Inconstant Justice

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It is often taken for granted that justice requires us to treat like cases alike. But some very ordinary considerations seem to suggest that there are contexts in which treating like cases alike – where that includes, as it surely must, treating the same considerations as decisive – is a dereliction of duty. Faced with a series of cases in which what is good for one of my two children is bad for the other, and vice versa, and where the goodness and badness are relevantly the same in each case, it would be wrong to treat the fact that my first child will be benefited as a decisive reason for doing what is good for them in each and every case, leaving the fact that my second would be benefited (to the same extent, and in a relevantly similar way) by an alternative course of action 'trumped' in each case. In these very familiar contexts, appealing to precedent ("I'm sorry, but we should do what is good for your brother this time, again, *because* we decided on the basis of what is good for him last time, when the stakes all round were the same") would be morally problematic, to say the least. So, there is at least some kind of limit to the plausibility of the principle that like cases ought to be treated alike.

Indeed, as the example I've just employed suggests, we might be under an obligation *not* to treat like cases alike – and we might be under such an obligation more often than is commonly thought. Section 1 interprets the idea that we ought to treat like cases alike. Sections 2 and 3 introduce and motivate an argument for the view that we could have an obligation not to treat like cases alike. (Among other things, that argument will explain what is wrong with appealing to precedent in the example above.) Sections 4–6 defend the argument.

1. Treating Like Cases Alike

A commonly endorsed principle of moral and legal reasoning is that like cases should be treated alike.[1] A bit more precisely, the idea is probably this:

[1] See e.g. Hart ([1961]: Chapter 8) and Worthington (2006: pp. 4, 6) for the legal context. See also Dworkin ([1986]: p.165 and Chapters 6 and 7, esp. p.180). More generally, see e.g. Feinberg (1974: p.310). Arguably, this principle is what Aristotle is getting at in his talk of 'proportional' justice as 'equality of ratios' at *NE*: 1131a30-b20. For the idea that binding precedent or 'stare decisis' in law does not rest on or require the principle that like cases are to be treated alike, see Schauer e.g. (2018). I think the argument I explore below speaks against stare decisis to just the same extent that it speaks against a requirement to always treat like cases alike, even if Schauer is right (which

> if cases *a*, *b*, …, *n* are similar in respect of considerations *F*, *G*, …, *N* , which in each case exhaust that case's normatively significant aspects, then agents act wrongly if they do not treat each of *a*, *b*, …, *n* in the same way.[2]

Let's say that I treat cases in the same way, in the relevant sense, in so far as

(i) I take the same considerations into account in my deliberations about those cases, and

(ii) I reach the same conclusion (modulo substitution of e.g. Piglet for Pooh, if in one case it is Pooh whom I am trying to decide how to treat, and Piglet in the other), and so act in the same way in those cases (modulo relevant substitution of particulars) on the basis of that deliberation, having weighed or otherwise ordered those considerations in relation to each other in the same way (e.g. seeing *F* as more significant than *G* in both cases, or seeing *G* as silencing *F* in both cases, etc.), taking the same considerations to be decisive.

I will not distinguish much between applications of our principle in moral and in legal (and other) contexts. The examples I employ are drawn from both interpersonal moral and legal settings, and I hope that they make clear that the argument I am exploring has application in both contexts (and thus in others too, presumably).

In moral theory, discussion of the principle that like cases should be treated alike has often been bound up with discussion of the 'universalisation' or 'universalizability' of moral judgments.[3] But the principle I am interested in might be restricted to telling us about how *I* ought to treat relevantly similar cases, and might have nothing to say about – and no implications for – how others should

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I doubt, since I am more sanguine than he is about admitting the existence of 'natural similarities' (2018: p.446)).

[2] This is naturally read as the claim that *all* like cases should be treated alike, but could be read as saying just that *some* like cases should be treated alike. I will be exploring an argument which purports to show that we have an obligation to treat *some* relevantly similar cases differently (thus conflicting with the claim that we ought to treat *all* like cases alike). But, at the admittedly unlikely limit, the argument can easily be seen to extend to show that we might have an obligation to treat *all* the cases which are similar differently from each other, if there are as many considerations apt to be taken as decisive as there are cases in the set of cases which are alike (this will make sense once the argument has been given, in §§2-3, below) (thus conflicting with even the weak claim that we always ought to treat *some* like cases alike).

