

# A New Way of Doing the Best That We Can: Person-Based Consequentialism and the Equality Problem\*

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It has been suggested that moral law requires that we act in ways that “make people happy” but does not require that we act in ways that “make happy people.”<sup>1</sup> It is important to keep in mind that moral law proscribes various things as well. We shouldn’t make people unhappy. Nor should we make unhappy people. There is some disrepute attached at the present time to all these “person-affecting,” or “person-based,” sentiments.<sup>2</sup> In this article, however, I want to present an argument that works in their favor. More specifically, I want to develop a plausible case for a new, person-based form of consequentialism.

Part of the motivation for this project derives from the fact that the more traditional forms of consequentialism have themselves been

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1. Jan Narveson, “Moral Problems of Population,” in *Ethics and Population*, ed. Michael D. Bayles (Cambridge, Mass.: Schenkman, 1976), p. 73.

2. Thus, what has been called the “person-affecting intuition” is widely considered to give rise to the riveting—but deadly—“nonidentity problem.” I explain briefly in what follows why I believe that the particular version of the person-affecting intuition that I develop in this article does not succumb to the nonidentity problem. See Sec. I below. I have also defended the person-affecting intuition against the nonidentity problem as well as an inconsistency objection in *Child versus Childmaker: Future Persons and Present Duties in Ethics and the Law* (Lanham, Md.: Rowman & Littlefield, 1998), pp. 45–133. See also M. A. Roberts, “Present Duties and Future Persons: When Are Existence-Inducing Acts Wrong?” *Law and Philosophy* 14 (1995): 297–327, and Michael Goodman, review of *Child versus Childmaker*, *Ethics* 111 (2000): 636–38. Whether one agrees with my resolution of the nonidentity problem or not, it does seem that just as no one thinks that the so-called repugnant conclusion means that we must forgo all further discussion of aggregative consequentialism so should no one think, at this stage of the game, that the nonidentity problem means that we must forgo all further discussion of person-based consequentialism.

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the target of a powerful and sustained critique. But even the critic has to admit that those same theories typically manage to capture in one way or another an extremely attractive idea—namely, the basic maximizing idea that agents ought to do the most good that they can for people. What I think is especially interesting about the person-based approach is that it appears to have the capacity to avoid much of the criticism that has been directed at the traditional view while at the same time safeguarding the basic maximizing idea that agents ought, indeed, to do the most good that they can for people.<sup>3</sup>

According to the traditional account of the basic maximizing idea, what agents must do is create the most aggregate good that they can. I will call this traditional account “aggregative consequentialism,” or “AC,” in what follows. The person-based approach, in contrast, is non-aggregative. According to this less conventional account, what agents must do is create the most good that they can for each person. More precisely—and with important restrictions—for each person who ever will exist, agents must maximize well-being for that person. I will call this less conventional account of the basic maximizing idea “person-based consequentialism” or “PBC.”<sup>4</sup>

The primary claim of this article is that PBC competes well against AC. To support this claim, I make two arguments. The first is that PBC does a better job than AC addressing a particular set of problem cases that together form the basis of much of the criticism that has been directed at AC. The second is that PBC does exactly as good a job as AC addressing a second set of cases—a set of important cases that together nicely reveal just why AC has been such an attractive theory to so many for so long.

One of the problem cases contained in the first set raises issues regarding equality. I will argue that PBC, simply by not opposing equality, does a better job with the equality problem than AC does. As initially formulated, PBC does not, however, provide a decision in that case.

3. I owe my interest in articulating a coherent person-based approach to John Robertson. See his “Liberty, Identity, and Human Cloning,” *Texas Law Review* 76 (May 1998): 1406–7, for a discussion of “person-based” vs. “class-based” conceptions of harm. I owe my lasting enthusiasm for the basic maximizing idea that agents ought to do the best that they can to Fred Feldman. See his *Doing the Best We Can: An Essay in Informal Deontic Logic* (Dordrecht: Reidel, 1986).

4. Aggregative consequentialism, or “AC,” is sometimes referred to as “totalism” or the “total view.” Person-based consequentialism, or “PBC,” has not been widely recognized, to my knowledge, as an alternative form of consequentialism (though the so-called person-affecting intuition has been considered, and largely rejected, as a constraint on various normative approaches). “Averagism,” or the “average view,” constitutes still a third form of consequentialism. According to the average view, agents ought to do the most good that they can for people on average. Like AC, the average view involves aggregation—followed, of course, by division. I will not say much about the average view in what follows.

Accordingly, I will consider, toward the end of the article, just how PBC should be extended to address the equality problem.

The result that PBC competes well against AC is significant. At best, AC is a troubled theory. The aggregationist cannot plausibly deny that the problem cases I will identify do not need in one way or another to be addressed. At the same time, AC has been in many ways the best normative theory going. There is a scintillation to AC—largely, I think, having to do with its expression of the basic idea that agents ought to do the most good that they can—that its competitors have never quite achieved. Because PBC is itself nonaggregative, it is able to deflect much of the criticism that AC has sustained. At the same time, PBC prominently includes important maximizing elements.<sup>5</sup> For this reason, it has the ability to duplicate some of AC's most appealing results. It can thus safeguard the basic maximizing idea while sidestepping the apparent defects in AC. In the end, then, a showing that PBC competes well against AC in itself makes a plausible case for PBC.

Section I below introduces PBC and compares PBC to AC. The question of how PBC should be extended to address the equality problem is taken up in Section II. The argument of Section II will be that we should take a "quantificational"—rather than a "statistical"—approach to equality in view of the fact that statistical approaches turn out to have the very disadvantages that lead us to question AC to begin with. The quantificational approach, I believe, opens the door in an interesting way to a conception of equality as having moral significance only to the extent that it manages to coincide with the idea of first doing the best that we can for the least well-off.<sup>6</sup> On this view the equality problem becomes not so much a problem about equality at all but rather a maximization problem of a targeted, person-based sort, and AC can be considered to fail not because it fails to take specific facts about equality into account but rather because it fails to take into account how efforts to maximize the well-being of individuals should be ordered in a certain strategic way.

My goal in this article is to demonstrate a plausible case for PBC. But I do not claim to refute AC in a decisive way. I believe that the problem cases I will review are ones that proponents of the aggregative approach should, in one way or another, address. But the argument can always be made that the problem cases can be defused in some way and should

5. This is not to say that PBC should be categorized as a form of maximizing consequentialism. Why it could be misleading to do so is discussed in Sec. I.D below. As we will see, however, PBC does contain important maximizing components.

6. The idea of first doing the best that we can for the least well-off—that is, the idea of maximin—is often associated with John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 152–61. See Sec. II.C and n. 51 below.

therefore not be considered bona fide counterexamples to AC. Moreover, even if they are accepted as counterexamples to AC, the aggregationist can always take the view that newer, more subtle aggregative theories have the capacity to produce more palatable results.<sup>7</sup> I do not purport to refute either of these two strategies for rescuing the aggregative approach here. Nor do I purport to present a finished person-based theory—one that addresses all issues that might come its way. Nevertheless, I believe that this article shows that PBC should be of interest to anyone who is both troubled by and attracted to AC. If there is much to be said for AC, then there must be still more to be said for PBC.

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Some terminological comments are in order. I use the term “well-being” to designate the good that in fact befalls persons as individuals. While I do not attempt to analyze the concept here, well-being can roughly be thought of as that which makes life so precious to the one who lives.<sup>8</sup> References to levels of well-being should be understood as references to overall, lifetime levels of well-being and not to well-being at a time, and to actual, rather than expected, levels of well-being.<sup>9</sup> I make the assumption that a person’s level of well-being relative to a given possible future can be compared to that person’s level of well-being relative to any other possible future. I also assume that one person’s level of well-being relative to a given possible future can be compared to other persons’ levels of well-being relative to that or any other possible future. Finally, while I do not define “person” in what follows, I note that it seems plausible that the term excludes, for example, the human embryo and early human fetus but includes various nonhuman primates and other species of nonhuman animals.

7. See Sec. I.A below for a sketch of two strategies for rescuing the aggregative approach.

8. In describing ‘well-being’ as that which makes life precious to the one who lives, I do not mean to endorse a “preference-satisfaction” account of well-being. At least, it seems plausible to me that what one subjectively prefers and what makes one’s life precious to that one are two quite different things. See John Broome, *Ethics Out of Economics* (Cambridge: Cambridge University Press, 1999), pp. 29–43, for a discussion and critique of the preference-satisfaction theory. More broadly, I leave open the issue of whether well-being reduces, as Bentham and Mill suggest, to some array of positive feelings or emotions, such as pleasure or happiness, or alternatively involves, like the amount of money we have at a given time in the bank, characteristics of which we need have no conscious awareness. Such characteristics might include the capacity to interact socially, to engage in various functions and tasks, and to learn. For such a conception of well-being, see Amartya Sen, *Inequality Reexamined* (Cambridge, Mass.: Harvard University Press, 1995), pp. 31–55.

9. I will not try to describe here the relationship between what a given person’s level of well-being is at various times and that person’s overall, lifetime level of well-being. I note, however, that it may not be a matter of simple summation.

I present various tables in what follows. Throughout the article, tables represent just those possible futures that are accessible to agents at a given time. I do not spell out what constitutes an accessible future. I assume that accessible futures are those possible futures that agents (acting on their own or in concert, at a single moment or over time) have the capacity to bring about and that not all possible futures are likely to turn out to be accessible futures. I call those futures that are accessible to agents “alternatives.” I assume that there is a simple relationship between alternatives on the one hand and particular choices on the other and that in assessing the former we assess the latter. In fact, the relationship between a given alternative and a specific choice is complex. But that complexity is not an issue for the article.<sup>10</sup>

The tables should be understood to be exhaustive in the sense that they show all the alternatives available to agents at a given time. In addition, any population depicted by a table should be understood to include all those persons who do or will or who even might exist relative to each alternative. Finally, the levels of well-being assigned by the tables to individuals are intended to constitute, not preliminary values that will require adjustment once we factor in facts, for example, about equality, but rather final values. Thus, if the bare fact that well-being levels within an alternative are not uniform in itself deflates, for example, *my* level of well-being (perhaps because I am anxious about being poor in a society of plenty or because I spend money on the wrong things to preserve appearances), then it will be that *deflated* level of well-being that will appear, by my name, in the relevant table.

