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On the (Re)Construction and Basic Concepts of the Morality of Equal Respect

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Introduction

This chapter deals with two central problems for the thesis that all persons from a moral point of view are basically equals. Firstly, how can we justify moral equality? Secondly, about whom and with regard to what characteristics do we assert moral equality? In order to answer the first question, it will first be necessary to contest anti-egalitarian doubts by clarifying what could reasonably be meant by speaking of the basic equality of all humans (section 7.1). After that, it will be possible to turn to the question of the justification of basic equality (section 7.2). I offer an answer to the question why all persons are to be regarded as equal and autonomous by outlining a “weak” constructivist moral justification, i.e. one that appeals to some prior moral principles and does not lay claim to a strong ultimate justification of morality as a whole. According to this constructivist justification, it is not a particular conception of justification-independent, intrinsic values which is fundamental to the concept of morality, but rather a *principle of justification*. This principle states that norms can be regarded as justified if, and only if, free and equal persons, who wish to regulate their coexistence by means of such norms, are rationally able to agree on the norms in question. The principle of justification however does have a critical limitation which should and must be conceded: the moral stance itself cannot be derived from the justification principle or the contractual agreement. Instead, a normatively substantial concept of the moral person and of his/her “inviolability” and “dignity” can only be attained by reconstructing “our” morality on the basis of a kind of reflective equilibrium which articulates our conception of ourselves and others as persons. The concept of a person with basic equality can only be

reconstructed: it cannot be constructed. Because of the “merely” reconstructed nature of this foundation, there simply does not exist, in my view, a “strong” ultimate justification of basic equality, i.e. a justification that does not appeal to moral premises.

The second central question—to whom do we owe basic equality?—I try to answer in section 7.3 by offering a reconstruction of the moral concept of a person that is so crucial to our morality. The idea of morality is embedded in a network of beliefs as to what distinguishes persons from other living beings and inanimate objects, and about why these distinctions carry such great moral weight. Four characteristics, (i) *sensitivity to pain* and *capacity for suffering*, (ii) *a conscious orientation toward the future*, (iii) *autonomy in general*, and lastly (iv) *moral autonomy in particular*, are appropriate for helping us to understand widely shared, well-considered judgments about rights and duties, for it is they that concern us and that we respect when we treat persons as morally equal.

7.1 Two Basic Questions of Moral Equality and the Distinction between Two Levels of Equality

Prima facie there seem to be two intuitions which speak against egalitarianism. These intuitions can be made clear with the help of two examples. Let us suppose—this is the first example—that we come across a small child lying on the pavement, wretched, emaciated, and starving. The child is obviously suffering and in need of help; we see him/her and know we have to help. The child’s misery and suffering speak to us, cry out to us even; they distress us and appeal to us to act. Help in need, in order to alleviate misery and suffering—that is the humanitarian ideal. What, if not this ideal, should be at the center of morality or justice?¹ Let us now suppose—this is the second example—we were to meet Mother Teresa and Hitler, or a criminal and his/her innocent victim. Wouldn’t we treat them differently from one another and also respect one more than the other? If these really were our moral intuitions in such cases, it would seem that equality² has no role to play in them. Or does it?

However intuitively plausible cases such as these may appear at first glance, it is nevertheless necessary in philosophical reflection and wide reflective equilibrium to give a more precise definition of the individual moral claims of persons (such as for instance the persons in these examples) in order to be able to react to them appropriately. This is the beginning of the debate between egalitarian and non-egalitarian theories of morality, which takes place on two levels. On the first level, we ask what the *concept* of morality is about: is it about individual needs and deserts, i.e. nonrelational fittingness,

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or is it about relational comparisons? On the second level, we ask about the appropriate *conception* of either nonrelational fittingness or relational comparisons.

On the first level, the debate is concerned with defining the general form and content of our concept of morality. Here the above examples seem to suggest that a glance at the various claims of each individual is enough to enable us to establish what would constitute a morally appropriate action in each case. This is the opinion shared by most nonrelational theories of morality. As a result of this way of thinking, first-level non-egalitarians hold the view that equality does not play an essential or substantive role in justifying claims of morality. First-level egalitarians on the other hand are convinced that the legitimacy of claims cannot be morally examined and judged without comparisons with other persons' (justified) claims. On this first fundamental level, they assert that all human beings have the same worth, that they all possess equal dignity. For them, contrary to anti-egalitarians, equality assumes central place in a theory of morality. This does not mean, as critics of egalitarianism have objected, that egalitarians necessarily regard equality as a supreme value in itself, albeit in connection with other values, but rather that they regard equality as a constitutive goal of morally right action.

First-level basic equality is understood as the assertion of the fundamental moral equality of all persons. Following this assertion, different persons' fundamental rights and dignity are not unequal.³ This is the conception of substantive, fundamental, universalist moral equality widely shared today; it states that every person is entitled to be treated as an equal. This means that in spite of descriptive differences in certain relevant respects, all persons should be regarded as moral equals and treated as equals, so that they are therefore essentially entitled to the same *basic* moral rights and duties. The principle of treatment as an equal is not the same as equal treatment; it does not imply being entitled to an equal share, but being treated as a free and equal person.⁴ This is the morally and politically fundamental principle of basic moral equality. It is based on the assumption that all persons possess equal dignity. Following this assumption, every person is to be recognized as equal from an impartial point of view.⁵

This concept of the equal dignity of all persons is recognized as a plausible (overlapping) conception by almost all currents of modern Western culture. Thus for example, internationally binding human rights (such as the Universal Declaration of Human Rights) which are officially recognized by many states, postulate equal dignity for all humans. This does not mean that this demand for the basic equality of all humans is in fact universally recognized; on the contrary, there are serious anti-egalitarian critics of equality on both levels.⁶

