

*Equality and Proportionality*¹

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The idea that all people are moral equals enjoys broad support. Practically speaking, there is no doubt that this is a great moral victory. Inegalitarian views are often morally arbitrary, and many have been used to support self-serving and deeply harmful actions and policies. Coming, as it does, on the heels of ideas of racial, ethnic, religious, and gender-based superiority, there is no question that the world is a far better place for our commitment to the idea that all (normal adult) humans deserve to be shown equal moral respect or concern.²

That said, neither the currency of this egalitarianism within philosophical and folk moral theories, nor its merit relative to the crude discriminatory ideas it has supplanted, is sufficient to show that it is

1 For their comments on versions of this paper and discussions about the topics it addresses, I am grateful to Larry Temkin, Bill Throop, Jeff McMahan, an anonymous referee for this journal, and especially John Arthur.

2 Throughout this discussion, I will be taking the word 'people' to refer only to normal adult humans. It is worth mentioning that the consequent modesty of the egalitarian thesis I will be analyzing is significant in several respects. First, the restriction to normal adults insures that the claim that all people are moral equals enjoys particularly broad support, as no controversial claims about the standing of, say, human fetuses or humans in vegetative states are being taken for granted. Second, the problems I will raise for this rather weak form of egalitarianism are likely to be only a subset of the problems many actual egalitarians must confront. For instance, most egalitarians believe that infants and young children are owed the same respect and concern as normal adults are. But it is notoriously difficult to justify this claim without committing oneself to extending the same standing to all sentient animals. And the moral equality of most of the animal kingdom is more than many egalitarians are willing to accept.

theoretically justified. For while there are very good reasons to believe that the view that people possess equal moral standing is preferable to many views according to which they do not, it is far from clear that these reasons will also be sufficient to show that such egalitarianism is itself on firm ground, and that it is more justified than *every* form of inequality.

This paper explores the prospects of finding an egalitarian response to a challenge that has dogged egalitarianism for many years — namely that, contrary to what egalitarianism seems to require, there is no morally relevant descriptive attribute that people possess equally. The plan is to spell out the considerable force of this challenge, present what I take to be the best egalitarian response, and then spend the bulk of the article discussing the prospects of making this response successful. Along the way, we will see that, in order to avoid prescribing differences in treatment or concern that are disproportionate to the morally relevant differences that exist between individuals, acceptable moral theories must allow that at least some individuals' moral standing varies with their natural attributes. And this, in turn, raises a new, and significantly stronger, reason to doubt that egalitarian convictions can be justified.

I The Inegalitarian's Challenge

The claim that all people are moral equals is a claim about their moral standing. What exactly we are claiming when we say an individual has moral standing is a disputed matter, of course. At the most general level, however, it can be agreed that it is in virtue of possessing moral standing that individuals have moral claims on us and deserve our moral concern or respect. The disagreement emerges when we try to specify what exactly the legitimate claims of those with moral standing are, and exactly what sort of concern and respect they deserve. Some will say that those with moral standing have rights that protect them from certain kinds of interference in the name of the overall good. Others will say that those with moral standing deserve to be treated as ends-in-themselves rather than merely as means. Still others will say that those with moral standing deserve a say in what rules govern social interactions in their community, or in what principles structure the political authority that governs them.³

3 There is one influential analysis of egalitarianism's normative upshot that I will not discuss directly here: namely, that when any two people share the same kind of interest to the same degree, the satisfaction of each of these interests carries equal

Despite these differences among theorists in the implications of an individual's possessing moral standing, there is almost universal agreement that an individual possesses moral standing in virtue of possessing some descriptive characteristic. This is no surprise insofar as many contemporary moral philosophers take it for granted that the evaluative must supervene on the descriptive — there can be no evaluative difference between two things without there also being some descriptive difference between them.⁴ Moreover, where there is an evaluative difference, the requisite descriptive difference, or some aspect of it, is typically taken to figure in the explanation of the evaluative difference. So, in the context of moral standing, if the moral standing of two individuals is different, then, it is typically supposed, there must be some difference between them in terms of descriptive properties, and this difference, or some aspect of it, at least partly explains their different moral standing.⁵

Indeed, even those who deny that individuals deserve moral standing in virtue of their possessing some non-moral characteristic still typically feel the pressure to justify any difference in the moral concern and respect individuals are shown by citing descriptive differences between them. Christine Korsgaard, for instance, holds that individuals deserve moral standing in virtue of being free rational beings. But the notion of freedom at issue is not a natural attribute; it is an ideal that is never perfectly realized in the empirical world. Consequently, we 'ascribe freedom to others, not because we have theoretical evidence that they

moral weight. See, for instance, Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press 1993), 21-5. For reasons I will allude to later, it is not clear that this utilitarian understanding of moral equality is beset by the problems I raise. It is worth remembering, though, that this version of egalitarianism is far weaker than what most egalitarians have in mind, not least because it is compatible with all manner of preferential treatment for those with a greater number of interests. Indeed, it is not even clear that this utilitarian egalitarianism is truly an assertion of the equal moral standing of individuals, as opposed to the equal standing of their interests.

