

Human rights and equality

Abstract

Human rights are often thought to express an egalitarian idea. This chapter argues that the connection between human rights and equality is more tenuous than it first seems and a robust egalitarianism is neither the input nor the output of human rights, as currently conceived. Inasmuch as human rights might be thought to rest on a substantive notion of moral equality between human beings, this is not supported by strong arguments or existing philosophical justifications for moral human rights. Inasmuch as they may be thought to lead to a form of equality of condition, current philosophical justifications cannot support a genuinely egalitarian, rather than sufficientarian or prioritarian, distribution.

Word count: 8545

Human rights and equality¹

Human rights are often thought to express an egalitarian idea. Consider, for instance, Article 1 in the UDHR, which declares that ‘All human beings are born free and equal in dignity and rights’. Other international legal documents similarly assert an idea that might be construed as a commitment to the moral equality of all human beings. But it is unclear what the connection is, if any, between human rights and equality and there is almost no discussion of it in the literature. As Allen Buchanan notes, ‘There is a puzzling disconnect between recent philosophical literature on equality and the modern theory and practice of human rights. This disconnect is puzzling because the modern human rights movement is arguably the most salient and powerful manifestation of the commitment to equality in our time’ (Buchanan 2005: 69). This chapter aims both to explain this disconnect and to start filling this gap in the literature by exploring the connections between human rights and equality.

The chapter will proceed as follows: first, I will offer a brief overview of the different forms of equality. Second, I will outline and examine Buchanan’s reasons for thinking that the human rights movement reflects a commitment to equality. I will argue that Buchanan wrongly assumes that the equality before the law enshrined in international legal documents must be underpinned by a more substantive notion of equality. Third, I will examine the main justifications offered for human rights in the philosophical literature, especially those that may appeal to the moral equality or equal moral status of all human beings, and argue that equality plays no role in these justifications. And finally, I will consider a possible connection between

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human rights and distributive equality. I argue, once again, that existing justifications of human rights cannot support seeing them as instruments for achieving socio-economic equality .

1. Forms of equality

A commitment to some form of equality is almost taken for granted in contemporary political philosophy. Indeed, as Amartya Sen declared, virtually every theory is in some sense egalitarian if only in the very minimal sense that it demands (some) equal rights (Sen 1992: ix). But this consensus is only apparent as there are different understandings of equality. In what follows, I will present the four main ways in which equality is understood by contemporary political philosophers.

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First, there is an idea of formal equality, namely that cases that are relevantly alike should be treated alike (Lippert-Rasmussen 2016: 36). This seems to be a basic requirement of fairness in almost any domain; a football referee, for instance, would act unfairly if they penalised a member of one team for a foul but not a member of the other for a similar transgression (White 2007: 16). Formal equality, on its own, does not entail any of the other forms of equality, chiefly because it does not rule out any feature being considered relevant for differential treatment. Arguably, this is the notion that underlies the idea of equality before the law.²

Second, a more substantive notion of equality is that of ‘basic’ or ‘moral’ equality of human beings. There are different ways of stating this idea but the core of it is that human beings ought to be treated as equals, for example by being accorded the same degree of respect or concern. Note that this is different from the previous thought that like cases should be treated

² But see Waldron (2009: 245) for the claim that this statement rests on a confusion and a more substantive notion of equal status underlies equality for the law.

alike; it requires more than similar treatment in similar circumstances, which is giving proper recognition to the fact that human beings have equal moral status. While this is a widely accepted thought, it is both somewhat slippery and also notoriously difficult to justify. Notably, although it tends to be applied exclusively to human beings, it is hard to pinpoint a feature in virtue of which human beings should be treated differently from non-human animals but as each other's equals. Every plausible candidate can be seen as admitting of degrees, so it's unclear why the moral status of its possessors wouldn't come in degrees as well. Typical candidates include agency or a capacity to form a plan of life but it's clear that not all human beings have such capacities, let alone to the same degree.

We can distinguish the idea of 'basic' equality from a third and substantive idea of equality, namely equal *social* status, or 'social' equality. This kind of equality is central to relational or social egalitarianism.³ It can be difficult to see the difference between basic and social equality, since inequalities of social status can track inequalities of basic moral status. For instance, caste systems or racist societies deny some people equal treatment as members of society but also as human beings. Indeed, Elizabeth Anderson accepts that '[Relational] egalitarians base claims to social and political equality on the fact of universal moral equality' (Anderson 1999: 287). It is unclear what equality of social status would require in addition to basic moral equality. Nevertheless, a distinct strand of contemporary egalitarianism takes egalitarianism to properly refer to relations that are 'unstructured by difference of rank, power, and status' (Scheffler 2005: 17-18). We can understand the idea of inequalities of rank, power and status if we grant that it is possible to treat certain (categories

³ For a thorough discussion of this notion, see Lippert-Rasmussen, 2018, Ch. 3. There are, of course, different social or relational egalitarian accounts in the literature. For instance, some focus on how individuals (in a society) relate to and treat one another while are more concerned about the way in institutions treat people, both as individuals and as groups. We might thus distinguish, following Emily McTernan, between 'social' egalitarians, who take a more institutional approach and 'relational' egalitarian who focus on the relations between individuals. (McTernan, 2018: 274-276). I take it, though, that the notion of equal social status is common to all social/relational egalitarians. For a good overview of the different social/relational egalitarian views, see Voigt, 2020.

of) people better than others even though everyone is treated as an equal human being; for instance, university graduates may have more than one vote in elections, or certain occupations are considered more respectable so those who occupy them can vouch for the identity of other people or get preferential treatment in certain situations. Equality of social status then seems to require something in addition to basic equality that pertains to the relations in which people stand to one another.

