as descriptive input and generates equal treatment as normative output. This, I think, is true also when the descriptive input is of the "evaluative" type, as when we say that human beings have equal value, worth or even dignity. To put it bluntly, the question of whether or not we are equal is strictly irrelevant to the truth of prescriptive equality (and not because we cannot deduce an "ought" from an "is").

This might sound like bad news to prescriptive equality: if one believes that formal equality is the only normative principle that can justify equal treatment of any kind, and prescriptive equality is not an instance of it, then nothing can justify prescriptive equality, period. Prior to the previous chapter, we suspected that it is a contingent fact that prescriptive equality is false; now we have a reason to believe that nothing can make it true.

On the other hand, there is clearly some good news here for prescriptive equality. If prescriptive equality is not supposed to be explained by descriptive equality, then the falsity of descriptive equality would not be a reason to abandon prescriptive equality. The question is: could

prescriptive equality be defended on grounds other than formal equality? Could prescriptive equality be defended on non-Correlationist grounds? The aim of the coming two chapters is to attempt a positive answer.

5.2 Outline of an Alternative

Consider the possibility that there is some attitude Z, and that it is owed to individuals not in virtue of possessing any property equally. Now consider that, upon reflection, it turns out that it is inconsistent with Z that some people's interests will be given less weight (or consideration) than the equal interests of certain other individuals. In other words, if one's interests are treated as having less weight than the equal interests of others, then one has not been shown Z. In such case, if one is owed Z, one's interests should not receive less weight than equal interests of other individuals. If a group of individuals are owed Z, and if the interests of some individuals in this group are given higher weight than others, then some individual's interests receive lower weight than others, but by hypothesis this individual is owed Z, and it is impermissible to give her interests lower weight. Hence, for a group of individuals who are owed Z, the interests of all its members should be given equal weight. Since prescriptive equality is the claim that the interests of individuals should receive equal weight (or consideration) prescriptive quality would be true for all those who are owed Z.

This would be true even if the individuals in this group are owed Z to different degrees. Responding to differences in Z by assigning different weights to the interests of individuals is itself inconsistent with Z, so being owed Z to different degrees would not threaten its egalitarian implication.

Another way of describing this approach to defending prescriptive equality for a group of individuals is to say that equality is not directly what we are trying to establish, but rather non-inferiority. Equality is the by-product of non-inferiority when applied to a group of individuals all of whom deserve to be treated as non-inferior to one another. Even if one believed that formal equality is the only principle that could directly recommend equal treatment (which explains the attraction of Correlationism), perhaps there is some other normative principle that could justify non-inferiority, and so, indirectly, recommend equal treatment. If that is the case, the demand to treat human beings as equals could be established without showing that they are "equal cases."

This is the template of my account of prescriptive. It could admit of different specific theories, depending on the specification of Z. Andrea Sangiovanny, for example, employs this general template and identifies Z as non-cruelty. He says that all those who deserve to be treated with non-cruelty deserve to be treated as non-inferior to others, since being treated as inferior is a form of being treated cruelly.[1] My preferred Z is different: I identify respect as the relevant attitude from which the demand for non-inferiority should be derived. In the rest of this chapter I try to develop this claim, by advancing certain theses about respect.

5.3 Existing Accounts of Respect

Respect has been a central concept of moral and political philosophy at least since Kant, but philosophers have strangely neglected the task of analyzing this concept. They often speak of it as if its meaning is transparent (and to some extent, like all terms of natural language, it is), or advance a certain ethical or political theory and then assert that that theory is the best explication of respect,

[1] (Sangiovanni 2017).

without advancing substantive claims about the attitude of respect that could support such claims. Perhaps surprisingly, Kant himself does not seem to be a helpful starting point (despite his immense influence), as he believed respect is owed primarily to the moral law, and only secondarily to individual persons. While some contemporary philosophers continue this Kantian model (Darwall, for example, speaks of "recognition respect" as respect directed primarily to norms),[2] most philosophers who employ the concept of respect tend to speak of individual persons as the primary objects of respect, and I shall do the same.

To the extent that there is a contemporary "debate" about respect (rather than occasional sporadic contributions), one can identify two main views: on one, respect means simply to treat someone as they should be treated. On this view, respect is not an independent source of reasons, and a complete picture of morality could do without this notion altogether. On the other view, the obligation to respect is a source of distinct moral reasons: any picture of moral reasons would be incomplete insofar as it does not include respect. Let me say a little more about each.

On the first view — which Joseph Raz dubs "the by-product view"[3] — to respect someone is to behave toward one in accordance with the obligations that exist toward one. On this view, respect is not an independent moral consideration. It does not explain why we have toward others the obligations that we do. Those should be determined in some other way. This is what Darwall calls "recognition respect". The early Joseph Raz embraced a similar view.[4] There seems to be something right about this view, in the following sense: insofar as one ignores duties one has

[2] (Darwall 1977).

[3] (Raz 2001, 126-127).

[4] (Raz 1986, 157).

toward another, one can be said to not take that other person seriously enough, to be indifferent to that person, which seems like a paradigmatic way of disrespecting someone.

The main concern with this conception is that it seems quite redundant and empty, as Leslie Green points out.[5] Of course we ought to treat others in accordance with how we ought to treat them. Respect simply drops out as a tautology; it is not seen as a substantive moral value in its own right. So why bother with it?

A rival theory has been proposed by Harry Frankfurt.[6] On this view, respect for another demands something specific and distinct from merely following any valid norm toward another. It means treating another as the individual human being she happens to be, in all her particularities, and so to not ignore facts that are part of her unique identity. Respect means that we should recognize the person as the particular person she is. If she likes music, to respect her would be to acknowledge that fact about her. The same goes for other important particular facts about her. Whereas for Kant, respect is related to the most universal duties we have to human beings as such, for Frankfurt respect reflects the most particularized duties we have to individual human beings qua the individuals that they are. While being human is one fact about each individual human beings that we should respect, according to Frankfurt it is just one. In its attentiveness to the particularities of persons, respect is the source of distinct moral reasons, for if we did not owe respect to persons, we would not owe it to them to recognize them as the unique individuals that they are.

[5] (Green 2010).

[6] (Frankfurt 1997).

A third option, somewhere in between, is developed by the late Joseph Raz.[7] Respect, according to Raz, is the response we are called to have in the face of what has value, in the face of what is good and worthy. More specifically, respect requires that we acknowledge the value in question (in our thoughts and emotions), and that we preserve or not destroy the valuable thing.[8] Respect, on this view, is more specific than the by-product view: it does not apply to all the valid norms one has toward something, only to those the source of which is located in value, and only insofar as what is required of one is acknowledgment and preservation. What it is to acknowledge and to preserve a given value varies with the value in question, which allows respect to be particularized, moving in Frankfurt's direction. But for Raz, respect is more general than it is for Frankfurt, insofar as it always requires these two things—acknowledgment and preservation—and insofar as it applies to anything of value. As Raz says, we should respect a good loaf of bread, and we should respect persons, and it is the same notion of respect that is employed for both.[9] If there is any difference in how a loaf of bread and a person should be acknowledged and preserved, it is to be explained not by a different notion of respect, but by the different values of a good bread and a good person. We can call it the "axiological view of respect," to distinguish it from the by-product view and from Frankfurt's view.

Because Raz explains all instances of respect in terms of value, he denies there is a distinction between what Darwall famously calls recognition respect and appraisal respect.[10] For Darwall, appraisal respect is indeed a response to value, but recognition respect is emphatically not: it is rather a response to obligations. In Raz, this distinction collapses: Respect is in all cases a response

[7] (Raz 2001, 127-175).

[8] (Raz 2001, 161-162).

[9] (Raz 2001, 169).

[10] (Darwall 1977, Raz 2001, 137f).

to value, and the apparent distinction between appraisal respect and recognition respect should be explained in terms of the different value of being a great swimmer and being a human person. One possible concern about Raz's account is exactly this generous scope. It seems a stretch of common usage to say that anything of value requires respect. I, for one, do not think that a good loaf of bread should be respected, or even can be respected (and I say this as an avid baker). But perhaps Raz could make sense of the requirement to respect a good loaf of bread. Take a case in which I buy a friend a very good and special bottle of gin. That friend is known to be somewhat of a foodie and a good chef and a connoisseur. However, the friend does not seem to know how good this bottle of gin is, so he is not appreciating it in his heart upon receiving it, nor does he say anything to express any genuine appreciation. To make things worse, he uses this bottle of gin for some non-special recipe or non-special occasion for which any gin would do just as well. I might feel that the gin's value should have been appreciated more, in the sense that it should have given rise to a deeper appreciation, and in the sense that it should have been saved for a more special occasion.[11] And perhaps something similar is true of a good loaf of bread. In my family, for example, one does not throw away a slice of bread that can be eaten. Maybe this is a token of respect to the bread.

I am still inclined to say that even if we need to respect a good loaf of bread, this respect would be different in kind than recognition respect. Respect for bread, whatever it may mean, is a response to its value and nothing more, but recognition respect involves being responsive to something besides value. For example, respect for persons is typically taken to imply more than the demand to preserve or not destroy them. With persons we believe that an integral part of respecting them includes not causing them pain, not restricting their freedom of movement and

[11] I owe the anecdote to Jaime Edwards.

speech, and the like. These are not essential to the preservation of the person, but presumably, it is the person that we respect in refraining from causing pain or interfering with their movement. I think that the by-product view and Darwall's notion of recognition respect can make better sense of the variety of obligations that are involved in respecting persons, and in what follows, I advance what I call "the enhanced by-product view", which aims to reflect what I take to be insightful in by-product view and in Darwall's notion of recognition respect, but in a way that saves them from charges of redundancy and emptiness.

Raz can perhaps respond to all these concerns. He can say (and does say) that what is valuable for something that is valuable in itself is itself valuable. If persons are valuable in themselves, and being-free-of-pain is valuable for them, it is valuable. And preserving this value (of no pain) requires avoiding causing pain. Similarly, having freedom of movement might be valuable for persons, and preserving that requires not interfering with their movement. Raz would say that all respectful behaviors can be described as the preservation (or non-destruction) of something valuable, whether in itself (like persons) or for something that is valuable for something that is valuable in itself. There is a long tradition that can support Raz here, according to which rights exist to protect valuable things, like autonomy,[12] and that generally obligations exist because of the good they protect.[13]

Some cases, however, still seem recalcitrant. Cases that interest Darwall when he speaks of recognition respect, like respect for parents, teachers and judges. While one could imagine certain parents so lacking in value as parents that respect for them is no longer called for (in which case one might say "they are not really my parents anymore"), usually respect to parents is not tied to

[12] For example, (Griffin 2008).

[13] (Anscombe 1981 (1969)).

the value they have as our parents, but to the fact that they are our parents. We respect our parents not because they are good parents, or because parenthood is good, or because they are persons, but because they are our parents. No doubt, we have with our parents a relationship that is typically valuable to us, but at least certain behaviors toward our parents are called for in such a way that they do not rise and fall with the rise and fall of the value of the parenting relationship.

That said, I do not have a knockdown argument against Raz's account of respect, and perhaps what I offer below can be interpreted as a variation on a Razian theme. But the vocabulary I use is different than his. Whereas Raz speaks of respect as a response to something good, valuable and worthy, I find it more natural to say that at least one kind of respect (recognition respect) is a response to something being important, serious and weighty. This might be a mere semantic difference, but as I develop my preferred enhanced by-product account, requirements other than mere acknowledgment and preservation will emerge.

5.4 The Enhanced By-Product View

Critics of the by-product view say that it turns respect into an empty and redundant concept. Instead of rejecting the by-product view completely, however, one can introduce certain improvements to it, that will retain its spirit but will save it from the charge of emptiness.

For example, while the by-product view affirms that respect does not offer any independent reasons, it can be interpreted to imply something substantial about what it is for an action to be respectful and disrespectful. Arguably, even on a by-product view, not all satisfactions of duties are respectful, and not all violations of duties are disrespectful. For example, the reason for a violation of duty I have toward another seems to matter when we judge whether I respect her: if I

violate a duty to you because I am indifferent to you, or because it is inconvenient to me, or because of some culpable ignorance about my duties, then my behavior is indeed disrespectful. But if I violate my duties to you because some strong fear took me over by surprise, then even though I may still be under a duty, violating my duty to you is not a sign of disrespect to you. Similarly, if I do as duty requires, this is not always a sign of respect. I can do what I owe you just because I am afraid of the consequences of not doing so. In so doing, I act in accordance with duty, but I do not respect you.

Take Gaston, the village bully. I hate and despise Gaston. When I see him walk to the fountain to fetch water, I really want to stop him from doing so. The only reason I do not stop him is that he is much stronger than me and has friends in the higher ranks of the village, and I am afraid of his retaliation. I let him go to the fountain and have water. Assume that I have a moral duty not to stop Gaston from getting to the fountain (because of his right of movement and his legitimate interest in drinking). I act in accordance with that duty, but not out of respect to Gaston, and my action cannot count as respectful.

