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BEHAVIOR TO BENEFIT OTHERS ON THE BASIS OF RELATION AND BELONGING: IS PARTIALITY TOWARDS RELATIVES OPPOSED TO UNIVERSALISM AND EQUALITY? A CONCEPTUAL ANALYSIS OF NORMATIVE TERMS

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Introduction

This article deals with the question of moral justification to show preference towards those individuals with whom an agent shares a relationship or who belong to the same group as the agent, on the basis of that very relationship or belonging — advantaging those individuals above other people who are strangers, i.e. not sharing a relationship with or belonging to the same group as the agent.³ The article clarifies basic concepts which apply to the issue and the question of the interaction between partiality, universalism and equality. However, the article will not deal with the moral basis for showing preference towards relatives, which we will examine at another time. To exemplify these concepts, this article will use a series of hypothetical situations devised by the authors. Let us begin with a number of pertinent examples of showing preference to relatives:

First example: Saving an individual from a danger to life or health

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³ Henceforth, we will refer in the text to this aspect as “preference for relatives.”

Let us assume that a person can save only one of two people: either one's spouse or a stranger. Is it justified, e.g., for a man to save his wife because she is his wife? Is he, in fact, obligated to save his wife because she is his wife?⁴

Second example: Financial assistance for the impoverished

Is it justified to give money to impoverished strangers rather than to those in need who are associated by relationship or belonging? Is someone sometimes obligated to do this? Does this depend on the level of need? Does it depend on the financial resources of the potential donor? Does the answer to this question change if these strangers share citizenship or nationality with the potential donor? What if they are strangers in this regard as well?⁵

Third example: Absorbing migrants

Must countries absorb migrants if these migrants have no national affiliation with these countries self-determination? Does this depend on the level of need among the migrants? If so, to what extent? What if they are refugees? Who is classified as a refugee? Does the issue depend on their reason for fleeing their country of origin: life-threatening war, dictatorship, crushing poverty? Does the duty to absorb migrants depend on the effect which that absorption will have on the potential host country and its citizens? On its

⁴ The literature presents a number of examples of preference for relatives when it comes to saving lives while discussing them. For the case of saving a stranger versus saving a spouse, see CHARLES FRIED, *AN ANATOMY OF VALUES* 227 (Harvard Univ. Press 2d ed. 1970); Bernard Williams, *Persons, Character and Morality*, in *MORAL LUCK* 17-18 (Cambridge Univ. Press 2012). For the case of saving one's child versus saving a venerable surgeon, see YOTAM BENZIMAN, *UNTIL YOU ARE IN HIS PLACE: ETHICS, IMPARTIALITY, AND PERSONAL RELATIONS* 14-15 (Hebrew Univ. Magnes Press, 2004) [Hebrew]. Godwin discusses two theoretical cases of a castle in flames: in the first, one may save the archbishop or his aide; in the second, one may save either the archbishop or one's own brother; see WILLIAM GODWIN, *ENQUIRY CONCERNING POLITICAL JUSTICE* 70-71 (K. C. Cardel ed., Oxford Univ. Press, 1971) (1793).

⁵ The issue of the duty of wealthy countries or wealthy families to help those in need in developing countries is discussed in a number of places: Tom Carson, *Hare on Utilitarianism and Intuitive Morality*, 39 *ERKENNTNIS* 305 (1993); Peter Singer, *Famine, Affluence and Morality*, 1 *INT'L ETHICS* 229, 247-261 (1972); Stephen Nathanson, *Patriotism, Morality, and Peace* (Rowman & Littlefield Publishers, Inc. 1993); Rudiger Bittner, *Morality and World Hunger*, 32 *METAPHILOSOPHY* 25 (2001).

economy? On its internal security? On its demographic composition? On its cultural and national character?⁶

Fourth example: Harming civilians in pre-emptive anti-terror operations

When a state is subjected to terror attacks, it may choose to undertake killings in pre-emptive operations to combat them, i.e. eliminating those planning to acts of terrors in order to prevent further acts of terror. At times, there is no choice but to kill noncombatants who happen to be in physical proximity to the target. One of the justifications for carrying out such an operation the state's duty to protect its citizens, which overwhelms the duty to avoid harming civilians of another nation. The argument is that because the strong connection between the state and the citizens or because such a connection exists among the citizens, the duty to protect from terror overwhelms the duty to avoid harming those civilians who are uninvolved in terror as the latter, who are foreigners do not have a relationship of belonging and relation. What is the weight of the state's duty to protect its citizens when considering whether to carry out a pre-emptive operation? Is this duty sufficient to justify a pre-emptive operation?⁷

This article has two sections, the conceptual and the normative. In the conceptual section, we will clarify the terms included in the expression "behavior to benefit others on the basis of relation and belonging." We will distinguish between subjective relation and objective relation, and we will present different types of objective relationships. We will also distinguish between different deontic meanings of preference for reasons of relation

⁶ The issue of migration, global justice and preference based on national origin is discussed in a number of places: CHAIM GANS, *THE LIMITS OF NATIONALISM* 139-160 (Cambridge Univ. Press, 2003); Michael Walzer, *The Distribution of Membership*, in *BOUNDARIES, NATIONAL AUTONOMY AND ITS LIMITS* (1981); Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 *REV. OF POL.* 251 (1987).

⁷ Elsewhere we analyzed the morality of harm to civilians in pre-emptive operations due to reasons of relation and belonging: Eyal Gruner & Doron Menashe, *State Under Attack: The Story of Preference for Relatives in Pre-Emptive Counterterrorism Operations*, *CARDOZO INT'L COMP. POL'Y & ETHICS L. REV.* (forthcoming); Asa Kasher & Amos Yadlin, *Military Ethics of Fighting Terror: An Israeli Perspective*, *J. MIL. ETHICS* 4(1), 3 (2005); Micheal Walzer, *AFTER 9/11: FIVE OUTSTANDING ABOUT TERRORISM, ARGUING ABOUT WAR* 130 (Yale Univ. Press, 2004); Michael Walzer, *Coda: Can the Good Guys Win?*, *EUR. J. INT'L L.* 24, 433 (2013); Michael Walzer, *The Risk Dilemma*, *PHILOSOPHIA* 44, 289 (2016).

and belonging, and we will finally distinguish between different potential approaches to normative preferences due to relation and belonging.

In the normative section, we will analyze the specific difficulties arising from justifying preference for relatives. These difficulties express the tension between preference for relatives and three central moral principles: a) the principle of universalism, b) the principle of equality, and c) impartiality. We will analyze the distinction between universalism and particularism, between equality and discrimination, and between partiality and impartiality. We will determine whether partiality on the basis of relation and belonging can be reconciled with universalism and equality.

Part I: The Conceptual Discussion

1.1 What is “behavior to benefit others on the basis of relation and belonging”?

The subject of our research contains a number of elements: 1) behavior, 2) to benefit others, 3) on the basis of (or due to), and 4) relation and belonging.

Element 1) is obvious and observable (unlike mental or emotional states), performed by the agent, the product of a conscious and willful decision to undertake such action. Behavior includes taking action (active behavior) and omission (passive behavior).

As for element 2), such behavior is in the interests of others when the aim of the agent is to improve the situation of the other, as compared to the situation of the other were the agent not to exhibit such behavior. In other words, this behavior creates a causal link between it and an improvement in the position of the other, as compared to the other’s previous state.

For definitional purposes, we take no position as to what should be considered “good” or “better” for the other. Whatever one’s point of view may be, it suffices that the agent’s intention be to improve the other’s situation, from whatever perspective and by

whatever criterion the other's situation may be said to be better as a result of the successful behavior of the moral agent.⁸

A better situation includes a number of possible processes based on the distinction between good and evil, on the one hand, and absolutism and relativism, on the other hand. It may be that the situation of the other prior to this behavior is bad in absolute terms, and this behavior makes the situation good in absolute terms. It may be that the situation of the other prior to this behavior is bad, and the behavior causes the situation to be less bad, which means that it would be a relative improvement. It may even be that the initial situation of the other is good and the behavior results in the situation of the other becoming better; in this case as well, the improvement is relative.

We may distinguish between improvement as an intrinsic value and improvement as an instrumental value. When an intrinsic value is discussed, the aim of improvement is the relationship, not any goal beyond it. The goal is to express and empower the relationship. When the benefit is instrumental, the aim is to strengthen the relationship and to strengthen the beneficiary in order to accomplish another aim. For example, a member of a group can provide a benefit to another member, in order to assist the group in advancing an ideology which the group embraces. This is an instrumental benefit due to relation and belonging. On the other hand, if the aim of the benefit is to preserve and strengthen the relationship as something which produces good due to its every existence, then this is the intrinsic value of benefit.

In this article, we are not discussing benefit as an instrumental value. The instrumental significance of the benefit is not compelling in intimate emotional relationships; it is enough for there to be cooperation towards a mutual goal. Helping

⁸ This is not an exhaustive list but for the purposes of this article, some possible examples of the criteria for good include the following: happiness and enjoyment, fulfillment and satisfaction, well-being, giving meaning to life, freedom and liberty (or personal autonomy).

another for instrumental reasons expresses freedom of association and the value of the existence of organizations and associations.

The reason to exclude the discussion of the instrumental value of benefit is, first of all, that organizations and associations do not have moral value in their own right, and acting through association raises no particular moral problem beyond the lone action of the individual.⁹ If there is a moral justification to limit individual action for the sake of a desired goal, there will be a similar justification when one is interested in accomplishing this goal by cooperation with another or through association.

Second, the moral value of benefit to another, which is instrumental, emerges from the different values which relation and belonging promote, not the value of relation or belonging itself. These values are not the subject of our research, but rather solely the value of relation and belonging.¹⁰

As for element 3), this is the justifying element for behavior to benefit others, or the element of the reason. This element means that relation and belonging fill the role of explaining why the behavior is justified. This does not necessarily mean that relation and belonging create the reasons for action; it is enough that there are general reasons for action, and the relation and belonging constitute conditions to apply the general reason. Thus, it may be that there is a reason to do P when P is an action to benefit others if condition C pertains, and condition C pertains in a situation of relation and belonging, or condition C commonly pertains in a situation of relation and belonging, but not only in such a situation.

