Binary Properties as the Basis of Equality

Nethanel Lipshitz

Abstract

"Basic equality" is the thesis that all (or nearly all) human beings are equal in moral status. Widespread interpersonal differences among humans make the task of justifying basic equality notoriously difficult. One strategy for circumventing this difficulty is to identify some morally significant binary ("all-or-nothing") property that all humans have. This strategy seems promising: if the basis of equality is binary, then those who have it have it equally. However, skeptics have argued against this strategy on the grounds that a proper defense of basic equality requires that we identify a morally significant property that *can* vary among humans but does not in fact vary. This paper examines various ways in which this skeptical argument can be motivated and concludes that they all fail.

1. Introduction

"Basic equality" is the thesis that all (or nearly all) humans are equal in some sense that is important to moral and political philosophy. Basic equality is sometimes expressed by saying that people have equal worth, dignity, or moral status, or even, in the laconic language of the American Declaration of Independence, that they are simply equal. Basic equality has been

described as a rare point of agreement among philosophers who otherwise agree on very little. For example, it has been claimed that all modern political philosophies worthy of discussion presuppose the truth of basic equality (Kymlicka 1990, pp. 3-4), that we reached an "egalitarian plateau" in political philosophy (Dworkin 1983, p. 25), or that, when it comes to basic equality, we are *all* egalitarians (Waldron 2008, p. 27). Such pronouncements may very well be overly optimistic (Phillips 2021), but they testify to the centrality of basic equality in contemporary moral and political philosophy.

In recent years, several philosophers have turned their attention to the difficult task of justifying basic equality. The task is difficult because according to a plausible and widely held view, basic equality is true only if there is some morally significant property that all (or nearly all) people have to an equal degree (Arneson 2015; Carter 2011; Coons and Brennan 1999; Floris 2019; McMahan 2008; Waldron 2008; Zuolo 2017).[1] We can refer to this property, if it exists, as the basis of equality. Given the immense variety found among humans, it appears that no human characteristic is a good candidate for the basis of equality.

In light of the undeniable interpersonal differences that exist among humans in many characteristics, several philosophers have proposed that the basis of equality should be identified with a binary ("all-or-nothing") property. This strategy seems promising: all those who have a binary property must have it to an equal degree. Rawls (1971, pp. 504–512), for example, suggests that the basis of equality is the range property *moral personhood*, and range properties are commonly understood to be binary properties (Carter 2011, p. 548; Knapp 2007; Parr and Slavny 2019, p. 838; Zuolo 2017, p. 177). More recently, Sher (2015) developed a sophisticated account of *subjectivity* as the basis of equality by arguing that subjectivity is a morally significant property, that nearly all humans have it, and that it is a binary property. And anyone

who regards *membership in the human species* as the basis of equality probably construes it as a binary property.

Several skeptics object to these proposals by arguing that the properties just mentioned are not, in fact, binary (Arneson 2015, pp. 42–44; McMahan 2008, pp. 95–97; Husi 2017, p. 394). My aim in this paper is to respond to a more general and fundamental objection. Some philosophers hold that if one wishes to defend basic equality by identifying a property that humans have to an equal degree, one must identify a property that *could* vary (but happens not to vary) among humans. The objection is that binary properties are not properties that individuals can be said to have *equally*, so they cannot serve as the basis of equality (Coons and Brennan 1999, pp. 10–11, 110; Cupit 2000, p. 109; Wolgast 1980, p. 45).

Responding to this challenge to binary-property accounts of basic equality is important for at least three reasons. First, vindicating a central strategy for justifying basic equality is useful as part of a general effort to answer growing skepticism about basic equality (Arneson 2015; Friday 2004; Husi 2017; McMahan 2008; Pojman 1992; Steinhoff 2015). Second, some philosophers who object to binary-property accounts of basic equality do not wish to deny basic equality itself. Rather, they typically offer some alternative justification of basic equality. But these accounts too face difficulties. Coons and Brennan, for example, reject binary-property accounts of basic equality and propose a theistic account instead, advocating for a view—that has been also defended by Waldron (2002)—according to which the defense of basic equality requires theistic commitments. But many advocates of basic equality are atheist or agnostic, and appealing to binary properties seems promising for a secular defense of basic equality. Third, an argument that is structurally similar to the one discussed below has been influential among legal philosophers. Westen (1982) famously argues that having a right or falling under a rule is an all-

or-nothing matter: either one has a right or one does not, either one falls under a rule or one does not. Westen then says that it adds nothing to say that people have some right *equally*, or have *equal* rights, or enjoy *equality* before the law. From these observations he concludes that equality is an "empty" idea, and recommends that we banish it from our moral, political, and legal discourse (Westen 1982, p. 542). The objection to binary-properties accounts of basic equality discussed below is structurally similar to such line of reasoning, so someone who advocates for a binary-property account of basic equality should have something to say in response to it.

