How to Count Sore Throats

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Abstract: Kamm's sore throat case gives us a choice: save one life, or save a distinct life and cure a sore throat. We defend *the fairness explanation* of the judgement that one should flip a coin to decide whom to save: it is disrespectful to let a sore throat act as a tie-breaker, because an individual would be forced to forgo a 50% fair chance of living (given to them by a coin flip), which cannot be outweighed by any number of sore throats. We show that this explanation of when and why claims can permissibly break ties generates new problem cases for theories of aggregation, including theories that have been thought to accommodate the judgement that one should flip a coin in Kamm's sore throat case. We then generalise the fairness explanation to cases involving multiple groups.

Key words: sore throat, limited aggregation, tie-breaking, fairness, risk

1. Introduction

We often endorse *aggregative judgements,* holding that smaller benefits can sum to outweigh larger burdens. For example, it seems one should prevent paralyses in this case:

> *Death vs. Paralyses*. You can rescue a person from death or rescue 1,000 distinct people from full-body paralysis.

At the same time, we often endorse *non-aggregative judgements,* holding that sufficiently small benefits cannot sum to outweigh large burdens, nor break ties between them. Consider, for example, the following cases:

> *Transmitter Room.* Jones has suffered an accident in a broadcasting station and is receiving agonisingly painful electrical shocks. You can turn the power off, saving him,

or leave the power on, so that countless viewers do not miss the end of the World Cup final. (Scanlon 1998: 253)

Sore Throat. You can save one life or save a distinct life and cure a sore throat. (Kamm 2005: 12)

In Transmitter Room, it seems one should save Jones rather than satisfy viewers' desires to watch the match, and in the Sore Throat case, it seems one should flip a coin rather than let a sore throat act as a tie-breaker between deaths.

Theories of limited aggregation aspire to reconcile these kinds of aggregative and non-aggregative judgements in a principled way. The wider interest of these theories lies in their ambition of providing a principled and common-sense resolution to long-standing disputes in ethical theory, for example between act-utilitarians and contractualists, concerning whether and how the numbers should count.[1]

In this paper, we offer an explanation of what we call the Sore Throat Judgement (STJ), according to which one should flip a coin in the Sore Throat case, rather than let a sore throat break the tie between two deaths. This explanation has been suggested in the literature.[2] The main contributions of our paper are to offer a fuller and more precise characterization of it (§2), and to use the clarity afforded by this characterization to reveal implications for theories of limited aggregation (§§3-4).

In §2, we offer a precise statement of the *Fairness Explanation* of STJ: allowing a sore throat to break a tie between two people facing death amounts to allowing it to weigh against a 50% fair chance of living, given to each by a coin flip. Thus, STJ is explained by the fact that it would be impermissible to allow any number of sore throats to outweigh a 50% fair chance of living. In §3, we show that the Fairness Explanation generates constraints in cases which have often been thought unrelated to sore throat cases, thereby posing a problem for recent theories of limited aggregation. In §4, we generalise the Fairness Explanation to cases involving multiple groups, turning to a second implication of the Fairness Explanation, anticipated by Frances

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[1] The tenability of a distinction between major ethical theories hangs on these debates**:** Parfit (2011: Ch. 21) argues that, when modified to allow aggregation, Scanlon's (1998) contractualism amounts to rule-consequentialism.
[2] Kamm (2005: 9-13) and Tadros (2019: 184-185) suggest the Fairness Explanation. We interpret Hart (2022: 330-331) as endorsing it and van Gils & Tomlin (2017: 239) as rejecting it. Unlike the other authors, Kamm (fn 13) discusses multiple groups.

Kamm (2005, fn 13): it may be disrespectful *not* to let a sore throat act as a tie-breaker when deciding which of *a great many* lives to save, because the tie-breaking sore throat then deprives each person not of a 50% fair chance of living, but of an arbitrarily small one.

