

## Six

### Egalitarianism without Equality?

Paul J. Weithman

Like, I expect, many other people, I am drawn to democratic egalitarianism in large part because it seems to me to fit so well with my religious convictions. Democracy's ethos of equal respect for all seems to me to be among the proper political and cultural expressions of the universal love my religion enjoins. Egalitarian principles of distributive justice seem to me to be among the proper ways of expressing the demands for justice found throughout the Hebrew and Christian scriptures.

If I try to be more specific about just what I mean by talking of a good fit between my religious and my political convictions, I am led to the following. Both a democratic ethos and egalitarian principles seem to me somehow to be underpinned by two claims: the claim that human beings are by nature equal and the claim that our natural equality must be expressed in our social and political relations. The first of these claims seems to me to be one of which my religion

contains at least the elements of an account, in the form of claims about our common paternity and destiny.

But on examination, the connections that seem to me to be in place among democratic egalitarianism, the two claims I have said underpin it, and religious accounts of human equality all appear rather loose. Even if we suppose, as I will, that my version of Christianity is committed to the equality of all people, it is far from clear exactly how that commitment supports the ethical and distributive commitments of democratic egalitarianism. *Pace* some recent work by Jeremy Waldron, it is also far from clear that any such underpinning is needed.<sup>1</sup> For there are reasons to think that egalitarian principles of distributive justice can be sustained, or at least publicly sustained, without the support of the sort of robust account of natural equality that I have suggested religion can provide.

Some of those reasons depend upon Rawlsian arguments about the political character of political philosophy. According to those arguments, egalitarian principles can derive all the public justification they need from ideas to be found in political culture. Deeper religious justifications are not necessary. Other reasons depend upon the very challenging claim that our egalitarian convictions about distributive justice do not depend upon the value of equality at all. Here I shall ignore the first set of reasons for thinking that egalitarianism can get by without robust ideas of human equality and shall concentrate on the second. Let me begin by trying to state my concerns more precisely.

### The Fairness Conditional

I am concerned with the distribution of an important class of socially created goods that I shall refer to as "basic social benefits." Basic social benefits are those goods that together constitute the so-called currency of egalitarian justice. They are the goods with the distribution of which distributive justice is most fundamentally concerned. For now I shall remain noncommittal about what the currency of egalitarian justice is, though later I shall say something about what I believe to be one of the currency's more important denominations. I shall also suggest the need to distribute some basic social benefits differently than others—to use the currency of egalitarian justice to, as it were, make change. But for the moment we can take the currency to be Rawlsian primary

goods, preference satisfaction, opportunities for welfare, access to advantage, or Sen and Nussbaum's capabilities.

The questions that concern me are how these basic social benefits should be distributed and why.<sup>2</sup> By saying that I am attracted to egalitarian principles, I do not mean that I am attracted to the equal distribution of these benefits. I am, however, attracted to the claim that departures from equal distribution must be justified, so that there is a presumption in favor of equal distribution. I want to ask how that presumption can be defended and among what class of beneficiaries it holds.

It is natural to think that the presumption in favor of equal distribution is justified by the moral importance of some form of equality. And it is natural to think that the appeal to equality will not drop out when the most basic premises of the argument for egalitarianism are brought forward. Much political philosophizing in the democratic tradition—as well as much street-level political discourse—encourages the thought that equality is not just of moral importance but of *fundamental* moral importance. While arguments and pleas for greater equality may often rely on premises about other values as well, such as liberty and fraternity, the moral importance of equality is not generally explained by reference to these other values. Rather, the value of equality seems to be *sui generis*. And so if we think that the presumption of equal distribution is justified in part by the moral importance of equality, it will also be natural to think that some appeal to equality will be part of the deepest justification available.

Some philosophers, however, have asked whether the value of equality really is fundamental in egalitarian thinking about distributive justice. They have argued instead that an egalitarian distribution is justified because it serves other moral and political values. Some of these philosophers have maintained that the presumption in favor of an equal distribution of basic social benefits is supported by a requirement that procedures for distributing those benefits be fair, together with premises about the requirements of fairness and about who is owed fair treatment. I shall call the argument these philosophers offer for the presumption of equal distribution "the argument from procedural fairness." The philosophers who offer this argument deny that equality is fundamental in egalitarian thinking about distributive justice because, they claim, the value of equality does not figure in the argument from procedural fairness in any fundamental way.

T. M. Scanlon has thought about the argument from procedural fairness especially deeply. In an important essay he provides the "schematic form" of that argument.<sup>3</sup> According to Scanlon, the argument relies upon a premise to the effect that beneficiaries of a distributive scheme have claims to enjoy the benefits the scheme distributes. What makes the argument an argument *from procedural fairness* is its reliance on a conditional claim about what follows if the beneficiaries' claims to benefit are prima facie equal and if the distributive scheme is to be fair. I will call that conditional "the fairness conditional." The fairness conditional, as Scanlon states it, says:

If all the members of a certain group have a prima facie equal claim to benefit in a certain way, then a fair procedure for distributing such benefits must (in the absence of special justification) result in equal benefits.<sup>4</sup>

Let me recast the fairness conditional a bit more formally. More formally stated, the conditional says:

If all members of group G have a prima facie equal claim to benefits B, then if there is no special justification for departing from equal distribution, a fair procedure for distributing such benefits must result in equal benefits for members of G.

Thus the form of the argument from procedural fairness for equal distribution is:

- (1) [The formalized version of the fairness conditional.]
- (2) All members of group G have a prima facie equal claim to enjoy benefits B.
- (3) There is no special justification for departing from equal distribution.

Therefore

- (4) A fair procedure for distributing benefits B must result in equal benefits for members of G.

And if we assume that the benefits must be fairly distributed, we arrive at the conclusion that benefits must be distributed equally among members of G.

With this schematic form in hand, we can see the form of the argument from procedural fairness for a presumption of equal distribution. That argument form is:

- (1) [The formalized version of the fairness conditional.]
- (2) All members of group G have a prima facie equal claim to enjoy benefits B.

Therefore

- (3) If there is no special justification for departing from equal distribution, a fair procedure for distributing benefits B must result in equal benefits for members of G.

And if we assume, again, that benefits must be fairly distributed, we arrive at the conclusion that they must be distributed equally unless there is some special justification for doing otherwise. I take this conclusion to express a presumption in favor of equal distribution.

Scanlon's reliance on arguments from procedural fairness places him firmly in the line of egalitarian thought that Derek Parfit dubs "deontic egalitarianism."<sup>5</sup> Scanlon is certainly not alone among deontic egalitarians in thinking that egalitarianism (either actual or presumptive) is somehow required by people's equality of claims and the demands of fair treatment.<sup>6</sup> In fact, he thinks that arguments from procedural fairness are frequently if implicitly invoked to support egalitarian conclusions in a great deal of political philosophy and workaday political thinking.<sup>7</sup> I shall take him at his word and suppose that these arguments are of sufficiently general use and interest that they merit close attention.

