

Basic Equality: Neither Rejectable Nor Acceptable

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All persons share a fundamental equal moral status. All persons simply by virtue of being persons have equal basic dignity and worth. These claims about basic human equality are profound and widely shared. They appear to mark a divide in moral thinking between (1) a premodern world in which nobles are regarded as having greater worth than peasants and humans outside one's own tribe or clan have little or no moral standing and (2) a modern world that repudiates these crude prejudices. These basic equality claims are attractive but also turn out to be elusive and controversial under scrutiny.

Consequentialists and nonconsequentialists both adhere to the basic equality idea but give it a different interpretation. (A consequentialist holds that one morally ought always to do whatever would bring about the best outcome and a nonconsequentialist denies this claim.) I shall not try to describe these different views of basic equality in full generality, but just sketch one particular view from each side. So far as I can see, the problem of interpreting and defending the idea of basic equality is substantially the same, or at least of equal difficulty, for both consequentialists and nonconsequentialists, so reflection on the basic equality problem does not generate any reason to favor consequentialism over nonconsequentialism or the reverse.

According to the rights-based nonconsequentialist, each person has the same fundamental rights, which constrain the ways in which morality allows one to treat any and all persons. One prominent rights view is that each person has the moral right to be left free to do

whatever she chooses with whatever she legitimately owns provided she does not thereby cause or excessively risk causing harm to others (in certain specified ways that would violate their rights), and each person legitimately owns herself. A determinate content is supplied by specifying a list of the ways in which people may not permissibly be subjected to harm or excessive risk of harm by others and by clarifying the idea of ownership that figures in the formula. From basic rights nonbasic rights may emerge: for example, if one promises to transfer ten dollars to Smith on Tuesday, Smith acquires a nonbasic right (one not shared by others) to get the ten dollars on Tuesday that have been promised. On this view, basic equality amounts to the claim that everyone has the same basic moral rights, specified by a list, and everyone has the rights in the same full-blooded way, so that respecting the moral rights of Smith does not have greater or lesser moral weight in determining what to do all things considered than the constraint of respecting the identical moral rights of anyone else.

Notice that one cannot just say that basic equality is the claim that everyone possesses the same basic moral rights, because one could agree with this and hold that, for example, one basic moral right gives people with blue blood in their veins or those with light skin color or males rather than females special entitlements. The basic equality idea constrains the content of moral principles and cannot be read simply as a formal constraint stipulating that the rights apply universally to all persons. In this essay I do not try to do more than give examples of moral doctrines that do and do not violate basic equality. Without providing an abstract characterization of the basic equality idea, I lack a response to the skeptic who doubts that anything substantive rises and falls with acceptance of it.

According to the welfarist consequentialist, what one morally ought always to do is to perform an act among the available alternatives that would bring about an outcome of no less moral value than the outcome of anything else one might instead have done, with the moral value of outcomes being entirely a function of the well-being that accrues to persons and to

other sentient beings (perhaps a function that adds up the welfare gains and losses of all affected individuals, perhaps a function that gives greater weight to attaining gains or avoiding losses for an individual, the worse off she would otherwise be in terms of lifetime well-being). The basic equality idea governs this principle as follows: any well-being gain or loss that would accrue to one individual person has exactly the same moral value as a same-sized gain or loss that would accrue to any other individual person in the calculation that determines what morally one ought to do. In a familiar slogan, everyone is to count for one, nobody for more than one. This doctrine is committed to basic equality via its commitment to the idea that persons matter morally, that each person matters equally, and that persons matter more than nonpersons.

Not all recognizable moral doctrines have use for a doctrine of basic equality. Rational egoism, the idea that each person ought always to do whatever would most advance her own advantage, so far as I can see has no truck with the idea. Neither does utilitarianism in a pure version, which involves no commitments to the existence of persons or for that matter individual sentient beings. For example, hedonic utilitarianism requires that one ought always to do whatever would do most to maximize aggregate happiness. So long as one can associate each action one might perform with an increment or decrement in aggregate happiness the action would bring about, one needs no doctrine that tells one how to determine to what beings the happiness accrues or what is the metaphysical status of those beings. One might not countenance the individuation of recipients of happiness into individual beings. I'm not opposed; for my purposes I need take no stand on this issue. Lacking commitment to the idea of a person (or of an individual sentient being), utilitarianism in this pure form lacks any commitment to any doctrine of the basic equality of persons (or of sentient beings). Of course pure utilitarianism as described does invoke the idea of an agent who chooses and performs actions, but so far as I can see there is nothing in utilitarianism that requires that the

characterization of the agent who is bound by utilitarian dictates should have any shaping influence on the characterization of the maximand that the theory tells us ought to be pursued.

The starting point for this inquiry is that the moral doctrines that travel light and do not carry the baggage of the basic equality idea are *prima facie* objectionable. This is an assumption, not a claim to be supported by argument here.

One further disclaimer: the notion of a person, a being with certain agency capacities that persists over time and can be identified and reidentified, itself calls out for articulation and clarification. This essay relies on an ordinary, unanalyzed idea of a person. Suppose that it is metaphysically possible for several persons to fuse into one person or for one person to divide into several persons or for combinations of fission and fusion to unfold over time. What does the doctrine of the moral equality of persons imply ought to govern our treatment of variable persons in such a world? I do not attempt to say.

The basic equality doctrine is also a doctrine of basic inequality. All persons have the same basic rights (nonconsequentialist version) or every person's same-sized interests count the same (consequentialist version). Moreover, beings that lack the attributes of personhood do not possess basic rights in the nonconsequentialist framework and their interests do not have as much moral value as relevantly identical interests of persons in the consequentialist calculations of what should be done. These matters vary by degree. The more one lacks personhood attributes, the further one's moral status is from that of persons. A desideratum in an account of basic equality is that it should explain why (for example) individual lizards, rats, cats, and chimps are morally less considerable than individual persons and also explain why some animals are more equal than others—why chimps matter more and possess greater rights or right-like entitlements than lizards.ⁱ

An account of basic moral equality faces several challenges. One is to explain what a person is and to clarify the moral basis for holding persons to have higher moral status than

beings that are nonpersons. Another is to interpret the idea of basic equality and to do so in such a way that the idea has substantive moral content and does not reduce to triviality. The idea evidently is that in some basic respects, persons should be treated the same. In what respects? The trivial answer would be that if there are no morally relevant differences between persons in their circumstances, the persons in these circumstances should be treated the same. Treat those individuals differently who should be treated differently and do not treat differently those who should not be treated differently! The question then becomes whether we can do better than this.