Before proceeding, some definitions: two groups of competing claims are *tied* if neither outweighs the other, and a claim *acts as a tie-breaker* if adding it to one group of tied claims justifies opting to satisfy the claims in that group rather than any other.[3] We assume we ought to respond to a tie by choosing randomly between the groups of tied claims, because fairness requires assigning weight to claims in proportion to their strength, and thus that we provide equally strong, incompatible claims with an equal chance of satisfaction (Broome 1990).[4] For brevity, we use a coin toss as a shorthand for a method that allows one to randomly decide whom to save.

2. The Fairness Explanation of the Sore Throat Judgement

In this section, we first introduce STJ. Next, we clear the ground for our proposal by offering a taxonomy of existing views regarding STJ. Finally, we propose the Fairness Explanation of STJ.

2.1 The Sore Throat Judgement

Many theories of limited aggregation work by establishing and breaking ties between claims of various strengths in order to decide which set of claims should be satisfied.[5]

Limited aggregationists *establish ties* between claims by identifying which claims are close enough (or 'relevant') to other claims to weigh against them, and by devising procedures to 'match' claims with one another.[6] For example, they hold that viewers' pleasures in watching the

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[3] An individual possesses a claim against a burden iff they have an interest in not having that burden imposed on them. A claim in this sense is not necessarily a Hohfeldian (1919) claim-right.

[4] For scepticism that fairness requires random choice, see Henning (2015, 2023); for scepticism about aggregation, see Anscombe (1967), Taurek (1977) and Munoz-Dardé (2005).

[5] Voorhoeve (2014) and Rüger (2020) do not distinguish these steps: claims are either relevant to deliberation or set aside entirely. Still, these views can be interpreted as setting the same standard for tie-establishing and tie-breaking—namely, relevance—and thus fit into our proposed taxonomy.

[6] For the former, see Voorhoeve (2014, 2017). For the latter, see Tomlin (2017), Tadros (2019), van Gils & Tomlin (2020), Steuwer (2020), Hart (2022), and Zhang (2024).

World Cup are too weak to establish a tie with (and thus to ever outweigh) Jones's claim against agonising shocks, but that claims against full-body paralysis are strong enough to establish a tie with (and eventually outweigh) a single claim against death.

Now, Kamm's Sore Throat case concerns *tie-breaking*. It raises the issue of when and why a small benefit, such as being spared a sore throat, cannot break a tie between claims against a greater burden, such as death. Limited aggregationists respond to this case by either vindicating or debunking the non-aggregative judgement that, since it would be wrong to let a sore throat break a tie between two claims against death, one should flip a coin in the Sore Throat case.[7] We call this the *Sore Throat Judgement* (STJ).

In this paper, we provide an explanation—not an argument—for STJ. We show that, if STJ is correct, the Fairness Explanation counts against certain theories of limited aggregation. However, this explanation can be endorsed regardless of whether one accepts or rejects STJ: it gives a simple and principled account of what it takes for one to be on either side of the debate over STJ.

2.2 A taxonomy of existing views

To clear the ground for our proposal, we offer a taxonomy of views regarding tie-breaking. These views differ in the relationship they establish between criteria for tie-establishing and those for tie-breaking, and thus in their compatibility with STJ.

First, some theories of limited aggregation entail

Free for All: Any claim can break a tie involving any other claims.[8]

This is straightforwardly incompatible with STJ: it implies that a sore throat could act as a tie-breaker between claims against death.

Second, some other theories of limited aggregation entail

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[7] For the former**,** see Steuwer (2020) and Hart (2022). For the latter**,** see Van Gils & Tomlin (2020: 231-342) and Rüger (2020: 11-12).
[8] Entailed by Tadros's (2019) "local relevance" view and its variations considered by van Gils & Tomlin (2020).

Establishing-Breaking Symmetry: Some claims can break a tie between two claims iff they can establish ties with those two claims.[9]

This principle entails that, since sore throats cannot form ties with deaths, they cannot break ties with deaths either. On the other hand, since full-body paralyses can form ties with deaths, they can also break ties with deaths. Thus consideration of sore throats, full-body paralyses, and deaths initially supports Establishing-Breaking Symmetry.

