

The Significance of Fairness

By

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B.A., Merton College, Oxford (2004)

Submitted to the Department of Linguistics and Philosophy
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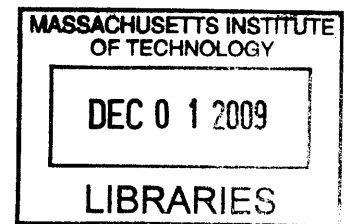
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This dissertation is about fairness and the role it plays in political and personal morality. Specifically, I investigate when it is appropriate to rely on considerations of fairness to draw substantive conclusions about what we should do.

In Chapter 1 (“Numbers, Fairness and Beneficence”) I discuss the “numbers problem,” the problem of explaining why you should save more people rather than fewer when forced to choose. Existing non-consequentialist approaches to the problem appeal to fairness to explain why. I argue that this is a mistake and that we can give a more satisfying answer by appealing to requirements of beneficence or generosity.

In Chapter 2 (“Fairness, Distributive Justice and Global Justice”) I discuss justice in the distribution of resources, both within states and across different states. On one influential view, it is always unjust for one person to have less than another through no fault of her own. State borders, on this account, have no importance in determining which distributions are just.

I show that an alternative approach is needed. I argue that distributions of wealth are only unjust in so far as they issue from unfair treatment. It follows that not all inequalities in the distribution of goods are unjust. I use these results to explain how state borders do play a role in determining which inequalities are unjust, since some of these inequalities issue from unfair treatment of citizens by the state.

In Chapter 3 (“Contractualism, Politics and Morality”) I discuss Rawls’ contractualist theory of social justice and Scanlon’s extension of it to provide a theory of “rightness”, or morality more generally. I argue that while there is some justification for adopting a contractualist theory of social justice, this justification does not support a contractualist theory of rightness. This is because social justice is centrally a matter of cooperative fairness whereas rightness is not.

Thesis Supervisor: Rae Langton
Title: Professor of Philosophy

Contents

Abstract 2

Acknowledgements 4

Chapter 1: Numbers, Fairness and Beneficence 5

Chapter 2: Fairness, Distributive Justice and Global Justice 33

Chapter 3: Contractualism, Politics and Morality 72

References 104

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Chapter 1: Numbers, Fairness and Beneficence

1.

Suppose you find yourself in the following “tradeoff” situation.

Tradeoff: you own a life saving drug which you can give away at only small cost to yourself. “Six people will all certainly die if they are not treated with the drug. But one of the six requires all of the drug if he is to survive. Each of the other five requires only one-fifth of the drug.”¹

All six persons are strangers to you.

What should you do? The costs to you of giving away the drug are low, so you should certainly do so. But to whom should you give it? Nearly all of us judge that you ought to save the five people who require only one fifth of the drug. The “numbers problem” is the problem of saying *why* it is that you ought to save the five.

Consequentialists, and those sympathetic to consequentialism, are thought to have an easy time answering this question. They endorse the principle that one ought to act in the way that brings about the best possible state of affairs. Applying this principle, they say that you should save the five because doing so will bring about a

¹ The case is from Taurek (1977), p.293.

better state of affairs than saving one. But many philosophers reject the consequentialist principle. They claim, for instance, that it makes implausible predictions about what one ought to do or that the notion of “betterness” that it employs is unintelligible.

For these non-consequentialist philosophers, the numbers problem is thought to be very *hard*. In this paper I am going to ask whether this is true. I am going to look at what answers you can give to the numbers problem if you are a non-consequentialist. That is, I am going to consider what answers you can give without appealing to the goodness of states of affairs.

The standard non-consequentialist accounts try to answer the problem by appealing to *fairness*. According to these accounts, you ought to save the five because this is the only way to treat each needy person fairly. If you fail to save the five, they say, then there is at least one member of the five that you will have treated unfairly.

I think this approach is radically mistaken. Appealing to fairness will not allow us to explain why you should save more and, furthermore, considerations of fairness are irrelevant in cases such as Tradeoff. What morality centrally requires of us in Tradeoff is that we be beneficent, or act in ways that show regard for the needs of others. I think the beneficent thing to do is to save the five, and will show why.

I will proceed as follows. I first show some *prima facie* problems with appealing to fairness to justify saving five (section 2) and then argue that recent accounts have not surmounted these problems (section 3). In section 4, I argue that, furthermore, fairness is irrelevant in a case such as Tradeoff. In section 5 I offer my own account of why you

should save the greater number in Tradeoff. Failing to save the greater number, I claim, would be unbeneficent. In section 6, I consider choices between lives of a different kind, where fairness plausibly *does* have some role to play in explaining why we should save the many and argue that there are distinctive reason why, in these cases, fairness may require saving more.

2.

The standard non-consequentialist approaches to the numbers problem begin with the idea that one must respond fairly to those who need your aid.² So, I am going to begin by considering the idea of fairness in our dealings with others.

We appeal to fairness frequently in our everyday life. For instance, suppose that a parent provides more help to one of her children than another. This seems to be unfair treatment of the less favoured child. Suppose that a firm pays its female workers less than male workers who do the same jobs. This would be considered unfair treatment of the female employees. Or, suppose that grants for scientific research never go to members of a particular race. We would think candidates of that race are being treated unfairly.

Fairness in this sense is a requirement on how we treat others. It is comparative: it concerns how we treat some people compared with how we treat others. It requires,

² For instance, Kamm (2007), Chap. 2; Otsuka (2006) and Hsieh et al. (2006).

roughly, that we treat all relevantly similar persons similarly.³ Thus, the children who are each equally in need of the parent's help should be given the same assistance, employees doing similar jobs should be similarly compensated and so on. Where we are providing benefits, fairness demands, more specifically, that we benefit people in proportion to their eligibility for the benefit. Thus, variations in the size of grants should be in proportion to how qualified their recipients are.

Some ethical theories deny that fairness has any fundamental importance. Utilitarians, for instance, deny that one is ever bound by a requirement of fairness.⁴ They do think that we should sometimes act as fairness would demand, say by helping our children equally, but only when, and because, so acting would increase aggregate utility, not because it would be fair.

According to the standard non-consequentialist accounts of the numbers problem, we are required to be fair in giving aid to needy strangers. They appeal to this general requirement that we be fair to the needy in order to explain why you should save the many in a case such as Tradeoff. But before looking at why exactly they think fairness requires you to save the many, I am going to briefly discuss some *prima facie* difficulties with showing that it is fair to save the five. It will be useful to consider these initial difficulties, since they will help us to understand the arguments for thinking that

³ Broome (1990-91) characterizes fairness in this way; Hsieh, et al. (2006) similarly write that “if people are the same in morally relevant respects, then they deserve to be treated in the same way,” p.353. The principle that likes be treated alike is found in Aristotle (2002) *Nich. Ethics* V. 3.

⁴ It might be said that utilitarians try to capture a very abstract sense of “fairness” in saying that a unit of utility has the same value whoever experiences it, be they black, white, young, old, etc. It would still be true that utilitarians reject appeals to “fairness” in the everyday sense that we are concerned with.

saving five is fair and will also help to illuminate some of the problems with that view.

So, what must we do in order to be fair in giving aid to strangers? I said that fairness requires treating all relevantly similar individuals similarly. Plausibly, when we are giving out aid to needy strangers, the only relevant characteristic of any individual is the extent of her need. That is, the only thing that makes one needy person more eligible for our help than another is the extent of her need. Thus, fairness requires that we help each needy person in proportion to her need. Where needs are equal, fairness requires us to help each needy person equally.

In Tradeoff, those you can aid are equally needy. But it is impossible for you to help each of them to the same degree. The only help you can provide for any candidate is saving her life, but it is impossible for you to save each person's life.

It is thus very tempting to conclude that in such a case there is no way to act fairly, since we cannot give the same help to every candidate. If that is true, then we should simply abandon the appeal to fairness to justify saving the greater number. We would then have to justify saving the greater number on some other grounds. This the first problem I will mention for any account that appeals to fairness: Tradeoff seems plausibly to be a case where fairness simply cannot be achieved.

The second problem is that to the extent that fairness can be achieved, it seems to require not saving the greater number, but, instead, giving each candidate an equal chance of being saved. The fairest thing we can do, plausibly, is what Taurek proposed, namely tossing a coin to pick between saving the one or the five.⁵ Here is why:

⁵ Taurek's proposal is in Taurek (1977). The defense of Taurek that I offer draws heavily on Broome

I said that, in general, fairness seems to require giving equally needy persons equal help, and that doing that is impossible here. Even so, we can still try to fulfill the basic requirement of fairness, which is to treat relevantly similarly people similarly. Rather than giving each candidate the same *amount* of help, we can, as a proxy, give each candidate an equal *chance* of being helped. We can thus treat each candidate similarly by giving each the same chance of getting our aid. We can do this by using a coin toss to make our decision about whether to save one or five, thereby giving each person a fifty percent chance of being saved. If this line of reasoning is correct, then the fairest thing to do in the circumstances is not to save the greater number, but, instead, to toss a coin to decide whether to save one or five.

Thus, appealing to fairness to justify saving the greater number seems problematic. Initial investigation suggests, firstly, that it might be impossible to be fair in these cases and, secondly, that the best approximation of fairness seems to be not saving the greater number but tossing a coin to decide whom to save.

These problems are well known and recent non-consequentialist accounts operate against this background. They attempt to show that, despite appearances, one can be fair in tradeoff cases and that, contrary to Taurek, fairness requires saving the greater number. I am going to briefly illustrate the most prominent of these recent accounts, namely Francis Kamm's, and the problems that any such account faces.

3.

(1990-91).

Kamm claims, as does Taurek, that we ought to toss a coin if we are faced with a choice between saving a single person A and another person B (and all else is equal). This would be fair, they agree, because it would give each person a fifty percent chance of being saved and so each person would be treated the same way.

Where Kamm and Taurek differ is that Taurek would still use a coin if faced with a choice between saving person A and saving two other people B and C, whilst Kamm would save B and C. Taurek would toss coin between saving A and saving B and C in order to give each of A, B and C an equal (fifty percent) chance of being saved.

Kamm objects that in using a coin toss he would be proceeding just as if the choice were between saving A and just the individual B, rather than a choice between saving A or saving B *and* C. The presence of the additional person C would be making no difference to his actions. C could complain that she has been treated unfairly, Kamm claims, since her “presence does not make any difference to the outcome”.⁶

As it stands, this objection to Taurek is very unpersuasive.⁷ The mere fact that Taurek would perform a certain action whether or not a particular person is present does not show that said person has been treated unfairly. For, Kamm herself must agree that there are cases where one should perform the same action whether or not some individual is present and that, in these cases, so acting is not unfair. For instance, suppose that I can easily save five people and I decide to do so. I might now discover

⁶ Kamm (2007), p.55.

⁷ Raz (2003), p.362 makes a similar point in discussing Scanlon.

that there is a different single individual whom I could save instead of the initial five. On Kamm's view, I should still go ahead and save the five; the presence of the other single individual should make no difference to what I do. She does not think acting in this way is unfair.

Thus, both Taurek and Kamm agree that only sometimes should the presence of some particular individual make a difference to how we act. So the important question is whether the presence of C should make a difference in the particular case we are concerned with. Kamm thinks that it should. She thinks that someone who is prepared to toss a coin whether or not C is present treats C unfairly. To proceed in this way, she claims, would be unfair because it would give no significance to C's need.⁸ Kamm's suggestion is that if we toss a coin when we can either save A or save B and C, this will be unfair to C because her presence will not have been taken into account in our decision making.

Is this a reasonable objection to Taurek? It all depends on what we have to do to take into account the presence of person C. Kamm is assuming that in this situation we must be fair to each needy person. So, on her view, taking into account C's need in this situation should just be a matter of giving her whatever help she can fairly demand.

But, as we have seen, there is an argument Taurek can offer for thinking that treating C fairly just requires giving her an equal chance of being saved. Since A and B are just as needy as she is, C can demand no more, as a matter of fairness, than to be treated the same as they are. As a matter of fairness, Taurek can say, giving C an

⁸ Kamm (2007), p. 33.

equal chance is the appropriate way to take account of her need.⁹ So more needs to be said if Kamm is to show that C is being treated unfairly.

Kamm needs to show that fairness to C requires us to actually save her rather than just give her an equal chance of being saved. But it is difficult to see how she could establish this. I said that fairness requires treating all similarly eligible candidates for a good similarly. We can only give a candidate for a good more of it on grounds of fairness if she herself is more eligible for the good. For instance, suppose grants are being given out to researchers. If we are going to give one candidate a bigger grant than others on grounds of fairness, we have to show that she is better qualified or otherwise more eligible for funding than her competitors.

Now, Kamm believes that when just A and B's lives are at stake, each is equally eligible for your help and should be given an equal chance of getting it. But she thinks that when B is joined by another person C, such that we can either save A or save B and C, suddenly fairness requires giving no chance of aid to A and giving all your aid to B and C. So Kamm must claim that when C can be saved along with B, C is suddenly more eligible for your help than A. Kamm needs to give reasons for thinking that, in this case, C is relevantly different from A, such that C is more eligible for your help than A is.

It is hard to see what these reasons could be. A and C both stand to lose their lives. The only difference between them is that C can be saved along with B. But this does not seem to make *C herself* any more eligible for receiving help than A. It is thus hard to see why it would be *unfair to C* to not save her and it is hard to see why it would

⁹ Otsuka (2006) presents essentially this point on Taurek's behalf.

not be unfair to A to give him no help or chance of help.

Thus, Kamm's project of trying to show that we wrong C if we do not save B and C over A faces some serious difficulties. It is hard to see what could make C more eligible for help in this case than A, and so it is hard to see why fairness requires us to give more help to C than to A. Kamm has not provided an answer to the challenges I presented in the previous section since she has not shown that fairness can be done in Tradeoff or that it would require saving the greater number rather than tossing a coin.

4.

So any account that appeals to fairness faces serious difficulties in explaining why you should save the greater number. But I think there is a further fundamental problem with appealing to fairness in these contexts. I think that it is not the case that in a situation such as Tradeoff one is required to be fair. I am not suggesting that we should act *unfairly* in these cases but, rather, that considerations of fairness do not apply there at all. Saving the greater number in this case, I think, is neither required by fairness nor ruled out by fairness.

It seems to me that our dealings with needy strangers are in general unconstrained by fairness. For instance, consider the following case,

Charities: various people stop me on the street and ask me to donate to their charities, each of which is engaged in life saving activities in a different area of the world. Each is only asking for a small contribution but that contribution will help save a life.

Each of these charities, and the people they serve, is equally worthy of my aid. Yet, it is perfectly permissible for me to just pick one of these charities and give all of my aid to them. We do not think that I must divide my aid equally between them or find some way of giving each charity an equal chance of receiving my aid. I can just pick where my aid is going to go.

What I just said is slightly too strong because *some* ways of picking where to send my aid do seem morally abhorrent. For instance, suppose I think that members of race R are inferior and, on this basis, only ever give aid to parts of the world where members of race R are scarce. This would be morally unacceptable. It might be said that we should condemn this because it would be *unfair* to members of that race and hence that our charitable donations really are constrained by fairness.

I do not think appealing to fairness provides a very good explanation for why it is wrong to choose in this way. For instance, suppose again that I only give to aid to parts of the world where race R is scarce but that the reason why I do so is not connected to any views about racial superiority. Rather, I am just a creature of habit and tend to always give my aid to people in some other part of the world, where there is just as much need. Acting in this way does not seem morally unacceptable, so I do not think

that fairness requires us to give equal aid, or equal chances of aid, to members of different races.