4 For a helpful discussion, see Frank Jackson, *From Metaphysics to Ethics* (Oxford: Clarendon Press 1998), 117-29.

5 While the commitment to supervenience does not entail that there be a single such difference that figures in the explanation of any difference in status — a moral property like standing might be multiply realizable, and thus supervene on a variety of descriptive properties — most contemporary moral theorists hold that there is a single descriptive ground, or 'criterion,' for deserving moral standing. An exception is Mary Anne Warren, who endorses a pluralistic account of moral standing in her *Moral Status: Obligations to Persons and Other Living Things* (Oxford: Clarendon Press 1997).

have it, but because it is a moral duty to do so.⁶ Korsgaard still allows, though, that ascriptions of moral standing (rather than its desert) depend on descriptive properties in at least two ways. First, being at least a candidate for moral standing depends on one's descriptive properties: 'Although we cannot find a perfect match between ethical concepts and natural facts, theoretical considerations do provide guidance. After all, it is theoretical facts which teach us which things are even potentially rational beings. The ethical concept of a moral person is mapped on to the naturalistic concept of a human being.' And second, descriptive properties can justify a decision to ascribe or withhold a particular kind of moral standing. For Korsgaard claims that we can decide against ascribing a standing to children and the insane that would rule out paternalistically deceiving them because 'theoretical facts do teach us that there is a sense in which children and the insane are not as "autonomous" — that is, not as in control of themselves — as ordinary adult persons are.'⁷

Tying the possession (or, in Korsgaard's case, ascription) of moral standing to the possession of descriptive criteria in this way opens egalitarians to the following potent, and by now familiar objection. If an individual deserves moral standing in virtue of possessing one of these descriptive criteria, it is difficult to see why possessing the criterion to a greater degree would not mean that an individual deserves a greater degree of standing. But of all the many criteria of moral standing that have been proposed — including, most prominently, rationality, the capacity to possess a conception of the good and a sense of justice, the ability to shape one's life according to a plan, humanity, subjectivity, and sentience⁸ — there is not a single one that all people possess equally. For

6 *Creating the Kingdom of Ends* (New York: Cambridge University Press 1996), 351. It should be noted that although she presents this as a Kantian view, Korsgaard allows that it is not a view Kant explicitly held; she points out that in his *Anthropology from a Pragmatic Point of View*, Kant claims that, in principle, scientists could determine whether an individual possesses the capacities sufficient for having moral standing.

7 *Ibid.*, 356-7.

8 Some of the most prominent proponents of these prominent criteria of moral standing are, in order: Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 429; John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press 1971), 505 (it is worth noting, however, that Rawls uses this as a criterion of political, rather than moral, standing in *Political Liberalism* (New York: Columbia University Press 1996), xlv); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books 1974), 48-51; T.M. Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press 2001), 185; Tom Regan, *The Case for Animal Rights* (Berkeley: University of California Press 1983), 243; Jeremy Bentham, *Introduction to the Principles of Morals and Legisla-*

each attribute, there are some people who possess it to a greater degree than others. So it seems that the current consensus regarding the relationship between moral standing and certain morally relevant descriptive attributes undermines the thesis that all people deserve the same moral standing and, in so doing, gives us very good reason to believe that people are not really all moral equals after all. If people deserve moral standing in virtue of satisfying some criterion, it seems difficult to deny that the more fully one satisfies the criterion, the higher the standing one deserves.⁹

II The Appeal to Range Properties

This challenge has prompted considerable discussion, although perhaps not quite as much as it merits. Consequently, I cannot hope to give an exhaustive treatment of all the responses that have been given, much less all the possible responses.¹⁰ Instead, I will focus on what I take to be the most promising response to the challenge. In defense of restricting the discussion in this way, however, let me offer the following promissory note: if the discussion that follows is successful, then the difficulties that arise will be difficulties that nearly any defender of egalitarianism will need to address, no matter what strategy they adopt for handling the differences that exist between people in morally relevant respects.

John Rawls is generally credited with explicitly formulating the defense of egalitarianism I have in mind, although he claims that it is 'too obvious to be overlooked.' Faced with the objection that the descriptive properties that he says make an individual deserving of moral standing — the capacity to possess a conception of the good and a sense of justice — are properties that people possess to different degrees, Rawls responds as follows:

tion, ch. 18, sect. 1. In addition, some authors combine several of these criteria. Dworkin, for instance, combines the criteria of Rawls, Nozick, and Scanlon when he says that we deserve moral standing in virtue of being 'human beings with the capacity to make plans and give justice' (*Taking Rights Seriously* [Cambridge: Harvard University Press 1977], 184).

9 For influential statements of this objection to egalitarianism, see J.R. Lucas, 'Against Equality,' *Philosophy* 40 (1965), 297 and Bernard Williams, 'The Idea of Equality,' in *Problems of the Self* (Cambridge: Cambridge University Press 1973), 230.

10 For a more comprehensive discussion of justifications of egalitarianism, see Louis Pojman's helpful 'Are Human Rights Based on Equal Human Worth?' *Philosophy and Phenomenological Research* 52 (1992) 605-22.

All we have to do is to select a range property (as I shall say) and to give equal justice to those meeting its conditions. For example, the property of being in the interior of the unit circle is a range property of points in the plane. All points inside this circle have this property, although their coordinates vary within a certain range. And they equally have this property, since no point interior to a circle is more or less interior to it than any other point.... There is no obstacle to thinking that a natural capacity constitutes the basis of equality.¹¹

To put Rawls's point in more general terms, his recommendation is that we recognize that there are two different sorts of properties associated with the proposed criteria of moral standing. The first sort of property comes in degrees, e.g., one can be more or less rational, more or less capable of having a conception of the good and a sense of justice, more or less capable of shaping one's life according to a plan, and so on. It is this kind of property that the objection to egalitarianism we considered above supposes the criterion of moral standing to be. But Rawls directs our attention to another sort of descriptive property that divides individuals into *kinds*, e.g., one can be the kind of individual that is rational or not, capable of having a conception of the good and a sense of justice or not, capable of shaping one's life according to a plan or not, and so on. And since the nature of these properties is such that one cannot possess them to greater or lesser degrees, all people that possess one such property must possess it equally. So, provided that egalitarians claim that moral standing depends on the possession of one of these sortal or 'range' properties, it seems they can simultaneously tie moral standing to non-moral characteristics without making themselves vulnerable to the charge that, by their own lights, different people deserve different degrees of moral standing.

