

## 10 EQUALITY

In the last three chapters, we considered a commonplace claim to one kind of equality: the political equality constitutive of democracy. In this chapter, we consider claims to other kinds of equality. As before, the thrust of this chapter will be mostly negative: to show that these claims to equality cannot be fully explained by interests in improvement or rights against invasion. However, there will be one major exception. Claims to substantive equality of opportunity, I will suggest, can be explained, without remainder, in terms of interests in improvement.

Much of this chapter might be viewed as a meditation on a puzzle about Rawls. The puzzlement starts with noticing that the parties in Rawls's "original position" exclusively press interests in improvement. That is, they seek a larger share of "social primary goods," understood as means to advance one's "life plan" or "conception of the good," for those they represent. In other words, the aims of the parties, to get the largest share of primary goods for those they represent, are, at the most basic level, non-comparative. They want the most for those they represent, period. They do not care what others enjoy, at least so long as this does not affect what those whom they represent themselves enjoy.

This last clause is an important qualification. In some cases, what a given person enjoys in absolute terms is affected by what others enjoy in comparative terms. For example, the mere fact that Altra has a *greater* share of primary goods than Indy may affect Indy's share *itself*, because it puts Indy at a disadvantage in competition for other goods, or because it has adverse effects on Indy's psychology, which makes Indy less able to pursue Indy's conception of the good. Nevertheless, our main point stands. At the most basic level, what the parties care about is the absolute share of those they represent. What others get in comparative terms matters only insofar as it affects that absolute share.

Why should this fact, that Rawls's principles answer simply to interests in improvement, be puzzling? Because Rawls's principles have more structure, and more comparative, egalitarian structure, than one would expect if they simply answered to interests in improvement.

First, different principles regulate different goods. In the crudest terms, the different goods are: (i) liberties, (ii)

(chances for) jobs, and (iii) money. To be sure, there are other primary goods, notably the “social bases of self-respect.” However, these other primary goods are supposed to be properly distributed just when the other primary goods are.<sup>48</sup>

Second, the principles governing liberty and jobs require strict equality.<sup>49</sup> It is only the principle governing money, the difference principle, that sanctions inequality, and then only insofar as it benefits the worst off.<sup>50</sup>

Finally, liberty takes lexical priority over jobs, which take lexical priority over money. This bit of structure—the priority of the basic liberties—has attracted a great deal of criticism, with which I am sympathetic.<sup>51</sup> But my main focus

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<sup>48</sup> This is compatible with the fact that the concern for the social bases of self-respect plays a role in justifying the principles that regulate the distribution of other goods. The parties choose the principles that they do in part because of how they support the social bases of self-respect.

<sup>49</sup> I know, I know: The fine print actually allows inequality in liberty and jobs, so long as it benefits those with less (Rawls 1999 266). According to the fine print, the real structure of the theory is: first, the difference principle for liberty, then the difference principle for jobs, then the difference principle for money. But I think the fine print is at odds with the rest of the document. The first principle is certainly advertised as a principle of equality (“equal right to... equal basic liberties”). And the second argument for priority of the equal basic liberties works only if they are indeed equal (477: “And this distribution being equal...”).

<sup>50</sup> And as Cohen (2008) stresses, “only insofar as it benefits,” as opposed to “so long as it does not disbenefit,” itself expresses a comparative, egalitarian idea. The former idea, but not the latter, prohibits weak Pareto improvements, in which the better off are made better off, but the worse off remain as they were.

<sup>51</sup> See, e.g., van Parijs (2003 225). To be sure, Rawls offers an argument for the priority of *liberty*. At a sufficiently advanced stage of development, first, certain pursuits are simply more important than other pursuits and, second, any increase in liberty, no matter how small, is always a better means to those privileged pursuits than any increase in money, no matter how great.

In special cases, this may be true. Perhaps, within many religious traditions, simple prayer—which requires only the forbearance of others—takes priority over temple

is on the other bits of structure: the regulation of the distribution of different primary goods by different principles and the egalitarian character of those principles.

The puzzle, in brief, is: Why equality, and why equality in just these goods? Why not instead a single principle: improve the overall situation of each as far as possible, except where this would deprive another of an improvement, in which case trade off between them fairly? Or, coming at it from another direction: If equality *is* the right way to distribute *some* goods, such as liberty, then why isn't equality also the right way to distribute *other* goods, such as wealth?

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construction—which requires money. But, as many note, it hardly seems true in general.

Rawls also offers an argument for the priority of *equal* liberty. If people have equal liberty, and if equal liberty takes priority over the distribution of other goods, then people enjoy a kind of equal status. As will become clear, I'm very sympathetic to this *form* of argument, and I return to it in Equal Basic Liberty, Revisited.

## 10.1 *Equal Basic Liberty*

To make this more concrete, let's begin with three specific puzzles about liberty. Since we have already discussed the political liberties, we assume that it is non-political liberties that are at issue.

The first puzzle is why the parties should treat liberty and money differently. Rawls suggests that liberties matter as means to certain activities. But money is also a means to many of the same activities. Consider "freedom of movement." I take it that you enjoy "freedom of movement," understood as what Rawls calls a "basic liberty," insofar as the state, first, does not issue and enforce commands that you not travel, and, second, prevents others from obstructing your travel. Granted, you can't travel if you lack freedom of movement. But you also can't travel if you lack bus fare. So not only freedom of movement, but also money, is a means to activities that require getting from point A to point B.

One might reply that liberty is a special *kind* of means: a means that consists in being able to predict that *others* will not *coercively* prevent one from that activity. (Again, I don't think we know what we mean by "coercively" here, but set that aside.) If one lacks freedom of movement, then others will *coercively prevent* one from travelling. By contrast, if one lacks money, one just can't pay for travel.

One problem with this reply is that it's obscure why protection from coercion—which is what liberty is supposed to provide—should be governed by one principle whereas protection from, say, disease—which is likewise a means to certain activities—should be governed by another principle. Insofar as the parties in the original position simply want to pursue the relevant activities, it is not clear why they should care whether what prevents them from pursuing those activities is coercion or disease. Either way, they can't pursue those activities.

Another problem with this reply is that, on closer inspection, it does nothing to distinguish freedom of movement from bus fare (Hale 1923, Cohen 2011, Ch. 8). Without freedom of movement, one will be stopped by domestic passport control, which will call on the police to enforce it. Without bus fare, one will be stopped by the driver, who will call on the police to enforce it. If being stopped by domestic passport control counts as coercive interference, then so too do being stopped

by the police. So, lacking money *is* being unable to predict that others won't coercively interfere with you as you pursue certain activities. So, setting aside why anyone should *care* about the distinction between liberty and money, it's elusive what the distinction, in suitably general terms, even *is*.

