Numbers, Fairness and Charity

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 better state of affairs than saving one. But many philosophers reject the consequentialist principle. They claim, for instance, that it makes implausible

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

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, 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

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

[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.

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

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

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[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.

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:

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

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[5] Taurek's proposal is in Taurek (1977). The defense of Taurek that I offer draws heavily on Broome (1990-91).

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.

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

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

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[6] Kamm (2007), p.55.

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

[8] Kamm (2007), p. 33.

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 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

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

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 *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. Considerations of fairness, as I'll put it, do not apply in these circumstances. Compare, for instance, my decision this morning about which of my shoes to tie first, the right or the left. Suppose I opt for the right. This is clearly permissible. Is it fair? The correct response is surely that it is neither fair nor unfair: fairness neither recommends nor tells against this choice. I'll characterize

this by saying that, in these circumstances, "considerations of fairness do not apply". I think we should similarly say that considerations of fairness do not apply in Tradeoff. Saving the greater number in this case, I think, is neither required by fairness nor ruled out by fairness.

It seems to me that in general considerations of fairness do not apply to our dealings with needy strangers. 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. 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.[10] 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 should thus doubt that the needy persons in Tradeoff have a right to your pill which

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

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.[11] 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 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

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[11] 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.

violators or as failing to be fair. Rather, we criticize them for being uncharitable, selfish, callous, ungenerous, insensitive, lacking in beneficence 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.[12] 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 "charity". The examples I gave are cases where people fail to be charitable and thereby do something morally wrong. The cases illustrate that charity is morally required of us. We are not required to be *heroically* charitable, traveling the world to alleviate suffering or running into burning buildings. Doing so is typically morally praiseworthy, but beyond what morality requires. Being charitable 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 uncharitable to not aid in these cases.

We have seen that requirements of charity feature heavily in our everyday moral thinking. These requirements could be treated quite differently within different non-consequentialist theories. Within a deontological theory, such as that of Ross, one could treat requirements of charity as *pro tanto* moral duties. Within a virtue theory, one could link failures of charity 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

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

some category of requirements of charity 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 charity instead.[13] To see this, let's look at some kinds of failure to be beneficent.

One way to be uncharitable is to be stingy or ungenerous in providing aid. In these cases, one is uncharitable 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 uncharitable. Another way 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 uncharitable 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

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

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 uncharitable to me. So, we can criticize people for being uncharitable, 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 charity in Tradeoff too; I think that someone acts uncharitably 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 uncharitable 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 charity, the two options are equally acceptable. Someone reponding charitably to the circumstances would be equally satisfied with saving A as with saving B. The charitable 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, charity 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. Charity 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 is 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 uncharitable. So it is uncharitable 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 uncharitable 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.[14] 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.[15]

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

[15] 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

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 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 uncharitable. It would be uncharitable 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

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other cans get a chance of being selected. You could just pick one.

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.[16]

I cannot fully address these cases here. However, I think they do not provide a 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 charitable 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 charitable to cure the headache as to save the life. So the explanation I offered for why it is uncharitable to save one life rather than five cannot be directly used to argue that it would be uncharitable 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

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[16]   Ostuka (2006) raises concerns of this kind.

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 charitable or beneficent for an agent to do.

It might be said that we can only understand what it is for someone to be charitable or beneficent in terms of what would promote the best states of affairs. But I reject this. It seems to me that the idea of charity, and associated notions of beneficence, 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 charity. 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 charity 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 uncharitable of the firefighter to not save five and, for the reasons I gave

earlier, I think it would indeed be uncharitable 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 seems 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.[17] 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 charity, 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 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.

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[17] Taurek (1977) points this out.

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.[18]

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. 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.

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[18] 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.

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 charitable 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.

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