Finally, a fourth kind of equality that is also substantive is equality of condition. This is more demanding than equality of status and egalitarianism often refers to a commitment to equality of condition. One may be excused for not taking very seriously, as egalitarian, theories or thinkers who profess a commitment to the first two forms of equality but not this last one. But what equality of condition amounts to is the subject of heated debate in the 'recent philosophical literature on equality' that Buchanan presumably refers to.⁴ Some might argue that equality of condition is best understood as or at least includes the relational egalitarian view mentioned above; others would claim that equality of condition cannot be achieved without an egalitarian distribution of goods or advantage. A weak form of distributive egalitarianism requires only that *opportunities* for advantage(s) be equal while allowing for significant inequalities of outcome. But equality of opportunity itself has different interpretations from a weak one, which only requires non-discrimination, to a radical or luck egalitarian one, which requires that everyone has equal substantive or real opportunities to achieve equal welfare.

Moreover, there is a debate over the pattern of distribution. A number of theories may be considered egalitarian merely because they imply that current inequalities of wealth should be *reduced*. But on some theories, a reduction of current inequalities would follow not from a

⁴ So inasmuch as the egalitarianism of human rights is about status or basic equality, it is unsurprising that the recent literature on *distributive* equality has ignored issues of human rights.

Commented [2]: But I thought the point for relational/social egalitarians wasn't so much about how people are treated, but how they relate to one another, particularly with respect to power/domination.

Commented [3R2]: I've elaborated on the footnote that was already there in response to this comment and I hope it addresses it to some extent. I confess that I think you may be running different things together. For one thing, I don't quite see the contrast between 'relating' and 'treating'. But I suppose I took as the difference between the 'social' and the 'relational' egalitarians. Of course, relational ones also talk about people relating to one another as equal. The last bit, about power and domination, seems to pertain more to republicans though I suppose there may be some overlap between republicans and social egalitarians. I actually evaluated a very interesting postdoctoral proposal precisely about that. So at least I'm confident that I'm not the only one who finds the difference someone blurry.

Commented [4R2]: Ah, yes, I've always thought that relational egalitarians and republicans are basically saying the same thing. I think Christian Schemmel argues this kind of point in his book from a couple of years ago, but I admittedly haven't read it. On the point about treatment vs relations, I take it that we can stand in unequal relations to others without treating them unequally or being treated unequally with respect to them. Maybe it comes down to how people "could" or "might" treat each other though, so perhaps you're right.

Commented [5]: If my above comment is correct, then perhaps this can be spelled out by saying that social equality is different from moral equality in that it has to do with the relations in which people stand to one another rather than their inherent worth (even though it is generally thought that the former should reflect the latter).

Commented [6R5]: I've inserted your exact formulation. I hope that's ok.

Commented [7]: The first three points are about kinds/ideas of equality, whereas here you are talking about egalitarianism. Can this be reformulated to bring it more in line with the other points above? Maybe: "Basic and social equality are substantive forms of equality that have to do with status. A fourth kind of equality that is also substantive has to do with condition rather than status."

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commitment to economic equality *per se* but rather from a concern with the worse off either in terms of their absolute level (sufficientarianism) or the relative deprivation compared to the better off (prioritarianism). Many of those familiar with these debates have come to reserve the term ‘egalitarian’ for those theories that aim at an equal distribution of whatever is considered the currency of justice (e.g. welfare, advantage); thus, while the Rawlsian difference principle might have been traditionally seen as egalitarian, it is now often given as an example of a prioritarian principle since inequalities are justified inasmuch as they are to the greatest advantage of the worst off.

2. The putative egalitarianism of human rights

Having briefly surveyed four different understandings of equality, we can now turn to the connection between human rights and equality. It is widely believed that the idea of human rights is a fundamentally egalitarian one, in that it encompasses basic equality, it may be connected to equality of opportunity and protects everyone’s basic material needs (Baker 2005). But the presumed egalitarian credentials of human rights have not been sufficiently probed and this is what I propose to do here, based on one of the few explicit arguments in the literature.

According to Buchanan, the international legal human rights system (IHR)⁵ has a robust status egalitarian function. By ‘the international legal human rights system’ Buchanan means ‘the UN-based human rights law and the institutions that support it’ (Buchanan, 2013: 6). According to Buchanan, there are five aspects of this system that make it robustly egalitarian: 1) inclusive (or universal) ascription of rights; 2) equality of rights for all (in that they have the

⁵ By ‘the international legal human rights system’ Buchanan means ‘the UN-based human rights law and the institutions that support it’ (Buchanan, 2013: 6).

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same *content, weight* as well as conditions of abrogation); 3) states are obliged to make *everyone's* rights effective; 4) robust equality before the law (including an extensive set of *equal* due process rights); and 5) strong rights against discrimination on grounds of gender and race (Buchanan 2013: 28-30). It is worth commenting briefly on the change in these five elements from Buchanan's 2010 article 'The Egalitarianism of Human Rights' to his 2013 book. In the former, the second aspect was the inclusion of positive rights to socio-economic goods, which can limit material inequality; this was replaced by equality of rights for all in the latter. (Buchanan 2010: 683-691). While he does not comment on what led to this change, it is certainly warranted since not many would agree that the socio-economic rights enshrined in international legal documents would lead to an egalitarian global distribution, even if implemented as envisaged. Even the International Covenant on Economic, Social and Cultural Rights (ICESCR) only envisages an 'adequate' rather than equal standard of living (art. 11), free education only for the primary level (ar. 13) and equal *opportunity* in employment (art. 6).