Now the second puzzle. To my knowledge, Rawls never addresses, and in any event justice hardly requires, the kind of restrictions that would actually be required to secure equal basic liberty. Suppose that some people buy home security systems on the open market. This means that they are better protected from "interference" than others, but (let us suppose) no one is worse protected in absolute terms. The basic structure is predictably resulting in inequality in liberty (and moreover inequality that does not work to the advantage, even if not to the disadvantage either, of those with less liberty). As far as I understand the distinction, this is inequality not in what Rawls calls the "worth" or "value" of liberty, but instead in liberty *itself*—freedom from interference.

The third and final puzzle concerns how "unequal" liberty is even to be understood. Rawls's paradigm of unequal liberty is a ban on a minority religion (1971 §33). Now, one might object to this ban simply on the grounds that it reduces *everyone's* liberty equally. *No one* is permitted to practice the banned religion. In that respect, it would be ruled out by the "greatest extent" part of Rawls's first principle.

So far, so good. The puzzle is why Rawls should describe a ban on a minority religion as an *inequality* in liberty, which is ruled out by the "equal" part of the first principle. After all, as we just noted, the ban removes the *same* option from *everyone's* menu, like the prohibition of alcohol or perjury.

One might reply that, if we take it as given that some people are adherents of the banned religion, the ban does *not* remove the same option from everyone's menu. It removes from some, but not from others, the option of "the religion to which *I* adhere."

One difficulty with this reply, however, is that the same could be said of the prohibition of alcohol or perjury.

Another difficulty with this reply is that Rawls explicitly rules it out. For Rawls insists that when evaluating whether people have been given their just shares, we should view

people as free: as not bound by, or identified with, any religion or other conception of the good. Insofar as a person is viewed as free, there is no particular religion to which that person adheres. Rawls (1975) clarifies this in his reply to Nagel (1973). Nagel observes that a society that realized justice as fairness would not be *neutral among conceptions of the good*, since it would likely be a society in which some conceptions flourished and others did not. Rawls replied that while the theory was not *neutral among conceptions*, it was nonetheless *fair to persons, viewed as free*. For any given conception, it ensured that no person had (unfairly) greater opportunity to pursue successfully that conception *than any other person*—even if it did not ensure that each person would have the same opportunity to pursue successfully some conception *as that same person would have to pursue another conception*. I am inclined to agree with Rawls on this point. In evaluating whether someone's situation is better or worse, we should view them as free: as not associated with any particular choice, judgment, etc. But then a ban on a minority religion, while perhaps unjustifiably restrictive for everyone, does not treat anyone unequally.

Those, then, are three puzzles about Rawls's doctrine of equal basic liberty. And they are not just puzzles about Rawls, since Rawls is, by and large, reflecting widely shared judgments. We would find unequal legal prohibitions on movement intolerable, even though we are more or less reconciled to inequality in bus fare and home security upgrades. And we view a ban on a particular religion as the paradigm of unequal liberty, in a way in which we don't view a ban on alcohol or perjury as a paradigm of unequal liberty. The question is why. All I suggest at this point is looking beyond interests in improvement for answers.

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### 10.2 Formal Equality of Opportunity

After the equal basic liberties, Rawls urges “equality of fair opportunity,” requiring, roughly, equal chances for jobs. Opportunities for positions are to be distributed equally, and this equal distribution is to take priority over the distribution of the remaining goods, such as income and wealth, by the difference principle. Equality of opportunity has a “formal” and a “substantive” component. The “formal” component says something like the following:

*Equal Qualifications:* For any given position, P, if person A has no worse qualifications than B for P, then A has a complaint if A has worse chances than B of being selected for P, if both apply.

Principles of this kind are usually formulated as requiring only that *equal* qualifications receive *equal* chances. But that formulation seems too narrow. It recognizes no complaint of A’s against B’s enjoying much *better* chances than A, even though B’s qualifications are much *worse*. This is why I favor the formulation that *no worse* qualifications receive *no worse* chances (compare Cohen 2008 367).

Our question in this section is: Can A’s complaint in Equal Qualifications be understood as an improvement complaint: that some individual or institutional agent, by improving A’s chances for P, could have improved A’s situation without unfairness to B or others?

We begin by distinguishing several kinds of improvement complaints relevant to the allocation of positions. Along one “axis,” we can distinguish between improvement complaints from those who would be served by work—“beneficiaries”—and from those who aspire to do the work—“workers.”<sup>52</sup> Along another axis, we can distinguish improvement complaints about which *positions* are made available, about how they are *filled*, and—although we won’t discuss them until the next section—about how people are *trained* for them.

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<sup>52</sup> One way of reading Rawls 1999 73 “the reasons for requiring open positions are not solely, or even primarily, those of efficiency” is simply as a reminder that workers’ position complaints (and, as we will soon discuss, their selection complaints) must be given due consideration.

Thus, to begin with, *beneficiaries* may have an improvement complaint if, *by making different positions available*, their situation could be improved without unfairness to others. If we make the position of “baker” available, for example, consumers will have baked goods to eat. Call these “beneficiary-position” complaints.

*Workers* may also have an improvement complaint if, *by making different positions available*, their opportunities could be improved without unfairness to others. If we make the position of “baker” available, some workers will have the opportunity to spend their days as bakers. Call these “worker-position” complaints.

Of course, beneficiary- and worker-position complaints may conflict. “Inefficient” positions may improve the situation of workers, but worsen the situation of beneficiaries. Such “inefficiency” does not support a beneficiary-position complaint, however, if this is a *fair* trade off. Nor does it count as a genuine inefficiency, with the scare quotes removed. The relevant sense of efficiency is simply promotion of the public interest, and the “inefficient” positions do promote the public interest.

Note that “making positions available” might consist not only in creating baking jobs, but also in changing the structure of baking jobs so that certain workers can do them: e.g., providing equipment to help lift heavy bags of flour, offering flexible scheduling to allow bakers to care for elderly parents. Again, this may make the positions less “efficient,” but again it may be a fair trade off, and so, in the sense that matters, a gain in efficiency.

Now consider complaints about how positions are filled. A *beneficiary* may have an improvement complaint if, *by filling the positions in a different way*, their situation could be improved without unfairness to others.<sup>53</sup> Call this a “beneficiary-selection” complaint.

