



Constructing Moral Equality

ABSTRACT: *Moral equality—the idea that ‘we’ all have equal moral worth, our interests ought to count for the same, and we possess the same bundle of basic rights—is one of the most central principles of liberal thought, being regularly drawn on as a presupposition of moral and political inquiry. Perhaps because it is so often relied on as a presupposition, however, moral equality is more often assumed than argued for. When moral equality is argued for, the most common tactic is to appeal to some inherent property. As is well established, however, such property-based defenses of moral equality face two significant challenges: the problem of exclusion and the problem of inequality. In light of these challenges, in this article I put forward a new, revisionist account of moral equality. Taking inspiration from recent work in the social metaphysics of human kinds, I argue that moral equality ought to be seen as a component of a status that we confer on one another, rather than (grounded in) a property inherent in certain individuals. Conceiving of moral equality this way, I argue, side-steps both the problem of exclusion and the problem of natural equality.*

KEYWORDS: moral equality, moral status, social construction, social kind, humanity

Introduction

The moral equality of persons—the idea that ‘we’ all have equal moral worth, that our interests ought to count for the same, and that we possess the same bundle of basic rights—is one of the most central principles of liberal thought, regularly drawn on as a presupposition of moral and political enquiry. Perhaps because it is so often relied on as a presupposition, however, moral equality is far more often assumed than argued for (Carter 2011; Steinhoff 2015). When moral equality is argued for, the most common way to do so is through appeal to some inherent property. That is, the category of those to whom moral equality applies is typically defined in terms of possession of features or capacities such as autonomy, self-awareness, and consciousness of the past and future.

As is well established, such property-based defenses of moral equality face significant challenges. Two in particular stand out. The first is the problem of exclusion: if moral equality is held in virtue of possessing some inherent property, then it follows that anyone lacking the property—for instance, someone with significant cognitive impairments—is not a moral equal. The second is the problem of natural inequality: the properties typically taken to ground moral equality, such as rationality or autonomy, are in fact held to variable degrees. If these capacities suffice to make us matter morally, it strongly suggests those with more developed or robust capacities should matter *more*.



Taken together, these two problems call into question the viability of the idea of moral equality. Indeed, they have tempted some to conclude that moral equality is a myth, and that moral individualists such as Peter Singer are correct when they suggest that we ‘abandon the idea of the equal value of all human beings, replacing that with a more graduated view in which moral status depends on aspects of cognitive ability’ (Singer 2009: 575; see also McMahan 2002; Rachels 2004).

This temptation to abandon the idea of moral equality becomes even stronger if we compare the worldview implicit in these competing ideas. On the picture typically painted by advocates of moral individualism, we are to imagine all living things distributed along a spectrum, according to the degree to which they exhibit the relevant properties. How an individual creature ought to be treated—or more precisely, the moral concern it warrants—is taken to be a function of where it sits along that spectrum (Kagan 2019: 279–304). Advocates of moral equality, by contrast, typically invite us to see a break in the moral fabric. At least beyond a certain point, individuals cannot be located on a spectrum, but rather float beyond on a higher plane: a community of equals, each with full moral status.

Presented in these (admittedly oversimplified) terms, there is something deeply mysterious, and perhaps even troubling, about the idea of moral equality. The idea appears to be built on an enchanted image of the world in which human beings occupy a realm different from that of the rest of the natural world. As Val Plumwood (2012: 15) explains, ‘Human/nature dualism conceives the human as not only superior to but as different in kind from the non-human, which as a lower sphere exists as a mere resource for the higher human one’. The picture that advocates of moral equality paint, in which the moral world cleaves at a point suspiciously close to the species boundary around human beings, is thus problematically reminiscent of belief in a great chain of being—a belief that not only rests on a highly dubious ontology but has historically served the interests of hierarchy and oppression rather than justice and equality (compare Smith 2020: 77–82).

In the face of these misgivings, I offer a new, revisionist account of moral equality. The problems faced by property-based accounts of moral equality can be avoided if we shift from an attempt to ground moral equality in some inherent property and instead conceive of moral equality as a product of social construction. Moral equality is thus reconceived as a political achievement rather than a given feature of the world (Phillips 2015, 2021).

My goal in this article is not to convince sceptics of the truth of moral equality—I recognize that would require a very different kind of argument than the one I put forward here. So while I draw on moral individualism as a foil at various points, I do not seek to rebut such views; nor do I offer any response to those, such as Harry Frankfurt (1997), who critique moral equality on other grounds. Instead, I address those who are already committed to the idea of moral equality but recognize the long-standing difficulties faced by those who seek to defend it. My primary goal is to show that social constructionism offers a viable alternative to the more familiar property-based accounts. Importantly, this does not mean that my alternative is free from problems. As Richard Arneson points out, ‘On this topic, no available position may altogether lack strongly counterintuitive

implications. We may just have to choose our poison' (1999: 40). To put the point another way, then, a social constructionist approach to moral equality is less poisonous than property-based accounts.