Scanlon's treatment of these arguments is noteworthy because he has laid out the connections between procedural fairness, equality of claims, and egalitarian conclusions especially clearly and economically and because he has most explicitly drawn the provocative conclusion that equality itself plays a minimal role in egalitarian thinking. But I am less concerned with the details of Scanlon's own discussion than I am with the soundness of arguments from procedural fairness and with their implications, if any, for the role equality plays in justifying the presumption of equal distribution.<sup>8</sup>

Once we see the form of arguments from procedural fairness, however, we might wonder why their proponents think that such

arguments do not appeal, or do not fundamentally appeal, to the moral value of equality. It is not immediately clear what might count as a fundamental appeal to the value of equality. Scanlon sometimes implies that, when he says he is not appealing to equality in a fundamental way, what he means is that his arguments for egalitarian outcomes do not depend upon the premise that an equal outcome is for that reason a better outcome.<sup>9</sup> Sometimes, however, Scanlon seems to be saying something more. When he lays out the schematic form of arguments from procedural fairness, he stresses that "what [such arguments] have in common is not that all men and women are created equal" but that they all rely on what I have called "the fairness conditional." This remark suggests that, when he denies he is appealing to equality in a fundamental way, Scanlon is not merely denying that he relies on the claim that an equal distribution is a better distribution simply because it is equal. He is also denying that he relies upon claims about human equality to provide or to support premises in his arguments for egalitarian outcomes. What interests me is the question of whether arguments from procedural fairness show that egalitarian conclusions can indeed be adequately supported without appealing to such claims.

It might seem that arguments from procedural fairness do depend upon the premise that those who are to benefit from the distributive scheme in question are equal in an important respect—namely, they have prima facie equal claims to benefit. If the fairness conditional is true, then this form of equality has important consequences. So the argument's reliance on the assertion that beneficiaries are equal in this respect seems to imply that it *does* rely on the importance of preserving or respecting that form of equality—hence that it does appeal to the value of equality in a fundamental way.

Proponents of arguments from procedural fairness like Scanlon deny this conclusion. They do so because of what they think makes the antecedent of the fairness conditional true. They think that even when the antecedent of that conditional is true—even when members of some group do have prima facie equal claims to benefit—the prima facie equality of their claims does not itself depend upon further claims about human equality. I shall ask what does ground the prima facie equality of claims below in the section "Participation and Equal Claims." But I want to begin asking about arguments from procedural fairness by asking about the truth of (1), the fairness conditional.

## Consequent Blockers

At first glance, the fairness conditional might seem implausible because it might seem to prove too much. The antecedent of the conditional refers to parties with prima facie equal claims to benefits. But now consider members of some group G whose prima facie claims are undefeated. It might be thought that when their claims are undefeated, (3) is true and there is no justification for departing from equality. Conjoined with an appropriate instance of (2), which asserts the antecedent of the fairness conditional, the conditional might then be thought to support, not just the *presumption* of equal distribution of benefits among members of G, but the equal distribution of benefits among them *tout court*. This conclusion may seem worryingly strong, for it is far from obvious that those who have ultima facie equal claims to benefit should get equal benefits. Since I am supposing for the sake of argument that the relevant instance of (2) is true, the problem seems to be due to the strength of the fairness conditional.

The support that the fairness conditional seems to provide for the stronger conclusion is illusory. The illusion arises from misconstruing the phrase "in the absence of special justification." More specifically, it arises from the mistaken thought that such justifications can provide only reasons for denying that parties who have prima facie equal claims have ultima facie equal claims. For if that is the only sort of reason such justification can provide, then (2) plus the conditional will indeed imply that there cannot be any compelling reason for departing from an equal distribution among those with ultima facie equal claims.

In fact, the phrase *special justification* must refer to considerations of two very different sorts. It must refer to what we might call *antecedent defeaters*, which defeat prima facie equal claims to a benefit. It must also refer to *consequent blockers*.

*Consequent blockers* in this case are justifications for deviating from an equal distribution of benefits even when the antecedent of the fairness conditional is satisfied (and the parties really do have prima facie equal claims to benefit), when there are no considerations that defeat those prima facie claims, and when the distributive scheme is supposed to be fair. Of course, the availability of consequent blockers does not show that the fairness conditional is false, since—I am maintaining—the conditional allows for the possibility of consequent blockers by

including the clause about special justification. The point of construing *special justification* as referring to consequent blockers is to make provision for cases in which we want to deny claims to equal benefits without denying that the fairness conditional is true, that the scheme for distributing benefits must be fair, or that the parties in question have *ultima facie* equal claims to benefit.

Consider an example. Rawls thinks citizens of a well-ordered society have *prima facie* equal claims to primary goods, and he thinks there is a presumption in favor of equal distribution. Yet he famously thinks that fair distributive schemes may yield unequal distributions of income and wealth. He thinks an unequal distribution is justified by the fact that when inequalities function as incentives, all parties are better off under an unequal distribution than they are under an equal one. Just how this justification functions depends upon just what is meant by *prima facie equal claims*; I shall say more about that in the next section. For now, let me say simply that I think the incentives justification does not function to defeat citizens' *prima facie* equal claims to primary goods. Indeed, I believe Rawls thinks these *prima facie* claims are undefeated in the well-ordered society, so that citizens of well-ordered societies have not just *prima facie* but *ultima facie* equal claims to the benefits of social cooperation.<sup>10</sup> And so I think the function of the justification must be to block the inference *from* citizens' *ultima facie* equal claims *to* the conclusion that income and wealth should be equally divided.

What does this conclusion show about arguments from procedural fairness?

If the conclusion is correct, then an argument from procedural fairness could be used to vindicate Rawls's presumption that all primary goods should be distributed equally among those with *prima facie* equal claims. Someone using that argument could then maintain that the presumption is rebutted in the case of income and wealth because, while the only special justification for departing from equality (namely, Rawls's incentives argument) leaves those claims intact, it blocks the inference to the consequent of the relevant fairness conditional (which would require equal distribution).

Another example of a consequent blocker is the special justification for departing from equal distribution that can be based upon special features of some of those among whom benefits are to be distributed, such as physical handicaps. Though I am primarily interested in the

distribution of what I called "basic social benefits," the fairness conditional is not restricted to such benefits. It applies to any benefits whatever. To see how a special justification based on physical handicaps can function as a consequent blocker, consider the claims that citizens have to the benefits of a national park such as Yosemite. I assume that all citizens have *prima facie* equal claims to those benefits. I also assume that physical handicaps do not defeat those *prima facie* claims. For reasons that I hope will become clearer when I ask just what it is to have equal claims, I think that we treat differently abled citizens as equals only if we deny that disabilities defeat *prima facie* equal claims to benefits. And so I shall assume that differently abled citizens, as such, have *ultima facie* equal claims to the benefits of Yosemite.

What follows from this depends in part upon just what citizens have equal claims *to*. I would argue that the most appealing answer—more appealing than *enjoyment* of Yosemite or the *opportunity to enjoy* Yosemite—is that the benefit to which citizens have equal claim is *access* to Yosemite. If this is so, as I shall assume it is, then unless we allow for a consequent blocker, the fairness conditional implies that a fair procedure for distributing that benefit would give citizens equal access to Yosemite.

