The Egalitarian constitution: modern identity in three moral values

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Chapter 6: The Egalitarian Mind

The purpose of this chapter is to show the ostensible solution to the problem of the previous chapter in the egalitarian mind. By the end of the previous chapter it was shown that the insatiable demands of the alter-conscience, which will destroy all concerned if it gets its way, require a container. Or the equality impulse needs to be tempered and tamed, not to cease to become a reduced version of what it was meant to be, but to become a liveable approximation of justice for persons. 'Justice as fairness' is its best contemporary example. This is not the limited version, which limits justice to a political virtue, but the broader metaphysical vision of justice as fairness, and fairness as goodness—the Good and the Right are more or less covered by justice. Although I'll spend some time describing the limits and terrain of the most prominent manifestations of the egalitarian mind in our age, these are always meant also to be comments about the ordinary character of modern values.

Before we were all egalitarians

There was a time before we would all affirm a form of political and social egalitarianism such as that which John Stuart Mill gave us when he says: 'All persons are deemed to have a right to equal treatment except when some recognised social expediency requires the reverse'.[1] Mill was announcing to the much-changed world Anglo-American world of mid-nineteenth century, what had emerged into an identifiable and common enough cast of mind only two generations before.

In its infancy, the Egalitarian Mind had benefitted from contemporaneous conceptions of what equality meant. They varied as much as they were truly various—from Thomas Paine's secular liberal religiosity ('My own mind is my own church'[2]) to George Fox's and the Quaker's Christian heresy that each can be church of one, with one's own private revelation of Christ; or one could even be a new incarnation of Christ.[3] All were not only equal but equally divinely superior, a phrase that makes a much

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[1] *Utilitarianism* 5.36.

[2] Thomas Paine *The Age of Reason*, Part 1 (1793).

[3] George Fox left little more than his legacy as an evangelist and his journal. The latter is of interest for the study of the transition of spiritual equality into practical theology (a term he would abhor). Cf., *The Journal of George Fox* (1952 [1694]).

literal sense as 'more equality', but which, nevertheless, tokens the meaning of equality as a universal superior status. These eighteenth-century thinkers and politicians extended into the secular institutions the long-held truth of spiritual equality. It had long been preached from pulpits and practiced in monasteries and cloisters.

But these early evangelists of the egalitarian mind also continued in a revivified tradition of universal spiritual brotherhood, which wherever taken as a social prescription, resolves itself in the disappearance of difference, *and* a quest for total unity. In this rendering, equality and peace tend to be twinned values. St Paul had adumbrated this when claiming there is 'neither Jew nor Gentile, neither slave nor free, nor is there male and female, *for you are all one* in Christ Jesus.'[4] Finding it hard to convince the inveterately hierarchical Romans of, the early church had tucked that truth away in a chest with the more eccentric prophetic statements, along with Jesus's apparent *revocation* of what is Caesar's.[5] But Luther, following Augustine, and the Anabaptists following Luther's logic, cut down much of what had separated Christians from the teaching about 'spiritual equality'. In Munster they tore it down, in a fit of revolutionary equalitarian zeal. The reaction against that zealous holdout was so strong—uniting Catholics and Protestants in a fight against the radical reformers—that it might have set back the political realization of spiritual equality by a few hundred years. Yet, the ideals collected and gained mass like so much mercury that has been scattered and slowly returns to its unified state.

Along with the musings on spiritual equality came the elevation of another ancient ideal of personal relations: friendship. This was now understood to be relations *as if equals*, and at times a 'qualified equality'.[6] Friendship was meant to supplant stronger ties of kinship and blood. Friendship, as a consensual relation, was thought to decrease inequality, rather than enforcing hierarchy as so many other relations do by the fact of their being ascribed and defined heteronomous (master-slave, father-son, husband-wife, older sibling to younger sibling). The revolutionary call for *Fraternité* is a

[4] Galatians 3:28 (emphasis mine). Paul communicates a similar message in his epistles: Cf. Romans 3:22; 1 Corinthians 7:19. In Colossians 3:11, he leaves out the abolition of sex differences: 'Here there is no Gentile or Jew, circumcised or uncircumcised, barbarian, Scythian, slave or free, but Christ is all, and is in all.' Perhaps that was the most jealously held difference?

[5] One obvious reading of an itinerate preacher's words is that it is dismissive of Caesar's pretence to own anything.

[6] See 'The Aristotelian Framework: Conformity of Wills between Unequal Friends, 43-44, in Daniel Schwartz, *Aquinas on Friendship* (2012 [2007]).

mimicry and a mockery of familial and religions duties that it seeks to replace; and even more directly, is it an attempt at supplanting duties of patriotism with duties to 'peers'. This becomes stark when politics, often formerly understood as involving a relation of children to a father (be it to the *patria* or the sovereign), becomes brothers without a father; or, siblings with an absentee father in the being of a deistic God. One now becomes involved with others in a political bond that is not forged in shared origin in a father(land) or in a God who was or is active in history. Rather, it is a shared commitment to the same idea or ideals, those that make us a family. It is friendship, 'political friendship' as Aristotle calls it, that now makes us brothers.[7]

Traditions of equality

There are at least two great traditions of equality in modern Western thought, and at least two in ancient thought. All of them have been adumbrated or referred to in what has preceded. The egalitarian mind has borrowed from each tradition, resulting in an alloyed conception of equality. Dividing modern from ancient equalities allows for a surprising realization of just how novel modern egalitarianism is. Although I'll take some care so as not to present the ancients as egalitarians, it cannot be denied that the concept and relation of equality was useful and used, even if in a limited way, in the ancient societies that we know best.

Ancient equalities find their roots in Attic and Koine Greek traditions: one is pagan, the Aristotelian, and the other is Christian, more properly understood as Pauline. The division I am drawing here between modern and ancient is really one between modern and pre-modern. Yet Greek and Roman antiquity remained sources of ideas of what equality is and its place in human life until well into the modern age. Where ideas with modern names such as 'meritocracy' are ascendant, an older conception of proportional equality persists, even if the availability of merit-based rewards is altered from the limited set of citizens to a set that includes all persons, the principle basis of distribution is self-same, The influence of our ancients is not always direct; there were times of partial cultural amnesia; much was lost and only regained centuries later. But the habits and customs of Western culture persisted even when only a third of Aristotle was known to the most learned among them, as

[7] Aristotle lists political friendship as one of three kinds of friendship Bk VIII:II-III of the *Nicomachean Ethics*.

in the Middle Ages. The ideas had been digested and turned into the nomoi and cultural identity of the ancestors of the North Atlantic peoples.

Modern equalities

It is possible to speak of at least two distinct forms of modern equality. Their differences are so marked that each eventually speaks a different philosophical language, even as they routinely are used to support similar modern personal, social and policy goals. For instance, there divergence in principle has not prevented them from being brought together in political experiments, such as the United States of America. These are also the most prominent ways of considering equality in any frame of mind that might rightly be called egalitarian, and any culture that is justly called modern.

First there is the natural liberty tradition commonly exemplified in Locke. It affirms that '[m]en [are] by nature all free, equal and independent'.[8] This tradition is an inheritor of the thought of Grotius, Pufendorf, and Hobbes before him, in teaching that life, liberty and land are not to be denied to anyone without due process, once guaranteed by some kind of 'right'. 'Right' is the term on which these thinkers will stake their claims, each with differing conceptions or concepts doing the work behind the terms. Their resulting teachings on natural law/right will differ as greatly as their points of departure differed. This right might arise from original possession or acquisition, in one taking something out of nature and making use of it. And it remains in place by control or power that is exercised over the property. This would in principle exclude ownership of the high seas, until or unless one can possess and control them. For those things that one can eventually own, one acquires original ownership if one transforms nature from its undifferentiated existence unto something more useful or valuable to himself than the time it took to make it: he sharpens a rock into an arrowhead, affixes it to a stick, and adds feathers. By that acquisitive labour he is now the owner of the resulting weapon.

This model is also used to explain how a *man* possesses himself *morally*, particularly his own liberty. Just as a *person* can own a piece of property *legally*, either by original acquisition or by just transfer from its current owner, a person owns his liberty morally by taming it and directing it toward his chosen ends. Those creatures that can possess themselves are understood to be natural persons (rather than legal persons). Personal identity includes the

[8] *Two Treatises of Government*, (1988 [1690]), para 95.

body and all that transpires in and through it: particularly 'labour' in Locke's philosophy. To trespass on his person—or anything the person does rightly—is to tread on his territory. Usually, the reverse is also true: to trespass on his territory is to tread on his person (i.e. to harm him in some way).

The concept of privacy on one's own land has a parallel in this line of liberal thought in the freedom of conscience. There is a geographical sense to privacy that makes this obvious: the conscience is 'in(side)' the person's body. Freedom of conscience itself, when not fully manifested in freedom of speech or freedom to go where one wills when one wills, tends to manifest itself in the Lockean side of autonomy. This involves self-determination (within the bounds of some basic rules) and self-defence. In both cases particularly this involves what one does with one's body. Although expression of one's deepest beliefs might not be seen as a necessary extension of this form of freedom rooted in equality, it is still the case that the conclusions of conscience that lead to actions are permitted, say, in contracting for sales and for use of one's labour, as well as deciding where one might live, etc. All kinds of individual freedom are extensions of this bodily autonomy. Broadly speaking, these make pro-contractual forms of social and (pre-)political relations the most obvious go-to forms amongst such free, equal, and independent bodies (without having to *argue* that the state itself is founded merely on a contract).[9]

In its original design, the United States of America is by-and-large a Lockean settlement in the way its doctrine of equality manifests itself. For instance, the right to bear arms of the Second Amendment of the United States Constitution has long been interpreted to be an individual right to keep, own, and use firearms for one's own benefit and protection of life and property. In that way this right connects privacy, self-protection, self-determination to the property of the literal arms and limbs and bodies that own them. Nevertheless, even as America retained Locke's attaching of liberty to land, and of equality of access to the right of having both liberty and land, Thomas Jefferson altered the language of Locke's phrase slightly but meaningfully. In Jefferson's appropriation of Lock's phrase, 'land' is replaced by 'the pursuit of happiness'. He probably did this so as not to exclude non-landowners from the revolutionary movement. Yet, his alteration proved to

[9] Typical of the Egalitarian Mind is Dworkin's 'persistent strategy … to locate the essence of rights not in individuals and their needs but in the exclusion of arguments or political justifications opposed to equality.' P Yowell, *Constitutional Rights and Constitutional Design* (2018).

be a door into the American settlement for another set of ideas about equality. This was done without Jefferson or the Founders ever defining 'happiness', and perhaps without claiming that it need be or even could be defined for individuals *a priori*. 'Equality' consists in access to life, liberty and the pursuit of happiness. 'Happiness' gets us to the second form of equality.

The other modern form of equality tracks well to the form of self-discovering autonomy of Jean-Jacques Rousseau. Kant, and Hegel, Marx and Engels, Bentham and Mill all appeal to it in various places. It can be encapsulated in the cry of revolutionaries. '*Egalité!*' is a word whose intellectual progenitor is Rousseau. It is more about equality as participation, be it in the means of governance or the means of production. It, as we shall see, is also a byword for various kinds of autonomy. Words like 'inclusion' and 'access', and 'diversity' and 'respect' are expressions of what it is meant to accomplish (although they only indirectly answer what 'equality of…' should be filled in with.) Non-discrimination laws are often motivated by *Egalité*.[10] With the Rousseauian philosophy of equality, there is less fuss about allowing for contractual and other self-directed freedom to be the outcome of equality, although that is manifestly one desire of those who espouse *Egalité*. Or at least the fuss is not about equal access to personal liberty *above all else*. It is rather about including, or better, *not excluding*, anyone from the good life (however construed by that person within the bounds of the harm principle). Always bearing in mind that a large part of the good life is enjoyment of *Egalité* itself. That equality itself in the abstract is now considered a good in itself must be returned to. When asked what sort of society they want to live in, moderns often say one which has greater equality. We know part of what they mean is distribution of goods. But there is also the *intention* to distribute in a certain way and the disposition to do so. Moderns like people who refrain from judging in advance of personal experience, and they have epithets for people who do not do so.

