

## ORIGINAL ARTICLE

# Distributive justice, social cooperation, and the basis of equality

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## Abstract

This paper considers the view that the basis of equality is the range property of being a moral person. This view, suggested by John Rawls in his *A Theory of Justice* (1971), is commonly dismissed in the literature. By defending the view against the criticism levelled against it, I aim to show that this dismissal has been too quick. The critics have generally failed to fully appreciate the fact that Rawls's account is restricted to the domain of distributive justice. On Rawls's view distributive justice is a matter of the fair terms of cooperation among the participants of a system of social cooperation. I argue that this understanding of distributive justice can provide a compelling rationale for considering moral personality as the basis of equality for this domain of morality. That moral persons are indeed equal is further supported by an intuitive argument concerning the irrelevance of morally arbitrary factors, giving us reasons to believe that varying capacities among moral persons does not result in an unequal moral status. The dismissal of Rawls's account of equality has thus been premature, and it remains an important view to consider.

## KEYWORDS

basis of equality, Contractualism, distributive justice, John Rawls

## 1 | INTRODUCTION

A common idea in much modern moral and political philosophy is that all persons are, in some fundamental sense, equal. This is not the idea that resources or welfare should be distributed equally, that everyone should have equal rights, or that everyone should receive some other kind of equal treatment. Rather, the idea is that all persons *matter equally* from a moral point of view. This idea is sometimes expressed by saying that each person has equal value, that each has equal worth, or that each has equal dignity. If all persons are equals in such a fundamental

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sense, they ought to be *treated as equals*. On this matter, philosophers with opposing views on what justice requires—for instance egalitarians and libertarians—typically agree. Though they disagree on how people should be treated in order to be treated as equals, they nevertheless share a commitment to the equality of all persons at this more fundamental level (Dworkin, 1977: 180, 272–273, 1983: 24–25; Kymlicka, 2002: 3–4; Nagel, 1979: 111–112).

It is often, at least implicitly, assumed that this equal moral status is possessed by persons only. But what is it about persons that explains their equality? They must, it seems, be equals in virtue of some properties that they all possess. These properties, which would then constitute the *basis of equality*, must be such that they can plausibly explain why those who possess them are equals in the fundamental sense, and be such that only persons possess them (or at least that only they possess them to the required degree). Hence, if we are to vindicate the commonly shared idea about the equality of persons, we must identify properties of this kind.<sup>1</sup>

Unfortunately, and as pointed out by numerous philosophers, basing equality on the possession of the rational capacities necessary for personhood faces serious problems. Whichever capacities that we identify as necessary for personhood, it will be true that different persons possess them to different degrees. Some will have highly developed capacities, whereas others will just barely possess them. But if so, how can such an unequal possession of these capacities render those who possess them equal? Should we not instead conclude that moral status comes in degrees and varies in proportion to the degree in which persons possess the relevant capacities (Arneson, 1999; McMahan, 2008: 3; Thomas, 1979; Williams, 1973: 14)?

In *A Theory of Justice* (1971), John Rawls suggested a partial solution to this problem. It is partial in the sense that it does not deal with the problem of equal moral status for morality as such but only for equality in the case of *distributive justice*. The solution is thus restricted to this particular domain of morality. Rawls suggested that the basis of equality in this domain—‘the features of human beings in virtue of which they are to be treated in accordance with the principles of justice’—is the *range property* of being a *moral person* (Rawls, 1971: 504–505). Rawls’s idea is that although being a moral person depends on the possession of certain *scalar properties* (i.e., properties that comes in degrees) above a certain threshold, moral personality as such is something that you simply have or lack. As long as you possess the relevant scalar properties above the relevant threshold, you are within the range that makes you possess the range property of moral personality. If the basis of equality is this range property, rather than the scalar properties upon which it supervenes, then it appears that we may be able to salvage the idea of equal status after all.<sup>2</sup>

Though this may appear to be an elegant solution to the problem—at least in this particular domain of morality—the widely shared verdict in the literature is that Rawls is unsuccessful in his vindication of equality. Indeed, Rawls’s approach to the problem is usually very quickly, almost routinely, dismissed. Rawls failed, it is often claimed, to supply any compelling reasons for moral personality as the relevant range property (Carter, 2011; Christiano, 2014; Cupit, 2000; Sher, 2014; Thomas, 1979). He also appeared to simply assume that variations in the underlying scalar properties above the threshold are irrelevant (Arneson, 1999; Carter, 2011; Christiano, 2014; Cupit, 2000; Sher, 2014; Thomas, 1979). But if it is the scalar properties that underlies the range property, and thereby explains the importance of this property, then there is pressure to also acknowledge the significance of variations above the threshold (Arneson, 1999, 2014; Christiano, 2014; Kagan, 2019; McMahan, 2002). This

<sup>1</sup>There are those who have suggested other approaches to the problem of the equality of persons. For instance, Sangiovanni (2017) has suggested that our commitment to equality should not be explained in terms of our shared rational capacities but rather by our rejection of cruelty. For a criticism of this approach, see Floris (2019). I mention this approach merely to set it aside, as I shall here exclusively focus on the more traditional view that the basis of equality must be some set of properties possessed by those who qualify as equals in the fundamental moral sense.

<sup>2</sup>We are not, however, able to salvage the idea that *all* persons possess this equal moral status since there may be persons who are not moral persons in Rawls’s sense. I address these matters in section 4.

suggests that even if one could amend Rawls's account by the addition of some rationale for moral personality as the basis of equality, the result would most likely not be equal moral status but rather moral status in accordance with one's possession of the underlying scalar properties.<sup>3</sup> Hence, if the critics are right, Rawls's account appears to be not only seriously incomplete but also highly unlikely to be salvageable.