Raz would explain this case by saying that I failed to recognize the value of Gaston. But there is a more direct explanation. What I most immediately fail to recognize and act on is the obligations I have to Gaston. Gaston's interests in free movement and in water impose certain moral obligations on me, and in not being responsive to these obligations, I disrespect Gaston. My behavior implies: "you and your interest are nothing to me." Perhaps all of this has to be grounded in some story about Gaston's value and the value of his interests. Perhaps only valuable creatures like Gaston are such that their interests impose interests on others. But this would be a substantive theory of the source of obligations. One does not have to subscribe to it to get a grasp of what is disrespectful in my behavior toward Gaston.

Actions in accordance with duty are not as such respectful. This is not surprising, as respect, in its common usage, usually does not denote actions, but an attitude, the attitude expressed in one's actions. This is why (also in Raz's theory of respect) one important level of respect is "internal": it involves the beliefs and emotions a person has or endorses. When I refrain from stopping Gaston because I am afraid of him, my action (or omission) does not reveal beliefs and desires that someone who truly respects Gaston would have, like the belief that there is something I owe him. It is therefore not surprising that Kant, who elaborates his moral system in the language of respect, is concerned that people act not just in accordance with duty but also from the motive of duty.[14]

On the enhanced by-product view, as I develop it here, respect consists not just in acting as obligation requires, but also in acting out of the recognition of the obligation. Respect, I propose, is not a response to value, but a response to duty. It is deontological, not axiological.

If there is a moral obligation to act respectfully toward some individuals, this obligation is not empty or redundant. It is an obligation to do what we ought to do toward someone because this is what we ought to do toward them. It is, if you like, a second-order obligation: an obligation to do other obligations for certain reasons and not others.

On this proposal, respect is indeed not a moral obligation in the same way as "do not cause pain" or "do not murder" are. It is not a source of obligations like these, and for this reason it is still a by-product obligation, and might seem empty and redundant. Respect kicks in only after these first-order moral obligations have already been settled. Once they have been settled, respect

[14] Of course, nothing I said so far should be read as embracing Kant's ethics, as I have not yet whether anyone or anything ever deserves respect, and more specifically, haven't expressed the view that the moral law deserves respect. But I think Kant's insistence that rational agents act from the motive of justice is nicely married to the employment of respect.

adds a distinctive obligation: "obey these obligations toward others because they are your obligations toward them." Let us call this second-order obligation "the responsiveness principle." If the responsiveness principle is a valid moral principle, then a full picture of the moral realm cannot do without respect.

Why following an obligation out of recognition of it expresses an attitude of respect to a person rather than (as Kant and Darwall thought) respect to the obligation or moral law? The answer is that moral obligations toward individuals do not come out of nowhere. The grounds of obligations toward individuals are to be located in their interests. Some interests of at least some individuals are obligation-generating or duty-imposing (perhaps with the help of additional premises or factors). Merely to act in accordance with what these interests require is not yet to have any particular stance in relation to the individual whose interests they are; but if one follows the relevant obligations because one is responsive to them, one's behavior carries the meaning: "It is because you and your interests matter that I act toward you the way I do." And this implication give the act the quality of respect. Respectful actions express the attitude that the respected party is something quite important, someone that matters, something that should weigh on one's deliberation. This is why the responsiveness principle is constitutive of respect.

Before moving on, let me offer some clarifications and refinements of this idea.

First, not any duty, not even any moral duty, would give rise to respect if it motivated my behavior. If the reason I do not stop Gaston from reaching the fountain is that I promised my mom I would not do so, then even though the reason for which I act is a moral duty, it is not respect to Gaston that is shown in my action (at best, it is respect to my mother that is shown in my actions). Gaston and his interests must be the source of the duty to which I am responsive for me to respect him.

Second, locating respect in the motivation for action explains the following intuitive thought: I respect you when I try in good faith to be responsive to duties imposed on me by your interests, even if I ultimately fail. This is because "respecting", unlike, say, "saving", is rooted in my attitude toward you and in how that attitude motivates me for action, not in what I actually end up doing. This is another Kantian theme the enhanced by-product view would agree with.

Third, the enhanced by-product view can explain the notion of self-respect. When one is responsive to duties imposed by one's own interests (if there are such duties) and one does so because one recognizes these duties, one respects oneself.

Fourth, I have described the enhanced by-product approach in terms of obligations and duties, but perhaps I should describe it more generally in terms of reasons for action. The interests of individuals do not just generate duties, they also generate something weaker: reasons for action that are not duties. One should act out of responsiveness to these reasons for action to count as respectful. I will continue to speak of duties in what follows, but one should keep in mind that when interests do not impose duties but mere reasons for action, respect requires that one be responsive to these reasons for action.

Fifth, I have so far spoken about the ways respect shapes the behavior of an agent. But one can have respect to people one never interacts with, as long as one recognizes that their interests are duty-imposing on those with whom they come into contact, and that they would impose duties on one if one came into contact with them. For example, I can respect all the people of Calgary, even though I haven't met all the people in Calgary. In fact, I never met anyone from Calgary. But I believe that the interests of the people in Calgary matter, and people should act toward them in recognition of the duties imposed by these interests. If I ever meet a person from Calgary, I would

be responsive to duties generated by his interests. This is because now I respect the people of Calgary.

Sixth, if respect is to be responsive to duties, only moral agents can show respect. I think this is a correct implication of the theory: while creatures who are not moral agents can fear and maybe even love, they cannot respect. This is not yet to say that moral agents are owed respect, nor that only they are owed respect. But only they can show respect.

Seventh, notice the impartial and objective tone: the interests of the respected party are duty-imposing on anyone who interacts with them, and dispositionally (hypothetically, subjunctively) on moral agents who do not interact with them. In this way, respect is different from love, friendship and other partial attitudes. When one loves another person, one usually recognizes the interests of the other as duty-imposing on one, but the lover also recognizes that other people are not, in general, bound by those same duties. If my lover drowns, I would save him over others, and I might hope others will do the same. But I would not expect or demand from others to prefer my lover to some other drowning person. By contrast, to respect someone is to take the duties imposed by her interests to apply regardless of relations of partiality. It is interesting that when children take themselves to have duties to parents they no longer love, they sometimes say that while they do not love their parents, they respect them. I say more about partiality in §6.4.

Eighth, according to the enhanced by-product view, X respects Y only when X acts out of responsiveness to the obligations imposed by the interests of Y.[15] This might seem to set the bar too high: usually, we do not act with the conscious recognition of the importance of people's interests or a conscious recognition of our obligations to them. But the bar is not set unrealistically high. As Raz nicely puts it,

[15] Keep in mind that X and Y might be the same person, if self-respect is possible.

> I do not consider my duty to care for my child when I care for my child. I do not consider the duty not to murder before I help a person without murdering him. It does not follow that the duty to care for my child or that the prohibition on murder does not shape my actions. Duties are reasons for action. They can shape our view of our options even when we do not deliberate, or do not refer to them in our deliberation. For most of us, our duty not to murder makes the thought of murder inconceivable. Our duties rule out many options — exclude them from our mental horizon.[16]

Applying these statements to the enhanced by-product view, to count as respectful, one's actions must be shaped by the duties one has toward another, but this does not require being conscious of this process. The relevant obligations do not have to be introspectively discernable. But then, what makes it true that one acts out of responsiveness to duty rather than some other reason? The answer, I think, has to do with the counterfactuals that are true of one. If the only reason I do not stop Gaston from getting water is that I am afraid of him, then the following counterfactual is true: "if I weren't afraid of him, I would have stopped him from getting water." The truth of this counterfactual indicates that it is not responsiveness to what I owe Gaston that shapes my action. So I do not respect Gaston. If, to take a different case, I now take care of my parents because I love them, but it is also true that I would have taken care of them had I stopped loving them, that shows, I think, that I respect them. If even lacking the emotional motivation of love I would be responsive to the duties I have toward them, that shows I am directly responsive to the relevant obligations. While I do not have a theory of what makes such counterfactuals true, I do not think consciousness of obligations (or lack thereof) is the plausible truth-maker here.[17]

[16] (Raz 2001, 21-2).

[17] See also (Arpaly 2003).

5.5 Other Notions of Respect

So far I advanced a number of claims about a notion of respect that is pretty close to what Darwall calls recognition respect, with the difference that the attitude I describe is supposed to explain respect for persons. But like Darwall's idea of recognition respect, the idea of respect I advance here is primarily concerned with obligations one already has. For this reason, I advance my claims under the banner of the (enhanced) by-product view of respect. It might be helpful at this point to compare this view of respect with other notions of respect that exist in everyday usage and the philosophical literature:

1) Honor, Etiquette, Conventional-, or Symbolic Respect: This category includes actions like bowing to a king, wearing a suit to a wedding, standing up when a teacher enters the room, waiting for the last person to sit down before starting to eat, using "vous" instead of "tu", and the like. These actions are not inherently related to the interests of the receiver. Rather, to not do these actions is, in certain contexts, to express the view that someone is not really important, does not really matter. But it does not express this view by violating duties imposed by a person's interests, but through a more direct symbolic act. The enhanced by-product view of respect does not deny the existence of these forms of disrespect and does not seek to explain them. It shares with this form of respect the insistence on the meaning of actions, what attitudes actions express. I think that for this reason, both attitudes deserve the name of respect.

2) Appraisal respect:[18] This attitude is a way of being responsive not to duties toward a person but to a positive evaluation of a person (or a thing). When we give a gold medal to a winner in a swimming competition, for example, we show appraisal respect. Appraisal respect is a response to value, and it is explained well by Raz's axiological theory. Raz, however, thinks that all forms of respect should be explained as appraisal respect. The enhanced by-product view denies this. Still, there are shared elements between the two views. For example, Raz mentions that appraisal respect requires certain duties in foro interno: one should have beliefs and emotions that are consistent with the value of the object of respect. The enhanced by-product view agrees: one's actions should express certain attitudes. What one thinks and feels "inside" matters.
3) Respect as non-humiliation and non-degradation: This is the kind of respect we show people when we refrain from: stripping them naked in front of others, make them dance to our laughter, torture them, force them to lick our shoes, replace their names with serial numbers. This ethically important category of disrespectful actions would be explained by the enhanced by-product view as those actions that express an attitude of disrespect simply by the kind of actions they are, regardless of the motivation of the agent and the attitudes they intend to express. To put it differently, an agent cannot do these actions without expressing disrespect. Also, it seems like these actions, in addition to being described as not responsive to someone's interests, can also be described as cruel, which I take to be a distinct topic than respect.[19] And third, these actions are typically a combination of a strong disregard for another's interests

[18] Following (Darwall 1977).

[19] But see (Sangiovanni 2017).

combined with a strong symbolic or conventional disrespect, of the kind mentioned above. The enhanced by-product view can be part of the explanation of the phenomenon of humiliation.

5.6 The Enhanced By-Product View of Respect: Enhance More?

So far, the enhanced by-product view of respect has been characterized by a single second-order obligation: the responsiveness principle. The question arises: is this the only second-order obligation involved in respecting someone? The answer to that question, I shall now argue, is no. The relation between second-order obligations and first-order obligations that is involved in X respecting Y is more complicated.

I have thus far demarcated the first-order duties or obligations X has toward Y by the idea that they are the duties or obligations that are generated by the interests of Y. The duties arising from such interests might include: alleviate pain, do not murder, save life, do not block one's movement, tell the truth. The relation between these first-order obligations and the interests from which they were generated is usually quite simple: they require that someone satisfies the interest in question or that one would not stand in the way of its satisfaction. For example, Gaston's interest in drinking gives rise to the obligation to give water to Gaston, or at least to not stop Gaston from getting to the fountain. Every interest has what we might call "satisfaction conditions". First-order obligations are satisfaction duties: they are duties (or reasons) to satisfy or to not stand in the way of the satisfaction of the interest that gave rise to the duty in question. The responsiveness principle does not deny this. It merely adds to first-order satisfaction duties the demand to act of out

recognition of them. But I will argue that there is another second-order obligation that is constitutive of respect, and which occasionally asks one to not follow certain first-order obligations and not satisfy certain first-order interests.[20]

Second, and more important for the current project, it seems to be the case that first-order obligations are not comparative in nature. For example, as far as Gaston's interest in drinking water goes, all that matters is that he gets water, or not be inhibited from getting water. Whether other people get water has nothing to do with the satisfaction-conditions of Gaston's interest in drinking water, and so has nothing to do with whatever first-order duties or reasons arise from this interest. The same goes for avoiding pain, being free to move around, and so on. First-order obligations are absolute (i.e. non-comparative) duties rather than comparative duties. The responsiveness principle is similarly non-comparative. But I will argue that there is a second-order obligation that is constitutive of respect, and that requires that we compare the stringency of the first-order obligations we owe to different people.

If respect requires nothing but the responsiveness principle, respect would be a non-comparative attitude, limited to the satisfaction of individual interests (or not standing in the way of their satisfaction) for the reason that these interests impose duties on one. But if there is a second-order obligation that is constitutive of respect and occasionally requires we compare the stringency of the duties imposed by similar interests of different individuals, then respect has an inherently comparative nature.

