[This paper is forthcoming in *Saving Lives from the Badness of Death*, Espen Gamlund & Carl Tollef Solberg ed. (Oxford: Oxford University Press). This version might differ slightly from the forthcoming version.]

The Badness of Death for Us, the Worth in Us, and Priorities in Saving Lives

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1. Introduction

Carl Tollef Solberg and Espen Gamlund have recently suggested that in allocating scarce, life-saving resources we ought to consider how bad death would be for those who would die if left untreated (Solberg and Gamlund 2016, 8). We have moral reason, they intimate, to prioritize persons for whom death would be very bad over persons for whom it would be less bad (or not bad at all). In particular, we should in our allocation decisions consider how bad death would be for persons according to the "Time-Relative Interest Account," developed by Jeff McMahan (Solberg and Gamlund 2016, 2).

I raise some questions regarding Solberg and Gamlund's view. I try to illustrate first that when taken on its own, a principle of allocation that specifies minimizing the badness of death among those vying for a life-saving resource would be morally problematic. In short, such allocation would fail to respect the worth many of us hold to be inherent in persons (Section 2). Solberg and Gamlund do not defend the position that the badness of death for those who would die if untreated is the only morally relevant factor in our choice of allocation. They mention several other factors that might be relevant, including whether the candidates have had their 'fair

innings,' the societal value of saving them, and the health benefits generated by doing so (Solberg and Gamlund 2016, 2). But I attempt to show, second, that even when these other factors come into play along with a principle of minimizing the badness of death for those who would die if untreated, something important gets left out, namely, respect for the worth of persons (Section 3). A principle of respect for the worth of persons, I contend, deserves a place among principles we appeal to in the allocation of scarce, life-saving resources. I try to allay worries some might have about appealing to such a principle (Sections 4 & 5). In order to assuage the concern that a principle of respect for the worth of persons must be hopelessly vague, I present and apply one in some detail. I also try to dispel the worry that such a principle would forbid us from considering length of future life in deciding whom to save.

2. Minimizing the Badness of Death Clashes with Respect for Persons

Solberg and Gamlund find attractive Jeff McMahan's Time-Relative Interest Account of the badness of death for one who dies (McMahan 2002, 105-106). According to this account, as interpreted by them, the badness of death for a person is proportional to the strength of his time-relative interest in continuing to live. The level of that interest is equivalent to the net amount of good he would have if he were not to die multiplied by 1 if he would have full ownership of his future if he did not die, or multiplied by a positive fraction of 1 if he would lack full ownership of his future if he did not die (Solberg and Gamlund 2016, 6-7). Whether a person has complete ownership of his future depends on the strength of the psychological connections that would obtain between him now and in his future. Examples of such connections are earlier and later instances of the same belief or disposition of character, experiences and later memories of those

experiences, and the formation of a goal and a later experience of its fulfillment (McMahan 2002, 74). Solberg and Gamlund hold that according to the Time-Relative Interest Account, the badness of death for a person typically peaks at around 10 years of age. At around that age persons typically have complete ownership of their future and a great deal of well-being ahead of them, if they continue to live.

Let us explore Solberg and Gamlund's suggestion that badness of death for people ought to play a role in the distribution of scarce life-saving resources by crystallizing the suggestion into a principle:

> MBD: Minimize the badness of death for candidates for scarce, life-saving resources.

The candidates in question are currently existing human beings, according to MBD. Suppose that two candidates are vying for a life-saving resource that can go to only one, and one person's death would be worse for her than the other's would be for him. MBD implies that we ought to save the person for whom death would be worse. According to MBD as I understand it here, the badness of death for a person is measured in terms of Solberg and Gamlund's take on the Time-Relative Interest Account.[1]

I propose to probe MBD by applying it to two stylized cases. But some stage-setting points are in order. First, as mentioned earlier, Solberg and Gamlund do not endorse MBD as a stand-alone allocation principle. However, in my view investigating it as such helps to reveal quickly and clearly some of its ethically problematic features; it enables us to see how, if it were

[1] Solberg and Gamlund also discuss a different way of measuring the badness of death: the "Deprivation Account," according to which as "soon as personal identity is acquired, death is the greatest loss" (Solberg and Gamlund 2016, 5).

included in an allocation system, it would need to be supplemented by other principles. Second, for the sake of simplicity our cases are ones in which we must decide between just two possible recipients. Solberg and Gamlund focus on population-level allocation scenarios. They seem primarily interested in using MBD as a tool to prioritize between different age groups. One of the cases examined below (i.e., the Child and Young Adult Case) has relevance to putting MBD to this type of use. If, as I believe, we find that, even when coupled with other principles Solberg and Gamlund mention, MBD has ethically questionable implications in the cases we examine, then we have reason for moral concern about its employment on the population level.

