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# Against Always Benefiting the Greater Number \*

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## Abstract

One of the most pressing problems in both ethics and economics is how we ought to distribute scarce, indivisible goods. This paper considers a particular variant of this problem, namely when each and every potential beneficiary has an equally strong claim on an equal good, and criticizes a prominent solution to this problem. Many prominent theories, both consequentialist and nonconsequentialist, claim that in such cases, you are morally required to give the benefit to as many people as possible. I will argue that always acting according to these prominent theories can lead to objectionable long-term discrimination and unfairness.

Keywords: Fairness, Distributive Ethics, Scarcity.

One of the most pressing problems in both ethics and economics is how we ought to distribute scarce, indivisible goods. This paper considers a particular variant of this problem, namely when each and every potential beneficiary has an equally strong claim on an equal good, and criticizes a prominent solution to this problem. Many prominent theories, both consequentialist and nonconsequentialist, claim that in such cases, you are morally required to give the benefit to as many people as possible. Call such theories majoritarian theories. I will argue that always acting according to majoritarian theories can lead to objectionable long-term discrimination and unfairness.

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## 1 Equal Conflict Cases

Before arguing against majoritarian theories, this section will introduce terminology and specify the type of distribution case this paper will focus on. Consider the following case:

*1v5 Lifeboat*: One person, Alice, is stranded on one rock R1 and five other people (Betty, Celine, Diane, Edna & Frances) are stranded on another rock R2. You have a seaworthy lifeboat with which you can easily save the occupants of one rock before the tide rises and drowns everyone you fail to save. All six potential people stranded on the rocks are young and innocent and will lose a great deal by dying. In this case and others I will discuss in this paper, no one knows anyone else and no one differs in any other morally relevant way.

Call this case 1v5 Lifeboat, where the 1 and 5 are indicative of the number of people on rocks R1 and R2 respectively. Call the different groups that can be benefited (in this case, the occupants on R1 or R2), outcome groups. 1v5 Lifeboat is a particular version of a general problem that this paper focuses on, namely how to distribute benefits when all potential beneficiaries have an equally strong claim to an equal benefit that cannot be distributed to all claimants. Call cases with this distributive feature, *equal conflict cases*.

These are conflict cases because they are cases in which choosing to benefit some set of claimants prevents one from benefiting other claimants. A potential beneficiary X (such as Alice in the case above) has a claim that Y provide a benefit G to X if and only if Y has a duty to X to provide G to B. This duty can be defeasible or it can be an all things considered moral duty. Claims ground patient-relative reasons, where a patient is a person or thing that undergoes an action of another. This meaning of ‘patient’ contrasts with the meaning of ‘agent’. To illustrate the distinction between reasons that are grounded by claims and those that are not, note that there are reasons to benefit a person that are grounded in duties owed to a particular person and there are reasons to benefit a person that are not grounded in duties owed to any person. For example, if you promise X to benefit Y, you have a reason to benefit Y, but this reason is owed to X and not Y. In this case, X has a claim on you to benefit Y.

In this paper, I will be largely neutral about how claims are established, maintained, strengthened or weakened. My paper, does, however, draw upon a number of thought experiments that are intended to be examples of the equal conflict cases and as such it makes some assumptions about claims. For example, in the life rescue cases I discuss, I assume that each and every one of the potential beneficiaries has an equal claim to be rescued. One plausible way in which such a claim could arise is through the right to life creating

a defeasible duty owed to each potential beneficiary to save him or her when it is easy to do so. When, as in 1v5 Lifeboat, it is easy to save lives, it is plausible that each potential beneficiary has a claim to be saved. What is important in the cases I discuss are the different possible ways to distribute benefits and the existence of equally strong claims. Nothing substantive rests on the particular narrative details of each case. Readers with differing views about how claims arise can construct structurally similar variants of my cases in which all beneficiaries have equal claims on an equal benefit.

