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A CRITIQUE OF CONTEMPORARY EGALITARIANISM: A CHRISTIAN PERSPECTIVE

Louis P. Pojman

In this paper I examine several arguments used to base equal rights on equal human worth. After a brief overview of the history of the doctrine of natural rights in Part I, I examine Kant's egalitarian theory of the kingdom of ends in Part II. In Part III I examine contemporary secular arguments for the equal rights doctrine and conclude that none of them succeeds. Finally, in Part IV, I argue that the idea of equal human rights has its natural home in a Christian world view where God is the Source of all value whence derives equal human worth and equal human rights.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

(The Declaration of Independence of the United States of America)

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

(United Nations' Universal Declaration of Human Rights, 1948)

Rights theories are alive and well in contemporary social-political philosophy. In the last two decades an exponential growth of books and articles has occurred, in which proponents have set forth arguments and theories for equal human rights.¹ Occasionally, we find a skeptic in the midst who either rejects the notion of human rights or takes a relativist view of the matter.² Perhaps the most notorious of these skeptics is Arthur Danto who views human rights as claims that our peers will let us get away with.

In the aftermath of [the student revolt of] 1968, I found myself a member of a group charged with working out disciplinary procedures for acts against my university. It was an exemplary group from the perspective of representation so urgent at the time: administrators, tenured and non-tenured faculty, graduate and undergraduate students, men and women, whites and blacks. We all wondered, nevertheless, what right we had to do what was asked of us, and a good bit of time went into expressing our insecurities. Finally, a man from the law-school said, with the tried patience of someone required to explain what should be plain as day in a tone of voice I can still hear:



“This is the way it is with rights. You want ‘em, so you say you got ‘em, and if nobody says you don’t then you do.” In the end he was right. We worked a code out which nobody liked, but in debating it the community acknowledged the rights.³

Danto is in the minority. Most moral and political philosophers think that a human being possesses rights because of the very fact that he or she is a person, of equal dignity, and who consequently is not merely a means to an end, but an end, an end which must be treated as such. The phrase ‘dignity of the human person’ signifies in the words of Jacques Maritan, that “the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to [a person] because of the very fact that he is a [person].”⁴ The notion of equal human rights based on equal human worth has become, in the words of Ronald Dworkin, one of “the deepest moral assumptions” of our time.

In this paper I would like to examine some of the arguments used to base equal rights on equal human worth and point out their problems. After a brief overview of the history of the doctrine of human or natural rights in Part I, I will in Part II examine Kant’s theory of the equal and absolute worth of all rational beings. Then in Part III I will examine several secular arguments which base human rights on the assumption of equal human worth. In Part IV I will suggest that the idea of equal human rights has its home in a theistic, Christian world view where God is the Source of all value and humans derive their equal worth by being created by him and in his image.

I. *A Brief Historical Overview on the Notion of Human Rights*

Let me outline some of the major views on human rights up to Kant. The classical Greek moral philosophers (The Sophists, Socrates, Plato and Aristotle) do not speak of equal rights, and the notion that humans are of equal worth would make no sense to them. For Plato and Aristotle, human beings, like everything else, have a function and some fulfill this function better than others. Value is determined by a person’s capacity to fulfill this function, and hence, some are better than others.⁵ Greek secular ethics are essentially hierarchical and meritocratic. According to Plato, every one should have an equal opportunity (males and females), but early on a caste separation based on ability must take place. The golden souled children should be separated from those with silver, iron or bronze souls and treated appropriately. Democracy was rejected as an unjust distribution, treating unequals as though they were equals.⁶

Aristotle, who made reason the criterion of worth, believed that most people were worthless (fit to be slaves), a minority were good (noble) and a few were excellent (had *arete*). Only the latter two categories were of any importance. “It is manifest,” he wrote, “that there are classes of people of whom

some are freemen and others slaves by nature, and for these slavery is an institution both expedient and just.”⁷ Although all humans had the same distinguishing form (*viz.* rationality), they had different degrees of recalcitrant matter in their beings which limited the actualization of rationality.

The notion of a ‘natural right,’ a right that is ours simply by the nature of things, independent of any other reason or moral duty or ideal, first appears in the work of William of Occam (1290-1349) and Jean Gerson (1363-1429) in the Late Middle Ages, and only becomes prominent in the Enlightenment of the seventeenth century with the work of Thomas Hobbes (1588-1679) and John Locke (1632-1704).⁸ For the Enlightenment thinkers, persons possess natural rights in a state of nature apart from government, which is itself legitimized by its ability to protect these rights.

For Locke humans possess rights by nature (*viz.*, life, liberty and property) which society must recognize if it is to be legitimate. They are bestowed on us by God. Because these rights are a gift of God, they are ‘inalienable’ and ‘imprescribable,’ that is, we do not give them to people nor can we take them away nor even give our own rights away (e.g., we cannot give away our right to freedom by selling ourselves into slavery). They are based on our being created in the image of God and become the proper basis of all specific rights such as the right to vote, to be protected by the Law, to sell property, to work and to be educated.

Locke’s contemporary, Thomas Hobbes, is the first philosopher to discuss human rights from a secular perspective based on the idea of relative equal power.

Nature has made men so equal in the faculties of the body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all is reckoned together, the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination or by confederacy with others that are in the same danger with himself.⁹

In other words, equality is founded on the power to harm, not on a notion of intrinsic value. In fact, Hobbes completely rejects the notion of intrinsic human value. All value is instrumental. “The value or worth of a man is, as of all other things, his price—that is to say, so much as would be given for the use of his power—and therefore is not absolute but a thing dependent on the need and judgment of another.”

II. *Kant’s Theory of Absolute and Equal Worth*

The secular version of the doctrine of equal human dignity receives its first comprehensive form in the work of Immanuel Kant. In his *Foundations of the Metaphysics of Morals* (1785) and other writings, Kant detaches morality

and the notion of equal human worth from a theological perspective. Human beings qua *rational* have an inherent dignity and so ought to treat each other as ends and never merely as means.

But suppose that there were something the existence of which in itself had absolute worth, something which, as an end in itself, could be a ground of definite laws. In it and only in it could lie the ground of a possible categorical imperative, i.e., of a practical law. Now I say, man, and in general, every rational being exists as an end in himself and not merely as a means to be arbitrarily used by this or that will...

Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only. Human beings qua rational have an inherent dignity and so ought to treat each other as ends and never merely as means.¹⁰

Kant's argument for the absolute value of rational beings is difficult to decipher, and some commentators like Robert Paul Wolff, having despaired of finding a clear argument in Kant, assert that Kant simply assumes the doctrine.¹¹ However, two non-religious arguments appear in the *Foundations of the Metaphysics of Morals*. (1) First there is the argument based on respect for reason. Kant locates the intrinsic value of humans in our ability to reason. What separates him from Aristotle is that *practical* rather than *theoretical* reason makes human life valuable. "Reason is given to us as a practical faculty, i.e., one which is meant to have an influence on the will. As nature has elsewhere distributed capacities suitable to the functions they are to perform, reason's proper function must be to produce a will good in itself and not one good merely as a means, for to the former reason is absolutely essential" (p. 12). It is the good will, the will to do one's duty for duty's sake, that is intrinsically good, the only thing that can be called "good without qualification" (p. 9). This good will is "within the reach of everyone, even the most ordinary man" (p. 20). This capacity for a good will makes us all equal. We ought to respect every person equally because each person is a rational being capable of having a good will.

This argument has problems. First, if our ability to will the good is what gives us value, then it would seem that some people are more valuable than others because they have greater ability to will the good than others. Some people must struggle against great odds to will the good, others find it relatively easy, and still others will not only to do their duty but to do altruistic or supererogatory acts. So we are not of equal worth but of radically differential worth. Shouldn't we be treated in proportion to our ability to will the good?

Secondly, Kant's equation of practical reason with the function to produce a good will is based on a teleological conception of human nature. Living in a pre-Darwinian, Christianized culture, Kant naturally saw things in terms of natural ends. But this aspect vitiates the secular element of his thesis. Post-

Darwinian secular interpretations of evolution allow no place for teleological theories of human faculties. So we cannot speak of reason's natural function as producing a good will. Hence the analogy with natural law fails to produce an argument for the naturalness of the moral law. As there are no purposes in nature, there are no purposes in the function of reason. Reason is left without a definite purpose.

If reason's function is not to produce a good will, as Kant thought, his whole scheme is left in chaos. No natural order guarantees intrinsic worth to each person on the basis of his or her equal ability to use reason to produce a good will.

Thirdly, even if we conceded that everyone was equally capable of a good will, we would still question whether this was sufficient for equal human worth. Why should conscientiousness alone constitute our value? On what basis does Kant make one's ability to have a sense of duty the necessary and sufficient condition for value? Aren't theoretical reason, prudence, and the other moral virtues also contributory to human worth? If we built an automaton which could always "will" to live by the categorical imperative, would that grant it equal intrinsic worth with self-conscious beings?

In response to these objections, Kant and many other philosophers interpret the intrinsic value of rationality as a *threshold* trait, unlike other abilities or talents. Simply having the capability to reason gives one an inherent dignity. But this needs an argument for support and cannot be taken as a first principle. Even if there is a qualitative gap between beings who reason and those who don't, it does not follow that all who have the ability to reason are to be accorded equal consideration or equal rights. If reason is really all that makes us valuable, then the more of it the better, and those who have the most of it must be the most valuable in the relevant sense.

The general strategy of my criticism is by now clear: Given any value-endowing property P that persons have, it makes sense to ask whether having more of that property would be even better for one. If P constitutes human worth, then it would seem that the more of P that a person has, the better he or she is. The valuable trait is transferred to the person in a way that endows him or her with value to the exact proportion of the quantity of the trait. The argument can be formalized in this way:

- 1) All things considered, the more one has of an intrinsically good thing which constitutes our essential worth, the better one is.
- 2) Property P (e.g., rationality, freedom, wisdom) is intrinsically good and constitutes our essential worth.
- 3) Therefore, all things considered, those who have more P (rationality, freedom, wisdom) than others, are better than those who have less of P.

The notion of worth here is a metaphysical one such as Plato, Aristotle, Kant,

or G. E. Moore would have used. It is not to be equated with moral worth but with being morally considerable, worthy of respect.

The *ceteris paribus* clause is meant to cover the fact that it might be argued that premise 1) is not always true. This seems correct when the good in question crowds out another good or when it is used for an evil purpose, but failing to do that, 1) seems to be true. If 1) is true and if there are intrinsically good properties, then the threshold argument fails and the idea of differential worth succeeds.

2) Kant's second argument is based on the notion of autonomy and on the agent theory of free will which grounds autonomy. "What else can freedom of will be but autonomy—that is, the property which will has of being a law unto itself?... Thus a free will and a will under the moral law are one in the same." Kant appeals to the notion of contra-causal freedom rooted in the noumenal self to provide space for a notion of equal human worth. However, three problems plague it. First of all, we're not supposed to have knowledge of the noumenal self.¹² So the idea of free will seems to lack the substance to ground his theory of value. Secondly, even if we have supersensible free wills, how does Kant know that we all have such wills to equal degrees? Thirdly, a Kantian libertarian interpretation of free will loses much of its plausibility when linked with contemporary materialist and secular views of human nature. Kant's views seem to depend on a kind of mind-body dualism repugnant to many secular philosophers. Of course, there are exceptions (Ducasse and Broad are two recent examples of non-religious dualists), but secularism seems increasingly wedded to physicalism in a way that makes the notion of a noumenal self, and hence a libertarian view of freedom, implausible.

If we set Kant's notion of equal human value in the context of an anthropology which holds to a noumenal and transcendental self, which is created by God and will survive death in an afterlife where the self will continue to perfect itself, then what started out as an autonomous, secular ethic has been transformed into a theologically based ethic.

III. *Contemporary Secular Arguments for Equal Human Worth*

Kant seems to be the source of the secular notion of the equal and absolute worth of rational beings, as well as the inspiration in leading philosophers from the classical view of inequality to a secular view of equal human worth. Contemporary moral philosophers usually do not follow Kant in making reason the sole deposit of our value, nor in using transcendental arguments, but they do follow him in holding to a secular doctrine of equal human worth. They employ such metaphysically mild strategies as the equal consideration strategy, existential commitment, pragmatic considerations, the notion of rational agency, and the idea of moral personality. I will first note three strategies which do not include developed arguments and then turn to an

examination of three egalitarian arguments which seem more promising. I will argue that none of the arguments succeeds and that secular philosophy has yet to produce a plausible theory of equal rights based on equal human worth.

Sometimes, no argument at all is given for the claim of equal human worth and the equal human rights that flow from it. Ronald Dworkin begins his book *Taking Rights Seriously* with a rejection of metaphysical assumptions.

Individual rights are political trumps held by individuals. Individuals have rights when, for some *reason*, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or not a sufficient justification for imposing some loss or injury upon them. That characterization of a right is, of course, formal in the sense that it does not indicate what rights people have or guarantee, indeed, that they have any. But it does not suppose that rights have some special metaphysical character, and the theory defended in these essays therefore departs from older theories of rights that do rely on that supposition (p. xi, italics mine).