## I. TWO FORMS OF CONSEQUENTIALISM

The purpose of Section I.A is to review a set of cases that seriously challenge AC. In Section I.B, I turn to a second set of cases—a set of cases that suggest just why AC has seemed such an attractive theory to so many for so long. I also introduce in Section I.B the core components of PBC in the order that the need for them arises, and I argue that the success stories that make up this second set of cases are in fact analyzed just as well by PBC as by AC. In Section I.C, I return to the problem cases. I there make the argument that PBC in fact does a better job analyzing the problem cases than AC does. Finally, I address very briefly, in Section I.D, a handful of issues that PBC may well raise: whether the

10. We can, however, consistent with this assumption, assess multiplicities of choices by construing them as single complex choices associated with a single, determinate alternative. For example, a woman's choice to have a baby in nine months and her (and possibly her partner's) further choice to treat the baby in a certain way (say, *well*) once the baby is born can be counted as a single complex choice that will give rise (in a relatively simple world) to a single determinate alternative. For further discussion of this point, see Peter Vallentyne, “Roberts's *Child versus Childmaker*,” *Noûs* 34 (2000): 634–47.

structure of the overall argument is question begging; in what sense, if at all, PBC can be said to constitute a form of maximizing consequentialism; and, last but not least, the notorious "nonidentity problem." Section II is devoted in its entirety to the equality problem.

#### A. Three Problem Cases for AC

A good statement of traditional, aggregative, maximizing consequentialism—AC—makes two points: (a) that one alternative future is better than a second if and only if the summation (the "aggregate") of all individual levels of well-being of all persons who exist or ever will exist in the one is greater than the like summation in the second and (b) that agents ought to choose the best alternative, and may permissibly in the case of ties choose from among the best alternatives, available to them at a time. Agents thus ought, according to AC, to maximize aggregate well-being.<sup>11</sup>

Consider what AC has to say about example 1, the infinite population problem.<sup>12</sup> Example 1 depicts two alternatives, A and B, each of which contains person-for-person identical, infinite populations ( $p_1$ ,  $p_2$ , . . . ,  $p_\infty$ ). Natural numbers represent levels of individual, overall, lifetime well-being.

#### Example 1: Infinite Population Problem

|            | A   | B   |
|------------|-----|-----|
| $p_1$      | 2   | 1   |
| $p_2$      | 2   | 1   |
| ...        | ... | ... |
| $p_\infty$ | 2   | 1   |

In example 1, the amount of total aggregate well-being in A is exactly the same as in B (under plausible mathematical assumptions) since both alternatives contain an infinite amount of aggregate well-being. But this means that A and B equally maximize aggregate well-being. Thus, AC implies that agents may permissibly choose either A or B. But this result is, at least on its face, implausible. A in fact seems to represent the better

11. For a fuller description of AC, including proposed solutions to some of the formal challenges that AC has had to meet, see Feldman, *Doing the Best We Can*. Peter Singer has presented perhaps the fullest application of the consequentialist ethic to practical problems. See, e.g., Singer, *Practical Ethics*, 2d ed. (Cambridge: Cambridge University Press, 1993).

12. Infinite population problems have been identified and discussed by Peter Vallentyne and Shelly Kagan in "Infinite Value and Finitely Additive Value Theory," *Journal of Philosophy* 44 (1997): 5–26.

alternative, and agents would be doing a real wrong were they to choose B over A.<sup>13</sup>

A second problem case for AC is the genesis problem.<sup>14</sup> Consider two people, Mom and Dad, who have a single child, Victoria. Suppose that Mom does not want to have a second child since having a second child will adversely affect her health. Suppose that whether a second child is produced or not will on a net basis have no effect at all on the levels of well-being of either Dad or Victoria. Suppose, finally, that Mom puts her concerns to the side (perhaps a highly respected philosopher has explained to her what her moral obligations really are) and the couple produce Chuck.

Since the couple in fact does choose to have the second child, A represents the "road not taken." An asterisk is used to indicate that Chuck does not exist at all in A; and Chuck's level of well-being at A is given as "zero" on the theory that nonexistence is accompanied by neither benefits nor burdens of any kind whatsoever.<sup>15</sup> Alternative B represents the couple's actual choice.

*Example 2: Genesis Problem*

|          | A  | B |
|----------|----|---|
| Dad      | 5  | 5 |
| Mom      | 5  | 3 |
| Victoria | 5  | 5 |
| Chuck    | 0* | 5 |

Since B contains more aggregate well-being than A does, AC is committed to the result that B is better than A and, hence, that B is

13. Singer has pointed out to me that some theorists might consider the infinite population problem to be just an instance of a more general puzzle about infinity. Thus, if A and B contained not units of well-being but rather (in Singer's example) beans, we would find ourselves committed, under basic mathematical assumptions, to the view that A and B contain the same number of beans. One might consider this result just as odd as the result that A and B are both morally permissible. But it is not clear to me that this analogy will ultimately work. The application of AC to the infinite population problem leads to a conclusion that is intransigently troubling—that A and B are both equally morally permissible. In contrast, pressing the beans analogy to its fullest can lead only to a far more limited conclusion—that the two alternatives contain the same aggregate quantity of well-being. The oddness of this more limited conclusion recedes, I think, so long as we keep in mind some cogent and appropriate concept of the infinite. In contrast, the oddness of the result that A and B are both equally morally permissible does not, for me at any rate, even begin to recede.

14. The genesis problem can be viewed as one version (there are several) of the "repugnant conclusion." See Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), pp. 387–90.

15. For purposes of this article, I make the assumption that nonexistence implies a "zero" level of well-being. See n. 27 below.

the morally obligatory choice. In other words, AC commands Mom to have Chuck despite the fact that doing so reduces her own level of well-being—that is, is bad for, or we might say “harms,” her—and despite the fact that the only one whose well-being would have been reduced—who would have arguably been harmed—had the couple chosen not to have Chuck is Chuck himself. This seems odd. Perhaps nonexistence does harm Chuck in the sense that his level of well-being, at the zero level implied by nonexistence, is lower than it might have been. But it is far from clear that harm in this sense has any moral significance. In general, a simple reduction in one individual’s level of well-being does not by itself even begin to imply that agents have made a choice that is morally impermissible or morally wrong. When that reduction in well-being is a function of the fact that one has never been brought into existence to begin with, its moral relevance becomes particularly unclear. Putting theory aside, it seems extremely implausible—especially, surely, to many women—that moral law requires them to have children, or to have more children, or to carry to term a human embryo that is not yet a person, when doing so is definitively bad for those women and “good” for someone only in the sense that existence is conferred on one who would otherwise never have existed at all.

A third challenge to AC is the equality problem.<sup>16</sup> Suppose that the choice to be made is how resources (which are plausibly distinct from well-being) are to be distributed across a given population. Suppose further that there is no particular reason why one member of that population should be accorded more well-being than another. This is not a case, for example, where the choice is whether to reward persons who work hard or punish those who don’t in order to give the population at large a strong incentive to work hard and produce additional well-being for many.<sup>17</sup> Then:

*Example 3: Equality Problem*

|                | A | B  |
|----------------|---|----|
| p <sub>1</sub> | 9 | 16 |
| p <sub>2</sub> | 9 | 3  |

Because aggregate well-being in B is 19 and only 18 in A, AC implies that B is the morally correct result. But this implication is implausible.

16. The well-known “objection from justice” is but one version of the equality problem. See, e.g., Rawls, pp. 22–33. See also David Gauthier, *Practical Reasoning: The Structure and Foundations of Prudential and Moral Arguments and Their Exemplification in Discourse* (Oxford: Oxford University Press, 1962), p. 126; and Thomas Nagel, *The Possibility of Altruism* (Oxford: Oxford University Press, 1970), p. 134.

17. In short, example 3 does not give rise to what is aptly called the “incentives problem.”



Why, just because aggregate well-being is greater in B, should  $p_1$  enjoy a vast windfall and  $p_2$  be relegated to a life whose value is just barely in the positive range?

The example might, of course, itself be challenged. The argument might be made that the gross inequality displayed in B in itself will deflate individual levels of well-being in ways that the table does not itself reflect.<sup>18</sup> It is not necessarily just the narrow seat and bad air in coach that makes one walk off the airplane with so little of one's well-being intact. The incidents of inequality—including the sheer resentment that others are traveling in such grand style—have a role to play as well. Thus it might be argued that if the numbers shown in example 3 were simply adjusted to take such incidents into account—which adjustment might well reduce  $p_2$ 's level of well-being at B by the necessary couple of points—then AC would after all produce a correct account of the case.

Ultimately, however, the success of any such challenge to the example is short-lived. For we can just as easily—and hereby do—stipulate that the values displayed in the various tables have already been adjusted in ways that take the incidents of inequality into account. This means that the values displayed in example 3 are the very ones we need, just as they stand, for purposes of applying AC. So AC does, after all, imply that B is the better alternative and that agents are thus morally required to choose B over A.<sup>19</sup>

I find this result implausible. It seems especially troubling when we focus on the six units of well-being  $p_2$  loses in the move from A to B. According to AC, because aggregate well-being will be greater if  $p_1$  gets those six units of well-being than if  $p_2$  does,  $p_1$  should get them and  $p_2$  should not. The result that B is the correct choice makes something that accrues to no one—namely, aggregate well-being—the critical focal point of moral law. And this fact, in turn, could be considered to rep-

18. More precisely: it is easy to imagine how an inequality in one aspect or component of well-being might itself function to deflate (or elevate!) an individual's overall level of well-being—especially if overall well-being consists in something like capabilities to achieve various specific functionings. See n. 8 above. "Being poor in a rich society itself is a capability [or well-being] handicap. . . . *Relative* deprivation in the space of *incomes* can yield *absolute* deprivation in the space of *capabilities*. In a country that is generally rich, more income may be needed to buy enough commodities to achieve the *same social functioning*, such as 'appearing in public without shame'" (Sen, *Inequality Reexamined*, pp. 114–16; Sen's italics).

19. In responding to the equality problem, there are much more sophisticated positions than the one I have just described that the committed aggregationist might endorse. Such positions do not challenge the example but rather provide a different account of it. See n. 22 below.

resent a shift away from the appealing idea that agents ought to do the most good that they can for people.<sup>20</sup>

But this last argument is very speculative, and it is not one that I want to develop here. For purposes of this article, we need note only that on its face the choice of A over B seems correct.

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I have not argued that the problem cases just reviewed refute AC in a definitive way. To press that argument, I would need to examine, for example, Norcross's suggestion that we simply learn to live with at least some of AC's seemingly unpalatable results.<sup>21</sup> Since I do not conduct that kind of examination here, Norcross's strategy, consistent with this article, remains viable.