However, whereas Free for All is too permissive with tie-breakers, Establishing-Breaking Symmetry appears too restrictive, by ruling out any potential tie-breaker between two claims merely because it cannot establish ties with them. For example, Kamm (2005, p. 14) claims that paralysis in one leg cannot establish a tie with death (i.e. that one should save a life rather than prevent any number of one-leg paralyses) but can break a tie between two deaths. Similarly, Hart (2022: 318-319) claims that loss of one hand cannot establish a tie with death but can break a tie between two deaths. Establishing-Breaking Symmetry cannot accommodate these judgements. Thus, although intuitions vary, it is worth considering a third principle, which avoids both of these problems:

Establishing-Breaking Asymmetry: In addition to (i) claims (e.g. sore throats) that can neither break nor establish ties with other claims (e.g. deaths) and (ii) claims (e.g. full-body paralysis) that can both break and establish ties with other claims (e.g. deaths), there exist (iii) *intermediate claims,* which can break ties between claims that they cannot form ties with.[10]

Unlike Free for All, Establishing-Breaking Asymmetry is compatible with STJ, and unlike Establishing-Breaking Symmetry, it is compatible with the existence of the intermediate claims described by Kamm and Hart.

2.3 The Fairness Explanation

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[9] Entailed by the "global relevance" views of Voorhoeve (2014) and Rüger (2020), according to which claims that are not weighty enough relative to some standard are set aside entirely.
[10] Entailed by Hart's (2022) "hybrid relevance" view.

We defend the following explanation of Establishing-Breaking Asymmetry:

The Fairness Explanation: A claim can break a tie between two claims against a burden iff it is the kind of claim that can establish a tie with a claim to a 50% chance of avoiding that burden, given to each by a requirement of fairness. This is explained by the fact that one of the individuals involved in the tie would have to forgo this chance if a third claim were allowed to break the tie.

The idea behind the Fairness Explanation is that, when two sets of claims are tied, the individuals whose claims are tied retain a claim to a fair procedure. Moreover, fairness requires that we flip a coin in the event of a tie, since a fair procedure is one that gives everyone involved in the tie an equal chance of being rescued. Therefore, letting an excessively weak claim break a tie deprives one of the groups involved in the tie of their fair chance of being chosen—which, in the Sore Throat case, amounts to depriving one individual of a 50% fair chance of life. This explains why only claims that are strong enough to establish a tie with a 50% fair chance to be rescued from death should be allowed to break a tie between deaths.[11]

The Fairness Explanation thus accounts for the judgement that it would be unfair to let a sore throat break the tie in Sore Throat: minor claims against sore throats are not weighty enough to establish a tie with a claim to a 50% fair chance of life. Moreover, it accounts for the fact that intermediate claims can break ties between deaths: they are the kinds of claims that (unlike sore throats) are strong enough to establish ties with a claim to a 50% fair chance of life, even though (unlike full-body paralyses) they are not strong enough to establish ties with claims against death. Thus the Fairness Explanation explains the existence of intermediate claims and the difference between sore throats and full-body paralyses that underlies STJ.

Two clarifications are in order. First, since we propose to assess a candidate tie-breaker by considering whether it could disrupt an *already-existing* tie, it might sound as though the tie-breaker is appearing on the scene, with the tied claims (and associated fairness claims) already present. Moreover, it might seem as though the claims to fair chances remain after a candidate tie-breaker is allowed to break the tie. But, of course, the tied and potential

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[11] When ties are established between two sets of heterogeneous claims, a tie-breaker must be able to establish a tie with the strongest competing fairness claim in the tie.

tie-breaking claims are all present from the start, and whether claims to fair chances are present at all depends on whether there is a tie, and thus on whether the potential tie-breakers are weighty enough. By presenting the case sequentially, we are merely deploying a familiar device (compare Scanlon 1998: Ch. 5, §9; Kamm 1998: 7-8) to vividly compare two situations, one with the tie-breaker and one without, to determine the difference the potential tie-breaker ought to make to our decision-making. We say that, if a sore throat were to break the tie, an individual would be forced to forgo their 50% fair chance of life. By this we mean that the individual could reasonably complain (i) that they would have had a claim to this 50% chance, were the sore throat not present, and (ii) that the sore throat is not weighty enough, such that fairness still requires giving them this chance, because (iii) no number of sore throats could form a tie with a single claim to a 50% fair chance of life.[12]

