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## **The Egalitarian constitution: modern identity in three moral values**

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## **PART II: What is it like to be equal?**

The purpose of this part of the book is to show what it is like to be equal by way of illustrating its common modern instance, the egalitarian mind. *Equalitarians* take up the mindset because, both conceptually and practically, ‘equality’ alone—namely, ‘more equality’—is not enough to secure the basic sense of the modern value of universal equality. It is thus fortunate that equality alone is not what moderns are after, after all. Their alter-conscience protests otherwise, with a Jacobine insistence, but the innocence of ‘mere equality is enough’ is broken by equality’s totalizing and violent insistence on levelling, its ravenous desire for more. The alter-conscience is always wakeful worrying about inequality, imagining grand and total (and just as often violent) schemes to make the world instantly fairer. It whispers that ‘the human race has before it splendid destinies of various kinds’, the only road to them is found ‘in the recognition of substantial equality between all human creatures’.<sup>1</sup> But that road is littered with headless corpses and inundated boats full of those who were not revolutionary enough to become universally equal, on the road the Gulags. Moderns have come to realize—as anyone would who toyed with so sharp an instrument—that something else is needed to balance, to control, and to channel the great power that is universal equality.

The ‘container’ that moderns use to temper and tame and direct the equality impulse, which has become their alter-conscience, is the modern mindset: ‘the egalitarian mind’. It sometimes acts like a neutral agent that helps the medicine to be digested safely, and at other times it functions like circuitry that routes otherwise dangerous electricity to beneficial uses. ‘Justice as fairness’ serves as the best contemporary instance of this mindset, and for that reason I compared it to the older sense of justice as *summ cuique*, which it has attempted to replace. ‘Justice as fairness’ is used to defend a less destructive form of equalization of resources and access, often called ‘social democracy’, after humanity’s traumatic experience with modernity’s totalizing instances of equalitarianism, such as Marxist communism, proved deleterious not only of the Right but also of the Good of equality.

I set the stage for the comparison of justice as fairness with thought experiments that might excite your equalitarian alter-conscience and cause you to resort to some of the security of the egalitarian mind in order to

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<sup>1</sup> James Fitzjames Stephen employs the phrase in defining Comte’s ‘Religion of Humanity’, *Liberty, Equality, Fraternity*, 3ff.

prevent equality's excesses. As you resort to the egalitarian mind, and find your social imaginary participating in an egalitarian regime of likeminded persons, I'll describe some of its elements, which you will likely also have taken advantage of in order to save equality from itself, and to save you and yours from it as well.

### **Thought experiment: Fair science**

A modern liberal democratic republic has had the good fortune of birthing a citizen whose intelligence is higher than any ever recorded. From an early age she, let's call her 'Suzy', began solving mathematical and practical problems that had baffled previous generations of thinkers. She turned her attention to medicine during university and led a team that developed an AIDS vaccine. Then, even more miraculously, she cured the common cold with an inexpensive enema. She dedicates most of her waking hours to advancing practical knowledge that benefits humanity, with the knock-on effect of increasing her personal wealth and library of patents. In the process, she has founded some of the most successful technology and R&D companies in the world. She is now also one of the wealthiest persons in the world at age 33.

Her government increasingly exercises a modern progressive tax scheme, so that the more successful she becomes, the greater share of her income is allocated to the public fisc. Once that ceases to be sufficient to the public's 'needs', they alter the laws on intellectual property 'for the common good', causing many of her patents to fall into public ownership after only five years. After twenty years of diminishing returns, Suzy no longer sees any incentive in spending her time solving other people's problems. After all, she has already done more than any other mere human before her to ameliorate the plight of humanity. She does not believe in any reward in the afterlife, and so she wants to spend the rest of her life enjoying being alive. She thus decides to retire at fifty-three, and proceeds to divest herself of interest in business and scientific research.

But rumours have been flying for years that she has more or less figured out cold fusion. With a couple more years of research, it might provide unlimited and nearly free energy to all of humanity, but first it would benefit to the citizens of her land. She is kindly asked by the Minister of Energy to complete the work. She refuses, preferring instead to emigrate to an island atoll, and live out her days away from such acquisitive persons and states.

Her leaders respond by taking her passport, arresting her, and quarantining her. They tell her that for the good of all, she must produce the

formulas for cold fusion. It is *unfair* that she keeps this great benefit to herself. She won the lottery of birth, and now she has the *moral responsibility* to give back. If she refuses, then she will be detained indefinitely.<sup>2</sup> She vows that she will commit suicide rather than be tormented in this way, and goes on hunger strike. The state hospitalizes her, and actively force-feeds her. And the battle for her knowledge ensues.

Shouldn't she just give the formulas? Isn't that the 'fair' thing to do?<sup>3</sup> Or, is it the other way round, that any state that would coerce her into working in this way—becoming literally a captive slave—is always on the wrong side of equality?<sup>4</sup> The question boils down to: Can 'equality', or its more particular inflection as 'universal equality', tell us what to do here? Does it come down either on the repugnant side of torturing one woman for the sake of the health of all humanity or on the tragically bleak side of denying free energy to the world, and thus presumably resulting in millions of preventable deaths and a continued low general living standard for two-thirds of the world.<sup>5</sup>

You are probably retreating either to deontological or utilitarian calculations to justify the side that you find 'equality' to be on; or, likewise, you might well begin by condemning the side that you find 'equality' to be against. But neither of those ethical approaches are native to the value of 'universal equality' (albeit that deontological certainty does mesh with equality once the question of who or what is to be equalized has been determined, as often on utilitarian grounds as not).