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<sup>53</sup> Note that if beneficiaries so much as *expect* that decisions will be made in ways that give rise to beneficiary-selection complaints, or if workers expect that decisions will be made in ways that give rise to worker-selection complaints, then it may incentivize behavior that in turn disservices the public interest. If nepotism is widespread, say, then consumers may hedge against poor performance by seeking costly substitutes, and workers may divert their



A *worker* may have an improvement complaint if, *by filling the positions in a different way*, they could have had a better chance for the position, without unfairness to others. Call this a “worker-selection” complaint.

One worker’s having a better chance might be unfair to others in two ways. First, there may be *competition*, by which I mean that improving one worker’s chances of obtaining the position reduces another worker’s chances of obtaining the position. In this sense, lotteries are “competitive,” even though they don’t involve rivalrous exertion. Note that not all cases of filling positions are competitive. For instance, there may be at least as many positions as applicants, in which case your obtaining one position does not prevent me from obtaining one of open positions that remain. I assume that Equal Qualifications applies even when there is not competition. Although the terms, “competition” and “competitive,” often appear in discussions of equality of opportunity (e.g., Arneson 1999 77; 2013a 316), they aren’t defined, they aren’t consistently applied, and their significance, if any, isn’t explained.

Second, one worker’s having a better chance might serve beneficiaries worse, in which case beneficiaries have selection complaints. This is the main reason, I think, why a worker’s being “qualified” for a position is morally relevant. If Arbeit is more qualified for a position than Boulot, then giving Arbeit the position *costs beneficiaries less*. It’s *beneficiaries, not Arbeit*, who have a complaint if, despite his better qualifications, he has no better a chance at the position than Boulot.<sup>54</sup> And beneficiaries might not have a complaint; the importance to Boulot of a chance at the job may mean that the loss of “efficiency” that beneficiaries bear is not unfair (and so not, in the relevant sense, a loss of efficiency). Imagine, for example, that the “inefficiency”

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investments away from augmenting their own human capital into marrying into employers’ families.

<sup>54</sup> Here I set aside the possibility that Arbeit might have complaints (i) that Arbeit was led to expect that the position would go to the best qualified, or (ii) that Arbeit would find the job more rewarding than Boulot, would get more out of it. The traits of Arbeit that make it the case that he would find the job more rewarding may overlap, to some degree, with the traits that make Arbeit more qualified for it. But they are not, in general, the same.

comes only from the cost of accommodating Boulot's occasionally disruptive need to care for an elderly parent.

For another illustration of the ways in which one worker's having a better chance for a job may or may not be unfair to others, suppose selection processes X and Y have a zero "false-positive" rate—they never overestimate qualifications—and they fill all of the positions. However, X has a lower "false-negative" rate—unlike Y, it does not overlook qualified *F* workers—and settles ties by lottery. Then *F* workers may complain that their chances for the job could be improved by X. Selection process X would not be unfair to beneficiaries, since X, with the same zero false-positive rate as Y, serves their interests just as well. Granted, in raising the chances of *F* workers (from zero), X lowers the chances of non-*F* workers (from something above zero). By construction, the case is competitive. But far from being unfair to non-*F* workers, this trade-off—raising some from zero, while lowering others from above zero—seems positively required by fairness.

Insofar as "qualifications" play this justificatory role, they are nothing more than traits such that beneficiaries' situations are fairly improved by a system where people with those traits are "given the position." To say that A is "more qualified" than B for a position is to say that A's and B's traits are such that beneficiaries' situations would be fairly improved by giving people with A's, rather than B's, traits that position.<sup>55</sup>

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<sup>55</sup> This should be read so as to accommodate the following point about comparative advantage, raised by Lucas Stanczyk. In the ordinary usage, A is "more qualified" than B for position 1 when, *holding other things equal, including how well other positions are filled*, giving A position 1 would better serve beneficiaries. Suppose now that A is more qualified than B, in this sense, for both position 1 and for position 2. Compatibly with that, however, it might be the case that beneficiaries would benefit more from having A in 1, given that this will mean that B is in 2, than they would from having A in 2, given that this will mean that B is in 1. (This is just an application of David Ricardo's famous doctrine.) In that case, A does not have a selection complaint about having worse chances than B for position 2, even though in an ordinary sense, A is "better at the job." The morally relevant sense of "more qualified" should *not* hold other things equal. A is more qualified than B for position 2 only if giving A rather than B position 2 would better serve

So understood, “qualifications” don’t answer to any independent notion of “merit.” Nor are they limited to what we might ordinarily think of as on-the-job skills (Scanlon 2018 48). They include, among other things, that the worker would serve as a “role model,” helping to combat the impression that members of an underrepresented group would be unsuccessful (or simply unhappy) in it, or “foster social trust and cooperation among [deeply divided] groups” (Arneson 2013a 319). Granted, I’m not sure whether this is how Rawls understood “qualifications.” But it is hard to see how else he could have understood them, consistently with the rest of his outlook.

The phrase, “given the position,” is significantly ambiguous. On a narrow reading, to be “qualified” is to have traits such that beneficiaries’ situations are improved when people with those traits *have* those positions, *abstracting from the process of selecting those people*. For example, someone who *would* have passed a certification exam, even though they *in fact* neglected to take it, is just as qualified, in this narrow sense, as someone who is in fact certified.

On a broad reading, to be qualified is to have traits such that beneficiaries’ situations are improved when there is a *process of selecting people with those traits for those positions*. A certification may well be a qualification in this broad sense, since it efficiently assures others that the certified person is qualified in the narrow sense.

Insofar as “qualifications” are simply factors that affect the complaints of beneficiaries in the way described, I believe that they should be understood in the broad sense. Suppose that while X is a better qualification than Y in the narrow sense, X is impossible to detect whereas Y is not (or X is prohibitively costly to detect, or attempts to detect X are intolerably more prone to error). Then beneficiaries would have a complaint about selection processes that sought to ascertain X, instead of selection processes that sought to ascertain Y.

