

Hierarchical Consequentialism

RE'EM SEGEV

The Hebrew University of Jerusalem

The article considers a hierarchical theory that combines concern for two values: individual well-being – as a fundamental, first-order value – and (distributive) fairness – as a high-order value whose exclusive function is to complete the value of individual well-being by resolving internal clashes within it that occur in interpersonal conflicts. The argument for this unique conception of high-order fairness is that fairness is morally significant in itself only regarding *what matters* – individual well-being – and *when it matters* – in interpersonal conflicts in which constitutive aspects of individual well-being clash. Consequently, the proposed theory is not exposed to the claim that fairness comes at the expense of welfare. This theory is considered within a consequentialist framework, based on the standard version and, alternatively, on a novel interpretation of consequentialism. Thus, it refutes the claim that consequentialism does not take the distinction between persons seriously.

INTRODUCTION

The article presents a hierarchical theory that combines concern for two values – individual well-being and fairness – within a consequentialist framework. The first part of the article considers the interaction of individual well-being and fairness and offers a unique conception of fairness. I suggest that individual well-being is a first-order value and consideration, while fairness is a high-order value whose exclusive function is to complete the value of individual well-being by resolving internal clashes within it that occur in interpersonal conflicts. The first aim of the article is to present this hierarchical theory and argue for it. I suggest that the proposed theory identifies the relation between well-being and fairness accurately. Specifically, its unique conception of high-order fairness is plausible since fairness is morally significant in itself only with respect to *what matters* – individual well-being – and *when it matters* – in an interpersonal conflict in which the well-being of persons clash. Consequently, I argue that the proposed account is not exposed to the common (especially utilitarian) claim that fairness is merely bad in terms of individual well-being (good for no one and bad for some or even for everyone). Therefore, the proposed theory is more plausible than the standard form of a distributive theory that is not hierarchical.

The second part of the article considers two ways of incorporating this hierarchical theory, and particularly its unique conception of high-order fairness, into a consequentialist framework. The first is based on the standard version of consequentialism and considers high-order fairness as part of a (consequentialist) conception of the good. The second

is based on a novel interpretation of consequentialism that considers high-order fairness as part of an unorthodox consequential conception of the right. The second aim of the article is thus to suggest that the concept of consequentialism is potentially more complicated than its standard understanding and that it is not necessarily exposed to the (deontological) common claim that it does not take the distinction between persons seriously.

HIERARCHICAL THEORY OF FAIRNESS

The proposed theory includes a hierarchical order of principles, which reflect independent (pro-tanto) considerations. The basic level includes the following principle:

The Well-Being Principle: there is a consideration in favor of promoting the well-being of each person as much as possible.¹

The Well-Being Principle is personal rather than aggregative: it refers to the promotion of the well-being of each individual rather than to a function of the aggregate well-being of several (all) individuals, such as the maximization of the sum of the well-being of all persons.² The personal nature of the Well-Being Principle is an important advantage, since the view that there is a (pro-tanto) consideration in favor of promoting individual well-being seems beyond dispute,³ whereas the view that there is a consideration in favor of promoting aggregate well-being is controversial.

However, due to its personal nature, the Well-Being Principle is often indeterminate. It is determinate when there is no clash within the value of individual well-being, but it is indeterminate when considerations of well-being clash, namely, in an interpersonal conflict in which a

¹ If there is a conceptual distinction that is morally significant in some respect between promotion of individual well-being and prevention of a setback to individual well-being, I believe that it is not morally significant regarding this consideration.

² For a similar distinction see Bertil Tungodden, 'The Value of Equality', *Economics & Philosophy* 19 (2003), pp. 1–44, at p. 18. A plausible extension of the Well-Being Principle is the Pareto Principle, according to which if one state of affairs is better than another for at least one person and the latter state of affairs is not better than the first for another person, then the first state of affairs is better overall. I consider the Pareto Principle as a consideration of well-being rather than as a consideration of fairness. For the latter interpretation see Richard J. Arneson, 'Against "Complex" Equality', *Pluralism, Justice and Equality*, ed. David Miller and Michael Walzer (Oxford, 1995), pp. 226–52, at pp. 249, 251–2.

³ See John Stuart Mill, *Utilitarianism* (1861) (Kitchener, 2001), p. 3; Bernard Williams, *Morality: An Introduction to Ethics* (Cambridge, 1972), pp. 97–8; Shelly Kagan, *The Limits of Morality* (Oxford, 1989), p. 7; Shelly Kagan, *Normative Ethics* (Boulder, 1998), p. 30. See also the claim that everyone should accept the Pareto Principle: Tungodden, 'The Value of Equality', p. 19.

limited benefit (an unavoidable burden)⁴ could be distributed between more than one person.⁵ In an interpersonal conflict, on the one hand, it is impossible to promote the well-being of every person as much as possible, in accordance with the Well-Being Principle, but, on the other hand, it is possible to promote the well-being of more than one person, however not of all these persons, so that a choice between persons is required. For example, when it is possible to save only one of two persons from a danger, the Well-Being Principle generates two clashing first-order considerations – one in favor of saving each person – and therefore does not generate a determinate prescription.

A determinate normative decision in an interpersonal conflict requires a resolution of the clash between the first-order considerations of individual well-being in light of an additional substantive consideration. The conception of high-order fairness provides such considerations.

The conception of high-order fairness consists of several distinct principles, each of which represents a constitutive aspect of fairness. The general concept of fairness does not have an additional substantive content beyond its specific aspects (principles). Its role is to highlight the specific aspects of fairness, which, while distinct in their content, have an important common denominator, particularly their exclusive function of resolving clashes of individual well-being and accordingly their application only in interpersonal conflicts.

Second-order principles of fairness

The most basic level within the conception of high-order fairness includes second-order principles, each of which reflects a pro-tanto consideration regarding the resolution of an interpersonal conflict. The most plausible second-order principles are the following.

Equality (of overall well-being): (1) among persons who are equally well-off (a) each should get an equal benefit or (b) if this is impossible, each person should get an equal chance to get a benefit; (2) among persons who are not equally well-off, a worse-off person should be preferred to a better-off person.⁶

For example, if two persons whose level of well-being is the same are hungry and each could benefit from one portion of food, but only one

⁴ If there is a conceptual distinction that is morally significant in some respect between a benefit and a burden, I believe that it is not morally significant in this context.