2. The skeptical challenge

The following quotes from Coons and Brennan can be used to introduce the skeptical challenge I have in mind:

> Equality becomes interesting only when there is the possibility that, in respect to some common and significant human capacity, we might—or might not—*differ by degrees*. … Equality becomes significant once we come to compare degrees ... The significant inquiry, then, is the *degree (if any) by which individuals differ* in their possession of a property that could, but might not, vary. (Coons and Brennan 1999, p. 11)

> [t]he purely formal capacity to will *could not* vary in degree. Being uniform simply by definition, it creates an equality of no interest to us. It is a "single" equality—one of possession only. To attach the adjective "equal" would be

almost a redundancy; for once we have said that rational persons have wills, we have said everything important. (Coons and Brennan 1999, p. 110)

Suppose that X is a morally significant binary property, and that (nearly) all humans have X. According to Coons and Brennan, to say that people have X *equally* is to say something uninteresting, insignificant, or redundant, because X is not a property regarding which individuals can differ by degree. I will question shortly the claim that people cannot have a binary property to different degrees, but before doing so we should assess the force of the claim that, in the case of binary properties, attributions of equality are redundant, uninteresting, or insignificant. A redundant, uninteresting, or insignificant utterance need not be meaningless or false. Consider the statement "It is raining or it is raining." This statement includes a redundancy, but it is not meaningless and it need not be false. If asserting that people have some binary property X equally is meaningful and true, why can't it be used to justify basic equality?

Coons and Brennan (1999, pp. 10–11) answer by drawing a distinction between *single equality* and *double equality*. A and B have some property equally in the single-equality sense if they have it to *some* degree. A and B have some property equally in the double-equality sense if they have it to an *equal* degree. For example, if A has $10 and B has a $100,000, they are equal in the sense that they both "have money" (single-equality), but they are unequal in the amount of money that they have—they are unequal in the double-equality sense. No one would describe A and B as economically equal if they were equal only in the single-equality sense. Coons and Brennan argue that something similar is true of moral status: for basic equality to be true, it is not enough that people have a morally significant property to some positive or even considerable

5

degree. Rather, people must have the basis of equality to the same degree for basic equality to be true.

Most philosophers who attempt to identify the basis of equality would probably accept this demand for double equality. But Coons and Brennan are mistaken in arguing that having some binary property in common only makes people equal in the single-equality sense. Presumably, if X is binary, then the following propositions are equivalent:

1.   A and B have X. (single equality)

2.   A and B have X equally. (double equality)

This equivalence explains why (2) involves a redundancy, and why it might seem uninteresting to assert (2) rather than (1). But the equivalence between (1) and (2) also demonstrates that if A and B have X (and so are equal in the single-equality sense), they are equal in the double-equality sense. Thus, invoking a binary property to justify basic equality does not violate the requirement that people be equal in the double-equality sense. Is there nonetheless some reason to refrain from invoking a binary property when justifying basic equality? Consider Cupit's remarks:

> But such an argument [an argument invoking a binary property to justify basic equality] tries to have its cake and eat it. To claim that we are equally human (say) is to claim that we are human to the same extent or degree, and thus to imply that it makes sense to talk of degrees of humanity; while, in so far as no evidence or argument for our alleged equal humanity is offered or thought necessary, the assumption is that it makes no sense to talk of degrees of humanity. But we cannot have it both ways. (Cupit 2000, p. 109).[2]

According to Cupit, when we say of A and B that they are equal with respect to some property X, we imply that X admits of degrees. But that would pose a problem for binary-property accounts of basic equality only if binary properties do not admit of degrees. And while we usually talk of degrees in relation to nonbinary properties, and while it might be odd to say that human beings are "more" human than other beings, binary properties admit of degrees—*two* degrees (all and nothing; zero and one). To assert that individuals have some binary property equally is not to have one's cake and it eat too. If Cupit wants to say that the meaningful attribution of equality presupposes the possibility of the meaningful attribution of *in*equality, then that presupposition is not denied in the case of binary properties. Presumably, to have some property unequally is to have it to different degrees, and for that purpose two degrees seem quite enough.