I will motivate the need for a comparative second-order principle in two ways. First, by pointing out what is missing in a theory that does not include such a principle: Frankfurt's theory

[20] Of course, there can be many legitimate reasons not to follow first-order obligations: perhaps a consequential disaster would ensue, for example. But these reasons are not constitutive of respect, unlike the second-order principle I am about to discuss.

of respect. Then, I introduce some cases to motivate the thought that the enhanced by-product view of respect should include a comparative second-order principle.

5.7 Frankfurt on Respect

Continuing his sufficientarian line of thinking, Harry Frankfurt argues that respect requires that one treat another well in accordance with some absolute standard, one that does not take into account how others are treated.[21] On this view, to be treated with appropriate respect has nothing to do with the respect other people enjoy. Every person should be accorded the respect to which he is entitled by virtue of what he is and of what he has done.[22] For example, stopping an innocent person from getting to the fountain is disrespectful, and that disrespect is neither exacerbated nor diminished by whether other people are allowed or prevented from drinking water. Frankfurt denies that respect includes any comparative requirement.

Throughout his discussion, Frankfurt focuses on satisfaction of various interests ("doing enough") as the one most important ethical factor.[23] In his earlier paper on equality, Frankfurt discusses the hypothetical case of scarcity:

> Thus, suppose that there is enough of a certain resource (e.g., food or medicine) to enable some but not all members of a population to survive. Let us say that the size of the population is ten, that a person needs at least five units of the resource in question to live, and that forty units are available. If any members of this population are to survive, some must have more than others. An equal distribution, which gives

[21] (Frankfurt 1997); The ideas are repeated with no changes I could detect in (Frankfurt 2015).

[22] (Frankfurt 1997, 7)

[23] For example, "If a person has enough resources to provide for the satisfaction of his needs and his interests, his resources are entirely adequate; their adequacy does not depend in addition upon the magnitude of the resources that other people possess." (Frankfurt 1997, 7)

> each person four units, leads to the worst possible outcome, namely, everyone dies. Surely in this case it would be morally grotesque to insist upon equality! [24]

The grotesqueness of the decision to let all die is explained by the idea that the only relevant consideration is what actually satisfied an interest. Equal non-satisfaction has nothing good about it. To be treated well, Frankfurt argues, it is enough that interests are satisfied, regardless of whether the interests of others are similarly satisfied. Comparisons with others are strictly irrelevant for being treated justly (in his earlier paper) or to being treated with respect (in his later paper).

But there is a wrinkle. In the second part of his later paper, Frankfurt admits that there is a case in which unequal treatment expresses disrespect. This is the case of wrongful discrimination. Frankfurt explains the wrong of discrimination by saying that where there is no reason to prefer one person to another, it is disrespectful to treat them unequally. He explains this not by appealing to the value of equality, but by appealing to the value of impartiality, which Frankfurt accepts as a valid moral norm. According to Frankfurt, to violate impartiality is to act arbitrarily and irrationally, and thereby disrespectfully.[25] Impartiality, Frankfurt correctly observes, is not related essentially to equality more than to inequality (it is normatively symmetric, in my terminology). According to Frankfurt, respect does not directly require equality of any kind. Rather, respect requires rationality and non-arbitrariness, which sometimes will recommend equality of treatment.

Interestingly, Frankfurt allows for the possibility that being human is a reason to treat human beings in certain ways, and since the property of being human does not vary among humans, he

[24] (Frankfurt 1987, 30)

[25] (Frankfurt 1987, 10).

thinks there is a reason of impartiality to treat human beings equally.[26] Frankfurt, then, affirms descriptive equality. From this he comes to affirm some version of prescriptive equality: since human beings are equally human, those treatments that are owed to them in virtue of their being human are owed to them equally, and unequal treatment would be irrational and so disrespectful. The disrespect, in these cases, is explained not by the moral importance of comparisons (which Frankfurt denies) but by the irrationality of treating like cases unalike. Frankfurt is a Correlationist par excellence.

Frankfurt's theory of respect, then, has three elements:

- Respect is not essentially comparative.
- Some behaviors can be disrespectful for comparative reasons, when the action in question violates the requirements of rationality.
- It so happens that all human beings are equal in being human, and that being human is a reason to treat humans in certain ways, so that some unequal treatments of humans are irrational and therefore disrespectful.

Frankfurt's concession that discrimination can be disrespectful is important. It betrays that any plausible theory of respect for persons should explain why discrimination can be disrespectful, and discrimination is an essentially comparative idea. Frankfurt believes that this concession is not harmful to his claim that respect is not essentially comparative. But I do not think he is entitled to say this.

First, if Correlationism fails as an explanation of what goes wrong in unequal treatment of humans (because being human is not a plausible basis of moral status, because there is no basis of

[26] (Frankfurt 1997, 10-1).

moral status human beings have equally, or because of my normative-symmetry argument), then Frankfurt cannot avail himself to the formal requirements of rationality to explain what goes wrong when human beings are wrongfully discriminated against.

Further, it is questionable whether irrationality can explain the disrespect involved in wrongful discrimination.[27] After all, irrationality is not as such disrespectful. A failure of reason does not necessarily express an attitude of not seeing another as an important human being. I do not deny that sometimes the irrationality of an action indicates that it is disrespectful. Sometimes, irrational acts indicate that we treat a certain subject matter lightly, not worthy of serious deliberation, and there seems to be some connection between treating a person lightly and disrespecting her. But in these cases it is taking someone lightly that explains the disrespect, not the irrationality of the action as such. Our actions can be irrational in relation to things we care deeply about. The irrationality in those actions would arise from our deliberative limitations, our limited knowledge, our temptations, and so on, not our lack of respect. In those cases, an irrational act should be judged as silly, stupid or unimaginative, but it would not be judged as disrespectful. Irrationality as such is not sufficient for disrespect.

Frankfurt might want to say that human beings have an interest in being treated rationally and impartially. This interest gives rise to a duty to treat people rationally and impartially. I do not think, however, that we have an interest in being treated rationally or impartially. We have an interest in living, avoiding pain, being loved, developing a career, and so on. Whether or not we should be treated rationally is wholly contingent on whether, in a particular instance, acting rationally would advance those other interests. If Jews get a right to vote, I have an interest in being treated like them. If Jews are denied the right to vote, I have an interest in being treated

[27] See (Hellman 2008).

unlike them. Any interest I may have in being treated rationally (consistently, impartially) piggybacks on whether I have interest in the treatment that will be offered to me on grounds of rationality.[28]

Frankfurt's own account of the essential connection between rationality and respect attempts something different. He does not appeal to an interest in being treated rationally, but to an interest in self-preservation, under a generous interpretation of this interest. It is the duty generated by that interest that requires we treat people rationally. To do justice to Frankfurt's proposal, let me quote him at some length:

> People who resent disrespectful treatment do so because, by its very nature, it conveys a refusal to acknowledge the truth about them. Failing to respect someone is a matter of ignoring the relevance of some aspect of his nature or of his situation. The lack of respect consists in the circumstance that some important fact about the person is not taken appropriately into account. In other words, the person is dealt with as though he is not what he actually is. The implications of significant features of his life are ignored or denied. Pertinent aspects of how things are with him are treated as though they had no reality. It is as though, in denying him suitable respect, his very existence is reduced.
>
> This sort of treatment, at least when it has to do with matters of some consequence, may naturally evoke natural feelings of resentment. It may also evoke a more or less inchoate anxiety; for when a person is treated as though significant elements of his life count for nothing, it is natural for him to experience this as in a certain way an assault upon his reality. What is at stake for him, when people act as though he is not what he is, is a kind of self-preservation. It is not biological survival that is challenged, of course, when his nature is denied. It is the reality of his existence for others, and hence the solidity of his own sense that he is real.
>
> Experiences of being ignored - of not being taken seriously, of not counting, of being unable to make one's presence felt or one's voice heard - may be profoundly disturbing. They often trigger in people an extraordinarily intense protective response … [29]

[28] This might be a more general point about rationality: We do not have a reason to be consistent, but to believe anything we have substantive reason to believe. See (Kolodny 2005).

[29] (Frankfurt 1997, 12-3).

Frankfurt suggests that treating equal people irrationally is disrespectful because of their interest in self-preservation. The interest in self-preservation is itself non-comparative, and all it requires is its non-comparative satisfaction. It just happens to be the case that to satisfy this interest one has to act rationally, that is, in this case, equally. While we might not have a general interest in being treated rationally, we all have an interest in self-preservation, from which a demand of rational treatment arises.

But this explanation would not do. When I treat equal cases unequally, my response fails to track the truth of two parties: the one who is treated better and the one who is treated worse. Both are not treated as the equal cases that they in fact are. If not tracking the truth is disrespectful, both parties are disrespected, and equally disrespected, in this act of discrimination. But this is clearly false: the one who is treated less well is the only one who is disrespected, but he is not the only one that has been treated irrationally.

Frankfurt faces a dilemma: either deny that wrongful discrimination is disrespectful, or allow that respect has an essentially comparative element. The former is untenable. So the latter should be endorsed. This is one indication that a complete theory of respect has to include a comparative element. Without it, the disrespect in wrongful discrimination cannot be explained.

5.8 Non-Inferiority and the Enhanced By-Product View of Respect

Let us continue the exploration of the comparative aspect of respect with the help of some cases:

Case 1: Left Behind

One interest human beings have, which is generally agreed to generate certain obligations, is the interest in life. This interest gives rise to a duty not to kill. On the enhanced by-product view of respect, to respect someone involves not killing her because there is a moral duty not to kill her. The duty corresponds, in this case, to a right people have to life. This right is, however, defeasible: certain consequential considerations can override it. For example, if by killing one person we can save the life of many people, it might be permissible to do so. Let us say, for the sake of argument, that killing one person to save the life of 300 persons is permitted.

Given the threshold we specified (300 people) if I could save the life of 501 people by killing either Joe or Bernadette, it would be permissible for me to do so. But now imagine that I make a general decision that I would sacrifice the life of Joe only to save 500 people (or more), and that I would sacrifice the life of Bernadette only to save 2,000 people (or more). While both Joe's right to life and Bernadette's right to life are defeasible, my decision indicates that I take the duty not to kill Bernadette as more stringent than the duty not to kill Joe. If I could kill either Joe or Bernadette to save the lives of 600 people, say, I would always go for Joe. Intuitively, Joe would have a reason to complain for disrespectful discrimination. But how could that disrespect be explained?

Joe cannot complain that I am not responsive to his right of life. I am. I would not kill him unless I could save at least 500 people, which is significantly above the threshold that permits killing him. And further, it could be the case that I am never actually confronted with a situation in which I can save 600 human lives by killing either Joe or Bernadette, so my decision is never implemented. In other words, my decision is perfectly consistent with me never actually killing Joe. So in making that decision, I did not yet fail to satisfy his interest in living. And further still, we could imagine that the only circumstances I am confronted with are such that I can save 2001

people by killing either Joe or Bernadette. In such case I would toss a fair coin between the two. My actual behavior will not always prefer Bernadette to Joe.

Still, Joe could complain my decision disrespects him (if you do not have the intuition, imagine a government adopting such a rule of action for some part of society). I think Joe can say the following: "Indeed, you are responsive to the first-order duty not to kill me. But the rule of action you adopted suggests that you take the duty not to kill me to be less stringent than the duty not to kill Bernadette. To wit, you take the duty not to kill me as stringent enough, as you will not kill me to save less than 300 lives, and that is all the first-order duty not to kill me requires. But you take Bernadette's interest in living as more important (as giving rise to greater constrains on what you can do to her), and this is disrespectful to me."

This, I think, is what Joe would be justified in saying. But nothing said so far about the enhanced by-product view can explain that. If respect were completely non-comparative, there would be no explanation for why the rule of action I adopted is disrespectful to Joe.

So it seems like a complete theory of respect requires that we add another second-order duty: to take the duty not to kill Joe to be no less stringent than the duty not to kill Bernadette. This is a comparative principle. Not adopting this comparative principle is disrespectful to Joe, even if I never get to kill him. And it is not the satisfaction of the interest that matters for respect here: there is a way of not killing Joe that is disrespectful (when I adopt a certain principle of action I never get to act on) and there is a way of killing him that is respectful (if I do not adopt a discriminatory principle of action, but kill Joe to save 300 lives). The issue of respect arises not in relation to whether an interest has been satisfied, but in relation to the question whether it was taken as no less weighty than the equal interest of another person.

Frankfurt might say that the disrespect in adopting the rule of action I adopted should be explained by appeal to the irrationally of making such an arbitrary distinction between Joe and Bernadette. But again: Both Joe and Bernadette are treated irrationally. How is it that only Joe is disrespected? Certainly not because only he has been treated irrationally. Some other ethical principle is needed here.

I propose, then, the following second-order principle as constitutive of respect, in addition to the responsiveness principle:

The non-inferiority principle: to respect a person, the duties imposed by her interests should be taken as no less stringent than the duties imposed by the equal interests of others.

This principle could explain what goes wrong in wrongful discrimination, and why it is specifically the person who is treated worse that is disrespected.

Let us see how the principle can help explain other cases.

