

[Paul Kelly](#)

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# Why Equality? On Justifying Liberal Egalitarianism

Paul Kelly

*London School of Economics*

**Abstract:** The debate over the nature of egalitarianism has come to dominate political philosophy. As ever more sophisticated attempts are made to describe the principles of an egalitarian distribution or to specify the good or goods that should be distributed equally, little is said about the fundamental basis of equality. In virtue of what should people be regarded as equal? Egalitarians have tended to dismiss this question of fundamental equality. In the first part of the paper I will examine some of these strategies of marginalisation and assess whether the issue of fundamental equality matters. Jeremy Waldron has criticised this strategy of avoidance in his recent book God, Locke and Equality. He argues that Locke's turn to a theistic grounding for fundamental equality provides a better approach to the problem than the approach taken by contemporary liberals such as John Rawls. I will examine Waldron's critique of Rawls and show that it is wanting. I will conclude by suggesting that Rawls' approach to the issue has a bearing on the way in which equality should be understood as a political value. This argument for the primacy of a political conception of egalitarianism has a bearing on the interconnection between core liberal values and the idea of the state that has been emphasised by Rawls, Dworkin and Nagel.

## 1. Defending egalitarianism

It is customary to credit Rawls with resurrecting normative political theory with the publication of A Theory of Justice in 1971. Others might make a case for Brian Barry's Political Argument of 1965. However one wants to explain it, it is clear that something happens in the late sixties or early seventies that marks a move away from the modest application of linguistic

philosophy to the analysis political concepts, and towards the form of normative theorising we find dominant today. Political philosophy has come to be associated with the development of liberal egalitarian theories associated with the names of John Rawls, Ronald Dworkin, Brian Barry and their criticism by the likes of G.A. Cohen. Egalitarianism provides the backdrop to increasingly technical questions about responsibility and choice versus circumstances, on the one hand and resources, access to advantage or primary goods on the other. Egalitarianism of the form we find in Rawls provides the paradigm within which normal political philosophy is carried on. Various summaries of these debates are provided under such headings as ‘Equality of What?’<sup>1</sup> or ‘On The Currency of Egalitarian Justice’<sup>2</sup>. Each suggests that the real issue is the question of what should be equalised – income, resources, primary good, rights, welfare or opportunities for advantage. There is no doubt that these are serious questions deserving of attention from political philosophers and theorists. For example, does it make sense to describe oneself as an egalitarian without some clear idea of what one thinks should be equalised and what should not? But some philosophers such as Ronald Dworkin have suggested that these are not only

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<sup>1</sup> Taken from the title of A. Sen’s Tanner Lecture on Human Values in 1980.

<sup>2</sup> The title of an equally famous article by G.A. Cohen, ‘On The Currency of Egalitarian Justice’, *Ethics*, vol. 99, (1989) pp. 906-44.

important questions, but in some sense these are the fundamental questions for egalitarians. The reason for this is that a more fundamental sense of equality is assumed by all the rival candidate theories that one finds in modern politics. The differences between such theories are not differences between those who regard mankind as equals and those who believe in racial or hierarchical political theories, rather they are differences over how equality of the relevant kind may be achieved. In this general sense every serious candidate theory is concerned with equality, the interesting differences between theories concern answers to questions such as ‘Equality of What?’ or ‘The Currency of Egalitarian Justice’.<sup>3</sup> Some will argue that the only goods to be distributed equally are basic rights to life, liberty and property, others will focus on social primary goods without which no decent life is possible, others still will try and cash-out the conditions of a valuable life in terms of a bundle of resources which individuals can use differently in pursuing their preferred conceptions of the good life. On this Dworkinian view the broad commitment to equality of concern and respect is the only game in town, what matters for politics and for political theorists is which candidate theory of egalitarianism can see off its opponents. This insight

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<sup>3</sup> The exploration of this Dworkinian idea forms the principle narrative of W. Kymlicka, Contemporary Political Philosophy: An Introduction, 2<sup>nd</sup> edn., Oxford, Oxford University Press, 2002, pp. 2-5.

seems to capture an important aspect of the practice of political philosophy where theory construction and criticism is what political theorists do.<sup>4</sup> But more importantly Dworkin's argument shifts the meaning of egalitarian from those who believe in basic equality (as he claims that pretty much everyone believes in equality now) to a more specific answer to the 'currency' and 'equality of what' questions. For Dworkin liberal egalitarians are those who endorse the idea of equality of resources, for non-liberal egalitarians such as G.A. Cohen, egalitarians endorse the idea of equality of access to advantage.