Behavior to benefit others to whom one is tied by relation or belonging may be motivated by reasons which are not themselves connected to relation or belonging, so that

⁹ For additional insight into the concept of morality and associations, see generally Christin-Melanie Vauclair, et. al, *Cultural conceptions of morality: Examining laypeople's associations of moral character*, 43 J. OF MORAL ED. 54 (2014).

¹⁰ See generally Amanda Enayati, *The importance of belonging*, CNN (June 1, 2012), <https://www.cnn.com/2012/06/01/health/enayati-importance-of-belonging/index.html>.

even without relation or belonging, there would still be a reason to engage in the behavior which benefits that recipient. For example, the duty to rescue (the duty of the Good Samaritan) engenders the duty to save a drowning girl even if one is not tied to that girl by relation or belonging.¹¹ Thus, even if those ties do not exist, the duty to rescue is still an independent reason to save the girl, even if we set aside the ties of relation and belonging. This study will deal with the issue of benefit for others when ties of relation and belonging are the reason for this behavior, i.e. the existence of ties of relation and belonging is not sufficient when the reason for providing the benefit is not influenced by these ties.

Element 4) is the element of relation and belonging. This element is about the link or connection between the moral agent and the other who is the beneficiary of the behavior.

To put this in negative terms, any position which is not one of relation and belonging is one of foreignness. Any position which is not a position of foreignness is included in the position of relation and belonging. In other words, a position of relation and belonging is a position which negates (even in a minimal way) foreignness, so that we cannot say that the agent is a stranger to the recipient.

1.2. Subjective Relation and Objective Relation

There are two types of relation positions: 1) subjective-emotional relation (hereinafter “subjective relation”) and 2) relation defined by a certain objective position (hereinafter “objective relation”).

¹¹ The concept of the “Good Samaritan” is derived from a biblical parable found in the New Testament. *See Luke 10:25-37*. Many countries have developed “Good Samaritan” laws which levy criminal penalties against individuals that do not come to the aid of someone in an emergency situation. *See generally* Lynwood M. Holland, *The Good Samaritan Laws: A Reappraisal*, 16 J. PUB. L 128 (1967). In contrast, in the United States, Good Samaritan laws typically often offer legal protection/ defenses to individuals that do come to the aid of another in an emergency situation. *See generally* Janet Lubman Rathner, *Good Samaritan Laws: What Exactly Do They Protect?*, LABORER’S HEALTH & SAFETY FUND OF NORTH AMERICA (Jan. 2019), <https://www.lhsfna.org/index.cfm/lifelines/january-2019/good-samaritan-laws-what-exactly-do-they-protect/>.

Concerning subjective relation, A has a subjective relation to B when a mental state characterizing their relationship pertains, such as the following: love, affection, solidarity, trust, desire to give.

Concerning objective relation, we are talking about types of relation between A and B based on a bond which is not in itself emotional (e.g., birth and genealogy, adoption, marriage, certain interactions, geographical proximity), which common perception identifies as intimate relations. In other words, when information is given about objective relation between A and B, common perception will assume that a subjective relation exists, or that the probability that a subjective relation exists among objective relatives is greater than the probability that a subjective relation exists among strangers. This is true even without specific information that such a subjective relation exists.¹²

Often subjective relation is based on objective relation, but not necessarily. Subjective relation without objective relation may exist in cases of “love at first sight” between strangers who are not a couple at this stage. There may be instances of the opposite as well, in which objective relation without subjective relation pertains, e.g. family members who are estranged, perhaps even at odds. The gap between subjective relation and objective relation can be expressed in levels of relations as well. Generally, we consider certain types of objective relation as a stronger relation due to the characteristic power of subjective relation. Therefore, first-degree family members are considered to have a more powerful relation than neighbors. However, there may be some outliers, so that the subjective relation among neighbors in a specific case may be higher than the power of the subjective relation among first-degree family members. First, let us specify a number of types of objective relationships:

¹² This does not contradict the fact that common perception will assume, at the same time, that the probability of a hostile relationship among objective relatives is higher than the probability of a hostile relationship among strangers. It is sufficient that the probability of subjective relation among objective relatives is greater than the probability of subjective relation among strangers.

Relations of Kinship and Family Belonging

Kinship relations are specific types of relationships which have a correlation between them and affection, mutual assistance, feelings of belonging and responsibility towards others. Not all relationships with such a correlation are kinship relationships. Rather, there are two types. The first type is based on origin and blood, direct and indirect bonds based on birth: biological connections to parents, grandparents and siblings. The second type is fraternal bonds of a certain sort: spousal bonds, adoptions bonds, and indirect bonds based on spousal relationships, such as a spouse's biological children or nonbiological siblings (when the common parent is the spouse of one's biological parent). The family unit is one arrangement of kinship relations.¹³

Kinship relations, first and foremost, may be seen in biological parentage, i.e. the relationships between biological parents and children); but it applies to descendants as well, i.e. grandparents and grandchildren, etc.¹⁴ Spousal relations include bonds of marriage as well as couple-hood without marriage (cohabitation); similarly, it applies to adoptive relationships (adoptive parents and their children). In addition, there other familial relationships, whether in nuclear families or in expanded families (siblings, aunts and uncles, nephews and nieces, siblings-in-law), based on combination of birth ties and spousal ties.

Friendship and social relations are bonds between people who interact socially at different levels of intimacy and commitment, but do not reach the level of couple-hood.¹⁵ Even if we assume that a prerequisite for friendship is emotional relation, we may deduce such emotional closeness based on patterns of behavior among members and these patterns constitute the objective component of the relation. In addition, it may be that

¹³ KAREN V. HANSEN & ANITA ILTA GARY, *FAMILIES IN THE U.S.: KINSHIP AND DOMESTIC POLITICS* xvii-xix (Temp. U. Press, 1998).

¹⁴ See generally Martin Ottenheimer, *The Current Controversy in Kinship*, 9 CZECH SOC. REV. 201 (2001).

¹⁵ We will not discuss the question of distinguishing between friendship and couple-hood. It is sufficient to rely on common perception which tells us that such a distinction exists.

claims of relation may be raised not only based on existing friendship, but also on the basis of friendship which existed at some point, even if the emotional component no longer pertains.

Cooperative-activity relationships include the relationships between coworkers and business associates. They are partners in some sort of instrumental activity, as opposed to friends, with whom one's cooperative activity is intrinsic-expressive. In other words, the very activity has value for friends, while for those in a cooperative activity relationship, it is the result which has value, not the act in itself.

Geographical proximity refers to neighbors, roommates and the like, i.e. people who frequently see each other because they live close to one another.

Belonging is a conscious state in which one sees oneself as belonging to the same group as another person or other people. To a certain extent, we may say that there is an overlap between objective relationships and belonging; e.g. belonging to a family or belonging to a group of friends. However, the common denominator among all objective relations noted up to this point is the familiarity. Those who have an objective relationship have some familiarity, personal contact between the individual and the relatives.

However, belonging is the sort of relationship which may exist without any personal familiarity. An ethnic or national group is relatively large (as its members may number in the thousands or millions), and those who belong to such a group do not, for the most part, know each other personally, though a conscious element of belonging is held by all members in common.¹⁶ This conscious element is expressed in the awareness of belonging to a given group, i.e. distinguishing between the inner group (who belongs to us) and the outer group (who we are not, who is beyond our group). In addition, the conscious element is expressed in one or more of the common denominators of the

¹⁶ See generally Sofia Hamaz & Ellie Vasta, 'To belong or not to belong': Is that the question?' *Negotiating belonging in multi-ethnic London*, CTR.ON MIG., POL. & SOC. (2009), https://www.compas.ox.ac.uk/wp-content/uploads/WP-2009-073-Hamaz-Vasta_Belonging_Multi-ethnic_London.pdf.

members of the groups: shared origin, shared language, shared culture, shared history, shared faith.

Thus, belonging includes a conscious state of people who do not know each other being linked, despite their lack of personal contact; nevertheless, they share a common consciousness of their group. Such a state includes belonging to an ethnic group, belonging to a nation, and belonging to the citizenry of a country.¹⁷

The relationship between the element of belonging, on the one hand, and subjective and objective relation on the other, means that belonging is a type of subjective relation not based on personal familiarity, but on mutual objective elements such as: shared origin, shared territory, shared language, shared faith, shared culture and shared history.

Above, we argued that objective relationships raise a common expectation of subjective relation. In terms of common expectation, this is formulated to mean that objective relation does not necessarily imply subjective relation. Indeed, objective relatives may have relationships of enmity and oppression. Not all anthropologists agree that kinship relations imply solidarity; for example, feminist anthropology argues that kinship relation is the mechanism for the oppression of women.¹⁸

The emotional component does not necessarily exist mutually for the moral agent and the other. Only one may experience such emotional connection. If the moral agent is the only one to feel an emotional connection, then the agent is likely to conceive of a moral duty or right or permission to benefit the other, even though the other holds no such feelings towards the agent. If the other is the only one to feel such an emotional connection, but not the agent, the agent may still feel a duty to benefit the other because of the other's emotional connection to the agent.

¹⁷ GANS, *supra* note 6; ERNEST GELLNER, NATIONS AND NATIONALISM 5-7 (Blackwell Pub., 2nd ed. 2006).

¹⁸ LINDA STONE, KINSHIP AND GENDER: AN INTRODUCTION 20 (Westview Press, 4th ed. 1997).

Another distinction is between relation and belonging as an intrinsic value versus relation and belonging as an instrumental value.¹⁹ The former means that the very fact that relation or belonging exists is of positive value, independent of the question of what the results or the ramifications of this relation or belonging may be. The latter means that the positive value of relation or belonging emerges from the good results which the relation or belonging produces.

1.2 Deontic Classification of the Preference for the Other due to Relation and Belonging

As with every practice which is subject to moral analysis, a practice which gives precedence to the benefit of the other due to reasons of relation and belonging, must be addressed on different planes of deontic classification;²⁰ we may say that a practice which gives precedence to the benefit of the other due to reasons of relation and belonging is optional from a moral viewpoint or that it is not optional. If it is optional from a moral viewpoint, it may be a matter of allowance, permission or right. In this case, the moral agent is not behaving in a non-moral way by benefitting the other due to reasons of relation and belonging, and the agent also does not behave non-morally by refraining from taking action to benefit the other due to reasons of relation and belonging. In such a situation, the question of benefitting the other due to reasons of relation and belonging is morally indifferent.