Inclusion in society is considered a bona fide good, so long as the society is based on the right principles, ultimately with equality at the centre. If one does not want to be included in a good state, one will be made to do so anyway. For, this form of equality is also a universal good. With a romantic

[10] Although, they could also be set up in order to prevent Lockean equality from being trampled upon, as when property rights are adjudicable by almost anyone in small claims courts in most Western countries. Non-discrimination does attempt to restore equity in relations where power is unequally distributed. Contract laws involving consumer protection and labour arrangements do the same.

notion of selfhood hovering behind Rousseau's philosophy, one can be in error about what is good for one's true self. One could also be 'in bad faith'.[11] Thus understood, 'equality' requires public education to ensure that one knows what is good for oneself and has the formation (the 'tools') to fight to acquire it.[12] When we hear that there is tremendous 'inequality' in a society, it is frequently about education, opportunity, or salaries (or all three chained together causally). It is about participation in these forms of affirmation and self-respect, as well as the formation that one needs to be 'author of one's own destiny', notably within the confines of equality as fairness.

These two traditions of modern equality are brought together in 'political liberalism' of the Rawlsian variety. Rawls was not so much constructing a new way of being an egalitarian, as giving a sophisticated example of how to merge Rousseauian egalitarianism within the confines of Lockean liberalism. Thus, the alter-conscience of the egalitarian mind is assured that it can have its cake and keep it too. Since the publication of *A Theory of Justice* in 1971, Rawls has achieved near saint status in fashionable scholarly and policy circles of North Atlantic lands. This was only a few years after the fruits of modern values had over-ripened into campus and urban upheavals. Those movements rejected not only traditional orthodoxies—residual hierarchies, heteronomies, and inheritances—but the idea of any non-consent-based orthodoxy itself. The very idea of authority has been called into question; an authority that needs to be argued for is no longer an authority, which is also true of the principle itself. It was an experiment with what Durkheim calls 'anomie', rather than anarchy (although many anarchists took part). It was seen as a time when the promises of universal equality, of 'liberty for all' as the American Pledge of Allegiance is daily pronounced, could finally be extended to all.

Rawls stepped in with his proclamation that justice is the first virtue of social institutions. On other accounts of the virtues of social institutions one might count survival and reproduction as one or other of the highest. That collective vision of material necessity never really meshed with the promises

[11] As the neo-Rousseau, Jean-Paul Sartre, called it, '*mauvaise foi*'. *Essays in Existentialism* (1993 [1965]), 160-9.

[12] Currently, in much of the North Atlantic world, 'literacy' is taught in place of reading. 'Literacy' means whole language, narrative, story-telling, diversity. Reading is those wretched 'rote' bits that are rumoured to turn children off to reading: grammar, syntax, orthography, phonics, and especially spelling. Reading is harder to teach, and also divides the children more quickly based on ability. It is no wonder that 'literacy' is preferred, even if actual literacy is never achieved at levels approaching those achieved when reading was taught. See Chapter 11 of 'The Two Cultures of Science and Education' in Mark Seidenberg, *Language at the Speed of Sight: How We Read, Why So Many Can't, and What Can be Done About It* (2012).

of individual liberty that John Stuart Mill had articulated in 1859, the same year as the publication of *The Origin of Species* (which argued for survival and reproduction as virtues of the species). But the two poles were kept apart from each other in the minds of most. For Rawls, justice is that set of principles, the use of which is the allocation of the benefits and the burdens of social cooperation. These institutions are 'the basic structure of society':

> For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus, the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions.[13]

Besides his positing of a dubious first virtue of social institutions, the sentiments in his 'basic structure' could track with almost any elementary description of politics. The 'monogamous family' even gets a mention. How conservative! The danger of Rawls is his innocuousness. He lulls the reader with his sonorous prose until just when he slides the needle in and pushes the plunger. Let's deal with the dose of equality on steroids that he delivers, the two principles, before tackling the manner he delivers it, the 'veil of ignorance'. Here we see a model *par excellence* of the egalitarian mind doing its best to control the alter-conscience.

Justice is broken into two principles: (1) 'each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others'; and (2) 'social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.'[14] Amongst his disciples, the principles are known as (1) the 'equal basic liberty principle'; (2a) the 'difference principle', and (2b) the 'equal opportunity' principle. But don't confuse the ordering with the order of

[13] *A Theory of Justice* (1999 [1971]), 6.

[14] *Ibid.,* 53.

priority. The first is the most important, then 2b and finally 2a. So, equality both coming and going. To see just how important the first is, he reworks 2a and 2b into his preferred short versions deemphasizing their liberal character in favour of their egalitarian flavour: 'Social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity'.[15]

This equality sandwich presents itself as the principle(s) of justice, even as Rawls is routinely presented (or presents himself) as a 'liberal' philosopher. If he were liberal, he would be expected to prioritize liberty over other values. Yet, whatever direction we are told we are going in, Rawls's compass seems to point toward equality. As one commentator says, 'Rawls declares that his book is grounded in Kant's moral theory', yet, for 'every teaspoon of Kant…there are whole cupfuls of Rousseau.'[16] Rawls is operating under the mistaken impression that 'Kant's main aim is to deepen and to justify Rousseau's idea that liberty is acting in accordance with a law that we give to ourselves.' Rawls sees the relation of autonomy to choice/consent ('acting in accordance with'), and thus to equality (his principles are 'Kantian'). He is wrong in believing that Kant and Rousseau share a doctrine of autonomy. I return to this problem below. But for now, this serves to illustrate Rawls as *the type* of the egalitarian mind. He is attempting to implement the equalitarian alter-conscience in workable bounds of consensualism (freedom) and autonomy (guarantee of basic goods to all).

Rawls's 'equal basic liberty principle' is a byword for autonomy. Like Rousseau, equality implies autonomy, and autonomy requires equality. Rawls frames this principle as our ability to 'frame, revise and rationally to pursue' a conception of the good, which for individuals is of the utmost importance. However, a world in which each acts according to his own conception of the good, is a world either of anomie or anarchy. Like Rousseau before him, a social contract (or something that can be construed as such after the fact) *must* be forged, which will grossly limit possibilities for action, toward the end of equality. The sacrifice will be in what can be chosen, the freedoms that are permissible. For, that is where the danger lies for the egalitarian mind to miss the mark of equality. Liberty tends toward diversity, equality toward unity. One should be wary of the ways that thinkers (or their disciples) self-describe. Sometimes the principle that they advertise is the very one that they are most

[15] *A Theory of Justice* (1999 [1971]), 72.

[16] R Nisbet (1983) 129-30, footnote.

ready to sacrifice.[17] Rawls as a teacher of 'political liberalism' needs first to curb liberty extensively, especially amongst the (potentially) most free, ostensibly for the sake of its equal enjoyment. We are seeing here the unfolding of the egalitarian mind in a sophisticated form. Many brute forms also exist, and many more in between.

The energy that drives nearly all on the modern age into the disinterested arms of universal equality in part come from ancient ideas of spiritual equality and friendship; recall that brotherhood has been redefined as friendship since *Fraternité* became an egalitarian principle. That energy is now directed to a generalized vision of man as an 'individual'. The anthropology of the 'individual' that stands in for each person in the egalitarian mind needs to be interrogated further. For, it sets the terms permissible in the debate. But, first I should say a little about two predominant premodern senses of equality that the egalitarian mind supplants by subsuming and then redefining.

Ancient equalities

The two kinds of ancient equality could be called equality of likes and equality under God.

Let's begin with equality under God. Monotheism, in which God is also creator of the world, includes Jewish, Christian, and Islamic varieties. Each presents the world to varying degrees with a new possibility of human egalitarian relations by way of spiritual equality. Spiritual equality is harder to approach when different tribes or nations, or even different families, are descended from different gods, demiurges, demons, powers, animals, stars, and so forth. It is not *impossible* from within polytheism or pantheism or local or animist religions to get to universal spiritual equality, but there are fewer obvious steps to arrive there. Meaning, it would presumably take more steps to get there. Monotheism is a more likely beginning of spiritual equality.

And then there is the record of history. Moral and social equality have descended historically from spiritual equality in monotheist religions,

[17] 'Autonomy is fundamental to liberalism. But autonomous individuals often choose to do things that harm themselves or undermine their equality. In particular, women often choose to participate in practices of sexual inequality—cosmetic surgery, gendered patterns of work and childcare, makeup, restrictive clothing, or the sexual subordination required by membership in certain religious groups. In this book, Chambers argues that this predicament poses a fundamental challenge to many existing liberal and multicultural theories that dominate contemporary political philosophy'. The answer is thus to limit liberalism, to call that autonomy, and to call it all an increase in equality. Clare Chambers, *Sex, culture, and Justice: The Limits of Choice* (2008).

particularly Christianity, as Hegel tirelessly illustrates.[18] Hegel, who sees the movement of history as an ever-increasing realization of freedom, saw in the relation between master and slave a hierarchy that would eventually resolve in mutual recognition of the other as a spiritual equal (or at least equal in so far as one is essentially spirit). This provided liberation on both sides, particularly for the slave. This was said to be an inheritance of monotheism. Be that as it may, monotheism inclines toward universal brotherhood, due to the sameness of our creaturely relation to God as his (or her, for that matter) children. Within monotheism there have always been internal contradictions. These include the ethnic component in Judaism, with some being a people of God and others only being blessed through them; the House of God/House of War (*dar-al-islam* / *dar-al-harb*) distinction in Islam; and the Church versus the 'world' in Christianity. These and other essential distinctions to those religions have called into question just how morally relevant the shared universal fatherhood of God is either to our earthly or our ultimate destiny as 'spiritual equals'.

Nevertheless, the very fact that spiritual equality is declared, believed, and taught in cultures cultivated in a soil of monotheism, creates a foundation that can be used to cultivate more extensive doctrines of equality. Even very secular modern forms of environmentalism, which are almost exclusively a Western, post-Christian phenomenon, retain common brotherhood from a shared origin as a moral argument for collective action. It is Christian brotherhood minus Christ, where Gaia replaces both Christ and Mary, she being the source of life and herself a god. Think no further than Our Blessed Lady, 'Mother Nature'. Very strange indeed, but the connection is there. The near universal *belief* in single origin, 'out of Africa', evolution—brotherhood in the long-forgotten past—is enthusiastically taken up in the popular uses of science for egalitarian ends.[19] The Romans, too, would be shocked at what egalitarian structures have now been built on the solid foundations they left in Rome, with a pagan religion that had nothing like spiritual equality in its teachings, and a legal system that ossified social hierarchies. Both their

[18] Cf. 'Hegel. Freedom as the goal of history', in Leszek Kołakowski, *Main Currents of Marxism. Vol. 1* (1978).

[19] That natural science, if pursued in an impartial way, should have no 'ends' outside of itself, has not prevented it from being the handmaiden of politics and ideology. Nearly every European and American progressive movement, and most reactionary ones, since the French Revolution have declared their 'scientific' credentials. Marxism was the form of socialism that came to dominate in part because it was believed to be a 'scientific' theory of social change.

religion and their law were present to enforce the human order and its fitting hierarchical arrangements.

