

EGALITARIANISM WITH A HUMAN FACE

SUBMITTED BY

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Abstract

My thesis vindicates the ideal of egalitarianism with a human face by answering the threefold challenge that contemporary egalitarians fail to capture what really matters when it comes to distributions of burdens and benefits among human beings, that egalitarian concerns apply only within specific institutional contexts, and that there is no account of human nature that would furnish a commitment to distributive equality with a coherent foundation. The ideal of egalitarianism with a human face marks a turn against both non-egalitarian variants of humanism and non-humanist variants of egalitarianism.

My thesis is divided into three parts. The first set of arguments offers a powerful line of reasoning in support of the claim that our concern for the well-being of other people is egalitarian. I argue that the principle of equality is in two important respects superior to both the priority view and a contractualist commitment to strict priority. The second set of arguments maintains that whether or not our concern for other people is egalitarian does not depend on whether individuals share a common institution. I argue against the recently prominent idea that whether some are worse off than others matters only among individuals who stand in a particular relation to each other. The final set of arguments advocates a common humanity account of basic equality. I argue that the idea of common humanity offers a promising approach to many of the problems associated with the question of basic equality and may be invoked in support of the claim that nobody should be better or worse off than anybody else through no choice or fault of his or her own.

Signed Declaration

I, Gabriel Wollner, confirm that the work presented in this thesis is my own.

Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Gabriel Wollner

London, August 2010

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INTRODUCTION

Egalitarianism with a human face

1. Preliminary remarks

Alexander Dubcek believed in socialism as a way of realizing important human values. At the same time he observed that by 1968 socialism in his country had actually become an enemy of these values. His famous advocacy of socialism with a human face captured this dual conviction.¹ Dubcek and other reformers in socialist Czechoslovakia set out to revive the humanist sources of socialism and restore the human face that socialism had lost. On the one hand, they had to overcome a deranged socialist status quo and insist that the rule of unaccountable party elites, complete bureaucratic control, inefficient central planning and pervasive censorship did not comply with the "categorical imperative to overthrow all relations in which man is a debased, enslaved, forsaken, despicable being" (Marx 1977, p.68). On the other hand, they had to deflect the specters of a non-socialist alternative and insist that socialism had a unique claim to taking seriously the humanist "teaching that man is the highest being for man" (Marx 1977, p.68). Socialism with a human face marked a turn against both non-human variants of socialism and non-socialist variants of humanism.

The predicament of egalitarianism in contemporary political philosophy is of course very different from that of socialism in Warsaw Pact countries in the 1960s. However, there are also important parallels. Egalitarians who believe that it is morally objectionable if some are worse off than others find themselves in a

¹ For a fuller version of this account and an exploration of the Dubcek analogy in a different philosophical context, see James Conant's introduction in Hilary Putnam, *Realism with a Human Face*, ed. James Conant (Cambridge, MA: Harvard University Press, 1992). p.xv.

position similar to that of reform socialists during the period of the Prague Spring. They believe that equality is an important human value. At the same time they may have to worry that contemporary egalitarianism misunderstands the nature of this value and the requirements it gives rise to. Those who believe that some kind of distributive equality is central to social justice face the objection that their doctrine has lost its human face. In its most recent developments, egalitarianism may have abandoned its humanist roots.

Taking current debates about social justice and distributive ethics seriously, there are three questions which motivate the objection that egalitarianism has lost its human face. First: Does distributive equality really capture the nature of our concern for the well-being of other human beings? There are non-egalitarians who maintain that it does not matter whether some are worse off than others. They argue that instead of embracing comparative principles, one ought to focus on how people fare in absolute terms. To illustrate the alleged inhumanity of egalitarianism, these critics draw on considerations like this: Egalitarians believe that it is better in one respect if all were blind in a world in which half are sighted, even though such an egalitarian levelling down is better for nobody. If the non-egalitarian critics are right, distributive egalitarianism fails to exhibit a human face because it fails to capture a human value. Second: Under what conditions does equality arise as a moral demand among individuals? Some philosophers argue that even though relative shares sometimes matter, equality arises as a moral concern only in very specific circumstances, for example if people share a common set of institutions. These philosophers believe that comparative principles require a particular ground or trigger. If their argument is sound, egalitarianism possesses an institutional rather than a human face. Third: In virtue of which feature or property do human

beings enjoy egalitarian entitlements? Some philosophers object that those who believe that egalitarian principles apply to all human beings in virtue of their humanity lack a coherent foundation for their view. There is no account of basic human equality which is both coherent and supportive of the normative commitments of distributive egalitarianism. Egalitarianism fails to exhibit a human face because one cannot identify a relevant human property that would support a commitment to distributive equality.

My thesis vindicates the ideal of egalitarianism with a human face by answering the threefold challenge that egalitarianism fails to capture what really matters when it comes to distributions of burdens and benefits among human beings, that egalitarian concerns apply only within specific institutional contexts, and that there is no account of human nature that would furnish distributive equality with a coherent foundation. My first set of arguments offers a powerful line of reasoning in support of the claim that our concern for the well-being of other people is egalitarian. The second set of arguments maintains that whether or not our concern for other people is egalitarian does not depend on whether individuals share a common institution. The final set of arguments advocates a common humanity account of basic equality and explains which human features give rise to the moral demand of distributive equality. The ideal of egalitarianism with a human face reclaims the humanist roots of egalitarianism and marks a turn against both non-human variants of egalitarianism and non-egalitarian variants of humanism.

2. The first set of arguments (chapters 1 to 3)

There are three distributive principles that have emerged as the most promising alternatives or supplements to pure utilitarianism. Advocates of the principle of

equality believe that it is in itself bad if some people are worse or better off than others. Proponents of the priority view believe that benefiting people matters more the worse off they are in absolute terms. Contractualists, who believe that a distribution must be acceptable from each individual's point of view, are committed to a principle of strict priority for the worst-off individual. The first part of my thesis offers a line of reasoning in support of the principle of equality. Chapters 1 and 2 establish the premises, which I shall employ when providing two arguments for the principle of equality in chapter 3. My arguments operate on two levels. First, they rely on intuitions about what we believe is the all things considered right thing to do in particular cases. Second, they hinge on more abstract considerations concerning the characteristics and features of principles governing the allocation of burdens and benefits among individuals.

I argue in chapters 1 and 2 that the principle of equality, the priority view and a contractualist commitment to strict priority each fall victim to a serious objection and violate at least one condition or requirement that intuitively a sound distributive view would have to satisfy. The principle of equality appears initially plausible because it explains why one ought to benefit those who are worse off than others even if in doing so one would fail to maximise overall well-being. However, there are cases in which the principle of equality delivers wrong verdicts regarding what ought to be done. If one can achieve an equal distribution only by worsening the situation of the better off, the principle of equality gives one a reason to level down and make people worse off. The principle of equality thus fails to accommodate the apparently important conviction that one distribution can be better than another, only if it is better for somebody. The priority view appears superior to the principle of equality. It explains why it is more important to confer

benefits on those who are badly off but does not face the levelling down objection. Unfortunately, the priority view fails to distinguish between cases involving the interests of just one individual and cases where the interests of several individuals are at stake. Because proponents of the priority view apply the same priority-weighted principle to cases involving trade-offs within one particular individual's life and trade-offs between the lives of different individuals, the priority view fails to take seriously the separateness of persons. A contractualist commitment to strict priority avoids the problems of both the principle of equality and the priority view. It explains why one ought to benefit the worse-off without recommending levelling down or failing to distinguish between one- and many-person cases. Unfortunately, a contractualist commitment to strict priority fails to account for the significance of numbers. Contractualist egalitarianism cannot explain how the number of people affected matters for what distribution one ought to choose. The conclusion of my arguments in chapters 1 and 2 is simple: None of the three distributive views that appear initially promising succeeds in jointly satisfying our considered convictions about the person-affecting nature of value, the significance of the separateness of persons and the importance of numbers.

Chapter 3 takes this trilemma of distributive ethics as its starting point and presents two arguments in support of the principle of equality. First: I argue that in facing the trilemma, one ought to give up on the condition of person-affectingness. If this choice is justified, the objection faced by the principle of equality is less powerful than the other two objections. This observation leaves the principle of equality with a comparative advantage over its rivals. Second: On the level of all things considered verdicts, the challenge is to devise a distributive view which explains why we ought to benefit the worse off even if we thereby fail to maximise

overall well-being, why most of the time we should not make people worse off to achieve equality, and why often we ought to do what benefits the greater number. I argue that in order to arrive at these verdicts in a number of important cases, one will have to appeal to the principle of equality. The principle of equality is, all things considered, part of the truth about distributive ethics. If my arguments are sound, an essential part of our concern for the well-being of other human beings is captured by the principle of equality.

3. The second set of arguments (chapters 4 and 5)

There are philosophers who argue that whether some are worse off than others matters only between individuals who stand in a particular relation to each other. More precisely, they believe that egalitarian demands are triggered by particular interactions. Some of these philosophers believe that our concern for other people gives us a reason to aim for an egalitarian distribution of goods if and only if we stand in a relation of coercion to them. Others believe that moral demands take on a distributive and comparative form if and only if individuals reciprocally cooperate with each other. Still others seem convinced that egalitarian demands arise only in cases where interaction between individuals exhibits certain higher-order features, for example where it is governed by rules or mutual expectations. I argue in chapters 4 and 5 of my thesis that neither are any of these particular claims true nor are there good reasons to believe in the general idea that egalitarian demands arise only from special contexts of interaction.

The claim that a particular type of interaction serves as a trigger or ground of egalitarian demands comprises two ideas. The first idea is that a particular type of interaction is necessary for egalitarian demands, and the second idea is that such

interaction is sufficient: Equality arises as moral demand if and only if individuals interact with each other in the relevant way. There are then two questions one might ask about any particular candidate trigger. First: Is it the case that demands of equality arise if individuals interact with each other in the relevant way, e.g., if they share an institution or coerce each other? Second: Is it the case that equality does not arise as a moral demand if individuals do not interact with each other in the relevant way, e.g., if they do not share an institution or do not coerce each other?

Chapter 4 focuses on the second question. I argue that two prominent approaches to the grounds of egalitarian justice, namely A.J. Julius's account building on the notion of framing and Andrea Sangiovanni's account building on the notion of reciprocity, fail to vindicate their preferred type of interaction as necessary for equality. Likewise, they both fail to establish the claim that, in order to serve as a ground of egalitarian distributive justice, interaction has to exhibit certain higher-order features. Equality is not an institutional value. Chapter 5 focuses on the first question. I argue that the idea of coercion as a trigger of equality is neither as plausible nor as powerful as it may initially appear. Those who believe that some form of coercion is sufficient for egalitarian demands will have to account for the significance of coercion, argue that equality arises in response to coercion and identify particular acts as relevantly coercive. This threefold challenge, I argue, cannot be met.

4. The third set of arguments (chapter 6)

In virtue of what feature or property do human beings possess equal moral status? My sixth and final chapter takes up the question of basic equality, which until very recently has been neglected by contemporary egalitarians. It is easy to see why the

question should not be neglected. An account of basic equality is pertinent to a number of important egalitarian arguments. Egalitarians will, for example, have to explain how the bearers of egalitarian entitlements differ from those who do not enjoy the status of basic equality. Similarly, they will have to explain in what respects the entitlement bearers relevantly resemble each other, for example to determine the metric of their preferred egalitarian entitlement. Anyone relying on the idea of basic equality faces a threefold challenge. It is difficult to identify a property that is possessed equally by all human beings, draws the right line between human and non-human beings, and possesses the kind of normative significance we attach to the status of basic equality. An additional problem arises for egalitarians who believe that nobody should be worse off than anybody else through no fault or choice of his or her own. It seems that the most promising approach to the problem of basic equality is incompatible with a version of egalitarianism that is sensitive to considerations of individual responsibility and compensates for internal endowment deficits.

I shall address this challenge and develop an account of common humanity as family resemblance. My account of basic equality is compatible with a responsibility-sensitive version of the principle of equality and it meets the threefold challenge of variation, scope and significance. The idea of common humanity as family resemblance appears independently plausible and may be invoked in support of the claim that nobody should be better or worse off than anybody else through no choice or fault of his or her own. This principle may after all provide egalitarianism with a human face.

CHAPTER 1

Equality, levelling down and person-affectingness ²

1. Preliminary remarks

Advocates of the levelling down objection maintain that the principle of equality violates an important condition that a sound distributive view would have to satisfy:³ "If inequality is bad, its disappearance must be in one way a change for the better, however this change occurs. Suppose that those who are better off suffer some misfortune, so that they become as badly off as everyone else. Since these events would remove the inequality, they must be in one way welcome (...), even though they would be worse for some people, and better for no one. This implication seems to many quite absurd" (Parfit 2002, p.98). It appears that the principle of equality, because it implies that an equal distribution is in one respect better than an unequal distribution even though it may not be better for anybody,

² Some of the material presented in this chapter has previously been submitted as part of my M.Phil. thesis (*Reasons for equality and the levelling down objection*) to the University of Oxford in 2007. I am grateful to Alan Ryan and Jerry Cohen for discussing this earlier material with me.

³ It is difficult to track down the origin of the levelling down objection in contemporary debates about equality and justice. Thomas Scanlon (1976, p.9 ff.) discusses an early version of the objection in his review of Nozick's *Anarchy, State and Utopia*: "If the evil of being relatively disadvantaged justifies eliminating inequalities by redistribution, however, it may be asked whether it does not provide an equally strong reason for simply worsening the position of the better off when redistribution is not possible." Joseph Raz (1986, p. 227) introduces a similar objection in his discussion of equality in *The Morality of Freedom*: "Egalitarian principles often lead to waste. If there is not enough of the benefit to go round then whatever of it we have should be wasted rather than given to, or allowed to be retained by some." Harry Frankfurt (1987, p.30) raises a related objection and argues that "allocating resources equally will reduce aggregate utility" and under conditions of scarcity be "morally grotesque."

violates a deep conviction about the person-affecting nature of value. Various proponents of egalitarianism respond to the levelling down objection in different ways. I am interested in egalitarians who argue that properly understood, the principle of equality does not violate the condition of person-affectingness. There are two ways of arguing in support of this claim. Firstly, egalitarians may argue that the principle of equality does not even give us a pro tanto reason to level down. There is no respect in which an unequal distribution that is better for some and worse for none is worse than an equal distribution that is worse for some and better for none. Secondly, egalitarians may argue that equality is always good for somebody, even if achieved through levelling down. The aim of this chapter is to show that both these arguments fail. Telic egalitarians will have to admit that their normative commitment to equality violates the principle of person-affectingness.

My argument proceeds in three steps. I shall firstly elaborate on the nature of the levelling down objection and offer what I think is the most appropriate way to think of it. I secondly examine Thomas Christiano's attempt to vindicate the claim that equality does not even give us a pro tanto reason to level down and argue that it fails.⁴ Egalitarians should insist that making somebody worse off without making anyone better off can in some respects be good. I thirdly examine John Broome's attempt to argue that equality is always good for somebody even if achieved through levelling down and argue that it also fails to convince.⁵ It is not the case that reducing inequality is always good for somebody.

⁴ I shall rely on his arguments in Christiano (2007, 2008) and Christiano and Braynen (2008).

⁵ Broome's response to the levelling down objection can be reconstructed from a number of papers, including Broome (1989, 1991, 2002 and forthcoming).

2. The levelling down objection properly understood

Advocates of the levelling down objection rely on cases where the principle of equality delivers counterintuitive verdicts on the goodness or badness of distributions. Consider a simple case.

Case (1): Imagine that somebody has two children, the first one suffering from a very strong headache, the second one suffering from a mild headache. Assume that there is one aspirin pill, which normally would completely alleviate the pain. Unfortunately, the child suffering from a very strong headache has some additional condition nullifying the effect of aspirin and the pill would be wasted on her. What should one do with the pill?

If one believes that inequality is in itself bad, there is something wrong with giving the pill to the child suffering from a mild headache. Alleviating the pain of the child suffering from a mild headache would increase the inequality between the two children. Advocates of the principle of equality may of course appeal to the pluralist nature of their outlook and argue that it is better, all things considered, if the pill goes to the child with the mild headache. However, there still seems to be something deeply wrong with a principle implying that a situation which is worse for some and better for none, i.e., the situation where the pill would be wasted, is still in one respect better, i.e., the respect of equality. Can there be anything good about achieving (or advancing) equality through making (or leaving) some people worse off without making anyone else better off? An inclination to answer this question negatively puts pressure on the principle of equality.

Derek Parfit seems to believe that the force of the levelling down objection does not depend on the truth of the person-affecting claim.⁶ I do not think that Parfit is right. If it is true that one outcome can be worse than another even though it is not worse for anybody, the egalitarian claim that an unequal distribution which is not worse for anybody is still in some respect worse, would be unproblematic. Without a commitment to the person-affecting nature of value, the levelling down objection would lose its force as an objection to the principle of equality. As recently argued by Joseph Raz (2008, p.7 ff.), the objection would merely illustrate a twofold predicament, which in fact is a feature of any pluralist theory. First: Leaving the person-affecting claim to one side, one may understand the levelling down objection as turning on the observation that, from the point of view of equality alone, the egalitarian will have to be indifferent "between achieving equality by making people who are better off worse off and achieving equality by making people who are worse off better off" (Raz 2008, p.7). However, this observation does not sustain an objection to the principle of equality. After all, we do not object to the liberal on the ground that her commitment to a principle of freedom would leave her indifferent between everyone being free and well off and everyone being free and badly off. From the point of view of one value alone, the extent to which the realisation of that value serves another value is irrelevant.⁷ Second: One may then think that the objection is forceful because it shows that there are cases where the realisation of equality comes at the cost of another very important value, namely well-being. But again, this observation does not speak

⁶ He says: "The person-affecting claim has, I think, less force than, and cannot be used to strengthen, the Levelling Down Objection" (Parfit, 2002, p.115).

⁷ As Parfit explains, and as virtually all egalitarians insist, egalitarianism is a position which recognizes other values besides equality, and embraces for example the principle of utility.

against egalitarianism. Nobody thinks that a situation in which the promotion of liberty and the promotion of well-being come into conflict with each other, such that a loss in well-being may be outweighed by a gain in liberty, would deal a decisive blow to somebody who believes in the importance of liberty. Any version of pluralism will have to accommodate trade-offs between different values and commitments.

I believe that the levelling down objection will have to rely on a commitment to the person-affecting nature of value and one should conceive of its force in terms of four inconsistent propositions. Each proposition of the set (a) to (d) below appears initially plausible and any subset of three can jointly be held, yet they cannot all be true together:⁸

- (a) Equality is valuable and there is something good about the disappearance of inequality.
- (b) Equality gives a pro tanto reason for levelling down, at least when there are no other ways to achieve equality.
- (c) A situation, distribution or action can only be good if it is good for somebody.
- (d) There is nobody for whom levelling down is good.

The levelling down objection is informed by subscribing to propositions (b), (c), and (d), which supports a denial of (a): Because equality gives us a pro tanto reason to level down, while there is no one for whom levelling down is good, and something

⁸ This exposition builds on a suggestion by Jerry Cohen, which was developed at graduate seminars in Oxford and at Columbia University, and discussed in personal conversation.

can only be good if it is good for somebody, we should not believe in the principle of equality. If one believes in the principle of equality, one should maintain proposition (a). This can be done in at least three different ways. To defend equality against the levelling down argument, one can reject either (b), (c), or (d), or in fact a combination of these. The present discussion is concerned with egalitarian responses that focus on (b) and (d). Some egalitarians attempt to rescue the principle of equality by rejecting (b).⁹ Thomas Christiano argues that the principle of equality does not give us a pro tanto reason for levelling down, even if that would be the only way to achieve equality. A second strategy maintains that (d) is false. John Broome argues that some people always benefit from equality, even if achieved through levelling down. Although all egalitarian in spirit, these positions differ in important respects. Because one cannot coherently subscribe to all of them, the diversity of egalitarian responses to levelling down triggers a question: Which egalitarian response, if any, is the right one? I shall argue that both Christiano's and Broome's responses fail.

3. Does equality give us a reason to level down?

Thomas Christiano argues that, properly understood, the principle of equality does not require levelling down and he thus rejects proposition (b) of the objection.¹⁰

Overall, his argument pursues a dual strategy: Firstly, he tries to defend a principle

⁹ Some other attempts of arguing against (b) are found in different versions of "conditional egalitarianism" or "anti-inegalitarianism," as for example advocated by Andrew Mason (2001) or Ingmar Persson (2008). I shall discuss their views only in passing and focus on Thomas Christiano's position. For a fuller discussion of conditional egalitarianism, see for example Holtug (2007) and Brown (unpublished).

¹⁰ This position is developed in Christiano (2007, 2008) and Christiano and Braynen (2008).

of equality on the basis of supposedly uncontroversial premises. Secondly, he aims at showing how the levelling down objection can be defeated. These two strands of argument mutually support each other: Christiano's defence of equality supports an egalitarian principle which defeats levelling down, while this defeat speaks in favour of that principle. The central idea of his position is this: Because the notion of well-being is essential to equality, egalitarians can, in virtue of their belief in equality, prefer inegalitarian Pareto-superior distributions to egalitarian Pareto-inferior distributions. Consequently, equality does not give us reason to level down. The first two sub-sections offer a brief summary of Christiano's reasoning; the third one presents three arguments against it.

3.1 Three arguments for a common good conception of equality

Christiano claims that a principle of equality must incorporate a notion of well-being, or more generally a conception of the common good: "The principle of equality I defend has two inseparable dimensions: it implies that justice is concerned with the common good and it implies that the common good is ideally just only to the extent that it is egalitarian. The common good and distributive dimensions are both essential to the principle of equality I defend" (Christiano 2007, p.44). The distributive dimension of equality appears familiar. Egalitarians understand equality as a relational property of different persons' shares in some good, or as a comparative function determining the size of the share that each individual is entitled to. But why should one think that the importance of well-being is somehow built into the principle of equality? Christiano's answer to this question builds on the idea of a "common good conception of equality," which he

argues is superior to a "merely structural conception" (Christiano and Braynen 2008, p.395). He offers three reasons in its support.

Firstly, Christiano argues that without a close link to well-being, equality could not have the significance that egalitarians attribute to it.¹¹ We only consider some forms of inequality as significant: "There is an internal connection between the idea of equality and the value of the relevant fundamental good that is equalised. (...) If it was not true that more well-being was better than less, there would be no point to equality" (Christiano 2007, p.72). What matters from the point of view of equality are equal shares of the fundamental good of well-being. Secondly, Christiano points out how the assumption that egalitarians are concerned with the distribution of a good of which it is better to have more, is crucial for defeating the rival position of sufficientarianism.¹² The idea that it is generally better to enjoy more well-being than less renders the claim that there is something like a level or threshold of sufficiency implausible. Finally, Christiano asserts that egalitarians need a foundational argument for their belief in the value of equality. Because the importance of well-being figures as a premise in such an argument, we have to assume that the importance of well-being is essential to egalitarianism: "Since the proposition that more substantial good is a necessary condition for there being a rationale for the principle of equality in the substantial good, the right account of the principle of equality must somehow include the idea that equalities

¹¹ Note that this passage should not be understood as offering an argument in support of a welfare metric. The point is that the egalitarian concern presupposes some fundamental good of which it is better to have more.

¹² See Christiano and Braynen (2008, p.398). For advocates of a sufficientarian position, see for example Harry Frankfurt (1987, 1997) and Roger Crisp (2003, 2004). For an egalitarian response to the sufficientarian, see: Casal (2007) and Temkin (2003a, 2003b).

in which everyone is better off are better than inequalities in which everyone is worse off" (Christiano and Braynen 2008, p.398).

The argument for equality that Christiano has in mind establishes an egalitarian principle from four main premises; each of which is supposedly much less contentious than the substantive egalitarian conclusion:¹³ Firstly, there is the fundamental importance of well-being which gives us reasons to promote individual human well-being. The notion of well-being captures the quality of a person's life, which is of intrinsic value.¹⁴ The good of well-being is such that people ought to have more of it rather than less. Secondly, human beings enjoy a fundamentally equal status. This fundamental equality is grounded in people's equal basic capacity "to be authorities in the realm of value" (Christiano 2008, p. 17). Human beings possess the equal status of personhood in virtue of their ability to "recognise, appreciate, engage with, harmonise with, and produce intrinsic goods" (Christiano 2008, p.14).¹⁵ Thirdly, there are no relevant differences that would require or justify differential treatment. Standard candidates, such as considerations of desert or merit, according to Christiano, fail to undermine the no relevant differences-thesis.¹⁶ Fourthly, there are two principles of justice. The generic principle of justice requires that we treat similar cases alike.¹⁷ The principle of propriety requires that, as a matter of justice, we determine an individual's share

¹³ I discuss a generalized version of this argument in my final chapter.

¹⁴ See Christiano (2008, p.18).

¹⁵ I will discuss the question of basic equality in the final chapter and cast some doubt on the plausibility of Christiano's assumptions. For the point of the present discussion, however, I simply take them as given.

¹⁶ See Christiano (2008, p.24).

¹⁷ See Christiano (2008, p.20).

on the morally relevant reasons alone and thus make sure that everybody receives his or her due. For example, reasons to give some good to somebody, must exclusively be grounded in the relevant characteristics of the person in question. Jointly held, these four premises support the principle of equality. Because individuals enjoy equal status and there are no relevant differences between them, the two basic principles of justice ensure that any reason to promote a person's well-being applies to all individuals equally: "If there is a reason for any person to be brought to a certain level of well-being, then the same reason holds for every person to be brought to that level of well-being" (Christiano 2007, p.62). Equality is based on the pursuit of each individual's well-being up to the maximum point compatible with the generic principle of justice and the principle of propriety. Alternative distributive principles are eliminated as they clash with one or several of the premises. Utilitarianism, for example, fails to recognise the generic principle of justice: "Only equality of well-being is compatible with the fundamental value of well-being, the generic principle of justice, equality of the person and the absence of relevant differences" (Christiano 2007, p.63). This line of reasoning completes the first strand of Christiano's argument: Because we can defend a principle of equality on a premise asserting the fundamental importance of well-being, well-being is essential to equality. But how does this position defeat the levelling down objection?

3.2 How the common good conception defeats levelling down

Christiano believes that because well-being is essential to equality, egalitarians can prefer Pareto-superior inequalitarian distributions to Pareto-inferior egalitarian distributions. The principle of equality implies that "all inequalities are unjust," but also that "some inequalities are less unjust than some equalities, namely those in

which everyone is worse off" (Christiano and Braynen 2008, p.394). The key idea is to maintain that while only Pareto-optimal equality is fully just, equality is not always better (or more just) than inequality. Christiano argues that we should evaluate any less than fully equal distribution in terms of its shortcoming from what the ideal egalitarian distribution would be: "In each circumstance there exists an ideal distribution (or the ideally just distribution), and (...) in evaluating how just the world is, it will matter how far your actual distribution is from the ideal distribution" (Christiano and Braynen 2008, p.395). One should understand Christiano as pursuing a three-step strategy to defeat levelling down. In ranking different distributions, we firstly determine what would be ideally just, we secondly devise a rule of approximation by which we determine the shortcoming of each distribution from the ideally just distribution, and we finally generate a ranking of the relevant distributions, such that some inegalitarian distributions exhibit greater proximity to ideal egalitarian justice than some egalitarian distributions.¹⁸

For a tighter grip on this strategy, consider [Circumstance 1], where A and B are two individuals, I and II stand for different distributions and the figures refer to cardinally, interpersonally comparable levels of holdings of one's preferred metric:¹⁹

	I	II
A	2	3
B	2	7

¹⁸ See Christiano and Braynen (2008, p.400).

¹⁹ I agree with Parfit (2002, p.83) who concedes that these "figures misleadingly suggest precision." Whenever, throughout this thesis, I make use of figures, I rely on the idea that we can roughly capture how well off people are and make some sense of the differences between their levels of well-being.

To avoid the levelling down objection, Christiano will have to argue that even from the point of view of equality, distribution II is better than distribution I. But how would the principle of equality deliver that conclusion? According to Christiano, the egalitarian will firstly have to determine the ideal egalitarian distribution. The ideal distribution is one where everybody would enjoy the highest feasible average level of well-being.²⁰ The highest feasible average level of well-being is 5, i.e., the average well-being of distribution II, while a situation in which every individual enjoyed the highest feasible average level of well-being would be a distribution in which both A and B are at level 5. Referring back to the argument that Christiano offers in support of his common good conception of equality, the ideal egalitarian distribution maximises well-being subject to the two principles of justice, that is, it achieves the maximum individual well-being compatible with everyone else being at the same level, which would be distribution III below:

	I	II	III
A	2	3	5
B	2	7	5

Distribution III may not be feasible and the choice we actually face may just be between I and II; however, distribution III is the ideal egalitarian distribution.

Relying on III as a point of reference, one should next employ a method of approximation to determine how far off each feasible distribution is from the egalitarian ideal. Christiano believes that a plausible rule of approximation would have to satisfy four conditions. It would have to recommend the ideal egalitarian distribution if feasible, never favour Pareto-inferior states over Pareto-superior states, and diverge from utilitarian rankings but not depart too much from the

²⁰ See Christiano and Braynen (2008, p.405).

difference principle.²¹ A plausible candidate which satisfies these conditions is the "difference summation rule of approximation" (Christiano and Braynen 2008, p. 409). The basic idea behind this rule is simple: "The state in which the sum of differences from the ideal egalitarian distribution is smallest is closer to the ideal of equality and so is the more just state" (Christiano and Braynen 2008, p.409). Applying this rule to [Circumstance 1] delivers the result that defeats levelling down.²² Because the sum of differences between II and III is smaller (the added differences between A's and B's well-being in each distribution is 4), than the sum of differences between I and III (here the difference is 6), II is better than I. This ranking delivers the intended result. Even from the point of view of equality alone, an equal distribution in which some are better off and nobody is worse off, cannot be worse.

We are now in the position to put an intuitive gloss on Christiano's principle of equality and his defeat of levelling down: Because it is better to have more well-being than less, egalitarian justice is fully realised by an equal distribution that is Pareto-non-comparable to the feasible Pareto-optimum. Pareto-inferior distributions and unequal distributions both contravene the requirements of equality. Because well-being is essential to our egalitarian concern, it can be a requirement of equality to make people worse off, only if other people are thereby made better off. Equality thus does not give us a pro tanto reason to level down, even if there is no other way to achieve equality.

²¹ Some of these conditions are rather obvious. For the rationale behind those that are not, see Christiano and Braynen (2008, p.408).

²² Christiano and Braynen ultimately reject the "difference summation approximation" and replaces it with a more complex "divergence rule of approximation" (p.412 ff.). For my present argument, reliance on the much simpler difference summation approximation is sufficient.

3.3 Three arguments against Christiano

I am sceptical about Christiano's response to the levelling down objection and believe that egalitarians, in their search for an effective response to levelling down, should look elsewhere. Three arguments support this claim. The first argument presents a dilemma that Christiano cannot avoid and which undermines his overall strategy of combining an argument for equality with a response to the levelling down objection. The second and third arguments cast doubt on the common good conception of equality, which enables Christiano's response to levelling down. The second argument shows that Christiano's reasoning against the so-called structural conception of equality is inconclusive. The third argument turns against the common good conception and highlights what I think are some of its significant shortcomings. Jointly, these arguments support my claim that the levelling down objection cannot be avoided by arguing that equality does not give us a pro tanto reason to level down.

My first argument targets Christiano's dual argumentative strategy. He intends to establish his egalitarian position on the basis of four premises. At the same time he seeks to defeat the levelling down objection. I argue that Christiano cannot achieve both of these aims, or at least not in the way he imagines. He faces the dilemma of either begging the question against alternative distributive principles or of having to bite the bullet of levelling down. Given his overall aspirations, either option is unattractive. Consider [Circumstance 1] familiar from above:

	I	II
A	2	3
B	2	7

Christiano claims that egalitarians can prefer II to I on grounds of their egalitarian commitment, a preference which defeats the levelling down objection. However, preferring II to I violates at least one of the principles originally supporting Christiano's conception of equality. Christiano thinks that II is preferable to I because it is better if B enjoys more than 3 units of well-being. But if there is a reason for B to have more than 3 units of well-being, the generic principle of justice in combination with the assumption of equal status and the no relevant differences thesis tells us that the same reason applies to A. In ranking II above I, Christiano violates the generic principle of justice: He does not treat similar cases, and by definition the cases of A and B are similar in the relevant respects, alike. Violating the generic principle of justice has significant adverse consequences. The generic principle plays a central role in the overall dialectic of Christiano's argument, for he rejects utilitarianism as a candidate distributive principle precisely because it violates the generic principle of justice.²³ If the principle of equality also violates the generic principle of justice, Christiano's argument for equality begs the question. How could Christiano avoid violating the generic principle? It appears that in ranking distributions I and II, at least one of the principles supporting Christiano's egalitarian position will have to yield. Arguing that there are relevant differences between A and B, which would justify an unequal distribution, or assuming that it is not the case that A and B enjoy a fundamentally equal status, not only seems ad hoc, but would stand in deep tension with the egalitarian spirit of Christiano's enterprise. Violating the principle of well-being then appears to be the only alternative option. But Christiano has a good reason not to do so: Sticking to the principle of generic justice and accepting a violation of the principle that more well-

²³ See Christiano (2007, p.63).

being is better than less, one would have to prefer I to II. Christiano would again face the levelling down objection.

This observation gives rise to a second point. One may interpret my argument as simply raising a problem internal to Christiano's position, undermining his joint attempt to argue for equality and concurrently defeat the levelling down objection. However, the argument also raises a more general concern. If one believes that an individual's distributive share should be a function of some relevant characteristic she possesses, for example her deservingness (i.e., if one believes in the principle of propriety in combination with a substantive view about the relevant individual feature), and if one also believes that relevantly similar cases ought to be treated equally (i.e., if one believes in the principle of generic justice), then a commitment to Pareto-optimality will inevitably give rise to tough choices. There will be cases, just like [Circumstance 1], where one's commitments cannot jointly be satisfied. If one believes that at least sometimes one's commitments to generic justice etc. should trump Pareto-optimality, one will have to face some version of the levelling down objection. But if Pareto-optimality always gains the upper hand, one will have a hard time defending one's preferred distributive principle against competing views on the ground that these would violate important principles of justice. If in avoiding the shortcomings of pure utilitarianism one pays heed to the principle of generic justice and the principle of propriety, avoiding the levelling down objection by arguing that the principle of equality never offers a reason to level down becomes unavailable.

My second argument calls into question the reasoning that Christiano offers against a merely structural conception of equality, i.e., against a conception of equality which "evaluates distributions of goods exclusively in terms of the

comparisons across persons" (Christiano and Braynen 2008, p.395). I believe that Christiano's arguments are inconclusive for they only support the claim that well-being is normatively significant. Advocates of the structural conception can take the significance of well-being on board without embracing Christiano's common good conception. Christiano commits what one might call a welfarist fallacy. The fallacy is that of inferring a common good conception of equality, which as a matter of egalitarian principle "favours states in which everyone is better off to those in which everyone is worse off" (Christiano and Braynen 2008, p.395), from the significance of well-being. One can quite plausibly believe that well-being is important and still maintain that structural equality possesses independent value. The loss of individual well-being occurring in a levelling down situation, so the argument may go, is to be weighed against the goodness of maintaining equality. There is nothing wrong with believing that important and valuable equality is equality of well-being while simultaneously subscribing to a conception of equality that sometimes prefers Pareto-inferior distributions to Pareto-superior alternatives.