A second strategy accepts examples 1–3 as valid counterexamples to AC but reworks the traditional axiology on which AC is based with the aim of providing a different and better treatment of examples 1–3. Feldman thus preserves aggregation but suggests that it is not well-being simpliciter but rather a justicized form of well-being that should be aggregated across the population.<sup>22</sup> This article does not call Feldman's

20. It might be argued that Mill's *Utilitarianism* is itself consistent with the view that  $p_2$ 's plight in B might constitute just the sort of "social expediency" that would warrant the choice of A over B. Thus, addressing issues of justice in chap. 5 of *Utilitarianism*, Mill writes "[The Greatest Happiness Principle] is a mere form of words without rational signification, unless one person's happiness, supposed equal in degree (with the proper allowance made for kind), is counted for exactly as much as another's." One way of reading this passage is that a given unit of happiness has no more value when possessed by a king than by a peasant. But another interpretation is that  $p_1$  has no better claim than  $p_2$  in B to those six units of well-being in example 3 in dispute despite the aggregate numbers. In any event, an unequivocal endorsement of the aggregative approach simply does not appear in *Utilitarianism*. Singer has suggested that the distinction between aggregative and person-based consequentialism is simply one that Mill never particularly focused on or intended to make anything out of (lecture in "Questions of Life and Death" [seminar], Center for Human Values, Princeton, N.J., Fall 1999). Coope questions whether Mill was really a utilitarian. But Coope focuses not on whether Mill was an aggregationist but rather on whether he was a "maximizer." See Christopher Miles Coope, "Was Mill a Utilitarian?" *Utilitas* 10 (1998): 33–67.

21. For a utilitarian defense of inequality (if not slavery), see, e.g., Alastair Norcross, "Comparing Harms: Headaches and Human Lives," *Philosophy & Public Affairs* 26 (1997): 135–67.

22. See Fred Feldman, "Adjusting Utility for Justice: A Consequentialist Reply to the Objections from Justice," *Philosophy and Phenomenological Research* 55 (1995): 567–85, and "Justice, Desert, and the Repugnant Conclusion," *Utilitas* 7 (1995): 189–206. Feldman departs from traditional, aggregative consequentialism by abandoning the idea that the value of a world depends entirely on the total, aggregate well-being (or utility) present in that world. While retaining the framework of the aggregative approach, Feldman's proposed formula for calculating a world's total value takes into account the extent to which individuals deserve the level of well-being they are accorded. On this approach, an

strategy into question.<sup>23</sup>

It is not that I do not have doubts about both of these strategies. It is rather that my primary aim here is not to undermine these strategies but rather to describe yet a third strategy—a person-based strategy—for how we might address the problem cases without abandoning the basic maximizing idea that agents ought to do the most good that they can for people. I believe that this third strategy should be of interest to anyone who, despite the bad press that consequentialism has so often received, continues to think that the basic maximizing idea seems right. If we are, or should we become, disaffected with the first two, a third strategy means a third chance for what might well be the best normative theory going.<sup>24</sup>

To establish person-based consequentialism, or PBC, as a viable third strategy, I will need to argue for two points. The first is that PBC does indeed safeguard the basic maximizing idea. To establish this point, I will describe three cases (examples 4–6) that AC analyzes in an appealing way. My argument will then be that PBC analyzes these cases just as well as AC. The second point is that PBC does not suffer from the various deficiencies that infect AC. To make this point, I turn back

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undeservedly high level of well-being may be discounted, and an undeservedly low level of well-being may even contribute negatively toward the calculation of total value. Whereas Feldman suggests an adjustment at the level of individual well-being, others suggest adjustments at the level of aggregate well-being. Thus, John Broome proposes that “overall good” might reflect, not merely aggregate well-being, but other “goods,” such as equality, as well. Broome, *Counting the Costs of Global Warming* (Cambridge: White Horse, 1992), p. 41. See also T. M. Scanlon, “Rights, Goods, and Fairness,” in *Public and Private Morality*, ed. Stuart Hampshire (Cambridge: Cambridge University Press, 1978), pp. 93–112.

23. Other ways around the equality problem have also been suggested. Thus Hare argues that slavery, because of the costs it imposes on people in the actual world, will never as a matter of fact be, though it might in principle be, an option that maximizes total aggregate well-being (R. M. Hare, “What Is Wrong with Slavery?” *Philosophy & Public Affairs* 8 [1979]: 103–21). But it is unclear that such a response completely allays concerns about the equality problem. It is far too easy to imagine how perfectly avoidable and deeply troubling inequalities can—and not just in worlds that seem in any morally significant respect unlike the actual world—promote total aggregate well-being.

24. Issues in philosophy of law make clear the urgency of actually formulating a cogent normative theory—as opposed to resting content with the view that some such theory must be true, whether formulated or not. For in the absence of any such formulation the idea that moral principle should be taken into account in the judicial interpretation and extension of the law is more difficult to sustain against, e.g., Posner’s challenge. See Richard A. Posner, *The Problematics of Moral and Legal Theory* (Cambridge, Mass.: Harvard University Press, Belknap Press, 1999), pp. 3–90 (critiquing moral reasoning generally, especially reasoning about justice, fairness, and, by implication, equality). Compare Duncan Kennedy, “From the Will Theory to the Principle of Personal Autonomy: Lon Fuller’s ‘Consideration and Form,’” *Columbia Law Review* 100 (2000): 94–175 (discussing Fuller’s modified naturalism, wherein “policy” considerations—also known as moral considerations—are considered significant in properly understanding and developing even such seemingly mundane areas as contract law).

to the problem cases (examples 1–3) and make the argument that PBC does a much better job with those cases than AC does. I believe that AC errs just at the juncture at which it aggregates and that PBC avoids the error because it avoids the aggregation.

*B. How PBC Captures the Basic Maximizing Idea*

Person-based consequentialism is able to capture the basic maximizing idea because it contains strong maximizing elements. Forms of consequentialism that demand that agents maximize well-being are typically aggregative in nature. In this respect, PBC is atypical. Rather than requiring agents to maximize aggregate well-being, PBC instead requires agents to maximize individual well-being. To be more precise, PBC requires, for each person who ever exists, that agents maximize that person's well-being.<sup>25</sup> This initial statement of PBC will need to be restricted since it will not always be possible to increase one person's well-being without reducing the well-being of others, and trade-offs in well-being will sometimes be necessary. But even in its restricted form, PBC, I will argue, takes us a surprisingly long way in the direction of the basic maximizing idea that agents ought to do the most good that they can for people.

Consider, then, the following example 4.

*Example 4: Nice Is Not Enough*

|                | A  | B |
|----------------|----|---|
| p <sub>1</sub> | 10 | 8 |
| p <sub>2</sub> | 10 | 8 |
| p <sub>3</sub> | 10 | 8 |
| p <sub>4</sub> | 10 | 8 |

Suppose that having 8 units of well-being means that one will have a perfectly nice life. At the very heart of AC is the idea that agents ought

25. I have heard the point put this way: we can "partition" (but not in the logician's usual sense) relative to any world the set of all those individuals who ever exist however we like and then formulate a maximizing principle that requires the maximization of well-being within that partition. Thus, consequentialism traditionally maximizes on aggregate well-being of the total population—the summation, that is, of the individual levels of well-being of all persons (including all future persons) who ever existed or will exist. Partitioning in the same way, one who adopts the "average" view maximizes on average well-being. In contrast, Vallentyne and Kagan suggest maximizing not on total or average aggregate well-being but, rather, on the aggregate well-being of just those persons who belong to a defined proper (finite) subset of the total population (Vallentyne and Kagan, pp. 5–26). The suggestion of PBC is that we can partition still more finely, so that what is maximized is individual well-being. The general idea, then, of PBC is that for each person who does or will exist, agents ought to (with restrictions) maximize well-being for that person. See also Sec. I.D.2 below.

to do the most good that they can. It doesn't matter that 8 is a lot since ten is more. According to AC, A is the correct choice.

Example 4 is in its own way an important case for AC. It helps to define AC and to set it apart from at least some of its competitors. For the result that A is permissible and B is not is nontrivial. We have already made the supposition that 8 units of well-being makes for a perfectly nice life. Assume further that 8 units of well-being is as much well-being as anyone can plausibly be said to deserve, that no one's rights have been violated in either A or B, and that agents are all of flawless character and sterling virtue. Some theorists may well take the view, on these facts, that there is no moral requirement that agents confer additional well-being. Aggregative consequentialism, of course, disagrees.

I believe that AC's treatment of this case is plausible—indeed, insightful. But whether I am correct on this point is not the issue here. What is important for present purposes is that getting to the result that A is the correct choice and that B is not does not depend on facts about aggregate well-being. Facts about individual well-being will do the job just as well. Thus, one might say that the good thing about A is that aggregate well-being has been maximized and the defect of B is that it has not. But one might equally well say that the good thing about A is that each person's well-being in A has been maximized and, hence, that each person in A has been dealt with in a way that is morally beyond reproach. And the defect with B is that someone's—indeed, that each person's—well-being has not been maximized. Of course, trade-off scenarios will often arise, and when they do the failure to maximize a given person's well-being will not necessarily always count as a wrong. But there is no trade-off in example 4; agents there can increase each person's well-being without reducing anyone else's. And so they should. Where they fail to do so for any person, they fail to treat that person as well as they ought. In failing to treat that person as well as they ought, they wrong that person.

The following pair of principles captures these ideas. The first principle is exculpatory. It provides a sufficient (but not a necessary) condition for when a given person has been treated as well as he or she ought to have been treated—when, that is, he or she has not been wronged—by the choice of a given alternative. Where X is any alternative and p is any person who does or will exist in X,

*Exculpating Maximizing Principle (EMP):* p is not wronged in X if there is no alternative Y in which p has more well-being than p has in X.<sup>26</sup>

26. I have described this principle and the next two, as well as the "nonexistence principle" introduced in Sec. I.B below, elsewhere. See Roberts, *Child versus Childmaker*, pp. 45–85.

Leaving open the possibility that in some cases a person whose well-being has not been maximized has not been wronged, EMP implies that anyone whose well-being has been maximized has not been wronged.

The second person-based principle is inculpatory. It provides a sufficient (and, again, not a necessary) condition for when a given person has not been treated as well as he or she ought to have been treated—when, that is, he or she has been wronged. Thus, where *X* is any alternative and *p* is any person who does or will exist in *X*,

*Inculcating Maximizing Principle (IMP):* *p* is (or will be) wronged in *X* if there is some alternative *Y* in which *p* has more well-being than in *X* and there is no *q* who does or will exist in *Y* who has more well-being in *X* than in *Y* and each person who does or will exist in *Y* also exists in *X*.