[3] For a discussion of our principle linking it, without a second thought, to the requirement of universalizability, citing Sidgwick as well as Hare, and discussing Winch [1965], see e.g. Zaibert (2021). (Note that a requirement for consistency in *judgement* is not the same as, and doesn't immediately entail, a requirement for consistency of action or of treating cases alike in general (Gillespie (1975: §III, esp. pp.156-7)).)

treat cases of similar kinds (or how I should think that they should treat those cases).[4]

Various arguments for rejecting the principle that like cases are to be treated alike have been offered which don't rely on conflating that principle with ideas about the universalisation of moral judgement, and which settle for concluding that we are sometimes *permitted* not to treat like cases alike.[5] I will not say anything much about them, except to note, first, that in purporting to show that we have might have an obligation not to treat like cases alike, the argument I will explore here goes much further and, second, that that some of them are subject to an objection which my argument won't be subject to, as I will explain in Section 5.

2. An Obligation not to treat Like Cases Alike

The idea I want to explore is that the existence of conflicting considerations which are balanced or incomparable in cases which are alike gives rise to obligations to treat those cases differently, by treating different considerations as decisive in different cases.[6] The argument starts from the existence of sets of cases such that:

(a) in each case all and only the same considerations are in play (i.e. all and only the same considerations which are relevant for the kind of deliberation in question: moral, legal, political etc. considerations);

[4] Compare the (supposed) requirement of practical rationality that my intentions be consistent, in that they could in principle be jointly satisfied, which doesn't imply that my intentions should be consistent with the intentions of others. Our principle might very plausibly be interpreted as including only each agent's own treatment of cases in its scope, at least in some legal contexts e.g. requiring like treatment of relevantly similar cases *within jurisdictions*, but not *across* jurisdictions (cf. Dworkin ([1986]: pp.185-6); Strauss (2002: §IV.3)), and some moral ones e.g. requiring each parent to treat each of their own children similarly to each of *their* other children in relevantly similar cases, but not requiring *all parents* to treat their children as others do in those kinds of cases.

[5] See e.g. Gillespie (1975), Lavin (1988), Strauss (2002), and Marmor (2005). (Both Lavin and Levvis (1991), who responds, seem to conflate *judging* like cases alike and *treating* like cases alike (where that includes how we act in those cases), in the way Gillespie (1975: (1975: §III) warns against.)

[6] Marmor (2005) has also noticed the relevance of incomparable or balanced considerations, in a legal context, arguing that all the relevant reasons in a case can underdetermine which judgement is the correct one, leaving room for discretion, and that since this is so in *each* similar case involving the same intrinsically indecisive conflicting reasons, it is permissible to treat relevantly similar cases differently. (He also makes a similar case on the basis of vague concepts, with respect to which interpretive discretion is permissible.) But whilst Marmor's argument bears an obvious similarity to mine, he offers only the scantest suggestion in passing that there might be grounds for an *obligation not to* treat like cases alike, as opposed to a mere permission not to do so; and even that suggestion – about the *desirability* of experimentation and of accommodating disagreement – barely *implies* that there might be a such an obligation. (2005: p. 35) Marmor himself does not seem to notice that implication, or at least he doesn't comment on it.

(b) those considerations point in different directions from each other, recommending incompatible courses of action or conclusions (they are *conflicting*); and

(c) they are either incomparable or balanced (at least as far as the agent can discern).[7]

We might argue straightaway, in Marmor's (2005) vein, that if (a)–(c) obtain then there is room for agents' preferences to be decisive on a case-by-case basis (as long as they do what *some* consideration recommends in each of the cases), since by stipulation these are sets of cases in each of which no considerations rationally determine what to do. We might then conclude that it is permissible not to treat these like cases alike, since preference (which may permissibly determine how cases are treated here) might vary from case to case.[8]

But, first, that argument would be question-begging against the principle that like cases ought to be treated alike. At least, it could only be permissible for preference to be decisive in further cases if there isn't a decisive reason to treat further cases in the same way as relevantly similar prior cases have been treated (even if the treatment of those prior cases was permissibly based on preference), which is to say if the principle that like cases ought to be treated alike is false.

Second, even if that argument weren't question-begging, it would only establish that the principle requiring us to treat like cases alike is false. It would not establish an obligation not to treat like cases alike.

However, a non-question-begging argument which does promise to establish an obligation not to treat like cases alike is available if there are sets of cases such that (a)–(c) obtain *and* such that

(d) more than one of the conflicting considerations in play in each case are such that it would be wrong to systematically treat them as non-decisive.[9]

It then follows that it would be wrong to treat the same consideration(s) as decisive in each case of the set – which is to say that we have an obligation not to treat each of the cases in that set alike, even though they are relevantly similar.