In the Paraplegia Case, inspired by Frances Kamm, our job is to distribute a scarce, life-saving resource in a morally permissible way (Kamm 2009, 161-162). We have enough of this resource to give candidate A or candidate B, but not both, an additional ten years of life. B would spend those years in full health. However, as a side effect of the treatment, A would be paraplegic, significantly reducing her quality of life (health-related and otherwise). Other things are equal between them—for example, they are both 20 years old, and they have had equally good pasts regarding their health.[2]

MBD, which prescribes minimizing the badness of death for candidates for scarce, life-saving resources, implies that we ought to save B, the one who would be non-paraplegic, straightaway.[3] We assume that A and B have complete ownership of their future. But since there

[2] The usual background assumptions apply to all of the allocation cases considered in this article. For example, the candidates for the resource are not morally responsible for their need of it in any way that would affect their claim on it.

[3] By "straightaway," I mean without the determination of whom to save being based on some intermediate step, such as a lottery.

is more well-being in prospect for B, B's death would be worse for her than A's death would be for A. The implication that we ought to save B straightaway strikes many of us as morally problematic. Empirical studies of so-called person trade-offs (PTO) support the idea that many of us would find it so. In one study, participants were asked how many paraplegics "would need to be cured of a life-threatening infection to make them indifferent between curing that group versus curing 100 healthy people who had the life threatening infection" (Damschroder et al. 2005, 6). The median participant judged that curing the infection in 100 paraplegics was equally good as curing it in 100 healthy people. This judgment seems to harmonize with the notion that in the Paraplegia Case, A and B should get equal chances to be treated, but certainly not with the notion that B ought to be treated straightaway.

In a second case, call it the Child and Young Adult Case, our job is once again to distribute life-saving resources. A child of 5 is suffering from a life-threatening infection. If treated, he will live for 10 more years in good health. A young adult of 20 is also suffering from a life-threatening infection. If treated, he will live for 10 more years in good health. Both have had equally good health in the past. Each wishes to receive treatment, but there is enough for only one.

MBD implies that we ought to save the young adult straightaway. Although, let us assume, she has the same amount of well-being in prospect as the child, she has full ownership of her future, while the child does not. According to the Time-Relative Interest Account of the badness of death for a person (or at least Solberg and Gamlund's interpretation of it), the young adult's death would be worse for her than the child's death would be for her. But many of us balk at the idea that we ought to save the young adult straightaway. Some of us think we ought to give them equal chances, others that we ought to save the child. Some empirical evidence regarding

priorities in saving persons of various ages for limited periods of time (e.g., 5 years) suggests that study participants tend to prioritize children (e.g., 5-year-olds) over young adults (Tsuchiya, Dolan, and Shaw 2003, 692).[4]

If our reaction to these cases is as I suggest, that is, if many of us reject the implications of MBD regarding them, then what accounts for this? Regarding the Child and Young Adult Case, perhaps some people have prioritarian grounds. Perhaps they favor the child because he is worse off, having lived only 5 years as opposed to the young adult's 20, and they believe that it is morally more important to benefit the worse off. But prioritarian reasons do not seem to ground rejection of MBD's implications in the Paraplegia Case. In this case, before the allocation occurs no one is worse off than the other. At least part of our unwillingness to embrace MBD's implications regarding it stems, I suspect, from a view that each of the people involved has a worth that is not diminished by paraplegia or by less than full ownership of the future. It is at least in part because acting in accordance with MBD would fail to respect this worth that we reject its verdicts. If we believe, as many of us do, that paraplegia does not at all diminish (or raise) the worth of a person, then a principle of respect for the worth of persons would, it seems, demand that the candidates get equal chances in the Paraplegia Case.

3. Failure of a Package of Allocation Principles to Capture the Prescription to Respect Persons

[4] For discussion of the merits of various ways of giving priority to the younger over the older in health resource allocation, see Gamlund (this volume) and Millum (this volume).