1. The Problems with Property-Based Approaches

1.1. The Problem of Exclusion

The problem of exclusion has been well rehearsed in the literature (examples include Silvers 2012; Jaworska and Tannenbaum 2021: §5; Phillips 2015), and I do not replicate those arguments here. But why is the problem so intractable?

The problem of exclusion arises because defenders of moral equality are striving for a non-speciesist justification that carries explanatory force. As Jeremy Waldron puts it: 'If we were happy to be blatant speciesists or pure human chauvinists, we might just assert barefacedly that the key property upon which human equality supervenes is human DNA. We might start with that, but it is unsatisfactory even as a starting point. It does little or nothing to make the equality position intelligible' (2017: 87–88).

This demand for a non-speciesist justification creates a dilemma for advocates of property-based approaches to moral equality. On the one hand, the property that they are looking for needs to be significant enough to do the moral work demanded of it. On the other hand, the property needs to be widely held: otherwise, significant numbers of human beings will be excluded from the realm of moral equality, rendering the account unfit for purpose. The dilemma lies in the fact that the better a feature satisfies the first requirement, the more likely it is to fail the second. Defenders of property-based views are thus forced to either narrow the boundaries of moral equality, thereby encountering the problem of exclusion (as can be seen in Korsgaard 1996); or avoid the problem of exclusion by abandoning the commitment to explanatory force (as can be seen in Liao 2010).

The problem of exclusion has proven intractable for property-based accounts because of the implicit assumption that moral equality attaches to membership in a natural kind. In other words, property-based accounts start from the assumption that there is some morally relevant property that corresponds to a joint in nature, separating beings with moral equality from the rest of the natural world. This implicit appeal to a natural kind is most clearly evident in the theory of moral equality defended by Waldron. He pointedly asks, 'In virtue of what fact or facts about us is [the principle of basic equality] supposed to hold?' (2017: 84). He continues: 'we are looking for similarities. *We are looking for a "host property"*, a property that humans share that is key to their equality' (Waldron 2017: 85, my emphasis). This search for a 'host property' is the hallmark of an appeal to a natural kind. It is also directly responsible for the problem of exclusion that pervades defenses of moral equality.

Property-based approaches are committed to there being a natural and inherent difference between those who are moral equals and those who are not. However, as shown above, the relevant difference cannot simply be the species boundary, for that boundary has no independent moral significance. Hence, the boundary of

the relevant natural kind must be independent of the species boundary, picking out a conceptually distinct set of individuals—often marked by the shift to the language of *persons*. This means that property-based approaches must either explain how one natural kind, *person*, comes to have a one-to-one correlation with the kind *Homo sapiens*, or concede that some *Homo sapiens* are not our moral equals. Hence the pervasiveness of the problem of exclusion.

1.2. The Problem of Natural Inequality

The problem of natural inequality, while widely recognized, has not received as much attention as the problem of exclusion, so warrants a little more explication.

The problem of natural inequality arises because of property-based accounts' commitment to a particular, hierarchical, picture of the natural world. On this picture, possession of the relevant property, or the capacity for it, is supposed to explain why a human being has higher moral worth than a mouse and why our interests count for more than those of cows. The problem is that such an argument threatens to prove too much: If a being who possesses rationality is worth more than a being who does not, then surely a being possessing a higher degree of rationality is worth more than a being possessing a lower degree of rationality?

The most common way for property-based approaches to try to circumvent the problem of natural inequality is to invoke the idea of a range property—a concept whose popularity is no doubt due to its utilization by John Rawls (1999: 444) and which has more recently formed a central plank of Waldron's (2017) account of moral equality. Those who invoke range properties do not deny that the relevant feature comes in degrees; instead, they deny that differences in degree—at least beyond a specified threshold—are morally significant. Possession of the relevant feature is thus understood as an entry ticket to full moral status, much as citizenship serves as an entry ticket to national membership. While individuals might have a longer or shorter relationship with a country, all citizens are equally members of that country. Likewise, the argument goes, those who possess a certain property to the specified threshold all have the same full moral status.

Range properties have the benefit of helping us conceptualize the shape an account would have to take if moral equality were to extend to all—but only—human beings. That is, range properties allow for a sharp moral divide between the human and non-human worlds, while at the same time precluding a significant moral divide *within* the human world. However, there is good reason to be suspicious of the invocation of a range property to justify moral equality, at least via a property-based approach. It is one thing to note that the relevant feature or capacity would have to take the form of a range property for it to explain moral equality, and it is quite another to show that it *is* in fact a range property.

The problem with invoking range properties is straightforward: once it is acknowledged that differences of degree in possession of some given property are morally relevant, it generates a burden of proof to justify the moral significance of the identified threshold. However, there seems to be no principled way to explain why significant differences *within* the range are morally irrelevant while minor

differences at the *boundary* of the range have momentous moral import (Arneson 1999; Sangiovanni 2017; Wasserman, Blustein, and Putnam 2017: §3). Moral equality thus comes to seem distinctly morally arbitrary. This arbitrariness is especially striking if—as it so often is—the threshold is set to include all or most human beings, while excluding all or most nonhuman animals.