3. Good inegalitarianism

Let us return to the charge of redundancy. Suppose that X is a morally significant binary property that all humans have.[3] The following propositions would then be equivalent:

3. All humans have X.

4. All humans have X equally.

Should we be concerned about the equivalence between (3) and (4)? Cupit and Coons and Brennan do not offer compelling reasons for concern, but the equivalence can be worrisome for another reason. Basic equality is no longer (and perhaps never was) the only plausible moral view on offer. Some ways of denying basic equality are clearly pernicious: racism, sexism and classism come to mind. Those who support such views are *bad* inegalitarians. But not all

inegalitarians are bad. It is open to someone who rejects basic equality to hold that all people have some considerable intrinsic worth and that all people deserve concern and respect, while also holding that there are people who have greater intrinsic worth than others and who deserve greater concern and respect. Furthermore, an inegalitarian of this kind can condemn racism, sexism, and classism by objecting to morally arbitrary distinctions between people. On such view, differences in moral status exist only where differences in some morally significant property exist, and one can argue that salient social groups do not differ with respect to any morally significant property. Call such view *good inegalitarianism*.[4]

Good inegalitarianism and basic equality are not identical positions. There is something they agree on and something they disagree on. If an individual has considerable moral status because she has some morally significant property X to a positive or considerable degree, then advocates of both views would accept (3). However, they would disagree on (4): good inegalitarians reject (4), while advocates of basic equality accept it. But if (3) and (4) are equivalent, good inegalitarians and advocates of basic equality cannot disagree. Since they clearly disagree on *something*, we should reject propositions that entail that (3) and (4) are equivalent. The proposition that X is binary entails that (3) and (4) are equivalent, so it should be rejected.

In response, we should note that a meaningful disagreement between good inegalitarians and advocates of basic equality is possible because they can disagree about whether the basis of equality is binary. An advocate of good inegalitarianism can argue that the basis of equality is not binary, so if (3) is true, (4) may not be. An advocate of basic equality, by contrast, can argue that the basis of equality is binary, and so that if (3) is true, (4) must be true too. While a binary basis of equality is inconsistent with good inegalitarianism, the conclusion need not be that the

basis of equality is not binary. Rather, the conclusion might be that good inegalitarian is false. The important point is that there is room for meaningful disagreement between basic equality and good inegalitarianism because good inegalitarians need not accept a binary basis of equality. Indeed, they *must* reject a binary basis of equality, whereas advocates of basic equality may or may not endorse the claim that the basis of equality is binary. Advocates of basic equality should be allowed to defend their view by invoking a binary property.

4. Binary properties and proportionality

Let me end by considering a different objection to binary-properties accounts of basic equality. Knapp (2007) offers a moral rather than conceptual argument against such accounts. His argument targets an important subset of such accounts, namely, range-property accounts. Range properties can be thought of as second-order binary properties (Rawls 1971, 508). Roughly, an individual has the (binary) range property X if and only if she has some scalar property Y withing a certain range of values—say, above a certain threshold. Knapp points out that if X is a range property, A can have X and B can lack X even though they vary only slightly in the extent to which they have Y. This would imply that A has the full moral status humans are said to have while B would lack it entirely. This conclusion appears to violate the moral ideal of proportionality:

> [i]n order to treat individuals as they deserve, any difference in the treatment two
> individuals receive must be proportional to the morally relevant differences
> between them. Individuals who are virtually, but not quite, identical in the
> respects that are relevant to being deserving of some kind of treatment, deserve to

be treated similarly. To treat them drastically differently on the basis of such

minute differences would be to infringe, if not always to violate, the demands of

justice. (Knapp 2007, p. 186)

In response, we should begin by noting that binary properties allow for borderline cases.