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Independently of whether equality can be justified as a constitutive element of every plausible conception of morality, or whether it proves superfluous, the interpretation and concretization of the central aspects of morality established on the first level (equality or nonrelational appropriateness) remain, on a second, distributive level, a point of contention between egalitarians and non-egalitarians. On the second level, the question is whether it follows from the assertion that all human beings are fundamentally equal that they should also be treated *equally*—and if so, when, where (i.e. in which spheres of morality), why, and in which respects. It is of course characteristic of egalitarianism that it attaches considerable importance to equality also on the second level. But depending on the criterion used to measure and judge just equality, theories of morality can be classified as more or less egalitarian. There are in fact hardly any egalitarians who advocate the criteria so often attributed to egalitarianism of strict equality of outcome with regard to the distribution of material goods, or strict equality of well-being. The moral inadequacies of such criteria are too obvious. A far more accurate distinction between egalitarian and non-egalitarian second-level conceptions of morality can be made by asking whether or not mere good or bad luck is relevant to distribution. As a rule, egalitarians reject the normative relevance of fate for distribution. Non-egalitarians, on the other hand, advocate an entitlement theory according to which persons are not in principle entitled to an equal amount; instead they might, for example, be entitled merely to enough to satisfy their needs.

It is possible to regard basic equality as right, i.e. it is possible to be a first-level egalitarian and regard all persons as entitled to being treated as *equals*, and still dispute on the second level that there is any justified demand for being treated *equally*. But even a second-level egalitarian does not in fact ever demand the strictly equal treatment of all humans in all cases. That would be absurd and strongly counterintuitive. Instead, almost all second-level egalitarians admit justified instances of inequality or unequal treatment. It is my view that this occurs through a presumption of equality.⁷ According to this presumption of equality, the fundamental equality of all persons means that they are to be treated equally in the public domain as a matter of public morality unless there is good reason for treating them unequally. Equality is thus the default option resulting from the fundamental equality of all humans; the *onus probandi* is on unequal treatment. As I will explicate below only those rules can be considered legitimate to which all concerned parties can freely agree on the basis of universal, discursively applicable, commonly shared reasons. Equal consideration is thus accorded to all persons and their interests. In a public distribution anyone who lays claim to more owes all others an adequate universal and reciprocal justification. If this cannot be provided, i.e. if there is no reason for unequal treatment that can

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be universally and reciprocally recognized by all, then equal treatment is the only legitimate general norm. How could it be otherwise? Absent such justification, any unequal treatment would mean that someone is treated as lower in rank, and another as higher in rank. Whoever is treated unequally can justifiably demand a reason for being disadvantaged. If no convincing reasons for unequal treatment can be brought forward, the only option remaining, consistent with treating persons as equals, is that of treating them equally. Equal treatment is therefore not merely one alternative among many, but rather the inevitable default that must be assumed insofar as one is to treat persons as equals. Second-level egalitarians are, then, of the opinion that humans are to be treated equally because of their equal dignity, provided there are no good reasons for inequality. But even from a common egalitarian point of view, there are a great deal of good reasons for unequal treatment, which vary from one sphere of morality to another.

Over and above distinguishing between two levels and establishing widespread *de facto* consensus in spite of differing opinions, it would also be as well to be able to say something about the philosophical justification of fundamental moral equality and about its scope.⁸ These questions coincide with questions about the justification and scope of the morality of equal respect. This should make us skeptical as regards possible answers. In spite of constant debates, there is little agreement regarding the basic principles of our morality. Moral equality is as fundamental to our morality as its definition is unclear. To reiterate, the aim of this chapter is to provide answers to the following two questions: Firstly, how can we justify moral equality? Secondly, for whom and with regard to what characteristics do we demand moral equality? In section 7.2 I attempt to provide an answer to the first question, why all persons are to be regarded as equal persons, by recourse to a constructivist *principle of justification*. The second question—to whom do we owe basic equality?—I try to answer in section 7.3 by delineating the moral concept of a person which is so crucial to our morality.

7.2 How Can We Justify Moral Equality?

7.2.1 *The Program: A Reconstructive Explanation of the Justificatory Basis of Morality*

It is held by many today that theological, traditionalist, anthropological, transcendental, and conventionalist attempts at justification of morality are to a great extent no longer plausible. Moral philosophy should therefore be understood primarily as an explication, as an objectively plausible and adequate reconstruction and reflection of our moral awareness. “Our”⁹ actual mainstream moral awareness is often framed as the conception of the

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morality of respect, or rather of equal respect. A purely conceptual analysis does not seem to get us very far here. In order to be able to (fully) understand a moral stance, we must be capable of a reflective understanding and a reconstructive explanation of the moral practice of those involved, in particular of their justificatory practice. It is necessary, then, that we provide a (critical) reconstruction of “our” everyday moral awareness, i.e. that we render the central ideas and ideals of this moral conception comprehensible in its premises, that we grasp its meaning, make explicit the complex network of reasons and motives on which our moral awareness and our day-to-day moral practice are based, and above all, that we make use of philosophical reflection to determine whether they can lay claim to normative validity.

In my view,¹⁰ the content of “our” morality, i.e. all moral norms, rights, and duties, can be spelled out in terms of a basic normative procedure which it makes sense to call the “morality of equal respect.” (It could also be given another name; the main thing is to agree on how the term is to be used and to make sense of it accordingly.) A perhaps controversial theory implied by the “morality of equal respect” is that all moral norms can be justified by means of this one basic procedure, that is, that the norms attained by applying this procedure can cover everything of moral relevance.

Conformity with moral norms, which we demand of one another reciprocally, is concerned with the adequate fulfillment of individual moral claims. Non-egalitarians on the first level often believe they can judge the adequacy of individual moral claims without any process of comparison. I should like to dispute this by asserting that even if moral reasons are constituted by people’s needs or interests rather than by relational considerations, moral rights and duties are still only established by what I will call the principle of justification, to which I turn in section 7.2.4.