An additional remark supplements this response. It seems that Christiano fails to appreciate the different ways in which the significance of well-being may be incorporated into the egalitarian outlook. There are at least three general possibilities. Egalitarians might firstly believe that a concern for well-being is built into the principle of equality, such that well-being is always to be promoted and Pareto-superior distributions always to be preferred to Pareto-inferior ones. This is the position that Christiano takes. However, egalitarians could also believe that while the significance of well-being is germane to the egalitarian concern, the idea that well-being is always to be promoted is not. They could, for example, believe that individuals have equal claims to well-being, while the egalitarian concern is

with these claims being satisfied proportionally.²⁴ Such an account would furnish a response to the sufficientarian (the requirement that equal claims be satisfied equally may not be satisfied by ensuring that everybody gets enough) and none of the considerations offered by Christiano speak against the soundness of its foundations. Thirdly, egalitarians could refer to the pluralist nature of their outlook. Equality simply is not all that matters. Granting that well-being is of independent significance delivers the egalitarian preference for equality at a higher level. It seems that Christiano's arguments do not give us a conclusive reason to prefer his common good conception of equality to an alternative view that is both structural and pluralist in the sense just offered.

My third argument highlights some of the shortcomings of Christiano's response to the levelling down objection. I believe that there are cases where his common good conception of equality fails to adequately account for what appear to be powerful considered convictions. Consider two simple cases. First:²⁵ Assume that there are two religious groups who would equally benefit from public provision of facilities needed to exercise their religion. Assume that each religious group requires one facility strictly dedicated to its own purposes, as sharing would defeat the point of the facility. Unfortunately, the budget that the municipality has been allocated by the federal level for the public provision of religious facilities is very small, such that at most one building project could be realised. If the municipality does not spend that part of its budget on religious facilities, the federal level will simply cut the funds. The municipality has three options: It could build a mosque, a

²⁴ Egalitarians may rely on Broome's theory of "fairness as the proportionate satisfaction of claims" to motivate their egalitarian commitment, c.f. Broome (1999).

²⁵ Jonathan Wolff offers a similar case involving the provision of racially segregated swimming pools in Wolff (2001).

synagogue, or neither. What should happen? Second:²⁶ Imagine that a white racist who is terminally ill donates his liver on the condition that it only be given to a white man. There are two patients awaiting a liver transplant, one white and one black, and they both equally fulfil the criteria usually relied upon in organ allocation, such as urgency, need and capacity to benefit. If the conditional donation is accepted by the health authorities, the white man will be saved and the black man will die. If the conditional donation is not accepted, they both die. Should the conditional donation be accepted?

My argument against Christiano builds on three observations. To begin with, Christiano's argument for equality can be relied upon in explaining the difficulty of the choice faced in each case. The potential recipients of a benefit appear to be equal in the respect relevant to the distribution of the good at hand, there are no morally relevant differences between them and it would be good for them to receive the benefit. However, under the circumstances of the respective case, these considerations pull in opposite directions. There is a strong reason to give the good to somebody (the significance of well-being speaks in its favour) but unfortunately, there also is a strong reason not to give the good to anybody, or in other words to pursue the option that produces less of the good, for this is the only way to honour the principle of generic justice. There are now two further observations about Christiano's commitments in the context of these cases. First: Even if we agreed that, all things considered, one ought to build a mosque (or synagogue) and accept the conditional liver donation, Christiano's justification for pursuing that option appears odd. Christiano will have to argue that giving the racist's liver to the white

²⁶ This case builds on an example discussed by Wilkinson (2007). I am grateful to Andrew Williams for bringing this article to my attention.

patient, or providing only one religious community with a building, is the option preferable from the point of view of egalitarian justice. However, that promoting unfair inequality is better in terms of egalitarian justice is clearly the wrong thing to say. The following justification seems to capture our reasoning much more accurately: Accepting the conditional donation promotes unfair inequality, however, that option may still be all things considered justified, for saving a life is more important than achieving fairness. Unfortunately, a justification differentiating between the dimensions of fair equality and well-being is unavailable to Christiano. Second: One might very plausibly believe that not funding any building and not accepting the racist's liver is what one ought to do all things considered. The two examples are clear cases of levelling down and Christiano cannot support what may very well be the right thing to do.

There is one final implication of the common good conception of equality that is worth pointing out. Imagine that Jane is offered some benefit that would make her much better off than everyone around her, say some privilege or extra-resource such as an inheritance from a remote and wealthy uncle living abroad.²⁷ The testament of the uncle says that all of his money, which he kept in a suitcase under his bed, should be given to Jane if she agrees to spend it in ways that exclusively enhance her own well-being, or otherwise be burned. As it happens, Jane decides to forgo the benefit of the inheritance and she offers considerations of egalitarian justice in support of doing so. She says: "I believe that as a matter of egalitarian justice, I should not be better off than anyone else. And if the

²⁷ Jane finds herself in a similar scenario in Jerry Cohen's discussion of justice and the Pareto-principle, where she benefits from extra-manna that has fallen on her plot of land, see Cohen (2008, p.317).

inheritance could only benefit me but nobody else, I prefer that the money be burned." If Christiano's common good conception of equality is correct, then Jane does not only make a mistake in refusing the inheritance, but she is wrong in invoking considerations of egalitarian justice to justify her decision. She misunderstands, Christiano would have to say, the nature of egalitarianism. However, this is not true. The justification she offers appears perfectly coherent and her decision admirably egalitarian.

4. Is inequality bad for individuals?

Egalitarians might embrace a second strategy and argue that proposition (d) of the levelling down objection is false. It is not the case that there is nobody for whom levelling down is good. This claim asserts that inequality as such is bad for individuals. The following line of reasoning accounts for its effectiveness against the levelling down objection. Because inequality harms individuals, and levelling down diminishes inequality, there is somebody who benefits from levelling down, namely the otherwise worse off. Consequently the original objection loses its force: As the proponent of the levelling down objection would have to admit, there is nothing wrong with considering one scenario better than another if there is someone for whom that scenario is in fact better. The plausibility of a position that accounts for the badness of inequality as an individual harm is the focus of the present section.

The claim that inequality is bad for individuals has been defended by John Broome.²⁸ I briefly outline the thrust of Broome's position and employ his theory of fairness to develop an egalitarian response to the levelling down objection. Initially,

²⁸ See for example (Broome, 1991, p.198 ff.)

this response appears powerful because it follows from what many people believe about equality and it really deprives the original objection of much of its force. I will argue, however, that Broome's theory fails to satisfactorily account for the badness or wrongness of inequality. Firstly, I question the claim that inequality is always bad for individuals. Secondly, I will show that even if inequality were bad for individuals, Broome's approach would often fail to support what, from the point of view of equality, appears to be the right ranking of distributions.

4.1 John Broome and the badness of inequality

John Broome argues that inequality is bad for individuals: "Since what is bad about inequality is its unfairness, inequality is clearly a harm suffered by individuals" (Broome 1991, p.199). This claim is supported by a theory of fairness and equality. It is helpful to briefly reconstruct Broome's reasoning in terms of four propositions.

i. Claims are the objects of fairness

Receiving a good or benefit creates well-being. The fact that a person would benefit from a particular good provides one with a reason to give it to her. Different kinds of reasons play a role in determining who gets what. Because one reason for giving a particular good to an individual might conflict with another reason to give that good to somebody else, we need a mechanism for balancing reasons in cases of conflict. One way of doing so would be to weigh reasons against each other. We would give the good in question to the person who has the stronger reasons on her side. Broome rejects this simple procedure to determine who should get what. He distinguishes between different types of distributive reasons. Within the set of relevant reasons for giving a particular good to a person some reasons are special.

These special reasons are claims: “Some of these reasons are duties owed to the candidate herself, and others are not. I shall call the former claims that the candidate has to the good” (Broome 1999, p.114). Claims are the objects of fairness.²⁹

ii. Fairness requires the proportionate satisfaction of claims

Fairness is concerned with the mediation of claims. Claims can conflict, for example, when two individuals have a claim to the same good. Fairness requires that in such cases claims be satisfied proportionally. The claim of a given individual ought to be satisfied to the same degree that similar claims of other individuals are satisfied: “The heart of my suggestion is that fairness is concerned only with how well each person’s claim is satisfied compared with how well other people’s are satisfied. It is concerned only with relative satisfaction, not absolute satisfaction” (Broome 1999, p.117). The premise that some people sometimes have equal claims to a good establishes a link between fairness and equality: “Whenever people have equal claims to something, then fairness requires they should have equal shares of it. It is in some respect bad if they do not: it is unfair. So this account of fairness provides a basis for explaining the badness of inequality and the goodness of equality” (Broome 1991, p.197).

iii. Complaints capture the badness of unfair inequality

The badness of inequality is an individual harm and it gives rise to complaints. Broome argues that fairness is a personal good. Individuals enjoy the good or

²⁹ Claims are to be distinguished from both ordinary reasons and side-constraints. The three types of reasons differ from each other in important respects, for example in how they are to be balanced or weighed in cases of conflict, see Broome (1999, p.114 ff).

benefit from being treated fairly. Conversely, unfairness is a harm suffered by individuals. Not to have one's claim satisfied in proportion to the level of satisfaction enjoyed by others is harmful. Treating people unfairly makes them worse off. The harm caused by unfair inequalities is captured by the notion of a complaint. According to Broome's theory of fairness, and assuming that people have equal claims to the good in question, a person P's complaint depends on the difference between her level of well-being (W_P) and that enjoyed by others; it may for example be a function of the difference between (W_P) and average well-being ($W_{Average}$):

$$[C] \quad \text{Complaint}_P = |W_P - W_{Average}| \quad ^{30}$$

For person P to have a complaint, she neither has to feel harmed, nor does she actually have to complain.³¹ A complaint simply arises from the unfairness of inequality.

iv. The badness of inequality is part of a complete goodness function

A theory of equality evaluates and ranks different distributions of resources or well-being by employing a goodness function. According to Broome, the overall goodness of a distribution (G^*) is determined by the amount of overall well-being in that situation (W^*), minus the inequality induced by unfairness (I^*):

$$[G] \quad G^* = W^* - I^*$$

³⁰ "For instance a person's complaint might be a non-linear function of the difference between her income and the mean" (Temkin, 1993, p.17).

³¹ See Broome (1989, p.15).

The badness of inequality (I^*) is an individual harm. This harm is captured and assessed in terms of a complaint, which, as mentioned above, is a function of the difference between the respective individual well-being and the average well-being. Personal goodness mirrors the structure of (G^*) and substitutes complaints as the individual measure of inequality. How good a distribution is for person P depends on her absolute well-being minus her complaint:

$$[PG] \quad G_P = W_P - |W_P - W_{Average}|$$

This personal goodness function captures the idea that unfair inequality creates complaints, which should be thought of as an individual harm. Unfair inequality makes people worse off.

4.2 The badness of inequality and levelling down

Propositions (i) to (iv) offer the building blocks for an egalitarian response to the levelling down objection. Because inequality is in fact bad for individuals, and because levelling down diminishes inequality, there are individuals who benefit from levelling down. Once one recognizes that unfair inequality is bad for individuals, the claim that levelling down is in (at least) one respect good appears unproblematic. To understand this way of responding to levelling down, I suggest distinguishing between two different modes of assessing the goodness of a distribution. One mode, label it [mode 1], only focuses on absolute levels of well-being and fails to take into consideration the badness of inequality. This is the mode presupposed by those who advance the levelling down objection. The second mode of assessing the goodness of a distribution, label it [mode 2], includes the badness of inequality as expressed by [PG].

The egalitarian response to levelling down is this: What is presented as a troubling case by proponents of the objection in [mode 1] ceases to be an instance of levelling down once one correctly applies [mode 2]. Let us reconsider a scenario invoked by proponents of the levelling down objection in support of their case, e.g., [Circumstance 1] from above:

	I	II
A	2	3
B	2	7

The question raised by the critic of equality is this: How can distribution I be in any respect better than II? Drawing on Broome, the egalitarian now has a good response. The presentation of [Circumstance 1] relies on the wrong mode of assessing the goodness of a distribution. In distribution II, A's well-being has to be discounted by her inequality complaint. Because A enjoys less than the average absolute level of well-being, the distributions look different when correctly applying [mode 2], giving rise to [Circumstance 1']:

	I	II
A	2	1
B	2	7

In [Circumstance 1], the average well-being in II is 5, and A, given her absolute well-being of 3, has a complaint of the magnitude 2. Discounting accordingly, her [mode 2] well-being only amounts to 1. It is thus not true that there is no one for whom levelling down is good. For person A, distribution I is better than distribution II. The claim that inequality is bad for individuals defeats the levelling down objection by modifying the assessment of distributions. If Broome is right, proposition (d) of the original formulation of the levelling down objection is false.

4.3 Two arguments against Broome

However, there are at least two arguments that speak against Broome's response to levelling down. My first argument shows that it is implausible to conceive of unfairness or inequality as an individual harm. Secondly, I believe that the conceptual framework provided by Broome does not suffice to fully explain the badness of inequality.

4.3.1 The first argument: What is the harm of inequality?

I seriously doubt whether inequality is in fact always an individual harm. What does it mean to say that inequality is bad for individuals? How is it that a relational property such as inequality can inflict harm? Taking sides with Derek Parfit (2002), Brad Hooker (2005) and Joseph Raz (2008), I argue that these questions cannot be answered in a satisfactory manner. The argument I am going to present for my position proceeds in five steps (i) – (v) and works by elimination: I will consider various candidate explanations, which may render the badness of inequality claim plausible, and argue that each of them fails. After due consideration, the claim that inequality is bad for individuals turns out untenable.

i. The harm of inequality is not the harm of being badly off

There is an obvious sense in which unfairness is bad for individuals. Unfairness is bad for me because had I not been treated unfairly, I might have been better off in absolute terms. If four pieces of chocolate are distributed between my sister and me, an unfair distribution under which she receives three pieces is bad for me because I only receive one. Under a fair distribution, I would receive two pieces and the difference to what I actually have may be called the harm inflicted by

unfairness. This harm is in fact a personal harm. However, the harm is neither due to the badness of unfair inequality, nor is it the kind of harm presupposed by Broome's theory of fairness. Fairness merely requires that claims be satisfied proportionally. If we both only received one piece and left the rest undistributed, no unfairness harm would be inflicted upon me. I am harmed by being badly off, yet this harm is different from the badness of unfair inequality.

ii. The harm of inequality is different from the effects of inequality

How individuals fare relative to each other determines the extent of the harm suffered. But can a relation cause harm? A number of examples supporting a positive answer to this question spring to mind. If individuals A and B compete for one place at university, while the quality of secondary schooling is a decisive factor in gaining admission, the fact that individual A received schooling that is better than that of B may harm B. The personal harm consists in B's not gaining admission to university. The domain of positional goods provides ample material to construct similar examples.³² However, in identifying the source of harm, we must be careful not to mistake the consequences of the relation for the relation itself. I suspect that in all examples to be constructed in analogy to the university admissions case, it is not the unfairness itself that causes individual harm, but rather the result of the unfairness in the context of a specific setting. It is not a relation that does the harming, but the consequences of that relation. The connection between the two elements can be very intricate, yet it is important to keep the distinction.³³ If we had two university places on offer, the unfairness of

³² For a discussion of positional goods, see for example Brighouse and Swift (2006).

³³ For a discussion of the bad effects of inequality, see Scanlon (2003) and O'Neill (2008).

unequal schooling would persist, but the kind of harm we have been concerned with would disappear. The nature of the relation between the different levels of education is only instrumental to the harm which rendered the example convincing. Because one can eliminate the consequences without eliminating the unfairness, the harm of the former cannot exhaust that of the latter.

iii. The harm of inequality is different from the harm of knowing about it

One might try to rescue the idea that relations induce harm by introducing the condition of knowledge. To know that others are better off than I am, to know that I am the victim of an unfair inequality causes harm, even if only in the form of distress or regret. The knowledge that people with the same claims receive more, or are treated better than I am might give rise to feelings of anger or misery that have a negative effect on my well-being. In this sense, a relation can induce harm.

However, there is a simple consideration that speaks against this interpretation. To base the badness of inequality on the knowledge of inequality turns out unsatisfactory from an egalitarian point of view. Is there not something bad about inequalities, even if nobody is aware of them? Are secret inequalities, say between different members of society, less objectionable than known inequalities? Instead of alleviating inequalities through redistribution, shall we just ensure that nobody knows about them? Posing these questions suffices to render the knowledge-based account of harm unconvincing.

iv. Equality is not an environmental benefit

Joseph Raz (2008) considers the possibility of understanding equality as conferring an environmental benefit. Just like living in a beautiful valley, living in

circumstances of fair equality may confer a benefit, where the benefit "consists of nothing more than living in a certain environment" (Raz 2008, p.11). One may think that the benefits of living in an egalitarian society are not exhausted by the consequences of fair equality, such as the absence of status differentials, but that living in such a society is of independent value. If correct, this picture avoids the mistake of confusing fairness and its effects. However, there are two considerations which render the claim that equality is an environmental benefit implausible.

Firstly, one ought to be sceptical about the idea of a personal environmental value. It seems that the benefits coming along with living in a beautiful valley supervene on the effects that certain aspects of the environment have on people, such as providing fresh air and space for lengthy hikes. To be sure, it makes perfect sense to say that a beautiful valley has value that is independent of the provision of these opportunities; however, it is not so clear in what sense this independent value confers a benefit on anyone. And if we are sceptical of the valley as conferring environmental benefits, we ought to be sceptical about the prospects of making sense of equality as an environmental benefit. Secondly, the idea of an environmental benefit seems to presuppose awareness. As Raz points out, we could only benefit from intrinsic environmental values by "experiencing their presence" (Raz 2008, p.12). But if we need to be aware of equality to benefit from it, or, conversely, aware of an unfair inequality to be harmed by it, then the problems already discussed in (iii) re-emerge. Are we prepared to admit that ignorance about inequality is the same as the absence of that inequality? Note that the awareness condition comes with another serious drawback: It severely limits the scope of the egalitarian concern. Am I really aware of all relevant inequalities? And do the distant needy really experience the presence of the inequality between

themselves and me? It seems that the environmental benefit understanding of equality disappoints on too many counts. It should not serve as the background against which we render plausible the claim that inequality is bad for individuals.

v. A more encompassing notion of harm does not help either

As explaining how unfair inequality as such adversely affects a particular individual turns out to be rather difficult, advocates of the badness of inequality claim may expand on what they mean by a harm. Instead of assuming that a harm must be suffered by a particular subject at a particular point in time, they could draw on Thomas Nagel's attempt to account for the badness of death in the absence of a subject suffering it and consider things as harmful to a person that "do not take place within the boundaries of his body and his mind" (Nagel 1979a, p.6). Consider two simple cases. It seems plausible to believe that there is a sense in which the fact that a wife betrayed her husband constitutes a harm, it makes his life go worse, even if he never learns about the betrayal. It is likewise plausible to believe that a deceased scientist is harmed, even after his death, when it turns out that his apparent scientific discoveries had rested on a deep mistake. Had his theory been correct, he would have had a better life. Note that even though there is no discernible impact on the mind or body of the respective individual, it still seems plausible to speak of people suffering a harm. And maybe the case of unfair inequality can be treated analogously: The fact that I am the victim of an unfairness harms me, maybe in just the way that a betrayed husband is harmed, even if I am unaware of the unfairness and even if it does not have any further effects on me.

However, there is a simple general question that causes serious trouble for advocates of this response: "What would be best for someone, or would be most in

this person's interests, or would make this person's life go, for him, as well as possible?" (Parfit 1984, p.493). I believe that there is no answer to this question on which the analogy just developed would offer a convincing account of the badness of inequality claim. One might think that the claim about the betrayed husband and the deceased scientist are most plausible when one thinks of what makes someone's life go best in terms of preferences or ends. The husband is harmed because he has his preference for a true and honest relationship frustrated.³⁴ However, while such a preference satisfaction or ends realisation approach may render some examples plausible, it fails in the case of fairness and equality. Clearly, the badness of unfair inequality should not depend on people having a preference for fairness. Whether or not a distribution between two individuals is fair is independent of whether or not the people in that distribution have a preference for a fair distribution. In response to this problem one may, instead of relying on people's preferences or ends, think that it is objectively bad for a husband to be betrayed, or for a scientist to have spent his life developing a mistaken theory.³⁵ However, there are two observations that speak against an objective list theory in this particular argumentative context. It firstly seems that in relying on such an account, the advocate of the badness of inequality claim is walking a very thin line. Why should the objective list only contain values that are good for somebody?³⁶ Once a notion of what is good for people lies upstream from their interests or preferences, why "can't the boundaries of the objectively good extend beyond what is good for someone?" (Temkin 2000, p.145). It seems that by embracing an objective list

³⁴ In Parfit's terminology (1984, p.494) one would presuppose a "success theory of self-interest".

³⁵ In Parfit's terminology (1984, p.499) one would presuppose a "objective list theory of self-interest".

³⁶ Larry Temkin develops this point in a slightly different context, see Temkin (1993, p.276).

account, the egalitarian runs up against the condition of person-affectingness, the violation of which she originally set out to avoid. There is secondly the question of what meaning the objective list strategy gives to the notion of something being good for somebody. If any objective value is understood as being good for somebody, one will be unable to discriminate between what is and is not person-affecting in a more robust sense of the term. It seems that one is blurring an important distinction, for example between directly harming somebody and violating an objective normative requirement. As long as the exact harm-inducing mechanism remains obscure, the violation of any ideal could be said to harm individuals. I believe that these considerations are sufficient to dismiss the strategy of defending the badness of inequality claim by relying on a more encompassing notion of harm.

4.3.2 The second argument: The remaining badness of inequality

I believe that a response to the levelling down objection which builds on the claim that inequality is bad for individuals fails to explain the badness of some substantial and worrisome inequalities. The badness of inequality response distinguishes between different modes of assessing the goodness of a distribution. On the one hand, there is [mode 1], which focuses solely on absolute levels of well-being. On the other hand, there is [mode 2], which takes into consideration the badness of inequality. An argument in favour of [mode 2] supports a response to the levelling down objection: What proponents of the objection present as a case of levelling

down in [mode 1], ceases to be an instance of levelling down once one correctly applies [mode 2]. But is this response convincing? I argue that it is not.³⁷

Consider another circumstance, [circumstance 2], which again involves two alternative distributions that in [mode1] appear like this:

	I	II
A	2	4
B	2	8

In distribution I, individuals A and B are equally well off at the level of 2. In distribution II, both individuals are better off, yet they are better off to unequal extents. Because of this inequality, [mode1] misrepresents distribution II. Relying on the claim that inequality is bad for individuals, A's well-being in scenario II should be discounted by her inequality complaint. [Mode 2] thus delivers the more adequate picture:

	I	II
A	2	2
B	2	8

The badness of the inequality of absolute holdings in distribution II is captured by the re-description of the situation offered by [mode2]. From the perspective of [mode1], both individuals are better off in scenario II. However, the additional benefits are distributed unequally and the resulting inequality harms the worse-off person. From the perspective of [mode 2], distribution II only makes individual B better off because the harm done by the inequality offsets A's initial gain in well-being. The new situation resembles a levelling down case; however, as [mode 2]

³⁷ My argument offers a fuller development of a point that Larry Temkin raises against John Broome in defense of his saint and sinner case, see Temkin (2000, p.148).

already takes the badness of inequality into account, there is no more reason to think that I is better than II.

This verdict avoids the levelling down objection. However, there is also something deeply strange about it. An egalitarian who believes that inequality is an individual harm seems committed to two claims. First: Well-Being properly understood incorporates a badness of inequality discount. Second: There is something wrong with people enjoying unequal holdings of the relevant distributive metric. When considering [circumstance 2], one realises that this dual commitment gives rise to a problem. On the one hand, the egalitarian will believe that [mode 2] captures the situation most accurately. On the other hand, she will have no objection to the inequality of distribution II, which under [mode 2] still obtains between A and B. In ranking distribution II over distribution I, and in maintaining that there is no respect in which I is better than II, the badness of inequality egalitarian will have to refrain from taking issues with a situation of unfair inequality. Because [mode 2] already takes into consideration what is to be said about the badness of inequality, there are no conceptual tools at the egalitarian's disposal to condemn the inequality of distribution II. Arguing once more that inequality is bad for individuals would be a case of illegitimate double counting. One cannot rely on the inequality discount as often as one finds convenient. But if the levels of well-being in [mode2] are the ones of genuine significance, and if [mode 2] well-being is the relevant metric of egalitarian justice, should not the egalitarian be worried about the inequality that obtains in distribution II?

5. Conclusion

I have argued that, properly understood, the levelling down objection forces the egalitarian to give up (at least) one of three beliefs. To maintain that equality is valuable, egalitarians could maintain that equality does not even give us a pro tanto reason to level down, they could argue that levelling down is in fact good for individuals, or they could deny that a distribution or action can only be good if it is good for somebody. I have shown that both the first and the second strategy fail. Thomas Christiano's advocacy of a common good conception of equality fails to convince, for it runs together two commitments that ought to be kept separate, namely a commitment to the significance of equality and a commitment to the significance of well-being. As I have argued, an egalitarian who does not take this distinction seriously finds herself in a position where she is unable to account for a number of important considered convictions and fails to vindicate her distributive commitment against alternative principles, such as utilitarianism. When there is no other way to achieve equality, the egalitarian commitment provides a pro tanto reason to level down. John Broome's argument that unfair inequality is always bad for individuals also fails to convince, for even though unfair inequality is sometimes bad for people, it is not clear how a relational property can itself be bad for somebody. Because the badness of inequality cannot be exhausted in terms of individual harms, achieving equality can be good even though it is not good for anybody. If my arguments are sound, the only way for the egalitarian to avoid the force of the levelling down objection is to give up on the claim of person-affectingness. I shall return to this option in chapter 3.

CHAPTER 2

Priority, numbers and the separateness of persons ³⁸

1. Preliminary remarks

Philosophers disappointed with the principle of equality have turned towards alternative distributive views. To avoid the counterintuitive implications of telic egalitarianism, such as the levelling down objection, they have come to endorse various ways of giving priority to the worse off.³⁹ Proponents of Derek Parfit's priority view believe that benefiting people matters more the worse off they are in absolute terms.⁴⁰ Advocates of a contractualist position inspired by Thomas Nagel endorse, because they believe that a distribution will have to be acceptable from each individual's point of view, a principle of strict priority for the worst off individual.⁴¹ I shall argue that just like the principle of equality, each of these views violates one condition or requirement that intuitively a sound distribution would have to satisfy. The priority view fails to take seriously the moral significance of the boundary between different individuals and violates the separateness of persons

³⁸ Earlier versions of this paper have been presented at a graduate conference in Pavia and at a colloquium at the Ludwig Maximilian University Munich. I am grateful to audiences there for helpful comments.

³⁹ Richard Arneson, for example, has come to modify his formerly luck egalitarian position and now defends a version of "responsibility-catering prioritarianism," see Arneson (2000).

⁴⁰ The priority view has been formulated by Derek Parfit in his "Equality or Priority," delivered as the Lindley Lecture at the University of Kansas in 1991. My references refer to the reprinted versions Parfit (1997) and Parfit (2002).

⁴¹ The contractualist position that I shall be concerned with here is formulated by Thomas Nagel (1979b, 1991).

requirement.⁴² The contractualist commitment to strict priority remains insufficiently sensitive to the number of people affected by each distributive option and violates the important conviction that the numbers count.⁴³ Considerations of numbers and the separateness of persons defeat two prominent contemporary versions of prioritarianism.

Section 2 discusses the separateness of persons objection against Parfit's priority view. I consider various responses to the objection and argue that pure versions of the priority view fail to take the separateness of persons seriously. Section 3 explains how the numbers objection threatens to undermine the contractualist commitment to strict priority. I distinguish between three instances of the objection and argue that contractualists could only come to terms with it by adopting a pluralist stance.

2. The priority view and the separateness of persons requirement

Derek Parfit (2002, p.101 ff.) offers the priority view as an alternative to telic egalitarianism and argues that, (a) “benefiting people matters more the worse off these people are”, (b) not “because these people are worse off than others”, but (c) because “utility has diminishing moral importance.” The priority view does not fall victim to the objections which respectively face the principle of utility and the principle of equality. It explains why we sometimes should not simply maximise overall well-being, it avoids the levelling down objection and delivers the correct judgment in a simple case that fuels scepticism about pure utilitarianism.⁴⁴

⁴² This objection has recently been raised by Michael Otsuka and Alex Voorhoeve (2009).

⁴³ For a seminal formulation of the numbers problem, see Taurek (1977).

⁴⁴ This is a case discussed by Nagel (1979b, p.123).

Case (2): Imagine that somebody has two children and considers where to move. Moving to the city would benefit the disabled and very badly-off child, for it is only there she could receive therapy and treatment. Moving to the countryside, however, would benefit the healthy child. The benefit that would accrue to the healthy child from moving to the countryside is larger than the benefit that would accrue to the disabled child from moving to the city. Where should one move?

The priority view succeeds in delivering the correct verdict on this case and explains why one should move to the city. Unfortunately, the priority view invites another objection. Consider a variation of case (2):⁴⁵

Case (2*): Imagine that somebody is expecting a child. There is a 50% chance that the child will be disabled and a 50% chance that the child will be born healthy. Assume that one has to decide where to move before the actual condition of the child is known. One could move to the countryside, which would leave a healthy child very well off but a disabled child very badly off. Alternatively, one could move to the city, which would leave a healthy child merely well off, but be better for a disabled child. Under this option, due to the availability of

⁴⁵ In their original article, Otsuka and Voorhoeve discuss a number of cases, including the choice of medical treatment under conditions of uncertainty. For matters of simplicity, I shall employ a variant of case (2), which Otsuka and Voorhoeve (2009, p.188) only mention briefly in response to a critic.

treatment and therapy, the otherwise disabled child would be merely badly off. Where should one move?

The force of the challenge created by the introduction of case (2*) does not rest on a substantive judgement about which option to pursue. The point is that a shift in judgement occurs when moving from case (2) to case (2*). Assume that the burdens and benefits accruing to a disabled and a healthy child under each option would be the same in each case. Even if one believes that such a profile of burdens and benefits justified a move to the countryside in case (2*), say one believes that even when applying the appropriate priority weighting the great countryside prospects for a potentially healthy child gain the upper hand, one still may not be justified in moving to the countryside in case (2).⁴⁶ Otsuka and Voorhoeve argue that this observation about the shift in judgment that occurs when moving from the two-person case (2) to the one-person case (2*) warrants two conclusions. Firstly, they believe that the extent to which one attaches additional significance to the well-being of somebody if he or she is badly off depends on whether that person is worse off than others. This insight undermines the pure priority view. If Otsuka and Voorhoeve are right, then (b) is false. Our considered convictions in case (2) and case (2*) illustrate "why it matters that some are worse off than others." Secondly, the mistake that the prioritarian makes in offering (b) as her reasoning in support of (a) is that of not taking seriously what has been called the separateness of persons. When deciding what to do in the intrapersonal case, one could justify a decision to

⁴⁶ Whether or not one would be justified in moving to the countryside in case (2) will depend on the magnitude and distribution of the respective burdens and benefits. To make the point against the priority view, it is enough to think of a case where the magnitude and distribution of benefits is such that they merely tip the balance in favor of moving to the countryside in case (2*).

move to the countryside "on the grounds that one was looking after that very same child's interest in flourishing" (Otsuka and Voorhoeve 2009, p.188). Making up one's mind about what to do in the interpersonal case, this justification is not available. Unlike a group of people, "a single person has a unity that renders it permissible to balance (expected) burdens and benefits against each other" (Otsuka and Voorhoeve 2009, p.179). The objection is not just that the pure priority view would deliver the wrong judgement all things considered, but that it is in principle insensitive to the distinction between cases involving trade-offs within one particular individual's life and trade-offs between the lives of different individuals. The priority view permits the same form of priority-weighted balancing, regardless of whether the burdens and benefits accrue to a single individual or to different persons. It fails to recognise the separateness of persons.

There are three things that I have to say about the pure priority view and the separateness of persons requirement. Firstly, I argue that the first conclusion offered above is unwarranted: It is not strictly speaking true that the observed shift in judgement supports the claim that it matters whether or not some are worse off than others. Secondly, I argue that the separateness of persons objection still undermines the pure priority view and I defend Otsuka's and Voorhoeve's objection against two types of critics. The first type of critic is sceptical about the notion of the separateness of persons and regards it as a mere "dogma of deontology."⁴⁷ In response to this critic, I distinguish between different types of raising a separateness of persons objection and argue that Otsuka's and Voorhoeve's argument only presupposes a very thin requirement, which even the consequentialist critic should have reason to accept. The second type of critic argues that the pure priority view

⁴⁷ For example Norcross (2009).

can be rescued at little cost, for example by denying that the alleged shift in judgement takes place.⁴⁸ I argue that such a rescue is not to be had. Pure versions of the priority view fall victim to the separateness of persons objection.

2.1 On why it may not matter whether some are worse off than others

My first observation aims at making clear the force of the separateness of persons objection. I believe that the argument presented by Otsuka and Voorhoeve does not warrant the conclusion that it matters whether some are worse off than others. It is not true that, in order to explain the shift in judgement that occurs when moving from case (2*) to case (2), one would need to "invoke interpersonal considerations that are essentially relational" (Otsuka and Voorhoeve 2009, p.185). It is a mistake to argue that the priority view is mistaken because "in ruling out such essentially comparative considerations, it ignores the moral significance of the separateness of persons" (Otsuka and Voorhoeve 2009, p.185). The priority view is mistaken because it fails to take seriously the significance of the separateness of persons. However, one can take the separateness of persons seriously without invoking considerations that are relational and comparative. One would need to present a different argument, that is, an argument not provided by Voorhoeve and Otsuka,⁴⁹ to show that one can only comply with the separateness of persons requirement through recognizing the significance of comparative considerations. To understand how the two considerations come apart, consider ways in which one can take the separateness of persons seriously, at least in the way that the notion has been

⁴⁸ For example O'Neill (2009).

⁴⁹ I will argue that Otsuka and Voorhoeve have good reason to stick to a minimal understanding of the separateness of persons in subsection 2.2.1 below.

invoked against the priority view, and still remain insensitive to whether or not some are worse off than others.

The significance of the separateness of persons is not equivalent to the significance of the fact that some are worse off than others. One might think that our considered convictions in cases (2) and (2*) show that whether benefiting people matters more the worse off they are is a function of whether they are worse off than others. I believe, however, that the question of relative well-being is only of secondary or derivative importance. What really matters is whether the burdens and benefits in question would accrue to a single person or to different individuals. A further variant of the cases discussed above clarifies what I have in mind:⁵⁰

Case (2**): Imagine that somebody is expecting two children. She knows that one of them will be healthy and the other one will be disabled, while each of them has the same chance of ending up in either condition. Each of them has a 50% chance of being born healthy and a 50% chance of ending up disabled, while the outcomes are inversely correlated. Assume that the expecting parent has to decide where to move before their actual conditions are known. She could move to the countryside, which would leave a healthy child very well off but a disabled child very badly off. Alternatively, she could move to the city which would leave a healthy child merely well off, but be better

⁵⁰ Interestingly, a variant of this case is discussed by Otsuka and Voorhoeve in response to a view they call *ex ante* prioritarianism (Otsuka and Voorhoeve, 2008, p.196). However, they seem to be unaware of the implications that this case has for their overall argument.

for a disabled child, which under that option, due to treatment and therapy, would be merely badly off. Where should she move?