The main consequence of the trend that Dworkin identifies and advocates is that it pays scant attention to more traditional questions about the basis of fundamental equality, or why we should be interested in equality in the first place. Some philosophers have cast a sceptical eye at Dworkin's account of the terms of political debate amongst liberals, in particular Joseph Raz has made much of the supposed emptiness of the Dworkinian account of equality of concern and respect, yet Raz's warning seems to have been largely sidestepped.<sup>5</sup> This is no doubt in part because Raz does not think much can be made of the idea of basic of fundamental equality as anything

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<sup>4</sup> A fact that is lamented in Brian Barry's Why Social Justice Matters? Cambridge, Polity Press, 2005. Barry suggests in this book that too much political theory is narrowly inward looking and that egalitarians would be more profitably employed looking at how real equality can be achieved in modern democratic societies such as the UK and the US.

<sup>5</sup> See J. Raz, The Morality of Freedom, Oxford, Oxford University Press, 1986, chapter 9.

other than a principle of closure around a group of 'equals'. As such equality is secondary to the substantive characteristic shared by the group of 'equals' such that again the real issue is one of significance (what matters) and only then, of how it is distributed. And what matter is usually personhood cashed out in terms of autonomy.

Most contemporary political philosophers seem to accept either Dworkin's position or a variation of Raz's. Barry for example, assumes fundamental equality, as the starting point of his 'Scanlonian contractualism' but says nothing about why we should accept it.<sup>6</sup> For Barry, basic equality is an axiom from which other things can be deduced or inferred and the success or attractiveness of these inferences is what will confirm and support the initial axiom. Such an approach has some common-sense plausibility in that anyone who seriously objects to the equal claims of other human beings is unlikely to be worried about the nature of social justice and therefore with reading Barry's books.

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<sup>6</sup> B. Barry, Justice as Impartiality, Oxford, Clarendon Press, 1995, p. 70, and B. Barry, 'Something in the Disputation Not Unpleasant', in Paul Kelly ed. Impartiality, Neutrality and Justice, Edinburgh, Edinburgh University Press, 1998, p. ?

The other common approach to the problem of basic equality in the literature, which can be illustrated by the example of T.M. Scanlon, is the abandonment of the search for a single unified conception of equality as a value characteristic shared by all individuals and instead its replacement with a re-description of what egalitarians want in terms of a cluster of distinct but related moral commitments. These moral commitments can be illustrated by the diversity of reasons for rejecting inequalities.<sup>7</sup> Scanlon provides subtle and insightful discussions of what is wrong with suffering and severe deprivation, stigmatizing differences in status, unacceptable domination, procedural unfairness and unfair outcomes. These diverse faces of objectionable inequality depend on values other than basic equality of concern and respect and suggest that it is particular types of inequality that are wrong and not necessarily inequality per se. This approach is shared by many philosophers, who agree with Scanlon that it is both more sensitive to our moral experience whilst allowing us to challenge objectionable social and political practices.

What both approaches suggest is that not much turns on the idea of basic equality – or that in virtue of which we are worthy of equality of concern

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<sup>7</sup> T.M. Scanlon, 'The Diversity of Objections to Inequality', reprinted in M. Clayton and A. Williams, The Ideal of Equality, Basingstoke, Palgrave, 2002, pp. 41-59.

and respect – and therefore that political theory can proceed without paying the idea much attention. What really matters is the internal analysis and critique of particular theories in the attempt to converge upon a position that merits support because it has seen off all of the available contenders. This strategy has some attractions in terms of how we do political theory. If every time we wished to address what is wrong with unjust social arrangements or policies we had to build a theory from the ground up, we would never make any contribution to wider political and moral debate. To demand this fully foundationalist approach of political philosophers seems to make no more sense than requiring biologists or chemists to do fundamental work in basic physics before advancing any hypotheses in their own fields of enquiry. So political philosophers can seek to make some progress in debates between luck-egalitarians, sufficientarians, prioritarists and humanitarians by the internal analysis and criticism of their arguments, presuppositions and implications. This is one strategy employed by many political philosophers.<sup>8</sup> Yet the question remains whether it is ultimately insufficient as a complete defence of a political principle that may be used to justify coercion in the real world of politics, or at least will claim to justify such coercion. The

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<sup>8</sup> Indeed it is a strategy I have used myself in Liberalism, Cambridge, Polity Press, 2004. It can also be found in Jeremy Bentham's attempt to provide an informal justification of the primacy of the principle of utility in An Introduction to the Principles of Morals and Legislation. [(1789)]. See the discussion in R. Harrison, Bentham, London, Routledge, 1983, pp. 187-8.



reason for this is that showing that a particular perspective can withstand a critical engagement with other theories cannot show its uniqueness as the right basis for social cooperation and political coercion. This is because a theory's unique ability to withstand critical challenge depends upon being able to set limits to the range of possible rival candidate theories. In the case of arguments for egalitarianism these rival theories will not only be alternative egalitarian theories up to and including utilitarianism but also the whole range of non-egalitarian arguments and theories. Just as the strategy of internal analysis and criticism will not single out the uniqueness of egalitarianism amongst its rivals so similarly it will not provide support to the idea of fundamental equality, as there is no non-question begging sense in which egalitarianism must win out over non-egalitarian theories.

