

A Puzzle about Rawls's Egalitarianism

Last time: a commonplace claim to one kind of equality: the political equality constitutive of democracy. Now a commonplace claim to other kinds of equality.

A puzzle about Rawls:

- Parties in “original position” exclusively press *non-comparative* interests in improvement.
- But they choose principles with *comparative, egalitarian* structure.
 - First, different principles regulate different goods: (i) liberties, (ii) (chances for) jobs, and (iii) money.
 - Second, the principles governing liberty and jobs require strict equality. It is only the principle governing money, the difference principle, that sanctions inequality, and then only insofar as it benefits the worst off.
 - Finally, liberty takes lexical priority over jobs, which take lexical priority over money.
- 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?

Equal Basic Liberty

Three more specific puzzles about liberty.

First puzzle: Why treat liberty and money differently?

- Liberties are means to certain activities.
- But money also a means.
- E.g. “freedom of movement” as a “basic liberty” = the state does not issue and enforce commands that you not travel; prevents others from obstructing travel.
- Can’t travel if you lack freedom of movement.
- But also can’t travel if you lack bus fare.
- Reply: “Liberty a special means: absence of *coercive* interference.”
 - Not clear what “coercive” means.
 - Why care specially about *coercive* impediments to activities?
 - In any event, bus fare also leads to “coercive” interference.
- A more basic question: What even is the difference between liberty and money?

Second puzzle: Why doesn’t Rawls prohibit private provision of “greater” liberty? E.g., purchasing a home security system. Basic structure predictably results in unequal liberty. (Not simply inequality in “worth” or “value” of liberty.)

Third puzzle: Why is a ban on a minority religion Rawls’s paradigm of *unequal* liberty (1971 §33)? So long as citizens are viewed as “free,” everyone’s liberty is *equally* restricted.

Discrimination

Commonplace 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.

Are discrimination complaints simply improvement complaints?

- To be sure, discrimination often does give rise to improvement complaints!
- Still, even when discrimination does give rise to improvement complaints, there seems to be a *discrimination complaint* that goes beyond this, e.g., absent-mindedness vs. transphobia.
- Moreover, discrimination complaints without improvement complaints...

...the Myth of the Half-Warm Society:

- Cold Society: no supererogation.
- Warm Society: supererogation the norm.
- Half-Warm Society: everyone now treats 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.

What is this distinctive discrimination complaint? Alexander 1992: “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.

- 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.
 - What is a “protected class”?
 - Not responsible for being a member of?
 - Defined by some visible or salient trait?
 - Has been mistreated in the past? Regress?
 - At least: *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*.
- 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.

Equal Treatment, By the State and By Officials

Commonplace claim to equal treatment (or “comparative injustice”): State/official provides a benefit, *B*, for one citizen, *X*, that it does not provide for another citizen, *Y*, when there is no “justifying difference” between *X* and *Y*.

- Common and especially rhetorically potent.

Are equal treatment complaints really improvement complaints?

- 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*. “What would I tell the other people I’ve already said no to?”
- Finally, consider cases in which giving *B* to anyone is either supererogatory or discretionary. Still, 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.

“Justifying difference”

- *Equal treatment is the default*, pending some showing of a “justifying difference.”
- Doesn’t make equal treatment complaints collapse into improvement complaints.
- Equal treatment complaints can arise in cases without any such justifying difference in, say, need or ability to pay.
- Justifying difference only 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 equal *non-means-tested* benefits OK.

Equal treatment complaints pattern in distinctive ways:

- 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*. 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 contributes to a pattern of discrimination). Allows “random acts of kindness.”
- Third, equal treatment complaints differ from discrimination complaints.
 - Discrimination complaints against private strangers.
 - Equal treatment complaints without protected classes.
- Fourth, applies to what the state or the official *directly* provides.
- Finally, triggered by inequalities in *specific* benefits.

“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!”

- Doesn’t explain distinctive pattern.
- Why do we *care* about simple fairness, treating like alike, not making arbitrary distinctions? What is at stake? Why not “foolish consistency” or “rule worship”?