Slavery is in human history universal; that is, except in the Western world where it began to be outlawed universally at a certain point. In Christianity in particular, the emphasis on love and forgiveness, reconciliation in an idealized world where 'there is neither free nor slave'[20], led to the first known universal outlawing of slavery during the Christian middle ages in Europe. Eventually in the nineteenth century, in no small part through Christian argumentation by the likes of William Wilberforce, the Quakers, and many others, it led to the universal outlawing of slavery. Every civilization has known slavery; only one is known to have fully outlawed it. The process of universal removal of slave relations is still ongoing. God's children are created with a shared status as persons. Increasingly that status (*dignus*) was seen as necessary to manifest itself here and now.

It is no accident that societies whose formation was predominantly Christian have been at the forefront of movements for equality of spiritual status. It means the realization in practice of the long-held belief in universal human dignity, based in the dignity of persons.[21] Even secular-seeming activities in such societies are usually the step-children of Christian faith's influence on culture, for better or worse, for ill and for good. In this light we should not forget about the illegitimate children of Christendom, such as Robespierre and his ilk. They came down hard both on atheists and Catholics, but they were severe monotheists. *Egalité* was connected to *Fraternité*, these being two of the three endowments of a pure deistic god (a hand-me-down deity from the Manicheans). *Liberté* required *freedom from* the Church, a gift of a providential universal deity. The underlying spiritual equality was being transferred to political equality and eventually to social equality. The next descendant of this tradition would be Karl Marx, whose Chosen People were not his own Jewish ancestors, but a mass of proletariat so similar (equal in status) that individuation need not even be spoken about. They were as if one great body.

Equality in its most fervent forms pushes toward a totality in which all differences need to be smelted away as the pure metal emerges. Yet, for all the talk of spiritual equality, and setting aside the fantastical and short-lived rule of all truly revolutionary governments, it was not until the day before

[20] See footnote 4 above.

[21] Thomas Aquinas puts plainly what seemed to be assumed since Boethius: 'Person implies dignity'. *Summa Theologiae*, 1a. 29. 3. r2.

yesterday that universal equality took on its current urgency *en masse*. 'Now' became the time for equality. Formerly, equality before God took on an eschatological character. The 'powers that be' were always grateful to the Church that it did not revise Jesus's words 'to render unto Caesar what is Caesar's and unto God what is God's', but rather interpreted them as a sort of rapprochement between Church and State.[22] It was often even understood as an endorsement of state supremacy or general caesaropapism. For, this permanent 'rendering unto Caesar' allowed the secular order to persist in spite of the manifestly better teachings of the Gospel.

Later theologians, perhaps discouraged by a few centuries of failed attempts to Christianize the Roman Empire, developed pessimistic theologies that put up a dividing wall between the two Kingdoms, one divine and the other human. The magisterial work of St Augustine, *The City of God*, completes the title as …*against the Pagans.*[23] There is precious little hope for the reforming power of the Gospel to remake the city of man in a divine image, including spiritual equality.[24]

Nevertheless, the pessimism about a holy human city coupled with a doctrine of original sin, and all within a theology of one loving creator God, put all humans in the same boat: sinners in need of a saviour. *Agape*, that is, brotherly love, answers the call for equality, or makes up for some inequalities, but it does not by itself result in *sub lunar* egalitarian relations. Augustine's realization that all are alike in their inextricable sinfulness is a mere descriptive equality, like the secularized Calvinist and neo-Augustinian 'equality in weakness' of Hobbes.

It was not until either the church was fully placed under the crown or until it was pushed into the private sphere (as was the case in various lands), that the urgency to equalize became a political-social urge. In some places, such as Quebec or Ireland, that only happened in the 1960s. In other places, such as France it happened in 1789, then unhappened in the Restauration, then re-happened in the Republican experiments (France has not been

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[22] Various and sundry churches and states organized their relations in idiomatic ways. After Constantine's time, it was not until recently that the state fully subsumed the church under its protective custody, perhaps beginning in England in 1534.

[23] C*ity of God* (2004 [426]).

[24] Later theologians who were more optimistic about the possibilities imagined various ways to relate the cities of God and man. See H R Niebuhr, *Christ and Culture* (1951). Five ways are presented to imagine the Church/body of Christ and its relation to culture/the city of man: Christ against culture (opposition); Christ of culture (accommodation); Christ above culture (synthesis); Christ and culture in paradox (tension); Christ the transformer of culture (reformation).

constitutionally stable over these last two hundred years, vacillating between its many modern historical options: five or so monarchies, the same number of republics, a few empires, …).

The urge to equalize has—and indeed does—happen every day in individual minds. Once we know and act on the knowledge that obedience is not due to God, the secular, meaning, the personal, is able to reign. This does not mean that one automatically becomes an atheist. It might mean that God becomes for us a creator of equals—that *god* also creates us as equals of himself as brothers, or even better, as friends. The Serpent in the garden told our first parents 'you *shall be as gods*, knowing good and evil'.[25] And so we have become, first in the knowledge of our equal subjugation to sin, death and the devil; later, once we became moderns, it was in our knowledge that god is the moral law, and the moral law is that 'all men are created equal'.

De amicitia

The other, ancient form of 'equality' is also perhaps the most universally experienced form of equal (or near-equal) relations. It is where likes treat one another as such. Treating like alike, or like cases alike, a doctrine of consistency, is one ancient form of equity. But friendship in the ancient world is perhaps the best model of likes treating one another as likes, since it involves as few as two natural persons, and could have, at least in principle, been open to anyone. It is hard to underestimate how important this relation was to our ancients. Aristotle and Cicero are able to appeal to this it as the sweetest and best that one can hope for in this life, and as a seedbed of virtue.[26] It shows up in the wisdom literature of the near east that 'Iron sharpeneth iron; so a man sharpeneth the countenance of his friend.'[27]

Aristotle deals with friendship in multiple places, but the *Politics* contains the most famous passages. There he identifies various different kind of friendship. Moderns have in a way a more limited conception than he did. What he calls friendship in the good or in virtue, we would now call 'friendship'. His two other kinds of friendship are friendship of use/pleasure and political friendship. Nevertheless, in all cases the two (or more, but ideally two) parties are pursuing things together, side by side. In the highest form they together pursue the best things, virtue, renown, etc. In a way, they are

[25] Gen. 3:1-7, 12-13 (emphasis mine).

[26] See Cicero *De Amicitia.* Aristotle's highest form of friendship involves the unity of pursuit of virtue.

[27] Proverbs 27:17 KJV.

then pursuing those goods in the other person, as a 'second self'. They are not only walking toward the same goal hand in hand (and male friendships did involve physical affection that would now not regularly be practiced by heterosexual moderns), but like lovers, sharing passing glances at each other. Unlike lovers, the critical faculties are not dimmed by the passions. Friends rule their relations by way of the rational parts of man. Friends ideally increase the virtue in each other, by sharpening the wits—practical reason—and directing the attention of the other to the good, the right, and the fitting, in descending order of priority in the best men. The suggestion of something approaching equality is here present, without it ever being broached. Friends would not have said 'you are my equal', but rather 'I cherish you as my own self'. We see here at least the *least unequal* of relations in the ancient world. There is a difference in that it is never said that the two are 'equals' but 'likes', meaning they are similar enough to conduct certain relations without dishonour, and hopefully with honour. A holdover of this sort of relation is seen in the peerage in England. No one believes that a duke and marquis are equals, but they might be enough alike to attempt to arrange that their offspring contract a suitable marriage.

Friendship's sublimation of equality

In truth, neither Christ nor Christianity has ever been all that concerned about equality *per se*. Jesus's parable of the vineyard-labourers would have been a very different story indeed if each worker got his proportionally fair wage. As it is, those who say it is unfair get told off. All are treated with dignity; without respect to whether it is 'equal' treatment.

Equality is about what 'I receive' and that it is supposed to be the same as what 'others have'. Friendship, however, is about putting others before myself. After Jesus calls his disciples his own friends, he says, 'Greater love hath no man than to lay down his life for his friends.' Here one is asked to suffer for others as the flipside of friendship. That is perhaps unfair. For, it is frequently unequally borne. An inverse hierarchy of love is what Christianity teaches, wherein each bears the burdens of others according to one's capacity (and in proportion to the grace one is given), nearly always unequally; and God stands at the bottom of this inverted pyramid, holding it up, where he ultimately bears the whole burden on the cross.

These are common enough themes in ancient philosophies of friendship. The elevation of the other in friendship is found in Cicero. In his *De Amicitia* XVI, he writes of the friend as more than equal. Asked whether we should

have the 'same attitude [to a friend] as [to ourself]', he says no, the friend is better, and our attitudes must reflect that. Are friends of the 'same value' as myself? No, they are of higher value. Asked whether there should be 'equal correspondence' between what I give the friend and what I keep for myself, he answers no, it is not balanced. One is to be more generous with the friend. It is not, after all a base market exchange. One wants to form a 'Complete community' with the friend, 'turning...[two] minds into one'. Friendship is then about pursuing the same goal together, and thus serving one another along the way. Compare this to the part of the Lord's prayer, wherein it is asked 'thy will be done' rather than our own. It is prayed theologically in the Christian churches not only as children of God ('Our Father') but as friends of God in Christ. Cicero understood the greater value put on the other. He did not add to it the need for self-sacrifice that Christianity includes.

Friendship was '*simile simili gaudet* / like delights in like', as the saying goes. It might serve as a better sense of the uses that our ancients put nearness of quality in persons, similarity, or what we might be tempted to understand as approaching a realization of equality. But it is not full equality.

Treating likes alike

Although it is known everywhere, we are most familiar with the Greco-Roman instances of equality of likes in status. These include such statuses as 'freeman', 'citizen', 'freedman' and even 'slave'. A Roman slave was in a higher place in Roman society than some foreigners and all foreign slaves. But to be a slave meant that like any other slave you were similarly subject to general laws pertaining to your person and a particular relation to your master. Between members of any given status, however, forms of equality could be assumed, *insofar as that status was the means of the relation*. If citizens' cases were considered by the praetor, he would be expected to adjudicate similarly the cases of various otherwise differentiated persons. *Qua* citizen one was equally able to call for judgment by the praetor or appeal for another to be brought to the praetor for judgment. Since there would always be competing statuses, differences in consideration relating to those might enter into the judgment (but where is that ever absent?). The equality treatment is only relevant in so far as the status extends; it is not universal.

This form of 'status equality' differs from another, similarly limited, form, 'proportional equality'.[28] It is related to desserts relative to, for instance,

[28] *NE* 1130b-1132b. Plato too addresses it in *Laws* VI.757b-c.

performance of some sort of meritorious act. Likes are treated alike in rewards. I am suggesting that friendship and other forms of status which were not universally shared in the ancient world, at times allowed otherwise hierarchically stratified persons to consider one another as if equal, as far as status equality and proportional equality permitted.

