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Dignity, Disability, and Lifespan

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Suppose our job is to distribute life-saving resources, and we aim to do so in a morally permissible way. Person A and person B suffer from a life-threatening but treatable illness. Each one wishes to receive treatment, and with it each would live an additional 10 years. Unfortunately, we have the resources to save only one person.¹ Since A but not B very recently became paraplegic, A's quality of life after being treated would be significantly lower than B's. But other things are equal between them—for example, they are the same age, and they have had equally good pasts in terms of their health. Call this the Paraplegia Case.² Those with consequentialist leanings would presumably save B straightaway, thereby securing greater benefits. But many non-consequentialists agree with Frances Kamm that saving B straightaway on the grounds that doing so would maximize benefits would be morally wrong. We hold, rather, that A and B ought to receive equal chances to receive the life-saving treatment.

But now consider the Unequal Lifespan Case. Person C and person D are suffering from a life-threatening but treatable illness, and both are otherwise healthy. Once again, we aim to carry out our job of distributing life-saving resources in a morally permissible way, but we cannot save both parties. C, if treated, would live 5 years in full health, while D, if treated, would live 25 years in full health. Both C and D want to survive. Benefit-

maximizers would hold that saving D straightaway is morally permissible (and presumably also that doing so is morally required). But many non-consequentialists are drawn to the idea that saving D straightaway would be morally permissible. Many of us hold something like the following: When we must decide between using a scarce resource to save one of two persons striving to get it, quality of life considerations ought to have no role, yet length of life considerations can sometimes legitimately come into play.

This article focuses on the question of whether or how non-consequentialists might defend the view that it would be wrong to save straightaway the non-disabled person in cases like the first one yet morally permissible to save the person with the longer future lifespan in cases like the second. More particularly, I discuss an argument Kamm has recently formulated supporting the position that we should give the paraplegic and non-paraplegic equal chances to be treated in the Paraplegia Case (Section 1). As she notes, this argument implies that it would be wrong to save the person with the longer future lifespan in the Unequal Lifespan Case. Kamm explores an argument designed to show that non-consequentialists can legitimately opt to save straightaway the person expected to live longer in the Unequal Lifespan Case (Section 2). This “Equal Respect Argument” falls short of demonstrating this, I contend (Section 3). More importantly, neither the argument nor Kamm’s surrounding discussion provides a rationale for holding that it is consistent with respect for persons to privilege one person over another for lifesaving aid on the grounds that the one will live longer than the other. I try to show that a Kant-inspired account of respect for persons, in particular respect for their dignity, goes a significant way towards grounding a moral requirement to give equal chances in the Paraplegia Case and a moral permission to save the person who would live longer in the Unequal Lifespan Case

(Sections 4-5). The Kant-inspired account is able to do this, I believe, roughly because it conceives of respect for persons in terms of respect for the value *in them*, rather than as respect for their pursuit of what is of value *for them*.³

As it is already evident, the cases we examine are idealized. They reflect greater certainty regarding the length and quality of life of candidates for treatment than would in fact be warranted, for example. Nevertheless, the issues they raise have practical import. Suppose that, contrary to my view, it would run afoul of any plausible principle of respect for persons to treat straightaway the one who would live longer in the Unequal Lifespan Case. Then similar allocations of scarce resources would presumably also violate any such principle. For example, consider a government formulating rules for the distribution of scarce organs for transplantation. It would have at least *pro tanto* reason *not* to adopt a policy of allocating an organ straightaway to a candidate whom the organ would enable to live significantly longer than it would enable another candidate to live, even when other things are equal between the candidates (e.g., they are the same age).

Let me now specify some assumptions we make in discussing our examples. Kamm supposes for the sake of argument in the Paraplegia Case that one year of life as a paraplegic is half as good in terms of health-related quality of life as one year in full health, and we follow her in this. According to benefit-maximizing views, we ought to distribute scarce medical resources in a way that produces maximum health benefit for the cost. As we have been doing implicitly thus far, we assume in our cases that it would cost the same to save the one person vying for treatment as it would to save the other. So in our cases benefit-maximizing would amount simply to taking the course of action that would produce the greatest health benefit.⁴ For the sake of simplicity we conceptualize health-related

quality of life in terms amenable to benefit maximizers. One commonly used index, for example, rates it along seven dimensions, including amount of pain, degree of mobility, and ability to care for oneself.⁵ Moreover, we assume that health-related quality of life correlates positively with quality of life *tout court*. For example, we suppose that it would be good for the persons in our examples, in terms of their overall well-being, to move from being paraplegic to being non-paraplegic.⁶ Finally, we suppose that all the people in our examples are such that if they receive the life-saving treatment, they will spend the rest of their lives as persons in a Kantian sense suggested below (Section 4). Personhood is here meant to be a threshold concept. If one possesses a certain set of capacities, including that to rationally pursue ends, one is a person, no matter how developed those capacities may be. This assumption implies that if we save A in the Paraplegia Case, he will not spend 5 of his remaining years in an irreversible coma.

Benefit maximizers would save straightaway the person with the much longer lifespan in the Unequal Lifespan Case and the non-paraplegic in the Paraplegia Case. Peter Singer, who is sympathetic to benefit maximizing in health-resource allocation, poses the following question: What justification could there be for accepting the benefit-maximizing verdict in the former case, but not in the latter?⁷ This article probes non-consequentialist answers to this question, specifically one offered by Kamm and a different one inspired by Kant's reflections on the dignity of persons.