[7] For the sense of incomparability I have in mind, see Chang (2015). Incomparability is stronger than incommensurability: incomparability entails incommensurability, but the reverse entailment fails.

[8] 'Preference[s]' might be misleading, especially when considering legal contexts (as Marmor is). But it need not mean that how an agent (judge) treats a case is determined by their likes and dislikes. It might mean that they pump for a solution, not considering themselves constrained by rationally decisive reasons, so on the basis of *something else*, the nature of which is left open.

[9] Perhaps a further condition is also required, namely: (e) none of the conflicting considerations in each case silence all of the other considerations which are such that it would be wrong to systematically treat them as non-decisive. But this condition may not be required. See **n.12** and accompanying text, below.

This conclusion follows because to treat like cases alike is to treat the *same* considerations as decisive in each of those cases, and that is precisely what we ought not to do if at least two relevant conflicting considerations, *F* and *G*, are each such that it would be wrong to treat them as non-decisive systematically: if only one consideration were like that, it could be treated as decisive in every case without doing wrong; but since (at least) *F* and *G* are both like that, yet cannot both be treated as decisive in any one case (since they are conflicting), the only way to avoid doing wrong is to treat each as decisive in *different* cases, so that neither is *systematically* treated as non-decisive.

At least, the conclusion follows if it is wrong to treat the same considerations as decisive in each case *of the set in question*. Of course, if it is simply wrong to treat the same considerations as decisive in *all* cases, it is possibly still permissible to treat them as decisive in all the cases *in a particular set* satisfying (a)–(c). But plausibly there are sets of relevantly similar cases of which it is true that it would be wrong for some agent to treat the same consideration(s) as decisive in every case *of that set*. So, rather than glossing 'wrong to systematically treat them as non-decisive' as wrong to never treat them as decisive, we can – and must, for the argument to work – gloss that phrase as wrong not to treat them as decisive in any cases of the set of relevantly similar cases satisfying (a)–(c).

This argument is not question-begging in the way the previous one was. The extra assumption it employs – namely that there are sets of cases such that more than one consideration relevant to each case is such that it would be wrong to systematically treat it as non-decisive – can be independently motivated. I will suggest how it might be motivated in the next section.

3. Sharing Decisiveness Around

Remember that we are concerned with sets of cases in which the same *conflicting* considerations are in play. This means that not all the considerations in play can be treated as decisive in all the cases.[10] But it might be very important that all of them – or at least more than one of them – 'get a turn' at being treated as decisive.

More than that, it might be very important that each consideration gets a turn at being treated as decisive *when the other balanced considerations are in play*, and not only when they aren't, since nothing else could properly express or constitute the appropriate approach on the part of the agent to the *relative* importance of each consideration. This relative importance might be a matter of

[10] You might think that if there are multiple *non*-conflicting considerations in play then not even all of them can be treated as decisive, since treating as decisive is a matter of prioritising considerations, whether they conflict or not. But when only non-conflicting considerations are in play each could be treated as decisive in a sense involving them being treated as *over-determining* the right or permissible choice(s): each is treated as having a status such that if the others hadn't been in play, it would have been decisive. However, treating as over-determining like this requires that each of the over-determining considerations taken individually determines the same choice(s) to be the right or permissible one(s), so conflicting considerations cannot be treated as decisive in this over-determining sense.

equal importance. Or, if the considerations are incomparable, each might deserve a turn at being treated as decisive on the basis that nothing other than giving each a turn could properly express or constitute the appropriate approach on the part of the agent for some other reason. Perhaps the very fact that a particular consideration in play in various cases is *not* outweighed by the other considerations also in play, and the fact that recognising this matters, makes it important to give it a turn at decisiveness. Again, it would not be enough to simply treat each incomparable consideration as decisive in just any old case: the *relational* fact that *F* is not outweighed *by G specifically* (and vice versa) would require treating *F* as decisive in at least some cases where *G* is also in play (and vice versa).

I will expand on these suggestions, developing them in various ways, in the remainder of this section.

3.1 Manifesting Conflicting Commitments

Here is what I will call the *Manifesting Argument*. When we have an obligation to manifest or express our recognition of the significance of each of a set of conflicting considerations (or of at least more than one of them), and when manifesting or expressing our recognition of the significance of each of those conflicting considerations requires us to treat each of them as decisive in at least some cases, we have an obligation to treat each of them as decisive in at least some cases – and, for the reason sketched two paragraphs ago, not only in *some* cases, but specifically in some relevantly similar cases, or cases which are alike.