Though it will not be important in the context of example 4, we may as well go ahead and note now that, while costs to others who do or will exist are taken into account by IMP in deciding whether a given person has been wronged, costs to never-existents do not, according to IMP, count at all. This aspect of IMP will be important in connection with the genesis problem (see Sec. I.C below).<sup>27</sup>

As to the case at hand, EMP and IMP together imply that no one in *A*, and everyone in *B*, is wronged. But EMP and IMP as they stand do not fully analyze example 4 since they leave open the question of the connection between wronging a person and doing something that is wrong. To make this connection, we need a third principle, one that captures a variation of what has been called the “person-affecting intuition.” According to that intuition, “what is bad must be bad for someone.”<sup>28</sup> In other words:

27. One other important point is that EMP and IMP leave open the possibility that bringing someone into an anguished existence—one that is more of a burden to that person than a benefit—might in itself wrong that person. This result depends on the assumption that, where *X* is an alternative in which a person *p* exists, for any *Y* that is an alternative to *X*, if *p* does not exist (ever) at *Y*, then *p*’s level of well-being at *Y* is just zero. Under this assumption, EMP avoids the troubling implication that a person whose level of well-being is negative and whose existence could have been avoided has not been wronged. Under this same assumption, if *p*’s level of well-being at *X* is negative, then *p* will have more well-being (at the zero level implied by nonexistence) in any alternative *Y* in which *p* does not exist than *p* has at *X*. If not bringing *p* into existence would have made no other existing person worse off, then we may infer from IMP that *p* is wronged by having been brought into existence. I find the assumption that nonexistence implies a zero level of well-being both coherent and plausible. I note, however, that the assumption is a controversial one. See, e.g., Broome, *Ethics Out of Economics*, p. 168 (arguing that it is either incoherent or false to assert that “it is better for a person that she lives than that she should never have lived at all”). I note also that EMP and IMP have much in common with some of the Pareto principles (but not with “Pareto plus”).

28. Parfit, p. 363; see also Narveson, p. 73.

*Person-Affecting Intuition (PAI)*: An alternative X is morally permissible if and only if each person is treated in a morally permissible way in X, that is, if and only if no person is wronged in X.

The person-affecting intuition, or PAI, can now be used to complete the picture, implying that A, but not B, is a permissible choice.<sup>29</sup> These results seem plausible. Moreover, they are the very results we obtain from AC. A is permissible and B is not.

Example 5 shows a second coincidence between the two forms of consequentialism.

*Example 5: Equality Sometimes Irrelevant*

|                | A  | B |
|----------------|----|---|
| p <sub>1</sub> | 16 | 8 |
| p <sub>2</sub> | 8  | 8 |

In this case, AC implies that A is permissible and B is not. Like example 4, example 5 is an important case for AC. It generates a result that is nontrivial. A very strict egalitarian might, for example, dispute this result.<sup>30</sup> At the same time, AC's analysis of the case is at least plausible and one that may initially seem to offer some insight into the relationship between maximization, or efficiency, on the one hand and equality on the other. For purposes here, however, the important point is that PBC supports the result that A is permissible and B is not just as clearly as AC does. Without aggregating, EMP and IMP together imply that no one in A, ~~and everyone in B~~, is wronged. As in the case of example 4 above, PAI completes the picture with the result that A is permissible and B is not. *and p<sub>1</sub> in B*

We turn now to example 6. Example 6 is a good example of a trade-off scenario—a scenario, that is, in which agents cannot increase one person's well-being without reducing the well-being of others. In this particular case, the trade-off in well-being occurs between two identifiable groups of individuals—the many and the few.

*Example 6: The Many versus the Few*

|                | A   | B   |
|----------------|-----|-----|
| p <sub>1</sub> | 1   | 100 |
| p <sub>2</sub> | 100 | 1   |
| p <sub>3</sub> | 100 | 1   |
| p <sub>4</sub> | 100 | 1   |

29. In view of the nonidentity problem, the fact that AC rejects the person-affecting intuition is often considered an advantage of AC. See, e.g., Parfit, pp. 351–79. The nonidentity problem is discussed briefly in Sec. I.D.3 below.

30. This result might also be disputed by proponents of the view that the “overall good” depends not just on facts about aggregate well-being but also on facts about equality. See n. 22 above.

Example 6 reveals AC in all its shining glory. That theory quickly takes us to what appears to be an obviously correct result; and we get there for what in at least some vague way seems to be the right reason.<sup>31</sup>

My claim has been that PBC does as well as AC in analyzing some important cases. However, all EMP, IMP, and PAI tell us about example 6 is that  $p_1$  is not wronged in B and that  $p_2$ – $p_4$  are not wronged in A. The issues of whether  $p_1$  is wronged in A and whether  $p_2$ – $p_4$  are wronged in B are left unresolved.

But there is no reason to think that a person-based approach is not competent to address these issues. For there is nothing in the person-based approach that precludes taking a count of the number of well-off people in one alternative versus the number of well-off people in another as part of the calculation of the morally correct choice. What the person-based approach takes care to avoid is not the counting of persons but rather the aggregation of well-being across persons. With respect to example 6, then, we may extend PBC to provide that  $p_1$  is not wronged in A—despite  $p_1$ 's dire circumstances there—since A assigns more well-being to more people than B does. And, likewise, we may extend PBC to provide that  $p_2$ – $p_4$  are each wronged in B since B assigns to so many people— $p_2$ – $p_4$ —so much less well-being than A does.

These points can be stated more formally. To simplify, we make the assumption (the “same-person” assumption) that each person who exists in X also exists in each alternative to X and vice versa. Then, where X is any alternative and p is any person who does or will exist in X,

*Exculpatory Counting Principle* (ECP): p is not wronged in X if, for each Y in which p has more well-being than in X, there is some q who does or will exist in X and has more well-being in X than in Y and

- (i) p and q merely reverse positions between X and Y;
- (ii) the number of people who occupy q's position in Y is at least as great as the number of people who occupy p's position in X; and
- (iii) for any r who does or will exist in X and occupies neither p's nor q's position in X or Y, r has at least as much well-being in X as r has in Y.

Applied to example 6, ECP implies that the bare fact that fewer people are worse off in A than in B justifies the conclusion that  $p_1$  is not wronged in A.

A like principle can be used to generate the further result that  $p_2$ – $p_4$  are each wronged in B. Again making the same-person assumption

31. Fred Feldman suggested an example to me very like example 6 as a test case for PBC.



for each alternative to X, we can say that, where X is any alternative and p is any person who does or will exist in X,

*Inculcating Counting Principle* (ICP): p is (or will be) wronged in X if there is some Y such that p has more well-being in Y than in X and there is some q who does or will exist in Y and has more well-being in X than in Y and

- (i) p and q merely reverse positions between X and Y;
- (ii) the number of people who occupy p's position in X is greater than the number of people who occupy q's position in Y; and
- (iii) for any r who does or will exist in X and occupies neither p's nor q's position in X or Y, r has at least as much well-being in Y as r has in X.

We can now apply ICP to complete the analysis of example 6. Because more people—three more people, to be exact—are worse off in B than in A, ICP implies that each of those worse-off persons is wronged in B. Completing the picture, PAI then implies that A is permissible and B is not.

\* \* \*

This discussion has shown that PBC (which now includes ECP and ICP as well as EMP, IMP, and PAI) and AC produce the same results when applied to a collection of important cases. We can thus spell out the basic maximizing idea—that agents ought to do the most good that they can for people—in nonaggregative, person-based terms and still get the same fabulous results as when we spell out the obligation in traditional, aggregative terms. Thus, contrary to the conventional view, aggregation does not appear after all to be an essential aspect of the basic idea that agents ought to do the most good that they can for people.

### *C. How PBC Addresses the Problem Cases*

I next turn to the argument that, while the basic maximizing idea spelled out in aggregative terms is subject to serious challenge, the same idea spelled out in person-based terms is not. More specifically, my claim is that, in contrast to AC, PBC analyzes examples 1–3 in ways that are immediately plausible.

Consider, for example, how PBC analyzes the infinite population problem (example 1). The exculcating maximizing principle, or EMP, implies that no one in A is wronged and the inculcating maximizing principle, or IMP, implies that everyone in B is wronged. On the basis of these results, the person affecting intuition, or PAI, implies that A is permissible and B is not. This seems right. The fact that the domain over which we quantify is infinite presents no special problem for PBC

since PBC focuses on whether each person can be made better off than he or she is.

Put together with one additional person-based principle, PBC also does quite well with the genesis problem (example 2). This additional principle—the nonexistence principle—helps capture the idea that while “making people happy” may be important, “making happy people” is certainly not.<sup>32</sup> Thus:

*Nonexistence Principle* (NP): For any alternative X and person p, if p does not and will not ever exist in X, then it is not the case that p is or can ever be wronged in X.<sup>33</sup>

The nonexistence principle, or NP, addresses the issue of whether someone who has never been brought into existence to begin with can ever be wronged. According to NP, never-existents fall among the very large class of entities that do not count for moral purposes; one who never exists can never be wronged.

In the genesis problem, the couple in fact choose B—choose, that is, to have the second child. The principle NP has nothing to say about that choice. But NP immediately produces the desirable result that, had the couple chosen A instead of B—had they chosen, that is, not to produce Chuck—the couple would not have wronged Chuck. The principle EMP implies that no one else is wronged in A. The principle PAI completes the picture with the result that A is a permissible choice. Though NP has nothing to say about B, other principles imply that B is impermissible. According to IMP, Mom is wronged in B since she has more well-being in A at a cost to no one who does or will exist in A. One might observe that Chuck, who would have been barred from life by the choice of A, would arguably have been burdened by that choice. But if he is, the burden is not, according to IMP, a morally relevant one. According to IMP, costs to those who never exist do not count. But if Mom is wronged in B, then B itself is, under PAI, impermissible, that is, wrong.<sup>34</sup>

32. Narveson, p. 73.

33. The nonexistence principle is intended to be consistent with the view that a person who has existed but no longer exists may have been wronged at some point during the period when he or she exists. But NP would imply that, once a person dies and ceases to exist, he or she can no longer be subject to further wrongs.