⁵ Compare M. A. Roberts, 'A New Way of Doing the Best That We Can: Person-Based Consequentialism and the Equality Problem', *Ethics* 112 (2002), pp. 315–50, at pp. 325–31, 341; Thomas Christiano, 'A Foundation for Egalitarianism', *Egalitarianism: New Essays on the Nature and Value of Equality*, ed. Nils Holtug and Kasper Lippert-Rasmussen (Oxford, 2007), pp. 41–82, at p. 53.

⁶ I argue for this principle in Re'em Segev, 'Second-Order Equality and Levelling Down', *Australasian Journal of Philosophy* 87 (2009), pp. 425–43.

portion exists, there is a clash between two first-order considerations: one in favor of giving the portion to each of the two persons. According to the Principle of Equality, each person should get an equal share of the food, namely, half a portion. Similarly, if it is possible to save only one of two persons from a danger, this principle is in favor of giving each person an equal (50 percent) chance of being saved.

Priority for the Greater Benefit: a greater benefit (smaller burden) for a person should be preferred.⁷

This principle (too) is personal rather than aggregative: it refers to the size of a benefit (burden) for an individual rather than to the aggregate well-being of several (all) individuals (and in this respect is different from the utilitarian principle).⁸ It reflects the common view that promoting (protecting) the well-being of an individual is more important the greater the benefit is. Consider, for example, a case in which two persons are in danger, one of being severely injured and the other of being slightly injured, and it is possible to prevent the danger from materializing only with respect to one person. In this case, there is a clash between two first-order considerations of individual well-being: one in favor of saving one person and another in saving the other person. The Priority for the Greater Benefit Principle supports preferring the former person who would otherwise suffer the more serious harm.⁹

Probability: a higher probability of benefit (lower probability of burden) for a person should be preferred.

For example, if two persons are in danger of being injured, and the probability that one would be injured is higher than the probability that the other would be injured, and it is possible to prevent the danger from materializing only with respect to one of them, this principle recommends preventing the danger whose probability of materializing is higher.

⁷ Compare Brad Hooker, 'Fairness', *Ethical Theory & Moral Practice* 8 (2005), pp. 329–52, at p. 331. But see Kristen Meyer, 'How to be Consistent without Saving the Greater Number', *Philosophy & Public Affairs* 34 (2006), pp. 136–46, at pp. 140, 143–5.

⁸ This distinction is noted by Andrew Stark, 'Benefit versus Numbers versus Helping the Worst-off: An Alternative to the Prevalent Approach to the Just Distribution of Resources', *Utilitas* 20 (2008), pp. 356–82, at pp. 357–8.

⁹ I consider the Priority for the Greater Benefit Principle as a consideration of fairness rather than a consideration of 'efficiency' (as it is commonly understood). For the latter interpretation, see, for example, Thomas Nagel, *Equality and Partiality* (Oxford, 1991), p. 66.

Responsibility: a person who is not (less) responsible should be preferred to a person who is (more) responsible for a burden (and vice versa with regard to responsibility for a benefit).¹⁰

Constructing a plausible conception of responsibility is complex. However, the Principle of Responsibility in its general form seems necessary. Consider, for example, a case in which two persons are in danger of being injured, whereas one of them is responsible for the existence of the danger (to both) and the other is not, and it is possible to prevent the danger only to one of them. In this case, there is a clash between two first-order considerations: one in favor of saving each of the two persons. The Principle of Responsibility supports saving the non-responsible person.

I am less certain regarding the plausibility of the following possible second-order principles.

Priority for the Worse-Off: a worse-off person should be preferred.

The standard version of this idea – Prioritarianism – is the view that the worse-off a person is, the more important it is to improve her situation.¹¹ This version is not a second-order principle since it is concerned merely with the absolute, and not also with the comparative, position of individuals. Accordingly, it applies regardless of the existence of interpersonal conflicts.¹² However, it is plausible to develop this idea to the more complex version of the Priority for the Worse-Off Principle,¹³ since the most important implication of determining the importance of promoting individual well-being concerns a situation in which there is a clash between several considerations of this kind. However, if the Principle of Equality is valid, it is unclear whether it is

¹⁰ For such a principle, although one that is not necessarily presented as a high-order principle, see Phillip Montague, 'Self-Defense and Choosing between Lives', *Philosophical Studies* 40 (1981), pp. 207–19; Phillip Montague, *Punishment as Societal-Defense* (Lanham, 1995), chs. 2 and 5; George Draper, 'Fairness and Self-Defense', *Social Theory & Practice* 19 (1993), pp. 72–92, at p. 77; Jeff McMahan, 'Self-Defense and the Problem of the Innocent Attacker', *Ethics* 104 (1994), pp. 252–90, at pp. 259–63; Jules Coleman and Arthur Ripstein, 'Mischief and Misfortune', *McGill Law Journal* 41 (1995), pp. 91–130, at p. 94; Re'em Segev, 'Well-Being and Fairness in the Distribution of Scarce Health Resources', *Journal of Medicine & Philosophy* 30 (2005), pp. 231–60, at pp. 252–5; Re'em Segev, 'Fairness, Responsibility and Self-Defense', *Santa Clara Law Review* 45 (2005), pp. 383–460, at pp. 392–404; Richard Kraut, *What is Good and Why: The Ethics of Well-Being* (Cambridge, 2007), p. 231.

¹¹ See, for example, Joseph Raz, *The Morality of Freedom* (Oxford, 1986), pp. 218–21; Derek Parfit, 'Equality and Priority', *Ratio* 10 (1997), pp. 202–21, at pp. 212–17.

¹² See Larry Temkin, 'Equality, Priority, and the Levelling Down Objection', *The Ideal of Equality*, ed. Matthew Clayton & Andrew Williams (Basingstoke, 2002), pp. 126–61, at pp. 128–30; Larry S. Temkin, 'Egalitarianism Defended', *Ethics* 113 (2003), pp. 764–82, at p. 769 n. 9.

¹³ Compare Paula Casal, 'Why Sufficiency Is Not Enough', *Ethics* 117 (2007), pp. 296–326, at p. 309.

plausible to adopt also the Priority for the Worse-Off Principle in light of the similar implications of these principles.¹⁴

Numbers: a greater number of persons should be preferred.

While many consider the idea reflected in this principle as self-evident, it is not obvious: as opposed to the value of individual well-being, it is not clear that the outcome of a function that aggregates the well-being of several persons is morally significant in itself.