Have we overlooked a further complaint that workers might have? Scanlon 2018 suggests that it would be wrong to use

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beneficiaries, *given the effects of that decision on how well other positions are staffed*. This further distinguishes the morally relevant notion of being more qualified from the ordinary notion of being “better at the job.”

proxies rather than more direct evidence of narrow qualifications, even if there was no worker-selection complaint, because it made no difference to applicants' chances of the job, and no beneficiary-selection complaint, because proxies were more efficient. This is so, he writes, because "people have further reason to want to be taken seriously as candidates for these positions, and considered on their (institutionally determined) merits" (51).<sup>56</sup>

I doubt, though, one has a significant interest in simply having one's narrow qualifications attentively reviewed, for its own sake, much less an interest that gives one a claim on others to bear the cost of satisfying it. It becomes all the more questionable when we remind ourselves of what narrow qualifications amount to in this context. Perhaps there's some plausibility in the suggestion that one has an interest in having one's narrow qualifications attentively reviewed (if not in the suggestion that this interest gives one much of a claim on others) when the qualifications in question are traits that one has independent reason to take pride in. But one's "(institutionally determined) merits" needn't be that. I may "merit" a place in nursing school simply because I plan to move to St. Louis after I graduate, because my wife has work there, and since a new hospital will be opening, there's expected to be relatively high demand for nurses in St. Louis. A valid reason to be sure, but it's not clear that it's a fact about myself that I have a claim that people stand up and take notice of.

Let's now return to our main question. In this section so far, we have described various improvement complaints, from workers and beneficiaries, about positions and selection, concerning the distribution of jobs. Do these improvement complaints fully account for the sort of complaint described

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<sup>56</sup> It is not clear how far Scanlon's concern is, or is exclusively, a concern, about being "treated as an individual," as opposed to a member of a statistical class. If, in general, graduates of university A really do tend to be better prepared than graduates of university B, would it disregard the reason that Scanlon has in mind to use that as a "proxy"? The concern may be instead about whether the process seeks out factors that have some "rational" or "explicable" connection to qualifications. The fact people who like "curly fries" on Facebook score higher on IQ tests (Kosinski et al. 2013), even if no less statistical, might seem more problematic. What the problem is, however, is another question.

in Equal Qualifications: a complaint of having worse chances for a job, when one has no worse qualifications?

Here I make three observations. First, Equal Qualifications conflicts with these improvement complaints—that is, avoiding the complaint described by Equal Qualifications gives rise to these improvement complaints—only on the narrow reading of “qualifications,” but not, as far as I can tell, on the broad reading. To illustrate, suppose that we can create a kind of beneficial and desirable position, for which X workers and Y workers would be equally narrowly qualified. However, the only selection process available to us would fail to pick up on Y qualifications. Creating and filling the position would violate Equal Qualifications on the narrow reading. However, if we don’t create and fill the position, beneficiaries would have position complaints, and X workers would have position complaints. On the broad reading, however, Y workers are simply not as qualified. So, the fact that their chances are lower than those of X workers does not violate Equal Qualifications. So, on the broad reading, which I believe is the correct reading, Equal Qualifications does not conflict with the improvement complaints that we have described.

The second observation is that, even when Equal Qualifications is satisfied, workers can still have improvement complaints. Equal Qualifications is satisfied when *every* worker has the *same* improvement complaint: where *no one* occupies the position that should be created, or where *everyone’s* qualifications for a given job are neglected. And, as we noted, Boulot might have a complaint about a process that gives the job straightaway to the more qualified Arbeit, even though this process does not violate Equal Qualifications. (And note that a process that gave Boulot an equal chance wouldn’t violate Equal Qualifications, since it would not mean that the more qualified Arbeit had worse chances than Boulot.) So, Equal Qualifications needs at least to be supplemented by the improvement complaints that we have described, in order to have a complete “theory of justice” in employment.

The final observation is that, when Equal Qualifications is violated, this often *indicates* that A has an improvement complaint. Suppose that A is no less qualified, but only B is considered. A can complain that A’s chances could have been improved, by also being considered, without unfairness to B or, since A is no less qualified, to beneficiaries. This complaint does not rest on any

comparison, let alone any inequality. If there was no *B* and the position was simply left unfilled, *A* would have exactly the same complaint: *A*'s situation could have been improved without unfairness to anyone else, by *A*'s being considered.

These three observations suggest a kind of reduction, or error theory, of Equal Qualifications. Violations of Equal Qualifications matter *only as indicators* that *A* has an improvement complaint. Improvement complaints tell the whole story, and we could simply drop Equal Qualifications.

However, this doesn't seem quite right. Consider a case in which an employer, at a scale larger than a family business, hires no one, even though hiring someone wouldn't harm business, even though *A* and *B* are equally qualified (in either sense), and even though *A* and *B* would each find the job rewarding. In this case, perhaps each has an improvement complaint. But now contrast this with a case in which the employer refuses to consider *A*'s application and hires *B*. If improvement complaints were the only thing at issue, then what the employer does in the second case should be *less* objectionable. But if anything, it seems *more* objectionable. At any rate, *A* has a complaint about this, which has a comparative character. It arises only because, while *A* wasn't given a chance for the job, *B was* given a chance. So, it seems like we need Equal Qualifications as an independent principle. If it isn't explained by improvement complaints, what is it explained by? This is something that we still need to explain.

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### 10.3 Substantive Equality of Opportunity

Turning from the “formal” component to the “substantive” component, equality of fair opportunity seems to imply something like:

*Equal Potential:* For any kind of opportunity to acquire a qualification<sup>57</sup> (where the opportunity might be, e.g., a certain educational setting), if at a given time *A* has no worse potential than *B*, then *A* has a complaint if at that time<sup>58</sup> *A* has a worse opportunity of that kind than *B* has.

Someone has more “potential,” let us say, to the extent that they are more likely to acquire the qualification if they are given (or, alternatively, if they exercise) the opportunity.

As in the previous section, our question is whether improvement complaints explain Equal Potential.

We can distinguish two kinds of improvement complaints relevant to Equal Potential. A worker has an improvement complaint if her opportunity to acquire qualifications could

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<sup>57</sup> I set aside opportunities to actualize oneself in ways other than the acquisition of qualifications: such as learning to play a musical instrument for purely amateur purposes, to speak the native language of one’s in-laws, or to appreciate poetry in one’s spare time, whether or not any of these accomplishments improve one’s chances for formal employment. I will make two comments, however. First, with respect to such opportunities, having greater potential may be even less important. A lower level of actualized musical skill may be just as rewarding for the less talented learner than a higher level for the more talented learner. (Or so I tell myself.) Second, such opportunities are less likely to be competitive. Your learning to play the piano usually doesn’t prevent me from learning to play.