## **2. Do we need an account of Basic Equality?**

A question we might ask ourselves at this point is whether it really matters that we do not provide a justification or defence of fundamental equality? I am interested in the question of why we should regard other (all?) human beings as equals. My interest and the point of this question is not the search for a universal motivation to act morally although clearly if we can find a

ground for regarding other human beings as moral equals this will have a bearing on questions of the scope and demands of our obligations. Rather I am concerned with why we should be concerned with basic equality in the first place and what an appropriate concern for basic equality would look like. This question is certainly concerned with the scope of our obligations and this does seem to be central to the concerns of contemporary political philosophy. So at least in this sense the issue of basic equality does seem to matter the question to be answered is what is basic equality and how does it have a bearing on scope?

There are three main reasons why the question of basic equality might well matter and therefore why it should merit some equal attention amongst those political philosophers who regard themselves as egalitarian.<sup>9</sup>

The first reason is the most obvious and concerns the ability of egalitarians to say something to anti-egalitarians, Nietzscheans and the defenders of natural aristocracy. Although most contemporary political philosophy is conducted against the background of a weak commitment to equality of

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<sup>9</sup> I am not suggesting that there should be a complete redirection of attention from questions about the currency of egalitarian justice or the nature of what should be distributed. All I am suggesting is that some attention should be given to this fundamental question as well, and that certainly seems to be lacking in the contemporary literature.

concern and respect it is certainly not the case that everyone accepts this premise. It is certainly not the case that in the wider world egalitarianism is the norm, whatever Dworkin might claim. As well as the unattractive claims of racists, misogynists and homophobes, many people do think that there are ethically relevant differences between people that undermine the idea of basic equality. These anti-egalitarian claims can be based on prejudice but it is not a sign of prejudice as such that one rejects basic equality, as many egalitarians deny that all departures from equality are morally significant. Some inequalities can be egalitarian.

The rejection of egalitarianism can take many forms. Some might argue that there are no grounds for attributing equal worth to persons in any respect, because there are no grounds for attributing moral worth to persons as such. Followers of Nietzsche fall into this group. They see the claims of equality as part of the 'slave morality' legacy of Christianity, which in its attempt to overcome natural hierarchy undermines the status of any ethical values and leaves us with nihilism.<sup>10</sup> For the nihilist anything goes because every claim to value is the assertion of the will to power. The Nietzschean challenge is similar to the challenge of the amoralist, to whom perhaps no general answer

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<sup>10</sup> F. Nietzsche, Beyond Good and Evil, Harmondsworth, Penguin books, 2003.

to the question why be moral can be given. But the challenge for the egalitarian is also different, because even if we can give some kind of ethical response to the Nietzschean, of the sort that he too is involved in a kind of ethical practice, it does not follow that this response will result in equal concern and respect.

Not all anti-egalitarians are nihilists or Nietzsche inspired relativists. Some philosophers take a realist but anti-egalitarian view, a good example is John Kekes. Kekes rubbishes basic equality on its own grounds by claiming that because egalitarians do not take seriously the issue of evil they are unable to see why some people are less worthy of moral consideration than others and hence are not in the relevant sense equals. He gives the examples of torturers, murderers and concentration camp guards as the sort of people who show through their actions that they are less worthy of consideration than others.<sup>11</sup> Kekes's argument is important, in at least this respect, in that he argues against prescriptive or moral equality, whilst potentially conceding the case in favour of descriptive equality. Thus all people may satisfy some natural criterion of equality as human beings (all having interests) yet fail to satisfy the relevant criteria of moral equality because of the repugnance of

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<sup>11</sup> J. Kekes, The Illusions of Egalitarianism, Ithaca, Cornell University Press, 2003.

their acts and motives. It is at least arguable that certain kinds of person are not worthy of equal consideration even if we decline to deny them any protection of the law. We might for example find some people so repugnant in their acts, (torturers are a good example) that we deny them equal concern and respect in any meaningful sense, and the only reason we do not allow them to become total moral outlaws is the concern not to demean ourselves rather than any concern for their status.

Without some criterion of basic equality we have no way of responding to the challenge of anti-egalitarians and this fact is perhaps more pressing today than for many years because of the unfortunate consequences of the so-called war on terror and the clash of civilisations thesis. It is too easy to dismiss such people as beyond the pale and therefore not deserving of serious consideration. If egalitarianism is only of interest to other egalitarians then it is unlikely to have much impact beyond the confines of the seminar room.

