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## WELL-BEING AND FAIRNESS

**ABSTRACT.** The article explores the interaction of two, potentially clashing, considerations, each reflecting a different conception of fairness concerning the resolution of interpersonal conflicts. According to the Equal Chance Principle, the harm for each person should be minimized in a significant and (roughly) equal degree; when this is impossible, each person should be accorded the highest possible equal chance to avoid the harm. According to the Importance Principle, the danger to the person who would otherwise suffer the more serious harm should be prevented.

### 1. INTRODUCTION

In simple interpersonal conflicts, several persons are in danger that it is possible to prevent only partly, namely, only with respect to one or only to a certain extent to both. In order to avoid complicating issues, I assume that only two persons are involved in the conflict, that the overall state of well-being of both persons is the same, that none of them is responsible for the existence of the conflict, that there are no special relations between the agent and either of these persons and that preventing the danger to one does not involve actively harming the other.<sup>1</sup> This article suggests a framework for the resolution of such simple conflicts.

The proposed thesis reflects two basic ideas. First, the fundamental value and source for reasons for actions, in the context of interpersonal conflicts, is individual well-being. Second, interpersonal conflicts between the well-being of different individuals involve an *internal* clash *within* the first idea, between contrary reasons to take account of the well-being of different persons. The resolution of interpersonal conflicts thus requires an *interpretation* of the idea that individual well-being is the fundamental value, which

*adjudicates* between different aspects of this value. This should be done in light of the distributive notion of fairness. This notion includes several, potentially clashing, considerations, two of which are relevant in simple interpersonal conflicts: one reflecting the independent value of persons and the other the difference in the importance of various aspects of individual well-being.<sup>2</sup>

It is important to emphasize that, according to the proposed thesis, the concepts of individual well-being and fairness do not represent competing values: the idea that interpersonal conflicts should be resolved fairly completes the idea that individual well-being is the fundamental value, rather than constitutes a contrasting value. This feature becomes clear once we notice that the concept of fairness becomes applicable only when there is an *internal* clash within the concept of individual well-being.

The proposed theory differs from standard deontological and rights-based theories in several respects. Unlike deontological and rights-based theories, the proposed thesis considers individual well-being as the fundamental value, which should be construed and supplemented, in interpersonal conflicts, from an impartial (agent-neutral) perspective, in light of the notion of fairness, but not substituted or limited by other fundamental values, such as agent-relative duties or rights. In other words, I suggest that individual well-being is *what* we should fundamentally care about, while the notion of fairness explains *how* we should care for this value when we are confronted by interpersonal conflicts.

The proposed theory is different from common forms of consequentialism, particularly utilitarianism, in several respects: its focus on reasons for action rather than states of affairs, its reference to the concepts of fairness and distribution and its rejection of sweeping aggregation.

However, despite these differences between the proposed thesis and standard forms of consequentialism, this thesis is nevertheless essentially consequential in one important respect, since it considers individual well-being as the *fundamental*

value and source of reasons for actions. The other proposed reasons for action do not represent competing fundamental values, but rather reflect the proper – fair – way of resolving clashes between various aspects of individual well-being.

Moreover, in one important respect the proposed thesis goes as far as any complete moral theory could conceptually, and, in my opinion, should substantively, in endorsing the idea that the fundamental value is a certain good. Conceptually, every complete normative theory – that is, a theory that aims at providing general guidance for actions – must go beyond this idea in order to resolve *internal clashes within this idea*, such as those that emerge in interpersonal conflicts of well-being. Indeed, even utilitarianism – the paradigm of a consequential theory – does not – cannot, as a complete moral theory – simply declare some good, namely, well-being, as the fundamental normative standard. Its governing principle is rather the *maximization* of the *aggregate* balance of well-being. The additional normative content of this further step is often overlooked or trivialized, perhaps due to the common assumption that the only rational way to take account of a certain good is by adopting an aggregative standard. From a substantive point of view, however, I suggest that this assumption is mistaken: an aggregative standard is irrational since it does not properly reflect the independent value of persons.

My suggestion is thus that the idea that a certain good – individual well-being – is morally important both *could* and *should* be separated from the aggregative standard that typically accompanies it. The common contrast between utilitarianism and deontological theories or theories of rights ignores the possibility of a theory of the kind I propose, which considers individual well-being as the fundamental value but resolves interpersonal conflicts of well-being in light of non-aggregative conceptions of fairness, based on the independent value of individuals. I believe that this general framework constitutes a plausible alternative to traditional moral

theories, particularly with regard to the resolution of interpersonal conflicts.

## 2. THE WELL-BEING PRINCIPLE

Consider a simple interpersonal conflict: two persons are drowning and it is possible to save only one. The first step towards the resolution of this conflict seems obvious. There is a reason to save each of these persons. This reason is based on:

The Well-Being Principle: there is a reason to protect the well-being of persons.