Think of shared membership in a tribe or nation. The common way that certain statuses related to identity had buried within it a sense that convention was mapping onto something true about reality. This included the relations of equality or likeness. That 'our people' are synonymous with 'humans rightly understood' or 'the real humans' is nearly a universal trait of primitive peoples. Some even use the same word for 'man' and for (members of) their own tribe. This prejudice remained in more civilized societies in the ancient world. Aristotle remarks on the Greeks in this respect, also alluding to equality of likes: 'Hellenes do not like to call Hellenes slaves, but confine the term to barbarians.'[29] The barbarians are said to be those who don't speak in ways understandable to the Greeks; they then don't think and act and organize the world as the Greeks do, but in an inferior way. Aristotle immediately extends the comment, saying, 'Yet, in using this language, they really mean the natural slave of whom we spoke at first; for it must be admitted that some are slaves everywhere, others nowhere.'[30] 'Nobility' is his example of the same principle working, which he then reads it back into the question of slavery. 'Hellenes regard themselves as noble everywhere, (…) but they deem the barbarians noble only when at home'.[31] Implied are two sorts of nobility and freedom, the absolute and the relative. Helen of Theodectes is prejudicial in the Hellenes' favour: 'Who would presume to call me servant who am on both sides sprung from the stem of the Gods?'[32]

In a way all the Greek are *in some way equal when* set above all barbarians. This is based on the understanding that 'from good men a good man springs', and it should persist. Observation of human or animal generation, however, indicates that 'nature, though she may intend it, cannot always accomplish [it].'[33] Nevertheless, the ordering of the group, and its status, must be preserved in spite of the unpredictable disruptions of nature. That order takes into account either the natural freedom of those ruled or the lack thereof.

[29] *Politics* I.VI. 1255a29ff.

[30] *Ibid.*

[31] *Ibid.*

[32] *Ibid.*

[33] *Ibid.*

'For there is one rule exercised over subjects who are by nature free, another over subjects who are by nature slaves.'[34] One could easily substitute 'children' in the place of 'slaves', to make sense of what he is arguing. Those who are by nature slaves can follow reason, but do not possess the ability to guide themselves by reason. Someone else must command them by way of reason. The Greeks, believing natural slavery to be something of the barbarians, will rule with a presumption of equality of likes amongst Greeks. Rule will be by those who are 'similar in stock and free'.[35] The slaves that they do have among the Greeks are former captives of war, their children, and others who for one reason or another are *considered* conventional slaves, rather than slaves by nature (the Greeks don't like to call Hellenes slaves, but they will if convention has provided the opportunity or necessity). Some of those might also be, on Aristotle's terms, 'natural slaves'. But there would be a reluctance to say that any sharing the same status (equality of likes) with the Greeks would be one.

In practice this might not extend much further than a preference for Greeks over any other sort of humans. One might more easily trust them with whom one can converse and correspond than those who fall outside of that *logos*. However, that preference and trust are the bedrock of life together, of trade and alliance, of self-interest potentially extending to include all Hellenes, notably *when there is a barbarian enemy*. We see here the limitedness of non-universal status as equals—the revolution in thought that modern values brought. There would certainly also be a great sense of the inequalities amongst and between the Greeks—or, more likely, of the hierarchies there present—but this does not fully extinguish the likeness that is the seedbed of relations *as if* equals.

This would be a completely intolerable situation to the egalitarian mind, with statuses given even before birth and rarely able to be gotten out of. That remained the way of the world until relatively recently. Three generations to access the ruling class, to 'become a gentleman' is scandalous. All who are qualified should be able to inhabit the office. The accusation of injustice wherever inegalitarian relations persist within one lifetime—that is, whenever goods are not available to one generation—shows us the high value placed on it the mobility between statuses. That mobility is a knock-on effect of universal equality. It also shows us that valuations are made using equality as the gold standard. That valuation did not fall from the sky. It replaced older

[34] *Politics* I.VI, 1255b18-20; VII, 1325a27-30.

[35] *Ibid.,* 1277b8.

currencies wherein there were multiple standards: gold, silver, and bronze, if you like. It shows a move from 'treating like cases alike' (which is still a principle of equality under law, just with different laws for different statuses) to ensuring that all cases are treated alike. We measure all with the same stick. The stick, however, has tended to change over time.

The analogy of the court and 'like cases' that names this section is fitting. For, moral considerations have become all the more juridical in their tenor as we have simplified the irascible concept of justice to the sanguine notion of fairness. So much so that, Rawls tells us that 'our intuitive conviction [is] of the conviction of the primacy of justice [as fairness]'[36] In doing so, we have placed ordinary rational animals on par with each other as moral reasoners. Each is the best judge in his own case, we believe. No longer are confession manuals or training in philosophy or knowledge of God's will for man or any other conventional learning necessary to discern the Good or Right or good and right with certainty. *Natural* spiritual equality is fulfilled in equal moral consideration for all, at all times, everywhere. This leaves the question of how egalitarian minds will be ruled with many precluded answers. Such minds will not be ruled in any way that increases perceived or actual inequality. How will it be known which forms of governance are so anathema? They be asked, hopefully often. And those that are the 'least of them' will increasingly see the value of their answers rise relative both to the better off and also to the commonweal. The chapter on consensualism details the entry of this ideal into the egalitarian constitution.

By nature equal (in duty)

Now I return to the natural equality which, when coupled with natural goodness, provides the conditions of consensual rule. If we were all equal, but all tainted by sin, then rule by some class of priests or 'great men' would be sensible. Those who by way of virtue or a divine grace or revelation could see further, and thus would be most fit to lead us. Since we are equal, and each is in principle pristine (only made wicked by society), no such external rule can be in our interest *a priori*, that is, unless we say it is, hopefully in full knowledge of what it is.

Early in the age that was to be dominated by the egalitarian mind, one begins to read direct statements about the equality of man in political and legal treatises. In the late seventeenth century Pufendorf, when discussing

[36] *A Theory of Justice* (1999 [1971]), 4.

sovereignty, says: 'since men are by nature all equal, and so no one is subject to another's sovereignty, it follows that mere force and seizure are not sufficient to constitute legitimate sovereignty over men'.[37] The conclusion of this line of reasoning (which Pufendorf does not directly take) is removal of presumed natural rule of one over another, as when Aristotle put the 'natural slaves' under natural masters, by virtue of one being only able to obey reason; whereas the other could command and obey by way of reason.[38] Concluding his line of reasoning Pufendorf makes the now tautological point: 'He who is not another's is his own.'[39] This would seem to imply an original position of freedom, as well as its continuation in all (thus, equality), as long as something else has not intervened. Convention, contract, harm (delict), or some other human action that creates obligations could be inserted here. And Pufendorf does not stand against obligations arising from them. However, if it is posited that one cannot be in principle master of another, or that one could never have a master, then he is always 'his own'. That direction of self-ownership will be where the argument goes as it enters its most influential period, transitioning to full-blown liberalism. First one will be said town one's own labour, and then one's whole self. The argument will transition there from the most influential expositor of these or similar ideas, besides perhaps John Locke, between Grotius and Kant. Eventually the argument will not even need to be made, since the near-universal presumption of natural liberty will render arguments for and toward it obsolete.

But there is an interesting hold-over, which might seem like an endorsement of the older aristocratic constitution in Pufendorf's work. His proto-liberalism is presented in a treatise that is premised on natural duty, first to God, then to oneself (self-preservation), and finally to others. In the discussion of ancient equalities above, common kinship of the one true God was commonly the route to declaring spiritual equality. Pufendorf's 'Lutheran reading'[40] of the political consequences of our common Father as well as of the uses of Tradition, cuts through all accretion of culture and history (the inherited constitution). It is tossed aside whilst he maintains a connection to those special parts of history deemed to accord with revelation and reason.

[37] Pufendorf, *DING*, 1085.

[38] The latter phrase is not used by him.

[39] Pufendorf, *DING*, 1085.

[40] I call this a 'Lutheran reading', as opposed to the more radical, say 'Calvinist', readings that would take their inspiration only from the Bible or, for instance, those which refuse to deal in religion or history (the non-literally minded social contract school or the rationalist tradition that derives politics from [human] rights).

One might say that he has attempted to establish political theory that is not opposed to biblical teaching, rather than one that is fully inspired by it. Thus, Aristotle can comfortably be used by Pufendorf in a way that more severe Protestants could not for a time. For, Aristotle was deemed too Catholic. Pufendorf does this even whilst self-consciously rejecting Aristotelian-Thomistic doctrines such as the grounding of natural law in human nature.[41] Pufendorf places the emphasis squarely on each person, his duty given directly by God, and thus his equality amongst others before God, and from this his derived freedom. Like Luther, it is the freedom of the Christian, but now naturalized. Said differently, all of us, the able and the lame, the rich and the poor, men of the cloth and men of the world, are equally under the duty to obey God and preserve the life he gave us by any means we deem practically necessary within our duty to God and his created order. Unlike Grotius, for whom duties are derived from human sociableness, Pufendorf begins by locating us always already bound up in duty to God, oneself and others—and in that order. Differences and qualities abound among and between humans, but no one is free of the basic duty. Insofar as it is a general rule without exception, all are *equally* obligated.

Although it is not yet fully modern, Pufendorf's philosophy is an easy place to see the 'universal' beginning to displace any multiplicity of statuses. Equality is slipping out of its slots where likeness made for limited equality. It is about to spill out and collect like quicksilver coming back together. These philosophies of Pufendorf, Grotius before him, and Kant after, are (often unwittingly) building up justifications for fundamental social and political relations as equals. It is still the case that man's basic equality is not the go-to consideration for daily political life. Yet, when social order starts to be justified in terms that begin logically both with a common ancestor (a provision of monotheism) and with shared duties of care, materials are in place for equality to flourish. It will be Kant who imagines that 'perpetual peace' is possible under such conditions, and speak of a Kingdom of Ends, inhabited by other-regarding, free, equals—both individual persons and states

[41] The many ways that allegiance to the Reformation was indicated included the removal of Aristotle, at least in name, from new treatises on nature and law. This was part of a broader rejection of Thomism and the Roman Church in which Aristotle had become revered as a sort of pre-Christian 'saint'. James Tully, introduction to Samuel Pufendorf, *On the Duty of Man and Citizen* (1991), xvii, xix.

that act as if they, too, were ends-in-themselves.[42] But I am getting ahead of myself.

Notwithstanding their power to compel (which we later hear in cries for '*Liberté*'), ideas can exist for hundreds of years, even ideas that could change the foundation of society, without disturbing, say, a profitable (if embarrassing) trans-Atlantic slave trade. Of course, slavery was once universal, and the universal outlawing of it got its authority from principles of Western civilization, including an extensive spiritual equality that became urgent in the political sphere.[43] Yet, we did not, in the end, take the path that Pufendorf laid out for us—or perhaps only Marxism and paternalist socialism did. We preferred, rather, to restore the Grotian consensus of deriving duties from rights, in the thought of John Locke.[44] This had the power to turbocharge Pufendorf's ideas, since it located all of what was necessary for political and social life in the individual. When rights once given by an absentee creator can be taken advantage of legitimately by each and every person, a lot of the prudence that duty-based equality instils becomes superfluous. It is no wonder that the chief revolutionary document in France of the 18th century was an unsubtle bow to Pufendorf, with only one word swapped. 'The *Rights* of Man and Citizen' after his *The Duty of Man and Citizen*.

I won't dwell here again on Locke, since the uniqueness of his contribution to politics, psychology, economics, and governance has been overstated already elsewhere.[45] But Locke's influence in one area cannot be overstated: He translated the limited natural and spiritual equality that was

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[42] Kant, 'Perpetual Peace: A Philosophical Sketch / Zum ewigen Frieden. Ein philosophischer Entwurf' (1795).

[43] Recall the words of Toussaint Louverture's 1801 Constitution. As governor-general of Saint-Domingue, a French colony, he wrote the third article declaring, 'Here, all men are born, live, and die, free and French.'