Third-order principles of fairness

Second-order principles might clash. For example, the Principle of Equality clashes with the Principle of Priority for the Greater Benefit when the choice is between preventing a more serious harm to one person and a less serious harm to another person.¹⁵ Similarly, the Principle of Priority for the Greater Benefit clashes with the Principle of Responsibility when the choice is between preventing a more serious harm to a responsible person and a less serious harm to an innocent (non-responsible) person.¹⁶

In order to resolve a clash between second-order principles, a third-order principle, which represents a higher level of a consideration of fairness, is required. I believe that since the basic structure of the clash between second-order principles is the same with regard to all clashes of this kind, the basic third-order solution should be the same as well. It seems to me that the most promising form of a third-order principle is based on the importance (weight) of the clashing second-order considerations, namely, it resolves a clash between second-order principles by preferring the more important (weighty) principle. The importance of a second-order principle depends on its nature.¹⁷ The importance of the Equality Principle is affected by the degree of inequality that it is possible to diminish: it is more important to prevent

¹⁴ See Segev, 'Second-Order Equality', pp. 440–1; Re'em Segev, 'Equality, Not Priority' (unpublished manuscript).

¹⁵ I elaborate concerning this clash in Re'em Segev, 'Well-Being and Fairness', *Philosophical Studies* 131 (2006), pp. 369–91, at pp. 378–82.

¹⁶ I elaborate concerning this clash in Re'em Segev, 'Taking Equality and Responsibility Seriously: An Egalitarian Alternative to Luck Egalitarianism' (unpublished manuscript).

¹⁷ A general variable, which affects the importance of all the second-order principles of fairness, is the importance of the benefit: the more important it is, the more important is fairness with regard to its allocation. For example, it is more important to ensure fairness with regard to a matter of life and death than concerning a trivial benefit. Accordingly, if there are two interpersonal conflicts and it is possible to affect – to ensure the fairness of – only one, then the more important conflict should be preferred. This consideration is not practicably important with regard to the clash between these principles since it affects the force of every principle of fairness to the same degree. Compare, regarding the considerations of equality and priority for the worse-off: Casal, 'Why Sufficiency Is Not Enough', pp. 311–12.

a substantial rather than a trivial inequality.¹⁸ The importance of the Principle of Priority for the Greater Benefit is affected by the gap in the importance of the competing interests: it is more important to save the life of one person rather than to prevent a slight discomfort to another, compared to saving one person from an injury rather than another from a slightly less serious injury. The importance of the Probability Principle is affected by the gap in the degree of the relevant probabilities: it is more important to save a person from a very probable danger rather than another from a remote danger, compared to saving a person from a danger that is just slightly more probable than a (less probable) danger to another person. The importance of the Responsibility Principle is affected by the gap in the degree of responsibility: it is more important to prefer a person who is not responsible for a danger rather than a person who is responsible for a danger to a significant degree, compared to preferring a person who is responsible for a danger rather than a person who is slightly less responsible.

According to this account, which is based on the preference of the more important second-order consideration, I suggest that the clash between two second-order principles should be resolved in light of the Substantial Difference Principle. Consider, first, the clash between the Principle of Equality and the Priority for the Greater Benefit Principle. According to the Substantial Difference Principle, the Equality Principle prevails unless the weight of the Priority for the Greater Benefit Principle is beyond a certain threshold, namely, unless there is substantial difference in the degree of the pertinent benefits (burden). Consider, for instance, the choice between preventing a more serious injury for one person and a less serious injury to another. According to the Substantial Difference Principle, each person should get an equal chance of being saved if the difference in the severity of the injuries is not substantial, but if the difference is substantial (or more), the first person should be (straightforwardly) preferred.¹⁹

A similar account applies to the clash between the Equality Principle and the Priority of the Probability Principle. This account explains why, when the choice is between an action that has a 50 percent chance of saving one person and an action that has a 51 percent chance of saving another, it is plausible to give each an equal chance to be selected, while if the choice is between a 100 percent chance of saving one person and

¹⁸ Determining the degree of inequality is a complex task, especially in situations that involve more than two persons. See Larry S. Temkin, *Inequality* (New York, 1993), ch. 5. In order to avoid this question, I focus on situations involving only two persons.

¹⁹ I argue for this principle in Segev, 'Well-Being and Fairness', pp. 382–6.

a 2 percent chance of saving another, it is plausible straightforwardly to save the former.²⁰

The clash between the Principle of Equality and the Responsibility Principle should be resolved in light of an analogous principle. Consider the choice between preventing a more serious injury to a person who is responsible for a danger to a significant extent and a less serious injury to a person who is responsible for this danger too but to a lesser degree. According to the Substantial Difference Principle, each person should get an equal chance of being saved if the gap in the degree of responsibility is not substantial, but if it is substantial (or more), the second person should be (straightforwardly) preferred.²¹

Two alternative third-order accounts seem to me less promising. The first resolves a clash between second-order principles by assigning lexical priority to one of the principles. However, in the absence of an explanation for the absolute priority of one principle, this account is unpersuasive.

The second alternative account resolves a clash between second-order principles by partially satisfying each of these principles in a way that generates a novel, third-order principle. An example is the Principle of Proportional Shares (or, with respect to proportional chances, the Weighted Lottery Principle). This principle resolves the clash between the Principle of Equality and the Priority for the Greater Benefit Principle in a way that gives each person a share (chance) whose size is proportional to the importance of the benefit for this person. Consider again the unavoidable choice between preventing a more serious injury for one person and a less serious injury to another and assume that the first injury is twice as serious as the second. According to the Proportional Chances Principle, the first person should receive a 66 percent chance of being preferred while the second should receive a 33 percent chance.²² A similar analysis concerns the clash between the Equality Principle and the Priority for the Greater Benefit Principle.²³

The Principle of Proportional Shares might seem to be a plausible compromise between the clashing second-order principles. However, I think that it is misguided. It involves two main problems. Consider, for

²⁰ This seems to me a more persuasive account for the last judgment than the claim that otherwise there is a high chance of saving no one. For this claim, see Eduardo Rivera-Lopez, 'Probabilities in Tragic Choices', *Utilitas* 20 (2008), pp. 323–33, at p. 327.

²¹ I argue for this principle in Segev, 'Taking Equality and Responsibility Seriously'.

²² For this principle, although not as in the framework of high-order fairness, see John Broome, 'Selecting People Randomly', *Ethics* 95 (1984), pp. 38–55, at p. 55.