I believe that this dismissal of Rawls's account of equality has been too quick. In this paper I intend to explain why by responding to the criticism described above. The critics have generally failed to fully appreciate the fact that Rawls's account is restricted to a particular domain of morality. A careful explication of how Rawls envisions this domain can, I shall argue, provide a plausible rationale for moral personality as the relevant range property. In short, Rawls's theory is not merely limited to the domain of justice but rather to a specific and limited part of this domain of morality. It is intended to answer a question about distributive justice understood as the fair terms of cooperation among the participants of a common enterprise. This understanding of distributive justice ties it closely to social cooperation and provides a rationale for identifying the basis of equality as the capacities required to take part in such cooperation. Further, I argue that this view can be supplemented by an intuitive argument to the effect that variations in capacities above the relevant threshold are irrelevant for our moral status due to their dependence on contingent and morally arbitrary factors. These arguments provide us, I claim, with good reasons to believe that this account of the basis of equality can be successfully defended after all.

## 2 | MORAL PERSONALITY AS THE BASIS OF EQUALITY

I shall start out by explaining Rawls's account of equality in more detail and will also qualify my defence of it in certain respects. On Rawls's account, moral persons are equals with regard to the requirements of justice. They are the subjects to which the principles of justice are to be applied, and they are equally entitled to being treated in accordance with these principles (Rawls, 1971: 504–505). But the equal moral status of moral persons does not only direct the application of the principles of justice. More fundamentally, it also has a significant influence on the *content* of these principles. This is most evident in how this idea of equality shapes the original position and thereby also the resulting principles of justice. I shall return to this important point later in the paper.

Moral personality, according to the view we are here concerned with, supervenes on two scalar properties: the capacity for having a conception of the good, and the capacity for a sense of justice. The former is a capacity to form a conception of the good (i.e., a view about what is valuable in life, and worth pursuing for its own sake) and to pursue it with rational means. The latter is a capacity to understand and to act on principles of justice, which includes a 'normally effective desire' to do so (Rawls, 1971: 505, 2005: 305).

As will become evident in section 4, it is the capacity for a sense of justice that is most clearly connected to the idea of social cooperation that is crucial for my defence of Rawls's account. It is also this capacity that Rawls actually appeals to in presenting and motivating his view. Having a sense of justice is a matter of being able to understand, act upon, and be motivated to abide by agreed upon moral and legal standards. In contrast, the capacity for a conception of the good appears not to be directly connected to one's capacity to cooperate with others. Instead, it is a capacity primarily necessary for being capable of successfully pursuing one's own interests. I will therefore put the capacity for a conception of the good to the side, and here remain agnostic on the issue whether it is necessary for moral personality or not.

<sup>3</sup>See section 3 below for a more detailed exposition of these different lines of criticism.

Hence, subsequent references to the capacities that underlies moral personality should be read as referring in the first instance to the sense of justice.

Of course, a moral person may often fail to act in accordance with the demands of justice. If having a sense of justice would require one to have perfect knowledge of the nature of justice, and to always intend to act as justice requires, then presumably there would be no moral persons at all. What is required is thus merely that one possesses the relevant capacities to a certain minimum degree. Exactly where this threshold is to be placed, and whether there may be borderline cases without a determinate answer as to whether someone is above it or below it, are difficult questions that I shall not attempt to answer here.<sup>4</sup> Rawls himself made no attempt at specifying the relevant threshold in any detail as he merely claimed that ‘the overwhelming majority of mankind’ will qualify as moral persons (Rawls, 1971: 506). From this we may gather that Rawls intended the threshold to be very low but not exactly how low. Interesting as this issue may be, the criticism that I want to address in this paper does not concern where to place the threshold, and hence I shall not pursue this matter further here. For the sake of argument, I shall instead assume that it can be made reasonably clear where the threshold is to be placed.

Another important feature of Rawls’s view that I shall put aside is that not only those who are in fact moral persons are equally entitled to justice. Those who have the *potential* for moral personality—for instance children, who are yet to develop their capacities—are also equals in this sense (Rawls, 1971: 505, 509). Once again, the criticism that I respond to in this paper does not concern this aspect of the view, and hence I shall not discuss it any further. Though this idea is probably essential for the overall plausibility of the view, defending it is a task better left for another occasion.<sup>5</sup>

With these clarifications and qualifications in place, let us proceed to consider three lines of critique against this account of the basis of equality.

### 3 | THE CRITIQUE

The first line of critique concerns the reasons, or lack thereof, for thinking that moral personality is the relevant range property. On this subject Rawls says that ‘whether there is a suitable range property for singling out the respect in which human beings are to be counted as equal *is settled by the conception of justice*’ (Rawls, 1971: 508, my emphasis). This motivation for moral personality as the relevant range property appears, as D. A. Lloyd Thomas puts it in an early criticism, ‘rather extraordinary’ (Thomas, 1979: 549). If the equality of persons is what grounds the requirement of treating them as equals, then arguably this equality should be conceived of as part of the foundations of justice. But if justice as fairness is what somehow determines the basis of equality, then ‘it can hardly be said that equal justice is founded on equal natural attributes’ since it is in fact ‘the conception of justice [that] imposes this equality’ (Thomas, 1979: 549).

The problem with Rawls’s rationale for moral personality as the relevant range property is thus that it appears to be based on elements of his conception of justice that should be seen as a consequence of the equality of persons rather than its cause or explanation. In Geoffrey Cupit’s view, this makes Rawls’s argument ‘wholly *ad hoc*’ (Cupit, 2000: 110, emphasis in original). And as Ian Carter notes, what is required is some reason in favour of moral personality as the basis of equality that is suitably independent of—rather than the direct consequence of—one’s substantial view about the requirements of justice. But, Carter claims, ‘no such independent reason is explicitly put forward by Rawls himself’ (Carter, 2011: 550). This line of criticism does

<sup>4</sup>For some comments on the idea of a threshold and indeterminate cases, see Arneson (1999: 109).