This maneuver is likely to better satisfy those who are concerned to see that their egalitarianism is a consistent position than those who are looking for reason to be egalitarians in the first place. Sceptics are apt to find the appeal to range properties as the criteria for moral standing rather ad hoc. The reason is that, beyond its providing a way out of the inegalitarian's challenge, there seems to be little independent motivation

11 Rawls, *A Theory of Justice*, 508. Charles Larmore echoes this response when he writes of his proposed criterion of moral standing — the capacity to work out a coherent view of the world — that, 'Of course, some people have this capacity to a greater degree than others do, but respect is something that others as persons are due just by virtue of having that capacity, so it should be given equally to all' (*Patterns of Moral Complexity* [Cambridge: Cambridge University Press 1987], 64). Williams's response to the problem posed by the descriptive differences between normal adult humans — that we should remind ourselves that 'all men are men' — is similar in spirit. See 'The idea of equality,' 230.

for holding that the criterion should be a range property rather than the associated property that admits of degrees.

But even if one only hopes to show that there is no contradiction in holding that people are moral equals and that our moral standing depends on our descriptive attributes, there is still a good deal more theoretical work to do. For the appeal to a range property as the criterion for moral standing must not only make it possible to answer the egalitarian's challenge; it must also do so in a way that is consistent with other moral beliefs and principles that we hold dear. As we shall see, however, there is good reason to doubt that this is possible.

III Precise All-or-Nothing Accounts of Moral Standing

The difficulties of justifying egalitarianism by appealing to criterial range properties emerge when we consider what egalitarian moral theories say about the moral standing of those who are not our moral equals. One simple, and popular, alternative is to hold that those who are not our moral equals lack entirely the kind of moral standing we possess. The standing possessed by people is an all-or-nothing matter. Like the criterial range property on which it depends, this kind of moral standing does not admit of degrees: one either possesses it fully or not at all.

The appeal of such a view is not hard to appreciate. Eliminating the possibility that individuals possess a given kind of moral standing to different degrees greatly simplifies moral theories, for otherwise, a theory would need to specify what is due to those who possess each one of the possible degrees of that standing in addition to specifying what is due to those who possess it fully. Perhaps even more appealing is the fact that by taking the kind of moral standing people possess as itself a range property, one thereby achieves a certain harmony between one's account of the criterion of moral standing and the property of moral standing that supervenes on it. In response to the charge that there is no motivation for using a range property as a criterion for moral standing, one can at least answer that this choice is only fitting, as moral standing is itself a range property. Given these advantages, it is no surprise that many philosophers — including, for instance, Kant and most utilitarians — endorse the view that the only kind of moral standing is a range property, and that many others — including Rawls and Nozick — endorse the slightly more moderate view that at least the moral standing possessed by people is.

Let us set aside the more moderate view for the moment and consider first the view that there is only one kind of moral standing, and that this

standing is a range property. On one plausible interpretation of this view — and an interpretation that, in some ways, seems to best fit the position of many of its proponents — the one and only kind of moral standing is not only a range property, but a precise range property. It is, like Rawls' example of the property of being on the interior of a circle, a property that does not admit of borderline cases.

The trouble with this sort of view is that it is almost always incompatible with a familiar and deeply appealing aspect of our notion of moral desert. According to what I will call 'the ideal of proportionality,' in order to treat individuals as they deserve, any difference in the treatment two individuals receive must be proportional to the morally relevant differences between them. Individuals who are virtually, but not quite, identical in the respects that are relevant to being deserving of some kind of treatment, deserve to be treated similarly. To treat them drastically differently on the basis of such minute differences would be to infringe, if not always to violate, the demands of justice.

Like nearly all moral ideals, the ideal of proportionality is not, in practice, inviolable. Sometimes pragmatic limitations drive us to adopt policies that entitle people to differential treatment that is disproportionate to the differences between them. Minimum qualifications for positions that, as a practical matter, do not admit of degrees are cases in point. For instance, a one-point difference in an exam score between two otherwise equally qualified candidates might mean that one but not the other is entitled to a license to practice medicine. It is important to notice, however, that the permissibility of such a policy is not a counterexample to the ideal of proportionality. Even in such cases, the ideal of proportionality still governs what people *deserve*; our two nearly identically qualified aspiring doctors deserve similar career opportunities, as is confirmed by our sense that there is something unfair in allowing one but not the other to treat patients simply because of a one-point difference on a single exam. It is just that we have an overriding interest in licensing doctors, and presumably, the only practically feasible way of doing so involves drawing some morally arbitrary lines to mark morally significant conventional distinctions. In situations like this, practical considerations can make it permissible, despite our moral discomfort, to depart from the ideal of proportionality and bestow an entitlement on those that do not entirely deserve it or withhold it from those that do.

Moral theories positing a single kind of moral standing that is a precise range property will contravene the ideal of proportionality provided that the terms we use to refer to their criterial property are vague — as, unfortunately, the terms naming nearly all plausible candidates for moral standing are. There are (or have been) borderline cases of being rational, being capable of possessing a conception of the good and a sense of justice, being able to shape one's life according to a plan, being

self-aware, being sentient, and even being human.¹² To see how these borderline cases become the Achilles' heel of all-or-nothing theories of moral standing, it will be helpful to consider a representative example. Suppose a theorist holds that moral standing is a precise range property that an individual possesses in virtue of being rational. According to this theory, all individuals must be divided into two classes — those who possess full and equal moral standing and those who possess none at all — and the division is to be made on the basis of whether an individual is rational. Since 'rational' is a vague term, however, there is no precise amount of cognitive capacity that is minimally sufficient for an individual to qualify as rational. The transition from cognitive abilities that are insufficient for rationality to those that are sufficient occurs over an interval rather than at a precise point. As a result, there will be a range of individuals whose capacities fall in this interval about whom we can neither say that they are rational nor say that they are not rational. These are the borderline cases of 'rational.' But which of the two possible categories of moral standing that this theory allows for should these individuals fall under?