¹⁹ This distinction differs from the distance presented above between benefit as an intrinsic or instrumental value. See generally George Gantz, *Intrinsic Value vs. Instrumental Value - What Do We Choose?*, SPIRAL INQUIRY (Sept. 7, 2017), <https://spiralinquiry.org/intrinsic-value-vs-instrumental-value-what-do-we-choose/>.

²⁰ In moral philosophy, there is a distinction between a value-axiological discourse and a deontic discourse. The axiological discourse deals with the categories of good and evil, in relation to situations of interests, motives, personality traits and character independently of the existence of moral agents who can cause their existence or hope for the existence of those states of affairs, motives, etc. On the other hand, deontic discourse deals with judging and evaluating the behavior of the moral agents according to categories of permission, duty, rights, what one ought to do and supererogation. For example, if cats are not moral agents, then in a world in which cats exist but not moral agents, the claim “a situation in which a cat is in pain is a bad situation” is a claim on the axiological plain. The claim that the moral agent Aviva must avoid hurting cats (or that she ought not to hurt cats) is a claim on the deontic plain. Concerning this distinction, see DAVID HEYD, SUPEREROGATION 171-172 (Cambridge University Press, 1982).

Another possible situation is moral optionality of behavior to benefit others due to reasons of relation and belonging, but without moral indifference. This is a situation in which the behavior to benefit the other due to reasons of relation and belonging is seen as an action beyond duty (supererogation).²¹ In this situation, if the moral agent acts to benefit the other due to reasons of relation and belonging, then the agent increases the moral good, but if the agent avoids doing so, then the agent does not act in a non-moral manner, even though the agent has not increased the moral good.²²

An additional possibility for deontic approach is the claim that a practice to benefit others in the context of relation and belonging is not optional. One possibility of non-optionality is that the behavior to benefit others due to reasons of relation and belonging is a moral duty.²³ In such a case, the moral agent who refrains from taking action is behaving non-morally.

An additional deontic possibility is that a practice to benefit others due to reasons of relation and belonging is morally forbidden. In other words, a duty exists: a duty to refrain from acting. This moral state as well is non-optional, but in this case the moral agent who acts to benefit the other due to reasons of relation and belonging is acting in a non-moral manner.

1.3 Classifying Approaches to the Normative Significance of Partiality

The normative meaning of partiality may be understood in a number of different ways.

Partiality as a reason to act in partial manner — this, of course, is the most minimalistic sense of partiality. According to this, if a moral agent wants or feels the need to act in a partial manner towards relatives, then the agent has a reason to do so. Still, the

²¹ *Id.* at 111-142.

²² *See generally id.*

²³ For additional background on the deontic approach and obligation, *see* Paul McNamara, *Deontic Logic*, STANFORD ENCYCLOPEDIA OF PHIL. (Feb. 7, 2006), <https://plato.stanford.edu/entries/logic-deontic/>.

existence of a reason does not mean that such behavior is justified. Rather, it means that if there are no compelling counterarguments, the agent has a moral permission for partiality. If partiality does not conflict with the rights of others or one's own duties, it is permissible to act in a manner which is partial towards one's own relatives.

It is difficult to dispute the establishment of this norm. We may say that every person has a presumed right to partiality towards one's relatives, as part of the general right of liberty and personal autonomy. According to the principle of liberty, every human being has the right to act as he or she wants if nothing militates against it.²⁴ Whoever is interested in limiting the liberty of a person to act as he or she wants has the burden to provide compelling reasons for this restriction.

Justification for partiality in a case of gross equivalence between the relative and the stranger — this is a situation of gross equivalence, a situation in which, in the interpersonal conflict between the interest of the relative and the interest of the stranger, the result of the balance is that the interests are more or less equal. Another way of describing a situation of gross equivalence is *ceteris paribus*. The argument is that in a situation of gross equivalence between the relative and the stranger, there is a right or duty to act to benefit the relative. When one can only help one person, either a relative or a stranger, then according to this approach, when the balance between them constitutes gross equivalence, it may be justified or even required to help the relative.²⁵ A similar argument may be offered concerning the duty to prevent damage: if a trolley is rolling downing the track and will run over either a relative or a stranger then in a case of gross equivalence, such that were both individuals to be strangers, there would be no stronger duty to prevent harming one of them, then if one is a relative, the agent should prevent harm to the relative.

²⁴ See generally Ian Carter, *Positive and Negative Liberty*, STANFORD ENCYCLOPEDIA OF PHIL. (Feb. 27, 2003), <https://plato.stanford.edu/entries/liberty-positive-negative/>.

²⁵ GANS, *supra* note 6 at 158.

We may say that if relation and belonging are the reasons for partial action, then in any case in which there is gross equivalence between the relative and stranger, the relative should be preferred, since in a case of gross equivalence, the reason to act will be the compelling reason. Gans presents the opposite example. Let us assume that we are talking about someone who is in an official position, who must consider the cases of a relative and a of stranger, whose interests may be said to be in a state of gross equivalence. Here we have a strong reason to prefer the stranger specifically, e.g. for the reason of public confidence in those who work in official capacities.²⁶ However, this situation is not really one of gross equivalence, because this is not a situation in which all considerations are equal aside from the consideration of relation and belonging; rather, the consideration of relation and belonging is in conflict with the consideration which justifies impartial behavior on the part of the public official.

A greater degree of rights and duties for partiality than rights and duties towards strangers — according to this approach, if there is a right to benefit a stranger, then there is a greater right to benefit a relative. If there is a duty to benefit a stranger, then there is a greater duty to benefit a relative. The meaning of the matter is that rights and duties towards strangers will be decided with far more ease than rights and duties towards relatives. This is the situation when a right conflicts with another right or another duty, and similarly when a duty conflicts with another duty or other rights, including the right to realize personal interest.²⁷ This means that, inter alia, the duty not to harm a relative is stronger than the duty not to harm a stranger. The level of non-morality in harming a relative is stronger than the non-morality of harming a stranger, assuming that the harm is similar and both are non-moral. Similarly, if a person must incur cost for the other, there is reason to incur greater costs when the other is one's relative.²⁸ If a person is permitted

²⁶ GELLNER, *supra* note 17.

²⁷ SAMUEL SCHEFFLER, *BOUNDARIES AND ALLEGIANCES* 52 (Oxford Univ. Press, 2001).

²⁸ *Id.* at 53.

or obligated to cause harm to Stranger A on behalf of Stranger B, then if A is a relative, there is a stronger reason to reduce the harm caused. If B is a relative, there is a greater reason to cause more harm to A. If it is justified for a person to harm a stranger for the agent's own sake, then if we are talking about a relative, there is a greater reason to cause less harm.²⁹

This category emerges from the category in which the very fact of relation and belonging is the reason for showing preference. If this is a reason for showing preference, it emerges from this that it is also a reason to increase the rights of relatives or to decrease the duties of relatives, since the increase or decrease are a specific case of preferences. In other words, in a situation of gross equivalence between reasons to increase or not or to decrease or not (depending on circumstances), the agents should increase or decrease (depending on circumstances). However, we must remember that we are talking about apparent reasons only; the matter depends on the balance in specific circumstances. The apparent reason to increase or decrease will not always prove to be compelling for actual increase or decrease, and this is because of opposing considerations not to increase or to decrease, which may prove compelling in specific circumstances.

Justifying partiality towards a relative can exist even in a situation in which the balance inclines towards the stranger — here the claim is that even in a case in which there is not gross equivalence between a stranger and a relative, but rather the preference is for the stranger due to considerations which are not associated with relation and belonging, there are cases in which, nevertheless, there is a right or a duty to show preference to the relative due to considerations of relation and belonging. In other words, if we are talking about Stranger A and Stranger B, and moral considerations militate towards A's favor,

²⁹ See generally *id.*

there are situations in which, if that B were a relative, then the moral determination would change towards B's favor.³⁰

Preference such as this as well can be claimed whether as regards rights or as regards duties, whether these are proactive duties (justification to save a relative who is in a worse situation than a stranger, or justification to save a relative instead of two strangers), or duties to avoid causing harm (justification not to prevent harm to a stranger by a runaway trolley³¹ even though the stranger will suffer worse injury than the relative will suffer, or justification not to prevent harm to two strangers in order to prevent harm to one relative, with the assumption that the duty to prevent harm is equal when we are discussing two people whose injury would be to the same degree³²) or the degree of non-morality in violating a negative duty (it is worse to harm a relative even when the harm to the relative is less than the harm to a stranger, or it is worse to harm a relative than to harm two strangers).

This category does not emerge from the previous categories, because it does not address the very existence of a reason to be partial to relatives, but it addresses the weight of this reason. In order to claim that the reason for partiality is not compelling in a case of gross equivalence only, but also in a situation in which it is justifiable to show preference towards strangers due to reasons not based on relation and belonging, we may assume that the weight of the reason for partiality towards relatives is sufficiently strong to reverse a tentative decision in favor of strangers.

The distinction between cases of gross equivalence and cases in which the point of departure is balanced in the favor of strangers is the distinction between a qualitative situation as to the very existence of a reason and a quantitative state of the weight of that

³⁰ *Id.* at 52.

³¹ See generally Laura D'Olimpio, *Trolley dilemma: would you kill one person to save five?*, THE CONVERSATION (June 2, 2016), <https://theconversation.com/the-trolley-dilemma-would-you-kill-one-person-to-save-five-57111>.

³² SCHEFFLER, *supra* note 27 at 53.

reason, given that it exists. When it is a case of gross equivalence, the weight of the reason to prefer relatives is not influential; its mere existence suffices. Even if it is light as a feather, that is enough to determine in favor of preference for relatives. When it is a case of gross equivalence, the question of the weight of the reason becomes superfluous. On the other hand, when the point of departures is not gross equivalence but balance in favor of strangers, it is necessary to address not just the mere existence of the reason, but its weight as well. In the category of weight, there may be an infinite number of states, from light to heavy, but the essential distinction between the mere existence of the reason and its weight is significant.

When the duties of a higher order are not compelling among strangers, they are compelling between strangers and relatives— if we assume that negative duties are stronger than positive duties, and if despite this, in a given circumstance, it is justified to cause harm to Stranger A in order to benefit Stranger B, then if Stranger A were a relative, this would not be justifiable. If we assume that the duty not to cause harm is stronger than the duty to prevent harm, but nonetheless in a given circumstances it is justifiable to cause harm to Stranger A in order to prevent harm to Stranger B, then if Stranger A were a relative, this would not be justifiable.³³ This category is a specific case in which the reason for partiality is of sufficient weight in order to outweigh the weaker duty (the proactive duty) that, when strangers are involved, becomes a determinative duty. In other words, it is insufficient that there is an apparent reason for partiality, but here there is an argument about the weight of the reason, so that it has the capacity to overcome the preference of the stronger duty, such as a negative duty.

