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When Equality Matters

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Abstract Equality is at the heart of liberal, democratic political theory. Despite this, there is considerable disagreement about how we should understand equality in the context of liberal politics. Several different conceptions of equality (e.g., equality of opportunity, equality of welfare outcomes, and equality of basic rights) will recommend different and often conflicting policies and institutions. Further, we can expect, in democratic societies, that citizens will disagree on the correct conception of equality. This leads to the *diversity problem* of equality—there is no one conception of equality that will be acceptable to all citizens. This is compounded by the *complexity problem* of generating determinate and predictable results in the institutional application of any particular conception of equality. After identifying these problems and looking at G.A. Cohen’s defense of a thoroughly egalitarian conception of politics, I argue in favor of “democratic equality” as a political ideal.

Equality is a core value in all liberal and democratic societies. Despite this, the exact understanding of equality differs considerably even among egalitarians. There is even disagreement about what exactly should be equalized. G.A. Cohen, for instance, argues that the measure of equality is the welfare of individuals.¹ Ronald Dworkin, disagreed,

¹ G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99, no. 4 (December 1989): 906–44.

arguing that resources, not welfare should be the egalitarian's concern.² Both approaches are wrong, argue Amartya Sen and Martha Nussbaum, who claim that capabilities to live the way one chooses, rather than resources or welfare are what is important.³ Others argue that equality, as such, is not the issue at all. Instead, we should give *priority* to the welfare, interests, or resources of the less well off.⁴ In the other direction, a diverse range of critics have questioned the importance of this entire debate. Harry Frankfurt dismissed the obsession with equality in distributive justice as contributing to the "moral disorientation and shallowness of our times."⁵

In one respect, this disagreement about the proper understanding of equality should come as no surprise. Even though equality is a core liberal value, it is also an essentially contested one.⁶ Not only is there no general agreement on what "equality" means in the context of liberal political life, any attempt to find consensus is beset by divergent political and ethical goals. Despite this, it should be possible to determine certain conceptions of equality that should be more or less important in liberal political theory. This core notion of equality relevant to liberal society, I argue, is political equality understood as equality of status, which we can call "democratic equality". Any other conception of equality will be beset with indeterminacy or conflict with other core liberal values like freedom and the general welfare of the society. Equality matters in a liberal democratic society when fundamental rights are involved. Any other conception of equality is not suitable as a guide for public policy. Or so I shall argue in this chapter.

² Ronald Dworkin, "What Is Equality? Part 1: Equality of Welfare," *Philosophy & Public Affairs* 10, no. 3 (1981): 185–246; Ronald Dworkin, "What Is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (1981): 283–345.

³ Amartya Sen, "Utilitarianism and Welfarism," *The Journal of Philosophy* 76, no. 9 (1979): 463–89, <https://doi.org/10.2307/2025934>; Martha Nussbaum and Amartya Sen, *The Quality of Life* (Clarendon Press, 1993).

⁴ Derek Parfit, "Equality or Priority?," *Ratio* 10, no. 3 (1997): 202–21.

⁵ "Equality as a Moral Ideal," *Ethics* 98, no. 1 (October 1, 1987): 23.

⁶ W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society*, New Series, 56 (1956): 167–98.

1. Diversity, Complexity, and Equality

Liberal, democratic societies are pluralistic; citizens care about many different and often competing values. If we were required to conclusively decide between these competing values as a society, those who held minority values would be systematically disadvantaged. Over time, the losers might no longer have reason to endorse the overall liberal political structure, judging it illegitimate—a tool of oppression rather than justice. And they would be right to do so. Fortunately, we don't need to adjudicate most of these disputes in the public sphere. In liberal societies, most claims about values are “privatized” out of the public sphere. Still, no philosopher in a liberal democratic society can approach politics without taking diversity seriously.⁷ What it means to take diversity seriously, however, is a matter of considerable debate. Without weighing in on those larger debates, we can assume that core values in liberal societies tend to be “essentially contested” and that the free use of reason by citizens will lead to diverse conclusions about important topics.⁸