Another challenge is to identify a justification for basic equality that withstands critical scrutiny and is vindicated in extended reflective equilibrium. To my mind, one potential justification stands head and shoulders above any competitors, and is appealing and plausible along many fronts. Unfortunately, a simple counterargument I do not have a way of countering knocks this justification off its feet. The options remaining are not plausible; we have to search for the least bad position.

1. The rational agency capacity account

The initially promising justification holds that a person is a being capable of rational agency, and beings with this capacity are morally more considerable than beings that lack it.ⁱⁱ A rational agent can identify available courses of action she might take, discern reasons for and against the options, weigh and assess the reasons she discerns, deliberate and make choices, carry out the action chosen, and do all this not simply for a single decision problem at a time but with respect to long-term plans of action and projects she might undertake. A rational agent can identify reasons that have a bearing on what to do, and this ability to detect reasons includes an ability to understand and appreciate distinctively moral reasons involving the due consideration and concern that each of us owes to others. If you have cognitive, affective, and

volitional abilities at some threshold level, you qualify as an individual person, and possess a dignity and worth that is just the moral consideration you are owed in virtue of qualifying for personhood. The basic equality idea is that all individual beings that possess rational agency capacities at the threshold level that qualifies for personhood are equally persons and have equal basic moral entitlements. What these basic moral entitlements amount to will be different in different normative moral theories embracing different moral principles and accounts of how we ought to decide what to do.

An appealing feature of the rational agency capacity account is that it avoids any claims that being a member of the human species or biologically human has per se moral significance. If there are beings in some region of the universe that have rational agency capacities above the threshold level, they qualify as persons, even if they happen to look like green slime to us. Being biologically human or not is not to the point.

The rational agency capacity account does not claim species membership per se to be morally significant, but the account does offer a plausible explanation as to why a human being with normal human psychological traits does have greater moral entitlements than a normal lizard or rat or cat or even a chimp. This is a point in its favor.

Complications arise in working out the implications for the rational agency capacity account for the moral status of young humans. A human fetus entirely lacks rational agency capacity and is morally inconsiderable, and even when a fetus acquires some rudimentary sentience, the fetus is just barely morally considerable. This implication may not be troubling. However, a newborn infant and even a young child of one or two years of age will have very little rational capacity and hence will not qualify for personhood status on this account, and this implication might seem to open the door to permissible infanticide, which many will find objectionable. Consider that a 20 month old human child and a 20 month old chimpanzee child appear to be similar in developed cognitive abilities, and the human surges ahead only

with development of linguistic capacity after this time. One possibility here is that a being's moral status with respect to the approach of personhood depends on interaction between the developed cognitive and related psychological abilities the being has at a time and its potential cognitive and related abilities, the ones it is on the way to developing. A 20 month old chimp and a 20 month old human are similar in developed capacities but differ in potential capacities, and on this basis, the human may be deemed morally more considerable than the chimp even if neither actually qualifies for personhood status. A day old human fetus has the same potential rational agency capacities as the young human child, but the fetus, unlike the young child, entirely lacks developed capacity, and the formula that fixes moral considerability may include, so to speak, a multiplicative rather than additive relation between developed capacity and potential capacity (so that a zero developed capacity always yields zero moral considerability).

Another complication concerns the moral status of individuals that have achieved personhood status and then lose rational agency capacity. A demented human individual suffering from advanced Alzheimer's Disease does not qualify as a person on the rational agency capacity account, though I suppose a demented human, unlike a now cognitively more competent cat, has the dignity of having once had personhood status. However, though obviously controversial, the claim that a demented human individual loses personhood status and the moral entitlements that attach to it might well be correct, and seems plausible to me. The point here is not that killing a demented human individual might often be deemed likely to be in that individual's interests so far as we can tell. Focus on a case in which a severely demented individual enjoys simple satisfactions such as eating candy provided by caregivers and seems to have a will to survive. Killing such an innocent, nonthreatening individual who wants to keep living and for whom continued life would be a benefit might be morally wrong but it lacks the moral seriousness of a murder of a person, or so it seems to me. Notice the

demented human individual lacks the potential for once again achieving rational agency capacity, and differs in this respect from a young child that is developing towards the threshold of personhood.

The rational agency capacity account handles the complications just noted in an intuitively plausible way. That is another point in favor of the account. Its implications for disputed moral issues such as the permissibility of infanticide and the moral quality of killings of the severely cognitively impaired are sensible, and this is no small achievement on this tricky terrain. However, tempering this optimistic assessment, I would add that the account just lightly sketched relies on an unanalyzed notion of the potential of a being, and this notion may not suit the needs of the argument. As Peter Vallentyne has asked, if a human being with genetic defects that could be repaired by therapy and other favorable interventions has a potential for rational agency capacity, then doesn't a normal mouse with no inner tendency toward developing rational agency also qualify as having the potential for rational agency capacity, since in principle there could be genetic therapy and other favorable interventions that would bring it about that the mouse eventually does cross the threshold of personhood?ⁱⁱⁱ