<sup>5</sup>For some critical comments regarding Rawls on potentiality, see McMahan (2002: 254).

not imply that no plausible independent reason for moral personality can be provided. It merely states that no such reason has been provided this far, and in its absence the case for this basis of equality is incomplete and unsatisfactory.<sup>6</sup>

The second line of critique is closely related to the first in that it also concerns the lack of a sufficient rationale. This time, however, the complaint is that no plausible reason has been provided for treating variations in the underlying scalar properties above the threshold as irrelevant. The point being that even if some plausible and independent rationale for moral personality as the relevant range property were provided, it would still be the case that moral persons differ greatly with regard to their possession of the capacities that make them moral persons. Why believe that these variations are irrelevant for the moral status of persons? Once again, the complaint against Rawls concerns the absence of reasons. Thomas asserts that the irrelevance of variations above the threshold is simply ‘presupposed’ by Rawls (Thomas, 1979: 550). Similarly, Richard J. Arneson claims that ‘no plausible reason is given for regarding the possession of more or less of the Rawls features once one is above the threshold as irrelevant to the determination of one’s moral status’ (Arneson, 1999: 108). And as Thomas Christiano puts it, ‘the idea that the status of personhood appears at a particular threshold and then remains unchanged after the threshold appears ad hoc’ (Christiano, 2014: 57). Once again, this critique does not demonstrate that no plausible explanation can be provided. The complaint is merely that we cannot assume, without any convincing arguments, that variations above the threshold are irrelevant for moral status.<sup>7</sup>

As noted, nothing in the critique described above suggests that moral personality as the basis of equality cannot be successfully defended. That Rawls failed to provide sufficient independent reasons for his account does not show that no such reasons exist. But there is a way of reasoning about the problem of variations in capacities that may be interpreted as third kind of critique, one that may lead us to doubt that sufficient reasons in support of Rawls’s account of equality will be forthcoming. As an example of this way of reasoning, consider the following passage from Christiano:

The thought is that the status of persons is grounded in the possession of a certain capacity, because of the *high value* of the capacity. But if that capacity can come in degrees, and some persons have greater capacities than others in respect of the relevant features, then those persons have something of *even greater value* than those who have a lesser capacity. If we value the capacity then we must value the greater capacity even more. (Christiano, 2014: 56, my emphasis)

If we reason in this way, then the problem of appealing to a range property is quite clear. Even though one may say that moral personality is a range property, the fact remains that this range property supervenes on some underlying scalar properties. If this basis of the range property is, as Carter puts it, ‘more fundamental than the range property itself’ (Carter, 2011: 549), then it appears reasonable to think that the value of the range property is a function of the value of the scalar properties. The reason as to why the range property matters is to be found in the value of the underlying scalar properties. But if that is the case, we should arguably not be indifferent to variations above the threshold since a greater possession of the scalar properties implies greater value. The problem is thus that if the importance of the range property depends on the value of the underlying scalar properties, there is a significant ‘pressure of reason’ (Arneson, 2014: 36) not to be indifferent to variations above the threshold.<sup>8</sup>

<sup>6</sup>For additional statements of this kind of critique, see Christiano (2014: 56–57) and Sher (2014: 19). I return to Sher’s statement of this critique in section 4 below.

<sup>7</sup>For additional formulations of this critique, see Carter (2011: 550), Cupit (2000: 110), and Sher (2014: 19).

<sup>8</sup>See also Arneson (1999: 107), McMahan (2002: 249), and Kagan (2019: 208–214). A somewhat different way of putting the point is found in Lippert-Rasmussen (2015: 43).

It is of course possible that these reasons in favour of treating variations above the threshold as relevant for moral status are outweighed by competing reasons. But even though this is a possibility, I nevertheless think it reasonable to treat the line of reasoning above as a constraint regarding how to respond to the first line of critique. Everything else being equal, it is preferable to identify a rationale for moral personality that does not suggest that variations above the threshold has an influence on the moral status of persons. Otherwise, the task of responding to the second line of critique will turn out to be significantly more difficult. In effect, we should thus strive for a response to the first line of critique that simultaneously provides a response to the third. I shall now turn to the task of offering just that.

#### 4 | MORAL PERSONALITY AND SOCIAL COOPERATION

According to the first line of critique, Rawls fails to offer an independent rationale for moral personality as the relevant range property, which renders his account of the basis of equality ad hoc. This critique is primarily aimed at Rawls's claim that the basis of equality is 'settled by the conception of justice'. How, more exactly, should we understand this claim? The critics have generally interpreted this as referring to the description of the parties in the original position. Thomas, in claiming that it is justice as fairness that 'imposes' equality, appears to think that it is Rawls's view that moral personality as the basis of equality is selected in the original position. Since the veil of ignorance excludes information about one's capacities, 'rational self-interest requires that one choose only principles of justice which make "moral personality" a range property' (Thomas, 1979: 549). But, Thomas points out, the original position itself assumes some degree of equality for admittance into the hypothetical contract in the first place. This equality, however, is presupposed rather than argued for (Thomas, 1979: 550).

A variation on the same theme is found in George Sher's claim that Rawls chooses to focus on the two capacities upon which moral personality supervenes precisely 'because these properties are singled out as significant by the description of the parties in the original position' (Sher, 2014: 19). However, that the parties in the original position (or the persons that they represent) are in fact equal in virtue of their possession of moral personality is not something that is argued for.