1: The 'Sufficiently Good Only Option' Argument

In the Paraplegia Case we must choose between treating A who has recently become paraplegic and who would live for 10 years in that condition and treating B who would live for 10 years in full health. Both A and B have only one option for survival, namely the

treatment that would extend one of their lives for 10 years. According to Kamm's Sufficiently Good Only Option Argument, if this treatment is a sufficiently good only option for each of the two persons, then each one should receive the same chance for survival. In illustrating the argument, let us focus on A. A's option is sufficiently good for him if, against the background of his realizing that it is his only option, it would be reasonable for him to want or, as Kamm says, *care about* securing 10 years of life as a paraplegic just as much as it would be reasonable for him to care about securing 10 years of life in full health, if this instead were his only option for survival (as it is, in fact, for B).⁸ Kamm suggests that it would be reasonable for A to care about the former just as much as the latter if it would be reasonable for him to sacrifice just as much, for example, spend just as much of his savings or undergo just as much pain, to secure the former as to secure the latter. It is, Kamm suggests, plausible to think that it would indeed be reasonable for A to be willing to sacrifice just as much for 10 years as a paraplegic as he would for 10 years in full health. And it is presumably also plausible to think that it would be reasonable for B to be willing to sacrifice just as much for 10 years in full health as he would for 10 years as a paraplegic. So, the argument concludes, A and B should get equal chances.⁹

In the Paraplegia Case, two persons have the same length of life, but of significantly differing quality. The Sufficiently Good Only Option argument implies that the two ought to get equal chances at the lifesaving treatment. But now consider what happens if in a case of two persons each striving for a resource that can go to only one, we hold quality of life constant but vary quantity. As Kamm notes, an implication of the argument is that large differences in the length of life of the persons we can save sometimes make no difference to our choice of whom to save. In the Unequal Lifespan Case, person C could live 5 years in full

health and person D could live 25 years in full health. (We assume that the case is otherwise the same as the Paraplegia Case, for example, that both have had equally good health in the past and want to live, but we cannot save both.) The Sufficiently Good Only Option argument would have us flip a fair coin between C and D. Both C and D aim to survive. Moreover, it would be reasonable for C to care about securing 5 years, given that that is his only option, just as much as it would for him to care about securing 25 years, if that were his only option. It would be reasonable for C to do as much, for example, to spend as much of his money, to get the 5 extra years of life that are a possibility for him as it would be for him to do in order to get 25 years, if that were an option. So the Sufficiently Good Only Option argument would imply that C and D should get equal chances.

Some thinkers would endorse this implication. As I discuss briefly below, perhaps Kant would. More recently, John Harris seems to embrace the idea that C and D ought to receive equal chances.¹⁰ My aim here is not to alter the views of those who are convinced that it would be impermissible to save D straightaway. Rather I join Kamm in trying to shed light on grounds for maintaining what I take to be the widely held position that while it is wrong to save B (the non-disabled person) straightaway in the Paraplegia Case, it is permissible to save D straightaway in the Unequal Lifespan Case.

2: The 'Equal Respect' Argument

Regarding the sort of cases we have considered, Kamm suggests that there is a moral difference between choosing whom to save on the basis of expected length of life and on the basis of disability. This difference, she says, might be revealed by an argument she develops: the Equal Respect Argument. The argument's premises entail that it would be a failure to give persons the respect they are owed to save the non-paraplegic straightaway

in the Paraplegia Case. Moreover, the argument purports to show it to be consistent with a principle of respect for persons to save D straightaway in the Unequal Lifespan Case.¹¹

The Equal Respect Argument unfolds as follows.¹²

1. "Each person is entitled to equal respect and (at least for purposes of an impartial distribution of scarce resources) equal concern."¹³
2. That each person is entitled to equal respect and concern implies that synchronic properties, for example, whether one is or will be paralyzed, should not bear on selection for scarce resources.
3. However, denying a person a scarce resource on the basis that he will not live as long as another individual who is a candidate for it does not amount to allowing synchronic properties to bear on selection for scarce resources.

Therefore, denying a person a scarce resource on this basis does not fail to give him equal respect and concern.

This argument requires interpretation in several places.

In invoking entitlement to equal respect and concern, the first premise states a principle widely embraced by non-consequentialists. But Kamm does not try to specify the principle's meaning. She seems to assume that our intuitive understanding of it is clear enough for her purposes.

The second premise holds that we violate this principle if we allow the fact that someone has or will have some synchronic property to influence our choice of whether that person or another receives a scarce resource.¹⁴ A synchronic property determines the character of a person's time alive, Kamm says.¹⁵ An example of such a property is a

person's being paraplegic; the property would include "components of the life of the paraplegic in virtue of paraplegia," such as not being able to walk, having to use a wheelchair, and so forth.¹⁶ A synchronic property influences an allocation decision if, for example, having it is part and parcel of having a certain health-related quality of life and that health-related quality of life influences the decision. Being paraplegic or non-paraplegic is partly constitutive of one's health-related quality of life. So we would violate a principle of equal respect and concern if we selected a non-paraplegic person over a paraplegic person to receive a life-saving medication on the grounds that although each would live for an additional ten years, the non-paraplegic would have a higher health-related quality of life.

According to the third premise, choosing to give a scarce resource to one candidate rather than to another on the basis that the one will live longer than the other does *not* amount to allowing the other's synchronic properties to bear on selection for scarce resources. Kamm seems to defend this premise on the grounds that the number of years a person will live is simply not one of his synchronic properties.¹⁷ Since it is not, in denying a person a scarce resource based on how long he will live, we have not allowed any of his synchronic properties to influence our choice. Kamm apparently holds that a person's synchronic properties are, by definition, ones that have two characteristics: they determine partly the character of the person's time alive *and* they are such that when she is alive, she might have them for a longer or shorter duration. It is, Kamm says, theoretically "compatible with each synchronic type that a person could be, that he could be that type for longer or shorter amounts of time."¹⁸ So a person might have the synchronic property of being a paraplegic (or a non-paraplegic) for five years or for twenty-five years. But, Kamm

might say, one cannot have one's particular future lifespan for a longer or shorter period. For example, if an adult's future lifespan is, at one point, precisely 10 years, then it must have been greater than 10 years the week before and it must be less than 10 years the week after. So lifespan is not a synchronic property.