2. The rational agency capacity account versus equal moral considerability

Despite all that it has going for it, the rational agency capacity account cannot justify the basic equality idea. The problem is simple.^{iv} On any remotely plausible view, all of the psychological traits that combine to generate rational agency capacity vary by degree, and any plausible standard that integrates the various traits into a single measure of personhood capacity will also vary by degree. If the fact that I possess greater rational agency capacity than a normal cat or chimp justifies my claim to have a moral status and accompanying moral entitlements greater than they possess, by the same token it would seem that the fact that I possess less rational agency capacity than many other humans would seem to show that I am

less morally considerable than they are. The rational agency account does not yield a basis for a basic equality claim but rather for its denial. I have greater affective and cognitive and volitional ability than even a very competent gorilla but much less of such abilities than many of my fellow humans. In response, one can say that being a person is a range property, and provided you have rational agency capacities at a threshold level, your further greater abilities still fall in the range of personhood and are not morally inconsiderable. But we can plausibly say that a feature's being larger or smaller within some specified range is inconsequential only if we have some good account of why this is so. For example, if the size and shape of a nut and a bolt fall within a certain range, for certain purposes it does not matter what exactly their size and shape are—the nut and bolt will screw together tolerably well and serve the intended purpose. But no comparable account that debunks the significance of possession of rational agency capacities above whatever threshold marks the status of personhood would be remotely credible. Being more rather than less intelligent along various dimensions, being more affectively responsive rather than less, having greater volitional and executive abilities rather than fewer, all serve to make one a more competent and effective rational agent, so having ever more rational agency capacity generates higher moral status, above the threshold of personhood. One might resist this conclusion by identifying some morally crucial element of rational agency capacity that does not vary by degree, but this strategy is hopeless—either the trait will turn out not to matter or variations in its extent will matter.

Moreover, one needs some measure of overall agency capacity in order to show that, for example, gorillas have less agency capacity and are thus less morally considerable than normal humans. But then it would be hard to maintain that there can be no nonarbitrary measure of overall agency capacity that applies to human persons within the normal range.

At this juncture one might drop the rational agency account as a failure and seek an entirely different basis for the moral equality claim. However, to my mind the rational agency

account has too much going for it to leave any room for plausible rival accounts. The alternative would seem to be rejection of the basic equality idea. Neither alternative is fully acceptable, but I do not see another.

3. Reconciliation to rejection of basic equality

Let us explore some strategies for rendering rejection of the basic equality idea less repulsive than it might at first appear.

One possibility is to maintain that although differences in rational agency capacity across persons matter, they do not matter so much. If one measures the overall extent of a being's rational agency capacities on a vertical axis and the extent of the being's moral considerability on the horizontal axis, the line that is formed cannot become fully flat or bend downward, given what has been conceded to this point. But this is compatible with the line becoming very nearly flat, so the differences in moral considerability that separate an ordinary person such as myself and persons with excellent rational agency capacity, are very small. In proposing this I am just making an appeal to raw moral intuition without backing of argument, but the idea would be to accommodate to the extent that one can the moral appearance that all persons have exactly the same basic moral rights or that their interests count exactly the same in correct moral calculation.

Another strategy would be to attribute a multi-level structure to moral theory and claim that the basic equality idea shows up, and is justified, at a derivative level, not the level of fundamental moral principle.^v Given entrenched limits in our knowledge of facts relevant to decisions we face, our selfish and otherwise inappropriately partial motivation that leads us to carry out acts other than those we judge to be morally justified, and our ability to integrate such relevant facts as we do know appropriately into moral decisionmaking, we do better, according to the standards set by fundamental moral principles, to embrace laws, social

norms, and even a public morality that are simpler and more rigid and less easily manipulable than fundamental principles as practical guides to action. The reasons that press morality to take the shape of a multi-level structure hold for nonconsequentialist as well as for consequentialist versions of fundamental morality. If humans differ in overall rational agency capacity, and hence in moral considerability, we will very likely very often be poor judges of the various components of an individual's rational agency capacity, erratic judges of how to integrate these component scores into an all-things-considered rational agency capacity score, and strongly biased toward overestimating the rational agency capacity scores of ourselves and of those near and dear to us and of those whose favor we need to curry and toward underestimating the scores of strangers and enemies and rivals and of those who are weak and vulnerable and are unable to retaliate effectively if we act toward them on the basis of low estimates of their scores. Acting toward people in a way that expresses a conviction that they are substandard people is likely to stir up hostility and break down desirable cooperation and trust. For these and more reasons, at the level of laws, public morality, and social norms, we should affirm basic equality even if the idea cannot be upheld at the level of fundamental moral principle.

An extra reason for entrenching the idea that all persons are equally morally considerable and have equal moral standing at the level of moral thinking that looks for a public morality into which we should be trained and which should guide everyday decision making, a level just one rung up from the foundational level of moral principles, is that we will seek a public morality that is widely acceptable to people of various moral outlooks. People disagree in their intuitive moral beliefs and in what they believe ultimately matters, and a public morality to fulfill its job should be acceptable to a broad array of points of view. If the public morality looks to be narrow and sectarian, enforcing it will strike many as just some people pushing other people around.^{vi} If that view is widespread, the public morality will not be able to

perform its function. Any proposed basis for classifying persons as more or less morally considerable at the fundamental level according to one or another elite status theory will arouse opposition from reasonable and sensible people. The idea that people are equally morally considerable will also attract opposition, but this idea is a salient agreement point in practice even if the theoretical moral thinking of reasonable persons on this point sails off in all directions.

A further consideration that pushes further in the direction of insisting that at the level of practical morality, unequal moral considerability may have little or no weight in determining how we should treat one another is that there is great uncertainty as to how to attach proper weight to various dimensions of rational agency capacity so as to yield an overall measure of such capacity. We cannot entirely do without such a measure, because the view I defend does countenance inter-species all things considered rational agency capability comparisons: a bear scores higher than a lizard but lower than a normal human individual. But regarding humans, any overall assessment is epistemically and conceptually fraught. The person who cannot comprehend calculus may be emotionally sensitive, or have great ability to persevere at chosen tasks, or show integrity in the face of corrupting temptation, and so on. So to understate the point, one should be wary of venturing such assessment. One should refrain from venturing to make such judgments of the bases of different persons' moral considerability unless they are needed for some pressing purpose.