The problem with this implication is that differently abled citizens cannot be granted equal access to all of Yosemite. There are some ways of accessing parts of the park, such as climbing the face of El Capitan, that are not open to those with certain physical disabilities. And so granting equal access to Yosemite is simply not possible. Unequal access is reasonable in this case. In the absence of a consequent blocker, an argument from procedural fairness could be used to establish rights of equal access. But the impossibility of granting equal access to differently abled citizens justifies the unequal distribution of access and blocks the implication that equal access must be granted.

When I introduced the idea of consequent blockers, I said they allow us to provide for cases in which we want to justify the unequal distribution of benefits while asserting the truth of the fairness conditional and maintaining both that the distributive scheme must be fair and that citizens have *ultima facie* equal claims. The examples I have discussed do just that. Rawls's incentives argument justifies the unequal distribution of income and wealth by a distributive scheme that fairly takes account of citizens' *ultima facie* equal claims to primary goods. The impossibility of granting equal access to Yosemite justifies unequal

access while allowing us to maintain that access must be distributed fairly and that differently abled citizens have *ultima facie* equal claims to access.

The distinction between consequent blockers and antecedent defeaters therefore makes it possible to defend fairness conditionals against the charge with which I opened this section, the charge that they prove too much in cases in which we do not wish to deny *ultima facie* equality of claims to benefit. By doing so, the distinction enables us to blunt what looked like a powerful objection to arguments from procedural fairness. But what of the claim that considerations of fairness, rather than some fundamental claim about equality, account for the presumption in favor of equal distribution?

At this point it may be said that by construing the presumption of equality as requiring only that departures from equality be justified, I have construed the presumption too weakly. It might be thought that even in cases in which there is a justification for departing from equality, we intuitively think that the ideal of equality has a special place. For example, in cases in which citizens have *ultima facie* equal claims to benefit and in which distributive procedures must be fair, we may still suppose that the presumption of equal distribution requires more than that there be no departure from equal distribution without some special justification. The presumption might also be thought to require that, even in the presence of such a justification, the ideal of equal distribution should play a privileged role in determining what the right distribution is. Perhaps it will be thought to require that, in the presence of a consequent blocker, we should try for the most reasonable approximation of equal distribution.

Whether this thought is plausible depends upon what makes an approximation reasonable. What makes an approximation reasonable in the example of the differently abled, it might be said, is that the degree of access provided to all citizens reasonably balances the interests of the disabled in accessing the park against the interests of those whose access and enjoyment would be impeded by the presence of ramps and the exclusive dedication of parking space. And what makes the distribution of income and wealth in Rawls's well-ordered society a reasonable approximation of equal distribution, it might also be said, is that it reasonably privileges the interests of the least advantaged.

One difficulty with this line of thought is that, by referring to the reasonable approximation of equal distribution, it seems to contain an

unnecessary shuffle. Instead of saying that we should reasonably approximate equal access and that such an approximation is reached by reasonably balancing the interests of differently abled citizens, why not simply dispense with the idea of an equal distribution of access altogether in this case? Why not say simply that striking such a balance just is the right thing to do when citizens who have *ultima facie* equal claims to a socially generated benefit differ in their capacity to enjoy or access it? And why not say that reasonably balancing the interests of citizens in a well-ordered society just is the right thing to do when there is a justification for departing from the equal distribution of income and wealth?

My suggestion, then, is that we eliminate the shuffle by rejecting the thought that equal distribution has a privileged role in determining what the right distribution is in the presence of consequent blockers. The presence of consequent blockers does not imply that there is not a presumption of equal distribution; it implies that that presumption is overridden. My suggestion is therefore compatible with retaining the presumption of equal distribution among parties who have *prima facie* equal claims. It is also compatible with using the fairness conditional to argue for that presumption. And so it is compatible with the truth of the fairness conditional.

But by allowing so much work to be done by the notion of a reasonable balance of interests, my suggestion about how to eliminate the shuffle raises questions about just what work the idea of procedural fairness does. Perhaps the fundamental principle at work when distributive questions must be settled is a principle requiring that fair distributive procedures strike a balance of the interests of those with *prima facie* equal claims that none of the claimants could reasonably reject.<sup>11</sup> And perhaps what the fairness conditional does is express a requirement of reasonability in cases in which those *prima facie* equal claims are undefeated and in which there are no consequent blockers.

When the idea of procedural fairness was introduced to help justify egalitarian outcomes, it may have seemed that that idea was being taken as primitive. If my speculations in the previous paragraph are correct, however, then this is a misunderstanding. If those speculations are right, then procedural fairness is not primitive; instead it is a species of reasonability. The distinction between antecedent defeaters and consequent blockers showed how to maintain the truth of the fairness conditional because the distinction can be deployed to show that the

conditional does not prove too much. But while the fairness conditional may be true, its truth may depend upon other, more fundamental considerations.

This line of thought does not try to turn the tables on proponents of arguments from procedural fairness, for it does not conclude that equality is more fundamental than fairness. But it is an attempt to beat these philosophers at their own game by showing that if procedural fairness is more fundamental to our thinking about distributive justice than equality is, then reasonability is more fundamental still. Even so, these philosophers might think that understanding procedural fairness in the way I have suggested is in the spirit of their view, for understanding the idea that way still makes it possible to account for the presumption of equal distribution without fundamental appeal to the value of equality. I now want to argue that we may need to make such an appeal to justify some egalitarian outcomes that are intuitively appealing. I will do so by shifting my attention from the plausibility of the fairness conditional to the meaning of the conditional's antecedent, which I will take up in the next section, and to the conditions under which the antecedent is true, which I will take up below in the section "Participation and Equal Claims."

### Equal Claims to Benefit

The antecedent of the fairness conditional is satisfied when members of a given group have prima facie equal claims to benefit. What is it to have prima facie equal claims to a benefit?

I shall assume for the sake of argument that we understand what it is for two or more people to have *claims* on some benefit. But while we may also think that we understand the idea that they have claims that are prima facie *equal*, the idea of claims that are prima facie equal is very puzzling on closer examination. I will not puzzle over the idea long, nor will I answer the question of what it is to have prima facie equal claims. I will, however, puzzle over this question long enough to suggest some possible answers and to raise further questions about arguments from procedural fairness.

One way in which A and B can have prima facie *equal* claims is for them to have *identical* claims, where by *identical claims* I mean that they have claims with identical grounds. For example, two people who have

identical lottery tickets bearing winning numbers have prima facie equal claims to the payoff. Two people who have performed identical work have prima facie equal claims to wages.<sup>12</sup> When people have prima facie equal claims of this sort, it does seem plausible that, in the absence of further considerations, fair distributions of the payoff or the wage pool will result in their receiving equal benefits.