On this understanding, whether a property a person possesses is synchronic might depend on the context in which he lives. For example, a person's having parasites in his gut might result in illness for him just in case certain environmental conditions arise. If the conditions arise, his parasitic infection counts as one of his synchronic properties. But if these conditions do not arise, it does not; for it would have no effect on the quality of his life, health-related or otherwise.

In sum, the Equal Respect Argument identifies a way in which our choosing a particular candidate for a scarce resource over another candidate violates a principle of equal respect and concern for persons. We violate this principle if we make the choice on the basis of the candidate's synchronic properties. The argument concludes that in choosing one candidate over another on the basis that one would live a significantly longer time than the other, say 25 years as opposed to 5 years, we would not be holding against her the candidate's synchronic properties per se. So, the argument concludes, we would not be violating a principle of equal respect and concern.¹⁹

3: Shortcomings of the Equal Respect Argument

The Equal Respect Argument contains a salient gap. If true, the argument's premises generate the following conclusion: saving straightaway the person who will live a longer rather than a shorter time does not fail to give appropriate respect and concern for both *as a result of holding someone's synchronic properties against him*. But, if true, the premises do

not generate the conclusion contained in the argument: they fall short of showing that saving straightaway the person who will live longer is consistent with giving appropriate respect and concern for both. For all that the premises imply, we might fail to show someone in our cases equal respect and concern by holding some *non-synchronic* property he has against him. In particular, the Equal Respect Argument leaves open the possibility that holding one candidate's shorter future lifespan against him by saving straightaway the candidate with a longer one amounts to failing to manifest equal respect and concern for both.

Let me illustrate that choosing whom to save based on persons' non-synchronic properties can fail to give them equal respect and concern. Suppose that there are three candidates for a scarce, lifesaving treatment, one candidate with blood type AB- and the other two with type O+. Each would live 10 years of the same high quality if treated (and all else is equal between them), but we are able to treat only either the two with type O+ blood or the one with AB-. If we choose to treat the one solely because he has type AB- blood, then we fail to treat the three parties with equal respect and concern, intuitively speaking. Whatever a principle of equal respect and concern would permit in this case, it would not include our saving the one straightaway on the sole basis of his blood type! But note that if we did do this, we would not be allowing any of our candidates' synchronic properties in Kamm's sense to bear on our choice of whom to save. She conceives of synchronic properties as ones that determine in part the lived character of people's lives. But we can make the plausible assumption that our candidates' blood types do not do this. For example, we can assume it not to be the case that the two people with type O+ blood must, in virtue of their blood type, suffer hardships that the person with AB- blood avoids.

This example shows that, intuitively speaking, it can be inconsistent with giving equal respect and concern to persons to choose some over others for lifesaving treatment on the basis of their having certain non-synchronic properties. We cannot legitimately conclude from the fact that we refrain from basing our life or death choices on persons' synchronic properties that we treat them with equal respect and concern. The example involves three people, instead of two as in our other examples, in order to make this point as clearly as possible. But the same point could be made with a case involving two people, one with type AB- blood, and the other with type O+. Suppose we are aware that AB- is the rarest blood type and O+ the most common. If we save the one with type AB- based on a policy we have adopted of always in such life-or-death cases maximizing for its own sake the preservation of people with AB- blood, then we fail to treat the person with O+ blood with equal concern and respect, intuitively speaking. We cannot plausibly claim that we are doing something equivalent to flipping a fair coin in determining whom to save. Privileging some over others for preservation based on non-synchronic properties can clearly amount to failing to treat these others with what we intuitively take to be equal respect and concern.²⁰

It is, I think, important to be clear about the limitations of the Equal Respect Argument. But I do not take it to be a serious criticism of Kamm's discussion that it fails to *demonstrate definitively* that treating one candidate rather than another on the basis of the one's longer lifespan amounts to giving both candidates equal respect and concern. Her reflections fall short, rather, in that they do not provide any rationale for thinking that a principle of equal respect and concern would countenance basing one's choice of whom to save on the non-synchronic property of future life span. For example, Kamm does not offer

an explanation of where, morally speaking, the difference lies between privileging someone for lifesaving treatment on the basis of expected lifespan and privileging someone for such treatment on the basis of blood type. The Equal Respect Argument and Kamm's surrounding discussion fail to develop a general basis for believing that it is consistent with respect for persons to save straightaway the candidate who will live longer in the Unequal Lifespan Case.

4: A Kant-Inspired Account of Respect for the Dignity of Persons

Many of us, I suspect, have the following view. It is morally impermissible to save straightaway the non-paraplegic in the Paraplegia Case. It is a shortcoming of benefit-maximizing views that they imply otherwise. But it is not wrong to save the candidate who will live longer in the Unequal Lifespan Case. If non-consequentialist views regarding the distribution of scarce, life-saving resources imply that it is, that is a serious blow against them. Can we find grounds for holding that giving the two equal chances in the Paraplegia Case is required by a principle of respect for persons, but that saving the one with greater life-expectancy in the Unequal Lifespan Case is permitted by such a principle? The rest of this article tries to move us towards a positive answer to this question.

To this end, I introduce a Kant-inspired principle of respect for persons, or, more precisely, for their dignity. I refer to this principle as "Kant-inspired" rather than Kantian because I wish to suggest neither that Kant himself would have endorsed it—I do not believe he would have—nor that it is faithful to the essence of Kantianism, whatever that may be. Let me be clear from the outset that the Kant-inspired principle I introduce does not contain jointly necessary and sufficient conditions for honoring persons' dignity. The principle is intended merely to shed light on much, but not all, behavior that fails to do so.

Success in showing that saving straightaway the person with the longer lifespan in the Unequal Lifespan Case is consistent with the principle of respect for persons' dignity I introduce does not amount to a proof that saving him straightaway is consistent with respect for the dignity of persons *tout court* (let alone morally permissible, all things considered). Nevertheless, it would be significant to demonstrate, as I will attempt to do, that this choice in the Unequal Lifespan Case is consistent with a robust principle of respect for persons—a principle that is more determinate than the one Kamm employs.