Do we have an obligation to *have* conflicting commitments (i.e. to recognise the significance of conflicting considerations)? And if so, do we have an obligation to *manifest* or *express* those conflicting commitments? And if so, does doing so require giving each conflicting consideration a turn at decisiveness? If the answer to any of these questions is no, then the Manifesting Argument fails to establish that we ought not to treat the same considerations as decisive, or that any particular conflicting considerations are such that they ought not to be treated as non-decisive systematically. But I think that the answers to all three questions are plausibly yes, and I will explain why, in the next three sub-sections.

3.1.1 An Obligation to Have Conflicting Commitments

I'll deal with the first briefly, because it's too big an issue to do justice to here. Value pluralists have long argued that the goods worth aiming for cannot consistently be pursued all together. (e.g. Berlin [1988]; Stocker (1990).) Their being right about that doesn't yet get us what we need for the Manifesting Argument, of course: it might be that there are conflicting goods, but that we don't have an obligation (or indeed rational or moral permission) to care about any pairs of goods which conflict, so we don't have an obligation to have conflicting commitments (it's just that there are conflicting goods from which we permissibly choose a non-conflicting set of commitments or things to care about).

Nonetheless, I think it is plausible that we *do* have such an obligation. The limits of our capacities for attention, and various other limitations, might (or might not) stand in the way of our each having an obligation to see *all* kinds of goods as considerations in favour of or counting against things; but to see only an impoverished set of goods as having that status, given normal capacities for apprehending goods *as* good, is plausibly a form of negligence which ought to be avoided. And even if this isn't true of moral agents in relation to moral goods, then it is much more plausibly true of aesthetes in relation to aesthetic goods, judges in relation to legal goods, and managers and leaders in relation to the goods appropriate to their roles. In all these cases, a person is negligent if they apprehend and give reason-giving status to some but only a small proportion of the relevant kinds of goods in the relevant domain. (Remember I said that I am interested in whether we have an obligation not to treat like cases alike in various different domains – moral, legal, political, and others – so if a crucial premise for the Manifesting Argument (or any other argument) is plausible only for e.g. the legal domain and not the moral, then that doesn't matter for my purposes.) Plausibly, then, given the extent of appreciation of goods required to avoid negligence, appreciation of conflicting goods will be required.

3.1.2 An Obligation to Manifest or Express (Correct) Commitments

So much for an obligation to *have* conflicting commitments. Why should we think that there is an obligation to manifest or express all of those commitments, or at least enough of them that one ought to manifest or express some conflicting ones? Presumably there is no obligation to manifest every commitment one has.

Indeed there isn't. But reflection on what grounds *some* obligation to manifest one's commitments suggests that there is an obligation to manifest quite a range of them – and perhaps especially a range of conflicting ones. I will start with the fact that we often owe reassurance to people – especially when manifesting only a partial selection of our commitments is apt to raise concerns or cause upset, as is particularly likely when we only manifest commitments of one kind which conflict with commitments of another kind which go unmanifested.

So, consider our obligations of reassurance to those whose wellbeing depends, at least in some small but significant part, on their perception of our character or values. Plausibly those people include those with whom we are in romantic relationships, close friends, and those with whom we are involved in normally non-antagonistic immediate family relationships. But the concern involved need not be reciprocal: unfortunate as it might be in various ways, if someone invests a great deal of emotional interest in my character or values, despite my having little or no interest in theirs, I might have an obligation to reassure them that I value the right kinds of things since their wellbeing depends upon their knowing that I do.

Then there are those whose plans or other interests depend upon knowing that we value the right things, and these need not only be people who are invested in us as *people*: they include those whose investment in us is entirely to do

with our ex officio role (their plans or interests depend upon knowing that we will perform some official duty responsibly). In so far as their knowledge that we will perform our official duties responsibly depends in part upon their confidence in us as people who are sensitive to more or less the full range of the relevant considerations, reassurance of our being such people matters for their wellbeing, to the extent that their plans or interests are important for that wellbeing.

In all these cases, and others, it is relatively uncontroversial, I think, that we have *some* obligations to offer reassurance as to our proper commitments – grounded in just the same way as any obligation to do what we reasonably can to protect the wellbeing of those who depend upon us. If a romantic partner, or close friend, or stranger who needs to know that I will do my job properly will be harmed if they come to think that I don't value what I ought to, and if that can be avoided or alleviated by my offering sincere reassurance that I *do* value what I ought to, then I have some obligation (albeit defeasible, if you like) to offer that reassurance. And that includes not only *saying* what is required to offer reassurance, but also *doing* what is required beyond merely reporting my commitments. Many people believe that actions speak louder than words, and simply won't be reassured (whether or not they should be) by mere words. So, our obligation to manifest our commitments is, at least sometimes, an obligation to do more or other than simply say that we value something.