Of course, there are limits to the diversity of judgments that will be acceptable in a liberal society. Jon Quong, for instance, argues that the basic values of liberalism should constrain the realm of the “reasonable” among citizens.⁹ This leads to what he calls the “internal” conception of liberalism. Internal in the sense that it can only appeal to those who are already liberals; it does not seek to justify liberal principles to the “unreasonable.” Gerald Gaus, in contrast, argues that the limits of public reason should

⁷ *Political Liberalism*, Paperback (New York: Columbia University Press, 1996), 144.

⁸ Gallie, “Essentially Contested Concepts.”

⁹ Jonathan Quong, *Liberalism without Perfection* (New York: Oxford University Press, 2011).

be drawn much wider.¹⁰ Or perhaps, as Ryan Muldoon has argued, not drawn at all.¹¹ In any case, there is some range of reasonable or acceptable views that will be allowed in a liberal society of any form.¹² As long as some diversity is allowed, however, there is a problem for many conceptions of equality. Call this the *diversity problem* of equality. The problem is that there is no one conception of equality that we can expect egalitarians to agree on, despite the fact that they agree that all people are equal. This is why Dworkin, Sen, and Nozick can all argue that equality is a central value while disagreeing substantively about how to understand that value.¹³ In itself, conceptual diversity or indeterminacy is not a problem, but it becomes a problem when we need one stable conception of a value like equality for political life and public policy.

We can think of social life as divided into choices and outcomes. Given any status quo state of affairs *S*, some choice *C* will lead to some other outcome *O*. In the realm of politics, these choices are what we call “social” or “public” choices made by a democratic assembly, regulatory agency, judicial body, or in authoritarian states, by a dictator or oligarchy. Social choices lead to social outcomes, but also to outcomes for individuals. For instance, raising the marginal tax rate from 25% to 30% will change the overall social state of affairs by changing the wealth of those paying the tax. Similarly, individual action may lead to social outcomes. An increased preference of American consumers for Chinese socks will lead to an increase in Chinese sock imports into the USA. To make things even more complex, individuals can affect social choices through voting, public demonstration, etc. So, in addition to in-eliminable diversity over

¹⁰ Jerry Gaus, “Sectarianism Without Perfection? Quong’s Political Liberalism,” *Philosophy and Public Issues - Filosofia E Questioni Pubbliche* 2, no. 2 (2012): 7–15; Gerald Gaus, *The Tyranny of the Ideal: Justice in a Diverse Society* (Princeton University Press, 2016); Gerald Gaus and Keith Hankins, “Searching for the Ideal: The Fundamental Diversity Dilemma,” in *Political Utopias: Promise or Peril?*, ed. Kevin Vallier and Michael Weber (Oxford: Oxford University Press, 2016).

¹¹ Ryan Muldoon, *Social Contract Theory for a Diverse World: Beyond Tolerance* (Routledge, 2017).

¹² Brian Kogelmann, “Justice, Diversity, and The Well-Ordered Society,” *The Philosophical Quarterly*, 2017; John Thrasher and Kevin Vallier, “Political Stability in the Open Society,” *American Journal of Political Science* Forthcoming (2017).

¹³ Amartya Sen, *Inequality Reexamined* (Clarendon Press, 1992), 12–14.

conceptions of equality in liberal societies, we also have complexity in how those conceptions create social outcomes. Call this the *complexity* problem. Even in the simplified model of social choice outlined above, there is feedback between individual actors, social choice, and outcomes.¹⁴ As Paul Pierson argues, “the complexity of the goals of politics as well as the loose and diffuse links between actions and outcomes render politics inherently ambiguous.”¹⁵ This “inherent” ambiguity arises from the interlocking feedback loops of social life, creating fundamental complexity.