Readers familiar with Kant's Formula of Humanity, which commands that we treat persons always as ends in themselves, never merely as means, might be surprised by an attempt to show that saving the person with the longer future lifespan is consistent with a Kant-inspired principle of respect for the dignity of persons. Kant suggests that all persons have incomparable worth. If persons have incomparable worth, then no one person has more or less of this worth than any other person. In our example, it is not the case that the person with a future lifespan of 5 years has less worth than the one with a future lifespan of 25 years. So it appears that if we are to respect the worth of persons, which treating them as ends in themselves presumably involves, we must give each an equal chance of getting treated.²¹ (Of course, some Kantians might argue that this appearance is misleading: Kant is not committed to giving equal chances, they might insist. But this is not a debate we can pursue here.)

Elsewhere I argue that when Kant's Formula of Humanity is interpreted to incorporate the idea that persons have incomparable worth, it has highly implausible normative implications in a range of cases.²² For example, the principle implies that it is morally impermissible for someone to intentionally sacrifice her own life (e.g., as might a

soldier who dives on a grenade) in order to preserve the greater value she takes to be inherent in several others (e.g., four of her fellow soldiers). Partly in order to avoid such implications, I have developed a Kant-Inspired Account of Dignity (KID).

For our purposes, this account amounts to the following²³:

Dignity is a special status that persons possess by virtue of having the capacities constitutive of personhood. This status is such that:

1. A person ought not to use another merely as a means. This first aspect of persons' special status is lexically prior to the following aspect:
2. If a person treats another in some way, then she ought to treat him as having unconditional, preeminent value.

An agent's treatment of a person respects the dignity of that person only if it accords with the special status just described.

Of course, many aspects of KID are in need of clarification.

KID embraces a Kantian account of a person according to which a being is a person if and only if it has the capacities to: set and pursue ends; strive for coherence among its ends; be self-aware; conform its actions to practical rules, including hypothetical imperatives; and act in accordance with moral imperatives, even when it believes that it would gain more satisfaction by acting contrary to them. As mentioned above, personhood is here meant to be a threshold concept. If one has the set of capacities that are constitutive of it, one has personhood, no matter how well- or ill-developed those capacities may be.

The first plank in the account need not occupy us for long. No matter whom we save in our cases, we do not treat anyone merely as a means. To treat someone merely as a means, we must treat the person as a means: we must use that person. But on my

understanding an agent uses another if and only if she intentionally does something to or with (some aspect of) the other in order to realize her end, and she intends the presence or participation of (some aspect of) the other to contribute to the end's realization.²⁴ Suppose that in the Paraplegia Case we save straightaway the person who will return to full health. We have not treated the paraplegic merely as a means; for we have not used him at all. We did not intend his presence or participation to contribute to our end, which is presumably something like that of distributing scarce, life-saving resources in a morally acceptable way. In our view, we could just as well have accomplished that goal without the paraplegic—indeed, doing so would then have been far less emotionally trying. An analogous point applies to the Unequal Lifespan Case, of course. So we need not consider the mere means constraint any further.

Although no matter whom we save in our cases we do not treat the other person merely as a means, we do count as treating in some way all of those requesting our aid, it seems reasonable to believe. An agent treats another in some way, let us assume, if she intentionally does something to him in order to realize some end of hers. In giving someone a life-saving resource, we would obviously be treating him in some way. But we would also be treating in some way someone whom we choose not to save. We would intentionally be denying his request for the resource in order to promote our end, say, of distributing such resources fairly.

KID specifies that each and every person has a status such that if an agent treats him in some way, then she ought to treat him as having unconditional, preeminent value or, equivalently, worth (2). According to the concept invoked in KID, something has unconditional value only if there are no conditions, actual or possible, under which it exists

but lacks value. Moreover, if a particular being possesses unconditional value, this value does not vary on the basis of its intelligence or talents, its instrumental value to others, its impersonal value, that is, the value that an impartial rational spectator would assign to it, or the magnitude of its health-related quality of life, personal satisfaction (i.e., happiness, in one sense of the term) or well-being. It should come as no surprise that on this Kant-inspired account of unconditional value, neither health-related quality of life, nor happiness, nor well-being themselves count as unconditionally valuable, at least as these goods are typically conceived. For example, pleasure is typically thought of as a good such that when its intensity increases, so does its value: an intense pleasure is better than a mild one. But according to the account embedded in KID, unconditionally valuable things are not such that their worth increases (or decreases) based solely on their hedonic properties.

To say that an unconditionally valuable being of a particular kind has preeminent value is to say that no amount of anything that is not a being of that kind can have a value equal to or greater than a being of that kind. Let us assume that persons have unconditional value. To say that they also have preeminent value is to imply that no amount of anything that is not a person can equal the value of a person. It is to imply that persons have value that transcends that of non-persons. Part of holding that an unconditionally valuable being has preeminent worth is, according to our concept of such worth, to hold that if one treats the being in some way, this treatment ought to reflect that the being has such worth. If the treatment also reflects that the being has or lacks (or promotes or hinders) any conditional value, it must be consistent with what the treatment would be if it did not reflect the latter.

For purposes of conceptual clarification, suppose for a moment that all living species have unconditional, preeminent worth. Our job is to preserve species, but we can prevent

only one of two different plant species from going extinct. We would not honor the worth of each species if we chose to save straightaway one rather than the other on the sole basis that one of the species but not the other can be used to make blue pigment. If we made that choice, our treatment of the species we did not preserve would reflect its lacking a conditional value, that of furthering a pigment-making purpose we may or may not have. Our treatment would not be consistent with the treatment we would engage in if that conditional value was not in play, for example, saving one rather than the other as a result of a lottery in which each got an equal chance of being saved.