The theorist who holds that moral standing is a precise range property has three options: she may either say that some of these borderline individuals have full standing and some none at all; that all of them have full standing; or that none of them have any standing at all. In order to take the first option in any non-arbitrary way, she must draw a precise line within the blurry threshold region, on one side of which fall those borderline individuals who, she will say, possess enough cognitive capacity to have moral standing, and on the other side of which fall those who have too little to have any moral standing at all. But this differentiation is incompatible with the ideal of proportionality, and hence with our understanding of what people deserve. For the line must be drawn between two individuals — namely, an individual who possesses exactly the minimum degree of cognitive capacity and an individual who possesses only ever so slightly less — whose cognitive capacities are virtually the same. Since cognitive capacities can vary so minutely, it may well be that the individuals are so similar that we cannot perceive any cognitive difference between them. Moreover, these two individuals

12 Although the meaning of species terms is a matter of dispute within the philosophy of biology, the vagueness of 'human' is suggested by the fact that, on nearly all accounts, the species *homo sapiens* emerged gradually over a long interval rather than at a precise point in time. See, for instance, Ernst Mayr's discussion of transitional 'semi-species' in his 'What Is a Species, and What Is Not?' *Philosophy of Science* 63 (1996) 273-4.

will be *identical* with respect to the attribute that this egalitarian theory says is relevant to possessing standing; both will be borderline cases of being rational, where 'rational' denotes a range property.¹³ Yet, despite their striking similarity in the respects this theory claims are morally relevant, this theory would hold that these two individuals deserve to be treated drastically differently. One of these individuals will deserve the concern that is due to you or me, and the other will deserve the concern that is due a plastic shopping bag. But a theory that is to honor the ideal of proportionality cannot imply that two individuals deserve such dramatically different standing when, in the theory's own terms, they do not differ at all in the respect that is the descriptive criterion for deserving moral standing, and differ only minutely in the lower-level property upon which that descriptive criterion depends.

The other two options fare no better. Suppose, for instance, that the defender claims that none of borderline cases has full moral standing. In our example, she would say that only those who are definitely rational have standing, while those who are borderline rational and those who are definitely not rational have no moral standing at all. The difficulty with this response is that there is no precise threshold separating those who are definitely rational (and thus morally significant) from those who are borderline rational. There will be those about whom we can neither say that they are borderline rational nor say that they are definitely rational. These individuals will be borderline cases of definite rationality. And the defender will now need to say of each of these borderline cases whether it has full moral standing or none at all. If she says that some have standing and some do not, she will run afoul of the ideal of proportionality straightaway, for she will be committed to saying that one individual who is a borderline case of being definitely rational deserves to be shown full moral concern in virtue of its cognitive ability, while another individual who has ever so slightly less cognitive ability, but who is also a borderline case of being definitely rational, deserves none. She might, on the other hand, again claim that only definite cases of definite rationality have full standing, whereas those who are not definitely definitely rational have none at all. But, again, there is no

13 While it is undeniable that the two individuals will both be borderline cases of 'rational,' those who hold some non-truth-value-gap theory of vagueness will resist the claim that they are therefore identical with respect to the proposed criterion for moral standing. I will discuss one such theory — epistemicism — later in this section. I will not explicitly discuss the degree theorist's proposal that, for one of these individuals, it is 'more true' that it is rational. But the most straightforward way of accommodating this approach to vagueness would be to adopt the approach to moral standing I recommend in section V.

precise threshold separating those who are definitely definitely rational from those who are not definitely definitely rational. And so the dance continues. Either the theorist finally gives up and draws a precise line, in which case her theory is incompatible with the ideal of proportionality, or she continues restricting the range of moral standing until it excludes people altogether, in which case her theory becomes absurd.¹⁴ (Of course, parallel reasoning would apply if the theorist instead adopted a liberal stance and extended the range of morally significant individuals to include borderline rational individuals as well as definitely rational ones.¹⁵ In this case she would be committed to the absurd conclusion that moral standing extends to things that we are sure lack it.)

Even though it is obvious that individuals will vary minutely in both their possession of candidate criteria and their possession of the lower-level properties on which these criteria depend, it is relatively easy to overlook the problem this presents. For it is tempting to think that there might be special cases in which two individuals who differ only minutely along a morally relevant dimension nevertheless deserve drastically different treatment. This might be so, for instance, if the minute differ-

14 Timothy Williamson shows how, given highly plausible assumptions, second-order vagueness leads to vagueness of all orders in his 'On the Structure of Higher-Order Vagueness,' *Mind* 108 (1999) 127-43. The argument from the existence of vagueness of all orders to the conclusion that any human is some order of borderline rational goes as follows: construct a finite series of individuals who differ only minutely in their cognitive capacity that ranges from those that possess the capacity of a chicken to those that possess super-human capacities. It is clear that fewer of these individuals will be definitely rational than are rational; fewer will be definitely definitely rational than are definitely rational; and so on. The existence of vagueness of all orders insures that the 'definitely' operator can be iterated indefinitely, and each iteration of 'definitely' reduces the number of individuals in our finite series who fall under the description until none do. So those with super-human capacities will be borderline cases of some order of definite rationality. So all humans will be borderline cases of some (lower) order of definite rationality. See Williamson, *Vagueness*, 160-1.

15 This 'liberal' stance should not be confused with the pragmatic policy that is sometimes called 'playing it safe.' According to this policy, if we are unsure whether an individual possesses moral standing, we should treat the individual *as if* it does. This policy is not without its moral costs: for instance, if an individual about whom we are unsure does in fact lack moral standing, the policy will sometimes recommend restricting those who do have moral standing for its sake. In such cases, the restricted individual has a valid moral complaint. But in the current context this is really beside the point, for the pragmatic policy of 'playing it safe' is not an account of what moral standing individuals actually possess, but rather, a recommendation of how to cope with our uncertainty regarding that issue.

ence in degree also constituted a difference *in kind*.¹⁶ If two individuals are of two different morally relevant descriptive kinds, then they might plausibly deserve two very different kinds of treatment, despite differing only minutely in degree. For example, the difference in the time it takes two runners to complete a marathon may be only a fraction of a second, but one may deserve much greater honor than the other in virtue of having won the race rather than having come in second. What the previous argument shows, however, is that this defense will not be available when the kinds at issue are identified by vague terms. For any vague criterion, there just is no minute difference in degree that constitutes the difference in kind that is the difference between satisfying the criterion and not; such differences in kind for vague criteria only emerge gradually over an interval. There is, in fact, no minute difference that separates those who are rational, possess a conception of the good and a sense of justice, are capable of shaping their lives according to a plan, and so on, from those who are not. So no matter where an account of moral standing draws a precise line separating those who possess moral standing from those who do not, it will not be a line that puts everyone who satisfies the criterion on one side and everyone else on the other. As a result, there is no difference in kind between candidates for moral standing that can justify holding that some deserve the highest moral concern or respect and that the remainder deserve none.