So if we take it that A and B have prima facie equal claims just in case they have identically grounded claims, it would be easy to establish a presumption of equal distribution using an argument from procedural fairness. This will seem like a strong point in favor of this analysis to those who find arguments from procedural fairness intuitively compelling. The problem with our understanding prima facie equality of claims in this way is that, while identity of grounds may be sufficient for having prima facie equal claims, it can hardly be necessary. It is too easy to come up with cases of people who seem, intuitively, to have prima facie equal claims to benefit but whose claims are differently grounded.

A different analysis of *prima facie equal claims* may seem more promising: perhaps A and B have prima facie equal claims to benefit just in case a fair distributor of the benefit does not have reason to benefit one of them more than the other in the absence of special considerations. This may seem promising because if we adopt it, then—as with the suggestion about identically grounded claims—arguments from procedural fairness are easily used to establish a presumption of equality. For if it is established that A and B have equal claims in this sense and that the distributive scheme should be fair, then it would indeed follow, in the absence of special considerations, that the two should receive equal benefits.

One problem with this suggestion may seem to be that it simply helps itself to a distinction that is very difficult to make out. To see the problem, note first that tenability of the suggestion depends upon our being able to draw the distinction between (i) reasons for denying that A and B had prima facie equal claims in the first place and (ii) those "special considerations" that would justify an unequal distribution between A and B in spite of their having prima facie equal claims. Among the "special considerations" in set (ii) are presumably considerations that override the prima facie equal claims of A and B. So the tenability of the suggestion depends upon our ability to distinguish reasons of kind (i) from kind (ii), those reasons for differentially benefiting A and

B that presuppose but override their prima facie equal claims. It is by no means clear how this distinction is to be drawn. So the intuitive plausibility the suggestion seemed to enjoy is in fact purchased with a promissory note that may be very difficult to redeem.

I do not think that this objection is as telling as it may seem to be. For I do not think we should expect intuitions and intuitively obvious distinctions alone to take us far in understanding what it is for people to have prima facie equal claims. Instead, I suggest that the idea of prima facie equal claims, the conditions under which people have such claims, and the considerations that defeat or override those claims are all most likely to be understood only in the context of a philosophical theory in which these various notions play a role. If it is not immediately clear how to draw the distinction between the sets of reasons that I discussed in the previous paragraph, we should remain open to the possibility that the distinction can be made clear by a theory of justice or of equality the whole of which strikes us as plausible.

The suggestion now under consideration is that A and B have prima facie equal claims to benefit just in case a fair distributor of the benefit does not have reason to benefit one of them more than the other in the absence of special considerations. I have said that we should not expect our intuitions alone to take us far in understanding what it is for people to have prima facie equal claims. Insofar as I have intuitions that bear on this suggestion, they incline me to think that the suggestion is not the right way to understand what it is for A and B to have *prima facie equal claims to benefit*. Rather, they incline me to think that this is a way to understand what it is for A and B to have *prima facie claims to equal benefit*. For it strikes me that, if prima facie there is no reason for a fair distributor to give A more than B, then this fact bears not on the equality or inequality of their claims but on how much A and B have claims to. If that is so, then it is no wonder that mistaking it for the way to understand *prima facie equal claims to benefit* makes it so easy to demonstrate a presumption of equal distribution.<sup>13</sup>

What is it, then, for parties to have prima facie equal claims to some benefit? Let me just mention a number of possibilities. Perhaps A and B have prima facie equal claims to benefit just in case, prima facie:

- Their claims to benefit must be equally taken into account.
- Their interests in the benefit must be equally taken into account.

- There is no reason to satisfy one's claim at the expense of the other's.
- It would be wrong to satisfy one's claim at the expense of the other's.
- The distribution of the benefit must be justifiable to them as free and equal.
- The distribution of the benefit must be such that they could not reasonably reject it.

These various attempts to understand the prima facie equality of claims to benefit are obviously not equivalent. My aim here is not to decide which one, if any, is correct. In the remainder of this section, I want to show how these understandings of the prima facie equality of claims confirm the need for consequent blockers. In the next, I want to raise questions about the conditions under which people might have prima facie equal claims, however the nature of such claims is to be understood.

First, there may be considerations that override prima facie equal claims to benefit, understood in one of these ways, and that may thereby justify an unequal distribution among people with prima facie equal claims. These are considerations I referred to earlier as antecedent defeaters. If the benefits in question are shares of what I called basic social benefits, then it is the job of a theory of justice to identify the considerations that can serve as antecedent defeaters. Perhaps, according to the right theory of justice, prima facie equal claims to basic social benefits are defeated if able-bodied persons who have those claims refuse to contribute to the social product because they prefer to spend their days surfing. In that case, though prima facie the surfers' and the nonsurfers' interests in the social product should (for example) have equally been taken into account, the fact that the surfers have refused to work overrides the need to take equal account of their interests. Ultima facie, the nonsurfers' interests in the basic social product may be given priority.

But once we survey the possible ways of understanding what it is to have prima facie equal claims, we can see why antecedent defeaters cannot be the only considerations that justify departures from an equal distribution of benefits. For there may be cases in which we think an unequal distribution is justified but in which we do not want to say that there are considerations that defeat prima facie equal claims to



benefit—now understood in one of the foregoing ways. Thus there may be cases in which we think an unequal distribution of benefits is justified but in which we do not want to say that the need to take equal account of the beneficiaries' interests has been overridden or that the considerations that justify unequal distribution also make it the case that the distribution need not be justifiable to the beneficiaries as free and equal. Instead we want to maintain that though an unequal distribution is justified, parties have *ultima facie*—as well as *prima facie*—equal claims to benefit.

Rawls's incentives argument, for example, provides reason for departing from the equal distribution of income and wealth. But it does not provide a reason to deny that citizens' interests in the primary goods need to be taken equally into account or that the distribution must be justifiable to them. The impossibility of providing differently abled citizens equal access to Yosemite furnishes a reason for providing unequal access. But, I would maintain, it does not provide a reason for denying that the interests of the differently abled must equally be taken into account when benefits are distributed.

It is important to maintain that the *prima facie* equality of claims is undefeated in these cases—it is important to maintain that claims in these cases are *ultima facie* equal—because to have a claim on socially created benefits is to have a status in the scheme that creates and distributes those benefits. In the case of some distributive schemes, equality of status is something about which beneficiaries may care deeply. To deny that some people have that status and to assert that they are only *prima facie* equal claimants may be deeply hurtful or insulting, especially if the features of their persons or behavior that are said to override the *prima facie* equality of claims are features that they value highly or over which they have no control.

Thus I believe Rawls thinks it would unjustifiably denigrate the least well off in the well-ordered society if they were said to have claims that were not *ultima facie* equal to those of the better off—if, say, their interests would not need to be given the same weight as those of the better off—simply because they did not have the ability to occupy positions that people normally need incentives to fill.<sup>14</sup> I believe it would unjustifiably denigrate disabled citizens to say that their disabilities defeat the *prima facie* equality of their claims to access public parks. Allowing physical disabilities and the considerations appealed to in the incentives argument to function as consequent blockers makes it

possible to justify unequal distributions while avoiding such unjustifiable denigrations of claimants' status.