Solberg and Gamlund mention several allocation principles, some of which, they appear to hold, need to enter along with MBD into allocation decisions. Two of these are the principles youngest first and modified youngest first. Youngest first is straightforward—it gives priority to younger candidates for scarce, life-saving resources over older ones. Modified youngest first prioritizes persons roughly between 15 and 40 years old over younger children and older adults (Persad, Wertheimer, and Emanuel 2009, 428).[5] For example, the modified youngest first principle prioritizes 17 year-olds over 5 year-olds and 30 year-olds over 10 year-olds. Of course, youngest first and modified youngest first are in tension with one another.[6] Moreover, the dictates of modified youngest first do not square with those of MBD. MBD would typically favor a 10 year-old over a 30 year-old, while modified youngest first would do the opposite. Solberg and Gamlund also mention a principle of societal value, which apparently favors people who are more productive and have dependents over those who are less productive and lack dependents (Solberg and Gamlund 2016, 3). In addition, they invoke a "greater benefit" principle, according to which "resources should be accorded to the intervention with the greater health benefit" and a fair innings principle, which says that "resources should be directed to those who have not yet had their fair share of life" (Solberg and Gamlund 2016, 3). Solberg and Gamlund mention these other principles, but they do not make clear which of them they would endorse or how conflicts between principles should be adjudicated.

Even a cursory look at these principles reveals that, intuitively speaking, none of them captures the content of a principle of respect for the worth of persons. While, as we have noted, the principles taken individually yield inconsistent allocation recommendations in some cases, in

[5] "Modified youngest first" is a label introduced in Kerstein and Bognar 2010, 37.

[6] For criticism of modified youngest first see Gamlund 2016.

others they yield consistent ones. And sometimes, when they yield consistent recommendations, these are in tension with the recommendations that a principle of respect for the worth of persons would presumably make. Consider the Paraplegia Case. Since the candidates are the same age, the youngest first, modified youngest first, and fair innings principles fail to apply, making it trivially true that they yield consistent recommendations (i.e., none at all). And we can assume that the societal value principle would favor neither candidate. The greater benefit principle would clearly favor the person who would get 10 years in full health over the one who would get 10 years as a paraplegic. Of course, MBD would favor the prospective non-paraplegic as well. So, taken together, the set of principles Solberg and Gamlund mention would have us save this person straightaway. But a principle of respect for the worth of persons would, intuitively speaking, imply that the two should get equal chances.

4. A Principle of Respect for the Worth of Persons

I believe that a principle of respect for persons ought to be among those we employ in the distribution of scarce, life-saving resources. But the idea that it should prompts some familiar concerns.[7] First, principles of respect for the worth of persons can seem ill-defined. What worth, precisely, do persons have, and what does it mean to respect it? It seems correct to say that in the Paraplegia Case it would not be respectful of the worth of persons to save straightaway the one who would return to full health, but why not, precisely? A second concern is that once it got specified, a principle of respect for the worth of persons would lose its appeal. Such a principle might, for example, seem to imply that whenever two people are vying for a scarce, life-saving

[7] Some material in Sections 3 and 4 stems from Kerstein 2015.

resource each should get a 50% chance of getting it, even if, say, the two are the same age and one would live 5 years in full health and the other would live 25 years in full health. In the remainder of this chapter, I hope to make some progress towards alleviating these concerns.

Elsewhere I have developed a Kant-inspired account of respect for the worth of persons, or, more precisely, for their dignity (Kerstein 2013, 125-134). Before presenting this account, which I refer to as "KID," some preliminary remarks are in order. First, KID does not contain jointly necessary and sufficient conditions for honoring persons' dignity; it is intended merely to shed light on much, but not all, behavior that fails to do so. Second, KID is not to be taken as a categorical imperative commanding us to refrain from all conduct that would fail to respect someone's dignity. Whereas Kant presumably holds that such conduct is always wrong, all things considered, KID specifies merely a *pro tanto* wrong. It is consistent with KID to hold, as I do, that we always have strong reasons to respect the dignity of a person, but that these reasons might be outweighed by other reasons. An action might not respect the dignity of a person, according to KID, yet in my view be morally permissible, all things considered. For example, as should soon be evident, it would fail to respect the dignity of a person according to KID to refrain from saving his life and personhood in a tragic situation in which one had to choose between doing that and preventing quadriplegia in thousands of people (assuming that quadriplegia would not truncate their existence as persons). But it is consistent with KID to hold, as I suspect many of us do, that failing to respect the person's dignity is morally permissible, all things considered. Finally, I contend that in allocating scarce, life-saving resources we need to weigh alongside of other principles a principle of respect for persons like KID. I do not contend

that our allocations should be based solely on considerations of respect for the dignity of persons.[8]

An abridged version of KID, which is sufficient for our purposes, is as follows[9]:

Dignity is a special status possessed by persons. 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.[10]

KID requires clarification on several points. This is not the place to investigate in detail how to specify the notion of persons in KID. But here is a Kantian account, put forth as a proposal open to modification.[11] A being is a person 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 that specify means to ends; and act in accordance with moral imperatives, even when it

[8] Of course, it is one task to present KID, as I now do, and another to defend it. I try to do the latter elsewhere (Kerstein 2013, chapters 3 and 5).