²³ See Broome, 'Selecting People Randomly', pp. 44–5; Jens Timmermann, 'The Individualist Lottery: How People Count, But Not Their Number', *Analysis* 64 (2004), pp. 106–12, at pp. 110–12; Iwao Hirose, 'Weighted Lotteries in Life and Death Cases', *Ratio* 20 (2007), pp. 45–56; Adam Cureton, 'Degrees of Fairness and Proportional Chances', *Utilitas* 21 (2009), pp. 217–21.

example, the clash between the Equality Principle and the Priority for the Greater Benefit Principle. On the one hand, when the difference in the importance of the relevant benefits is small, it seems that we should give each person an equal chance rather than assign some preference to the person who would get the greater benefit. On the other hand, and even more clearly, when the difference in the importance of the relevant benefits is big, for example the difference between saving the life of one person and preventing a headache to another, it seems that we should straightforwardly prefer the person who would otherwise die rather than assign proportional chances.²⁴

High-order principles and fairness

A normative principle (consideration) can be distributive in (at least) three senses. First, a normative principle can have a *distributive implication*. This is a trivial sense that applies to almost every normative principle. Therefore, I ignore this sense in the remainder of the article.

Second, a normative principle can assign *moral significance* to the distribution of a benefit (burden) among persons. More specifically, a principle can assign *independent (intrinsic) moral significance* to the distribution of a benefit. Typically, the term 'a distributive principle' is reserved for such a principle. This kind of principles includes all high-order principles of fairness as well as other familiar distributive principles. Alternatively, a principle can assign (merely) *instrumental significance* to the distribution of a benefit. The most familiar example is the utilitarian principle: the maximization of the sum (average) of individual well-being.

Finally, a normative principle can have the *function of resolving a clash* between other principles. More specifically, a *high-order principle of fairness* has the *exclusive* function of resolving a clash between considerations based on the *lower-order* Well-Being Principle. This unique conception of high-order fairness considers fairness as morally significant in itself *only with respect to the resolution of an interpersonal conflict* (in which considerations of individual well-being clash). This conception of fairness is *comparative*.²⁵ Accordingly, every high-order principle of fairness, which is based on this conception, has the same basic structure of preferring one option – one person – to another. Specifically, a high-order principle of fairness applies *only* in an interpersonal conflict in which lower-order considerations of individual

²⁴ See Segev, 'Well-Being and Fairness', pp. 385–6; Hooker, 'Fairness', p. 349.

²⁵ For the distinction between full and comparative fairness see Peter Vallentyne, 'Distributive Justice', *A Companion to Contemporary Political Philosophy*, 2nd edn., ed. Robert E. Goodin, Philip Pettit and Thomas Pogge (Oxford, 2007), vol. 2, p. 1.

well-being clash; when there is no clash between considerations of well-being – no interpersonal conflict – a high-order principle is inapplicable.²⁶ Alternatively, a principle can have the *non-exclusive* function of resolving a clash between other principles. Accordingly, such a principle applies also in a situation that does not involve an interpersonal conflict. A standard distributive principle is of this kind.

A high-order principle of fairness is thus distributive in all the above three senses, and particularly in the two latter significant senses: assignment of independent significance to distribution and reliance on the unique conception of fairness whose exclusive function is the resolution of an interpersonal conflict. These features are related: a principle whose exclusive function is to resolve an interpersonal conflict naturally assigns intrinsic significance to distribution. However, the opposite is not necessarily the case: a principle that assigns intrinsic significance to distribution does not necessarily have an exclusive function of resolving an interpersonal conflict. For example, the standard conception of equality assigns intrinsic significance to distribution but does not have an exclusive function of resolving interpersonal conflicts.

The key feature of a high-order principle of fairness – that distinguishes it from a standard distributive principle – is thus its reliance on a unique conception of fairness whose exclusive function is the resolution of interpersonal conflicts and accordingly its application is limited to situations that involve such conflicts. To be sure, typically, a situation involves an interpersonal conflict in the relevant sense of a clash between the well-being of persons that occurs whenever there is a limited benefit (unavoidable burden). Nevertheless, this feature of the conception of high-order fairness is significant with respect to the justification of fairness and its implications and accordingly it demonstrates why the proposed conception is more plausible than standard distributive theories.

The argument for high-order principles of fairness

The fundamental argument in favor of the proposed hierarchical theory, particularly its unique conception of high-order fairness and its key feature – the exclusive function of resolving interpersonal conflicts – concerns the question when fairness is morally significant in itself. I suggest that fairness is morally significant in itself only if two independent but related conditions are met. First, fairness is important only with respect to *what matters* – particularly individual

²⁶ Compare Daniel Markovits, 'Luck Egalitarianism and Political Solidarity', *Theoretical Inquiries in Law* 9 (2008), pp. 271–308, at p. 293 n. 62.

well-being – as opposed to something that is worthless.²⁷ Therefore, it is reasonable to assign importance to a distributional consideration only alongside another, more basic, consideration,²⁸ namely, individual well-being. Second, fairness is important only *when it matters* – again with respect to individual well-being – that is, in an interpersonal conflict in which the well-beings of persons clash. The latter condition entails the exclusive function of the proposed conception of high-order fairness – the adjudication of clashes between first-order considerations of individual well-being that occur in interpersonal conflicts – and accordingly its limited application in such conflicts.

Thus, the proposed conception combines concerns for the values of individual well-being and fairness in a way that explains the relation between them. First, the proposed conception assigns (high-order) fairness the role of regulating (first-order) individual well-being in the above two senses: it is concerned with individual well-being and its function is to resolve internal clashes within this value. Second, according to the proposed account, the values of individual well-being and fairness, while distinct, are not competing and potentially clashing values, but rather *complementary* values. Indeed, the role of each value is different: while the first-order value of individual well-being is concerned with *what* we should fundamentally care about, the high-order value of fairness is concerned with *how* we should care for this fundamental value when its aspects clash. Accordingly, each principle generates overall and therefore decisive conclusions in a distinct kind of situation. The (first-order) Principle of Well-Being generates decisive conclusions only in situations that do not involve interpersonal conflicts in which there is no clash between first-order considerations of individual well-being. For example, when it is possible to save a person from an injury and there is no other person who is in danger, the consideration entailed by the first-order Principle of Well-Being in favor of saving the endangered person is necessarily decisive (and no high-order principle is in play). On the other hand, the conception of (high-order) fairness applies and generates decisive conclusions only when the (first-order) Principle of Well-Being exhausts itself due to an internal clash between first-order considerations of well-being that occurs in interpersonal conflicts.²⁹

²⁷ See Nicolas Rescher, *Distributive Justice: A Constructive Critique of the Utilitarian Theory of Distribution* (Indianapolis, 1966), pp. 29–30 n. 8; Christiano, 'A Foundation for Egalitarianism', pp. 61, 72–3; Joseph Raz, 'On the Value of Distributional Equality', *Hillel Steiner and the Anatomy of Justice*, ed. Stephen de Wijze, Matthew H. Kramer and Ian Carter (New York, 2009), pp. 22–33; Thomas Christiano and Will Braynen, 'Inequality, Injustice and Levelling Down', *Ratio* 21 (2008), pp. 392–420, at p. 397.