Second, limited aggregationists sometimes explain STJ by observing that it would be *disrespectful* to let a sore throat break the tie (Steuwer 2020: 24-25). We agree, but this seems more like a description of the judgement to be explained than an explanation of it. To say that it would be disrespectful to let a sore throat break the tie amounts to saying that it would be wrongful to let a sore throat break the tie: acting wrongfully is disrespectful in general, insofar as it fails to show due regard for another's claims (Wallace 2019: 9-11). The Fairness Explanation goes a step further, by specifying the source of the relevant disrespect, while setting a precise, independently intelligible standard for tie-breaking.

3. The Fairness Explanation and the Activation Approach

In this section, we show that the Fairness Explanation generates constraints in cases which have often been thought unrelated to the Sore Throat case. In particular, it threatens to undermine an argument that very weak claims should be allowed to deprive someone of a 50% fair chance of living, provided they are "activated" by weighing directly against claims which are close enough to them in strength. Consider an example:

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[12] Even if a claim is weighty enough to break a tie, such that fairness no longer requires giving equal chances to both groups, everyone maintains a claim to fair treatment. It is just that fairness in this case no longer requires a lottery. (As Scanlon (1998: Ch. 5, §9) and Zhang (2024) argue, in this case, fairness may require aggregation.)

Shared Intermediate Additions

Stage 1: You can save A, one person facing death, or B, 1,001 people facing mild illness.

Stage 2: 10 people facing severe illness are added to both groups.

	Group A	Group B
Death	1	
Severe illness	(10 added in Stage 2)	(10 added in Stage 2)
Mild illness		1000 + 1

Suppose 1 death is tied with 10 severe illnesses, which are tied with 1,000 mild illnesses, but that mild illnesses cannot establish a tie with a 50% fair chance of death.

Some theorists hold that we should save A at stage 1, but that at Stage 2 we should save B (van Gils & Tomlin 2020: 250-251; Rüger 2020: 461-462).[13] They endorse

The Activation Approach to Shared Intermediate Additions:

1. At Stage 1, it is disrespectful to let mild illness weigh against death, so we rescue A.
2. At Stage 2, since it is not disrespectful to let mild illnesses weigh against severe illnesses, the latter "activate" the former, allowing them to enter into our decision. The A-claim against death is then offset by 10 B-claims against severe illness, and the A-claims against severe illness are outweighed by the 1,001 B-claims against mild illness. So, we should rescue B.

Proponents of this argument recognise its tension with

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[13] Although the Activation Approach is usually seen as a theoretical cost (Horton 2018: 167-173), its proponents defend its implications.

Equal Consideration for Identical Claims (EC): Adding identical claims to A and B cannot make it the case that we should save A, when previously we should have saved B (provided the added claims are not strongest in either group[14]).

To illustrate: this principle implies that if we should save A at Stage 1, we should not save B at Stage 2. Proponents of the Activation Approach have accordingly argued against EC, or defended an alternative, similar-spirited constraint compatible with their favoured theory.

Whatever the merits of EC, we now argue that the Activation Approach comes with a distinct theoretical burden: the Fairness Explanation renders the Activation Approach to Shared Intermediate Additions incompatible with STJ. This undermines a common assumption in the literature, namely that the Activation Approach and STJ can be discussed separately, with theorists free to endorse independent positions on each of them.[15]

By assumption, with the exception of a single claim against mild illness, the claims in A and B are tied at Stage 2. The Fairness Explanation then implies that we should not opt for B at Stage 2: the single claim against mild illness cannot break the tie because, like a sore throat, it cannot weigh against the A-claim against a 50% fair chance of death (by assumption). But this verdict is incompatible with the Activation Approach, which recommends opting for B at Stage 2. In this way, the Fairness Explanation renders STJ incompatible with the Activation Approach to Shared Intermediate Addition.