What is wrong with giving out one's aid with racist motivations is not that it results in distributing one's aid unfairly. A better explanation for what is wrong with the racist's aid decisions is just that acting on racist motivations is always wrong, even when considerations of fairness are not applicable.

So our intuitions do suggest that requirements of fairness are not present when we are giving aid to strangers. But can we explain why? Can we give some rationale for denying that aid to strangers is subject to fairness?

It seems to me that fairness only comes into play where others have *rights* against us. Teachers owe it to their students to provide them with education, parents owe it to their children to care for them, members in good standing of a squash club are owed the benefits the club provides. All of these are cases where we think fairness is required. In each of these cases, there are individuals with similar rights and so fairness comes into play and requires that they are treated similarly.

By contrast, no restaurant, say, has a right that I attend it or even consider attending it. This provides an explanation for why I am not required to be fair in my decisions about where to eat and can frequent some restaurants more than others as I please.

Thus, a potential explanation for why fairness is not relevant to aid is that needy strangers do not have rights to our aid.

Is it true that needy strangers have no rights to our aid? This is a difficult and

long debated question which I cannot fully address here, but I think there is a good case for thinking that they do not. For instance, we think it perfectly acceptable to not help some needy persons on the grounds that we have been helping others a lot previously. If individuals had rights to our aid, this sort of justification would not be acceptable.¹⁰ For instance, since I owe it to you to keep my promises, I cannot justify breaking this promise to you on the grounds that I have previously kept many promises made to others. Your right that I keep my promise is not affected by what I have done for others. Aid is clearly different and a good explanation of why it is different is that no one has rights to our aid.

It might be said that even though needy strangers do not *in general* have rights to our aid, there are special circumstances where they do and, it might be said, Tradeoff is one of those circumstances.¹¹ More specifically, it might be said that individuals have rights to our aid only when the costs to us of providing the aid are low and there is no one else around who can provide it. Tradeoff is such a case, so perhaps the individuals in Tradeoff do have rights to your aid.

I think this suggestion is implausible. Rights do not ordinarily go in and out of existence depending on the costs to us of fulfilling them. For instance, suppose you were no threat to me but killing you was the only way to save my life (say, the Mafia have said they will kill me if I do not assassinate you). You would still have a right to life against me despite the extremely high costs to me of not infringing that right. We

¹⁰ I owe this point to Judith Jarvis Thomson.

¹¹ Hsieh, et al. (2006) make a proposal similar to this in Section 5.

should thus doubt that the needy persons in Tradeoff have a right to your pill which appears only because the costs to you of giving the pill away are low.

It seems to me that in Tradeoff the only person who has a right to the pill is *you*. After all, you *own* it. If, say, someone stole the pill to give it to the needy, they would infringe your right to it and have to compensate you and so on.

All the same, you *should* give it away. It would not only be praiseworthy for you to do so, you are morally required to. I think this fact, that you are morally required to give away your pill, is the source of the temptation to suppose that the needy in Tradeoff have *rights* to that pill. To dispell that temptation, one needs to show that there is some other explanation for why you are morally required to give away your pill.¹² I show this in the next section.

5.

The appeal to rights and fairness to deal with cases such as Tradeoff seems to me to not only make the wrong predictions but also to simply ignore the most natural concepts to employ. Think about ordinary situations where private persons fail to provide for the needy and we think morality requires them to.

Consider, for instance, someone who does not stop to help a fallen biker out of the road, someone who refuses to help look for a missing child or someone who never

¹² Thomson (1990) emphasizes that someone's having a right that you do A is neither necessary nor sufficient for it to be the case that you ought to do A.

gives to charity. All of these people seem to me to have acted in ways that are morally wrong, at least assuming the costs to them of aiding are not excessively high and they have not been giving a lot of aid in the past. But we would not criticize them as rights violators or as failing to be fair. Rather, we criticize them for being uncharitable, selfish, callous, unbeneficent, insensitive or similar. It seems to me that we use the latter concepts to describe a very different sort of moral failing to the failure to fulfill people's rights or to be fair.¹³ We thus need to recognize that a very different sort of moral requirement applies in these cases.

The most general term I can find for this sort of moral requirement is "beneficence". The examples I gave are cases where people fail to be beneficent and thereby do something morally wrong. The cases illustrate that beneficence is morally required of us. We are not required to be *heroically* beneficent, traveling the world to alleviate suffering or running into burning buildings. Doing so is typically morally praiseworthy, but beyond what morality requires. Being beneficent is morally required. Situations where we can provide aid to the suffering at little cost seem to be clear cases where to not help would be morally wrong. We need not appeal to rights to explain why this would be wrong. A perfectly good explanation is that it would be unbeneficent to not aid in these cases.

We have seen that requirements of beneficence feature heavily in our everyday moral thinking. These requirements could be treated quite differently within different

¹³ Foot (2002) also emphasizes the distinction between requirements of "justice," or satisfying rights, and of "charity".

non-consequentialist theories. Within a deontological theory, such as that of Ross, one could treat requirements of beneficence as *pro tanto* moral duties. Within a virtue theory, one could link failures of beneficence to broader defects of character such as unkindness. I am not going to consider here which of these theories is correct or how to develop it. It seems to me that any acceptable non-consequentialist moral theory ought to include some category of requirements of beneficence and I will proceed under that assumption.

We saw earlier that we cannot explain why it is wrong to not save five in Tradeoff by appealing to fairness or rights. I think we can give a better explanation by appealing to requirements of beneficence instead.¹⁴ To see this, let's look at some kinds of failure to be beneficent.

One way to be unbeneficent is to be stingy or ungenerous in providing aid. In these cases, one is unbeneficent because one gives away fewer resources than one ought to. For instance, suppose that I see a man by the side of the road with a broken leg. "I've been lying here for hours in the heat," he says, "please give me a drop of water." You recognize his need, but, you think, "if I keep all of the water in my bottle I could use it to fix my hair better when I get back to the car."

This would be profoundly stingy or ungenerous because I would be hoarding my resources for myself in the face of great need.

But this doesn't seem to me to be the only way to be unbeneficent. Another way

¹⁴ Foot (2002) similarly proposes that charity requires us to save the many, although she says little about why.

is to not be appropriately sensitive to the good of some person, quite irrespective of the gains to oneself. In these cases one acts in ways that are callously insensitive to what is good for some other person(s), even though there is no benefit to oneself of doing so. This is unbeneficent because it shows a callous insensitivity to the good of those persons. Consider the following example.

Easy Split: I have a pill, of little use to me, with which I can save someone's life. I decide to give it to him. Now I discover that this person only needs half the pill to save him, and so I can split it and save the life of an additional person with the remaining half. But, I don't bother splitting it. I just give the whole thing to the one.

It does not seem that my behavior in such a case would be stingy or ungenerous. I am not withholding any of my resources for my own benefit. Rather, in failing to split the pill, I can be accused of being callously insensitive to the good of the additional person whose life I could save.

I have two options which are in all respects equivalent except for the fact that if I choose one of the options P will die, whereas if I choose the other option P will live. I should treat the fact that I would save P as a decisive reason for choosing the option of splitting the pill. To not do so would be to show a callous insensitivity to the good of P. To show such insensitivity to need seems unbeneficent to me. So, we can criticize

people for being unbeneficent, not just for hoarding their resources, but also for giving their resources away in a manner that does not show appropriate regard for the good of some persons.

Someone who saves one rather than five in Tradeoff also cannot be accused of hoarding their resources. Furthermore, Tradeoff is importantly different to Easy Split because in Tradeoff one is faced with a choice between saving two *different* sets of people rather than a choice between saving one person or saving that person plus an *extra* person. Still, I think we can appeal to beneficence in Tradeoff too; I think that someone acts unbeneficently if they do not save the many in Tradeoff. I think someone who does not save the greater number in Tradeoff shows a callous insensitivity to the good of the extra people they could save. For, in choosing to give the pill to the one, they must not be giving proper consideration to the good of the extra people they could save. All of this seems very intuitive to me. But I think the following line of reasoning may make it clearer.

Suppose I am holidaying on my boat and I notice two people, A and B, drowning. If I sail to my left, then I will be able to easily save A and if I sail to my right, then I will be able to easily save B. But there is not enough time to save both.

It would certainly be unbeneficent to not take a few minutes out of my holiday to save one of these people. It is up to me, though, to decide which of them to save. Morality permits me to sail left or to sail right, so I can just pick which way to go.

Why am I allowed to just pick whether to sail left or right? I think this is because, as a matter of beneficence, the two options are equally acceptable. Someone

reponding beneficently to the circumstances would be equally satisfied with saving A as with saving B. The beneficent person would see that each stands to lose his life and will be equally satisfied with saving either one.

Suppose I now discover that if I sail to my right I will be able to pick up an additional person, C, once I have saved B. Should I save person A alone, or should I save B and then this additional person C? Should I sail left or right?

As we have seen, taking into account just the needs of A and B, beneficence requires us to sail either right or left - each option is equally acceptable. The only remaining consideration is the additional presence of C on the right. That fact that C can be saved if I sail right is the only relevant difference between sailing right and sailing left. Beneficence surely requires me to take this difference into account and sail to the right.

To not take account of C in this way would show a callous insensitivity to her good. This is a situation where all else is equal except for the fact that C's life can be saved if I sail right rather than left. We saw, in my discussion of Easy Split that, where all else is equal, one ought to save a person's life where one can do so at no extra cost. To not do so is to show a callous insensitivity to her good. So, to not sail right, in order to save C as well as B, would show a callous insensitivity to C's good.

Showing such a lack of sensitivity to someone's good, as I suggested earlier, is unbeneficent. So it is unbeneficent to not save B and C. Similar reasoning might be employed in any case where we face trade-offs between similarly needy persons. In any such case, it would be unbeneficent to not save the greater number because it

would show a callous lack of sensitivity to the good of the extra persons who would be saved if one helped the greater number.

Now, the reasoning I have employed is very similar to some suggestions made by Kamm and subsequent non-consequentialists.¹⁵ But their accounts differ crucially, as we have seen, because they are appealing to *fairness* and this makes it impossible for them to argue as I have done.

For instance, I relied on the claim that it is permissible, given a choice between saving A or saving B, to choose to save either because saving either is just as beneficent. But just picking between A and B is not permissible where fairness is required. Fairness would require us to put in place a procedure, such as coin toss, that ensures each of A and B will get an equal chance of aid.¹⁶

Also, I claimed that when we can save C along with B, we should take C's presence into account by treating it as a reason to sail right rather than left. To not do so would show a callous lack of sensitivity to C's need. Fairness would require taking C's presence into account in a very different way, making sure that she received the same treatment as A and B, perhaps by giving her an equal chance to be saved. On my account there is no such requirement of fair treatment in this case and so it is

¹⁵ Most fully in Kamm (2007), Chapt. 2. Scanlon repeats some of Kamm's ideas in Scanlon (1998), Chapt. 5.

¹⁶ Is "just picking" genuinely different from putting in place such a procedure? To see the difference consider two ways you might select a can of soup at the market. On the one hand, you might put in place a procedure designed to ensure that there is an equal chance of your selecting any given can, such as a can lottery. But you could just grab a can from the shelf, taking no steps to ensure that the other cans get a chance of being selected. You could just pick one.

permissible to just sail right rather than left on account of C's life.

More generally, fairness accounts face an objection that my account does not. When we save the greater number, we give help to C and no help to A. Fairness requires that we treat all similarly eligible candidates for a good similarly. Thus, in order to justify saving the many on grounds of fairness, one must be able to say what makes C more eligible for the good than A. We saw earlier that doing so is very difficult. Once we abandon the appeal to fairness, we no longer need to explain why our choice treats each candidate similarly and hence do not need to claim that C is more eligible for the good than A. Thus, my account does not face the problem that fairness accounts face.

I thus conclude that it is wrong to save the lesser number in cases such as Tradeoff because to do so would be unbeneficent. It would be unbeneficent because it would show a callous insensitivity to the good of some persons.

6.

Before proceeding, I would like to consider some potential objections.

Many people worry that the answer one gives to the numbers problem will be inconsistent with some other firmly held convictions of ours. They note that we have a firm intuition that, faced with a choice between saving a single individual from death and a million people from tiny headaches, one should save the single individual. Their concern is that one's answer to the numbers problem will undermine this intuition.¹⁷

I cannot fully address these cases here. However, I think they do not provide a

¹⁷ Ostuka (2006) raises concerns of this kind.

direct challenge to my account, since my account leaves open whether you should cure the many headaches rather than save a life. I have claimed that it is uncharitable to save one person rather than five because to do so would show a lack of concern for the additional lives one could save by helping the five. I defended this claim by noting that faced with a choice between saving one person A, and another person B, it is just as beneficent to save either person.

A choice between saving one person's life and curing another's headache is very different. I suspect most people would not think it is just as beneficent to cure the headache as to save the life. So the explanation I offered for why it is unbeneficent to save one life rather than five cannot be directly used to argue that it would be unbeneficent to save one person's life rather than cure the headaches of a million others. My account of the numbers problem leaves open the question of whether you should save the single life over the many headaches.

As I said in the introduction, the numbers problem is the problem of giving a *non-consequentialist* explanation for why we should save the greater number. Some may question whether the explanation I have given is a genuine alternative to the consequentialist one. So, I would like to briefly clarify the respect in which my explanation differs from the one offered by the consequentialist.

My explanation, like the consequentialist one, relies in part on considerations about what would be good for certain people. But it does not, like the consequentialist one, turn on facts about the goodness of states of affairs. Rather, facts about what would be good for people matter in my account because they affect what it would be

beneficent or generous for an agent to do.

It might be said that we can only understand what it is for someone to be beneficent or generous in terms of what would promote the best states of affairs. But I reject this. It seems to me that the idea of beneficence, and associated notions of charity, generosity and so on, are familiar concepts from our common sense morality. We have a perfectly good grip on them, it seems to me, without having to bring in any notion of good states of affairs.

Of course, the consequentialist can claim that the best explanation for why we should be beneficent is that doing so will produce the best states of affairs. But in so far as we have reason to reject consequentialism, in light of the familiar objections I mentioned at the outset, we also have reason to reject this explanation.

7.

I have been discussing only Tradeoff and similar cases where the agent with aid to give is a private person and the needy are strangers to her. I proposed that in such cases the needy have no rights to that aid and that considerations of fairness are irrelevant. For these cases, the explanation of why one should save the five appeals to beneficence. Still, it seems to me that there are some important cases where we should save the greater number but where it seems inappropriate to appeal to beneficence and considerations of fairness are relevant. Before concluding, I would like to briefly discuss

some of these cases and show that they are not in tension with my account.

Consider, for instance, agents of the state, such as firefighters, public health officials and so on. These agents are frequently required to save the lives of these people and find themselves in tradeoff situations where they can save, say, only one person or five but not both. For instance, a firefighter might find herself in a situation where she can save one person in one wing of a building, or five others in another wing, but not both.

The firefighter, we think, ought to save the five. Why is this? One explanation is that it would be unbeneficent of the firefighter to not save five and, for the reasons I gave earlier, I think it would indeed be unbeneficent of her to not save five. But this does not seem to me to be the only or central explanation of why she should save the five. It seems to me that the firefighter owes it to the five to save them.

This might seem puzzling because, given that both firefighters and private persons should save the greater number, we might expect the explanation of why they should to be the same. I do not find this very troubling, however, since the reasons why firefighters are required to put out fires in general seem quite different from the reasons why a private person might be required to put out a fire. Although firefighters should also save the greater number, other aspects of their responsibilities to aid reveal important differences between them and private persons.