Just as with the problem of exclusion, the problem of natural inequality arises because of the implicit appeal to natural kinds in property-based approaches. Moral equality is supposed to hold for a set of individuals in virtue of their possession of an inherent feature or capacity. However, properties that come in degrees make poor candidates for demarcating distinct sets in this way—at least in the natural world. Where thresholds *do* function to demarcate kinds, by contrast, is in the social realm. Consider the age thresholds imposed on voting rights. No one thinks eighteen has some kind of independent moral significance, such that those just below that age are too immature to vote, but those immediately above are transformed into responsible adults. *Eligible voter* is a social, not a natural, kind, and eighteen has been constructed, not discovered, as its boundary. Of course, its boundaries were not constructed at random, but rather appeal back to salient natural features as part of their justification. Nonetheless, these salient features do not function to demarcate the boundaries of the social kind *eligible voter* as if those boundaries would be identifiable absent our decision to place them where we have. For property-based approaches to moral status, however, the salient features are presumed to demarcate a significant moral boundary, independent of human choices. The arbitrariness of the threshold taken to settle this boundary is a function of taking moral equality to track membership in a natural kind.

2. A Social Constructionist Alternative

I am by no means the first to note the intractability of the problems of exclusion and natural inequality or the knots property-based approaches have been twisted into by those trying to address them. Anne Phillips, for instance, has this to say about Carter's account: 'I am struck here, as in many of the attempts to find the grounding, by how ingeniously political theorists come up with good reasons to insist on treating others as equals, even failing the ability to establish the crucial common property, yet cannot quite bring themselves to abandon the chimerical search' (2021: 48). The question, though, is whether any alternative approach can do better. Phillips herself is skeptical, arguing that we ought to move away from attempts to justify moral equality, and instead commit to making equality a lived reality: 'This is equality as enactment, not recognition: not a discovery of something previously concealed but a bringing into existence' (2021: 54).

I am sympathetic to Phillips's position and think it especially important to heed her warnings about the dangers of trying to identify a philosophical ground of moral equality. As she carefully documents, such grounds have historically been used as much to justify excluding certain others from the realm of moral equality as they have to support greater inclusions. However, I take the problems she documents to arise precisely because of the appeal to natural kinds implicit in

property-based approaches. As she puts it, “[a] claim based on shared “natural” characteristics simultaneously invited discussion of “natural” difference” (Phillips 2021: 21). It is when we are invited to see the world as cleaving in moral twain due to some inherent property possessed by some but not others that the temptation emerges to deny possession of that property to those we despise (Clark 1994: 25–27; see also Smith 2020). The problem is thus not with attempting to find a justification of moral equality per se, but rather with attempting to ground moral equality in inherent properties.

2.1. Introducing the Social Constructionist Account

Property-based approaches become tangled with the problems of exclusion and natural inequality because of their implicit assumption that moral equality tracks membership in a natural kind. These problems can be avoided if we instead take moral equality to attach to membership in a *social* kind.

The basic idea is this: we have constructed a social kind *human*, just as we have constructed social kinds such as *citizen*, or *eligible voter*, or *royal*, or *woman*. Social kinds are constructed and maintained through social norms, especially when these coalesce in social schemas and become embedded in institutions (see, for example, Hacking 1999; Haslanger 2000; Searle 2010: 31–57; Mallon 2016: 48–93; Thomasson 2019). Two kinds of social norms are especially relevant to the present discussion: norms concerning who counts as a member, and norms concerning the status of members, including how they ought to be treated (compare Rust [2021: 315], who calls these the constitutive rules and the deontological rules). We can see how this works with a social kind such as *royalty*. To understand the kind *royal*, we need to identify the socially constructed criteria for *being* a royal (such as lineage), and we need to identify the *status* of royals, including both the kinds of powers they wield and how we are expected to treat them. Analogously, to grasp the social kind *human* we need to identify both the socially constructed criteria for being human, and the status gained by being human. The extant membership conditions for the social kind *human* are simply that one is (assumed to be) a member of the species *Homo sapiens*; and it is part of the status of being human to have equal worth, to have one’s interests counted equally, and to possess the same bundle of basic rights as other humans. In other words, moral equality is conferred on all *Homo sapiens qua* members of the social kind *human*.

Importantly, a social constructionist approach to moral equality does not presuppose that in our day-to-day lives we see the criteria for membership in the human as constructed, nor that we see our status as moral equals as conventional. Social kinds can involve ‘covert construction’ (Mallon 2019: §1.2). A comparison with *woman* can help bring out this point and further elucidate my claim that we should think of moral equality as attaching to membership in the social kind *human*.

Though increasingly contested, it has been a common refrain in feminist theory that gender is the social meaning of sex. In other words, at least on the simple story, there is a natural, biological kind—*female*—and there is also a separate social kind—*woman*—that overlays it. Crucially, on this simple picture, it is the

social kind, not the natural kind, that we should look to in explaining the social oppression of woman. Women have been constructed as caregivers, homemakers, dependents, and sexual objects: these roles are not inherent in our nature (de Beauvoir 1989; Haslanger 2012). As people are becoming more self-conscious about the distinction between sex and gender, it is increasingly recognized that how we understand ourselves, how others see us, and the roles and expectations placed on us by society, are explicable in terms of the socially constructed category of gender, rather than the biological category of sex (whatever that turns out to be, and whether or not it remains a viable or relevant category). Indeed, it is becoming increasingly commonplace to cleave gender from sex entirely, renegotiating the membership criteria for the gender categories such that they make no reference to biological sex. This possibility emerges once we acknowledge a category as a social kind: it is up to us whether the membership criteria appeal back to some natural kind, or whether we instead develop different criteria.