My point does not hinge on any particular substantive judgement about what to do in case (2**). However, I believe that there are two things that can be said about it. Firstly, there will be inequality between the two children. The disabled child will be worse off than the healthy child. Moving to the countryside will increase that inequality, though moving to the city will diminish it. Secondly, in deciding which option to pursue, there is no separateness of persons objection to be raised against employing the same priority weighted function as in the single person case (2*). If one thinks that it is permissible to move to the countryside in a case where one child has a 50% chance of being born disabled, one may also think that it is permissible to move to the countryside in a case where two children have a 50% chance of being born disabled. The reasoning in support of such a verdict would be this: Just as in the single person case (2*), one can appeal to the interest of each individual in the two-person case (2**). If one can justify a move to the countryside to a child with a 50% chance of being born disabled in case (2*), one can justify moving to the countryside to a child with the same prospects in case (2**). The justification for moving to the countryside respects the separateness of persons, even though moving to the countryside is the option that increases the inequality between the worse-off and the better-off. One might object to a principle that treats cases (2*) and (2**) equivalently, such as ex ante prioritarianism, on other grounds.⁵¹ However, ex ante prioritarianism is a position that satisfies the separateness of

⁵¹ Unlike standard prioritarianism, ex ante prioritarianism does not apply expected value reasoning to priority-weighted outcomes, but gives priority to those with the lowest expected-utility prospects.

persons requirement as introduced by Otsuka and Voorhoeve and still remains insensitive to whether or not some are worse off than others. The separateness of persons objection does not deliver a genuinely egalitarian concern.

2.2 Defending the separateness of persons objection against two critics

I believe that the separateness of persons objection still undermines the pure priority view. There are two ways in which one could resist such a conclusion. Some might argue that because the idea of the separateness of persons is notoriously ambiguous and controversial, mere appeal to it will not succeed in undermining an otherwise plausible normative principle. Until we clarify, interpret and defend the notion of the separateness of persons, it does not rule out anything.⁵² Others believe that the prioritarian could simply resist the line of argument offered by Otsuka and Voorhoeve, for example by denying that the relevant shift in judgement occurs when moving from case (2) to case (2*). I shall respond to each critic in turn.

2.2.1 The "dogma of deontology" objection

The idea of the separateness of persons has often been invoked in opposition to utilitarian positions.⁵³ But even though there seems to be a reasonably clear meaning to the idea of the separateness of persons, i.e., the idea that the boundaries between individual lives are morally significant, it is not so clear what that

⁵² For an exploration of the force of the separateness of persons, see for example Brink (1993).

⁵³ The idea underpinning the separateness of persons has been discussed among others by Rawls (1999, p.26), Nagel (1970, p.142), Williams (1981, p.3) and Nozick (1974, p.33).

significance actually amounts to.⁵⁴ Utilitarians may defend themselves against a separateness of persons objection by arguing that it does not in fact rule out any of their particular commitments. Iwao Hirose (2009), for example, maintains that the separateness of persons requirement is compatible with the aggregation of burdens and benefits across individuals. Alistair Norcross (2009, p.76) argues that because "the charge is often made, but rarely explained in any detail, much less argued for (...) the separateness of persons objection poses no special threat to consequentialism." David Brink (1993, p.253) believes that the idea of the separateness of persons does not support a contractualist or deontological commitment, and also does not rule out consequentialist or teleological theories: "I am skeptical that the separateness of persons can play successfully either the negative or the constructive role." If it is true that the separateness of persons objection is a mere "deontological dogma," then maybe it poses no special threat to the priority view either. I respond to this challenge by distinguishing between three different ways of pressing a separateness of persons objection against a distributive view. While some ways of making the objection would require further argument, the particular objection made by Otsuka and Voorhoeve only relies on a very thin requirement.

Firstly, the idea of the separateness of persons can be invoked to formulate a scope-based objection against a particular distributive view. Such an objection claims that proponents of the distributive view under attack make a mistake about the scope of their preferred distributive principle. More precisely, the objection takes

⁵⁴ Parfit refers to the idea of the separateness of persons as "one of the fundamental facts underlying all reasons for acting" captured by the observation: "We are different people, each with his own life to lead" (Parfit, 1984, p.329).

issue with the claim that a given distributive principle is appropriately applied in intra- and interpersonal cases alike. The moral significance of the boundary between individual lives is referred to when arguing that there is a relevant difference between choices affecting multiple individuals and choices affecting just one individual.⁵⁵ This difference, it is claimed, renders it inappropriate to apply one and the same principle to both instances. To take the idea of the separateness of persons seriously is to insist that different distributive principles apply in each case. Note that pressing a separateness of persons scope objection is compatible with maintaining that the proposed distributive principle is adequate as a principle for settling either only intra- or only interpersonal questions. There are different ways of making a scope mistake. One might wrongly apply a principle that is adequate for intrapersonal cases to questions of interpersonal conflict. This seems to be part of Rawls's concern when he objects that, "the utilitarian extends to society the principle of choice for one man" (Rawls 1999, p.28). Alternatively, one might wrongly apply a principle that is appropriate in cases of interpersonal conflict to intrapersonal questions.⁵⁶

Secondly, the idea of the separateness of persons might be invoked to formulate a non-scope-based objection. Here the moral significance of boundaries between individual lives is thought to eliminate a given distributive principle as appropriate for settling interpersonal distributive conflicts. The claim is not that

⁵⁵ Scope-based arguments illustrate how the idea of the separateness of persons relates to the idea of the unity of persons. The separateness of persons A and B is equivalent to the lack of unity of A and B as a group, i.e., a unity which they individually possess.

⁵⁶ As Nagel (1979b, p.120) notes, this would be "the reverse of Rawls' argument: no special distributive principle should apply within within human lives because that would be to extend to the individual the principle of choice appropriate for society."

different principles have to apply depending on whether one is dealing with intra- or interpersonal cases, but simply that a given principle fails to take seriously the morally relevant characteristics of the interpersonal case at hand. One might reject some distributive principle because it violates the requirements coming along with the separateness of persons, and still believe that some other principle should govern both intra- and interpersonal cases. An egalitarian who is committed to a reductionist view of personal identity might, for example, object to utilitarianism on the ground that it fails to take seriously the separateness of persons, and argue that an egalitarian distributive principle should apply to both intrapersonal and interpersonal cases.⁵⁷ In illustration of the distinction between content and scope-based objections, consider two claims:

(P1) The sum of expected benefits should be maximized within an individual person's life.

(P1*) The sum of expected benefits should be maximized across the lives of different individuals.

If one presses a non-scope-based separateness of persons objection, one rejects (P1*) because it fails to take seriously the boundaries between individuals but one remains neutral on whether there is some alternative principle (Pn*) such that one can simultaneously believe in (Pn) and (Pn*). If one presses a separateness of persons scope objection, one claims that it is wrong to hold both (P1) and (P1*) because one thinks that one and the same principle must not be applied to single

⁵⁷ For a reductionist view about personal identity, see Parfit (1984). For the argument that an egalitarian concern appropriately applies within one person's life, see McKerlie (2001).

and multiple individual cases alike. Each objection relies on the idea of the separateness of persons.

Thirdly, one could argue that instead of mattering directly for the scope and content of one's preferred distributive principle, the separateness of persons imposes requirements on the reasoning behind one's preferred distributive principles, for their mode of justification, or the method by which one arrives at them. One objects to a distributive view because the reasoning it offers in support of its principles does not reflect the moral significance of boundaries between individuals. Call this the justification objection. Rawls does not only object to utilitarianism because "many people are fused into one" (Rawls 1999, p.26), but he finds fault with the impartial spectator reasoning employed in its support. It seems that for Scanlon (1998) and Nagel (1979a), the separateness of persons requirement is primarily about the acceptability of principles to individuals. To respect the fact that we each have our own life to lead, principles ought to be acceptable from each individual's point of view. When pressing a separateness of persons objection one might take issue with the content and scope of a distributive principle, or with the justification offered in its support.

It is often the case that these various objections go hand in hand. If one objects to a specific justificatory mode, it is likely that there is also something wrong with the principles it gives rise to. However, the three objections are logically independent. David Brink, for example, argues that the justificatory mode of contractualism offers a plausible interpretation of the separateness of persons requirement, but objects to the anti-aggregative conclusions that Nagel's or Scanlon's criteria of unanimity or non-rejectability give rise to.⁵⁸ The independence

⁵⁸ See for example Brink (1993, p.264 ff).

of different ways of making a separateness of persons objection is important for two reasons. It might firstly be the case that the best argument available only supports one of the objections. A distributive view vulnerable to a scope-based objection might, for example, still get the content of interpersonal principles right. Secondly, different objections correspond to different ways of taking the separateness of persons seriously. Whether the moral significance of the boundaries between individuals primarily imposes requirements on the justification of normative principles or whether it matters directly for the content and scope of these principles will have a bearing on one's wider normative commitments and the project one is engaged in.

One can rely on these observations when making three points in response to the objection of "deontological dogma." First: The separateness of persons objection put forward by Otsuka and Voorhoeve is a scope-based objection. They turn against the priority view on the ground that it employs the exact same principle in both the inter- and the intrapersonal case. However, they remain uncommitted on the question of whether some version of the priority view is appropriate for settling the interpersonal distribution of burdens and benefits. Second: Out of the three different types of objections, scope-based objections are established most easily. A scope-based objection can be pressed without presupposing a full interpretation of the separateness of persons requirement. Indeed, one can understand a particular scope-based objection as part of such interpretation. The interpretation is offered employing one's considered convictions in a particular case of distributive conflict. Third: Otsuka and Voorhoeve convincingly present such a case. While it may be true that some ways of invoking the separateness of persons are obscure, and one cannot simply refer to the notion without offering a well-argued interpretation of its

normative requirements, the particular objection made by Otsuka and Voorhoeve is far off from merely invoking a "deontological dogma."

2.2.2 Deny the shift?

Advocates of the priority view could turn against Otsuka's and Voorhoeve's scope-based objection by denying that a shift occurs when moving from case (2*) to case (2).⁵⁹ Maybe we should reconsider our considered conviction in light of a good reason for why the two cases should in fact be treated on par? One could assimilate the individual case under risk to the two-person case and argue that the former should be treated like the latter. Alternatively, one could provide an argument in support of the claim that the principle appropriate for the one-person case should also apply in the two person-case. I consider an argument in support of the first strategy and argue that it fails.

Martin O'Neill argues that, "even one person cases, when they involve risk, can involve the sort of trade-offs that Otsuka and Voorhoeve see as being characteristic only of many-person distributive cases" (O'Neill 2009, p.16). His reasoning advances two central claims. First: We should think of cases imposing risks on individuals as trade-offs between different future persons.⁶⁰ Second: If it is permissible to choose the option that would benefit the better-off future person in the one-person case involving risk, e.g., move to the countryside in case (2*), it is permissible to pursue the option that would benefit the person actually better off in

⁵⁹ This is a strategy suggested by Martin O'Neill (2009, p.16 ff).

⁶⁰ He says: "According to the Priority View, given that outcomes rather than prospects are the bearers of moral value, the claims of particular individuals under conditions of risk are effectively proxies or stand-ins for the claims of the possible future individuals (that is, their different future selves) who will endure those outcomes" (O'Neill, 2009, p.17).

the two-person case.⁶¹ The first claim seems to deliver the rationale for the second claim, while it itself rests on an auxiliary observation: Because outcomes are morally more important than prospects, the justification in terms of prospects, which Otsuka and Voorhoeve offer in support of the claim that it may be permissible to do what would benefit a healthy child in the one-person risk case, is insufficient.⁶²

My response to O'Neill is threefold. Firstly, I do not believe that the auxiliary observation is true. The claim that outcomes are, other things being equal, more important than prospects, is compatible with the claim that prospects can justify pursuing one course of action rather than another. Consider a case where the presence or absence of a justification in terms of prospects matters crucially for the permissibility of an option. Assume that in a case where two employees, a clerk and a secretary, have been taken hostage by a bank robber, the police will have to choose which of two options to pursue. Option A, which entails blowing up part of the building, will certainly lead to the death of the secretary but certainly save the clerk. Option B, which entails sending in a SWAT team, will give both the secretary and the clerk an objective 50% chance of survival, while one of them will certainly be killed. Which option should the police pursue?⁶³ It seems clear that option B is better than option A. In fact, it seems impermissible to pursue option A if option B is also available. If only one of two individuals can be saved, then one ought to give everybody an equal chance for being saved. However, the impermissibility of option

⁶¹ See O'Neill (2009, p.18).

⁶² See O'Neill (2009, p.17).

⁶³ This case is structurally similar to cases that Broome considers when discussing fairness and equality under conditions of uncertainty, which in turn are based on an example introduced by Peter Diamond, see: Broome (1991, p.185 ff) and Diamond (1967).

A can only be explained in terms of prospects. It is the fairness in the distribution of prospects that explains why A is to be preferred to B. From the point of view of an impartial theory exclusively focused on outcomes, one ought to be indifferent between options A and B. Note that prioritarrians could respond by arguing that prospects do in fact confer benefits upon individuals, that these benefits should be considered when assessing outcomes and one thus ought to prefer policy B to policy A. While this might be a generally plausible line of thought, it is not available in the particular context at hand. It is the point of Martin O'Neill's response to the scope objection to deny the significance of prospects and insist on the importance of actual outcomes. If prospects matter, for example, as discounted or surrogate outcomes, then one might well be right in claiming that what in virtue of certain prospects is permissible in case (2*), for lack of such a prospect is impermissible in case (2).

Secondly, I am sceptical about the first central claim. One should not think about risk in terms of trade-offs between future persons. In the case of the bank robber and the police, assimilating trade-offs between different future people to trade-offs between actual individuals creates a simple problem: It is neither clear how many future individuals would be involved under each option, nor how one should conceive of the trade-off of burdens and benefits between them. Option B, it seems, would contain a future living secretary, a future dead secretary, a future living clerk and a future dead clerk. But what future people populate option A? And how exactly does one know, which future person one ought to benefit? Advocates of O'Neill's strategy may respond that one should only think about risk in terms of future people when dealing with a case involving just one individual. This response, however, fails to convince for two reasons. Firstly, the response appears ad hoc:

Why should questions of risk be approached in fundamentally different ways in each case? Secondly, note that the future-person reasoning runs up against a problem, even when only applied in a one-person case: Imagine an individual facing a situation where one option occurs with a likelihood of one third and another option with the likelihood of two thirds. How does one account for these probabilities? Assuming that it is difficult to deal with fractions of future people, the most natural way of accommodating these probabilities may be by thinking of the risk as a trade-off between differently seized groups of future individuals. But this approach will have another unwelcome consequence: The question of whether and how the numbers should count, would arise even in one person-cases. Given the difficulties involved in answering questions about numbers, one should think twice before committing to an understanding of risk as a trade-off between future persons.

My third response questions the second central claim. It is not the case that a similar profile of burdens and benefits would render benefiting the better-off individual permissible in the one- and two-person cases alike. One might plausibly think that our considered convictions in case (2) and case (2*) are enough to discard O'Neill's claim. The fact that we assess (2) and (2*) differently speaks against O'Neill's two central claims and the auxiliary observation, rather than the other way around. However, there is another consideration one can draw on in response to O'Neill. Even if we granted that prospects do not matter, and even if we agreed that risk should be conceived of as a trade-off between future persons, there still remains a good explanation for why our judgement from the one-person case does not carry over to the two-person case: My two future selves bear a different relationship to each other than two actual persons do. They are both my future selves and they

both share a common past self, whereas there is no such link in the case of two actual individuals. An individual life has a kind of unity which explains the relationship between present and future selves.⁶⁴ And the fact that this different relationship should matter for how we trade off burdens and benefits should not come as a surprise: The unity of persons is the flip-side of the separateness of persons. It is not only the case that our convictions stand against O'Neill's second central claim, but there are good reasons which confirm this conviction and explain why it is justified.

3. Nagel's contractualism and the numbers objection

Thomas Nagel claims to take the separateness of persons requirement seriously when arguing that in cases involving more than one individual, any claim to a scarce good must be justified in light of the claims of others. Three ideas are central to his version of contractualism: The criterion of universal acceptability, the method of pairwise comparison and the resulting principle of strict priority. First: Nagel (1970) believes that because moral reasoning involves putting oneself into the shoes of others, the distribution of a good must be acceptable from every individual's point of view. Second: To achieve universal acceptability, one ought to proceed by pairwise comparison. If individuals A, B and C each have a claim to some indivisible good G, one begins by asking whether A's claim to G is stronger than B's claim to G. A's claim to G is stronger than B's claim to G if A has a greater complaint than B in the case of not receiving G. If A has such a greater complaint,

⁶⁴ The fact that the relationship between present and future selves is different from the relationship between different present people can be illustrated by an example of Nozick. Presumably, the idea that "we go to the dentist to avoid worse suffering later" (Nozick, 1974, p.32) applies primarily where I am making the sacrifice of going to the dentist for my own future selves.

one then checks whether A's claim is stronger than C's claim. If it is, A receives the good in question. If it is not, one compares B's claim to C's claim etc. Third: In determining the magnitude of a complaint, it matters how well off the claimant is and it is more difficult to justify giving a benefit to somebody who is already better off. Considering whether or not a distribution is universally acceptable, one thus focuses on the point of view of the worst-off individual: "Where there is conflict of interests, no result can be acceptable to everyone. But it is possible to assess each result from each point of view to try to find the one that is least unacceptable to the person to whom it is most unacceptable. This means that any other alternative will be more unacceptable to someone than this alternative is to anyone. The preferred alternative is in that sense the least unacceptable, considered from each person's point of view separately" (Nagel 1979b, p.123). Jointly, the requirement of universal acceptability and the claim that it is harder to justify benefiting somebody who is already better off deliver the principle of lexical or strict priority: One distribution is better than another, if it is better for the respectively worst-off individual.

Nagel's position seems to deliver the right results. The contractualist egalitarian commitment to strict priority succeeds in explaining why we ought to benefit the worst-off and avoids both the separateness of persons objection and the levelling down objection. Because the requirement of universal acceptability, which gives rise to the method of pairwise comparison and is satisfied by strict priority for the worst-off, applies only in cases involving conflicting claims of different individuals, contractualist egalitarians can explain the shift that occurs when moving from the intra- to the interpersonal case. However, contractualist egalitarianism falls victim to a different objection. Unfortunately, there are cases where the contractualist egalitarian commitment to strict priority gives rise to a

problem. Consider another simple case:

Case (3): Imagine that somebody has 10 children and considers where to move. Moving to the city would be slightly better for one of the children whose mild hay fever would improve under that option. Moving to the countryside, however, would be significantly better for the other nine children. Where should one move?

It seems that even though a move to the countryside would make the worst-off child slightly worse off, one should move to the countryside and thereby confer a significant benefit on the other nine children. Unfortunately, this judgement is not to be had if one believes in the principle of strict priority. If one believes that one distribution is better than another just in case it is better for the respectively worst-off individual, one cannot prefer a distribution that is worse for the worst-off individual, even if it leaves the worst-off individual only slightly worse off and is significantly better for a great number of people. The contractualist commitment to strict priority is insufficiently sensitive to the number of people affected by each option.

As I shall argue, Thomas Nagel's contractualist commitment to the method of pairwise comparison and the principle of strict priority is vulnerable to three kinds of numbers objections. I introduce each objection and argue that apparent responses to each objection fail. One could try and resist the numbers objection by supplementing Nagel's formulation of the pairwise comparison approach, for example through modifying one's understanding of what considerations give rise to

individual complaints. I believe that all such attempts fail. The only way of coming to terms with the numbers objection is to adopt a pluralist perspective.

3.1 Three instances of the numbers objection

Nagel's solution of achieving a universally acceptable distribution through pairwise comparison encounters what I call the numbers problem. This problem arises in cases involving the allocation of burdens and benefits between differently sized groups of individuals. I consider three instances of this problem. The first one is that of case (3) introduced in the introduction above, call it the "many weaker claims" - instance: Nagel's solution fails to accommodate our considered convictions in cases where the weaker claims of a great number of people stand against the stronger claims of fewer individuals. Applying the method of pairwise comparison, the claim of one child suffering from a mild hay fever would beat the claims of all other nine healthy children. Counterintuitively, moving to the city would turn out to be the course of action required.

Secondly, the method of pairwise comparison sometimes fails to deliver a transitive ranking of distributive options involving various individuals. Call this the "transitivity" - instance of the numbers problem:⁶⁵

Case (4): Assume one can allocate three pills among (a) the members of a group of three, and (b) an additional fourth person. All four people have all four limbs paralysed. If one gives a pill to a member of the group of three, she will have use of both arms restored and each additional pill would be wasted on her. If one gives one pill to the fourth person, she will have the use of one arm restored, a second pill

⁶⁵ This case is discussed by Michael Otsuka (2004, p.421).

would restore her second arm, and a third pill would also restore one of her legs. It seems that one is faced with four reasonable options. One could (i) give each member of the group a pill and none to the fourth person, (ii) give two members of the group a pill and one to the single person, (iii) give one pill to a group member and two to the fourth person, and (iv) give all pills to the single individual. How should the pills be allocated between the four individuals?

It is not straightforwardly clear how the three pills ought to be allocated between the four individuals. However, the principles informing one's decision-making should single out one distribution as superior to others. Now think about the options in case (4) from Nagel's point of view. Option (i) should be preferred to option (ii) because the complaint of a group member not having two arms restored would be greater than the complaint of the single individual not having one arm restored. Option (ii) would be preferred to (iii) because the complaint of a group member not having two arms restored is greater than the complaint of the single individual not having a second arm restored. Similarly, option (iii) should be preferred to option (iv) because the complaint of a group member not having two arms restored is greater than the complaint of the single individual not having his leg restored. Option (iv), however, should be preferred to option (i) because the single individual's complaint against not having three limbs restored is greater than each group member's claim against not having two arms restored. One thus ends up with a choice-defeating cycle of preferences or ranking of the different options: (i) > (ii) > (iii) > (iv) > (i).

Thirdly, consider how one versus many rescue cases raise another problem

for Nagel's account of pairwise comparison.⁶⁶ Consider case (5), where Nagel's method apparently fails to deliver the right result:⁶⁷

Case (5): Imagine that somebody is in a boat, the tide is rising and she faces two options. She could head north and rescue a single individual called David who is stranded on a rock and would otherwise drown in the rising sea. Alternatively, she could head south and rescue a group of 50 people who are in the same situation as David sitting on a different rock. It is impossible to rescue the group of 50 and David. Should the person in the boat head north or should she head south?

Without taking a stance on how exactly this distributive conflict ought to be resolved, I believe that any reasonable way of allocating the benefit of being rescued between David and the 50 should render it more likely that one rescues the 50. But what does Nagel's method of pairwise comparison require in this case? Remember that Nagel proposes that a distribution of burdens and benefits should be acceptable from the point of view of those for whom it is least acceptable. Rescuing 50 would leave David with the complaint of certain death. Rescuing David would leave each of the other 50 with the complaint of certain death. Tossing a coin to decide whether to head north or south leaves both David and the group of 50 with a 50% chance of survival. It seems that this lottery approach provides the solution most acceptable to those it is least acceptable for. If the coin

⁶⁶ These cases are introduced by John Taurek (1977) and Elisabeth Anscombe (1967). One could think that case (5) is similar to case (3) considered above. However, case (5) is different, as here individuals do not have differential claims to the good in question.

⁶⁷ This draws on Taurek (1977).

comes off heads and one rescues David, each individual at least had a 50% chance of being rescued, which is more acceptable than not having had a chance of being rescued. If the coin comes off tails and one rescues the group of 50, David at least had a $\frac{1}{2}$ chance of being rescued, which is more acceptable than not having had the chance of being rescued.⁶⁸ It seems that Nagel's method of pairwise comparison would require to toss a coin. Unfortunately, this solution does not sit well with some important considered convictions. Would one really be prepared to rescue David in case the coin comes off heads? I believe that other options, such as rescuing the greater number, or running a weighted lottery would more adequately reflect our judgements in this particular case.

3.2 An objection to the "many weaker claims" objection rejected

Defending the method of pairwise comparison, its advocates could respond to the intuitive objection raised through case (3) by modifying their understanding of what gives rise to a complaint. They could respond to the "many weaker claims" - objection by denying that in the case under consideration, the claims of the many are in fact weaker. Currently, case (3) presents a problem because we have assumed that the worst-off individual would always have the greatest complaint in case of not choosing the option that would be better for her. We think that one should move to the city because that would leave the worst-off individual better off, such as in a representation of case (3), which for the moment leaves considerations of how many healthy children there are aside:

⁶⁸ This line of reasoning draws on Parfit's (2003) analysis of Scanlon's contractualist position.

	City	Countryside
Hay fever Child	19	18
Healthy Child	20	30

Not relying on any considerations having to do with the number of people involved, advocates of pairwise comparison could pre-empt the force of case (3) by arguing that even if we are considering what to do when there is just one healthy child and one child suffering from hay fever, we ought to move to the countryside. Doing so would require a modified understanding of what gives rise to a complaint.

Advocates of pairwise comparison could argue that the size of a person's complaint is not only a function of her absolute level of well-being under each option, such that her complaint against an option is bigger the worse off she would respectively be, but also of how great her loss would be compared to that alternative distribution which would be most beneficial to her.⁶⁹ We ought to move to the countryside, so the argument may go, because the loss-induced complaint of the healthy child against the city option is greater than the absolute level-induced complaint that the hay fever child would have against the countryside option. It seems that if this response convinces in cases where there is one individual that stands to benefit from pursuing the option that does not benefit the worst-off individual, it also delivers the intuitively correct judgment in the original version of case (3) involving ten healthy children.

Unfortunately, there are two considerations that speak against rescuing the method of pairwise comparison from case (3) by making complaints a function of individual losses. Firstly, consider a case put forward in an argument by Alex

⁶⁹ This option is discussed by Scanlon (1998, p. 213). I follow Alex Voorhoeve's exposition of it, c.f. Voorhoeve (2010, p.2).

Voorhoeve (2010). Imagine that you are at the centre of a circular island, that there are 900 individuals located around the shore of the island, that all 900 individuals suffer from a disease that will kill them after 1000 days, that all 900 individuals have just been infected and the disease progresses day by day, that you possess a medicine that could stop the disease and leave the individual in the state she was in when given the medicine, and that the individuals are located a one-day drive from one another around the island. Imagine that you can take one of two roads to get to the shore and start driving round the island on a one-way road delivering the medicine. Using the first road it will take you a day to get to the shore, you will be able to cure individual 1 after one day, cure individual 2 after two days and so on. Using the second road it will take you two days to get to the shore, you will reach it further to the west and you will be able to cure individual 900 after two days, individual 1 after three days, individual 2 after four days and so on. Choosing the second road would leave everyone somewhat worse off but individual 900 significantly better off. Consider a simple table, where the numbers indicate the number of days each individual would have to wait, and thus the level of disease progression at which they would be cured under each option:

	First Road	Second Road
Individual 1	1	3
Individual 2	2	4
...
Individual 899	899	901
Individual 900	900	2

It seems that when deciding which road to take, you should take the first road.

Doing so would be better for the worst-off individual, the second-worst-off

individual and so on. However, using the amended method of pairwise comparison where the size of a complaint is a function of both absolute well-being and potential loss, you ought to take road two. Taking the second road, the worst-off individual is only minimally worse off than the worst-off individual under the first road option. However, if you take the first road, individual 900 could complain that she will have to forgo a benefit of 898. Nobody would have a comparable loss/benefit-induced complaint against taking the second road.

The second worry concerns the effectiveness of the proposed response against other variants of case (3). Advocates of pairwise comparison cannot always expect the benefit/loss complaint to deliver the intuitively correct response. We could think of cases where the benefit forgone by healthy children when moving to the city would be just as big as the benefit forgone by a disabled child when moving to the countryside, but where the number of healthy children gives us a decisive reason to move to the countryside. Would one move to the city just to make one child that is slightly worse off than her siblings better off, even if one's other 200 children would benefit from moving to the countryside? It seems that having the losses count does not go all the way in successfully deflecting the challenge that case (3) poses to contractualist egalitarianism.

3.3 A response to the intransitivity challenge rebutted

One may attempt to rescue the method of pairwise comparison from the second instance of the numbers problem and argue that the intransitivity objection does

indeed fail. There is one such attempted rescue that is worth considering.⁷⁰ Hsieh, Strudler and Wasserman (2007) have suggested that an intransitive ranking arises only if one restricts pairwise comparison to a sequence of binary choices, whereas the method of pairwise comparison properly understood presupposes that an individual complaint is assessed against the background of all available alternatives. I shall argue that this response fails.

Hsieh's, Strudler's and Wassermann's (2007) alternative interpretation of the method of pairwise comparison, which they claim is both superior to Otsuka's interpretation and avoids the intransitivity problem, comprises three steps. It is set against the background of a simple observation, namely the observation that in the case introduced by Otsuka, the situation of the respectively worst-off individual would be the same under each distributive alternative. Regardless of what one does, the worst-off individual(s) will always end up limbless. The first step then consists of a claim about how to understand a complaint: Hsieh, Strudler and Wassermann suggest that instead of understanding the complaint of the worst-off individual as primarily a function of the size of the benefit potentially forgone, one should assume that the worst-off individual has a complaint if and only if she could be made better off without anyone else thereby being made as badly off as she is. If one could go from a situation in which a person is limbless to a situation in which she has one arm restored, without it being the case that somebody else thereby becomes limbless, then the person would have a complaint in case that option is not

⁷⁰ Frances Kamm (2005) has produced another twofold response. She argues that advocates of pairwise comparison could deny that the size of the benefit matters for the strength of individual complaints. She also suggests that a distinction between different ways of conferring a benefit may help avoid the intransitive cycle. For a critical assessment of these two strands of argument, see Hsieh, Strudler and Wasserman (2007).

pursued. The second step argues that instead of understanding pairwise comparison as concerned with pairs of alternatives, it should "look at all four alternatives together" (Hsieh et al. 2007, p.505). The idea is that a person's complaint should be assessed against a background of feasible alternatives: "If different alternatives are available or existing alternatives are no longer available, her complaint about a given alternative may change" (Hsieh et al. 2007, p.503). The third step runs these claims together and delivers a new ranking of the options (i) to (iv) in case (4). Applying Hsieh's, Strudler's and Wasserman's notion of a complaint while looking at all four alternatives simultaneously delivers the following picture: There is nobody who would have a complaint if one chose option (i) or option (ii), because there is no alternative that would make the worst-off better off without making anyone else as badly off. However, choosing distributive option (iii) or (iv), there would be at least one worst-off person, one member of the group of three in (iii) and two members of the group of three in (iv), who could be made better off without anyone else becoming as badly off. Choosing option (ii) over (iii), for example, would make one limbless person better off without anyone else thereby becoming limbless. This reasoning delivers the following ranking: (i) = (ii) > (iii) = (iv). This ranking may be incomplete (it does not single out one superior option), however, it is not intransitive. Otsuka's objection, it appears, is misguided.

There is a simple way of responding to this particular argument. Note that the response put forward by Hsieh et al. relies on the assumption that whether or not somebody has a complaint is a function of the available alternatives. Consequently, whether it is permissible or required to pursue a particular option will also depend on the available alternatives. There are of course cases where it is clearly true that what I am permitted or required to do depends on the available

alternatives. Whether or not I am required, or maybe even permitted to save Peter from drowning, depends on whether I could also rescue Peter and Mary from drowning. However, there are other cases where such dependence on available alternatives has problematic implications. Consider the ranking of options that Hsieh's et al. interpretation of the complaint model delivers when applied to the original version of case (4): $(i) = (ii) > (iii) = (iv)$. We either ought to give a pill to each of the members of the group of three, or give a pill to two members of this group and one pill to the single individual. We ought to be indifferent between these two options, though they are both superior to (iii) and (iv). One of the recommendations implied by this picture is this: We ought to bring about (i) rather than (iii). But now imagine that option (ii) is removed from the feasible set. Assume that it is, for whatever reason, no longer possible to give a pill to each of the members of the group of three. The removal of (ii) has an interesting implication: Option (i) is no longer preferred to (iii). Because it is no longer possible to make the limbless members of the group of three better off without making anyone else limbless, there is no more complaint against distribution (iii), nor in fact against distribution (iv). The new ranking is: $(i) = (iii) = (iv)$. But if it was previously the case that we ought to bring about (i) rather than (iii), why should we become indifferent between these two options only because some independent alternative is removed from the feasible set? The solution advocated by Hsieh, Strudler and Wasserman violates the plausible principle that "if x is to be preferred to y when they are elements of the feasible set S , then x must be preferred to y when they are elements of the feasible set T which is a subset of S " (Otsuka 2004, p.420). Imagine that in a version of case (4) where all options are available, there is a decisive moral reason that somebody has not to bring about option (ii), for instance, if doing so

would prevent her from discharging another obligation entirely independent of the case at hand. It seems uncontroversial that under these circumstances one is required to do (i). But as option (ii), that is, an option it was permissible for or even required not to pursue in the first place, and which one had no intentions of bringing about, becomes unavailable, one is no longer required to pursue option (i). Under the Hsieh et al. model, whether or not one is required to pursue a particular option will depend on the absence or presence of options one may permissibly refrain from pursuing. This, I believe, is a good reason to turn against their account.⁷¹

3.4 Why pluralism is the only way of responding to the numbers objection

There are three basic strategies that advocates of contractualism and pairwise comparison could pursue in fending off the numbers objection. Firstly, they could try and render the method of pairwise comparison sensitive to number concerns, for example by allowing that aggregates of individual claims matter for the acceptability of a distribution. Secondly, they could try to explain the significance of numbers from within their individualist framework and without allowing that claims of different individuals be aggregated. Thirdly, they could become pluralist and allow that considerations of numbers be balanced against the individualist approach of pairwise comparison. The present section argues that only this last option is in fact available to them.

The first strategy is dismissed easily. The idea that a distribution has to be acceptable from each individual's point of view lies at the heart of the contractualist

⁷¹ I shall offer a full defense of this claim in chapter 3, where I discuss Frances Kamm's argument that violating the independence of irrelevant alternatives condition may be unproblematic.

commitment. To allow that a greater number of claims outweighs a smaller number of equally strong or even stronger claims would not only leave contractualism without a foundation, but render it vulnerable to the same type of objection (for example that of not taking seriously the separateness of persons), which other views fall victim to and the avoidance of which accounted for the attraction of contractualist egalitarianism in the first place. As Nagel himself notes, employing the first strategy would be to give up on the contractualist framework: “But if egalitarian urgency is itself sensitive to numbers in this way, it does not seem that any form of unanimity criterion could explain the foundation of the view” (Nagel 1979b, p.125). The first strategy thus ought to be rejected.

The second strategy can only be dismissed by an argument that proceeds by elimination. So far, none of the proposed attempts to generate a concern for numbers from the individualist premises of contractualism and within the method of pairwise comparison has succeeded. I shall briefly recapitulate two prominent attempts to resist the objection of the rescue case (5) and explain why they fail.⁷² Frances Kamm and Thomas Scanlon argue that when equally strong claims conflict with each other, the number of claimants should serve as a tie-breaker, for otherwise we would deny the significance of the presence of each additional claimant.⁷³ By tossing a coin to decide whether to rescue David or the 50 in case (5), we are denying the significance of 49 individuals, because we would also toss a coin to decide whom to rescue in a case where we could only rescue one of two individuals. However, the idea that additional individuals would have a legitimate complaint about their presence not making a difference to the decision-making

⁷² For a more exhaustive treatment of these various attempts, see Otsuka (2006a).