### Participation and Equal Claims

What establishes that people have *prima facie* equal claims, understood in one of the ways I have canvassed? What, that is, establishes that (2) is true and that the antecedent of the fairness conditional is satisfied?

For possible answers, I return to Scanlon. Scanlon writes that the "antecedent [of the fairness conditional] is true in an important range of cases—e.g. that participants in many cooperative ventures do have *prima facie* equal claims to the benefits produced."<sup>15</sup> An especially important example of a cooperative venture in which participants have *prima facie* equal claims, Scanlon continues, is "the case of the basic institutions of society." Moreover, Scanlon clearly implies, it is participation in the basic institutions of society that *confers* *prima facie* equality on claims to benefit.

In this section I want to focus on the example of society's basic institutions. I shall assume that the phrase *basic institutions of society* denotes what Rawls's phrase *the basic structure of society* denotes. I shall also assume that we know what institutions the phrase denotes. Finally, I shall assume that the basic institutions of society, taken together, are a cooperative venture that produces and distributes basic social benefits. What I want to query is the assertion that participants in society's basic institutions have *prima facie* equal claims to basic social benefits in virtue of their participation.

That assertion is difficult to assess without knowing (i) just what the conditions of participation are and (ii) who satisfies those conditions. Perhaps we can make some headway in answering (i) and (ii) by seeing how the truth of the assertion would advance the case that proponents of arguments from procedural fairness wish to make. I said early on that some philosophers think considerations of procedural fairness—rather than the moral value of equality—justify the presumption in favor of equal distribution of basic social benefits and sometimes justify equal distribution itself. They deny that the value of equality plays a fundamental role in justifying the presumption or in justifying an equal distribution because they think that arguments from

procedural fairness do not appeal to the moral value of equality in any fundamental way. I take it that what proponents of arguments from procedural fairness have in mind is the following.

A presumption in favor of equal distribution does not depend, or does not depend exclusively, upon the brute goodness of equality as a property of distributions. Rather, it depends, or depends as well, upon considerations of procedural fairness together with the fact that beneficiaries have *prima facie* equal claims. Beneficiaries' *prima facie* equality of claims does not depend upon their natural equality as persons. Rather, their having those claims depends upon something they have done—namely, take part in the venture that produces the benefits to be distributed. The question is what they would have to have done—what participation would have to be—to ground such claims. If the answer is that persons with the claims must have played some productive part in the cooperative scheme that produces the benefits, then arguments from procedural fairness need not appeal to the value of equality. For while showing that participants have *prima facie* equal claims on the basis of what they have done may require us to appeal to moral values about earnings, desert, or the legitimacy of expectations, these values do not seem to be rooted in the value of equality.<sup>16</sup>

Suppose for the moment that the answer to (i) is: a participant in a cooperative venture is someone who takes part in the production of the benefits to be distributed. Let us turn to (ii). Who participates?

For purposes of ideal theorizing about basic institutions, we might simply assume that every citizen in a society participates in those institutions. We might then assert that everyone's participation entitles her to partake of the benefits produced, maintaining—as Scanlon says—that participation gives one a *prima facie* equal claim to partake of those benefits. We can then ask what principles of justice must be satisfied by the distribution of those benefits among participants with *prima facie* equal claims.

I do not want to engage in ideal theory here. Instead I want to ask whether arguments from procedural fairness can support what egalitarian intuitions we may have about *actual* societies such as the contemporary United States. Actual societies are especially difficult for those who think arguments from procedural fairness can support the egalitarian outcomes we favor because, when we reason about actual societies, we are forced to question idealizing assumptions and stipulations that we might make for purposes of ideal theorizing. One as-

sumption we are forced to question is the assumption that every citizen of an actual society is a participant in its basic social institutions. Once we question it, we are forced to revisit (i), the question of just what participation is.

I will not try to formulate a set of necessary and sufficient conditions for participation here.<sup>17</sup> Instead, I shall just suppose—as seems to me very plausible—that participation is a demanding notion. In particular, I shall suppose that being a productive member of one's society requires opportunity, ability, and motivation to take part in basic social institutions. And so I shall suppose that someone does not participate in the basic institutions of his society if he is involuntarily without meaningful work for long periods of time or if having been raised in social conditions of violence and deprivation has left him permanently alienated from the society in which he lives. These suppositions open the possibility that there are some citizens of actual societies, such as the contemporary United States, who do *not* participate in their societies' basic social institutions.

Let us call the opportunity, ability, and willingness to participate in one's society "the social conditions of participation." These conditions are themselves socially created goods. To say that the willingness or the ability to participate is produced and distributed by society's basic social institutions may seem to stretch the notions of production and distribution. But conditions of poverty, violence, and social disintegration can produce profound and permanent alienation from one's society, an alienation in virtue of which one believes that putting forth effort to participate in one's society is hopeless or is otherwise not worthwhile. The conditions that produce such alienation are themselves the result of how society's basic social institutions are configured. So while saying that the willingness to participate is itself socially produced may be elliptical, it is not inaccurate. That opportunity and ability also depend upon the configuration of basic institutions seems even clearer.

Being a productive member of one's society is a very great good. This is true in part because being productive is inherently satisfying.<sup>18</sup> It is also true because, in societies such as the contemporary United States, being rightly regarded as a productive member of one's society is a precondition for the respect of one's fellow citizens. The social conditions of participation are therefore very important goods. (And the philosopher who says participation entitles one to a *prima facie* equal claim is thereby committed to regarding them that way.) Indeed, I shall

assume they are so important that they count among basic social benefits if anything does. My intuition is that there is at least a presumption that these goods—the social conditions of participation in one's society—should be equally distributed. I also have the intuition that that presumption can be overridden by only a very limited class of considerations. The questions I now want to pose are how those conclusions can be supported and, in particular, whether they can be supported without fundamental appeal to equality.

It is tempting to support the conclusion with an argument from procedural fairness. Such an argument would begin with the relevant instance of the fairness conditional. It would include the premises that everyone in society has *prima facie* equal claims to the social conditions of participation and that the procedure for producing and distributing these conditions must be fair. The challenge facing someone who wants to pursue this line of thought lies in the difficulty of establishing the second premise, which says that everyone in society has a *prima facie* equal claim to the conditions of participation. Why should we think that that premise is true?

Not everyone can have such claims in virtue of their being participants in a cooperative venture that produces and distributes those conditions, for I have supposed that in actual societies not everyone participates. There are some who do not. Among these are some who do not do so because they have been denied the social conditions of participation. The fact that they have been denied these conditions is one of the injustices of actual societies that needs remedying. An argument for remedying it cannot, however, depend upon the grounds that those who have been denied the social conditions of participation are participants.

Perhaps it will be said that having *prima facie* equal claims to the social conditions of participation in a society simply follows from, or is part and parcel of, equal citizenship in that society. The basic idea behind this reply is that citizenship is not simply a legal status. It is a moral status in this sense: to have the status of a citizen in a society just is or includes the entitlement to make claims on that society, including claims to basic social benefits. When a society commits itself to the equality of citizens, part of what it commits itself to is the *prima facie* equality of those claims. Thus the step in the argument from procedural fairness with which I am now concerned—the step according to which citizens have *prima facie* equal claims to the conditions of participation—is true simply because of what it is to be a citizen.