I suggest we think of *Homo sapiens*:human as analogous to this way of thinking about female:woman. Although *Homo sapiens* is often conflated with *human*, it is the latter, the socially conferred status, that we should look to in explaining moral equality.

That's the basic idea; now it needs to be fleshed out. Justifying the claim that moral equality is held in virtue of membership in the socially constructed kind *human* involves two key steps. First, it must be demonstrated that we have in fact constructed a social kind *human*; and second, evidence must be given that this status confers moral equality.

2.2. The Human as a Social Kind

Arguments for the existence of social kinds typically appeal to social practices. One approach is to see whether institutional structures and informal social norms pick out a certain category and confer what John Searle (2010: 100 calls 'deontic powers' on members of that category. Social kinds commonly involve collective recognition that objects of a certain type have certain powers, entitlements, or obligations. For instance, money can be used to purchase goods because of collective recognition of that power. A similar process is often at play for kinds of people. As Amie Thomasson explains, '[O]ne way social groups may be constituted is by their members having shared external norms of treatment (privileging, subordinating, or just different), based on any of many kinds of different "markers" (bodily features real or imagined, accent, geographic origin, or simple enumeration)' (2019: 4839). In other words, social groups come to exist when there are norms around which feature functions to determine membership in the kind and further norms around how members of the kind are to be treated and what powers they possess.

Social kinds—of people or otherwise—are easiest to recognize when, like money, it is very clear that they would have no power absent the social recognition. Social kinds are much harder to recognize when there is widespread belief that the members have the relevant power absent its recognition (that is, when they involve

covert construction). Importantly, though, invocation of the relevant powers functions to reinforce the social kind, even if the basis of those powers is taken to be something other than our social recognition. An implication of this is that assertions of the deontic powers of human beings, including the claim that they have equal moral worth, function to confer those powers on members of the social kind *human*—and they do so even when those assertions assume a naturalistic foundation for that equality. As Searle notes, in a different context: ‘The mechanism so described does not require that the participants be aware of what is actually happening. They may think that the man is King only because he is divinely anointed, but as long as they continue to recognize his authority, he has the status-function of king, regardless of whatever false beliefs they may hold’ (2010: 96). Likewise, the widespread assumption that being human inherently carries significant moral import helps make it the case that every human has a social status with conferred powers, irrespective of the truth or falsity of that assumption (compare Taylor 1985).

To be clear, I am not arguing that natural properties cannot suffice for moral entitlements (I remain agnostic on that issue). Rather, I suggest that, whatever the case may be with those natural entitlements, we have also constructed a social kind *human* and conferred powers upon members. These powers function to level up all humans, so that over and above whatever specific entitlements each of us is owed in virtue of our natural properties, we are all also, in virtue of our membership in the social kind, entitled to the same basic bundle of rights; to have our interests counted the same; and to be recognized as of equal worth to all other humans. That we have in fact constructed such a kind is evidenced by the commonplace assumption that all *Homo sapiens*—irrespective of their inherent properties—have certain rights and ought to be recognized as equals. As social metaphysicians have shown, such beliefs create social realities.

2.3. Conferring Moral Equality

Membership in the social kind *human* confers not just a social status but, more specifically, moral equality. What evidence could be mustered to show that there is sufficiently widespread recognition of equal moral worth for the socially constructed kind *human* to incorporate moral equality? There are two avenues: first, we can look to institutions and practices that build in a commitment to universal moral equality; and second, we can look to the unwillingness to deny explicitly that all humans are moral equals.

To be human, on the social constructionist model, is to belong to a social kind, membership in which confers deontic powers. Importantly, to share the status is to be entitled to the same things, *qua* member, as everyone else with that status (Waldron 2012: 32). Formal equality is thus baked into the social kind *human*, providing a basis for moral equality.

This formal equality is especially vivid in the context of institutions. Of particular significance here is human rights practice. Human rights presuppose and reenact the norm that all human beings have equal moral worth: the preamble to the Universal Declaration of Human Rights, for instance, opens with the statement, ‘recognition of

the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' (United Nations n.d.). Moreover, human rights presuppose and reenact the norm that all *Homo sapiens* are human. As Allan Buchanan stresses, through its commitment to nondiscrimination and equal standing before the law, human rights practice 'exhibits a robust commitment to affirming and protecting the equal basic moral status of all individuals' (2013: 28). Likewise, Charles Beitz summarizes the doctrine of human rights as 'the articulation in the public morality of world politics of the idea that each person is a subject of global concern . . . *Everyone* has human rights' (2009: 1, my emphasis).