Yet the problem is not simply that egalitarians will have little to say to the wider world of anti-egalitarianism. The problem is also one of consistency. Egalitarians cannot accuse anti-egalitarians of missing a crucial point of

moral significance if they are themselves going to avoid any justification and explanation of the grounds of equal treatment. The Dworkinian view is to reject as candidates for serious consideration, principles and policies that are systematically anti-egalitarian such as racial discrimination on the grounds that it fails to acknowledge a basic parameter of ethics. Yet this argument is seriously weakened if there is no attempt to explain and defend the basis of that ethical parameter. If, one steps-back from righteous indignation and asks dispassionately what is the anti-egalitarian missing, we find the importance of making some case for basic equality. The anti-egalitarian can want many of the things that egalitarians want, but differ only in that he wants them for the morally worthy. This is not quite the position taken by Kekes who wants to reject substantive egalitarianism as well, but it is one that could be based on his anti-egalitarian argument from evil. There is no good reason for the anti-egalitarian to reject the idea that once one has weeded out all the torturers and other evildoers, amongst the remainder equality might be the appropriate grounds of moral and political recognition. This is not unlike the idea of equality between equals that we find in Aristotle's Nicomachean Ethics. Here the idea is that amongst those sharing the appropriate quality or excellence there should be equality of treatment, so that, for example, amongst able violinists, violins should be equally

distributed. This form of egalitarianism is consistent with most forms of elitism and political systems such as aristocracy.

This brings us to the third reason for providing an account of basic or fundamental equality namely the problem of scope. As we have just seen some of those who claim to reject egalitarianism could with consistency accept a form of egalitarianism as equality amongst equals. The question of the scope of egalitarian principles is therefore very important as how we define the scope of basic equality seems to have a direct bearing on the nature of egalitarian principles. Just as we could reconstruct the anti-egalitarian argument of Kekes so that it is consistent with allowing egalitarianism amongst a suitably circumscribed group of worthy individuals, so in the case of most other egalitarian principles we could circumscribe the group to whom they are supposed to apply. This is not merely an unintentional consequence of egalitarian arguments for one of the central debates in liberal political theory concerns the question of the scope of liberal egalitarian political principles. If we take Rawls' theory as an example we can see how the argument of A Theory of Justice,<sup>12</sup> was assumed to have a broadly cosmopolitan scope, yet that in Political

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<sup>12</sup> See especially the interpretation of Rawls theory in C. Beitz, Political Theory and International Relations, rev. edn., Princeton, Princeton University Press, 1999.

Liberalism and A Law of Peoples,<sup>13</sup> the egalitarian principles of ‘justice as fairness’ are clearly supposed to apply to the members of ‘a people’ rather than to all people as such. Some have accused Rawls of apostasy in moving from his cosmopolitan to communitarian conception of liberalism, but arguably Rawls always claimed that equality in the relevant sense is something appropriate to those who share in the same scheme social cooperation and he is not alone amongst egalitarian liberals in holding such a view.<sup>14</sup> So at the heart of modern liberalism we already have ethical distinctions between individuals. Some of these distinctions can no doubt be explained via the institutional division of labour between political equality, which clearly presupposes membership of a polity, economic equality, which assumes some form of social and economic cooperation and more basic forms of equality, which simply depend on common humanity. But that is not sufficient if we are to prioritize the respective claims of these various forms of equal treatment. Do the claims of individuals as such, to be equals, trump the claims of co-operators or members of the same ethical community? As this issue is precisely what separates cosmopolitan from

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<sup>13</sup> J. Rawls, Political Liberalism, New York, Columbia University Press, 1993, and A Law of Peoples, Cambridge MA, Harvard University Press, 1999.

<sup>14</sup> See for example, T. Nagel, ‘The Problem of Global Justice’ Philosophy and Public Affairs, 33 (2005), pp. 113-147. Although I have not been able to find a clear statement in his writings Ronald Dworkin claimed in a conversation with the author that there was no such thing as international justice. Presumably the point is that whatever equality exists beyond border is different from what exists amongst those within a political community.



other kinds of egalitarian, I do not see how we can make much in the way of progress without addressing the basis and character of fundamental equality.<sup>15</sup> The issue of the scope of equality versus ideas that may be more fundamental such as humanity is precisely what is being debated amongst defenders and critics of cosmopolitan egalitarianism.