The idea that we have an obligation of reassurance – where 'we' refers to those involved in dispensing justice, at least – is, I think, behind the notion that it is not enough for justice to be done, but that it must be *seen* to be done. So, in the legal context and others to which that slogan is taken to apply, the idea that there is an obligation of reassurance is far from eccentric. Nor is it remotely eccentric in the domain of personal relationships, or in the political domain. So, whichever domain we are interested in, justifying the Manifesting Argument's assumption that we might have obligations to manifest or express our commitments by appealing to ordinary reasons of reassurance is unproblematic.

Of course, The Manifesting Argument needs more: not only does it need it to be that we might have obligations (of reassurance, or otherwise grounded) to manifest our commitments generally; it requires specifically that we might have obligations to manifest *conflicting* commitments. And we haven't quite argued for that yet.

The extra argument is not hard to come by, though. If (as per the assumption canvassed in §3.1.1, above) there are in fact conflicting goods grounding an obligation to have conflicting commitments, the sort of reassurance we owe to others might easily be reassurance that we have those conflicting commitments: if others need reassurance that we are committed to more or less the full range of things which matter, and what matters is incoherent, then others need reassurance that we have conflicting commitments. So, our obligations to manifest our commitments grounded in reassurance might be discharged only if we manifest more or less the full range of our conflicting commitments.

It remains to see whether manifesting more or less the full range of our conflicting commitments requires giving each of them a turn at decisiveness, and in particular whether it requires giving each of them a turn at decisiveness in relevantly similar cases, though.

3.1.3 How to Manifest or Express (Conflicting) Commitments

Cases which are alike in respect of featuring all and only the same relevant considerations, weighted or otherwise related in the same ways in each case, are on the front line, when it comes to manifesting conflicting commitments. In cases which are alike in this respect, more than in others, treating particular considerations as decisive is apt to imply something about how seriously various considerations are being taken. Cases in which competing considerations are not in play, or in which they are relevant but are related or properly weighed in such a way that a decisive consideration emerges on the basis of *strength* or *silencing* or some such, will not be so apt to imply something about *how we value* a consideration, in the sense I have in mind.

If I am equally sensitive or responsive to the demands of justice and to the demands of beneficence, for example, I would be expected to choose the course of action which serves justice, even though it doesn't serve beneficence, when required to deliberate about what to do in a case in which the reasons of justice are simply stronger or more pressing than (or silence) the reasons of beneficence. So, nothing much is conveyed with respect to my relative sensitivity or responsiveness to those different considerations by the fact that I treat reasons of justice as decisive in such a case (that is, whether I am more sensitive and responsive to justice than to beneficence, or less, or just as sensitive and responsive to each).

On the other hand, faced with a set of cases in which the reasons of various kinds are balanced (perhaps within a range, and as far as can be discerned), the fact that I systematically treat a particular consideration as decisive plausibly implies (though of course it doesn't entail) that I am more sensitive or responsive to that consideration than to those of equal strength which I do not treat as decisive in any of the cases in that set. In this way, how I treat such cases is particularly significant in respect of manifesting – or at least being apt to be taken as manifesting – *relative* degrees of sensitivity or responsiveness to various considerations.

In no particular case in which conflicting considerations are balanced can I avoid treating one or other as decisive, and thus acting in a way apt to make me seem to be more sensitive or responsive to one over the other, except by simply refusing to decide. This might mean that refusing to decide is what I ought to do, in some cases, because I ought to avoid acting in a way apt to make me seem to be more sensitive or responsive to one consideration than to the other. But even if that is true in some cases, there are also bound to be cases in which refusal to act is not a way of opting out of conveying the impressions about my commitments which I have been describing. In some cases, inaction is one of the options for and

against which there are reasons, of the conflicting kind at issue – so choosing not to act conveys something (however misleadingly) in just the way choosing a particular act would. (Also, as I argue in §4.1, below, there can be decisive reasons not to abdicate responsibility for choosing which are not to do with manifesting our commitments, too.)