7.2.2 *Impartiality*

To begin with, however, it is important to realize that all demands that individuals make on others, requesting that their separate moral claims be adequately taken into account and fulfilled, are latently conflictual. If all human beings were in permanent agreement as to what is the morally right thing to do, morality would hardly be necessary as a social institution. However, because the interests and convictions of human beings are in constant latent conflict, morality is necessary to regulate their coexistence peaceably and with long-lasting effect by establishing a system of norms, principles, and virtues informally, i.e. without state coercion.¹¹ Whichever norms, principles, and virtues a moral system may contain, it will only be able to fulfill its stabilizing and peacemaking function if it can create a belief in its own legitimacy in those concerned, who will only regard a moral system as legitimate if they are of the opinion

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that the system is not partial to their own disadvantage. Where statements regarding morality are concerned, there are always (moral) judgments at stake, which must claim to be well-founded from a perspective of impartiality according to the standards, criteria, or rules of morality. If I say, "It is right to do x," "X is good," "I ought to do x," or "X is worth achieving," then I must be prepared to provide *reasons* for my judgments which are in a certain sense objective. Moral statements in particular lay claim to a certain objectivity; the reasons given must also in principle be acceptable by all parties concerned. Otherwise they wouldn't be justifiable to the parties but forced on them. This general point is also of specific relevance to statements of morality. Rights and duties only seem just to us if their claim that they are justified on an objective, i.e. intersubjective level can convince us. The first and most important condition of their objective justification is *impartiality*. And impartiality, which is thus a fundamental aspect of morality, also takes effect on two levels.¹²

On the *first level*, impartiality refers to the impartial application of a prescribed norm. I will rely on the following analysis of first-level impartiality: A is impartial in respect R with regard to group G if and only if A's actions in respect R are not influenced at all by which member(s) of G benefit or are harmed by these actions.¹³ Thus the norm R is impartially applied if A's actions are guided only by the relevant general facts about the situations and persons involved and not by the arbitrary fact which individuals in particular are affected by those actions.

On the *second level*, impartiality is required of the rules themselves, as an aspect of their justifiability: purely subjective or egoistic norms or rules are generally considered unjust and are prohibited.¹⁴ We are prepared to accept that we have specific duties only if we are convinced by the claim that the regulations can be impartially justified. The demand for justification which is inherent in morality relates to this second-level impartiality.

All moral claims, therefore (including the claim to equal or unequal treatment) are to be examined and justified from a perspective of second-level impartiality.

7.2.3 A "Weak" Moral Justification

This brings us to the central question regarding basic equality: why are all persons to be regarded as equals? My answer attempts to give the following "*weak*" moral justification. I call it "weak" since the justification provided does not aim to provide a "strong," i.e. ultimate foundation of morality as a whole. The possibility of such an ultimate foundation of morality is generally considered unlikely today. Instead of looking for an ultimate foundation or derivation from nonmoral premises, the following "weak" justification rather relies on normative premises (most importantly, the value of autonomy).

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The argument is based on a conception of persons as rational and autonomous agents that I hope to be quite widely shared. The individual's interest in being able to exercise his or her autonomy (in the sense of self-government) constitutes the ultimate basis of legitimation and the only one which must be respected under all circumstances. It is ultimately only those who are actually affected by a system of norms who can in principle support and formulate their (true) interests to avoid any kind of problematic heteronomy. Truly autonomous, i.e. free, enlightened, and rational individuals will never voluntarily approve the humiliation of their own dignity (whatever form it may take). (I explain the role and concept of autonomy further in section 7.2.5.)

Moral judgments are not orders, in which a de facto private or collective will is expressed. Moral judgments are claims about what it is right to do. At a pragmatic level, to make a claim is to commit oneself to offering reasons in support of it. One implies that one is prepared to offer a justification (if asked for one) to those who would be affected by the proposed action.

Justifications whose acceptance by those to whom they are offered results from manipulation or coercion do not satisfy this pragmatic commitment. The relevant justification must therefore be free from coercion and manipulation.

In order to form a unified moral community with others, we must be able to approve the system of norms together by reason and deliberation, or else the system would be an arbitrarily imposed and perhaps even coercive one. Exerting arbitrary external influence (including coercion) and offering persuasive justifications are mutually exclusive. They are also jointly exhaustive of the grounds for norm acceptance: provided that arbitrary external influence including coercion is ruled out, a person can approve of a moral norm or principle only if that person has been convinced by what she considers to be good reasons.

As explained in section 7.2.2 above the concept of morality implies the possibility of an impartial justification of moral norms. Norms can be regarded as impartially justified only in the case that they can be accepted by all. Thus in order for a moral principle to be legitimate, i.e. justified, it needs to be the case that all its addressees would accept it in a hypothetical situation in which they were free from compulsion, rather than that they would accept it under de facto circumstances of coercion, dependence, hierarchy, etc.

In addition, the justification must be addressed to *everyone* that the moral norms are to apply to. No one to whom the moral norms are to apply is to be ignored. Every individual has a "right to justification."¹⁵ For those to whom the moral norms cannot be justified, those norms constitute an arbitrary imposition or even a coercive system.

When manipulation and coercion are absent, the reasons on the basis of which the norms are acceptable to all are intersubjectively shared reasons, in

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so far as they concern this mutual justification. Nevertheless, all persons can also have additional reasons which lead them to agree to the norms with a clear conscience, such as, for example, religious convictions, which they cannot voice openly, because they know that the convictions are not generally shared. Persons can and should agree on norms which can be accepted by everyone, even if each person may have other ulterior metaphysical convictions for agreeing to the norms.