Case 2: The Boat (Again)

Imagine that six people are drowning, and I can save only one of them with my tiny boat. I cannot save all six, so it is impossible that the interest in life of all of them will be satisfied. But I recognize that each has an interest in living, and that that poses a duty on me to save as many of them as I can (which happens to be just one). Out of recognition of this duty, I go ahead and draw a lottery that gives 5 of them an equal chance of surviving, and the sixth person a lower chance than any of the five. Let us call that sixth person Joe. Could Joe complain for being disrespected? I think he can. But why?

Not because his interest in living has not been satisfied. He might still win the lottery with the smaller odds he has, in which case his interest in life will be satisfied. And even if he had equal

chances in the lottery, he could have lost the lottery, in which case his interest in living would not have been satisfied but he could not complain that he was disrespected.

The disrespect cannot be explained as a failure to attend to a first-order duty, nor as a failure to attend to the responsiveness principle. Joe's complaint is not that I am not responsive to his interest in living, but that I am less responsive to his interest in living than I am to the interests of others. I take his interest in living as less important than theirs (giving rise to a less stringent duty to save Joe). To be respectful to Joe, I should take the obligation arising from his interest in living to be just as stringent as the obligation arising from the equal interests of other human beings. This requires a second-order principle like the non-inferiority principle, which is an essentially comparative principle. This principle would imply that if I turn to lottery to determine whom to save, all should receive equal chances of surviving.

Case 3: The Strange Legitimating Power of Equal Treatment

Consider Chuck and Bill, two friends of mine—a couple. They have recently flown to Thailand to attend the birth of their twin children from a surrogate mother. They were very excited about the upcoming new experience of parenthood. It is something they were waiting a long time for, and something they tried to do a number of times without success. I consider them very close friends of mine, but they have not told me about their efforts to become parents or about their coming trip. One day I saw on Facebook a picture of them hugging two newborn babies, announcing their birth to the world. As a close friend, I was hurt, not understanding how they could not tell me in advance about such life-changing event. When I confessed my feelings to them later,

their response was: “Our privacy is important to us. And besides, we didn’t tell any of our friends.” That seemed to me like a pretty good response. And the second part of the response seemed to be part of the reason their response was so good.

But why does the second part of their response have any justificatory power? After all, if I believe that my friendship with Chuck and Bill gives me some kind of legitimate expectation to be told certain things, why does it make things better for me that they haven’t shared those things with other friends? My non-comparative interest in being shared personal information has not been satisfied by their not telling other friends. But somehow, while my interest was not satisfied, their response suggests that I was respected. The non-inferiority principle can explain it: by not treating me worse than other friends, Chuck and Bill express the attitude that they respect me as a friend.

There is a phenomenon here: equal non-satisfaction of an interest (not even trying to satisfy it) is more respectful than unequal non-satisfaction of an interest and might even be perfectly respectful. We can say to someone: “it is true we did not satisfy your interests. We did not even try to satisfy them. But we do not disrespect you. Why? Because we did not satisfy anybody’s interests.”

Does this phenomenon generalize beyond such low-stake contexts such as friendships? I think it does. The natural context for the application of this phenomenon is a case in which some general good could be achieved by frustrating the interests of certain individuals. Sometimes, when the general good in question is not great, to respect the inviolability of individuals we have to forgo the general good. At other times, the good in question is so great, that it simply overrides the claims generated by the interests of individuals. Other cases fall somewhere in between: the general good in question is quite great, but we feel that we cannot simply go ahead and override the claims generated any individual’s interests. In such cases, we can justify overriding the claims generated

by individuals' interests by overriding the equal claims of all individuals (in a certain comparison group). Equally not attending to a certain claim is seen in these cases to be less disrespectful to the individuals in question. The equal treatment of interests bumps up the justification of frustrating interests that otherwise would not be justified.

One striking literary example of this phenomenon can be found, I believe, in Euripides's Iphigenia in Aulis. In a memorable point in the tragedy, Clytemnestra gives a long speech in order to convince Agamemnon not to slaughter their daughter, Iphigenia. In so doing, she follows the advice of Achilles, who tells her that words and logic can fight off fear and bring Agamemnon back to his senses. Toward the end of her speech, after giving many reasons why it is absolutely awful for a father to slaughter his daughter, Clytemnestra says:

> Think about your daughter for once, Agamemnon, and make a fair proposal to your army: Ask them all if they really want to go to Troy and if they do, well then, let them draw lots that will include their own children also! Let them all see which one should be sacrificed. Why should you be the only one to offer our child as a victim to the altar? (1191-1200, George Theodoridis' translation)

Agamemnon plans to do something horrible. His proposed action ignores Iphigenia's interest in living, Clytemnestra's and Agamemnon's interest in not losing their daughter, and Agamemnon's interest in not killing an innocent person. He plans to do this action in order to achieve a certain good: winning a war. He thinks this good justifies the clear evil otherwise inherent in his actions. Clytemnestra disagrees, but at this point in the tragedy, she is willing to concede this point to Agamemnon, if he would be willing to equalize the chances of receiving the evil treatment among all the children (of the relevant comparison group). Its equalization would allow Clytemnestra to be somewhat more at peace with what is about to happen. Perhaps the appeal to equality is just a pretext, and all Clytemnestra wants to do is to give her daughter a better chance to survive. But that explains why she gave the argument, not the rational appeal it should have on

its listener, which is an essential part of any argument. The rational appeal, as I understand it, is: if we need to treat someone horribly for the sake of some greater good, let us equalize the chances of receiving that horrible treatment, and in so doing moderate the evil in our action.

A third example comes from the legal idea of equality before the law. In the United States, it is sometimes permissible for a state to infringe the rights of individuals for a compelling state interest. However, one of the conditions of such infringement is that it be applied equally to all. Why can't the compelling state interest directly legitimize the infringement of a right? One plausible answer, I think, involves the intuitive idea that when respect for someone is threatened by ignoring a claim generated by that person's interests, the infringement is less disrespectful (or not disrespectful at all) if it is applied equally to all. In other words: if my rights are infringed for some general good, the infringement is less disrespectful to me if the rights of others are also infringed in similar circumstances.

Equality of treatment, it seems, has a legitimating power. Sometimes (definitely not always) to equally administer an action that infringes on a legitimate claim of individuals is more legitimate than unequally infringing on the claim.

The non-inferiority principle can explain the legitimating power of equal treatment: by treating the interests of no one as inferior to the equal interests of others, we show respect to all. Showing respect is a redeeming quality in an action. It compensates for the frustration of interests. It takes the sting of disrespect out of an action.

5.9 Could Rationality Explain These Cases?

As mentioned above, Frankfurt would try to explain these cases as failures of rationality. In each of them, an arbitrary distinction is drawn among people who are equal, and that is irrational. This, I said, is not satisfying. Both those treated better and those treated worse are treated unequally and so (in Frankfurt's terms) irrationally. If what is disrespectful in treating them unequally is that they really are equal and the unequal treatment is irrational, then both would be disrespected by the unequal treatment. But clearly it is the person who is treated worse who is disrespected. There is a direction to disrespect, it does not apply equally to both sides of the inequality. Rationality as such cannot explain this, the non-inferiority principle can.

There is another reason why rationality cannot adequately explain the above cases. Rationality indeed requires consistency, which is a comparative norm. Consistency requires that one treats something like one treats similar things. But consistency should not be allowed to "bootstrap" reasons.[30] For example, if I am unjustified and mistaken in believing p, I should not, just on pains of consistency, believe anything that is consistent with p. If I am unjustified in intending to X, I am not justified, just for the sake of consistency, in taking the means to achieve X. Consistency is valuable when it operates on beliefs and intentions that are themselves justified. That I happen to believe something is not a reason to believe it, and that I happen to intend something is not a reason to do it.

But the comparative requirement we see in the cases above is stronger than that. In some cases, we have seen, the equal treatment is itself a legitimating factor. It pushes up the moral credentials

[30] (Kolodny 2005).

of the action. This is not something rationality alone can explain. Rationality does not create reasons. Equality does. Equality is a redeeming quality in an action. Consistency is not.

In the case of my friends, two behaviors would be equally respectful to me: telling all their friends (including me), or telling no friend. Similarly, in Left Behind, two policies would be equally respectful: letting both Joe and Bernadette not be killed unless at least 2,000 lives are at stake, or letting both not be killed unless at least 500 lives are at stake. One is free to choose either policy. Rationality does not allow for this level of freedom. Since consistency is not a redeeming quality for a belief or an intention, one cannot simply choose any consistent set of beliefs or means-ends. Equality in ethics is not a subspecies of rationality more generally. It is not because we are bound by requirements of consistency that we cherish equality. And this is another way of making a point I have been pursuing throughout this essay: it is not the formal requirement to treat equal cases equally that explains why equality matters to us.

I conclude that Frankfurt is wrong: irrationality cannot account for what is disrespectful in unequal treatment.

5.10 Is Descriptive Equality Necessary?

A skeptic, predicting where I am going with all this, might complain that the non-inferiority principle has been misdescribed. She will say that being treated as inferior is disrespectful only if the persons in questions are equal. If descriptive equality is false, the non-inferiority principle would not apply.

But the conclusion of the last section challenges the skeptic on this point. If consistency and rationality cannot explain what is wrong with unequal treatment, then it is not because human

beings are “equal cases” that it is disrespectful to treat them unequally. Once rationality drops out of the explanation, there is no longer a reason to believe that only equals are disrespected by inferior treatment.

The skeptic will insist: “You want to say that treating someone as inferior to another is disrespectful, even if descriptive equality is false. I agree with you that it is not the unequal treatment of equals that is disrespectful. But why can’t I still say that what is disrespectful is the treatment of an equal as inferior? This will explain why only the inferior is disrespected, while maintaining the condition that the inferior could be disrespected only if he is presumed to be equal. In other words, you cannot get your theory started without an assumption of descriptive equality. And if you help yourself to descriptive equality, we kindly ask you to find an empirical property that all human beings have equally.”

But now, I think, the burden has shifted, for the skeptic cannot justify this moving monologue by appealing simply to what rationality requires, and she owes us an argument to the effect that it is only treating an equal as inferior that is disrespectful. There is at least one reason to believe she cannot offer such an explanation. I have mentioned above the view that formal equality is a normative principle that takes equal cases as descriptive input to generate equal treatment as normative output. But if the skeptic agrees that formal equality cannot explain why treating someone as inferior is disrespectful, she must believe that there is some other principle, one that takes equal cases as descriptive input and generates non-inferiority as normative output. But what could that principle be? Not formal equality. The burden is on the skeptic to say what justifies continuing to insist on descriptive equality once formal equality has dropped out of the picture.

Let us take stock. I claimed that the by-product view of respect, which initially looks quite empty, should be supplemented with two second-order principles: the responsiveness principle,

and the non-inferiority principle. I also think that until shown otherwise, there is no reason to believe that only individuals who are descriptively equal should be covered by these two second-order principles. These two principles are owed to individuals as part of the package-deal of being owed respect. Why should individuals have any property to an equal degree to be owed respect? It is up to the skeptic to answer that question.

5.11 Prescriptive Equality Defended

Assume there is a group of individuals who deserve respect. Given the non-inferiority principle, each individual deserves that her interests will not be taken as having less weight than the equal interests of other individuals (as reflected by the stringency of the duty arising from these interests). If this is correct, the equal interests of all members of this group should receive equal weight. If any member's interests receive greater weight than other members' interests, the non-inferiority principle would be violated in relation to all the others. If any member's interest receive smaller weight than other members' interests, the non-inferiority principle is violated in relation to that member. But we assumed that all members deserve respect. So the non-inferiority principle should not be violated in relation to any member. So the equal interests of all members should be given equal weight.

But that is just prescriptive equality. So if all members of a group deserve respect, all are covered by prescriptive equality.

Note that the notion of equal respect plays no role here. If one deserves respect, one should not be disrespected. No comparative notion is needed to state that. But if one should not be

disrespected, one should not be treated as inferior. So from deserving respect (rather than equal respect) individual deserve prescriptive equality.

I have not said who deserves respect, and in virtue of what. I will discuss these questions in the next chapter. But assume for a moment that all human beings deserve respect, in the sense just developed. Presumably, to deserve respect (rather than equal respect) there is no morally significant property that human beings need to have equally. If this is true, then, in virtue of the respect all humans are owed, their equal interests deserve to be treated as having equal weight. To do otherwise is to disrespect some of them, but all of them (by the hypothesis of this paragraph) deserve respect. The equal consideration of their interests thus does not depend on the equal possession of any property. It does not depend on descriptive equality, and is consistent with descriptive equality being false.

Larry Temkin once described his account of distributive egalitarianism in the following way:

> On the view of egalitarianism discussed in this article, equality is a subtopic of the more general—and even more complex—topic of fairness. Specifically, concern about equality is a portion of our concern about fairness that focuses on how people fare relative to others. So, our concern for equality is not separable from our concern for a certain aspect of fairness; they are part and parcel of a single concern.[31]

I would like to describe my account of prescriptive equality in similar terms, substituting respect for fairness:

> On the view of prescriptive equality discussed in this chapter, prescriptive equality is a subtopic of the more general—and even more complex—topic of respect. Specifically, concern about prescriptive equality is a portion of our concern about respect that focuses on how people's interests are weighted relative to the equal interests of others. So, our concern for prescriptive equality is not separable from our concern for a certain aspect of respect; they are part and parcel of a single concern.