34. Because Mom has, in this case, chosen or consented (though she may not have wanted) to have the second child, it could be argued that her own choice cannot actually wrong her. I do not find this argument persuasive. In any event, various nonconsensual cases make the same point about AC as example 2. Suppose that the choice to have a second child will affect no one other than the first child one way or the other and that it will affect that first child in some materially adverse way. Suppose, also, that the level of well-being the second child will have if he or she exists at all is about average. Then, depending on the actual numbers, AC will imply that the choice to have the second child

We turn, finally, to the equality problem (example 3). The principle EMP implies that  $p_1$  is not wronged in B and that  $p_2$  is not wronged in A. So far, so good. But PBC as it has been described so far unfortunately does not provide a complete account of the equality problem. Since  $p_1$ 's well-being is not maximized in A, EMP does not imply that  $p_1$  is not wronged in A. And given the trade-off in well-being between A and B, IMP does not imply that  $p_2$  is wronged in B. But without those results, PBC never reaches the desirable conclusion that A is impermissible and B is not.

On the positive side, however, PBC at least does not repeat the mistake that AC seems clearly to make. Thus, where AC implies that A is wrong and B is not (is, indeed, obligatory!), PBC remains silent. This fact in itself represents a genuine triumph for PBC. Ideally, we would like more from a theory than this, and it is the aim of Section II below to say what that more might be. But first, a few issues raised by what has been said so far need to be addressed.

#### *D. Questions Regarding the Person-Based Approach*

The argument I have described gives rise to some important issues.

1. *Is the Argument Question Begging?*—My argument has been that PBC nicely duplicates AC with respect to one set of cases but conveniently distinguishes itself from AC with respect to another. I thus begin with the idea that AC, as the problem cases so clearly help us to see, is a troubled view; and I argue that PBC does a better job with those cases than AC does. An important question is whether this part of the argument begs a critical question against AC.

One way to address this question is by identifying which positions, consistent with the premises of the argument, are foreclosed to the aggregationist and which remain open. What the aggregationist cannot do, consistent with the premises, is take the position that the problem cases do not need one way or another to be addressed, or that AC's analysis of those cases is immediately plausible or that PBC's is not. On the other hand, the aggregationist remains free to dispute just how the problem cases are to be addressed—via, for example, EMP, IMP, ECP, ICP, PAI, and NP or in some other way altogether.

But surely the view that the problem cases need one way or another to be addressed does not beg the question against AC. After all, the problem cases arise independently of what one thinks about PBC or indeed whether one has ever thought about PBC at all; it is the problem cases that, if anything, give rise to PBC and not vice versa. What would beg the question against AC would be the assumption, starting out, that

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is morally obligatory—that the parents would be wrong to choose, e.g., to protect the first child by declining to produce the second. This result seems implausible and is one that PBC avoids.

PAI or NP is self-evidently true, or that PAI and NP are principles that we all, including the aggregationist, are bound to endorse, or that any case that AC and PBC analyze differently counts as a problem case. But I have not made any of these assumptions in constructing the argument of this article.

Any charge of question-begging can, of course, cut both ways. Thus, just as starting off with the view that PAI or NP is true would beg the question against AC, it would likewise beg the question against PBC to insist from the beginning that we are all somehow bound either to deny that the problem cases seriously challenge AC or to reject either PAI or NP. Putting PBC forward as an alternative theory does not impose the basics of the person-based approach (e.g., PAI or NP) on the aggregationist. But nor should the aggregationist impose the basics of the aggregative approach (e.g., not-PAI or not-NP) on the person-based consequentialist.<sup>35</sup>

2. *Is Person-Based Consequentialism Genuinely a Form of Maximizing Consequentialism?*—I have argued that PBC captures the basic maximizing idea that agents ought to do as much good as they can for people. But is PBC genuinely—as AC surely is—a form of maximizing consequentialism?

It is obvious that PBC contains strong maximizing elements. Thus, some of the components of PBC (EMP and IMP) prefer alternatives in which the individual has more well-being rather than less, and others (ECP and ICP) prefer alternatives in which more individuals rather than fewer are better off. Moreover, if we think that AC, in its application to examples 4–6, expresses the basic maximizing idea that agents ought to do the most good that they can for people, we should think the same of PBC.

But even though PBC contains strong maximizing elements it still might be misleading to categorize PBC itself as a form of maximizing consequentialism.<sup>36</sup> Doing so, for two reasons, could obscure what the theory really amounts to. First, examples 1–3 prove that in certain respects PBC and AC part ways. Thus, if we regard AC as the standard, all we can really say about PBC is that it maximizes *in moderation*. That may not be such a bad thing to say. But it does suggest that PBC is not purely a maximizing theory.

Second, according to PBC there is no feature of the aggregate—neither aggregate well-being in itself, nor aggregate well-being taken together with other values, for example, equality, to form the “overall good”—that agents have any duty to maximize. Since theories categorized as maximizing typically are also theories that aggregate, to

35. The comments of an anonymous referee have helped me to clarify the structure of my argument.

36. An anonymous referee directed my attention to the need to make this clarification.

categorize PBC as maximizing might mistakenly be taken to suggest that PBC implies that there is some such aggregate. To avoid the confusion, it may make sense to avoid categorizing PBC as a form of maximizing consequentialism to begin with.<sup>37</sup>

In this connection, one final point should be made. Although PBC can, I believe, be extended to address the equality problem, the way I will suggest (in Sec. II below) that PBC should be extended does not involve putting equality, as one value, together with other values, for example, aggregate well-being, to produce a calculation of the "overall good" of a particular alternative.<sup>38</sup> Thus, the extension I will suggest does not involve the idea that more equality will create more value that will in turn in effect supercharge individual—or aggregate—levels of well-being. The numbers displayed in the various tables contained in this article—which numbers already reflect the fact that the incidents of various inequalities can affect well-being—are correct, according to the extension I will suggest, as they stand.

Thus, the extension of PBC that I will suggest does not suppose that equality and well-being, or aggregate well-being, are commensurable values. According to the approach that I will suggest, equality—in those contexts in which it is important at all—will be a matter of distribution, and well-being a matter of what it is that is to be distributed. This fact about PBC could be considered a problem if PBC included the conventional, aggregative idea that assessing choices requires a ranking of alternatives in terms of their relative betterness—requires, that is, an account of "X is at least as good as Y is." But it doesn't. Rather, PBC—in particular EMP, IMP, ECP, and ICP—requires, for each person, rankings of alternatives in terms of their betterness for that person. What PBC needs, then, is not an account of "X is at least as good as Y is" but rather an account of "p has at least as much well-being in X as q has in Y."

3. *Nonidentity Problem.*—PBC has the capacity to bar the production of "unhappy"—or at least of anguished—persons.<sup>39</sup> But if it is wrong to bring a person into existence who will unavoidably have a life that is more burdensome than not, does the fact that a person's life will *not* be more burdensome than not in itself imply that that person has not been wronged? No—at least, not according to PBC. There is nothing in PBC that permits this generalization. Under EMP, for example, it is

37. Again, I am grateful to an anonymous referee for directing my attention to this point.

38. See n. 22 above (regarding a conception of the "overall good" that would take into account, among other values, equality).

39. See Narveson, p. 73. See also n. 27 above.

not the mere having of a positive level of well-being, but only the maximization of well-being, that exculpates.

To see just how strict the standard PBC establishes in fact is, consider how it applies to Kavka's "slave child" example—an example that constitutes just one version of the so-called nonidentity problem.<sup>40</sup> In that example, a couple is lured to produce a child by a contract that promises \$50,000 for the delivery of that child into slavery. But for the contract, this particular couple would have declined to produce any child together at all. And even had the couple together produced some child or another outside the contract, given the vagaries of human reproduction (what Kavka calls the "precariousness" of existence) any such child would very likely have been a distinct child—a child "nonidentical" to the original slave child. The child is then born and, pursuant to contract, delivered immediately into slavery. The child then proceeds to have a life that is worth living but still a life that is worth much less than it might have been.

It may initially seem that any person-based approach will imply that the child has not been wronged by the couple. For, had the couple not entered into the nefarious contract, the child would, or would probably, have never existed at all, and by hypothesis the child's existence is worth having. So it may initially seem difficult to see—both intuitively and upon a cursory examination of EMP and IMP—why or how the child has been wronged. But if the child has not been wronged, then PAI, on the assumption that no one else has been wronged, implies that no wrong has been done at all.

Any such result would seriously challenge PBC. In fact, however, the argument is defective. It misses the significance under PBC of the fact that, regardless of what agents *would* have done, agents *could* have conferred additional well-being on the very child in fact delivered into slavery since, clearly, they could have both refused to enter into the slave child contract and produced the very same identical child by less pernicious means. The slave child's well-being has not, in fact, been maximized. And this in turn means that EMP will not vindicate what the couple has done. Under the assumption that no one else's level of well-being is affected one way or the other, IMP will, moreover, imply that the child has been wronged. Either way, PAI will let no one off the hook for having produced the slave child. It is true that person-based views distinct from PBC might define personal wronging in terms of whether a given person "would have been" made worse off "had" the

40. Gregory Kavka, "The Paradox of Future Individuals," *Philosophy & Public Affairs* 11 (1982): 93–112. For further discussion of the nonidentity problem, see Parfit, pp. 351–79 (encouraging the search for a "Theory X" that, he projects on the basis of the nonidentity problem, will not take a person-affecting form).

questionable act not been performed. Such views do not contemplate that the failure to maximize the child's well-being has any moral significance at all. But AC and PBC both take the same hard line with respect to the failure to maximize. Both say that moral law demands that agents do the best that they can for people, and neither even hints that it is enough for agents to do whatever they feel like for people as long as they would otherwise have done still worse to those very same people.<sup>41</sup>

More generally, it is true that PBC includes, in the form of PAI, one interpretation of the so-called person-affecting intuition and that that intuition has been widely understood to give rise to the nonidentity problem. However, unlike some other person-based approaches PBC embeds the person-affecting intuition, in the form of PAI, in a theory that contains strong maximizing elements (including EMP and IMP). I believe that this, in turn, means that PBC avoids giving rise to the most crushing forms of the nonidentity problem.<sup>42</sup>

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41. Additional person-based principles introduced in Sec. II below exculpate even in the absence of maximization. But just as the standard set by EMP is strict, so too is the standard set by those additional principles—plenty strict enough to preclude the inference that a positive level of well-being in itself implies that a person has not been wronged.