I am supposing that the presumption in favor of an equal distribution of the social conditions of participation is a presumption that is very difficult to override. If citizenship itself confers *prima facie* equality of claims to those conditions, then we can see why the relevant argument from procedural fairness establishes a presumption that is so strong. For arguments from procedural fairness establish equality of claims in the absence of special considerations. I have argued that those special considerations should be divided into antecedent defeaters and consequent blockers. It seems plausible that only a small number of very powerful considerations could serve as antecedent defeaters—as considerations that defeat the antecedent of the relevant fairness conditional by defeating the *prima facie* equality of claims.

This seems plausible, in turn, because it seems plausible that only a small number of very powerful considerations can defeat the *prima facie* equality of citizenship to which contemporary liberal democracies like the United States are theoretically committed. It also seems plausible that only a relatively small number of powerful considerations could serve as consequent blockers, though I admit that this would be more difficult to show. The assertion that *prima facie* equality of citizenship confers *prima facie* equality of claims to the social conditions of participation thus helps to show, not only why there is a presumption in favor of equal distribution of those conditions, but also why the presumption is so strong. That it does so may seem to tell in favor of the assertion.<sup>19</sup>

But proponents of arguments from procedural fairness face a serious difficulty if they assert both that citizens have *prima facie* equal claim to basic social benefits simply in virtue of their citizenship and that arguments from procedural fairness do not appeal to the value of equality in any fundamental way. To see that difficulty, let's recall why arguments from procedural fairness seem so plausibly to account for the presumption that socially created goods, such as basic social benefits, should be equally distributed and to do so without appeal to the value of equality.

Those arguments include the relevant versions of the fairness conditional as premises. The apparent soundness of the arguments from procedural fairness depends upon the fact that the second premises of those arguments—the premises that assert the antecedents of the fairness conditionals—seem to be true in the case of cooperative ventures, such as the cooperative ventures that produce basic social benefits. Those premises seem to be true in such cases because it seems plausible

that someone gets a prima facie equal claim to the benefits of a cooperative scheme when she is one of the people who cooperate to produce those benefits.<sup>20</sup> Arguments from procedural fairness thus seem to justify presumptions of equal distribution because it seems so plausible that those who take part in cooperative schemes thereby earn prima facie equal claims to the benefits produced. These arguments seem to support presumptions of equality without appeal to the value of equality because, as I suggested earlier in this section, appeals to earnings do not seem to be appeals to equality.

By suggesting that participation in society has somewhat demanding requirements, I raised the possibility that some citizens in actual societies such as the United States do not participate in the cooperative scheme that produces basic social benefits. I thereby raised the possibility that some citizens in those societies do not earn prima facie equal claims. A philosopher who wants to maintain (as I do) that there is still a presumption in favor of distributing some of basic social benefits equally, and who also wants to maintain (as I do not) that arguments from procedural fairness explain that presumption without fundamental appeal to equality, can still insist that people *have* such claims. I have suggested the grounds he might bring forward for his insistence. But if I am right about the requirements of participation, then this philosopher cannot maintain that all the citizens who *have* those claims have *earned* them.

The shift from *earning* to *having* is significant, for it seems that proponents of arguments from procedural fairness are able to maintain that they do not appeal to the value of equality because they maintain that participants in cooperative ventures earn their prima facie equal claims. Once they fall back on the claim that citizens simply have prima facie equal claims in virtue of their citizenship, these philosophers may seem to be making a fundamental appeal to the moral value of equality after all. In particular, they seem to be making a fundamental appeal to the moral significance of equal citizenship.

### Equal Claims without Equality

An adequate reply to this objection would have to show why citizens have prima facie equal claims and to do so without fundamental appeal to equality. Is such a reply available?

We can imagine a number of arguments for the assertions that equal citizenship confers prima facie equal claims and that among the benefits citizens have prima facie equal claim to are the social conditions of participation. One such argument might begin from the claim that political power is properly thought of as the power of citizens who are free and equal. When society exercises that power to regulate the production and distribution of basic social benefits, the exercise of that power must be justified to those whose power it is. So the production and distribution of those benefits must be justifiable to citizens as free and equal. To say this is just to say that citizens have prima facie equal claims, on one of the understandings of *prima facie equal claims* that I listed in the section "Equal Claims to Benefit." A different argument might begin from my earlier claim that being an equal claimant is a valued status. To deny that citizens are prima facie equal claimants, it might be argued, is unjustifiably to denigrate their status as citizens.

Neither of these arguments as it stands is sufficient to answer the objection, for both seem to make fundamental appeal to some value of equality. The latter derives citizens' prima facie equality of claims from the imperative to respect their status as equal citizens. The former derives it from the claim that citizens are free and equal coholders of society's political power. Furthermore, it is not obvious that the former argument is valid, for it is not obvious—without either additional premises about the relationship between citizens and the government that exercises their power or additional premises about what that power is exercised to do—that the exercise of citizens' power must be justifiable to them.

A different reply to the objection begins from the proposition that society's basic institutions have a profound impact on citizens by the ways they provide or fail to provide citizens with the incentives, opportunities, and abilities to participate in their society. Because the productive and distributive effects of a society's basic institutions have so profound an impact on its citizens, there is a prima facie case for taking citizens' interests in those effects equally into account in assessing how the social conditions of participation are produced and distributed.<sup>21</sup> To say that there is a prima facie case for taking these interests equally into account is just to say that citizens have prima facie equal claims to the conditions of participation, on one understanding of what it is for people to have prima facie equal claims. So the second premise of the relevant argument from procedural fairness—the premise according to which citizens have prima facie equal claims to the social conditions

of participation—might be thought to follow from plausible claims about how profoundly citizens are affected by their society's basic institutions.

The profundity-of-effect reply seems also to imply that even non-participant citizens have prima facie equal claims to basic social benefits, since their life prospects are as profoundly affected as those of participant citizens. The reply therefore furnishes the missing premise in a procedural fairness argument for the presumption of equal distribution among participant and nonparticipant citizens. The fact that it does so might be thought to tell in favor of the reply, since this is a presumption that needs to be justified once we drop the idealizing that all citizens are participants.

My own view is that some version of the profundity-of-effect reply is correct: it is the profundity of the impact of social institutions on people's fundamental interests that creates prima facie entitlements to the benefits those institutions create and distribute. But there are difficulties with the reply, at least from the point of view of those who deny that fundamental appeals to equality are needed to justify the presumption of equal distribution.