These two problems interact in an interesting way. Imagine a society of three people (Alaric, Boadicea, and Cato), each of whom have a different conception “equality.” Alaric is drawn to a conception of equality as “equality of opportunity,” Boadicea to equality as “equality of welfare outcomes,” and Cato to equality as “equality of basic rights.” Imagine also that these three are involved in some social choice process (perhaps a democratic assembly) where they must decide between three different policies. For our purposes, we can call those policies *x*, *y*, *z*. Each has a ranking of those policies based on their preferred conception of equality as displayed in Table 1.

Alaric	Boadicea	Cato
<i>x</i>	<i>y</i>	<i>z</i>
<i>y</i>	<i>z</i>	<i>x</i>
<i>z</i>	<i>x</i>	<i>y</i>

Table 1—Rankings of Policies Based on Conceptions of Equality

Aficionados of social choice theory will immediately recognize the problem. If majority vote is used, none of the options is the clear winner. Or, rather, any option can garner majority support depending on the voting procedure; the order of voting will determine the winner. For instance, if the three put up options *y* and *z* for a vote, *y* will win (since both Alaric and Boadicea prefer *y* to *z*). Then, if they put *x* and *y* up for a vote, *x* will win (since Alaric and Cato prefer *x* to *y*). If, however, *x* and *y* are voted on first, *z* will win. If

¹⁴ Scott E. Page, *Diversity and Complexity* (Princeton University Press, 2011).

¹⁵ Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review* 94, no. 2 (June 2000): 260, <https://doi.org/10.2307/2586011>.

x and z are voted on first, y will win. The voting procedure will determine the outcome. This is a general problem of voting procedures that cannot be overcome in any straightforward way.¹⁶ So, if Alaric can somehow select the order of voting and make sure that y and z are decided on first, he can insure that his preferred option x will be selected. The same is true of everyone else.

The point of this example is to show how the diversity of interpretations of a value like “equality” can lead to strange results in the context of social choice. This complexity is amplified when we take into account the fact that when our friends from above choose one of the policies (x,y,z) , they are not choosing a policy *outcome* directly. Instead, they are choosing a policy on the basis of its *expected* outcome. The actual outcome may vary from the expected outcome. There are also often unanticipated consequences of policy choices. Many legislators believed in the righteousness of alcohol or drug prohibition and supported these policies on that basis. What they failed to see, however, was the enormous human cost of prohibition in terms of crime, adulterated products, and social disorder that these policies would cause.¹⁷ This is a general problem with public policy.

The relationship between policy choice and outcome then is complex in several ways. Because of the *diversity* and *complexity* problems, it is not possible to go directly from a philosophical understanding of a value like “equality,” even in a liberal society, directly to policy outcomes. Since there are a diversity of reasonable interpretations of “equality” and since the relationship between any given policy and its outcome is likely to be complex, this leaves us with very little hope that we can be very confident about how to effect equality at the granular policy level.

2. Fact, Principles, and Motives

¹⁶ Kenneth J. Arrow, *Social Choice and Individual Values*, Revised Edition (New Haven: Yale University Press, 1963); Alan Gibbard, “Manipulation of Voting Schemes: A General Result,” *Econometrica: Journal of the Econometric Society* 41, no. 4 (1973): 587–601.

¹⁷ Jeffrey A. Miron and Jeffrey Zwiebel, “The Economic Case Against Drug Prohibition,” *The Journal of Economic Perspectives* 9, no. 4 (1995): 175–92.

G.A. Cohen has argued forcefully against the idea that the location of equality should be institutions and structure, rather than of actions.¹⁸ There are several points of interest here. The first is Cohen's argument against the general Rawlsian conception of justice as a set of principles that govern our shared social life. Cohen distinguishes sharply between fundamental principles of equality and what he calls "rules of regulation."¹⁹ Here Cohen harkens back to the mid-20th century philosophical method of conceptual analysis. He argues that to ask "what is equality" is a fundamentally philosophical, i.e. conceptual question that is independent of facts about reality.²⁰ This somewhat surprising claim has sparked significant and heated debate, but the claim is less mysterious if we realize Cohen is concerned with the *meaning* of "equality" in a moral conceptual scheme.