Nowhere in his book does Dworkin parse out the notion of “some reason” to override “collective goals.” The notion of equal natural rights based on equal human worth simply becomes the assumption that replaces earlier religious or Kantian assumptions. “The Deepest Moral Assumption: the assumption of a natural right of all men and women to an equality of concern and respect, a right they possess not in virtue of birth or characteristic or merit or excellence but simply as human beings with the capacity to make plans and give justice.”¹³ In other words, we don’t need to argue for this thesis.

Dworkin’s view seems similar to what Alvin Plantinga calls “a properly basic belief,” a foundational belief which doesn’t need any further justification. But whatever merit this strategy has for religious beliefs, it seems unsatisfactory when employed to justify moral and political equality. At the very least, we should want to know why the capacity to “make plans and give justice” grants all and only humans equal concern and respect.

Closely related to Dworkin’s view is the view that equal human worth is something we simply, arbitrarily choose. Kai Nielsen treats his allegiance to “Radical Egalitarianism” as an existential commitment.

I do not know how anyone could show this belief to be true—to say nothing of showing it to be self-evident—or in any way prove it or show that if one is through and through rational, one must accept it.... A Nietzschean, a Benthamite, or even a classist amoralist who rejects it cannot thereby be shown to be irrational or even in any way necessarily to be diminished in his reason. It is a moral belief that I am committed to...[and which leads] to some...form of radical egalitarianism.¹⁴

In other words, equal human worth is a posit of secular faith, but a faith that seems to suffer from counter-examples: the apparent inequalities of abilities of every sort.

Similarly, Joel Feinberg concedes that the notion of human worth is “not demonstrably justifiable.” His support for the principle of equal human worth seems based on a combination of existential commitment and pragmatic concerns.

“Human worth” itself is best understood to name no property in the way that “strength” names strength and “redness” names redness. In attributing human worth to everyone we may be ascribing no property or set of qualities, but rather expressing an attitude—the attitude of respect—towards the humanity in each man’s person. That attitude follows naturally from regarding everyone from the ‘human point of view’, but it is not grounded on anything more ultimate than itself, and it is not demonstrably justifiable.

It can be argued further against the skeptics that a world with equal human rights is a *more just* world, a way of organizing society for which we would all opt if we were designing our institutions afresh in ignorance of the roles we might one day have to play in them. It is also a *less dangerous* world generally, and one with a *more elevated and civilized* tone. If none of this convinces the skeptic, we should turn our backs on him to examine more important problems.¹⁵

Feinberg may be correct in seeking to disentangle the concept of *human* worth from a property-view, but his own position seems to have its own problems. He needs to tell us why we should take the *attitude* of regarding every one as equally worthy. What is this peculiar “human point of view” which supposedly grounds the notion of equal human worth? His pragmatic justification (i.e., that it will result in a less dangerous, more elevated and civilized world) simply needs to be argued out, for it’s not obvious that acting as if everyone were of equal worth would result in a less dangerous world than one in which we treated people according to some other criteria.

Feinberg’s claim that a world with equal human rights based on equal worth “is a more just world” is simply question-begging, since it is exactly the notion of equal worth that is contested in the idea of justice. Formally, we are to treat equals equally and unequals unequally. Feinberg seems to be saying that justice consists in treating all people as though they were equal whether or not they are.

But ignoring this and supposing that there were good utilitarian reasons to treat people as though they were of equal worth, we would still want to know whether we really were of equal worth. If the evidence is not forthcoming, then the thesis of equal worth would have all the ear-marks of Plato’s *Noble Lie*, ironically, asserting the very contrary of the original. Whereas for Plato the *Noble Lie* consisted in teaching people that they are really unequal in order to bring about social stability, for Feinberg it consists in teaching people that they are all equal in order to bring social stability to a democratic society.

Feinberg’s final comment, “If none of this convinces the skeptic, we should turn our backs on him to examine more important problems,” signals a flight from the battle, an admission that the Emperor has no clothes, for what could

be more important than justifying these fundamental ideas in socio-political philosophy?¹⁶

Accepting equal human worth as a fundamental assumption, an existential posit or as a useful attitude, lacks an adequate persuasive component. These strategies may be suggestive of a valid interpretation, but in themselves they do not get us very far towards justifying egalitarianism. There are three more sustained strategies in the literature, however, and to these we now turn.

The first, and most popular, of these more developed strategies is the Presumption of Equality Argument. Isaiah Berlin, R. S. Peters, Stanley Benn, Monroe Beardsley, E. F. Carritt and others interpret equal worth in terms of equal consideration and argue that there is a presumption in favor of treating people equally. "All persons are to be treated alike, unless there are good reasons for treating them differently."¹⁷ Isaiah Berlin expresses the view this way:

The assumption is that equality needs no reasons, only inequality does so; that uniformity, regularity, similarity, symmetry...need not be specially accounted for, whereas differences, unsystematic behavior, change in conduct, need explanation and, as a rule, justification. If I have a cake and there are ten persons among whom I wish to divide it, then if I give exactly one tenth to each, this will not...call for justification; whereas if I depart from this principle of equal division I am expected to produce a special reason.¹⁸

This type of egalitarianism seems unduly formal. One might as well say that "all sentient beings should be treated alike, unless there are good reasons for treating them differently." The formula only shifts the focus onto *good reasons*. We need to know by virtue of what material criterion people are to be treated equally or differently. Aristotle's aristocratic views could accommodate this form notion of equal worth: Treat slaves differently from philosophers, for they have different levels of rational ability. Inegalitarians simply claim that there is a good reason for unequal treatment of human beings. They are of unequal worth.

The presumption of equality argument reduces to the notion of impartiality (what R. M. Hare calls "universalizability") and is not really an egalitarian argument at all. It prescribes that we not act arbitrarily, but consistently. We should make our discriminations according to a proper standard. But doing so does not commit us to egalitarianism.

Recurring to Berlin's cake, I might well divide the cake in nine unequal pieces and offer it to nine children on the basis of their need or desert, while I withhold it from one because he is overweight.

Sometimes, egalitarians modify the presumption of equality argument to read "every one's interests should be given equal consideration." *Interests* are made the material criterion. But I don't think that this modification helps matters, for *interests* is a goal-oriented relational term. The formula is generally: Something (it need not be an agent but may be a tree or a work of art)

has an interest *I* in order to achieve some goal *G*. For example, the patient has an interest in medicine in order to regain her health. It is in the interest of the New York Yankees to acquire a good left handed relief pitcher in order to save close baseball games. But if interests are relative to goals, we need to assess the worthwhileness of those goals. If it turns out that the goals of an Aristotle are more worthy than the goals of a human with less intellectual abilities, then the formula of equal consideration of interests is compatible with inegalitarianism. It is still essentially a formal principle which enjoins impartiality but not substantive equality.