This way of putting the problem also helps us see how the current argument is substantively different from a standard sorites argument. In sorites arguments, the impermissibility of drawing a precise line between those who satisfy a vague predicate and those who do not is underwritten by our intuition that the meaning of such predicates is 'tolerant' in that minute differences cannot make a difference in the permissibility of ascribing the term. The current argument, however, relies on no such intuition about the ordinary meaning of 'moral standing.' Instead, the impermissibility of drawing a precise line between those who possess full moral standing and those who possess none at all is underwritten by the decidedly moral ideal of proportionality. We must reject any theory that would draw such a line because doing so contradicts our moral convictions, not our linguistic intuitions.

It is worth noting that there is one step in the present argument that is currently controversial, if not among moral philosophers, then among philosophers of language. Some contemporary philosophers hold that

16 This way of putting the point was inspired by the discussion of continua in Larry Temkin's 'A Continuum Argument for Intransitivity,' *Philosophy and Public Affairs* 25 (1996) 175-210.

vagueness is the result of a very deep kind of epistemic ignorance. According to this theory, there is indeed a precise threshold that separates those who satisfy the criterion of moral standing from those who do not; it is just that the location of that threshold is unknowable, at least for humans.¹⁷ If this account of vagueness is right, then, contrary to what I have been claiming, there is a place where an account of moral standing could draw a line such that everyone who satisfies the criterion is on one side and everyone else is on the other (but, in principle, no human will ever know where this line lies). Thus, as a last-ditch effort, the defender of all-or-nothing theories of moral standing might hope to answer the disproportionality problem by adopting an epistemic account of vagueness.

Whatever its merits as an account of the ordinary meaning of vague terms, however, the epistemic account offers these moral philosophers little solace. For these theorists need to do more than set a threshold for moral standing somewhere; they also need to explain why the minute difference between those who just barely meet that threshold and those who just barely fall short justifies holding that the former deserve full moral consideration and the latter none. The details of epistemicism make this impossible, however. According to epistemic accounts of vagueness, the precise threshold for vague criteria is an extraordinarily complex and sensitive function of how the term has been used, or would be used, by ordinary speakers; had some ordinary speakers used the term, or been disposed to use the term, slightly differently, the line separating those who satisfy a vague criterion from those who do not would be drawn in a different place. In this sense, the threshold is 'unstable.' Williamson offers the following illustration:

A slight shift along one axis of measurement in all our dispositions to use 'thin' would slightly shift the meaning and extension of 'thin.' On the epistemic view, the boundary of 'thin' is sharp but unstable. Suppose that I am on the 'thin' side of the boundary, but only just. If our use of 'thin' had been very slightly different, as it easily could have been, then I should have been on the 'not thin' side. The sentence 'TW is thin' is true, but could very easily have been false without any change in my physical measurements or those of the relevant comparison class.¹⁸

Such semantic instability would undermine the moral appeal of any all-or-nothing account that employed a vague criterion. Consider two

17 See, for instance, Timothy Williamson, *Vagueness* (New York: Routledge 1994), chs. 7 and 8.

18 Williamson, *Vagueness*, 231

individuals — one just above the threshold for possessing the criterion of moral standing and the other just below it. On an all-or-nothing account of moral standing, the former individual would possess full moral standing and the latter none. But, according to the epistemicist, there is nothing intrinsically significant about the slight difference in their capacities that puts one just above the threshold for the criterion and the other just below it; it is simply that their capacities are differently related to minutia concerning our use of certain words. Morally speaking, it is absurd to say that such semantic facts underwrite the difference between deserving the highest moral consideration and deserving none whatsoever. It would be perverse to hold, for instance, that whether or not vivisectioning an individual wrongs him could even partly be a matter of subtle facts concerning occasions on which a few people uttered, or were disposed to utter, the word 'rational.'¹⁹ Epistemic accounts of vagueness, we may conclude, might help logicians and linguists, but they cannot help to bring all-or-nothing accounts of moral standing into line with the ideal of proportionality.

IV Vague All-or-Nothing Accounts of Moral Standing

The difficulties just canvassed arise when accounts hold that moral standing is a precise range property whose possession (or ascription) depends on the possession of a vague descriptive characteristic. One response is that these difficulties might be avoided if we instead held that the term 'moral standing' is, like its criterion, vague. L.W. Sumner, for instance, has suggested this sort of view in a discussion of the ethics of abortion: 'Because there is no quantum leap in consciousness during fetal development,' he writes, 'there is no clean and sharp boundary between sentient and nonsentient fetuses.... We are therefore inevitably confronted with a class of fetuses around the threshold stage whose sentience, and *therefore* whose moral status is indeterminate.'²⁰

19 Torin Alter and Stuart Rachels make a similar point concerning epistemicism and theories of personal identity in their 'Epistemicism and the Combined Spectrum Argument,' *Ratio* 17 (2004) 241-55.

20 L.W. Sumner, *Abortion and Moral Theory* (Princeton: Princeton University Press 1981), 150. The emphasis is mine. Other authors who are tempted by the notion of indeterminate status include Roger Wertheimer (see his 'Understanding the Abortion Argument,' *Philosophy and Public Affairs* 1 [1971], 88) and Jeff McMahan (see his *The Ethics of Killing: Problems at the Margins of Life* [New York: Oxford University Press 2002], 265).