Thomas and Sher are quite right that it would be highly unsatisfactory to support moral personality as the basis of equality by an appeal to the original position in this way. The most obvious problem with such a strategy would be the vicious circularity that it would involve. The description of the parties in the original position, Rawls himself explicitly tells us both in *Theory* and in his later writings, is motivated precisely by the equality (and freedom) of the persons that they are to represent (Rawls, 1971: 19, 2005: 23, 305). But then we can hardly ascertain what the basis of equality is by simply consulting the original position. There must be something beyond, and prior to, the original position that we can use to determine whether this hypothetical device successfully captures the equality of persons. If not, it is difficult to see how equality could ever be invoked in support of a particular way of describing the original position.

It is thus clear that we cannot be content with a simple appeal to the original position here. But fortunately, there are alternative interpretations of Rawls's claim available. One interpretation that suggests itself is that the appeal is not to the original position but rather to *some other foundational element of the conception of justice*, which in turn provides support for the description of the parties in the original position. In fact, it appears quite clear that Rawls does indeed appeal to such an element in his treatment of the basis of equality. This is evident in his remarks that '[t]hose who can give justice are owed justice', and that '[b]y giving justice to those who can give justice in return, the principle of reciprocity is fulfilled at the highest level' (Rawls, 1971: 510–511).



These remarks suggests that the rationale for moral personality as the basis of equality is not merely to be found in the description of the parties in the original position but rather in the fact that moral persons are capable of ‘giving justice in return’. Persons who lack a sense of justice, or whose sense of justice is significantly underdeveloped, are incapable of understanding and living in accordance with agreed upon terms and principles. Since such persons are wholly incapable of giving justice to others, they have no claim to justice themselves. In this sense, it is moral personality that ‘brings the claims of justice into play’ (Rawls, 1971: 505).<sup>9</sup>

But what is so special about being able to give justice in return? That is, what reasons do we have for thinking that claims of justice are dependent on being the kind of person that is able to understand and act in accordance with justice? Here an example might be helpful. Imagine someone being born with genes that result in serious and permanent cognitive impairment such that the person’s sense of justice is clearly below the threshold. Assume that this impairment also results in this person having fewer resources, and a lower level of well-being, than everyone else. Given that one cannot control which genes one is born with, this person is not responsible for their situation and does not deserve to be worse off than the others. Should we then not judge this situation as unjust, and this person as having a claim of justice on the others to receive some compensation?

This is a kind of case that luck egalitarians would regard as a paradigmatic case of injustice (Lippert-Rasmussen, 2015: 2). The person in this example may lack moral personality and be wholly incapable of giving justice to others. But nevertheless, luck egalitarians would claim, this person is being worse off than others through their bad luck, and therefore the situation is unjust.<sup>10</sup> What could a defender of Rawls’s account of equality put forward as a response to the luck egalitarian?

The response that is most clearly suggested by Rawls’s work is, I believe, one that depends on understanding distributive justice as not only a distinct part of morality but as a distinct part for the domain of justice. The *question of justice* that Rawls’s theory is aimed to address is formulated in such a way that it concerns justice *within a certain kind of practice*. This is clearly expressed in *Theory*, in the initial description of the *role* of the principles of justice that Rawls suggests. Their role is to determine the rules that are to ‘specify a system of cooperation designed to advance the good of those taking part in it’, and to ‘define the appropriate distribution of the benefits and burdens of social cooperation’ (Rawls, 1971: 4). Consistent with this, ‘the primary subject of justice’ is described as the *basic structure of society*: ‘the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation’ (Rawls, 1971: 7).

These remarks clearly show, as Rawls himself points out, that the theory is ‘concerned with a special case of the problem of justice’ (Rawls, 1971: 7). It considers the practice of social cooperation and the regulation of the relations between those who participate in this particular kind of social practice. This is the practice primarily focused on the kind of productive work that ‘makes possible a better life for all’ (Rawls, 1971: 4), and for which the major social institutions of the basic structure are necessary. Those who participate in a system of social cooperation need principles that regulate their common practice and that distribute the benefits and burdens of it in a fair way among them. The question of justice that Rawls aims to address concerns what justice demands *within* this kind of practice—how those who participate in it are to regulate their claims on each other—and hence the role of the principles is to specify the fair

<sup>9</sup>It is worth noting that Rawls’s official position is to remain agnostic regarding whether moral personality is not only sufficient, but also necessary, for being entitled to equal justice (Rawls, 1971: 512). On the interpretation suggested below, however, moral personality is most plausibly considered as both necessary and sufficient.

<sup>10</sup>This construal of luck egalitarianism is in line with how it is usually understood. But it may be possible for a luck egalitarian to conceive of the position differently so that it only concerns inequalities between moral persons that are the result of luck. Though this is a possible view that should be mentioned, it makes no difference for the present discussion. I am here only concerned with the more common interpretation of the luck egalitarian position.

terms of cooperation between those who participate in the cooperative scheme (Freeman, 2007: 107, 2018: 213, 252; Quong, 2007: 77).<sup>11</sup>

That moral personality ‘brings the claims of justice into play’ is thus explained by the fact that moral personality is required for participation in the kind of practice where the relevant question of justice arises. Since this question of *distributive justice* arises only in this kind of case, only those who are able to take part in the cooperative scheme—and to assume the burdens associated with doing so—can have claims of distributive justice on the resulting social product.<sup>12</sup> Against this suggestion, a luck egalitarian might object that those who cannot *participate* in social cooperation may still *benefit* from it, and hence there is a question of justice with regard to whether and to what extent they should do so. But the Rawlsian view, properly understood, is not incompatible with that claim. As stressed by Samuel Freeman, the Rawlsian view presupposes a kind of *pluralism* of principles of justice. In addition to principles of distributive justice in Rawls’s sense, there might be principles concerning such things as humanitarian justice, compensatory justice, and just assistance (Freeman, 2018: 252). These other forms of justice cover other areas of the domain of justice and need not at all be tied to social cooperation of any kind.<sup>13</sup> They may also have important consequences regarding the just distribution of goods, all things considered. Those who cannot participate in social cooperation may thus have claims of justice to be compensated for their bad luck; however, whereas these claims may be claims of justice of some sort, they are not claims of distributive justice in the Rawlsian sense.