In Buchanan's view, in virtue of these five features taken together, the existing system of IHR has 'a robust *status egalitarian* aspect' (2013: 30). It should be noted that Buchanan only attributes this egalitarian aspect to *legal* human rights which need not 'mirror' moral rights. (2013: 34). Indeed, one of the main aims of his book is to argue against the widespread assumption that legal (human) rights must be justified by appeal to moral rights or even 'mirror' them, that is, enshrine them into law. His complaint is that philosophical discussions of human rights tend to take moral rights as the primary concept and fail to pay attention to legal rights as a separate concept. Thus, philosophers tend to focus on the grounding on moral human rights while assuming that whichever moral rights are found to be justified should be translated into law. This blinkered view led to a failure to account for the *status* egalitarian aspect of IHR since the standard view among philosophers is that human rights help ensure that all have a minimally decent life, which could be achieved without an egalitarian system of rights

Commented [10]: Adding a couple of examples of the socio-economic human rights enshrined in international legal docs would help to illustrate this point. Article 25 of the UDHR, for example, is very clearly sufficientarian, and rights to education tend only to include education up to a certain level.

Commented [11R10]: I hope this helps. I thought the ICESCR was better for this purpose.

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(Buchanan, 2013: 31). What Buchanan then aims to do is to first describe the international human rights system, highlighting its status egalitarian aspect in the process, and then ask whether and how it is justified; his hypothesis is that the system takes equal basic status as an independent value which is given expression through specific rights and features that could not be accounted for by standard philosophical justifications. But it is unclear what precisely is meant by status egalitarianism and by the egalitarian aspect or function of IHR.

It is telling that Buchanan switches between talking about the egalitarian *aspect* of IHR and its egalitarian *function*. As David Miller notes, talk of function is somewhat odd in this context as functional explanations are 'straightforwardly' empirical so the functions of certain things can be verified by observation (Miller 2016: 262). Moreover, 'function' itself is ambiguous between two possible senses: a claim about the purposes for which the system was developed and a claim about its effects.

We might refine Miller's distinction by noting that there are two senses in which a set of (moral) rights can be egalitarian: On the one hand, a set of rights can be egalitarian with respect to its *input*, in that it is based on egalitarian premises. In other words, the set of rights is justified by egalitarian values. On the other hand, a set of rights can be egalitarian with respect to its *output*, in that it delivers equality when it is implemented, with respect to either status or condition.⁶ This distinction rests on the assumption that we need not have egalitarian premises in order to propose a set of rights that promotes equality in some respect. For instance, rights to equal shares of natural resources might be justified by appealing to the thought that people's basic equality entails equal ownership of resources; but it might alternatively be justified on the basis of a conceptual argument about rights.⁷ (see, for example, Steiner, 1994).

⁶ This distinction is also inspired by the distinction that Kymlicka attributes to Raz between justificatory and consequential neutrality, where the first requires neutrality in the justification of a policy while the second in its consequences. The first takes no stand on which lives are more worth living even though its effects may be that some are more encouraged than others (Kymlicka, 1989: 883-4).

Commented [13]: I'm not sure this footnote is really necessary.

Commented [KW14R13]: Yeah, agree: we've deleted - hope that's ok?

Commented [15]: It would be helpful to say something about how the distinction between input and output equality interacts/intersects with the distinction between the four kinds of equality outlined in the previous section.

Commented [16R15]: Hmm, I'm not sure I get this or can really address the comment. I mean, they are orthogonal distinction, well, more specifically one is a distinction I make or operate with the, while the other is just a classification of conceptions of equality in the literature. But in a sense the interactions between them is what the rest of the paper is about!

The output of this set of rights would in both cases be equality in natural resources, but only in the former case would it be grounded in egalitarian assumptions.

Buchanan does not aim to ‘discern the purposes of the founders of the system’ but rather how the system’s features are to be understood on the best construal of it (2013: 35). It is unclear then whether he thinks that IHR is egalitarian in its input or output. Given that he emphasises that he is merely describing the system when he points to its egalitarian aspects, one might conclude that he thinks IHR are egalitarian in their output, that is to say this set of legal rights, if implemented/respected, would ensure status equality. However, he also wants to argue that this function is best accounted for by an independent commitment to equality, which is not captured in standard philosophical justifications. What I will argue in what follows is that the kind of equality conferred by IHR is less robust than either of the forms of equal status discussed in the previous section. Furthermore, the kind of (formal) equality that is conferred by IHR need not rest on strongly egalitarian premises; it is because Buchanan assumes that egalitarian premises are needed that he attributes this robust egalitarian function to IHR.

Let us consider the five features identified by Buchanan in more detail. Arguably what features 1) to 4) amount to is mere equality before the law or formal equality since all they confer is equality in rights (protection). Of course, since they are applicable to all humans, this is a more egalitarian set of rights than one that would only be applicable to members of a group or nation, for example. But this universality of application is not sufficient for a substantive form of equality; as Miller points out, the same meagre right (for example, a chicken in every pot every Sunday) could be accorded to everyone and this is compatible with both inequality of status and condition (Miller, 2016: 464). We might wonder at this juncture whether Buchanan and Miller envisage different kinds of status, to wit social and basic human status respectively. It is, I think, reasonably clear that equal rights are compatible with unequal *social*

Commented [17]: I think this could do with a bit of explanation. It doesn't obviously follow from a set of rights ensuring status equality that having that set of rights is just what it means to have status equality. Sufficient for what?