[9] For a complete statement of KID, see Kerstein 2013, 127-128.

[10] A more complete version of KID 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).

[11] For a somewhat different and more detailed account, see Kerstein 2013, 16-23.

believes that it would gain more satisfaction by acting contrary to them. Moreover, to count as a person a being must not only possess, but have *exercised* the capacity Kant seems to associate most directly with humanity: the capacity to set and pursue ends. If a being fulfills all of the conditions mentioned above, then it is a person. The account incorporates a broad interpretation of what it means to possess a capacity. According to the account, for example, a typical toddler has the capacity to act in accordance with moral imperatives given that, if her development proceeds as expected, she will be able to do so. But a being who, practically speaking, cannot and will not be able to exercise one or more of the capacities is not a person. In principle, a living being from another planet or a non-living artifact such as a sophisticated computer might possess all of the capacities constitutive of personhood. A human being who has died or is alive but whose cerebrum can no longer function is not a person in the sense of the term employed here since he can, practically speaking, no longer exercise the capacities. I will not try here to answer the question of precisely when, in the course of its development, a typical human being becomes a person. If human embryos and first or second trimester fetuses do not engage in goal directed activity, then they are not persons. If infants do engage such activity, as appears to be the case, then they presumably are persons.[12] Finally, personhood is here meant to be a threshold concept. If one has the features constitutive of it, one has personhood, no matter how well- or ill-developed those features may be.

Second, the first plank in KID, namely, the constraint against treating others merely as means, is not relevant to our cases. We might worry that we would be treating merely as means those whom we choose not to save. But this worry is misplaced. To treat someone *merely as a*

[12] For evidence that infants engage in goal-directed activity see Woodward and Gerson 2013, 4.

means, we must treat the person *as a means*: we must *use* that person.[13] In choosing not to save someone, we may or may not be acting unethically, but we are not using the person. However, we do in our cases count as *treating in some way* all of those requesting our aid.

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, or the magnitude of its health-related quality of life, personal satisfaction (i.e., happiness, in one sense of the term), or well-being. Its value also does not vary on the basis of its impersonal value, that is, the value that an impartial rational spectator would assign to it.

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 a 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.

[13] For my account of an agent using another, see Kerstein 2013, 56-59.

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.

5. Applying a Principle of Respect for the Dignity of Persons to Allocation Cases

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, the treatment would render A but not B paraplegic. 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.

A's paraplegia does not affect his status as a person, according to KID. 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 tempted to embrace the notion that it would be consistent with KID to save B straightaway in order to maximize benefits. B's being non-paraplegic would not at all raise his worth as a person. However, 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?

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.

So far we have, I hope, seen that contrary to one understandable worry regarding appeals to respect for the worth of persons in the allocation of scarce, life-saving resources, KID is determinate enough to ground what many of us take to be a correct verdict in the Paraplegia Case. But are its implications plausible in other kinds of cases? In particular, would an advocate for respect for the worth of persons need to hold that when one person can be saved among two vying for a resource, there is a strong moral reason for each get a 50% chance regardless of wide disparities in how long each would live? Consider, for example, 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 it would violate KID to give C and D equal chances. But I argue that it is consistent with 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 something can and often does involve trying to preserve it. 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 persons who are vying for survival and who, according to KID, we must treat as having unconditional, preeminent value. 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. One might say that by saving D we preserve five times as many "person years."

6. Conclusion

Reference to respect for persons (or for their dignity) is absent in Solberg and Gamlund's discussion of the allocation of scarce life-saving resources, as it is absent in many discussions.[14] I have defended the view that this absence is unwarranted. A principle of respect for the dignity of persons can capture moral thinking that underlies our judgments in cases where we resist the prescriptions of principles that maximize what is good for people or minimize what is bad for them, the latter being Solberg and Gamlund's focus. Moreover, as I have illustrated, for example, regarding the Paraplegia Case, considerations of respect for the dignity of persons are not always captured by other oft-mentioned principles, for instance, prioritarian or fair innings principles.

[14] See, for example, Persad et al. 2009. One thinker who does invoke respect for persons in discussions of scarce resource allocation is Kamm (2009, 168).

Finally, as I hope to have made progress towards showing, a principle of respect for the dignity of persons can be both determinate enough to be useful and cohere with the idea that length of future life matters in allocation decisions. Such a principle should feature in discussions of the ages (if any) at which we ought to give people priority for scarce, life-saving resources.

Acknowledgements

I would like to thank Carl Tollef Solberg, Espen Gamlund, and Joseph Millum for their comments on an earlier draft.

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