One must question the very form of the presumption argument. There seems something arbitrary about placing a presumption in favor of equality rather than inequality. Why don't we have a principle presuming unequal treatment: "All persons are to be treated unequally unless there is some reason for treating them equally"? Is it sheer pragmatism or utilitarian considerations that cause Benn and Peters to opt for a presumption of equality rather than inequality?

One of the most intriguing arguments for equal rights based on equal worth is that based on the notion of rational agency, as set forth by Thomas Nagel, Peter Singer, and Alan Gewirth.¹⁹ Since I find Nagel's version clearer and superior, I will concentrate on it.

In several places Nagel has argued that from the impersonal point of view, "a view from nowhere," all humans have equal and positive value. Pleasure and happiness are positive values and the capacity to suffer a negative one. We, as containers of these properties, have value by virtue of the very possession of them.

You cannot sustain an impersonal indifference to the things in your life which matter to you personally: some of the most important have to be regarded as mattering, period, so that others besides yourself have reason to take them into account. But since the impersonal standpoint does not single you out from anyone else, the same must be true of the values arising in other lives. If you matter impersonally, so does everyone.... From the impersonal standpoint...everyone's life matters, and no one is more important than anyone else. This does not mean that some people may not be more important in virtue of their greater value for others. But at the baseline of value in the lives of individuals, from which all higher order inequalities of value must derive, everyone counts the same. For a given quantity of whatever it is that's good or bad—suffering or happiness or fulfillment or frustration—its intrinsic impersonal value doesn't depend on whose it is.²⁰

Singer and Gewirth's versions are similar in that all three involve the universalization of the agent's valuing of himself or of his own projects or capacity for values. The argument seems to go like this:

1. I cannot help but value myself as a subject of positive and negative experiences (e.g., suffering, happiness, fulfillment or frustration).

2. All other humans are relevantly similar to me, subjects of positive and negative experiences.
3. Therefore, I must, on pain of contradiction, ascribe equal value to all other humans.

Although this argument has enormous popular appeal, I think it is defective, beginning with the first premise. First of all, I don't value myself simply as the possessor of the *capacity* for positive and negative experiences. I value myself because of a complex of specific properties, the kind of qualities that Dworkin, Tom Regan and others insist are irrelevant to value: excellence, moral virtue, discipline, rationality, artistic prowess, good health and athletic ability. I value myself more for actually *having* these properties than I do, or at least in a different way than I do, my *capacity* to suffer. These are what positively make up my happiness. If I were to lose any one of these properties, I, given my present identity, would value myself less than I do now. Should I lose enough of them, my present self would view this future self as lacking positive value altogether, and my future self might well agree. Should I become immoral, insane, or desperately disease ridden, I would be valueless and I hope I would die as swiftly as possible. So it would follow that I am under no obligation to value everyone, since not everyone is moral, rational or healthy. There is no contradiction in failing to value Rawls' blade of grass counter, the rapist, the child molester, the severely retarded child, or the senile, since they lack the necessary qualities. And I may value others to the degree that they exhibit the appropriate qualities.

So we need to revise the first premise to read:

- 1A. I cannot help but value myself as the possessor of a set of traits T.

But then 2 does not follow. All other humans are *not* relevantly similar to me in this regard. I need only value those who are like me in the relevant respects.

In fact, people seem to value themselves for many different reasons depending on heredity, upbringing, experience, or whatever. Bentham seemed to think that it was our common ability to suffer that gave us and animals equal worth, and Peter Singer and Tom Regan, following Bentham, argue that if we only had enough painkiller to alleviate either the pain of a normal human or the pain of an animal, we would have to make the decision on the basis of who was suffering most.²¹ Albert Schweitzer, who believed that life itself gives every living thing equal worth, suffered remorse in applying germ-killing antibiotics to suffering humans.

But these least-common-denominator properties seem too general to define whatever intrinsic worth we may have, or to generate a sense of universal equal respect and concern. However, any more specific properties, such as feeling pleasure or being rational, moral, courageous or healthy, lead to unequal worth. Indeed, there is even a problem of specifying which properties should be taken into account in granting sentient beings value.

What the egalitarian really wants is a non-metaphysical proposition equivalent to the theological doctrine that all humans have been created equal in the image of God and have immortal souls of inestimable worth. But once the metaphysical foundations for equal worth are destroyed, it's very difficult to construct that thesis on the shifting sands of empirical human traits.

There is a second problem with Nagel's argument. It rests too heavily on the agent's judgment about himself. "If you matter impersonally, so does everyone." There are two ways to invalidate this conditional. The conditional won't go through if you don't value yourself. If I am sick of life and believe that I don't matter, then, on Nagel's premises, I have no reason to value anyone else. Secondly, I may deny the consequent and thereby reject the antecedent. I may come to believe that no one else does matter and then be forced to acknowledge that I don't matter either. We're all equal—equally worthless.

Thirdly, note the consequentialist tone of the last two sentences of Nagel's statement: "...at the baseline of value in the lives of individuals, from which all higher order inequalities of value must derive, everyone counts the same. For a given quantity of whatever it is that's good or bad—suffering or happiness or fulfillment or frustration—its intrinsic impersonal value doesn't depend on whose it is." We hear the echo of Bentham's "each one to count for one and no one for more than one" in this passage. But Nagel and Bentham before him cannot be both maximizer and egalitarian. If it is the suffering or happiness that really is the good to be maximized, then individuals are mere place holders for these qualities, so that if we can maximize happiness by subordinating some individuals to others, we should do so.

If it is the properties of happiness or pleasure or non-suffering that are important, then it doesn't really matter who has them, so long as they are had. If A can derive 10 hedons by eliminating B and C who together can only obtain 8 hedons, it would be a good thing for A to kill B and C. If it turns out that a pig satisfied really is happier than Socrates dissatisfied, then we ought to value the pig's life more than Socrates, and if a lot of people are miserable and are making others miserable, we would improve the total happiness of the world by killing them.

No exposition of egalitarianism has had a greater influence on our generation than John Rawls' *A Theory of Justice*, which Robert Nisbet has called "the long awaited successor to Rousseau's *Social Contract*... the Rock on which the Church of Equality can properly be founded in our time."²² Rawls sets forth a hypothetical contract theory in which the bargainers go behind a veil of ignorance in order to devise a set of fundamental agreements that are fair.