Commented [18R17]: Yes, this is precisely the point I'm trying to make in what follows. I've elaborated a bit to make that clearer. But let me know if I misunderstood the comment or something.

status, especially if this refers also to how people treat each other in their private dealings, as well as inequality of condition. Are equal rights also compatible with inequality of basic human status? It would take us too far afield to fully answer this question here but there are reasons to think that even if equal rights are necessary for basic equality, they may not be sufficient. First, as we will see in the next section, basic equality arguably refers not just to the equal status of people but also to their *high* status; in other words, they are not only entitled to equal treatment but to equally *good* treatment that fits their status as human beings. So, these rights should have a certain content, which is what is assumed in the philosophical literature that Buchanan is dissatisfied with . Second, basic equality may require certain kinds of (equal) treatment outside the realm of rights (legal or moral). A libertarian set of rights (to non-interference) would have universal application but is compatible with discrimination, at least by private actors, and other forms of unequal treatment.

It might then be the 5th feature, i.e. non-discrimination, that plays a crucial role in conferring a status egalitarian aspect to IHR in Buchanan's account. But we should note several things here. First, the non-discrimination principle is primarily aimed at discrimination in the provision of the various legal instruments' rights (e.g. ICCPR, art 2.1) although some non-discrimination articles are *autonomous*, i.e. are not confined to the rights contained in the same legal instrument (e.g. ICCPR, art. 26) .⁷ Second, as Buchanan himself seems to note, achieving equal basic, let alone social, status requires more than complying with legal requirements. How one is *treated* – and perhaps even *regarded* - by others in society is an important part of having an equal status and arguably the law cannot reach as far as people's beliefs and attitudes. What Buchanan seems to be assuming is that granting people equal *legal* status presupposes 'recognition of equal basic moral status (Buchanan, 2013: 89). In other words, rather than

⁷ [See Song, unpublished.](#)

showing that basic equality is the *output* of IHR, he takes the fifth feature of it to be an indication that basic equality is its *input*. This assumption will be challenged below.

It might also be argued that the non-discrimination principle in international law does result in a more substantive form of equality since it can and should be interpreted to require a measure of equality of condition, possibly cashed out as affirmative action (Song, unpublished). But in this context, the principle of non-discrimination targets the unfair exclusion of individuals from the provision of goods and services not wider distributive inequality (Miller, 2016: 465-466).⁸ So, if respected, this feature of IHR might translate into equality of opportunity but arguably only a weak form of equality of opportunity.

It is unclear what the connection between equality of opportunity and equal status is. It might be suggested that equality of opportunity presupposes basic equality but once again, the link is somewhat tenuous .

As convincingly argued recently by Kasper Lippert-Rasmussen in two twin articles (2022a and 2022b), we need not endorse an *egalitarian* view of the moral status of human beings in order to rule out certain unappealing views, such as those that would lead to racial or gender discrimination. ‘Modest non-egalitarian accounts of moral status’ – as he calls them, in order to distinguish them from radical, anti-egalitarian view – can have the same effect. One such view is the incommensurability view, according to which moral statuses of human beings are incommensurable (rather than equal). Another ‘modest non-egalitarian account of moral status’ is the sufficientarian view, according to which some human beings can have a higher moral standing than others but all possess it above a certain threshold. These, he claims, are ‘inconsistent with the sort of social hierarchies favoured by racists and sexists’ (2022a: 328).

⁸ In (legal) practice, of course, whether refusal to supply goods or services to members of certain groups amounts to unlawful discrimination is debatable as the case of *Lee vs. Ashers Baking Company Ltd.* and others demonstrates, where the Supreme Court overturned the verdict of lower courts. This case also supports the point made earlier, namely that individuals can hold and act in accordance with views that deny others equal rights and presumably status while complying with anti-discrimination legislation.

Commented [19]: I think it would be helpful to make clear, probably earlier in this section, what Buchanan's approach to theorising about HRs is. This will help readers who are not already familiar with Buchanan to make sense of your point here.

Commented [20R19]: I hope I've done that above and also made this point clearer above so delated this paragraph.

Commented [21]: Sufficient for what? A degree sufficient for justifying a principle of nondiscrimination?

Lippert-Rasmussen does not discuss human rights specifically but it seems plausible to me that modest non-egalitarian accounts of moral status could ground equal rights that mirror international legal human rights, that is rights that do not aim beyond sufficiency in terms of distribution.

What I have argued so far is that there are reasons to doubt that IHR deliver a substantive form of equality. It is indeed tempting to see human rights as instantiating basic equality but this cannot be merely in virtue of their universality – their content matters as well. Furthermore, while basic equality may indeed have historically been the idea behind arguments for equal rights, it is not necessary for equal rights to be justified. Thus, I conclude that human rights neither presuppose nor entail basic equality (or indeed some other substantive form of equality) although there is of course significant overlap between these two ideas.

To conclude this section, I wish to briefly consider a different way in which (human) rights might *lead to* equality, which was suggested by Feinberg in 1970. According to Feinberg, a feature that is common to all rights is that they enable their holders to *claim* the objects of their rights and, in doing so, right-holders assume a certain status. The activity – or even possibility - of claiming (rights), in Feinberg’s view, “enables us to stand up like men, [sic] look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holder of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others” (Feinberg 1970: 252). While it is not clear that rights are necessary for equality in the way Feinberg suggests (See Ihara, C. 2004), this is a connection between (human) rights and a form of egalitarianism worth considering. The thought here is that merely having rights is conducive to a more egalitarian ethos since those who are disadvantaged or seen as having lower status (in spite of their having equal rights) are able to assert their claim to equal treatment in at least some dimension. I suspect that this is the sense in which IHR can be most plausibly said to have a

Commented [22]: Again, there seems to be a conflation here between input egalitarian accounts and output egalitarian accounts. I thought the point here was that rights that have (or aim to have) an egalitarian output (e.g. nondiscrimination) need not have an egalitarian input, but in this sentence, you seem to be saying that modest non-egalitarian accounts of moral status (input) can ground non-egalitarian legal human rights (output).