²⁸ See, with respect to equality, Raz, 'On the Value of Distributional Equality'.

²⁹ Compare the suggestion that well-being and justice do not compete but rather the latter determines the good of who should be promoted, see Kraut, *What is Good and Why*, pp. 14–15, 209.

The first insight concerning the significance of fairness – that it is important only regarding what matters – is familiar. However, the second insight – that fairness is important only when it matters – is not. However, this condition is equally important, since it entails the key feature of high-order fairness – its exclusive application in interpersonal conflicts. Due to this feature, high-order fairness is not exposed to the common accusation that ‘fairness comes at the expense of welfare’ when fairness is merely bad in terms of individual well-being, namely, when it is good for no one and bad for some or even everyone.³⁰ This is a forceful accusation if the claim is not merely that well-being and fairness are distinct and potentially clashing values, but rather that a misguided conception of fairness sometimes undermines individual well-being even when these values do not clash. I suggest that it indeed applies to standard distributive principles when they entail considerations that apply (also) in situations that do not involve interpersonal conflicts.

The most salient example is the standard conception of equality, which includes a consideration in favor of leveling down, namely, making a (relatively) better-off person worse-off when this does not improve the position of another person, particularly a (relatively) worse-off person. To be sure, this is only a pro-tanto consideration that might be outweighed by another consideration. Yet, even the entailment of such a pro-tanto consideration seems problematic. Therefore, it is important to notice that the second-order Principle of Equality does not involve this implication, since, unlike the standard conception of equality, it applies only in interpersonal conflicts. A case of leveling down does not involve an interpersonal conflict. In this case, there is a first-order consideration of well-being against making a (better-off) person worse-off, namely, against leveling down, and no clashing first-order consideration in favor of leveling down, since it does not improve this situation of any other person. Thus, in this case, there is no clash between first-order considerations relating to the good of persons. Accordingly, the second-order Principle of Equality is inapplicable and therefore does not entail (even) a pro-tanto consideration in favor of leveling down. On the other hand, the standard conception of equality applies in this case since its function is not exclusively to resolve an interpersonal conflict and therefore it includes a consideration in favor of leveling down.³¹

³⁰ See Louis Kaplow and Steven Shavell, ‘Fairness Versus Welfare’, *Harvard Law Review* 114 (2001), pp. 961–1388, at p. 1012.

³¹ I elaborate regarding this difference between standard and second-order equality in Segev, ‘Second-Order Equality’.

Another example concerns the difference between a conception of retribution and the second-order Principle of Responsibility. A conception of retribution entails a consideration in favor of punishing a person who has committed a wrong even when this does not improve the situation of another person. For this reason, retribution is often considered problematic. Therefore, it is important to notice that the second-order Principle of Responsibility does not entail this implication. This difference is again due to the exclusive function of the latter principle of resolving interpersonal conflicts and accordingly its application only in interpersonal conflicts. In the relevant case, there is a first-order consideration of individual well-being against punishing a person and no clashing first-order consideration in favor of this option, since it does not improve the situation of another person. Thus, in this case, there is no clash between first-order considerations of well-being and no interpersonal conflict. Accordingly, the second-order Principle of Responsibility is inapplicable and does not entail (even) a pro-tanto consideration in favor of punishing such a person. On the other hand, a conception of retribution applies in this case since its function is not exclusively to resolve interpersonal conflicts and therefore it includes a consideration in favor of punishing such a person.³²

A closely related attractive feature of a high-order principle of fairness is that it reflects a *personal* value and consideration that is compatible with the Person-Affecting Principle, according to which a state of affairs could be morally better or worse only if it is better or worse, respectively, for a person.³³ This is true also with regard to the second-order Principle of Equality, despite the assumption that equality is necessarily an impersonal value (which is based on the assumption that equality is a first-order value).³⁴ A conception of equality is indeed necessarily impersonal in the sense that it is concerned with the relative (rather than the absolute) position of individuals, but the second-order Principle of Equality is personal in the important sense that it supports only an action that promotes individual well-being.

To conclude, the conception of high-order fairness is attractive mainly since it demonstrates that well-being and fairness are not competing values and especially that fairness does come at the expense of well-being but rather complements the concern for well-being.

³² I elaborate regarding this difference between retribution and second-order responsibility in Segev, 'Fairness, Responsibility and Self-Defense', pp. 399–400.

³³ For this principle, see Parfit, 'Equality and Priority', p. 219; Roberts, 'Person-Based Consequentialism', pp. 315–50.

³⁴ See Temkin, 'Egalitarianism Defended', p. 767.

Is a restricted conception of fairness ad hoc?

A restricted conception of fairness limits the scope of the value of fairness. Every (reasonable) conception of fairness is restricted at least in the trivial sense that it applies only with respect to its basic target (for example, well-being or resources of persons). However, a conception of fairness can be restricted in a more significant sense, beyond its basic target. A restricted conception of fairness in this strict sense differs from the standard conception of fairness that applies whenever its basic target is relevant. The proposed conception of high-order fairness is a restricted conception in this significant sense since it applies only in situations that involve interpersonal conflicts.

Several other restricted conceptions of fairness, and specifically equality, limit the scope of equality in order to avoid the troubling implications of the standard conception of equality so that it would not apply when it is good for no one.³⁵

An obvious objection to a restricted conception of fairness is that it is ad hoc, namely, that it limits the scope of fairness with no plausible explanation apart from the aim of avoiding an unintuitive conclusion (for example, leveling down). To put it bluntly, the common idea seems to be the following: 'I wish fairness (equality) would not entail (a consideration in favor of) leveling down. Therefore, I adopt a novel conception of fairness (equality) that is equivalent to the standard conception of fairness (equality) in all relevant respects except that it does not entail (a consideration in favor of) leveling down'. Thus, a restricted or conditional conception of fairness requires an explanation of why it is conditional in the relevant sense other than the need to avoid an embarrassing conclusion.