For instance, we think firefighters are morally required to go into burning buildings to save people, despite the personal risk of doing so, when we would not think private persons were required to. Also, when a private person is able to save five rather

than one but the one is her *friend* we think it perfectly permissible for her to save the one.¹⁸ But firefighters are not permitted to show such partiality.

These differences can be accounted for by the fact that private individuals are required to provide aid as a matter of beneficence, whereas firefighters owe it to us to do their job of putting out fires. There thus seems to me every reason to expect that the central explanation for why firefighters should save the greater number will be quite different.

I said the central explanation for why firefighters should save more seems to be that saving more is part of what they owe. But why is it part of what they owe?

The natural answer is surely that it is typically part of their *job* to save more rather than fewer. This answer suggests that the obligations of firefighters are fixed by the responsibilities that they are assigned by the state. Their obligations are fixed by what policy the state chooses about how firefighters are to react in different circumstances. So, a perfectly good explanation of why a particular firefighter should save the greater number refers to the policy that she has been asked to follow.

There is a further question we can ask about these cases, namely what policy should be enacted. What rule should the state tell firefighters to follow when they find themselves faced with forced choices between lives?

We think the state has a duty, indeed the same duty, to every citizen to provide her with protection from fire. In coming up with a *policy* for its firefighters, the state is not distributing the good of fire protection to any particular person. It is not telling them to

¹⁸ Taurek (1977) points this out.

quell any particular fire, but instructing them about what to do when certain situations arise. In coming up with a policy, the state is thus determining what would happen to any given citizen should they find themselves in the relevant circumstances. The state's decisions will thus determine what the *chances* are of any given citizen getting helped if they find themselves in need of it.

Suppose the state is deciding between the policy of saving the greater number and the policy of tossing a coin to decide between saving more or fewer people. A randomly selected citizen has a higher chance of being among the greater number. So the choice between these policies is just a choice between giving every citizen a higher chance of being saved or a lower chance.¹⁹

Thus, the policy of saving the greater number seems to be fair, since every citizen's chances of being saved is raised. Each person is treated the same by a policy which raises each person's chances of being saved.

There are other policies that also give person the same chance of being saved, such as the policy of tossing a coin. But the policy of saving the greater number is more attractive because it gives each person the *highest* possible chance of being saved (consistent with everyone else getting the same). Given that the state is obligated to provide care for its citizens, surely it ought, all else being equal, to choose the policy which benefits them the most and this is the policy of saving the greater number.

So, it seems to me that the right way to explain why firefighters, lifeguards, etc.

¹⁹ This argument draws on Taurek (1977). His discussion has been interpreted in different ways but I think the argument I give is the strongest version of the one he offers.

should save the greater number is to refer to the responsibilities they have been assigned by state policies. We can ask whether such policies are themselves justified given what the state owes to its citizens, and I think it is clear that they are.

8.

In conclusion, let me briefly summarize what we have found. Non-consequentialists have assumed that we must justify saving the greater number on grounds of *fairness*. This has proved very difficult and so the numbers problem has been thought very hard for non-consequentialists.

The difficulty arises, I argued, because of the false assumption that requirements of fairness apply in cases such as Tradeoff. This assumption is false because we are not required to be fair in giving aid to needy strangers. Fairness does not apply to these actions because needy strangers do not have rights to our aid.

Once we abandon the assumption that fairness is required of us in these cases, we can justify saving the greater number much more easily and intuitively on the grounds that it is the beneficent thing to do.

There are other cases of tradeoffs, such as those involving firefighters, lifeguards and so on, where rights and fairness do seem relevant to the justification for saving more. But these cases are importantly different and do not stand in tension with the rest of my account.

Chapter 2: Fairness, Distributive Justice and Global Justice

1.

There is, uncontroversially, some duty to help those who are living lives of great deprivation, at least where we can do so without bearing an unreasonable burden. We might call this a duty of “humanitarianism”. This duty requires us to help those who are living in great deprivation because they are doing so *badly*. It is relatively uncontroversial that some such duty exists. For instance, there are few who would say we needn’t do anything to prevent easily avoidable starvation. However, it is rather more controversial what the best way to fulfill this duty is, how much of a burden it requires one to bear and so on.

This duty of humanitarianism is the minimal requirement bearing on the morality of resource distribution. But many of us think that there are, in addition, requirements of *justice*. In particular, many of us are “egalitarians”. Egalitarians are not just concerned about levels of avoidable suffering in our society, they are also concerned with its *inequalities* and think that these inequalities are unjust, or unjust unless they can be given a special justification.²⁰ They thus think that we should have state policies which address these inequalities. Some familiar egalitarian policy proposals for addressing inequality include progressive taxation, a redistributive welfare state, heavy investment

²⁰In the rest of the paper I will sometimes drop the qualification “unless they can be given a special justification,” but it should be assumed throughout.

in education, minimum wages and so on. Others, such as non-egalitarian liberals, may also endorse these policies. But their justification for the policies is different. They might say redistribution is needed to alleviate need or to place limits on the political power any individual can gain. What distinguishes the egalitarian is that she thinks inequality is *itself* unjust (absenting a special justification for it) and endorses these policies as a means of redressing inequality.

These policies are, of course, extremely controversial in the United States and elsewhere in the developed world. It's thus important for those attracted to egalitarianism to have something to say in defense of their views and I'm going to begin this paper by considering what justifications could be offered for egalitarian policies. What argument can egalitarians give for the claim that justice requires the sort of policies they endorse?

That question is important in its own right. But answering it is also essential for addressing another issue that political philosophers have recently begun to focus on. Egalitarianism, as I've described it, is a view about policies that affect the distribution of wealth *within* a particular society. We can also ask about distributive justice in the global context, about the distribution of wealth *between* different societies and their members. In particular, we can ask, "If you're an egalitarian about distributive justice within a society, what should you say about global distributive justice, about distributive justice across different societies?" As we shall see, different ways of defending egalitarianism for the domestic sphere have very different implications for global distributive justice.

I'm going to argue, firstly, that some prominent views about how to defend domestic egalitarianism are mistaken and that there is a better alternative available. Secondly, I'm going to argue that this means some central ways of thinking about global justice are mistaken. And, finally, I will suggest how my own view about how to defend domestic egalitarianism can be used to develop a quite different theory of global distributive justice.

I'm not actually going to discuss every way of defending egalitarian policies. There are many arguments philosophers have offered for egalitarian policies. For instance, some utilitarians have suggested that the utility individuals get from resources exhibits diminishing marginal returns and that, hence, more equal distributions of wealth should be promoted in order to maximize aggregate utility. Others, "communitarians" perhaps, have argued for redistribution on the grounds that it engenders more a cohesive and sympathetic community life within a society and that only in a community of this kind can there be stable democratic political institutions.

Though these and other justifications for egalitarianism are important, I'm going to be more narrowly focused in this paper. I'm going to focus mainly on one particular strand of egalitarian thought, namely that which relies centrally on the notion of *fairness*. In political philosophy, that strand rose to prominence with the publication of John Rawls' theory of "Justice as Fairness" and remains central in contemporary discussions of distributive justice. "Fairness" is also frequently appealed to in political debate about distribution. For instance, when Jo Biden was asked to defend the policy of raising taxes on those earning more than \$250,000 a year, he replied that this policy was

justified out of “fairness” to the middle class.

2.

The most prominent view about how fairness might figure in an argument for egalitarian policies is “luck egalitarianism”. This view is inspired by certain passages of Rawls and Dworkin, but its central proponents include G.A. Cohen, Richard Arneson and John Roemer.²¹ The core idea of luck egalitarianism is that it is unfair if one person has less than another through sheer bad luck and that justice requires the elimination of such unfair disadvantage. Something needs to be said about what it is for someone to be disadvantaged through “sheer bad luck” and the most common path is to say that an inequality is due to sheer bad luck, and hence unfair, if someone has less than others *through no fault of her own*.

The idea is that if it is my fault that I'm in a position where I have less than others, say because I made bad decisions, then I cannot say that I've just been unlucky and so I cannot complain that it is unfair that I have less. For instance, if I've chosen to squander my money in the arcade or set a match to it, then I can't say it's unfair that I now have less than others. But, if it's not my fault that I have less, if I can't be held responsible for being in that position, then it is just sheer bad luck that I have less and I can complain that this is unfair.

Here, then, is a canonical statement of the luck egalitarian view: G.A. Cohen

²¹ See Cohen (1989) and (2008); Arneson (1989) and (2001) and Roemer (1994), (1996) and (1998).

writes that his “animating conviction in political philosophy is that an unequal distribution whose inequality cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto*, unjust, and that nothing can remove that particular injustice.”²² The unfairness of such inequalities, on Cohen’s view, makes a strong *prima facie* case for policies that aim to eradicate them.

To defend egalitarian policies (some sort of redistributive welfare state, for instance) on luck egalitarian grounds one needs to fill in a number of details. For instance, one needs to say something about when exactly someone should be thought at fault for having less than another. And having done that, a lot of empirical work would need to be done to show that some important class of inequalities in our society are faultless, according to the relevant standard. Filling in these details is hard and presents serious difficulties for the luck egalitarian, but we can set these issues aside for present purposes. Now that we have the basics of the luck egalitarian position in view, I’m going to illustrate a more fundamental problem for the theory.

3.

Start by considering ordinary appeals to fairness in our everyday moral thinking. One way that we talk about fairness concerns fairness in the way that people are being *treated*. Here are some examples. Suppose that a parent were to neglect one of her children for the sake of their doted on sibling. We would consider this unfair. More

²² Cohen (2008) p.7.

specifically, we would think that the parent's *treatment* of the less favored child was unfair. It is unfair for the parent to be doing so little for this child compared with the other.

Here is another case. Suppose that within a company men earn greater wages than women who are doing just the same work. This is surely unfair. In this case what is unfair is the company's treatment of its employees, giving arbitrary advantages to its male employees over female.

Finally, consider a carpool scheme where some friends cooperate to reduce the amount of wear to their cars from traveling to work. They take turns driving each other to work, but over time one friend consistently finds herself doing more driving than the others. She is being treated unfairly because she is being expected to accept a greater share of the burdens of the scheme than the others.

In each of these cases of unfairness, what is unfair is how some person or institution is *treating* certain people. The moral defect is in the *relation* that the person or institution has put itself in to those people. For example, in one case, the parent is defectively in a position of doing much more for one child than the other and, in another, the company is defectively offering a greater share of its profits to some members over other, relevantly similar, members.

When discussing these cases of unfair *treatment*, we sometimes also call certain *distributions* of goods unfair. For instance, when discussing the sexist company, we might say that it is unfair that certain female members have a lesser income than certain men. But it seems clear enough that the distribution of goods here is only thought to be

derivatively unfair. The unfairness of the distribution derives from the unfair treatment that the employees have been subject too.²³ The *primary* subject of unfairness in these cases is the way people are being treated.

Now, there is another very different kind of claim about fairness that people also make in our everyday moral discourse. People are inclined to call certain distributions unfair, even in circumstances where it is obvious that no-one has been treated unfairly. We might call this “cosmic unfairness;” unfairness in the world that is independent of how anyone is being, or has been, treated.

Take, for instance, the distribution of natural talents. Some individuals are born with greater natural talents, or propensities to develop certain talents. They are born with genes that dispose them to be more intelligent than others, have greater physical strength and so on. Setting aside whether or not there is a God, no agent decided that things should be like this. No-one selected her rather than him to have a greater natural intelligence or seems to be responsible for the distribution being one way rather than another.

Yet, many people call inequalities in the distribution of natural talent unfair. They say such things as “No matter how hard I train, I’ll never be as good a soccer player as her. I just won’t be able to kick the ball as hard. It’s so unfair.” Or they might say, “It’s completely unfair that I was born tone deaf but she was born with a wonderful ear for

²³ Some may deny this and claim instead that the unfairness of the treatment involved derives from its contribution to a distribution which is, independently, unfair. I will discuss this suggestion in the next section.

music.” Any unfairness in these cases cannot be derivative from unfairness in how anyone has been, or is being, treated. It must be “cosmic unfairness,” unfairness in the world that is independent of how anyone has been treated.

4.

So, we have identified two quite different sorts of fairness judgements in our common-sense morality. One set of judgements concerns how people are being treated: judgements about fair and unfair treatment. And a second, quite different, sort of judgment concerns cosmic unfairness: fairness in the distribution of advantages, which is independent of how anyone has been treated.

Now, when the luck egalitarian claims that certain distributions of resources are unfair, she is clearly speaking of *cosmic unfairness*. For, on her view, it is unfair for one person to have less than another (through no fault of her own), irrespectively of whether she has been treated unfairly. We can ask then, “Is it a good idea to rely on the notion of cosmic unfairness to justify egalitarian policies?”

I think it is a bad idea and we can see the reason why by noticing an important difference between claims about unfair treatment and claims about cosmic unfairness. The difference concerns what we can *justify* by referring to these different kinds of unfairness. In particular, these different kinds of unfairness play a very different role in determining what actions ought to be performed. The difference is that there are clear duties grounded in facts about unfair treatment while there are no such duties grounded in facts (if they are facts) about cosmic unfairness.

All else being equal, one ought not to treat others unfairly. Or, if you like, there is a *prima facie* duty to not treat others unfairly. Thus, judgments about unfair treatment have clear implications for what we ought to do. If a person would treat others unfairly in performing a certain action then, all else being equal, she ought not to perform that action. For instance, take the parent who favors one child over the other, despite the two children being similar in needs, abilities and so on. This is a case of unfair treatment, the parent is treating the less favored child unfairly. And *because* it is unfair to treat her child like this, she ought, all else being equal, not to do so. She may also have a duty to make up for the results of previous unfair treatment.

What relation does cosmic unfairness bear to what we ought to do? Presumably, if there is any general principle here it says that we ought, all else being equal, to remove, or reduce, any cosmic disadvantage. Whereas the duty to correct the results of unfair treatment falls on the agent who was being unfair, a plausible duty to correct cosmic unfairness must fall on *all* agents.

Do we all have such a duty? Take the distribution of natural talents. If there is a duty to correct cosmic unfairness, then we must all take steps to correct the unfairness of some being born with greater natural talent than others. Of course, it would be very difficult, and likely objectionably intrusive, to actually redistribute the natural talents themselves. But we could instead fulfill our duty to reduce cosmic unfairness by compensating the less talented with resources or some other good.

Must we do so? Surely not, it seems to me. The mere fact that person A is less naturally intelligent, or gifted in some other respect, than some other person B does not

impose on me a duty to help A rise to level of B or to compensate A with resources. Think of any familiar instance of one person having lesser natural sporting ability, philosophical talent, musical gifts and so on. If the person really wants to have a greater natural ability, say their life goal is to play in the manner of their favorite violinist, we might feel bad for them and we might, in a spirit of generosity, help them out in some way. But helping them is surely superogatory. There is no *duty* to compensate for all natural inequalities of talent.

It might be said that in the cases just discussed there is no duty to compensate because the goods involved are not important enough. But take a case where differences in natural talent seem to confer huge benefits. Take, for instance, the basketball player Shaquille O'Neal. By the age of 32 O'Neal had amassed a fortune of \$222 million dollars. So, O'Neal earns many times more than the median earner. So, this should be a paradigm case of an inequality that egalitarians will find unjust. But why is it unjust?

The luck egalitarian might say the following: Shaq is 7'1" and blessed with many natural gifts of dexterity, speed and so on. These natural gifts give him a much greater earning potential than the rest of us. But it's sheer good fortune that he has those talents and not us. Thus, it is unfair that Shaq has these talents and all the benefits they bring. We should therefore have redistributive policies to compensate the rest of us for Shaq's unfair advantages.