Commented [23R22]: Hmm, that was about the input and output of a set of rights; that set itself is not the output of whatever grounds it and I guess I’m assuming - or even sort of arguing throughout this section- that a set of rights cannot be called egalitarian just because the rights are equally granted to all. Does this help? If so, does it need to be made clearer?

status egalitarian *function*, that is they can be a useful tool for challenging inequalities and empowering the oppressed and the disadvantaged. But again, how substantive the form of equality they support is depends on the content of the rights in question and, I would suggest, on whether they envisage some form of equality of condition.

So far I have challenged the idea that the five conditions identified by Buchanan are sufficient to lend a *robust status* egalitarian aspect to the international human rights regime; they appear to do nothing more than establish *formal* equality (of opportunity), which is indeed a form of equality but one that can hardly qualify a set of human rights as egalitarian. The thought that such a set of rights is robustly egalitarian probably assumes, I have suggested, that it can only be justified by an appeal to basic equality.

In what follows, I will consider some familiar philosophical justifications of human rights and ultimately provide support for Buchanan's implicit assumption, namely that a set of (human) rights not grounded in a substantive form of equality is unlikely to yield a robustly egalitarian outcome. Justifications for human rights are usually classified as either instrumental or status-based. For instrumentalists, human rights are tools that protect valued aspects of human life, such as personhood, or the components of a (minimally) good life. Status-based justifications, by contrast, claim to ground human rights in the worth or status of human beings rather than certain valuable features. To further illustrate the contrast, for instrumental justifications, the worth, or status, or dignity of human beings can be a value that human rights are meant to promote or protect; for status-based justifications, the moral status of human beings just *is* or finds expression in a set of rights; the appropriate response to status is to 'respect and defer to the person who bears it' (Waldron 2009: 218).

Connections can be drawn between each type of justification and different forms of equality. The status-based one is thought to be closely related to the notion of basic equality and thus more likely to be able to offer the robust status egalitarianism that Buchanan thinks

characterises IHR. The instrumental type may be thought to be conducive to an even more substantive form of equality, equality of condition, since on this view, human rights often protect humans' well-being – and equally so – they might be seen as aiming to an equal distribution of welfare.

I will start with philosophical justifications that claim to ground human rights in basic equality or the equal moral status of human beings and argue that, the notion of equality used in these justifications is not only marred with familiar difficulties but does no work in the argument for human rights. I then consider a version of the instrumental justification and argue that the resulting pattern of distribution is prioritarian rather egalitarian.

3. Status-based justifications

Status-based justifications ground human rights in the worth, dignity, or inviolability of the human being. On this kind of view, human rights do not protect what is valuable *to* humans but their very nature, as a person or moral agent. In Kamm's words: 'Fundamental human rights...are not concerned with protecting a person's interests but with expressing his nature as a being of a certain sort, one whose interests are worth protecting. They express the worth of the person rather than the worth of what is in the interests of that person' (Kamm 2007: 271). Or, to cite the other main proponent of this view, Thomas Nagel: 'I believe it is most accurate to think of rights as aspects of *status* – part of what is involved in being a member of the moral community' (Nagel 1995: 85).

As alluded above, it is tempting to think that this kind of justification is egalitarian in that it seems to appeal to the now almost dogmatic idea of moral equality of persons. 'Human beings have often been thought fundamentally to have equal moral status. This equality in moral status leads to the idea that all human beings should be afforded the kinds of protection

that human rights provide' (Cruft, Liao & Renzo, 2015: 5). But there are reasons to doubt that it is the *equality* of status that grounds human rights.

Let me first clarify that, as Kamm and others make clear, the notion of status can be understood in two different ways: a) as a broad one, which is 'defined as what is morally permissible or impermissible to do to some entity' (Kamm 2007: 227) or b) as a narrow one, where to have a moral status is 'to count morally in one's own right' (idem).⁹ But, as it has been often noted, a justification of human rights that appeals to the first notion is viciously circular (see Tasioulas 2013, Zylberman, 2016: 322). Unless we can give an account of moral status that is independent of rights, this kind of justification does not get off the ground. So the only viable notion of status is the narrow one that cashes out moral status independently of rights or permissible treatment. Kamm explains this notion as follows: 'an entity has moral status when, in its own right and for its own sake, it can give us reason to do things such as not destroy it or help it' (Kamm 2007: 229). Let's accept that this notion of moral status does not incur the charge of circularity; two questions then arise: in virtue of what do some entities (and not others) have this status, and is this an egalitarian ground for human rights?

Once again, it is no news that this view of moral status also runs into problems: whichever empirical feature it is that human beings possess that explains their high or inviolable status, it is unlikely to be possessed in equal measure by all humans so it will leave out some humans and perhaps leaves room for the inclusion of other creatures. Drawing a line between the species is very problematic as it would arguably be an indication of a mere speciesist bias.¹⁰ So arguably not all human beings have the same status and those who possess more of it should presumably be more protected. It does not, then, yield *equal* human rights. This is not a problem that has gone unnoticed and various responses to it have been offered,

⁹ I think this is equivalent to the distinction drawn by Kasper Lippert Rasmussen between an epiphenomenal and a non-epiphenomenal notion of moral equality rather than status. See Lippert-Rasmussen, 2022a.