A greater power of duties towards relatives, even when the duties towards strangers are from a stronger type— according to this approach, if we assume that the negative

³³ *Id.* at 52-53.

duties are more powerful than the proactive duties, it is feasible for there to be a situation in which it is justified to cause harm to a stranger in order to benefit a relative. If we assume that the duty not to harm is stronger than the duty to prevent harm, in any case it would be justifiable to harm a stranger in order to prevent harm to a relative.³⁴ Here as well, the argument concerning the weight of the reason for partiality overcomes the stronger duty (such as a negative duty versus a positive duty), in addition to the very existence of the reason for partiality.³⁵

Part II: The Normative Discussion

2.1 Special Difficulties Justifying Behavior to Benefit the Other due to Reasons of Relation and Belonging in Situations of Interpersonal Conflict as Regards Universality, Equality and Impartiality.

Interpersonal conflict exists when we have a prima facie reason to justify behavior due to a norm or value which apply to one person, and on the other, we have an apparent reason not to justify this behavior because of a norm or value applicable to another person. The interpersonal conflict exists for example when two rights clash (when the right of A impinges on the right of B) or two duties (when A's duty does not allow the fulfillment of B's duty) or a right and a duty (when A's right does not allow the fulfillment of B's duty or the duty of A does not allow the realization of B's right).

These situations may exist when the argument is made for a person's right to provide benefit for a relative or a person's duty to do the same, but that right or duty harms another person. A person may be able to save only one person out of two, either a relative or stranger; saving the relative means failing to save the stranger.³⁶

³⁴ *Id.* at 52.

³⁵ For more background on particularity, see generally John Cottingham, *Partiality, Favouritism and Morality*, 36 PHIL. Q. 357 (1986).

³⁶ See generally Jennifer Wilkinson & Michael Bittman, *Relatives, Friends and Strangers: The Links Between Voluntary Activity, Sociability and Care*, SOC. POL. RES. CTR. (Sept. 2003), <https://www.arts.unsw.edu.au/sites/default/files/documents/DP125.pdf>.

Here we may confront conflicting duties to rescue. Another example is that of a state defending itself from terror; it may undertake pre-emptive operations of terrorists in order to protect its citizens, killing those uninvolved in terror at the same time. This situation presents a conflict between the right to life of the citizens of that state and the state's duty to protect its citizens, on the one hand, and the right to life of those civilians who are uninvolved in terror, on the other hand. When there is interpersonal conflict, the moral solution is to balance the conflicting reasons or norms (or the rights or duties which are in conflict).³⁷ However, in a case in which the reasons for the behavior are those of relation, there is a moral difficulty to justify such behavior when there is interpersonal conflict.

It appears that there is no difficulty to justify behavior to benefit the other due to reasons of relation and belonging when no interpersonal conflict is at issue, when the moral agent wants to benefit a relative and no other is injured by this action. In this case, the moral permission or the right of the moral agent to help the relative is based on the general principle of liberty, based on the assumption that any argument to limit it requires a reason or a justification. Without a person being harmed by this behavior, there is no reason or justification to restrict the behavior of the moral agent or to prevent the moral agent from realizing the desire to provide benefit to a relative.

However, when there is at least one person who is harmed by the beneficial behavior (aside from the moral agent), special moral difficulties arise as to justifying this behavior. These difficulties apply to all states of interpersonal conflict in which one of the sides wants to provide benefit to a relative. Unlike standard states of interpersonal conflict,

³⁷ For more discussion on the philosophical arguments on moral justifications for aggressive counter-terrorism, see Craig Hammer, *Patriotism, Nationalism, and the War on Terror: A Mild Plea in Avoidance*, 56 FLA. L. REV. 933 (2004).

in which the moral solution is to seek balance in every case on its own terms, the issue of benefiting relatives raises essential problems.

According to the special difficulties argument, any preference shown towards another in a case of interpersonal conflict clashes with three moral norms: 1) the norm which requires morality to be universal; 2) the norm of equality among people; and 3) the norm concerning impartiality in relationships among human beings. If we combine these elements, then the argument is that showing preference to the other due to relation and belonging in a case of interpersonal conflict clashes with universality, equality and impartiality.

2.2 Universalism and Particularism

Different objects have different characteristics, for example the color red. When we say that an object is red, this means that any other object which is similar in the relevant aspect will also be red. This means that the quality of redness is universal, i.e. that it can be generalized. If being red for a specific object means that specific circumstances pertain to make the object red, then every object subject to the same circumstances would also be red.³⁸

On the other hand, a non-universal characteristic is one which is unique, particular, idiosyncratic, cannot be generalized, and applies only to a specific object and nothing else. These are objects with specific indicators, either personal names or demonstratives.³⁹

The argument that morality is universal, or that at least it ought to be universal, is an argument that the “moral” description is a universal characteristic. If the decision in any given situation is that certain behavior is moral behavior, this determination is based on

³⁸ R.M. HARE, FREEDOM AND REASON (Oxford Scholarship Online 2003) (1965).

³⁹ For more on the definition of universalism and its distinction from particularism in terms of personal names and demonstratives, see Philip Pettit, *The Paradox of Loyalty*, 25 AM. PHIL. Q. 163, 165-168 (1988) (Personal names and demonstratives (such as this, that, these) mark the characteristic, unique quality of a subject or object. In Latin, this phenomenon is known as *Haeccitas*, or *Thisness* in English).

the specific circumstances of the situation. This means that in any other situation to which those circumstances apply, we must reach a similar decision concerning that type of behavior. If we have decided that such behavior is moral in the previous situation due to its circumstances, then in another situation in those circumstances, similar behavior would also be regarded as moral (and the same applies if the behavior is non-moral).⁴⁰ For example, an argument that Person A has a duty to rescue Person B from a fire under certain circumstances is a moral-universal argument in the sense that in any other situation of a fire in certain circumstances when another person is in similar circumstances to that of Person B, for any person in similar circumstances to Person A, there would be a moral duty to rescue that person.

The universal argument of ethics applies to all deontic categories of behavior and to all involved in the situation. We may demonstrate this in situations in which the moral agent and the person affected by the action switch places in a similar situation. Let us assume that in Situation A we have the moral agent and the person affected by the activity. If a deontic category applies to the moral agent towards the person affected by the activity, e.g. one has the moral permission or moral right or moral duty or moral prohibition or supererogation concerning any behavior of the agent towards the person affected, then in Situation B, under similar circumstances, when the agent is in the affected person's position and the affected person is in the agent's position (i.e. they switch places), then that deontic category would apply to the new moral agent, who was formerly the affected person. This is true also when the behavior under discussion is harmful or damaging, so that the agent is the one inflicting damage or harm and the affected person is the victim. If the agent in Situation A believes that it is morally permissible, or that there is a moral right or a moral duty to inflict harm or damage upon the affected person, then moral universalism demands

⁴⁰ See HARE, *supra* note 38, at 15.

that, in Situation B, when the agent is in the position of the affected person, that individual must accept that the new moral agent (who was the affected person in Situation A) will now inflict damage or harm on the new affected person, and the infliction of this harm or damage upon him or her will be with permission, by right or as a duty — just as it was in Situation A when the affected person (the victim) was in the position of the agent (the inflictor of harm).⁴¹

According to Marcus Singer, in ethics, there is a generalization principle; in addition, there is a well-founded argument called the generalization argument.⁴² A person who does not fulfill the principle of generalization and the argument of generalization acts, according to Singer, in a non-moral way.⁴³ According to the generalization principle, anything which is morally justified for Person A is morally justified for anyone who is similar to Person A facing similar circumstances; anything which is not morally justified for Person A is not morally justified for any person like Person A facing similar circumstances.⁴⁴ The generalization argument states that the moral agent must think of the consequences of a given action as if everyone were to emulate his or her example. For example, if the consequences of everyone following his or her example would be negative, then the action should be eschewed.⁴⁵ In other words, one cannot allow oneself to take an action which, were everyone to follow suit, would cause bad results. For the same reason, a person cannot grant such a permission to his or her relatives, or assist them, or appeal to them, to execute such an action.

Universalism is expressed in the many situations which are similar in their properties and circumstances. In what sense must the properties be similar? Hare argues

⁴¹ *Id.* at 90-1 (providing an example of universalization of moral discretion in a creditor-debtor situation regarding imprisoning the debtor in debtors' prison).

⁴² See generally MARCUS G. SINGER, GENERALIZATION IN ETHICS 5 (1963).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 3-4.

that the situations must be similar in their universal properties, as opposed to being similar in their non-universal or particular properties. In order to clarify the argument, we must clarify what the term “universal property” means.

A universal property is properties which may exist in many subjects; a particular property exists only in one subject.⁴⁶ A universal property of a subject allows this property to be a common denominator with other subjects. A particular property is, necessarily, not a common denominator with any other subject. This is a unique (idiosyncratic) property for this subject and only this subject. A particular property is the property of identity, distinguishing this specific subject from every other subject which may bear any similarity to it. A universal property may be replicable, while a particular property is necessarily singular. There is no recurrence of such a property. A particular property is nominal, a proper noun, and it is peculiar to one unique subject or one unique group, while a universal property is a general, common noun in an open group of specific elements. The distinction between universalistic property and particularistic property parallels the distinction between a personal name or demonstrative and a description (or descriptive property).

A personal name or a demonstrative does not replace a list of descriptive qualities. For example, the name Theodor Herzl is not equivalent to the description “author of *Der Judenstaat*.” We can conceive of worlds in which Herzl did not write *Der Judenstaat*. However, there is no world in which Theodor Herzl is not Theodor Herzl, nor is there a world in which Theodor Herzl is actually Immanuel Kant.⁴⁷

The particular moral claim is a moral claim which relates to a particular property, particularism of place: “In England, no man ought to marry his sister.”⁴⁸ England refers to

⁴⁶ R.M. HARE, *SORTING OUT ETHICS*, 22 (Clarendon Press, 1997).