<sup>58</sup> Equality of fair opportunity is typically formulated in terms of potential *at birth*. But suppose that *A* had greater potential than some *C* at birth, but because *A* was not offered some educational opportunity, *A* now has the same potential as *C*. It isn’t clear why *A* should now have a greater claim than *C* on educational opportunities going forward. *A* may have a complaint that *A* was not given certain opportunities in the past, but it isn’t clear why that should give *A* priority over *C* now, except perhaps under the separate heading of reparative justice.

have been improved without unfairness to anyone else. Call this a “worker-development” complaint.

Beneficiaries have improvement complaints if by changing the scheme of opportunities, beneficiaries’ situations would be improved, without unfairness to anyone else. On the one hand, beneficiaries benefit from superior qualifications. On the other hand, beneficiaries may have to bear the costs of changing the scheme of opportunities. Call this a “beneficiary-development” complaint.

Now consider two observations. The first is that many such improvement complaints don’t show up as violations of Equal Potential. Suppose that *A* has less potential than *B* relative to the current educational setting (e.g., where there are no accommodations for dyslexia), but *A* would have at least as much potential in a restructured educational setting. While Equal Potential is satisfied in the current educational setting, *A* may well have a development complaint, which argues for a different educational setting altogether. (This is similar to cases from the last section, in which a worker who is currently less qualified, because they can’t lift the sacks of flour, might be just as qualified if positions were restructured.) So Equal Potential needs at least to be supplemented by development complaints.

The second observation is that violations of Equal Potential often *indicate* that *A* has a development complaint. Suppose that *B* has better opportunity than *A*, and we could redistribute some of that opportunity from *B* to *A*. If *B* had more potential, then beneficiaries might have a development complaint if *A* rather than *B* had that opportunity, since it is more likely to lead to better qualifications. And if *B* had more potential, then the opportunity might be worth more to *B* than to *A*, since it has higher odds of resulting in a qualification. But if the antecedent of Equal Potential is satisfied, then *B* does *not* have more potential. So, neither consideration argues against redistributing some of *B*’s opportunity to *A*. So, *A* may have a development complaint: an improvement complaint that *A*’s opportunity could be improved, without unfairness to anyone else.

These two observations again suggest a possible reduction or error theory: namely, that violations of Equal Potential matter only as indicators that *A* has a development complaint.



I think that this is reduction in fact correct. While so far I have been highlighting what improvement complaints can't explain, here we find something that improvement complaints *can* explain.

This takes some work to see, however, since this reduction faces a challenge. The challenge is that there seem to be violations of Equal Potential where, intuitively, *A* has a complaint, but where, it seems, *A* has no improvement complaint. Suppose that White and Blue have, as children, equal potential. White's parents give White additional education in high school. Blue's parents do not, either because they could not, or because they chose not to. Crucially, assume that prior to White's parents giving White additional education, neither Blue nor White had any improvement complaint, against either the school system or their own parents, that their education could have been improved without unfairness to others. Everyone was already doing enough for them; White's parents just volunteered to do more. Because White was given this additional education and Blue was not, White has more potential for a college education.<sup>59</sup> As a result of that enhanced potential, White receives a college education, whereas Blue does not, and so White becomes more qualified for a desirable job. And as a result of those better qualifications, White gets the job, whereas Blue does not.

Blue seems to have a complaint that, because White got additional education, White, but not Blue, got the college place and later the job. And this complaint, unlike an improvement complaint, seems to have a *comparative* character. It's only because White's parents do something

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<sup>59</sup> As Scanlon 2018 cautions us, the additional education might not mean that White has greater college potential. Suppose the additional education means that White can place out of some required first-semester courses. However, a study has shown that placing out of the first-semester does not predict higher achievement at the end of four years. In that case, there is still a violation of Equal Potential, not in the additional high-school education, but instead in the sensitivity of college admissions to it. And Blue has an improvement complaint about this. However, in the example in the text, we are supposing that, as a result of the additional high-school education, White does in fact have greater potential, and college admissions is simply registering this.

for White that Blue has a complaint. How can we explain it without Equal Potential?

As this same case illustrates, satisfying Equal Potential might seem to come at the cost of improvement complaints. By hypothesis, others have *already* provided Blue with whatever opportunities it was not unfair to ask of them to provide (e.g., by paying taxes, or being deprived of other services). Isn't it unfair for them *now* to be required to provide more for Blue, to bring Blue up to the level of White (Arneson 2013a 318)?

Something else is puzzling about this case. The intuition that Blue has a complaint seems oddly fixated on employment. Contrast a case in which the Hausers don't give Jr. additional education, but save the money and give Jr. the down payment for a house. Later in life, Hauser has no better job than Renter, but Hauser owns, whereas Renter has to rent. Might Renter have a complaint like Blue's: that the broader social structure permits parents' desires to do things for their children to translate into significant advantages for them? I suspect that most people who think that Blue has a complaint would deny that Renter does. The difference between Renter and Hauser, they think, unlike the difference between Blue and White, involves no problematic violation of "equality of opportunity." But why should it be *less* concerning if Hauser's parents just give him the financial advantage directly, without laundering it, as the Whites do, through a diploma? In this fixation on employment, one might worry, there's a whiff of what Arneson calls "meritocratic bias."

Is the answer that, while no one can deserve a house, someone can deserve a job? But we are setting aside desert—let alone the idea that jobs and educational opportunities are rewards for desert.

Is it that not getting a job has unique importance, say, because a job is a unique opportunity for self-realization (Shiffrin 2004 1666–7)? But Hauser's house-pride can also be a kind of self-realization.

I suspect that the difference in our reactions to White vs. Blue and Hauser vs. Renter has to do with *competition* as we earlier defined it. Hauser's getting the house doesn't *prevent* Renter from getting it. Renter wouldn't have gotten it anyway (Shiffrin 2004 1670–1).

To test this suggestion, suppose that White was not competing with Blue. There are two unfilled spots for anyone who meets the threshold of qualification. White's additional education pushes him over the threshold, whereas Blue remains below it. This seems less objectionable.

If the crux is competition, then jobs are not somehow different in kind from other forms of advantage. There isn't, in that sense, a meritocratic bias. If housing were competitive, Renter would have a complaint like Blue's. Imagine that there's a land rush, and the Hausers outfit Jr. with a party of advance scouts and the fastest team of horses money can buy. In this competitive context, a complaint about a violation of "equality of opportunity" gains intuitive traction.

Why, then, should competition matter? Because, if a competition isn't "fair," then the outcome is less likely to track genuine desert? Again, we set desert aside.