42. The "prior existence" view is one person-based approach that has been criticized on the grounds of something like the nonidentity problem. See Singer, *Practical Ethics*, pp. 104–5, 185–91. According to the prior-existence view, we are to "count only beings who already exist, prior to the decision we are taking, or at least will exist independently of that decision" (Singer, p. 103). If this view were correct, we would not "count" the slave child since (i) that child is not in existence at the time the questionable act—the choice to enter into the slave child agreement—is made and (ii) it is presumably not the case that the child "will" exist if that choice is not made. It is, of course, hard to see how such a view could be correct. But for the purposes here the only important point is that the prior-existence view has little in common with PBC. According to PBC, a given person—if he or she ever will as a matter of fact come into existence—counts for purposes of making a given choice even if not making that choice will mean that that person as a matter of fact never exists at all. Where PBC does coincide with the prior-existence view in a way that some may find objectionable is in the case of a person—like the hemophiliac and unlike the slave child—whose existence will be unavoidably, irremediably difficult but nonetheless worth having (Singer, pp. 184–85). Is it wrong to bring such a person into existence? According to PBC, in the case where the only alternatives are nonexistence and a defective existence—in the case where, that is, additional well-being is not an option for the individual whose existence is defective—such a choice would be wrong only if the existence is itself truly anguished—that is, so miserable that it would have been better, from the individual's own point of view, never to have existed to begin with. This condition would obviously not be satisfied for the case of the hemophiliac. Person-based consequentialism's treatment of Parfit's "two medical programmes" example is also likely to be controversial (see Parfit, pp. 366–71). For my own part, I find PBC to provide a more plausible analysis of both the hemophiliac and the two medical programs examples than

I have argued that PBC competes well against AC. But until we see how the theory is to be filled out—in particular, how it is to be extended to address the equality problem—any advantage that PBC may have will remain a matter of speculation. After all, the equality problem could reveal some fundamental defect in the basic person-based approach that is far and away more serious than any challenge that has yet been raised against AC. Thus we turn to that problem now.

## II. THE EQUALITY PROBLEM

It has famously been said that consequentialism fails “to take into account the distinctions between people.”<sup>43</sup> This critique is exemplified by the equality problem (example 3). I have argued that the equality problem challenges consequentialism’s basic maximizing idea only if that idea is spelled out in aggregative terms. Spelled out in person-based terms, the basic maximizing idea withstands the challenge. Moreover, PBC avoids the equality problem without abandoning the attractive idea that agents ought to do the most good that they can for people. This means that theorists who have a distaste for equality cannot, in the face

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AC does. For this reason, I find problematic the recent suggestion that, where the genetic or chromosomal disease is one that can be expected to seriously impair the resulting child, “just as nondirectiveness about . . . cases of child abuse and neglect would be indefensible, so too is nondirectiveness [by genetics counselors] about genetic transmission of comparable harmful conditions” (Allen Buchanan, Dan W. Brock, Norman Daniels, and Daniel Wikler, *From Choice to Chance: Genetics and Justice* [Cambridge: Cambridge University Press, 2000], p. 256). The idea that producing a genetically defective child—who, by hypothesis, is “severely impaired” but who will be maximally well cared for, whose life as a result will be worth living and whose existence does not involve a reduction in the well-being of anyone else—is morally comparable to abusing a child in such a way as to cause comparable deficiencies is impenetrable to me. An anguished life is one thing; but a merely defective life is something else; and it seems extremely unclear that it is really “indefensible” for genetics counselors to be “nondirective” with respect to lives of the latter sort. See M. A. Roberts, “Parent-Selected Disability, Present Duties and Future Persons: When Is There a Moral Obligation *Not* to Produce a Genetically Diseased or Disabled Baby?” (on file with author). At the same time, the choice to produce a child with a serious genetic disease may in some cases wrong others and so be “indefensible,” according to PBC, on those grounds. Moreover, when technologies for therapeutic intervention at the genetic level become available, PBC will be the first to require such intervention in certain instances in view of the fact that there is no reason to think that any such intervention in itself will necessarily mark a change in personal identity.

43. To be more precise, Rawls thus diagnoses what he perceives to be the defect of utilitarianism; see Rawls, pp. 27 and 187; see also pp. 22–23 and p. 188, n. 37. See also Gauthier, p. 126 (aggregative theories “suppose that mankind is a super-person, whose greatest satisfaction is the objective of moral action”); and Nagel, p. 134 (the aggregative approach “treats the desires, needs, satisfactions, and dissatisfactions of distinct persons as if they were the desires, etc., of a mass person”).



of PBC, successfully argue that a genuine commitment to equality requires the abandonment of efficiency.<sup>44</sup>

But while PBC leaves room for equality it also leaves us in need of a way to extend PBC. The remainder of this article is devoted to a consideration of just what such an extension should look like. My argument will be that any correct extension of PBC is itself likely to be one that is person based, or “quantificational,” rather than aggregative, or “statistical,” in nature.

#### *A. The Aggregative, or “Statistical,” Approach to Equality*

It is easy to formulate a crude person-based extension of PBC capable of addressing the equality problem. But things quickly get complicated, and statistical extensions of PBC, as we will see, gain appeal.

Thus consider an initial, simplistic extension of PBC that consists of just the following two principles:

a person *p* is not wronged in *X* if *p*’s reduction in well-being from *Y* is accompanied by an increase in well-being in *X* for someone else *q* and *p* is not worse off in *X* than *q* is in *Y*

and

a person *p* is wronged in *X* if there is some *Y* such that *p* is better off in *Y* and no one else is worse off in *Y* than *p* is in *X*.

These two principles, taken together with the rest of PBC, generate a plausible account of the equality problem—namely, that *p*<sub>1</sub> is not wronged in *A* and *p*<sub>2</sub> is wronged in *B* and that *A* is correct and *B* is not.

44. See, e.g., Posner, pp. 3–90 (disputing the notion that equality has an important role to play in moral or legal analysis). The proper reach of equality has been a daunting topic in both law and ethics. The U.S. Supreme Court, e.g., seems perilously close to reading the primary constitutional safeguard of equality—i.e., the equal protection clause of the Fourteenth Amendment—out of the U.S. Constitution altogether. See *McCleskey v. Kemp*, 481 U.S. 279 (1987); *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979); and *Washington v. Davis*, 426 U.S. 229 (1976) (in each case abandoning disparate impact and foreseeability tests in favor of a stringent purposeful discrimination requirement). See also *U.S. v. Morrison*, 529 U.S. 598 (2000) (refusing to recognize congressional authority under the Fourteenth Amendment to enact portions of Violence against Women Act). Only in instances in which the interests of the majority—or a dominant minority—are arguably threatened in some way has the Court in recent years been willing to press the equal protection clause into service. In such cases, equal protection has then been used in ways that thwart governmental efforts to promote equality by, e.g., redressing past discrimination. See, e.g., *Adarand v. Peña*, 515 U.S. 200 (1995) and *City of Richmond v. J. A. Croson*, 488 U.S. 469 (1989) (in each case banning racial preferences in the context of governmental contracting). See also *Bush v. Gore*, 531 U.S. 98 (2000) and *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996). An advantage of the person-based extension of PBC that I will introduce in what follows is that it potentially suggests a practical guide to a meaningful interpretation of the equal protection clause.

But now consider what these two principles have to say about the following example 7, which is just like example 3 except for the addition of two individuals who merely reverse positions between A and B:

*Example 7: Equality Problem in Context  
of Merely Reversing Change*

|                | A | B  |
|----------------|---|----|
| p <sub>1</sub> | 9 | 16 |
| p <sub>2</sub> | 9 | 3  |
| p <sub>3</sub> | 1 | 2  |
| p <sub>4</sub> | 2 | 1  |

Intuitively, the addition of p<sub>3</sub> and p<sub>4</sub> should not change the conclusions we have already reached regarding A and B.<sup>45</sup> But they do. The new principles do not produce the result that p<sub>2</sub> is wronged in B. What is worse, they imply that p<sub>2</sub> is not wronged in B. The initial, crude extension of PBC thus fails.

Other person-based approaches could—and ultimately will—be put forward. However, it may well seem that a statistical approach is tailor-made for cases like example 7 since that approach, which regards personal identity as utterly lacking in any significance, likewise regards merely reversing changes as utterly lacking in any significance. Until the deficits of the statistical approach are identified, it will be hard to motivate the seemingly more arduous task of formulating cogent person-based principles that can competently address both examples 3 and 7.

An examination of the statistical approach is thus in order. The Gini measure of inequality is a good example of that approach. Temkin describes its operation as follows:

In any pair-wise comparison the man with the lower level of welfare can be thought to have a “complaint” regarding inequality. This complaint may seem to be proportional to the difference between his level of welfare and that of the better-off person. How bad a world’s inequality is may seem to depend upon its sum total of complaints (taking into consideration all pair-wise comparisons).<sup>46</sup>

On this view, inequality across a population increases as the sum of the absolute values of the differences between each person’s level of well-being and each better-off person’s level of well-being increases in pro-

45. Vallentyne argues that “merely reversing changes” should not make a difference to the normative evaluation. See Peter Vallentyne, “Equality, Efficiency, and the Priority of the Worse-Off,” *Economics and Philosophy* 16 (2000): 1–19.

46. See Larry S. Temkin, *Inequality* (New York: Oxford University Press, 1993), p. 132. My formulation of the Gini coefficient in what follows is based on Temkin’s own formulation (pp. 129–32).

portion to the size of the population. Thus, the lower the Gini coefficient ( $G(X)$ ), the better things are from the point of view of equality. In symbols,

$$G(X) = (1/2) \sum_{i,j=1}^n |wb(p_i) - wb(q_j)|/n^2 a,$$

where  $wb(p)$  = the level of well-being  $p$  has in  $X$ ,  $n$  = the number of people in  $X$ , and  $a$  = the average level of well-being in  $X$ .

The Gini measure is not person-based in nature. It identifies a characteristic of a complete alternative and does not set standards for the treatment of each person within that alternative. But there is a way to fit the Gini measure into a person-based approach. We need just to limit appeal to the Gini measure to those issues with respect to which PBC proper—that is, EMP, IMP, NP, ECP, and ICP—falls silent. We can say, in other words, that when PBC proper does not itself determine a result, appeal is to be made in its place to facts about equality as expressed by the Gini measure.

When, then, does PBC proper fall silent? The principles that constitute PBC—namely, EMP, IMP, NP, ECP, and ICP—will fail to provide a decision in any trade-off scenario—that is, in any case in which one person's (or, in the case of ECP and ICP, one group's) well-being can be increased only at the expense of someone else's.<sup>47</sup> In all such cases, according to the present proposal, appeal to the Gini measure is to be made.