However, even if it is granted that questions of distributive justice in the Rawlsian sense arise only within the context of social cooperation, the link between cooperation and moral personality may be questioned. A particularly good example of how that might be done can be found in the work of Christie Hartley, who has argued that those who lack a sense of justice can nevertheless engage in cooperation with others. On her view, what is required for cooperation is merely a capacity for a certain kind of *engagement* with others. For two individuals to be able to cooperate with each other for some common goal, it is not necessary that they can understand and act upon common principles or rules. Instead, what is required is merely a kind of ‘common recognition’; them ‘seeing each other as responsive, animate beings and recognizing the ability of the other to be responsive to what one does’ (Hartley, 2009: 148).

Hartley further suggests that contractualists ought to conceive of the end of social cooperation in different terms than those proposed by Rawls. Rather than the production of material goods, the proper end of social cooperation is the establishment of a relationship of mutual respect among the members. As long as one has the capacity for engagement with others, one may contribute to this end. One of Hartley’s examples of how this may happen is how those with severe mental disabilities contribute to relationships within the family. Their capacity for engagement makes them involved in cooperation in the form of companionship with family members, thereby contributing to family life. Since well-functioning families are essential for the realisation of equal respect among the members of society, this should also be considered a contribution to this end. Hence, these persons appear able to cooperate and contribute without possessing a developed sense of justice (Hartley, 2009: 146–147, 150–152, Hartley, 2014: 427–431).

In order to evaluate Hartley’s suggestion, let us return to the idea of a pluralism of principles of justice. Rawls suggests that different ‘social forms’ should be ‘governed by distinct principles in view of their different aims and purposes and their peculiar nature and special

<sup>11</sup>Cf. Parfit (1997: 209).

<sup>12</sup>It is worth pointing out that Rawls often employs the notion of ‘social justice’, whereas I prefer the notion of ‘distributive justice’. This is to emphasise the limitation of the theory more clearly. At one point in his *Justice as Fairness: A Restatement*, Rawls talks about ‘distributive justice in the narrow sense’, referring to the area covered by the difference principle (Rawls, 2001: 61). My usage of the notion of ‘distributive justice’ is, although quite narrow, not narrow in that particular sense.

<sup>13</sup>As argued by Quong, we may have a ‘natural duty of mutual aid’ to those unable to take part in productive cooperation (Quong, 2007: 93–97).



requirements' (Rawls, 2001: 11, see also 2005: 262). In the description of the problem of distributive justice, Rawls can thus be taken to describe a certain 'social form', with its own 'peculiar nature'. It is cooperation with regard to productive work, to the advantage of those participating, where the common scheme 'is guided by publicly organized rules and procedures that those cooperating accept' (Rawls, 2005: 16). When people engage in this kind of practice—which they appear to do in every modern society—it gives rise to the distinctive problem of how their common practice ought to be regulated. Since other practices, or social forms, have different 'aims and purposes', the principles suitable for them will most likely not provide the answer to this distinctive problem. Hence the problem of distributive justice in Rawls's sense is a distinctive problem precisely because the nature of this particular kind of social cooperation differs from other forms of cooperation.

In the light of this, Hartley's suggestion is not really a challenge to the connection between the Rawlsian sense of social cooperation and moral personality. Rather, it consists in describing another social form, characterised by other features; that is, a *different kind of social cooperation*, with different ends, and consequently different criteria for participation. A defender of Rawls's view can thus agree that this qualifies as a form of social cooperation, and that it gives rise to its own distinctive questions of justice. But since the nature of this form of social cooperation significantly differs from the one that Rawls is concerned with, the pluralist position is that different principles should regulate these different practices. It can thus be suggested that Hartley is concerned with a different question of justice, and that answering that question does not answer the Rawlsian question regarding distributive justice. Pluralism thus provides a way of acknowledging the central aspects of Hartley's view without abandoning the idea that moral personality is the basis of equality at least in this particular part of the domain of justice.

Difficult questions remain, of course, regarding the individuation of different practices, and how different sets of principles relate to each other. But I shall not address these as my ambition is not to offer a full-blown defence of pluralism.<sup>14</sup> My considerably more modest aim here is merely to show that the first line of critique—the claim that Rawls offered no rationale for moral personality being the relevant range property—is mistaken. I thus suggest that if pluralism is true, and social cooperation in the Rawlsian sense is a distinct practice that requires its own distinct principles of justice, then there is indeed a plausible rationale for Rawls's account of the basis of equality.

On the basis of the reasoning here provided, I believe it fair to judge the critics' reading of Rawls's claim that the basis of equality is determined by the conception of justice both simplistic and uncharitable. A more plausible construal of the claim is that it is based on the idea that it is those who are able to participate in social cooperation—those who are able to give justice to others—that are owed justice in the relevant sense. This suggestion—far from being imposed by the original position or being in some other way ad hoc—appears both plausible and motivated once we carefully consider the nature of the problem of distributive justice that Rawls's theory is meant to address.

A final objection to the strategy here employed is that it amounts to a kind of cheating. All the work, it might be argued, is being done by formulating the question in a certain way instead of providing independent arguments for the relevance of moral personality. By way of response, it is indeed correct to note that most of the work is here being done by formulating the question of distributive justice in a certain way. But I find it hard to see anything amiss with that. This is not cheating if it makes sense, after careful reflection, to consider the question of the fair distribution of benefits and burdens of social cooperation among the participants of a cooperative scheme as a distinct question of justice. If we agree with Rawls that this is indeed a distinct

<sup>14</sup>Such a defence would also require me to address the objections of Nussbaum (2006), and the view of Stark (2007). Though I believe that pluralism can accommodate their concerns, arguing for that point goes beyond my aims in this paper.

question—one that should not be conflated with, or reduced to, other moral questions regarding how to distribute certain goods—then the suggestion that moral personality is the basis of equality does not appear arbitrary or ad hoc. Given that we are concerned with this particular problem of justice, there is an explanation as to why being a moral person is morally relevant.