Instead, I suggest, competition between Blue and White matters, simply because it means that White's additional education *reduces Blue's absolute opportunity*. White's chances of getting the college spot increase from 50%, which, given competition, means that—and this is what really matters—Blue's chances *decrease from 50%*.<sup>60</sup> Blue has a non-comparative, improvement complaint after all. After all, Blue's chances could have been improved, by keeping Blue from dropping below 50%, and this would not have been unfair to White. Fairness does not require trading off a reduction in Blue's chance from 50% so as to raise White's chances above 50%, any more than fairness requires, if Blue and White each presently have \$50, taking, say, \$25 from Blue so as to raise White to \$75. So we don't need to appeal to Equal Potential after all. Blue just has a straightforward improvement complaint.

Or, rather, Blue *may* have an improvement complaint. By hypothesis, people other than White benefit from White's

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<sup>60</sup> One might object: "But if White simply makes use of his opportunity when Blue does not, then White also reduces Blue's chances. Surely that isn't distributively unfair." The reply is contained in the objection. Blue's doesn't have less opportunity; Blue just doesn't make use of it. This is related to the Compossibility Principle, discussed in A Priori Equality.

additional education. In effect, White's parents are making voluntary contributions to augment the stock of human capital. Once we take this into account, whether Blue still has an improvement complaint, that his opportunity could have been improved without unfairness to others, depends on whether it is unfair to trade off the reduction in Blue's opportunity for these benefits to others. It may be unfair in some cases, but not in others.

Suppose the case is one in which it is unfair, so Blue does have a complaint. To answer it, must we prevent White's parents from giving White the additional education, which is invasive, or require others to give Blue the additional education, which is expensive? Maybe, but maybe there's a third alternative: to make the college admissions process insensitive to White's greater potential. (This would be like making the hiring process insensitive to the fact that Arbeit is more qualified than Boulot.)

Isn't this to sacrifice "efficiency"? No: "efficiency" is served just insofar as the public interest is served: insofar as people's situations are improved in a way that makes trade-offs among people fairly. And the insensitive process, in this case, improves people's situations in a way that makes trade-offs among people fairly. Granted, the process (if Blue should win) reduces the benefits that others would receive from White's greater qualifications. But the lottery improves Blue's situation. And we are imagining a case in which it is fair to improve Blue's situation, even when this reduces others' benefits.

To recap: The case of Blue and White is a paradigm violation of Equal Potential. At first, it seemed that Blue does not have an improvement complaint, which suggested that Equal Potential is an independent constraint. On closer inspection, however, Blue *does* have an improvement complaint when but only when two conditions are met: (i) Blue and White are in competition and (ii) it is unfair to trade off the reduction in Blue's chances (brought about by White's additional education) for the benefits to others (also brought about by White's additional education).

Does Blue have a complaint when (i) and (ii) do not hold? I don't think so. In the non-competitive case, Blue may have, as it were, a "cosmic" complaint about being unlucky in not having wealthier or more generous parents. But that's like Renter's "cosmic" complaint about not having wealthier or more generous parents, or like the "cosmic" complaint of

someone who finds themselves in a society where their talents happen to be in either high supply or low demand.

So, in sum, improvement complaints *do* appear to explain what needs to be explained in the “substantive” principle of Equal Potential. Again, however, improvement complaints *don’t* seem to explain *all* that needs to be explained in the “formal” principle of Equal Qualifications.

OK, now stop skimming...

#### 10.4 Discrimination

Consider, next, complaints against discrimination: roughly, adverse choices on the basis of, or disparate outcomes that track, membership in “protected classes,” such as gender, race, sexual orientation, or religion. Although concerns about discrimination seem to animate much in Rawls’s two principles, he does not address discrimination explicitly, and so one might worry that he does not address it adequately. As Shiffrin memorably observes, “To put it concretely, it is unclear what specific provision of the two principles would directly condemn as unjust the treatment of Rosa Parks and countless other African-Americans who were told they had to sit at the back of the bus” (2004 1647).

Our question is: Can complaints against discrimination be explained as improvement complaints?

To be sure, discrimination often does give rise to improvement complaints (Moreau 2010, Arneson 2013b, Lippert-Rasmussen 2014). For example, the overlooked *F* workers, in the previous section’s example of the differing false-negative rates, might be female workers.

Still, even when discrimination does give rise to improvement complaints, there seems to be a *discrimination complaint* that goes beyond this. It’s one thing to be denied a job because an employer is absent-minded, and happens to space out at the precise moment in the late afternoon when, as chance has it, they reach your application in the stack. It’s another thing to be denied a job because you are transgender, and the employer consciously or subconsciously views this as a minus.

Moreover, there can be discrimination complaints where there are no improvement complaints. Consider an admittedly stylized example.

Imagine, first, the Cold Society, in which every private person treats every other private person well enough that no one has any improvement complaint, but does nothing more for anyone. Now contrast it with the Warm Society, in which everyone takes every opportunity to do more for everyone. Supererogation is the norm. Your neighbors help you move in, hold doors when you are struggling with groceries, drive your kids to school when you’ve slept through your alarm, etc. Some in the Cold Society might well prefer that their society were more like the Warm

Society. But none of them, even someone prepared to innovate, has a complaint (or much of one, at any rate) against anyone else.

But now imagine the Half-Warm Society. Everyone now treats light-skinned—or for perhaps a cleaner example, right-handed—people in the ways that everyone treats everyone in the Warm Society, while treating others in the ways that everyone treats everyone in the Cold Society. Now, if this occurred in competitive contexts, then the pattern of differential treatment would worsen the opportunities of the left-handed in absolute terms. But let us suppose that it does not occur in competitive contexts, only in noncompetitive contexts. It seems that the left-handed in the Half-Warm Society have a discrimination complaint, even though they have no improvement complaint—or no more improvement complaint than anyone has in the Cold Society.

What is this distinctive discrimination complaint? Alexander 1992 (with second thoughts in 2016) suggests that the distinctive wrong of discrimination is that “a person is judged incorrectly to be of lesser moral worth and is treated accordingly.” I don’t doubt that it is wrong to treat people as having less moral worth than they in fact have. But I doubt that this can explain all of the relevant discrimination complaints (compare Arneson 2013a, Lippert-Rasmussen 2014).

First, discrimination complaints, as Alexander’s own formulation implicitly acknowledges, seem to be *comparative*. They aren’t complaints that one might have to a consistent amoralist, who underestimated *everyone’s* moral worth.