⁴⁷ See SAUL KRIPKE, *NAMING AND NECESSITY* 48 (Harv. U. Press, 1980) (Kripke terms an expression as denoting the same object in every possible world as a rigid designator. This means that personal names are rigid designators).

⁴⁸ HARE, *supra* note 38, at 36 (modifying Hare’s example of a particular legal argument: “It is illegal in England to marry one’s own sister”).

a specific geographical location. Universal claims, on the other hand, are of the following sort: “No man ought to marry his sister” or “No man ought to marry his sister in a country in which it is forbidden by law” or “No man out to marry his sister in a society in which societal norms forbid this.”

An example of particularism of time is in the following sentence: “Every person born in 1993 must serve in the military.” A universal claim would be the following: “Whoever has reached the age of eighteen years must serve in the military.”

An example of particularism of person is in the following sentence: “Iago must not tell Othello that Othello’s wife betrayed him.”⁴⁹ A universal claim would be the following: “A man must not tell another that the latter’s wife betrayed him.” Here we ought to note that the above examples of particular sentences are based on the fact that the particular characteristics are the final reason, which does not depend on another universal reason. On the other hand, if the particular sentence relies on another universal reason, then it is ultimately universal.

Let us demonstrate this: “In England, no man ought to marry his sister” is particular, as long as “In England” is a final reason which is not reliant on another universal reason. However, if the reason for “In England” is reliant on another universal reason, such as “because in England it is illegal to marry one’s sister,” then “In England” is reliant on the universal reason of “legal prohibition,” and ultimately the reason is universal “because of the legal prohibition.”

Thus, if the reason for “Every person born in 1993 must serve in the military” is that every person born in 1993 has reached the age of eighteen, then the reason is ultimately universal. Only if the reason of being born in 1993 is final, without any reliance on a universal reason for why 1993 justifies a duty of military service, is the sentence particular.

⁴⁹ See generally WILLIAM SHAKESPEARE, *OTHELLO*.

Considering particularism and universalism of groups, we may say that a particular argument about a group relates to a closed group by the names of the members, as opposed to a universal argument about a group, which relates to properties which constitute criteria for belonging to a group, so that different individuals may belong to it if they have the relevant property for belonging. This means that argument based on age (a group of children), sex (or gender) and race are universal arguments. However, as Raz justifiably notes, an argument about an ethnic group such as “Russians” is not universal⁵⁰ due to the group’s association with a specific place, Russia. Specific points in space (and in time) are singular phenomena. There is no other place called Russia aside from the specific location known as Russia. On the other hand, “being a woman” or “being white” are phenomena which may be replicated in many places and at many times.

Raz argues that this conclusion is unsatisfying, since intuitively, any arguments based on gender or on race are not conceived of as universal.⁵¹ When we address universal rights, we mean that that all people have them, and discrimination against groups by race or sex is not considered universal.

Therefore, Raz examines an additional condition for defining universalism: if there is a property that a number of individuals may display, then in principle it is possible that every individual can display it.⁵² However, Raz rejects this proposal, since the right of a person to be the first student in the youngest university is a right that very few people may realize. Similarly, even if we assume that gender is an aspect of one’s personality that anyone may change, it is not convincing to say that an argument limited to gender is universal, since de facto the procedure is not available for most people.⁵³

⁵⁰ See JOSEPH RAZ, *VALUE, RESPECT AND ATTACHMENT* 55 (Cambridge Univ. Press, 2004) (explaining why characteristics that apply to all children, all women or men, and racial characteristics are universal, but the attributes that apply to all Russians are not).

⁵¹ *Id.*

⁵² See generally *id.*

⁵³ *Id.* at 55-58.

We believe that one should leave the definition of universality as presented above, since the unsatisfying nature of the conclusion emerges from a blurring of the distinction between universalism and equality. What is objectionable in terms of the intuitive moral ramifications of this definition emerges from the expectation that the conditions of universalism will also embrace equality. On the other hand, the conceptual distinction between the two highlights that in order to satisfy our expectations of the conceptual analysis, we should not be satisfied with universalism, but we must reach for equal universalism.⁵⁴

An additional conceptual distinction between universalism and generality is that the opposite of universal is particular, while the opposite of general is specific. Between universalism and particularism, we have a dichotomous distinction, while the distinction between generality and specificity is a continuum. The argument “A man ought not lie to his wife” is more specific than the argument “A man ought not lie.” However “A man ought not lie to his wife” is universal, not particular, because it does not address a proper noun.⁵⁵

This means that we must reject David Miller’s distinction between universalism and particularism.⁵⁶ Miller argues that moral universalism addresses generic human abilities, while particularism addresses relational facts tied to a unique network of interactions. Miller argues that the duty to help Tom because he is in need is universal, as it related to the property of neediness, which is generic.⁵⁷ On the other hand, assisting someone “because he is my brother” is particularistic, in Miller’s view.⁵⁸

⁵⁴ Concerning equality, see below, 2.3.

⁵⁵ On the distinction between universalism and generality, see HARE, *supra* note 38, at 39-40. John Rawls has a different conceptual viewpoint of universalism and generality. Rawls uses generality to refer to what we call universalism; in other words, generality for Rawls is the absence of particularism. Universalism according to Rawls is the lack of discrimination based on race or class; in other words, universalism for Rawls is what we call equality. JOHN RAWLS, A THEORY OF JUSTICE 131-132 (Harvard Univ. Press, 1971).

⁵⁶ See generally DAVID MILLER, ON NATIONALITY (David Miller & Alan Ryan eds., 1995).

⁵⁷ See generally *id.*

⁵⁸ *Id.* at 49-50.

However, in light of what we said above, universalism does not require being generic; it is enough that it is not particular.⁵⁹ The argument that a person's duty to help his brother has precedence over one's duty to help a stranger is not generic, but it is still universal. It does not relate to one unique individual, but to all individuals who have siblings; therefore it is not particular.

This argument is subject to generalization; in other words, it is universal.⁶⁰ If the reasoning were "we should help Tom because he is Tom" or "we should help Tom because he was born on the 21st of May," then the reasoning would be particularistic (assuming that there is no universal explanation for why being born on the 21st of May should justify helping Tom).

At this point, we need to distinguish between agent-relative justifications and particularistic justifications. Thomas Nagel distinguishes between agent-relative and agent-neutral justifications.⁶¹ An agent-neutral justification is a reason which does not refer to the person who maintains this reason.⁶² For example, the reason for a person to reduce poverty in the world is agent-neutral. An agent-relative justification is a reason which does refer to the person who maintains this reason; e.g. the reason to advance the personal interest of the agent.⁶³

Must an agent-relative reason necessarily be particularistic, or may it be universal? The question is how we understand an agent-relative reason. Nagel's definition is that it is a reason which refers to the agent; however, the term "agent" is a general one, which may include a number of elements.⁶⁴ We may relate to a property of the agent which is not

⁵⁹ See generally Alan Gewirth, *Ethical Universalism and Particularism*, 85 THE J. OF PHIL. 283, 300 (1988).

⁶⁰ If the claim is universal, this does not mean that it fulfills the principles of equality or impartiality. For more information, see below 2.3 and 2.4.

⁶¹ See T. NAGEL, *THE VIEW FROM NOWHERE* (Oxford Univ. Press, 1986).

⁶² See *id.*

⁶³ *Id.* at 152-153.

⁶⁴ See generally *id.*

unique, which may be present in many individuals (for example, the agent's being sick, the agent's being someone's brother), and we may relate to a unique property which exists only for the agent (having an interest which is the agent's interest, not that of any other person). In addition, the reason which relates to the agent may have a general justification, such as in the following formulations: "I am sick and entitled to medication, just as any sick person is entitled to medication;" "This is my brother and I must help him, because any person must help his or her brother;" "This is my interest, and I am entitled to promote it because everyone who has a personal interest is entitled to promote it." It may also be particular justification, as in the following formulation: "I am sick, therefore I am entitled to medication, because my interest in medication is my interest alone;" "This is my brother, and I must help him because my interest in my brother's welfare is my interest alone;" "I must promote my interests because they are mine."

We may understand the agent-relative reasons in a weak sense, and in this sense, they may be universalized. The reason indeed refers to the properties of the agent, but this property is not unique, and it can, at least in theory, be present among others as well, and in addition the justification of the reason is not due to the interest of the agent being his or hers. In other words, even though this is the agent's interest, this fact does not constitute a justification, because his or her interest is a specific case of personal interest, and in this case the fact is that it is the agent's interest. In such a situation, the justification "Because he is my brother" may be universalized. On the other hand, if we understand the agent-relative reason in the strong sense, then it cannot be universalized, because it relates to a property which is unique to the agent (the interest being his or hers alone), and the justification for this reason is a justification which gives a unique value to the interest being that of the agent alone and not of anyone else. The viewpoint which states that morality must be universal or that universalism is a prerequisite (even if it does not suffice on its

own) for moral correctness is moral universalism, while the viewpoint which states that an argument can be moral even without being universal is moral particularism.

Within moral universalism, there is a meta-ethical argument, according to which universalism is an element defining the sphere of morality as a whole. According to this viewpoint, in order for a philosophy to be considered moral and within the moral realm, it must be universal. This means that any particularistic argument is beyond the realm of morality, i.e. non-moral or amoral.⁶⁵ Another version of moral universalism is an argument of normative ethics. According to this version, particularism arguments are part of the realm of morality, but they are morally mistaken, making them non-moral.⁶⁶

2.2.1 Justification of Universalism and Rejection of Particularism

Hare presents the following argument to justify universalism. Descriptive claims such as “This is red” lead to the claim that “Anything which is comparable to this, from the relevant perspective, will be red.” If someone identifies an object as red but denies that everything like it from the relevant perspective will be red as well, this is an erroneous use of language. The term red describes a certain type of properties, and anything with these properties would be red as well. This means that descriptive claims cannot be particular.⁶⁷ In order to determine what is similar from a relevant perspective, there must be an indication of what in that object makes us define it as red. The answer to this question is

⁶⁵ Hare supports meta-ethical universalism. In his view, the fact is that moral judgment is a universal judgment, not a substantive moral principle, but a logical argument stemming from the use of language. According to him, to speak of what one ought to do demands universalism; *see* HARE, *supra* note 38 at 30. Bernard Williams distinguishes between ethics and morality, as morality is a subsystem of ethics. According to him, loyalty to family, community or nation, in opposition to universalism, may be expressed ethically but not morally. Williams, like Hare, sees universalism as a prerequisite for morality; unlike Hare, Williams does not see universalism as a prerequisite for ethics. *See* BERNARD WILLIAMS, *ETHICS AND THE LIMITS OF PHILOSOPHY* 14, 174-197 (Harvard Univ. Press, 1985).