One problem with the version of the reply that I offered a couple of paragraphs ago is that it is difficult to tell whether that version appeals to the value of equality or not. This is because that version of the reply masks the need to explain what it is about citizenship that confers a prima facie equal claim by some of the language the reply employs. That reply refers to the opportunities citizens have to participate in *their* society and to how societies are affected by *their* society's basic institutions. The use of the possessive suggests that being a citizen makes one a joint possessor or perhaps a joint owner of the basic institutions of the society of which one is a citizen. This relation of shared possession or ownership might, in turn, be thought to ground citizens' prima facie equality of claims to basic social benefits, including claims to the conditions of participation. If this is so, then what does the work in what I have called the "profundity-of-effect reply" is not the profundity of effect at all but a set of claims about citizenship and possession or ownership. The nature of possession or ownership, why possession or ownership follows from citizenship, and why possession or ownership confers prima facie equality of claims are not spelled out. When they are, there may well be an appeal to equality after all.

Another problem with the reply arises from the fact that those who want to deny the importance of fundamental appeals to equality

must restrict the class of those with prima facie equal claims—the membership of what I referred to as "group G" when I laid out the schematic form of arguments from procedural fairness. The restrictions they need may be hard to sustain without making some very unrealistic assumptions.

If we assume that we are theorizing about a nation-state that is isolated from all others and that is composed only of citizens, the effects of a society's basic institutions on resident noncitizens and on those who live in other societies can be left out of account. Once we drop the assumptions, however, these effects cannot be ignored. That the effects of a society's basic institutions on its resident noncitizens are profound is obvious. Those institutions determine the opportunities and benefits available to resident noncitizens, the burdens that can be imposed upon them, the liberties they enjoy, and the conditions under which they can gain citizenship.

The effects of a society's basic institutions on residents of other societies can be, and often are, profound as well. The policies a society makes about the extraction and depletion of natural resources, its distribution of externalities such as pollution across national borders, the patterns of consumption that its economy allows and encourages, and the ways in which its economic demands influence what other economies have incentives to produce all have profound effects on the lives of those in other societies. The profundity-of-effect reply therefore opens the possibility that nonresident citizens and residents of other societies have claims on basic social benefits that are prima facie equal to those of citizens. It thus opens the possibility that arguments from procedural fairness could be used to support the presumption of distributing those benefits—or some of those benefits—across borders.

I believe that there is a presumption in favor of distributing some basic social benefits equally even across borders. Among the plausible candidates for this presumption, I would argue, are political influence over the extraction and consumption of valuable resources that are scarce and nonrenewable and influence over the creation and imposition of externalities such as pollution and greenhouse gases. Perhaps other people will think that other basic social benefits enjoy this presumption in addition or instead. I am prepared to grant that the presumption in favor of equal distribution depends upon the prima facie equality of claims to benefit that are had by those among whom the benefit should be distributed. I am also prepared to grant that this prima facie equality of claims depends upon some form of the

profundity-of-effect argument. The interests of those among whom benefits are to be distributed have prima facie equal claims to benefit because they are profoundly affected by schemes that distribute those benefits.

It may still be that special considerations—in the form of antecedent defeaters, consequent blockers, or both—defeat the presumption in favor of equal distribution.<sup>22</sup> I do not want to ask what those special considerations might be. Instead, I want to ask whether the prima facie equality of claims can be established without appealing to equality in some fundamental way. The answer, I believe, is that it cannot. Anyone who maintains that persons who are profoundly affected by a society's basic institutions have prima facie equal claims to some of the social benefits it generates must explain why effects on those persons matter and why they matter enough to generate prima facie equality of claims among all those affected. The explanation can only be that effects generate prima facie equal claims among those affected because all those affected are equal, so that effects on some count every bit as much as effects on others.

So long as our attention is restricted to citizens of a single society or to those who live in a single society, it may be possible to support the equality of those affected by appealing to their equal citizenship or to their shared membership in a single society. The commitments to the equality of citizens—or, more broadly, to the equality of members—may be thought to be among the fundamental commitments of liberal democracy and so not to be in need of any further justification. Once we ask about why those across borders are equal, however, appeals to equal citizenship and equal membership no longer suffice. In this case, what is needed is an appeal to human equality. It is because human beings are of equal worth and matter equally that a society's profound effects on their life prospects can ground prima facie equal claims. The question is how these claims about equal human worth can be defended. It is the need to answer this question that opens the space for appeal to religious accounts of human equality.

### Dropping the Idealizing Assumptions

Let me conclude by taking stock. First, arguments from procedural fairness most strongly support a presumption of equal distribution among all and only citizens when the crucial premises of those arguments are

based on three assumptions, namely that societies are composed exclusively of participants, that those participants are all citizens, and that societies exist in isolation. Second, as those assumptions are progressively dropped, proponents of procedural fairness arguments are driven from the claim that citizen-participants in a cooperative scheme *earn* their prima facie equal claims to the benefits they produce by participating in that scheme to the premise that persons *have* prima facie equal claims to the benefits produced by a cooperative scheme in virtue of the scheme's effects on their life prospects. Third, the move from the former claim to the latter widens the class of claimants from participant-citizens to all citizens of a given society, then to all the residents of that society, and finally to many of those affected, whether resident or not. Successively dropping the idealizing assumptions thus opens the possibility that at least some of the benefits created by a society's basic institutions—its economic benefits and opportunities, for example, or political influence over its extraction of nonrenewable resources and its distribution of externalities—may have to be distributed equally across borders in the absence of special considerations because those across borders may have prima facie equal claims.

The three assumptions are idealizing assumptions. They are assumptions that it would be natural for a philosopher to make if he were building an ideal theory of justice or domestic justice. Indeed, I believe they are assumptions Rawls makes to facilitate just such a project. Given these assumptions, it may be possible to articulate and defend egalitarian principles of domestic justice without appealing to metaphysically robust claims about human equality. But it does not follow from this that such claims about human equality—and religious accounts of those claims—have no place in other defenses of egalitarianism.<sup>23</sup>

### Notes

This paper was drafted for the conference "Religion and Equality" held at the Einstein Forum, Potsdam, Germany, on June 10–12, 2004. I am grateful to Phil Quinn for helpful comments on an earlier draft.

1. Jeremy Waldron, *God, Locke and Equality* (Cambridge: Cambridge University Press, 2002).

2. Quine once waggishly remarked that the two questions with which political philosophy concerns itself are "Who gets what?" and "Says who?"

3. T. M. Scanlon, "The Diversity of Objections to Inequality," in *The Difficulty of Toleration: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2003), p. 206.

4. *Ibid.*, p. 208 (emphasis in original).

5. Derek Parfit, "Equality or Priority," in *The Ideal of Equality*, ed. Matthew Clayton and Andrew Williams (New York: Palgrave Macmillan, 2002), pp. 81–125, esp. p. 84.

6. See Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000); also Stanley Benn, "Egalitarianism and the Equal Consideration of Interests," in *Equality*, ed. J. Roland Pennock and John W. Chapman, *Nomos* 9 (New York: Atherton Press, 1967), pp. 61–78, esp. pp. 67ff.

7. For an example of a reliance on what I have called "the fairness conditional," see Stuart White, *The Civic Minimum* (Oxford: Oxford University Press, 2003), p. 38.