First of all no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and

abilities, his intelligence and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society. That is, they do not know its economic or political situation, or the level of civilization and culture it has been able to achieve. The persons in the original position have no information as to which generation they belong (p. 137).

By denying individuals knowledge of their natural assets and social position Rawls prevents them from exploiting their advantages, thus transforming a decision under risk (where probabilities of outcomes are known) to a decision under uncertainty (where probabilities are not known). To the question, why should the individual acknowledge the principles chosen as morally binding? Rawls would answer, "We should abide by these principles because we all chose them under fair conditions." That is, the rules and rights chosen by fair procedures are themselves fair, since these procedures take full account of our moral nature as equally capable of "doing justice." The two principles that would be chosen, Rawls argues, are (1) everyone will have an equal right to equal basic liberties and (2) social and economic inequalities must satisfy two conditions: (a) they are to attach to positions open to all under conditions of fair equality of opportunity; and (b) they must serve the greatest advantage of the least advantaged members of society (the difference principle).

Michael Sandel has criticized Rawls' project as lacking a notion of intrinsic worth. "Rawls' principles do not mention moral desert because, strictly speaking, no one can be said to deserve anything.... On Rawls' view *people have no intrinsic worth*, no worth that is intrinsic in the sense that it is theirs prior to or independent of...what just institutions attribute to them."²³

Although Rawls sometimes lays himself open to this kind of charge, I think that Sandel is wrong here. What grounds Rawls' social contract is a Kantian humanism.

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by the many. Therefore, in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or the calculus of social interests (p. 3f).

At the center of Rawls' project is a respect for the individual as "inviolable," sacred, whose essential rights are inalienable. In Section 77 of Rawls' book this *inviolability* is grounded in our having "the capacity for moral personality," that is, the ability to enter into moral deliberation. "It is precisely the moral persons who are entitled to equal justice. Moral persons are distin-

guished by two features: first they are capable of having...a conception of the good; and second they are capable of having...a sense of justice.... One should observe that moral personality is here defined as a potentiality that is ordinarily realized in due course. It is this potentiality which brings the claims of justice into play."²⁴

Members in the original position are not mere utilitarian containers of the good but Kantian "ends in themselves," who are worthy of "equal concern and respect." Rawls already presupposes equal and positive worth at the very beginning of his project. The question is, is this assumption reasonable? Is Rawls' egalitarian starting point justified? I think not. Given the framework in which Rawls writes there is no reason to suppose that we have intrinsic and equal value. Let me explain.

A standard criticism of *A Theory of Justice* is that it fails to take into account the conservative who, as a gambler, would rather take his chances on a meritocratic or hierarchical society and so reject part or all of Rawls' second principle. I think that this objection is even stronger than has been made out, for it is not simply as a *gambler* that the conservative will self-interestedly choose meritocracy, but rather because he or she deems it the essence of justice.

This point becomes highlighted when we examine Rawls' *threshold* principle. "Once a certain minimum is met, a person is entitled to equal liberty on a par with everyone else" (p. 506). This move, which we already noted in our discussion of Kant, seems *ad hoc*. There is no obvious reason why we should opt for tacit equal status (let alone *inviolability*) rather than an Aristotelian hierarchical structure based on differential ability to reason or deliberate. Even as some life plans are objectively better than others, so some people might well be considered more worthy than others and treated accordingly.

Why would it be wrong to weight the votes behind the veil of ignorance according to criteria of assessment? For example, the deeply reflective with low time preferences would be given more votes than the less reflective with high time preferences. Those with high grades might get four or five votes whereas the minimally reflective might get only one vote. Why have only one threshold between those who pass and those who fail the rationality test, as Rawls proposes? Why not have five or six thresholds?

With different layers of weighted votes one would still expect a benevolent society, but the difference principle might well be replaced by Harsanyi's average utility principle or Frankfurt's sufficiency principle, permitting hierarchical arrangements.²⁵ Rawls' first principle (maximum liberty) and the first half of the second principle (equal opportunity) would very likely result in a hierarchical, elitist society.

What would Rawls say to these criticisms? Why does he hold on to a principle of equal intrinsic worth? The closest Rawls comes to addressing

this question is when he states that self-respect is a fundamental human need which his theory satisfies and which hierarchical arrangements fail to satisfy.²⁶ The argument might be formalized in this way.

1. We need self-respect in order to live meaningful lives. Self-respect gives us inner pride or good feelings about ourselves, which are necessary for placing positive value on our plans of life and motivating us to cooperative activity in society.
2. Self-respect entails that our essential worth is equal to everyone else's.
3. We have a moral community where every participant feels a stake in the form of life only if we can live meaningful lives.
4. A community that lives by the principles of Justice as Fairness is a moral community.

Therefore

5. If a community is to be moral then it is the case that we are all of equal worth.

Rawls seems to be using the notion of equal worth as a *deus ex machina* in order to serve his complex theory. It fits into his scheme as a coherent part, but it seems *ad hoc*, needing a clearer defense. First of all, it isn't obvious that the notion of equal worth is needed in order to live a meaningful life. Plato didn't think so. (And if Plato held an unjustified bias towards aristocracy, Rawls reveals a bias towards democracy). Secondly, self-respect seems partly a function of our success in life. It is not clear that we can lack all virtues and talents and be a complete failure at what we endeavor to do and still maintain self-respect—except in a purely formal sense. As long as there are limited resources, including the resource of roles and status, some will succeed and others fail in realizing these goods. Thirdly, even if we needed the notion of self-respect to keep society happy, it might be the case that it was nevertheless a myth.

Kai Nielsen has responded to these criticisms of Rawls by saying that one needs to take Rawls' total project into consideration together with what we know about human nature in order to build a coherentist justification of secular morality. Nielsen claims that Rawls' method of wide reflective equilibrium, a method which aims at providing a fit between our moral theory and our particular moral judgments, will eventually show that the principle of equal human worth and the consequent prescription of equal human treatment are morally justified.²⁷ Good coherentist theories distinguish themselves from fairy tales and other fictions by being rooted in evidence, or at least by not having strong evidence oppose them, but there does seem to be strong evidence against egalitarianism.

Contrary to egalitarians there is good reason to believe that humans are not

of equal worth. On the basis of empirical observation, it is hard to believe that humans are equal in any way at all. We all seem to have vastly different levels of abilities. Some, like Aristotle, Newton, Galileo, Shakespeare, and Einstein are very intelligent; others are imbeciles and idiots. Some like Socrates and Abraham Lincoln are wise; others are very foolish. Some have great powers of foresight and are able to defer gratification, while others, hardly able to assess their present circumstances, gamble away their futures, succumb to immediate gratification and generally go through life as in a fog. Empirically, Einstein, Gandhi and Mother Teresa have more value than Jack the Ripper or Hitler. If a research scientist with the cure for cancer were on the same life raft with an ordinary person, we have no doubt about who should be saved on the basis of functional value.