Consider, then, how this proposal applies to example 7. Since PBC proper remains silent on whether  $p_1$  is wronged in  $A$  or  $p_2$  is wronged in  $B$ , we turn, under the present proposal, to equality. Since  $G(A) = .37$  and  $G(B) = .52$  (rounded), we know that  $A$  is better, regarding equality, than  $B$  is. We can then fit this result into the person-based scheme by taking the view that  $p_1$  is not wronged in  $A$  while  $p_2$  is wronged in  $B$  and finally completing the picture with the inference, from PAI, that  $A$  is permissible and that  $B$  is not.

### *B. Two Problems for the Statistical Proposal*

Two problems quickly arise for the proposal that a statistical extension of PBC is in order. The first problem derives from the fact that well-

47. In the case where  $p$ 's well-being is decreased in  $X$  as compared to  $Y$  by virtue of the fact that  $p$  does not exist in  $X$  but has a good life in  $Y$ , NP, together with PBC's maximizing components, does provide a complete analysis and no appeal to the Gini measure would be in order. I would not characterize such a case as involving a "trade-off." I note that, strictly speaking, ECP and ICP do address trade-off scenarios. Still, they are restricted to the case where the well-being of no one, outside the group whose members merely reverse positions, is made worse off in the alternative that makes more people rather than fewer better off.

being is not the only thing that can be aggregated. Under the statistical proposal, equality is effectively aggregated as well. Thus, the same kind of ill-treatment of the individual that is so problematically associated with AC turns out to be morally permissible on the statistical extension of PBC as well as long as there is a sufficient amount of aggregate equality present in a given alternative. Second, the statistical proposal offers no clear device for distinguishing between morally significant inequalities and what appear to be morally insignificant inequalities.

Example 8 demonstrates the first problem.

*Example 8: Equality and Exploitation*

|       | A  | B  |
|-------|----|----|
| $p_1$ | 16 | 12 |
| $p_2$ | 8  | 12 |
| $p_3$ | 3  | 1  |

Here we see various trade-offs in well-being between A and B. It is not possible to increase  $p_1$ 's or  $p_3$ 's well-being from B, for example, without decreasing  $p_2$ 's. Since PBC proper (EMP, IMP, etc.) therefore does not fully analyze this case, we turn to the Gini measure and find that  $G(A) = .32$  and  $G(B) = .29$  and, hence, that B is better, regarding equality, than A is. We determine then that  $p_1$  is not wronged in B but that  $p_2$  is wronged in A, and finally, under PAI, that B is permissible and A is not.

But the only reason that  $G(B)$  happens to be less than  $G(A)$  is that  $p_1$  and  $p_2$  have exactly equal amounts of well-being in B but not in A. All that equality in B effectively eclipses how devastating a choice B is for  $p_3$ . Plausibly, A is the better choice.<sup>48</sup>

The proponent of the statistical approach might at this juncture take the position that the present proposal relies prominently on the Gini measure and that distinct, more plausible, statistical measures of inequality would extend PBC in more plausible ways. But I think the search for the right statistical device is one that in the end will fail. A logarithmic measure, for example, will do a better job with cases like example 8 because it will give more weight to differences in levels of well-being at the low end of the well-being scale than at the high end.<sup>49</sup>

48. It might be objected that the Gini measure was never intended to be used as a stopgap for a set of person-based principles. This is surely correct. But the aim of the present discussion has been just to determine whether the Gini measure can be used as a stopgap. My conclusion will be that it cannot.

49. Thus, logarithmic measures typically consider a gap in, say, ten units of well-being between two very well-off individuals not to contribute as much toward inequality (or, depending on the theory, toward the "overall good") as a gap of, say, five units between two very badly off individuals. For discussion of the logarithmic approach, see Temkin, pp. 125–29.

But weighting formulae do not cure the basic defect of the statistical approach. A more extreme set of numbers will stump logarithmic theories in the same way that the less extreme set of numbers in example 8 stumps the Gini measure—and for the same reason. Such measures are essentially aggregative in nature; and, just as in the case of AC, the ill-treatment of one individual can be made all right—whitewashed, sanitized—by essentially irrelevant adjustments in the well-being distribution across other segments of the population.

Thus, one problem with any statistical extension of PBC will be that its essentially aggregative nature gives it the capacity to eclipse purely “local” problems. We need a theory that never does that. Unlike statistics, quantifiers thrillingly enable us to say something about each and every person, individually, and what standard of conduct that person is owed, and not about just one particular person or the average person or the mass of all persons.<sup>50</sup> Person-based approaches are, of course, inherently quantificational. This fact suggests that the task of formulating a person-based extension to PBC may be worth pursuing after all.

A second problem as well arises for the statistical proposal. According to that proposal, in any case in which PBC proper is silent—that is, in any trade-off scenario—a decision is to be made by appeal to facts about equality (with such facts being measured, if not by the Gini coefficient itself, then by some suitable statistical theory or another). With respect to some trade-off scenarios (e.g., examples 3 and 7) the idea that we should appeal to equality is an attractive one. However, with respect to other trade-off scenarios the idea that equality should be assigned such a prominent role—or indeed any role—in the calculation of the morally correct choice seems far less plausible.

Example 9 makes this point.

*Example 9: Maximization versus Equality*

|       | A  | B |
|-------|----|---|
| $p_1$ | 3  | 4 |
| $p_2$ | 20 | 1 |

Here, it is evident (and surely any cogent theory of equality will say) that B represents the “more equal” of the two alternatives. Fitting this result into a person-based approach, we obtain that  $p_1$  is wronged in A,

50. There is an analogy between doing normative theory without allowing oneself the device of the quantifier and doing foundations of mathematics without yet having had the quantifier discovered. In both cases, one feels that one is missing an important element in the analysis. Or so Bertrand Russell must have found working without the universal quantifier in *Principles of Mathematics* (1903), chap. 5 (“Denoting”) and chap. 8 (“The Variable”). Alongside the variable and the propositional function, he needed a good analysis of “each  $x$  is  $F$ ” to achieve his desired end.

that  $p_2$  is not wronged in B and, finally, that B is permissible and A is not. But this result seems clearly false. More plausibly, agents should choose A over B.

But now we face something of a puzzle. In connection with the trade-off scenarios in examples 3 and 7, it seemed sensible to appeal to equality for a decision. Why, then, does such an appeal fall so flat in the context of example 9? Why are some trade-off scenarios best addressed by minimizing inequality and others by exaggerating inequality? Why does equality itself appear to be morally relevant in a way that is subtle and fleeting, seemingly critical in some contexts and utterly without significance in others?

We will come back to this question shortly. For immediate purposes, the important point is that it does not seem plausible to say that trade-off scenarios—cases, that is, in which PBC proper falls silent—should always be decided by appeal to facts about equality. This fact leaves us to take one or both of at least two positions. The first is that with respect to some yet-to-be-specified trade-off scenarios equality will determine the correct choice and with respect to others it will not. The second is that what actually determines the correct decision in any trade-off scenario involves facts independent of facts about equality. In the end, I will argue that the right thing to say is that what in general determines the choice for the broader class of trade-off cases involves facts independent of facts about equality. At the same time, I will suggest that for a defined subclass of cases equality is a constant product of those equality-independent facts and can be used (as aggregate well-being can be used in the context of, e.g., examples 4 and 5) as a marker of what the morally correct choice in fact is.

### *C. Structuring a Quantificational, or Person-Based, Approach to the Equality Problem*

Any successful extension of PBC must address the original equality problem (example 3) in a plausible way. Such an extension must also ignore merely reversing changes (of the sort contained in example 7). But it should also keep a close eye out for cases in which it is more important to increase the well-being of someone who is, relatively speaking, destitute than it is to promote equality (such as example 8) as well as for cases in which it appears that equality should be dismissed as a factor altogether (such as example 9). With these constraints in mind, my suggestion is that PBC should be extended in a way that is quantificational, or person-based, rather than statistical, or aggregative, in nature.

One quantificational extension of PBC that seems especially fruitful conceives of agents' normative tasks as being ordered or structured in a certain way. On that approach, agents' very first priority is the securing of a better position for the very least well-off. Once the position of the

least well-off has been secured—once, in other words, agents have narrowed their options to those that have already been determined not to wrong the least well-off—agents may then disregard, for purposes of choosing from among their remaining options, any effects their choices may have on that particular class of individual. Agents may then focus exclusively on the securing of a better position for the next least well-off. And so they may proceed up the ladder—until they may even find themselves, in certain circumstances, required to redress the “plights” of those who are among the most well-off.<sup>51</sup>

Such a structured approach has considerable value. First, it provides a practical road map for formulating a person-based extension to PBC capable of addressing complex equality problems. Consider, for example, example 7. The structured approach makes it the agents’ first priority to secure the positions of the least well-off members of a given population. Thus in example 7 the first priority would be to avoid wronging  $p_3$  in A and  $p_4$  in B. Application of a base principle will imply that agents accomplish this first priority whether they opt for A or for B. Agents may then turn to the status of the next least well-off. In example 7, the next least well-off person in A is  $p_4$ . But we already know, from EMP, the status of  $p_4$  in A, as well as the status of  $p_2$  in A and of  $p_1$  and  $p_3$  in B. The only open issues, then, are whether  $p_1$  is wronged in A and whether  $p_2$  is wronged in B. These final issues will be settled by application of an inductive, or recursive, principle that will rely in part on information regarding who has been wronged and who has not previously generated by the base principle. As we will see, application of the recursive principle will ultimately produce the essential bit of information that  $p_1$  is not wronged in A but that  $p_2$  is wronged in B.

51. The person-based extension of PBC that I will describe—in particular the idea that agents should first do the best that they can for the least well-off; second do the best that they can for the next least well-off; and so on—constitutes a person-based version of the “leximin” principle. Many different impersonal (but nonaggregative) formulations of leximin—leading to varying results—have been suggested. See, e.g., Rawls, pp. 152–61; Sen, “On Weights and Measures: Informational Constraints in Social Welfare Analysis,” *Econometrica* 44 (1977): 1539–72; and Bertil Tungodden, “Egalitarianism: Is Leximin the Only Option?” *Economics and Philosophy* 16 (2000): 229–45 (“positions instead of persons will be the basic element in the conditions we introduce”). See also Vallentyne, “Equality, Efficiency, and the Priority of the Worse-Off,” pp. 1–19 (describing modified version of leximin). Temkin observes that leximin does not constitute a plausible theory of equality since its results (as example 9 indicates) can run counter to equality (Temkin, p. 32). But perhaps we do not need such a theory. For the class of cases with respect to which it initially appears that equality is properly raised as an issue (such as examples 3 and 7), the person-based extension I will describe manages to imply that what is in fact the “more equal” alternative is the correct alternative. At the same time, in cases where considerations of equality would seem to steer us in the wrong direction altogether (as in example 9) that extension chooses the “less equal” alternative.