[44] Both Marxism and paternalist socialism (and here I include 'liberalism' inspired by Rawls and carried over by Dworkins *et al.*) have the problem that they begin by assuming fundamental duty rather than fundamental rights. Said differently, one does not have property in anything in the world, not even one's own person, if it is, in the most sympathetic example, more usefully employed to raise the status of the least well off. Confiscatory taxation of high earners can easily be justified in such regimes as an act of kindness: at least the rich were left with the free uses of 'their' bodies. *Cf.* Grahame Lock's article 'Self-ownership, Equality of Resources and the case of the Indolent Indigent' R&R (1989) JRG 18 AFL 1. See the thought experiment at the beginning of this part. Laws on compulsory organ donation, even with the provision of an opt-out, are in part inspired by this logic: to each according to his need.

[45] Locke's influence is frequently described as a malady or plague on us. It has been given the title 'possessive individualism', as if it were a spectre, by C. B. Macpherson *The Political Theory of Possessive Individualism: Hobbes to Locke* (1962).

widely believed and nearly nowhere practiced into a moral imperative. When Thomas Jefferson produced his 'rough draft' of the American Declaration of Independence, the Lockean nuts and bolts were exposed: 'We hold these truths to be sacred and undeniable, that all men are created equal and independent, that from that equal creation they derive rights inherent and inalienable, among which are the preservation of life, liberty, and the pursuit of happiness'.[46] Those truths became 'self-evident' after the draft was rinsed in an equalitarian solution. And they got further and further from the 'duty to God' that Pufendorf thought firmly grounded all subsequent obligations and all possible rights.

It will be said with some justice that Locke and Jefferson were involved in black slavery. An implication is that they were tending the garden of vice while singing virtue's praises. Or worse: it was only by presenting some with the vision of equally-enjoyed liberty that they could maintain the slave class.[47] The price of freedom was always slavery. And who does not like a promise of freedom? Locke seems to have merely been short-sighted, not seeing the contradiction. Jefferson, however, had a bad conscience about his continued holding of slaves.[48] We can make sense of the apparent hypocrisy of the architects of the egalitarian order when we understand how the movement of ideas from fundaments to exoskeleton of personal and political considerations works. Jefferson was beginning society anew based on first principles within the confines of English common law doctrines, such as the liberties of an Englishman. Locke was participating in a messy, conventional system of common law, with no dreams of breaking it down and reconstructing it: What, after all, *should* go in the place of a civilization? A piece of paper with 'Constitution' written at the top? Said more directly: Locke was a reformer; Jefferson was a 'founding father' and perhaps a

[46] Available in J.P. Boyd (ed.), Papers of Thomas Jefferson, vol. I, 423.

[47] Rousseau hints at this in *Social Contract*, bk III, 15. Orlando Patterson, in *Slavery and Social Death* (1982), alludes to the common Marxist accusation that 'freedom' is parasitical on slavery, or at least only understandable after slavery is seen in its full flower. The more practical claim that freedom of a certain kind, namely the leisure of a Jefferson or Locke having days free to read philosophy—is dependent on a slave class who does the labour, should be given full consideration. Petroleum and cheap labour now do for us much of what slaves used to for Jefferson's ilk. Robots might replace them in the future.

[48] He had plans to free them during his lifetime, but he never had the resolve actually to unburden himself of the leisurely life unpaid labour afforded him. They were freed upon his death, with little thought to the quality of life that his posterity might enjoy. As he taught us, 'the earth belongs in usufruct to the living' to James Madison Sep. 6, 1789, in *Thomas Jefferson: Writings*. (1984).

'revolutionary'. Most revolutionary's lives are, it must be said, more uneven than their ideals are.[49]

The importance of this positive vision of equality, or any equality of goods, is its ability to inspire in its true believers' new sense of the possible. Robert Kennedy famously said: 'There are those that look at things the way they are, and ask why? I dream of things that never were, and ask why not?' Hobbes had announced a negative equality, or equality in misery. That was to be the inverse of Lockean basic equality. In the latter, even the strongest share a good with the weakest in their fundamental rights to life, liberty and land. In the former, even the strongest share with the weakest the threat of violent death. Locke *lifts all up* into equality; whereas Hobbes, like the strongest crab in the bucket, pulls us all down into the pit of equality. When the egalitarian mind comforts its overly scrupulous alter-conscience with the assurance that 'all men are created equal', it is a Locke-like, elevating vision that it has in mind.

Inequality as original sin

I have up to this point spoken of equality as a concept, only alluding to its obligatory function in the lives of modern persons, its religious dimension. This section introduces its claims on the believer.

The ancients described the unity of public and private virtues and ways of life as a 'constitution'; what Tocqueville would call a 'regime'. In this study I have preferred to speak of the same phenomenon as a constitution, but also variously of the values, dogmas, and nomoi that make it up. If there is one value that modern personal identity turns on, it is natural equality. This is dogmatically held to, as the compelling belief that the limited equality common to all humans *must* determine the just limits of the political project *as well as* those of personal relations.[50] The alter-conscience is always present in

[49] Since 'revolutionaries' are still well loved despite their often deleterious effect on ordinary human life, one should regularly receive an antidote by reading, say, about the egalitarian relations between Simone de Beauvoir and Jean-Paul Sartre, or the wise administration of justice in Cuba of '*el Che*'; or, for some proper entertainment, obtain a copy of Lenin's private letters.

[50] Liberalism has had problems separating other spheres of life, as Pierre Manent indicates in 'The Crisis of Liberalism', in *Journal of Democracy* 25:1 (2014). Liberalism, which is the political philosophy that has the good of natural equality at its heart (manifested in equal freedom for all persons), has unified the public and private visions of human excellence wherever it has become dominant. Even as liberalism is only two centuries old as a governing order, it has spread throughout the body politic *as* public and private virtue, if not usually *as* 'liberalism' per se. Very few modern westerners outside of the United States identify as 'liberals'; there are a slew of other bywords for it.

personal and public life, raising consciousness about where inequalities persist. And the development of a habit of response—an attitude toward it all—is the development of the egalitarian mind. But it all begins with the acceptance of the knowledge of the alter-conscience as true, a conversion. The result is a condemnation of the world as it is, and a call for reform.

It was knowledge of good and evil that exiled our first parents from their innocence. It is likewise the new knowledge of inequality as evil that exiles us all from innocent participation in our native cultures. Our Second Fall is that into knowledge of the scandal of inequality. Like Adam before us, the result is a need to work the ground to make anything good come from it. The fallen egalitarian must discover how to till the wasteland of human culture and history wherein very little of value can flourished. It will take all of her being to make this so. And so, along the way, she dreams of a heaven where it is so, and attempts to direct herself and others towards it.

For the egalitarian mind equality is a *moral imperative* of cosmological import. Inequality is experienced as a wound in need of medicine, an existential sickness unto death. Unless it is medicinal pain, there is no good reason to suffer its pain. It must further the goals of equality at another level or stage, or it must be removed.[51] Then the wound like that of a surgeon, would be deliberately borne, rather than seeming like the sting of a wound from the enemy. For instance, what is commonly euphemized as 'affirmative action' in the United States is more properly called 'positive discrimination' in Europe and elsewhere, where the egalitarian motive of liberalism is more directly declared. Perhaps because of America's uniquely modern tenor, any suggestion of unequal treatment, even for the sake of greater equality, is intolerable to some. Outside of extreme cases involving the 'historically marginalized', all attempts are made to ensure that the disposition is in favour of greater equality, both here-and-now and in the future—namely, in both opportunity and outcome. The wages of sin for our original ancestors was death. Life was regained only through salvation. In Christian salvation history that was gained through knowledge of God (given by God himself), and right action toward the restauration of our original friendship with him. Eschatology recapitulates protology: as it was in the beginning, so too will it be in the end. But the pre-Fall condition is not what the egalitarian mind intends. It is not a world wherein there is no knowledge of inequality and its

[51] See 'Equality: Concepts and Controversies', the introduction to S Fredman, *Discrimination law* (2002), which goes a long way whilst failing to justify why this is necessary, never failing to indicate how important it is.

ills, but rather a world where inequality has been rendered harmless, hopefully by being extinguished. The original position of equality can be regained only in a future utopia. And it can be approached now only if we commit ourselves wholeheartedly to its manifestations in culture and personal identity. For, those are the human personal relations that touch on our shared identity.

Equality is often spoken about as the rule of law and procedural adherence to rules, which is a 'culture' in one sense. But more than that, it has the character of a virtue, connected to a real and perceived good.[52] Being an egalitarian means treating others as equals, at the right times and for the right reasons. It has formative and normative effects similar to the classical and Christian virtues. It also ranges through all areas of life like they do. Like the old religion that it replaces, 'being an egalitarian' is an ethos which has an ethic. If one really *is* an egalitarian, it has consequences for social, political, economic, ethical, personal, and societal relations. This is a full-time business, requiring the dedication of the whole person. More than merely a new religion (or surrogate for the old one), the egalitarian mind posits a new cosmology within which there is correct (that is, religious) and natural action and its opposite, sin. The great poet of egalitarian ethics, Rousseau, is always said to be going 'back to nature' in his restauration of original equality. He does nothing of the sort, unless 'nature' is not understood as 'what was present in our human past'. He is positing that which is 'natural' is equality. That is, he is redefining nature. Nature can mean 'all things that are'. And in this way, in positing natural universal equality, the egalitarian mind is doing cosmology.

The question is why it works so well? Why is it so convincing that natural equality is the 'original condition', when all evidence from history, anthropology, biology, and the rest, lead to the opposite conclusion.[53] How does the egalitarian mind trump all that we can learn from matter? How have we become such dualists in an age of 'science'?—treating our bodies as evolved things that have an evolutionary history; and treating our selves as unicities that soar in an egalitarian mission toward their homes in a perfected future?

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[52] Lon Fuller's argument that procedural adherence to the rule of law is itself part of the morality of law is made, I think, successfully, in *The Morality of Law* (1964).

[53] For an overview of the state-of-the-science literature at the time of his writing, see 'The Liberty/Oppression Foundation', 197ff in J Haidt, *The Righteous Mind* (2012), which draws on the work of Boehm, De Waal, Wrangham, Pilbeam, and Dunbar.

I-You encounters

How does the egalitarian constitution trump any materialist account of our being? The egalitarian mind has the intimacy of ordinary human experience on its side. When teaching egalitarianism as a virtue this helps it to seem natural. Interaction with another without preconditions or prejudices, on terms derived only from the interactions themselves is known to permit the falling away of prior or assumed hierarchies and heteronomies. It is even one way that egalitarian virtues are taught on university campuses, through exposure to 'diversity'. One does not need studies to show this; one merely needs to be a modern person subjected to other persons in daily life. The way in which friendships that form between persons of different status—for instance during the general enlistment in the First World War—make them reluctant to restore the former division indicates. This would seem to indicate that, insofar as they are friends, they see in each other a commonality that does not seek distinction. It seeks unity and some form of sameness.

Equality and unity are here connected in a way that is psychologically convincing: each person sees another self in the other, as Aristotle describes it.[54] Unlike Aristotle's description, however, this is not only true in cases of friendships of the good or between the virtuous (assuming then that virtue was understood to be pursued chiefly by free males). Friendship, understood as broadly as possible, attaches itself to the belief in a basic equality of the other. This obtains sometimes even when the other is not of the same species. Children often befriend pets or animals – usually sentient beings but not always – and see another self in those creatures. They anthropomorphize. In an age as sentimentally egalitarian as ours it is no wonder that such a childlike (and sometimes childish) habit would continue into adulthood. The indications are everywhere: pet graveyards[55], animal rights (mostly for the cuddly, cute, furry, or fearsome mammals; few fight for arachnid rights), and anthropomorphized back-stories given to animals. Remember the polar bear 'Knut' that Germans went mad about in the mid-2000s? Abandoned by his

[54] Ronna Burger notes that the phrase 'second self' translated two Greek phrases: '*allos autos*' which is 'suggesting the replication of myself in another'; and '*heteros autos*' where a friend is 'a pair with me precisely because of the difference that makes him genuinely other' in 'Hunting Together or Philosophizing: Friendship and Eros in Aristotle's Nicomachean Ethics' in Eduardo Velásquez, ed., *Love and Friendship*, 50ff. Equality is closely related in many people's minds to peace and harmony. But compare Hobbes's equality in weakness that leads inevitably to war, where fear and discord are the associations man has because of a dearth. One locks one's door so that everyone does not have equal access to my space.