If X is a binary property, it is possible that some individuals clearly have X, some individuals

clearly lack X, and some individuals are borderline cases. To say that X is binary is to say that all

those who clearly have X do not differ in their X-ity, and all those who clearly lack X lack it

completely. When we compare an individual who clearly has X with an individual who clearly

lacks it, the difference between them in terms of Y might be quite significant. If so, treating them

differently need not violate the ideal of proportionality. This response, however, is not entirely

satisfying. X might not admit of borderline cases, or, if it does, many people might turn out to be

borderline cases, so invoking X will not help us demonstrate their equal moral status. But there is

more that can be said in response to Knapp's argument.

First, some philosophers have proposed a two-stage strategy for defending basic

equality.[5] They propose that we begin with defending the equal moral status of a proper subset of

human beings, perhaps by identifying a morally significant binary property that they have. They

then identify reasons for extending this moral status to people who lack the binary property in

question. If this strategy is successful, individuals who are similar in Y (but unequal in X) might

still be treated as having the same moral status. In such case, the ideal of proportionality will not

be violated. More generally, to say that all those who have X equally are equal in moral status

does not imply that those who have X and those lack X should be treated drastically differently.

Perhaps there are reasons of justice to extend to those who lack X some or all of the entitlements

that those who have X enjoy. It is also possible that those who lack X have some other property Z that entitles them to a treatment not very different from that to which those who have X are entitled.

Second, we should remember that binary properties are invoked to justify the equal moral status of the members of a class of entities (humans, persons) that are often thought to differ significantly in their moral status from other entities. It seems that our commonsense morality recognizes a considerable gap in moral status between those who count as humans or persons and those who do not. This aspect of commonsense morality may turn out to be untenable upon reflection, but for those who accept it, invoking binary properties as the basis of equality would seem to yield the right result.

Finally, it is unclear whether the ideal of proportionality is violated by range-property accounts of basic equality even in cases such as those envisioned by Knapp. Those who invoke some range-property X as the basis of equality believe that it is this property that grounds moral status, not some other property Y, even if X is a function of Y. Of course, such claim must be defended, and it is the task of anyone who defends any particular range-property account of basic equality to do so. But advocates of range-property accounts can say that individuals who are similar in Y but different in X are not similar in the property that grounds moral status, and so are not similar in a morally relevant sense. To treat such individuals as different in moral status would not violate the ideal of proportionality.

5. Conclusion

Attempts to show that binary-property accounts of basic equality are conceptually confused or morally objectionable fail. This does not mean, of course, that any particular binary-property

defense of basic equality is successful. It does mean, however, that when a binary basis of equality is proposed, objections to such proposal would have to be specific to the proposal: one would have to show that the proposed basis of equality is not really binary, or that the binary property identified is not morally significant, or that some scalar property is a better candidate for the basis of equality than the proposed binary property. We cannot rule out in advance the possibility that what makes basic equality true is some morally significant binary property that all humans have (equally).

Penn State College of Medicine

700 HMC Crescent Road

Hershey, PA 17033

nlipshitz@pennstatehealth.psu.edu

Notes

1._Not all philosophers, however, believe that basic equality must be justified by reference to some descriptive equality (e.g., Cupit 2000, Sangiovanni 2017; Wolgast 1980). More radically, Phillips (2021) has recently proposed that basic equality does not require justification at all.

2._Perhaps Williams (1973, p. 230) gestures at a similar objection when he writes "Now to this it might be objected that being men is not a respect in which men can strictly speaking be said to be *equal*."

3._The discussion in this section can be adapted to other formulations, such as "most humans have X," "all persons have X", etc.

4._A similar view is described without endorsement in Arneson 2015, pp. 39–40. For endorsements of a similar view, see Frankfurt 1997; Steinhoff 2015, pp. 171-172; and Westen 1982.

5._See Waldron (2008, pp. 34–35). See also Rawls (1971, p. 506); Scanlon (1998, pp. 183-88; Wood (1998). For other strategies, see Floris (2021); Parr and Slavny (2019, pp. 850–854).

References

Arneson, Richard J. 2015. "Basic Equality: Neither Acceptable nor Rejectable," in Do All Persons Have Equal Moral Worth?, ed. Uwe Steinhoff (Oxford, UK: Oxford University Press), pp. 30-52.