This objection seems to me to apply to most restricted conceptions of fairness and specifically equality. Indeed, these conceptions merely note the conceptual possibility of restricting the scope of equality (beyond the restriction implied by its basic target), without providing an explanation as to why the restriction is plausible.³⁶

³⁵ See Andrew D. Williams, 'The Revisionist Difference Principle', *Canadian Journal of Philosophy* 25 (1995), pp. 257–81, at p. 259; Bertil Tungodden and Peter Vallentyne, 'On the Possibility of Paretian Egalitarianism', *Journal of Philosophy* 102 (2005), pp. 126–54; Christiano, 'A Foundation for Egalitarianism', pp. 42, 76–8; Christiano and Braynen, 'Inequality, Injustice and Leveling Down'; Temkin, 'Equality, Priority, and the Leveling Down Objection', pp. 156–7; Andrew Mason, 'Egalitarianism and the Leveling Down Objection', *Analysis* 61 (2001), pp. 246–54, at pp. 248–9; Casal, 'Why Sufficiency Is Not Enough', pp. 309, 319; Iwao Hirose, 'Reconsidering the Value of Equality', *Australasian Journal of Philosophy* 87 (2009), pp. 1–12, at pp. 1–8, 3.

³⁶ See Nils Holtug, 'A Note on Conditional Egalitarianism', *Economics & Philosophy* 23 (2007), pp. 45–63, at pp. 56–61; Nils Holtug and Kasper Lippert-Rasmussen, 'An Introduction to Contemporary Egalitarianism', *Egalitarianism*, pp. 1–37, at p. 24.

However, I believe that this objection does not apply to the conception of high-order fairness, for the following reasons. First, the conception of high-order fairness provides an account of its restricted scope that is based on general ideas that are plausible in themselves: the value of individual well-being and its relation to a high-order conception of fairness that is morally significant with respect to the resolution of interpersonal conflicts. More specifically, the restriction of the proposed conception of fairness to the resolution of interpersonal conflicts is reasonable in light of the argument that fairness matters only when there is a clash of considerations of individual well-being. Generally, the significance of a fact can change in accordance with the context.³⁷ Specifically, the existence of an interpersonal conflict is a fact that is morally significant with regard to the value of fairness.

Second, the conception of high-order fairness avoids all the aspects of the claim that fairness is sometimes merely bad in terms of individual well-being due to a single key feature: its role as a solution for interpersonal conflicts.

Finally, the conception of second-order fairness includes several plausible principles of fairness that have the same basic structure, mainly equality, priority for the greater benefit and responsibility.

HIERARCHICAL CONSEQUENTIALISM

Based on the analysis of the proposed hierarchical theory, I consider next whether it is compatible with consequentialism. This task is especially important since both the claim that fairness comes at the expense of well-being and my response that this is not the case with regard to the proposed hierarchical theory are particularly significant within a consequential account.

The standard definition of consequentialism includes the following components: a conception of the good according to which the only value is (certain) states of affairs (consequences of actions); the view that considerations regarding the rightness or wrongness of actions – in favor or against actions – are based exclusively on this conception of the good (consequential considerations);³⁸ and a conception of the right according to which the right action is determined solely in light of the conception of the good and particularly is always the one that leads to the best (optimal) possible overall state of affairs (consequences).

³⁷ See generally Shelly Kagan, 'The Additive Fallacy', *Ethics* 99 (1988), pp. 5–31; F. M. Kamm, *Morality, Mortality II: Rights, Duties, and Status* (New York, 1996), ch. 2. In the context of equality, see Tungodden, 'The Value of Equality', p. 9.

³⁸ See, for example, William Shaw, 'The Consequentialist Perspective', *Contemporary Debates in Moral Theory*, ed. James Dreier (Malden, 2006), pp. 5–20, at p. 5.

I consider two alternatives of incorporating the proposed theory – and particularly its unique feature: the high-order conception of fairness – into a consequential framework: first, as part of the standard (consequential) conception of the good, although a complex version of it; second, as part of a unique (consequential) conception of the right. If either of these possibilities is sound, the claim that fairness necessarily comes at the expense of well-being is misguided not only in general but also, more specifically, with regard to consequentialism.

Hierarchical fairness and a consequential conception of the good

The first and most straightforward option of incorporating the proposed hierarchical theory of fairness into a consequential framework is as part of the standard (consequential) conception of the good. This option is of special importance since the above concerns regarding standard distributive principles are especially acute when such principles are considered part of a conception of the good. It is especially difficult to accept the implication of the standard conception of equality, in its consequential form, that there is something *good* in leveling down.³⁹ Similarly, it seems especially difficult to accept the implication of a consequential conception of retribution that there is something *good* in punishing a person who has committed a wrong when this does not benefit another. Accordingly, high-order principles of fairness, which avoid these implications, are especially attractive within a (consequential) conception of the good.

A conception of the good, and particularly a *consequential* conception of the good, can include various goods, although it is unclear whether it can include *any* good. The first-order Principle of Well-Being could be clearly part of a (consequential) conception of the good. The question is thus whether the high-order conception of fairness is compatible with a consequential conception of the good. The definition of consequentialism seems compatible with a (consequential) conception of the good that includes a distributive, and particularly a fairness-based, concern.⁴⁰ The question is thus whether the unique nature of the

³⁹ See Segev, 'Second-Order Equality', p. 426.

⁴⁰ See, for example, T. M. Scanlon, 'Rights, Goals, and Fairness', *Public and Private Morality*, ed. Stuart Hampshire (Cambridge, 1978), pp. 93–112; T. M. Scanlon, *What We Owe to Each Other* (Cambridge, 1998), pp. 80–1; *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge, 1982), pp. 3–4; Samuel Scheffler, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (Oxford, 1982), pp. 10–13, 25–36, 70–9; Derek Parfit, *Reasons and Persons* (Oxford, 1984), p. 25; David O. Brink, *Moral Realism and the Foundations of Ethics* (Cambridge, 1989), pp. 213–14; John Broome, *Weighing Goods: Equality, Uncertainty and Time* (Oxford, 1991), pp. 14–15; Temkin, *Inequality*, p. 19; Fred Feldman, 'Adjusting Utility for Justice: A Consequential Reply to the Objections from Justice', *Utilitarianism, Hedonism, and Desert: Essays in Moral Philosophy* (Cambridge, 1997),

conception of high-order fairness (compared to standard distributive considerations) – its exclusive function of resolving interpersonal conflicts – is (also) compatible with consequentialism. According to this conception, a state of affairs in which an interpersonal conflict is resolved in accordance with high-order fairness is better than a state of affairs in which an interpersonal conflict is not resolved in this manner. While this conception of fairness is unique, particularly within a conception of the good, this difference between high-order principles of fairness and other distributive principles should not affect the plausibility of incorporating the former within a consequential conception of the good.