There are two ways of interpreting this claim, each of which faces its own serious problems. On one interpretation, the 'indeterminate' moral status proposed for borderline cases of the criterion is a particular kind of moral standing that they possess and that is different from the kind possessed by clear cases of the criterion. Individuals whose status is indeterminate would thus have moral claims of a determinate strength, and deserve specific kinds of concern or treatment. I will discuss such two-tiered theories in the next section.

Alternatively, the claim that borderline cases of the criterion possess 'indeterminate' moral status could be understood as saying that we can neither affirm nor deny that these individuals have moral claims or deserve any particular moral concern or treatment. What they are due, like their status, is indeterminate. But if we can neither affirm nor deny that these individuals have any moral claims, we literally cannot say what, morally, we ought to do with respect to them. On this interpretation of 'indeterminate' moral status, we are left, utterly and irremediably, without any moral guidance in our interactions with these individuals. To claim that there are individuals whose moral status is indeterminate is thus to open a gap in morality into which our interactions with these individuals would fall.

And this is only the least of the difficulties. For, as I noted earlier, the edges of the interval over which a vague criterion like sentience or rationality emerges are themselves blurry rather than precise — there are, for instance, borderline cases of borderline sentience. Consequently, if one claims that individuals who are borderline sentient qualify for indeterminate moral standing, one will face two additional questions: what standing do those who are neither definitely borderline sentient nor definitely not sentient possess? And what standing do those who are neither definitely borderline sentient nor definitely sentient possess? One possibility is that we could extend Sumner's advice above and claim that when it is indeterminate to any degree that an individual satisfies the criterion of moral standing, the individual's moral standing is likewise indeterminate. Using Sumner's proposed criterion, for instance, we could say that those who are borderline cases of being definitely sentient also have indeterminate moral standing. The difficulty, however, will not end there — there are borderline cases of being definite cases of definite sentience, and so on. As we saw above, this phenomenon of higher-order vagueness ensures that the application of a vague term like 'sentient' will be indeterminate at some level with respect to all people. Consequently, this way of dealing with higher-order indeterminacy would lead to the unacceptable conclusion that the moral standings of all people is indeterminate.

Faced with this implication, the defender of indeterminate moral status might respond by rejecting the idea that any degree of indetermi-

nacy with respect to the possession of the criterion of moral standing produces indeterminacy in moral standing itself. Instead, she might say that while those who are borderline cases for the criterion have an indeterminate moral status, the status of the borderline borderline cases is determinate. For instance, if her favored criterion of moral standing is sentience, the defender of indeterminate moral status might claim that an individual who is neither definitely borderline sentient nor definitely sentient has full moral standing, while an individual who is neither definitely borderline sentient nor definitely not sentient has none. The trouble with this proposal is that the range of borderline cases overlaps with the range of borderline borderline cases. The same individual might be both borderline sentient and not definitely borderline sentient. (To deny this would be to claim, falsely, that there is a precise line that separates the borderline cases from the borderline borderline cases of the criterion.) Consequently, this proposal avoids implying that the moral status of everything is indeterminate only by embracing the contradiction that some individuals both have and lack a determinate moral status.

Finally, Sumner's proposal also seems to imply that all those whose possession of the criterion for moral standing is indeterminate have the same moral status — their moral standing is indeterminate. And this would be so despite the fact that it is true of some of these individuals that they are closer to determinately possessing the criterion than others are. But if an individual deserves moral status in virtue of possessing the criterion, then it seems that those who are closer to possessing the criterion have a greater claim to being shown concern than do those who are farther away, and that an adequate account of moral standing should reflect this. As it stands, though, Sumner's proposal cannot accommodate this powerful intuition.

V Multiple Kinds and Degrees of Moral Standing

So far, we have seen that egalitarian theories according to which individuals either have the moral standing people possess or none at all will be incompatible with the ideal of proportionality. This is because, given their vague criteria, there is no way they can set the boundary of this drastic change in status as occurring between individuals who differ greatly in morally relevant respects. Nor will it do to try to soften this drastic change by stipulating that, in addition to those individuals who satisfy the criterion and those who do not, there are individuals who neither have nor lack moral standing. Positing that individuals' standing may be indeterminate is fraught with difficulties. The obvious remaining alternative is to embrace a theory according to which the difference

between what is due to those who possess the moral standing of people and what is due to at least some of those who do not is not so drastic as the difference between having the strongest of moral claims and none at all. That is, the most promising strategy is to acknowledge that there are kinds or degrees of moral standing other than that in virtue of which all people are equal.

The most conservative version of this strategy would be to allow that there are two kinds of moral standing, both of which are range properties. For instance, Robert Nozick tentatively suggests that because of the cognitive differences between animals who are not persons and those who are, we should adopt a 'utilitarianism for [sentient] animals [who are not persons], Kantianism for persons' account of morality.²¹ Very roughly, such an account would claim that animals who are not persons equally possess a standing that requires that their interests be taken into account in determining what actions are right, and that their interests may only be sacrificed if doing so is necessary in order to achieve the greatest overall satisfaction of interests. Persons, on the other hand, all have a higher standing that constrains the morally legitimate pursuit of overall interest-satisfaction; because of their high standing, persons may never be sacrificed for the good of others.²²

The problem, however, is that even though such a theory allows for some difference in the moral standing that different individuals possess, it will still run afoul of the ideal of proportionality. For on this two-tiered theory, the difference in concern deserved by individuals who have different kinds of moral standing will still be drastic. As Nozick, following Rawls, points out, the utilitarian and Kantian theories at issue express very different kinds of respect for those they protect. Kantianism, but not utilitarianism, treats individuals as 'separate' and inviolable in the sense that the good to be gained by others by an individual's loss cannot morally compensate for that loss. Given the great moral distance between this way of treating individuals and the way individuals are treated in utilitarianism, one cannot plausibly hold that those who deserve this exalted Kantian respect could be virtually identical in morally relevant respects to those who deserve only utilitarian respect. If there is such a great difference in the moral respect and concern that these two theories say are owed to individuals, then the ideal of propor-