For the consequentialist who is driven to reject basic equality at the fundamental level of principle and reinstate it as a means to promoting conformity to fundamental principle, the dissonance between this stance and progressive common-sense opinion in modern society is perhaps no greater than and not different in kind from the dissonance between her act consequentialism and such basic staples of moral opinion as the idea that people have agent-relative moral rights which ought to be respected and which are ground-level moral

considerations, not derivative reasons in the service of general world improvement. Rejecting basic equality in this way just adds some weight to a burden of conflict with common sense that the consequentialist must carry anyway. To my mind this shows that conflict with common sense opinion is not such a bad stance to have to assume; others may see this issue in a different light. Anyway the consequentialist has company; the nonconsequentialist moral theory must also, if I am right, oppose common opinion here. Consequentialists and nonconsequentialists march arm in arm for once.

A third strategy emphasizes the special moral considerability that attaches to persons and notes that those human individuals who qualify as persons share this special status (even though some have extra moral considerability in virtue of their possession of extra rational agency capacities above the personhood threshold). A comparison: All students at a highly selective high school are equally students at the school and all share the status of being academically talented as indicated by their passing the selection criteria, even though the students differ in their academic talents and the differences can be important. We avoid positing an arbitrary discontinuity by stipulating a precise line marking the amount of rational agency capacity that qualifies you as a person; instead we can posit a range, with personhood status clearly being possessed by those at one end of the range and clearly not being possessed by those at the other end, with greater moral considerability accruing to one as one's capacities shift toward the upper end of the range. Since normal humans are clearly above the upper end of the range and normal members of other animal species are clearly far below its lower end, it makes sense that differences of degree for practical purposes will be regarded as differences in kind. The gap in moral standing between person and nonperson dwarfs the gaps among persons with the variations in rational agency capacities familiar to us.

These reconciliation strategies leave intact a strongly counterintuitive implication of the rational agency capacity account. This account must allow that from the standpoint of fundamental morality, sheer variations in mental ability render some persons morally more considerable than others. In the consequentialist version, this means, for example, that there is greater moral value in the pleasure of a lick of ice cream enjoyed by a smarter person than in the qualitatively identical pleasure of a lick of ice cream enjoyed by someone less smart. In the nonconsequentialist rights-based version, the account implies either that a smarter person has basic moral rights a person with lesser mental ability lacks or that the moral rights of the smarter have greater moral weight, so that the ratio of loss to nonrightholders if a right is upheld to the loss to rightholders if the right is not upheld must be larger in order to justify overriding the moral right, say, of an innocent nonthreatening smart person not to be killed than to justify an otherwise exactly similar killing of an innocent nonthreatening less smart person. To put it mildly, these implications of the rational agency account are hard to swallow.^{vii}

4. Further searches for a justification of equal moral considerability

On this topic, no available position may altogether lack strongly counterintuitive implications. We may just have to choose our poison.

4A. An all-or-nothing basis for personhood status?

One possible alternative is to show that the on the best interpretation of the notion of rational agency capacity, the notion applies in an all-or-nothing fashion that admits no degrees. One is either a person or one is not, and if one is a person, one has the moral entitlements that accrue to personhood, which are the same for all persons. The poisonous feature of this alternative is that there does not seem to be any plausible interpretation of the notion of rational agency

capacity that applies in all-or-nothing fashion. For every candidate all-or-nothing account of qualifying as a person, there will be underlying factors, the ones that on reflection really matter morally, and these underlying factors will vary by degree.

There is no difficulty in finding properties of human persons that are not scalar. Here is one. All human persons are physically embodied. I do not dispute that physical embodiment is all-or-nothing; either one is embodied or one is not. (We can imagine science-fiction examples in which this might not be so, but in our world, if you are a human person, you are physically embodied, period.) One person may be physically larger than another but is not thereby rendered more physically embodied in the relevant intended sense. But this is no help in the project of providing a normative basis for assertions that all persons share a fundamental equal moral status. The evident difficulty is that being physically embodied is not any sort of special qualification that renders you morally considerable at all, so the fact that we are all physically embodied is just no help toward establishing equal moral considerability. Rocks and stars and bears and lizards are physically embodied.

So the difficulty lies in identifying a property that persons possess that is both (a) equally possessed by all persons and (b) the sort of thing that qualifies a being as being significantly morally considerable, the basis for ascription of dignity and worth.

Here is another illustration of the difficulty. One might claim that the capacity for having second-order desires (desires about one's first-order desires) is both (a) and (b). One might dispute the claim that the capacity to have second-order desires is all-or-nothing. Imagine a being that gradually worked up to having just one second-order desire over the course of its otherwise not very complicated mental life. But let that worry pass. The greater difficulty is that the capacity for having second-order desires, if we are careful not to associate this capacity with other mental capacities that are distinguishable from it, does not seem to be remotely impressive enough to qualify the being that has the capacity as specially morally

considerable. For example, one could lack several traits necessary for personhood while having the capacity for second-order desire. The same holds for second-order volition.

4B. Subjectivity as the all-or-nothing basis: a simple dilemma

Another possible candidate for the role of justifying equal moral considerability is the sheer fact that a being has a point of view, a subjective perspective on the world.^{viii} There is something it is like to view the world from the standpoint of this being. However, many animals seem to pass this test for moral considerability, while still falling short of the moral status of personhood. A particular dog has a particular unique one-of-a-kind doggy way of seeing the world, one possessed by this particular German Shepherd, for example, and not any other type of dog nor by any other member of the German Shepherd breed.

One can pack extra cognitive, conative, and affective abilities into the idea of having a subjective point of view on the world. One might for example stipulate that a being must be able to develop mental representations of features of an external world that it perceives and of an inner world that it experiences, or that a being must be able to understand a language, or more, to qualify as having a subjective point of view. The idea here would be that although many properties that vary by degree underlie or are prerequisite for having a subjective point of view, it remains the case that having such a point of view is an all or nothing matter.