Second, discrimination complaints apply only when the treatment tracks *membership in a protected class*, not when it is motivated, say, by personal animosity.

It is a further question what a “protected class” is: how one should generalize from the paradigms of race or gender. Is it a class that one is not responsible for being a member of? Is it a class defined by some visible or salient trait? Is it a class that has been mistreated in the past? This last answer risks a kind of regress, if the mistreatment in question is itself supposed to consist in discrimination. For then a group *is* discriminated against in the present only if that group *was* discriminated against in the past. But then how could discrimination of that group ever begin? To be sure,

there may be a way to avoid this regress, if we suppose that the past mistreatment can be identified in terms other than discrimination, such as a failure to meet claims of improvement, or a violation of rights against invasion. But no mistreatment of that kind is presupposed in the Half-Warm Society. Again, left-handed people are treated as everyone is treated in the Cold Society.

Whatever else we say of protected classes, however, there seems at least this necessary condition: namely, that C counts as a protected class only if there is, or has been, or threatens to be, a pattern of differential treatment, widespread in society, on the basis of membership in C. We can't say whether an episode of differential treatment on some basis amounts to discrimination without looking at the pattern of treatment on that basis in the broader society. If the differential treatment is not for membership in some group (if it's an arbitrary whim), or it's once-off or cabined, or then it doesn't count as discrimination (even if it might be objectionable for other reasons).

The final problem with Alexander's account is that there can be a discrimination complaint about differential treatment that *does not involve any underestimation of moral worth*. As I have described the Half-Warm Society, no one judges left-handed people of lesser moral worth, any more than anyone in the Cold Society judges anyone to be of lesser moral worth. People in the Half-Warm Society simply withhold supererogatory treatment from left-handed people, on the grounds that they are left-handed. They don't overthink it.



### 10.5 *Equal Treatment, By the State and By Officials*

This section considers one last commonplace claim. Suppose that the state provides a benefit, *B*, for one citizen, *X*, that it does not provide for another citizen, *Y*. The benefit might be some positive good or service: e.g., roads, schools, disaster relief. Or it might be exemption from some rule, duty, or penalty. Suppose, further, that there is no “justifying difference” between *X* and *Y* that might justify this difference in treatment. When the state does this, *Y* is often thought to have a *complaint of unequal treatment by the state*, which is expressed in comparative terms: that the state is *favoring X over Y*, or that *since* the state gave *B* to *X*, it should *also* give *B* to *Y*. Call the principle thereby violated, “Equal Treatment By the State.” The issue is one of, as is sometimes said, “comparative injustice.”

A similar complaint can be leveled against certain *non-state* officers, such as teachers, administrators, employers, or even custodians of children, provide a benefit, *B*, to one student, administratee, employee, or child in their custody, *X*, but not to another, *Y*, when there is no justifying difference between them. When this occurs, *Y* is often thought to have a *complaint of unequal treatment by an official*, which is expressed in similarly comparative terms, of favoritism. Call the principle thereby violated, “Equal Treatment By Officials.”

Although unequal treatment complaints are not much discussed in the philosophical literature (an exception being Scanlon 2018, ch. 2), they seem at least as common in actual political discourse as complaints that states or officials are simply not doing enough for people, in absolute terms. Equal treatment complaints moreover are often especially rhetorically potent. This may be, in part, because they are often easier to establish. One only needs to show that one group isn’t getting the same as another group, whatever “the same” happens to be. One doesn’t need to show that it is the “right” amount in some absolute sense.

Once again, our question is: Can we explain these apparently comparative, equal treatment complaints be explained as non-comparative, improvement complaints?

One might suggest that we can: that equal treatment complaints are really non-comparative, improvement complaints in disguise. *Y*’s complaint is really just that the state or official could have given *B* to *Y*. That the state in fact gave *B* to *X* is immaterial.

But I doubt this, for several reasons. First, contrast a baseline in which the state or the official provides *B* to neither *X* nor *Y*. If improvement complaints were all that were at issue, then the state's or official's giving *B* to *X*, but not to *Y*, would only subtract a complaint. But, intuitively, it seems to add one.

Second, suppose *B* cannot be given to *Y*. A case of this so common as to be overlooked is the application of the same rule to different people at different times. Here the benefit, *B*, is exemption from the rule. The state or official, applying the rule, required something of *Y* in the past, but now faces the question of whether to require it similarly of *X*. *Y* has no improvement complaint about what the state now does for *X*, since that has no bearing on what the state could have done for *Y*. Still, *Y* might seem to have an equal treatment complaint about exempting *X*. When, in the "office" of teacher or administrator, I'm asked for an extension, waiver, exception, etc. that I've denied before, I hear myself saying "What would I tell the other people I've already said no to?"

Finally, consider cases in which neither *X* nor *Y* would have an improvement complaint if they did not receive *B*. Giving *B* to anyone is either supererogatory<sup>61</sup> or discretionary.<sup>62</sup> Still,

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<sup>61</sup> One might wonder whether anything can be supererogatory *for the state*. The state isn't a person who can say: "I've done enough for others; I have my own life to lead." Of course, the state may rein in current expenditures to save for a rainy day, but this is for the benefit of people when the rain comes, not for *raisons d'état*.

However, first, when the benefit, *B*, is the extra time or effort of an *official* (and possibly a *state official*) beyond what can otherwise be fairly asked of them, we can speak of supererogation. If the official volunteers that extra effort for *X*, then *Y* has a complaint if the official doesn't similarly do so for *Y*.

Second, even if the state is not a person with its own life to lead, still the state's giving *B* to *X* or *Y* may be supererogatory *with respect to what the state must do for X or Y*. In that case, presumably, giving *B* to *X* or *Y* *unfairly burdens some Z*: by, e.g., reducing services, raising taxes, increasing risk. If the state nonetheless gives *B* to *X*, then the state now has a reason to give *B* to *Y* too. This *might* unfairly burden *Z*. In that case, meeting *Y*'s equal treatment complaint by "leveling up," by giving *B* to *Y* too, would conflict with *Z*'s improvement complaint not to be burdened unfairly.

if the state or official gives *B* to *X*, *Y* may have an equal treatment complaint that the state does not give *B* to *Y* too (Scanlon 2018 17).

So far, then, it seems that equal treatment complaints resist reduction into improvement complaints. However, equal treatment complaints need some escape clause. For example, *Y* may have no equal treatment complaint if *X* needs medical care that *Y* does not, or *Y*'s parents already provide *Y* with school lunch. And once we clarify what the escape clause is, one might argue, equal treatment complaints will reduce to improvement complaints.