Take any capacity or ability you like: reason, a good will, the capacity to suffer, the ability to deliberate and choose freely, the ability to make moral decisions and carry them out, and humans (not to mention animals) differ in the degree to which they have those capacities and abilities.

Furthermore, given the purely secular version of the theory of evolution, we have no reason to believe in the physico-teleological theory that supports the notion of a common human family or the idea of brotherhood as put forth in the *United Nations' Declaration on Human Rights* (quoted at the beginning of this paper). If we're simply a product of blind evolutionary chance and necessity, it is hard to see where the family connection comes in. Who is the parent? In fact, on the basis of a naturalistic account of the origins of homo sapiens, it is hard to see that humans have *intrinsic* value at all. If we are simply physicalist constructions, where does intrinsic value emerge?

IV. *Human Dignity: Our Judeo-Christian Tradition and our Common Ancestry*

The proposition that all people are of equal worth, and thus endowed with inalienable rights, is rooted in our religious heritage. The language of human dignity and worth implies a great family in which a benevolent and sovereign Father binds together all his children in love and justice. The originators of rights language presupposed a theistic world view, and secular advocates of equal rights are like children who see beautiful flowers, grab them, break them at their stems, and try to transplant them without their roots. The egalitarian assertions of the *United Nations' Universal Declaration of Human Rights* are similar to those of our *Declaration of Independence* with one important difference—God is left out of the former—but that makes all the difference. That posit (or something equivalent) is not just an ugly appendage but a root necessary for the bloom of rights.

While the thesis of equal human worth may not have been clearly recognized, let alone embraced, by ancient Israel or in all Jewish and Christian

quarters, the Jewish prophetic tradition and much of the Christian tradition, finds the thesis in the Scriptures: in such texts as Genesis chapters 1 to 3, which speak of God creating man and woman in His image and as valuable—"good"; in Malachi 2:10, where the prophet writes, "Have we not all one Father? Has not one God created us? Why then are we faithless to one another?" and in Ps. 8:3-6, where the Psalmist asks, "When I look at thy heavens, the work of thy fingers, the moon and the stars which thou hast established; What is man that thou art mindful of him, or the son of man that thou dost care for him?" and answers his own question, "Thou hast made him little less than God, and dost crown him with glory and honor. Thou hast given him dominion over the works of thy hands; thou hast put all things under his feet." The prophets Amos, Micah, and Isaiah, speak of God's concern being universal. They speak of a coming universal kingdom wherein all people enjoy peace and prosperity.²⁸

In the New Testament and in the early Christian church there are strains which point to the thesis that all humans are loved equally by God and are equally accountable to him for their actions. The moral law is revealed to each person, so that each will be judged by his or her moral desert. Still, even the sinner is of incalculable worth; like a corroded and distorted coin of the royal mint, he or she still bears the King's image.

Of course, in itself theism is no guarantee of equal worth, for God could have created people unequal. The argument implicit in the Judeo-Christian tradition seems to be that God is the ultimate value and that humans derive their value by being created in his image and likeness. To paraphrase the Psalmist, we are a little lower than God, mini-gods, as it were. With regard to possessing intrinsic value we all get equal grades.

There are two arguments for equal human worth which I find implicit in the Judeo-Christian tradition: the Essentialist Argument and the Argument from Grace.

The Essentialist Argument goes like this: God created all humans with an equal amount of some property P, which constitutes value. The property may be a natural or a non-natural one. If it is a natural one, then conceivably we could discover it and act upon it without needing God (though we might still need the incentive of divine grace or sanctions to respond appropriately to this value). The property could be simple or complex, and we might not easily identify it.

If it is a non-natural property, the only reason to suppose that we possess it is that our theory says we do. The fact that we cannot identify it constitutes some evidence against the theory itself, but if there are good reasons to accept the theory as a whole, one might be content to live with mystery.

Human rights fit into this scheme as the sort of dignity-recognition claims that creatures of divine value are entitled to make against one another.

The second argument which I find in the Judeo-Christian tradition is the Argument from Grace. Strictly speaking it is not an egalitarian argument, if egalitarianism means that each person has equal intrinsic worth. Here the actual value may be different in different people but grace levels or compensates the differences. It raises the least best off until they are equal with the best off.

The Argument from Grace often makes use of the family metaphor. God is our Heavenly Father, and we are all family, brothers and sisters of each other. As our Father, God loves us each equally and unconditionally, and wants his or her children to love each other. All humans are his children and as such we should be concerned about their welfare.

One illustration of this argument occurs in the Sermon on the Mount recorded in the Gospel of St. Matthew, chapter 5, beginning at verse 43. Jesus shows how the Old Testament already commits one to universal love, love of one's enemies as well as one's friends. "Ye have heard that it hath been said, Thou shalt love thy neighbor, and hate thine enemy," he says, echoing the usual interpretation of the Torah (Lev. 19:18 and Deut. 23:6), a common sense morality that is found throughout the world. Then Jesus seeks to transform their moral sense by showing his disciples that they ought to love their enemies also. "But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you; That ye may be the children of your Father which is in heaven: for he maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust. For if you love them which love you, what reward have ye? Do not even the publicans the same?... Be ye therefore perfect, even as your Father which is in heaven is perfect."

The argument goes like this:

1. God is perfect (Matt. 5:47).
2. Everyone who is morally perfect loves his children, brethren and friends.
3. The evil and the good are God's children (Mal. 2:10).
4. You and your enemies are God's children (implication of 3).
5. Therefore God loves both you and your enemies (1, 2, and 4).
6. Your enemies are your brethren (from 4).
7. Therefore, if you would be an obedient child (i.e., perfect) of your Father, you ought to love your enemies as well as your friends (2 and 6).

Jesus pointed out that the whole of the Torah can be summed up in two Great Commandments found in the Torah: "Thou shalt love the Lord, Thy God, with all thy heart, and with all thy soul and with all thy mind" and "Thou shalt love thy neighbor as thyself" (Matt. 22:37f; Deut. 6:5; Lev. 19:18). As Jesus further points out in the Parable of the Good Samaritan, every human

has the capacity for becoming my neighbor. Whoever is in need and can be helped by my effort is my neighbor.

God commands us to love each other as members of a single family or neighbors, which translates into *prima facie* duties of meeting basic needs (including the need for life itself and freedom). From the duty to God to serve our fellows, our fellows derive a *prima facie* right to have their basic needs met. If God commands A to treat B as a free agent, then B receives a right to freedom against A. All human rights are derived from God's loving commands.