The conception of moral justification just presented has an egalitarian structure, since it requires that moral norms be justifiable to everyone. I will now comment on this egalitarian aspect in some more detail. This conception qualifies the demand for justification in such a way that “to justify mutually” eventually entails the meaning “to justify for all who have a ‘right to justification’ equally.”

Arguments from (epistemic, moral, political etc.) authority are insufficient, because they always leave one justificatory question unanswered—why should I accept what he or she said? There is no undisputed moral authority whose judgments are defined as superior. In the transition to the modern age, metaphysical, religious, and traditionalist conceptions of morality have lost their general plausibility. Thus, all sources of an impartial justification of hierarchical, discriminatory, elitist, and exclusionist moral conceptions have run dry. Although this would have to be shown piecemeal for any particular argument offered by its opponents, the general hypothesis seems plausible that these non-egalitarian conceptions cannot be justified generally and reciprocally today. An a priori distinction of status between (categories of) persons can no longer be justified impartially. All conceptions which claim to be able to justify such primary distinctions of status are tied to premises which can successfully be disputed.

For the required justification has to fulfill two conditions: First, general moral norms and rights are only morally justified on the one hand, if they can be justified reciprocally, i.e. if one person does not demand more of the other than s/he is prepared to concede him/herself. This is the condition of reciprocity. The reasons provided for the moral judgments are such as can allow every addressee to take the place of the person judging. This means that the reasons would still be accepted if the person currently judging were replaced by any other addressee of the relevant moral norm. Second, these reasons must possess justifying character with regard to the interests of all concerned. Everyone must have good reasons for accepting the norms in question; no one concerned must have overriding reasons to reject them.¹⁶ This is the condition of generality.¹⁷

Thus a moral justification must be able to demonstrate that a suggested system of norms is acceptable to every individual affected by those norms, i.e. that no one has overriding reason to reject them. As soon as justification is

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conceived of as egalitarian and autonomous as opposed to authoritarian, *everyone* is entitled to *equal* consideration in the process of justification. Only that which is *equally* acceptable to everyone can be regarded as justified. The conception of mutual justification requires that it be possible to demonstrate that the system of norms can be equally accepted by all addressees as a general guideline for their reciprocal actions.

The system of norms which meets these justificatory requirements is the moral principle of the enlightened liberal morality of equal respect. It is as follows: a rule is morally justified if and only if, as part of a system of norms, it can be accepted by all addressees as a general guideline for their actions for reasons which are in equal measure general and reciprocal, forming the basis for a generally accepted agreement reached without coercion or manipulation. This moral conception is a morality of equal respect since it grants all persons an equal status in the procedure of justification. Equal status follows from such a justification procedure since there are no reasons we know of to assign unequal status to different but autonomous individuals that would be acceptable to all, i.e. even those to whom an inferior status should be assigned. Nobody would autonomously accept his or her own degradation. Thus unequal status (at the first of the two levels of equality distinguished above) is ruled out by the requirement to generally and reciprocally justify all norms to those affected who are regarded as autonomous.

In addition (and already alluded to above, in my discussion of second-level equality) a presumption for equal treatment holds. If no general and reciprocal justifications for unequal treatment on the second level can be provided that are acceptable to all autonomous equals then equal treatment is the default option. If there is no reason for unequal treatment that can be universally and reciprocally recognized by all, then equal treatment is the only legitimate norm. Any unequal treatment without good reason would mean that someone is treated as of lower status, and another as of higher status, which would violate the equal status established on the first level.

In the next two sections I will spell out two central tenets of the liberal morality of equal respect in more detail: the principle of justification in section 7.2.4 and the respect for the autonomy of each person in section 7.2.5. In section 7.2.6 I will return to the anti-egalitarian challenge and show how it can be rebutted by appeal to this justification of the liberal morality of equal respect.

7.2.4 Principle of Justification

A person does not show another the required respect if s/he responds to a request for justification in a way which s/he knows or has reason to suppose cannot be accepted by the other person. All intersubjective regulations must

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be justified by recourse to principles which can be accepted as justified by all free, autonomous, and equal persons. What is fundamental to the concept of morality is not therefore a particular understanding of independent, intrinsic values, or a theory of the good but a *principle of justification*. Norms can only be regarded as justified, if free and equal persons who wish to regulate their coexistence by means of norms are rationally seeking regulations to that end and are able to agree on the norms in question.¹⁸ This fundamental principle strengthens the idea of impartiality, so that it ends up by asserting that in the case of impartial, interpersonal regulations, or regulations of distribution, the persons concerned or their essential interests must receive equal weighting and equal consideration in public affairs.

Since respect for the autonomy of each person implies that it is morally wrong to force someone to do something of which s/he is not convinced *in principle* (i.e. not necessarily de facto) and which s/he cannot therefore accept, it is only those reasons which s/he can accept in principle which grant the moral right to treat that person in accordance with those reasons. The qualification “in principle” should make clear that the criterion for moral correctness is ultimately bound to a hypothetical agreement. De facto convictions and reactions in real situations are not sufficient conditions for moral legitimation, because they could have originated under pressure, or as a result of false information, a lack of reflection, irrational considerations, or unenlightened interests. What is required is the approval of regulations which those concerned would give under the idealized circumstances of freedom from the pressure of others and autonomy, i.e. reasoned consideration and decision-making based on free, enlightened, and rational opinions and desires—whether or not they would actually consciously approve them in reality. Unfortunately it is only possible to make a hypothetical investigation into whether all persons could have reciprocal and general reasons for approving a regulation. In actuality, we are almost never in a situation where all concerned can in fact be asked under circumstances of freedom, equality, and autonomy. Usually, some of those concerned cannot be asked at all, while others are not free or autonomous enough. In moral philosophy therefore, it is inevitable that we work with an idealization, as long as it is a criterion for moral legitimacy that reasons be approved in principle.