Is this a good argument for redistribution? Well there are many people who will agree that it is unlucky, and unfair, that the rest of us lack Shaq's talents. But few will

think that this is a good reason for insisting that he, or anyone else else, must compensate us for being less naturally gifted. As long as we think of Shaq's millions as among the benefits of his natural gifts, there does not seem to be a good case for making him give them up.²⁴

Though I have no general duty to compensate for inequalities of natural talent, there are clear cases where I should help someone who is born disadvantaged. For instance, suppose that someone is born severely disabled and unable to lead a decent life without assistance. I am morally required to help such a person, at least assuming that I can do so without bearing an excessive burden. But we do not need to appeal to any supposed cosmic unfairness to explain why I should help. We can give a better explanation by appealing to a duty of charity, or beneficence, that requires me to aid those who are in serious need. The reason I must help the disabled person is that she is in serious need, not because there is a general duty to reduce the amount of cosmic unfairness in the world.

What about cases of unfair treatment? Might they be best accounted for by a duty to reduce cosmic unfairness? Earlier I discussed some examples of unfair treatment, on the part of parents, companies, and so on. I said that in such cases we sometimes call certain distributions unfair, such as the distribution of wage income within the firm, but that any unfairness in these distributions is derived from the unfair

²⁴I will argue later that people such as Shaq are not wealthy just because of their natural talents but because of the effects of state decisions about how to regulate the economy and that, hence, their greater wealth can be traced to unfair treatment. My point here is just that the influence of natural talent on a distribution is not enough to make us think it is unjust.

treatment of the people involved. This might be denied. It might be said that in fact what makes the forms of treatment in these cases unfair is their effects on the distribution of advantages and hence the amount of cosmic unfairness in the world.

For example, it might be said that inequalities of advantages between men and women are cosmically unfair and that it is unfair for a company to pay men and women differently because of the effect that doing so has on the amount of cosmic unfairness in the world. In this way, a duty to reduce cosmic unfairness might be used to explain why various forms of treatment are unfair.

I am doubtful, however, that it would be a very good explanation. Consider the case of parents. It is unfair for a parent to favor one child over another, say by giving them a superior education. On the proposed explanation, this is because doing so would contribute to the amount of cosmic unfairness in the world. What makes the parent's actions wrong, on this view, is their effect on the overall distribution of advantages.

Now, we would judge a parent harshly for even very small differences in their treatment of their own children, such as giving one a slightly better education than the other. We would do this even where both children are, by average standards, well educated. Yet, the effect of such actions on the overall distribution of advantages, and hence cosmic unfairness, seems negligible.

It thus seems implausible to say that the strict requirement of equal treatment within the family is derived from a duty to promote more equal distributions of resources generally. Furthermore, if parents were subject to a more general duty to reduce

(cosmically) unfair distributions, they would have to do much more than just favor their children equally. They would have a duty to compensate the various people that are less advantaged than others, such as the untalented. But as we have seen, there does not seem to be such a duty.

In some cases, fair treatment may in fact require introducing inequalities. For instance, treating the competitors for a music prize fairly will require giving the prize to the most talented performer even if she is better of than the other competitors. On the assumption, held by the luck egalitarian, that no-one is at fault for being less talented than others, giving the prize out in this way will increase the amount of faultless inequality, and hence the amount of cosmic unfairness. So clearly this is a case where a requirement of fair treatment is not best explained by a duty to prevent or reduce cosmic unfairness.

I have been defending that claim while certain distributions may be cosmically unfair, there is no duty to correct cosmic unfairness. Two considerations were advanced in support of this claim. Firstly, there seem to mainly examples of cosmic unfairness that we do not have to do anything about, such as inequalities in natural talent. Secondly, the examples of wrongs that might provide evidence for such a duty are best explained by other requirements, such as duties of beneficence or of fair treatment, which are not themselves grounded in a duty to correct cosmic unfairness.

5.

There is a reply the luck egalitarian can make to my claims, which I would like to

briefly consider. The luck egalitarian can point out that ordinary people are often quite limited in the information they have about how their actions will affect the overall distribution of advantages and also in their abilities to alter that distribution. She can thus suggest that while people have a duty to reduce cosmic unfairness they should not in general aim to change the overall distribution of advantages themselves. They should not, for instance, try to correct the disadvantages faced by people who are less talented in general. They should instead focus on reducing disadvantages faced by people who they know a lot about and can help easily. For instance, they should focus on ensuring that each of their children, whom they know a lot about and have easy access to, is not disadvantaged.

This luck egalitarian reply to my arguments is similar to some of the claims utilitarians often make in defense of their view. They too often appeal to people's limited information and abilities to explain away some of the counter-intuitive aspects of their view. Accordingly, there is a large literature discussing such appeals and it will not be possible to survey all of that here. However, I will raise two problems for the luck egalitarian reply that I think are serious.

Firstly, I am doubtful that even when we take into account people's limited information and abilities the luck egalitarian can explain our ordinary responses to inequalities. We have seen that the luck egalitarian can offer some reasons why individuals should focus on correcting the disadvantages of people who are familiar and accessible to them rather than trying to end global inequality directly. However, I don't think this suggestion is sufficient to explain the sharply different attitudes we have to

inequalities in different contexts.

We don't think of inequalities due to natural talent as being merely difficult to repair, we don't see *any* pressure to alter them. By contrast, we find gendered wage inequalities within a company repulsive even where all members of the company earn significantly more than the median worker. Changing these wage inequalities would have very little impact on overall cosmic unfairness but seems like a very important moral requirement. It is hard to see how such sharply different attitudes to inequality in these different contexts could be justified just by appeal to limits on our information and abilities.

Secondly, the luck egalitarian explanation for why we are concerned with inequality in some contexts and not others seems, on its face, to focus on the wrong facts. On the luck egalitarian proposal the only difference, morally speaking, between my children and other children is that I know more about mine and can help them more easily. But this conflicts with our ordinary understanding about why we must care for our children and care for them equally. According to that ordinary understanding, helping my children equally is not a mere means to creating a more equal global distribution of advantages. It is something I owe to my children in light of having accepted a responsibility to each of them to help them develop.

6.

We have seen that while some distributions of advantages may be cosmically unfair, there is no general duty to correct these distributions. It thus seems to me that

claims of cosmic injustice are going to be a poor ground for egalitarian views about the distribution of wealth within a state. For, egalitarians do not think that inequalities of wealth within a state are merely unfortunate, they think those inequalities are *unjust* and that the state ought, all else being equal, to do something about them. They are not asking us to pity those with fewer resources or regret the fact that our society contains enormous inequalities, they are asking us to endorse *policies* which *do* something about these inequalities. Since there is no duty to correct cosmic unfairness, they cannot appeal to cosmic unfairness to defend their view that the state ought to correct inequalities in the distribution of wealth.

Of course, none of things I've said constitute a knock-down argument against the luck-egalitarian position. Some people will hold steadfastly to the view that there is pervasive cosmic unfairness and that all individuals and institutions, including the state, have a duty to redress this unfairness. But it should be clear at least that the luck egalitarian position is at odds with what many people think and so we quickly reach an argumentative deadlock.

I think it's worth noting that claims about cosmic unfairness are sometimes made in political discourse and reflecting on what role those claims play. Here is an example. In 1977 Jimmy Carter was asked about a supreme court decision which ruled that the federal government did not have to fund abortions for those who could not otherwise afford them. Carter said, "There are many things in life that are unfair, that wealthy people can afford and poor people can't. But I don't believe the federal government

should take action to try to make these opportunities exactly equal.”²⁵ Kennedy similarly said, fifteen years earlier, that certain inequalities are not unjust because “Life is unfair” and many similar things have been said since.

Clearly the unfairness that Carter is speaking of is *cosmic* unfairness; he’s trying to convince us that the differential access of rich and poor women to abortions is just cosmically unfair. And he is using that claim not to motivate political action to address these inequalities but rather to justify *inaction* with respect to those inequalities. Here, as elsewhere in familiar political discourse, the point of saying that an inequality is merely cosmically unfair, a feature of the “unfairness of life,” is to *deny* that anyone has a responsibility to do anything about it. As an argument for equality in the public sphere, the luck egalitarian case is unlikely to generate much success.

So, it is worth asking if there’s an argument that can be given for egalitarian policies that has more widely accepted premises than the luck egalitarian view. We have seen that there is clearly and uncontroversially a duty to not treat people unfairly. If egalitarian policies can be shown to be required as a matter of fair treatment then there will be a good case for them. I thus propose, as an attractive alternative to the luck egalitarian view, what I will call the “Fair Treatment View”. According to the Fair Treatment View, distributions of resources are unjust to the extent that they issue from

²⁵ Carter (1977), p.1237. I don’t mean to endorse Carter’s opinion here, just to note the use he makes of the idea of cosmic unfairness. Indeed, I think he is wrong to describe inequalities between rich and poor women as merely part of the unfairness of “life,” since, as we will see, I think inequalities in a society issue from unfair treatment.

unfair treatment of some individuals. I'm going to argue that we can defend egalitarianism by relying, in particular, on the requirement that the *state* treat its citizens fairly.

7.

First, though, let me say a few words about fair treatment more generally and what it might involve. Fairness seems to be a comparative notion; it concerns how some people are treated compared with others. When we claim that someone is being unfairly treated, we usually offer as evidence some difference in how they are being treated compared with others. For instance, those who think that their company is remunerating them in an unfair manner will point out that other, similarly productive, members of the company are being more handsomely reward. What is unfair here is that the company is favoring some members over others, despite there being no relevant difference between them.

More generally, we can say that unfair treatment exists where an agent or institution favors some people over others where there is no relevant difference between them. Which differences between people are relevant? This seems to me to vary according to the situation we are considering. Parents should do more or less for their children depending on their needs. The person awarding music prizes should favor the candidates who produced better performances. The members of a car pool should receive the benefits of the scheme in proportion to their contributions. In these different contexts, different features of the people involved are relevant: their needs,

abilities, contributions and so on.

So it seems that what counts as inappropriate favoring, and which differences between people are relevant, depends a good deal on what situation and, especially, what agents or institutions, we are considering. In particular, it seems to depend on what the appropriate roles or functions of the agents or institutions are. For instance, parents should ensure that each of their children develops into a capable adult, and this will require helping them in proportion with their needs. The person awarding a music prize should have the aim of promoting musical excellence and so should favor the contestants who have produced the best performance. The function of the car pool is to provide rides for its members and so it is relevant if some members contribute more to that goal than others.

We should be skeptical, then, about whether there is a general rule for determining whether a given instance of favoring some people over others is inappropriate. We should expect that there is no principle that applies across the board to tell us which differences between people are relevant or provide an appropriate basis for favoring them differentially. But, as we have seen, we can still work out what is relevant in particular cases.

8.

What, then, does the state have to do in order to treat its citizens fairly? What distinctions are relevant in this context? Which favorings and disfavorings are appropriate? A number of deeply held shared convictions bear on this question,

including some quite abstract ideas about the relation between state and citizen and some more concrete judgments about particular state decisions that we would consider fair or unfair.

We can think of a political society as a cooperative association whose members are the citizens. Citizens cooperate together by accepting a common set of rules for interaction and doing so works to the advantage of each. The rules are made by a central authority, the state, through collective decision, and these rules are binding on the members.²⁶

In some societies there have been different classes of membership in the political community, different classes of citizen. For instance, in aristocratic societies, individuals could be born into higher and lower political classes. Those born into the higher classes were considered more capable of fulfilling the responsibilities of citizenship and were also considered more worthy of civic benefits. In an aristocratic society, the higher born are expected to fulfill civic duties, such as voting, from which others are excluded and are also entitled to advantages that are denied to other members of society. For instance, the higher born might be granted a more extensive set of liberties, while other members are slaves or restricted in their freedom to practice their religion. Or, the state might restrict access to certain economic goods, such as land or desirable jobs, to only those born within the appropriate class.

In a liberal democracy, we have a very different conception of the relation

²⁶ Rawls (1971) similarly suggests that citizens can be seen as members of a cooperative association. I discuss this part of Rawls' view more fully in Chapter 3 of this dissertation.

between state and citizen. We think of all citizens as being *equal* members of the polity, all able to fulfill the responsibilities of membership, such as voting and upholding the law, and equally entitled to civic rights and benefits. We think of all citizens as being equal members of the polity, irrespective of their race, sex, social class, natural talent and so on. We expect the state's treatment of its citizens to reflect this fundamental equality of standing and hence we expect the state to treat differences of race, sex and so on between citizens as irrelevant.²⁷

These more abstract convictions about the relation between state and citizen are reflected in some of our more specific expectations about how the state ought to relate to the citizens.²⁸ We think, for instance, that no citizen should be granted special exemptions from the law (that there should be, as we say, “equality before the law”). We think that each citizen should be equally well protected by the police, regardless of their race, wealth or talent. We think that there should be equal liberties of religion and conscience for citizens with different religions and moral views.

Thus, the equal status of every citizen as a member of the polity seems to require that the state favor each citizen equally, at least in the context of fundamental decisions about the “basic structure” of a society, its central social and economic

²⁷ What I say is one interpretation of Rawls’ remarks that citizens are viewed as “free and equal” in a liberal democracy. See Rawls (1971). Also, see Dworkin (2001), who claims that the state must show “equal concern for its citizens”.

²⁸ Here I draw on Cohen (1989).

institutions.²⁹ Differences between citizens of race, sex, social class, natural talent and so on are irrelevant in this context and are not an appropriate basis for differential treatment. We have seen what this means for goods such as police protection and so on. What does it mean for justice in the distribution of resources?

9.

Among the functions we expect the state to perform include putting in place various economic structures. We expect the state to create and protect property rights, maintain a stable system of contract law, foster competition through anti-trust laws, and take various other measures that are needed to create a working economy for the benefit of the citizens. The state's role in maintaining a working economy is more obvious during some periods than others, for instance it was particularly conspicuous during the “bailout” to ensure that American financial institutions persist, but the state's hand is there at all times. The state has important choices to make about exactly which economic rules to enact and the choice of rules will profoundly affect the prospects different citizens face for access to resources.

For instance, in an aristocratic society, of the sort I mentioned earlier, certain sorts of property and the best jobs might be legally restricted to those born within a certain caste. These rules would obviously work to the advantage of the higher born.

Instead, the state might create a competitive market economy with no such legal restrictions on access to jobs to property. In this case there would not be the *obvious*

²⁹The term “basic structure” was introduced by Rawls (1971).

favoring of those born into particular classes that we see in an aristocratic society. However, the income any individual can gain in the open market will depend on how scarce and in demand her skills are. And what skills she has will depend substantially on her class background and innate talents. So, this economic system could be said to favor those born into wealthy families and with certain genetic endowments.

Another set of policies, those favored by so called “meritocrats,” is designed to ensure that individual prospects for wealth and income depend just on variations in natural talent. Attempts are made to reduce the effects of class background on an individual’s prospects through such policies as heavy investment in public education and heavy taxation of estates. This is an economic system that does not advantage those born wealthy but does advantage those born with certain natural talents.

Finally, the state might have, in addition to a market economy, certain redistributive policies, such as having some form of welfare state, progressive taxation and so on. These policies would reduce the effect of both social class and natural talent on an individual’s prospects and generate more equal prospects for every citizen.

These are just a few, briefly articulated, policy options. But they will suffice to illustrate the fact that the distribution of wealth between citizens depends substantially upon what rules the state chooses to enact. Different sets of policies will work to the advantage of citizens with different characteristics, such as those born into wealthy families, those with greater natural talents and so on.

