Kamm on fairness

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1 *Introduction*

Chapters 5, 6 and 7 of Frances Kamm's *Morality, Mortality, Volume 1*[i] deal with a classic problem. Suppose you are faced with the choice between saving the lives of five people on the one hand, and on the other hand the life of just one person who is not among the five. How should you choose? An obvious answer is that you should save the five, on the grounds that saving five lives does more good than saving one. But in his `Should the numbers count?', John Taurek disagrees.[ii] He denies that saving five people does more good than saving one. He accepts that saving a particular person is better *for that person* than not saving her, but he denies there is an impersonal standpoint, neutral between people, from which saving five people is better *simpliciter* than saving one. He concludes you should toss a coin to decide whether to save the one or the five. This gives each person the same one-half chance of being saved.

Kamm's argument in these chapters sets out from Taurek's article. In chapter 5 she argues, against Taurek, that saving five lives is indeed better than saving one. But she points out it does not automatically follow that, when faced with the choice between saving five and saving one, you ought to save the five. That would have the best results, but there may be considerations of right as opposed to good that determine you should act differently. Accordingly, having reached the conclusion in the domain of goodness that saving five lives is better than saving one, Kamm switches her attention to the domain of right. She particularly concentrates on fairness, which is one particular consideration of right. She gives us the most fascinating, detailed and complex examination of fairness I know. In the course of it, she proposes no less than three choice procedures that she considers fair, each different from Taurek's `equal chances'. I shall review some of her arguments for them.

2 *Equal chances*

First, though, I shall offer some support for Taurek's opinion about fairness. I agree with Kamm that saving five lives is better than saving one. I also agree this fact is not enough to settle what you should do when faced with a choice between five and one, because considerations of fairness are relevant as well. But, unlike Kamm, I think fairness requires just the action Taurek recommends: giving everyone the same chance by tossing a coin to decide whether to save the five or the one. Here is why.[iii]

As Kamm does, let us take it for granted that all of the six people have equal claims to being saved. When claims are equal, I believe fairness requires them to be equally satisfied, and that is all it requires. It does not require any of them to be satisfied to any particular degree; only that they should each be satisfied to the same degree. If everyone were saved, that would give equal satisfaction of claims and would be fair, but we are assuming it would be impossible. If no one was saved, that too would give equal satisfaction and would be perfectly fair. This is evidence that fairness requires only equality in the satisfaction of claims. If it required satisfaction itself, saving no one would be unfair. But plainly there would be nothing *unfair* about it, although it would doubtless be the wrong thing to do for another reason.

It would be wrong because it would have the bad result that everyone dies. The badness of this result is surely enough to outweigh the fairness of the action. You should at least save someone. This will inevitably be unfair to an extent, because not everyone's claim to be saved will be equally satisfied: either five people will have full satisfaction and one none, or one will have full satisfaction and five none. But still, the unfairness is justified. This shows that fairness has to be set against considerations of good in a decision, and does not always dominate them.

Moreover, in this particular case, there is a way of mitigating the unfairness. Each person can be given an equal *chance* of being saved, by tossing a coin to decide whether to save the one or the five. If a person has a chance of having her life saved, that provides a sort of surrogate satisfaction of her claim to have her life saved. Equal chances provide a surrogate equality in satisfaction, and so a degree of fairness. It is not true equality of satisfaction, and therefore not completely fair, but it is fair to some degree. Saving no one would be the fairest thing to do; tossing a coin the next fairest.

But as I said, fairness is not everything. Fairness requires tossing a coin, but just as I think the fairness of saving no one is outweighed by the badness of the result, so I think the fairness of tossing a coin is outweighed by the expected badness of the result. Tossing a coin will lead you to save three lives on average (the expectation of lives saved is three), whereas you could save five for sure. Two lives are worth some unfairness, I should say. Therefore, I think you should save the five without more ado. Taurek disagrees at this point, because he thinks five lives saved are no better than three. But, like Kamm, I think he is wrong about that. Saving five lives is indeed better than saving three, and enough better to justify some unfairness.

3 *Majority rule*

That is my view of what fairness demands in this situation. Kamm thinks differently. Her driving idea is that fairness requires us to give proper respect to people as individuals: we must maintain our personal links to each individual; we must take seriously the separateness of persons. In chapters 6 and 7, Kamm describes three different procedures for making a choice, and argues that each of them meets this requirement.

The first is simply to save the greater number of people: the five rather than the one. Kamm calls this `majority rule'. Its basis is a procedure she calls `substituting equivalents' (p. 101), which permits a sort of weighing of the numbers of people on each side. The majority outweighs the minority. It is important to stress that Kamm thinks it is *fair* to substitute equivalents. Fairness permits counting numbers, as she puts it. It is not simply *better* to save five rather than one; Kamm has already argued that point and now puts it aside.