This principle raises complex questions, and disputes, regarding its precise content, reach and place within a moral theory. But, in essence, it is widely accepted. The idea that the well-being of individuals, for whom the concept of well-being is meaningful,<sup>3</sup> is *a* moral value and *a* source of reasons for actions might be the only consensual normative idea.<sup>4</sup> Some think that only certain aspects of individual well-being (of certain creatures) generate (agent-neutral) reasons to protect them.<sup>5</sup> Others believe that the reason to protect the well-being of individuals is not necessarily decisive, even if there are no other moral considerations (or when the only contrary consideration is the cost for the agent).<sup>6</sup> Still others argue, more generally, that well-being is not a central value, and particularly not a “master” value to which all other values are reducible.<sup>7</sup> But, presumably, everyone would agree that there is a (pro tanto, agent-neutral) *reason*, to protect (sufficiently important) *basic interests*, such as life and bodily integrity, and that this reason *might* be decisive – if the cost for the agent is not substantial, or if the agent (rationally) chooses to make the sacrifice.

## 3. THE EQUAL CHANCE PRINCIPLE

There are thus two clashing reasons for actions in such conflicts, for example, to save each of two drowning persons. Since, by hypothesis, it is impossible to follow both, we

should follow one reason, by saving one person. But which (whom)?

I believe the answer should begin with the following notion of fairness:

The Equal Chance Principle: (1) the harm for each person should be minimized in a significant and (roughly) equal degree; (2) when this is impossible, each person should receive the highest possible equal chance to avoid the harm.

According to the Equal Chance Principle, the best option is that a harm that threatens two persons would be reduced so that each person would bear the minimum possible setback for her well-being that is (roughly) equal to that of the other if the reduction is significant. The second best option, which applies when it is impossible to prevent the harm to both persons in a significant and (roughly) equal degree, is to accord each person the highest possible *equal chance* to avoid the harm, namely, in a conflict involving two persons, by employing a procedure that gives a 50% chance to each. (For simplicity, I assume in this article that it is impossible to prevent the harm with respect to each person in a significant and roughly equal extent, so that the second best option applies, and accordingly call this idea the Equal Chance Principle.)

The Equal Chance Principle reflects the following considerations. First, each person has an independent value and therefore each person's fate is intrinsically important. Second, the resolution of an interpersonal conflict is, for each of the persons involved, a question of all or nothing (with respect to the interest at stake).<sup>8</sup> Third, there is no common denominator that enables trade-off between interests of different persons without a loss.<sup>9</sup> These truths are generally valid, with respect to every aspect of individual well-being, but they are especially conspicuous when important interests, such as life or major aspects of bodily integrity, are at stake.

Several points should be emphasized with respect to the Equal Chance Principle. First, the Equal Chance Principle reflects an impartial, rather than agent-relative, reason for

action: it is important that an equal share or chance would be given, regardless of the identity of the agent.

Second, the Equal Chance Principle is entailed by an impartial concern for the well-being of each person, which considers the fate of each person as equally important.<sup>10</sup> The Equal Chance Principle does not reflect the assumption that the relative position of persons as such is morally important.<sup>11</sup> Equality is the right solution only since, and when, the relevant reasons apply to all relevant individuals in the same way. (Of course, there might occasionally be also various *instrumental* reasons for equality, in certain contexts.)

Third, the Equal Chance Principle reflects a reason for action, based on a conception of fairness, which is *intrinsically* important: according each person an equal share or chance is a way of conveying impartial concern for the well-being of each person. There might occasionally be instrumental reasons for such a principle,<sup>12</sup> but these are not the reasons I have in mind.

Fourth, the Equal Chance Principle is not (only) a method of overcoming or reducing (factual or normative) ignorance, fallibility, prejudices or corruption. We should follow it even assuming perfect knowledge and impartiality.<sup>13</sup>

Fifth, the Equal Chance Principle, even when implemented through a random procedure, such as a lottery, is not a way of evading responsibility or of transferring responsibility to God or to fate.<sup>14</sup> Rather, its aim is to give each person an equal share or chance as the fair way of resolving interpersonal conflicts.<sup>15</sup>

Sixth, the (equal) *chance* to be preferred is, at least, of *instrumental* value for each person, namely, it is important for each person, at least, in light of the possibility that it would lead to preferring this person, whether or not the chance of being preferred is also of intrinsic value, namely, valuable in itself, regardless of the final resolution of the conflict.

Seventh, the Equal Chance Principle holds that an equal chance should be accorded; it does not dictate the *way* in which this should be done. The notion of an equal chance

should thus be distinguished from various possible ways of implementing it, such as a lottery or a random choice. Ultimately, *if* an equal chance is indeed accorded, the way in which it is done is not important in itself. Generally, the Equal Chance Principle should be implemented, in light of its aim, in the best way of according each person an equal chance, which might be affected by the circumstances of each case.

Eighth, the idea behind the Equal Chance Principle applies not only with respect to the prevention of initial harms; it might also require, in later stages, compensation of the person harmed and equal distribution of the burden of compensation. (For simplicity, I ignore this point in this article.)