Some people will accept that state decisions have an important impact on the distribution of wealth, but will claim that this impact ought to be measured against the

baseline of individuals' pre-tax incomes, as determined by the operations of the "free market". For example, some people favor a flat tax rate on the grounds that it involves the government imposing a similar percentage burden on each citizen. These people are assuming that the burdens the government imposes on any citizen have to be measured against a baseline of her pretax income.

For their view to be coherent, we have to think of pre-tax income levels as being fixed independently of government policies. Only then would it make sense to use pre-tax incomes as a baseline against which to measure the impact of government policy on distribution. In fact, however, the state is heavily involved in the process that determines citizens' pre-tax incomes.

To see this, consider the property rights individuals have, which play a large role in determining pre-tax incomes. A "right to property" in an item consists in having various Hohfeldian claims, privileges and powers.³⁰ These include, typically, the right to use the item without interference by others, the right to transfer it to others as a gift or bequest and the right to some of the income that it can be sold for.

Each of these rights associated with property is created and enforced by the state. For instance, the state decrees that some item of physical capital is to be controlled exclusively by a particular individual and prevents others from using it. The state decides whether an item may be passed on as a bequest and whether or not the police will intervene when someone tries to bequeath it. And the state decides whether

³⁰See, for instance, Thomson (1992).

the owner may receive income from the sale of the item.³¹

Furthermore, there are various decisions to be made about the precise details of these rights. For instance, the state must say when a will is needed for successors to receive an inheritance and what the content of such a will must be. The state decides exactly how much of the income from the sale of an item should accrue to the seller.

Thus, I think it will not do to take the pre-tax distribution of wealth as a baseline against which we measure the effects of state policy. That distribution is itself heavily determined by state measures. State decisions determine both the pre-tax and post-tax distribution of wealth and hence have a pervasive impact on the resources that citizens hold.

10.

Now, we saw earlier that in the context of fundamental state decisions about the social and economic structure of a society, differences between citizens, such as their race, social class and natural talents, are irrelevant and should not be a basis on which some citizens are favored over others. The state must favor its citizens equally. Thus, if the economic rules the state enacts are working, say, to the advantage of those that are born in higher social classes, then there is a complaint of unfairness that can be made by those born into lower classes, namely that they are being inappropriately disfavored by the state.

³¹ The idea that these rights are created by the state will be resisted by Lockeans such as Nozick (1974) but it would take us too far afield to discuss their arguments in detail.

We are now in a position to see the basic argument for egalitarian policies on the Fair Treatment View. The state makes rules that govern the basic structure of a society, including rules about the structure of the economy. It has choices to make about which rules to adopt and the choice of rules has a pervasive impact on the distribution of resources.

But, as matter of fairness, the state must favor its citizens *equally* because, in the context of fundamental state decision making, all citizens are relevantly similar. So, when rules are chosen such that some citizens have greater resources than others, those who fare less well can complain that the state has benefitted them less, and hence treated them unfairly. Thus, unless inequalities can be given a special justification, the rules ought to be chosen with the aim of benefiting each citizen equally.

The relationship between state and citizen is an ongoing one, so the aim should not be that every economic decision at every moment favor every citizen equally but, rather, that the overall economic structure work over time to ensure that each citizens has roughly equal prospects for earning income and wealth, unless inequalities can be given a special justification.

Here is the argument in summary:

1. X treats Y unfairly if X favors Z over Y and there is no relevant difference between Y and Z.
2. In the context of state decision making, differences between citizens are irrelevant.³²

³² This premise and, hence, premise 3 need to be qualified so that they only concern fundamental state decisions about the basic structure. Individual policies may permissibly favor some citizens over others. I leave out the qualification in the text to make the argument clearer.

- Thus, from 1. and 2.
3. The state must not favor some citizens over others, it must favor its citizens equally.
 4. Decisions made by the state have a pervasive impact on the distribution of wealth in a society.
- Hence
5. Inequalities of wealth reflect decisions by the state which benefit some citizens more than others.
- Therefore, from 3 and 5,
6. Conclusion: Inequalities of wealth issue from unfair treatment of some citizens by the state.

This is my first pass at the argument, but I think it needs to be revised slightly in light of an important objection, which I will now present. The problem, according to the objection, is with premise 3. It is true, the objector says, that the state must treat its citizens equally in making basic structural decisions. But it is not the case that to treat its citizens equally the state must ensure that they have equal *resources*. Rather the state must favor its citizens equally with respect to some other goods or rights, such as equal liberties.

The reasoning behind the objection is as follows. State policy ought to be made by considering the goods different policies would bring for citizens. However, not all goods are proper objects of state concern. There is some special set of goods which it is appropriate for the state to focus on. For instance, many people have thought that individuals benefit from living piously whilst denying that a state should be concerned with ensuring that individuals live piously. Some have said that a state is responsible for ensuring that its citizens have freedom of speech whilst denying that a state should be concerned with the ability of its citizens to express their ideas well or draw a crowd.

Let's call the set of goods the state ought to be concerned with the "political goods".³³

It is unfair if the state favor some citizens with respect to political goods. But is not unfair, according to the objector, if the state favors some citizens over others with respect to goods that are not political goods. Thus, the objector's suggestion is that premise 3 must be revised so that it says:

3*: The state must favor its citizens equally with respect to their holdings of political goods.

If we revise premise 3 in this way, which I think we should, then the inference from 3 and 5 to 6 must be questioned. It is only valid if resources are a primary good. An objector could deny that resources are a political good and hence resist the conclusion that inequalities of resources are the result of unfair treatment.

Any example of such reasoning may found in a number of supreme court decisions. For instance, in *Rodriguez* the court had to evaluate school funding policies that resulted in education of different quality for students living in different areas. Because of the funding policies, poorer quality public education was offered to children in poorer areas. The court ruled, roughly, that despite their receiving a lower quality public education, children in the poorer areas had not been treated unfairly by the state.

Simplifying somewhat, an important argument in the majority opinion was that

³³ What I call "political goods" are similar to Rawls' "primary goods", at least he used the term in later works. For instance, Rawls (1996), on p.179, tells us that an index of primary goods provides a "conception of citizens' needs - that is, of persons' needs as citizens". I think what he had in mind in this passage is roughly the idea I describe in the text.

education, except up to a minimal level, is not a political good or not among the goods that the state must be centrally concerned with providing for its citizens.³⁴ The court majority agreed that an individual's educational level is very important to her life chances and well-being.³⁵ But it denied that this importance is enough to make it a political good.³⁶

We need to consider, then, whether resources are a political good so that we can evaluate whether inequalities of resources within a state are unfair. How could we show that resources are a political good? Agreeing with the supreme court, I do not think it will suffice to point out that having resources is important to an individual's life prospects. However, I think the following considerations make it plausible to think that resources are a political good.

The policies that we expect a government to enact include creating a working economy. In liberal democracies, it is usually expected, in particular, that a government will have policies which support a market economy such as the creation of private property rights, the enforcement of contracts, limited liability rules for certain firms and so on.

Given that we think creating and maintaining an economy is a core function of

³⁴ In the court's vocabulary, education was deemed to not be a "fundamental right".

³⁵ 'We are in complete agreement with the conclusion of the three-judge panel below that "the grave significance of education both to the individual and to our society" cannot be doubted.'

³⁶ "But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause.'

government, we can ask what the rationale is for these policies. Why is it that a government should perform these economic functions? A very plausible answer is that having these policies creates wealth and hence results in citizens having resources. Thus, it seems that the state should be concerned with ensuring that its citizens have resources. It seems that resources are a political good.

Thinking about the economic functions of government in this way is also attractive because it allows us to give a more unified rationale for some of the various functions we expect the state to perform. Some of these functions, as we have seen, include creating and supporting an economy. Another core function of government is protecting a set of core liberties for citizens, such as freedom of religion, freedom of speech, freedom of association and so on.

Take freedom of speech. Whatever benefit there is to an individual from having freedom of speech is increased by her possessing resources. Having formal freedom of speech provides her with an opportunity to speak without interference. With more resources she is better placed to exercise that opportunity. For instance, with her freedom of speech protected, an individual can publish pamphlets about politics, sex or religion without having the police or other citizens interfere with her. However, this opportunity to publish without molestation is much more useful to her if she has the resources to actually produce and disseminate the pamphlets.

Thus, whatever rationale there is for ensuring that individuals have freedom of speech extends to ensuring that they have resources. Hence, if we think, as I proposed, that the economic functions of the state are justified by their role in helping

citizens obtain resources, then those functions can be given the same rationale as provision of liberties. Both the state's economic functions and its liberty providing functions could be given a common basis. This would be attractive and is a further reason to think of resources as a political good.

Thus, by relying on requirements of fair treatment, in this case the requirement that the state treat its citizens fairly, we can argue for an egalitarian view about distributive justice. We can argue that inequalities are unjust, or unjust unless they can be given a special justification, because they issue from unfair treatment of some citizens by the state.

There remain a number of important questions and problems for the egalitarian. For instance, I have said nothing about how considerations of freedom and responsibility might fit into this picture. And, of course, there are large empirical question about exactly which policies will satisfy the broad principles I have suggested, although it seems very likely that some intervention to correct the inequalities of a competitive market economy will be needed. What I hope to have given you is an account of how I think the basic fairness based case for egalitarianism should be made. We can avoid the problems of relying on “cosmic unfairness,” as the Luck Egalitarian does, to justify an egalitarian view and, instead, adopt the Fair Treatment View.

11.

So far, we've been discussing distributive justice within the context of an individual society. I've defended a view about how best to defend egalitarian policies in

that context by appealing to fairness. I'm now going to turn to the implications of what I've said so far for distributive justice in the global sphere. Distributive justice in this sphere concerns the distribution of wealth across political borders, between different societies or between the individuals that inhabit different societies.

One clearly important duty when considering the global sphere is the duty of humanitarianism that I mentioned at the beginning of this paper. Huge portions of the world's population live in conditions of immense poverty and, in so far as this is possible, we should be doing something about this (though it is difficult to know how). This duty is not my main focus in this paper, though it is an important duty in this context.

Political philosophers have asked whether there is more to the morality of global wealth than considerations of humanitarianism. They have considered whether in addition to considerations of humanitarianism there are also considerations of fairness or justice that arise in the global context. In particular, they have asked what principles of global justice an egalitarian about domestic justice is committed to.

So, what does a commitment to egalitarianism in the domestic sphere commit you to globally? Well, it all depends on what the justification for egalitarianism in the domestic context is. Suppose we defend domestic egalitarianism as the luck egalitarian does, by appealing to cosmic unfairness. If we take this route, then we will be committed to applying the same principles of justice in the global sphere as we do at home.

The animating idea behind luck egalitarianism is that it is unfair for someone to

have less than someone else through no fault of their own. But, clearly, being born in one country rather than another is not something for which an individual can be held responsible. So, if some people have less than others simply because they are born into one society rather than another, this is unfair by luck egalitarian standards. Thus, on the luck egalitarian view, state borders are irrelevant in determining which distributions of income and wealth are unjust. Whatever sort of equality we demand at home must also be demanded across the globe.

A number of theories of global justice have been developed along these lines, for instance, in the recent work of Simon Caney and Kok-Chor Tan.³⁷ If my earlier arguments are correct, then these authors are making a mistake. I have suggested that we should not rely on the idea of cosmic unfairness to justify egalitarianism in the domestic context. If this is right, then Caney, Tan and others are resting their theories of global justice on a mistaken view about what fairness requires of us. Their arguments for extending egalitarian principles directly from the domestic sphere to the global are thus unsound. This doesn't necessarily mean that global egalitarianism is wrong, but that it would need a very different defense.

What about my own view about how to defend egalitarianism within a society? What are the implications of my Fair Treatment View for global justice? I argued that a theory of distributive justice should rely centrally on the notion *fair treatment*. The duties we have of distributive justice, I suggested, are duties to treat people fairly. In particular, I argued that for a state to treat its citizens fairly, it must enact economic

³⁷ Caney (2006) and Tan (2004).

policies that work to the equal advantage of each citizen. This was because, I claimed, there is a more general requirement that a state favor its citizens equally.

Clearly, this argument for why the state must ensure roughly equal economic prospects for its citizens does not entail a duty for the state to ensure such prospects for *all* persons, since the state is not required to favor all persons equally. Furthermore, in the absence of a global state, there is no institution at the global level that would be subject to the same requirements of fairness as the states we know.

Thus, on my view we cannot develop a theory of global justice by just taking whatever principle of distributive justice we endorse domestically and applying them straightforwardly in the global context. So that simple approach to global justice must be abandoned.

This might seem to push us towards another simple approach to global justice. This view, at the opposite extreme to the luck egalitarian view, is the position, recently defended by Tom Nagel and Michael Blake, that there are *no* considerations of distributive justice in the global sphere.³⁸

I think this approach is also mistaken. All that we have seen so far is that we should not think the *same* principles of distributive justice apply at the global level as apply within a state. This leaves open the possibility that some other, perhaps quite different, considerations of justice do apply in the global sphere. And, under conditions of globalization where there are new institutions, cooperative relations between states and so on, it is very plausible to think that some consideration of justice do apply in the

³⁸ Blake (2001) and Nagel (2005).

global sphere.³⁹ In particular, it is plausible to think there will be requirements of fair treatment.

In the remainder of this paper, I am going to illustrate how such requirements might be invoked, by looking at the World Trade Organisation (WTO). I am not going to develop here a full theory of justice for the WTO, let alone of global distributive justice more generally. I'm just going to show how requirements of fair treatment may apply to decisions made in the WTO and hence illustrate how, on the Fair Treatment View, considerations of justice can arise in the global sphere. This will be some evidence for my suggestion that by relying on the idea of fair treatment we can have a theory of distributive justice which says neither that the *same* distributive norms apply in the global sphere as in the domestic one, nor that distributive norms *only* apply in the domestic sphere.

12.

The WTO is an organisation within which various member states negotiate a common set of rules governing terms of trade. Essentially, the aim of the organisation is to help encourage trade across political borders and lower barriers to it. Of course, though this is not always emphasised, increasing the volume of trade is not an end in itself. The justification for trade is that it is supposed to bring with it various economic benefits to the countries involved, including greater productivity, growth and development.

³⁹Cohen and Sabel (2006) make similar points in reply to Nagel.

So, the members of the WTO are part of a cooperative enterprise for the sake of benefits to all and the benefits are created through the existence of a shared set of rules that are enacted by and apply to all the members. But different sets of rules will have quite different impacts on countries of different kinds. In other words, some rules will favor countries of one kind and other rules will favor countries of another sort. Members can thus question whether the rules that they are being asked to sign up for are inappropriately favoring or disfavoring them. Thus, it is plausible to think that questions about fairness of treatment should arise here; questions about whether the rules that are being enacted inappropriately favor some countries over others.

And sure enough, such questions are raised in ongoing political debates. Take, for instance, Joseph Stiglitz's criticisms of existing trade rules.⁴⁰ Stiglitz argues that the rules which have been enacted have typically worked disproportionately to the advantage of richer, and hence more powerful, countries over poorer ones and he offers two main grounds for this view.

Firstly, he argues that previous trade regimes have imposed special *costs* on developing countries and hence disadvantaged them. The costs are due to the difficulties that developing countries have in maintaining full employment. A rule that requires member states to drop their tariffs with respect to certain goods, says Stiglitz, should have relatively few costs (and many benefits) to a developed country. Increased competition with foreign firms may mean that some domestic business will be forced to close. But, perhaps with some help from the government, it should be possible for their

⁴⁰ Stiglitz, and Charlton (2005).

workers to move into new jobs, in more productive sectors.