¹⁰ See also the chapters by Suzy Killmister and Alasdair Cochrane.

Commented [24]: Cross ref, thanks. But also, I still think we need an extra line earlier on to say why that is the huge problem that it is presented here as being (and I agree that it is, I think, but I just think it needs unpacking?)

Commented [25R24]: Does this addition here help? I wasn't sure where it would fit above without changing the structure too much.

most notably the idea that the property we are looking for is a *range* property; so, whoever possesses the property above a certain threshold then has equal status and qualifies for rights (Carter, 2011). Of course, even this response may not be suitable for justifying rights for all and *only* human beings, depending on what the property is. Some humans may fall outside the range while some non-human animals may fall within it. But even if this response is satisfactory, I would argue that what does the work in this type of account is the *high* or at least *special* status that human beings have, not the *equality* of their status.

Let me unpack this thought. As Waldron clarifies, basic equality (as well as nearby concepts), ‘does two jobs, one vertical and one horizontal: vertically, it identifies a particular value or set of requirements that attend our dealings with each person; horizontally, it asserts an equality of that value or a sameness of requirements across all human persons’ (Waldron 2017: 3). Now, I am suggesting that existing status-based justifications of human rights only make use of the first of these two uses of basic equality. We could re-state Waldron’s clarification as two separate claims, both of which are contained within the assumption of basic equality that is meant to support arguments for human rights:

1. Human beings have high status because they possess X
2. This high status is equal (even if the possession of X is not)

My contention is that typical arguments rely merely on the first claim in order to generate rights. Consider Kamm’s argument. On her view, only a subset of the entities that matter morally in their own right have moral status as defined above. But it is in fact only a subset of entities with moral status that can have rights because while all entities with moral status can give us reason to behave in certain ways, ‘only some entities that have moral status are owed things and have rights against us’ (p. 230). She further suggests that such entities have even higher moral status and appears to follow Scanlon in selecting ‘judgement-sensitive attitudes’ as the distinguishing feature. So the point is that status-based justifications of this

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kind make *high* status the ground of rights. No additional premise about equality is needed in order to justify (some) rights.

Now, it might be argued that this additional premise could be added in order to explain why the rights in question are equal. But note that this will only generate equal rights assuming that the rights are not meant to protect or promote the property that grounds the status. But then it is unclear why it is the status that justifies rights. Indeed, as we will see below specific rights may be grounded in interests that human beings have which makes the contrast between the status-based and instrumental justifications less clear cut.¹¹ But for now, the thought is that *equality* of human beings plays no role in grounding (human) rights. So, the (widespread) idea that status-based justifications rest on an egalitarian foundation is misconceived. They do rely on one facet of the package of the basic equality idea, its vertical rather than horizontal component.

I am not suggesting that moral equality cannot be the ground of human rights; only that it plays no role in existing accounts. But perhaps, as Waldron and others suggest, there cannot be only one ground for human rights and we might look to a plural foundation, among which equality. James Griffin considers adding equality as a third ground for human rights, in addition to personhood and practicalities, and says: ‘it is undeniable that human rights are based on our equal human status. Still, if one wants to identify the existence conditions for human rights, one would not look to the equality of our human status but to the human status itself, and the personhood ground already captures that’ (Griffin 2008: 40). I read this to be confirming the point made above, namely that it is humans’ *high* status that is sufficient for the argument that human beings have some rights. The fact that this status happens to be equal is incidental and may come into play once we specify what rights we actually have.

¹¹ See also the chapter by Peter Jones, which highlights the idea that in both status and interests play a role in both types of justification.

So, once we come to specify the content of human rights, equality will come back into the picture. Kamm's argument at least only purports to show why (only) some entities *can* be owed duties, to wit, because of their very high status. But this does not (fully) specify the content of the duties.¹² When it comes to specifying the content of the duties, we might think that all creatures of this status are owed the same thing. But this depends on how we establish the content of the duties. Kamm herself seems to fall back on an interest-based account of rights and at this point, the status-based theorist faces a dilemma: either the interests that ground rights are those related to the features that account for the (high) status, in which case the resulting rights may not be equal, or they are not related, in which case it is unclear why only beings with such status can have rights.¹³ In either case, one of the jobs that basic equality is meant to do disappears from view.

Commented [27]: Omit, I think.

I conclude that no existing status-based justifications of human rights rest on an egalitarian foundation; a justification would be egalitarian if it was the equality (of human beings) – rather than their high status or specific features or common interests – that did the work in an argument that establishes that they (all) have certain rights. Perhaps such an argument is available but it has not been made to my knowledge. So it seems that basic equality is neither the output nor the input of human rights.

We might then ask what the relation is between human rights and another substantive form of equality, namely equality of condition. The international human rights regime has recently come under attack for failing to address issues of socio-economic inequality and having displaced movements that aimed to address it (Moyn, 2018).¹⁴ Arguably, this critique is too harsh and while the international human rights practice may not have aimed to address socio-economic inequality, it need not be incompatible with such attempts (Song 2019). But

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¹² ~~Other than inviolability.~~

¹³ See also Lippert-Rasmussen (2022a: 317-322), who argues that when interests that are irrelevant to the status are at stake, an entity's higher moral status does not determine that its interests must be protected.

could a philosophical account of human rights underwrite a set of rights that support an egalitarian distribution? Arguably, instrumental justifications that seek to ground equal rights to the conditions of a (minimally) good life might be suitable candidates.