Finally, the *force* of the Equal Chance Principle depends on the importance of the interests at stake: the stronger are the competing interests, the stronger is the reason to accord each person an equal chance. For example, there is a stronger reason to accord an equal chance in a conflict in which lives are at stake than in a conflict involving property.

The Equal Chance Principle is often rejected, ignored or downplayed. It is rejected by the view that considers the answer to the question whom to save in conflicts in which all morally significant factors are equal, a matter of moral indifference.<sup>16</sup> This is, particularly, the position of utilitarianism, which rejects the notion of fairness in general and the Equal Chance Principle in particular. Thus, in the example of the two drowning persons, utilitarianism would consider the choice whom to save immaterial when the effect of both options on the aggregate balance of well-being is identical.<sup>17</sup>

The indifference view might not seem too troubling. After all, by hypothesis, it is possible to save only one person and there is no reason to prefer one to the other. Nevertheless, I believe that this view ignores the importance of the decision which person to save in interpersonal conflicts, including conflicts involving equally important competing interests. This decision is especially important when major aspects of individual well-being, most notably life, are at stake. The

importance of this decision could be most vividly seen by imagining oneself in the place of a person involved in the conflict, such as one of the drowning persons in the above example.<sup>18</sup>

Once we appreciate the importance of the choice that needs to be made in interpersonal conflicts, we start to see the significance of the existence of two contrary reasons for action in such conflicts, to protect the well-being of different persons – rather than “no reason to intervene on behalf of either party.”<sup>19</sup> In light of the independent value of each person, and since a loss to one person is not annulled by a benefit to another, I believe that the clash between these reasons should be resolved in a way that accords equal weight to the well-being of each person. The best elaboration of this idea, in my opinion, is the Equal Chance Principle.

Another view does not reject the Equal Chance Principle, but ignores or downplays it. Many readily concede that if all relevant factors are (exactly) equal, then according equal chances is reasonable, but only as a tie-breaker. According to this view, *any* special reason, no matter how trivial, would justify deviating from the Equal Chance Principle.<sup>20</sup>

In my opinion, this view misses an important point: if the Equal Chance Principle indeed reflects an *important* reason for action, then it should be outweighed only by contrary reasons beyond a certain threshold of importance.

#### 4. THE IMPORTANCE PRINCIPLE

A central reason that might clash with the Equal Chance Principle, represents another conception of fairness. This reason is reflected in

The Importance Principle: the strength of the reason to take account of the well-being of individuals depends on the importance of the interest at stake and the conjectured probabilities that it would be harmed if no action is taken and saved if some act is performed.<sup>21</sup> Other things being equal, the more important is the interest, the stronger is the reason to prefer the person to whom it belongs.

This principle reflects the obvious truth that different aspects of well-being are of different importance for persons. It also reflects the assumption that it is possible to roughly assess, and accordingly rank, the state of the well-being of individuals, and the extent to which it is affected by actions, and to make at least rough interpersonal comparisons of well-being.<sup>22</sup> These assumptions seem especially plausible in the context of small-scale and one-dimensional interpersonal conflicts involving adverse effects on basic interests, such as life, bodily integrity and property. For example, it is generally much more important to prevent death or serious bodily harm than damage to property.<sup>23</sup>

The strength of the reason to prefer the more important interest depends on the relative importance of the competing interests: a huge difference in importance, such as that between life and property, provides a very strong reason to prefer the former, while a small difference, such as that between two pieces of property which differ only slightly in their contribution to individual well-being, provides a weak reason.

The Importance Principle seems simple, plausible and uncontroversial, as the most straightforward explanation for the justification to harm a trivial interest, such as property, in order to save a very important interest, such as life. Nevertheless, the Importance Principle is rarely accepted *as such*. Deontological and rights-based theories often take account of the different importance of various interests, but insist that this is not their fundamental guiding standard, and indeed often lead to conclusions that are incompatible with the Importance Principle, by prohibiting actions that actively or intentionally cause harm to a person even when this could prevent a more serious harm to another person. Aggregative forms of consequentialism, such as utilitarianism, are interested in the different importance of interests not to *persons* but as part of an aggregative balance. These theories are *compatible* with the Importance Principle in conflicts involving only one person on each side, but merely since the different standards coincide in such conflicts. And, even in such

conflicts, the explanation offered by aggregative theories is misguided: it is justified to sacrifice trivial property in order to save life not because this is conducive to the aggregate balance, but since some interests are more important for *persons*. This flaw in reasoning leads to conclusions which are incompatible with the Importance Principle in conflicts involving more than one person on each side, in which an aggregate standard might sacrifice important interests in order to promote a larger number of trivial interests.

##### 5. THE CLASH: EQUAL CHANCES VERSUS RELATIVE IMPORTANCE

The above analysis suggests that, in conflicts involving interests of different importance, there are two clashing reasons, both entailed by the concept of fairness, one reflected in the Equal Chance Principle and the other in the Importance Principle. This analysis might, however, raise several objections.