In developing countries, according to Stiglitz, the situation is quite different. Workers who are laid off due to increased competition do not typically end up in new, more productive employment. They simply remain unemployed. And significantly increased unemployment is a huge cost for a developing country.

Secondly, Stiglitz argues that previous WTO rounds have negotiated settlements where the *benefits* from trade have mainly accrued to developed countries. In particular, he suggests that there has been much greater reduction in tariffs for goods that developed countries have an interest in exporting, while there are still large tariffs and subsidies in the developed world for goods that developing countries have an interest in exporting, such as agricultural produce and labour intensive manufactured goods.

Thus, according to Stiglitz, previous rounds of trade negotiations have resulted in decisions that have favored developed countries over developing ones, because they have imposed special costs on developing countries and because their benefits have been mainly to developed countries. And this, he claims, is *unfair*. The unfairness he claims to have identified is unfairness of treatment. The rules that have been enacted in the WTO, he claims, have inappropriately favored some members over others.

Why have developed countries been favored? Mainly, Stiglitz suggests, because of their superior bargaining power, their better access to information, the larger teams they can send to the negotiations and so on. In short, the developed countries are more powerful and trade deals have favored the more powerful. This, we might say, is

inappropriate because having a better bargaining position is plausibly not something that makes one country relevantly different to another in this context: it is not a reason for favoring one country over another in deciding which set of rules to adopt.

Oxfam has made similar complaints about the WTO, such as those published in their “Rigged Rules and Double Standards”. Their concern is also with unfair treatment. For instance, they write: “The international trading system is not a force of nature. It is a system of exchange, managed by rules and institutions that reflect political choices. Those choices can prioritise the interests of the weak and vulnerable, or the interests of the wealthy and powerful.”⁴¹

Of course, there are very substantial empirical assumptions behind the claims of Stiglitz and Oxfam and this is not the place to defend those. Many economists, I recognise, will disagree with their claims. My point is just to illustrate the Fair Treatment View, to show that a plausible looking argument about injustice in the global sphere can be made by relying on requirements of fair treatment, in this case fair treatment of members of the WTO by the decision making body.

Those who resist Stiglitz' claims, on normative grounds, can also often be seen making arguments about fair treatment. For instance, economist T.N. Srinivasan claims that even if WTO decisions have typically favored the developed countries, this has still not been unjust. He writes of Stiglitz' complaints that “it is not obvious why the share of benefits from an agreement that accrues to poorer countries necessarily has to rise for it to be fair. Why is an agreement, which delivers a Pareto improvement over the status

⁴¹ Oxfam (2002).

quo in the sense of benefiting every member of the WTO but in which a large share of the benefits accrue to richer countries, unfair?"⁴² Srinivasan's suggestion is that fairness just demands that WTO decisions give *some* weight to the interests of each member country, even if some countries are favored more than others. But he is not disagreeing that there is some sort of requirement of fair treatment involved here, just disagreeing about the interpretation of that requirement. And it is consistent with his argument that a different requirements of fairness would play a role in the domestic setting.

Hopefully these reflections will be enough to convince you that requirements of fair treatment have a significant role to play in the global sphere and, indeed, are already playing an important role. This suggests that even if we abandon appeals to cosmic unfairness we can still have a theory according to which there are some significant constraints of justice beyond the borders of the state. We just need a more subtle approach than the existing ones, which simply take egalitarian principles designed for application in the domestic sphere and apply them directly to the global. We need to pay closer attention to the existing and evolving global institutions, cooperative arrangements and so on to consider how requirements of fair treatment can constrain them.

⁴² Srinivasan (2005), p.12.

(See end of chapter for abbreviations.)

Chapter 3: Contractualism, Politics and Morality

1.

John Rawls' theory of justice is known as a "contractualist" theory because it employs a thought experiment about what social arrangements people would agree to, or contract into, under certain special conditions. The theory was intended to explain and issue in requirements of social justice. These are requirements on how a state should design the central economic and social institutions of a society, what Rawls called its "basic structure". (*TJ* pp. 6-10) These institutions include, for instance, the structure of the economy, the system of fundamental rights given to citizens and so on. Rawls' initial theory was thus limited in its application, applying only to questions about political decision making.

However, Rawls suggested, as did others, that a contractualist theory might be developed with application to a much larger set of moral questions. The thought experiment about what people would agree to might be used, it was thought, not just to settle how basic political decisions should be made but how people should act more generally. This broader theory would tell us when any given action is right or wrong. We might call this a theory of "rightness". Such a theory was developed most fully by Thomas Scanlon.

We can thus distinguish between contractualist theories of social justice, such as Rawls', and contractualist theories of rightness, such as Scanlon's. And we can ask whether it was a good idea to use the contractual model, first developed to settle questions of social justice, to develop a theory of rightness more generally. In this paper, I am going to argue that this was a bad idea, that there may be good reasons to adopt a contractualist theory of social justice but that it is a mistake to adopt of contractualist theory of rightness.

I proceed as follows. Firstly, I explain, drawing on Rawls, the most plausible motivations for adopting a contractualist theory of social justice. Secondly, I argue that those motivations do not support adopting a contractualist theory of rightness. Nor, I claim, do some other motivations suggested by Scanlon. Thirdly, I show some problems with using a contractualist theory of rightness to explain why some intuitively wrong acts are wrong.

Before proceeding, I would like to qualify my aims in one respect. The idea of appealing to a contract or "original agreement" to justify political arrangements did not, of course, originate with Rawls. Hobbes, Locke and Rousseau all endorse some version of this idea, though in seemingly quite different ways to Rawls. And there may be other ways of deploying a contract thought experiment.

But I will focus just on the use that Rawls and Scanlon makes of the contract idea. Scanlon, we will see, carries over to his theory of morality much of the structure of Rawls' view of social justice and I will be concerned with this particular manoeuvre. So, my concern is just whether a broadly Rawlsian contractualist theory of morality, of the

kind Scanlon offers, is correct. It may yet be that there is a different theory that can be reasonably called “contractualist” which would be a good theory of social justice and morality more generally.

2.

In this section I am going to focus on Rawls' contractualist theory of justice and the justifications for it. I will mainly be concerned with presenting the motivations that Rawls himself offers for the theory in a plausible light, though I will not offer a full defense of it.

Rawls' theory of “justice as fairness” is addressed to the problem of political decision making in a state. The problem is this. A state is a central decision making authority which makes decisions about the structure of the central social and economic institutions of a society. The state must enact rules governing the assignment of basic rights to citizens, regulate the economy and so on. There are a range of choices the state can make and different choices will have very different effects on the division of benefits and burdens among the citizens. So, some moral criteria are needed for making this choice. We need to know what is required for the state's choice to be just or for it to enact a just set of rules.

Rawls' theory was developed, he tells us, primarily as a response and alternative to utilitarian theories of social justice, and to understand his view it will help us to first consider the utilitarian theory of social justice.⁴³ According to the utilitarian theory, we

⁴³ Notice that I am speaking here, as Rawls does, only of the utilitarian theory of *justice* and not of act utilitarianism,

should evaluate different possible political choices according to their effects on the aggregate “utility”, or pleasure, experienced by citizens. One choice is to be preferred to another if produces greater aggregate utility. The just decision is the one that produces the greatest possible aggregate utility.

Why might an alternative be needed to utilitarianism? One potential problem with utilitarianism is that it seems to provide a poor explanation for some strongly held convictions we have about what justice requires . For instance, according to utilitarianism it is permissible to deprive some individuals of basic liberties, such as freedom of religion and speech, if doing so will lead to sufficient benefits for the majority. But we think that individual rights must be protected, even if such benefits could be gained.

According to Rawls there is an explanation for why utilitarianism has these untoward consequences. The utilitarian theory of justice, Rawls says, is “inconsistent with the idea of reciprocity implicit in a well ordered society” and “incompatible with the conception of social cooperation among equals for mutual advantage”. (*TJ p. 13*) What is this idea of reciprocity and this conception exactly?

Rawls' thought seems to be along the following lines. Citizens in a state are not merely passive recipients of benefits. The goods that a state makes available, such as resources, security and so on, are only made available through the efforts of its citizens. Citizens do their part in making these goods available by following the law, serving in

which is a theory of rightness. For the remainder of this section, where I use the term “utilitarianism” it always to refer to the former and not the latter.

armed forces, serving on juries and performing other civic duties. It thus seems appropriate to think of a political society, consisting of a state and citizens who contribute in these various ways, as a *cooperative* association.

Furthermore, once we think of a political society as a cooperative association, it is plausible to suppose that norms of *reciprocity* will play an important role. That is to say, once we think of citizens as cooperators who jointly make certain goods available, it is plausible to think that there will be a moral requirement that each citizen get something in return for her participation. Each citizen ought to gain a fair share of the benefits of the association.

So, Rawls' suggestion is that a political society can plausibly be thought of as a cooperative association whose members are its citizens and that these members are thus each owed a fair share of the benefits of the association. A fundamental moral requirement on political decision is that they ensure each citizen gets her fair due as a cooperating member.

We can now see why utilitarianism, according to Rawls, is in "conflict" with the conception of a political society as a cooperative association and with accompanying ideas of reciprocity. Once we take those considerations into account, we see that a fundamental moral requirement on political decisions is that they ensure each citizen gets her fair due as a cooperating member of society. But the utilitarian theory of justice does not include such a requirement.

According to utilitarianism, all that is relevant, as a matter of justice, is the effects of political decisions on the aggregate well-being of citizens. No weight is given to

ensuring that *each* citizen benefits appropriately, as long as the sum of well-being is maximized. This explains why utilitarianism has untoward consequences, such as requiring that we sacrifice the liberty of the few for the sake of greater benefits to the majority. Utilitarianism has these untoward consequences because it gives no weight to ensuring that each person's interests are promoted, except in so far as doing so will promote aggregate well-being. Utilitarianism ignores the importance of political decisions being fair to each citizen.

So, we have identified the core problem with utilitarianism, according to Rawls. Utilitarianism mandates policies which are *prima facie* unjust, such as denying equal liberties of speech and conscience to the few. And the reason why utilitarianism has these unacceptable implications is that it gives no role to the requirement that citizens be treated *fairly* in the allocation of benefits and burdens – that political decisions treat them in ways that befit their status as cooperating members of society.

3.

Rawls' aim was to create a theory of justice that did not have these defects of utilitarianism, one which did give a fundamental role to the requirement that citizens be treated fairly by the state and which could thus explain intuitive precepts of justice such as strong protections for individual rights.

Why, then, did he appeal to the idea of a “contract” or agreement between persons, what he called an “original position”, in his theory of justice? How could this

idea help capture the requirements of fair treatment that he was concerned to include in his theory? Why didn't he just elaborate further on what is required for citizens to be treated fairly and in a way that shows how that requirement explains some more specific precepts of justice? Well, Rawls says that we could just do this, but he proposes that the idea of the original position may be a useful "device" for helping us to work out more clearly what treating citizens fairly amounts to. (*TJ p.19*) I'm now going to turn to that device and how it might help us model the requirements that Rawls is concerned with.

To see the intuitive idea behind the original position, return to Rawls' criticisms of utilitarianism. As we saw, Rawls objects that utilitarian policies may treat citizens unfairly by requiring that they accept lower prospects than others just for the sake of small benefits that this would bring for a multitude of other citizens. Now, consider such a policy from the perspective of a citizen who is being asked to accept the lesser prospects. This citizen seems to have a legitimate complaint against those who make the policy. We can imagine her formulating the complaint as follows: "I see that this policy will produce a sum of benefits for various others. But, hey, *what about me!* I am being *left out*. I do my part as a cooperating member of society, but I am being asked to accept less than others even though they do no more than me."

Thinking about the policy from the perspective of the person who loses out is, perhaps, a useful way of seeing that it is unfair. By considering the complaint that this person could legitimately make about the policy, we can see that it treats them unfairly.

This suggests a more general strategy for thinking about the fairness of state policies. Perhaps we can think about whether or not a policy (or set of policies) is fair by

thinking about what complaints any individual citizen could raise against it. If some citizen has a legitimate complaint, then the policy treats her unfairly, but if no citizen does then the policy is fair. Since citizens are equal members of society, each can make the same complaints as another. Thus, Rawls proposes that we think about fairness in policies by asking what “persons who view themselves as equals, entitled to press their claims upon one another, would agree to”. (p.13) The idea is that if a set of policies would be acceptable to each citizen, then no-one would be treated unfairly were we to enact them.

So, there is some motivation for using a thought experiment about what citizens would agree to in order to work out which political decisions would treat citizens fairly. By using a thought experiment about which policies would be acceptable to each citizen, and hence agreed to by them, we can ensure that the policies we enact are fair to each citizen or give each their due.

More needs to be said if this thought experiment is to be useful. For it to work, we need to specify what grounds citizens can legitimately offer as a complaint. We need to think about what counts as a good reason for complaint, so that we ensure the chosen policies will give each citizen her due. And we also need to think about the limits on what the parties can complain about, so that we don't reject a policy just because there's an alternative which someone would prefer. Rawls specifies in more detail how the thought experiment is to work, telling us what a citizen can complain about and how we might place limits on what each can demand. He suggests that we proceed as follows.

We imagine parties who will only accept a set of policies if the policies are in their interests (Rawls discuss exactly which interests they are to consider, but we can ignore this for now). This ensures that whatever policies are accepted will be in the interests of *each* citizen and hence that, unlike in a utilitarian society, no-one will be left out.

But this still leaves the problem of placing limits on what parties in the thought experiment demand, of ensuring that no-one demands *more* than their due. Rawls ensures that there will be some such limits by placing further constraints on the thought experiment. We are to imagine, he suggests, that the parties are subject to a “veil of ignorance”, which prevents any of them knowing exactly which person they are and from knowing characteristics of themselves such as their race, sex, class and so on. All they know is that they are a member of society and that they have certain interests. Since they don’t know any of their own particular characteristics, no party will demand special benefits for themselves. Rather, the parties will choose policies that advantage each citizen that will live under them, since each party will want to ensure good prospect for themselves, whoever they turn out to be. We thus arrive at Rawlsian contractualism about justice: the correct principles of justice are those that would be chosen by citizens concerned to protect their fundamental interests from behind a veil of ignorance.

We can easily imagine other ways of constructing the thought experiment, which also ensure that no citizen demands more than her due. One obvious thought would be to suppose that the parties to the agreement are not just motivated by self-interest, but also concerned to only demand what they can reasonably expect. On this way of imagining the contract, the parties themselves accept that they, and other citizens, are

equal cooperating members of society and that hence that they should be willing to accept the same benefits and burdens as others. Given this acceptance, they limit their demands to only what can be ensured for other citizens also. No-one demands more than her due as an equal member.

Rawls, at various points in “A Theory of Justice,” touches on this alternative way of constructing the contract thought experiment, though he does not opt for it in the end. For instance, he at one point asks us to consider not what self-interested individuals behind a veil of ignorance would agree to but what “persons who view themselves as equals, entitled to press their claims upon one another, would agree to”. (*TJ p.13*) Rawls calls this version of the contract thought experiment an “ethical variations” and I will call it an “ethical variant“. (*TJ p.514*)

So, we have seen two versions of Rawlsian Contractualism about social justice. The first, which is Rawls’ considered view, is the following:

Rawlsian Contractualism (RC): A principle of justice is correct if it would be agreed to by citizens concerned solely to advance their fundamental interests and subject to a veil of ignorance.

The second version we have discussed does away with the veil ignorance as a means of limiting what any party to the agreement will demand. Instead, the parties are assumed to themselves limit their demands only to what is reasonable, given their status as an equal member of society. This is the ethical variant of Rawlsian

Contractualism.