Counting numbers can be suspected of failing to respect people as individuals, because it aggregates together the claims of different people. That is Taurek's objection to it. Taurek believes there is no suprapersonal standpoint from which five people count for more than one. There are only the standpoints of the individuals separately, and from each individual's standpoint her own life counts more than anything. But Kamm argues we do not need to posit a suprapersonal standpoint to recognize that the claims of five people can overbalance the claim of one. Her argument is this. The claim of the one conflicts with the claims of the five. Taken individually, it must confront the claims of the five taken individually, and it is actually equivalent to the claim of just one among the five. Then there are the claims of the other four as well. So there are four uncountered claims on one side of the dilemma. These are enough to make it permissible to decide to go that way. This reasoning leads to substituting equivalents, but it only considers the claims of the individuals as individuals; it does not try to ascend to any suprapersonal standpoint. So it respects the people as individuals.

I dare say this is right, and substituting equivalents does not necessarily imply a suprapersonal standpoint. But it does not follow that substituting equivalents is fair. Refusing to adopt a suprapersonal standpoint may be necessary for fairness but it is plainly not sufficient. I argued that fairness requires equal chances rather than majority rule, and my argument did not rest on a suprapersonal standpoint. Fairness requires equal claims to be equally satisfied, I said, and equal chances is a surrogate. Kamm needs to answer this argument by more than the negative point that majority rule need not imply a suprapersonal standpoint.

And she does. Though I think fairness requires equal chances, I think that actually you should save the five without tossing a coin, which is what majority rule implies. My reason is that in this case fairness is overridden by the greater good of saving five. Kamm argues this is implausible: there are occasions where fairness is overridden by greater good, but this is not one of them (pp. 104–7). Therefore it must be fairness itself that determines it is right to save the five.

Why does she find it implausible that good overrides fairness here? One reason is that it normally takes a great improvement in good to override fairness, and the improvement in this case could not be enough. With this, I simply disagree. Saving even a few lives is very valuable, and well worth some loss of fairness.

Kamm's second reason is that in other similar cases good does not override fairness, so it presumably does not do so in our case either. Compare two variations on Taurek's problem. In case 1 you have a choice between using a quantity of a drug to save one person *A* and using it to save two people *B* and *C*. In case 2 you have a choice between using the drug to save one person *A* and using it to save just one other person *B*, but *B* will in turn will save *C* by some different means. In case 1, Kamm thinks you should save *B* and *C* directly, without tossing a coin. In case 2, she thinks you should toss a coin to decide between *A* and *B*. Yet, she says, the considerations of good are just the same in the two cases: two people saved versus one. So if good overrides fairness in case 1, good should override fairness in case 2 too: you should give the drug directly to *B*. Since Kamm thinks this is wrong in case 2, she thinks neither case can be one where good overrides fairness.

This argument depends entirely on the intuition that you should save the two in case 1, but toss a coin in case 2. Kamm relies absolutely on her intuitions, and her typical method of argument is to look for principles that underlie them. The merit of this approach is that it makes room for subtle moral considerations that can easily be suppressed by general theories. The disadvantage is that Kamm's arguments are powerless against people who do not share her intuitions, or are willing to give up their intuitions when they have a reason to do so.

In this case, if Kamm's intuition is correct, I am sure she draws the right conclusion from it. I can offer some more analysis that initially gives her intuition some support, though in the end it will undermine it. First I must say more about the nature of claims. When some resource such as a drug is to be distributed, there may be reasons of various sorts why one person or another should get a share of it. Some of these reasons are claims to the resource and some are not. Claims are distinguished by being owed to the person herself. We owe it to a person to save her life if we can, so a person has a claim to a drug that will save her life. On the other hand, if I threaten to destroy a city if I do not get a drug, that is a reason for giving it to me, but not a claim I have to it. Fairness is concerned with claims only, not other reasons. If I have no claim to a resource, and I get no share of it, then no unfairness has been done me, even if there are good reasons why I should have got a share.

Return to case 2. *B*'s claim to the drug is that it will save her life. There is also the further reason for giving her the drug that she will save *C*, but this is not a claim on *B*'s part. So in case 2 there is one claim on each side. But in case 1, there is one claim on one side and two on the other. Since fairness is concerned with claims, we might conclude that fairness require you to give the drug to *B* and *C* in case 1, in order to satisfy two claims rather than one, whereas it requires you to toss a coin in case 2. This argument supports Kamm's intuition that the cases are different. It is not that good overrides fairness in case 1. Considerations of good are the same in either case: two lives against one. It is claims that are different.

However, in the end I think this argument is mistaken. I do not think fairness requires you to satisfy two claims rather than one. I said in section 0 that fairness requires equality in the satisfaction of claims, not satisfaction itself. In case 1, equality in satisfaction is best achieved by tossing a coin. Saving *B* and *C* directly leads to a greater total of satisfaction, but to unequal satisfaction: *B*'s and *C*'s claims are fully satisfied, and *A*'s not at all. So I continue to believe that fairness requires you to toss a coin in case 1. I believe this requirement of fairness is overridden by the greater good of saving *B* and *C* directly. Kamm correctly points out that consistency requires me to believe that in case 2 you should save *B*, because she will it turn save *C*. I do believe that. Perhaps my intuition was initially on Kamm's side, but I think I have sufficient reason to give it up.