Let me now turn to consider how this suggestion fares with regard to the third line of critique. This critique, remember, poses a problem for the strategy of appealing to a range property as the basis of equality. Insofar as the moral significance of the suggested range property is explained by a reference to the value of the underlying—more fundamental, as it were—scalar properties, then this strategy appears to suggest that variations above the threshold should matter as well. More of these valuable scalar properties should be better than less, and possession of more of these valuable things above the threshold should therefore result in a higher moral status. Hence there appears to be an internal tension in an account of equal moral status based on the idea of a range property.

Does this line of reasoning show that there is a tension inherent in holding that moral personality is the basis of equality but that variations in the underlying scalar properties above the threshold are irrelevant? This appears to depend on what rationale for the threshold one provides. If one's suggested rationale simply appeals to the value inherent in the possession of these capacities, then one may indeed be forced to also agree that possessing them to an even higher degree is even more valuable. But the suggested rationale for moral personality sketched above is different in that it does not appeal to the *value* of these capacities at all. What explains the relevance of the threshold, on the view I have here suggested, is not that a person that has reached it thereby also possesses a high amount of valuable capacities. Rather, the relevance of the threshold is explained by one's ability to partake in the kind of activity in which questions of distributive justice arise. This is a rationale that does not in any way imply that a greater possession of the relevant capacities gives rise to higher moral status. Hence there appears to be no internal tension in this account of the basis of equality, and the third line of critique has been responded to as well.<sup>15</sup>

Finally, let me emphasise two things about the arguments provided in this section: The first is that the viability of this line of reasoning is crucially dependent on construing the problem as one about the basis of equality in the case of distributive justice only. If we were instead concerned with the whole of morality, or even with the whole of justice, a similar rationale for some particular threshold appears highly implausible. Indeed, it might be the case that we should agree with Arneson that no such rationale 'would be remotely credible' (Arneson, 2014: 36).<sup>16</sup> But Arneson is concerned with an area of morality much broader than that of distributive justice, and what would be not even remotely credible in the case of the former may be quite plausible in the case of the latter. An adequate assessment of Rawls's account of equality thus depends on an accurate depiction of the area of morality for which it is suggested.

The second is that, although the result is a significant limitation of the Rawlsian account of the basis of equality, this limitation is not something that should be held against it. The fact that this account cannot plausibly be extended to cover other areas of morality is not due to a flaw in the theory but rather a reflection of the complexity of the moral landscape. And further, this limitation does not make it unimportant or of little interest to defend the theory against the criticism it has received. Distributive justice is a central and essential part of the domain of justice, and correctly understanding the basis of equality in this part of the domain is of considerable philosophical interest in its own right.

<sup>15</sup>For an example of a recent interpretation of Rawls's account that does not escape this line of critique, see Floris (2021: 1863–1864).

<sup>16</sup>Cf. McMahan (2002: 250–251).

## 5 | THE EQUALITY OF MORAL PERSONS

Thus far, we have seen that there is a plausible rationale for moral personality as the relevant range property, and that this rationale does not suggest that variations above the threshold will lead to unequal, rather than equal, moral status. But none of this demonstrates that variations above the threshold are in fact irrelevant, and hence the second line of critique remains to be addressed. Even if there is a good explanation as to why the threshold matters, what is the justification for thinking that moral status above this threshold will be equal?

In order to make it clear exactly why the arguments in the previous section are insufficient for establishing equality, it is worthwhile to briefly revisit the relation between equality and the original position. What may have been established this far is that moral persons are the kind of beings to whom principles of distributive justice are to be applied. But that the principles are to be equally applied to all moral persons is consistent with moral persons having different degrees of moral status, which in turn influences the content of the principles themselves.

To see this point, note that the design of the original position is to a significant degree justified by an assumption of equality. All persons, being equal, have ‘a right to equal respect and consideration in determining the principles by which the basic arrangements of their society are to be regulated’ (Rawls, 1999: 255). Since they have such a right, they are to be symmetrically situated in the original position, and none given a greater say than the others. But if we question this assumption, and instead suggest that moral persons in fact have an unequal moral status, then we would presumably also believe that those with a higher status are worthy of more consideration in the selection of principles. This inequality should then be mirrored in the description of the representatives in the original position: the representatives of those with a higher status should have a greater say in the selection of principles. We would thus have to determine the moral status of the persons who are to be represented and then allow this information behind a thinner version of the veil of ignorance.

Such an assumption of inequality is perfectly consistent with the arguments in the previous section, but it would of course be disastrous for Rawls’s attempt to show that the parties would select his two principles of justice. It is thus clear that not only the equality of moral persons remains to be justified but also that successfully doing so is of fundamental importance for the Rawlsian project.

But although justifying the equality of moral persons is clearly an important task, it is not entirely clear how we are to go about doing so. Being such a fundamental idea, it appears unlikely, as noted by Ronald Dworkin, ‘that it can be derived from any more general and basic principle of political morality that is more widely accepted’ (Dworkin, 1983: 31). Since this is so, it may be tempting to simply appeal to a coherentist view of moral justification—such as Rawlsian reflective equilibrium—according to which the justification of our moral beliefs and judgements is matter of how they fit together and support each other. On Rawls’s understanding of this view, the only way to settle ‘questions at the most fundamental level’ is to ‘consider after due reflection which view, when fully worked out, offers the most coherent and convincing account’ (Rawls, 2005: 53).