[31] (Temkin 2003, 767).

I call this account: the respect view of prescriptive equality.

5.12 Advantages and Disadvantages of the Respect View

What are the advantages of the respect view?

First, it reconciles prescriptive equality with descriptive inequality. Descriptive inequality has always been the Achilles heel of prescriptive equality, and descriptive inequality is very hard to deny. On the respect view, unless one's empirical make-up is such that they do not deserve respect, an individual is covered by prescriptive equality. An individual can deserve respect and so prescriptive equality without having any property to an equal degree compared with any other individual.

Second, this proposal explains the non-symmetric nature of prescriptive equality, for presumably, it is worse to disrespect someone who is owed respect than to respect someone who is not owed respect.

Third, the account does not deny that there are empirical reasons for equal consideration of interests, for there might be empirical grounds for someone being respect-worthy. What the respect view denies is that the empirical world needs to include some facts of equality for prescriptive equality to have a hold. The proposal thus relaxes the descriptive demands on prescriptive equality without necessarily giving up the demand for some descriptive explanation.

Fourth, the proposal explains what is ethically significant in prescriptive equality. Prescriptive equality is ethically important because it expresses respect for persons. Correlationists, it seems to me, have a harder time explaining the ethical significance of prescriptive equality, for why is it so

important from a moral point of view that we will be treated by the norm of formal equality and consistency? It is true that for an action to be irrational is a fault in the action, but it is not an ethically fault. For an action to be disrespectful shows directly the moral fault in it.

The proposal has its disadvantages too. It defends the norm of prescriptive equality out of another norm, that of respect. But there is much disagreement and uncertainty about norms. Correlationist defenses of prescriptive equality have a clear advantage here: they attempt to defend prescriptive equality on the basis of an empirical observation and from the minimal and widely-endorsed norm of formal equality. If successful, Correlationism would thus defend prescriptive equality on thinner normative commitments than the respect view, which is always preferable. My proposal enters a territory where there is less clarity and less agreement. To make things worse, I appealed throughout to some pretty "risky" thought-experiments, where disagreements on intuitions are likely to arise. I recognize that this methodology might reduce my constituency. For each thought experiment, I tried to come up with the best possible version of it, but that will still not answer all concerns.

5.13 Going Deeper into the Respect View

Let me now turn to some clarificatory notes on the nature and implications of the respect view.

The Comparison Group

Respect requires that we not treat one as inferior to others. Who this "one" is will be explored in the next chapter. But who are the "others"? Who are those such that, if one is to be respected, one should not be treated as inferior to?

The best answer I can think of is: anyone else who deserves respect. Someone who deserves respect should not be treated as inferior to anyone else who deserves respect. The comparison group consists of all those who deserve respect. So in answering the question "who deserves respect" one also answers the question "what is the relevant comparison group." The next chapter explores the first question, and ipso facto answers the second. My claim will be that all human beings deserve respect, so no human beings should be treated as inferior to any other human being.

As always, there are complications. When Chuck and Bill respect me by not telling any of their friends about the birth of the twins, clearly the comparison group is "friends". It would not disrespect me if they told their parents about their efforts to have children. But even there, all those to whom I am compared are people who deserve to be respected as friends. So we can imagine different communities of respect, distinguished by the type of respect their members deserve. The members of such communities deserve to be treated as each other' equals in those behaviors and in relation to those interests that are related to the specific type of respect in question. There are certain behaviors I expect friends to do that I do not expect strangers (like sharing personal things) and there are certain interests I have as a friend that I don't have in my other relations (like the interest in being invited to birthday parties). Being respected as a friend, then, would require a comparison group that consists of all those who deserve that kind of respect, that is, other friends of Chuck and Bill. I do not think this complication threatens what I say in the next chapter.

What about Descriptive and Axiological Equality?

Prescriptive equality is all that the respect view defends. Does it lose plausibility points for not defending descriptive equality and axiological equality? I think it does not, since prescriptive equality is the most essential element of basic equality. What should we do with the idea that

human beings are descriptively and axiologically equal? I think our attachment to these ideas comes from the erroneous thought that they are necessary for the defense of prescriptive equality. Once we see that this is a mistake, I think we can abandon these ideas.

As for axiological equality, I think that if we wish to retain it, we should give it a prescriptive interpretation. To say that human beings are equal in worth is just to say that they have the moral status of equals, that is, that prescriptive equality is true of them. But then rather than justifying prescriptive equality, axiological equality is justified by it.

What Interests Deserve Equal Weight?

The question arises: what interests deserve equal weight? The most general answer is: any interest that gives rise to duties or reasons for action. On the enhanced by-product view, the content of the first-order duties is not determined by the theory of respect, but by some other department of moral philosophy. For example, one might believe that only interests that are related to human autonomy make moral claims. If this view is correct, those are the interests that should receive equal weight. A capabilities approach might take the interests that are essential for human flourishing as the relevant interests. And so on.[32]

My own view is that all interests deserve equal weight, with some qualifications. Remember that prescriptive equality mandates that comparable interests be given equal weight. That means that if my interest in being a basketball player is not as morally important as your interest in living, it is not a violation of prescriptive equality to give my interest in being a basketball player less weight compared with your interest in living. However, my interest in living should not have

[32] See §1.5 for some examples.

smaller weight compared with your interest in living; the duties that arise from my interest in living should be no less stringent than the duties that arise from yours.

That said, I want to add a qualification. I think we should understand the interests that deserve equal weight under a relatively general description of these interests. What we really should compare is not my interest in being a basketball player compared with your interest in being a basketball player, but rather my interest in finding a meaningful vocation and your interest in finding a meaningful vocation. Respect, I think, pushes in this direction of generality.

Assume I love Kyle. I have all kinds of particular interests that are Kyle-specific. I have an interest, for example, that other people and institutions will not prevent me from getting to Kyle's house, that they will not put me in jail for loving Kyle, and so on. Now assume that the political system is such that it respects my Kyle-specific interests under that specific description. If, however, I loved anyone other than Kyle, my interests related to that other person would not matter morally, for the reason that the other person is not Kyle. I think it would be legitimate for me to feel now that my interests are disrespected even though the system satisfies my Kyle-specific interests, and as it happens, I do love Kyle. To have my interests respected, I want to know that no matter whom I loved, the political system would not stand in the way of its satisfaction. If my dream is to be a basketball player, then I have basketball-specific interests. But these interests are respected only if I know that even if I chose a different vocation, I would be allowed to pursue it. Respect for interests pushes in this way toward a relatively general description of those interests. And again, note that I am not saying that the interest in having a meaningful vocation is one that generates a right for a meaningful vocation. All I am saying is that whatever moral weight X's interest in finding a meaningful vocation has, Y's has too.

For this reason, I cannot claim to be disrespected if I did not get the exact job I wanted, or the exact boyfriend. However, I can complain to be disrespected if the reason I did not get the exact job I wanted or the exact boyfriend is that I am prevented by society from getting a job or a boyfriend in general. If the reason I did not get the exact job or boyfriend I wanted is that my interest in having any job or boyfriend weighs less than the comparable interests of others, then I am disrespected.

My preferred answer regarding which interests deserve equal consideration is: all interests, under a general description. This answer, as I have noted, is not the only possible answer, but ultimately it is not the task of a theory of respect to answer it. Respect kicks in once we already have some grasp of which interests of persons make demands on us.

Is Prescriptive Equality Foundational to Morality?

As I said in the introduction, prescriptive equality is often believed to be foundational to ethics and political philosophy. One question to consider is whether the respect view affirms or denies the foundational role typically ascribed to prescriptive equality. The answer is yes and no.

Let us start with the "no." As I developed the respect view, respect has nothing to say about what first-order duties there are, about what interests matter morally. Respect kicks in only with second-order principles. That means that many important moral precepts, like "do not kill", "tell the truth", "do not cause pain" and so on are not justified by the idea of respect, and so are not justified by prescriptive equality. The justification of all of these principles has to come from elsewhere in moral theory. In this sense, prescriptive equality is not foundational to morality.

But this does mean that prescriptive equality is just one duty among others. Since it results from the second-order principle of non-inferiority, there is not a single moral duty that is not touched by prescriptive equality. All moral duties are under its scope.

"Foundational" is thus not the right word if one understands it to mean "that from which everything in ethics can be inferred." But prescriptive equality is foundational in the sense that our entire ethical system would look very different without it, and that all of our moral duties are under its scope.

6 Who are the Equals?

So far, I attempted to establish the following thesis: individuals who are unequal in any morally significant property deserve equal consideration of their equal interests as long as they deserve respect. The skeptic can agree to all this but deny that it helps establish the thesis of prescriptive equality. She can deny that any human being deserves respect, or that all human beings deserve respect. In this chapter I take up the questions: Who deserves respect? And in virtue of what?

If the respect view shows that not all but nearly all human beings deserve prescriptive equality that is ok. Perhaps if it includes some nonhuman animals that is ok too. But if it excludes many human beings or includes too many nonhuman species, nothing that has been said so far can be seen as a defense of prescriptive equality as it is commonly understood, but as a refutation of it.

My own view is that in fact all human beings deserve respect, and only them. If it wasn't clear from what I have said so far, I am an old-fashioned humanist. In this chapter, I defend the humanistic extension of prescriptive equality. In defending this extension, however, I do not deny that the interests of nonhuman animals matter. I will say more about that toward the end of the chapter.

My argument in this chapter proceeds in two stages. First (§6.1), I argue that some (possibly many) human beings deserve respect. I offer three possible routes for this conclusion. Second (§6.2), I argue that if some human beings deserve respect, all human beings deserve respect. This is how I attempt to establish the humanistic extension of prescriptive equality. I end (§6.3 and §6.4) by discussing the problem of nonhuman animals and the problem of partiality.

6.1 Some (Many?) Human Beings Deserve Respect

My aim in this section is to establish the claim: some human beings, perhaps a large number, deserve respect. I will offer three considerations in favor of this claim. One is a direct response to the skeptic. The second is an argument from value. The third is an argument from vulnerability, which will be my main focus.

6.1.1 From Enlightened Skepticism to Prescriptive Equality

Skepticism about prescriptive equality comes in various strengths. The strongest denial of prescriptive equality, perhaps, can be found in ideologies like Nazism. Another strong version of skepticism about prescriptive equality can be found in Nietzsche. Philosophers sometimes like to mention these examples to convince us that nearly all of us today already believe in prescriptive equality, for few philosophers accept Nazism, and many hesitate when it comes to Nietzsche. Analytic philosophers, however, usually take a more moderate skeptical stance, and they get annoyed when they are associated with more extreme denials of prescriptive equality. Louis Pojman, for example, complains that skeptics about prescriptive equality are too easily dismissed by being compared with Nazis, a move he calls argumentum ad Nazium.[1] Other skeptics agree.[2] They believe that rejecting prescriptive equality does not commit them to any form of racism, sexism or a wholesale rejection of modern morality. Some of them emphatically affirm that human

[1] (Pojman 1995, 1).

[2] (Narveson 2015, Steinhoff 2015).

beings have rights and resist wrongful discrimination. They just think we do not need prescriptive equality to hold any of these moral notions. Prescriptive equality, they claim, is a redundant baggage in an otherwise correct modern moral outlook.[3] I call this camp of philosophers Enlightened Skeptics. They accept (or so it seems) some fundamental moral and political notions of the enlightenment (like individual rights, democracy and non-discrimination) but reject prescriptive equality. They see no inconsistency in rejecting prescriptive equality while holding to all the rest.

Part of the motivation for Enlightened Skepticism is to show that the denial of prescriptive equality does not have the shocking moral implications that supporters of prescriptive equality would like it to have. An Enlightened Skeptic, for example, can endorse the claim that there are some rights that all humans have, but deny that the word "equal" does any work in this assertion.[4] In another version, Enlightened Skeptics believe that there is a baseline of rights that all human beings have, but that above this baseline some human beings have more rights.[5] A third option endorses the previous claims, but in relation to nearly all human beings, making room for the exclusion of the severely cognitively disabled, or of anencephalic babies, or Hitler.[6]

Nothing about respect directly follows from embracing Enlightened Skepticism (especially as it is a mixed bag of views), but it is unclear why any Enlightened Skeptic would like to deny the following assertion: "Many human beings deserve substantial (even if unequal) respect." This assertion, rather than its denial, is more in the spirit of Enlightened Skepticism. If there weren't

[3] (Husi 2017, Kekes 1988, Lloyd Thomas 1979, Lucas 1965, McMahan 2008, Narveson 2015, Steinhoff 2015).

[4] (Husi 2017, Lucas 1965, Steinhoff 2015).

[5] See (McMahan 2008).

[6] (Kekes 1988, McMahan 2008, Singer 2010).

egalitarian implications to this claim, I suspect no Enlightened Skeptic would be invested in denying it.

I said above that a skeptic can agree with my analysis of respect in the previous chapter, but deny that many human beings deserve respect, and so deny that they deserve prescriptive equality. But now I want to say that this is not so simple. While there are skeptics about prescriptive equality (Nietzsche) who can deny that many human beings deserve respect, most current skeptics about prescriptive equality, are not so easily situated to deny that many human beings deserve respect. In fact, I believe they should be inclined to say that the great majority of human beings deserve respect.