For all of the reasons given above it is clear that the issue of basic equality is something that egalitarians should not ignore as it affects the scope and therefore the plausibility of the arguments they make about ‘currency’ and ‘distributive principles’. One of the few political philosophers who have sought to address head on the issue of basic equality is Jeremy Waldron. He writes;

Basic equality is so fundamental to innumerable aspects of our ethical outlook that it requires a special sort of defense – at once transcendent and powerful – so that it can both underpin what are usually taken to be the starting points of public justification and also

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<sup>15</sup> I am aware that most cosmopolitans will answer that they do have a conception of basic equality which gives priority to humanity over other forms of ethical relationship, on the grounds that they are concerned with humanities equal status as the bearer of interests. This is however too quick as the idea of human interests is still controversial, indeed it is partly what theories of egalitarian justice try to explain. Some accounts of basic interests might actually presuppose membership of certain kinds of communities, such as juridical states, in order for people to enjoy freedom.

prevail in the face of the various temptations that invite us to start drawing distinctions between types and grades of human being.<sup>16</sup>

In the next section of the paper I propose to examine Waldron's argument based on his reading of Locke and his use of this to mount a critique of the treatment of basic equality in contemporary liberalism such as that of John Rawls. Before turning to Waldron's argument it is worthwhile just reminding our selves of the point of turning to basic or fundamental equality. The issue is in virtue of what are human beings deserving of equal consideration and respect? My point will not be to provide an unchallengeable defence of equality, rather the point will be to identify the nature of the claim to basic equality as only then will we be in a position to determine the requirements of any defence or justification of that claim.

### **3. Basic Equality – Christian or Liberal?**

Waldron's discussion of basic equality is developed in the context of his reinterpretation of Locke's moral and political philosophy. One of the distinctive features of his argument is that Locke should be read as a philosopher who has potentially interesting things to say about fundamental

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<sup>16</sup> J. Waldron, God, Locke and Equality, Cambridge, Cambridge University Press, 2002, p. 14.

philosophical problems and not merely as an historical curiosity. As such he challenges the interpretation of Cambridge historians such as Peter Laslett and John Dunn who both argue that because of Locke's seventeenth century theological views there are no issues of contemporary political relevance about which we can learn anything from Locke.<sup>17</sup> This means that we can both learn something about basic equality from Locke's arguments but more controversially we do not have to discard Locke's theological beliefs in order to learn from him. For Waldron, the discussion of basic equality is not merely a side issue in an historical discussion of a past political thinker: we can learn something about the 'shape' of basic equality from Locke that has a bearing on how we judge secular contemporary discussions of basic equality such as that notably offered by John Rawls in A Theory of Justice. I do not intend to say anything here about Waldron's methodology of historical enquiry or his critique of Cambridge historicism, other than to note that I am in broad agreement with him. Our primary concern is what we can learn about the 'shape' or nature of the criteria of fundamental equality.

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<sup>17</sup> See P.Laslett, 'Introduction' to John Locke, Two Treatises of Government ed. P. Laslett, Cambridge, Cambridge University Press, 1988, and J. Dunn, The Political Thought of John Locke: An Historical Account of the Argument of 'Two Treatises of Government', Cambridge, Cambridge University Press, 1969.

Locke is interesting for Waldron because he has a conception of the fundamental equality of all mankind in the Second Treatise as the bearers of rights and therefore of ethical significance. In this sense Locke too seems to fall into Dworkin's claim that equality is the only game in town. What makes Locke interesting is how he seeks to cash out that claim. Locke seems to both reject a straightforward species-based naturalism and appeal to the idea of the species as the principle of closure of his conception of moral significance.

Human beings are not equal because they belong to the same species Man. And the reason for this argument is to be found in Locke's account the concept or term species in his Essay Concerning Human Understanding<sup>18</sup>. In the Essay' Locke rejects species terms as what he calls nominal essences. Nominal essences are collections of ideas derived from sensation and experience derived from nature. However, they are not based on real distinctions between objects of experience and therefore cannot provide the basis for real distinctions between species, and more importantly between mankind as a species and other kinds of species. The point about this is that our use of species terms cannot draw a real distinction between one species

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<sup>18</sup> J. Locke, An Essay Concerning Human Understanding, ed. P.H. Nidditch, Oxford, Clarendon Press, 1971, III. vi.

and another, although it can identify some nature features of creatures which are not shared by all. How we distinguish these criteria is largely based on convention and practice and it is for that reason that species terms will not provide the right kind of distinctions and discriminations. We can see an intimation here of the kind of arguments used by defenders of animal rights or animal welfare such as Peter Singer. He would certainly not deny any differences between what we call species, but rather like Locke, would deny the significance of these basically conventional distinctions for real and morally relevant distinctions between classes of being.<sup>19</sup> What we focus on in making such distinctions will draw the boundaries of moral significance and therefore who or what counts as an equal. Appealing the idea of a common species will not do the relevant work because the classification is conventional though based in nature but it is not given directly by nature. Names will not help us here.