This might be taken to suggest that we need not try to identify any direct arguments for fundamental ideas such as the equal status of moral persons. But I believe that would be a mistake. Even if the theory of reflective equilibrium is correct, appeal to coherence as such is too indirect. We should want at least some of our beliefs to *directly support*, as a part of a larger coherent set of beliefs, our commitment to equality. Without such direct support, it would to some extent appear as an arbitrary part of our view. It would, to borrow a term from Shelly Kagan, appear to be ‘dangling’ (Kagan, 1989: 13–14). If we are to adequately justify our moral beliefs, we should not allow central ideas and distinctions to ‘dangle’ without the support necessary to render them non-arbitrary.<sup>17</sup>

<sup>17</sup>For a related argument, see Nathan (2011).

Hence, even though I believe that the theory of reflective equilibrium is correct, I also believe that we should aim to provide some direct support for the equality of moral persons. So, let us now turn to consider how that may be done.

## 5.1 | Morally arbitrary factors

The second line of critique is correct insofar as it is true that Rawls did not supply any developed arguments for the irrelevance of variations in capacities above the threshold. But it appears to me false to claim that he simply assumed it. He does in fact provide some remarks in support of regarding these variations as irrelevant, and these may be developed into a direct argument in favour of equality.

After a brief summary of his account of equality, Rawls notes that the ‘advantages of these straightforward propositions become more evident when other accounts of equality are examined’ (Rawls, 1971: 510). One such rival view which he considers is the view according to which greater abilities give rise to greater claims. This view (which I would not really describe as an account of equality at all, as it prescribes moral status in degree, in proportion to one’s capacities) he comments on as follows:

[T]his conception of equality means that the strength of men’s claims is directly influenced by the distribution of natural abilities, and therefore by contingencies that are arbitrary from a moral point of view. The basis of equality in justice as fairness avoids these objections. The only contingency which is decisive is that of having or not having the capacity for a sense of justice. (Rawls, 1971: 510–511)

The suggestion here is that the fact that this view makes the moral status of persons dependent on ‘contingencies that are arbitrary from a moral point of view’ counts against it. Rawls’s account of equality, on the other hand, avoids this objection. It only allows one such contingency to matter, and that is ‘having or not having the capacity for a sense of justice’. But above the threshold one’s moral status is not influenced by such morally arbitrary factors as the distribution of natural abilities.

It might be objected that Rawls’s account does not entirely avoid this objection since it does, after all, allow one sort of contingency to fundamentally affect one’s moral status. Since one’s possession of moral personality is crucially influenced by morally arbitrary factors (e.g., one’s genes), one’s equal moral status is likewise dependent on such factors. And if such influence is allowed, then why not also allow for the influence of other factors as well, such as more developed capacities? If the capacities necessary for participation matter, then it is not entirely clear why we may not also allow for the capacities that make one a *better* participant to matter. If I, for instance, happen to be born with talents that make me extraordinarily productive, what is objectionable about such a contingent fact having an influence on my moral status? Is it not better to be able to contribute more rather than less, even if one’s ability to do so is based on contingencies that are, as Rawls puts it, ‘arbitrary from a moral point of view’?

To this we can respond as follows: There is an important difference between contingent facts having an influence on whether one has claims of distributive justice *at all* and such facts having an influence on the *strength* of one’s claims. This difference being that there is a good explanation—one based on the fundamental characteristics of the problem of distributive justice—that explains exactly why the first kind of contingency matters, but this explanation lends no support whatsoever to influence of the second kind. The explanation that I have in mind is, of course, based on the account of distributive justice defended in section 4 above; that is, that moral personality is necessary for participation in the kind of practice where the question of distributive justice arises. This account of the problem of distributive justice provides a

compelling explanation as to why certain capacities are necessary for having claims of distributive justice at all. But since this account does not, as we have already seen, in any way suggest that a greater possession of the relevant capacities gives rise to higher moral status, it does not provide any support for considering the second kind of influence appropriate. Hence, this rationale for allowing this particular contingency to matter does not open the door wide open, so to speak, for allowing the influence of other contingent and morally arbitrary factors.

A plausible way of developing Rawls's comments regarding the influence of contingencies may thus be to say that such influence is in general objectionable, *in the absence of a satisfactory explanation as to why it is appropriate*. Hence, there is a *prima facie* case against allowing the influence of contingent facts in this context, but this may be overcome by the existence of a credible explanation. And as we have seen, there are facts about the problem of distributive justice that explain why certain contingencies matter for having claims of justice at all. The nature of this explanation, however, is such that it cannot readily be extended to also justify the influence of other contingencies.

But this reasoning depends, of course, on there being something objectionable about the influence of contingent facts in this context. Without an argument to that effect, there seems to be little of substance in this suggested line of reasoning. So, is there something, in Rawls's appeal to the idea of morally arbitrary factors, that can be developed into a *prima facie* argument against the relevance of variations in capacities above the threshold?

The argument that is most clearly suggested is, I believe, an intuitive one. Intuitively, it appears implausible that a moral person's degree of moral status is determined by morally arbitrary factors. That our capacities, and whether and how they are developed, depend on natural and social factors beyond our control is uncontroversial. We cannot control our genes, or the social circumstances we are born into. The degree to which one possesses the two capacities necessary for moral personality is therefore based on morally arbitrary factors. Hence, a view according to which moral status above the threshold is a matter of degree, determined by how highly developed these capacities are, appears implausible. In comparison, Rawls's account appears to be the intuitively more plausible one.

A possible worry about such an intuitive argument is that it is unclear whether the intuition upon which it depends is sufficiently independent of the account of equality that it is supposed to support. The explanation, someone might suggest, as to why we believe that morally arbitrary factors have no influence on our moral status is simply that we believe that we are equals. It is thus precisely because we already believe in equality that we are inclined to judge these factors as incapable of influencing our moral status. So rather than providing any independent support for the irrelevance of variations above the threshold, this appeal to our intuitions is actually an appeal to a view according to which these variations are irrelevant. But then this argument appears to presuppose what it was supposed to establish.

