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Basic Equality and its Applications

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**A thesis presented in fulfilment of the requirements of the degree of Doctor of
Philosophy at The University of Auckland.**

Abstract

Equality is a prominent value in modern moral, legal and political philosophy. There is, however, much controversy over the meaning of the concept and its moral implications. In this thesis I argue that the recent scepticism expressed by some writers about the prospects of reaching any agreement about what equality means is not well founded. The idea is not an empty one. The difficulty in pinning down its exact meaning and implications for our social ethics is caused by its abstractness, not its vacuity.

The moral significance of equality can be expressed in the idea of *basic equality* – the requirement that persons are to be treated as equals and accorded equal concern and respect. That idea is morally justifiable and plays an important role in modern moral theory. If we accept that human beings are equal in important respects and that a commitment to basic equality as a moral ideal makes sense because of our shared human condition, then it follows that respect for that value is implicit in each instance of our moral decision making.

The abstractness of basic equality means that it cannot serve as a straightforward rule which can be easily applied to disputes about who should or should not receive equal treatment. There is no list of prohibited grounds of differentiation that applies in all circumstances. Thoughtful moral judgments about the denial of basic equality typically demand sophisticated assessments of whether the interests of all affected parties have been taken into account and different sorts of denial of basic equality will require consideration of different factors.

Attempts have been made in recent equality law jurisprudence to find a less abstract concept of equality that can inform the interpretation of the law. These are unsuccessful because basic equality cannot be reduced to some simpler, rule like, standard. These understandable attempts to make this area of law more manageable are not good explanations of what is morally important about the idea of equality. Clarity about the meaning and purpose of contemporary discrimination law is not likely to be achieved by further attempts to say what this law is *really* about. The law is difficult to apply because it is in the same broad terms as the idea of basic equality.

The central moral quandaries of recent jurisprudential thought about basic equality concern the appropriateness of different treatment on grounds which can be used to discriminate against people. The difficulties that courts have with these issues are not remarkable because the moral issues are intractable. Issues such as indirect discrimination or the fairness of affirmative action policies require in depth consideration of the interests and concerns of all affected parties and will not be resolved by the application of any simple algorithm based on a less abstract definition of equality. These issues are difficult to resolve, not because we do not know what equality is but because weighing the competing concerns of affected parties while paying attention to other important values is a complex and often difficult task.

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