The Argument from Grace is a version of the divine command theory, though it does not entail reducing all morality to divine commands. Some moral duties may be based on human nature, while the duty to equal regard for the welfare of all persons may be a product of God's command. That is, morality may be a combination of divine commands and rational discoveries.

The two arguments can stand separately or together in making the case for the thesis of equal human rights based on equal worth. That is, it is the God-relationship that provides the metaphysical basis for this thesis, whether the equality comes in at creation or whether it is due to grace.

One suspects that the real motivation behind Kant's view of humanity's having equal and intrinsic worth is his own religious heritage, which is always lurking in the background. In the *Critique of Judgment* he reveals his theological-teleological assumptions. "Man is the final end of creation. Without man the chain of mutually subordinated ends would have no ultimate point of attachment."²⁹ As Keith Ward and others have persuasively argued, without this religious teleological metaphysic, Kant's moral theory makes little sense.³⁰

As Alan Donagan explains, this fundamental principle of the Hebraic-Christian tradition, most explicitly articulated by Aquinas and Kant, has far-reaching implications. It means respecting every human life, no matter how retarded or vicious or perverted, as an inviolable fundamental good. This sacred regard prohibits exploitation, such as slavery, manipulation, and perhaps even violence in self-defense (Matt. 5:39). Equal concern for each other's needs transcends utilitarian considerations.³¹

Of course, I do not mean to say that the Judeo-Christian tradition is the only logical basis for a doctrine of positive equal worth. I am simply saying that this has been our historic basis. One could opt for a Stoic pantheism which maintains that all humans have within them a part of God, the *logos spermatikos*. We are all part of God, chips off the old divine block as it were. We could even choose forms of dualism or polytheism, arguing that different gods created different races in their own images. The races evolved at different paces from different sources, being guided by the invisible hand of a rival god, but since the gods are essentially equal and have the power to endow their creation with that quality, each human being is equal—though unrelated. Here equal worth exists without the universal family metaphor.

The possibilities are frighteningly innumerable. My point is that you need some metaphysical explanation to ground the doctrine of equal worth. It is not enough simply to assert, as philosophers like Dworkin do, that their doctrines of human rights and equal human worth are “metaphysically unambitious.” In this area metaphysics is the Capital on which human rights depends as interest.

Objections

Finally, I must address two important objections to my thesis that the basis for the doctrine of equal human worth is located in the Jewish-Christian version of theism.³²

Objection 1: If the empirical facts belie the secular theory of equal worth, why don't they equally challenge the religious version of this theory?

Response: Both religious and secular egalitarians must deal with recalcitrant empirical data, the unequal rationality, wisdom, morality, ability and talents of humans. My argument has been that secular theories have failed to provide a metaphysically rich explanation to justify the notion of equal worth in spite of the evidence, whereas religious theories have. The burden of my criticism has been levelled at the very eschewal of metaphysics which the secular theories embrace. The theist acknowledges the empirical data but reinterprets it in the light of his or her theology. To a considerable degree the thesis of equal human worth must be acknowledged as a mystery of faith.

Objection 2: You dismiss the possibility that an equal worth doctrine might be a foundational assumption in someone's ethics. You urge the secular egalitarians to find better arguments for their position or give up the doctrine of equal worth. But if we have to assume a questionable religious metaphysic in order to justify the equal worth doctrine, why not simply assume equal worth in the first place?

Response: Accepting egalitarianism as foundational, that is, without supporting evidence, has, to quote Bertrand Russell, “all the virtues of theft over honest toil.” It has all the problems of intuitionism—there is no basis for discussion or argument with people who don't share the intuitions. Even religious foundationalists, who see belief in God as properly basic, admit that it is preferable to have arguments for properly basic beliefs. If we're reduced to merely pleading that egalitarianism is innocent until proven guilty, the doctrine has lost much of its force. It is reduced to a matter of private secular-religion, an existential leap, but not a rationally derived doctrine.

As far as religion goes, its case may be weak, though not as weak as some might think. If it turns out that it is irrational to believe in an equality-bestowing-Creator, then the correct move would be to give up the belief in equal human worth to ground human rights.

Conclusion

It is a puzzling irony that during most of the time that egalitarian Judeo-Christian metaphysics flourished, so did gross inequalities: slavery, classism, anti-democratic elitism, sexual and racial discrimination, and ethnocentricism; whereas during our age when the leading metaphysic is value-less or value neutral (all life plans are equally valid—at least as long as they tolerate or respect others), equality is busting out all over. Elitism is the unpardonable sin of our day in a culture that has bought Rawls' difference (maximim) principle. Discrimination is condemned on every front—unless it is reverse discrimination. It's as if our culture has finally realized the attractiveness of the egalitarian edifice just when its capital has run out and now is building on the remaining interest from a bank account that has been closed. The idea is in danger of bankruptcy.

I have argued that at best, secular egalitarians have made it a posit of faith that all humans are of equal worth. They have not offered plausible reasons for their thesis, and, given empirical considerations, inegalitarianism seems plausible. I have suggested that we are living off the borrowed interest of a religious metaphysic, for the notion of equal worth finds its natural setting in a theistic world view, which even the principal founder of the notion of equal human worth supposed. I have not argued that theism is true, but since it is such a fitting premise for egalitarian arguments, egalitarians should at least give it serious consideration. Failing that, they should either find independent arguments for the notion of equal human rights or join Arthur Danto in frankly admitting that the claim of human rights is without foundation, simply a clever bluff.³³

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NOTES

1. Among the most prominent recent works on equal human rights are: John Baker, *Arguing for Equality* (London: Verso, 1987); J. Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980); Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University, 1977); Alan Gewirth, *Human Rights* (Chicago: University of Chicago, 1982); Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974); Ellen Paul, Fred Miller and Jeffrey Paul, eds., *Human Rights* (Oxford: Basil Blackwell, 1984); John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); Jeremy Waldron, ed., *Theories of Rights* (Oxford: Oxford University Press, 1984); L. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1989); and Morton Winston, ed., *The Philosophy of Human Rights* (Belmont, CA: Wadsworth Publishing Company, 1989).

2. For skeptical soundings on rights see Joseph Raz's articles, "Right-Based Moralities" (in Waldron, *op. cit.*); Douglas Husak, "Why There are No Human Rights" (in Winston,

op. cit.), and Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1981). For two relativistic views on human rights, see J. L. Mackie's "Can There be a Right-Based Moral Theory?" (in Waldron, *op. cit.*) and Arthur Danto, "Constructing an Epistemology of Human Rights: A Pseudo Problem?" (in Paul, *et al.*, *op. cit.*).