4 *Proportional chances*

Kamm thinks substituting equivalents is a fair procedure, but not the only one. For the reasons I gave in Section 0, she thinks substituting equivalents can respect people as individuals – the essential requirement of fairness – but she thinks there are also other ways of doing this. One leads to a procedure she calls `proportional chances' (pp. 128–34). In a choice between groups of people, proportional chances means giving each group a chance in proportion to its size. In a choice between five and one, it means giving the five a five-sixths chance and the one a one-sixth chance. It could be implemented by throwing a six-sided dice.

In defence of proportional chances, Kamm asks us to imagine a lottery where one of six people is to win a prize. She believes a lottery respects people as individuals. In this lottery, fairness says each person should have an equal chance. But now imagine five of the six `pool their chances'. By this Kamm means they make some arrangement that has the miraculous effect that, if one of them wins, they all will. (Perhaps they agree to invest the prize cooperatively in a way that multiplies it by five, and distribute the proceeds.) Then each of the five has a five-sixths chance of winning. Kamm argues it would be fair to let them do this. So it would be fair to let them have a five-sixths chance of winning, and leave the sixth person only a one-sixth chance. Here, then, is a case where it is fair to allocate chances between groups in proportion to numbers. The argument starts from the fairness of giving everyone an equal chance, and manoeuvres to the conclusion that unequal chances are fair. Finally, Kamm suggests we might extend the same argument to Taurek's choice between saving one person and saving five.

I am happy to accept the starting point of this argument: without doubt, equal chances are fair in a lottery where only one person can win. For the sake of argument, I am willing to concede the second step too, and permit pooling. If we did not allow the five to pool their chances, Kamm asks, `mightn't each of the five complain that he was denied his equal one-sixth *baseline* chance to win and the right to use it as he saw fit'? (p. 131.) Kamm's view resembles a particular liberal theory about the distribution of wealth in a society. Some liberals think that people ought to have an equal start in life, but that what they then make of their opportunities is up to them, so there is no reason why wealth should end up equally distributed. Kamm's idea seems to be that people should have an equal baseline chance, but that if they can improve their chances by pooling, that is their right; it is no reason to change the baseline distribution of chances. Perhaps this is right for the lottery story. Perhaps there are cases where one can distinguish an initial baseline distribution of chances from a subsequent distribution that is reached by trading among the people, and perhaps the lottery story with its miraculous pooling is a case like this.

But the problem of saving one or five is plainly not. You are simply presented with a choice between saving one person and saving five. It is not that you are initially able to save just one person out of six, and then somehow five of the six pool their chances. There is no distinction between baseline chances and final chances in this case. If you adopt the procedure of proportional chances, you are simply making the chances of the six people unequal; you are giving a five-sixths chance to five of them and a one-sixth chance to one. This cannot possibly be justified by appealing to the fairness of *equal* chances.

Kamm tries to generate a distinction between baseline and final chances in this problem by suggesting nature pools the chances of the five. `We might imagine that they started off on five separate icebergs . . . The icebergs then floated into an island.' (p. 133.) But the liberals' idea is that people's position should be equalized *after* nature has done its business. People should be compensated for what nature does, since that is no responsibility of theirs. A person is only entitled to a favoured position if it results from what she herself has done. If there are six people on separate icebergs, and you can only save one, to be fair you should give each an equal chance of one sixth. If nature pushes five of them together, so you can now save either these five or the lone one, fairness requires you to give everyone an equal chance in the new situation. If you did that, none of the six could complain `he was denied his equal one-sixth baseline chance to win and the right to use it as he saw fit'. Indeed, nature has fortunately made it possible to increase each person's baseline chance from a sixth to a half.

I see no good grounds for the procedure of proportional chances.

5 Conclusion

Kamm also describes a third procedure that she considers fair: the `ideal procedure' (pp. 123–8). But the ideal procedure is basically a development from proportional chances, and if there are no good grounds for proportional chances there are none for the ideal procedure either. So I shall not delve into the arguments for this third procedure. I have not had space to discuss all Kamm's arguments for majority rule and proportional chances, either. But I am sorry to say that in the end I was not convinced by Kamm's remarkable account of fairness. I remain attached to the view I outlined in Section 0.

Notes

i.F. M. Kamm, *Morality, Mortality, Volume I: Death and Whom to Save From It*, Oxford University Press, 1993.
ii.John Taurek, `Should the numbers count', *Philosophy and Public Affairs*, 6 (1977), pp. 293–316.
iii.This argument is set out in more detail in my `Fairness', *Proceedings of the Aristotelian Society*, 91 (1990–91), pp. 87–102.