Rawlsian Contractualism - Ethical Variant (RC-EV): A principle of justice is correct if it would be agreed to by citizens concerned to advance their fundamental interests to the degree that is reasonable.

RC and RC-EV, we have seen, have a common motivation. In both cases, the theory is motivated by a concern to work out what principles of justice for the regulation of society must be used if its citizens are to be treated fairly. This concern for fair treatment of citizens arises because citizens are equal members of society, each doing their part as cooperators.

It might be asked what exactly, on Rawls' view, the relation is between what is just, or fair, and what would be agreed to. Is he, for instance, saying that certain arrangements are just *because* they would be agreed to? Or something weaker?

As I have been interpreting Rawls, RC and RC-EV are relatively weak claims.⁴⁴ They don't constitute an analysis of what justice is, they just tell us that a certain conditional is true, namely that certain arrangements are just if they would be agreed to under certain circumstances. RC and RC-EV are supposed to be a useful heuristic for working out what is fair, and hence just, in a set of social arrangements. They are useful only in so far as we have a better grip on what would be agreed to under the

⁴⁴ Although, admittedly, it's not fully clear from Rawls' text what he in mind.

relevant circumstances than we do on fairness and, hence, justice.⁴⁵

4.

Let us now turn to Scanlon's theory, which I will later compare with Rawls'. As I said, in the introduction, Scanlon's aim is broader than Rawls': he hopes to provide a theory of not just social justice, but morality more generally. Such a theory should tell us not just what the correct principles of justice are but the correct principles for evaluating all actions. I am going to call this a theory of "rightness," a theory which tells us when an action is right. Also, I am going to assume, as Scanlon does, that an action is right just in case it is not wrong, so I will speak interchangeably about a theory of "rightness" and of "wrongness".⁴⁶ Here is Scanlon's canonical statement of his theory of rightness:

Scanlonian Contractualism (SC): An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for

⁴⁵ I'm going to set aside the question of whether they really are a useful heuristic. The question seems especially pressing with respect to RC-EV, because to apply RC-EV one needs to bring in substantial normative claims about what is reasonable, whereas to apply RC one does not. But this difference will not be important for our purposes.

⁴⁶ I don't mean to fully endorse this suggestion, but it will be a useful, for the sake of simplicity, to follow Scanlon in making it.

informed, unforced, general agreement. (WVO, p. 153).

As it stands, this thesis may sound appealing but it is highly abstract and difficult to evaluate in isolation. It is hence important important for us to understand how Scanlon interprets it and intends us to apply it. Let us thus examine this formulation of Scanlon's view to get clearer on what he has in mind.

According to Scanlon's formula, the rightness of an action is determined by facts about "principles for the general regulation of society". What exactly does he have in mind by such principles?

Let us say that a principle is a proposition of the form *You ought/ought not to do action A under conditions C*. For instance, *You ought to aid people when they are in great need* is a principle. What is it to consider a principle as a rule for "the general regulation of behavior"? Scanlon seems to have a few conditions in mind.

Firstly, most people believe that the principle is true. Secondly, these people are motivated to perform the actions that the principle requires. Thirdly, it is public knowledge that the first two conditions are met. So, to evaluate a set of principles for the general regulation of behavior, we have to imagine those principles being implemented such that these three conditions are met.

To determine the rightness of an action, on Scanlon's view, we have to evaluate possible rules for general regulation. How are we to evaluate a set of rules for general regulation?

We start by considering what benefits and burdens for people would be produced

if that rule was used for general regulation. For instance, to evaluate the rule *You ought not to steal from others*, we consider what it would be like if most people accepted that rule and so on. And we consider the benefits and burdens for people that would result from this, such as protection for some people from the harms of theft and costs for those who would otherwise gain from theft.

Having seen the consequences of adopting different sets of rules, how are we to decide which should be adopted? We should choose those rules which no-one could “reasonably reject” says Scanlon. I think that without any serious loss we can restate Scanlon’s claim in terms of *acceptance* of rules rather than *rejection*.⁴⁷ When we do this, Scanlon’s claim is that rules for general regulation should be evaluated by considering whether they would be accepted by reasonable people. And when we do this we can see that Scanlon’s procedure for evaluating rules is *very* close to the way we are supposed to evaluate political policies according to the Ethical Variant of Rawlsian Contractualism. Here, again, is that claim about social justice:

Rawlsian Contractualism - Ethical Variant (RC-EV): A principle of social justice is correct if it would be agreed to by citizens concerned to advance their

⁴⁷ Scanlon tells us in *C&U* and *WVO* that he focuses on reasonable *rejection* rather than *acceptance* because he wants to avoid the possibility of arrangements being reasonably accepted by someone because they are especially giving or self-sacrificing. But one could just as easily focus on acceptance and *stipulate* that none of the parties to the agreement are self-sacrificing because they are concerned to advance their interests (as is done in my formulation of RCEV). The “contract” is, after all, a thought experiment which it is up to us to design.

fundamental interests to the degree that is reasonable.

We saw in the last section that the point of requiring that political principles would be accepted by reasonable citizens is to ensure that each citizen is treated fairly. We imagine what would happen if the state enacted certain principles and the consequences this would have for citizens. We ensure that the resulting benefits and burdens each citizen would face are fair by considering whether any citizen would have a reasonable complaint about them.

Similarly, on Scanlon's view, we evaluate a rule for general regulation by thinking about the burdens and benefits it would produce and considering the "weightiness of the burden for those on whom it falls and the importance of the benefits it offers, for those who enjoy them". (WVO p.208) We consider whether any individual has a reasonable complaint against that rule being adopted, given the benefits and burdens that it would impose on her. As on the Rawlsian view, the effect of doing this is to ensure that each person would be treated fairly by the adoption of a rule, given the benefits and burdens she would experience.

Just as Rawls' theory can be contrasted with the utilitarian theory of justice, Scanlon's view can be contrasted with rule utilitarianism. According to the rule utilitarian, we evaluate rules for general regulation solely by considering their effects on *aggregate* utility or well-being. By contrast, Scanlon's account includes a constraint of fairness because the rules are evaluated by considering the benefits and burdens they would impose on each *individual*.

5.

So much for the basics of Scanlon's view, let us now consider whether there is anything to recommend it. As with the Ethical Variant of Rawlsian Contractualism, to apply Scanlon's formula we have to already have a significant grasp on what fairness requires and, in particular, what counts as an "unreasonable" demand for a benefit or to be freed from a burden. For this reason, a number of people have understandably questioned whether Scanlon's theory is very informative.

But I am going to set aside this concern and suppose that we do have a good grip on what makes for a "reasonable complaint". My focus is going to be on the broad view of morality that Scanlon proposes rather than the details of his formula. According to that broad view, we have seen, whether a moral principle is correct depends on the benefits and burdens it would produce were it used as a rule for general regulation and, in particular, on whether that distribution of burdens and benefits would be fair.

Rawls similarly thought, we saw earlier, that principles of social justice should be evaluated by considering what would happen if we implemented them as general rules (for regulating the basic structure) and, in particular, whether they would produce a fair distribution of benefits and burdens for the citizens. Rawls justified this approach, we saw, by appeal to the idea that a political society is a scheme of cooperation. The state, on his approach, should be seen as a body which makes rules for a cooperative scheme. Rawls suggested that because these rules are cooperative rules, which citizens are expected to comply with for the common good, the rules ought to result in

each citizen benefiting fairly from the scheme and bearing only a fair share of its burdens.

So, Rawls motivated his approach by appealing to the idea that principles of social justice are principles for the regulation of a cooperative scheme. What about principles of rightness? Can Scanlon similarly say that principles of rightness are principles for the regulation of a cooperative scheme?

There certainly seem to be some cases where an action is wrong in virtue of certain cooperative schemes being fair or unfair. For instance, people are sometimes members of fair clubs, car-pools, business cooperatives and so on, and their membership in these fair schemes creates obligations to perform certain actions, such as paying club dues, fulfilling car pool duties and so on. In these cases, the correct principles for regulating my actions will often be the fair rules for the schemes I am involved in. For instance, I ought to pay my membership fees because *Members ought to pay their dues* is a fair rule for the club to implement.

But there are also seem to be many moral obligations that are not tied to our membership in fair cooperative schemes or what rules would be fair for such schemes. For instance, it seems that I have an obligation not to kill others even if they are not members of any cooperative association with me. If I meet an unknown, foreign person in the desert I must not kill them arbitrarily, regardless of our lack of antecedent ties. Similarly, it seems, for many other obligations, such as the obligation to keep promises, to aid those in serious need, to not lie and so on.

On the face of it, then, there are large parts of our morality which have nothing to

do with the fairness of cooperative schemes. The similarities between Scanlon's view and Rawls' are thus puzzling. Rawls' view focuses on the fairness of general rules because he thinks that the rules we need to regulate the basic structure are rules for the regulation of a cooperative association. Scanlon's theory also focuses on the fairness of general rules: which actions are right, he thinks, is determined by which general rules are fair. But his theory cannot be motivated in the same way. The correct principles governing individual actions do not seem to be rules for the regulation of cooperative associations.

6.

So, why think that an action is wrong if it would be prohibited by the rules that would be fair to use for general regulation? We saw in the last section that Scanlon's view, whilst sharing much of the Rawlsian approach, cannot be motivated in the same way as Rawls'. Is there an alternative motivation that Scanlon can offer for it?

One suggestion Scanlon makes is that it is natural to appeal to facts about rules for general regulation one we see the role that *principles* play in ordinary moral explanations of wrongness. In ordinary cases of moral judgment, Scanlon suggests, we appeal to general principles to explain why certain actions are wrong. (WVO p.187) For instance, suppose I hear that Jones killed Smith in North Cambridge today and that Smith was wholly innocent: Jones killed him just for fun.

I would conclude that Jones' action was wrong and if someone asked me why it

was wrong I would likely appeal to a general principle. “Murder is wrong,” I might say, “and Jones murdered Smith.” The general principle that murdering is wrong seems to provide a good explanation for why the particular action is wrong.⁴⁸

Given that principles have this role to play, we need to figure out which moral principles are correct if we are to determine which actions are wrong. The evaluation of principles, then, ought to be central moral theory. We, moral theorists, ought to be concerned with working out what the correct set of moral principles is.

Scanlon infers from this that we should focus on whether those principles should be used *as rules for general regulation*. But no such conclusion follows. It is one thing to ask whether the principle *Murder is wrong* is a correct principle. It is quite another to ask whether the principle *Murder is wrong* should be used as part of set of rules for the general regulation of society. A range of extra considerations come into play when we consider the latter question.

For instance, when we are considering whether to use a principle for the general regulation of society we have to imagine, as I described earlier, that most people follow the rule and that it is publicly known that they follow the rule. Various effects might be produced by such common belief in a principle. Perhaps, for instance, levels of fear in a society are reduced when it is known that most people will not kill. This might be a reason for using the principle *Murder is wrong* for the general regulation of society.

⁴⁸ Some recent writers, so called “particularists”, such as Dancy (2006), have denied that general principles have any important role to play in the explanation of why actions are wrong or why we judge them to be wrong. But it seems to me that they do and, for present purposes, I’ll grant Scanlon that they do.

It is not, however, a natural consideration to appeal to when we are just discussing whether the principle *Murder is wrong* is correct. When considering that question we usually think just about what is involved in a single individual performing an act of killing another. We do not bring to mind what it would be like for *everyone* to perform or not perform such acts or it to be publicly known that such acts are performed or not performed.

7.

So far, then, we have seen just that moral explanation should focus on figuring out what the correct moral principles are. But we have seen no reason for adopting Scanlon's preferred way of evaluating moral principles, namely by considering whether it would be fair to use them as part of a scheme for the general regulation of society. What does Scanlon have to say in favour of his preferred method for evaluating principles?

The most central idea that Scanlon appeals in his original paper and more recent work is the importance of standing in "moral relations" to others. (C&U p.135) Scanlon claims that the morality of right and wrong fundamentally concerns what relations we stand in to other persons. An action is right or wrong in virtue of the relation to others we would be in were we to perform it. (WWO p. 155) When we act rightly we put ourselves into a kind of moral harmony with others. (WWO p.154) When we perform a wrong action, doing so puts us in a defective relation with others.

There is some attraction to this suggestion, I think. Often, it seems to me, an action

is wrong in virtue of the relation to others that performing it would put me in. For instance, it seems to me that spreading malicious gossip about someone is wrong because it would put me into a bad relation with the person whose reputation might be tarnished by the gossip. I would be treating them with a lack of regard. Conversely, actions also often seem to be required because the good relation they would put me in. For instance, when someone has done you a favor, one often must do something in return so as to be in the relation of showing her gratitude.

So, there is some plausibility to Scanlon's idea that relations with others are fundamental to morality. Let us call this thesis the "relation thesis":

Relation Thesis (RT): An action is wrong if it would put us in into defective relations with others.

What is the defective relation we stand in to others when we act wrongly? Scanlon makes a few different suggestions. One suggestion he makes is that when we act wrongly, we put ourselves in a relation to others such that they could "reasonably object to" (*WWO* p.155) what we are doing. In another formulation, the objectionable relation is one where we are unable to "justify our actions to others on grounds that they could not reasonably reject" (*WWO* p.154). He also suggests that these formulations connect with the Kantian requirement that we must avoid being in relations with others where we are treating them as "mere means". (*MD Chapter 3.*)

These suggestions have some plausibility. For instance, perhaps we can say that

the spreading of the malicious gossip is wrong because the victim of the gossip could reasonably object to our doing it. Or, perhaps it is wrong because the victim could reasonably reject any justification we could offer for spreading it; for instance, the cruel pleasure it will bring us. Moreover, when we think we have acted rightly, we often say such things as “I did all he could ask of me” or “No one had a right to complain about that”. These common phrases suggest that there is some moral importance to being able to justify ourselves to others or to what they can, within limits, complain about in our actions.

Here is the formulation Scanlon uses most often to express this idea:

Justifiability Thesis (JT): An action is wrong if it could not be justified to others on grounds that they could not reasonably reject.

As I said, the Justifiability Thesis is supposed to be a more specific version of the Relation Thesis. RT tells us that an action is wrong is wrong when performing it would put us into a defective relation with others, or involve mistreating them. Thus, for instance, stealing is wrong on this view because it would involve mistreating the person from whom one steals.

But RT leaves open what exactly it takes to mistreat someone or be in a defective relation with them. It seems me that there are many different ways of mistreating people. For instance, we can mistreat people by disrespecting them, being cruel to them, abusing their trust, showing them callous indifference and so on.

According to JT, these various ways of mistreating people are all instances of one basic way: treating them in ways that cannot be justified to them. Kant similarly claimed that there is one fundamental way of mistreating others: treating them as a means and not as ends in themselves.

I don't wish to fully evaluate RT or JT here, just to briefly indicate the most plausible way to understand and motivate them. My main aim here is to consider whether either of them support Scanlon's contractualism.

So, does RT or JT support the idea that the wrongness of individual acts depends on whether we would treat people fairly by implementing certain rules for the general regulation of society? As the examples we have looked at illustrate, the intuitive idea behind RT and JT is that there is some moral importance to being in certain relationships with other people. The relevant relationships are between oneself and particular other persons. As Scanlon himself says, "When we think of those to whom justification is owed, we naturally think first of the specific individuals who are affected by specific actions". (*WVO* p.202) But, as we have seen, Scanlon's final contractualist formulation requires that we judge actions not by looking at how we would treat particular people in performing them but by considering how we would treat people generally by adopting general rules prohibiting those actions.