[55] Antiquity, too, had its eccentricities of a horse a consul; the great Confederate general of the American South is buried near his horse at Washington and Lee University in Lexington, Virginia.

mother, hand-raised by zoo-keepers, he still died tragically young from an undiagnosed disorder.[56]

Philosophically, this tendency toward the unobstructed vision of the other as equal made its way round mid-twentieth century existentialist philosophy. It was a manifestation in philosophy of what had permeated politics and culture already as a modern virtue, and what had begun in a categorical ethics of the person in Kant's philosophy. Now it was to take on a fully-formed doctrine of how one should approach others. Martin Buber famously called it the '*Ich und Du*' encounter.[57] His phrase is often accurately but therefore poorly translated as 'I and Thou', which suggests a relation of one to a reverend other; whereas, the older intimate second person pronoun was used to translate the intimacy of the other through the intentionality of pronouns. 'Thou' is an archaic second person singular, that is less formal than 'you'. It would be used for kin and friends. However, upon the reception of the King James Bible in the early seventeenth century, 'Thou' became associated with God, and thus formalized, elevated, and then mostly only used to speak of or to God. Certain Quakers as well as some regional dialects in England are said to have retained the older usage of a familiar 'thou'. In its religious use it originally meant to shows God's approach to man as a nearness of encounter person-to-person, which is what Buber also emphasizes in his existentialist uses of the German equivalent.

There is a tendency, even if I–You encounters begin in conflict, that they do not end there. For, once the parties are able to see the other as a person to be interacted with directly, the relations lend themselves to justice (as fairness) almost intrinsically. That justice is a relation in which each person acknowledges the right of the other to equal treatment.[58] The right to equal treatment is usually held fast to and persists between them. That is, so long as it is equally good treatment, i.e., equal access to good treatment or to goods. The disposition to seek equally good treatment can be based in desire to love another. Or it can be based in the desire to see oneself loved, or not to see oneself harmed, or not to see another harmed. It does not matter greatly where it comes from, but the claim made by moderns seems to stick: ordinary human experience is egalitarian unless it is made otherwise by convention, society, 'power', and the rest.

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[56] Amos, Jonathan. 'Knut polar bear death riddle solved'. BBC News (27-08-2015) www.bbc.com/news/science-environment-34073689.

[57] Martin Buber, *Ich und Du / I and Thou* (1923).

[58] Roger Scruton. *Face of God* (2012), 64

It is hard to get around that statement by argument or by example, since it is nearly always made by those who are already committed to egalitarian ways of life, and who notice the residual differences fall away when they, say, meet a new 'friend' in a shisha bar while backpacking in Fez. It is unclear whether two Bengal Indians of different classes or two Chinese, one Han and the other Weiger, would also see the basic egalitarian original position as the place they arrive and stop at whilst interacting one-on-one. They might just as well see it as a refreshing rest-stop on an otherwise well-marked road leading in two opposite directions, one for each of them.

The confusion of the part for the whole amongst egalitarians tracks well with studies of a glaring weakness in contemporary social sciences. These frequently use WEIRD people as their baseline subjects: Western, Educated, Industrialized, Rich, and Democratic.[59] Then they translate the results to all *homo sapiens*, nah!, to all moral persons (which could include non-humans). This 'translation problem' is not seen—and not a problem at all—if the WEIRD people are understood to be synonymous with all humans rightly understood; all humans who have not been duped into persistent inequality states by their cultures would react this way; all humans who do not yet have the salvific knowledge of the alter-conscience; all who cannot approach each other in I-You encounters, and instead substitute cultural artifice for the natural equality that we natively share.

Following equality

The equality we are after is the same that follows us. It precedes us as goal and follows us as accomplishment. The modern by-words for equality in politics are 'liberal' or 'egalitarian', sometimes 'progressive', all depending on the context.[60] Those words and their various imports are important, but not actually at the heart of what equality means for moderns; nor is it what the egalitarian mind is focussed upon as its vision of the good life. Liberalism and egalitarianism are two political programmes the adherents of which believe to be bringing about a world of more equality, either of opportunity or outcome (in each case the phrases are just that vague), or both. A simple statement of the egalitarian principle has been proposed: 'that all human beings should be treated with equal considerations unless there are good reasons against it', or

[59] 'The weirdest people in the world?', Henrich, Joseph, et al. *Behavioral and Brain Sciences* (2010).

[60] John Kekes, *The Illusions of Egalitarianism*. (2003), 1-2.

'the initial presumption in favour of equal consideration'.[61] This gets part of the way to the egalitarian mind's vision of what is downstream from equality. But it begs the question of what one gets 'equal consideration' to or for. It is as if it is known to be a good and desirable, even before it is identified. Equal consideration to corrupt practices is not what anyone wants. Some of the problems related to this were addressed above in chapter 4 above. Here I'll deal with the good of freedom itself that the egalitarian mind seeks.

In the basic liberal vision, this consideration involves the presumption of 'freedom': hence, '*liber*'-alism. Freedom, however, is often opposed to equality both in post-liberal and pre-liberal settings, and both conceptually and psychologically. Or as Tocqueville related the opposition: 'democratic nations show a more ardent and enduring love of equality than of liberty'.[62] But the egalitarian mind attempts to combine these in the alloyed illusion that 'equal freedom is the fundamental political value'.[63] If universal equality is both true and good, and turns out to be possible (for instance, within the confines of the egalitarian constitution), then there are moral and political obligations that would seem to bind.

Those obligations, like much in modern personal identity, attempt to combine the seemingly un-alloyable. Bridging the Lockean and Rousseauian visions of negative equality and positive freedom, respectively, is a similar shared assumption of natural liberty manifested in politics, or even *as* politics. Behind much modern thought about rights of war, and personal autonomy retained after the peace, is the assumption of natural liberty that I detailed above.[64] It has a pre-modern provenance, it being the direct inheritance of late scholastic thought, and ultimately Roman in its origin and Christian in its ethos. Rousseau famously talks of 'man born free, yet everywhere in chains'. Locke simply names the right and calls it natural. Natural liberty, again, is not in itself a politically relevant category. It can just as likely be banal and even anti-egalitarian. Hobbes's state of nature requires a renunciation of rights in order to remedy it. The result is, thus, often less equality, and none in relation to those that oversee the pact (the 'sovereign'). But as inherited, natural liberty has taken on the necessity of universality. Why, though?

Hegel gives us some indication in his brief genealogy of universal equality by way of equal freedom, returning first to proportional freedom, premised

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[61] John Kekes, *op. cit.*, 1-2.

[62] Tocqueville *Democracy in America* (1899[1835/1840]), Volume. II, Section II, Ch. 1.

[63] John Kekes, *op. cit.*, 1-2.

[64] CF Pufendorf, *DING* 1297-1307.

on proportional equality. '[T]he consciousness of freedom arose among the Greeks', he says, but they 'knew only that some were free—not man as such.'[65] This meant all sorts of freedom-enhancing institutions were possible (which should not be confused with the material and efficient causes of freedom, as Patterson does). Hegel continues, 'The Greeks therefore had slaves; and their whole life and their splendid liberty was implicated with the institutions of slavery.' Although the legacy of the Greeks tyrannized the Germans intellectually and spiritually, the Teutonic peoples were not without their original discoveries.[66] Hegel notes that '[t]he German nations, under the influence of Christianity, were the first to attain the consciousness, that man, as man, is free.'[67]

The answer is found in the baptism of the German nations. Spiritual equality, plus the universalization of freedom, meant universal equality *in principle*. Notice what 'the German nations' is here thought to be definitional of 'man as such' (and Hegel as the apogee of the World Spirit). 'Man as such' is naked, but the German nations clothed him in fitting garments. It was a German monk who extended 'the priesthood of all believers' into an anti-hierarchical posture against the Roman Church. Luther was not, however, committed to freedom as a natural condition, especially not after humanity inherited the Fall. The resulting, ever-present 'Bondage of the Will' puts that to rest.[68] However, in other Germanic lands, particularly Holland, Erasmus and Grotius do extend the spiritual equality to include a general right of nature to all things that one comes upon, useful for preserving 'life, limb, and the things necessary for life.'[69] That is fundamental to the universalizability of the egalitarian political and legal order. For, where the law cannot reach, it cannot be cognizant. But if the law of nature is everywhere, dynamically present in each human individually—even Robinson Crusoe alone on his island—then there is no place without law. Such a constitution with individual at its metaphysical and ethical centre would have the pretence of being universal that need not remain a pretension for long.

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[65] G. W. F. Hegel, *The Philosophy of History* (1991) 18.

[66] It is not only in popular imagination that the German peoples seemed to be under the yoke of more civilized peoples, the Germans themselves felt it. For a small artistic sliver of this, see, E M Butler, *The Tyranny of Greece over Germany: A Study of the Influence Exercised by Greek Art and Poetry over the Great German Writers of the Eighteenth, Nineteenth and Twentieth Centuries* (2012 [1935]).

[67] Hegel, *The Philosophy of History* (1991) 18.

[68] Martin Luther. *De Servo Arbitrio / The Bondage of the Will* (2012 [1525]).

[69] Grotius, *DIBP* II.1ff

Moving from Grotius to Erasmus, the reinvigoration of the doctrine of the free will in theology could have in an even greater way carved out the space for universal equality to flower. Erasmus says that Luther rightly identifies a sickness in original sin's consequences, but that he confused it with death. A trustworthy will, free to follow God (and likely to do so if left unmolested), is an obvious beginning of a rejection either of voluntarist command-based or Aristotelian reason-based rule of man by man. Meaning: it is an obvious rejection of 'order as the first need', replaced with 'freedom as the first need'. It looks instead to the spontaneous order provided by the providential working out of self-interest.[70] It looks to equality—like parties to a contract—to provide a suitable law for all involved within very limited bounds of not causing harm.

While recognition of universal spiritual equality, and its translation through a religious revolution into a profession of faith in the Germanic lands cannot be excluded as causes, it is still hard to explain why 'universal' would take the sort of character it has in modern culture when modifying equality. We must remember that animals are currently being rolled into the sense of 'universal', with the legal and—more fundamentally—moral rights being extended to them. That is, insofar as possible when dealing with sentient but non-linguistic beings. When these beasts are not considered as moral agents, they are at least proposed as moral patients. Robots could join the fray in a few short decades if we find that their ability to relate to us reaches at least the level as that of our pets. Fundamental rights as currently construed in law and social practice are more or less designed for humans, and so we also call them 'human rights'. But there is not a reason that equality in the sense that we are after could not be extended *as far as possible* to animals and robots—meaning as far as their capacities allow them to enjoy the goods. Animals do, after all, have the same '[heavenly] father'. And the common origin has been

[70] Russell Kirk says: 'In any society, order is the first need of all. Liberty and justice may be established only after order is tolerably secure', in 'Libertarians: the Chirping Sectaries'. *Modern Age* (Fall 1981), 349. Elsewhere, he says it is the first need of the soul. There is a long line of reflection on order arising from the good operation of self-desire, meaning, in specific instances, the will doing what is most in the self-interest of the person, for whatever reason, or no *reason* at all. This literature is largely Dutch and British in origin. Mandeville takes the radical position that private vice leads to public virtue in 'The Fable of the Bees' (1705). Adam Smith takes the more modest position that private interest leads to public benefit in *The Wealth of Nations* (1776). Edmund Burke makes this order nearly sacrosanct as an eternal contract of spontaneous assent and ordering through the generations of the living, the dead, and the unborn, in various places, but also in his *A Vindication of Natural* Society (1756).

one of the motivating reasons for universal spiritual equality of human persons to expand to politics and to social life.