To the Enlightened Skeptic I say: "You are an Enlightened Skeptic. You probably already believe, or have no reason to deny, that many human beings deserve non-negligible amount of respect, even if unequally. You probably believe this, because you believe human beings have certain rights, deserve certain minimal treatment, should not be humiliated or enslaved, and so on. I am not asking you why you believe that human beings deserve respect. I simply observe that you probably already do, as it is in the spirit of everything else that you believe. Now marry this believe to the account of respect I offered in the last chapter, and conclude that many human beings, perhaps the great majority of human beings, deserve that their comparable interests be given equal weight. If you already believe that many human beings deserve respect, don't retract it just because it has egalitarian implications. That would be ad hoc."

6.1.2 Value and Respect

One traditional way of approaching the question of who deserves respect is through the idea that there are some properties that make at least some things worthy, precious and valuable, and thereby respect-worthy. As we have seen, this is Raz's view of respect.[7]

While I do not agree with Raz in his analysis of respect, Raz and I can have a mutual offspring. One can say that respect should be analyzed in accordance with the enhanced by-product view (and so have egalitarian implications) but that the reason anyone should be respected is that they are valuable. Interests give rise to duties because they belong to a valuable thing, like a human person. On this view, while respect is a response to duties, duties are grounded in value.

If that is the view one takes, one can follow Raz. Raz claims that all individuals who are valuers are themselves valuable, and so deserve respect. This idea echoes similar ideas about the capacity to value as a basis of moral status.[8] Since, arguably, many human beings are valuers (perhaps nearly all human beings), many human beings deserve respect. So from this perspective as well, an argument can be made that some, perhaps many, human beings deserve respect.

[7] (Raz 2001, 127-175).

[8] (Christiano 2008, Jaworska 2007).

6.1.3 Vulnerability and Respect

In a famous footnote, Jeremy Bentham claims that it is not the capacity to reason that is the basis of a creature's moral claims, but its capacity to suffer.[9] Bentham's aim is to argue in favor of extending moral consideration to nonhuman animals who (he supposed) cannot reason but who (it is clear) can suffer. The shift from reason to suffering marks a deeper theoretical shift than merely moving from one (relatively exclusive) basis of moral status to another (relatively inclusive) basis of moral status. When reason is proposed as a basis for moral status, one is working with a value model of moral status: one is morally considerable because one is a precious thing, worthy of protection. By contrast, when the capacity to suffer is proposed as a basis for moral consideration, this property is clearly not proposed as something that makes us worthy, but as something that makes us vulnerable. Bentham's idea is that being vulnerable to certain harms should serve as a direct moral reason to not cause these harms, without the mediation of ideas about the status of the being whose vulnerability is in question. To ask "but why should I refrain from causing unnecessary pain?" in relation to a being that can feel pain is to ask one question too many. Or so the thought goes.

This idea has been picked up in contemporary philosophy by Peter Singer.[10] On his interpretation, Bentham's insight implies that there is no such thing as moral status. Rather, there is a direct function from interests to their moral weight, and interests are grounded in what we are vulnerable to. Sentient beings, for example, are vulnerable to pain, and so have an interest (and a

[9] "the question is not, Can they *reason*? nor, Can they talk? but, Can they *suffer*?" (footnote for Ch. XVII, Sec. IV in (Bentham 1988, 310-311f)).

[10] (Singer 1986), and see §1.4 above.

moral claim) to avoid it. Beings with high cognitive capacities have a strong interest in continuing to live, because they stand to lose much from dying, than beings with cruder cognitive functions. There is no room for the consideration of the status of the bearer of the interest in question.

Singer's idea is not that 'is' directly implies 'ought', but rather that our oughts are directly concerned with these kinds of "is": the vulnerabilities. And there is something attractive about this thought. When someone is in pain, it seems strange to ask about her worth prior to concluding that we know enough to conclude that there is a reason to alleviate that pain. This does not mean that any pain calls for alleviation, or that preventing pain overrides other reasons; but when a pain does not call for any alleviation, it is not because its bearer lacks a certain status. Considerations of status drop out of moral deliberation as irrelevant.

But there is a possibility that Singer does not consider. It could be the case that some individuals are vulnerable to disrespect, and so deserve respect (on a vulnerability model). And if respect is what I say it is, it involves second-order considerations regarding the first-order duties generated by the interests of individuals. Respect requires we weigh duties in a certain way (as non-inferior relative to the duties generated by equal interests of others) and that we respond to them in the right way (that we act out of appreciation of them). These considerations are not very far from what the concept of moral status is intended to do in moral reasoning. The idea of moral status, then, can be introduced into a vulnerability model, so long as some individuals are vulnerable to not having the moral status in question, that is, as long as they are vulnerable to disrespect.[11]

[11] We can think of a vulnerability to disrespect as a second-order vulnerability, a vulnerability to the way one's other vulnerabilities are weighed and approached.

This idea reduces to Raz's view if only things with value are vulnerable to disrespect. Even if one accepts this view (and I do not), it might prove helpful to have a grasp of the vulnerability model, as epistemically it might be easier (and less controversial) to establish that it is possible to disrespect someone (and from that to infer that they have value) than it is to establish that they are valuable (and so should not be disrespected). In any case, in what follows, I will not rely on the idea of value to explain what makes one vulnerable to disrespect. Rather, I want to propose that at least some human beings are vulnerable to disrespect because of three other things to which they are vulnerable. The vulnerability to disrespect is grounded not in value but in further vulnerabilities that at least some human beings have.

First, at least some human beings are vulnerable to things that happen beyond their immediate physical and psychological experiences. They are vulnerable to betrayal they know nothing of, to strangers laughing at them behind their backs, to having their reputation tarnished without their awareness, to being deceived, to being subject to hypocritical criticism the hypocrisy in which they do not detect. It is because humans are vulnerable to such things that hedonist accounts of well-being are so inadequate.

This vulnerability can explain vulnerability to some aspects of disrespect, because, as we have seen, disrespect is sensitive to comparisons and to the reasons for which people act. These things are located outside the recipient's immediate physical and psychological sphere. The way I am treated compared with the way others are treated is never a fact just about me, nor is it always something I am aware of. The same goes for the reasons someone else acts toward me.

Second, human beings are vulnerable to the meaning actions express and the motivation from which actions are done. When I step on the foot of a human being, it matters to her whether I did it accidentally or on purpose, and if it was on purpose, for what reason I did it. When I say "I love

you", a person is vulnerable to the possibility that I say it without meaning it, and so that I do not express love in these words. This vulnerability explains certain aspects of vulnerability to disrespect, as respect and disrespect are sensitive to the motivation from which one acts and to the attitude expressed in one's actions.[12]

Third, human beings are vulnerable to modal facts, to harms and wrongs that can be understood only counterfactually. For example, it can matter to Lisa whether, if she were not wealthy, Lucas would still marry her. Or it can matter to me that a friend would have confessed something bad they did to me even if there weren't a high likelihood that I would discover it by myself. In a sense, every harm is modal: is makes one worse than one could have otherwise been. But there are harms that require a richer modal background to be intelligible, a modal background that does not include simply a world in which one fares better. If it is true of me that I wouldn't have allowed Gaston to drink if I wasn't afraid of him, it means I do not respect him. This is not because now I harm him: it is not that he would fare better in a world in which I wasn't afraid of him (to the contrary). The significance of the modal fact here goes beyond that of indicating harm.

Think of the Left-Behind case: no one is actually harmed, but there is a possible harm that some are more vulnerable to than others, and for this reason they are disrespected in this actual world. The counterfactuals of Joe look different than the counterfactuals of Bernadette, and this explains the disrespect shown to Joe. Only a being that is vulnerable to counterfactuals in this way can be vulnerable to disrespect.

Being vulnerable in these three ways (which are not entirely independent of each other) can explain, I think, why someone would be vulnerable to disrespect. I would like to say something

[12] Raz: "Frankfurt must be right in seeing the expression of respect or its denial in the meaning of the action, a meaning that cannot be just a reflection of the intentions and beliefs that happen to inform it in one set of circumstances or another." (Raz 2002, 310).

stronger: having these three vulnerabilities is sufficient to being vulnerable to disrespect, or are a good indication that a being is vulnerable to disrespect. A being vulnerable to things she knows nothing about, to motivations from which actions are done, and to counterfactuals, is a being that is vulnerable to disrespect. But I do not have an argument for that. What the three vulnerabilities do offer is demystification of vulnerability to disrespect. They explain how it is possible that there are being who are vulnerable to disrespect. They dispel the worry that beings vulnerable to disrespect (in the way I analyze the concept of respect) could not exist.

Perhaps this is an overkill. In a sense, the thought experiments of the previous chapter directly indicate that some human beings are vulnerable to disrespect. The thought experiments tell us of people who, due to all kinds of behaviors directed at them, are disrespected, and we have the sense that this is bad for the people in question. So these people are vulnerable to disrespect. And since there was nothing special about the people mentioned in the thought experiments, we can perhaps generalize and say that probably many people are vulnerable to disrespect. I do not think this is a bad way of reasoning, but it lacks an account. I think the three-vulnerabilities proposal is the beginning of such an account.

6.2 From Some Human Beings to All Human Beings

6.2.1 Beyond the Usual Suspects

I explored three possible routes for the claim that some, and perhaps many human beings deserve respect. Given last chapter's argument, the provisional conclusion is that some, and perhaps many human beings deserve prescriptive equality.

On some ambitious interpretations, some of these routes can directly establish that all human beings deserve prescriptive equality. For example, we can imagine an Enlightened Skeptic who believes that all human beings deserve respect (even if unequal respect) and on the power of that belief alone would come to see that all human beings deserve prescriptive equality. Perhaps there is an argument to the effect that all human beings are valuable (even if unequally valuable), and so deserve respect. For example, Nicolas Delon argues that the value of individuals can supervene on relational properties to other individuals whose value is not in question.[13] Arguably, this would cover most if not all human beings. One could also try and argue directly that all human beings are vulnerable to disrespect. I think there is promise in all these moves, but I will not pursue them further here.

Another route that I will not pursue here relates to something I discussed in Chapter 3 (§3.4). In that chapter, I propose that there might be moral reasons to extend the equal moral status of some human beings to all, or nearly all, human beings. Such reasons include an appeal to potentiality, numerical identity, misfortune and personal relations to people who are equal in moral status. These, however, are not the strategies I will explore in this chapter (although I think they are worth exploring). Rather, I am interested in the question whether reflections on the nature of respect could give us reasons to extend the duty of respect beyond those who we believe clearly deserve it.

[13] (Delon 2014)

6.2.2 The Modal Stability of Respect and the Ideal of Unconditional Welcome

The hypothesis I want to examine in this section is that one is not respected in our actual world if it is true that one would not be respected in possible worlds in which one were different than the way one is now. I call this claim the modal stability of respect and explore its implications for the extension of prescriptive equality.

I call an attitude "modally stable" if, for that attitude to be exhibited in the actual world, it has to be exhibited in certain other possible worlds. Take the example of romantic love. If Simon loves me but would not love me in sickness as well as in health, in poverty as well as in wealth, with wrinkles as well as without, I might legitimately question whether Simon really loves me now. I can question the depth of his love and judge his alleged love to be defective. This does not mean that Simon has to love me in all possible worlds: Simon can genuinely love me now even if, had I been violent, say, he would not have loved me. But love is modally stable to some extent: for some attitude to count as full-fledged romantic love in this world, there are certain possible worlds in which the loved one is also loved.

While there are many differences between love and respect, I think there is something to learn about respect from the modal stability of love.

The case I would like to use to think about respect is not romantic love, but parental love. The case I consider comes from disability studies. In arguing against prenatal testing and selection, some disability-rights advocates advance what they call "the ideal of unconditional welcome." The thought behind this ideal is that it is inconsistent with the proper love parents should have for their children to put any conditions on what the offspring should be like to be accepted into the family and to be loved. There is no test an offspring should pass to deserve the love and acceptance of his

parents and to be welcomed into the family.[14] This is a moral ideal of parenthood. It might prove psychologically difficult, but it is a valid ideal nonetheless, or so its proponents argue. I agree.

This ideal, some disability advocates argue, should extend all the way back to the moment parents choose to conceive a child, which is why prenatal testing should be discouraged. Wasserman describes a case in point:

> Consider a family formed in an era of increasingly refined preimplantation genetic diagnosis. As an embryo, each child was screened for all the undesirable conditions that were then detectable. Because of rapid progress in genetic diagnosis, each of the older siblings has genetic conditions that would have precluded the implantation of his successors. Each older child (despite receiving a larger share of parental attention than his successors) could reasonably see his membership in the family as less well-grounded than theirs: the eligibility standards for the family go up with improving technology, and he is only a family member because, at the time of his conception, the technology has not improved enough to screen him out. He knows that he is loved as unconditionally as his younger siblings; they, in turn, are loved as unconditionally as those who will be added under even more refined screening techniques. Each nevertheless has a reason to feel like a second-class family member, 'grandfathered in' under a standard that would have excluded him. There is a tension between the unconditional love shown the present child and the conditions imposed on the selection of his siblings, a tension that cannot be easily resolved by recourse to a contrast between ex-ante and ex-post perspectives. The parents' claim, however truthful, that because of their love of the impaired child they actually have they have no regrets that they did not screen for that impairment, is cold comfort when they are now employing that screening to select his future siblings. He experiences, vicariously, the ex-ante perspective on which an impairment like his is a disqualification for family membership."[15]

The older sibling in this example has no complaints about how his parents have treated him since he was born. But he knows that had there been a screening process that could detect his condition, he would not have been allowed to be born and to be part of the family. He would not have gotten the chance to receive the parental love he now actually receives. This counterfactual exposes a fault in his parents' welcoming attitude, and possibly, in their love. This can be seen

[14] (Wasserman 2009).