Pace Cohen, this still leaves open the question of "what ought principles of equality to be" in the same way that we can ask, quite reasonably, what "ought to be considered a vegetable." Are mushrooms, tomatoes, and seaweed vegetables? It depends on whether one is concerned with taxonomy or nutritional guidelines; whether one is a chef or a scientist. "Equality" is, perhaps, not so context sensitive, but we saw in the previous section that there are many different senses and conceptions of "equality," many of which are in conflict. It is perfectly reasonable to ask which conception of equality we should use to govern social life and public policy. Given that "equality" is an essentially contested concept, we can be certain that conceptual analysis alone will not answer this question for us.

Cohen's larger point, though is that the rules of social life, what he calls "rules of regulation" are distinct from principles like "equality." What "equality" is as a conceptual matter is distinct from how specific rules will affect or generate equality in a particular

¹⁸ G. A. Cohen, "Rescuing Justice from Constructivism and Equality from the Basic Structure Restriction," in *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*, ed. Michael Otsuka (Princeton: Princeton University Press, 2011), 236–54.

¹⁹ Cohen, 239. Cohen does not distinguish between "justice" and "equality" in his writing; the content of justice is equality. For that reason, I will use "equality" rather than "justice" in order to maintain continuity.

²⁰ G. A. Cohen, "Facts and Principles," *Philosophy and Public Affairs* 31, no. 3 (2003): 211–245; Cohen, "Rescuing Justice from Constructivism and Equality from the Basic Structure Restriction," 239.

society. As far as it goes, this is correct; but, only insofar as it is circular. His argument assumes that we understand what “equality” is/means independently of its role in social life. That is, political conceptual analysis is separated from the practical role that those political concepts play in social life. This bakes the distinction between fundamental principles and rules of regulation in at the beginning. If, however, we think that to understand what “equality” (or whatever) means in a political context requires us to look at the role that concept will play in generating rules of social life, one will come to a very different conclusion about the distinction between rules of regulation and fundamental principles.

It is not my purpose here to argue that Cohen is wrong in every particular, only that distinguishing between the political principle and its application is not so straightforward. Instead, there are background claims about the nature of political concepts and how we determine the substance or meaning of those concepts. Cohen’s argument here is circular but that does not make it false. Rather, it is explanatorily sterile. He has only explained the implication for public policy and political theory of his mid-century approach to conceptual analysis. He has not, however, shown that this is the preferred method of understanding political concepts. He may be right to understand political concepts this way, but the question will turn on larger matters of philosophical method, which are certainly not settled.²¹

Cohen, however, also makes a different argument that can be assessed independently of the fundamental concerns he has with constructivism. This is the question of whether justice should apply to the basic structure only or to actions of individuals directly. Cohen’s argument is that it doesn’t make sense for Rawls to argue that the difference principle should apply to the institutional structure of society as an incentive to the more productive in society. Rawls is arguing that inequalities are justified in the basic structure insofar as increasing inequality will benefit the least well off in that society, perhaps by incentivizing entrepreneurs or other to take risks and bear costs they

²¹ This argument is distinct from the argument made in: Miriam Ronzoni and Laura Valentini, “On the Meta-Ethical Status of Constructivism: Reflections on G.A. Cohen’s ‘Facts and Principles’,” *Politics, Philosophy & Economics* 7, no. 4 (November 1, 2008): 403–22, <https://doi.org/10.1177/1470594X08095751>.

wouldn't otherwise.²² The basic idea is that inequality is not a problem if it benefits the least well off. Cohen, however, argues that the incentive that inequality provides is only necessary insofar as the more productive members of society are unwilling to work harder without it.²³ This, of course, is just to explain what an "incentive" is, but Cohen draws two larger points from it. First, inequality is only required to make the least well off better because of the choices of the more productive. If they chose to work harder for free, no incentive would be required. Second, this incentive is only required insofar as the more productive do not, themselves, hold that justice means acting in the way that the difference principle requires. If the more productive really cared about the well-being of the least well-off, they wouldn't need an additional incentive to work for their benefit.