A more complete version of KID, which I refrain for brevity's sake from describing here, specifies that the status of persons is such that, apart from some specified exceptions, if an agent treats others in some way, then she ought to treat them as having an unconditional, preeminent worth that does not change as a result of the agent's relationship to them or what they do (or have done). Among the exceptions are cases of treating one's family or friends in some way. A mother does not fail to honor the dignity of persons, for example, by treating her own child as having greater value than another child by straightaway saving the former rather than the latter when she cannot save both. The exceptions are not relevant to the cases we are examining here.

An agent treats another person as having unconditional, preeminent value, according to KID, if and only if, in the given context, the action she performs is among those that she might perform if she reasonably believed her action to be successfully and absolutely constrained by her holding the other to have this value (as the value is defined above). The notion of reasonableness at work here is non-moral. What it is reasonable for an agent to believe is what the evidence available to the agent favors, given the information

she has, her education, her upbringing, and so forth. An agent would not be treating another person as having unconditional, preeminent value if she kills him solely in order to prevent some third party from losing half of his inheritance (assuming, plausibly, that it is not reasonable for the agent to believe that money has unconditional worth). This action is not among those that she might perform if she reasonably believed what she did to be constrained by her holding persons to have unconditional, preeminent worth. The third party's balance sheet is obviously not the same thing as his personhood; a person who is poorer than he otherwise might be is still a person. But the one the agent kills is no longer a person.

Note that it is consistent with the notion that persons have unconditional, preeminent value to conclude that several persons together have more value than one. To cite an example, suppose you are piloting a boat and learn from five strangers on one island that they will perish soon if you cannot rescue them immediately and learn from another stranger on a different island that she will die if you cannot rescue her right away. Unfortunately, if you perform a rescue on one island, you will be unable to do so on the other. It is consistent with the notion that persons have unconditional, preeminent value (and indeed with KID as a whole) to hold that the five together have a value that adds up to one greater than the value of the one and on that basis to rescue the five. To say that persons have preeminent value is to imply that no amount of anything that is *not* a person can equal the value of a person. But it is not to imply that no set of persons (i.e., a larger set) can have a value that surpasses the value of another set of persons (i.e., a smaller one). Treating persons as having unconditional, preeminent value does not itself commit one to treating them as having a value closed to all aggregation.

That treating persons as having such value does not commit one to treating them as having a value closed to all aggregation is part of what differentiates KID from Kant's account, at least as this account is widely interpreted. Another difference between KID and an orthodox Kantian account of dignity is that the imperative to respect the dignity of persons implicit in KID is not meant to be categorical. Whereas Kant presumably holds that it is always wrong, all things considered, to fail to respect the dignity of a person, KID is intended to specify merely a *pro tanto* wrong. KID implies that we always have strong reasons to respect the dignity of a person, but it allows that these reasons might be outweighed by other reasons. That an action fails to respect the dignity of a person, according to KID, fails to entail that it is morally impermissible, all things considered. For example, it would fail to respect the dignity of a person, according to KID, to treat him merely as a means even if this was the only way to save a million people from immediate death. But KID does not imply that treating this person merely as a means would be wrong, all things considered. This and other differences between KID and orthodox Kantianism are not important for our purposes.

Of course, it is one task to present KID and another to defend it. I try to do the latter in another place.²⁵ But I am not sanguine on the prospects of providing a justification for KID, or for any other substantive moral principle, solely with Kantian a priori arguments (e.g., appealing to the nature of reason or reasons for action). As I explain elsewhere, part of my defense of KID involves consideration of its implications in a wide range of cases.²⁶ If, as I now attempt to show, KID yields plausible verdicts in the resource allocation cases that are our focus, that itself adds some support to its credibility, in my view.

5: Applying KID to Cases

I will argue that in the Paraplegia Case it would be inconsistent with KID to save the non-paraplegic straightaway in order to maximize benefits, but that in the Unequal Lifespan Case it would be consistent with KID to save straightaway the person expected to live longer in order to preserve personhood as best we can.

In the Paraplegia Case, let us recall, our job is to distribute life-saving resources fairly. Person A and person B, who flourished to the same extent in the past, suffer from a life-threatening but curable illness. Both will live 10 years if saved. However, A but not B very recently became paraplegic, so, if saved, B would have much higher health-related quality of life than A. It would be incompatible with KID for us to save B straightaway, basing our choice on the expectation that B would have higher health-related quality of life. That is not among the actions someone might in this context perform if he reasonably believed his action to be successfully and absolutely constrained by his holding persons to have unconditional, preeminent worth.

Note first that A's paraplegia does not affect his status as a person, according to KID. A being is a person if it has the capacities constitutive of personhood. And A has those capacities before and after he becomes paraplegic. Moreover, according to the concept embedded in KID, an unconditionally valuable being's worth does not increase or decrease based solely on its level of health-related quality of life, personal satisfaction, or well-being. As far as KID is concerned, A has just as much worth as B.

We might nevertheless be drawn to the idea that it would be consistent with KID to save B straightaway in order to maximize benefits. Although B's being non-paraplegic would raise his worth as a person not at all there would be more value as a whole in B's surviving, namely, his worth as a person plus his high health-related quality of life for ten

years, than there would be as a whole in A's surviving, namely, his worth as a person plus his lower health-related quality of life for ten years, we might assert. Why would it not be consistent with KID to use B's greater health-related quality of life as a kind of tie-breaker between A and B?