If this objection is correct, the appeal to morally arbitrary factors does no real work. The appeal is simply to the intuitive plausibility of the idea of equal moral status irrespective of variations above the threshold. But we may be able to respond to this objection by a comparison with Rawls's well-known and quite similar 'intuitive' argument for the difference principle. Roughly, that argument goes as follows: We have good reasons to object to a social system that merely realises formal equality of opportunity on the grounds that it allows social positions and the distribution of goods to be determined by social contingencies. Morally arbitrary factors such as the wealth of one's parents, and the education one is lucky enough to receive, are allowed to determine one's prospects in life. These factors are morally arbitrary in the sense that they are undeserved; those with higher prospects due to these factors have not done anything to deserve their superior position, and hence it appears unjust that these morally arbitrary contingencies should be allowed to determine distributive matters. As Rawls puts it: 'the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view' (Rawls, 1971: 72).

In order to counteract the influence of these morally arbitrary factors, we may aim for a social system that establishes that everyone—regardless of the social position that they are born into—have a fair chance to attain the various social positions in society. But this is still not satisfactory because it allows for the influence of other, equally arbitrary, factors. Even if we correct for social contingencies such as class and upbringing, the effects of the natural distribution of abilities and talents remain. Hence, we would allow that ‘distributive shares are decided by the outcome of the natural lottery; and this outcome is arbitrary from a moral perspective’ (Rawls, 1971: 74). Just as one cannot deserve the social position one is born into, one cannot do anything to deserve or merit the genes one is born with. Since both social and natural contingencies of this kind are in this sense morally arbitrary, they should not be allowed to determine the distribution of goods in a just society. Hence, Rawls argues, we have an argument for supplementing fair equality of opportunity with the difference principle (Rawls, 1971: 75).

If we find this argument convincing, we may construct an analogous intuitive argument in the case of moral status. Just as it is intuitively implausible to allow morally arbitrary factors to determine the distribution of goods, it is intuitively implausible to hold that equally morally arbitrary factors determine our degree of moral status. If we focus on how moral status is represented in the original position, we may develop this line of argument as follows. A higher degree of moral status would amount to being more worthy of respect and consideration in the selection of the principles that are to regulate the cooperative scheme. Being more worthy of consideration, those with a higher status should be given a greater say in the selection of these principles. But it appears highly implausible to suggest that one is worthy of a higher degree of respect and consideration in virtue of undeserved factors such as one’s natural abilities or one’s upbringing. Being undeserved, these factors does not appear to yield a stronger claim to determine the principles of justice. This conclusion appears as intuitively plausible as the claim that similarly undeserved factors should not determine a just distribution of resources.

In response to the worry formulated above, it can thus be plausibly claimed that the intuitive case against allowing variations above the threshold to influence moral status is not simply based on a directly competing account of equality but rather on beliefs about the relation between moral status and the proper influence of morally arbitrary factors. The moral arbitrariness of the factors that determine our capacities is thus essential for the intuitive force of the argument.

The upshot of this discussion is thus that it appears possible to construct an intuitive argument in favour of the equality of moral persons on the basis of Rawls’s comments regarding morally arbitrary factors. This argument, further, appears comparable in strength to Rawls’s intuitive argument for the difference principle. Insofar as we find that argument convincing—which, it may be worthwhile to note, many philosophers have—we should find this to be so as well. This shows that there is at least some, quite considerable, direct support for the equality of moral persons.

Finally, it should be noted that intuitive arguments of this kind are rarely conclusive on their own. Showing that there is a *prima facie* case against the idea that variations in capacities over the threshold matters is not, of course, to conclusively rule out this possibility. For all that has been said here, there might, for instance, be a plausible explanation as to why being a better participant is actually relevant for one’s moral status. But this intuitive argument at least gives us good reasons to doubt this as it simply appears unlikely that there is an explanation that can overcome the *prima facie* implausibility of the suggestion that one can be worthy of a higher degree of respect and consideration in virtue of completely undeserved factors. In the end, this is a matter that must be determined in the light of which view is the one best supported by our various beliefs and commitments in reflective equilibrium. The intuitive argument provided here should thus be considered merely a part—though an essential one, as some direct argument is needed—of the larger justificatory story.



## 6 | CONCLUDING REMARKS

In this paper I have defended the idea that the basis of equality in the case of distributive justice is the range property of moral personality. Provided that the issue is not the basis of moral standing as such, but rather the properties of persons that give rise to claims of distributive justice, there is a plausible case to be made for identifying moral personality as the relevant range property. Only moral persons are capable of engaging in social cooperation of the relevant kind, and the problem of distributive justice simply is the problem of how to distribute the benefits and burdens of social cooperation among those who engage in the cooperative scheme.

Importantly, this rationale for moral personality does not in itself in any way suggest that greater capacities above the threshold result in a higher degree of moral status. But it does not rule it out either, and hence it is essential to also defend the equality of moral persons. Such a defence can indeed, I have here shown, be mounted on the basis of Rawlsian ideas. In an analogue to Rawls's famous intuitive argument in favour of the difference principle, the moral arbitrariness of our varying natural capacities gives us reason to believe that moral status does not vary in proportion to these capacities.

This shows, I believe, that the dismissal of Rawls's account of the basis of equality has been premature. But of course, none of this demonstrates that this account is correct. Arguing that point is a much larger task, and my aim here has only been to show that the view is, *pace* numerous critics, a viable one. It is therefore worthy of further philosophical investigation.

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## CONFLICT OF INTERESTS

None to report.

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