7.2.5 Respecting Autonomy

The principle of justification directs morality to a procedure by means of which the necessary steps for the just formation of social coexistence are to be developed. Morality, or rather the moral outlook of those actually concerned is not derived from the principle of justification—for in that case the construction would be laid open to legitimate criticism.¹⁹ Thus morality is

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not constructed by help of the justification principle all the way down. The prerequisite for the justification principle is a certain moral outlook of respect for the autonomous decisions of other persons. This moral conception lays the stress on the existential primacy of the individual and on the overriding value of each person's rational capacity for *autonomy*.

In a negative dimension, respect includes the prohibition of the instrumentalization of others. This corresponds with the condition expressed in Kant's second formulation of the categorical imperative, that we "treat [...] all others never merely as means but always at the same time as ends in themselves."²⁰ Others are used as means, Kant specifies, if they cannot approve their treatment.²¹ Thus in a positive dimension, respect is connected to the ability to set oneself goals and objectives and to reflect on them critically, i.e. to have one's own good reasons for approving or rejecting a regulation. The object of equal and mutual respect is the autonomy of every individual who, as a result of his or her supposed autonomy, is conceived of as a "self-authenticating source of valid claims."²² What equal concern and respect must refer to, can therefore only be the considered interests of every autonomous individual. It is ultimately only those who are actually concerned, who can support and formulate their (true) interests.²³ Only the individuals themselves can and may decide what is in their own "best," "enlightened," "rational," and "true" interest.²⁴ It is entirely up to the individuals to decide which interests they wish to assert. To begin with, all interests are admitted to the process of justification; subsequently, all morally inadmissible preferences (e.g. "egoistic" or "external" desires,²⁵ such as for instance that the interests of one's neighbor be ignored) are filtered out, because they go against the conditions of equality inherent in the justification process. All other "personal" interests are *prima facie* morally admissible, provided no one has good reason to dispute them during the process of justification. Thus there are no other prior, absolute, nonprocedural moral criteria for (in)admissible interests.

In this way, autonomy assumes a special status within the morality of equal respect. For it is ultimately autonomy which we respect. It is autonomy which provides the circumstances which make justification possible in the first place. Individual autonomy is the central (although not the only) value of the enlightened liberal morality of equal respect. From the point of view of the morality of equal respect, autonomy, or rather an autonomously led life is of value, and it is of equal value to the life of each individual person.

Autonomy as self-determination means among other things not being defined by others, which in turn means not being controlled without sufficient justification, and not simply being ignored without good reason. This can assume more or less drastic form, from forms of social exclusion to physical torture, but structurally the crux of the matter remains the same: a person who is owed justification for the way in which s/he has been treated is not being

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taken seriously; rather s/he is being ignored, as if s/he were not an equal person or even not a person at all. Kant has termed this, “the worthiness of every rational subject to be a legislating member in the kingdom of ends.”²⁶ Being a legislating member of this kind means not being ignored by the law, and knowing not to ignore others, i.e. it means that one is oneself subject to the law.

7.2.6 *Rejecting the Anti-Egalitarian Challenge*

With the help of, first, the above mentioned (in section 7.1) distinction between two levels in the debate about equality and between two correspondingly different kinds of assertion of equality; second, a justification of the perspective of impartiality (in section 7.2.2); and third, the principle of justification (in section 7.2.4), serious anti-egalitarian misunderstandings can be avoided when dealing with questions of morally adequate treatment.²⁷ For, whether first-level or second-level, an anti-egalitarian must not take such obviously intuitively plausible examples of justified unequal treatment as proof that first-level egalitarianism is ungrounded.

(a) From the perspective of impartiality, all individuals are at first equally entitled to justification. The application of the principle of justification can however result in different entitlements proving justified on the second level.

Thus, it may be right from a moral point of view to treat Mother Teresa and Hitler unequally and to ascribe them with unequal moral worth (for society?). However it does not follow that they are not entitled to equal dignity on the first level in the sense of having an equal “right to justification.” In the example above, it is simply assumed obvious that it is morally appropriate to treat Mother Teresa and Hitler differently—or a guilty person and an innocent one, etc. But in everyday life, impartial examination is precisely what is required in such a case, because the results of impartial examination should not simply be assumed or anticipated. In a justification procedure among autonomous equals unequal treatment can be justified if general and reciprocal reasons can be given for it that are acceptable to all. This would be the case, for example, if persons were to agree that criminals should be treated differentially (say, subjected to punishment). In the example Hitler would not be able to just veto proposals he doesn’t like unless he could give better general and reciprocal reasons for a different norm he would propose. For as explicated above, if no general and reciprocal reasons for unequal treatment can be given, equal treatment is the presumed default option.

This means, however, that the plausibility of non-egalitarian intuitions is (also) based on the principle of justification, for such plausibility must claim to be able to make use of good reasons, i.e. reasons which are acceptable to everyone, to demonstrate which criteria justify a claim to what kind of unequal treatment.

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Which claims can be regarded as appropriate, and which criteria or qualities can qualify a person as bad or good, can only be determined in a consistent and nonparticularist way, i.e. impartially, if we ask whether the claim in question could be approved by all concerned under hypothetical conditions of freedom and equality. Such a principle of justification is all the more necessary, the less evident and the more unclear or contentious it is whether or not we are really dealing with suffering, hardship, or objective need. Moral rights and duties can only be determined by means of general and reciprocal justification. The principle of justification is constitutive for morality. It must be defined more closely for modern morality in such a way that every person concerned is given equal weighting. The basic constellation is an egalitarian one: every person (who belongs to the relevant context of distribution) has an equal "right to justification." But this makes it clear once again that moral claims can only be justified on a basis of fundamental moral equality, so that this principle is by no means dispensable.