Carter, Ian. 2011. "Respect and the Basis of Equality," Ethics, vol. 121, no. 3, pp. 538-571.

Coons, John E., and Patrick M. Brennan. 1999. By Nature Equal (Princeton, NJ: Princeton University Press).

Cupit, Geoffrey. 2000. "The Basis of Equality," Philosophy, vol. 75, no. 291, pp. 105-125.

Dworkin, Ronald. 1983. "Comment on Narveson: in Defense of Equality," Social Philosophy and Policy, vol. 1, no. 1, pp. 24-40.

Floris, Giacomo. 2019. "On the Basis of Moral Equality: A Rejection of the Relation-First Approach," Ethical Theory and Moral Practice, vol. 22, no. 1, pp. 237-250.

Floris, Giacomo. 2021. "A Pluralist Account of the Basis of Moral Status," Philosophical Studies, vol. 178, no. 6, pp. 1859-1877.

Frankfurt, Harry. 1997. "Equality and Respect," Social Research, vol. 64, no. 1, pp. 3-15.

Friday, Jonathan. 2004. "Moral Equality and the Foundations of Liberal Moral Theory," The Journal of Value Inquiry, vol. 38, pp. 61-74.

Husi, Stan. 2017. "Why We (Almost Certainly) Are Not Moral Equals," The Journal of Ethics, vol. 21, no. 4, pp. 375-401.

Knapp, Christopher. 2007. "Equality and Proportionality," Canadian Journal of Philosophy, vol. 37, no. 2, pp. 179-201.

Kymlicka, Will. 1990. Contemporary Political Philosophy (Oxford, UK: Oxford University Press).

McMahan, Jeff. 2008. "Challenges to Human Equality," The Journal of Ethics, vol. 12, no. 1, pp. 81-104.

Parr, Tom, and Adam Slavny. 2019. "Rescuing Basic Equality," Pacific Philosophical Quarterly, vol. 100, no. 3, pp. 837-857.

Phillips, Anne. 2021. Unconditional Equals (Princeton, NJ: Princeton University Press).

Pojman, Louis P. 1992. "Are Human Rights Based on Equal Human Worth?" Philosophy and Phenomenological Research, vol. 52, no. 3, pp. 605-622.

Rawls, John. 1971. A Theory of Justice (Cambridge, MA: Harvard University Press).

Sangiovanni, Andrea. 2017. Humanity without Dignity (Cambridge, MA: Harvard University Press).

Scanlon, Thomas. 1998. What We Owe to Each Other (Cambridge, MA: Harvard University Press).

Sher, George. 2015. "Why We Are Moral Equals," in <u>Do All Persons Have Equal Moral Worth?</u>, ed. Uwe Steinhoff (Oxford, UK: Oxford University Press), pp. 17-29.

Steinhoff, Uwe. 2015. "Against Equal Respect and Concern, Equal Rights, and Egalitarian Impartiality," in <u>Do All Persons Have Equal Moral Worth?</u>, ed. Uwe Steinhoff (Oxford, UK: Oxford University Press), pp. 142-72.

Waldron, Jeremy. 2002. <u>God, Locke, and Equality</u> (Cambridge, UK: Cambridge University Press).

Waldron, Jeremy. 2008. "Basic Equality," <u>NYU School of Law, Public Law Research Paper No. 08-61, NELLCO Legal Scholars Hip Repository</u>.

Westen, Peter. 1982. "The Empty Idea of Equality," <u>Harvard Law Review</u>, vol. 95, no. 3, pp. 537-596.

Williams, Bernard. 1973. "The Idea of Equality," in <u>Problems of the Self</u> (Cambridge, UK: Cambridge University Press), pp. 230-49.

Wolgast, Elizabeth H. 1980. <u>Equality and the Rights of Women</u> (Ithaca, NY: Cornell University Press).

Wood, Allen W. 1998. "Kant on Duties Regarding Nonrational Nature," <u>Proceedings of the Aristotelian Society, Supplementary Volumes</u>, vol. 72, pp. 189-210.

Zuolo, Federico. 2017. "Equality, Its Basis and Moral Status: Challenging the Principle of Equal Consideration of Interests," <u>International Journal of Philosophical Studies</u>, vol. 25, no. 2, pp. 170-188.