It is now something of a commonplace to think that the concept of justice has a formal dimension. Formal justice, it is argued, commands the maintenance of relevant equalities and the eradication of unjustified inequalities. What is right or just for one case must also be right or just for all relevantly similar cases, and so, doing justice, the argument goes, formally requires a strict consistency of treatment. These observations are, of course, sufficiently familiar to be both boring and tedious. So pervasive is this point of view that in recent times the concept of formal justice has come to enjoy a conceptual independence and moral significance all its own. It has been variously described and applauded as 'fidelity to rule, obedience to system', 'proceeding by rule', 'adherence to principle', and 'impartiality, mutuality, and reciprocity.' In light of this ubiquity of favor, it might seem like conceptual sacrilege to suggest that this view of justice is mistaken; but sacrilege or not, this is what I propose to do here. In what follows I shall argue that the virtue of formal justice is but a philosophical illusion that fades away, like the notorious Cheshire cat, when one tries to state its case with precision. With this point established, we will be better able to appreciate the way in which the concerns of justice are embedded in, and conceptually inseparable from, the distinctive social and moral practice through which we express respect for individual rights and deserts.

I. JUSTICE AND THE PROBLEM OF EQUALITY

According to one rather popular view, formal justice is to be defined in terms of the principle, "Treat equal (like) cases equally (alike), and unequal (different) cases unequally (differently)". It will facilitate matters to have a name for this principle, so I will call it the equal treatment principle (hereafter ETP). Since this principle is habitually put forward in the form of an imperative, we can presume its proponents intend it to express a criterion
for doing justice. Formal justice, as defined by \textit{ETP}, looks between subjects and demands a relative equality or parity of treatment for all relevant parties. It remains to be seen, however, just what place or purpose a principle with this particular normative clout has in our reflections on justice. This will be the subject of the majority of what follows.

To begin, we should note that \textit{ETP} is substantively empty and thus formally neutral between subjects. It does not contain or specify any substantive grounds for the determination of relevant equalities or inequalities; nor does it presume any basic equality between subjects prior to the establishment of such grounds. Thus we should be careful to avoid the error of thinking that \textit{ETP} presents both a necessary and a sufficient condition for doing justice. Some independent criterion must be called upon to determine relevant equalities and inequalities before the demands of \textit{ETP} become operative. Similarly, we should not think that \textit{ETP} requires a strict consistency of treatment for the sake of consistency itself. That is, \textit{ETP} does not commit us to the arbitrary view that the consequences which have befallen \( B \) ought to be determinate of the treatment to be accorded \( C \). If, for example, \( A \) reacts to a particularly garish shirt worn by \( B \) by punching \( B \) in the nose, \( A \) is not then required by \textit{ETP} to punch \( C \) in the nose because \( C \) happens to be wearing a shirt identical to \( B \)'s. Should \( A \) proceed to punch \( C \) in the nose out of some misguided sense of duty, he could not be said to be doing justice in any sense of the term. Rather, his actions serve only to propagate an injustice. There is nothing terribly virtuous about equality of treatment \textit{for its own sake} and we should not think that \textit{ETP} either expresses or implies such a virtue. The appropriate corrective here is to think of \textit{ETP} as a necessary but not a sufficient condition for doing justice.

\section*{II. JUSTICE AND JUSTIFYING CONDITIONS}

Now, one way to state the case for \textit{ETP} is to say that our reflections on justice have two logically distinct elements to them: a material element which supplies a justifying condition establishing the rightness or justness of a certain treatment for a given subject; and a formal element, supplied by \textit{ETP}, which generalizes the requirements of the material element for all relevantly similar cases. I shall refer to this as the ‘two elements’ thesis. This thesis, of course, has the obvious virtue of avoiding the mistake just discussed, but it does so at the expense of its own internal coherence. Simply put, this thesis