Part of the reason that animals might join the set 'universal' in universal equality goes back to the prioritization of the 'I-You' experience amongst and between moderns. It is formative of the consciousness of the egalitarian mind, which superimposes its experiences of the world onto the world itself. Moderns, especially in late modernity, are tempted to see persons in their most beloved animals. Listen to a pet owner telling the biography of his dog. Sometimes it is just standard happenings, a sort of rigmarole of doings. That is the traditional relation of humans to animals that are *known* to have no sense of their own presence in the world, no self-consciousness. We assume no autobiography is possible, and so we cannot really ascribe a biography to them either. However, once one does start telling our animals' stories to ourselves and then back to them, a bridge has been crossed: 'Molly *loves* her fluffy tail, but she resents us talking about it, doesn't she [affectionate pet here given to the beast].' This is not simple anthropomorphism, or at least not a knowing form of it; nor is it mere projection. It is ascription of *personal* consciousness—of a self that is conscious of itself as a self among other selves—to the beasts of the hearth.[71] Selves are one basis of equality, although usually only self-conscious selves. It is the same type of ascription we participate in when we recognize other human animals as moral persons.

It might also be the *recognition* of a 'second self' in the animal, a form of friendship. Dogs are said to be 'man's best friend'. In Aristotelian terms this could be construed as either a friendship of use (work dogs) or pleasure (lap dogs). But 'friendship' is now understood to be limited to friendship of virtue. A dog really *can* be my friend, even a better friend than you can!—'My dog understands me'. Those with the means have pet health care. Surgeries to fix aesthetic or small problems with animals—or even serious surgeries like that of the heart, kidneys or back—are now routine. Time taken off work to care for an ailing pet is not uncommon. Companion animals on airplanes are commonplace. We feel their pain, and we want to alleviate it.[72] But we don't

[71] The older position on animal suffering, which distinguishes human suffering by its connection to knowledge of death and prospective further suffering before that time, is described in C S Lewis, *The Problem of Pain*. The Macmillan company (1944), especially, 'Animal Pain' 132ff.

[72] There are ancient antecedents to this attitude, but more begin to appear in Christian monasticism, where the 'Peaceable Garden' was attempted to be restored by care of animals and often through vegetarianism in the eastern Christian Churches' monastic communities. St Francis's communion with the animals is one example, as is his 'Laudes Creaturarum / Canticle of the Sun', with reference to 'Brother Sun' and 'Mother Earth'. Some differences in quality between his spirituality

feel it as 'their' pain, as that of a species wholly other. We feel it as deserving consideration—at least similar consideration if not equal consideration. It is also 'our' pain. The old hierarchy of 'humans first' is now called 'speciesism' by the scions of the egalitarian mind.[73]

All of this is completely mad from the perspective of ancient virtues and classical personhood, as well as from Aristotelian proportional equality. But so was universal equality of humans considered mad, we must remember, not so long ago. Then only a few were of the egalitarian mind. How was it that humans—and not wicked humans but ordinary persons like you and me—enslaved one another, watched as others were whipped together with the beasts of burden, failed to have fellow feeling as others were sold. It was not 'racism' or 'power' or some other magical explanation, which simply names something with a descriptive flourish, and thereby pushes any explanation off to another level of mystery. It was much more simply that certain others were not included in the group of humans that deserved equal moral consideration. One did not see some others as like unto oneself, as a 'you' that was equivalent to my 'I'. There were, it might be said, no possibilities for friendship of virtue, since it was thought that only some could participate in virtue, and not 'those sorts'. Definitions and culture mattered too. For instance, if a society defines virtue as 'courage in battle', and then forbids both women and peasants from fighting, then this has a factual truth about it who *can* do it, rather than who *would be able* to do it, all things considered. Now it is possible for consistently-principled egalitarian minds to include a substantial portion of living things under 'universal', with a hand of brotherhood extended.

In this case the egalitarian mind is still unable to provide some others with is equitable treatment in shared goods, and it believes it has good reason for this denial. One does not treat a rock equally, one cannot do so—well, at least not on the system of personal virtues that are built into the goods that equality is meant to distribute. These are both absolute and contextual, but always relative to the well-being of a living thing, a person, in fact.

Nevertheless, as we have become more modern, the equality we are after has easily extended to other sentient creatures, and it could even extend

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and the egalitarian disposition exist. For him, common paternity provided the basis of the moral vision that included the heavenly bodies and animals, but it did not universalize the special status—*dignitas*—of humans. The other creations of God were to receive consideration according to their status and shared paternity, but not equal consideration, or the same immutable status.

[73] A term apparently coined by Richard D Ryder, *Animals, Men and Morals: An Inquiry into The Maltreatment of Non-humans* (1971), popularized by Peter Singer, *Animal Liberation* (1975).

beyond them to nature itself.[74] But the virtues we value would need to be transmuted to match the new objects of affection. Ideas such as 'environmental justice' and 'environmental inequality' have bled into the conversation, and not merely where they touch on people groups disproportionately affected by human-induced changes to the environment. 'Climate justice' is one word for it. But the broader ecological movement announced to the world by the publication of *Silent Spring* in 1962, is that we are committing irreparable harm to the planet, which has something like an equal right not to be harmed.[75] Meaning, we say and feel 'That's not fair!' We take the side of that which cannot speak for itself. But we do believe that there is some sort of 'self' there—a stoic moral patient—a moral entity, which could not be harmed with impunity. This is an extension both of the 'I' in the I-You relation, of the 'us' or 'who we are'. It is inclusive in a way that something with the pretence of universality should be. And it shares the goods of equal consideration by means of the tools of justice. But it has not yet moved the moral reasoning beyond persons as the primary status that should share equally in moral consideration.

The equality we are after is the equality we follow, and that follows us. It focusses on persons' share in the goods of life. Personal identity has been shown to be plastic enough to extend beyond humans. And 'universal' has meant that the natural world can even be considered up for equal moral consideration. This latter consideration, however, is still usually analogical rather than real. The consideration of great apes and other sentient beings as persons deserving of equal moral consideration, however, is a wholly consonant habit of the egalitarian mind with its alter-conscience.

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[74] 'Environmental justice', involving 'environmental discrimination' and environmental racism', are still, however, limited to 'disparate impact' on humans, usually categorized based on traditional race, class, sex lines. See the US Environmental Protection definition: 'Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.' Further: 'EPA has this goal for all communities and persons across this nation. It will be achieved when everyone enjoys: the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.' https://www.epa.gov/environmentaljustice.

[75] Rachel Carson, *Silent Spring* (Houghton Mifflin 1962).

Consensual autonomy

Open ends means consent is required for autonomy, rather than it just necessitating some set of material and social conditions. What the egalitarian mind seems to be seeking immediately and in the more common extension of equality to all adult human persons, is not equality of any *specific* good or set thereof, but equity. Or, even more so, a reduction of inequity. This is the result of an application (and compromise) of the dispositive conclusions of the alter-conscience to the messiness of life. As the conclusions are applied, the focus also shifts from the mathematical world of equality itself to the personal realm of hopes and ambitions that are more or less frustrated. This is laid bare if the question is put to moderns whether they want to be happy or equal. The answer is invariably happy, unless they think that they or those that they believe to deserve equal consideration will be adversely affected by that answer. Only then is the answer 'equal'. 'Equal' is then a corrective, it is equity. If equality plays a part, it is that people want to be 'equally free to pursue happiness.' Whatever it might mean, it is most often distinct from traditional understandings of both freedom and happiness. This discourse on 'happiness' heads away from traditional concerns with human flourishing, which look for great agreement on ends. Amongst traditional people, there is also often—and perhaps necessarily—broad consensus on means to achieve those ends. If, say, *man* is meant to flourish and contemplate the good, some specific set of virtues is needed to get him in the position where he even has the time to contemplate. And not only in himself, but also in the society around him.

What 'equality' bleeds into in practice is the open-endedness of goods (besides the good of equality), including the non-definition of ends for oneself and others. We are equally free of coercive cultivation of appropriate ends, and thus free from *and free of* the necessary means to those ends, the virtues (that is, besides means that are also forms of equalization). This refraining from determining both means and ends is in tension with Rousseauian autonomy, which has as its ostensible end the self's achievement of its own happiness, and thus enforces the means toward a self-chosen end. This represents the tension between equality and half of modern autonomy, which I return to in the chapter on autonomy below. Locke is less coercive about ends and means with his understanding of corporeal autonomy. He is more concerned that the actions of the will—particularly one's labour—is able to be exercised without unnecessary external interference or coercion.

There is here then an obvious competition between Lockean-Jeffersonian open-ended *eudaimonia* and Rousseauian-Jeffersonian self-discovery preceding eudaimonic life ('…the pursuit of happiness'). Nevertheless, since authenticity in self-discovery is at the very least difficult to discern in individual cases (or even within oneself 'Have I really found my true self?'), and impossible to determine collectively, a political system that allows either for a Lockean or for a Rousseauian model should look substantially similar. They might be indistinguishable from the 'cultural' outside (as eighteenth-century pre-Revolution France and Britain could have been to non-Western cultures). Neither the Lockean nor the Rousseauian vision could, for instance, truly require inner assent to principles that are not obviously universal, neither could be too particular about appropriate ends of human life, without betraying their understanding of autonomy. Though we would expect that the 'militant lowbrowness' of Rousseau would result in more aggressive policing of the realization of basic personal autonomy[76], neither could ultimately demand heroic sacrifice from its members without their consent.

When we find ourselves living as universally equal persons, we find ourselves needing to project something into the world—deliberate '*pro-jecto*'—to replace the givens that were, in fact, never given to us with a grand narrative of the self.[77] In trying to make sense of this 'throwing-forward-ness', some have asked how we can live with the thought that we create our own nature, our own values, our own purposes, since modernity 'has to create its normativity out of itself'.[78] Others have just focussed on deriving democratic ethics from the structure of human communication, irrespective of whether it is metaphysically anchored.[79] A self-created normativity is true not only on the level of groups but also especially on the level of natural persons, each of whom must write and communicate. After the narrative is constructed, we

[76] It is important to remember that Rousseau intended to reform education and science for the instruction of 'morals'; whereas Jefferson's republican vision was substantially about reform of political life. *Cf* section 'Respect for Autonomy as Ground for Restricting Freedom' in D Kimel, *From Promise to Contract: Towards a Liberal Theory of Contract* (Hart Publishing 2003) 129-131; J Raz, *The Morality of Freedom* (Oxford 1986) 204: 'a person is autonomous only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options.; Raz deals with problems of autonomy, including whether ideals or visions of the good (perfectionism) can be present in a system the members of which are truly autonomous, *Ibid.*, 'Autonomy and Pluralism', 372-377. Choices are required for autonomy, but liberalism is not synonymous with increasing choices—even in Thomas Jefferson's form of it.

[77] Remi Brague does so in *Moderately Modern* (St Augustine's Press 2017).

[78] R Rorty, 'Posties', *London Review of Books* (3 September 1987), 11.