It is not that the implications generated by my treating one consideration as decisive over another – in either a single case or across a set of relevantly similar cases – can never be undone, or prevented from arising. I might explain, in so many words, that my treating one consideration over another does *not* reflect any greater sensitivity or responsiveness to it than I have to the other considerations in play, and I might be believed. But it might be difficult or impossible to get a particular audience to accept that my treating one of those considerations as decisive is not, in fact, a manifestation of my valuing some things over others, or of my being more sensitive or responsive to some considerations than I am to others (especially, perhaps, when those with an interest in my treatment of cases are already anxious about my commitments, when reassurance is most needed).[11]

So, if what I have been saying in the last few paragraphs is correct, it might matter very much that I don't treat the same considerations as decisive on every occasion of *cases involving the same considerations, equally balanced in each case*. In these cases, especially, my treatment of a consideration as decisive is apt to be taken as a manifestation of a *general* way of valuing or (equivalently, I take it) a pattern of sensitivity and responsiveness. Sometimes, it matters that I convey an *accurate* sense of the fact that I am *not* more sensitive or responsive to one particular consideration over others; and in some contexts, at least, it is likely to only be by means of taking different considerations as decisive in different cases where the same considerations are equally strong that I can achieve that.

So far in this subsection, I have been focussing on *balanced* conflicting considerations (within a range, as far as can be discerned, at least). But there are similar things to say about *incomparable* conflicting considerations. Just as in the case of balanced considerations, my treating a consideration as decisive in a case where other incomparable considerations are in play is apt to imply that I am more sensitive or responsive to that consideration than I am to those others. It could hardly be that I have treated justice as decisive on the basis of reasons of justice being stronger than reasons of beneficence in the case, if the demands of justice

[11] If it is true that mere professions of commitments are likely to be taken as disingenuous, as I have implied, that needn't be because there are good reasons to take them to be anything other than sincere. Perhaps we are far too cynical and untrusting, and too quick to judge that professions of commitments are insincere. Nonetheless, even unreasonable or misguided suspicion is sufficient to undermine the capacity of professions of commitment to successfully manifest the commitments which are reported (and to thereby provide the reassurance we have an obligation to provide).

and of beneficence are incomparable,[12] unless I am confused about their incomparability (which it *could* reasonably be assumed that I am not). So, in plenty of cases, a plausible (if misguided) explanation of my treating that consideration as decisive will be that I am simply more sensitive or responsive to that consideration than to those others.[13]

Other explanations will often – perhaps usually – be available, in cases of balanced and incomparable considerations alike. Perhaps in the face of balanced or incomparable considerations I have decided (entirely rationally) to pick a reason or set of reasons to treat as decisive 'pseudo-arbitrarily': like a more rational version of Buridan's ass, I recognise that there is no sufficient *contrastive* reason to be guided by one consideration *rather than the others*; but I also realise that I require *some* considerations to be decisive for me, so I adopt the sensible policy of picking one over the others for no contrastive reason at all (though not for *no reason* at all (hence '*pseudo*-arbitrarily', above): the fact that a consideration is normatively relevant is a reason to treat it as decisive, albeit not a *decisive* reason to treat it as such in the context of other, competing reasons, and albeit not a contrastive reason[14]). As I said, my treating a particular consideration as decisive does not entail that I am more sensitive or responsive to it. Nonetheless, as a matter of fact, it will often be taken to imply that I am, regardless of attempts I might make to overturn that implication, if only because of the vagaries of human belief-forming mechanisms, including mechanisms by which we form beliefs about others' motives, values and attitudes. And that fact is significant if the context is one in which manifesting and giving assurances of my actual values and sensitivities matters.

To sum up: it might matter that we manifest not only our conflicting commitments (for the reasons canvassed in §3.1.1, above), but also our recognition of the fact that they are balanced or incomparable, when they are. The reasons why it might matter are presumably the same kinds of reasons as the reasons we have for providing reassurance of our commitments themselves: often, others need to know that we understand the *relations between* things which matter, not only that we understand what matters. Here, what we treat as decisive in various cases *which are alike in respect of the consideration in play* is crucial. As I've already said, we cannot always show that we consider considerations to be balanced or incomparable in a *particular* case by prescinding from choosing – either because

[12] See **n.9**, above. If incomparable reasons can *silence* one another, then condition (e) must be satisfied for our argument to work at this point, if it is incomparability rather than balance which is in play. In that case, the scope of our argument is obviously further restricted; but I see no reason to think that (e) would never be satisfied, even if satisfaction of that condition is required.

[13] Compare Raz's (2003: pp.72, 76) comments about what might be discovered about *oneself* in deciding to treat a particular consideration as decisive.