⁶⁶ Deciding between meta-ethical universalism and normative ethical universalism is beyond the scope of this essay. The relationship to moral universalism will follow either of the two. Similarly, in opposition to Williams, we will not distinguish between morality and ethics; “morality” includes the sphere which Williams defines as ethics. *See* BERNARD WILLIAMS, *ETHICS AND THE LIMITS OF PHILOSOPHY* 14, 174-197 (Harvard Univ. Press, 1985).

⁶⁷ HARE, *supra* note 38, at 11-12.

the determination that everything else which maintains these properties that make us call it red will be defined as red as well.⁶⁸

This is the situation not only for descriptive claims, but prescriptive sentences as well which express a value along the lines of “This is good.” If something is “good” or “appropriate,” it must be so due to specific qualities, and should these specific qualities pertain to another thing, they would establish the “good” or “appropriate” property of that other thing as well.⁶⁹

Hare’s argument is, in practice, that consistent thought demands that we accept universalism, as we cannot consistently argue in favor of moral judgment which is not subject to generalization.⁷⁰ In our view, Hare’s justification does not support moral universalism. We may make a particular claim without engaging in inconsistency. If we are to address the claim “This is red,” then we can define the property which make that thing red, as well as adding the property of its being in a certain time or place. For example, a prerequisite of X’s being red is X’s existing on 2 March, 1986; or a prerequisite of X’s being red is its being located at a certain point in space. If this is how we define “red,” this means that the definition is particular, but on the other hand there is no inconsistency since *prima facie* the term is defined by a specific time or place.

Similarly, “good” or “appropriate” may be defined in particular ways related to time or space. The objection to this does not emerge from the particular nature of the definitions, but rather because it is necessary to explain what is wrong with particularism. In our view, the support for universalism must come from elsewhere. We propose that the support come from the irrelevance in value of differentiation in space and time, or the argument of the lack of sufficient reason for time-space differentiation.

⁶⁸ *Id.* at 13-14.

⁶⁹ *Id.* at 15-16.

⁷⁰ *Id.* at 16.

According to this argument, distinctions due to different locations in space or time do not constitute a sufficient reason for an action or preference, and thus they do not support a value-based, moral argument.⁷¹ If we have already decided that something is in keeping with morality and values, then the fact that only the location in space or time has changed does not constitute a sufficient reason to alter the decision. Whoever claims otherwise has the burden of presenting a convincing argument that the time-space alteration constitutes a reason to reevaluate the moral conclusion. We may say that pointing to the time-space change in itself constitutes a naturalistic failure, since the very fact of the time-space differentiation is indicating a fact, and we cannot transition directly from indication of a fact to a moral conclusion.

Thus, if we have decided that from a moral standpoint that Person A has the right to do something to Person B, when A and B switch places, but all the other characteristics are identical, the only alteration which has occurred is a change in space (the individuals are in another place) or a change in time (they are in the same place but at another time). If we cannot support that a time-space change is morally relevant, then switching places cannot be morally relevant.

From this, it emerges that moral universalism is the approach that we should accept, while moral particularism is the approach we should reject.⁷²

2.2.3 Equality and Discrimination

Generally, an argument for equality includes universalism, which is defined as equal treatment for those who are equal, different treatment for those who are different. However, an argument for equality requires something else, that the different treatment for those who are different be morally justified as a relevant difference.

⁷¹ See generally *id.*

⁷² For more discussion on this topic, see generally Daniel Callahan, *Universalism & Particularism Fighting to a Draw*, 30 HASTINGS CTR. REPORT 37 (2000).

The demand for universalism is a formal demand, independent of content. The demand for universalism assumes a generalization of any practical decision on its own terms, without moral criticism of the content of the practice, as long as the practical decision applies to all similar situations. On the other hand, the demand for equality is morally critical of the practical decision itself, so that it is not merely formal, but depends on content.⁷³ For example, if we take the decision to withhold from a black man certain benefits extended to a white man, this decision may be generalized in the following way: “Whenever benefits are extended, white men should receive more than black men.” This is a universal statement. It does not criticize discrimination based on skin color. The argument of equality does criticize the relevance of discrimination based on skin color. An argument that states that it is morally unacceptable to use skin color as a relevant difference for extending benefits is an argument which criticizes the universal decision from the perspective of equality — despite the fact that the decision is universal.⁷⁴ A failure to apply the principle of equality constitutes discrimination.

2.3.1 The Relationship between the Principle of Universality and the Principle of Equality

Universalism is a prerequisite, though insufficient in its own right, for the establishment of the principle of equality. Any abrogation of universality is necessarily an abrogation of equality and, as discussed above, preference towards people due to their particular properties (their different location in space and time) cannot be justified. Since

⁷³ See generally Andre Beteille, *Equality & Universality*, 36 *ECON. AND POL. WEEKLY* 3619 (2001).

⁷⁴ In this way, substantive equality expresses the principle of Aristotelian formal justice: applying the same criterion of division among all, and not necessarily the distribution of equal portions. See ARISTOTLE, *NICOMACHEAN ETHICS* 80-82 (D.P. Chase, trans., Dover Publications, 1998). In Israeli jurisprudence, the principle of equality is substantive and not formal, thus substantive equality demands equal treatments of equals and different treatment of those who are different in the context of some relevant characteristic. See DN 10/69 Baranowski v. Chief Rabbi of Israel Nissim, et al. PD 25(1) 7, 35; HCJ 528/88 Avitan v. Israel Land Management et al. PD 43 (4) 297, 299; HCJ 678/88 Kfar Veradim, et al. v. Minister of Finance, et al., PD 43 (2), 501, 507-508.

the gap between individuals in terms of the space-time continuum is not justified, treating different people differently on this basis is discrimination.

On the other hand, not every abrogation of equality is an abrogation of universalism. Universalism may be unequitable or discriminatory. As Raz demonstrates,⁷⁵ relating to different people differently due to gender or race is universal.

For example, we may universalize the distribution of medication based on skin color: “All medication should be distributed based on the skin color of the recipient.” This is not a particularistic directive, because it does not apply to a singular, unique individual; rather, it is applicable to all people based on this criterion of skin color. As stated, Raz points out how uncomfortable this conclusion is.⁷⁶ We may propose a solution for this discomfort. Moral outrage towards this decision is not based on the lack of universalism, but on discrimination, i.e. the abrogation of the principle of substantive equality. Even though the principle of distribution is universal, it requires that different people be treated differently based on a property which is unjustifiable: the color of one’s skin. Universalism is a prerequisite for moral justification, but it does not suffice. If substantive equality is violated, then the outcome is immoral, despite its universal quality. Universality is neither equitable nor discriminatory.

2.3.2. Justification of the Principle of Equality

Justifying the principle of substantive equality expresses the argument that differential treatment of people based on some characteristic they exhibit must be sufficiently reasonable. Differential treatment of people may have negative ramifications from a moral perspective.

⁷⁵ RAZ, *supra* note 50, at 50.

⁷⁶ See generally *id.*

First of all, differential treatment is likely to cause a withholding of benefits or an undue burden upon one or more of the subjects of this unjustified treatment. Differential treatment violates one's rights, by violating the very equality of rights. For example, if Person A rescues only one of two people due to some unjustified properties, then there is unjustified harm to the person who was not rescued by the very fact that this person was not rescued, impinging on his or her rights and welfare without any good reason to refrain from saving him or her. In other words, discrimination is unjustifiable preference for the welfare of others while neglecting the welfare and needs of the person discriminated against.

Second, differential treatment is likely to cause feelings of deprivation and violation of human dignity due to the very existence of differential treatment. The deprived person is likely to feel that he or she is insignificant or without value in the eyes of others.⁷⁷

Third, differential treatment due to a property which is part of one's identity (such as belonging to a given national or ethnic group) is likely to cause violation of human dignity due to the shameful treatment based on the property which the person sees as an intrinsic part of his or her identity.

Fourth, differential treatment due to an immutable property (or one which can only be altered with great difficulty) imposes an injury upon a person due to a state of being which is not his or her fault; this is unjust, much like punishing the innocent.

Fifth, differential treatment due to a property which is mutable impinges upon human liberty, personal autonomy and the right to claim this very property. If people are entitled to such a property (such as belonging to a given nation), or if there is some value to broadening the range of options for them to choose among different properties, then

⁷⁷ Andrei Marmor, *The Intrinsic Value of Economic Equality*, in *RIGHTS, CULTURE, AND THE LAW: THEMES FROM THE LEGAL AND POLITICAL PHILOSOPHY OF JOSEPH RAZ* 127-41 (L. H. Meyer, S. L. Paulson & T. W. M. Pogge eds., Oxford Univ. Press, 2003).

differential treatment due to this property creates a threat and pressure towards those who exhibit it to quash it. This impinges on human liberty, as it creates a sanction due to the chosen properties' existence; it also impinges on personal autonomy by limiting the range of options which people may choose without being subject to sanction.

2.4 Impartiality and Partiality

Impartiality is behavior in which the moral agent does not treat a given person differently due to some relationship between that agent and the subject. We may derive from this that partiality means treating a given person differently due to such a relationship between the agent and the subject.

Partiality may be intrinsic or instrumental. Intrinsic partiality applies when the impetus towards partiality is valuing the other or valuing the link with the other, without accomplishing any goals beyond this. Instrumental partiality exists when the impetus towards partiality is valuing the other or valuing the link with the other, as dependent on accomplishing goals beyond the other or the link itself, such as some personal interest of the agent. For example, instrumental partiality could be a case of bias in order to ingratiate oneself to the other, so that the other will give the agent some benefit in return. Partiality of this type is not what this essay deals with, because it has nothing to do with belonging or relation.

When the partiality is related to an intrinsic value, the connection which is the basis for distinguishing between partiality and impartiality has two elements: 1) an association of relation or belonging, and 2) an attraction or sympathy which the moral agent feels towards the other. Not every case of special treatment of another constitutes biased behavior. The question is what the justification or reason for that special treatment is. If the reason is not relation or belonging, and it is also not the attraction or sympathy the agent feels towards the other, then this is not a case of partiality. Similarly, if the moral agent bestows special

treatment because of a sense of duty, and this duty is not based on relation or belonging, then there is no partiality.