The subjectivity proposal admits of being elaborated in different ways. My hunch is that all of them will prove to be vulnerable to one or both of two difficulties. One difficulty is that subjectivity as characterized is not a plausible ground of moral considerability, at the level that distinguishes normal humans from other animals known to us. The second difficulty is that as one pumps up the characterization of subjectivity so it becomes tightly associated with personhood status, it then becomes increasingly implausible to deny that the property or complex of properties one is characterizing varies by degree. If you say that the subjectivity

of a human is far more morally considerable than the comparatively crude and limited subjectivity of a lizard or even of a bonobo or gorilla, than it becomes radically unclear why the basis for comparing generic humans to members of other species does not *eo ipso* become a basis for making comparisons among generic humans. If subjectivity capacities do vary by degree, then discrimination of degrees does not suddenly cease to be relevant when we hit a threshold of capacities.

To reiterate, my general line is to press a dilemma for advocates of any proposed basis for the claim that human persons are equally morally considerable or entitled to basic equality of moral consideration: Either the proposed basis will turn out to vary by degree, and variations above the claimed threshold that establishes equality will give rise to inequality of moral considerability, or the proposed basis will turn out to be one that applies in all or nothing fashion, and then it will turn out that the basis proposed as justifying equal moral considerability is too flimsy or insubstantial to do this justifying work. My underlying hunch as to why this dilemma will prove binding is that the best account of what traits qualify a being as morally considerable and, if possessed beyond some threshold, as attaining personhood status is the Kantian rational agency capacities account as elaborated by Robert Nozick. This rational agency capacities account cites several traits that vary by degree as together establishing the measure of personhood capacity. This overall measure of personhood capacity also varies by degree. So the best account we have that explains why persons are morally considerable also undermines the further claim that persons are equally morally considerable.

Return to the subjectivity proposal. Each person has capacity for subjectivity, which applies in all or nothing fashion, so all persons equally have the capacity and all nonpersons lack it. I assume one can tweak the proposal so that it roughly draws the line so that normal human adults and even normal human children beyond infancy will by that standard qualify

as persons and normal adult bonobos, chimps, and gorillas will not qualify, and other nonhuman animals known to us will fail the subjectivity standard test more decisively. I suggest that the important components of subjectivity under examination will turn out to be scalar, so the proposal falls on the first horn of the dilemma. Suppose this hunch should turn out to be false. The second horn of the dilemma, I submit, then looms as threatening. If subjectivity capacity can be possessed by a being that lacks rational agency capacities, then my concern will be that we have not identified traits sufficient for personhood, so a fortiori we will not have identified traits that are a plausible basis for a claim that beings with subjectivity capacity are all equally morally considerable. For example, suppose that the correct account of psychopathy delivers the result that a psychopath lacks the ability to recognize that other people's interests generate genuine reasons that bear on his rational choice of what to do. The psychopath cannot distinguish moral rules from conventional rules, and he cannot but see people who constrain the pursuit of their interests by moral rules as being just weak, like a person who refrained from wholehearted pursuit of her important interests merely because they conflicted with some mere conventional rule such as the rule that an invitation addressed to one in the third person should be answered in the third person. Nonetheless the psychopath has a rich subjective perspective on the world; things strike her in a certain particular way that is unique to her. However, if all this is so, then the psychopath might qualify as a being with subjectivity capacity but not meet the standard of personhood. So not all beings with subjective capacity have all of the rational agency capacities needed for personhood, so not all beings who pass the all or nothing standard of subjectivity are equally morally considerable. The proposal is impaled on the second horn of the dilemma.

Sher's version of subjectivity as the basis seems to avoid the dilemma altogether. His account has two stages. At stage one, we identify "structural features of consciousness" or agency capacities, having which within the normal human range explains the fact that normal

human individuals have agency ends. At stage two we notice that a person's taking an interest in satisfying his generic agency goals is just a matter of his being a sentient being with a subjectivity, a perspective he takes on the world, an orientation that is bound up with his caring about some things and not others. Having a subjectivity is all-or-nothing, so here we have identified a basis for holding that everyone is owed "an equal measure of concern and respect."

We should still be puzzled. One concern is that it does not look as though having a subjectivity is all-or-nothing. Some people's subjective perspective is rich and kaleidoscopic; other people's is thin and bare. Even if we grant that every sentient being has a subjectivity, it can vary by degree along many dimensions, and even asymptotically approach the limit of nil subjectivity. Imagine a being who occupies the view from nowhere and always registers the reasons for action as they appear from an impartial perspective and acts in response to the reasons there are properly assessed and weighted. He experiences felt desires faintly but they simply register as impartial reasons and have no dispositional pull motivating his choices. There is nothing he specially cares about. Lacking almost all subjectivity, the person is disabled in some ways, somewhat like a person who is paraplegic. But the imagined person who is extremely deficient in subjectivity seems unequivocally to qualify as a person given his robust possession of rational agency capacities. If you are tempted to reply that occupying the impartial perspective is itself having a particular perspective, then imagine a being who just barely subjectively responds to the world. He likes a song he heard once by the pop group Duran Duran, and wants to hear more, otherwise his subjectivity is a blank. The examples strike both at the claim that having a subjectivity is all or nothing and does not admit of degrees and that having a subjectivity, with rational agency capacities in the normal range as backdrop, is uniquely and specially valuable such that this trait justifies equal moral considerability.