⁷³ See: Scanlon (1998, p.232) and Kamm (1993, p.101).

procedure in case the option of tossing a coin is maintained in case (5), does not support a duty to save the greater number. Firstly, the significance of the presence of an individual can be acknowledged without changing one's preferred allocation mechanism, and secondly, changing one's allocation mechanism so as to incorporate the significance of the additional individual does not mean that we ought to simply save the greater number.⁷⁴

Relying on a well-known device of Rawls's, the individualist contractualist could alternatively employ the idea of choice from behind a veil of ignorance to explain why we ought to save the greater number in case (5).⁷⁵ Given that one is always more likely to end up in the bigger group, it would be rational to choose the policy of saving the greater number. However, by the same logic we ought to choose a policy that confers a minimal benefit on an extremely large number of people, say treatment of a mild headache for 1 billion people, at the cost of a significant harm to a single individual, say certain death. Expected benefit reasoning from behind a veil of ignorance recommends policies that the contractualist egalitarian or advocate of pairwise comparison has good reason to reject. Until a more successful derivation of the significance of numbers from individualist premises is offered, the second strategy ought to be rejected.⁷⁶

If strategies one and two are unavailable, the contractualist egalitarian will have to fall back on a pluralist solution. Nagel himself indicates sympathy for this

⁷⁴ See Otsuka (2006a, p.114 ff).

⁷⁵ This is a solution that Taurek (1979, p.313) himself alludes to.

⁷⁶ Rahul Kumar (2001) argues that we ought to save the greater number because equally strong claims cancel each other out. Iawo Hirose (2001) argues that one can save the greater number without aggregation by relying on the idea of anonymous Pareto optimality. For a response to these proposals, see Otsuka (2006a).

strategy: “But if the choice is between preventing severe hardship for some who are very poor and deprived, and preventing less severe but still substantial hardship for those who are better off but still struggling for subsistence, then it is very difficult for me to believe that the numbers do not count (...). It might be suggested that this is a case where equality is outweighed by utility” (Nagel 1979b, p.125). Nagel believes that the concerns of “individualized impartiality,” “unanimity” and “separateness of persons” which underpin his individualist conception of equality should be balanced against aggregative concerns of benefiting the greater number.

4. Conclusion

I have argued that two prominent prioritarian commitments fall victim to serious objections. Derek Parfit's priority view fails to account for a shift in judgement that occurs when moving from a single- to a multi-person case and violates the separateness of persons requirement. Thomas Nagel's contractualist commitment to universal acceptability, pairwise comparison and strict priority faces the numbers objection and cannot explain how the number of people affected by a distribution matters. I have considered various ways in which proponents of the respective view could try to respond to these objections and argued that all of them fail. Appeal to a pluralist solution appears to be the only option. To explain the shift in judgement, advocates of Parfit's priority view would have to appeal to some version of equality. To account for the significance of numbers, the contractualist will have to appeal to non-individualist considerations. I discuss further implications of both objections and the prospects of pluralism in the next chapter.

CHAPTER 3

Two arguments for the principle of equality

1. Preliminary remarks

The previous two chapters have established the background against which I shall now present two arguments in support of the principle of equality. My first argument concerns pure versions of the distributive views in question and comprises two steps. The first step diagnoses a trilemma and the second step argues for a particular way of solving it. As I have shown, none of the distributive principles that appeared initially promising satisfies all three conditions which many people think a sound distributive view should satisfy. The principle of equality violates the condition of person-affectingness, the priority view fails to take seriously the separateness of persons and the contractualist commitment to pairwise comparison cannot explain how the numbers count. I refer to this observation as the trilemma of pure distributive ethics. As long as no pure principle satisfies all three conditions, we have reason to believe that the three conditions cannot jointly be satisfied. If we want to hold on to any of the pure distributive principles, one of the three conditions will have to yield. I argue that if having to choose between the three conditions, one ought to give up the commitment to person-affectingness. If this choice is justified, the levelling down objection appears less powerful than the other two objections, which leaves telic egalitarianism with a comparative advantage over its rivals.

My second argument supports the claim that the principle of equality is part of any plausible pluralist distributive view. Advocates of each distributive view may try to avoid the intuitive force of the objections raised against them by becoming

pluralist, that is, by endorsing more than one distributive principle. Advocates of the principle of equality may argue that because they also believe in the principle of utility, they are not committed to the view that levelling down is all things considered required. Advocates of the priority view may appeal to the principle of equality or the contractualist framework to account for the shift in judgement that occurs when moving from an intrapersonal to an interpersonal case. However, as I shall argue, the contractualist position does not lend itself to a pluralist solution. Any attempt at avoiding the numbers objection by combining the method of pairwise comparison with a less strictly individualist principle will give rise to two serious objections. Any pluralist distributive view covering our considered convictions across a wide range of distributive cases will thus have to comprise the principle of equality. The principle of equality is, all things considered, part of the truth about distributive ethics.⁷⁷

2. A first argument for the principle of equality

2.1 The trilemma

Three distributive views have emerged as the most plausible alternatives to pure utilitarianism. The principle of equality, the priority view and a contractualist

⁷⁷ One may of course object that my list of distributive views is not exhaustive. However, I share this predicament with Rawls, who in section 21 of *A Theory of Justice* justifies his choice of candidate principles which the parties of the original position get to choose from: "I shall simply take as given a short list of traditional conceptions of justice. (...)" (Rawls, 1999, p.106). I believe that my list of principles covers the most promising traditional views. Some distributive views, such as sufficientarianism, are excluded because they fall victim to independent objections, c.f. Casal (2007). If, however, one is convinced that other principles ought to be on the list as well, my argument still warrants a weaker conclusion: Telic egalitarianism is superior to the two rival views discussed, i.e., Parfit's priority view and Nagel's contractualist commitment to strict priority.

commitment to strict priority all appear superior to pure utilitarianism, for they succeed in explaining why in cases of distributive conflict, we (sometimes) ought to benefit the worse-off, even if doing so would fail to maximise overall well-being:⁷⁸

Principle of equality: "It is in itself bad if some people are worse off than others" (Parfit 1997, p.204).

Priority view: "Benefiting people matters more the worse off these people are" (Parfit 1997p.213).

Strict priority: One distribution is better than another, if and only if it is better for the respectively worst-off individual.

Many people believe that there are (at least) three conditions or requirements which a sound distributive view should satisfy. Firstly, in establishing a betterness relation between different distributions, a sound distributive view would have to satisfy the condition of person-affectingness:

Person-affectingness: "One distribution cannot be better (worse) than another, unless it is better (worse) for somebody" (Temkin 1993b, p.263).

⁷⁸ Bertil Tungodden (2003, p.32) believes that the question of "how much priority to assign to the worse off" is "the most fundamental concern in distributive reasoning."

Secondly, a sound distributive view would have to reflect the fact that different individuals have different lives to lead and take seriously the separateness of persons requirement:

Separateness of persons: A distributive principle will have to recognise the normative significance of boundaries between different individuals.

Thirdly, a distributive principle should be sensitive to the number of people affected by each distribution and thus be number sensitive:

Number sensitivity: The number of people standing to gain or lose under each option matters for what distribution we ought to choose.

As I have argued in chapter 1, the principle of equality violates the condition of person-affectingness. The levelling down objection derives its force from the observation that telic egalitarians will have to regard an equal distribution that is not better for anybody as in (at least) one respect better than an unequal distribution which is better for some. As explained in chapter 2, the priority view fails to take seriously the separateness of persons. Due to the non-comparative nature of their commitment, advocates of the priority view fail to distinguish between inter- and intrapersonal cases of conflict and apply the same priority-weighted principle in each case. As I have also argued in chapter 2, a commitment to the method of pairwise comparison and the principle of strict priority fails number sensitivity.

Evaluating distributions solely from the point of view of the worst-off individual, one cannot accommodate the fact that the number of people affected matters for what distribution one ought to choose.

These observations present us with a trilemma. On the level of pure principle, none of the initially promising candidates fulfils all three of the requirements that a sound principle should satisfy. As the various objections show, each principle fails at least one condition. There is a strong and a weak conclusion that could be drawn from this observation. The strong conclusion entertains the suspicion that the three conditions cannot jointly be satisfied. The weaker conclusion asserts that none of the three familiar principles satisfies all three conditions. The weaker conclusion is all I need for my present argument. One way of thinking about the trilemma takes the priority view and the separateness of persons requirement as a starting point. The priority view satisfies two of the three conditions but fails to take seriously the separateness of persons. The principle of equality and a contractualist commitment to strict priority present two different ways of satisfying the separateness of persons requirement. Unfortunately, each of these ways embarrasses one of the other two conditions. Taking the separateness of persons seriously by arguing that there is something wrong with some being worse off than others will violate the condition of person-affectingness. Taking the separateness of persons seriously by maintaining that a distribution will have to be justifiable to each will run up against the condition of number sensitivity.

There are (at least) four different ways of responding to the trilemma. Firstly, one could abandon the search for principles. This I believe is the wrong response. Secondly, one could formulate a principle that solves the trilemma and satisfies all three conditions. If I knew of such a principle, I would opt for that response.

Unfortunately, I do not. Thirdly, one could try to avoid the trilemma by adopting a pluralist stance and endorsing a conjunction of principles, which jointly avoid the trilemma. I shall discuss this strategy in section 3 when presenting my second argument for the principle of equality. However, I also believe that the trilemma raises a genuine question on the level of pure principles. The three objections discussed in chapters 1 and 2 are objections against pure versions of the respective principle. In making up one's mind about the strengths and weaknesses of pure principles (which objection is most powerful?), one should set the option of pluralism aside for one moment.⁷⁹ Finally, one could argue that in light of the trilemma at hand, one of the conditions will have to yield. This is the response I choose. There are again different ways of making an argument for giving up one particular condition. On the one hand, one could argue that giving up any of the other two conditions would be more costly. Alternatively, one could provide an independent reason for giving up one condition, i.e., a reason which is independent of the comparative strengths of the other conditions. I shall focus on the latter option and only return to the former in my conclusion below. Throughout the remainder of this section, I shall argue that there are good reasons for giving up the condition of person-affectingness.

2.2 How to interpret the "slogan"?

The motivation behind principles of person-affectingness can be captured in many different ways and I shall take Temkin's seminal formulation of the "slogan" as my starting point: "One distribution cannot be better (worse) than another, unless it is

⁷⁹ Parfit (2002, p.103) believes in a pure version of the priority view: "The priority view, in contrast, can be held as a complete moral view. (...) It can be regarded as the only principle we need."

better (worse) for somebody" (Temkin 1993b, p.263). The "slogan" captures the deep intuition that our moral concern needs to somehow be connected to what happens to individuals, it seems to underpin a great number of arguments in moral and political theory, and Temkin believes that it serves as a modern equivalent to Ockham's razor. Temkin presents a number of arguments against the "slogan" and I shall presently focus on those two, which I believe raise the most interesting questions in their own right and have hitherto received least treatment.⁸⁰ My approach is simple. I briefly present each of the two arguments, sketch what I believe is the most powerful response to them,⁸¹ and then argue that because these responses fail, the original arguments stand. Advocates of the "slogan" cannot meet the dual challenge of rescuing (a variant of) the "slogan" from various objections, and maintaining it as a principle informing the levelling down objection to the principle of equality. To solve the trilemma of distributive ethics in favour of the principle of equality, only one of the arguments discussed would have to succeed. I believe that both of them do.

2.2.1 The "no coherent interpretation" objection to the "slogan"

Larry Temkin argues that in spite of its intuitive appeal, the "slogan" lacks a coherent interpretation. This objection rests on two observations. Temkin firstly observes that the "slogan" establishes a tight link between theories of self-interest and theories about the goodness of outcomes. The "slogan" implies that "one's theory about outcomes must be a direct function of (perhaps, in a sense, supervenient on) one's theory of self-interest" (Temkin 1993b, p.263). His second

⁸⁰ I ignore some strands of argument, which have either been extensively dealt with in the literature, or have received treatment elsewhere in my thesis.

⁸¹ Again, I focus on those objections that Temkin himself has not yet responded to.

observation maintains that there is no theory of self-interest that would both serve as a plausible account of what is good for individuals and succeed in maintaining that the goodness of outcomes is a direct function of what is good for individuals. The reasoning in support of this observation proceeds by elimination. None of the familiar theories of self-interest succeed in supporting the "slogan".⁸² Mental State Theories (MST) assert that "only conscious states have intrinsic value or disvalue" (Temkin 1993b, p.258). Subjective Desire Fulfilment Theories (SDFT) assume that "something will be good or bad for someone insofar, and only insofar, as it promotes or contravenes the fulfilment of her desires" (Temkin 1993b, p.264). Objective List Theories establish that some things "are intrinsically good or bad (...) for people independent of the quality of their conscious states or the fulfilment of their desires" (Temkin 1993b, p.272). All these theories fail in at least one of three ways, while failure in one way would be sufficient to reject them as a convincing interpretation of the "slogan". The following table offers a brief summary of Temkin's reasoning:⁸³

	fails about self-interest...	fails about outcomes...	fails supervenience...
MST	because conscious states are not all that matters to how well someone's life goes.	because not everything which is good about outcomes can be traced to somebody's enjoying some conscious state.	
SDFT	because contravening somebody's desires does not always harm them.	because the goodness of an outcome does not solely depend on whether somebody has a desire for that outcome.	because as about self-interest, SDFT should focus only on self-regarding desires, but as about outcomes should include other-regarding desires.

⁸² For a list of these theories, see Appendix I in Parfit (1984).

⁸³ This table summarizes the main points of Temkin's original reasoning in Temkin (1993a, 1993b).

	fails about self-interest...	fails about outcomes...	fails supervenience...
OLT	because objective values should not be understood in terms of the effects that their realization has on individuals.		because once we allow that outcomes can be intrinsically good or bad, we cannot be certain that all of them are good or bad for individuals.

To vindicate an interpretation of the "slogan", its advocates could now pursue one of two response options. Undermining the second of Temkin's observations, they would have to single out one theory of self-interest and refute all objections raised, thus entirely clearing the respective row of the table.⁸⁴ Undermining Temkin's first observation, advocates of the "slogan" could turn against the claim that the goodness of outcomes must be a direct function of self-interest and argue that the supervenience requirement, properly understood, would avoid the "no coherent interpretation objection" without thereby rendering the "slogan" ineffective as a consideration against the principle of equality.

2.2.2 The necessary condition response

I consider those advocates of the "slogan" who try to undermine Temkin's argument by turning against its first observation.⁸⁵ They seek to clarify what is at stake in affirming or denying the "slogan" and argue that one can maintain the "slogan" and still insist that there are elements in one's account of the goodness of outcomes that do not play a role in one's theory of self-interest. This response is facilitated by the insight that the "slogan" only formulates a necessary condition of

⁸⁴ Different authors defend different theories of self-interest. Nils Holtug (2003) argues that the difficulties faces by (SDFT) can be overcome, Dennis McKerlie (1995) and Marc Ramsay (2005) argue that (OLT) is most promising.

⁸⁵ I believe that this response is more promising. Turning against the second premise of Temkin's argument at best leads to a stand-off between advocates of the "slogan" and its opponents.

goodness or betterness. That somebody be made better (or worse) off by a particular distribution is merely a necessary condition for there being (at least) one respect in which that distribution is better (or worse). Other independent reasons, that is, considerations independent of what is good for individuals, will have to be invoked to establish which of two distributions (both of which are better (or worse) for somebody) is in fact better (or worse).⁸⁶ Because non-person affecting value considerations will have to matter for the goodness of outcomes, a theory of self-interest does not have to contain all the building blocks for a satisfactory theory of the goodness of outcomes. And as long as one insists that these non-person affecting considerations cannot render one outcome better than another unless it is also better for somebody, the requirement of the "slogan" is satisfied. The "slogan" thus leaves room for non-person-affecting value considerations.⁸⁷ Advocates of a particular theory of self-interest, say (SDFT), may thus respond to Temkin by pointing out his apparent mistake about what is to count as a coherent interpretation of the "slogan". The fact that desire-fulfilment explains what is good for individuals, for example, does not imply that a particular pattern of desire-fulfilment is good only if individuals have a preference for that pattern. The "slogan" captures the idea that considerations having to do with the "quality of human life" provide "the raw material of value" (Ramsay 2005, p.103). However,

⁸⁶ Ramsay introduces this thought in opposition to what Temkin calls the requirement of improvement. According to improvement, "the extent to which a change improves a situation will be a direct function of the extent to which individuals in that situation are benefitted by that change" (Temkin, 2000, p.152).

⁸⁷ A related person-affecting principle that would not leave room for such considerations is introduced by Persson (2001, p.28): "(PAC*): If one outcome is, in some way, better (worse) than another, its betterness (worseness) for some (collective) is greater than the betterness (worseness) of the other is for any (collective)."

non-person-affecting value considerations may have a bearing on how changes in the quality of human life are to count morally: "Again, the essential idea is that, while losses to the quality of a person's life are necessary conditions for negative moral changes, other moral ideals may bear upon the situation in a way that either enhances or diminishes (perhaps even eliminates) this negative change" (Ramsay 2005, p.103). Temkin's "no coherent interpretation" objection then appears misguided. It is not true that for the "slogan" to be coherent, one would have to be able to accommodate every change in the value or goodness of an outcome in terms of one's theory of self-interest. A belief in person-affectingness seems compatible with a commitment to an account of value which does not solely or even primarily understand the goodness of outcomes as a direct function of individual self-interest.

2.2.3 Why a necessary condition is not good enough

Critics may turn against the "no coherent interpretation" objection by pointing out that because the "slogan" merely formulates a necessary condition of goodness, a theory of self-interest need not exhaust one's account of value or goodness.

Impersonal value considerations are compatible with the "slogan", as long a moral change operates on a change in somebody's well-being.⁸⁸ However, I believe that because this response suffers from three serious flaws, it fails as a response to Temkin's objection.

⁸⁸ Note that the "merely a necessary condition" line of reasoning I am discussing is different from another one, which Bertil Tungodden (2003) raises in response to Temkin. Tungodden believes that the Pareto principle can support the levelling down objection, while this principle only needs to assert that all things considered value judgements will have to be person-affecting. The claim that I am presently discussing, however, asserts that the "slogan" stipulates a necessary condition for something to be in one respect good.

First: If one believes in the significance of impersonal value, why does one insist that an outcome can be better or worse than another only if it is better or worse for somebody?⁸⁹ If one believes that non-person-affecting considerations matter for the goodness or badness of an outcome, why do impersonal values alone never make an outcome better or worse? I believe that there is no coherent answer to these questions. There are two candidate responses but each of them fails to convince. A first reason for embracing any condition of person-affectingness may be found in a deep and general welfarist commitment, captured for example by the idea "that the moral value of an outcome is entirely determined by what is good or bad for individuals in it" (Persson 2001, p.29). How could anything other than the well-being of individuals be of moral significance? Unfortunately, this thought, even if it were independently plausible,⁹⁰ is not to be had by advocates of the revised version of the "slogan": They respond to the 'no coherent interpretation' objection by arguing that the moral value of an outcome is in part determined by considerations that are independent of what is good or bad for individuals. The same change of well-being may be of varying moral significance, depending for example on whom it accrues to, e.g., whether it accrues to the more or the less deserving, the more or the less well-off etc.⁹¹ But if it is not general scepticism about impersonal value that motivates the "slogan", what other principled reason could be invoked in its support?

Another idea could support the claim that even though there are impersonal values, their realisation alone can never make an outcome better: Values are

⁸⁹ Temkin (2003a) raises a similar question in the related Tungodden debate.

⁹⁰ It should not come as a surprise that I do not find this claim plausible.

⁹¹ Note that that a denial of this idea would deliver simple utilitarianism and be incompatible with the priority view and any other distributive value containing an impersonal component.

compounds containing both an impersonal and a personal component, such that the personal component serves as a necessary or enabling condition of impersonal value. Invoking G.E. Moore's (1993 (1903), p.79) notion of organic wholes, Andrew Mason (2001) argues that intrinsic impersonal values may be valuable only in certain contexts or as a component of certain wholes, for example when their realisation would benefit somebody. However, there are three considerations that speak against motivating the necessary condition understanding of the "slogan" in this way. Firstly, the ideas of wholes and context, and how it is that contexts enable values, stand in need of further elaboration.⁹² I am sceptical about the prospects of meeting it. Secondly, the idea of conditional values does not strike me as particularly convincing. There are at least some intrinsic values, for example values associated with the status of individuals, that matter unconditionally and irrespective of context. It might be that in a specific context these values are outweighed by competing considerations; however, this is not to say that these values would require a specific context as an enabling condition. Thirdly, consider what the argument of those seeking to motivate the "slogan" in this way would have to achieve. Not only would they have to show that every impersonal value is conditional or contextual in nature, but they would have to establish that the relevant condition is that of benefiting somebody. Finally, one ought to keep in mind that searching for a rationale in support of their position, those who endorse the "slogan" as merely stipulating a necessary condition of goodness are walking a fine line. On the one hand, they will have to maintain that preferring a distribution {3,3,3} to a distribution {2, 9, 9} is compatible with the spirit that animates the "slogan." On the other hand, they will have to explain why impersonal

⁹² As Mason (2001, p.251) himself points out.

considerations can neither make an all things considered difference, nor even render one distribution in one respect better. If considerations independent of individual well-being are morally significant, why can their significance never be sufficient as a reason to prefer one distribution over another? Why should impersonal value be accompanied by changes in well-being to be morally efficacious at all?

Second: The belief that impersonal value can create a reason to prefer one situation to another, only if accompanied by a change in well-being, will give rise to additional problems. There are for example cases where it seems clear that an impersonal value should give one a reason to prefer one situation to another, even though levels of well-being are exactly the same in each case. Imagine that one of two individuals who fare equally well at time T_1 , e.g., $\{7,7\}$, will unavoidably and as a matter of fact be worse off at time T_2 , e.g., $\{3,7\}$. There are, however, two possible causal paths leading to the $\{3,7\}$ situation at T_2 . On the first causal path C_1 , the worse-off individual would become worse off as the result of her own responsible agency, for example because she loses a risky gamble that she voluntarily entered having had the opportunity for a risk-free alternative. On the second causal path C_2 , the worse-off individual performs no such act and becomes worse off as a matter of bad brute luck. I believe that a world in which T_2 comes about as a consequence of C_1 is better than a world in which T_2 comes about as a consequence of C_2 . Put differently, there is a reason to hope that C_1 rather than C_2 actually obtains. However, advocates of the "slogan" cannot accommodate such reason. There is nobody for whom $\{3,7\}$ coming about as a result of C_1 is better than $\{3,7\}$ coming about as a result of C_2 . Arguing that impersonal values can only matter if

accompanied by changes in well-being, one will have to remain insensitive to how values may be realised in the history of outcomes.⁹³

Third: Note that if successful, the idea of impersonal value underpinning the re-interpretation of the "slogan" would facilitate a person-affecting version of egalitarianism. If one responds to Temkin's "no coherent interpretation" objection by assuming that there are impersonal values which render one distribution better or worse if accompanied by a change in well-being, then equality may well be one of these values. As mentioned, Andrew Mason (2001) argues that equality is intrinsically valuable if and only if its realisation leaves people better off. Ingmar Persson (2001) argues that inequality makes an outcome worse, if it is at least worse for somebody. This observation is not strictly speaking an objection to the necessary condition response to Temkin's "no coherent interpretation" argument. However, it points out that such a response may leave the "slogan" with limited polemical force. It would, for example, no longer vindicate non-comparative views such as the priority view, for other comparative principles, such as a version of conditional egalitarianism, would also satisfy its requirements. In responding to Temkin, non-egalitarian advocates of the "slogan" would supply the egalitarian with the conceptual resources necessary to avoid the levelling down objection.

⁹³ In the language of Lippert-Rasmussen (2007, p.103), you will have to be insensitive to the "genesis" of a distribution. John Broome (2004, p.30) employs the notion "history".

2.3 The "slogan" and non-identity

2.3.1 The non-identity argument against the "slogan"

Larry Temkin believes that the "slogan" also falls victim to the non-identity problem.⁹⁴ Imagine that a group of presently existing people (P) faces the choice between two policies. Choosing the first policy, call this policy depletion, the presently existing people would decide to use existing resources immediately and have their children (C_{Now}) now. Choosing the second policy, call this policy conservation, the presently existing people would decide to save resources now and postpone having children (C_{Later}) until later. As represented in figure 1 below, the presently existing people would be better off if they opted for depletion; however, the generation of their children would be better off under the conservation policy:

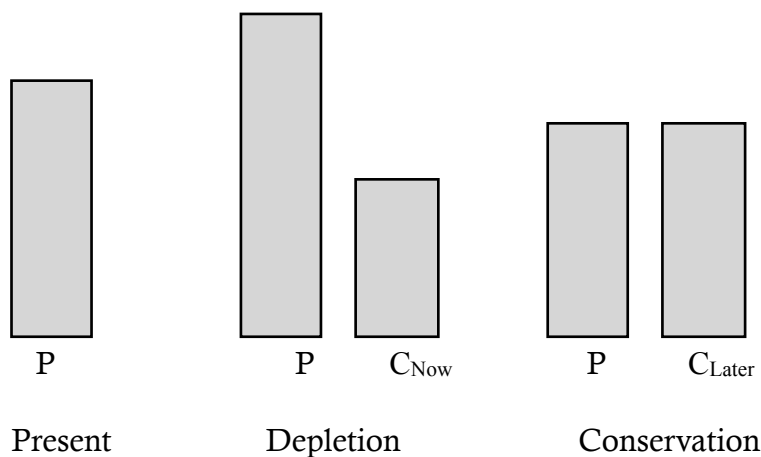


Fig.1

The non-identity problem arises from the fact that there are three plausible judgements about the scenario at hand which support a denial of the "slogan":

- (1) Depletion is worse than conservation.

⁹⁴ For the original formulation of the non-identity problem, see Parfit (1984, p.351 ff). For Temkin's presentation of the problem, see Temkin (1993a, p.255 ff).

- (2) The children born earlier under the policy of depletion (C_{Now}) are different individuals than the children born later under conservation (C_{Later}).
- (3) One does not harm a person by failing to conceive her.⁹⁵

Most people would agree that (1) is true. We ought to choose conservation instead of depletion. A variant of claim (2) is convincingly defended by Parfit and should be uncontroversial.⁹⁶ Claim (3) might be more controversial, however, it seems to capture some deep convictions about the nature of morality, for example that "morality has to do with how we treat whatever people there are" (Narveson 1973, p.73). But if one believes in (1), (2) and (3), then the "slogan" must be false. If the "slogan" were true, one could not argue that depletion is worse than conservation. If one believes that a situation can only be worse if it is worse for somebody, while there is nobody for whom depletion is worse (it is neither worse for C_{Now} because under conservation they would not exist, nor for C_{Later} because non-existence does not harm), one cannot claim that depletion is worse than conservation. In cases where the choice of a situation affects the identity of the people in it, the "slogan" excludes what clearly appears to be the right judgement. If one wants to hold on to the claim that one ought to choose conservation over depletion, which presumably is the claim endorsed with a higher degree of confidence, one ought to give up the "slogan".

⁹⁵ More elaborately, Larry Temkin (1993a, p.255) claims: "One cannot harm or act against the interests of someone who will never exist, and more particularly, one does not harm someone by failing to conceive her."

⁹⁶ See Parfit (1984, p.352).

2.3.2 The benefit of existence and a revised version of the "slogan"

In an attempt to rescue the "slogan," one may argue that claim (3) ought to be rejected.⁹⁷ The claim that causing somebody to exist may confer a benefit on that person may after all be defensible,⁹⁸ and the idea that living a life worth living is better than not existing could plausibly be expressed by the following claim:⁹⁹

- (3') "Coming into existence can be better or worse for a person than never existing" and "existence can be better or worse for a person than nonexistence" (Holtug 2001, p.364).

Unfortunately, substituting (3') for (3) does not quite succeed in rendering the claim that depletion is worse than conservation compatible with the "slogan". The "slogan" claims that one situation cannot be worse than another, unless there is somebody for whom it is worse. But even though C_{Later} would be better off under conservation, one cannot say that opting for depletion is worse for them. Slightly reformulating the "slogan" helps to solve this problem:

- (S') "An outcome, O_1 , cannot be in any respect better (worse) than another outcome, O_2 , if there is no one for whom, were O_1 to obtain, O_1 would be better (worse) than O_2 and no one for whom, were O_2 to obtain, O_2 would be in any respect worse (better) than O_1 "
(Holtug 2007a, p.142).

⁹⁷ The response to the non-identity objection presently sketched follows the arguments of Nils Holtug (1998, 2003).

⁹⁸ Parfit (1984, p.487) argues that the claim that existence may confer a benefit is at least defensible.

⁹⁹ For an argument in defense of this claim, see Holtug (2001).

A combination of (2), (3') and (S') is compatible with (1). Depletion is worse than conservation because there is somebody for whom conservation would be better than depletion, viz. it is better for C_{Later} to exist than not to exist. Note that (S') meets the dual challenge spelled out above: It avoids a particular objection against person-affectingness, in this case the non-identity objection, and still supports the levelling down objection to the principle of equality.

2.3.3 The repugnant conclusion rides again

The proposed response to the non-identity objection rests on two claims, (S') and (3'). One can thus respond to it by trying to undermine each individually, or by turning against the combination of (S') and (3'). My argument is of the latter sort.¹⁰⁰ Relying on a strategy employed by Parfit, I argue that solving the non-identity problem by endorsing (S') and (3') comes at the cost of inviting a version of the repugnant conclusion. More precisely, combining (S') and (3') with either the priority view or the principle of strict priority requires that we prefer a distribution in which a greater number of individuals exist at a level barely worth living to a situation in which a smaller number of people enjoy significantly better lives. Consider a scenario, where A to Z stand for different distributions, each column stands for 1000 people, and the height of each column represents the respective quality of life:

¹⁰⁰ Larry Temkin (2003b, p. 21ff.) offers an alternative response to Holtug's argument and claims that the proposed revised version of the "slogan" is at odds with the reasoning that originally motivates the "slogan." He believes that (S') is less attractive than (S).

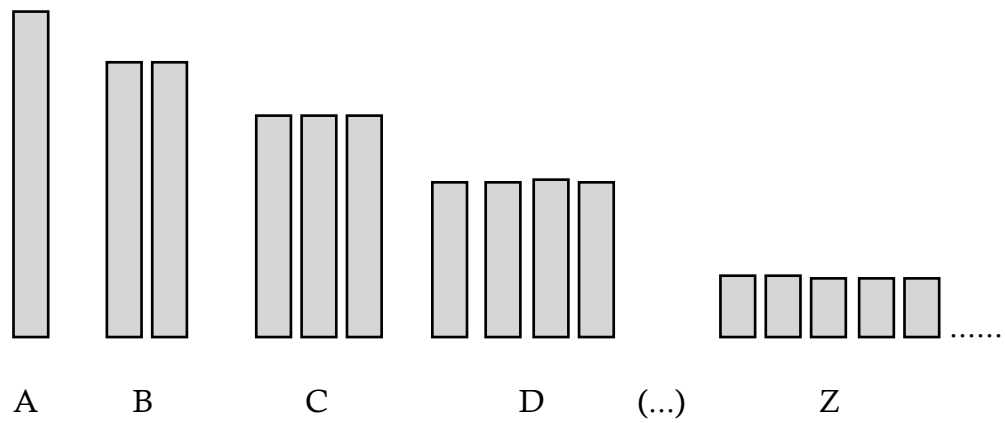


Fig.2

If one believes in (3') and accept that existence can be better than nonexistence, one will think that the additional 1000 people who exist in B but not in A are better off in B. Likewise, you will think that the additional 1000 people who exist in C but not in B are better off in C, and so on. If one embraces (S'), one will also believe that there may be a respect in which A is worse than B, a respect in which B is worse than C, and so forth. Derek Parfit argues that a standard maximizing version of utilitarianism, which he calls the "impersonal total principle" (Parfit 1984, p.387), falls victim to the repugnant conclusion objection because it would tell us to choose Z. Provided that the number of people in Z is large enough, the impersonal total principle tells us that a situation is better than any alternative, "even though its members have lives that are barely worth living" (Parfit 1984, p.388).

I believe that the priority view falls victim to a very similar objection.¹⁰¹ If it is true that coming into existence confers a benefit and that those who exist are better off than those who do not exist, then the prioritarian belief that benefiting people matters more the worse off these people are, gives one a strong reason to prefer B to A, C to B etc. The priority view, it appears, falls victim to a variant of the repugnant conclusion:

¹⁰¹ Ingmar Persson (2001, p.34, fn 14) formulates an objection very similar to the one I develop here.

Repugnant Conclusion': In combination with (3') and (S'), the priority view implies that for "any population with a high quality of life, there must be a much larger imaginable population whose existence, if other things are equal, would be better, even though its members only have lives barely worth living" (Parfit 1984, p.388).

Advocates of the priority view may respond that their preferred principle only gives them a pro tanto reason to prefer B to A, while the absolute size of the loss to the people in A is sufficiently large to prefer A to B all things considered. However, I believe that such a response will be unsuccessful. Prioritarians will have to believe that the greater the number of the badly-off people potentially to be benefitted, the greater the reason to benefit the badly-off. There will thus be a version of the scenario sketched above, where the number of additional people in each subsequent scenario is sufficient to deliver a decisive reason in its favour.

Advocates of strict priority face a similar predicament. The exact nature of this predicament depends on how exactly one conceives of their commitment. However, the options appear equally unattractive. Firstly, choosing between situation A and situation B, the strict prioritarian seems committed to the view that B is better than A. The complaint that those who would only exist in B would have against choosing A is stronger than the complaint those better off in A than in B would have against choosing B.¹⁰² Secondly, the strict prioritarian may respond that it is not true that B is better than A because the position of the worst-off individual

¹⁰² Provided, of course, that speaking of complaints when questions of (non-)existence are at stake makes sense in the first place.

remains the same whatever we choose. If we believe in (3'), then the worst-off are those who do not exist and these are infinitely many. This response, however, gives rise to an equally problematic conclusion, namely that one ought to be indifferent between the distributions A to Z. The strict prioritarian faces the choice between two variants of the repugnant conclusion:

Repugnant conclusion": In combination with (3') and (S'), the strict priority view implies that for "any population with a high quality of life, there must be a much larger imaginable population whose existence, if other things are equal, would be better, even though its members only have lives barely worth living" (Parfit 1984, p.388).

Repugnant conclusion": In combination with (3') and (S'), the strict priority view implies that for any population with a high quality of life, there must be a much larger imaginable population whose existence, if other things are equal, would not be worse, even though its members only have lives barely worth living.

Avoiding the non-identity objection to the "slogan" by embracing a modified version of person-affectingness in combination with the claim that coming into existence can confer a benefit comes at significant costs. In part, these costs are due to the present argumentative context. It may be open to some philosophers to

respond to the non-identity objection by embracing (S') and (3').¹⁰³ However, this rebuttal of the objection is not to be had if you are an advocate of either the priority view or the principle of strict priority. Because the point of my present argument is to develop considerations that may speak for or against these principles vis-a-vis the principle of equality, the repugnant conclusion is in fact significant. If advocates of either principle of priority can only respond to an objection (the non-identity objection) to a principle (the "slogan") which vindicates an objection (the levelling down objection) to a rival principle (the principle of equality) by inviting a new objection (the repugnant conclusion) to their own principle, then nothing is won.