An objection to this suggestion is that the incorporation of the proposed conception of high-order fairness into a consequential conception of the good entails a strange conclusion, namely, that factors such as equality and responsibility have intrinsic value only in interpersonal conflicts. In other words, the objection is that the suggestion that a state of affairs is good (better) or bad (worse) in terms of fairness only if there is an interpersonal conflict and so only if it is possible to affect it through action (make it more fair), is implausible.

This is a powerful objection, but I do not think that it is decisive. The first point that should be noted refers to the first-order level of the proposed account. The Well-Being Principle is a first-order principle that accordingly applies regardless of the existence of an interpersonal conflict and the possibility to affect it through action. Thus, according to the proposed account, a state of affairs is good (better) or bad (worse) in terms of individual well-being even if there is no interpersonal conflict and a way to change the situation at hand.

This assessment of states of affairs is clearly sufficient with regard to a consequential view that does not assign independent significance to fairness. However, the rejoinder might be that while it might be reasonable to reject the (consequential) value of fairness altogether, it is implausible to assign independent significance to fairness when there is a possibility of affecting a states of affairs (in the direction of more fairness) but not when this possibility does not exist.

My response to this rejoinder is that the above implication of the proposed conception of fairness is reasonable in light of the nature of the more plausible argument in favor of (high-order) fairness, namely, that fairness is morally significant only when it matters, that is, only when there is a clash of considerations of individual well-being that

pp. 154–74; Kagan, *Normative Ethics*, pp. 48, 54, 59, 216–18; Shaw, 'The Consequentialist Perspective', p. 11; Richard J. Arneson, 'Egalitarianism and Responsibility', *Journal of Ethics* 3 (1999), pp. 225–47. But compare John Rawls, *A Theory of Justice* (1971) (Cambridge, 1999), p. 22.

occurs in an interpersonal conflict. As noted above, the significance of a fact can change in accordance with the context, and, specifically, the existence of an interpersonal conflict changes the nature of the situation in a morally significant sense with regard to the value of fairness.

Hierarchical fairness and a consequential conception of the right

An alternative way of incorporating the proposed account into consequentialism considers the Well-being Principle within a consequential conception of the good and high-order principles of fairness as part of a consequential conception of the right. The latter suggestion requires an unorthodox interpretation of the division between a conception of the good and a conception of the right within consequentialism and particularly a unique consequential conception of the right.

According to the standard view, a conception of the good includes two parts: a determination of which state of affairs is good (bad) and the degree of goodness (badness) of a state of affairs and accordingly a ranking of the goodness (badness) of states of affairs, namely, whether one state of affairs is better (worse) than another and particularly which is the best state of affairs (from a set of alternatives).⁴¹ According to this view, a consequential conception of the right is very simple⁴² and this is why consequentialism is often described as a theory that defines the right according to the good.⁴³ The standard consequential conception of the right merely determines that the right action is always the one that leads to the peak of the conception of the good, namely, to the best overall possible state of affairs which is determined by the conception of the good. Accordingly, the only substantive normative content that the standard consequential conception of the right includes is the principle that requires the maximization of the good. Particularly, the standard consequential conception of the right does not include distributive and specifically fairness-based considerations.

The alternative interpretation of consequentialism considers the relation between its conception of the good and its conception of the right differently. According to this interpretation, the first-order Well-Being Principle determines what is good (bad), as well as the degree of goodness (badness) in terms of individual well-being. However, the high-order conception of fairness is not part of the conception of the good but rather part of a consequential conception of the right that

⁴¹ For the last element of ranking, see, for example, Peter Vallentyne, 'Consequentialism', *Ethics in Practice*, 3rd edn., ed. Hugh Lafollette (Malden, 2006), p. 3; Kagan, *Normative Ethics*, p. 60.

⁴² See, for example, Kagan, *Normative Ethics*, p. 61.

⁴³ See, for example, Rawls, *A Theory of Justice*, pp. 21–2; Freeman, 'Utilitarianism, Deontology, and the Priority of the Right', pp. 313–14.

determines which action reflects the good in an optimal manner (and requires each agent to perform this action). Thus, the conception of the good does not determine degrees of goodness (badness) with respect to fairness and therefore does not determine which is the best state of affairs overall. Consequently, a conception of the good identifies and ranks good (bad) states of affairs in the intrapersonal level, but not with respect to interpersonal conflicts.

According to this interpretation, in the interpersonal sphere it is the consequential conception of the right that determines which action reflects the good in an optimal manner and requires the agent to perform this action. This consequential conception of the right thus includes not only the idea of maximization of the good but also an additional, preliminary, substantive normative content regarding the content of this idea. This conception is compatible with various versions concerning the question of which action best reflects the balance of first-order consequential considerations (versions that are typically considered part of a conception of the good). One version consists of the proposed high-order conception (principles) of fairness. A different version includes the aggregative component of utilitarianism.

The proposed account of consequentialism thus reflects the following division: the first-order level identifies the basic value of individual well-being – that is, what is good for a person – which entails a consideration in favor of promoting individual well-being as much as possible. However, this basic value does not resolve an interpersonal conflict in which there is a clash within the value of individual well-being, between the good of different persons, that is, between considerations of well-being, for example, when it is possible to save only one of two persons. The resolution of such a conflict is based on a version of the general principle of consequential optimality – either the high-order conception of fairness or the utilitarian principle of maximizing the sum (average) of individual well-being.

According to this view, the conception of high-order fairness thus entails considerations that are not based on the relation of an action to a state of affairs. For this reason, this alternative avoids the above objection to the suggestion of incorporating the conception of high-order fairness into a consequential conception of the good.

However, this interpretation of consequential right raises several other objections. But I do not think that these objections are decisive. The most basic objection is that a plausible conception of the good includes not only an identification of what is good regarding individual well-being but also an evaluation of the overall degree of goodness including what is better and particularly best – based on other aspects of the good as well – in every case, including an interpersonal conflict. According to this objection, it is implausible to distinguish what is good

from what is better (best) since the latter is a natural extension of the former.