So much for the argument of the Essay, yet in the Two Treatises Locke does use the idea of the human species as the principle of closure of his account of ethical significance. This sets up an interesting historical question about

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<sup>19</sup> P. Singer, Practical Ethics, 2<sup>nd</sup> edn., Cambridge, Cambridge University Press, 1993.

the consistency of Locke's works which I do not intend to pursue.<sup>20</sup> Waldron suggests that Locke overcomes this apparent contradiction by weakening the status of the species based claim in the Two Treatises.

According to Waldron, Locke does not assert the strong claim about species identity as the boundary marker of significance for the reasons he sets out in the Essay. Instead, he falls back on the less ambitious claim that the perceptible qualities that make up the nominal essence of the species Mankind do actually contain some real resemblances that allow us to draw a boundary around the group of equals as the group of human beings. The key features that he picks out are that human beings are corporeal beings and that they have the capacity to think rationally or (what he takes to be the same thing) abstractly. The emphasis on corporeal beings is important because it suggests that Locke is concerned with human selves or persons and not souls despite his obvious religious commitments. This criteria distinguishes human persons from any other kind of non-corporeal entity should they exist and whatever they might happen to be. This choice has the important

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<sup>20</sup> P. Laslett argues that Locke made no attempt to make the arguments of the Essay and the Two Treatises consistent, and to seek such consistency is to force interpretations upon Lockes' works that they ultimately will not sustain.

implication for Locke that despite his theological presuppositions the scope of his conception of morality is definitely humanist.

The second characteristic that Locke identifies is the capacity for abstract thought or rationality. This immediately suggests one standard objection to all naturalistic attempts to ground ethical equality namely that not all of those we might include amongst 'humankind' express the capacity to think abstractly. One simple response would be to robustly deny that those who do not manifest that characteristic are moral equals. Thus infants, most children up to a certain age, many elderly people as well as those with mental disabilities, those in comas etc., would seem to fall outside the scope of moral equality. Yet many of these people are precisely the kind of people we would want to protect by according them moral equality. Locke does not take this view, instead according to Waldron, he uses the capacity to exhibit abstract rational thought as a range-property, an idea derived from Rawls which seems to fit Locke's arguments about the scope of the capacity for abstract thought.<sup>21</sup> The point about a range-property is that it allows for differences of degree within a range. Waldron illustrates Rawls' point with

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<sup>21</sup> J. Rawls, A Theory of Justice, rev edn., Oxford, Oxford University Press, 1999, p. 444.

the example of being in New Jersey.<sup>22</sup> Both Hoboken and Princeton fall within the range concept though they differ in the degree to which they fall within the State of New Jersey. Hoboken is on the border with New York. It is falling within the range that matters for Waldron and Locke and not the degree. So although people differ in the degree to which they exhibit the capacity for abstract thought this does not matter from the point of view of identifying the relevant criterion of equality.

But even if we can use the idea of the capacity for abstract thought amongst corporeal beings, Waldron's account of Locke's theory of basic equality seems to fall foul of the other standard criticism of naturalistic theories of ethics, namely how ethical significance is derived from what Locke concedes is a natural capacity, or how we move from descriptive to prescriptive equality? It is here that Locke's argument takes a theological turn and it is at this point that Waldron also argues that the significance of the appeal to God becomes important for making sense of equal status and value.

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<sup>22</sup> J. Waldron, God, Locke and Equality, p. 77.



The argument works in the following way, the capacity of abstract reasoning is identified as significant, not simply because it is widely universally shared (though to differing degrees) by all human beings. Instead the significance of abstract reasoning is that it enables each person to understand themselves as a part of the created order and from this they can reason to their obligation to preserve that order including other moral equals as part of the basic moral obligation we have to God. The idea seems to be as there is something rather than nothing there must have been a creator and therefore, a purpose to that creation of which human agents are a part. As soon as they ask themselves why have they been endowed uniquely with this capacity for abstract thought they will begin on an easy process of reasoning to the idea of a created order that gives a purpose and therefore a meaning to the possession and exercise of these capacities.

There are a number of important points to note from Waldron's account of Locke's theory. Firstly, a straightforward appeal to a natural property will not be sufficient to ground basic equality. Secondly, that natural capacity is a range property that admits of significant differences in degree. Thirdly, the appeal to God provides the important account of the significance of this capacity – what Waldron calls the 'shape' of basic equality. It is important,

according to Waldron that Locke's appeal to God is not for the traditional natural law idea of an authoritative sanction of our basic moral obligation. Clearly, for Locke, God does sanction the basic moral law of equal respect, but that is not the key point. The appeal to God and therefore a transcendent authority, provides the meaning and significance of the real resemblances (corporeality and capacity for rationality) on which moral equality is based. Thus the appeal to God in the defence of basic equality is not merely a contingent fact of Locke's historical circumstances that can be bracketed off from his 'proper' philosophical doctrines, it is central to his defence of equality. Yet Waldron also rejects the obvious contemporary response, which is that, if the defence of equality depends upon an appeal to God so much the worse for equality. It is hard enough trying to defend egalitarianism without having to defend the existence of God as Locke conceives him. It is precisely this source of transcendence that is significantly missing, according to Waldron in contemporary liberal theories of basic equality, and it is perhaps the embarrassment at having no such transcendent significance that causes liberals to fall back on either silence or a muted appeal to individuals as bearers of interests.