For example, a doctor treats a patient specially because of that patient's medical condition. This treatment has nothing to do with relation or belonging, nor other factors of attraction or sympathy, and so even though this treatment is special, it is not defined as partiality.

However, when the source of the partiality is attraction and sympathy, then there is partiality in it because of the sources of this sympathy, those properties which inspire the bias, such as physical-aesthetic attraction or ideological sympathy.⁷⁸ This attraction can be due to a preexisting relationship, but not necessarily. The partiality due to attraction may exist at first sight.

When the source for the partiality is belonging and relation, there is not necessarily attraction and sympathy. X may suddenly discover a relationship to Y, and even though Y is not attracted to X and there is no sympathetic characteristic which they share, X may still demonstrate partiality in the light of these ties of relation. It is possible that partiality may integrate motivations of relation and belonging and motivations of attraction and sympathy, but the integration is not necessary.

The justification for this conceptualization of partiality stems, in our opinion, from the assumption that partiality is a special personal relation due to a personal connection between the moral agent and another person, when the moral agent has a personal interest to give special treatment to another person. The agent has special interest due to their personal association, as opposed to some formal criterion which is not personal, such as the special situation of the other. If partiality demands a personal relationship, the possible

⁷⁸ See generally Niko Kolodny, *Which Relationships Justify Partiality? General Considerations and Problem Cases*, 38 PHIL. & PUB. AFFAIRS 169 (2010).

sources of the personal connection are relation and belonging, as well as attraction and sympathy.

It may be that impartiality exists despite the associations of relation and belonging; however, the reasons for special treatment of the other do not take these associations of relation and belonging into account. Partial treatment due to relation and belonging is treatment in which the discretion concerning benefiting the other takes into account the associations of relation and belonging between the giver of the benefit and the recipient.

The reason to benefit others can *prima facie* be a reason which is not determinative. In other words, it may be that this reason will be outweighed by counterarguments, such as the rights of others or duties towards others; i.e. despite the *prima facie* reason to grant the benefit to the other, at the end of the day, there will be no act to benefit the other. However, the *prima facie* reason may also be the determinative reason, if the giver decides that there are no counterarguments, or that those counterarguments are outweighed by the reason to be partial.

2.4.1 Volitional Partiality and Partiality out of a Sense of Duty

Partiality in this essay is a state in which relation and belonging constitute a reason to bestow a benefit upon another. As stated above, the giver may conclude that such a reason exists from various deontic categories: moral permission or moral right or moral duty or supererogation. When partiality is because the agent sees it as permission, right or supererogation, then it is volitional; this is as opposed to partiality out of a sense of duty.

When partiality is motivated by attraction or sympathy between the parties, then it is volitional, not obligatory.⁷⁹ In such a case, partiality is employed because a person wants to be partial, not because the agent feels duty to do so. The very attraction and sympathy testify to the desire to be partial, and so the feeling of duty is superfluous. We may say that when partiality is volitional, then the agent feels a commitment which he or she has accepted upon himself or herself, but not a moral duty to be partial.

When the source of partiality is relation and belonging, then the partiality may be volitional or out of feelings of duty. A person may not feel duty to be partial to a relative, but that person will want to do so because the subject is a family member or member of the same group; one may feel committed to do so, but not compelled. However, in the category of belonging and relation (unlike the category of attraction), partiality may be motivated by a feeling of duty towards one's relative. We ought to note that we are speaking here of a feeling of duty due to relation and belonging, not a feeling of special duty which is based not on relation and belonging, such as a lawyer's special relationship with his or her client.

If there is no attraction or sympathy, then in order for there to be partiality nevertheless, there must be an impetus of a feeling of duty. In order for a feeling of duty to exist along with the prerequisite of personal connection, this feeling of duty must be due to relation and belonging.⁸⁰

⁷⁹ For additional background on partiality and ethics, see Sophie Botros, *Hume, Justice and Sympathy: A Reversal of the Natural Order?*, 44 *DIAMETROS* 110 (2015).

⁸⁰ If the feeling of duty to help another is because of the character or appearance or ideology of the other, then the prerequisite of personal connection is not fulfilled, as then the motivation is the feeling of duty due to the evaluation of general character, the evaluation of general aesthetics, the evaluation of general ideology. Still, the very relation or belonging is already a personal connection in its own right. On the other hand, attraction (unlike duty) towards character, appearance or ideology expresses a personal connection because treatment due to attraction is not explained in a universal way, but rather in a particular way, towards the person to whom one is attracted. If someone else has those qualities of character, appearance or ideology, but there is no attraction towards that individual, then similar treatment will not be exhibited. On the other hand, duty towards those who have those aspects of character, appearance and ideology is impersonal and universal: there is a duty to treat similarly everyone who displays those aspects, wholly independent of any attraction towards that individual.

2.4.2. Partiality and Personal Treatment

Sometimes, Person A's behavior towards Person B is described as personal treatment, but personal treatment has two senses: 1) the agent invests in the needs of the other; 2) the agent gives preferential treatment to the other, in a way which is uniquely beneficial, relative to anyone else.

According to 1), personal treatment can be equitable. Here the personal treatment is expressed with the effort to approach the other, understand the other's needs and meet those needs. This personal treatment is described as "warm," unlike treatment which is cold and distant. There is no conceptual problem (as opposed to the problem of application in the real, empirical world) with extending this sort of personal treatment equally to everyone.

According to 2), personal treatment is necessarily unequal, from a formal perspective. This is special treatment for the recipient which is not given to anyone else; or if it is given to some others, at least it is not given to everyone.

Partiality constitutes personal treatment in sense 2), in other words partiality which is opposed to formal equality — special treatment which is not given to others. Partiality does not overlap personal treatment in sense 1). The reason for this is that partiality is, at the very conceptual level, a relationship of preference.

The moral agent shows partiality to X and not to Y (or, perhaps, to X's and not to Y's). The moral agent who shows partiality to everyone in an equitable manner does not show partiality to anyone. Rather, this agent treats everyone with equality. This means that impartiality does not contradict personal treatment in sense 1), but impartiality does contradict personal treatment in sense 2).

2.4.3 Partiality as a Special Responsibility and the Right to Partiality as a Special Right

Hart distinguishes between natural rights and special rights. A natural right is the right which every person has, while a special right is a right which exists only for certain people because of a certain relationship they have with other people or a certain thing which has been done. Hart notes four types of special rights: those based on promises, those based on consent, those based on natural ties (e.g. parent-child relations, as children have the right for their needs to be met) and those based on mutuality of restrictions to conduct joint enterprise.⁸¹

Due to this distinction, Scheffler distinguishes between general responsibility towards people in general and specific responsibility towards specific people, for example responsibility towards people due to a promise, towards people due to a contract, as repayment for damage inflicted, or out of gratitude for a benefit previously bestowed.⁸²

Special moral norms are norms which are not general, but may be universal. We have no essential difficulty to acknowledge rights or duties regarding specific people, and not towards everyone, e.g. the obligation to keep promises or express gratitude. Duties or rights which express partiality due to relation and belonging are a type of special duties or special rights. The duties of parents towards their children (not specifically in the context of meeting the needs of minors), children's duties to their parents, friends' duties towards their friends, duties towards members of a national group are duties towards a specific group and not generic duties towards everyone. The fact that they are not generic does not in its own right raise a moral quandary. If the very fulfillment of rights and duties which are not generic were morally invalid, there would be moral invalidity in the duty to keep promises, the duty to express gratitude, the duty to properly treat whoever has submitted to rules in a joint enterprise, and the duty for the damager to compensate the victim due to guilt. With the assumption (this is our assumption) that we do not see a moral defect in

⁸¹ H.L.A. Hart, *Are There Any Natural Rights?*, 64 PHIL. REV. 175 (1955).

⁸² SCHEFFLER, *supra* note 27 at 97.

the lack of generic quality of these duties and rights, the lack of generic quality does not undermine the duty to be partial due to reasons of relation and belonging or the right to receive partial treatment due to these reasons.

This essay deals with a special type of special rights, namely the norms which express partiality, i.e. responsibility for people who have an association of relation or belonging with the moral agent.

2.4.4 Partiality Due to Reasons of Relation and Belonging: Particularism and Universalism

Is there a contradiction between partiality due to relation and belonging, on the one hand, and universalism, on the other? The answer is no. Universalization of special rights or special duties is possible, and this means that universalization of partiality due to relation and belonging is also possible, as it is a specific instance of special duties or special rights.

We may say that a situation in which Person A has a special obligation towards Person B may be universalized in the sense that any other person in A's shoes, in certain circumstances, will have a special duty towards any other person in B's shoes in the same circumstances. A similar argument may be made concerning a norm based on rights. If Person A has a special right to demand of Person B certain behavior, in certain circumstances, then any other person in A's shoes in the same circumstances will have a similar special right to make that demand of any other person in B's shoes.

The special duty to keep promises is subject to universalization. If we claim that Person A is obligated to keep a promise to Person B, in circumstances in which a certain act is considered as a promise from A to B, for any other person who is in A's shoes and who executes a similar act, this act is considered a promise towards the subject, and therefore any other person, in the shoes of the one making the promise, must fulfill the

promise towards any other person, in the shoes of the one to whom the promise is made, in these circumstances.

We can apply this process to partiality due to belonging and relation as well. If we claim that a person has a right or duty to be partial to relatives over strangers, then we may generalize it in the following way: every person has the right or duty to be partial towards relatives and prefer them over strangers. This means that there is no contradiction between partiality and universalism.⁸³

We will present the argument in a formal way: if A is the moral agent in circumstance CA, if the relative of the agent is R in circumstance CR, and if the act of partiality is I, then for A, taking action I towards R is universally justified, if and only if taking that act is justified for every A in circumstance CA who takes action I on behalf of every R in circumstance CR.

We may offer an argument in favor of partiality towards relatives as a universal argument (as presented above) or as a particular argument. The argument for particularistic partiality is a personal-individual argument. According to this approach, a person has a right or duty to show partiality towards relatives, but the particularist will not necessarily or always accept the right or duty of another person, in that he or she will show partiality to his or her relatives.⁸⁴

The difference between the two moral agents who both justify partiality towards relatives, but one of whom is particularist and the other of whom is universalist, may be expressed in cases of interpersonal conflict. For example, Universalist U is related to Relative B. Particularist P is related to Relative C. B and C are both in danger. U and P can save only one of them. U makes the following claim: I have the right or duty to save my relative B, rather than C; but P has the right or duty to save C, rather than B. Then P will

⁸³ R.M. HARE, *MORAL THINKING* 140 (1981).