[14] Some philosophers argue or assume that all reasons are contrastive reasons. (See Snedegar (2017) for a sustained defence of this view. Leibniz ([1710]: perhaps esp. 196) assumes it, but as far as I can tell doesn't argue for it. See also e.g. *Shorter Texts* p.47) I do not think that all reasons are contrastive. Compare Pruss (2006: esp. Chapter 7.4).

we literally cannot prescind from choosing (because not choosing is itself one of the options for and against which there are balanced or incomparable reasons), or because it would be irrational to do so (as in a Buridan's Ass scenario). And we cannot show that we consider considerations to be balanced or incomparable with respect to a set of cases by means of treating each consideration as decisive in *other* kinds of cases (i.e. those which aren't relevantly similar in respect of the considerations which are in play), for the reason explained above: my treating *F* as decisive in case *a* in which *G* is not a relevant consideration (or in which *G* is simply outweighed or silenced by *F*), and *G* as decisive in *b* in which *F* is not a relevant consideration (or in which *F* is simply outweighed or silenced by *G*) conveys nothing informative about my attitude to the relative standing of *F* and *G* in relation to each other. So, if mere professions of commitment are insufficient for reassuring others (or for any other important purposes), and manifestation of our commitments, and of our recognition of the relations between relevant considerations, is practically achievable only through the choices we make about which considerations to treat as decisive in various cases, we must treat various different balanced or incomparable considerations as decisive *in relevantly similar cases*.

So, all the assumptions of the Manifesting Argument are, I think, defensible. Because we might have an obligation to manifest conflicting commitments, and because of the facts about the ways in which manifesting conflicting commitments is achievable, we might have an obligation not to treat the same considerations as decisive in cases which are alike in respect of the same conflicting and balanced or incomparable considerations being in play.

I have put the Manifesting Argument in terms of *commitments*, and in terms of agents giving reassurance of their own commitments. But that has been for reasons of convenience. In fact, nothing much about the nature of the agents in question and their capacity for having commitments as such need be assumed. Just as personal agents can have obligations of the kinds I have described, institutional or corporate agents could have, too, for they are also putative objects of trust. And even if personal, institutional or corporate agents aren't acting on anything deserving to be called *their commitments*, the reasons for treating considerations as decisive which I have been describing can apply: those subject to those agents' decisions and actions can be in need of reassurance as to their propensity to take the equal importance or the incomparable nature of the considerations in play seriously and to decide and act accordingly, whether or not their taking considerations as decisive amounts to choosing from amongst *their own commitments*. So, the Manifesting Argument generalises further than the label 'Manifesting Argument' implies (for there might be no commitments manifested). Nonetheless, I will continue to put the argument in the terms I've already used, rather than pausing whenever strictly speaking it would be appropriate to remind you that the argument can be generalised.

4. Alternatives to Sharing Decisiveness Around?

An objection to the arguments I have been exploring can be put like this: "even if there is an obligation for agents to manifest their appreciation of the balanced or incomparable status of competing considerations, or at least to treat cases in ways which assure others of their propensity to give those considerations appropriately decisive roles, there are other ways of manifesting that, or assuring others of that, besides treating different considerations as decisive in different cases. So, the step of the argument defended in §3.1.3, above, according to which treating relevantly similar cases differently is sometimes the only practical way of meeting obligations of reassurance (or other obligations requiring that we manifest our commitments or at least display a propensity to treat a range of competing considerations as decisive) fails. Even if treating relevantly similar cases differently (in respect of the considerations we treat as decisive in them) is *a* way of meeting those obligations of reassurance (etc.), other ways are preferable."

In many cases involving balanced incompatible considerations other ways are indeed available (although perhaps not in cases involving *incomparable* incompatible considerations). But neither of the two most obvious alternatives to treating different considerations as decisive in different cases are available in – or are proper ways of treating – all the cases I am interested in. There might be a less obvious alternative; but in the next two subsections I will explain why the two most obvious ones aren't sufficient across the board individually, and why they are not *jointly* sufficient across the board, either.

4.1 Equal Chances

Faced with a requirement to treat each of my two children's wellbeing as equally important, and with a series of cases in which what is good for one of them is bad for the other, and vice versa, the argument I have been exploring suggests that I ought to treat one child's wellbeing as decisive in some cases, and the other's as decisive in other relevantly similar ones. But a natural alternative – inspired by Taurek's (1977: esp. p.303) notorious view – might be to toss a coin or otherwise randomise decision making in each case. Instead of manifesting proper concern for these equally important considerations *across* cases, I can manifest it in *each and every case*, without violating the principle that like cases ought to be treated alike.