21 *Anarchy State and Utopia*, 39

22 Other gestures towards such a two-tiered view are made in John Rawls, *A Theory of Justice*, 512, and Ronald Dworkin, *Life's Dominion* (New York: Alfred A. Knopf 1993), 85.

tionality demands that there must be a proportionally great difference between the individuals who deserve them. As before, the vagueness of the criteria proposed for the highest level of moral standing, however, guarantees that any search for such a difference would be in vain. The theory will inevitably be committed to saying that one individual who is a borderline case of possessing the criterion for Kantian respect deserves that respect, while another individual who is only ever so slightly different, and who is also a borderline case of the criterion, does not.²³

In order to honor the ideal of proportionality, then, an egalitarian moral theory must hold that at least some individuals who possess the kind or degree of moral standing that is different from that possessed by people nonetheless deserve a level of moral respect and concern that is very similar to that deserved by people. And, provided that there is only one additional kind of moral standing, the theory must also hold that there are some individuals who possess this additional kind of moral standing who deserve a level of concern and respect that is very similar to that deserved by those individuals who have no moral standing at all.²⁴ What might such a theory look like? Consider the following sketch.

Each of the proposed egalitarian criteria for moral standing represents the possession of some lower-level descriptive property to a certain degree. Let us call this lower level property the 'grounding property' of the moral standing people possess. (If, for instance, the criterion of this standing is rationality, its grounding property is cognitive capacity.) Egalitarians might begin by holding that the basis of the additional kind of standing is the grounding property of the moral standing people enjoy. Then, in order to insure that some individuals who possess this

23 Do this theory's commitments regarding what we owe individuals just above and below the threshold for utilitarian respect also violate the ideal of proportionality? Perhaps not, if my characterization of the ideal is exhaustive. For it may be that the interests of the individuals just above the threshold will be of the very weakest sort, and hence that this theory can claim that they will generate only the weakest of moral reasons. If so, the treatment owed to those individuals just above and below the threshold may be similar. But matters are less clear if the ideal of proportionality requires more than just avoiding drastically different treatment of similar individuals. If, for instance, the ideal requires calibrating differences in treatment as finely as possible to the morally relevant descriptive differences, or if it applies not only to individuals but also to individuals' interests, then it may be that standard versions of utilitarianism contravene the ideal. I leave these issues to future work.

24 Or, if there is only one kind of moral standing, then the theory must hold that, among those who possess less moral standing than people do, there are some that deserve a level of concern or respect that is very similar that deserved by people, and others who deserve a level of concern and respect that is very similar to that deserved by those who have no moral standing at all.

standing deserve treatment similar to that deserved by people and some others deserve treatment similar to that deserved by those who possess no standing at all, the egalitarian could hold that the additional kind of standing varies with an individual's possession of the grounding property over a specified interval. If this grounding property is cognitive capacity, the theory will hold that for any difference between the cognitive capacities of two individuals who fall within this interval, there will be a corresponding difference in their moral standing. Since there are as many degrees of moral standing as there are degrees of cognitive capacity over the relevant interval, such an account will imply that two individuals within the relevant interval who differ only ever so slightly in cognitive capacity also differ only ever so slightly in their moral standing. Consequently, the treatment each deserves will be only ever so slightly different, and there is no threat that the difference in treatment they deserve is disproportional to the size of the morally relevant differences between them. As for the location of the relevant interval of cognitive capacity, it will be best to set the upper bound at the level of cognitive capacity that is just shy of being the minimum sufficient for the moral standing people possess, and to let the lower bound be determined by the criterion for this additional kind of standing. By setting the upper bound of the interval adjacent to the lower bound of the mental capacity that makes one deserving of the moral standing people enjoy, it will be possible for such a theory to insure that the consideration owed to individuals who fall just below the threshold for our standing is not drastically different than that owed to the descriptively similar individuals who fall at or just above it.

Such an account will not be entirely free of difficulties, however. The first is that this proposal may not make the additional kind of moral standing sufficiently fine-grained. For it is possible that the terms we use to describe the level of cognitive capacity an individual possesses are themselves vague. If so, there will be some individuals for whom we will be unable to say what level of cognitive capacity, and hence what degree of moral standing, they possess. The best response, if this proves to be the case, would be to have the additional kind of moral standing vary with the lower-level properties that cognitive capacity supervenes on. This should be sufficient; for at some level of description, the relevant terms will refer to natural kinds, and since, presumably, these properties are precise, so too will be the extension of the terms that refer to them.

Perhaps more troubling is the fact that, if the criterion for the additional kind of moral standing is vague, there will be no striking qualitative difference that will mark the boundary between those who possess it to the minutest degree and those who possess no moral standing at all. If, say, the criterion for this standing is borderline rationality (a natural choice if the criterion of the standing people enjoy is rationality), then

there will be no precise level of cognitive capacity that marks the beginning of the range of those who deserve some degree of moral standing given this criterion because there is no precise level of cognitive capacity that separates those who are borderline rational from those who are not. But, as we saw above, we must set a precise threshold somewhere. And this is so despite the fact that, whatever level of cognitive capacity we choose to use as this threshold, it will be no better than many other levels in its immediate vicinity that we might have used instead.