[15] (Wasserman 2009, 326-327).

only counterfactually, for the actual treatment of the older sibling by his parents does not reveal that they treat him any differently than the younger siblings.

I do not think there is anything bad with waiting until a child is born to love them. We can only love concrete individuals. But imagine parents who do not just wait for a child to be born to start loving him, but also have a secret test: if the child is born with a disability, they would not love him or welcome him into the family. They would abandon him in the hospital, for example. As it happens, an able child is born, and the parents love him. But the child can still have a legitimate complaint against his parents: he was not unconditionally welcomed into the family. Even if his parents' behavior — once they discover he is able — is impeccable, there is a fault in their parental welcoming attitude, and possibly, in their love.

It seems to me that an ideal of unconditional welcome extends beyond the moment of birth. I have a straight friend who "came out" to his parents to test their love for him. He is not actually gay, but he wanted to know that his parents would still welcome him if he were. The counterfactual mattered to him as a test of the depth of their love to him now, as attested by whether they would offer him unconditional welcome. It is a cruel test, as testing the love of parents often is, but we can understand the logic of the test, because we understand the norm of parental love it employs. Whether we would be included in our family if we were different matters to whether we are loved appropriately, here and now.

There is one detail in Wasserman's description, however, that should be corrected. He says that the older sibling would feel like "a second-class family member," given the just-mentioned counterfactuals. This suggests that the older sibling would feel less included in the family than his younger siblings. But this is actually not the case, for I think the younger siblings should also worry. It is true of the younger siblings too that if it were discovered that they had a certain

condition they would not be allowed into the family. Once tests of any kind are introduced as conditions for acceptance into the family, the welcoming of all children who are tested is at fault, both the children who pass and the children who fail the test. Similarly, if parents kick out their gay child, that exposes a fault in their welcoming attitude for their straight children too: they keep them within the family, but just because they are not gay. When parents fail to meet the ideal of unconditional welcome, there is a fault in their parental love toward all their children.

I have said that, to some extent, romantic love is modally stable. But parental love is modally stable on a much stronger modality. According to the ideal of unconditional welcome, no matter how a child turns out to be, parents should welcome her (with the possible exception of a child turning evil, which introduces special problems). We can say: "to love my child in this world, I should love her in all possible worlds in which she is my child (perhaps: as long as she is not evil)." To the extent that this counterfactual is false of me, so is my love to my child at fault (in the actual world).

Note that one can accept this (highly demanding) test of unconditional welcome without concluding that prenatal screening is morally bad. For example, one can claim that the ideal of unconditional welcome kicks in only at the moment of birth, where there is actually somebody to welcome (I tend to think that is the case). One can also think that emotions should not be regulated by norms, so unconditional welcome is not the same as unconditional love, where love is understood as an emotion. Unconditional welcome should perhaps be interpreted behaviorally: no matter what you feel about your child, you should behave toward her in such a way that reflects unconditional welcome into the family (invite her for Thanksgiving and do so with a smile). One might think that even this is too demanding, in which case, an endorsement of norm might be the correct interpretation of the ideal of unconditional welcome: even if my parents behave toward me

in such a way that fails the ideal of unconditional welcome, they should at least endorse that norm of behavior as a valid norm for them. They might not behave in accordance with it, but they should believe that they should.

Now let us turn to the topic of respect. I want to draw an analogy between parental love and respect for persons. Imagine the following. You have a person in your life, not a family member, named Gideon. Gideon might be a neighbor, a colleague, or some person on the street you happen to interact with a lot. Your interactions with Gideon are always good and smooth. He is attentive to your interests and does not stop you from satisfying them. And he does so out of recognition of the duties he has toward you given your interests. Furthermore, he does not take the duties imposed on him by your interests to be any less stringent than the duties imposed on him by the equal interests of others. According to everything said so far, Gideon respects you.

But now imagine that the following counterfactuals are true: If you had been in a coma and Gideon would have had the same general attitudes he now has, he would tarnish your reputation. He would come to visit you in the hospital just to see you in your moments of weakness. If he refrained from doing that, it would be just because he could not afford a ticket to the hospital. Or imagine that you went through an accident or an illness that left you severely cognitively disabled: you start looking and sounding and moving awkwardly. In that case, Gideon (who has the same general attitudes he has now) mimics you whenever he sees you, and mimics you in front of his family and friends. When he sees you and does not mimic you, it is just because he is afraid of how other people would judge him. In both counterfactuals, it is clear, Gideon does not respect you.

Assume that these counterfactuals are true. You might respond by saying, “well, I’m not actually in a coma, so who cares.” But I think you are more likely to say: “Oh dear. Gideon doesn’t

really respect me right now, does he?" Something in Gideon's respect to you in this actual world is defective because of these counterfactuals.

What do the counterfactuals show? They do not show that now, Gideon is not really motivated by a recognition of the duties he has toward you. He is. But if you were different, he wouldn't be. If his attitudes in the counterfactual cases are the same as his attitudes in the real world, what explains these counterfactuals is probably some belief or attitude or disposition he has in the actual world. Perhaps Gideon does not endorse the norm that the interests of people with severe cognitive disability or in a coma matter morally. While now he is fully responsive to your interests, given that you are able and conscious, he would not do so if your condition were different. If your condition were different, another part of his general attitudes would kick in, the part that says "don't respect someone in that condition." As you happen to be in the real world, that part of his set of beliefs does not kick in. But it would if you were in a coma or if you were cognitively disabled. Gideon's actual attitude regarding what he owes people different than you affects the quality of his respect for you. This explains the sense that Gideon's respect for you is defective in the actual world.

Is there a theoretical explanation for this?

I have mentioned Darwall's distinction between appraisal respect and recognition respect, and I advanced my account of respect as an account of recognition respect. I want to go back to this distinction, because one thing that seems clear is that appraisal respect is not modally stable at all. I show appraisal respect by responding to the value something has in this actual world. In any world in which the object lacks this value it is perfectly fine for me not to have appraisal respect (indeed, it would be irrational of me to have appraisal respect in worlds where the object lacks value). But recognition respect is not like that. It is not a response to value, so it is expected to

survive the loss of value and to be expressed even when there is no value to which it can respond. It is, for this reason, modally stable.

Using this distinction, I propose the following interpretation of the Gideon case: Gideon has only appraisal respect toward you, even though his behaviors are very similar to behaviors shown out of recognition respect. Or, to be more charitable, he has some recognition respect to you, yet it is tainted by appraisal respect. You have a certain value in his eyes as someone who is not in a coma and not cognitively disabled, but if you didn't have that value in his eyes, he would not have respected you the way he does. The disrespect in his current attitude is explained by the fact that you deserve to be shown recognition respect, and Gideon withholds recognition respect from you, or "pure" recognition respect from you.

Recognition respect is distinct from appraisal respect exactly by not depending on an evaluation. The pure case of recognition respect would be completely independent of evaluation. I am not evaluating you when I show you recognition respect, and whatever my evaluation of you would turn out to be would not affect my recognition respect for you.

Recognition respect thus comes with its own ideal of unconditional welcome. It is not enough for me that you respect me as I happen to be. It is important to me that, given your attitudes right now, you would have respected me even if I were different. Or at least, it is important to me that you now endorse a norm of respect toward me that would include me even if I were different. This is not because I want to know that if I were different I would have passed your tests, but because there should be no tests. The depth of your recognition respect for me now depends on there being no tests I need to pass to deserve that respect.

Note that if Gideon would not treat you well if you were in a coma or with a disability, all other able and conscious people should be worried as well. Gideon would behave the same way to them had they been different. The quality of respect he shows to them is defective as well.

How could Gideon transition into respecting you in accordance with the ideal of pure recognition respect? He is already responsive to your interests here and now, and he does not take them as inferior to the similar interests of others. So what more can you expect of him? You can expect of him that he endorses the view that people in a coma or with cognitive disability deserve recognition respect. That would make it the case that in a possible world in which he remains as he is, but you had a cognitive disability, he would still treat you with recognition respect.

In the previous chapter, I argued that if some are treated better than others, that can be a sign of disrespect for those treated worse. But now we see that sometimes, if some are treated worse than others, that can disrespect those who are treated better. Above, I made a lot of the point that respect has a direction, that only those who are treated worse are disrespected. Am I taking this claim back now? Not exactly. Whereas people have a right not to be treated as inferior (because this is disrespectful), people do not have a right not to be treated as superior (that would be a strange right). Being treated better is still different than being treated worse. Rather, what I claim is that people have a right that their status as non-inferiors not be conditioned on certain value they happen to have. Sometimes, the only sign that my status as non-inferior is conditioned on certain value I happen to have is revealed by the fact that I am treated better than others.

The next step in the argument is to claim that some people actually deserve pure recognition respect. I think that what Gideon's case suggests is that some people are vulnerable to the disrespect that comes with having pure recognition respect withheld from one. On the vulnerability model, this suggests some people (like you in the example) deserve pure recognition respect. Since

I do not assume there is anything special about you in the example, I think many people are vulnerable to this kind of disrespect. This is one way to motivate the thought that some people deserve pure recognition respect. Another way is to say that, assuming some people deserve respect (given the argument of the last section), what we now see they really deserve is pure recognition respect. Pure recognition respect is the correct ideal for the recognition respect many people are already believed to deserve. If some people deserve recognition respect, that respect should accord with the ideal of pure recognition respect. Pure recognition respect is the standard for judging recognition respect as appropriate or defective. So if some people deserve recognition respect, some people deserve respect that involves no appraisal, no evaluation, no test. They are owed a respect they do not earn, a respect that is offered in a spirit of unconditional welcome. And I argued in the last section that it is probably that at least some people deserve respect.

The case of birth is perhaps illuminating here. As we anticipate the birth of a new human being, we know in advance we should greet the newborn with recognition respect. This is true not just of the family, but of anyone. We do not wait to see how the newborn turns out to be to determine she deserve recognition respect. Waiting with a test in our head would be like those parents who wait to see whether their child has cognitive disability before they decide to love him. If we condition recognition respect to passing some test, then even if the newborn passes our test, whatever respect we show her is not the pure recognition respect she deserves.[16]

[16] Given this background, it is perhaps not surprising that it is sometimes said that human beings are *born* equal or *created* equal. One way to interpret these claims is that human beings can lose their equality after birth. But this is usually not the implication, and some documents say explicitly that people are both born equal and die equal (thus excluding the possibility of losing equal status). I think the reason we go back to birth or creation is that that is the moment in which a new human being should be welcomed into the world, and it is at that moment that we offer unconditional welcome.

Say that it is true that at least some people deserve pure recognition respect. What are the implications for other human beings? The answer, as I indicated, is that those other people should also be respected. Without respecting them, one is bound to fail in showing respect to those one takes to be clearly deserving of respect.

If X deserves pure recognition respect, then to show X the respect he deserves, it should be true of me that I would have respected X even if X were in a different condition. And norms I accept now in relation to people in conditions different than X attest to how I would treat X if he were in their condition. The only guarantee X has that I would treat him with respect even if his condition were different is that I endorse as valid a norm of respect toward people with conditions different than X's. And if I genuinely endorse such norms, I should treat people in conditions different than X with respect.

If I take X to deserve pure recognition respect, then there is almost no human condition that it is impossible for X to have had. Coma, disability, illness: there is a possible world in which X has them. If in this world I do not respect people with disability (say), X can legitimately ask: "If you do not think people with disability deserve respect, how can I know you would respect me if I had a disability?"

Imagine parents who kick out of the house an older sibling who comes out as gay. A younger, straight, sibling feels like his parents' love and welcome for him is now also defective: it is conditioned on him being straight (which he happens to be). It would be "cold comfort" for him to be told: "Oh, if you were gay we would not kick you out." Unless his parents change their behavior toward the older sibling, there is not indication they are telling the truth.

I conclude that if an agent fails to adopt an attitude in this world of respecting human beings in all particular conditions, the agent disrespects all those people who deserve respect and who

might have had those conditions. And all those conditions are possibilities for some human beings the agent actually respects. To avoid disrespect for those people agents do happen to respect, agents should endorse norms like "I should respect people with disability", "I should respect people in a coma," "I should respect ill people," and so on. Eventually, conditions covering the entire humanity, or nearly the entire humanity, will be included in the scope of respect.