It is not only philosophers who have observed this role for human rights. Historian Samuel Moyn, while critiquing human rights practice for abandoning any commitment to equality of distribution, nonetheless acknowledges the crucial role human rights have played in entrenching status equality as a global norm (2018: 9–10). International relations theorist Matthew Weinert is even more explicit about the role he takes human rights practice to play in what he calls 'making human'. Guiding documents such as the Universal Declaration of Human Rights and institutions such as the International Criminal Court, he argues, constitute us in international law as subjects with equal dignity—and they do so as a direct counter to historical processes of dehumanization. A key principle he thus takes to shape the 'post-Holocaust humanitarian world order' is 'recognition and defense of the notion that all *Homo sapiens* are human beings with equitable claims to human dignity' (2015: 207).

As each of these scholars in their own way attest, human rights practice helps to hold in place moral equality as a core element of the status of being human, as well as holding in place the extension of the human to all *Homo sapiens*.

Shifting from the global and institutional to the local and informal, we can also see evidence of the norm of equal moral worth in the rareness of its denial. While of course some do explicitly deny it—most blatantly, defenders of white supremacy or patriarchy—the pariah status that attaches to those positions suggests a strong social norm at work, even if it is all too often violated in practice. Consider, for instance, the vocal backlash to the Black Lives Matter movement in the United States. Tellingly, those who oppose the movement do not frame their objections as denials of the core claim that Black lives do matter; nor do they argue (at least openly) that white lives matter more. Instead, opposition to the Black Lives Matter movement most commonly takes the form of claiming that all lives matter. Even for those so willfully unconcerned with the unequal treatment of their fellow citizens to counterprotest, it was seemingly unthinkable to deny publicly that all humans have equal moral worth.

This example does raise a significant challenge, though: how could a norm of conferring moral equality on all humans coexist with the kinds of pervasive inequality and discrimination that prompted the Black Lives Matter movement?

Important work on race and gender has illuminated the ways in which these categories function to situate people within social hierarchies (Mills 1997; Haslanger 2000). By no means do I deny the reality of these kinds of entrenched inequalities. Rather, I suggest they are evidence that there are multiple social kinds

in play, and that the powers and disabilities attached to membership in overlapping social kinds can conflict. As Moira Gatens astutely observes, ‘Competition between different [norms] inevitably generates contradictions over time. For example, in emerging modern liberal societies, there was an acute contradiction between norms of marriage and norms of citizenship that may be traced to conflicting religious and political imaginaries. Are wives rightly subject to their husbands? If so, how can women become genuine citizens, that is, how can a subjected identity (wife) relate to other citizens as an equal? Such contradictions may be experienced as confusing and painful but may end up undermining the force of the norm of a wife’s obedience to her husband’ (2004: 287). Similarly, I am claiming, the powers attached to being human—including the claim to moral equality—conflict with the very real disabilities attached to being a member of an oppressed class or gender.

What this means in practice is that, insofar as someone is seen in the first instance as a fellow human, they are recognized as a moral equal. But we do not always engage with one another primarily as fellow humans; sometimes—too often—the operative social categories in our interactions position some of us as lesser. That the possibility of being recognized as a moral equal nonetheless remains in the background and is tied to being seen as a fellow human is evidenced in the ways denigrated groups so often make explicit demands that others see them precisely *as human*, as a way of demanding that others see them as moral equals. Consider, for instance, the Memphis sanitation workers strike of 1968, with its arresting ‘I *am* a man’ sandwich boards. More recently, protests against the treatment of refugees have been making frequent recourse to the claim that refugees are human. If there were no operative norm that being human entails being a moral equal, such strategies would make little sense.

2.4. Exclusion and Natural Inequality Revisited

With the social constructionist account more fully on the table, it’s time now to return to the two problems that have plagued property-based approaches to moral equality, and see how the social constructionist approach fares with respect to them.

Put bluntly, the problem of natural inequality evaporates when we adopt a social constructionist approach. Once we are in the realm of social kinds, it is no surprise that there are differences among members. Recall *eligible voter*: presumably, no one would deny there is a wide range of rational capacities and political knowledge among people over eighteen. But because the purpose of the category is to construct a political status, with corresponding political entitlements, these differences are irrelevant. *Eligible voter* thus exhibits just those features of range properties that property-based approaches are looking for. Crucially, though, it can only do so because it is a constructed status, and hence it is up to us where the boundary lies.

This might seem too quick. As Waldron (2017: 85) has pointed out, even on ‘decisionistic’ approaches such as mine, we surely need to appeal to some kind of intrinsic feature to justify the conferral of a status. As he puts it, we still need to ask ‘What features should we understand as delimiting the class of beings in

respect of which this decision is appropriate? What characteristics of the individuals we are talking about make sense of our decision?' (85–86). While such questions are indeed present for a social constructionist approach, we need to be careful about exactly how they figure in the account.