How to decide whom to benefit in equal conflict cases is a prevalent moral problem, evident not just in rescue cases, but also in medical resource distribution, promises and numerous other areas of public policy and private moral behaviour. For example, how should we distribute donor kidneys from cadaveric sources amongst equally needy patients that stand to gain the same benefit from a transplant when demand for operations far outstrips supply? What should you do if you promised two housemates that you would drive them to the Wimbledon final tomorrow but find out just before leaving that you only have car space for one and cannot compensate whomever you leave behind? Often such cases arise from insufficient resources to benefit all claimants. However, sometimes such a problem arises due to urgency, claimant accessibility<sup>\*1</sup> or indivisibility of a plentiful benefit<sup>\*2</sup>.

Majoritarian theories claim that in equal conflict cases you are morally required to benefit as many people as possible (i.e. benefit the largest outcome group). Defenders of majoritarian theories include both consequentialists such as Singer (2009) and Parfit (1978) and nonconsequentialists such as Scanlon (1998) and Kamm (1993). According to standard act consequentialist theories (e.g. act utilitarianism) saving the greater number is the morally required action in 1v5 Lifeboat because the value of saving five people is greater than just the value of saving just Alice. Nonconsequentialist procedures, such as the Scanlon-Kamm ‘tie-breaking’ procedure, also prescribe benefiting as many people as possible in equal conflict cases. I will argue in the next section that all majoritarian theories, whether consequentialist or nonconsequentialist, have two fundamental failings which make them unable to account for our strongly and widely held intuitions in a number of more complex equal conflict cases that I will discuss.

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<sup>\*1</sup> For example, claimants are in different places (e.g. different hospitals) so that we cannot send the benefit to all claimants.

<sup>\*2</sup> For example, you owe five people lunch, but you can only fulfill this obligation with one claimant and even then, only by giving them a voucher that entitles them and only them free meals for a year.

## 2 Against Majoritarian Theories

In this section I will argue against majoritarian theories. I do so by (i) demonstrating that always acting in accordance with majoritarian theories can lead to discrimination in iterative cases and (ii) that because majoritarian theories focus solely on the number of actual benefits distributed and not chances of benefiting, such theories have unfair implications.

Always acting according to the prescriptions of majoritarian theories can lead to objectionable long-term discrimination against minorities<sup>\*3</sup>. This is evident when the same groups of claimants are repeatedly involved in equal conflict cases. To see this, imagine there is a series of equal conflict cases involving the same two unequally sized groups, larger group  $G_1$  and smaller group  $G_2$ . We can choose to benefit only one of the two groups multiple times over the course of a year. This type of case may be evident when a charity has to repeatedly decide whether to distribute scarce medical treatments to one of two differently sized clans. It is also sometimes evident when a university decides which of two unequally sized university clubs to give the benefit of a theater booking at a series of times desired by both groups. If we always choose to benefit the larger group, then  $G_1$  will benefit consistently over the year, whereas  $G_2$  will never receive that benefit. This is both unfair and morally objectionable and gives us reason to doubt the plausibility of majoritarian theories when applied to iterative equal conflict cases. Always benefiting the largest group is intuitively objectionable even if the total value of always benefiting  $G_1$  is greater than an alternative procedure that sometimes benefits  $G_2$ . However, as I will argue, it is not just in iterative equal conflict cases that majoritarian theories affront our intuitions. Even in individual cases in which the exact same claimants will *never* be in an equal conflict case again, we are hesitant to straightforwardly benefit the greater number of claimants.

By focusing on the actual benefits distributed in equal conflict cases, majoritarians forego an important type of morally relevant fairness by not giving any but the largest outcome group(s) any chance of benefiting. This is because fairness and moral rightness does not only depend on the actual benefits distributed but also on the chances of receiving the benefit. To see this, consider the following case in which all claimants actually receive the benefit but beneficiaries' ex ante chances of receiving that benefit are different:

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<sup>\*3</sup> Scanlon's tie-breaking procedure is not designed for equal conflict cases in which the same claimants are repeatedly in conflict cases which other. Majoritarian theories that do not apply to this type of iterative case are not subject to this objection, though they are still subject to other objections. See Scanlon. *What we owe to each other*, 397n38

*The Chancy Doctor*<sup>\*4</sup>: A doctor can conduct lifesaving surgery on two of her equally badly off patients in two separate operations. Her two patients are the only people she can currently help and she can do easily with guaranteed success. Instead of just conducting the surgery on both patients, she decides to roll two separate, genuinely random, six sided dice. If and only if the first die rolls a 1, she will choose to conduct surgery on the first patient. If and only if the second die rolls between 1 and 5, she will choose to conduct surgery on the second patient. The first die rolls 1 and the second 4, so she actually conducts successful surgeries on both patients.