On to the “positive conjecture”!

Positive conjecture = the commonplace claims, which we could not explain by appeal to interests in improvement or rights against invasion, are explained instead by claims against inferiority.

A *claim* against inferiority = (roughly) a claim against a *relation* of inferiority to another person: against being subordinated to another, set beneath them in a social, or interpersonal, hierarchy.

What are *relations of inferiority*?

Three vague, abstract necessary conditions:

1. Genuine *relations*.
 - a. No relation of inferiority to e.g., Ramesses the Second.
 - b. No relation of inferiority to a neighbor who, e.g., discreetly enjoys some convenience.
2. *Unequal* ranking: One is above, the other, below.
3. Between *individual, natural persons*. Contrast: artificial person, collective, force of nature.

2 partly explains 3. Equality isn’t an issue with, e.g., collectives. E.g., if I am the “equal” of the City of Albany, the State of California, and the United States, and if equality is transitive, would the city, state, and nation then be equals? And if it doesn’t make sense to be equal to a collective, what sense does it make to be inferior or superior—as opposed to “n/a” or “none of the above”?

Two paradigms:

- Bondage, the relation between slave and master.
- Caste, the relation between Brahmins and untouchables.

These are *extreme* forms: aggravated cases of the pathology, which might instruct us about milder cases. The constituents of relations of inferiority particularly intense or pronounced; factors that elsewhere “temper” such relations are sparse or absent.

Constituents:

1. *Asymmetry of power*: that X has greater power over Y.

2. *Asymmetry of de facto authority*: greater ability to issue commands that are generally complied with:
 - a. X has greater de facto authority *over* Y
 - b. X has greater de facto authority *than* Y
3. *Disparity of consideration*: X enjoys, whereas Y does not, certain kinds of favorable responses, such as, among other things, respect, courtesy, a willingness to serve interests. Typically, because X believed to have certain “basing traits,” such as having no close ancestor with dark skin, or a noble lineage, or divine favor.

Viewed another way, only two categories here:

- 2a included in 1: authority over a kind of power over
- 2b included in 3: complying with commands a kind of consideration

Explains the vague necessary condition of “genuine relations”:

- where X and Y do not interact, X cannot have greater power over Y
- where X and Y do not share a society, and so are not appraised by some common Z, no disparity of consideration.

Primary tempering factors:

Objection: Not every asymmetry of power and authority, or every disparity in consideration, gives rise to an objection. Consider schools, houses of worship, firm.

Reply: This is because certain “tempering factors,” which we tend to take for granted until we notice their absence, limit, contextualize, or transform asymmetries or disparities in such a way as to make the charge that they amount to objectionable relations of inferiority out of place, or at any rate weaker. Not that these factors *outweigh* or *compensate* for the bad of inferiority. Rather, not (or less) bads to begin with.

Primary tempering factors:

1. Asymmetries, disparities arise only in chance, one-off encounters, instead of being entrenched in an established, ongoing social structure.
2. Asymmetries, disparities limited in time, place, and context.
3. Asymmetric power or authority is limited in content: what can be done or commanded.
4. Asymmetries, disparities escapable, at will, with little cost or difficulty.
 - a. Put another way, what matters is not so much inequality in *exercised* power or authority, and *actual* consideration, but instead inequality of *opportunity for* power, authority, and consideration, understood as *ongoing freedom to exit the relations* in which the asymmetry or disparity arises.
 - b. Point is *not* that while being on the losing end of asymmetries or disparities is always a burden, one forfeits one’s complaint when the burden is self-imposed—that “one has no one to blame but oneself.”
5. Asymmetries, disparities not “final”: that is, they may themselves be regulated by a higher court of appeal not itself marked by that asymmetry or disparity.
6. People in the relationship marked by the asymmetry or disparity also stand as equals in some other recognized relationship.

Part of why caste and bondage are extreme cases: primary tempering factors are absent.

Claims against inferiority:

Individuals who find themselves in the *inferior* position in untempered relations of inferiority have complaints against being so positioned.