2.4 To solve the trilemma is to vindicate the principle of equality

If my arguments are correct, the "no coherent interpretation" objection and the non-identity objection defeat the "slogan". Two further considerations may move those not yet convinced. Firstly, the trilemma gives us a reason to give up one of the three: The condition of person-affectingness, the separateness of persons requirement, or sensitivity to numbers. Secondly, there are no apparent reasons that speak in favor of giving up any of the latter two conditions. The distinction between different individuals is of undeniable significance and the number of people affected clearly matters for which outcome one ought to choose. Jointly, these two considerations should tip the balance in cases where there is a stand-off between advocates of the "slogan" and its opponents, i.e., where we neither have conclusive reasons for or against it. We ought to solve the trilemma of pure distributive ethics by giving up on the condition of person-affectingness. Doing so vindicates the

¹⁰³ For a defense of the claim that egalitarians could embrace (S') and (3') without encountering these problems, see Persson (2001, p.34 ff.).

principle of equality against its two main rivals. The levelling down objection to equality is less powerful than the separateness of persons objection to the priority view or the numbers objection to strict priority. This observation concludes my first argument in support of the principle of equality.

3. A second argument for the principle of equality

3.1 Pluralist responses

The considered convictions invoked to determine which option to pursue in particular cases have operated on the level of all things considered judgements and targeted pure versions of the respective distributive view.¹⁰⁴ Note that advocates of the respective view can avoid these particular objections by becoming pluralist. Instead of abandoning her view, the pluralist may simply supplement her original distributive commitment. The advocate of the principle of equality who points out that she also believes in the principle of utility can explain why the pill ought to be given to her better-off child: Considerations of utility outweigh considerations of equality. And a pluralist version of the priority view could appeal to the intrinsic significance of equality, or the significance of achieving a unanimously acceptable distribution, to account for the shift that occurs when moving from the one-person case to the two-person case.

My second argument for the principle of equality supports the claim that, insofar as the three distributive principles presently considered are concerned, any plausible pluralist position will have to rely on the principle of equality. The argument rests on two observations. First: The pluralist response strategy fails to solve the numbers problem which the contractualist commitment to strict priority

¹⁰⁴ These are cases (1) to (3) discussed in chapters 1 and 2 of my thesis.

falls victim to. The contractualist framework does not lend itself to pluralistically trading off different principles and values against one another. Second: To account for our considered convictions across a wide range of cases, one will have to invoke a combination of either the principle of utility and the principle of equality, or the principle of equality and the priority view. Either way, the principle of equality is part of the truth about how burdens and benefits ought to be distributed among individuals.

3.2 Nagel's contractualist pluralism

Nagel recognizes that the numbers objection presents the method of pairwise comparison and the principle of strict priority with a serious problem. On the one hand, he fears that a theory insensitive to numbers would "not provide the foundation for a correct egalitarian theory" (Nagel 1979b, p.125). On the other hand, he understands that a contractualist theory cannot be sensitive to numbers, for "if egalitarian urgency is itself sensitive to numbers (...), it does not seem that any form of unanimity criterion could explain the foundation of the view" (Nagel 1979b, p.125). If a sound distributive theory will have to accommodate our judgement that the number of people affected matters for the outcome to be chosen, while sensitivity to numbers cannot be part of the egalitarian or prioritarian concern, the only available option appears to endorse a pluralist theory. Nagel believes that his contractualist commitment can deliver the right intuitive judgements in cases involving numbers when combined with other values and considerations. He says, for example: "But if the choice is between preventing severe hardship for some who are very poor and deprived, and preventing less severe but still substantial hardship for those who are better off but still struggling

for subsistence, then it is very difficult for me to believe that the numbers do not count (...). It might be suggested that this is a case where equality is outweighed by utility” (Nagel 1979b, p.125). The concern of satisfying the separateness of persons requirement through a notion of individualized impartiality and acceptability of distributions to each which underpin Nagel's individualist conception of equality should (at least sometimes) be balanced against aggregative concerns of benefiting the greater number.

Giving “independent weight to aggregative considerations that are sensitive to the numbers of people” (Otsuka and Voorhoeve 2009, p.185 fn 22) would allow Nagel to escape the numbers objection in all of its three dimensions. Where the fact that one's child suffers from a mild hay fever would require a move to the city on the method of pairwise comparison, aggregative considerations allow pursuing the course of action that would create significant benefits for the other nine children. Similar considerations render the option of heading south to rescue 50 individuals permissible in the rescue case. The requirements of individual acceptability, which would demand that everybody be given a one in two chance of being rescued, are outweighed by considerations of utility. And finally, aggregative considerations would allow breaking the choice-defeating cycle of Otsuka's pill allocation case. Assuming that a greater number of weaker claims can outweigh a smaller number of stronger claims, one could opt for the distribution in which three individuals have the use of both arms restored.

However, I believe that this pluralist response strategy is not open to contractualists like Nagel. Contractualism does not lend itself to pluralistically trading off individualist and non-individualist principles against one another. Two arguments support this claim. Firstly, allowing that individualist principles be

balanced against non-individualist principles presents the contractualist with a coherency problem. Secondly, the pluralist solution invites a new set of problematic cases, which the contractualist is ill equipped to deal with.

3.3. Two arguments against contractualist pluralism

3.3.1 The coherency objection

My first objection to Nagel's attempt at pluralistically combining the individualist method of pairwise comparison with other non-individualist considerations raises a concern about coherency: I believe that the reasons in support of pairwise comparison cannot coherently be balanced against aggregative concerns. The intuitive idea behind the objection is this: If there is a good reason to prefer pairwise comparison to an aggregative method of combining individual claims, such as utilitarianism, then this reason rules out appeal to aggregative concerns altogether. Formulating the objection proceeds in three simple steps. The first step briefly explains Nagel's reasoning in support of pairwise comparison, drawing on the idea of acceptability from each point of view. The second step explains how the requirement of acceptability to each is both binary, i.e., it is either satisfied or not satisfied, and will have to be satisfied all things considered to be satisfied at all. The third step shows how the nature of the reasons in support of pairwise comparison rule out a pluralistic appeal to aggregation as incoherent.

First step: The significance of pairwise comparison, according to Nagel, should be understood in terms of two very fundamental observations.¹⁰⁵ Firstly: An impersonal or impartial point of view, from the perspective of which everybody matters equally, is an irreducible element of our moral reasoning. This standpoint serves as the “source of other regarding moral reasons” (Nagel 1979b, p.126) and its suppression would be a “denial of our full humanity” (Nagel 1991, p.20). Secondly: Because persons are distinct and separate, our impartial concern ought to be fragmented and individualized: “It includes a separate concern for each person, and it is realised by looking at the world from each person’s point of view separately and individually” (Nagel 1979b, p.127). Jointly these two observations deliver the method of individual pairwise comparison. Not to demand that an allocation of burdens and benefits be acceptable from each individual point of view would be to deny an ineliminable element of our moral reasoning and a failure to take seriously the individualized nature of the impartial concern. The requirement of acceptability to each, which arises from the nature of moral reasoning as putting

¹⁰⁵ Nagel develops the reasoning underpinning the method of pairwise comparison at various places. The philosophically most ambitious grounding is offered in the final pages of *The Possibility of Altruism*, where Nagel argues that the criterion of acceptability to each and the method of pairwise comparison are implied by the nature of altruistic reasons. If there are to be altruistic reasons, then pairwise comparison etc. will have to be true.

oneself into the shoes of others, requires that we solve distributive conflicts by pairwise comparison.¹⁰⁶

Second step: Any pluralist view will distinguish between two levels. On the one hand, there is the level of *pro tanto* reasons or precepts. On the other hand, there is the level of all things considered judgements. Some moral reasons can be exhausted on the level of precepts. The requirement that a benefit to the worse-off should matter more may be satisfied even if all things considered one decides not to benefit the worse-off. The requirement of acceptability to each, however, is not of that kind. It does not make sense to say that a distribution which is not acceptable from each individual's point of view may still respect the requirement that distributions be acceptable to each. The requirements that underpin pairwise comparison, it seems, will have to be satisfied all things considered to be satisfied at all. The fact that acceptability is a binary property may be part of the reason why this is so. Either a distribution is acceptable from each point of view (or most acceptable to those it is least acceptable to), or it is not. The requirement of acceptability to each seems akin to Jewish rules for preparing food: One cannot argue that one ought to eat kosher, take some kosher ingredients, then add some non-kosher ingredients, and recommend the result as a kosher dish. Just like certain dietary laws, the requirement of universal acceptability can only be satisfied all things considered, and it either is satisfied or it is not.

¹⁰⁶ One may think that the problems discussed in this section would be more troubling for Scanlon's more ambitious version of contractualism. However, if one takes Nagel's deep grounding of the unanimity criterion seriously, it is not obviously clear that Nagel's commitment to individualist principles is somehow less strict or fundamental. For an explanation of the costs a contractualist would incur by abandoning the acceptability to each condition, see Otsuka's (2006) discussion of Scanlon.

Third step: The numbers objection presents contractualist egalitarians with a case where the method of pairwise comparison requires that we choose the option which benefits the worst-off, where in fact we should choose an alternative option that would benefit a greater number of people. If my arguments in chapter 2 are correct, the contractualist egalitarian cannot generate a concern for numbers from within his individualist approach and will have to pluralistically appeal to aggregative concerns, such as the principle of utility. This appeal, however, presents pluralist contractualist egalitarians with the following problem: Allowing for aggregative considerations all things considered undermines the original case for pairwise comparison. Given that the requirement of universal acceptability can only be satisfied all things considered, the contractualist egalitarian will have to choose between either supporting the method of pairwise comparison by invoking the notion of universal acceptability, or opting for the distribution that would benefit the greater number. Trying to achieve both, Nagel would have to answer the question of whether or not his pluralist principle incorporating an aggregative component satisfies the acceptability to each requirement. To this question, he does not have a good answer: If he maintained that a principle which because it aggregates individual claims would prefer outcomes that benefit the greater number, would still be acceptable from the point of view of each, considerations of universal acceptability would fail to support pairwise comparison. But if he admitted that his pluralist method fails the requirement of universal acceptability, the contractualist egalitarian could not coherently invoke that requirement against the utilitarian aggregator, for he would be in the same boat in violating it. One cannot coherently (a) argue that the criterion of individual acceptability requires that conflicts between reasons to benefit people be settled by the method of pairwise comparison, (b) refer

to this claim in establishing pairwise comparison against the rival method of aggregation, and (c) embrace aggregation to justify benefiting the greater number.

3.3.2 The problematic cases objection

My second worry about the pluralist solution concerns a further set of problematic cases that the pluralist solution fails to adequately deal with. Making room for aggregative concerns leaves a distributive view vulnerable to the objection that it may recommend the dreaded conclusion, namely that one ought to save a great number of people from a minor harm, instead of saving a single individual from one very significant harm. I shall firstly motivate my objection by reference to a familiar case. Secondly, I will argue that various attempts to avoid the objection, as for example advocated by Parfit (2003) and Kamm (2007, p.297 ff.), fail.

If one believes that aggregative concerns can outweigh the demands of pairwise comparison and acceptability to each, the spectres of the cases that originally motivated a contractualist and individualist approach begin to haunt again. Scanlon and Taurek discuss cases where one thinks that a minor bad for a great number of people does not outweigh a significant bad for a single individual, regardless of the number of people suffering the minor bad. It seems that any view sensitive to aggregative number concerns will have trouble in accommodating our judgement in these cases. Consider Scanlon's (1998, p.235) famous example of the transmitter room:¹⁰⁷

¹⁰⁷ John Taurek (1977) discusses structurally similar cases, where the minor harms at stake are individual headaches.

Case (7): Suppose the World Cup final in football is going on and technician Jones suffers an accident in the television transmitter room. We could interrupt the transmission to remove the equipment that has fallen on Jones' arm. Doing so would spare Jones from severe pain but frustrate the preferences of millions of people watching the match. What shall one do?

I believe that regardless of the number of people watching, one should interrupt the transmission and rescue Jones.¹⁰⁸ It seems, however, that for anybody who allows for benefits and burdens to be added across different people, even if only pluralistically on the level of all things considered verdicts, there will have to be a point at which the number of individuals suffering a minor bad becomes sufficiently large to outweigh the claim of the single individual. Nagel's number sensitive pluralism may fail to accommodate our judgement that even if five billion people are watching, we ought to rescue Jones.

In response to this objection, Nagel could appeal to what Parfit calls the close-enough view.¹⁰⁹ For burdens and benefits to be weighed against each other in an aggregative calculus, they have to be close-enough to one another. For example: "Suppose that, for two benefits to be close-enough, the lesser benefit must be at least a tenth as great" (Parfit 2003, p.384). Arguing that the benefit of watching the football match is less than a tenth as great as being spared severe pain, the

¹⁰⁸ Some may argue that this depends on who is playing. I am not convinced.

¹⁰⁹ The passages where Nagel discusses the option of pluralism suggest that it is something like the close-enough view that he has in mind.

conclusion, according to which it is permissible not to rescue Jones, could be avoided. Unfortunately, applying the close-enough view is not always as straightforward as that. Assume that firstly, the harm of an individual death is close enough to that of suffering from quadriplegia, such that one person's death is not as bad as ten people suffering from quadriplegia; that secondly suffering from paraplegia is close enough to quadriplegia, such that one person suffering from quadriplegia is not as bad as ten people suffering from paraplegia; and that thirdly, one endorses a simple common sense version of aggregation. Against the background of these assumptions, consider another case:¹¹⁰

Case (8): Suppose one is faced with three options. One could (a) save one person from death, (b) save 10 people from quadriplegia, or (c) save 100 from paraplegia. What should one do?

Case (8) presents advocates of the close-enough view with two apparently unattractive options. On the one hand, they could argue that because of the numbers involved, and because of the fact that (a) is close enough to (b), and (b) is close enough to (c), one should opt for the latter and save 100 people from paraplegia. However, choosing (c) may not only be counterintuitive in its own right, but the reasoning underpinning this choice would give rise to what Kamm calls the downward spiral, delivering the non-consequentialist to the dreaded conclusion: If for fate (a) there is some close enough and less bad fate (b) such that we should save the greater number from (b), while the same is true of (c), (d), (e) and so on, we

¹¹⁰ Derek Parfit discusses a structurally similar case dealing with the question of whose lives to extend and involving an individual called Black, c.f. Parfit (2003, p.384).

cannot avoid "the dreaded conclusion that enormous numbers of people, each of whom has only a headache, should be saved from their headaches rather than save one person (to a long life) who faces death" (Kamm 2007, p.485). On the other hand, advocates of the close-enough view could avoid the downward spiral and argue that even though (b) is better than (a), and (c) is better than (b), it is not true that (c) is better than (a). Unfortunately, this way of avoiding the downward spiral violates two conditions which many people think should not be violated, i.e., the conditions of transitivity and the independence of irrelevant alternatives.

Kamm pursues the latter option and argues that in cases like the one at hand, "qualitative considerations constrain the quantitative ones" (Kamm 2007, p. 298). There are qualitative features to a case of distributive conflict, which "have a veto over the quantitative dimension" (Kamm 2007, p.485) and explain why even though (b) should be preferred to (a), and (c) should be preferred to (b), one still should not prefer (c) to (a). Choosing between (a), (b), and (c), the relevant "qualitative dimension" is that of respect. Kamm argues that it is disrespectful to a person to "attend to paraplegics who will lose much less than he, rather than save his life, but not disrespectful to him to save many who would suffer the much worse condition of quadriplegia" (Kamm 2007, p.298). The context of available options matters for whether or not one option is to be preferred to another. If the question is merely that of either rescuing ten people from quadriplegia, or 100 from paraplegia, the latter is to be preferred to the former. If, however, one could also rescue one person from death, rescuing the paraplegics would be disrespectful to the one person and one ought to save the quadriplegics. When somebody one could save from death is present, "one may go so far as save the quadriplegics but no further" (Kamm 2007, p.298). Is Kamm's way of avoiding the downward spiral and

the dreaded conclusion successful? There are two reasons why I believe it is not.

Before turning to the costs involved in giving up on requirements such as transitivity and the independence of irrelevant alternatives (in short: IIA), I shall discuss some of the difficulties involved in granting qualitative considerations a veto over quantitative ones. Kamm believes that while it may be permissible to let person (a) suffer a great harm, e.g., to let that person die, in order to save more people (b) from a slightly lesser harm, e.g., cure 10 quadriplegics, person (a) has a respect-grounded veto against rescuing an even greater number of people further down the spiral, say people (k), from a significantly lesser harm. A first question that arises is this: Where exactly should the veto apply? Roughly identifying the range of the veto may be relatively easy. But should the veto apply between (k) and (l), between (l) and (m), or between (m) and (n)? And if it applies, say between (l) and (m), why exactly is rescuing (m) disrespectful of (a) but saving (l) is not? As the differences between each step on the downward spiral become smaller and smaller, as in many cases they will do, coming up with convincing answers to these questions becomes increasingly difficult. But let us assume that these questions can be answered and advocates of qualitative vetoes succeed in coming up with an independently plausible and principled reason why the veto should apply between (l) and (m). I believe that Kamm would still be vulnerable to a serious objection: Putting the veto anywhere on the downward spiral will give rise to a new and equally serious respect complaint. If (a)'s veto applies between (l) and (m), we ought to rescue (l), even though we could have rescued a significantly greater number of people (m) who still

suffer from a very serious harm.¹¹¹ These (m) people, it seems, would have a respect-grounded complaint against choosing (l) over (m): "In rescuing a much smaller number of people from a harm that is only slightly less bad than ours, you fail to adequately acknowledge the presence of additional people who could be spared serious harms." When preventing 100 people from losing two legs, the 1000 people losing one leg could complain that they are treated disrespectfully. In fact, 900 people could mount a complaint on grounds invoked by Kamm in a different argumentative context, namely that because their presence does not make a difference, they are denied equal significance.¹¹² It is not clear then, to say the least, why the respect complaint that (a) has against rescuing 1000 (m) people, should be granted the status of a veto and override the respect complaint that 1000 (m) people have against saving 100 (l) people. Kamm's first problem then is this: Even if it is plausible to assume that qualitative considerations constrain quantitative ones, it is not clear that they do so in the way she imagines.

A second reason that speaks against Kamm's approach arises from the fact that it violates the requirements of transitivity and (IIA). I shall focus on the independence of irrelevant alternatives.¹¹³ There are (at least) two types of considerations that speak against violating this condition: A rationality consideration and a normative consideration. Considerations of rationality are

¹¹¹ Assuming that the steps on the downward spiral are small steps, and given that the veto applies between two such steps, it is implausible to assume that one would move from a significant harm to an insignificant harm.

¹¹² Kamm (1993, p.101 and 114-119) relies on this argument when turning against Taurek's coin tossing solution to the original numbers problem.

¹¹³ The question of transitivity has extensively been discussed in the literature, e.g. by Larry Temkin (1987, 1996), and my arguments here support my earlier response to Hsieh et al.

these: Some claim that it is irrational to violate the independence of irrelevant alternatives condition.¹¹⁴ If one prefers option (c) to option (b), that order of preference should not, as a matter of rationality, be inverted simply because some independent alternative (a) becomes (un)available. Kamm challenges this position and maintains that there may be a good reason for altering the ranking of (b) and (c) when (a) becomes available. For example, one may choose (b) rather than (c) when (a) becomes available, because choosing (c) would be disrespectful to those who are harmed by not choosing (a), whereas choosing (b) would not have that effect. However, I believe that the scope of Kamm's argument is limited. Firstly, the reasons which work as required are intricate and only apply under exceptional circumstances: The act of choosing one option (c) in light of a particular alternative (a) has a qualitative property, which renders the choice of (c) impermissible, even though choosing (c) would be required if alternative (a) was unavailable. Importantly, the choice of a very similar option (b) does not have that qualitative property. It is not at all clear that all problematic instances of the downward spiral exhibit this feature. One may, for example, imagine a case where possession of the relevant qualitative property, e.g., being disrespectful to those in (a), does not distinguish (c) from (b) because they both possess it, while such possession is not sufficient for impermissibility. One could plausibly think that one should let one person die and rescue 10 from some other condition, even though doing so would be disrespectful to the dying person. While there sometimes may be a good reason

¹¹⁴ Frances Kamm attributes this claim to Sidney Morgenbesser, who uses examples of the following kind: Imagine that the waiter in a restaurant asks what you would like for desert and offers chocolate fudge or fruit salad. You choose fruit salad. A minute later the waiter returns and says that he forgot to mention that there also is ice cream. It would be irrational to respond that in this case you will have chocolate fudge.

to avoid a downward spiral by violating the independence of irrelevant alternatives condition, it is not clear that there always is. And if there is not, violating the condition seems to remain irrational.¹¹⁵ Secondly, Kamm's respect response presupposes that what is at stake is the performance of an action. The qualitative property of being "disrespectful" is a property of an individual's action. Consequently, Kamm's response will not apply in cases where we are to rank distributions that have emerged naturally, that is, without the involvement of human agency. Would it be better if things turn out such that one person dies but ten are saved from quadriplegia? When merely ranking distributions, or dealing with natural distributions, Kamm's respect-grounded veto cannot apply. Altering one's ranking of distributions simply because a new dominated alternative becomes (un)available still appears irrational.

Violating the independence of irrelevant alternatives requirement also gives rise to a normative concern: Cases where people exploit the fact that the (un)availability of an independent alternative may matter in the instance of whom to rescue raise difficult questions.¹¹⁶ As long as we do not know how to answer these questions, we should maintain (IIA). Imagine that you are a flying doctor in the Australian Outback. While you are at ranch C, three things happen. Firstly, it turns out that through drinking polluted water, the 100 people living on ranch C have contracted a disease, which, if untreated, will cause them to suffer from paraplegia. Secondly, you receive a call that on the neighbouring ranch B, 10 people have been

¹¹⁵ Maybe one should think of (IIA) as a pro tanto or defeasible rationality requirement. Kamm's argument does not show that it sometimes may not be irrational to violate (IIA). The conclusion of Kamm's argument, viz. that it sometimes may not be irrational to violate the condition, does not undermine the assumption that absent such reason it is.

¹¹⁶ Kamm briefly mentions such a possibility but does not discuss its normative implications.

bitten by a venomous snake and if untreated they will all become quadriplegics.

Thirdly, you find out that on far away ranch A, somebody has suffered a stroke and unless treated will die within the next 30 minutes. Because of time constraints, you could only do one of three things. You could stay at ranch C and treat the 100 people there, you could walk over to ranch B and treat 10 people there, or you could fly out to ranch A in order to treat the person with the stroke. You have read your Kamm and figure that because saving 100 people from paraplegia would be disrespectful to the person with the stroke, you ought to walk over to ranch B and rescue 10 people from quadriplegia. Unfortunately, the people on ranch C have also read their Kamm, they know that you have too, so they figure that you will leave them to become paraplegics and they come up with a simple way of rescuing themselves: While you are still thinking through your various options, they begin to temporarily disable the runway that you would have to use for landing and take-off with your plane. The runway belongs to the people on ranch C and they disable it by driving their sheep on the runway, which also are their rightful property. With the runway being unusable after a couple of minutes, the option of rescuing the single individual on ranch A has become unavailable, it would not be disrespectful anymore to save 100 people from paraplegia and you now think that instead of walking over to ranch B, you are required to stay at ranch C. But are you really? It seems that there is something wrong with engineering one's own rescue by eliminating a reason that would have been decisive for rescuing someone else.

Unfortunately, it is not at all clear how to account for this intuition. The people on C have not harmed the person living at ranch A, for that person would not have been rescued anyways. It would also be weird to say that the people on C had a duty not to disable their runway. They may have such a duty if the runway was

needed for the doctor to discharge a rescue duty, however, it was not. Could we then say that the people on ranch C have wronged the people on ranch B? The following principle would render C's action wrong: Do not act with the intention of altering somebody else's reasons such that what is required of that person after your act would benefit you at the cost of somebody else. Unfortunately, one cannot rely on this principle, as it would condemn any effort at consciously improving your performance in a respect relevant to the allocation of a scarce good, such as your effort to give up alcohol and cigarettes in order to move up on the NHS list of priority for donated organ reception. Violating the independence of irrelevant alternatives requirement then gives rise to a simple problem: If we relax the requirement as suggested by Kamm, there may be cases where people exploit the fact that the (un)availability of an independent alternative may matter for whom to rescue. It seems that such exploitation is wrong; however, there is no good way of explaining why it is. Unless somebody either offers a good reason for abandoning the wrongness intuition, or comes up with a good way of accounting for it, one ought to maintain the independence of irrelevant alternatives requirement.

To sum up: A pluralist position combining individualist principles with aggregative concerns will encounter problematic cases such as Scanlon's transmitter room. Appealing to Parfit's close-enough view in order to avoid this problem, one will either encounter what Kamm calls the downward spiral, or one will have to give up on the requirements of transitivity and the independence of irrelevant alternatives. Focusing on the latter, I have shown that Kamm's response to the downward spiral suffers from significant shortcomings. As long as there is no better way of dealing with the problematic cases, one ought to stay away from pluralist contractualism.

3.4 Why the principle of equality is part of the truth

If the contractualist commitment to strict priority cannot be combined with non-individualist principles, how shall one explain one's considered convictions in cases (1) to (3) that originally gave rise to the various objections? It seems that the principle of equality will inevitably play a role in covering the fixed points of our normative reasoning in these cases. All the important all things considered judgments can be entertained by a view comprising the principle of equality, and some of them can only be entertained if the principle of equality is part of the picture. Combining the principle of equality with the principle of utility addresses the challenge that originally befell each principle: We move to the city in case (2) because considerations of equality outweigh considerations of utility. In case (1) the opposite is true and we give the pill to the child suffering from the mild headache. Addressing the separateness of persons objection, the priority view may be combined with the principle of equality, delivering the view according to which the intrinsic badness of equality explains the shift in judgement that takes place when moving from case (2) to case (2*).

There remains an open question: Shall one cover one's considered convictions by combining the principle of equality and the principle of utility, or by running together the principle of equality and the principle of priority? The case-based judgements are indeterminate in this respect, and eventually, one's answer will depend on whether one finds the priority view independently plausible. I shall presently remain agnostic on this question but observe that either way, i.e., regardless of whether one is a utilitarian or a prioritarian, one cannot avoid invoking the principle of equality to arrive at the correct list of all things considered judgements. This concludes my second argument for the principle of equality.

4. Conclusion

I have presented two arguments in support of the principle of equality. The first argument concerned pure distributive principles and came in three steps. I have argued that (a) there is a trilemma of pure distributive ethics (b) that ought to be resolved by giving up on the condition of person-affectingness, (c) which leaves the principle of equality with a comparative advantage over its rivals. The second argument concerned all things considered judgements about particular distributive scenarios and ran together two claims. I have argued that because (d) a contractualist commitment to strict priority does not lend itself to pluralist trade-offs, (e) any pluralist distributive principle doing justice to our considered convictions across a wide range of cases will have to invoke the principle of equality. Considerations (a) to (e), I believe, strongly support the principle of equality.

CHAPTER 4

Framing, reciprocity and the grounds of egalitarian justice

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CHAPTER 5

Equality and the significance of coercion ¹¹⁷

1. Preliminary remarks

Some political philosophers believe that equality emerges as a moral concern where and because people coerce each other. I shall argue that they are wrong. The idea of coercion as a trigger of equality is neither as plausible nor as powerful as it may initially appear. Those who rely on the idea that coercion is among the conditions that give rise to equality as a moral demand face a threefold challenge. They will have to succeed in jointly (a) offering a convincing account of the wrongness of coercion, (b) rendering cogent the idea that the demand of equality arises in response to the moral problem of coercion, and (c) identifying some types of interaction as relevantly coercive. This challenge, I believe, cannot be met. More precisely, I argue that two main accounts of coercion fail to meet it.

Section 2 explains why the idea of coercion as a trigger of equality appears both initially powerful and plausible. Section 3 outlines the difficulties that arise when trying to account for coercion and explain its wrongness. Section 4 discusses an account of coercion which explains its wrongness primarily in terms of the effects it has on the options of the victim. Advocates of this account believe that coercion is wrong because it leaves the victims of coercion worse off than they otherwise would have been. I argue that no familiar version of such a baseline account succeeds in meeting the threefold challenge (a) to (c). Section 5 proceeds likewise with a different account of coercion, which explains its wrongness in terms

¹¹⁷ An earlier version of this paper has been presented at a workshop of the "SFB 700: Governance in Regimes of limited Statehood" at the Free University Berlin. I am grateful to the audience for very helpful comments, especially to Bernd Ladwig and Cord Schmelzle.

of the coercer's intentions. Advocates of this account believe that coercion is wrong because to coerce somebody is to treat that person merely as a means. I argue that such a non-baseline account fails to convincingly explain the wrongness of coercion and does not succeed in rendering plausible the claim that a concern for equality arises in response to it. Section 6 concludes my argument.

2. The idea of coercion as a trigger of equality

A line of reasoning comprising three steps renders the idea of coercion as a trigger of equality initially plausible and powerful. I believe that this line of reasoning underpins the position of different philosophers who believe in the idea of coercion as trigger of equality, including Blake (2001), Nagel (2005), Julius (2006) and Rawls.¹¹⁸ The first two steps render the claim that coercion gives rise to egalitarian distributive justice plausible by arguing that principles of distributive equality justify what would otherwise be wrongful instances of coercion. The third one explains how the idea is powerful and significant, for example because it provides liberal egalitarians with an explanation for why obligations of justice within states are different from those that apply across them.

First: One is inclined to believe that coercion requires a special kind of justification. If one individual coerces another one, or if several individuals mutually coerce each other, they will have to justify their acts or schemes of coercion so as not to wrong each other. As argued by Michael Blake, "coercive acts and practices are *prima facie* prohibited" and "stand in need of justification" (Blake 2001, p.272). Coercion is *pro tanto* wrong and imposes a justificatory burden,

¹¹⁸ Michael Blake argues that (especially the later) Rawls should be seen as offering the difference principle to justify coercive state power, c.f. Blake (2001, p.285 ff.).

which gives rise to particularly strong demands on what individuals owe to each other. Unless justified, coercion is wrong.

Second: Even though unjustified coercion is wrong, coercion can be all things considered morally justified. As noted by Blake, "a question arises about the appropriate forms of justification, by which an otherwise impermissible invasion of autonomy might be legitimated" (Blake 2001, p.273). Consent by the victim is a familiar candidate for rendering the exercise of coercion legitimate. However, as argued by all proponents of the idea that coercion triggers equality, principles of egalitarian distributive justice may also justify coercion and thus render it all things considered legitimate. Relying on the idea that coercion would be justified if all those affected could consent to the distribution of burdens and benefits it mandates, and assuming that a distribution is acceptable if it is most acceptable to those it is least acceptable to, delivers principles of egalitarian distributive justice, such as the difference principle: "The real purpose of the difference principle is to justify coercion to all those coerced, including the least advantaged" (Blake 2001, p.283). There are minor variations between different accounts of how exactly coercion gives rise to equality, and disagreement on precisely what egalitarian principle is triggered. The central idea, however, is the same. The idea of coercion as a trigger of equality appears plausible because we are inclined to believe that coercion requires a special kind of justification, which may be provided through a particular distribution of burdens and benefits between those who coerce each other. Distributive equality rights the wrong of coercion.

Third: This idea is powerful because it provides a solution to two puzzles that trouble liberal egalitarians of a Rawlsian vintage. The first puzzle concerns an explanation for why the basic structure of society, rather than say decisions of

individuals within that structure, is the primary subject of distributive justice.¹¹⁹ If the basic structure of society, maybe understood as a society's legal system, because of its particular coerciveness raises a special moral problem, to which egalitarian distributive justice provides the answer, the objection that focusing on the basic structure as the primary site of justice is arbitrary would miss its target. The second puzzle concerns the question why principles of distributive justice that apply domestically are different from those that apply internationally. If other regarding reasons take on a distributive and egalitarian form only among individuals who coerce each other (in particular ways), while the relevant coercion only takes place within particular institutions, for example within states, there is a strong reason to believe that the scope of egalitarian justice is limited to those who participate in the relevant coercive scheme, for example to co-citizens of a state. The idea that coercion triggers equality can be employed to "defend principles of sufficiency abroad and principles of equality at home" (Blake 2001, p.258).

Controversy surrounding the idea of coercion as a trigger of equality has focused on the third step, asking which type of institution or interaction qualifies as relevantly coercive.¹²⁰ This chapter raises a more fundamental question: Is it plausible to believe that egalitarian distributive justice arises in response to the moral wrong of coercion? I shall argue that it is not. Michael Blake admits that he will "refrain from offering a complete theory of coercion" (Blake 2001, p.272). And

¹¹⁹ For the "basic structure objection", see Cohen (2000, chapters 8 and 9).

¹²⁰ Arguing that coercion can come as a matter of degree, and that there is coercion beyond the state, Cohen and Sabel (2006) have, for example, argued that the scope of equality should not be limited to the nation state. For a similar objection, see Armstrong (2009). A second debate about relevantly coercive institutions concerns the question whether state borders are coercive. Arash Abizadeh (2008, 2009) argues that border regimes are coercive, David Miller (2009) argues that they are not.

indeed, he has a good reason for doing so. Once one attempts to offer a theory of coercion, the difficulty of jointly offering a convincing account of the wrongness of coercion, rendering cogent the idea that the demand of equality arises in response to the moral problem of coercion and identifying some types of interaction as relevantly coercive, become apparent.

3. What is coercion? And what is wrong with it?

Specific claims about the conditions that an act or agent would have to satisfy to count as coercive will be controversial.¹²¹ Disagreement on answers to at least two questions is feeding such controversy.¹²² What is coercion and how does it differ from other acts that aim at altering other people's behaviour?¹²³ What, if anything, is wrong with coercion? A simple observation complicates things: It seems impossible to answer one of the two questions without presupposing an answer to the other.¹²⁴ To account for the wrongness of coercion, one will have to know what coercion is, which in turn will depend on whether one classifies certain acts as coercive. But depending on what one thinks is wrong with coercion, one will pick

¹²¹ Contemporary debate on the necessary and sufficient conditions of coercion has been triggered by Robert Nozick (1969). For a summary of contributions to this debate, see Scott Anderson (2009).

¹²² William Edmundson identifies another complication and notices that the notion of coercion is invoked and serves different pragmatic purposes in various different contexts, c.f. Edmundson (2007 p. 74 ff). I shall ignore this complication and focus on what Edmundson calls the "justification-demanding context."

¹²³ A.J. Julius calls this type of acts "action-directing action," see Julius (2009a). Other forms of action-directing action include: Advice, deception, warning, intimidation, provocation, offers etc.

¹²⁴ Raz puts a similar point in a slightly different way. He says: "One's list of sufficient conditions (of coercion) as well as one's view of how evil the threatened consequence must be to count as a coercive threat depends on one's view of the evaluative significance of coercion." (Raz 1986, p.149)

out different phenomena as coercive and arrive at one rather than another understanding of coercion. In making up one's mind about coercion and its wrongness one will have to move carefully between judgements about the meaning of coercion and judgements about why one thinks that particular acts are wrong. One of the challenges that those who believe in coercion as a trigger of equality will have to meet is that of developing an account of coercion which captures what we mean by coercion, convincingly explain why it is wrong, and adequately distinguish between coercive and non-coercive types of interaction.