First, it might be objected that the Equal Chance Principle should not apply in such conflicts, and that we should rather straightforwardly follow the Importance Principle and prefer the more important interest. Utilitarianism indeed entails this position in conflicts involving only two persons.

I think that this claim is misguided. The grounds of the Equal Chance Principle – the independent value of each person and the fact that a loss for one is not annulled by a benefit to another – apply in every interpersonal conflict. These grounds do not disappear if one person's interest is more important than that of another; they apply with respect to the person with the less important interest as well. True, the Importance Principle applies in such conflicts too, and provides a competing reason to prefer the more important interest. Such conflicts thus involve a clash between the conceptions of fairness reflected in Equal Chance Principle and in the Importance Principle.

The applicability of the Equal Chance Principle in interpersonal conflicts in which the Importance Principle applies as

well is most evident when the competing interests are both important – so that the grounds of the Equal Chance Principle are most compelling – and roughly (though not exactly) equal in importance – so that the grounds of the Importance Principle provide only a weak reason to prefer the slightly more important interest. For example, suppose that two persons are in danger of losing an arm and that this danger can be prevented with respect to only one of them. Suppose further that no one else would be affected by the resolution of the conflict and that the loss of the arm would have the same effect on both persons. Assume, however, that one person would also lose, in addition to the arm, a wristwatch, which is both expensive and has a sentimental value, so that its loss, although, of course, negligible relative to the loss of the arm, would cause the latter an additional, discernible, albeit slight, setback to her well-being, so that the overall effect on her well-being would be slightly, but discernibly, bigger. If the Equal Chance Principle is valid at all, it surely applies in such a conflict, despite the fact that the harm to one is slightly more significant than to the other. Moreover, if the Equal Chance Principle has any force, it surely outweighs the Importance Principle in such a conflict, in which the difference in importance is relatively trivial.

Utilitarianism is nevertheless incompatible with this conclusion. Instead, it requires that the person with the wristwatch would be straightforwardly preferred, as this would be (slightly) more conducive to the aggregate balance of well-being (it would decrease by slightly less). Similarly, in the example of the two drowning people, if it is slightly less expensive to save one, for instance, since it requires slightly less fuel because this person is just a bit closer than the other, utilitarianism requires that the closer person would be straightforwardly saved, even if the difference is negligible.

This utilitarian conclusion is yet another demonstration of the insignificance of the aggregate balance as such and of the failure of utilitarianism to reflect the grounds of the Equal Chance Principle. Since the fate of each person is important

in itself, there is a strong reason to accord each person involved in an interpersonal conflict an equal chance to prevail. This reason could not be outweighed by a trivial difference in the importance of the competing interests or by a negligible interest of a third person (for example, a person whose property needs to be destroyed in order to save one of two other persons whose lives are in danger). A trivial difference in the importance of the competing interests could not justify preferring one person over another.

A larger difference might. But this is because a larger difference provides, through the Importance Principle, a reason which might be strong enough to outweigh the reason provided by the Equal Chance Principle. When there is only a trivial difference in the importance of the competing interests, however, the Equal Chance Principle, if valid at all, must surely be decisive.

But perhaps this argument is too successful. At this point someone might wonder not whether the Equal Chance Principle applies in interpersonal conflicts involving important interests that only slightly differ in their importance, but rather whether the Importance Principle applies in such conflicts. This doubt might arise, moreover, not only with respect to interests that are negligible in themselves, but even with respect to interests that are only relatively negligible. For example, suppose that it is possible to extinguish only one of two fires, each threatening to ruin a different person's house, and that the loss of the house would have the same (very substantial) effect on both persons, except that one would also lose, along with the house, an inexpensive car (assume that the car's value – and its contribution to its owner's well-being – is 1% of the value and contribution of each house to each person's well-being). Is there *any* reason to take account of such a small difference in conflicts between important interests?

A negative answer is indeed entailed by the "Principle of Irrelevant Utilities," suggested by Frances Kamm and adopted by Thomas Scanlon, which holds that, in conflict between

important interests, interests below a certain threshold of (relative) importance should not be taken into account.<sup>24</sup> Similarly, Julian Savulescu suggests a “satisficing” theory according to which differences in expected value that are below a certain threshold do not affect the strength of reasons (to prefer one person to another) and therefore should not affect the resolution of interpersonal conflicts.<sup>25</sup>

My analysis of why it is unwarranted to resolve conflicts between important interests in light of (relatively) trivial differences is different: every aspect of individual well-being, no matter how trivial, in itself or relatively, is relevant in the resolution of such conflicts. Particularly, every difference in the importance of conflicting interests provides a reason to prefer the (even slightly) more important interest. However, the strength of the reason to prefer the more important interest is determined by the relative importance of the competing interests: a trivial difference generates only a trivial reason to prefer the slightly more important interest. Therefore, such a weak reason could not outweigh the strong reason provided by the Equal Chance Principle. In the above example, we should decide which of the fires to extinguish in a procedure that accords an equal (50%) chance to each person, not because the loss of the car is irrelevant, but because it is not important enough to outweigh the Equal Chance Principle.