A structured approach has a second value as well. It can explain why it is that in some trade-off scenarios equality seems so important when in others it does not, thus providing an account of the subtle and fleeting role equality seems to play in the analysis of specific cases. Thus a structured approach suggests that it does not really matter what is going on in more well-off sectors of a given alternative—in regards to well-being or equality—if in a specific less well-off sector even one individual is badly exploited—in effect sacrificed—for the benefit of others who would not themselves, were things reversed, be left in such terrible straits at all. Thus, in example 8 all that aggregate equality contained in B is not enough to make B the correct choice in view of (i) B's terrible consequences for  $p_3$  and (ii) A's terrible consequences for no one. A structured approach likewise suggests that it really doesn't matter what is going on in more well-off sectors of a given alternative if in a specific less well-off sector even one individual can in effect be saved. Thus, in example 9 all that aggregate inequality contained in A is, plausibly, morally irrelevant in view of the fact that not even one individual is made as badly off in A as ~~X~~ is in B.

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A like account can be given of examples 3 and 7. In those cases, it may well have initially seemed that equality was the telling fact—that is, that A in each case was the morally correct choice because individuals enjoyed more equality in A than in B. But we can now discern a distinct telling fact: in both examples 3 and 7, some individual is left badly off in B for the benefit of others who, were things reversed and were A to obtain rather than B, would not themselves have been left so badly off at all. This fact in itself plausibly suffices for the finding in both cases that A is the morally correct choice and B is not.

This latter point is, of course, not directly a point about equality at all but rather about a targeted form of person-based maximization—maximization, that is, of the level of well-being of the least well-off. But this does not mean that equality is irrelevant to morality. It just means that with respect to a certain class of trade-off cases (including examples 3 and 7), but not with respect to all trade-off cases (including examples 8 and 9), concern for the plight of the least well-off and concern for equality turn out to be coextensive. Hence the fleeting and subtle role equality has in moral analysis.

When, in general, can equality be used as a reliable marker of the morally correct choice? So long as total aggregate well-being in one alternative X is at least as great as total aggregate well-being in a second alternative Y, and assuming that X and Y contain exactly the same people, the fact that the least well-off in X enjoy more equality with their betters will of necessity mean that X and not Y complies with the dictates of the structured approach. Aggregate well-being, similarly, often serves as a marker of the morally correct choice—as it does in, for example,



examples 4 and 5. But neither equality nor aggregate well-being is a perfectly reliable marker of the morally correct choice. In many other cases, the more precise operations of the person-based, structured approach will of necessity be pressed into service.

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A structured, person-based approach can be described in more formal terms. We can begin by ranking classes of individuals in terms of levels of well-being relative to a given alternative. Thus, let  $R_{1,x}$  be the class consisting of the least well-off individuals in  $X$ . That is,

$R_{1,x} = \{p \mid p \text{ does or will exist in } X \text{ and no one who does or will exist in } X \text{ has less well-being in } X \text{ than } p \text{ does}\}.$

The expression  $R_{2,x}$  can be defined as the set of the next least well-off in  $X$ ; and so on. More generally for  $n > 1$ :

$R_{n,x} = \{p \mid p \text{ does or will exist in } X \text{ and, for any } q \text{ who } \text{is a member of } R_{1,x} \text{ to } R_{n-1,x}, p \text{ has more well-being in } X \text{ than } q \text{ has in } R_{n,x} \text{ and there is no } r \text{ who does or will exist in } X \text{ who has more well-being in } X \text{ than } q \text{ and less than } p\}.$

According to the structured approach, agents are first to turn their attention to the plights of the least well-off—that is, to the plights of the members of  $R_{1,x}$ . For this reason, we will begin by focusing on just those individuals. Under the same-person assumption—the assumption, that is, that each person who exists in  $X$  also exists in each alternative to  $X$  and vice versa—we can then introduce a single principle—a base principle—that provides necessary and sufficient conditions for when a member of  $R_{1,x}$  is wronged at  $X$ :

*Base principle (BP):* If  $p$  is a member of  $R_{1,x}$ , then  $p$  is wronged in  $X$  if and only if there is some  $Y$  such that  $p$  has more well-being in  $Y$  than in  $X$  and, for each  $q$  who does or will exist in  $Y$  and has more well-being in  $X$  than in  $Y$ , either

- (i)  $q$  has more well-being in  $Y$  than  $p$  has in  $X$ ; or
- (ii)  $q$  has exactly as much well-being in  $Y$  as  $p$  has in  $X$  and  $R_{1,x} > R_{1,y}$

One implication of BP is that if any  $q$  has less well-being in  $Y$  than  $p$  has in  $X$  then  $p$  is not wronged at  $X$ .

The base principle generates a plausible account of example 3—of, that is, the original equality problem. According to BP,  $p_2$  is wronged in  $B$  because there is some alternative,  $A$ , in which everyone is better off than  $p_2$  is in  $B$ . Moreover,  $p_1$  is not wronged in  $A$  because, although  $p_1$  has more well-being in  $B$ ,  $p_2$  does not have as much well-being in  $B$  as  $p_1$  has in  $A$ . From PAI, then, we obtain that  $A$  is morally permissible and  $B$  is not.

The base principle, or BP, also tells us much about example 7. Thus, BP implies that  $p_3$  is not wronged in A and that  $p_4$  is not wronged in B. But what about A? An adequate extension of PBC should also consider the plights of those who are not among the *least* well-off. Thus, in addition to BP we must also introduce a recursive principle capable of addressing the situations of those who exist at a given alternative but do not belong to  $R_{1,X}$ . Again under the same-person assumption, we may say that:

*Recursion principle* (RP): If  $p$  is a member of  $R_{n,X}$  ( $n > 1$ ), then  $p$  is wronged in X if and only if there is some Y such that  $p$  has more well-being in Y than in X and, for each  $q$  who does or will exist in Y and has more well-being in X than in Y, either

- (i)  $q$  has more well-being in Y than  $p$  has in X; or
- (ii)  $q$  has exactly as much well-being in Y as  $p$  has in X and  $q$  is a member of  $R_{m,Y}$  and  $R_{n,X} > R_{m,Y}$ ; or
- (iii)  $q$  has less well-being in Y than  $p$  has in X and  $q$  is not wronged in Y.

The idea behind the recursive clause (clause iii) is roughly that a given person  $p$  can be wronged at X even if any Y in which  $p$  has more well-being contains some  $q$  who is even worse off in Y than  $p$  is in X as long as  $q$  is not wronged in Y. Perhaps many in Y are less well-off than  $p$  is; perhaps the well-being of many in Y has not been maximized. As long as, by application of BP or RP, or indeed by application of EMP, IMP, ECP, and ICP (or, if we eliminate the simplifying assumption and rewrite RP, by application of NP), such individuals have not been wronged in Y,  $p$  is essentially owed Y and wronged if saddled with X in its place. In all other cases,  $p$  is not wronged in X.

The recursion principle, or RP, completes the analysis of example 7. First, consider the status of  $p_2$  in B. In B,  $p_2$  is wronged since those individuals— $p_1$  and  $p_3$ —who are better off in B than in A each satisfy one of clauses i–iii. Since  $p_1$  has more well-being in A than  $p_2$  has in B,  $p_1$  satisfies clause i. Clause iii is satisfied by  $p_3$  since, by operation of BP,  $p_3$  is not wronged in A. We can then turn to the status of  $p_1$  in A. Person  $p_1$  is not wronged in A since there is someone— $p_2$ —who is both better off in A than in B and avoids satisfying any of clauses i–iii. Clause i is not satisfied by  $p_2$  since  $p_2$  does not have more well-being in B than  $p_1$  has in A. Clause ii is not satisfied by  $p_2$  since  $p_2$  doesn't have exactly the same amount of well-being in B that  $p_1$  has in A. Finally, clause iii is not satisfied by  $p_2$  because  $p_2$  (as RP has previously implied) is wronged in B. Since we already know, from EMP, that  $p_2$  and  $p_4$  are not wronged in A, we may in the usual way conclude that A is the correct choice.

The analyses of examples 8 and 9 generated by BP and RP are just

as plausible as the analysis of example 7. For both examples 8 and 9, A is permissible and B is not.<sup>52</sup>

### III. CONCLUSION

My claim in this article has been that PBC competes well against AC. To support this claim, I have presented two arguments. The first is that PBC does a better job than AC addressing a set of problem cases that together seriously challenge AC. In contrast to the aggregative approach, PBC enables us to make immediate sense out of examples 1–3. Thus we can resolve the infinite population problem, think clearly about existing and future persons on the one hand and never-existing persons on the other and, perhaps most important, avoid the equality problem. The second argument is that PBC does exactly as good a job as AC addressing a second set of cases—a set of important cases that together nicely reveal just why AC has been such an attractive theory to so many for so long. Thus PBC, like AC, preserves the basic and appealing idea that agents ought to do the most good that they can for people.

I have claimed, in addition, that PBC can plausibly be extended so that it not only avoids the equality problem (though that in itself is an important triumph) but actually provides a plausible account of that problem. I have argued that an extension of PBC should itself be quantificational, and not statistical, in nature. We therefore should not be in the market for an aggregative theory that merely repeats the apparent mistakes of AC but rather for a theory that is fundamentally person-based in nature. The particular person-based extension that I have sketched requires agents to engage in a structured, targeted form of person-based maximization, according to which the first priority is always to rectify the plights of the least well-off. Though not per se a theory of equality, the extension that I have suggested can address both the original and more complex equality problems as well as provide an indication of when it is that equality has moral significance and when it does not.

My article does not claim to have refuted AC in any decisive way. I leave open the possibility that the problem cases can be somehow defused or that improvements on AC can be made. Nor have I made the claim that PBC is a finished theory. The fact is that many issues relating to PBC remain unsettled. Thus, BP and RP, the new principles by which I have proposed to extend PBC, are themselves heavily re-

52. I note that BP and RP to some extent overlap EMP, IMP, ECP, and ICP. I also note that the extension of PBC represented by BP and RP will hardly be uncontroversial. But my purpose here is not to argue decisively in favor of any single person-based extension of PBC but rather to show (i) that statistical extensions of PBC raise serious issues and (ii) that plausible, person-based extensions are available.

stricted. Moreover, in addition to those I have introduced here, additional, person-based, maximizing principles may well abound.

But none of these are decisive points against PBC. The main thing is that we have seen just how, and how well, PBC competes against AC. This showing in itself demonstrates a plausible case for PBC.