Consider again *eligible voter*. Even though natural capacities figure in the decision to draw the boundary of *eligible voter* in one place rather than another (such as making eighteen the age threshold for voter eligibility because of the typical level of cognitive development of an eighteen-year-old), membership in the kind need not depend on possessing those capacities. Unlike natural kinds, social kinds are not necessarily attempting to map onto joints in nature. Tendencies and generalities regarding capacities can suffice to justify drawing the boundary in one place rather than another, even in full knowledge that this boundary will include individuals who fall short with respect to the relevant capacities (Barclay 2013). Moreover, unlike with natural kinds, the justification for drawing the boundaries of social kinds in one place rather than another can appeal to downstream effects of doing otherwise. Because the boundaries are up to us, we should take all morally relevant information into consideration in drawing them. Were the criteria for *eligible voter* to try to track higher rational capacities or political knowledge, the likely social and political consequences are clear (history tells us how that particular story ends). The same is true for the human: any attempt to draw a moral boundary within the species, demarcating those who are moral equals from those who are not, is almost certain to lead to tragedy.

Importantly, this response to the problem of natural inequalities can still explain the intuition that there is a tight connection between normatively salient capacities and moral equality. That is because there are good reasons to appeal to capacities such as rationality or autonomy in justifying at least some of the entitlements that we confer on fellow humans, such as the right to education or freedom of association. Where social constructionism differs from property-based approaches, however, is in having a principled justification for refusing to take those capacities to demarcate the boundaries of moral equality.

The second problem is exclusion. The exclusionary implications borne by property-based approaches simply do not arise for a social constructionist approach because there is no special feature or capacity individuals must have to qualify for moral equality. Precisely because the boundaries are up to us, we can ensure they are drawn to include everyone.

This up-to-us-ness, however, is likely to cause deep concern. It invites three objections in particular. First is the objection from modal fragility: tying moral equality to membership in a social kind makes possession of that status contingent on maintenance of the relevant norms and institutions. Second is the speciesist objection: How can it be permissible to construct and maintain such a morally significant class and then exclude all but *Homo sapiens* from it? Finally, and most pressingly, there is the problem of normativity: If moral equality is grounded in social norms, where does its justificatory force come from?

3. Addressing the Objections

To clarify: as I offer my response to these objections below, I make no claim to be showing that a social constructionist approach comes with no theoretical or practical costs. My goal is just to shift the dial. Because so much philosophical attention has already been paid to developing and refining property-based theories, despite the deep and intractable problems they face, I hope to motivate others to take the social constructionist view as a serious contender and thus develop it further. Getting clear on the problems such a view faces and making a start on addressing those problems is an important step in that process.

3.1. The Modal Fragility Objection

The first objection concerns the modal fragility of moral equality, taken as a social construct. If it is up to ‘us’ who counts as human, then it is up to ‘us’ who is a moral equal—and what can be conferred can be taken away. This makes moral equality a contingent and fragile achievement, rather than an inalienable feature of all humans.

I have to concede the possibility that the category of the human could evolve to exclude some *Homo sapiens*. Moral equality, on my account, is the product of social norms, and social norms are not immutable. That said, social kinds can have more stability than is sometimes acknowledged. This is particularly so if the social kind in question is embedded in a network of institutional structures. Consider the social kind money. That we can use money in exchange for goods is a product of the social norms attached to money that confer on it a particular power. While the social norms surrounding money go beyond this core function of exchange, and vary widely across different communities, this core element has a deep stability because of the extent to which it is interwoven in multiple institutions that shape our daily lives. While it is ultimately up to us whether money continues to function according to this norm, stripping it of that norm would require dismantling or radically altering the institutions in which it is embedded, which—while not impossible—is not particularly likely.

What is true for money is true (albeit in an attenuated way) for the human. This is not to say that all people everywhere accept the connection between being human and being a moral equal. Rather, it is to say that both moral equality’s connection to the human, and the extension of membership in the human to all *Homo sapiens*, have some degree of stability because of their entanglement with a network of institutions and norms both global and local—especially those connected to the practice of human rights. It is notable, in this regard, that even critics of human rights, such as Moyn (2010) and Wendy Brown (2004), tend to accept their hegemonic status.

That said, it must be acknowledged that the norms conferring moral equality are more secure in some contexts than others, and for some demographics than for others. As noted above, moral equality operates alongside, and in tension with, other social practices that construct pernicious hierarchies. It cannot simply be assumed that the norms sustaining moral equality are the ones that will win out in

any particular situation. When those norms do lose out, the powers attached to being human would be functionally inert for some people at the local level (compare Hindriks 2020). While this does not negate their membership in the social kind *human* or the conferral of moral equality that comes with it, it does make that membership more tenuous and its associated powers harder to exercise.

Rather than taking the fragility of moral equality to cast doubt upon the social constructionist account, though, it can instead be seen as evidence of an incomplete project. If I am right that we have constructed a social kind *human* and conferred powers on members over and above what any of us can claim on the basis of inherent properties, then this is a profound achievement that we ought to fight to protect by both deepening and extending the global institutions that secure that status and by contesting erosion of the norms sustaining universal moral equality at the local level.

Although I have argued that moral equality is more secure than it might appear at first glance, the social constructionist approach nonetheless invites us to see moral equality not as immutable and indestructible, but as a precious and tenuous achievement—one that requires sustained effort to preserve and strengthen.