This analysis seems to me to provide the most straightforward account of the plausible judgment that trivial interests should not affect the resolution of conflicts involving important interests. In light of this analysis, it is unnecessary to employ the more cumbersome accounts of irrelevant interests or differences, in order to explain why trivial differences do not tip the scale in conflicts between important interests. It is enough that we recognize the importance of the Equal Chance Principle. The alternative accounts seem to emerge from a lack of recognition of the significance of the Equal Chance Principle combined with an unwarranted assumption that some sort of aggregation is inescapable in this context

(so that if we do not remove trivial difference completely out of the picture, they would be decisive).

Accounts of irrelevant interests or differences might be tempting not only as an explanation of why trivial interests should not determine the resolution of conflicts involving important interests, but also due to the vaguer feeling that there is something misguided in even paying attention to trivial interests or differences in conflicts involving weighty interests. My suggestion in this regard is that, in certain conflicts, certain interests and differences lose their salience before their moral significance evaporates completely.

#### 6. THE SUBSTANTIAL DIFFERENCE PRINCIPLE

I thus conclude that both the Equal Chance Principle, which provides a reason to accord each person involved in the conflict an equal chance to be preferred, and the Importance Principle, which provides a reason to prefer the person with the more important interest, apply and clash in interpersonal conflicts involving interests of different importance. This clash becomes vivid when we consider interpersonal conflicts from two different perspectives. The grounds of the Equal Chance Principle – the intrinsic and independent value of each person and the fact that for each person the resolution of the conflict is a question of all or nothing (as far as the interest at stake is concerned) – are emphasized, with respect to each person involved in a conflict, from his viewpoint. On the other hand, the truth underlying the Importance Principle – that different interests are of different importance – is emphasized if we consider the conflict from “outside.” The clash between the grounds of these principles could be described as an aspect of the tension between what Sidgwick called the personal point of view and “the point of view of the universe,”<sup>26</sup> or what Nagel depicted as the “personal–subjective” and the “detached–objective–external” points of view,<sup>27</sup> or what Scheffler described as the “personal” and the “impersonal” perspectives,<sup>28</sup> or what Kamm

referred to as the “objective” and the “subjective” views<sup>29</sup> – subject to the important qualification that the two principles I suggest generate (only) agent-neutral reasons for action.

The crucial first step towards a proper resolution of the clash between the Equal Chance Principle and the Importance Principle is to acknowledge its existence. Since *both* principles generate valid reasons for action in conflicts involving interests of different importance, it is necessary to strike a balance between them. This balance should reflect the relative force of the clashing principles. Since the force of both principles depends on the importance of the competing interests, the balance might vary in different conflicts. Still, two general implications are clear. On the one hand, as I have just argued, if the Equal Chance Principle is valid at all, it must prevail if the difference in the importance of the conflicting interests is (relatively) negligible. On the other hand, it is equally clear that at a certain point, as the difference in importance increases, and the reason to prefer the more important interest gains more and more strength, the Equal Chance Principle must yield to the Importance Principle.

The exact point at which this should happen is not easy to determine. My – admittedly vague – suggestion is that the Importance Principle outweighs the Equal Chance Principle if there is a substantial difference in the importance of the competing interests. Hence

The Substantial Difference Principle: sacrificing the interest of one person for the sake of another is justified if one interest is substantially more important than the other (considering probabilities).

According to this suggestion, the Equal Chance Principle is decisive not only when the competing interests are equally important, and when the difference in importance is trivial, but also when the difference is larger – as long as it is not substantial.

I will not try to explicate the notion of a substantial difference in detail. My main aim in this article is to point out the need for a principle that balances the Equal Chance Principle and the Importance Principle. I will therefore just briefly note

two main aspects concerning the content of the balancing principle. First, the paradigm of a substantial difference is that between life or important bodily interest and property (which is not essential for basic needs).<sup>30</sup> A substantial difference is most conspicuous in such conflicts, since the competing interests are of different aspects of individual well-being. However, a substantial difference might exist also between interests that are both part of the same aspect, if there is a substantial difference in the severity of the harm to each interest. Thus, the difference between a severe physical injury, such as the loss of an arm, and a minor physical injury, such as a broken finger, is substantial, even though both injuries could be described as parts of the same aspect of well-being (bodily integrity). Similarly, the difference between a very valuable property and a trivial object is substantial despite the fact that both are forms of property and therefore part of the same aspect of individual well-being.

Second, the notion of a substantial difference is relative to the importance of the competing interests. A difference can be substantial even if it is small in absolute terms provided that the importance of the competing interests is not considerable. For example, when the choice is between saving the arm of one person and saving the arm of another, the fact that one's loss of well-being would be trivially larger since the latter would also lose his expensive and sentimentally valued wristwatch, does not constitute a substantial difference that justifies preferring this person. But the same difference could be substantial if the choice is between two relatively trivial interests, for example, between two pieces of property.