In short, the Fairness Explanation implies that accommodating STJ requires more than just delivering a plausible verdict in Kamm's Sore Throat case. It generates a new constraint for theories of limited aggregation, by ruling out the Activation Approach to Shared Intermediate Additions. Those who endorse STJ should thus reject the Activation Approach until we have available a plausible alternative to the Fairness Explanation—one that draws a well-motivated distinction between the Sore Throat case and Shared Intermediate Additions, explaining why one can permissibly deprive someone of a 50% fair chance of life to address a small claim in the latter case but not in the former.

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[14] Without this provision, EC would contradict STJ: since we should cure a sore throat rather than do nothing, we should allow the sore throat to act as a tie-breaker when two individuals facing death are added to both sides.
[15] For example, Rüger (2020) dedicates separate sections to these issues. Steuwer (2020: 31-2) denies this assumption: he endorses STJ and condemns the Activation Approach for the same reasons.

We underscore that the Fairness Explanation undermines the Activation Approach to Shared Intermediate Additions, but not the general idea that claims can sometimes be activated by other claims. The Fairness Explanation may not rule out that claims against mild-illness are activated at Stage 2 in a limited way, by establishing (but not breaking) a tie at Stage 2. Hart (2022) defends this view.

4. Multiple group cases

In this section, we generalise the Fairness Explanation to cases involving multiple groups:

General Fairness Explanation: C1-claims can break a tie between N C2-claims iff C1-claims can establish a tie with an individual's $1/N$-chance C2-fairness claim.

For example, suppose that we can save exactly one of Alice, Bob, or Carla, and that if we save Alice, we will also satisfy Terry's claim. Then Terry's claim is a tie-breaker only if it can establish a tie with the ⅓ fair chance of living that would be possessed by Alice, Bob, and Carla, were we to pick randomly between them. Consider two ways of understanding this idea.

First, as Kamm (2005: fn 13) anticipates, one might say that ties are easier to break when the tie is established between more claims. Consider the following case:

Many People. You can save only one of N people. N is larger than the number of people who have ever purchased a lottery ticket.

If you are one of these N people, your fair chance of life is worse than your chance of winning the lottery. Your fairness claim against death may be correspondingly weak. Call this 'the Discounting Fairness View'. If this view is correct, the General Fairness Explanation would imply that if N is sufficiently large, a claim against a sore throat could break the tie, since the strength of a claim to a $1/N$ fair chance of being saved from death would be comparatively weak. Perhaps this is plausible. When chances of life are so slim, we might permissibly expect each

person to make peace with death, and correspondingly unfair to complain that you are being cheated if you are deprived of a vanishingly small chance of life in order to cure someone's sore throat.

However, some will find this implication counterintuitive. One might reject the Discounting Fairness View, instead assigning some significant weight to a person's interest in a fair chance of life, regardless of how many others have competing claims against death. This leads to a second understanding of the General Fairness Explanation, according to which a sore throat cannot break a tie in the Many People case, because a $1/N$ chance fairness claim retains significant strength, no matter how large N is. Surprisingly, this view suggests that it is worse to let a sore throat break the tie in Many People than in the Sore Throat case. In the latter case, a sore throat only deprives one person of a fair chance, but in the former case, a sore throat deprives N people of a fair chance of life, and all these fair chances have significant weight.

Which of these views one endorses may depend on one's view of social risk. Indeed, the Discounting Fairness View fits naturally with ex ante views, on which the strength of an individual's claim to a chance of a benefit decreases as the chance itself decreases.[16] It is natural for a proponent of such views to hold that the strength of a claim against a $1/N$ fair chance of life decreases at some rate as N increases, such that sore throats can eventually outweigh a $1/N$ fair chance of life. (Ex ante views do not *imply* the Discounting Fairness View. Since the value of a fairness claim to a good may exceed the expected value of receiving that good, the value of fairness need not decrease at the same rate as the chance of receiving that good.)