[79] Habermas, Jürgen. 'Discourse Ethics: Notes on a Program of Philosophical Justification.' (1990).

compete for equitable treatment of our own narrative against the narratives of others.[80] We work this out in consensual relations, for none other would be appropriate to those that we grant equal consideration of goods, and for those that we recognize as a 'you' that is also writing her own narrative.

Goods are frequently means. But sometimes they are (also) ends. An end in itself can also serve as a means to something else. Since we do not necessarily agree on the ends or the means, and we disagree on which should have priority, we must ask one another, negotiate the differences, and attempt at least not to 'harm' one another.[81] We must allow the results of those questions to become the fence posts of our field of action. In other words, consent is sought of other autonomous persons before we hold them to *moral* obligations. This is so, even as all other kinds of obligation persist without moral warrant, either because life must go on, or because moral reform of our obligations by the egalitarian mind, in order to put them in line with the egalitarian constitution, has not gotten there yet.

The egalitarian mind, as I have begun to describe it, has not yet collected enough reasons to see through that truth to a way of life. In the chapters that follow, consent and autonomy will emerge as essential to what the egalitarian mind envisions to be a perfectly moderated instance of equalitarianism, fit for everyone, everywhere. It will turn on the conception standing behind 'person', which for most equalitarians is closer in meaning to an anonymous 'individual', an 'unencumbered self' than it is to anyone with a name, and an address, and a dog that likes cats, and foot odour. Rawls makes use of such a thin metaphysics of the person as the very individual that we become when behind the veil of ignorance, in order to represent each and every one of us in the game of choosing the fairest society.

Unencumbered selves

John Rawls has attempted to present a perfectly moderated vision of equalitarianism, fit for all *individuals* everywhere. Recall that, for Rawls, the 'equal basic liberty principle' takes priority, wherein each is given the ability to 'frame, revise and rationally to pursue' her own conception of the good. That sounds very *personal* indeed. However, the self is imagined to exist as its true

[80] Multiculturalism could be read as an ideology that is attempting to prevent a clash of narratives more than a clash of cultures. It tends to exist in monocultures such as the Western academy, in which what really distinguishes one from the other is engagement with 'texts', rather than with whole 'cultures'.

[81] Raz's also sees this connection of autonomy, freedom, and plurality of goods, *supra* note 76.

self prior to its (chosen) ends. As one commentator argues, there is an 'unencumbered self' that is the metaphysical heart of Rawls's theory.[82]

Unencumbered from what? By what? Well, first by any thick conception of the good. One will choose one's ends—*eventually*—but not for reasons of personal identity. Identity is non-teleological. There is no 'nature' that is normative for human action, that is a guide to our ends. Rawls's conception of the self is the result of cultural, spiritual, and psychological neutering of the person, a reduction of the person to the generic individual. That provides the cover of neutrality (each is an impartial individual) under the pretence of consensualism (each chooses her ends). It is thus a backdoor allowing a heavy dose of categorical moral reasoning to be snuck in. Thus, Kant is used to provide content for an essentially Rousseauian construct of the social contract involving unencumbered individuals (very different from Rousseau's understanding of 'man'). Rawls's conception is thus well understood as Rousseau minus authenticity, plus rationalism. Following Rousseau, the social contract features largely. It is just now rechristened as the 'original position'.

'Social contract' is for Rawls and Rousseau, a mental game that is used to convince the reader that he would have chosen a certain system as the best, given either the initial conditions (the rules of the game) are correct (Rawls) or that there is a correct understanding of human nature as the point of departure (Rousseau). Those rules are said to be in some way natural or the 'real'. One necessity to this reality is a window onto the Peaceable Kingdom that one is meant to be pursuing. The fiction of a 'veil of ignorance' (Rawls) or a pristine original condition of our primitive ancestors (Rousseau) serve that need well. The individual in the original position is rendered ignorant of her own talent(s), status(es), and conception of the good, in the former case, and in the latter case, all three are rendered moot by the removal of the person from any civilization that she has ever known.

In Rawls's telling, the self is unencumbered by its own conception of the good at just the point it is meant to determine what justice is, in the 'original position'. This unencumbered self is Rawls's version of Rousseau's 'noble savages' (man before or outside of the corruption of civilization), who together eventually hammer out terms of engagement in a just society. But he has bettered Rousseau, since man can still get behind a veil; whereas Rousseau admits that man cannot ever return to savage innocence. Self-interest, tied to

[82] M Sandel *Liberalism and the Limits of Justice* (1982), 119-123. Compare this to the 'buffered self', e.g., in Tocqueville, *Democracy in America* (1899[1835]), Vol. II, Sec. II, Chs. II-IV.

a practical reasonableness, and pity for others who might suffer from a bad system, all feature large in their idealized selves, who are meant to determine the best political arrangements by way of 'justice'.

Rawls, like Rousseau before him, is attempting to justify the chains that purportedly naturally free men find themselves in—chains that are supposedly unjustifiable by the *facts* of nature. He is not looking to free us from chains. He is not a 'liberal' in that sense. Neither man is, in fact, a liberator. Each wants us to agree on the best chains for oneself and one's compatriots (Rousseau) or for anyone and everyone, everywhere (Rawls), whilst considering also what is optimal for everyone (both Rousseau and Rawls). So, they give with one hand and take back with the other. As one commentator has said, for Rawls, 'neutrality between conceptions of the good implies that individual conceptions of the good are morally arbitrary – i.e. ['one's] right is prior to the good. But if this is the case, how can the highest social virtue be that of enabling us to pursue our arbitrary conceptions of the good as fully as possible?'[83]

In Rawls's game one stands behind a veil of ignorance so that one's own self-interest, self-knowledge, and biography do not cause her to be partial. This is thought to produce justice as fairness. This result is expected on the analogy that if one knows in advance where one is to be located in a given system, one is likely to optimize the system to her own benefit, or to the detriment of others, or both. It assumes that self-interest is cunning, and that self-regard tempts one to pride, rather than that reason and altruism are able to be the possession of the autonomous person. Both Rawls and Rousseau are downstream from Jean Calvin on this point. Here we see yet another instance of Rawls's swapping of Rousseau for Kant. There is maximal risk-aversion on the part of any individual in the original position. Rawls calls the ideal result 'maximin reasoning'. One attempt to get the lowest position in society to be set at as high a baseline as possible regarding the availability of basic goods. One 'maximizes the minimum' just in case one ends up down there where one would never willingly place oneself.

Rawls tells us, echoing Rousseau before him, that determining a society's basic institutional arrangement on such grounds, and without knowledge of one's own talents, statuses, and conception of the good, will ensure freedom and equality are implemented. Ignorance of one's own talents and status will guarantee equality, or at least 'more equal' outcome. The alter-conscience

[83] Clare Chambers put this forward in a course on the matter at the University of Cambridge. Her lectures helped to clarify some of Rawls's thought in this section.

insists on meaningful nonsense phrases like 'more equal', while usually meaning 'more equitable'. This seems relatively straight-forward, when equality is defined in advance as universal equality. And the metaphysics of the person in both visions are fundamentally the same generalized individual. But that freedom could actually be guaranteed from behind the veil of ignorance by shedding knowledge of one's own conception of the good, seems to strain credulity. Would it not limit freedom only to *potentia*, rather than actualization? Freedom is always present in the future, rather than being a description of present conditions. Freedom is what one could potentially do under certain circumstances, rather than what one is or has become, and it seeks to remain in an ideal (or at least improved) political order.

Since much of one's identity is checked at the door, the unencumbered self is less a person than an 'individual' or, better yet, an 'agent'. Like so many units in utilitarian calculus, there ceases to be a way to determine which goods should be considered goods and why. Rawls then imagines that persons can choose their own ends without knowing anything about a large number of their preferences: status, talents, and conception of the good are absent. Additionally, as one commentator put it, human persons often *discover* their ends, rather than choosing them, where 'choosing' means 'creating' ends. Within that set of discovered ends, certain ends are based in inherited conceptions of the good, rather than chosen goods and thereby chosen ends.[84] Some inherited conceptions of the good are integral to one's identity. Some such inheritances come from a shared life with others, which is also tied up with one's identity, and often cannot be disconnected from status. Status originally related to the family and the religion of the hearth. It then transferred to the allegiance to the state.[85]

The longest-standing conceptions of the good, such as what has been called the 'Great Chain of Being', begin with communal unity, and descended to the individual persons' identities as members of that larger, eternal, body.[86] But like many a utilitarian before him, Rawls has boxed himself into not allowing a particular good to become *the good* of a (political) community. Along the way, he has boxed out large areas of actual freedom. Freedom, in one important sense, is belonging. It is the actuality of existing as something

[84] M Sandel, *Liberalism and the Limits of Justice* (1982), 119-123.

[85] See N D Fustel de Coulanges, *The Ancient City: A Study of the Religion, Laws, and Institutions of Greece and Rome* (2012 [1874]), esp. 'Religion was the constituent Principle of the ancient Family' 40ff, and 'Omnipotence of the State. The Ancients knew nothing of Individual Liberty', 219ff.

[86] See A O Lovejoy, 'The Outcome of the History and Its Moral', 315ff, in *The Great Chain of Being* (1936).

formed for a particular role, rather than always being at a loss for one's identity, always having to 'project'. Aristotle talks about *eudaimonia* in this way in the first book of the *Nicomachean Ethics*. It is something one had gained by a life-long possession of virtue; for, 'one swallow does not a summer make'. By excluding these large parts of personal identity from the individuals behind the veil of ignorance, including the actualities of a well-formed character, Rawls has ensured that those so veiled will be ignorant even of the freedoms that are no longer possible from the original position. For, as Aristotle says in the same book, it is only he who is educated in a discipline—meaning, disciplined enough to practice it—who can rightly judge it. Putting it in terms of Rumsfeldian epistemology, what is unavailable to Rawls's unencumbered selves is an 'unknown unknown'; moreover, it is an unknown unknowable.

With the slate of human nature now truly blank, she 'has to create its normativity out of itself', both for herself and for all others.[87] Universal equality will be the result. It can, in this way, be the only result. Some freedoms will attend it. And all who enjoy it will be educated into the knowledge that they have achieved morality as autonomy. But it will be a world bereft of possibilities for individual choice in line with one's own potentialities and actualities. Since all choices, in order to be just, must first lift up 'the least of these', no individual can himself knowingly choose the good for himself. Leave that to the social scientists, the new philosopher kings, says the academic Rawlsian. Leave that to a central authority, says his policy wonk technocrat.

In such an eventuality, the alter-conscience will have gotten more of its demands than it should have. With righteous indignation driving its alter-conscience, the egalitarian mind would become more incensed than the proverbial (but mostly fictitious) Massachusetts Puritan purging witches from the woods. Rawls sets egalitarianism up to be a revolutionary leveller, and finally to destroy its own thin conception of the good along with the thinner individual that chooses that good as justice as fairness: It keeps asking 'Who will level the levellers?' until there are none left to answer? Consensualism is needed to moderate equality. Asking actual persons what they would tolerate in order to achieve a more equal world is necessary. This means, asking which of their statuses, talents, preferences, and conceptions of the good are negotiable for the sake of equality is the only route to avoid a truly banal

[87] R Rorty, 'Posties', London Review of Books (3 September 1987), 11.

procedural tyranny.[88] The next chapter will pick up with the value of consensualism.

[88] Many of the crimes of the 20th century are more like the clerical 'banality of evil' that is depicted in Hannah Arendt's *Eichmann in Jerusalem*. Eichmann rightly reported that he never killed anyone, nor did he order anyone to be killed. The violence was much more integrated into the institutional setting, namely, the proverbial camps, cattle cars, and ovens that was subsequently to terrorize our collective conscience.