4C. Ian Carter's complex view: opacity respect and treating people as equals

Ian Carter proposes an interesting strategy for threading the needle, that is to say, basing the claim that humans are for all practical purposes equally morally considerable on their possession of agency capacity without becoming committed to elitist grading judgments of differential agency capacities and differential ascription of moral considerability and moral worth.^{ix} His idea is that beings that attain rational agency capacity anywhere within some specified range count as persons and are owed respect. When we inquire into the nature of the respect that is owed, we find it incorporates opacity respect. Respecting a person's opacity requires one to refrain from attempting to assess or measure any of her agency capacities provided they exceed the threshold at the lower edge of the range, and also requires one to refrain from using information one might have about the quality of her agency capacities in deliberating about what treatment she owes to other persons and what is owed to her (in certain contexts, for certain purposes). In particular, in determining everyone's fundamental political status and political moral entitlements, the duty of opacity respect is triggered, so estimation of people's different agency abilities must form no part of the basis for ascribing fundamental rights and duties. Only the range property of having agency capacity is relevant for this task, and all normal human individuals equally have agency capacity within the range, so all normal human individuals have equal fundamental moral rights and duties. Threshold agency plus opacity respect yields equality.

Carter proposes that when two conditions are met, the duty of opacity respect is triggered: (1) the being we are dealing with has threshold agency capacity, and (2) "we stand in a certain relation to that being such that it is appropriate for us to view that being *simply as an agent*."^x In many relations with a person, we appropriately view the person not simply as an agent. In friendship, one appropriately views one's friend in multi-faceted ways. In the

relationship of job applicant and potential employer, consideration of some of the applicant's agency abilities, those relevant to job performance, is appropriate. In the public sphere, in determining what members of society owe one another, it is appropriate to view one another simply as agents. So basic justice requirements must be determined without violating opacity respect.

Carter's proposal is ingenious. With respect to the basic equality issue that frames this essay, it is hard to say whether Carter begs the question, evades the question, resolves the question in a satisfactory way, or shows the question appears to need an answer only because I posed it improperly.

The idea of opacity respect clearly resonates with values we hold. However, I doubt it is basic to what we owe one another as Carter suggests. Opacity respect is better regarded as a derivative social norm—a rough and ready guide to avoidance of useless conflict that would impede desirable cooperation. When cooperating with others, one should generally refrain from looking inside the person and interpreting her inner thoughts and traits and making one's guesses about them public among cooperators when that will hurt the person's feelings or harm the person's relations with others or otherwise impede the success of the cooperative scheme. In this context what qualifies as public or private depends on the nature and purpose of the particular cooperative enterprise in which we are engaged. Adjusting one's behavior toward the person within the joint scheme in a way that is manifestly based on one's inferences about her inner traits and thoughts can often be wrongfully intrusive of privacy just as blurting out someone's secrets can be. (But this is a delicate matter; sometimes cooperation can be enhanced when fellow cooperators manifestly take up the slack for a colleague whose capacities are deficient in some area, so long as those who shoulder this burden do not call attention to what they are doing or behave in condescending ways toward the colleague whose inner troubles they sense.^{xi})

There may be other norms that cluster under the broad category of opacity respect. But it is not so that there is any general moral principle that commands refraining from gauging someone's agency capacities or determining how to behave toward the person on the basis of one's beliefs about their characteristics. Principles of justice at the fundamental level might command us to bring it about that people have a fair share of real freedom to pursue valuable courses of action or capabilities that we have reason to value. Principles of justice might command us to bring it about that people actually attain good quality lives to a good enough degree, or an equal degree, or a priority-weighted degree, and so on. Implementing any of a wide array of plausible conceptions of justice requires adjusting what we owe to others and what we are owed by them to determinations of any or many or all of their agency capacities. The sensitivity of moral requirements to particular trait assessments is a feature that holds across political and nonpolitical contexts. The Good Samaritan who helps the stranger in need, in order to know what he ought to do, may need to understand the peril the stranger faces precipitated by loss of intellectual or other agency capacities. If there is no duty of opacity respect, there is not going to be any finding of a basis for fundamental moral equality that proceeds from the premise that there is such a duty.

This simple denial that there is a duty of opacity respect will not impress one who accepts the idea. Here is another tack. The thought that in determining people's fundamental moral entitlements and in respecting these entitlements we must treat people as though they are equal in agency capacity does not conflict with holding that in this exercise we may appropriately assess any particular agency capacities that individuals might have. There are many agency capacities, so the judgment that I am deficient (or superproficient) in one or another of them does not preclude my having exactly as much agency capacity *overall* as anyone else. Being offered drug rehabilitation by a state agency after a finding that I am addicted to prescription painkillers or being offered income supplements on the ground that I

am unable to find employment even in a tight labor market involves the judgment that I have specific agency deficits but does not say anything about, so to speak, my overall agency capacity score. Let us say *minimal opacity respect* is refraining from forming and using any judgment about a person's overall agency capacity comparative ranking in deciding how one ought to act toward or with the person. If the finding that a being has overall agency capacity within the normal range triggers a moral duty to treat the being with minimal opacity respect, then it will turn out that in determining the being's fundamental moral entitlements one has no basis for treating her as other than equal to others. If having agency capacity in the normal range makes one morally considerable, then if there is a moral duty not to rank people as having greater or lesser overall agency capacity than any others, one will then have a basis for treating all as equally morally considerable for purposes of determining people's fundamental moral entitlements.

The fact that the duty of opacity respect as characterized broadly by Carter is overkill, so far as locating a basis for basic moral equality is concerned, does not tend to show there is no such broad duty. But in deciding whether there is, we should not be misled by the thought that only if we accept such a broad duty will we have a basis for affirming basic moral equality.

Now the question arises, should we accept even the duty of minimal opacity respect? Notice that the duty is claimed to be owed to beings with overall agency capacities within a range. Those who fall below the minimum lack the dignity of agents, and those who exceed the top end of the range will qualify as having greater moral considerability than ordinary folk. Think of angels or extraterrestrial beings with great agency powers. Given their agency status, it would be wrong to insist that we should accord all agents including normal humans and angels and extraterrestrials minimal opacity respect. That would be treating a morally relevant feature as irrelevant. But if variations in overall agency capacity within the normal

range do in fact qualify beings as more or less morally considerable, why is it acceptable to pretend otherwise by embracing and following the duty of minimal opacity respect? This just says, ignore what should not be ignored. To rebut this claim, one would have to show that variations in overall agency capacity within the normal range do not in fact generate differences in moral considerability. But that is just the deeply puzzling question that has been baffling us all along. My tentative verdict then is that Carter's ingenious proposal, despite its appeal, evades rather than solves the question at issue in this discussion.