(b) The second egalitarian objection to first-level non-egalitarianism is that every definition of moral claims must be relational. For morality is concerned with *what actions (or omissions) we owe to whom for what reasons* and (distributive) justice (as a central part of morality) is concerned with the question of *which claims to which goods are to be justified to whom and with which reasons*. Precepts of morality, including principles of justice, are always concerned with a person's fair share, and this can only be determined in the process of justification. The process of justification must be applied separately for each good which is to be distributed, so that in the case of some goods (e.g. food) it is less comparative grounds which play a role, while in the case of others (e.g. reputation)²⁸ it is more socially related reasons. Morality including justice is relational in as far as there are no "absolute" arguments, but only such as could be approved by free and equal persons. It is in the necessary recourse to the principle of morality including justice that the necessity of relating to others as equals becomes evident.

The critique of non-egalitarianism can, then, be summed up as follows. In order to determine the morally appropriate way to act, it is necessary to fall back on relational principles of morality and justice. To begin with, morality is relational in the sense that it always calls for the general and reciprocal justification of claims. It is also relational in a second sense, because it is always concerned with establishing or applying general rules, so as to ensure that equal cases are treated equally. And finally, morality is relational in a third sense, because in defining morality, it is necessary to make comparisons among persons and their claims and resources. Human beings are morally entitled to support *only to such an extent* as is considered appropriate according to generally justified opinion with regard to the circumstances, i.e. relative to the quantity of resources available and to the possible claims of others on those resources.²⁹

Do All Persons Have Equal Moral Worth?

7.3 For Whom and with Regard to What Characteristics Do We Demand Moral Equality?

7.3.1 *Person*

What characteristic or rather what *particularity* of human beings is it which inspires us with respect and has us talk of human dignity?³⁰ A reconstruction of “our” morality is not possible without a normatively substantial concept of the moral person and of his or her “inviolability” and “dignity,” a concept which shapes our understanding of ourselves and which we are prepared to grant one another mutually. The idea of morality is embedded in a network of opinions about what distinguishes persons from other living beings and inanimate objects, and why those distinctions carry such great moral weight. The characteristics I shall name are suitable for helping us to understand widely shared, well-considered judgments about rights and duties, for it is they that concern us and they we respect when we treat persons as morally equal.

These characteristic attributes can be determined by clarifying the abilities which a being has to possess if we are to be able to grant him/her the rights and duties which are part of the universally shared core of our morality. The connection between morality and certain personal capacities is made clear in the following model:

- (i) Firstly, beings which have no feelings, feel no pain, no fear, and no despair are not capable of suffering. It is not therefore possible to inflict suffering on them. *Sensitivity to pain* and *capacity for suffering* constitute therefore the first stage of conditions which beings must fulfill in order to be treated morally, i.e. in such a way that pain and suffering are not inflicted on them without particular reason. This corresponds with our moral intuition. On the other hand, a class of beings which possess only those capacities can hardly be attributed exactly the same moral status as persons whose capacities are on a higher level.
- (ii) Secondly, the only beings who have an independent right to life are those who have a concept of their own future, and who are capable of developing for themselves a conception of a good life and following that conception—this means that they are in a position to plan to a certain extent, and that they are normally also capable of carrying out their plans. Beings without an orientation toward the future are not being done out of anything if they are painlessly killed. Nothing can have moral value if it does not also have personal value for someone. Beings without an orientation toward the future cannot regard their own life as possessing any personal value.³¹ Provided they have no developed consciousness, they can have neither future-oriented

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desires nor the concepts of future necessary for forming such desires. However it is an orientation toward the future which constitutes the morally relevant basis for the prohibition of killing. Even if it is painless, killing is morally prohibited, if and because it violates the momentous interests of those concerned. A conscious *orientation toward the future* constitutes thus the second-stage capacity for beings which are to be morally treated in such a way that both their right to live and further related rights are respected.

- (iii) Thirdly, freedom and self-determination only possess meaning for beings who are equipped with self-awareness and a sense of autonomy and who also aspire to be autonomous.³² For them, the capacity and need for autonomy constitute the basis for a sense of their own dignity. Their capacity and need for autonomy also form the basis for their sense of responsibility that is central to morality. It is because of this that *autonomy* (including self-awareness) constitutes the third-stage capacity for beings who are to be treated morally in such a way that their interests are taken into account when it is being determined what is morally permissible. Persons must develop and exercise this capacity in order to be truly independent and free. Thus in its full sense, autonomy is not a purely natural predisposition, but also a duty (a requirement of reason).³³
- (iv) Fourthly, the conception of reciprocity (i.e. the idea that one owes something to others just as one is owed something by others) only makes sense in the case of beings who conceive of themselves as full members of the moral community, and who thus want not only to be well-treated themselves, but also to live together with others peacefully, cooperatively, and morally, and so seek moral norms to shape their coexistence in a way that is moral and just. What characterizes persons is not just the fact that they have interests, but also that they are capable of ignoring those interests. This corresponds with Kant's famous view that man's dignity is justified by his *moral autonomy*: "Thus, man had attained a position of *equality with all rational beings*, whatever their rank (III, 22), because he could claim *to be an end in himself*, to be accepted as such by all others, and not to be used by anyone else simply as a means to other ends. This [...] is the basis of man's unconditional equality."³⁴ This idea encompasses not only our ability to set ourselves objectives in accordance with our own conception of what is good, but also our ability to use the demands of morality to influence the choice of our goals and the actions we direct at those goals, i.e. our ability to be our own lawgivers. It is only with this fourth-stage criterion that we reach that not uncommon conception

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of morality as that which, with reasons, we owe one another and are prepared to grant one another. Only beings with this sense of morality can themselves assume obligations as the result of reasoning. The only beings who can do that are those who possess the ability to judge the way they are treated as appropriate or inappropriate, just or unjust.³⁵ Only then can our moral sanctions, such as guilt, outrage, or rebuke, take effect; they would otherwise make no sense. A moral stance is the fourth and highest condition which beings must fulfill in order to belong fully to a community whose members treat and respect one another mutually as persons. Persons, then—and this is particularly crucial from the point of view of morality—have a sense of morality and justice. Not only do they themselves have moral rights; they also have corresponding duties to one another. The moral relationship between persons is therefore symmetrical; the members of this class grant one another mutual rights and duties; only persons are at one and the same time moral actors and moral addressees.