The value of persons, according to KID, is not only unconditional, but preeminent. That implies that no matter how long it lasted, the value inherent in B's greater health-related quality of life would not add up to a value equal to the worth A has as a person. More importantly for our purposes, suppose we save B straightaway on the suggested grounds, giving A no chance whatsoever to receive life-saving aid. We could not reasonably believe that our action was constrained by our holding persons to be unconditionally and preeminently valuable. To hold that an unconditionally valuable being has preeminent worth is, in part, to hold the following: if one treats the being in some way, this treatment ought to reflect that the being has such worth, and if the treatment also reflects that the being has or lacks (or promotes or hinders) any conditional value, it must be consistent with what the treatment would be if it did not reflect the latter. But B's higher prospective health-related quality of life is a conditional value, according to the Kant-inspired notion of such value. There are conditions in which B's being non-paraplegic would not be good, for example, if it enabled him to grievously harm others. If the conditional value of B's higher prospective health-related quality of life did not figure into our decision of whom to save, we would, in treating persons as having unconditional, preeminent value, choose based on a random procedure in which each candidate gets a 50% chance. We surely would not abandon both A and B. But saving B straightaway on the grounds that he, unlike A, will survive in full health is, of course, inconsistent with giving A and B equal chances.

It is worth underscoring that KID does not clash with the idea that it is typically better for a person in terms of her well-being to be non-paraplegic than paraplegic. But the value of being able to use one's legs is not one that we can weigh in favor of one candidate in this case and yet respect persons' dignity, according to KID. By allowing this value to tip the scale in favor of the non-paraplegic, we would be failing to treat the paraplegic as having preeminent worth.

Let us turn now to the Unequal Lifespan Case, in which person C could live 5 years in full health and person D could live 25 years in full health, but we can save only one of them. I do not claim that KID requires us to save D. But I argue that it is consistent with respect for the dignity of persons, as specified in KID, to save D on the grounds of his greater expected lifespan.

As an initial step towards this conclusion, notice that acting with respect for the special value of a thing can and often does involve trying to preserve that thing. Suppose, for example, that we hold a certain painting to have exceptional aesthetic value. One way of respecting this value is to try to maintain the painting in existence by, say, protecting it against destruction from insects, excessive heat, and so forth. Or suppose that we hold a stand of thousand-year-old Sequoia trees to be of special worth. One way of respecting this worth would be to do what is in our power to prevent the forest from being consumed by a fire or cut down to make way for an amusement park. Acting with respect for the special value of a thing can and often does involve trying to preserve that thing.

In the Unequal Lifespan Case it is our job to allocate scarce, life-saving resources among extant persons who, according to KID, we must treat as having unconditional, preeminent value by virtue of possessing capacities constitutive of personhood. Each one of

these persons has, we assume, used these capacities to set herself the aim of preserving her own life. Among the actions we might perform if we reasonably believed our action to be (successfully and absolutely) constrained by our holding persons to have unconditional, preeminent value would be that of maximally preserving personhood. In this case, maximally preserving personhood would amount to saving D straightaway; for he will live, with his personhood intact, five times longer than C. In the idiom we shall adopt, by saving D we preserve five times as many “person years.”

An objector might argue that if we are in a situation where we can only preserve one person out of two, we maximally preserve personhood whichever person we choose to preserve; for whatever choice we make, there will be one and only one of these persons alive. This account of maximally preserving personhood lacks plausibility, in my view. We do not maximally preserve personhood if we save a five year old who would live five more years over a five year old who would live 85 more years when we can save one but not both. A rough analogy might be helpful. Suppose we are faced with a choice of saving from destruction in war one of two things with a special cultural value, say, one of only two extant copies of an early 16th-century book. We are aware that as a result of irreversible microscopic damage, one copy will, if saved from the war, last only another several years, while the other would last many decades, and there are no other salient differences between the books. If we aim to maximally preserve cultural value in this context, we would preserve the work that will endure for many decades, and this despite the fact that whatever choice we make, there will be one and only one of these books in existence.

Returning to the Unequal Lifespan Case, it might be that it is just as important *to C* that C get the treatment as it is *to D* that D get it. For each, survival is a sufficiently good

only option, to put the point in Kamm's terms. But respecting the dignity of persons, according to KID, does not in this case demand that we balance what it is important to persons, say, by giving each an equal chance to receive treatment. It allows us to try to preserve as far as possible the value *in* persons. And this can be done by saving the life of the person who will live longer.²⁷

Let us take stock briefly of where we are. In some respects we find ourselves in the same position as Kamm. Neither she nor we have demonstrated that it is consistent with a principle of respect for persons to give priority to one person for lifesaving treatment over another on the basis that the one will live a lot longer than the other. KID does not specify a sufficient condition for respecting the dignity of persons so as to enable us to show that engaging in such priority setting would fulfill it. Second, neither Kamm nor we have proven that it would be inconsistent with a principle of respect for persons to privilege one person over another for treatment solely on the basis of an intuitively irrelevant factor such as blood type. As we mentioned, KID purports to shed light on some, but not all, ways in which we can fail to honor persons' dignity. As an admittedly incomplete account of respect for persons, KID does not itself entail that allocating on the basis of factor such as blood type would fail to give persons the respect they are due.

However, in other respects we have progressed farther than Kamm. Above I said that Kamm offers no positive rationale for holding that a principle of respect for persons might allow choosing whom to save based on the non-synchronic property of future life span. But we have arrived at such a rationale. Given the status of persons as described in KID, in particular the idea that we are to treat them as having unconditional, preeminent value, we have located grounds for holding that it would honor them to allocate scarce

treatment to someone who, with its help, would live a lot longer than would another if he instead received it. Second, we find no basis whatsoever in the notion of the status of persons embedded in KID for allocating resources on the basis of an intuitively irrelevant factor such as blood type. So while Kamm seems to leave us without grounds for differentiating between allocation based on life expectancy and allocation based on a factor such as blood type, we have uncovered such grounds. The former allocation has a basis in a broadly Kantian notion of the status inherent to persons, while the latter does not.²⁸

As applied to cases of scarce life-saving resources, KID leaves us with an important question unanswered. All of the cases we have discussed thus far have involved two candidates for life-saving treatment. We have concluded that, according to KID, it would be incompatible with respecting the dignity of persons to treat straightaway someone who was non-paraplegic over someone who was paraplegic, given that if treated each would go on living (as a person) for the same length of time. We have also found that KID would not condemn as a failure to respect the dignity of persons saving straightaway an individual on the basis that he would have a significantly longer lifespan (as a person) than the other vying for treatment.