4. Instrumental justifications

Recall that an instrumental justification for human rights sees rights as tools for the protection of valuable features of human lives, such as their personhood, the components of a (minimally) good life or their basic needs (Cruft, Liao & Renzo 2015: 11). Inasmuch as people have the same basic needs or interests, this kind of justification can generate an equal right to identical bundles of basic goods.¹⁴ It seems then that the output of such an account of rights is a substantive form of equality, namely equality of condition. But recall the discussion of different forms of equality in section 1. The literature on distributive equality distinguishes between different patterns of distribution: sufficientarian, prioritarian and egalitarian. If human rights protect (merely) the equal satisfaction of basic needs, they seem to aim at sufficiency rather than equality. This would, of course, significantly reduce the current inequalities in the world but it does not aim at equality in the distribution of goods, but only at ensuring that everyone enjoys a minimum standard of living. Could human rights do more than that, i.e. go beyond sufficientarianism towards equality of welfare?

Some might claim that an interest-based justification can ground rights that protect more than the minimum required for a decent human life and can perhaps be used for egalitarian ends. Indeed, it is often thought that the interest theory of rights is both the more

Commented [29]: This seems to run together the distinction Peter mentions between the function and justification of rights.

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¹⁴ I am assuming that any instrumental justification must appeal to something like human needs or interest (rather than simply the value of certain features of live) in order to account for the *direction* of duties they give rise to and thus why they correspond to individual rights. See also the chapter by Peter Jones and note that interests need not be instruments for achieving well-being but rather components of it.

plausible theory of rights and more hospitable to egalitarian concerns (Campbell 1983). Most arguments for socio-economic (human) rights appeal, implicitly or explicitly, to this type of theory; inasmuch as the interests grounding them are the same for all persons in the relevant moral community, this is supposed to yield equal rights (to socio-economic goods) and thus potentially an egalitarian distribution. Arguably, this type of justification has to rely on Joseph Raz's version of the interest theory of rights, or one along these lines.

It may be worth outlining briefly the main tenets of the interest theory here. On any version of the interest theory, a right serves to protect an interest, that is an aspect of someone's well-being. Thus, for all versions of the interest theory, when a duty *directly* serves an interest it is directed or owed to the possessor of that interest. But duties may benefit several parties and it would be implausible to claim that they are owed to all beneficiaries. On Raz's version of the interest theory, the duty is owed to the party whose interest also *justifies* the duty. Here is Raz's definition of a right:

'X has a right if and only if X can have rights and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.'

On this account, a straightforward – though not unproblematic – way to justify a right is by showing that an interest is weighty enough to generate sufficient reasons for holding others under a duty. I will argue that this appeal to weighty interests is not consistent with a genuinely egalitarian pattern of distribution. A pattern of distribution is egalitarian in the strict sense if shares of the relevant distribuendum are equal; if the relevant distribuendum is (natural) resources, for instance, it is natural resources that should be distributed equally. If the distribuendum is welfare, resources ought to be distributed in ways that lead to equality of welfare. Once again, this is to be contrasted with a sufficientarian or a prioritarian pattern where

Commented [31]: What is a genuinely egalitarian pattern of distribution? Equal distribution of goods? Distribution of goods such that there is an equal distribution of x (e.g. wellbeing).

Commented [32R31]: Does this addition help?

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inequalities are not problematic as long as the worst off have a sufficient amount of the distribuendum or are given priority.

Moreover, I would add that, whatever the distribuendum is, a genuinely egalitarian theory of distributive justice requires not only that initial shares be equal but also that they be re-equalised if the egalitarian distribution is disrupted, such as in the case where a natural disaster destroys some people's holdings. In other words, what each is entitled to remains an *equal* share unless of course a share-holder so to speak waives their entitlement of a portion of the share, either explicitly – by say, gifting it to someone else – or implicitly, by being responsible for losing their share.

So, I would suggest that, if an egalitarian distribution were to be translated into rights, the rights in question would have to be not just equal but also *robust*, which means that the right to an equal share does not change depending on the circumstances. So, the right-holder cannot non-consensually lose the claim to their **equal** share of whatever the distribuendum is.

I claim that rights grounded in interests cannot satisfy all of these requirements, so interest-based rights are not compatible with an egalitarian distribution. First, while interest-based rights aim at protecting aspects of well-being, they do not necessarily aim at an *equal* distribution (of well-being)¹⁵. This is because not all human interests – unlike perhaps needs – can be satisfied to an equal degree. It might be thought that since, in order to justify *human* rights we should only consider those interests that all human beings share, this type of argument entails that all human beings have equal rights to the same goods.¹⁶ But even interests that are shared by all human beings are very numerous and cannot all be satisfied in a world resembling

¹⁵ It might be suggested that there could be an interest in an equal share that grounds a corresponding right. First, it's unclear that this is a plausible interest, that is an aspect of well-being. Second, it is only if this was the only interest that human beings had that rights based on it would result in an equal distribution.

¹⁶ It is of course unclear, once again, on what basis we would exclude non-human animals on this justification. In his contribution to the volume, Peter Jones points out that interest theorists assume a second ground for rights, namely moral status. But we've already seen that it is difficult to draw a line between the species based on this notion.

Commented [34]: I think this could be put a bit more clearly. I think something that might be missing here is the point that there is no universal and equal interest in having an equal share. If there were such an interest, it could ground a right to an equal share. In the absence of such an interest, any egalitarian distribution that results from the realisation of interest-based rights will be merely incidental. Have I understood you correctly? If so, perhaps you could include a bit about why you think there is no interest in an equal share.