In my opinion, these four stages correspond best to our reasoned judgments as to why we have moral duties to others.³⁶

7.3.2 *Human Dignity*

Equal moral respect refers to what is respected; it refers to individual autonomy. Instead of defining enlightened liberal morality as a morality of universal equal moral *respect*, we can also conceive of it as a morality of respecting individual *human dignity*. This is a reference to the equal fundamental status which persons must grant one another mutually, if they are to consider one another reciprocally as equals, because an unequal status cannot (any longer) be justified. Under the objectivizing and vague talk of *equal (human) dignity* we are to understand that everyone is entitled to equal respect, that autonomy must be respected, and that the regulations must be justified in a way that is in principle understandable to everyone, so that everyone is taken into consideration whenever the regulations concern him/her. In this way, human dignity is a function of other moral convictions. Its violation means that something is to be regarded as seriously morally wrong for independent reasons. Those independent reasons consist in the violation of moral equality or the justification principle.

Equal (human) dignity refers to the outlook of equal respect which we owe people; it means that everyone must be taken into equal consideration in their basic moral rights. This does not rule out the possibility that people may, under certain circumstances, be granted various specific values such as honors and recognitions, to a varying degree, without the principle of equal

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respect to all people being violated—in such cases, that is, where unequal treatment can be justified by invoking equal moral value. Fundamental equal dignity is not gradational. Various other honors or values are however gradational, because they are an expression of merits based on gradational qualities (such as talents, abilities, character, or personality) or on status.³⁷ Correspondingly, we speak of individual *esteem* in terms of something which refers to merits and is therefore gradational. *Moral respect*, however, is defined as a categorical concept which does not allow for any variation in degree. Moral respect does not refer to any merit, not even moral merit. In this respect, and only in this respect, does “human dignity” resemble love, which is not dependent on merits or abilities either, but rather relates to the individual as the actual bearer of all his/her positive and negative properties. But love is particularist; it relates to a few people who possess a special meaning for the one who loves. Respecting someone, on the other hand, is universalist, and means respecting him/her equally, as much as we respect every other person. But dignity is not a valuable, nongradational quality which all people possess equally; rather it is an outlook, an outlook of respect, which we show persons who excel as a class as a result of certain characteristics. The characteristics do not themselves justify equal human dignity.³⁸

Attempts to obtain and explain moral equality using the concept of the equal dignity of human beings³⁹ are not very promising, because the concept itself is empty and requires a moral conception to lend it substance.⁴⁰ The concepts of “dignity,” “moral equality,” “humiliation,” and “degradation” refer to one another mutually. We would therefore be going round in circles if we were to obtain the morality of equal respect only from the explication of one of these concepts. Respect for individual human dignity shows itself precisely in respect of individual rights, to which *every* person is *equally* entitled. The moral content of these rights can only be determined by *applying the process of justification* to all people equally. It must be applied to all people equally, because there is no acceptable generally and mutually shared reason for unequal treatment in the process of justification itself.

23. Narveson (2003a).
24. Narveson (2002), pp. 203–225.
25. Cavanagh (2002).
26. Cavanagh (2002), p. 174.

Chapter 7

1. I take justice to be an essential part of morality. In the following I will always use the term ‘morality’ as the broader inclusive concept.
2. On the definition of the concept, see Gosepath (2007).
3. In Rousseau (1997) we find the expression “égalité morale,” which he contrasts with “égalité naturelle” or “égalité physique” and uses to refer to the equality of all people as constituents or participants of the “volonté générale.”
4. Cf. Rawls (2001) § 7, who prefers to speak of the “idea of free and equal persons.”
5. On this well-known distinction and formulation, cf. Dworkin (1977), pp. 179–183; p. 277. “Treating as equals” or “equal concern and respect” are auxiliary constructions which require interpretation. Taken alone, the expression “treating as equals” explains little, because it is possible to imagine several ways of concretizing or proceduralizing it: cf. Feinberg (1973), p. 93. Thus “treating as equals” is an elliptical expression, in which the second part of the relationship is simply omitted. In full, it would have to read: all descriptively different persons who come under this norm are to be treated as equals *in a certain respect*. This could refer to human dignity, needs, etc. The expression “equal concern” is also ambiguous: someone who feels that his/her special entitlements have been ignored, regards him/herself as unequally considered. Cf. Tugendhat (1997), pp. 79 f. The same applies though to a person who, following traditional morality, alleges that s/he deserves unequal dignity, and feels unequally considered when distribution is equal. A single standard is therefore necessary to equal concern. Incidentally, Dworkin wants the idea that people must be treated as equals to be understood not as constituting a general moral demand, but rather as a demand on the *state*. Cf. Dworkin (1999), pp. 15–126, esp. p. 50; Dworkin (2011). Cf. by contrast my arguments in this chapter and in Gosepath (2004), ch. II, 5.3.
6. Cf. the different views of Anderson (1999), Frankfurt (1987), Hayek (1960), Kersting (2002), Letwin 1983, Lucas (1977), Lucas (1971), Narveson (2002), Pojman (1997), Raz (1986), ch. 9, Steinhoff (chapter 8 of this volume), Westen (1990).
7. Cf. For a full account and defense of the presumption of equality see [Gosepath, “The Presumption of Equality,”](#) in: [Carina Fourie, Fabian Schuppert, Ivo Wallimann-Heimer \(eds.\), *Social Justice*, Oxford: Oxford University Press \(forthcoming\)](#) and Gosepath (2004), ch. II. 8. The presumption in favor of equality can be justified by the principle of equal respect together with the requirement of universal and reciprocal justification (as explained below).
8. This is disputed by Nielsen (1988), pp. 55–71, who believes he can conduct a defense of moral equality with the sole assistance of the method of wide reflective equilibrium.