But what are KID's implications in cases in which not only the lifespans people will have, if treated, vary, but the number of persons who are vying for treatment vary? What if, for example, we must choose between saving two people for ten years each and saving one for forty years? It would, we have concluded, be in accordance with KID in the cases we have examined to preserve personhood as best we can. Personhood can be preserved along two dimensions. First, we can preserve personhood by extending the period of time in

which a person or persons possess the capacities constitutive of personhood: we can preserve persons along the person-years dimension. Second, we can preserve personhood by keeping as many persons as possible in existence; this involves preservation along what we might call the “person-numbers” dimension. But how should preservation along these two dimensions be weighed against one another, in light of our aim to preserve personhood as best we can?

We might discount the person-years dimension and focus on person numbers. That might mean saving 2 people who would each live for 6 months rather than saving one person who would live for 60 years. Or we might discount the person numbers dimension and focus on person years. That might mean saving 1 person who would live 62 years rather than saving two people who would live 2 years each. The path I favor, and that I have argued for elsewhere, is to balance these dimensions against one another.²⁹ But precisely how to do that is admittedly a controversial question. In any case, once we see that at stake is value or special status *in* persons, rather than simply value *for* them, we open ourselves to the possibility of sometimes privileging person-years over person-numbers.³⁰

Notes

¹Background assumptions apply to each allocation case considered here. We have taken on the job of choosing one of two candidates to receive a scarce life-saving resource. Although it might be consistent with our fulfilling an imperfect duty of beneficence for us to aid neither candidate, but someone else instead, in this scenario we would be acting wrongly if we did this. Second, both candidates have a claim on the resource we are distributing such that it would be wrong for us to refrain from giving it to the one or the other on morally arbitrary grounds (e.g., because we do not like her hair) or on grounds inappropriate to the context (e.g., because she is not a close friend). Moreover, neither candidate is morally responsible for her need of the resource in any way that would affect her claim on it. Finally, saving either candidate would have positive net effects overall, and neither choice we make would have better effects than the other as a result of its impact on anyone (or anything) besides the candidates themselves.

² This case is a variant of one sketched by Frances Kamm in 'Aggregation, allocating scarce resources, and the disabled', *Social Philosophy and Policy* 26, (2009): 161-2, henceforth cited as ARD. See also Kamm's 'Disability, discrimination, and irrelevant goods' in K. Brownlee and A. Cureton (ed.) *Disability and Disadvantage* (Oxford: Oxford University Press, 2009), p. 276, hereby cited as DDI. In all of our examples, the disability, if any, of those vying for a scarce, life-saving resource is very recent. This feature is present in many of Kamm's examples as well. It takes out of consideration the idea that one candidate ought to receive the resource rather than the other based on backward-looking considerations, for example, that the one has had less well-being than the other. Some bioethicists believe that, other things being equal, adolescents and young adults ought to be given priority for life-saving treatment over young children (e.g., Persad, G., A. Wertheimer, and E. J. Emanuel, 'Principles for the allocation of scarce medical interventions', *Lancet* 373 (2009): 423-431). I have discussed this view elsewhere (Samuel Kerstein and Greg Bogner, 'Complete lives in the balance', *The American Journal of Bioethics* 10, (2010): 37-45), but I will not address it here.

As we noted, in the Paraplegia Case, as well as other cases we investigate, we assume that all of the candidates for treatment are the same age.

³ This way of thinking about the dignity of persons echoes that of David Velleman in 'A right to self-termination?', *Ethics*, 109 (1999): 606-628.

⁴ The quality-adjusted life-year or QALY is sometimes used as a measure of an intervention's health benefits, particularly by advocates of benefit-maximization in health-resource allocation. One QALY is defined as one year of life in full health, while the absence of life is defined as zero QALYs. Health states during a year of life are valued on a scale ranging from those less than zero, that is, states worse than death, to 1, that is, full health. (For a helpful and brief account of QALYs see Milton Weinstein, George Torrance, and Alistair McGuire, 'QALYs: the basics,' *Value in Health* 12, Supplement 1, (2009): S5-S9.) When Kamm sketches examples such as the Paraplegia Case, she specifies gains from medical interventions in terms of QALYs. A paraplegic might gain 5 QALYs from an intervention that preserves his life for 10 years, while a non-paraplegic might gain 10 QALYs from an intervention that preserves his life for the same length of time. I refrain from describing health benefits in terms of QALYs since doing so would complicate expression yet make no substantive contribution to the main arguments we consider.

⁵ See Torrance, G.W. et al., 'Multiattribute utility function for a comprehensive health status classification system: health utilities index mark 2', *American Public Health Association Medical Care Section*, 34 (1996): 702-22.

⁶ It is, of course, implausible to assume that every individual who is cured of paraplegia thereby gains in overall well-being. Moreover, the extent to which, if any, particular disabilities have well-being-diminishing effects in a given population is a matter of controversy. For a helpful discussion of this issue, see Adrienne Asch and David Wasserman, 'Reproductive testing for disability,' in J. Arras, E. Fenton, and R. Kukla (ed.) *Routledge Companion to Bioethics* (New York: Routledge, 2015), pp. 417-431.

⁷ Peter Singer et al., ‘Double jeopardy and the use of QALYs in health care allocation,’ *Journal of Medical Ethics*, 21 (1995): 146. See also Singer ‘Why we must ration health care,’ *The New York Times* 19 July 2009.

⁸ Kamm, ARD, 163.

⁹ Kamm, ARD, 165.