The reply to this objection is based on the different nature of these two aspects: the identification of the good with respect to individual well-being and distributive justice. It is one thing to identify a factor as morally significant – and particularly as good (bad) – and another to determine which action is appropriate in light of this good. Particularly, it seems plausible that a basic value is concerned only with the question of what is good (bad) to individuals and simply does not answer the question of what is better (best) in another respect. This might be the case, specifically, concerning the basic value of individual well-being in the context of interpersonal conflicts. Indeed, it seems to me that a reasonable conception of the good might not have an answer to the question of what is better (best) in the context of an interpersonal conflict. The only answer to this question might be in terms of a conception of the right, namely, in terms of what there is most reason to do in light of this value. This might be so due to the combination of the nature of the value – specifically individual well-being – and the context – particularly an interpersonal conflict – even if there is no problem of incommensurability. Therefore, the separation of what is good regarding individual well-being from what is better (best) overall might be reasonable. Indeed, there is a significant difference in the nature of the first-order Principle of Well-being, which identifies what is good for a person, and that of higher-order principles of fairness, which determine what there is most reason to do when there is a clash between the good of different persons.

However, this reply raises another objection, namely, that the proposed conception of the right is not consequential, since, by definition, a consequential conception of the right simply requires the performance of the action that best promotes the good in light of a determination of the best within a conception of the good. This objection reflects the common understanding of the elements of consequentialism and accordingly the division between consequentialism and deontology.

Nevertheless, it seems to me that the proposed complex conception of consequential right is compatible with the essence of consequentialism, namely, the view that the rightness of an action supervenes on the good it creates. Several points should be noted in this regard. The first is that the proposed conception of consequential right encompasses principles – high-order principles of fairness or alternatively the utilitarian principle of maximizing the sum of well-being – that could be clearly part of a (consequential) conception of the good. But the classification of these principles – as part of a conception of the good or as part of a conception of the right – does not affect their content. Therefore, this classification should not affect the conclusion that these principles are compatible with consequentialism.

This is obvious with regard to the utilitarian principle since utilitarianism is the paradigm of consequentialism and therefore presumably every component of it is consequential, regardless of its classification as part of the good or of the right. Moreover, the classification of the utilitarian principle as part of a conception of the right – rather than as part of a conception of the good – has an important advantage in terms of its justification: it provides the arguably only comprehensible (and therefore the most plausible) argument in its favor (although not one that is convincing overall). It is difficult to see why the sum (or average) of individual well-being, which is experienced by no one, is a good. It is more plausible to consider this principle as a criterion for the right action when considerations of well-being clash. Indeed, it seems that the motivation for the utilitarian principle is often based on a notion of fairness. The most difficult question that utilitarians face is why it is proper to resolve an interpersonal conflict in light of the sum (average) of well-being. When utilitarians confront the question, the answer is typically based on a notion of fairness. A well-known example is Bentham's statement that, within the utilitarian principle, 'Everybody is to count for one, nobody for more than one'.⁴⁴ In other words, a comprehensible understanding of utilitarianism considers it as based on a (misguided) notion of fairness for resolving clashes between considerations relating to the well-being of individuals.

The proposed high-order principles of fairness reflect the essential feature of consequentialism too, including when considered as part of the above unique conception of consequential right. This is so because of the nature of the proposed conception of high-order fairness and its relation to the value of individual well-being – a value that is clearly consequential. High-order principles of fairness do not compete but rather complete the first-order Principle of Well-Being when it is indeterminate since its constitutive aspects clash. Thus, high-order principles of fairness are crucial in order to decide how to act in light of the basic consequential concern for individual well-being in interpersonal conflicts. In this respect, the role of high-order principles within the proposed conception is similar to the role of the utilitarian principle of aggregation within utilitarianism.

High-order principles of fairness thus differ from standard non-consequential principles, including deontological considerations against actions that involve positive (active or intentional) harm to persons and deontological principles that reflect the standard

⁴⁴ See, in this spirit, Mill, *Utilitarianism*, p. 60; Will Kymlicka, *Liberalism, Community, and Culture* (Oxford, 1989), pp. 25, 32–3; John McKie, Jeff Richardson, Peter Singer and Helga Kuhse, *The Allocation of Health Care Resources: An Ethical Evaluation of the 'QALY' Approach* (Aldershot, 1998), pp. 40–1; William H. Shaw, *Contemporary Ethics: Taking Account of Utilitarianism* (Malden, 1999), p. 100.

conception of distributive justice. Unlike high-order principles of fairness, standard deontological principles do not have an exclusive function of resolving clashes within a basic consequential value and accordingly apply not only when there are clashes between basic consequential considerations. In this sense, deontological principles, unlike high-order principles of fairness, do not complete, but rather compete with, the basic consequential value of individual well-being.

CONCLUSION

The proposed theory of hierarchical consequentialism includes two kinds of principles, which, on the one hand, significantly differ with respect to their content, but, on the other hand, are both essentially consequential. The first kind is the first-order Principle of Well-Being, which identifies certain state of affairs and accordingly considerations in favor of and against actions as morally significant. The second kind includes high-order principles that resolve clashes within the basic value of individual well-being based on a conception of fairness regarding the resolution of interpersonal conflicts.

I argued that this hierarchical theory is more plausible than rival theories of distributive justice since it accurately reflects the relation between individual well-being and (distributive) fairness. Specifically, it is not exposed to the (utilitarian) claim that fairness necessarily comes at the expense of well-being.

I also argued that high-order principles of fairness are consequential in nature and could therefore be incorporated within a consequential theory – the theory of hierarchical consequentialism – either as part of a (consequential) conception of the good or as part of a (consequential) conception of the right. If this argument is sound, the proposed theory is not exposed to the (deontological) claim that consequentialism necessarily does not take the distinction between persons seriously.

These two arguments are related: the unique aspect of the proposed theory – the exclusive function of its high-order principles of fairness of resolving clashes between basic constitutive aspects of individual well-being – is both the key to its special advantages, due to its application only in situations of interpersonal conflicts, and also reflects its consequential nature. In this respect, the classification of distributive principles as consequential or deontological is important not only theoretically but also since it has practical implications regarding their scope and plausibility.⁴⁵

rmsegev@huji.ac.il

⁴⁵ I thank David Enoch for helpful comments.