Scanlon suggests the following escape clause. *Y* has a complaint only if the state's or the official's giving *B* to *X* but not *Y* "would be unjustified if the interests of all those affected were given appropriate weight" (19, or "sufficient" and the "same" weight, 21). But this clause allows too much to escape. Suppose that the state or official, giving *X*'s interests appropriate weight, correctly determines that giving *B* to *X* is optional: giving *B* to *X* is not unjustified, but also not giving *B* to *X* is not unjustified. Knowing that *Y* is in exactly the same situation as *X*, the state or official, in giving *B* to *X*, but not to *Y*, does something that would not be unjustified if the interests of all were equally given their appropriate weight.

What I think Scanlon should say is instead is that *Y* has an equal treatment complaint just when the state or official gives *B* to *X*, but not to *Y*, *unless there is some difference between X and Y justifies not giving B to Y*. In other words, *equal treatment is the default*, pending some showing of a "justifying difference."

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However, giving *B* to *Y* too *might not* unfairly burden *Z*. There may be slack or waste in the system, which *already* unfairly burdens *Z*. Using some of that slack to give *B* to *Y* too, assuming that it would not go to *Z* anyway, would not add to *Z*'s burdens.

<sup>62</sup> By "discretionary," I mean that the state's or official's decision whether to provide people with benefit *B* or instead a different benefit *B'* is tied or incommensurable. In that case, no would-be recipient of *B* such as *Y* has an improvement complaint if *B'* is provided instead. But if *B* is provided to *X*, then *Y* does have an equal-treatment complaint if *B* isn't provided to *Y*.

Presumably, it's a justifying difference that X needs medical care that Y does not, or that Y's parents already provide Y with school lunch. More generally, a "justifying difference" for giving B to X rather than to Y will often be that giving B to X rather than to Y will better satisfy improvement claims (including, perhaps, the improvement claims of third parties, such as those who benefit from a job's being given to X rather than to Y).

But if we say that, in general, a justifying difference for giving B to X but not to Y just is that this will better satisfy improvement claims, doesn't this mean that equal treatment complaints collapse into improvement complaints?

No. First, equal treatment complaints can arise in cases without any such justifying difference in, say, need or ability to pay. Y might need the medical care just as much, or leave for school just as bereft of lunch.

Second, the appeal to justifying differences is a *defense* of the *unequal* provision of B to X but not to Y. When there is *equal* provision of B to X and to Y, no defense is called for. So, while there need not be an equal treatment complaint about "means-tested" benefits—since X's having more limited means is a justifying difference—there also need not be an equal treatment complaint about *non*-means-tested benefits that are equally provided—since no justifying difference *needs* to be adduced in the first place.

Finally, when the state or official cannot give B to Y (say, because it enforced the rule in Y's case) but can give B to X (say, by exempting X from the rule), it would better satisfy improvement claims to give B to X: it would be a weak Pareto improvement. But it is not obvious that *this* fact counts as a justifying difference.

If improvement complaints don't explain equal treatment complaints, then what does? It isn't clear. And making the matter more challenging is that equal treatment complaints pattern in distinctive ways.<sup>63</sup>

First, Y has a complaint of unequal treatment by a state, S, only if Y is a citizen, or at least a resident, of S. If Y is a non-resident alien, then Y may have a humanitarian complaint about foreign aid being too low, but not the sort of

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<sup>63</sup> For doubts about Scanlon's explanation of this pattern, see Kolodny 2019.

comparative complaint that residents have that they don't have access to the same benefits as other residents (Scanlon 2018). Similarly, Y has a complaint of unequal treatment by an official only when X and Y stand in the same relevant relationship to that official.

Second, Y does not have a complaint against a private person, *P*, who gives *B* to X but not Y, unless (i) this differential treatment contributes to a pattern of discrimination or (ii) *P* stands in some special relationship, of the same kind, to X and Y (such as that *P* is the parent of X and Y).<sup>64</sup> In general, if you do something supererogatory for one person (e.g., pick up one hitchhiker), you don't have to do it for everyone (even if there is no justifying difference). Equal Treatment allows "random acts of kindness."

Third, equal treatment complaints differ from discrimination complaints. On the one hand, discrimination complaints arise not only against the state or officials, but also against private strangers, as happens in the Half-Warm Society. On the other hand, Y can have an equal treatment complaint even if the state's or the official's differential treatment has nothing to do with X and Y belonging to different protected classes. The state or official might favor X for other reasons.

Fourth, equal treatment complaints apply to what the state or the official *directly* provides. If you pave your private driveway up to the public thoroughfare, but I do not pave mine, I do not have any equal treatment complaint about this, even though the state permitted a "basic structure" that let it come to pass that your private driveway but not mine was paved.

Finally, equal treatment complaints are typically triggered by inequalities in *specific* benefits—per-pupil spending across districts, or exemption from certain rules—without a detailed accounting of overall net receipts. There may be other kinds of "localization" or "compartmentalization," such as differentiation by age cohort. If kids these days get better schooling, their elders may not have a complaint. If a

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<sup>64</sup> Other such special relationships might be said to be those between trade unions or musketeer trios, organized around a common struggle or danger. Members should refuse to favor themselves, even when this would not come at other members' expense. The phenomenon in these cases, however, seems to me different from equal treatment. It is a matter of "solidarity," as I discuss later.

rule is repealed, those who were bound by the rule in the past may not have a complaint.

One might wonder, though, why we are making such hard work of this. Equal treatment is easy to explain. It just follows from the general moral principle of simple fairness, of treating like cases alike, of not making arbitrary distinctions!

This response, however, overlooks two difficulties. First, a general moral principle of simple fairness, or treating like cases alike, or not making arbitrary distinctions, would explain too much. There isn't a requirement to treat like cases alike in general. The requirement applies only to states and officials, only with respect to people who stand in the same relationship to them, only with respect to direct provision, and only with respect to certain goods. In our ordinary dealings with people, we aren't required to treat like cases alike. Again, we don't wrong people by performing random acts of kindness.

And, second, this response doesn't explain why we should *care* about simple fairness, or treating like alike, or not making arbitrary distinctions. What is at stake? Why not regard it as a foolish consistency, Thoreau's "hobgoblin of little minds"? Why isn't it "rule worship" to adhere to the rule applied to Y, when violating it in the case of X does no harm to the purposes that the rule is supposed to serve?