What then is coercion? Firstly, coercion is a particular way of getting people to do things.¹²⁵ Say that an individual's action Φ is a way of getting people to do things just in case it is performed because its performance will give another individual a reason to do some other action ψ . There are cases where it is clear that people get others to do things through coercion: The mugger who takes out his gun and shouts "Your life or your money!" is coercing his victim. There are five further observations that render the notion of coercion more precise without uniquely characterising it.¹²⁶ While not all ways of getting people to do things satisfy the following conditions, standard cases of coercion do. Secondly then, coercion gets people to do things through effectively altering their options. The mugger who threatens his victim removes the option of staying alive and keeping the money

¹²⁵ This is another expression borrowed from Julius (2009a). The list of different ways of getting people to do things is co-extensive with the list of action-directing action.

¹²⁶ My observations will fail to uniquely characterize coercion for two reasons. Firstly, they do not uniquely characterize coercion because they might hold true of other types of action-directing action. Secondly, it is not clear that they are true of all phenomena of coercion. However, the fact that they are true of standard cases of coercion, such as "Your life or your money!", renders them initially plausible.

from the victim's option set and replaces it with the options of either staying alive or keeping the money.¹²⁷ The alteration is effective because the victim now does what she otherwise would not have done, i.e., she hands over the money.¹²⁸ Thirdly, coercion gets people to do things by making a proposal and leaving the victim a choice. The mugger's proposal consists in offering two alternative options. If the victim hands over the money she will live, if she does not she will be shot. The mugger's threat gives the victim a reason to hand over the money but leaves her free to choose between these options.¹²⁹ Fourthly, the coercer not only communicates the fact that the options have changed but he is responsible for changing them. It is the mugger's action which makes it the case that the victim's options have

¹²⁷ Note that this formulation leaves open the question of whether the coercer alters the victim's objective or subjective options. Would the mugger relevantly alter the option set if instead of holding a real gun he would merely point a toy gun at the victim's head?

¹²⁸ Non-effective alterations of options probably should not count as coercive. If you render that of my two options worse, which I would not have chosen anyway, you do not coerce me into opting for the independently superior option. Harry Frankfurt admits that our "linguistic intuitions (...) are somewhat equivocal" but maintains that "it is incorrect to regard a man as being coerced to do something unless he does it because of the coercive force exerted against him." (Frankfurt 1988, p.5).

¹²⁹ Note that this is compatible with saying that the option of not handing over the money does not constitute a reasonable alternative.

changed.¹³⁰ Fifthly, the fact of coercion does not lead to the creation or recognition of an independent reason that speaks in favour of ψ -ing. Pulling out the gun does not give the victim a threat-independent reason to hand the money to the mugger. Finally, the fact that Φ is an act of coercion morally speaks against doing it.¹³¹ Coercion is *pro tanto* wrong.¹³² Unless he can offer some sound justification for his action, the mugger is committing a wrong. Typically, if we think that a coercer's action Φ coerces his victim into doing ψ , such as in the case of the mugger coercing his victim into handing over the money, the following is also the case. Call these the marks of coercion:

¹³⁰ The notion of "making it the case that options have changed" is ambiguous. One might say that the action which the coercer threatens to undertake will objectively make it the case that the options have changed. Alternatively, the coercer could be said to change the victim's subjective options merely by making a threat. Some considerations speak in favor of the objective reading: If one employed the subjective reading, other action-directing action such as advice or warning would also satisfy the criterion of coercion. Other considerations, however, favor the subjective reading: If the objective reading were true, the coercer could coerce the victim by removing an objective option that was never in the victim's subjective set in the first place. A combination of both approaches seems to initially solve these problems. One might think that an act counts as coercive if and only if it alters both subjective and objective options. On this understanding, however, a new problem arises: It seems that an effective bluff, say when a mugger points a toy gun at you, should count as coercive. On the combined approach it could not.

¹³¹ I say "morally speaks against doing it" because the fact that an act is coercive might give you a prudential reason to perform it, coercion might for example be quicker, less costly and more effective than relevant alternatives.

¹³² The notion of "pro tanto wrong" might sound odd and I use for lack of a better term. Say that an act Φ is *pro tanto* wrong if it is wrong but could be justified all things considered.

- (1) The coercer does Φ because he believes that his Φ -ing will give the victim a reason to ψ .
- (2) Φ -ing alters the victim's options, such that if the coercer had not done Φ , the victim would not have done ψ .¹³³
- (3) The coercer leaves the victim a choice between ψ -ing and not ψ -ing.¹³⁴
- (4) The coercer is responsible for the fact that Φ -ing alters the victim's option set and the victim is aware of this.¹³⁵
- (5) The coercer's Φ -ing does not give the victim a reason to ψ that is independent from (the effects of) Φ -ing.
- (6) The fact that Φ satisfies conditions (1) to (5) morally speaks against doing it.

What then is wrong with coercion? The short answer is that coercion invades autonomy. Most contemporary accounts of the wrongness of coercion can be understood as drawing, either implicitly or explicitly, on the importance of being

¹³³ This is to say that the victim does ψ because of the coercer's Φ -ing. For the reasoning behind the inclusion of this condition, see for example Frankfurt (1988).

¹³⁴ There are of course cases of coercion, call these cases of non-communicative coercion, where the victim does not have a choice, for example where direct force is applied to the victim. For the present purposes, however, cases of communicative coercion, such as present in threats, appear to be more important. Firstly, the threat of applying sanctions appears to be sufficient for coercion. Secondly, relevant cases of institutional coercion appear to be primarily and more pervasively communicative. Thirdly, communicative coercion appears to be the most promising candidate for rendering plausible the idea that coercion triggers equality.

¹³⁵ The victim needs to "be aware of this" to exclude cases where the victim misunderstands a threat as a warning.

the author of one's own life.¹³⁶ I suggest following Joseph Raz in his understanding of the value of autonomy as characterized by three conditions. An individual is autonomous if she possesses "appropriate mental abilities, an adequate range of options and independence" (Raz 1986, p.372). Different accounts of the wrongness of coercion can then be understood as relying on different elements of autonomy so construed. I shall consider two principle alternatives.

The first one focuses on what coercion does to the victim's set of options. One could maintain that coercion is wrong because it diminishes autonomy by changing an individual's options for the worse. The consequences of coercion negatively affect the victim by narrowing the set of available options or replacing valuable options with less valuable ones. This account of the wrongness of coercion focuses on condition (2). The mugger diminishes his victim's autonomy and thereby wrongs her through rendering a better option, namely that of keeping the money and staying alive, unavailable. Call this the victim's options account of the wrongness of coercion. Intuitively, the account seems plausible because it offers an easy way of distinguishing between coercion and other ways of getting people to do things, for example through making an offer. Conceptually, an act of coercion seems to contract an option set, whereas an offers expands it. Unlike coercing

¹³⁶ Blake, for example, explicitly accounts for the wrongness of coercion by reference to the "liberal principle of autonomy" (Blake, 2001, p.272).

somebody, making an offer is usually morally unproblematic, because often an offer improves rather than worsens the recipient's options.¹³⁷

Secondly, one could focus on Raz's independence component of autonomy and argue that the source of the wrong is not the impact that the coercer's Φ -ing has on the victim's options, but rather in the attitude that the coercer takes towards the victim's agency. The focus here is on conditions (1) and (5). By Φ -ing with the intention that the victim ψ , and without it being the case that Φ -ing gives the victim a reason to ψ that is independent from (the effects of) Φ -ing, the coercer is treating his victim merely as a means.¹³⁸ The mugger is committing a wrong because he treats the victim's agency as a means to his monetary gain. Call this the coercer's intention account of the wrongness of coercion.¹³⁹ Intuitively, this account appears promising because it succeeds in distinguishing between coercion and some other ways of getting people to do things. Coercion is morally problematic in a way that even misguided but honest and well-meaning advice is not, because unlike the former, the latter aims at giving the recipient a reason to ψ (or not to ψ) that would exist independently of the particular action in question.

¹³⁷ Note that there are two types of non-standard cases. First: Sometimes expanding an option set can be morally problematic, for example when consciously offering a glass of vodka to a dry alcoholic. Second: Sometimes contraction might make an option set better, for example because having fewer options makes choice easier. For the view that there can be coercive offers, see Zimmerman (1981).

¹³⁸ This is a simplified version of the position developed by A.J. Julius (2009a).

¹³⁹ I use "intention" in a broad sense, meaning reasons for action.

4. The victim's options account of coercion

The claim that coercion is wrong because it restricts the victim's options and renders her option set less valuable than it otherwise would have been appears initially plausible.¹⁴⁰ The mugger leaves his victim worse off than she would have been without the mugging. However, the notion of "otherwise" requires interpretation. My first argument against the victim's options account shows that those attempting such interpretation face tough choices. The question that gives rise to a dilemma is about the baseline to which the victim's options should be compared. My second argument establishes that assuming a natural baseline, advocates of the victim's option account will have a hard time identifying important institutions as relevantly coercive. The third argument illustrates that the moral baseline account faces a different objection. It seems that there can be no convincing answer to the question of whether or not equality is one of the considerations determining the moral baseline. I believe that these arguments are sufficient to establish that, in advocating coercion as a trigger of equality, one should not rely on a victim's option account of coercion.

4.1 The options account and the dilemma of baselines

One might think that in deciding whether an action Φ is coercive, the victim's option set after having been Φ -ed is to be assessed against the set of options she would have enjoyed in a normal course of events.¹⁴¹ Had things gone as expected and unfolded naturally without the intervention of the mugger, the victim would not have had to choose between staying alive and keeping her money. Nozick notes

¹⁴⁰ My arguments focus on Nozick (1969).

¹⁴¹ Note that there is a difference between the statistically normal course of events and the counterfactual course of events in a particular instance. Nozick fails to note this ambiguity.

that if the consequences of Φ make the victim worse off than she "would have been in the normal and expected course of events, it is a (coercive) threat; if it makes the consequences better, it is an offer" (Nozick 1969, p.447). However, there are two types of cases where reliance on such a natural baseline delivers the wrong results. Consider firstly a case where the natural baseline account would identify an act as coercive and thus wrong, which in fact is not wrong. Assume that the mugger's victim has no legitimate claim to the money she is carrying, maybe because she previously stole it from the person now about to mug her.¹⁴² In this case the mugger's coercive re-appropriation does not seem to constitute a wrong, or at least it should not count as a wrong if your sole concern is with people's options.¹⁴³ It would be odd to say that it is wrong to take away an option from somebody if she should not have had this option in the first place.¹⁴⁴ Consider secondly a case where the baseline is itself coercive and the coercer's action does in fact improve the victim's options. Would one not say that a slave-owner who gives his slave the option of doing the chores instead of ploughing the fields, which is the more

¹⁴² Edmundson mentions cases that are structurally similar, which he calls "tables turned on the gunman" and where the victim of the mugger responds by announcing that she is prepared to defend herself with force if the gunman does not refrain from his attack. He argues that in these cases coercion is not even *pro tanto* wrong, c.f. Edmundson (2007, p.82).

¹⁴³ It seems that given the choice between either re-transferring the money in a non-coercive way or allowing the mugger to mug the thief, one ought to choose the former. One might think that this preference is best explained by the wrongness of coercion. Note that if you hold a pure baseline view and believe that the wrongness of coercion consists solely in its effects on the victim's option set, then this judgement is not to be had.

¹⁴⁴ Unless, of course, you believe that there is something wrong with the action of removal as such. This, however, is not the suggestion of how to conceive the wrongness of coercion that I am considering here.

onerous task the slave normally has to perform, is thereby coercing her into doing the chores? If the natural baseline account were true, we could not entertain this judgement because altering them actually improves the options of the slave.

In these cases a moral baseline seems more appropriate.¹⁴⁵ Reference to a moral baseline delivers a slightly different version of condition (2). If we think that a coercer's action Φ coerces his victim into doing ψ , then the following is also often true:

- (2') Φ -ing alters the victim's options, such that if the coercer had not done Φ , the victim would not have done ψ , where the victim was both morally entitled to the conditions under which she would not have opted to ψ , and these conditions were morally sound.

It is often the case that we do not have to choose between the moral and the natural baseline because the two coincide. The mugger leaves his innocent victim worse off than she would have been if things had unfolded naturally and worse off than she would have been under morally sound conditions. But what should we do in cases where the two baselines diverge?

Sometimes reliance on the natural baseline fails and we ought to choose the moral one, such as in the case of the non-entitled victim and the generous slave-owner. However, there are also cases where the moral baseline delivers the wrong

¹⁴⁵ Alan Wertheimer advocates a moral baseline view in his "two-prong" theory of coercion. He believes that a coercer can be said to coerce his victim to ψ if and only if (a) he makes a proposal that creates a choice situation such that the victim has no reasonable alternative but to ψ (the choice prong) and (b) it is wrong for the coercer to make such a proposal (the proposal prong). c.f.: Alan Wertheimer (1987, p.172).

result and identifies an act as non-coercive which should in fact count as coercion. Consider the case of a drug dealer and an addict.¹⁴⁶ Suppose that a drug dealer has been selling drugs to an addict for a couple of years at a certain price but one day introduces the additional condition that he will not supply any more drugs unless the addict signs up to work for the dealer and starts peddling drugs at a local school. According to the moral baseline account the addict is not coerced into peddling the drugs because he is not morally entitled to the baseline in comparison to which he is now worse off, namely that of just buying drugs at the usual price. However, it seems that the addict is coerced into peddling drugs.¹⁴⁷

Drawing on another proposal of Nozick's, one might offer the following solution: In cases where natural and moral baseline come apart, the victim's preference is crucial for whether a given act Φ counts as coercive. Nozick suggests: "It may be that when the normal and morally expected courses of events diverge, the one of these to be used in deciding whether a conditional announcement of an action constitutes a (coercive) threat or a (non-coercive) offer is the course of events the recipient of the action prefers" (Nozick 1969, p.451). The addict would prefer the natural baseline of buying drugs without having to peddle himself and thus the dealer's action counts as coercive.

Unfortunately, there are two objections to be raised against Nozick's proposal. Firstly, his solution fails our judgement in a case familiar from above. In the case where the mugger's victim is not entitled to the money in the first place, natural and moral baseline come apart. Relying on Nozick's proposal, we would have to count the mugger's act of re-appropriating his money as wrongfully

¹⁴⁶ I am again employing a variation of an example used by Nozick (1969, p.450).

¹⁴⁷ This judgement is shared by Nozick (1969, p.447).

coercive; after all, the victim would choose the natural baseline of holding on to the money as the preferred course of events. Secondly, the proposal fails to explain why the victim's preference matters only when moral and natural baseline come apart. If they are relevant to determining whether an act counts as wrongfully coercive here, why should they not be of wider relevance and matter in other cases as well?

Advocates of the claim that coercion is wrong because it renders the victim's options less valuable then seem to face a dilemma. If they claim that coercion is wrong because it renders the victim's options less valuable than they would have been in a normal course of events, they will be unable to deal with cases where the victim is not morally entitled to the options she would enjoy under normal circumstances, such as in the case of the victim who previously stole the money. They would suffer from a similar predicament in cases where the natural baseline is itself coercive, such as in the case of the slave-owner. If, on the other hand, they claim that coercion is wrong because it renders the victim's options less valuable than they would have been assessed against a morally sound baseline, they fail to adequately deal with cases where somebody's options seem to be coercively restricted even though there is no moral baseline compared to which the victim is worse off, such as in the case of the dealer and the addict.

4.2 The natural baseline account and state coercion

Even if advocates of the victim's options account managed to handle the tough choices presented above, they would still fail to deliver on the idea that coercion, or more precisely a particular type of (state) coercion, triggers equality. The natural baseline approach falls victim to a simple problem: It is often the case that coercion, and this especially true of the type of coercion relevant for solving the two

Rawlsian puzzles discussed above, does not leave the victims worse off than they otherwise would have been. Advocates of a natural baseline account of the wrongness of coercion assert that some act is wrongfully coercive if it leaves the victim worse off compared to some counterfactual baseline. Assume that they are right and consider those instances of coercion that proponents of the claim that coercion triggers equality often refer to, such as coercive rules or acts commissioned and enforced by state institutions or a society's basic structure. Are such acts or rules wrongfully coercive on a natural baseline interpretation of the victim's option account? A simple thought explains why they are not: The existence of coercive state institutions does not leave the victims of coercion worse off than they otherwise would have been. Even if each particular citizen would be better off not having to make a particular tax payment, he would arguably be worse off in a world without coercive taxation. And the same seems to be true of the institution of criminal and civil law.¹⁴⁸ It might then be more difficult than initially expected to endorse a natural baseline account and hold that state coercion is pro tanto wrong. At least one of the following three claims will have to yield:

- (1) Coercion is pro tanto wrong because it renders the victim's options less valuable than they otherwise would have been.
- (2) State coercion is pro tanto wrong.
- (3) State coercion does not render its citizens' options less valuable than they otherwise would have been.

¹⁴⁸ Michael Blake, who discusses taxation, criminal law and civil law as central instances of state coercion says: "Without some sort of state coercion, the very ability to autonomously pursue our projects and plans seems impossible; settled rules of expectation seem necessary for the settled expectations without which autonomy is denied" (Blake 2001, p.280).

Advocates of a natural baseline account have good reasons for holding on to each of these claims. If they denied claim (1) they would give up on the natural baseline interpretation of the victim's option account. If they denied claim (2) they would lose a key premise needed for their overall argument that state coercion triggers equality. And denying claim (3) would give rise to the following problem: If it is not true that citizens' option sets are more valuable with states than without them, and state coercion is pro tanto wrong, then why have states? To deny that living in a state typically renders an individual's option set more valuable is to seriously threaten the prospects for successfully arguing that states are all things considered justified. What else than its impact on an individual's ability to set and pursue her own ends could justify the existence of a state?

There is a response to this argument and it is worth going to some length to pre-empt it. Advocates of the natural baseline account could try to escape the trilemma by pointing out an ambiguity: There is an important difference between two ways of understanding a natural baseline. One could firstly believe that the relevant counterfactual baseline is one where action Φ is universally absent, i.e., where nobody is subject to action Φ :¹⁴⁹

- (1') Some act Φ_1 counts as wrongfully coercive because it renders the victim's options less valuable compared to a counterfactual baseline without $\Phi_{\text{universal}}$.

¹⁴⁹ This ambiguity is briefly mentioned and discussed by Nozick, albeit under a different heading. He raises the question of whether one should focus on a baseline where a token of action is absent, or on a baseline where a type of action is absent.

Alternatively, one could believe that the relevant counterfactual baseline is one where only the particular act in question is not performed:

- (1'') Some act Φ_1 counts as wrongfully coercive because it renders the victim's options less valuable compared to a counterfactual baseline without Φ_1 .

Now reconsider the question of whether the fact that you have to pay taxes is wrongfully coercive.¹⁵⁰ Employing baseline (1'') the answer will have to be yes: The fact that you are paying taxes restricts your options and leaves you worse off than you would have been if tax exempt. It is only if you believe in baseline (1') that the answer might well be no: If nobody was paying any taxes you would be worse off than you are under the current tax regime. However, advocates of the natural baseline account might claim that because they rely on baseline (1''), the above-mentioned trilemma does not arise. It is perfectly consistent to claim that (1'') a particular act is wrongfully coercive because it renders the victim's options less valuable than they would have been without that particular act, hold that (2') any particular act of state coercion is wrongfully coercive, and admit that (3') universal state coercion leaves citizens better off than they would have been if there was no state coercion at all.

This way of avoiding the trilemma raises a question: What baseline should we be concerned with when trying to figure out whether a particular act is wrongfully coercive? Should the counterfactual situation where the act in question is universally absent count as the relevant natural baseline? Or should we be

¹⁵⁰ Taking civil law or criminal law as an example would deliver the same results.

concerned with a state of affairs where only one victim is exempt from the potentially coercive treatment? Is there a good reason to believe that the relevant natural baseline is (1'') and not (1')? A simple consideration leads me to believe that there is no such reason.¹⁵¹ There are important cases where reliance on (1'') invites a powerful objection by those in favour of a moral baseline.

It is often the case that the baseline picked out by the non-universal counterfactual (1'') is morally objectionable. Imagine a case where a particular set of rules is coercively imposed on a large number of people, say a tax regime backed with sanctions. It seems that in order to determine whether that regime leaves a particular individual worse off, one should not compare the status quo, where everyone including her is subject to that rule, to the baseline where everyone else is subject to the rule but she is exempt. Why should a baseline that is unfair be relevant for assessing the moral status of a situation? This line of thought turns into a powerful argument at the hand of somebody who advocates a moral baseline. Relying on interpretation (1''), natural baseline accounts are particularly vulnerable to the charge of determining the pro tanto wrongness of an act by comparing its effects to a morally arbitrary alternative. It is a mistake to think that what matters about coercion is how it affects the victim relative to an alternative situation that the victim is not actually entitled to. It seems that advocates of the natural baseline account will have to choose between either claiming that state coercion is wrongfully coercive or gaining the upper hand against moral baseline accounts.

The natural baseline account presents advocates of the claim that coercion triggers equality with a problem: Important forms of coercion, such as state

¹⁵¹ The idea that the state is in fact coercive cannot be relied upon here, for this is exactly the view in question.

coercion, do not leave individuals worse off than they otherwise would have been. One might try to come to terms with this problem by arguing that a natural baseline is best understood as a non-universalised counterfactual baseline. Unfortunately, this move seems ad hoc and weighty considerations speak against it. I conclude that the natural baseline interpretation of the victim's option account of the wrongness of coercion does not support the third step in the line of reasoning underpinning the idea that coercion triggers equality and fails to identify central institutions as relevantly coercive.

4.3 Does equality matter for the baseline? A dilemma for the moral account

Those who advocate a moral baseline account of the wrongness of coercion assert that an act is wrongfully coercive if it leaves the victim worse off compared to a baseline that she is entitled to and which is generally morally sound. Moral baseline accounts are attractive in two respects. They firstly succeed in explaining the wrongness of coercive offers, such as in the case of the benign slave owner discussed above. They secondly capture our conviction that not all types of coercion are morally wrong, such as in cases where the only way of restoring rightful holdings is through coercion. However, I believe that moral baseline accounts fail to render plausible the claim that coercion triggers equality, or put differently, the claim that the wrongness of coercion gives rise to a particular moral problem, which equality then answers. My first argument in support of this claim concerns the question of whether equality should be among the concerns that matter in fixing the baseline.

Those who in claiming that coercion triggers equality rely on a moral baseline account of coercion, will have to explain which moral considerations

matter in determining their preferred moral baseline. For example: Does equality matter in determining the relevant moral baseline? I believe that answering this question raises two serious problems. Firstly, exclusion of equality would require an argument, which as far as I can see, is not even attempted. The following remains an open question: Why should we believe that egalitarian concerns do not matter in determining the moral baseline while other concerns do? The answer that unlike other moral concerns, equality is only triggered through coercion is, for obvious reasons, not to be had.

Secondly, answering the question of whether equality matters gives rise to a dilemma, for the answer can neither be "yes" nor "no". It is easy to see why the answer cannot be "yes". If equality mattered in determining the moral baseline, while the wrongness of coercion is understood to consist in deviating from this baseline, the wrongness of coercion could hardly be the trigger of equality. Egalitarian concerns cannot be triggered by coercion if they already matter in accounting for coercion. If the answer to the question posed is "yes", then egalitarian concerns matter from the beginning and coercion lies downstream from equality. This renders the first problem particularly salient: Equality will have to be excluded from the moral concerns fixing the moral baseline but there is no argument in support of this option. If on the other hand the answer is "no", an independently important challenge arises: Can coercion serve as the trigger that turns non-egalitarian obligations into egalitarian ones? Does the fact that individuals coerce each other introduce equality as a concern between them?

Whether advocates of a moral baseline account succeed in answering this question will depend on their pre-coercive moral standards. Two considerations support my claim that one should not think that coercion turns non-egalitarian

concerns into egalitarian ones. Consider firstly a picture that appears initially plausible: Assume that absent coercion you think of moral concerns as sufficientarian in nature. Between individuals who do not coerce each other, it does not matter that individuals have equally valuable options, but it matters that their options are good enough.¹⁵² Now imagine a case where two individuals that do not coerce each other, Harry and Jerry, both enjoy options that are good enough but one enjoys twice as many as the other. Say that Harry is at level 20, Jerry is at level 10 and the level of sufficiency is at 7.¹⁵³ Because your moral concern is sufficientarian there is nothing wrong with this situation. Now imagine that Jerry decides to coerce Harry and thereby lowers the value of his option set to 19, increasing his own to 11. If one believes that coercion triggers equality, then this act has further implications. Unlike in the pre-coercive situation, the distribution of options no longer justifies the appropriate moral requirements. Instead of relying on a sufficiency standard, compliance with an egalitarian standard is now required. Harry will have to transfer more options to Jerry, up to the point where the value of both option sets is 15. This is an odd result: By coercing Harry to give up one of his rightfully held options, Jerry can trigger a moral standard, which in turn requires that Harry give up even more of his options. The coercion view requires that the coercer be benefitted and not the victim. These considerations cast a strong doubt

¹⁵² This pre-coercive sufficiency reasoning is, I believe, the picture endorsed by many of those who endorse the view that coercion triggers equality. Michael Blake, for example says: "The strategy I employ seeks to endorse the idea that we can defend principles of sufficiency abroad and principles of distributive equality at home" (Blake 2001, p.258).

¹⁵³ These number are just a rough indicator for the value of different options. You may plug in your preferred currency or metric.

on the idea that coercion turns sufficientarian standards into egalitarian standards.¹⁵⁴

Consider next an alternative picture of pre-coercive moral standards. Assume you believe that the moral baseline employed in accounting for the wrongness of coercion is one of historical entitlements, which are determined by considerations of self-ownership, justice in acquisition and justice in transfer.¹⁵⁵ Assume that on the relevant moral baseline the option holdings of two individuals, Bob and Jack, are just by the standards of historical entitlements. Now imagine that Jack decides to coerce Bob and thereby diminishes the value of his option set. Would it be plausible to think that coercion causes egalitarian concerns to take over from the historical entitlement reasoning? Again, the answer, it seems, will have to be no. If protection of autonomy from coercive interference is part of the reason for adopting an historical entitlement account, which is how I think one should plausibly conceive of such accounts, then coercive interference with autonomy should not give you a reason to give up on the historical entitlement reasoning and embrace an egalitarian account instead.

¹⁵⁴ One may of course worry that the type of coercion between Harry and Jerry is not the type of coercion that would be sufficient to trigger equality. However, one may simply revise the type of coercion used in the example, add whatever else one thinks is part of a sufficient condition and ask whether it would in this case be plausible to assume that duties of sufficiency turn into obligations of justice when the worse off (North Korea?) begin to coerce the better off (South Korea?). It would generally be odd if one could trigger moral obligations that benefit oneself by beginning to (relevantly) coerce somebody else.

¹⁵⁵ Note that the historical entitlement view I here have in mind is a version of right-libertarianism as defended by Robert Nozick and not a version of left-libertarianism as defended by Hillel Steiner, Peter Vallentyne or Mike Otsuka. For the former, see Nozick (1974). For the latter, see Michael Otsuka (2003).

The dilemma faced by the advocate of the moral baseline view then is this: If one believes that equality is among the concerns fixing the baseline, coercion cannot be the trigger of equality because egalitarian concerns would arise prior to and independently of coercion. If one believes that equality is not among the concerns determining the baseline, coercion cannot be the trigger of equality, because it is implausible to think that coercion turns non-egalitarian moral standards into egalitarian ones. In any case, coercion fails as a trigger of equality.

5. The coercer's intention account

The coercer's intention account seems to avoid some of the difficulties that befall the victim's options account. Explaining the wrongness of coercion in terms of the coercer's intention does not presuppose that one chooses a baseline and compares the value of different option sets.¹⁵⁶ The ability to clearly distinguish between coercive threats and non-coercive warnings also counts in favour of the coercer's intention account. The mugger does not merely warn his victim of a consequence that would independently ensue, but it is the mugger's intention to alter the victim's behaviour by announcing consequences he intends to bring about. On the coercer's intention account, coercion is considered wrong because it violates autonomy by failing to respect an individual's independence.¹⁵⁷ The account seems to capture the

¹⁵⁶ Advocates of the intention account, such as A.J. Julius, believe that coercion is wrong because the coercer's intentions violate an important requirement on how to treat other people. Their explanation of the wrongness of coercion in terms of the coercer's intentions should be understood as offering necessary and sufficient condition for the wrongness of coercion. An act which satisfies the descriptive criteria of coercion is wrong, if and only if the coercer's reasons for action contravene the relevant requirement.

¹⁵⁷ Maintaining Raz's terminology, the intention account can be said to focus on the independence constituent of autonomy.

special significance we attach to having one's own ends replaced with those of another person, of finding one's will subjected to somebody else's and of being steered into some particular course of action. The wrongness of coercion might then be understood in the following way.¹⁵⁸ The coercer's action Φ gives his victim a reason to ψ , where the coercer does not intend that his victim comes to ψ as a result of her recognition of an independently good reason that speaks in favour of ψ -ing.¹⁵⁹ There are two ways in which the victim might fail to act on the basis of recognising an independently good reason. The failure might firstly consist in the fact that there is no good independent reason. In the mugger's case there is no good independent reason for the victim to hand over the money. The failure might secondly consist in the fact that the coercer does not aim at the recipient's recognition of the independent reason. In some cases of paternalism, the paternalist does not intend that the recipient recognise the independent reason to ψ , for example that ψ -ing would promote her own well-being. In these cases, the coercer's intention seems to violate a simple requirement: Do not act in ways that gives others a reason to ψ , unless you thereby also intend to make it more likely that good independent reasons to ψ are acted upon. A.J. Julius (2009a, p.1) offers a formally more accurate version of this thought:

"You should not (do y, believe that your y-ing will lead me to x and that this fact is a reason to y, and fail by your y-ing to help make it the case that, for some reason R, that hold independently of your y-ing, I (do x as a result of my belief that I should x in virtue of R.))"

¹⁵⁸ The present section focuses on an account that has recently been offered by Julius (2009a).

¹⁵⁹ Note that this account puts a particular emphasis on conditions (1) and (5) from the account of coercion offered in section 3 above.

This requirement seems to capture a significant aspect of what we think is wrong with coercion.¹⁶⁰ However, I believe that the coercer's intention account fails to succeed both in explaining the wrongness of coercion and in rendering convincing the claim that coercion triggers equality. Three arguments support this verdict. The first argument shows that the coercer's intention account is mistaken because it overproduces judgements of wrongness. It identifies clearly permissible ways of getting people to do things as morally wrong. The second argument shows that the account underproduces judgements of wrongness and is unable to adequately deal with cases where people are coerced into recognising independently good reasons for action. The third argument relies on cases where acts have coercive but non-intended effects, to undermine the idea that equality arises as a moral demand in response to the moral problem of coercion.¹⁶¹

5.1. How the intention account overproduces judgements of wrongness

On the coercer's intention account, an act of coercion is wrong because the coercer is giving his victim a reason to perform a particular act, without intending to thereby make it more likely that the victim acts out of recognition of an independently good reason. The coercer's threat or proposal serves as the victim's sole reason for doing what she is coerced to do. But if that is the feature which renders acts of coercion wrong, then other ways of getting people to do things are similarly wrong. In many cases this is unproblematic. Deceiving and blackmailing are examples of acts that are rightfully condemned by Julius's principle. However, and this is where the problem arises, there are acts which the principle wrongfully

¹⁶⁰ Julius (2009a) argues that his account fits in with our judgements about a large number of particular cases.

¹⁶¹ For a fuller argument to this effect, see my previous chapter 4.

condemns. Some action-directing actions are morally unproblematic, for example making somebody an offer, but ruled out by the principle. If I offer my flatmate to cook her dinner if she agrees to do my dishes, she might not have a sufficient independent reason to do so. In fact, my offer might be the only reason she has to do my dishes. I am directing her action without making it more likely that she acts out of recognition of an independently good reason. But should we say that I am wronging my flatmate by making the offer? I believe not. The offer does not contract her option set; she is free to reject it and it does not prevent her from pursuing a more valuable option. The coercer's intention account then seems to overproduce judgements of wrongness. It fails to distinguish between acts of coercion and offers. An account of the wrongness of coercion, which finds the same kind of wrongness in both offers and coercion, is unconvincing and ought to be rejected.

Julius anticipates this objection and responds by introducing the notion of a joint-requirement.¹⁶² Two individuals are subject to a joint-requirement if they jointly ought to perform a particular pair of acts, while it is impossible to understand their reasons for action as a conjunction of individual requirements. An example clarifies the notion of a joint requirement. Assume that two individuals A and B are on one side of a river and have a good reason to cross it, say because their homes are on the other side. There is a rowing boat with two oars that could be used to cross. If A rows left and B rows right they both will cross the river safely. If one rows without the other, then the boat will spin without moving forward and the current will wash the boat into a cataract. It seems that even though neither A nor B has an individual reason to row, they are subject to the joint requirement {A rows

¹⁶² See for example Julius (2009a, p.6) and Julius (2009b).

left, B rows right}. Joint-requirements then render offers morally innocent, because offers help to meet joint-requirements. Put differently, joint-requirements provide the independent reason required by Julius's principle. Reconsider the example that motivated the original objection. Assume that I am better off cooking, say I enjoy cooking and do not like washing up, and my housemate is better off doing the dishes because she likes the food I cook and does not mind washing up, then my offer helps us to do what we jointly ought to do.

Does appeal to joint-requirements successfully pre-empt the offer-objection? Two considerations illustrate why it does not. First: Even though there might be some joint requirements, and even though some offers might plausibly be understood as helping to meet joint-requirements, there are many offers that do not. It is implausible to believe that all morally innocent offers facilitate joint-requirements. Consider the simple case of asymmetric offers. There are cases where those who issue an offer stand to benefit while those receiving the offer are indifferent between accepting and rejecting it. If I offer you a seat at my table during lunch, you may have no good independent reason to sit down at this particular table and you may even be indifferent between sitting with me and sitting alone. My offer gives you a reason to sit down, it is action-directing, but it clearly fails to track a joint-requirement. Second: Arguing that offers are morally innocent if they facilitate joint-requirements leaves coercion and offers implausibly on par with each other. If joint-requirements can be invoked in justification of offers, then they can be invoked in justification of coercion. If coercion is wrong because it violates Julius's principle, while joint-requirements can provide the independent reason required by that principle, then coercion is justified if it ensures that we together do what we are jointly required to do. However, there seems to be an

important difference between a situation in which person A coerces B into rowing right and a situation in which person A offers to row left if B agrees to row right. Once more the coercer's intention account fails to make a morally relevant distinction between coercion and offers.

5.2 How the intention account underproduces judgements of wrongness

The coercer's intention account also underproduces judgments of wrongness. There are cases where the coercer's action is coercive even though the coercer's intentions satisfy Julius's principle. It is sometimes *pro tanto* wrong to give somebody a reason to act, even if that act makes it more likely that the other person acts out of recognition of an independently good reason. Consider the following case:¹⁶³ A tightrope walker is about to cross a deep chasm. Assume that it is actually very dangerous to cross the chasm and that there is a good independent reason not to do so. The tightrope walker suffers from acrophobia and her psychological set-up is such that she can only bring herself about to walk as long as she does not look down. As long as she does not look down, she is determined to cross and she will walk just as safely as any other tightrope walker would. As soon as she looks down, however, she will recognise the danger, lose confidence and decide not to walk. Because she is aware of her psychological setup, the tightrope walker tries to avoid looking down. Now imagine that somebody concerned about the tightrope walker's safety appears on the scene, points a gun at the tightrope walker's head and threatens: "Look down the chasm or I will shoot you!" As a result of this threat, the tightrope walker looks down the chasm, recognizes the danger, her acrophobia kicks in, she loses confidence and overturns her original decision to walk. I believe

¹⁶³ I owe this case to a discussion with Mike Otsuka.

that that there are two things to be said about this situation: Firstly, even though the threat might be all things considered justified, it is still *pro tanto* wrong to coerce the tightrope walker into looking down the chasm. The gun-pointing person could appropriately regret her threat and think: "I wish I could have convinced her not to walk instead of having had to point my gun at her. Or even better, she should have looked down and recognised the danger without my interference." Secondly, if one believes that violation of Julius's principle is what makes coercion wrong, then the judgement that the gun-pointing is *pro tanto* wrong is not to be had. The gun-pointing gets the tightrope walker to act out of recognition of a good independent reason not to cross the chasm. The argument then is this: If one believes that the gun-pointer's threat is coercive and *pro tanto* wrong, one ought to reject the coercer's intention account.