3. Arthur Danto, *op. cit.*, p. 30.

4. Jacques Maritain, *The Rights of Man and Natural Law* (New York: Charles Scribner, 1943), p. 37. For a good introduction to the significance of human rights see the introduction and readings in Morton Winston, *op. cit.*, Mortimer Adler's statement is representative of contemporary egalitarians: "All human beings are equal as human. Being equal as humans, they are equal in the rights that arise from needs inherent in their common human nature. A constitution is not just if it does not treat equals equally. Nor is it just if it does not recognize the equal right of all to freedom—to be ruled as human beings should be ruled, as citizens, not as slaves or subjects." *Aristotle for Everybody* (New York: Bantam Books, 1978), p. 114.

5. See Richard Taylor, *Ethics, Faith and Reason* (Englewood Cliffs: Prentice-Hall, 1985) on this point. I take Aristotle as a good example of secular ethics, for although he probably was a deist, God did not play any decisive role in his ethics. The Stoics are, of course, an exception to the generalization that I have put forth in that they did believe in the equal worth of all people based on a pantheistic materialism which posited the seeds of the logos (*logos spermatikos*) or reason in each person, uniting all humans in a cosmic brotherhood.

6. Plato, *Republic* 588c. See also his *Laws* 757a: "For when equality is given to unequals the result is inequality, unless due measure is applied."

7. Aristotle, *Politics* I:5, p. 1255.

8. For a useful discussion of the origin and development of natural rights theories see Richard Tuck's *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).

9. Thomas Hobbes, *Leviathan* (Indianapolis: Bobbs-Merrill, 1958), ch. 13, p. 104f.

10. Kant, *Foundations of the Metaphysic of Morals*, trans. Lewis White Beck (Indianapolis: Bobbs-Merrill, 1959), p. 46f.

11. See Robert Paul Wolff, *The Autonomy of Reason* (New York: Harper & Row, 1973), p. 174f; H. J. Paton, *The Categorical Imperative* (London: Hutcheson, 1947), p. 167f; David Ross, *Kant's Ethical Theory* (Oxford: Oxford University Press, 1954), p. 48f; and Bruce Aune, *Kant's Theory of Morals* (Princeton: Princeton University Press, 1979), pp. 70-83.

12. Kant, *op. cit.*, p. 70.

13. Ronald Dworkin, *op. cit.*, p. 184. For a similar strategy which uses the analogy of a family to give life to the egalitarian assumption see Gregory Vlastos, "Justice and Equality," in Jeremy Waldron, *op. cit.*, p. 51. Cf. note 16.

14. Kai Nielsen, *Equality and Liberty* (Totowa, NJ: Rowman and Allenheld, 1985), p. 95.

15. Joel Feinberg, *Social Philosophy* (Englewood Cliffs: Prentice-Hall, 1973), p. 93f.

16. Part of Feinberg's concept of justice seems to depend on Rawls' idea of "justice as fairness," which I will deal with under my discussion of Rawls.

17. Isaiah Berlin, "Equality as an Ideal" in *Justice and Social Policy*, ed. Frederick Olafson (Englewood Cliffs: Prentice-Hall, 1961); R. S. Peters and S. I. Benn, *Social Principles and the Democratic State* (London: George Allen and Unwin, 1959), ch. 5; R. S. Peters, "Equality and Education," S. I. Benn and R. S. Peters, "Justice and Equality," and Monroe Beardsley, "Equality and Obedience to Law," all in *The Concept of Equality*, W. T. Blackstone, ed. (Minneapolis: Burgess Publishing Company, 1960). Benn and Peters recognize the negative character of their definition and appeal to the principle of relevance to fill in the positive content (*op. cit.*, p. 111f). E. F. Carrith in *Ethical and Political Thinking* (Oxford: Oxford University Press, 1947), p. 156f writes, "Equality of consideration is the only thing to the whole of which men have a right, [and] it is just to treat men as equal until some reason, other than preference, such as need, capacity, or desert, has been shown to the contrary."

18. Isaiah Berlin, *op. cit.*

19. Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978), "Epistemology of Human Rights" in Ellen Paul, *et al.*, *op. cit.*, and *Human Rights: Essays on Justification and Application* (Chicago: University of Chicago Press, 1982). Peter Singer, *Animal Liberation* (New York: Avon Books, 1975), and Thomas Nagel, *Equality and Partiality* (unpublished manuscript distributed to the Law and Philosophy class at NYU, fall, 1990), and *The View From Nowhere* (New York: Oxford University Press, 1986).

20. Nagel, *Equality and Partiality*, p. 12.

21. Singer, *op. cit.*; Tom Regan, "The Case for Animal Rights" in *In Defense of Animals* (Oxford: Blackwell, 1985).

22. Robert Nisbet, "The Pursuit of Equality," *The Public Interest*, vol. 35 (1974), 103-120.

23. Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), p. 88.

24. John Rawls, *op. cit.*, Section 77; p. 505.

25. John Harsanyi, *Essays in Ethics, Social Behavior and Scientific Explanation* (Dordrecht: Reidel, 1976); Harry Frankfurt, "Equality as a Moral Ideal," *Ethics*, vol. 98.1 (Oct. 1987).

26. John Rawls, *op. cit.*, pp. 3, 178, 252f, 312f, 440-44.

27. Kai Nielsen, "On Not Needing to Justify Equality," *International Studies in Philosophy*, vol. XX/3 (1988), pp. 55-71. Steven Ross made a similar suggestion to me in conversation.

28. See Lenn Evan Goodman's "Equality and Human Rights: The Lockean and the Judaic Views," in *Judaism* (1984) for a similar interpretation.

29. Kant, *The Critique of Judgment* (Oxford: Oxford University Press, 1952), trans. J. C. Meredith, p. 99.

30. H. J. Paton, *The Categorical Imperative* (Chicago: University of Chicago, 1948), p. 15; Keith Ward, *The Development of Kant's Theory of Ethics* (Oxford: Blackwell's, 1972), Chapter Seven.

31. Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 57f.

32. These objections were raised by Robert Louden, Peter Simpson and Richard Arneson.

33. Versions of this paper were read at the Central Division of the American Philosophical Association in New Orleans, April 1990, to the Graduate Faculty of Philosophy at the City University of New York, and to the Society for Philosophy of Religion in San Antonio, Texas. I am indebted to Richard Arneson, Robert Audi, Darrell Johnson, Larry Lacy, Michael Levin, Robert Louden, Alasdair MacIntyre, Tibor Machan, Steven Ross, William Rowe, Peter Simpson, Tziporah Kasachkoff, and Robert Westmoreland for comments on previous drafts of this paper which led to the present version.