3.2. The Speciesism Objection

The second objection accuses the social constructionist approach of speciesism. It must be admitted up front that there is *something* speciesist about the social constructionist approach—after all, we are to understand moral equality as a status we have chosen to confer on one another but not on nonhuman animals. However, there are two ways to defend the account. First, the kind of speciesism in play is not morally pernicious, which can be shown via analogy with another social kind: kinship. And second, there is an unacknowledged and pernicious speciesism at play in property-based accounts. So although the speciesism charge cannot be avoided altogether, I hope to show that my account at least fares better on this front than do property-based approaches.

While often presumed to be a natural kind, anthropologists generally agree that kinship is a social construct: who counts as kin and what it means to be kin varies widely across different communities (Galvin 2001; Carsten 2004: 1–30). The boundary between kin and non-kin can nonetheless be highly morally significant. That is, there can be distinct things we owe to kin that we do not owe to distant others, such as an enhanced kind of regard, attention, or care. Importantly, however, we can see our kin as special without seeing non-kin as expendable or believing that it is permissible to ignore or discount their interests. Crucially, too, we can see our kin as special without seeing them as *superior* to non-kin (I would do almost anything for my parents, but that is certainly not because I take them to be morally superior!). This makes kinship quite different from kinds such as gender and race, where presumptions of difference are infused with beliefs about inherent superiority. What is true for kinship is at least possible for the human.

Once we let go of the idea that what we owe one another is exhausted by our intrinsic features, recognizing special obligations to other humans need not imply any superiority over nonhuman animals, let alone imply the permissibility of

mistreatment. Indeed, accepting a social constructionist approach may well *lessen* the implication that moral equality is tied to inherent superiority because it abandons the search for some innate quality that sets us apart from and above nonhuman animals. As such (and perhaps surprisingly), it has distinct advantages over property-based approaches when it comes to countering the speciesism objection.

Whereas property-based approaches typically accept that any creature possessing the nominated properties counts as a moral equal, and as such are not formally speciesist, a pernicious form of speciesism does not lie far beneath the surface. This subterranean speciesism comes into view if we interrogate why *these* capacities are supposed to be so morally salient or (for those appealing to range properties) why they must be held to *this* degree.

Methodologically, property-based accounts almost invariably start by asking what properties are distinctly human and then look within that set for properties that could explain the superior moral status of (most) human beings. What they virtually never do, to the best of my knowledge, is survey in a species-neutral way the multitude of awe-inspiring properties held across the natural world—such as the capacities for social cooperation possessed by bees, the capacities for living in extremis of tardigrades, the goodness of dogs—and consider which ought to qualify its bearers to an elevated moral status. This failure to take seriously the possibility that other animals may be our moral equals (or even our moral superiors) belies any claims to species-neutrality.

I noted in the introduction the tendency of property-based views to presuppose a picture of the moral world on which (most) humans occupy a detached and elevated position vis-à-vis the rest of the natural world. By contrast, my account divorces the claim to moral equality from any presumption of inherent superiority. Insofar as we are required to treat one another as equals, this is to be understood as a consequence of our social practices rather than as a response to a given natural hierarchy. Moreover, the conferral of moral equality on fellow human beings, while different from any status we might confer on nonhuman animals, is compatible with the claim that other animals are as naturally morally significant as any of us and may in fact be our moral superiors.

That said, there remains the concern that the human, on this understanding, is to be understood as a construct predicated upon the exclusion of nonhuman animals, depriving them of important benefits we confer on one another. This raises the broader worry that the human, so understood, may prove to be an indefensible institution. I grapple with that worry in concert with the final objection.

3.3. The Normativity Objection

There is one final objection to the social constructionist approach that needs to be addressed. Even if it is accepted that there is a social kind *human* and that membership carries with it a status incorporating the norms of moral equality, it might still be objected that such an approach strips moral equality of its normative force. For a social constructionist approach to moral equality to be acceptable it must show that human status has moral, not just conventional, force. All humans must have the *moral* standing to demand that others recognize them as equals.

This creates a significant challenge for a social constructionist account. What is required is an argument to show that, in its attempt to extend moral equality to all humans, the social constructionist approach does not inadvertently render it morally inert. It must do this, moreover, without simultaneously attributing problematic moral force to categories such as race and gender. To meet the first prong of the challenge, it must be explained how someone could have the standing to make a moral claim to be treated in accordance with a status that has been conferred on her. To meet the second prong of the challenge, it must be explained how this standing fails to universalize—that is, why someone is morally entitled to be treated as an equal in virtue of their membership in the socially constructed kind *human* but is not morally entitled to be, say, treated with deference in virtue of their membership in the socially constructed kind *man*. Although a fully developed response to this objection is beyond the scope of this essay, I offer a sketch of how such an argument might go.