5.3 The intention account's failure as a trigger of equality

Putting the coercer's reasons for action centre-stage invites another objection. There is a further set of cases where the coercer's intention account underproduces judgements of wrongness. These are again cases where the coercer seems to wrongfully coerce his victim without it being the case that Julius's principle is violated. The coercer might for example give somebody a reason to ψ that does not track a good independent reason, without intending to do so. Put differently, the account fails in cases where threats have coercive but non-intended effects. Consider a simple example. Thousands of people are marching down Fleet Street in London protesting against the G20 Summit. Most of the protesters are marching peacefully but a small minority is smashing windows and throwing bricks. The police appear on the scene and officer Johnson threatens to use his water canon unless the

protesters vacate the city. In making this threat, however, he only intends to coerce the violent protesters into leaving. Johnson would prefer that the peaceful protesters remain on the street, maybe because he believes that they have a right to do so, maybe because he is afraid of bad press. But given that it is practically impossible to only threaten the violent protesters, Johnson accepts that the peaceful protesters will also face the options of either having to leave or being water cannoned. He does not act with the intention of giving the peaceful protesters a reason to leave, but merely foresees that his intended action will have that consequence. If the coercer's intention account of the wrongness of coercion were correct, we would have to accept that only the violent protesters are wrongfully coerced into leaving. This, I believe, is absurd. Both groups share the same predicament and face the same option set. A position committed to the view that the violent protesters are wronged while the peaceful demonstrators are not must be mistaken.

Note that this observation also undermines the coercer's intention account's prospects for rendering plausible the claim that egalitarian distributive justice arises in response to the wrongness of coercion. Imagine a society with three groups of people in it.¹⁶⁴ The emergent capitalists own some newly built factories. The talented farmers live off their own land and possess certain skills, such that the emergent capitalists would like them to work in their factory. The untalented farmers also live off their land but they possess no marketable factory skills. Because they can survive from what they earn from labouring their land and trading with each other, no farmer goes to work in the capitalists' factories. Thinking about how to get the talented farmers to work in their factories, the emergent capitalists

¹⁶⁴ This example is a simplification and variation on Karl Marx's account of the original accumulation of capital, see Marx (2008, chapter 24).

coercively impose a high tax on trading farm products, making it impossible for the farmers to live off their land and its produces. It seems that if the coercive imposition of a tax is sufficient to give rise to some obligations of distributive justice between the capitalists and the farmers, obligations would arise between capitalists and both talented and untalented farmers. The talented and the untalented farmers are equally affected by the imposition of the tax, i.e., they both end up unable to carry on with their traditional lifestyle etc. Advocates of the coercer's intention account, however, will have to maintain that obligations arise merely between the emergent capitalists and the talented farmers. After all, the tax is only intended to get the talented farmers to work in the factory and the predicament of the untalented farmers is not even intended. This observation, I believe, casts serious doubt on the idea that the wrongness of coercion, understood in terms of the intentions of the coercer, creates the moral problem to which equality provides the solution. If demands of equality arise as a result of taxation, they arise likewise between all three groups. Consequently, coercive intentions cannot be the triggers equality.

6. Conclusion

I have argued that those political philosophers who believe that equality emerges as a moral concern where and because people coerce each other are mistaken. If my arguments are correct, the idea of coercion as a trigger of equality is neither as plausible nor as powerful as it may initially appear. Neither the victim's options account nor the coercer's intentions account succeed in jointly (a) offering a convincing account of the wrongness of coercion, (b) rendering cogent the idea that the demand of equality arises in response to the moral problem of coercion, and (c)

identifying some institutions, such as those of a society's basic structure, as relevantly coercive. As long as no alternative account of coercion succeeds in these respects, one ought to remain sceptical about the claim that coercion triggers equality.

CHAPTER 6

Basic equality, range properties and common humanity ¹⁶⁵

1. Preliminary remarks

The idea that human beings are fundamentally one another's equals is uncontroversial. However, that a claim is universally accepted does not mean that it raises no further questions. Some ideas win support because they are vague, and affirming a proposition is different from offering reasons in its support. What exactly does it mean to say that people are fundamentally one another's equals? In virtue of what feature or property do human beings possess equal moral status? The first aim of this chapter is to outline the difficulties involved in answering these questions. The question is primarily of importance to egalitarians but also presents a genuine problem for other moral theories. The second aim of my chapter is to reconcile the idea of basic equality with a particular egalitarian commitment. Ian Carter (2009) has argued that rendering the idea of basic equality coherent rules out a substantive luck egalitarian commitment. I shall argue that the idea of basic equality is compatible with the substantive egalitarian claim that nobody should be worse or better off than anybody else through no fault or choice of his or her own. Finally, my third aim is to offer a sketch and brief defense of a particular and hitherto neglected conception of basic equality which, building on the ideas of common humanity and family resemblance, answers most of

¹⁶⁵ An earlier version of this chapter has been presented at the conference "The Diversity of Human Rights: Human Rights and Democracy in the Age of Globalization" at the InterUniversity Centre Dubrovnik, 5. - 12. September 2009. I am grateful to the audience for very helpful comments.

the difficulties associated with the question of basic equality and supports a luck egalitarian commitment.

My argument proceeds in seven steps. Section 2 offers an analysis of the structure of egalitarian theory and argues that the idea of basic equality is pertinent to three types of important egalitarian argument. Section 3 identifies three questions that those who believe in the idea of basic equality will have to come to terms with. Section 4 presents a general strategy for responding to these questions and introduces the idea of a range property. Section 5 argues that the idea of a range property raises still further questions that are difficult to answer. Section 6 introduces Carter's recent solution to the problems raised by the idea of a range property. Unfortunately, this solution challenges a particular type of distributive egalitarian commitment, namely distributive principles, which are sensitive to considerations of responsibility and aim at the compensation of internal endowment deficits. Section 7 explains how advocates of such principles should respond to Carter's challenge. Section 8 outlines the account of basic equality as common humanity.

2. The structure of egalitarian argument

This section illustrates how the claim that human beings are fundamentally one another's equals figures as a premise in egalitarian argument. My illustration has three parts. The first part advances a claim about the structure of egalitarian theory and identifies three different types of egalitarian argument. Establishing an egalitarian principle is to take a stance on (at least)

the metric, scope and grounds of equality.¹⁶⁶ The second part examines what role the characteristics of those entitled to equal shares play in these arguments. I believe that they figure as premises in all three types of argument. The third part argues that anybody who thinks that there is some egalitarian principle that applies to everybody has to rely on the idea of basic equality.

Egalitarians believe that some persons $\{P_1, P_2, P_n\}$ are entitled to equal amounts of some good G_n or treatment T_n . Substituting different goods or types of treatments for these placeholders gives rise to various specific egalitarian claims. Consider two examples: Every person is entitled to be treated with equal respect. Or: Individuals who participate in a joint productive effort are entitled to an equal share of the fruits of their cooperative endeavour. Advocating any such specific egalitarian claim, the egalitarian will have to take a stance on three different questions. The first question that arises is this: What good G_n or treatment T_n are the members of $\{P_1, P_2, P_n\}$ entitled to? This question is at the heart of the metric debate prominent in the current egalitarian literature.¹⁶⁷ Note that candidate metrics need not be confined to economic distributive justice and material goods,

¹⁶⁶ There are of course further relevant questions, such as "What is the site of distributive justice?". However, I believe that answering the questions of scope, metric and grounds is necessary and sufficient for rendering an egalitarian principle determinate. One may object to this threefold distinction and insist that a grounds argument is always a grounds argument in support of a principle with a particular metric, applying to a specific scope. However, I believe the three arguments are still logically independent and ought to be treated separately. As my discussion of chapters 4 and 5 has illustrated, one may agree about the scope and metric of an egalitarian principle, and still disagree on the relevant grounds.

¹⁶⁷ See for example: Sen (1978), Cohen (1989) and Dworkin (2000).

since entitlements to equal moral authority, liberty, political power or simply concern might be the quintessence of one's preferred egalitarian principle. The second question that arises is this: Who are the members of $\{P_1, P_2, P_n\}$ entitled to equal amounts of G_n or treatment T_n ? This second question concerns the scope of egalitarian entitlements. Egalitarians need to determine the range of people subject to egalitarian principles. A third question that arises is the following: Why are the members of $\{P_1, P_2, P_n\}$ entitled to equal amounts of good G_n or treatment T_n ? An answer to this question identifies those features of $\{P_1, P_2, P_n\}$ or the relationship in which they stand to each other that give rise to egalitarian entitlements. Call this a question about the grounds of equality. Arguing for a specific egalitarian principle is to give reasons in support of answers to questions of metric, scope and grounds. Correspondingly, there are (at least) three different types of egalitarian argument: Arguments supporting claims about the metric of equality, arguments supporting claims about the scope of equality, and arguments supporting claims about the grounds of equality. Keeping these arguments conceptually distinct is important. A specific egalitarian principle might be rejected for being mistaken about scope, metric or grounds.

The characteristics of the members of $\{P_1, P_2, P_n\}$ seem relevant to all three types of egalitarian argument. Consider the question of scope first. Arguments about the scope of equality will have to rely on a relevant difference between those who are entitled to equal amounts of G_n and those who are not. If P_1 is to be treated differently from P_2 , or to receive a different share of G_n , there must be a relevant difference between them. Call this the supervenience constraint on scope arguments. The supervenience constraint

does not presuppose that there is any characteristic the members of $\{P_1, P_2, P_n\}$ have in common. But it requires that there is a relevant difference between members and non-members.¹⁶⁸

Consider next the question of grounds. Giving a conclusive answer to the question why $\{P_1, P_2, P_n\}$ are entitled to equal amounts of G_n is a cornerstone of any egalitarian argument, and some contemporary egalitarians are indeed sceptical about the prospects of providing it.¹⁶⁹ Attempts that look promising are of this general argumentative form:¹⁷⁰

- (P1) Relevantly similar cases ought to be treated equally.
- (P2) The entitlements of $\{P_1, P_2, P_n\}$ to G_n have to be a fitting response to the features and characteristics of $\{P_1, P_2, P_n\}$.
- (P3) The features relevant to the distribution of G_n are possessed by all members $\{P_1, P_2, P_n\}$ equally.
- (P4) There are no differences between the members of $\{P_1, P_2, P_n\}$ relevant to the distribution of G_n .
- (\therefore) The members of $\{P_1, P_2, P_n\}$ are entitled to equal shares of G_n .

The first two premises of this argument are uncontroversial: (P1) formulates a weak generic principle of justice, (P2) states a relationship of propriety that is presupposed by most normative arguments seeking to establish distributive

¹⁶⁸ For a discussion of the supervenience constraint, see for example Waldron (2008, p.23 ff).

¹⁶⁹ A.J. Julius (2006, p.176) argues that nothing short of a full theory of justice would actually be sufficient to answer this question.

¹⁷⁰ More specific variants of this argument are employed by Thomas Christiano (2007, p.45 ff.) and Ingmar Persson (2007, p.83).

principles. The last two premises are more interesting. For the argument to be sound, or more precisely for (P3) to be true, there have to be characteristics that all members of $\{P_1, P_2, P_n\}$ share equally. Also, these characteristics have to be relevant to the distribution of G_n . After all, they are the features that give rise to egalitarian entitlements. Ground arguments build on the assumption of relevant sameness.

Consider finally the question of metric. It is often the case that arguments for a particular metric proceed by appeal to intuitions in specific cases.¹⁷¹ However, there has to be some systematic relationship between the good G_n and those features of $\{P_1, P_2, P_n\}$ that give rise to the entitlement in the first place. Take an example: If we believe that egalitarian distributive justice is more adequately captured in terms of entitlements to equal opportunity for welfare, rather than entitlements to welfare, this belief tracks some relevant features of $\{P_1, P_2, P_n\}$, such as the significance of and their ability to exercise responsible choice. Call this the tracking relation: The metric of egalitarian entitlements tracks significant features of the entitlement bearers. There are then (at least) three different ways in which the characteristics of those entitled to equal shares figure as premises in egalitarian argument. The characteristics of $\{P_1, P_2, P_n\}$ enter scope arguments through the supervenience constraint, they underpin the assumption of relevant sameness in ground arguments, and figure in the tracking relation of scope arguments.

¹⁷¹ A good example is the debate between those supporting a resource metric and those supporting a welfare metric, c.f. Cohen (1989).

I suspect that any approach in normative ethics contains at least one principle of the following form: “There is a good G_n or treatment T_n such that every person is entitled to equal shares of it.” Everybody seems to endorse at least one egalitarian principle with universal scope. Utilitarians believe that everybody is entitled to have their interest taken into account equally. Contractualists believe that everybody is owed equal justification in deciding on the principles that are to govern their conduct. Almost everybody believes that there is an equal right not to be killed. And some egalitarians believe that everybody is entitled to equal access to advantage. Proponents of all these views need to explain to whom their principle applies, why they think it applies and what the equal entitlement is an entitlement to. Doing so involves making claims about the characteristics of $\{P_1, P_2, P_n\}$. Where $\{P_1, P_2, P_n\}$ has universal scope and comprises everybody, these claims have to be about characteristics universally shared. This is where the idea of basic equality comes in. To satisfy the supervenience constraint, to make good on the relevant sameness assumption, and for the metric tracking relation to hold, the members of $\{P_1, P_2, P_n\}$ have to be one another’s equals. Defending an egalitarian principle with universal scope requires an interpretation and defence of the claim that human beings are fundamentally one another’s equals.

3. Variation, scope and significance: Three questions for basic equality

An account of basic equality comprises a descriptive and a normative component. The descriptive component identifies some property or feature that renders human beings fundamentally equal. The normative component

explains the choice of property and accounts for its significance. Even though there are different ways to conceive of the relationship between the two components, each of them is required for a complete account of basic equality and a successful account of basic equality will have to convince in both respects.¹⁷² In virtue of what features are human beings fundamentally one another's equals? What is the property that all human beings possess equally? And why does possession of this property matter? There are (at least) three challenges that a good answer to these questions must meet.¹⁷³ Firstly, the properties figuring in an account of basic equality must avoid variation without turning into properties it is incredible to claim are possessed by each. Secondly, the features rendering human beings equal must be such that all human beings and only human beings possess them. Thirdly, the property in question must indeed be of great significance. The present section briefly explains each of these challenges.

Bernard Williams (1979) argues that anyone taking the question of basic equality seriously faces a dilemma. Searching for a feature possessed by all human beings equally we come to find that those properties that initially look like promising candidates are in fact possessed unequally by different individuals, while those properties that are possessed equally fail to convince. To illustrate Williams's point, consider Anderson's (2009, p.320) interpretation of the notion of basic equality:

¹⁷² See for example Waldron's (2008, p.30) discussion of John McDowell and the claim that descriptive properties remain "shapeless" unless viewed from some normative point of view.

¹⁷³ Richard Arneson (1999) speaks of what he calls the "Singer Problem". However, I believe it is more helpful to treat the components of this problem independently.

"Everyone equally has the power to develop and exercise moral responsibility, to cooperate with others according to principles of justice, to shape and fulfil a conception of their good."

There is a straightforward empirical reading of this statement such that the underlying idea appears promising and plausible. Certain powers, for example one's ability to reflect and act upon the demands created by the interests of other people, seem clearly relevant to one's moral standing. However, on any plausible empirical reading, Anderson's remark is false. It is not the case that persons possess the properties underpinning moral powers equally. People differ in their practical intelligence and degree of empathy, some might be more vulnerable than others to acrasia, and not everybody can reciprocate in accordance with justice. In combination with the first two premises of the general argument, the principle of generic justice and the relationship of propriety, this insight would actually deliver inegalitarian principles. The first horn of Williams's dilemma is this: Relevant empirical candidate properties are possessed unequally. Seeking to avoid this predicament, one could instead apply a different reading to the notion of equal powers. Williams offers the alternative of a Kantian solution, according to which individuals possess certain moral powers independently of any contingent and empirical ability. On this reading, the properties in virtue of which human beings are fundamentally one another's equals are, *ex hypothesis*, possessed equally. However, this Kantian or transcendental solution has a serious drawback. The idea of basic equality itself is much less controversial than the idea of non-empirical moral powers. One might in fact worry that many contemporary

egalitarians would altogether like to avoid the commitments presupposed by the Kantian solution. This is the second horn of Williams's dilemma: The understanding on which plausible candidate properties are possessed equally by all individuals fail to convince. To meet the challenge posed by Williams's dilemma, egalitarians would need to identify a property or a set of properties that avoids both horns. Egalitarians are looking for properties that avoid variation and turn out believable.

Successfully spelling out the idea of basic equality requires that we accommodate our considered convictions about scope. I believe that the property we are looking for should cover every human being and only human beings.¹⁷⁴ There are two ways of making a scope mistake in this context. The scope of the property could firstly fail to subsume human beings under the status of moral equality that ought to be included. This mistake is most likely to occur when the candidate property focuses on an ability coming along with agency or personhood. Those at the margins of life like infants and cognitively impaired people must not be excluded from the realm of equality.¹⁷⁵ If our considered convictions tell us that somebody is entitled to equal moral concern, while our preferred feature specifying its scope fails to include them, we ought to revise the specifying feature. The second mistake is the inverse of the first. Instead of excluding individuals that ought to be included, one could make the mistake of including those that ought to be excluded. This mistake is most likely to occur where the candidate property focuses on vulnerabilities or capacities for benefit and suffering. Peter Vallentyne (2007) points out that

¹⁷⁴ The challenge is that of defending this claim and avoid the charge of "specieism". I shall discuss the challenge of specieism in greater detail below when defending my common humanity account.

¹⁷⁵ For "margins of life" see for example McMahan (1997).

just like men, mice possess capacity for well-being. To interpret the idea of basic equality as equal capacity for well-being would give rise to two problems. Firstly, inclusion of non-human beings does not sit well with our conviction that human beings are fundamentally one another's equals. We think that they are each other's equals but certainly not the equals of mice. Secondly, we ought to avoid overcrowding the purview of our egalitarian concern because otherwise our preferred egalitarian principle might become implausible. If we believe that the idea of basic equality supports some egalitarian principle governing the distribution of burdens and benefits, while mice share the property relevant for the status of basic equality, redistribution from men to mice might be what the egalitarian principle requires. A convincing account of basic equality should render all human beings and only human beings one another's equals.

Richard Arneson (1999) points out that the property underpinning the idea of basic equality will have to carry a lot of weight. We are looking for a property sufficiently significant to support one of our central moral convictions. Note that in the general argument formulated above, the features of $\{P_1, P_2, P_n\}$ have to play two roles that my discussion so far has neglected. On the one hand they have to give rise to the entitlements mentioned in the second premise and the conclusion. On the other hand they have to be established as relevant against and override the competing inequalitarian considerations mentioned in the fourth premise. Not any property or characteristic that all human beings possess equally would be successful in these respects. Considerations of significance introduce the third challenge that the advocate of basic equality would have to come to terms with.

4. Locke, Rawls and the idea of a range property

The first horn of Williams's dilemma brings out the importance of avoiding the type of variation that would contradict the idea of basic equality originally set out to vindicate. How can human beings be one another's equal in virtue of a feature that they possess unequally? The idea of a range property attempts to reconcile basic equality with variation by degree in the properties underpinning it. A range property is characterised by two features. Firstly, a range property is a property that individuals either possess or do not possess. It is binary. Secondly, individuals possess a range property in virtue of possessing some other property which admits of degrees. A range property establishes a relationship between a binary property and a scalar property. It specifies a range on a scale such that the range property is possessed by anyone coming within that range.¹⁷⁶ Consider an intuitive example. Being a mature student is a range property possessed by any student who passes the threshold of 21 on the scalar property of age. Jeremy Waldron defines a range property like this:

"R is a range property with respect to S if R is binary and there is a scalar property S, such that R applies to individual items in virtue of their being within a certain range on the scale connoted by S" (Waldron 2008, p.33).

¹⁷⁶ Note that some range properties have both a lower threshold and an upper threshold and some only have a lower threshold.

Relying on range properties offers a promising way of addressing the problem of variation. Variation in certain properties does not threaten the idea of basic equality, as long as the property ranging over this variation is possessed equally by all relevant individuals. There are two positions that rely on range properties to explain the idea of basic equality that are worth looking at.

John Locke's argument takes off from the assumption of "equality of men by nature" (Locke 1990, p.101). Locke argues that "there is nothing more evident than that creatures of the same species and rank, promiscuously born to all and the same advantages of nature, and the use of same faculties, should also be equal one amongst another without subordination or subjection" (Locke 1990, p.101). Trying to explain why human beings are by nature one another's equals, Locke relies on the idea of relevant similarity. Human beings relevantly resemble each other in their possession of "corporeal rationality," a property which in turn is explained by the fact that all men are created in the image of God. Unfortunately, people possess the property of "corporeal rationality" unequally. The problem of variation arises. Locke addresses this problem by relying on a range property. There is a level of rationality sufficient to place individuals within the realm of basic equality. The threshold that Locke has in mind consists of individuals having "Light enough to lead them to the Knowledge of their Maker, and the sight of their own Duties" (Locke 1971, p.45). Employing the definition offered above, the picture that unfolds is this: Capacity for abstraction sufficient for reasoning to the existence of God is a range property that applies to all individuals within a certain range on the scale of "corporeal rationality." Individuals are

fundamentally one another's equals in the sense that and because they can recognise the existence of God.

John Rawls (1999, p.441) understands the idea of basic equality as concerning "the features of human beings in virtue of which they are to be treated in accordance with the principles of justice." His question is this: "On what grounds then do we distinguish between mankind and other living things and regard the constraints of justice as holding only in our relations to human persons?" (1999, p.441). Rawls's answer builds on the notion of moral personhood: "Moral persons are distinguished by two features: first they are capable of having a conception of their good (...) and second they are capable of having a sense of justice" (Rawls 1999, p.442). To avoid the problem of variation, and clearly people differ in the degree to which they possess these two capacities, Rawls refers to the idea of a range property. Moral personhood is a binary property ranging over the two scalar properties of moral capacity. Anyone who passes a minimal threshold of moral capacity counts as a person. The threshold is specified by reference to the requirements of justice as fairness, "equal justice is owed to those who have the capacity to take part in and act in accordance with the public understanding of the initial situation" (1999, p.442), i.e., the original position. Individuals are fundamentally one another's equals in the sense that and because they can understand and act upon principles of justice: "Those who can give justice are owed justice" (1999p. 446).

5. The idea of a range property: Five questions and three problems

Advocates of a range property R will have to answer five questions: (1) Why choose scalar property S? (2) Why allocate entitlements on the basis of R rather than S? (3) Why set the particular threshold envisaged by R? (4) Why ignore variation above the threshold? (5) Why make a fundamental distinction between somebody just below the threshold and somebody just above the threshold? There are three problems that befall any attempt of providing sound arguments in support of answers to these five questions. Note that I am not offering a knock-down argument against the idea of a range property. I simply offer some considerations which may or may not be decisive.¹⁷⁷

There are several scalar properties that one might choose from when trying to establish the idea of basic equality. Considerations of significance, scope and believability are relevant criteria informing this choice. Opting for scalar property S1 rather than scalar property S2 we justify our choice by explaining the significance and importance of S1. Maybe we say that S1 matters more than S2 because S1 is more germane to what we believe is important about human beings, to what we value in persons or similar. Any such argument establishing the significance of a particular scalar property delivers an answer to question (1). Answers to question (2) require a different type of argument. Instead of providing an argument supporting our preference for focusing on S1 rather than on S2, we need an argument in support of our preference for focusing on R rather than on S1. Given that we

¹⁷⁷ I suspect that it may be easier to justify the choice of a range property on the level of social regulation. It may, for example, be more feasible or efficient to focus on some range property rather than the underlying scalar property. This sort of justification, however, is not what I am looking for in the present context.

believe in S1 as capturing a fundamentally significant feature of human beings, we need a good explanation for why we focus on some different property R as the basis of equality. Why should the equal possession of some range property R serve as the proper basis for determining entitlements to G_n rather than the unequal possession of the underlying scalar property S? Answering this question is less straightforward than it might initially appear. The challenge is that of explaining why possession of the scalar property matters but the fact that different people possess it in varying degrees does not. Arguments in support of answers to questions (1) and (2) have to strike an intricate balance. They would have to deliver the conclusion that one's preferred scalar property is more important than alternative scalar properties but less significant than one's preferred range property. Locke fails to strike this balance. The power to reason seems more significant than the power to reason to the existence of God. Does Rawls have a good reason for allocating entitlements to contractualist justification and liberties on the basis of a minimal threshold conception of moral personhood rather than on the two moral capacities?

Even if the difficulty involved in simultaneously answering question (1) and (2) can be overcome, there remains the question of why the threshold posited by one's preferred range property is precisely where it is. There are multiple ways of drawing the line on the underlying scalar property, and Richard Arneson (1999) worries that any such line would be vulnerable to the objection of arbitrariness. Advocates of a range property need to give a reason explaining the location of their threshold. In the case of Rawls this reason is given by his conception of justice. Jeremy Waldron (2008) observes that range

properties are driven by an interest or purpose, for example by the purpose of coherently supplementing the idea of justice as fairness. Ultimately, the plausibility of an argument in support of an answer to question (3) depends on the plausibility of one's theory of justice. However, there are three independent constraints on the reason for holding a specific threshold. Firstly, the reasoning offered in support of a threshold must avoid circularity. One cannot argue for a threshold on the ground that it is the threshold relevant for a particular principle and also maintain that the principle is supported by the idea of basic equality. If the idea of basic equality is going to do any genuine work in grounding a principle of justice, then Rawls's account that "those who can give justice are owed justice" turns out to be disappointingly circular.¹⁷⁸ Secondly, the interest driving the threshold must not be at odds with the interest of identifying what renders human beings fundamentally one another's equals. If the purpose of fixing a threshold is that of determining the range of people subject to principles of justice regulating the basic institutions of society, we might end up identifying a property different from the one rendering all human beings fundamentally one another's equals. Thirdly, the actual threshold ought to do justice to our pre-theoretical convictions about scope and avoid both types of scope mistake mentioned above. I believe that neither of the historically familiar accounts of range properties succeeds in meeting these three constraints.

Can a threshold support the fundamental significance we associate with the idea of basic equality? There is a simple line of reasoning in illustration of the claim that questions (4) and (5) escape a convincing answer.

¹⁷⁸ Carter (2009, p.32) makes the point about Rawls's circularity forcefully.

Presumably, there are individuals located across the whole range of a scalar property. However, the differences between various locations do not matter equally. In fact, there is only one difference that matters, namely that of being above or below the relevant threshold. The difference between somebody just below the threshold and somebody barely above it is much more significant than the respective differences between, on the one hand somebody barely above and somebody significantly above, and on the other hand somebody just below and somebody significantly below. The advocate of a range property faces a tough choice. The higher she sets the threshold, the more plausible the claim that differences below the threshold matter. The lower she sets the threshold, the more plausible the claim that differences above the threshold are of moral significance. A natural way of avoiding this choice would be to set multiple thresholds. Multiple thresholds, however, would fail to deliver the binary distinction needed to support the idea of basic equality.

6. Respect and the basis of equality: Carter's challenging proposal

Ian Carter (2009) argues that the notion of respect provides an independent justification for the range property of moral personhood. This is good news for egalitarians. If his argument is sound, then the range property discussed in section 4 appears less vulnerable to the challenges of section 5. But Carter also argues that his way of combining a Rawlsian range property with a Kantian notion of respect is the only way to render the idea of basic equality coherent. For some egalitarians this is bad news. Carter claims that his basis of equality

is incompatible with some key luck egalitarian commitments.¹⁷⁹ He believes that respect rules out distributive egalitarian principles that are both sensitive to considerations of individual responsibility and aim at compensating for internal endowment deficits. I will address the question of how luck egalitarians should respond to Carter's challenge in section 6 below. The present section briefly presents his argument.

Carter's solution to the problem of basic equality has two parts. Firstly, Carter argues that other persons are owed respect simply because they are moral agents.¹⁸⁰ Properly understood, such respect requires "a refusal to evaluate persons' varying capacities" (Carter 2009, p.26). Or put differently, respect requires that we treat them as opaque. To treat persons with opacity respect is to ignore variation in their agential capacities as irrelevant to their moral status. Once people possess the capacities minimally required for moral agency, we must ignore the fact that people possess these capacities to different degrees. Opacity respect is the attitude we are required to take towards persons, the adequate response to their dignity and status as ends in themselves.¹⁸¹ Second: Combining the Rawlsian range property of moral personhood and the idea of opacity respect promises to avoid the difficulties spelled out above. The notion of opacity respect explains the significance of

¹⁷⁹ Standard accounts of the luck egalitarian position, include among others Arneson (1989), Dworkin (2000) and Cohen (1989).

¹⁸⁰ Carter's understanding of respect has two sources. On the one hand he draws on Cupitt (2000). On the other hand, his notion resembles the neo-Kantian notion of respect, for example as developed by Stephen Darwall (2006).

¹⁸¹ As mentioned above, Carter's arguments are broadly speaking Kantian in spirit. He also refers to Thomas Hill (2000) as one of his sources.

the threshold and accounts for the insignificance of variation: Once individuals are recognised as persons, opacity respect requires that we ignore variation in the capacities underpinning moral agency. In Carter's own words: "Respecting persons involves viewing them from behind a veil of ignorance that allows us to perceive them only in the form of silhouettes, where the outlines of the silhouettes reflect the fact of those persons' capacities falling within a certain range" (Carter 2009, p.29). Opacity respect then offers a non-circular justification of the binary property of moral personhood, which in turn succeeds in rendering cogent the idea of basic equality. The dignity of persons requires that we treat them with opacity respect, which in turn requires evaluative abstinence and the refusal to evaluate variation in agential capacities. Opacity respect is the fitting response to the possession of moral personhood and requires that we treat human beings as fundamentally one another's equals.

Carter's verdict that opacity respect rules out luck egalitarianism relies on two claims. First: How one spells out the idea of basic equality matters for the content and metric of the egalitarian principle justified by it: "The foregoing reflections suggest that the outcome of our search for the basis of equality can work as a surprisingly powerful filter, leading us to question the internal coherence of a number of answers to the question 'Equality of what?'" (Carter 2009, p.47). Some egalitarian principles are ruled out by Carter's basis of equality because their application would require that we violate opacity respect. Second: Certain luck egalitarian metrics, such as equal

opportunity for welfare,¹⁸² equal access to advantage,¹⁸³ or equality of autonomy¹⁸⁴ are incompatible with opacity respect. There are two luck egalitarian commitments that appear objectionable from the point of view of opacity respect and they give rise to three independent problems. Firstly, compensating particular individuals for internal endowment deficits, say disability or a lack of marketable talents, is incompatible with opacity respect.¹⁸⁵ Carter (2009, p.38) says: "This topping-up exercise cannot be carried out without looking behind the exteriors individuals present to us as moral agents, and is therefore inconsistent with opacity respect." One may adopt egalitarian policies that generally benefit those with lesser internal endowments, say through an unconditional basic income;¹⁸⁶ however, one must refrain from compensating a particular individual on the basis of assessing her deficient internal endowments. Secondly, sensitivity to responsibility is ruled out by opacity respect, "given that judgements of responsibility presuppose knowledge about the degrees of autonomy with which particular individuals choose and act" (Carter 2009, p.43). One may make responsibility-sensitive judgements that presuppose some normal notion of responsibility or autonomy, that is, the degree of responsibility implied by the range property of personhood. However, judgements about specific

¹⁸² See Arneson (1989).

¹⁸³ See Cohen (1989).

¹⁸⁴ See Fleurbaey (2008).

¹⁸⁵ It is maybe helpful to here think of Carter as raising on a more fundamental level, an objection to luck egalitarianism that has previously been formulated by Jonathan Wolff (1998) and Elisabeth Anderson (1999).

¹⁸⁶ Carter here refers to van Parijs's (1995) work on an unconditional basic income.

individuals and their capacity to choose responsibly are ruled out. Thirdly, a dilemma arises from the first two observations. Carter argues that the luck egalitarian will have to choose between on the one hand a commitment to compensate for internal endowment deficits, and on the other hand sensitivity to responsibility considerations. The choice is between broadly speaking two types of policies. The first type of egalitarian policy satisfies the requirements of opacity respect and operates to the advantage of those with low internal endowments; however, it will have to be insensitive to considerations of responsibility. Opting for Rawls's difference principle or an unconditional basic income will, as a matter of empirical fact, promote the position of those with low internal endowments. However, such a policy leaves no room for questions of responsibility. The second type of egalitarian policy will choose a baseline of equality and then allow for inequalities that arise from the exercise of responsibility. However, attempting to satisfy the requirement of opacity respect renders this policy unattractive from an egalitarian point of view. Opacity respect rules out setting a baseline that equalises both internal and external endowments. And reliance on a normalised notion of responsibility puts those less equipped to behave responsibly, presumably those with lesser internal endowments, at an additional disadvantage. As Carter (2009, p.45) observes, "this alternative will almost certainly strike most luck egalitarians as unacceptably anti-egalitarian."

Employing some of the terms developed in section 2, Carter's overall line of reasoning and the challenge to luck egalitarianism delivered by it can be understood like this:

- (P1) To be justified, any principle of the kind (E) "Every person is entitled to equal amounts of some good G_n or treatment T_n " must rely on the idea of basic equality.
- (P2) The only way of rendering the idea of basic equality coherent relies on the idea of a Rawlsian range property and the requirements of opacity respect.
- (P3) For a principle of the kind (E) to be justified, the application of (E) must not violate any of the principles or ideas relied upon in its justification.
- (P4) Applying the luck egalitarian principles that "Every person is entitled to (G_i) equal access to advantage, (G_{ii}) equal opportunity for welfare, or (G_{iii}) equality of autonomy" violates the requirements of opacity respect.
- (\therefore) Luck egalitarian principles that "Every person is entitled to (G_i) equal access to advantage, (G_{ii}) equal opportunity for welfare, or (G_{iii}) equality of autonomy" are not justified.

How should the luck egalitarian come to terms with this challenge?