While *The Chancy Doctor* involves equally strong claims, this is a non-conflict case because it is possible to benefit all potential beneficiaries. Even though the *Chancy Doctor* gives the same lifesaving benefit she owes to both patients, her action is patently unfair and wrong because of the differences in the chances of benefiting she gives to the two patients. It would be even less fair if she gave one patient a 100% chance to be treated but gave no chance to the other. Because she can save both of their lives easily with guaranteed success, fairness requires her to give both patients an equal 100% chance of benefiting. This illustrates that fairness does not depend only on benefits distributed but also on chances of receiving the benefit. To see how this majoritarian failing manifests itself in equal conflict cases, consider,

8v7v7v7v7v6v6v5v5v4v4v4v4v4v4v3v3v1 *Archipelago*. A rescue team can save the inhabitants of one island in a thinly populated, typhoon-threatened archipelago before the typhoon kills all of the remaining inhabitants.<sup>\*5</sup> Stipulate that there are 100 people scattered over 20 islands as illustrated in the case's name. One island has eight inhabitants, which is more inhabitants than any other. What should the rescue team do?

Any majoritarian theory delivers an objectionable prescription in the above case. Not only do majoritarian theories condemn the majority of potential beneficiaries to death without any chance of survival by requiring the rescuer to save the largest outcome group, they objectionably appear to regard such an action as *obviously* the right answer.<sup>\*6</sup> To see the importance of the majority that are given no chance of survival, consider a majoritarian's act prescription to save the island of 908 in 908v7v7v7v7v6v6v5v5v4v4v4v4v4v4v3v3v1 *Archipelago*. While the number of individuals (92) given no chance of survival is the same as the first *Archipelago* case, saving the largest outcome group in this

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<sup>\*4</sup> Vong, Gerard. "Fairness, Benefiting by Lottery and the Chancy Satisfaction of Moral Claims" *Utilitas*, 27, no. 4: 470-486.

<sup>\*5</sup> This example is based on a case from Wasserman, David and Strudler, Alan, (2003) "Can a Nonconsequentialist Count Lives?" *Philosophy and Public Affairs* 31, no. 1: 71-94.

<sup>\*6</sup> This echoes a criticism made of utilitarianism by Bernard Williams throughout his contribution to Smart, John and Williams, Bernard, (1973) *Utilitarianism; for and Against*, Cambridge University Press

second variant of the case is intuitively less unfair than doing so in the first variant as those given no chance of survival are a minority of all claimants. The relative size of outcome groups and the distribution of chances of benefiting between them is important. Thus an intuitively plausible and fair theory of benefit distribution in equal conflict cases must account for both individuals and the relative size of groups.

Each of the cases discussed above are particular examples of more general types of equal conflict cases in which our intuitions clash with majoritarian theory's act prescriptions. The requirement to always benefit the greater number is counterintuitive in iterative equal conflict cases or in cases where doing so prevents us from giving any chance of benefiting to a slightly smaller group of claimants, especially when the largest possible group that we can benefit is a minority of all claimants (as in *8v7v7v7v7v7v6v6v5v5v4v4v4v4v4v4v4v3v3v1 Archipelago*). These generalizable cases are indicative of a fundamental flaw in majoritarian theory, namely by focusing solely on the actual benefits distributed and always benefiting the greater number, they forego giving claimants who are not in the largest outcome group any chance of benefiting. This is intuitively unfair. Majoritarians miss something of moral relevance in their moral theory. The arguments of this paper provide good reasons to look for a non-majoritarian theory that better respects fairness. I take up that task in forthcoming work.

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