Precisely what we are supposed to make of Waldron's argument is carefully ambiguous. One could take the view that he is merely repeating the standard criticism of liberal theories to the effect that the bracketing strategy and the avoidance of substantive philosophical or metaphysical commitments is unsustainable.<sup>23</sup> This is certainly part of Waldron's critique of Rawls in this account of the Lockean alternative. But this familiar, though perhaps important, point is not all that Waldron is offering us. Although he provides a defence of Locke's view that civil society cannot accommodate atheists, he does not expressly say that a belief in God is essential for those who count as moral equals – a view that is actually not so alien in modern democracies. Yet because Waldron wants to take Locke's argument seriously it does look as though he does endorse the need for God and the transcendent to make sense of our commitment to basic equality. Without it we are no better than the Nietzscheans who have no interest in equality or morality.

Where Waldron's challenge to contemporary liberalism is most clear is his suggestion that Rawls' defence of basic equality fails because it lacks the

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<sup>23</sup> A version of this argument can also be found in Charles Taylor's Sources of the Self, Cambridge, Cambridge University Press, 1989. Taylor is concerned with the way in which the resources from which our modern conceptions of self-hood such as the free and equal subject of democratic citizenship are under threat in late modernity. His concern is that what he calls horizontal secularism is in danger of undercutting the support of values we cherish. This is precisely what Nietzsche predicted in his Beyond God and Evil and the Genealogy of Morality.

‘shape’ or transcendent account of meaning and significance that basic equality needs. There is no alternative to substantive philosophical, metaphysical and even theological arguments in providing a defence of basic equality. Is Waldron right about Rawls and what does this tell us about the nature of fundamental equality?

Let us remind ourselves what according to Waldron, Locke’s appeal to God does in respect of justifying basic equality. His key point is that the appeal to the idea of God and a divine purpose provides the sources of an interpretation of the natural capacities of corporeal rationality, which gives them their special status amongst the range of other possible real resemblances amongst mankind. It is the meaning of the natural capacities that matters.

Rawls offers us an account of basic equality in terms of two features of moral personality, the capacity to form and pursue a conception of the good and the capacity for a sense of justice.<sup>24</sup> These capacities are natural capacities but for Rawls they are also range properties, indeed as we have seen it was Rawls who introduces the notion. Consequently, people can

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<sup>24</sup> J. Rawls, A Theory of Justice, rev. edn., p. 442.

manifest these capacities to a greater or lesser degree, thus covering the question of natural differences in intelligence and ability. It is also interesting that Rawls' characterisation of the two basic characteristics of moral personality as range properties answers Kekes's challenge about the egalitarians ability to take account of evil. For even Kekes's examples of torturers and murderers still have these capacities despite attempting to overcome or ignore their importance. It is for this reason that Rawls and liberal egalitarians see no one as beyond the protection of the law, however heinous their crimes may be. In this Rawls' position is also superior to that of Locke who as we have seen leaves atheists outside the law.

So far Rawls' position seems to mirror that attributed to Locke. Where they differ is on the issue of significance and meaning. Waldron claims that Rawls's account of moral personality has no shape as Rawls rejects the idea of appealing to some transcendent significance of these characteristics of moral personality. But this argument seems a bit hasty. Rawls does provide an interpretation of the significance of moral personality but in so doing he does not appeal to some external source of authority or significance. Instead Rawls interpretation of the significance of moral personality is spelt out through the articulation of a full theory of equal treatment appropriate to the

kind of persons who find themselves in the initial choice situation of his theory of justice as fairness. This is similar to the strategy of analysis and criticism of candidate theories of egalitarianism that I identified in the first part of the paper. But the strategy of Rawls employs here is rather different in that Rawls sees part of the task of theory construction as specifying the nature of basic equality whilst the appeal to basic equality places constraints on the character of that theory construction. Theory construction and the strategy of reflective equilibrium are obviously important parts of Rawls' account of the characteristic features of moral personality. The meaning and significance of the two basic features of moral personality is provided by the role they play in making sense of a just social order. Waldron's challenge is whether the process of explaining basic equality in this way is sufficient? But in order to answer his challenge we need an account of sufficient for what?