7. A luck egalitarian response to Carter

Because Carter's argument is valid, luck egalitarians will have to respond to his challenge by rejecting (at least) one of its premises. There are four basic options that are worth exploring. Firstly, luck egalitarians could challenge (P2) by denying that opacity respect succeeds in providing a basis for equality. They could rely on the objections pressed against range properties and ask

whether invoking opacity respect succeeds in answering all of them. Secondly, the luck egalitarian could question the reasoning underlying (P3) and insist that even if the application of a principle violates a requirement involved in the justification of that principle, the justification of the principle would still succeed. The argument would have to establish that an egalitarian principle which violates opacity respect in its application might still be justified by appealing to the requirements of opacity respect. Thirdly, proponents of luck egalitarianism could raise doubts about (P4) and argue that applying the luck egalitarian principle does not in fact violate opacity respect. They might for example maintain that there are hitherto unexplored alternatives undermining Carter's claim about the joint impossibility of opacity respect, sensitivity to responsibility and compensation for internal endowment deficits. Finally, and this is another way to deny (P2) (which also happens to be the most ambitious response), luck egalitarians could provide an alternative understanding of basic equality. If there is another way to account for basic human equality, the luck egalitarian does not find herself in the uncomfortable position of having to choose between giving up her substantive commitment and admitting that her view lacks a sound basis. The present section pursues the less ambitious luck egalitarian response options and I argue that each of them is promising. Section 8 will take up the final possibility and offer an alternative account of basic equality.

7.1 Against (P2): The failure of opacity respect

Turning against the second step of Carter's reasoning, luck egalitarians could question (P2) by arguing that the notion of opacity respect does not succeed in

rendering the idea of basic equality coherent. If combining the Rawlsian range property of moral personhood with the requirements of opacity respect does not offer one way of rendering the idea of basic equality coherent, the claim that it offers the only such way must be false. There are (at least) two sets of considerations that speak against the claim that moral personhood and opacity respect jointly succeed in accounting for basic equality. First: Thinking back to the three questions identified in section 3, one might wonder whether the notion of opacity respect succeeds in getting the scope of basic equality right. Remember that I suggested treating the claim that basic equality should comprise all human beings and only human beings as a fixed point of moral reasoning. But if opacity respect is only owed to those in possession of certain agential capacities, then a notion of basic equality based on such respect fails to include those who lack these capacities. It seems that young children, mentally disabled adults, coma patients and those suffering from Alzheimer's disease will be excluded from the scope of basic equality. If we take our pre-theoretical scope conviction seriously, we ought to turn against opacity respect. Advocates of Carter's solution might of course refer to how Rawls attempts to solve this problem and rely on the idea of potentiality: "One should observe that moral personality is here defined as a potentiality that is ordinarily realised in due course. It is this potentiality that brings the claims of justice into play" (Rawls 1999, p.442). Instead of arguing that opacity respect is owed to those actually in possession of the relevant agential capacities, it is owed, one might claim, to those with the potential for such capacities. This response, however, raises two further problems. It is firstly far from clear whether there is a principled rationale for the claim that opacity respect is

owed to those merely possessing the potential for moral personality. So far, it has only been argued that actual moral personality possesses the moral significance that triggers opacity respect.¹⁸⁷ The question why respect is also owed to those with potential for moral agency remains currently unanswered. I am secondly not convinced that introducing the notion of potentiality offers a full solution to the problem of scope. There are human beings who do not even possess the potential for moral personality, say because their coma is irreversible, because of the severity of their disability or because they have already passed through the stage of agency. In these cases, the notion of potentiality is of no help and advocates of Carter's solution might find themselves left with Rawls's admission that "those more or less permanently deprived of moral personality may present a difficulty. I cannot examine this problem here, but I assume that the account of equality would not be materially affected" (Rawls 1999, p.446). Unfortunately, it is hard to see why this particular assumption is warranted. The difficulty, it seems, remains to embarrass Rawls's, and hence Carter's account of basic equality. Second: The notion of opacity respect may succeed in offering a non-circular justification of the range property of moral personhood; however, some of the other questions from section 5 remain unanswered. For example: Where do we set the threshold and are we comfortable introducing a fundamental distinction between somebody just below and somebody just above it? Whether or not somebody is owed opacity respect and thus comes within the scope of basic equality is of fundamental importance. At the same time, whether or not somebody reaches the relevant threshold on the two scalar properties that

¹⁸⁷ For a discussion of these points in the context of Rawls, see McMahan (1997, p.254 ff.).

underpin moral personhood is a question of degree. As Jeff McMahan (1997, p.261) puts it, the threshold associated with a range property creates a chasm and "each of us must cross it with a single step." Is there a particular threshold that the advocate of opacity respect can put with confidence? At what day in their lives do infants reach the relevant level which merits opacity respect? Range properties solve the problem of variation, however, they encounter a new set of difficult questions associated with the idea of a threshold. The idea of opacity respect, it seems, is of no help in answering them. Consider the final attempt of a response on Rawls's and Carter's behalf. Advocates of a range property could respond to the challenge of where to put the threshold by introducing a wide instead of a narrow threshold. The idea is that one does not pass the threshold at one particular point on the underlying scalar property, but that there is a threshold band or area on the scalar property, such that one passes the threshold if one comes above its upper bounds and fails to pass if one comes below the lower bounds. Such a wide threshold avoids the particular location questions considered above. However, it also raises a set of new and equally difficult questions. What status do we grant to those within the band? And as the threshold will have upper and lower bounds, does not the problem of where to draw the line resurface? In fact, does it not resurface twice, once when determining who is below and who is within, and again when determining who is within and who is above? It seems that again, the idea of opacity respect is of no help in solving the problems that befall the idea of a range property. Step (P2) in Carter's reasoning is not beyond doubt.

7.2 Against (P3): The distinction between justification and application

Challenging the third step of Carter's reasoning, luck egalitarians could turn against the general claim of (P3) and deny that in order to be justified, the application of a principle must not violate any of the principles relied upon in its justification. Carter's thought that, if the idea of opacity respect plays a role in justifying a particular egalitarian principle P then one ought not to violate the requirements of opacity respect when applying principle P, appears initially plausible. However, there are many cases where the fact that the application of a principle violates requirements relied upon in its justification appears unproblematic. If this observation is correct, (P3) ought to be rejected.

Consider a simple example. Imagine a fictional rural country, maybe somewhere in Eastern Europe in the late 19th century, called Levinia. Only half the citizens of Levinia possess any land and it is distributed very unequally between them. Some of the enlightened aristocrats of Levinia propose a land reform that would give everyone who is currently a landowner an equal plot of land and they defend their proposal in the national assembly of kulaks. As it happens, their speech in defence of the proposed land reform comes in two parts. The first part offers a justification of the reform and the second part elaborates on its application. The enlightened aristocrats justify their proposal by making an argument in support of the claims that, firstly, all true Levinians have an equal claim to land and, secondly, while owning some land is what makes you a true Levinian, how much land you own does not matter for whether or not you are a true Levinian. The aristocrats argue that, "even minimal landownership confers an important virtue on people, a sense

of responsibility for nature and a conception of the value of your homeland, which turns them into true Levinians and commands our respect. To determine the status of your fellow men, you must not ask how much land they own but only find out whether they possess any." The aristocrats carry on: "Although it is true that those with more land behave more responsibly towards nature and are even better patriots than those with less land, we ought to abstain from taking these differences into account, for this abstinence is the attitude owed to true Levinians. We believe that anyone who owns at least some land is a true Levinian. In light of their equality as true Levinians, we propose that land be distributed equally between those who possess at least some land." In elaborating on the details of their reform, the enlightened aristocrats suggest: "We propose to form a commission that administers the redistribution of land. Those landowners that own more than an equal share of land are required to give up land; those who possess less than an equal share of land will receive additional land. Eventually, our redistributive efforts will ensure that the land of Levinia is distributed equally between the current landowners, that is, between all true Levinians." Regardless of how compelling you find the particular case of the enlightened aristocracy in Levinia, it seems perfectly consistent to advocate the policy of an egalitarian land reform relying on the claims:

- (a) that those entitled to an equal share of land bear their entitlements on the basis of a binary property that they all possess equally, e.g., the range property of being a true Levinian;

- (b) that this binary property ranges over a scalar property, which is again a function of some empirical property, e.g., the scalar properties of having a sense of responsibility for nature and a conception of the value of the homeland, which vary with the amount of land one possesses;
- (c) that an independent normative requirement explains why we focus on the range property rather than on the underlying scalar property when grounding the entitlement and determining the class of entitlement bearers, e.g., the requirement of respect owed to true Levinians explains why we ought to ignore the variation in possession of land;
- (d) that the land reform compensates those deficient in the empirical property underpinning the relevant scalar property, e.g., those with less than an egalitarian share of land.

I believe that the case of the land reform in Levinia casts some doubt on (P3).

Implementing the egalitarian land reform requires that we take into consideration how much land each true Levinian possesses. Justifying the land reform, however, requires that we ignore how much land each true Levinian possesses. If one does not believe that this fact renders the land reform unjustified, one ought to reject (P3).

7.3 Against (P4): Exploring neglected alternatives

There are two strategies that the luck egalitarian could pursue in turning against the final step of Carter's reasoning. The first strategy employs a simple

argument: If it is true that luck egalitarianism is incompatible with opacity respect in the way suggested by Carter, then opacity respect does not offer a plausible interpretation of the attitude owed to persons. Proponents of the second strategy argue that Carter presents the luck egalitarian with wrong policy choices. One actually can, maybe in more indirect ways, apply a luck egalitarian principle without violating opacity respect.

First: Remember that its sensitivity to particular internal endowment deficits was one of the features that rendered luck egalitarianism problematic from the point of view of opacity respect. Carter claims that while it is permissible that a principle be motivated by a concern for those with lesser internal endowments, the application of an egalitarian principle must not compensate particular individuals on the basis that their internal endowments are deficient, for this "topping-up exercise cannot be carried out without looking behind the exteriors individuals present to us as moral agents" (Carter 2009, p.38). Imagine a case where an egalitarian policy that aims at benefiting those with lesser internal endowments while observing the requirements of opacity respect, say an unconditional basic income, reaches its redistributive limits: Provision of an unconditional basic income has indeed generally tended to benefit those with lesser internal endowments, however, some individuals suffer from a specific internal endowment deficiency such that they are still very badly off. The basic income leaves a particular individual, call him phlegmatic Paul, significantly better off than he otherwise would have been, but he still suffers from a particular predicament: Paul possesses the relevant above threshold agential capacities; however, due to some genetic defect, it is extremely painful for him to exercise these capacities. As a

consequence, he hardly ever makes any decisions and never pursues a particular goal with any resoluteness. Phlegmatic Paul is, as a result, not only economically worse off than others but he regrets not being able to exercise his agential capacities painlessly. There are expensive painkillers that would allow him to reflect and decide painlessly, however, Paul is unable to afford them. It seems that the advocate of opacity respect will have to respond to Paul's request for painkillers like this: "Unfortunately, we must not give you any painkillers. We understand that it would be good for you to have them and that you should be able to decide and act without pain just like anyone else. However, to hand out the painkillers would be a failure to treat you with respect. What we owe to you as a person is that we ignore your condition." I think that Paul has good reason to think that the advocates of opacity respect misunderstand what we owe to persons. If opacity respect rules out compensation for internal endowment deficits in this case, then so much the worse for opacity respect.

Note that there is a response that the advocate of opacity respect could offer. The advocate of opacity respect could argue that giving out the painkillers is actually unproblematic. The internal endowment of painlessly being able to make and act upon decisions is not among those protected by opacity respect. To compensate for such a deficit is not a failure of respect. Unfortunately, this response raises a problem. The more narrowly one conceives of the properties requiring evaluative abstinence, or the patchier the veil of ignorance, the less significant the challenge to the luck egalitarian. If it is permissible to improve on how agents use their capacities by enhancing the conditions under which they would do so, the luck egalitarian can take the

challenge of opacity respect easy. It would leave large parts of their substantive commitments unscathed. The advocate of opacity respect faces a tough choice.

Second: Luck egalitarians could argue that in denying the possibility of an egalitarian principle which is sensitive to questions of responsibility, aims at the compensation of internal endowment deficits and satisfies the requirements of opacity respect, Carter is presenting the luck egalitarian with wrong policy choices. Carter believes that if luck egalitarians take opacity respect seriously, they will have to choose between either adopting a policy that benefits those with lesser internal endowments but is insensitive to matters of responsibility, such as an unconditional basic income, or choosing a policy that is sensitive to considerations of responsibility but unacceptably inequalitarian, such as a starting gate theory equalising external endowments. However, it is not clear whether luck egalitarians do in fact face this dilemma. One actually can, maybe in more indirect ways, serve the luck egalitarian aim without violating opacity respect. There are two things to be said in support of this option. Firstly, luck egalitarians could advocate the application of a hybrid principle, for example a responsibility-sensitive version of the priority view. One could think of a such a view as combining elements of what Arneson labels "responsibility-catering-prioritarianism"¹⁸⁸ and Rawls's difference principle: Primary goods ought to be distributed to the benefit of the least advantaged individual, unless the least advantaged finds herself in that position as a result of the exercise of responsible choice, where the notion of responsible choice presupposes the notion of agency implied is the

¹⁸⁸ This is advocated by Richard Arneson (2000).

threshold conception of personhood. Because those with lesser internal endowments tend to be among the least advantaged, such a principle would work to the benefit of those with low internal endowments. At the same time it would succeed in ensuring that distributions remain sensitive to individuals' exercise of responsible choice. Clearly, such a hybrid principle fails to fully realise the luck egalitarian commitments. However, it seems to offer an approximation that avoids Carter's dilemma.

Luck egalitarians could secondly amplify their response by noting that their preferred distribution of burdens and benefits between individuals is to be achieved indirectly and not in as simple a fashion as critics sometimes seem to suggest. Instead of directly allocating a particular distributive share to a particular individual on the basis of her relevant characteristics, the luck egalitarian could, just like the Rawlsian, be concerned with the "background social framework within which the activities of associations and its individuals take place" (Rawls 2001, p.10). There is nothing in the luck egalitarian principle that should prevent its advocates from employing the same ideas of background justice and a basic structure that Rawlsians rely on when thinking about how to realise their conception of justice.¹⁸⁹ But if one achieves equality of autonomy, or realises responsibility-catering-prioritarianism, by means of a sophisticated institutional design,¹⁹⁰ including "the specification of property rights, and permissible economic relations, control of capital, limits on concentration of wealth, permissible uses of property" (Freeman 2007, p.135) etc., one can avoid the move that, according to Carter, violates opacity

¹⁸⁹ For a recent discussion of background justice, see Ronzoni (2009).

¹⁹⁰ This response is suggested by Tan (2008).

respect, namely to compensate particular individuals on the basis of their particular endowment deficiency.

8. The common humanity account of basic equality

I believe that a range property account of basic equality that focuses on the capacity for moral and rational agency fails. A more promising account of basic equality will build on the idea of common humanity.¹⁹¹ The idea of common humanity runs together two commitments. Firstly, it attributes ethical significance to membership in the human species. Secondly, it replaces the idea that there is a small number of properties necessary and sufficient for the status of humanity with that of similarity or resemblance. People are one another's equals because they resemble each other in their possession of a number of human characteristics. Shakespeare (Shakespeare 1600, Act III, Scene I) offers a list of such common dispositions when, demanding justice for himself, Shylock dwells on the commonalities between Christians and Jews:

"Hath not a Jew eyes? hath not a Jew hands,
organs, dimensions, senses, affections and
passions? fed with the same food, hurt with the
same weapons, subject to the same diseases,
healed by the same means, warmed and cooled
by the same winter and summer, as a Christian
is? If you prick us, do we not bleed? if you tickle

¹⁹¹ Bernard Williams (1973, p.232) highlights the significance of common humanity.

us, do we not laugh? if you poison us, do we not
die? and if you wrong us, shall we not revenge?"

I shall offer seven considerations in support and clarification of my claim that the idea of common humanity succeeds in rendering coherent the notion of basic equality. These remarks will have to remain somewhat cursory, however, they lend plausibility to an alternative which has been neglected by those critics who claim that luck egalitarianism lacks an account of basic equality. The first consideration motivates my approach against the alternative of a Kantian range property and I argue that moral and rational agency are neither necessary nor sufficient for the status of basic human equality. The second consideration explains how I understand the notion of similarity and I argue that one should conceive of common humanity as a kind of family resemblance. The third consideration spells out my idea of common humanity as family resemblance and develops some of the essentially human characteristics from Shylock's list. Having outlined my account of basic equality, I shall explain how it meets the challenges identified above. The fourth consideration explains the ethical significance of common humanity and preempts the objection of speciecism. The fifth consideration explains how my account deals with the challenge of variation, the sixth one explains how I come to terms with the problem of scope, and finally, I explain how making sense of basic equality in terms of common humanity as family resemblance avoids Carter's challenge and turns out compatible with luck egalitarianism.

To determine whether some property P is a promising candidate for rendering all human beings fundamentally equal, one may apply a simple intuitive

test and ask two questions.¹⁹² If some being lacks property P, are you happy to exclude that being from the realm of fundamental human equality? If some being possesses property P, are you happy to include that being in the realm of fundamental human equality simply in virtue of her possession of P? I believe that any broadly speaking Kantian range property will fail this dual test. Moral and rational agency are neither necessary nor sufficient for the status of basic human equality. If some being resembled ordinary human beings in all respects, say she possessed the same needs, displayed affections etc., but just fell below the relevant threshold of agency, she should not be excluded from the realm of basic equality. Jeremy Waldron shares this intuitive scepticism about the significance of rational and moral agency. He is unconvinced that "what matters, ultimately, is our capacity to make judgments about what matters" (Waldron 2008, p.40). If on the other hand, some being very different from ordinary human beings, say an alien, angel or wild beast, turns out (or up) to possess the psychological capacity underpinning agency, we still would not think that she is our equal in the relevant sense. If it turned out that dolphins actually possessed the same psychological capacities as the average American, we still would not consider dolphins our equals. Rational and moral agency will play some part in a convincing account of basic equality. However, they are neither necessary nor sufficient conditions in the way suggested by advocates of Kantian range properties.

Instead of trying to identify a set of necessary and sufficient conditions, one ought to approach the idea of basic equality by relying on the idea of similarity or resemblance. I agree with Robert Nozick (Nozick 1997, p.308), who believes that "it may be a mistake to expect that there always can be a succinctly formulated

¹⁹² Thomas Hurka (1993, p.33) discusses this test but focuses exclusively on the second question.

distinction [between humans and non-humans] based on a manageably small set of properties." My reasoning in support of this claim is simple. We have reason to suspect that there is no manageably small set of properties that meets the threefold challenge of variation, scope and significance which a successful account of basic equality would have to meet. The most promising candidate properties to address the problem of variation are range properties. However, as I have argued, the historically familiar candidates fail in important respects and there are severe systematic difficulties associated with the idea of a range property. As long as these difficulties remain unresolved, scepticism about the prospects of identifying a definite set of properties that would render human beings fundamentally one another's equals seems warranted. One then ought to develop the idea of common humanity. As Bernard Williams claims, the proposition "that all men are human" serves "as a reminder that those who belong anatomically to the species homo sapiens (...) are also alike in certain respects more likely to be forgotten" (Williams 1973, p.232). I believe that one should understand the notion of common humanity relying on Wittgenstein's idea of "family resemblance" (Wittgenstein 2001, p.27). The different respects in which human beings are like one another are analogous to "the various resemblances between members of a family: build, features, colour of eyes, gait, temperament, etc., etc." (Wittgenstein 2001, p.27). Three characteristics of "family resemblance" are crucial for my present purposes. First: For a number of beings to resemble each other, they do not have to share a fixed set of properties or characteristics. Individuals A, B and C may resemble each other, even though there is no (set of) characteristic(s) that all of them possess. Three siblings may resemble each other, even though there is no feature shared by all of them, e.g., at least one of them has a different colour of eyes, a different build, etc. Second: To say that two

individuals resemble each other in their possession of one particular feature, they do not actually have to possess the exact same feature. Rough proximity in temperament or gait is sufficient for resemblance. Third: There is no single property the acquisition of which would on its own be sufficient to establish resemblance. Two otherwise entirely different individuals do not enter a relationship of family resemblance simply in virtue of say dying their hair in the same color. Why shall the idea of family resemblance help to make sense of basic equality? Two thoughts explain why it is plausible to conceive of common humanity in terms of family resemblance. One may firstly argue that the idea is true to or captures how we perceive of other human beings. Observing the various and diverse forms of human existence, "the result of this examination is: we see a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail" (Wittgenstein 2001, p.27). One may secondly argue that the notion of family resemblance turns out successful in solving the problems associated with the challenge of basic equality. The fact that the notion of family resemblance supports our independent judgements, for example about scope, speaks in its favor. I shall argue that it succeeds in addressing these important challenges below.

What then are the respects in which human beings are alike, what are the various resemblances between human beings? Taking my inspiration from Shylock, I shall focus on two broad respects of resemblance. These respects are neither mutually exclusive nor exhaustive, however, there are two good reasons for focusing on them. The two respects of resemblance are of independent moral significance and they offer a systematic approach to those characteristics constitutive of more complex relationships of resemblance. A first respect of resemblance concerns

certain human psychological capacities. These capacities should be understood broadly. Human beings do not only resemble each other in their capacity for rationality, but also in their capacity for empathy, their ability to feel affection and in their exhibition of particular reactive attitudes. As observed by Shylock, humans laugh if tickled and take revenge (or forgive) if wronged. A second respect of resemblance concerns particular human vulnerabilities. Human beings feel pain, they have interests grounded in sentience, they have similar needs and so on. Ultimately, the specific nature of these vulnerabilities is grounded in the physical setup of human beings, their anatomy, genes, etc. As Shylock points out, humans "are fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer". These various human dispositions, roughly categorized as psychological capacities and vulnerabilities, constitute the "complicated network of similarities overlapping and criss-crossing" that make up human family resemblance. Human beings do of course resemble each other in respects that combine various of the basic similarities. Being able to see the world through the eyes of others may, for example, be a complex constituent or intermediate respects of human family resemblance.

One may object that my account of basic equality grounded in common humanity as family resemblance is speciest.¹⁹³ Arguing that human beings enjoy some special moral status simply in virtue of their humanity, one may object, arbitrarily favors one species in a way comparable to racism or sexism. I believe that one ought to distinguish between different ways of objecting to a position as speciest. Once one becomes clear about what is at stake in each version of the

¹⁹³ For an original formulation of the objection of speciest, see Peter Singer (1993).

objection, it turns out that all of them can be answered. I shall defend my account of common humanity as family resemblance against the three most powerful speciecist objections. First: Advocates of a speciecism objection may take issue with giving priority to humans over non-humans in cases of conflict. If the exact same interest of a human being and a non-human being is at stake, one must not simply give priority to the human being. To this objection, however, there is a convincing twofold answer. It firstly seems that a requirement to give priority to a human being is well grounded. If a runaway trolley is heading towards a newborn infant and one could rescue the infant by diverting the trolley onto a sidetrack where it would kill a chimpanzee, one is required to divert the trolley. One secondly ought to note that giving priority to human beings does not exclude other creatures from also being the subject of our moral concern. Non-human beings still matter morally. Second: Those pressing the objection may argue that speciecists fail to articulate a criterion for status that could be empirically assessed.¹⁹⁴ Encountering a new group of beings, speciecists will fail to offer a test for determining whether these beings count as our equals. But even though this objection may apply to some versions of speciecism, it does not apply to my account of common humanity. The notion of family resemblance offers a way for determining whether a being not hitherto encountered enjoys the status of common humanity. One will have to find out whether it resembles us in the relevant respects, whether its name could be substituted in Shylock's monologue. Third: Those opposed to speciecism may argue that species membership as such is of no moral significance. Here my response is threefold. I firstly believe that speciecism enjoys a firm grounding in common sense morality. As observed by Williams, "whether a creature is a human being or not

¹⁹⁴ This is version of the objection discussed by Matthew Liao (2010).

makes a large difference, a lot of the time, to the ways in which we treat that creature or at least think that we should treat it" (Williams 2006, p.138). The fact that they are in line with common sense morality, counts in favor of speciecist commitments. The advocate of common humanity may secondly point out that the properties constitutive of the relationship of family resemblance are of independent normative significance. A consequentialist tradition in ethics has emphasized the significance of vulnerability and sentience and a non-consequentialist tradition has explained the ethical importance of psychological capacities. The fact that on my account none of these properties is individually necessary and sufficient does not undermine the claim that common humanity supervenes on independently significant properties, dispositions and commonalities. Finally, one may attempt to offer an independent justification for the significance of common humanity. I follow Bernard Williams and argue that what people like Peter Singer call speciecism, should be understood as a benign form of partiality, more aptly called humanism.¹⁹⁵ I shall briefly explain the model of special relationships which usually give rise to concerns of partiality and argue that common humanity fits this bill.

There are relationships, for example between friends or members of a family, which we think are especially valuable and which give rise to special moral considerations. It may be controversial which relationships count as special in this sense, but it seems that there are at least some clear cases. Three aspects are characteristic of the type of relationship that I have in mind.¹⁹⁶ Firstly, the relevant type of relationship creates special moral considerations which arise in virtue of

¹⁹⁵ Bernard Williams (1986, 2006) hints at this reformulation.

¹⁹⁶ See also Scheffler (2001).

being a member in that relationship. Special relationships are for example thought to give rise to positive duties. Many people who believe that we ordinarily only have weak reasons, if any, to benefit other people, believe that such reasons become stronger, or emerge, in the context of special relationships. Others think that membership in a group creates the duty to give members of the group different kinds of priority. Finding yourself in a situation where you can only rescue one of two drowning children, while one of them is your son and the other is a stranger, it is permissible, or maybe even required, that you save your son. Secondly, it is the nature of the relationship as such that matters and not any particular interaction within it. Joint membership in a group may suffice to account for the relevant relationship and the special responsibilities apply to all members regardless of their actual interaction.¹⁹⁷ Thirdly, the reason that there are special responsibilities which apply between members of, say a particular group, stem from the value of their relationship. In my attempt to justify significance of common humanity, I shall follow Samuel Scheffler and explore the suggestion that "one's relationships to other people give rise to special responsibilities to those people when they are relationships that one has reason to value" (Scheffler 2001, p.101).

I believe that we ought to think of the relationship between those who resemble each other as human beings on the model of special relationships. There is a particular relationship in which all such beings stand to each other. The value of this relationship offers an independent justification for the allegedly arbitrary weight placed on membership in the human species. But why should we think of the

¹⁹⁷ One may for example think that I have a special responsibilities to my son, even though I never met him before and only just now came to learn of his existence. The conception of special responsibilities is what Scheffler calls "non-reductionist," see Scheffler (2001, p.99).

relationship of human family resemblance in analogy to that between friends or members of a family? Clearly, the values realised in a family or friendship are very different from those potentially realised in the special relationship of humanity. However, I think one should agree with Bernard Williams and assume that there are genuinely human values which render the analogy plausible: "Human values are not just values that we have, but values that express our humanity, and to study them is to study what we value inasmuch as we are what we are, that is to say, human beings" (2006, p.138). One ought make sense of humanism (as opposed to speciecism) in the following way: Human family resemblance places individuals in a special relationship with each other. The special duties and responsibilities that arise within this relationship help to realise important values. Just as there is value in assuming special responsibilities and duties towards friends, there is value in exhibiting similar attitudes towards beings who resemble us in having our kind of "hands, organs, dimensions, senses, affections and passions." To give their claims priority over others allows us to "live in a world that will be our world, one in which we have a social, cultural, and personal life" (Williams 1986, p.111).

A further idea helps to make sense of common humanity as a special relationship. Trying to distinguish between special relationships that give rise to partiality and those that do not, Niko Kolodny (2010, forthcoming) has recently introduced the idea of "resonance." His thought is that the reasons which a special relationship gives rise to, for example reasons of partiality, need to resonate or be in line with the reasons that the individual elements which make up the relationship, such as individual encounters which make up a friendship, give rise to. In the present context, this idea is helpful in two respects. It firstly allows us to preempt the worry that if you admit of humanism as a form of partiality, you open the door

to racism or sexism. The relationship between whites does not give rise to reasons of partiality, because there is nothing of significance in the relationship between whites that such reasons could resonate with. The idea could secondly be employed as a starting point for thinking further about what exactly could account for the special relationship of common humanity, e.g., a shared history of encounters and a common situation.¹⁹⁸

It remains to explain how the account of basic equality building on common humanity as family resemblance comes to terms with the challenges of variation and scope. I believe that there are two ways of responding to the challenge of variation. First: Accounting for basic equality in terms of human family resemblance, one may emphasize "that there are certain similarities amongst men, not that there are certain qualities which they all possess to the same degree. Thus some people are much more sensitive to pain than others. But the egalitarian may mean merely that men are all, equally - the commas are important - liable to pain: i.e., one man is liable to pain just as another is, not just as much as another is" (Wilson 1967, p.83 fn. 5). The problem of variation arises because the generic principle of justice figures as an important premise in egalitarian arguments. If the property relevant from an egalitarian point of view is possessed unequally, and one ought to treat similar cases alike, possession of the property will not deliver the intended egalitarian conclusion. However, on the common humanity account, the respect of relevant similarity is not found in the possession of a single (set of) characteristic(s), but in human family resemblance. The fact that all bearers of egalitarian entitlements are equally human avoids the problem of variation. Second: The special relationship account that explains the significance of human family

¹⁹⁸ This idea will have to be worked out more fully. However, I believe it offers a promising direction.

resemblance also gives us a reason to ignore differences within the human species.¹⁹⁹ In addition to positive duties and concerns of partiality, membership in a valuable relationship can give rise to a reason to ignore various differences between the members, which, absent that relationship, would matter.²⁰⁰ There are two ways in which special relationships serve as a source for reasons to ignore differences. Firstly, the value of the relationship may itself arise from ignoring various differences within the group. Membership in some groups is valuable because members ignore (certain) differences between themselves. It is, for example, not only part of the significance of the family to give members of the family priority over strangers, but also to ignore otherwise important differences between various family members. A difference that may matter when deciding whom to rescue when the life of two strangers is at stake, for example considerations about who is going to contribute more good to society in case of survival, seem inappropriate when having to decide which of your two children to rescue. Families are valuable partly because within them certain differences do not matter. Secondly, taking certain differences into account may defeat the purpose of the relationship in question and undermine the values realized in it. Some liberal nationalists argue that nations are valuable because they satisfy a desire for "belonging and connectedness" (Tamir 1993, p.137). Achieving a sense of connectedness presupposes that certain differences be ignored. Standing in a special relationship to somebody mitigates the salience of otherwise significant differences. If we ought to think of the relationship of human family resemblance on the model of special

¹⁹⁹ This reason to ignore variation may be understood in analogy to how Ian Carter employs the idea of "opacity respect" in his attempt to justify the Rawlsian range property of moral personhood.

²⁰⁰ That is to say the distinction matters both between members of the group and outsiders, and between different outsiders, but not between insiders.

relationships described above, we have a reason to ignore differences between the members of that relationship.

As I have argued in section 3 above, in fixing the range of beings to which one's preferred egalitarian commitment applies, an account of basic equality should avoid two types of scope mistakes. The first scope mistake is that of including beings that should not be included. Our egalitarian concern should not, for example, encompass mice or dolphins. The second scope mistake is that of excluding beings that should be included. Our egalitarian concern should not, for example, exclude infants and Alzheimer patients. The common humanity as family resemblance account avoids both types of scope mistakes.²⁰¹ One may plausibly argue that there is a sufficient degree of resemblance and similarity between infants, Alzheimer patients and us, while the relationship of family resemblance does not hold between us and say, mice or dolphins. The general characteristics of family resemblance, and in particular its avoidance of a small set of necessary and sufficient properties make meeting the dual challenge of scope possible. Whereas advocates of the traditional Kantian or Rawlsian range property will have to admit that a human being who lacks the relevant psychological capacities is excluded from the realm of basic equality,²⁰² those who believe in common humanity can insist that lack of just one of the many human dispositions and characteristics is not sufficient to undermine human family resemblance. And where consequentialists who believe that sentience is the feature relevant for the status of basic equality will argue that animals are to be included, proponents of common humanity can insist that sentience is not sufficient to establish the relationship of resemblance. The

²⁰¹ The significance of avoiding both types of scope mistake is underlined by Matthew Liao (2010).

²⁰² As I have argued, various attempts to solve this problem, for example by talking about potentiality, fail to convince.

account of common humanity as family resemblance succeeds in getting the scope right, without giving up on empirical properties. It offers a framework flexible enough to deal with cases not (yet?) practically encountered but thought to be important test cases of an account of basic equality.²⁰³ Whether or not aliens or hitherto isolated cavemen enjoy the status of basic equality does not only depend on their rational agency, but on the degree to which they resemble us. Similarly, the account explains why enhancing a mouse's psychological capacities does not confer the status of basic human equality. The way in which the approach of common humanity as family resemblance approaches the problem of scope also seems to sit well with insights about moral learning provided by recent cognitive neuroscience. Emphasizing the importance of examples and moral prototypes, Paul Churchland argues that "one's capacity for recognizing and discriminating perceptual properties usually outstrips one's ability to articulate or express the basis of such discrimination in words" (Churchland 1996, p.101). Common humanity as family resemblance provides a framework within which this ability may be exercised.

I believe that the common humanity as family resemblance account can be successfully employed as a premise in all three types of egalitarian argument, i.e., in scope, metric and grounds arguments, and avoid Carter's challenge. As I have just argued, the account of common humanity succeeds in getting the scope right and still satisfies the supervenience constraint. Even though there is a normative component to the account of basic equality, there is ultimately a difference in non-evaluative properties between those who do and do not come within the scope of basic equality. The account of common humanity also supports the relevant

²⁰³ Both Nozick and Williams discuss our relationship to aliens, see Nozick (1974, chapter 3) and Williams (2006, p.149).

sameness assumption which figures as the third premise in an egalitarian grounds argument. Note that common humanity does not in itself deliver a substantive luck egalitarian principle. However, it can be supplemented by considerations of fairness and serve as a premise in a variety of arguments in support of the claim that nobody should be better or worse off than anybody else through no fault or choice of theirs. Finally, common humanity supports a luck egalitarian metric and satisfies the tracking relationship. The characteristics and dispositions which account for human family resemblance support a metric that is both sensitive to considerations of responsibility and aims at compensating for internal endowment deficits. Importantly, it does so in a way that avoids Carter's challenge. Carter has argued that the reason we have for ignoring variation in people's possession of the feature relevant for basic equality, namely the requirements of opacity respect, rule out a distributive principle which makes comparative responsibility judgements and compensates for internal endowment deficits. I have argued above that this argument is unsound. However, even if it were not, the luck egalitarian would now be in a position to avoid the problem that Carter has in mind. The way in which the common humanity account solves the problem of variation, for example by arguing that the values served in the special relationship of humanity gives us a reason to ignore certain differences between them as irrelevant to status, does not give us a reason to refrain from compensating people for internal endowment deficits and take into account the extent to which they are responsible for their predicament. It seems that by invoking the idea of common humanity as family resemblance luck egalitarians can after all render the idea of basic equality coherent.

9. Conclusion

This chapter has achieved three things. Firstly, I have explained the importance and difficulty of coming up with a convincing account of basic equality. Anyone relying on the idea of basic equality faces the threefold challenge of variation, scope and significance. Even though range properties seem to offer a promising approach to these challenges, all of the historically familiar versions fail to convince. Secondly, I have deflected the charge that egalitarians who aim at both compensating for internal endowment deficits and taking considerations of responsibility seriously, will fail to render coherent the idea of basic equality. Egalitarians have a number of good responses to Carter's claim that the only way to account for the idea of basic equality is to supplement a Rawlsian range property with the notion of opacity respect, which would rule out luck egalitarianism. Finally, I have defended an account of basic equality that is compatible with luck egalitarianism and meets the threefold challenge of variation, scope and significance. The idea of common humanity as family resemblance appears independently plausible and may be invoked in support of the claim that nobody should be better or worse off than anybody else through no choice or fault of his or her own.

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