¹⁰ See Harris, “Quality, value and justice,” *Health Policy* 10 (1988): 260-61 and “QALYfying the value of life,” *Journal of Medical Ethics* 13 (1987): 121.

¹¹ For evidence that in Kamm’s view this is indeed what the Equal Respect Argument purports to show, see ARD 169 and DDI 280-281. See also Kamm’s ‘Rationing and the disabled: several proposals’ in A. den Exter and M. Buijsen (ed.) *Rationing Health Care: Hard Choices and Unavoidable Trade-offs* (Antwerp: Maklu, 2012), p. 52 and *Bioethical Prescriptions* (Oxford: Oxford University Press, 2013), pp. 442-43. Kamm seems to stop short of wholeheartedly endorsing the Equal Respect Argument. But to my knowledge she specifies no other argument that might accomplish its aim.

¹² See Kamm, ARD 168. See also DDI 281, and ‘Rationing and the disabled: several proposals,’ 52.

¹³ Kamm, ARD 168.

¹⁴ Kamm actually says that we violate the principle of equal respect and concern if we allow the fact that someone has or will have *at least certain* synchronic properties to influence our choice of whether one person or another receives a scarce resource. See Kamm, ARD 168 and DDI 281. But to my knowledge Kamm does not explain *which* synchronic properties are (or might be) such that we would *not* violate this principle if we allowed them to influence our choice of whether one person or another receives a scarce resource. Would an example of these synchronic properties be that of being a psychopath? In any case, focusing on Kamm’s precise wording would not bolster the Equal Respect Argument against the criticism of it contained in the next section.

¹⁵ Kamm, ARD 168.

¹⁶ Kamm, ARD 188.

¹⁷ Kamm suggests that length of life is not a synchronic property. See, for example, DDI 279, 280.

¹⁸ ARD 168.

¹⁹ It would be a further step to show that our saving the person who would live 5 times longer would be morally permissible. An action that conformed to a principle of equal concern and respect might arguably nevertheless be wrong. But we will not investigate that possibility here.

²⁰ A defender of Kamm might claim the following: She never denies that privileging someone for a scarce resource over another based on their non-synchronic properties (for example, blood type) can fail to show the other equal respect and concern. She denies merely that privileging someone for a scarce resource over another based on a *diachronic* property, namely length of life, fails to show the other such respect and concern; for she refers to length of life as a diachronic property (e.g., Kamm, DDI 279, 280). In response, the Equal Respect Argument still does not establish that privileging someone for a scarce resource over another based on length of life is consistent with showing the other equal respect and concern. Second, the defender's reasoning depends on a distinction between non-synchronic properties that are and those that are not diachronic properties. But to my knowledge Kamm never makes this distinction. (In her most recent rendition of the Equal Respect Argument, she does not even use the term "diachronic." See *Bioethical Prescriptions*, 442-3.) Why would length of life be a diachronic property, but blood type not be? Extremely few, if any of us, can, practically speaking, have a particular blood type for a longer or shorter period of our lives. Finally, Kamm leaves unanswered the following crucial question: what about something's being a diachronic property would make it such that privileging someone for a scarce resource over another based on it would give the other equal respect and concern while other non-synchronic properties are such that doing this based on them would not give the other equal respect and concern?

²¹ For a brief grounding of this interpretation of the Formula of Humanity, see Greg Bognar and Samuel Kerstein, 'Saving lives and respecting persons', *Journal of Ethics and Social Philosophy*, 5 (2010): 7-10.

²² Samuel Kerstein, *How to Treat Persons* (Oxford: Oxford University Press, 2013), pp. 43-51.

²³ For a complete statement of KID, see Kerstein op. cit. pp. 127-128.

²⁴ For defense of this account, see Kerstein op. cit. pp. 56-59.

²⁵ Kerstein op. cit., especially chapters 3 and 5.

²⁶ Kerstein op. cit., chapter 1.

²⁷ KID does *not* entail that we would be acting *pro tanto* wrongly if we refrained from saving D straightaway in the Unequal Lifespan Case. To cite just one of several reasons for this, someone who holds persons to have unconditional, preeminent value might also hold that persons have incomparable value. If one has the background belief that persons have incomparable value, then it is also consistent with KID to flip a coin in order to decide whether to save C or D.

²⁸ One concern with the idea that it is consistent with KID to maximally preserve persons in our cases comes into focus if we suppose that we must choose between saving one person for a year or another person for 51 weeks. Given what we have said thus far, it would seem to be compatible with honoring the dignity of persons to choose to save the first person on the grounds that we thereby best preserve personhood. But Kamm argues that there are "irrelevant goods," the securing of which would not legitimately tip the balance towards saving one person over another (see Kamm, *Morality, Mortality, Volume 1: Death and Whom to Save from It* [New York: Oxford University Press, 1993], p. 101 and p. 110). If she is correct about this, then perhaps someone who was acting under the constraint of valuing persons unconditionally and preeminently would invoke maximizing person-years as a basis for choosing to save one over another only if the difference between the length of time the two could be preserved passed a certain threshold. It is not obvious how to define that threshold. However, it is clear that the extra 20 years that D can live in the

Unequal Lifespan Case would pass it. Admittedly, contextual factors, such as how long someone has been alive, might influence what counts as an irrelevant good in the sort of cases we are considering. For example, suppose that the average human lifespan has increased dramatically, say to 200 years, and that E, who, if saved, would live an additional 5 years, and F, who would live an additional 25 years, have already lived 180 years. Some might hold that in this context the difference between living to 185 and living to 200 is an irrelevant good, and so it makes sense to give E and F equal chances. Thanks to David Wasserman and an anonymous referee for suggesting discussion of these points.

²⁹ I have made a concrete proposal for how to do so in 'Complete lives in the balance', 43.

³⁰ For helpful comments, thanks to two anonymous reviewers for this journal as well as audiences at the University of Maryland, Baltimore County, La Trobe University, and Macquarie University.