The relative nature of the notion of a substantial difference is due to the relative aspects of the two principles it adjudicates. The Importance Principle is straightforwardly relative: it provides a reason to prefer a more important interest to a less important one. And the *force* of the Equal Chance Principle depends on the relative importance of the interests at stake. For example, the strong reason to accord each person who might lose an arm an equal chance outweighs the reason

to prefer the person who would lose, with the arm, a valued wristwatch. The difference due to the contribution of the watch to its owner's well-being is not substantial in a conflict between limbs. But the same difference, in absolute terms, could outweigh the weaker reason to accord each person an equal chance when the choice is between two relatively trivial interests, such as two pieces of property.

I believe that the Substantial Difference Principle should be preferred to other views regarding the resolution of interpersonal conflicts that seem to acknowledge the basic considerations reflected in the two clashing considerations that the Substantial Difference Principle adjudicates: the Equal Chance Principle and the Importance Principle (although these views do not adopt these principles as such).

One suggestion is to adopt a weighted lottery or a proportional chance scheme, which resolves all conflicts involving interests of different importance by giving chances proportional to the importance of the interests, for example, if the importance of one interest is twice as that of another, it gives the person with the first interest a 66% to win and the other a 33%.<sup>31</sup> The proportional chances scheme is similar to the account I suggest in that it might also be viewed as reflecting considerations of well-being and fairness. The apparent advantage of the proportional chances scheme is that, contrary to the view I suggest, it does not involve a sharp boundary that separates equal chances and straightforward preference. However, I believe that the account I suggest better reflects the applicable considerations. The proportional chances scheme involves two problems. On the one hand, when the difference in importance is small, the reason to give each person an equal chance is stronger than the reason to give any preference to the person with the (slightly) more important interest, either by straightforwardly preferring her or by giving her better chances. On the other hand, when the difference in importance is substantial, for example, between life and property, the reason to prefer the person with the (substantially) more important interest outweighs the reason

to give each person an equal chance and therefore we should straightforwardly prefer the person with the more important interest rather than give proportional chances.<sup>32</sup>

A more plausible suggestion is to adopt a proportional chances scheme when the difference is “salient but not large,” or neither “great” nor “slight,” since then, on the one hand, “we think it would be wrong to say that one deserves” to be preferred, but, on the other hand, “there is some difference... which is not irrelevant.”<sup>33</sup> However, as explained above, it seems to me that the better analysis is that both the Equal Chance Principle and the Importance Principle are *always* applicable, in conflicts involving interests of different importance, and that there is, in principle, a (precise) point in which the latter outweighs the former.

The only role that a proportional chances scheme could legitimately play, in my opinion, is in the gray area in which it is hard to determine whether a difference is substantial or not.

Finally, it is worth noting that the Substantial Difference Principle might lead to conclusions that are similar to those entailed by the “Principle of Irrelevant Utilities,” endorsed by Kamm and Scanlon, since the effect of both principles is to prefer the more important interest only when the difference is beyond a certain threshold.<sup>34</sup> However, as I explained above, these principles rest on different analysis with regard to the reasons present in interpersonal conflicts and their resolution.

## 7. CONCLUSION

The principles presented in this article, as an explication of the proposed thesis, are rudimentary and were explored while focusing on simple interpersonal conflicts. Applying these principles in more complex contexts requires further elaboration in order to address special difficulties that arise in different settings, some general and some unique to various kinds of conflicts. (The main omission in the analysis presented in this article concerns the moral significance of responsibility of

persons to the existence of interpersonal conflicts.) Nevertheless, I believe that the proposed conception is essentially plausible and could be adequately developed in order to accommodate special complexities. (I have explored some of these complexities in other articles, in which I have applied the proposed thesis with respect to the moral significance of the number of individuals involved in interpersonal conflicts<sup>35</sup> the justification of self-defense and defense of others<sup>36</sup> and the proper distribution of scarce health resources.<sup>37</sup>) My hope is that this article has demonstrated that the analysis of this framework is worth pursuing further.

#### NOTES

<sup>1</sup> I discuss the complicating issues in other articles: “The Concept of Lesser Evil: Beyond Deontology, Rights and Utilitarianism”; “The Significance of Numbers: Intrinsic and Comprehensive or Instrumental and Restricted?”; “Well-Being and Fairness in the Distribution of Scarce Health Resources,” *Journal of Medicine & Philosophy* 30:3 (2005): 231–260; and “Fairness, Responsibility and Self-Defense,” *Santa Clara Law Review* 45:2 (2005): 383–460.

<sup>2</sup> A third conception of fairness reflects the moral significance of responsibility. According to the Principle of Fairness-Responsibility, when an interpersonal conflict requires a choice between the well-being of several individuals, there is a reason to prefer those who are not responsible for the existence of the conflict to those who are (and those who are less responsible to those who are more responsible). The resolution of clashes between this principle and the other proposed principles depends on the relative force of the clashing reasons reflected in these principles, namely, the importance of the competing interests, the relevant probabilities and the degree of responsibility of each person for the existence of the conflict.