Clarification: I do not deny that our moral practices presuppose that people have a basically equal moral status, in other words that people are fundamentally equally morally considerable, and accordingly should be treated as equal in this sense. I take no stand against the idea that our basic moral practices may presuppose that there is a moral duty to treat normal agents with minimal opacity respect. (Carter's duty of broad opacity respect is more debatable.) But if minimal opacity respect is more than a derivative, rough and ready norm, and is taken to be a fundamental part of what we owe one another, I say it needs a defense, and the defense would have to consist in showing why normal persons are, or should be treated as, fundamentally equal in moral considerability or basic moral status.

Carter suggests that if we do not accept the duty of opacity respect (in its broad construal) we have no principled ground for treating people as agents at all, for taking seriously our reactive attitudes such as gratitude, resentment, and indignation, which constitute our view that the individuals to whom we take these attitudes are responsible agents. We will end up simply treating all circumstances including human phenomena as empirical circumstances to be manipulated in the service of our ends. (So we have strong independent moral reason to accept broad opacity respect, and the requirement to treat all people in the normal range as fundamentally equal in determining their basic moral requirements is just an implication of conforming to agency respect, which we anyway ought to do.)

Obviously, large issues are raised here. But it is at least far from obvious that these different strands in our moral attitudes hang together so tightly as Carter supposes. Someone may pay no attention to opacity respect, and adjust her views of what she owes me and I her and of what judgments should be made of my conduct in the light of the best assessment she can make of my agency capacities. Since I am gullible and credible, it would have been very hard for me not to swallow Nazi propaganda, so maybe I should not be blamed for my Nazi sympathies. Given my upbringing and education and talent endowment, my failure to be self-supporting by seeking and sustaining paid employment may downgrade my claim the rest of you should provide me regular income support. In these scenarios I am still being regarded as an agent even if my agency is empirically conditioned, as surely it is. And the help we owe people may center around facilitating their agency achievements. Suppose a social services caseworker has charge of examining my situation and offering me help tailored to my particular situation. This special service is offered because I am down-and-out, clearly headed for an unenviable life. The caseworker has a limited budget, and may decide to ignore my alcoholism (an agency deficit, but a lost cause) and offer to help me by helping me to publish a book of poetry, or reconcile with estranged relatives, or fulfill a long-standing goal of taking a trip to Africa, and so on. Robust dismissal of opacity respect need not be disrespectful in the sense of treating me as though I were a nonagent or as though my agency achievements were not crucial for my life success. If we lack sufficient moral grounds for accepting the duty of opacity respect independently of the implications of this acceptance for human equality, we cannot solve the basic human equality puzzle in carter's proposed way.

4D. Eschewing the wild-goose chase

Another possible gambit is to forego the search for a property of human persons that is the same for all and that plausibly grounds the claim of equal moral considerability. Instead we

start with the idea that we ought to seek equal relationships with people, relationships in which the participants treat each other as equals. On this view regarding people as equal in some respect is not the basis for treating people as equals at all. On this path we are liberated from the supposed imperative of following theorists on the “wild-goose chase for defining characteristics.”^{xii} The idea would be to work out what it is to treat people as equals, to figure out what interpretation of this idea should attract our reflective allegiance.

I am sympathetic to this project, but doubtful about its prospects. First, are we to understand the imperative to form and sustain equal relationships with people as an imperative of prudence, a way to improve our lives? One may doubt first of all that whatever an unequal relationship is, it is always inimical to one’s good. An unequal friendship may be mutually beneficial, more so than any equal friendship either could have sustained. Second, if one treats people as equal in order to build an equal relationship with them, the imperative of prudence will be suspended whenever that goal is not in any case going to be achieved. We get then a conditional and contingent hypothetical imperative, which does not seem to yield an interpretation of the idea that people are equally morally considerable. Treating people as equals should be derived as an unconditional moral requirement, to justify the idea that is at stake in the present discussion. But if one posits a moral requirement to treat people as equals, we then need to inquire into its moral justification, and then we are back to what may well be the wild goose chase of seeking a property that all have and that justifies the stated requirement.

4E. Equality for all animals not all persons

Another possible alternative is to drop entirely the interpretation of the basic equality idea as equality among persons. Instead one embraces the idea that all animals (all sentient beings) are morally equal, morally on a par. The consequentialist version of this claim is exemplified

by one construal of traditional act utilitarianism.^{xiii} On this view, if giving some resource to a crocodile would yield one unit of pleasure for the crocodile and giving that same resource to a rational person would yield one unit of pleasure for that being and there are no further indirect effects to consider, the two acts are morally on a par, because the utility consequences of the two acts are identical as regarded from the moral standpoint.

One worry about this line of thought is that the account relies on a notion of sentient being, and sentience might be thought to vary by degree just as rational agency capacities vary by degree. One being might be just barely sentient and another sentient being finely responsive to stimuli, and the question arises, for example, why does not the fulfillment of a highly sentient chipmunk count for more than an identical fulfillment that could be brought about instead by a barely sentient being such as maybe an oyster?

To my mind the truly poisonous feature of this alternative is its denial of the plausible idea that possession of rational agency capacities endows the possessor with special moral status and dignity, such that its fulfillments count for more than the relevantly identical fulfillments of a being that is entirely lacking in rational agency capacity.