8. Thus Scanlon tries to catalog the diversity of reasons for objecting to inequality, only one of which is that it sometimes violates the demands of procedural fairness. I will not attend to his other reasons here.

9. Scanlon, "Diversity of Objections," p. 208.

10. I assume Rawls thinks that citizens of a well-ordered society have *prima facie* equal claims to a stock of primary goods sufficient to develop and exercise their moral powers. If Rawls also accepts the fairness conditional, he is committed to the conclusion that primary goods should be distributed equally in the absence of special considerations. He is in fact committed to that conclusion; see the statement of the "general conception of justice" in *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), p. 54. The question is whether the special considerations to which Rawls appeals to justify the unequal distribution of income and wealth are considerations that he thinks defeat citizens' *prima facie* equality of claims. I have asserted that they are not. Substantiating this assertion would require more exegetical work than I can undertake here. For a passage that could, I believe, be exegeted to substantiate it, see the important paragraph on equality and the difference principle in John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), pp. 230–31. The paragraph is found in Rawls's essay "Some Reasons for the Maximin Criterion."

11. For the idea of reasonable rejectability, see T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 103–28.

12. Of course two people cannot have *numerically* identical tickets, nor can each of two people do *numerically* identical jobs. The use of the word *identical* in talk of identical grounds is like the use of that word in talk of identical

twins. In such cases, we predicate identity of two subjects in virtue of their being identical in a respect to which identity unproblematically applies.

13. Phil Quinn has noted another difficulty with the suggestion under consideration. If that suggestion were followed and the analysans were substituted for the antecedent of the fairness conditional, then the notion of fairness would do crucial work in both the antecedent and the consequent of the (newly parsed) conditional. Quinn raises the possibility that that substitution, if warranted, would show the fairness conditional to be an analytic—and therefore, he worries—a trivial truth.

14. Consider a society that publicly affirms that citizens who lack the talent to fill these positions *ipso facto* do not have claims to primary goods that are *ultima facie* equal to the claims of the talented. I take it that such a society undermines the social bases of the self-respect of those who lack the relevant talents and that it in that way denigrates them. And I take it that Rawls would agree. The only question raised by my claim about Rawls in the text, then, is what grounds there are for thinking that he would regard this undermining or denigration as unjustifiable. While I cannot engage in the requisite exegesis here, I believe grounds can be found in passages in which Rawls says it tells in favor of the difference principle that it furnishes the bases of self-respect for the least advantaged. See Rawls, *Theory of Justice*, p. 156–57.

15. Scanlon, "Diversity of Objections," p. 208.

16. Of course, we will need to be told why those who participate to different extents, and why those whose efforts add different amounts of value to the product, get claims that are *prima facie* equal. Answering these questions may not be easy, but for present purposes I shall assume that it can be done.

17. The idea of participation in one's society is a central one in contemporary Catholic social thought, though the conditions have not been systematically laid out by those who rely on it. I have tried to lay down some conditions of participation in my *Religion and the Obligations of Citizenship* (Cambridge: Cambridge University Press, 2002), ch. 2. I am well aware of the inadequacies of the treatment there.

18. Admittedly a satisfaction unappreciated by those who spend their days surfing off Malibu.

19. As the text suggests, proponents of arguments from procedural fairness think *prima facie* equal claims to benefit are very easily acquired and extraordinarily difficult to defeat. That they think so might suggest that these philosophers think these propositions are trivially true and that the philosophers in question are really motivated by their commitment to a presumption in favor of equal distribution—hence really motivated by a fundamental (if defeasible) commitment to equality. I believe that this is a mistake, though I cannot pursue the matter here. It is a mistake of which I have been guilty in thinking earlier about arguments from procedural fairness; see my review of Scanlon's *The Difficulty of Toleration* in *Ethics* 114 (2004): 836–42.

20. At least, let's grant, this seems plausible if we add that the various roles in the scheme, the opportunities to fill those roles, and the incentives and education needed to fill them are all produced by the scheme itself.

21. An account that would have to be filled in by describing these interests in some detail and by distinguishing these interests from others that do not ground such claims.

22. It may be that considerations associated with shared citizenship or shared membership in a society whose basic institutions produce the benefits in question can serve as antecedent defeaters and/or consequent blockers, so that benefits need not be equally distributed across borders after all. Of course, anyone who wishes to maintain this will have to show why these relationships possess the force they are alleged to have.

23. Summing up his own discussion of the "diversity of objections to inequality," Scanlon writes:

To conclude: relief of suffering, avoidance of stigmatizing differences in status, prevention of domination of some by others and the preservation of conditions of procedural fairness are basic and important moral values. *Within the framework of the principle of equal consideration* they provide strong reasons for the elimination of various inequalities. Taken together these values account for at least a large part of the importance that equality has in our political thinking. They may account for all of this importance, or there may be an important role to be played by a further moral idea of substantive equality. But it remains unclear exactly what that idea would be.

—Scanlon, "Diversity of Objections," p. 218 (emphasis added)

I have stressed throughout that my aim is not to raise objections to Scanlon but to see whether egalitarianism can be defended without appeal to claims about human equality. I am prepared to grant Scanlon's claim that no such appeal is needed "within the framework of the principle of equal consideration." But it is important for my purposes to see why this claim seems so plausible and why granting it does not tell against the conclusions I have defended here.

The principle that citizens (or perhaps members) of a given society are entitled to equal consideration in the design of basic social institutions is deeply embedded in democratic culture. Indeed, it may be so deeply embedded as to need no further justification. For purposes of argument, I shall assume that this is so. I shall also assume that the principle says or implies that those who are entitled to equal consideration have claims to basic social benefits that are prima facie equal, on one of the interpretations of "prima facie equality of claims" canvassed above.

Given the second assumption, the principle says or implies that citizens (or members) of a given society have prima facie equal claims to basic social benefits. Given the first assumption—according to which we can take the principle of equal consideration as a starting point—that principle provides all the justification we need for citizens' (or perhaps members') prima facie equality of claims. So we need not look for some further support for the relevant instances of premise (2) in the argument for procedural fairness when the egalitarian conclusion to be supported is an egalitarian conclusion about distribution among citizens (or perhaps members) of a given society. Scanlon is therefore correct if he means—as I take him to mean—that we need not go outside "the framework of the principle of equal consideration" and appeal to "a further moral idea of substantive equality" in order to defend such a distribution.

But I see little evidence that Americans, at least, think that citizens of other societies are entitled to much by way of equal consideration. And so I would argue that the *only* version of the principle of equal consideration that is deeply enough embedded in American political culture to be taken as a starting point is one that requires the equal consideration *only* of others within one's own society. The only version of the principle of equal consideration that we can take as a starting point thus has what we might call a "domestic restriction." Because of the restriction, that version of the principle cannot support instances of premise (2) that range over members of more than one society. Instances of that premise therefore need some other justification. I have maintained that that further justification will involve appealing to an idea of human equality. In sum, it is international cases—and not the cases with which I have taken Scanlon to be concerned—that require us to go outside "the framework of equal consideration."