Although it may not be all we hoped for in a moral theory, we should recognize that the arbitrariness involved in setting such a threshold pales in comparison with the arbitrariness to which precise all-or-nothing accounts of moral standing are committed. Those accounts arbitrarily distinguish between those who will enjoy full moral standing and who will enjoy none, and in so doing, prescribe a difference in the ways two individuals deserve to be treated that is drastically disproportionate to the morally relevant differences between them. The current proposal, on the other hand, makes an arbitrary distinction only between those whose moral claims are infinitesimally weak, and those whose claims are nonexistent. Even though the morally relevant differences between the individuals who deserve these different standings will be minute, so too will be the difference in consideration they deserve. So while the former arbitrariness flies in the face of one of our deepest moral ideals, the latter arbitrariness seems tolerable, especially given that it seems necessary in order for us to have a coherent account of moral standing at all.²⁵

VI The Inegalitarian's New Challenge

What will be harder for egalitarians to justify is the arbitrary boundary that is drawn at the top of the interval over which an individual's moral standing correlates with its possession of the grounding property. Here too, there will be no qualitative difference that we can appeal to as the explanation for the qualitative difference between the moral standing deserved by individuals just at and those just below the boundary. As I

25 Indeed, there is a case to be made that our discomfort with arbitrariness in moral matters arises from the fact that arbitrary moral distinctions typically involve violating the ideal of proportionality. If this is right, then the line this theory draws between those who deserve an infinitesimally small amount of respect or concern and those who deserve none is an instance of morally innocuous arbitrariness, as making this particular distinction in this way is consistent with the ideal of proportionality.

mentioned earlier, though, there is some hope that a moral theory could specify that the difference in concern these individuals deserve is nevertheless so slight that it need not be disproportionate with the very slight non-moral differences between them. Even still, there is a serious question about the fact that egalitarians must hold that those individuals who are just at the minimum level sufficient for the standing people enjoy deserve the same moral concern and respect that individuals who possess a higher level of the grounding property do. Consider again an account according to which people deserve moral standing in virtue of their rationality. I have suggested that, in order to honor the ideal of proportionality, such a theory should allow that there is a kind of moral standing that individuals deserve in virtue of their possession of the account's grounding property for our standing — in this case, their cognitive capacity — and that the degree to which they possess this standing varies in proportion to the cognitive capacity they possess. But now what is the justification for the egalitarian's further claim that people, too, deserve a kind of moral standing in virtue of their cognitive capacity, but that this standing does *not* vary in proportion to the cognitive capacity they possess?

While the challenges are similar in spirit, it is worth emphasizing that this new challenge is significantly stronger than the inegalitarian challenge we opened with. For the original challenge merely pointed to the fact that there is a sense in which people differ with respect to nearly any plausible candidate for a descriptive basis of moral standing. To this, we saw, the egalitarian might reply that the sense in which these differences exist is morally irrelevant; all that matters to moral standing is whether people possess the basis for moral standing construed as a range property. But now we see that, in order to honor the ideal of proportionality, the egalitarian cannot claim that, in general, differences in the degree to which individuals possess the basis for moral standing are irrelevant to their moral standing. Moral standing can and does come in degrees that vary with individuals' possession of morally relevant descriptive characteristics. Moreover, we see that there is no descriptive difference in kind the egalitarian can point to as marking the boundary between the individuals whose moral standing varies with their possession of those descriptive characteristics and the individuals whose standing does not. Any such boundary must be arbitrarily set between individuals who are only ever so slightly different in morally relevant respects. And so now the inegalitarian will understandably demand some reason to accept the awkward proposal that, while some differences in the degree to which individuals possess the basis of moral standing generate corresponding differences in those individuals' moral standing, at some otherwise unremarkable point, the very same sort of descriptive differences cease to generate such differences in moral standing. For without some such

argument, it is far more reasonable to believe that one's moral standing varies with the degree to which one possesses the descriptive attribute upon which that standing depends — whether one happens to be a normal adult human or not.

Here it may be tempting to suggest that the egalitarian could respond to the new challenge by saying that the standing of people is, in some important sense, absolute. People cannot have more standing than other people in virtue of possessing the grounding property of standing to greater degrees because all people have already reached the limit of standing. No people could possibly deserve more than others because there is simply nothing more for them to deserve.

This sort of view is difficult to square with the ideal of proportionality, however. For the natural way to understand how a standing could be absolute is for there to be some conceptual barrier to that standing's being any higher. And on such a view, it seems that the claims of those with absolute standing must take lexical priority over the claims of those with lesser standing, so that a claim of an individual with absolute standing must be honored no matter how many claims of those with lesser standing might be satisfied by failing to honor it. Otherwise, the individual whose standing is said to be 'absolute' would have a standing that is not as high as it could possibly be.²⁶ The concern is that giving the claims of those with absolute moral standing lexical priority over the claims of those with non-absolute standing is to say that these two groups deserve very different kinds of respect and concern. But we have seen that there must be some among those who have absolute standing who are virtually identical in morally relevant respects to some among those who have non-absolute standing, and, hence, the ideal of proportionality will rule out holding that they deserve anything but similar degrees of respect and concern.

VII Conclusion

We began this discussion by noting that if the appeal to range properties as the criteria for moral standing is to contribute to the justification of egalitarianism, it must not only defuse the inegalitarian's original chal-

26 This is, for instance, the way Francis Kamm understands the proposal that humans have a standing that makes them absolutely 'inviolable.' (She, however, rejects such a view as according individuals an excessive degree of protection.) See her 'Non-Consequentialism, the Person as an End-in-Itself, and the Significance of Status,' *Philosophy and Public Affairs* 21 (1992), 383-4.

lenge, it must do so in a way that coheres with the rest of egalitarian moral theory. What we have seen is that this may not be possible for an egalitarian theory that uses a vague criterion for the standing people possess, as nearly all contemporary theories do. For, in order for such a theory to honor the ideal of proportionality, it will have to posit an additional kind of moral standing. And neither this kind of standing, nor its criterion, can be a range property; they must instead be matters of degree. In itself, this is an important result. Few contemporary egalitarian theories acknowledge that there are individuals who have less than full standing, and even fewer specify how the consideration these individuals deserve varies with the degree of standing they possess.²⁷ But we have also seen that even when egalitarian theories are developed in this direction, they will still face a challenge that is stronger than they have faced before. For they will then be committed to the view that moral standing sometimes does and sometimes does not vary with the degree to which an individual possesses some morally relevant descriptive attribute. And absent some forthcoming argument for the claim that two such different relationships hold between moral standing and its basis, there is serious reason to doubt that all people are moral equals.

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27 I make some initial suggestions regarding how this might be done in my 'Species Inegalitarianism as a Matter of Principle,' *Journal of Applied Philosophy*, forthcoming.