Waldron's demand cannot be that Rawls sees off all challengers to his account of basic equality, as Waldron's own Lockean theory is hardly likely to fair even as well as Rawls's. For if Waldron argument is not merely for the development of a philosophical anthropology before we can do political theory, but the more demanding claim that we need to take theology

seriously, then his position would seem far more precarious than Rawls's. His argument does seem to play into the hands of the Nietzscheans by saying that equality depends upon a conception of God, but as we have no good arguments for belief in God we cannot sustain a conception of equality. Locke may well be providing us with an argument for basic equality but it is hardly one we should take very seriously. Rawls does not set the barrier of justification quite so high, so the idea of self-sufficiency in his account of basic equality must count as an advantage over Waldron and Locke. If the question is the role and purpose of basic equality it is not obvious that Waldron's turn to the transcendent is necessary, although clearly some argument beyond the identification of a natural property is important. Where Waldron's argument ultimately differs is on the issue of the sanction of basic equality, or why we should respect it. But this is a different question to how we identify the meaning and significance of basic equality, and it is one that depends on the existence of God for its answer. And this is something that Waldron does not prove.

The question is whether Rawls' approach is sufficient to address the claims of why basic equality matters. His approach certainly offers something to say to the anti-egalitarian about the nature of basic equality. Using the idea

of a range property he is able to address anti-egalitarians such as Kekes or others who deny the idea that there can be natural properties that include sufficient numbers to meet the aspirations of egalitarian theories. By providing an interpretation of the basic capacities of moral personality Rawls theory meets the demands of consistency in addressing alternative non-egalitarian theories. Finally there is the issue of scope. Here Rawls account of basic equality takes an interesting turn. He develops the idea of moral personality in the initial situation of establishing fair terms of social cooperation.<sup>25</sup> The point seems to be that basic equality exists first and foremost amongst those engaged in constructing a fair scheme of social cooperation. What is not developed in this argument but what is increasingly clear in Rawls' work is that basic equality is primarily a political notion that is articulated against the backdrop of a certain kind of political society – a just state. This certainly goes some way to explaining why liberal egalitarian theories see equality as primarily a 'sovereign virtue' that expresses the relationships that exist between members of a just political community and its structures of power and authority. In the absence of political society the issue of basic equality would not have the same significance. But one should not conclude from this that Rawls' confines the

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<sup>25</sup> J. Rawls, A Theory of Justice, rev.edn., p. 442.



scope of equal recognition to fellow citizens. There are after all two basic features of moral personality, the capacity for a sense of justice is only one of them. All individuals share in the capacity for a conception of the good, and it is no doubt in virtue of this that some form of cosmopolitan harm principle can be constructed. What is clear is that Rawls does not provide a simple answer to the issue of the scope of basic equality. At one level the capacity for a conception of the good is broad enough in range to encompass most of humanity. Yet at the level of a capacity for justice, it is not obvious that this entails relationships that are, at the political level, cosmopolitan in scope. The point here is not just one of a division of labour, but rather the more substantial claim that some of the relationships that count as part of being political equals are constituted by membership of the appropriate kind of political community, namely a state regulated by the two principle of justice. This approach to basic equality is developed in Rawls' later works such as A Law of Peoples, but even if one does not follow Rawls' argument fully in this direction it is clear that he offers at best a 'statist' version of cosmopolitanism.

What can we conclude from the above? Rawls does not provide the only possible route to the justification of a liberal egalitarian perspective, but his

approach to the issue of basic equality is insightful because it does not wholly marginalize the issue in the way that Dworkin's rival theory of liberal egalitarianism appears to. Furthermore, Rawls' theory connects the specification of basic equality to the context of a special form of political association but does not wholly subordinate equality to the issue of the internal structure of a just state. In more general terms we can also see that whilst the defence of basic equality forms an important part of the defence of substantive egalitarian theories of distributive justice, one can overstate the importance of defending basic equality along the lines suggested by Waldron. Where this leaves us, is with a defence of the status quo in terms of how political philosophers should proceed. The analysis and critique of rival theories of egalitarianism has an important role in the wider defence of basic equality. What we should not expect is some theory independent account of a basic natural property in virtue of which people become moral equals, but neither should we lament the fact of the absence of such a property. The appeal to basic equality is important in making sense of the egalitarian project but the account of basic equality is not a straightforward first premise from which all else must be derived. It is a central part of the process of egalitarian argument in so far as it forces us to concentrate on the issue of the scope of our principles, and this is something that can be lost in

a preoccupation with issues such as the currency of egalitarian justice. But in making the defence of basic equality depend on the articulation of an egalitarian theory of the just political community we open up scope not only for philosophical arguments but also establish opportunities for other forms of political theorising to assist in providing representations of the core idea of basic equality and the forms of social relationships on which it depends. Although Waldron's account of Locke proved to be unhelpful in providing the foundation of basic equality, perhaps there is scope for marshalling past historical thinkers and modes of thought in defending basic equality. Perhaps I could suggest Tom Paine.