As I have construed it, moral equality is a product of our having constructed a particular social kind, the human, which in turn is sustained through a network of institutions and social practices. As such, a fitting way to defend moral equality's normative force is with a practice-based, or conventionalist, approach. The most promising such approach, to my mind, is that recently defended by Katharina Nieswandt, according to whom, '[a] conventionalist holds that the [moral] duty exists as part of a larger social game, a "practice". She justifies the duty by pointing out that a rule of the practice prescribes it for the case in question' (2019: 3–4). For instance, I have a moral duty not to take your pencil, because the rules of the practice of private property forbid me from doing so without your permission. Analogously, I have a moral duty to recognize you as a moral equal because the rules of the practice of the human require me to do so.

So far, so simple. But what about the worry that in attempting to salvage the normativity of a constructionist account, normativity is also presumed for noxious social practices such as patriarchy and white supremacy? A conventionalist can respond to such a worry: duties internal to practices are only justified if the practice within which they operate is justified. Below, I consider how such a justification might go for the human; but for now, it suffices to note that there is a clear pathway here for vindicating the normativity of moral equality while simultaneously denying the normativity of claims to male or white privilege because the latter form part of what are manifestly unjustifiable practices.

This retreat to the justifiability of the background practice, however, raises a second worry. Conventionalist accounts of rights and duties have been critiqued (for example by Scanlon 1990: 211) on the grounds that they offer the wrong kinds of reasons. What is needed is an explanation of how I *owe it to you* to treat you as an equal. If the justification for my duty appeals back to some instrumental benefit to be gained by sustaining a social practice, the directedness of the duty is lost. To respond to this worry, we can follow Nieswandt in insisting that the justifiability of the practice constitutes a necessary background precondition for the justification of the moral duty; but it does not then figure again in the justification of that duty. Nieswandt explains how this works in the context of promising: 'the justification for my duty is not some good to be achieved through

the practice of promising. The justification of promising is not even picked up again in the because-clause. Instead, the justification for my duty simply is that *I promised*. I gave the sign; the rule says that I must φ if I gave the sign; now I must φ because I gave the sign' (2019: 8). The same move can be made for the human: the justification for my duty to treat you as a moral equal is not that this instrumentally serves some further end. It is simply that you are human, and humans must be treated as moral equals. This move captures the directedness of the duty to treat others as moral equals because, as Niewsandt points out, '[f]or a conventionalist, the addressee of a duty is determined by the rules of the relevant practice' (2019: 12).

The final worry to be addressed, which picks up on the concerns raised about speciesism above, is whether the practice of the human is in fact justifiable. I see two ways such a justification could be developed. The first, and to my mind most promising, points to the intrinsic good of the community of equals that the construction of the human enables (compare Cohen 2013). In other words, the practice of the human that we have created makes a certain way of living together possible; it enables (even if it does not guarantee) a global political community in which people relate to one another as equals rather than as superiors or inferiors, which is a better way to coexist. Because the construction of the human helps us coordinate on *how* to treat one another as equals, it is a justifiable practice.

Admittedly, this pathway retreats rather quickly to normative bedrock. For those who are skeptical of the intrinsic good of belonging to a community of equals, an alternative pathway is available. This would focus on the instrumental benefits the construction of the human has brought about, such as the development of the international practice of human rights, and the diffusion of norms of equal treatment that provide a—admittedly imperfect—bulwark against oppression. It would then contrast these benefits with the harms the category has arguably imposed, such as the entrenchment of the belief that non-human animals are lesser (Kymlicka 2018), or the humanist tendency to ignore or erase difference (Phillips 2015). While I do not take it to be given that the human would necessarily emerge victorious from such a consequentialist accounting, I am optimistic that a strong case could be made.

4. Conclusion

When I have presented related ideas publicly, I am frequently met with something approaching indignation. There is widespread reluctance to consider even the possibility that moral equality may be a social construct. A large part of this reluctance, I suspect, stems from an assumption that moral equality matters only insofar as it reflects inherent moral worth. Since this connection is dropped on my social constructionist approach, it is often interpreted as destroying moral equality in the process of trying to save it. In conclusion, I offer two responses to readers who may share this concern.

First, dropping the connection between moral equality and inherent moral worth does not render moral equality idle. To see this point, recall my definition of moral equality: as is commonplace in the literature, I have taken moral equality to equate to possession of equal worth; the entitlement to have one's interests counted equally;

and the possession of an equal bundle of basic rights. Each of these elements holds true on the social constructionist account: these powers are all conferred through membership in the human kind, along with the standing to claim them if they are denied. Admittedly, we might feel better if we could tell ourselves that we have these powers because we are inherently special rather than because they were bestowed on us by the community. But at the end of the day, having these powers and being able to exercise them matters significantly more than do the reasons why we have them.

Second, continuing to insist that moral equality is grounded in some inherent property, while being unable to explain plausibly how or why, does not aid in securing recognition of the equal worth of all human beings. To the contrary, it provides grist to the mill of those who would deny moral equality altogether or who would deny it to particular others. Recognizing moral equality as an element of a socially constructed kind, by contrast, puts us in a position not only to counter such objections in theory but also to start strategizing about how best to counter the corrosive effects of such non-egalitarian worldviews on marginalized people's lives.

SUZY KILLMISTER 

MONASH UNIVERSITY

suzy.killmister@gmail.com

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