<sup>3</sup> Several commentators argue against the view that the good for individuals – individual well-being or the interests of individuals – is the fundamental value, by claiming that the value of persons must be distinct from, and prior to, what is good for persons, since what is good for persons is of value only if – or because – persons are of value (independent of what is good for them). See Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993), p. 26; J. David Velleman, “A Right of Self-Termination?” *Ethics* 109:3 (1999): 606–628, 610–613; Meir Dan-Cohen, “Defending Dignity,” in *Harmful Thoughts – Essays on Law, Self, and Morality* (Princeton and Oxford:

Princeton University Press, 2002), pp. 150–171, 160. This argument seems to conflate two senses in which the value of persons could be independent of the good of persons: a correct but trivial sense, which does not support the view that individual well-being is not the fundamental value; and a robust sense, that does supports this view, but it mistaken. While it is true that an account of the value of persons must be independent from the good for persons, it is a mistake to assume that this account must have nothing to do with the good for persons. This assumption ignores the most plausible possibility: persons are of value *because* the concept of the good is *relevant* or *meaningful* with respect to them. I explore this issue further in “The Value of Well-Being.”

<sup>4</sup> See John Stuart Mill, *Utilitarianism* (1861) (2nd ed., George Sher, ed., Indianapolis and Cambridge: Hackett, 2001), p. 3 (“Nor is there any school of thought which refuses to admit that the influence of actions on happiness is a most material and even predominant consideration in many of the details of morals, however unwilling to acknowledge it as the fundamental principle of morality”); Bernard Williams, *Morality: An Introduction to Ethics* (Cambridge: Cambridge University Press, 1972), pp. 97–98 (“however much people differ, surely they at least all want to be happy, and aiming at as much happiness as possible must surely, whatever else gives way, be a reasonable aim”); Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989), p. 7; Shelly Kagan, *Normative Ethics* (Boulder, Colorado: Westview, 1998), p. 30.

Compare with respect to consequences in general: John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 30 (“All ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy”); Rosalind Hursthouse, “Virtue Ethics,” *The Stanford Encyclopedia of Philosophy* (Fall 2003 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/fall2003/entries/ethics-virtue>> (“It should go without saying that the virtuous are mindful of the consequences of possible actions. How could they fail to be reckless, thoughtless and short-sighted if they were not”).

<sup>5</sup> See, for example, Thomas Nagel, *The View from Nowhere* (New York: Oxford University Press, 1986), pp. 167–173; Ronald Dworkin, “Reverse Discrimination,” in *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), pp. 223, 233–238; Ronald Dworkin, “Do We Have a Right to Pornography?” in *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985), pp. 335, 359–372; Rawls, *A Theory of Justice*, pp. 30–31.

<sup>6</sup> See Samuel Scheffler, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (Oxford: Clarendon Press, 1982), pp. 5–10, 20–26, 42, 56–62, 77–79, 125–127.

<sup>7</sup> See T. M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998), ch. 3; Jonathan Wolff, "Scanlon on Well-Being," *Ratio* 16:4 (2003): 332–345; and T. M. Scanlon, "Replies," *Ratio* 16:4 (2003): 424–439, 426–427.

<sup>8</sup> I confront a possible objection to this claim in Segev, "Well-Being and Fairness in the Distribution of Scarce Health Resources," pp. 238–239.

<sup>9</sup> Subject to the possibility of compensation, which is limited in several respects: compensation does not void a loss; it is generally a better substitute for property loss than for bodily injury, and is inapplicable for a loss of life; and it is never certain that compensation is forthcoming at the time the decision whom to save is made. I discuss the significance of compensation in "The Significance of Numbers."

<sup>10</sup> This view, it should be noted, is compatible with the Importance Principle, discussed below, which accords different weight to different aspects of individual well-being.

<sup>11</sup> Compare Harry G. Frankfurt, "Equality as a Moral Ideal," in *The Importance of What We Care About: Philosophical Essays* (Cambridge: Cambridge University Press, 1988), pp. 134–135; H. L. A. Hart, "Between Utility and Rights," *Columbia Law Review* 79:5 (1979): 828–846, 845; Rawls, *A Theory of Justice*, pp. 534–541; Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 240; Derek Parfit, "Equality and Priority," *Ratio* 10:3 (1997): 202–221, 213–221.

<sup>12</sup> See John Broome, "Selecting People Randomly," *Ethics* 95:1 (1984): 38–55, 41; Nicholas Rescher, "The Allocation of Exotic Medical Lifesaving Therapy," *Ethics* 79:3 (1969): 173–186, 183–184; F. M. Kamm, "The Choice between People: 'Common Sense' Morality and Doctors," *Bioethics* 1:3 (1987): 255–271, 262–263.

<sup>13</sup> Compare Broome, "Selecting People Randomly," pp. 40, 50–52.

<sup>14</sup> Random procedure is associated with evasion of responsibility or religious assumptions, for example, by Guido Calabresi and Philip Bobbitt, *Tragic Choices* (New York and London: Norton, 1978), pp. 41, 44; Matti Häyry and Heta Häyry, "Health Care as a Right: Fairness and Medical Resources," *Bioethics* 4:1 (1990): 1–21, 10; Einer Elhauge, "Allocating Health Care Morally," *California Law Review* 82:6 (1994): 1449–1544, 1501.