One might hope that the nonconsequentialist version of this alternative fares better under critical scrutiny. In its rights-based exemplification, the idea would be to shift attention from the idea of *person* to the idea of *moral right*. How this view would go is not so clear to me. The details would depend on the best analysis of the idea of a moral right. Roughly, if my interest in freedom of movement generates a right on my part to freedom of movement, the similar interest of my cat or of a nearby coyote should generate a similar right on the part of these beings to freedom of movement. So understood, the proposal seems afflicted by counterintuitive implications parallel to those that sink the consequentialist version of the proposal. One might try to soften these implications by holding, for example, that it is internal to the idea of a moral right that only a being that is capable of responding to moral

demands can possess moral rights, or that only beings with sophisticated mental abilities can be possessors of rights. On this basis one might hold that I can have a right to freedom of movement but a cat or coyote cannot. But this attempt to reinsert discontinuity into a conceptual landscape of smooth continuities looks suspect. Social animals have some abilities to respond to social demands that are quasi-moral or moral-like. So why do not sentient beings with interests have right-like entitlements on the view under consideration?

5. Flat denial: the basic equality issue is a nonissue

There is always the hope that an issue that proves intractable is wrongly posed and that the appearance of intractability is an artifact of clumsy formulation. In this spirit we should consider another possible position, call it the flat-denial position. This says there is no initial plausibility to any version of the claim that all persons are equally morally considerable, so the threatened failure of the rational agency capacities account to justify the equal moral considerability idea should occasion no concern.^{xiv} The idea that all persons are equally morally considerable is meant to be just another way of stating the basic equality idea, which gets interpreted differently in its consequentialist and nonconsequentialist versions.

The flat-denial proposal has two components. One is that we do not need to rely on the elusive and suspect basic-equality-of-persons idea in order to repudiate racism and sexism and ethnic prejudice and natural aristocracy views. We can instead simply deny, for example, that having black or white or brown skin is a morally relevant fact that amounts to a moral consideration for favoring one person or another (except in special contexts such as casting the lead character in a production of *Othello*). The other component is to interpret an equal treatment norm as trivial rather than as having substantive content. Rather than affirm a substantive basic equality thesis we should simply notice that people who are the same in relevant respects should be treated the same and those who differ in relevant respects should

be treated differently. Hence we need not worry, for example, whether giving moral priority to helping the worse off, or to helping the virtuous, of being partial to those near and dear to us offends against a substantive basic equality norm. There is just the substantive moral issue, what principles we should accept, and what facts those principles determine to be relevant for choice of conduct and policy.

The flat-denial proposal is tempting but runs into grievous difficulties. Let us consider how the suggestion plays out when applied to both the consequentialist and nonconsequentialist versions of basic equality. (I discuss only sketchy examples of the versions, so I cannot rule out the possibility that there might be some construal of the flat-denial proposal that is resistant to the criticisms I raise against it.)

The flat denial of basic equality in its consequentialist guise denies that the interests of persons have greater moral weight than relevantly identical interests of beings that lack personhood status and denies that the relevantly identical interests of all persons have the same moral weight in the consequentialist calculation of what should be done. Or rather, the denial is that we need to appeal to something like the rational agency capacities account to justify the greater moral weight accorded to interests of persons in a way that forces us to claim implausibly that having greater rational capacity above the threshold of personhood gives a person's interests greater moral weight than the otherwise identical interests of persons with lesser mental abilities. I submit that this latter denial is deeply counterintuitive.

The advocate of flat denial might respond that consequentialism is anyway an implausible moral theory, so any troubles the theory encounters in dealing with the basic equality issue is just further evidence of its implausibility.

The flat denial of basic equality in the rights-based member of the nonconsequentialist family of views holds that people have moral rights that differ for all sorts of good reasons. People's moral rights, when we get down to identifying them, turn out to be different across

persons, not the same for all. The effort to identify some “basic” rights that are the same for everyone and from which nonbasic rights can be derived looks to be a misguided quest. In this tangled region of thought the likely truth is that there are no such basic moral rights.

This too is a hard saying. If you have a moral right to do as you choose so long as you do not harm others (in certain ways that violate their rights), then everyone else has exactly this same right. “Everyone else” means all persons, and persons are those with rational agency capacities at a sufficient level. You can waive or forfeit this basic right, in familiar ways, but the thought that initially your children have this basic right but other people’s children do not, or that the rights in question vary in stringency by degree depending on how smart or emotionally sensitive or capable of putting one’s choices into action one is, is deeply counterintuitive. I find it hard to swallow the thought that the basic equality is a nonissue.

My tentative and provisional conclusion is gloomy. In this area of thought, the available alternative positions are all bad. Choose your poison.

ⁱ McMahan, (1996), pp. 3-35.

ⁱⁱ This is a recognizably Kantian account of what makes beings morally considerable. One clear statement of this account is in Nozick (1974), ch. 3. See Wood (1999), ch. 4.

ⁱⁱⁱ Vallentyne (2007), pp. 211-238.

^{iv} I describe the problem and argue that it is intractable in Arneson (1999), pp. 103-128.

^v The *locus classicus* here is Hare (1981), ch. 3.

^{vi} The “just pushing people around” phrasing is taken from Gerald Gaus, who takes the political liberalism problem just mentioned here as having decisive weight at the ground level of morality not just at some subordinate level that is to operate as a means to achieving fundamental level principles. See Gaus (2011).

^{vii} For relevant discussion and an eloquent expression of the thought that rejecting basic equality is unthinkable, or close to unthinkable, and definitely repulsive to contemplate, even if it should turn out that we are rationally required to accept it, see McMahan (2008).

^{viii} George Sher, in this volume. My discussion is indebted to Sher’s. Sher cites Bernard Williams as anticipating the idea that he sharpens and develops. See Bernard Williams (1973), p. 236.

^{ix} Carter (2011).

^x Ibid., p. 556.

^{xi} Here I am borrowing from Nagel (1998).

^{xii} G. A. Cohen (2013), p.194. Note: This essay is in a preliminary version, and was never completed and judged by the author to be ready for publication.

^{xiii} This construal differs from the pure utilitarianism discussed in the introductory section to this essay.

^{xiv} G. A. Cohen (2013), p. 194. Note: This essay is in a preliminary version, and was never completed and judged by the author to be ready for publication.