These are the considerations I propose in favor of moving from "some human beings deserve respect" to "all human beings deserve respect". We start from individuals about which we have no doubt that they deserve our recognition respect. Those are likely to be some human beings. We then inquire what it means to show them recognition respect. We realize that a non-defective recognition respect does not contain any element of appraisal. From this we infer the modal stability of respect: to show someone recognition respect in this world, we should respect that individual even if she were different than she is. For this we need, in this world, to respect people in conditions different than those of the people to whom we offer recognition respect. Carrying this logic through, we end up endorsing the norm that we should respect human beings in any condition, that is, all human beings.

Of course, to endorse such a norm does not mean we will always succeed in respecting everyone. We will fail, and I do not think that every time I happen to disrespect someone I thereby disrespect everyone else. But I have to endorse the norm that any human being deserves respect, for me to be able to truly respect someone.

Let us tie it back to prescriptive equality. I have argued in the previous chapter that to respect someone is to treat them as non-inferior compared with other individuals that deserve respect. If I realize that to respect some human beings I have to respect every human being, I also realize I have to treat every human beings with prescriptive equality. To put it normatively: since there are

some human beings I ought to respect, I ought to respect all human beings, and so I ought to treat all human beings with the principle of prescriptive equality. The same is true of every other agent. This is how we get to the conclusion that all human beings deserve prescriptive equality.

Some clarifications are in order.

Acknowledging that I should respect one human being will probably not yet take me to respect all of humanity, because for each individual human being, there are conditions that it is impossible for them to have had. One might argue, for example, that someone who is biologically male could not have been biologically female and remain the same individual, so it is impossible for a person to have been born to a different sex (even if not to a different gender). I am not taking a position on this particular proposition, I just want to illustrate that perhaps not all human conditions are possible for each human being, although many do. To understand that one should respect all human beings, one should probably start with a somewhat varied group of individual that one believes deserve recognition respect. If one starts, say, with all non-evil, normally functioning, adult human beings as one's initial group (as some skeptics about prescriptive equality would probably allow), one will discover one's recognition respect has to extend to any human being. I suspect that a much smaller initial group could achieve the same result.

A more troubling issue with my argument is that it seems like the equal moral status of some human beings is derived from the moral status of others. It looks like I have to respect some human beings because I have to respect other human beings. But isn't that contrary to the spirit of prescriptive equality? Don't we want a theory that shows that each human being deserves respect just because of the human being that she is? This question came up before.[17] What does the respect view have to say in its defense?

[17] See §3.2.

The answer, I think, should be as follows. Say Danny deserves recognition respect from me, and I realize that to respect Danny, I should respect people in conditions different from that of Danny, say cognitively disabled people. What happens if I then commit myself to respecting people with cognitive disability, but do not believe that they deserve respect? I would not have succeeded in respecting Danny. Danny can still complain that if he had a cognitive disability, I would not show recognition respect to him despite the norm that I adopted, because recognition respect has to include the belief that the respected person deserves respect. Danny's complaint would be justified because of the responsiveness principle: recognition respect requires responding to duties imposed by the interests of others because one recognizes that the individual and his interests are important and generate duties. In other words, one cannot both show recognition respect to another and believe that they the other does not deserve it. If one believes that someone does not deserve respect, one cannot respect them.

In other words, if I have to respect all human beings, I have to believe all human beings deserve respect. That means I cannot believe something like "I treat you as if you deserve respect but really you do not deserve respect."

But now two worries arise. First, to believe that all human beings deserve respect does not mean that they actually deserve respect. That I morally ought to believe it does not make it true. Even if I go to hell for not believing all human beings deserve respect, that would not make them respect-worthy. The second worry is that it is never the case that one morally ought to believe anything. One should believe only on the base of evidence.

My reply is as follows. To respect Danny, what I discover is that I owe it to other people to respect them. I do not just owe respect but owe respect to people other than Danny. Here is why. Assume I really do owe respect to Danny. As I argued, for me to respect him, it needs to be the

case that even if Danny were different, I would still owe respect to him. And for that to be the case, I need, in this world, to owe respect to people in conditions other than Danny's.

Now, the following biconditional seems true: X owes T to Y iff Y deserves T from X. Usually, in moral reasoning, we start with what people deserve, and infer what others owe them on the basis of that. We usually look at the properties of the people deserving something, at what it is about them because of which they deserve what they deserve. The complaint against the respect view is that it does not start with those deserving respect, but from those owing respect. And that is true. But since the biconditional is true, there is no reason we cannot start from what X owes to Y to discover what Y deserves from X. This is just a discovery of desert starting from the other side of the tunnel.

If I discover that I owe respect to someone, what I discover is that they deserve respect from me. That I owe respect to someone is the evidence that they deserve respect from me. So to believe that others deserve respect is not a belief without evidence. It is not that one morally ought to believe that others deserve respect, thereby making it true that they do. Rather, one morally ought to believe one owes respect to other people, thereby discovering that it is true that they deserve respect.

In other words, from respecting some people I discover other people deserve respect. But this does not mean that the latter's respect is derived from the former, as if they were second-class humans. Their respect-worthiness is only epistemologically derived from the respect-worthiness of others. The "order of discovery" starts from people to whom we clearly owe respect and moves to people we are not sure deserve respect. But what is discovered in this process is that some people we did not initially respect deserve our respect, period.

6.3 Only Human Beings?

What about other animals? If human beings who do not have certain cognitive capacities (or who lack some other attribute) should be treated with respect in a spirit of unconditional welcome, why not extend this unconditional welcome to all nonhuman animals, who also lack the relevant cognitive capacities or attributes? Why not say that all animals are equal?

My own belief is that it is more important to show that prescriptive equality applies to all human beings than it is to show that nonhuman animals are not our equals. I believe that the equality of all animals is closer to the correct moral outlook than the inequality of all human beings. Given my belief in the non-symmetry of prescriptive equality, I am more concerned with the denial of equal moral status to some human being than I am with the inclusion of nonhuman animals within the community of equals.

That said, I think the theory I developed so far can be used to develop an attractive conception of animal rights. There are two views that strike many people as extreme. According to one view, nonhuman animals do not matter at all in their own right, and we have no direct duties to them. On such extreme view, there is no wrong, for example, in torturing animals, aside from the indirect damage it does to humans. Few would subscribe to such view these days.

On another extreme view, nonhuman animals matter morally just as much as human beings. If one can alleviate the pain of a rat or a human being but cannot alleviate both, one should toss a coin, or one is permissible in alleviating either. Many find this view implausible as well. The correct moral view, it seems to many (myself included) should be somewhere in the middle. The respect view offers one such middle. On this view, the main moral difference between human and

nonhuman animals is that the former deserve respect whereas the latter do not. Before asking what could motivate such claim, let us see what follows from it.

Respect, on the enhanced by-product view, is located in certain second-order obligations. On this view, to deny that nonhuman animals deserve respect is not to deny that their interests matter in their own right, or to deny that their interests generate any obligations. What first-order duties there are is not influenced by whether a creature deserves respect. So to deny that nonhuman animals deserve respect is not to deny that they have a right to life, bodily integrity, avoiding pain, freedom of movement, and so on.

What is denied when a duty of respect to animals is denied is that we must respond to these duties out of recognition of them, and that we must not take them to be less stringent than the duties of others. If nonhuman animals do not deserve respect, then as long as an animal is not killed by humans, does not suffer, is free to move, has food, and so on, it does not matter why humans protect such interests. If human beings provided all of these to nonhuman animals, it wouldn't matter why they did so. The meanings of actions that otherwise satisfy interests of animals does not matter. And if one gives enough weight to the duties imposed by the interests of nonhuman animals, it does not matter whether one takes some of these duties as more stringent than others. Comparative considerations do not matter when it comes to animals, only absolute considerations.

This does not always mean animals will be treated less well than humans. To the contrary. We have seen that with humans, sometimes it is legitimate not to satisfy their interests if the interests of everyone is equally unsatisfied. Not so with animals. In the case of animals, depriving them equally of some good is not a redeeming quality of an action in the same way it can be with humans. We can conceive of situations in which depriving humans of some goods would be more

appropriate than depriving some other animals. These implications of the respect view, while not universally affirmed, seem reasonable to me.

But why think nonhuman animals do not deserve respect, if we are now glowing with the spirit of unconditional welcome?

The answer has to do with the modal aspect of respect. We start with creatures we clearly owe respect to (some human beings) and discover what that entails (that all human beings deserve respect). Modality plays an essential role in this process of discovery: we need to determine what it would be like for individuals who deserve respect to not be respected in other possible worlds in which they exist. It matters, then, in what other worlds they exist. The initial group of individuals about which we have no doubt that they deserve respect includes only humans, I suspect. For human beings, there is no possible worlds in which they are not human. This, at least, seems to me like the most plausible metaphysical view on the matter. So one case we cannot consider is a case in which, had I been a horse, I would not have been respected. This is not because horses cannot be respected, but because I could not have been a horse. But I could be in a coma, or cognitively disabled, or mentally ill, or born without a brain. For this reason, while other human beings are included in the spirit of unconditional welcome for recognition respect, nonhuman animals are not. The boundaries of unconditional welcome are the boundaries of what it is possible for those who clearly deserve respect to be.

The significance of species boundaries, then, is not that being human is itself a morally significant property. It is not. But the property of being human is metaphysically significant: it determines what an individual human being could be in other possible worlds. If respect for an individual requires respecting her in other possible worlds in which she exists, and if an individual cannot exist as a member of another species in any possible world, and if the group of individuals

we start with as clearly respect-worthy includes only human beings, then modal considerations, rather than moral considerations, would limit the community of equals to human beings.

The conclusion of the last two sections is: all human beings deserve respect and only human beings deserve respect. Therefore, all human beings are covered by prescriptive equality, and only human beings are covered by prescriptive equality. Prescriptive equality is true in its humanistic extension.

6.4 Impartiality

Any account of prescriptive equality has to deal with the problem of special relationships. Prescriptive equality demands equal consideration of interests for a large number of individuals (however we end up determining who these individuals are), but it also seems to be legitimate to give greater weight to one's own interests and to the interests of loved ones. How can the two be consistent?

Partiality is not a problem that is unique to the respect view. Anyone believing in prescriptive equality should confront the problem of partiality. In fact, even people who deny prescriptive equality but affirm some objective hierarchy of human beings have to confront the problem of partiality. If my son is inferior in moral status to all other human beings, partiality might still make it legitimate for me to treat his interests as if they mattered more. Partiality presents a problem to any objectivist view of moral status, whether egalitarian or hierarchical.

The interesting question is whether the respect-view has some special resources to deal with the alleged legitimacy of some forms of partiality. And I think it does. Respect, as we have seen, matters ethically because of the attitude it expresses. Respect and disrespect are both objective

attitudes: when I respect you, I take it that the duties your interest generate apply to anyone. Similarly, if I disrespect you, I take the duties generated by your interests to be less stringent than the duties generated by the equal interests of others. I take them to be objectively less stringent.

Since relations of love are known to be partial, preferential treatment to one's family members and friends does not typically imply an objective judgment about the stringency of the duties generated by the interests of people. Even if I save you rather than her because you are my child and she is not, I do not expect others to save you rather than her because you are my child. In preferring my child in my own act of saving, I do not express a judgment about the objective moral claim that arises from the child's interest in living, so there is no disrespect to others in my behavior.

That said, there are limits to how much preferential treatment to loved ones can be consistent with respect to all. If there is a scarce medication, and there is a line of people waiting to get it to save their child, I cannot just run forward so my son will get it. If I ran to get the medication, this would suggest that I believe the lives of other kids matter less than the life of my son.

The respect-view, then, offers some resources for accommodating the intuition that preferential treatment motivated by partial relationships can be justified, while also helping us locate the boundaries of legitimate partiality.

6.5 Conclusion

In this dissertation, I advanced what I call the respect view for defending prescriptive equality. I argued that for X to respect Y:

1) X has to follow duties imposed by the interests of Y because X recognizes such duties.

2) X has to not take a duty imposed by an interest of Y as less stringent than the duty imposed by the equal interest of any other individual who deserves respect.
3) X has to endorse the moral norm that even if Y were different, X would respect Y.

From these three claims, together with the existential claim that some (many?) human beings deserve respect, I argue that all human beings deserve respect. This establishes that no human being should be treated as inferior to any other human being. I also argued that nonhuman animals do not deserve respect. Thus, prescriptive equality in its humanistic extension is true, and it is true regardless of whether there is an empirical property that all human beings have equally. This is how the respect view aims to reconcile prescriptive equality with descriptive inequality.

One important issue I did not address at all in this essay is the problem of evil: Do Hitler and Stalin deserve respect, and so deserve to be treated as equals? This is a tough question, and I am conflicted about how the respect view should address it. A previous version of this essay included a discussion of the issue, but I lost confidence in much I had to say, so I decided not to include it in the current version. I leave this tough issue for a future discussion.

I have no doubts that this account raises many other questions and concerns. My aim in the near future would be to gather these concerns and understand them, and hopefully respond to them. The account itself is likely to change in the process. Richard Arneson once remarked: "My tentative and provisional conclusion is gloomy. In this area of thought [i.e. basic equality], the available alternative positions are all bad. Choose your poison."[18] I hope my readers find my poison worth trying. I will continue to make it better.

[18] (Arneson 2015, 52).

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