Is it not the case that Suzy is an autonomous person, who must consent to moral obligations before they are ascribed to her? Hasn't a liberal democracy betrayed its very mandate and become the opposite of itself when it sustains itself on the suffering of even one innocent? All must be treated to the same justice under the law. That is what equality means politically, right?

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<sup>2</sup> See Grahame Lock's article 'Self-ownership, Equality of Resources and the case of the Indolent Indigent' R&R (1989) JRG 18 AFL 1., from which I took inspiration from for this example. Rawls, Marx, and many others who see only randomness in the assignment of excellences at birth ('luck', they call it) have had to treat talents as just another resource for exploitation and distribution. This temptation cuts across modern political philosophies and cultural *nomoi*. Think of the business concept and department of 'human resources'. Some 'human resources' are consensually exchanged (labour), whilst others are appropriated like so many taxes.

<sup>3</sup> Would you think any differently of the example if Suzy were Sam instead?

<sup>4</sup> Does your assessment change if Suzy were black, or from some other formerly enslaved/maltreated population?

<sup>5</sup> This choice is seemingly less problematic, since it involves the denial of a good rather than the visiting of harm; and in that the harm is both spread out over time and involves millions of nameless and faceless persons. Whether it is actually less wrong *for those reasons* is not clear.

That is its slimmest formal realization in receiving ‘equal justice under law’ (which is, incidentally, emblazoned on the United States Supreme Court building).

Or is this, rather, a case of one person, Suzy, holding the rest of humanity hostage simply because of her moral luck?<sup>6</sup> Imagine if all farmers decided to burn their harvests instead of bringing them to market, citing the fact that they own the land and the products that they have mixed their labour with.<sup>7</sup> Would they not be forced to hand it over? Moreover, and again, Suzy’s intelligence comes about simply because of the luck of birth. She had the freedom and resources to develop it because of the society around her, the government, and the positive and negative peace that those provided. Doesn’t she owe it to everyone else to share this knowledge?<sup>8</sup> Isn’t her knowledge in some way also the property of her society? Of all humanity even?

In short, by which principle would you deprive her of her freedom and life, coerce her, threaten her, remove her from society, and thereby set such a precedent about the collective use of ‘resources’?<sup>9</sup> Alternatively, what is the principle or value by which you would allow her to keep her knowledge to herself? Which of these is unrelated to an understanding of ‘equality’?<sup>10</sup> Is equality alone enough to determine what is just to do in such a circumstance? If it is not, what could we add so that a just outcome could be decided on?

Is ‘personal autonomy’ as a value enough to add to universal equality to guide the situation to the good? What about the necessity for consent before

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<sup>6</sup> Does the example change, if, rather than discovering cold fusion, she has found a way permanently to prevent inflation from reaching more than two percent worldwide? Or for perpetual, controlled growth? Or if she has stockpiled so much money, after taxes, that *if* she were to decide to dump it at once, all would suffer from a great deflation?

<sup>7</sup> An example derived by Lawrence Cahoon based on arguments in perhaps the first self-styled anarchist, Pierre-Joseph Proudhon, *What Is Property?* (1840).

<sup>8</sup> Recall Hobbes’s understanding of the ‘overmighty subject’, whose power, be it direct or by way of influence, made him a danger to public order and the peace. He was to be dealt with, presumably not unlike Athens and the other *poleis* dealt with their over-mighty *citizens*, by way of exile or death penalties at times, if he could not be brought into the service of the Commonwealth.

<sup>9</sup> Echoes Nozick’s ‘Wilt Chamberlain’ example against ascendant forms of distributive justice—including Rawls’s ‘difference principle’—in *Anarchy, State, and Utopia*, 161-164.

<sup>10</sup> In the article, ‘The Empty Idea of Equality’, *Harvard Law Review*, Peter Westen argues that ‘the endurance of the principle [of equality] is due to the fact that it is empty of content. For the principle to have meaning, it must incorporate some external values that determine which persons and treatments are alike, but once these external values are found, the principle of equality becomes superfluous.’ What we tend to want when we ask for equality is not a fair, even or equitable distribution of some goods. It is rather a reduction in inequality of something, a ‘more equitable’ society, or in the baffling phrase a ‘more equal’ society.

an obligation is laid on someone? It is unclear whether, based on modern values, and enforced through modern virtues and institutions, the answer would *have to be* one or the other, that is, by necessity, moral or otherwise. Put plainly: It is unclear whether we would protect Suzy or use her as a means to everyone's benefit. We moderns would like to think we would never cause even one innocent to suffer for the good of all. But few moderns oppose drafts in a time of war, when male bodies are needed to protect the realm (or just as cannon fodder for the ambitions of great men). Why is a body any more appropriable to sacrifice for the common good than one's privacy regarding knowledge?

I suspect that pushing this example in the direction of its logic—allowing the alter-conscience to enforce equality—yields uncomfortable conclusions for the modern equalitarian. One will need to build up defences, at least, in the values of personal autonomy and consensualism (and their sub-values like freedom and assent, respectively), to try to control universal equality.

Yet, if it cannot finally be controlled by the egalitarian mind, the modern constitution will have been revealed as an insufficient order for achieving the human good. In the conclusion of this book I return to the question with the full trifecta of modern values and attempt to provide a positive answer to the question. For now, I'll delve a bit deeper into just what 'equality' is for moderns as a value and virtue. Then, I'll compare it to the proportional equality that 'universal equality' has been designed to subvert and surmount.