⁸⁴ For background on moral particularism, see Michael Ridge & Sean McKeever, *Moral Particularism and Moral Generalism*, *STANFORD ENCYCLOPEDIA OF PHIL.* (Nov. 22 2016).

say: I have the right or duty to save my relative C, and U as well has the right or duty to save my relative C. The particularist does not include his or her right or duty in a case which is similar in its universal character. The particularist is committed to saving his or her relatives, without recognizing the legitimate interest of others to save their relatives, as he or she recognizes the legitimate interest to save his or her relative.⁸⁵

We should note that one is not necessarily a particularist if one believes that he or she must save his or her relatives first, and others must also save the agent's relatives first. One may argue based on another universal claim. For example, let us imagine that someone is a hedonistic utilitarianist. The overwhelming principle of such a philosophy is pursuing the greatest pleasure to the greatest number of people. This is a universal principle. If the moral agent believes that if everyone were to act to save his or her relatives, then the outcome would be the maximalization of pleasure for the maximal number of people, then in such a case the argument in favor of everyone's action to save his or her relatives is an argument for the action which will maximalize general happiness (in the view of the moral agent).

In order for the moral agent to be considered a particularist, the claim that everyone should act on behalf of his or her relatives should not be derived from another

⁸⁵ Pettit argues that someone who says "Dick is in need" (assuming that Dick is a friend and deserves help) expresses particularistic partiality, as the reason for help is that the subject's name is Dick, and this is a particularistic aspect. In order for the treatment to be universal, one must say: "This, my friend, is in need." This sentence, in Pettit's view, is particularistic and universalistic at the same time. The particularistic perspective is expressed in the reference "This," and the universalist perspective is expressed in the phrase "my friend," and it does not include the personal name Dick. See Pettit, *supra* note 39, at 168-169. In our view, the transition from the personal name Dick to "This, my friend" is not relevant in terms of identifying it as particular, because the demonstrative replaces the personal name in a way which is rigidly individualized. We believe that the relevant distinction here is between a particularistic sentence which is the application of a universal directive, on the one hand, and a particularistic sentence which is in itself a particularistic directive, on the other hand. The directive "Help your friends when they are in need" is universal, while the application of the directive about a specific case will lead to the sentence "Dick is in need, so I must help him" as a particularistic sentence which emerges from the universal directive. On the other hand, the directive "Help your friend Dick when he is in need" or "Help this friend when he is in need" is a particularistic directive. In other words, the distinction is between particularism as a moral directive and particularism as the application of a universal directive.

universal argument, but rather it itself should be the supreme principle of morality or it should be derived from a different particularistic argument.

Is there a contradiction between particularism and impartiality? In our view, the answer is affirmative. A particularist towards an individual must necessarily observe partiality towards that individual. Particularism is expressed in seeking the benefit of the individual constantly, despite the sameness of the universal duty of the different situations. This also expresses the constant association which is partiality towards the individual. The same is true of particularism towards a certain group in relation to other groups. David Miller claims that there is no contradiction between particularism and impartiality, as the particularist can exhibit impartiality towards individuals within the particular group.⁸⁶ For example, the agent will act with impartiality among his or her children or countrymen.⁸⁷

However, here we must distinguish between the treatment of a group relative to what is external to the group, on the one hand, and the treatment of individuals in the group, on the other. A situation may arise in which the treatment of the group is particular as compared to others outside the group, but if we consider the group (which receives particular treatment) as a whole, then in terms of this whole, the treatment of individuals is universal. However, this is universalism relative to the whole, when the treatment of this whole as compared to other wholes is particularistic.

We disagree with Miller about this argument. A person who practices impartiality towards the members of his group expresses universal treatment towards the members of that group too. It is inconceivable for impartiality to be particularistic, as without treatment which emerges from attraction or from relation or belonging, any other treatment is not particular, but rather generalizable. True, this universalism has an effective scope which is

⁸⁶ See generally MILLER, *supra* note 56.

⁸⁷ MILLER, *supra* note 56, at 54.

less than global, which is limited to that group; but within that group, the treatment of its members is universal.

2.4.5 Partiality Due to Relation and Belonging: Equality and Discrimination

Is there a contradiction between partiality due to relation and belonging and equality? Is partiality due to relation and belonging discriminatory treatment? There is no doubt that partiality due to relation and belonging is discriminatory when the principle of equality is conceived of as formal equality. Formal equality means equal treatment of equals and equal treatment of those who are different; while partiality due to relation and belonging is different treatment of those who are different, on the basis of the moral agent's association of relation or belonging with the subject.

However, if we conceive of equality as substantive equality, this formulation justifies treating different people differently. Those associated by relation and belonging are different by this very fact, in comparison to strangers. However, merely pointing out difference is not enough to justify different treatment. Not every difference justifies different treatment, and thus we must examine whether the difference expressed in associations of relation and belonging does in fact justify different treatment. If the answer is affirmative, then partiality due to relation and belonging is in fact discerning treatment, i.e. it does not contradict the principle of equality. If the answer is negative, then partiality due to relation and belonging is discriminatory treatment, contradicting the principle of equality.

This means that the question of the relation between a lack of partiality and the principle of equality depends on the question of justifying partiality due to relation and belonging. The question of justification we will leave for another essay, and the results of that analysis will apply to the question of the relationship between impartiality and equality.

Let us present this formally: If A is the moral agent in circumstance CA, if the agent's relative is R in circumstance CR, and if the act of partiality is I, if the difference between R in circumstance CR and not-R is D, and if the relevant moral distinction is DR, then act I is justified in terms of equality if and only if A is in circumstance CA and R is in circumstance CR when not-R is in the relation of DR to R.

Above, we distinguished between universalist partiality and particularist partiality. In terms of equality, universalist partiality is more equitable, from a formalistic point of view, than particularist partiality. This is because universalism itself has an element of formal equality. Universalism expresses the principle that even when the treatment is different, the difference applies to everyone equally. If the moral agent is a universalist in partiality, then if the agent justifies showing preference to his or her relatives in certain circumstances at the expense of others, then in those same circumstances, he or she would allow others to prefer their relatives at his or her expense. The different treatment applies to everyone equally in the same circumstances. On the other hand, if an agent is a particularist in partiality, then the different treatment itself will be applied in a different way in the same circumstances. This means that the agent will justify different treatment to benefit his or her relatives at the expense of others, but of others he or she will demand different treatment of their own relatives in the same circumstances; the agent will not justify preferential treatment of their relatives at the expense of his or her own relatives. In other words, in particularist partiality, the difference itself is not equally applied.

Since universalist partiality is "more equal" as compared to particularist partiality, it does not emerge that universalist partiality is "equal enough" in order for the principle of equality to be fulfilled.

In order to apply the principle of equality, it is not enough for the difference to be applied equally. We must ask: is the difference itself (even if it is applied equally) justified in its own right? There are situations in which we will invalidate universal partiality because

it is not equitable enough. Let us assume that we have a racist doctor who prefers to treat whites rather than blacks. Even if the doctor claims (and we believe) that if he or she were black and in need of medical treatment, then he would justify preference for white patients, we would still find this perspective to be morally invalid. We would still be of the view that this is a case of discriminatory treatment. Despite the fact that this treatment is universal, and thus more equitable than particular treatment, we would still argue that it is not equitable enough for the principle of equality to be upheld. The demand for equality is stronger than universalist partiality, even though universalism too has an element of equality.

Can impartiality be discriminatory? In our view, this is possible. Impartial treatment means avoiding special treatment due to relation and belonging or due to some attraction. However, it may still be that discriminatory treatment emerges from another source. For example, an officeholder may give special treatment to a certain person out of the desire to advance socialist ideology, and he or she may discriminate against a person who embraces libertarian ideology.⁸⁸ If we assume that the officeholder must treat socialists and libertarians equally, this means that the treatment is discriminatory. However, the impetus for discrimination is not relation or belonging, nor is it attraction to the person receiving the special treatment. It may be that the officeholder is personally repulsed by the person receiving special treatment, and the impetus to give that person special treatment is out of a sense of ideological duty.

Conclusion

In this essay, we have analyzed acting to benefit others due to reasons of relation and belonging. The first part of the essay deals with the conceptual analysis of acting to

⁸⁸ For more information on socialist and libertarian ideology, *see generally* Richard Wolff, *Economic Update: Libertarianism, Capitalism & Socialism*, DEMOCRACY AT WORK (Dec. 16, 2019), https://www.democracyatwork.info/eu_libertarianism_capitalism_socialism.

benefit others due to reasons of relation and belonging and with the different classifications of the factual and normative perspectives of preference: distinguishing between subjective relation and objective relation and among common types of objective relation (relations of kinship and family, relations of friendship and companionship, relations based on legal enterprises, relations based on geographical proximity; and belonging to a common ethnic, national or citizenship group). We distinguished different classes of preference based on deontic classification (optional preference as permission, or supererogation and non-optional preference as duty or prohibition). Finally, we examined the different approaches towards the meaning of normative preference based on relation and belonging: preference as a reason for an act of partiality, decision in a case of gross equivalence, differences in the power of the reasons, a decisive reason for the benefit of relatives in situations in which neutral considerations militate to the benefit of strangers, duties of a stronger type which are not determinative among strangers but are determinative in favor of relatives over strangers, and determinative preference towards relatives which outweighs the duties of a stronger type.

In the second part of the article, we dealt with the special difficulties of justifying preference for relative and the tension this presents with universalism, equality and the duty of impartiality. In this analysis, we have examined the concept of universalism and the concept of equality, and we reached the conclusion that partiality towards relatives does not contradict universalism, while the question of whether partiality due to reasons of relation and belonging is opposed to equality depends on the specific moral bases of partiality due to relation and belonging generally and specifically in the circumstances of each case. Additionally, we analyzed the concept of partiality due to relation and belonging, distinguishing between volitional partiality and partiality out of a sense of duty. We also distinguished between partiality and the concept of “personal treatment.” Finally, we

addressed the link between partiality and special rights towards individuals such as a right emerging from a contract or from a promise.