This argument can be put another way, as Cohen does in *Rescuing Justice and Equality*, in the form of what he calls the "trilemma argument."²⁴ The idea is that equality need not conflict with the personal freedom of the more productive members of society, nor the overall well-being of that society. Two traditional arguments against egalitarianism, if Cohen is correct, can be avoided: the "levelling-down" objection and the freedom objection. The first is the concern that egalitarianism of the sort that Cohen defends is purely comparative, it doesn't distinguish between making people more equal by making the more well-off worse off and making the worse-off better off. To avoid this, Rawls and others take it as a starting point that any distributive principle should be Pareto optimal, that is, if there is a possible state of affairs where at least one person is better-off and no one is made worse-off, that state of affairs should be preferred to an alternative that does not meet this condition.²⁵

²² John Rawls, *A Theory of Justice*, Revised (Belknap Press, 1999), 68.

²³ Cohen, "Rescuing Justice from Constructivism and Equality from the Basic Structure Restriction," 246.

²⁴ G. A. Cohen, *Rescuing Justice and Equality* (Harvard University Press, 2008), 181–225.

²⁵ Rawls, *A Theory of Justice*, 58–59. See also: Gerald Gaus and John Thrasher, "Rational Choice in the Original Position: The (Many) Models of Rawls and Harsanyi," in *The Cambridge Companion to The Original Position*, ed. Timothy Hinton (Cambridge: Cambridge University Press, 2015), 39–58.

It is useful, when we are comparing political principles, to think of these principles as selecting different states of affairs. Doing so allows us to have a shared standard of comparison between principles. For instance, in a status quo where two people (Alison and Bart) have some initial endowment of welfare or resources and they can either change to World 1 where they are made more equal by leveling down or World 2 where they are both made better off, but unequally, the Pareto standard allows the second but not the first option.

	Status Quo	World 1	World 2
<i>Alison</i>	50	40	60
<i>Bart</i>	40	40	50

Table 2—Alternative Welfare Worlds

Egalitarianism without a Pareto standard allows the move to World 1, but not World 2. Pareto optimality allows the move to World 2, but not World 1. In this case at least, Pareto and Equality conflict.

Similarly, we can think of freedom as conflicting with equality when the preferences, values, or interests of an individual would lead that individual to act in a way that would lead to more inequality in the world. The classic example is Robert Nozick’s “Wilt Chamberlin” case.²⁶ If we start from some state of initial equality and allow individuals to trade with one another freely, people will likely pay those with unusual or highly prized skills to perform their trade. This is a special application of what economists call the “Coase Theorem” that, given zero or very low transaction costs, resources will tend to flow to those with the highest valued use.²⁷ This, however, conflicts with Equality insofar as it ensures that, in Nozick’s pregnant phrase, “liberty upsets patterns.”²⁸ To preserve the egalitarian pattern “capitalist acts between consenting adults” must be banned or it must be true that everyone is motivated independently to

²⁶ Nozick, *Anarchy, State, and Utopia*, 160–61.

²⁷ Ronald Coase, “The Nature of the Firm,” *Economica* 4, no. 16 (1937): 386–405; Ronald Coase, “The Problem of Social Cost,” *Journal of Law and Economics* 3 (1960): 1–44.

²⁸ Nozick, *Anarchy, State, and Utopia*, 160–64.

maintain the egalitarian pattern. Nozick never seriously considers the second possibility, perhaps because it seems unlike a serious possibility. Cohen, however, seizes upon this idea, first in his attacks on Nozick and then in his analysis of the trilemma argument in his attack on Rawls. This is what Cohen calls the “ethical solution” to the trilemma.²⁹ If everyone in a society *really cares* about equality, they will be inclined to act on that basis and will, therefore, act freely in preserving equality.