It thus seems to me that RT and JT support a very different way of thinking about morality from Scanlon's contractualist view. On Scanlon's account, we should evaluate putative moral principles by considering the benefits and burdens they would produce for people were we to use them for the general regulation society. However, RT and JT

suggest a very different way figuring out which principles are correct. We could instead evaluate principles by considering directly whether the actions that they permit or require would put us into defective relations with others. Call this the “Moral Relations Approach”.

As an example, take the principle *You should not tell lies*. We could evaluate this principle by thinking about whether lying to someone puts one in a defective relationship to them. Plausibly, it does: when you lie to someone you mistreat them.

There is room for discussion about the manner in which you mistreat someone when you lie to them. Perhaps you show them disrespect, violate their autonomy or abuse their trust. Perhaps, as according to JT, you treat them in manner that could not be justified to them. It might be said, for instance, that lying to someone cannot be justified to them because the aims of the liar cannot be shared by the person who is lied to.⁴⁹

Whichever fuller account we given, the fact that lying to someone is mistreating them seems like a perfectly good reason to think that lying is wrong. And it is a reason we can see without thinking at all about the benefits and burdens produced by using a principle prohibiting lying as a rule for the general regulation of society.

In the last section we saw that Scanlon's approach cannot be motivated in the way that Rawls' is and so we have been looking for an alternative motivation. In this section we have seen he fails to provide such a motivation. We have also seen that some of the main ideas he appeals to, captured in RT and JT, not only fail support contractualism but instead suggest an alternative, namely the Moral Relations Approach.

⁴⁹ Kant (1948), p.70 makes this suggestion about the relation between the liar and lied-to.

In what follows, I am going to focus in more detail on an example of a wrongful action to illustrate the difference between a Scanlonian contractualist explanation and the sort of explanation we might offer on the Moral Relations Approach. In doing so, I hope to also show that the latter has important advantages over the former.

8.

Let us briefly remind ourselves of how we judge that an action is wrong on Scanlon's view. As we have seen, Scanlon tells us that the wrongness of an action depends on whether we would be treating people fairly were we to implement rules for general regulation that prohibited that action. How can we figure out which rules would be fair to use for this purpose?

The implementation of one rule for general regulation rather than another has benefits for some people and imposes burdens on others. There are, Scanlon tells us, typically two classes of people whose interests are at stake when we are considering a rule that constrains certain actions.⁵⁰ Firstly, there are some people who will benefit from the restriction. For instance, a rule prohibiting harming others would benefit those who would otherwise suffer harm. Secondly, there is the burden placed on those whose actions are restricted by the rule. For instance, implementing a rule prohibiting harming will result in agents having to organize their lives so as to avoid inflicting harm and will

⁵⁰ "I maintained above that in considering whether a principle could reasonably be rejected we should consider the weightiness of the burdens it involves, for those on whom they fall, and the importance of the benefits it offers, for those who enjoy them, leaving aside the likelihood of one's actually falling in either of these two classes." *WVO* p.208.

result in some not engaging in harmful activities which they might have enjoyed.

Rule utilitarians also focus on the benefits and costs for individuals of implementing certain rules. But the contractualist view is different from the rule utilitarian one because it brings in the idea of “justifiability to each”. As I showed earlier, the usefulness of this idea of justifiability to each is in helping to model requirements of *fairness*. The rule utilitarian view just requires us to look at the aggregate benefits of implementing one rule rather than another. By contrast, the contractualist view requires us to consider the effects of the rule from the perspective of each affected person, so that no individuals are left out, even for the sake of aggregate welfare.

As an example, let us consider how a contractualist might account for the wrongness of manipulation or deception. As a working definition, let us say that deception occurs when someone intentionally leads another person to believe that *p*, despite his knowing that *p* is false.

Here is an example of deception. Suppose that I am planning to apply for a job at the button factory. I know an acquaintance, Sid, would also like to apply for the same job. Sid asks me, “Do you know if the button factory has advertised for a position yet?” “No,” I say, trying to prevent him getting an application in on time, “I don't think they will be advertising a job for some months yet.” This seems like a case of wrongfully deceiving somebody. Despite the potential gains to me of deceiving Sid, it is not permissible for me to do so.

Why is it wrong for me to deceive Sid? What can the contractualist say to explain its wrongness? We must consider the effects of implementing the rule *It is wrong to*

deceive others.

In favor of implementing the rule, there are the benefits it would bring for those who are protected from being deceived. For example, in the case we just considered, Sid has an important interest in not being deceived by me. Sid has various plans, such as trying to pursue a satisfying career, and in order to pursue those plans he needs accurate information about the world. If I deceive him, he receives inaccurate information about the world and his ability to successfully carry out his plans is thwarted.

But implementing the rule prohibiting deception would also impose costs on some people. Some would benefit from being able to deceive others. For instance, I would benefit from deceiving Sid. By misleading him I would increase my chances of getting a job. There are also people, call them “third-parties”, who would benefit from other people’s deceptive behavior. For instance, perhaps it is not me that wants the job, but a friend, and so he would benefit from my deceiving Sid.

So, we have three different interests in play here. There are those who would gain from deceiving, those who would be harmed by being deceived and there are “third-parties” who would gain from someone else’s acts of deceit. Given that a rule prohibiting deceit affects these different interests, is it fair? Scanlon suggests that it is fair because those who would benefit from the rule have greater reasons to prefer it than those who are burdened by the rule have reasons to reject it.

What would make this the case? One suggestion Scanlon makes is that the people who would benefit from the rule have a stronger interest in deception being

prohibited than others have in its being allowed. (*WWO* p.298-299) What he seems to be saying is that the cost to an agent of being unable to deceive others, or to third-parties who could gain from the deceit, is always less than the benefit a prohibition on deceit brings to each individual who would otherwise be deceived.

But this seems false. Clearly, there are cases where A has a greater interest in deceiving B than B has in not being deceived. For instance, in the example we considered earlier, I might have more to gain from the job at the button factory than Sid does and so I might have more to gain from deceiving him than he would have to lose from being deceived.

It might be replied that even though in this particular case I stand to gain from being able to deceive, still a rule allowing deception is likely to make me worse off over the course of my life. For, it might be said, even though this rule allows me to gain on some occasions, it will result in me being deceived on other occasions, so that I would be overall worse off.

It is true that any individual would likely lose out somewhat over the course of their lives were a rule permitting deception implemented. But still, plausibly there will be *some* people who would gain overall from it. Perhaps these people are particularly good liars or perhaps they often find themselves in situations like the button factory case where deception is very beneficial to them. As long as there are some such people, Scanlon's explanation is in trouble. In any case, it seems to me very implausible to say that whether deceit is permissible should turn on whether such people exist.

A second option for Scanlon is to say that even though in *some* cases a deceiver has more gain from his deceit than a deceived person stands to lose, *typically* the costs to the deceived person are higher. He might thus say that the rule prohibiting manipulation should be preferred because it is better for *more* people.

But to take this route would be to abandon what is distinctive of contractualism. As we have seen, the central feature that distinguishes contractualism from rule utilitarianism is that the contractualist evaluates rules by reference to their effects on *each* individual and not on *aggregate* well-being.

It is thus hard to see how appealing to fairness in the benefits and burdens produced by general rules will explain why it is wrong to harm people through deceit even when one would gain substantially from doing so or could benefit someone else substantially through doing so, at least where the gains outweigh the harm done. There are some people who would gain from a rule prohibiting deception in these cases and others who would lose out. There seems to be no reason, grounded in fairness, for favoring some of these people over others. All of their interests seem to be on a par.

A third option for Scanlon would be to claim that a rule allowing deception in the cases we are discussing could be reasonably rejected because such a rule would allow people to *mistreat* each other. A rule prohibiting deception, he might say, is different because it does not allow mistreatment.

It does seem that when someone is mistreated when she is deceived. And, by contrast, I am not mistreated when I refrain from deceiving someone else and nor are third-parties mistreated when I refrain from acts of deception that would benefit them.

So, appealing to claims about mistreatment does introduce a difference between a principle that allows deception and one which does not. Only the former principle permits people to deceive each other.

I suspect Scanlon would reject this way of explaining the difference between the two principles. But in any event, I think it is unlikely to rescue contractualism. The fact that I would be ill-treating others in performing actions of kind K is enough, by itself, to show that (all else being equal) it is wrong to perform actions of that kind or that the principle *You should not perform actions of kind K* is correct.

We could add that because performing K actions involves ill-treating others, rules for general regulation that allowed those actions are reasonably rejectable. But it is very unclear what we would gain from adding this. Doing so wouldn't, on the face of it, give us any better or further explanation of why it is wrong to perform K actions. If we take the proposed route, little seems to be gained from appealing to "reasonable rejection" and so on at all.⁵¹ The contractualist principle would be an unnecessary "spare wheel" (as is sometimes said) in our moral theory.

This suggests that the Moral Relations Approach I introduced in the last section might be more attractive than contractualism. On that approach, we can appeal directly to facts about treatment and mistreatment to explain the wrongness of actions.

The contractualist thought experiment about what reasonable people could agree to is helpful, I argued, for modeling requirements of fairness in the benefits and burdens

⁵¹ In other words, if we adopt the proposed version of contractualism, the traditional worry that the contractualist formula is "redundant" comes to the fore. See, for instance, Pettit (2000), Blackburn (1999) and McGinn (1999).

produced by general rules. If we stop using it for that purpose, it seems to have little further use.

9.

To summarize what we have seen, a contractualist theory of social justice holds some attraction because it allows us to model requirements of cooperative fairness that are plausibly central to social justice. But such requirements are not central to morality more generally, or rightness, and so a contractualist theory of rightness does not seem promising. The central motivation Scanlon suggests for a contractualist theory of rightness in fact points towards an alternative approach that I have very briefly described: the Moral Relations Approach. We are further pushed towards such an approach when we see the problems Scanlon's contractualism has with explaining the wrongness of such actions as deception.

Finally, I would like to point out that Rawls can be seen as taking the Moral Relations Approach. He tries to explain the wrong of social injustice by reference to one way of ill-treating people, namely by enacting cooperative rules that are unfair to them. His contractual thought experiment is supposed to help us model this particular requirement on how we treat others. The lesson we might draw from Rawls then, is that considerations of ill-treatment can be relied on to help us explain certain wrongs. But we need not think that Rawls shows us the only way of mistreating others. Elsewhere in this thesis I explore some different ways of mistreating others, such as treating them

unfairly and treating them ungenerously, and the relations between them.

Abbreviations

References to Rawls and Scanlon are largely in the text. I have used the following abbreviations.

TJ: Rawls, J., 1999. *A Theory of Justice* (Cambridge: Belknap Press)

C&U: Scanlon, T. M., 2003. "Contractualism and Utilitarianism", in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press), pp. 103-28.

WWO: Scanlon, T.M., 1998. *What We Owe to Each Other* (Cambridge: Harvard University Press).

MD: Scanlon, T.M., 2008. *Moral Dimensions: Permissibility, Meaning and Blame* (Cambridge: Harvard University Press)

References

- Aristotle (2002) *Nicomachean Ethics* translated by Crisp, R. (Cambridge : Cambridge University Press).
- Arneson, R. (1989) "Equality and Equal Opportunity for Welfare," *Philosophical Studies* 56: 77-93.
- (2001) "Luck and Equality," *Proceedings of the Aristotelian Society*, supp. vol. 75: 73-90.
- Beitz, C. (1999) *Political Theory and International Relations*. (Princeton, N.J : Princeton University Press).
- Blackburn, S. 1999. "Am I Right?," *New York Times*, February 21.
- Blake, M. (2001) 'Distributive Justice, State Coercion, and Autonomy,' *Philosophy and Public Affairs* 30: 257-296.
- Broome (1990-91) "Fairness", *Proceedings of the Aristotelian Society*, 91: 87–102.
- Caney, S. (2006) *Justice Beyond Borders* (Oxford: Oxford University Press).
- Carter, J (1977) *Public Papers of the Presidents of the United States: Jimmy Carter, 1977*, book 2 (Washington: Office of the Federal Registrar).
- Cohen, G.A (1989) "On the Currency of Egalitarian Justice," *Ethics* 99: 906-44.
- (2008) *Rescuing Justice and Equality* (Harvard: Harvard University Press).
- Cohen, J. (1989), "Democratic Equality," *Ethics* , 99 (July 1989), pp. 727-75.

- Dancy, J (2004), *Ethics without Principles*, Oxford: Clarendon Press.
- Dworkin, R. (2000) *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge: Harvard University Press).
- Foot, Philippa (2002), *Virtues and Vices* (Oxford : Oxford University Press).
- Hsieh, N.; Strudler, A. and Wasserman, D. (2006) "The Numbers Problem," *Philosophy and Public Affairs*, vol. 34, no. 4: 352-372.
- Kamm, F. (1993) *Morality, Mortality*, vol. I (Oxford: Oxford University Press). (2007) *Intricate Ethics* (Oxford : Oxford University Press).
- Kumar, R. (2001), "Contractualism on Saving the Many," *Analysis* 61: 165– 70.
- McGinn, C. 1999. "Reasons and Unreasons", *The New Republic*, May 24: 34–38.
- Nagel, T. (2005) "The Problem of Global Justice," *Philosophy & Public Affairs* 33: 113
47.
- Otsuka, Michael (2006) "Saving Lives, Moral Theory, and the Claims of Individuals" *Philosophy and Public Affairs*, vol. 34, no. 2: 109-137.
- Oxfam (2002) *Rigged Rules and Double Standards: Trade, Globalisation and the Fight Against Poverty* (Oxfam Publishing).
- Pettit, P., 1999. "Doing unto Others", *Times Literary Supplement*, June 25, pp. 7-8.
2000. "A Consequentialist Perspective on Contractualism", *Theoria*, 66(3), pp. 228-236.
- Rawls, J. (1971) *A Theory of Justice* (Cambridge: Harvard University Press).
- (1996), *Political Liberalism* (New York : Columbia University Press) (2001), *The Law of Peoples*, (Cambridge : Harvard University Press).

- Rodrik, D. (1997) *Has Globalization Gone too Far?* (Washington D.C., Institute for International Economics).
- Roemer, J. (1994) "A Pragmatic Theory of Responsibility for the Egalitarian Planner," in his *Egalitarian Perspectives* (Cambridge: Cambridge University Press).
- (1996) *Theories of Distributive Justice* (Cambridge: Harvard University Press).
- (1998) *Equality of Opportunity* (Cambridge: Harvard University Press).
- Scanlon, T. (1998) *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press).
- (2003) "Contractualism and Utilitarianism", in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press), pp. 103-28.
- Srinivasan, T.N. (2005) "Doha Round of Multilateral Negotiations and Development" *Stanford Centre for International Development, Working Papers* Number 252, available at <http://scid.stanford.edu/pdf/SCID252.pdf>.
- Stiglitz, J. and Charlton, A (2005) *Fair Trade for All: How Trade Can Promote Development* (New York, Oxford University Press).
- Tan, K. (2004) *Justice Beyond Borders: Nationalism, Patriotism, Cosmopolitanism* (Cambridge: Cambridge University Press).
- Taurek, J. (1977) "Should the Numbers Count?" *Philosophy & Public Affairs* 6: 293-316.
- Thomson, J. J. (1990) *The Realm of Rights* (Cambridge Mass.: Harvard University Press).
- Thomson, Judith Jarvis (1994) "Goodness and Utilitarianism" *Proceedings and*

Addresses of the American Philosophical Association, Vol. 67, No. 4.

Wasserman, D. and Strudler, A. (2003) "Can a Nonconsequentialist Count Lives?"

Philosophy & Public Affairs 31: 71–94.