Strictly speaking, claims not against the *relations* of inferiority themselves, but instead claims addressed to certain agents, to perform or refrain from certain *actions* that involve relations of inferiority.

First, Indy has a claim on Benny not to “relate to” Indy as an inferior:

- not to wield untempered superior *power or authority over* Indy,
- not to wield untempered superior *authority than* Indy,
- and not to give Indy untempered *lesser consideration than* Benny gives Altra.

Claims of this kind have a “deontological” or “agent-relative” character.

Second, Indy has a claim on Benny, that Benny work, where he can, to temper relations of inferiority that Indy stands in with others, or to bring it about that Indy avoids those relations. A “consequentialist” or “agent-neutral” character.

Justifying the State, Revisited

What, then, do claims against inferiority imply for the state? A problem looms. After all, the state wields vastly greater power over, and vastly greater authority than, the individuals who are subject to it. At the same time, the state just is, like *l'enfer* of Sartre, other people. So, it would seem, those other people wield vastly greater power over, and authority than, the rest of us. Why don't we stand in relations of inferiority to those individual, natural persons?

Primary tempering factors no help:

1. State is an established social structure and our relations to it are ongoing.
2. State has extensive reach
3. Few limits on what the state can do to us, or command us to do.
4. Costly and difficult to avoid relations to the state.
5. State's decisions are typically “final”: that is, no further appeal.
6. If equality of citizenship with others is not available, not clear what *other* relation of equality with them will be available.

So, perhaps *this* is the complaint against the state: The state wields vastly greater power over, and vastly greater authority than, those who are subject to it. And, where the state is concerned, the tempering factors are conspicuously absent. Yet, the state just is, when the robes and badges are stripped away, other people. So, the complaint against the state is a complaint against standing in relations of inferiority to those natural persons whose decisions the state's decisions are.

Would explain why...

... there continues to be a complaint against the state in the Myths of the Omittites and the Trusting Future. Even if there is no force or threat, there are still final and inescapable asymmetries of power and authority.

... why complaint so often expressed in terms of “coercion” or “backing by coercion.” Gestures toward the final character of the state’s power and authority. The capacity to “compellingly steer” is *usually* necessary for holding final power and authority.

Secondary Tempering Factors:

If the state just is *les autres*, if it wields vastly superior power and authority over each of us, and if our relations to the state are not tempered by the primary factors, then how can they not be relations of inferiority?

Secondary tempering factors, to be discussed later:

- Impersonal Justification: asymmetries are offices justified by impersonal reasons
- Least Discretion: officials exercise no more discretion than serves impersonal reasons
- Equal Influence: those subject to the state have equal opportunity to influence its decisions
- Proper Representation: representatives stand in the right relationship to citizens
- Equal Consideration: the state shows equal consideration to its citizens
- Equal Citizenship: in virtue of Equal Influence and Equal Consideration, those subject to the state stand in at least one relationship of equality to one another, namely that of equal citizenship, whatever other asymmetries, disparities there may be.

—Might apply to non-state arrangements where, like the state, primary tempering factors are absent (e.g., warlords, Pinkerton in a company town).

—Might apply to non-state arrangements where some of the primary tempering factors *are* present. In particular, employees have claims to Impersonal Justification and Least Discretion against their employers, even when the employment arrangement is tempered by, among other things, the primary factor of freedom of exit.

—Perhaps not all of the secondary tempering factors are required. Perhaps Impersonal Justification, Least Discretion, Equal Consideration, and Equal Citizenship, *suffice*, so that the distinctively “democratic” secondary tempering factors of Equal Influence and Proper Representation are *not required*.

—Note that these secondary tempering factors differ from many of the legitimating conditions or limits of legitimacy traditionally said to be necessary for the state’s justification or legitimacy. In order to satisfy the secondary tempering factors, the state doesn’t need to restrict its efforts to protecting people from invasion of their person or property, but could promote other goods as well. Nor need the state have the consent of the governed, or a public justification for what it does.