Commented [35R34]: I agree that this wasn't very clear and indeed a lot of what followed. So I may have gone a bit overboard in trying to clarify and may still not have been successful. I regret getting into this now because I think making the argument properly would require a whole paper.

ours, that is one where resources are finite. Indeed, this type of justification for rights tends to be a breeding ground for a proliferation of (human) rights that protect important interests. Proponents of interest-based rights accept that interests conflict and suggest that the resolution of such conflicts depends on the strength of the interests in the circumstances. This kind of resolution, I argue, following Raz cannot be an egalitarian one.

Raz himself argues that principles establishing rights, which he calls principles of entitlement, should not be regarded as egalitarian merely in virtue of the fact that they establish *equal* rights, or in virtue of their generality or universality. ‘Universality may be a necessary condition for a principle to count as an egalitarian principle (I shall later show that it is not) but it is not a sufficient condition for egalitarian status’ (Raz 1986: 222). According to him, only principles of entitlement that *seek* to achieve an equal distribution have genuine egalitarian credentials; for such principles, ‘equality is not only their result but also their purpose’ (Raz 1986: 225). The way we can see whether a principle of entitlement has equality as its aim rather than mere result is by seeing what it would dictate in conditions of scarcity; an egalitarian principle dictates that ‘in scarcity, each who has an equal entitlement is entitled to an equal share’ (Raz 1986: 223). By contrast, a merely universal principle of entitlement does not adjudicate such cases; this is because ‘each person’s right is independent of that of other people [...] when several people qualify under a principle, the principle generates equality of rights but that is entirely fortuitous’ (Ibid: 225).

Moreover, Raz argues that principles calling for universal satisfaction of satiable interests, like basic needs, are not egalitarian even though they can lead to an approximately equal distribution even in conditions of scarcity and conflict; this is because the ‘equality they give rise to is a by-product of their concern with the alleviation of hunger not a reflection of a concern with equality’ (Ibid: 239). Raz uses these points to ultimately argue against egalitarianism and, while I do not endorse his conclusion, I have no objection to his description

of egalitarian principles. In what follows, I will explain why an interest-based justification for (human) rights is incompatible with an egalitarian resolution of conflicts in conditions of scarcity. If this is the case, such an account cannot support equal shares in the real world or re-equalising shares if an initial equal distribution is disrupted.

On a Razian interest theory, rights exist inasmuch as they protect interests that are weighty enough to defeat competing considerations and justify holding others under a duty. Let us note as well that on a Razian account, rights are the *grounds* of duties rather than their correlatives; that is to say, although a right may exist, the duties it generates will depend on the circumstances and the competing considerations at play.

As is often noted, on this view, conflicts of rights are unavoidable because conflicts of interests are unavoidable (Waldron 1989). When rights - or weighty interests - conflict, the interest theorist has to at least decide which of the duties generated by a right can be fulfilled under the circumstances. So, even if the interest grounding the right is sufficiently weighty and a right does exist, there is no guarantee that the rights can all be satisfied, i.e. that all right-holders will receive the object of their right.

To illustrate, let us take Raz's own example, in which there are 2 Fs and 4 units of G and each F's right or interest will be completely satisfied only by 3 Gs (Raz 1986: 223). An egalitarian principle of conflict resolution will in this case dictate, as Raz points out, that each F is entitled to 2 Gs. But this cannot be an interest theorist's resolution of the conflict since that doesn't satisfy either of the two interests. For clarity, contrast this with a world where there are 6 Gs available. In this case, interest-based rights will yield an equal distribution; but an entitlement to an equal share cannot be maintained if not everyone's interest can be fully satisfied. In these circumstances (of scarcity), it is either the case that only one interest will ground a right (to 3 Gs), because it is weightier, or perhaps both ground rights that are in conflict. As I already mentioned, it is often assumed that conflicts of interest-based rights will

be solved by weighing the two interests involved against each other and the weightier one prevails.¹⁷ It is less clear how the conflict might be solved if they are equally weighty; presumably it will depend on the competing considerations that apply in the circumstances. It is likely that one of the two rights will not ground duties under the circumstances so the right-holder will not receive the object of the right. This is to say that, while interests may ground rights to a share that is equal to others' under certain circumstances, they do not *robustly* hold if circumstances change.

This is not a surprising result. It is one way of spelling out the familiar thought that there is a tension between pursuing well-being and pursuing equality, and not just status equality as Buchanan claims but also distributive equality. What an interest-based justification for (human) rights essentially puts forward is a view according to which the more disadvantaged one is, the stronger their claim to a share of goods since their interest in that share is weightier; this is effectively a prioritarian principle of distribution not an egalitarian one.

5. Conclusion

This chapter considered the relationship between human rights and equality and it argued that it is more tenuous than it might appear at first. While international legal human rights may appear to be underpinned by egalitarian commitments or yield a form of status equality, their egalitarianism is not as robust as some might think. Neither the input nor the output of human rights – legal or moral – is a very substantive form of equality. This is not to suggest that human rights cannot serve egalitarian ends; human rights have been and continue to be powerful tools against the most egregious manifestations of inequality but we should not be complacent about

¹⁷ [For a longer discussion of conflicts between interest-based rights, see also Preda, 2024. my 'Interest-based rights, peremptoriness, and exclusionary reasons', forthcoming.](#)

the extent to which human rights can secure meaningful or robust equality; while they may establish some minimal standards both in terms of the treatment owed to all human beings and satisfaction of their basic needs, they are not sufficient – as currently conceived - for achieving more ambitious egalitarian ends. This chapter is meant to suggest that egalitarian grounds may be needed if human rights are to serve genuinely egalitarian ends.

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