As Cohen argues, the ethical solution is not “trivial,” but it is, nevertheless, circular.³⁰ Keith Hankins and I have argued that this “solution” solves the trilemma “by stipulating that it never arises.”³¹ If we allow for genuine choice in employment, there are bound to be cases where freedom will conflict with equality. In these cases, the trilemma does arise. Rawls argued that incentives could motivate the more skilled, productive, or whatever to seek professions that would benefit the least well off. Cohen argues that, in principle, this is unnecessary in a world of egalitarians. This argument, however, has unsavory implications when combined with Cohen’s “basic structure objection” that justice should not only apply to the basic structure. If we reject this constraint on the scope of equality, the demands of an egalitarian ethos seem to intrude on every aspect of life including, for instance, love and sex.³²

Changing motivation does not solve the conflict between equality and other values. Indeed, relying on this motivational solution creates a dilemma. Either there is no limit to the scope of an “egalitarian ethos,” in which case the trilemma argument dissolves, or there is some limit to egalitarian motivation, in which case the trilemma argument holds. The first horn raises the specter of a totalitarian notion of equality, while the second preserves potential conflict between Equality and other political principles

²⁹ Cohen, *Rescuing Justice and Equality*, 196.

³⁰ Cohen, 196.

³¹ John Thrasher and Keith Hankins, “When Justice Demands Inequality,” *Journal of Moral Philosophy* 12, no. 2 (2015): 182.

³² Cohen attempts to avoid this conclusion by arguing in favor of what he calls a “personal prerogative,” see: Thrasher and Hankins, “When Justice Demands Inequality.” Aside from this prerogative seeming to be a purely ad hoc way to avoid the type of conclusion I am pressing, a prerogative of this sort raises a number of question about scope and justification that are never addressed by Cohen.

like Freedom or Pareto. Even Cohen is wary of taking what he calls the “Stalinist plunge” of the first option, though he admits his views on that matter are not settled.³³ This leaves the conflict intact, however. Sometimes justice will require Freedom or Pareto to be privileged or at least balanced with equality in the sense that it would be unjust and not merely bad to force someone into a particular occupation or marriage. If so, justice cannot simply be identified with equality and we are led back to the *diversity* and *complexity* problems of the previous section in identifying any particular conception of equality.

3. Democracy and Equality

That “all men are created equal” is not only part of the catechism of America’s secular religion, it is at the heart of modern liberalism in all of its many forms. The problem with this claim is that it seems to imply many, often conflicting, political conclusions. In Section 1, I addressed this problem in terms of the diversity and complexity of the concept of equality. In Section 2, I argued that Cohen’s identification of equality with justice and his reliance on motivation as a way of solving the conflict between equality and other values fails. The conclusion to draw from this is that equality as a political concept is hopelessly indeterminate and/or likely to conflict with other important political concepts. Nevertheless, equality is an important, perhaps *the* important, principle of liberal democracy.³⁴

In “What is the Point of Equality?” Elizabeth Anderson asks if contemporary “work defending equality had been secretly penned by conservatives, could the results be any more embarrassing for egalitarians?”³⁵ Anderson proposes a conception of equality that, following John Rawls, she calls “democratic equality.” She argues that this conception avoids many of the problems of various competitors that were discussed above. Without agreeing to all of her specific proposals, something like this idea seems to

³³ Cohen, *Rescuing Justice and Equality*, 218.

³⁴ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press, 2002).

³⁵ Elizabeth Anderson, “What Is the Point of Equality?,” *Ethics* 109, no. 2 (1999): 287.

be behind the political conception of equality at the heart of liberal democracy. In a liberal democratic society, the most important form of equality is the political equality of the citizen. All other conceptions of equality are parasitic on this interpretation of equality. This conception begins with equal political and legal rights; all citizens should be treated the same at the bar of public reason. As Thomas Jefferson wrote in a letter to Roger Weightman in 1826, only weeks before his death, this claim of political equality represents the “palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.” No one has natural authority over any one else in a democratic society; citizens are free and equal. Democratic society is, in Michael Walzer’s memorable phrase, a “society of misters;” which is to say that there are no natural distinctions in status in a society of democratic equality.³⁶ Of course, this notion of equality is vague and aspirational, but it is nevertheless valuable. It acts as a limiting principle, a fixed point, in an otherwise changing, dynamic political system.³⁷ It is also a virtue or goal that can guide public practice, the evaluation of social norms, and political action. It has another benefit as well.