<sup>15</sup> Compare F. M. Kamm, *Morality, Mortality*: vol. 1: *Death and Whom to Save from It* (New York: Oxford University Press, 1993), p. 273; F. M. Kamm, "Whether to Discontinue Nonfutile Use of a Scarce Resource," in Rosamond Rhodes, Margaret P. Battin and Anita Silvers (eds.), *Medicine and Social Justice: Essays on the Distribution of Health Care* (Oxford: Oxford University Press, 2002), pp. 373–389, 378.

<sup>16</sup> For this view, see, for example, Broome, "Selecting People Randomly," p. 40; John Harris, *The Value of Life* (London: Routledge & Kegan Paul, 1985), pp. 71–72; John Harris, "What is the Good of Health

Care," *Bioethics* 10:4 (1996): 269–291, 278; Daniel Statman, *Moral Dilemmas* (Amsterdam: Rodopi, 1995), ch. 1. The indifference view might be implemented through a random choice, which might give each person an equal chance. But this is only a coincidence: the indifference view does not consider according an equal chance as important in itself.

<sup>17</sup> Namely, when there are no further, indirect, effects for saving one person or the other and the cost of saving each person is identical.

<sup>18</sup> The resolution of conflicts should, I believe, be made from an impartial perspective. What I suggest is not that we adopt another, agent-relative, perspective, but rather that the importance of the resolution could be made vivid by focusing on its effects on the persons involved.

<sup>19</sup> As suggested by Harris, *The Value of Life*, pp. 71–72.

<sup>20</sup> See, for example, Broome, "Selecting People Randomly," p. 40; Harris, "What is the Good of Health Care," p. 278.

<sup>21</sup> By "conjectured" probability, I mean the probability based on the information that the agent has and should have, rather than the actual probability. I elaborate on this issue in Re'em Segev, "Justification, Rationality and Mistake: Mistake of Law is No Excuse? It Might Be A Justification!," *Law & Philosophy* 25:1 (2006): 31–89, 41–53. In this article, I assume throughout, for simplicity, that all relevant probabilities are equal.

<sup>22</sup> These assumptions are thoroughly explored in James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Clarendon Press, 1986), chs. 5–7.

<sup>23</sup> The importance of interests should obviously be determined not in light of some rigid standards but in accordance with the effects of the interest in question on the relevant person's life, in light of each person's characteristics, needs, (long-term and short-term) life plans and other circumstances. For example, the value of property should be measured not according to its "market price," which is morally insignificant in itself (see Ronald Dworkin, "Is Wealth a Value?" in *A Matter of Principle*, pp. 244–245), but in light of its effects on the lives of individuals, which depend on factors that vary among different individuals and in different circumstances. The value of a glass of water, for instance, is different under normal circumstances from its value in an arid desert.

<sup>24</sup> See Kamm, *Morality, Mortality*: vol. 1, ch. 8; F. M. Kamm, "Owing, Justifying, and Rejecting," *Mind* 111:442 (2002): 323–354, 349–353; Kamm, "The Choice between People," pp. 256–271; Kamm, "Whether to Discontinue Nonfutile Use of a Scarce Resource," pp. 378–380; T. M. Scanlon, *What We Owe to Each Other*, pp. 239–240.

<sup>25</sup> See Julian Savulescu, "Consequentialism, Reasons, Value and Justice," *Bioethics* 12:3 (1998): 212–235, 213–214, 227–233.

<sup>26</sup> Henry Sidgwick, *The Methods of Ethics* (1874) (7th ed., London: Macmillan, 1907), p. 382.

<sup>27</sup> Nagel, *The View from Nowhere*, pp. 4–5.

<sup>28</sup> Scheffler, *The Rejection of Consequentialism*, pp. 56–58.

<sup>29</sup> Kamm, *Morality, Mortality*, vol. 1, pp. 101–119.

<sup>30</sup> Compare G. W. F. Hegel, *Philosophy of Right* (1821) (Translated with notes by T. M. Knox, Oxford: Clarendon Press, 1952), § 127, pp. 85–86.

<sup>31</sup> For such a suggestion, see Broome, “Selecting People Randomly,” p. 55.

<sup>32</sup> Compare Kamm, *Morality, Mortality*: vol. 1, pp. 189, 276.

<sup>33</sup> Kamm, *Morality, Mortality*: vol. 1, pp. 192, 276.

<sup>34</sup> See, with respect to the “Principle of Irrelevant Utilities,” Kamm, *Morality, Mortality*: vol. 1, pp. 101–119, 121, 145–149, 154, 166–193, 230.

<sup>35</sup> “The Significance of Numbers.”

<sup>36</sup> “Fairness, Responsibility and Self-Defense.”

<sup>37</sup> “Well-Being and Fairness in the Distribution of Scarce Health Resources.”

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