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9. From an empirical point of view, the scope of this “we” should remain open.
10. I defend this idea at greater length in Gosepath (2004), ch. 5.
11. I have borrowed this functional definition of morality from the classic sociological studies of morality.
12. Cf. Barry (1995), p.11; Gert (1998), ch. 6.
13. This is the definition given by Gert (2001), pp. 599–600 and Gert (1998), p. 132.
14. Barry (1995), p. 11, calls it “second-order impartiality.”
15. Cf. Forst (2012).
16. Cf. Forst (2002) and (2012). It is well known that the more precise conditions of the moral criterion of generalizability are differently characterized by different advocates of a deontological-liberal conception of morality. However, one important difference between the various philosophical theories has to do with the type of idealization. Cf. Kant (1997a); Rawls (1971); Scanlon (1998), esp. ch. 5; Habermas (1990); Ackerman (1980), esp. ch. I. These justification-based views are confronted with criticisms such as those brought against discourse ethics in Steinhoff (2006a). Unfortunately I cannot adequately deal with those criticisms within the confines of this chapter.
17. For an explication of the concept of justification see Steinhoff (2000).
18. Cf. Scanlon (1982), pp. 103–128.
19. Cf. my criticism of contract theory in Gosepath (1992), ch. VI. 2., pp. 325–342.
20. Kant (1997a), p. 41.
21. Kant (1997a).
22. Rawls (1993), p. 32.
23. Cf. Wingert (1993), pp. 90–96 and *passim*.
24. On the concepts of “best,” “enlightened,” “rational,” and “true” interests and on the differences between them and constructive ways of interpreting them, cf. Gosepath (1992), ch. VII. 4 & 5.
25. On the distinction between “personal preferences” and “external preferences,” cf. Dworkin (1977), pp. 234 ff. and 275 ff.
26. Kant (1997a), p. 46.
27. Cf. the examples cited at the beginning of section 7.1.
28. Some parts of our everyday morality can only be adequately reconstructed in terms of protection from relational violation. This is, above all, the case in the important area of disregard. Not being greeted by an acquaintance, for instance, counts as disregard in our society, but it is only in the context of the fact that others are greeted as a sign of politeness that this is understandable and justified. A feeling of disregard is always relative to the acknowledgement enjoyed by other persons.
29. Efficiency should also be taken into account. For inefficiency implies waste, and if there is waste, then something which could have been distributed is arbitrarily withheld from those entitled to it.
30. Cf. Quante (2002) and Quante (2007).
31. Cf. Tugendhat, López, and Vicuna (2000), ch. 1.
32. I do not understand “autonomy” in the narrow sense used by those following Kant (e.g. Habermas), but in a much wider sense to mean personal autonomy in

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- the sense of general personal self-determination about how one wants to live one's life.
33. Frankfurt's (1971) characterization of persons as beings who have second-order volitions helps to determine the criteria for referring to a person as autonomous and rational. For such a description, cf. Gosepath (2004), ch. VII. 2, pp. 346 ff.
 34. Kant (2003), p. 226.
 35. Cupit (1996), pp. 16–18.
 36. This four-stage catalogue of characteristics does however seem to possess some disadvantages which ought to be discussed. Because it fixes certain mental and cognitive performances as constitutive to being a person, the four-stage model has the obvious disadvantage of not coinciding with our widespread intuitions about fetuses, infants, and severely disabled people. These beings fulfill at most the conditions of the first stage; whether they fulfill the conditions of the second stage is questionable, and they quite clearly do not possess the capacities necessary for the third and fourth stages. It can however also be seen as an advantage of the gradational model that it enables us to admit and explain gradations in moral status. These beings are thus strictly speaking members of the moral community, because persons have duties towards them. But they do not possess rights of their own, and the duties owed them are not as extensive, as they are not full members. This seems contrainstuitive to many, who would grant fetuses and permanent coma patients at least the right to live.
 37. Vlastos (1984) attempts to use this distinction to justify equal dignity.
 38. Cf. Feinberg (1973), pp. 93f.
 39. Cf. Miller (1982), pp. 78–83; Scanlon (1996), part III.
 40. Thus Schopenhauer (1995), p. 100, criticized the fact that this expression “became the shibboleth of all the perplexed and empty-headed moralists who concealed behind that imposing expression their lack of any real sense of morals, or, at any rate, of one that had any meaning.”

Chapter 8

1. Waldron (2002), p. 3.
2. Waldron (2002), p. 4.
3. Waldron (2008), esp. sections 8–11.
4. See Kekes (2007), pp. 65–70.
5. Miller (2007), p. 28.
6. Kymlicka (1989), p. 40. The entry “Equality” (authored by Stefan Gosepath) in the *Stanford Encyclopedia of Philosophy*, normally an immensely useful and balanced resource, also succumbs to this error. Contemporary critics of “moral equality” are not mentioned (in an encyclopedia entry!); instead, the reader is assured that any position denying moral equality “will not be found plausible today.” As evidence for this claim Gosepath refers to other egalitarians. See Gosepath (2007).
7. Kekes (2007). As this volume shows, Sher might meanwhile object to being put into the anti-egalitarian camp.