By contrast, according to ex post views, individuals' reasons for objecting to an act which imposes a risk of a burden on them are based on the *actual results* that the act has for them. Thus whoever would have been randomly chosen in the Many People case, were the sore throat not allowed to break the tie, may have an undiscounted objection against their loss of life, and thus against the use of a sore throat as a tie-breaker. Whereas the Discounting Fairness View fits naturally with ex ante views, it fits less well with ex post views.

This connection with social risk reflects a broader point: the Fairness Explanation makes verdicts about tie-breaking depend on the weight one assigns to fairness claims and on one's view of tie-establishing. In particular, someone who rejects STJ could accept the Fairness Explanation, by assigning no weight to fairness claims, or by assigning some weight to fairness

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[16] For defence and criticism of ex ante views, see Frick (2015) and Horton (2017), respectively.

claims but holding that claims against sore throats are the kind of claims that can establish a tie with a 50% fair chance of life. As such, they might accept the Fairness Explanation as advancing the discussion by clarifying what it is at issue in disagreements about tie-breaking in limited aggregation.[17]

References

Anscombe, G. E. M. 1967. Who is wronged?—Philippa Foot on double effect: one point. *The Oxford Review* 5: 16-17.

Broome, J. 1990. Fairness. *Proceedings of the Aristotelian Society* 91: 87-101.

Frick, J. 2015. Contractualism and social risk. *Philosophy & Public Affairs* 43: 175-223.

van Gils, A. and Tomlin, P. 2020. Relevance rides again? Aggregation and local relevance. In Sobel, V. et al. (Eds.) *Oxford Studies in Political Philosophy* 6, 221-255. Oxford: Oxford University Press.

Hart, J. 2022. Tie-breaks and two types of relevance. *Ethical Theory and Moral Practice* 25: 315-334.

Henning, T. 2023. Numbers without aggregation. *Noûs*: 1-23.

Henning, T. 2015. From choice to chance? Saving people, fairness, and lotteries. *Philosophical Review* 124: 169-206.

Hohfeld, W. 1919. *Fundamental Legal Conceptions*, W. Cook (ed.). New Haven: Yale University Press.

Horton, J. 2017. Aggregation, complaints, and risk. *Philosophy and Public Affairs* 45: 54-81.

Horton, J. 2018. Always aggregate. *Philosophy & Public Affairs* 46: 160-174.

Kamm, F.M. 2005. Aggregation and two moral methods. *Utilitas* 17: 1-23.

Kamm, F.M. 1998. *Morality, Mortality, Volume 1*. Oxford: Oxford University Press.

Parfit, D. 2011. *On What Matters, Volumes 1 & 2*. Oxford: Oxford University Press.

Rüger, K. 2020. Aggregation with constraints. *Utilitas* 32: 454-471.

Scanlon, T.M. 2013. Reply to Zofia Stemplowska. *Journal of Moral Philosophy* 10: 508-14.

Scanlon, T.M. 1998. *What We Owe to Each Other*. Cambridge, MA: The Belknap Press of Harvard University Press.

Steuwer, B. 2020. Aggregation, balancing, and respect for the claims of individuals. *Utilitas* 33: 17-34.

Tadros, V. 2019. Localized restricted aggregation. In *Oxford Studies in Political Philosophy* 5, 171-204. Oxford: Oxford University Press.

Taurek, J. 1977. Should the numbers count? *Philosophy and Public Affairs* 6: 293-316.

Tomlin, P. 2017. On limited aggregation. *Philosophy & Public Affairs* 45: 232-260.

Munoz-Dardé, V. 2005. The distribution of numbers and the comprehensiveness of reasons. *Proceedings of the Aristotelian Society* 105: 207-233.

Voorhoeve, A. 2014. How should we aggregate competing claims? *Ethics* 125: 64-87.

Voorhoeve, A. 2017. Why one should count only claims with which one can sympathize. *Public Health Ethics* 10: 148-156.

Wallace, R. J. 2019. *The Moral Nexus.* Princeton University Press.

Zhang, E. 2024. Individualist theories and interpersonal aggregation. *Ethics* 134: 479-511.