Returning to the original problems of diversity and complexity from above, recall that the problem was ultimately one of indeterminacy. Equality has many different plausible possible interpretations, none of which are decisive. The is true at the level of Cohen-style conceptual analysis; but, understanding the concept of equality in this sense is not, strictly speaking, the goal *pace* Cohen, of political philosophy. Regardless, if we are concerned with the relationship between political philosophy and public policy, it is certainly not the goal. Instead, we need a conception of equality that is consistent with the other values of political liberalism in a democratic society. This leads us naturally to something like democratic equality as the master conception of equality for a society like ours. Using this conception, we can organize and order other possible interpretations and candidate policies, even other egalitarian policies.

³⁶ Michael Walzer, *Spheres of Justice : A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 252.

³⁷ Thrasher and Vallier, “Political Stability in the Open Society.”

The core of democratic equality is equality of status and standing under the rule of law. That is, under a system of general, impersonal law that ignores the diversity and difference that otherwise distinguishes citizens. Black citizens are to be treated the same as white citizens, Muslims the same as Christians, the poor the same as the rich. The struggle of democratic movements of liberation has been the struggle for equal recognition understood as equal status under the law. Further, it is the only conception of equality that is consistent with the liberal democratic ideal of free and equal citizens. We are created equal as citizens, regardless of our natural inequalities. The tension between natural diversity and the egalitarian impulse leads other conceptions of equality to conflict with democratic equality and liberty. We saw one example of that in the last section, but the essential tension between democratic equality and other conceptions of equality is less appreciated. As F.A. Hayek argued:

From the fact that people are very different it follows that, if we treat them equally, the result must be inequality in their actual position, and that the only way to place them in an equal position would be to treat them differently. Equality before the law [democratic equality] and material equality are therefore not only different but are in conflict with each other; and we can achieve the one or the other, but not both at the same time.³⁸

Although there is much debate about the scope and interpretation of democratic equality among its proponents, there is a clear demarcation between those who defend this conception of equality and those concerned with outcome equality.³⁹

³⁸ F.A. Hayek, *The Constitution of Liberty*, ed. Ronald Hamowy (University Of Chicago Press, 1960), 87.

³⁹ For instance, consider the substantial differences between John Rawls, Elizabeth Anderson, John David Schmidtz and John Tomasi, who are all, plausibly, described as defenders of democratic equality. See: Joshua Cohen, "Democratic Equality," *Ethics* 99, no. 4 (July 1, 1989): 727–51; Anderson, "What Is the Point of Equality?"; David Schmidtz, *The Elements of Justice* (Cambridge: Cambridge University Press, 2006); John Tomasi, *Free Market Fairness* (Princeton University Press, 2012).

Democratic equality, though, open to interpretation is not fundamentally indeterminate in the same way that other conceptions of equality are. This is because it, unlike the other conceptions of equality, is not a way of turning social choices into outcomes in a direct way. Instead, it is limiting principle that focuses our attention on the ways in which equality matters. Democratic equality can tell us when equality matters (and when it doesn't) even if it doesn't specify exactly how that is translated into policy. For those who are concerned with the problems of life in a diverse, complex, and pluralistic society there is simply no alternative to democratic equality. Any other conception of equality, such as Cohen's, will led to inequalities of authority, even given his generous motivational assumptions and will be beset by fundamental indeterminacy.⁴⁰ Democratic equality is not a precise algorithm for generating policies, but it provides a meaningful and principled framework within which policy makers can work.

⁴⁰ Thrasher and Hankins, "When Justice Demands Inequality."