Many of the sets of cases we are interested in will be amenable to such treatment. I have not claimed that we *always* have an obligation to treat relevantly similar cases differently, and sometimes the 'Taurekian' treatment which treats them alike by randomising in each will be the right one. But in other cases, there will be decisive reasons not to randomise. Indeed, I think there is a decisive reason not to randomise in the kind of case I referred to in the previous paragraph. Manifesting equal concern for the wellbeing of each of my children, across cases where what is good for one is bad for the other (and vice versa), cannot be achieved by randomising in each case. This is because even if each is given an

equal chance of having their wellbeing preserved or promoted in each case, randomisation ensures that it is possible for one or other of my children to see their wellbeing compromised *in every case* (or in a vast majority of cases), albeit by an unlikely statistical fluke, if the run of coin tosses goes against them (and of course a similar concern arises with weighted lotteries which randomise without giving equal chances). Since what matters is not just that I manifest *equal* concern, but that I manifest equal *concern*, no treatment of cases which even risks such an outcome, so deleterious to the interests of my children, is appropriate.

What is required, in such cases, is a way of manifesting equal concern which expresses not only the equality of my concern for each, but also the character of my concern for each, which makes it unacceptable for me to put any of them *at risk* of such inequitable outcomes by my hand (even if my hand is only tossing a coin). Taking the different facts about what is required for the wellbeing of different children as decisive in different relevantly similar cases is a way of doing that, in a way that randomisation isn't. And this is just one example of a more general point: when competing considerations are balanced, I can have an obligation not only to manifest my appreciation of their being balanced, but also my commitment to the importance of those considerations themselves, which might place constraints upon the ways of expressing equal commitment which are acceptable – and might happen to rule out randomisation as a way of expressing equal commitment.

4.2 Mitigation, or Treating as Jointly Decisive

In some cases, mitigation will be the way to express equal concern for conflicting considerations, or propensity to take them as equally apt for being decisive. That is, there will sometimes be a distinct option which is justified by its balancing competing considerations: giving a shorter prison sentence than is strictly deserved (but still meting out *something* of what is owed, whilst mitigating that in light of wellbeing mattering); awarding a middling mark to an essay (in light of it being excellent in one respect but terrible in another). In sets of cases amenable to such treatment, treating one consideration as decisive in some cases and the other as decisive in other cases is not required for achieving the expressive or reassuring goods I have been appealing to: it is possible in such cases to treat the balanced competing considerations as *jointly* decisive, in every case (where this means treating each as contributing to determining what is to be done, and the contribution of each is treated holistically, i.e. as being different from what it would be in the absence of the others).

In other cases, though, this will not be possible – or might be ruled out by other considerations. If the choice is most aptly characterised as between φ-ing and *not* φ-ing in each of cases *a* and *b*, which are relevantly similar in respect of the considerations in play in them, and if the considerations in favour of φ-ing in each case are balanced with the competing considerations in favour of *not* φ-ing in those cases, there is no hope of appealing to any kind of halfway-house *semi*-φ-ing

which is justified by treating the competing considerations as jointly decisive. The mitigation solution requires a more fine-grained range of options than is available, sometimes.

Also, mitigation solutions are clearly not an option for sets of cases involving *incomparable* competing considerations. Even if an option exists which falls halfway between treating a case as one consideration recommends and treating is as another recommends, that option would only be justified (at least with respect to those competing considerations) by the fact that the competing considerations mitigate each other's normal recommendations, and that can only be the case if they are comparable.

We commonly acknowledge that even when one consideration is weightier than another, the less weighty consideration can play a role in determining what is to be done. Even though the most important thing is to keep my young children safe, which in the absence of other relevant considerations would recommend minimizing the risks they are exposed to, less important facts about what they want and would enjoy can legitimate and even require my permitting them to take certain unnecessary risks in the course of their play. Of course, this doesn't mean that on occasions when risks may be taken the relevance of the more important consideration is suspended; rather, what is recommended, all things considered, is not just what that more important consideration would normally recommend on its own. We do not have to think that facts about what my children will enjoy and facts about what will keep them safe are balanced or equally important as considerations in order to acknowledge that what is to be done is a function of both; but we do surely have to think that if it is a function of both, each must be comparable with the other.

I'm sure the fact that this kind of mitigation of one consideration by another requires comparability is a reason why many people reject the idea that there are incomparable considerations: since there is always, in principle at least, the possibility of mitigation of one consideration by another, there is never strict incomparability (although there might be *practical* incomparability, where *we* are unable to do the comparison (properly, at least), although in principle it could be done). But if there are sometimes strictly incomparable considerations, mitigation solutions will not be available for reconciling them.

So, not all *balanced* considerations cases involve a sufficiently fine-grained range of options for us to be able to treat those cases individually in a way which takes all of the competing considerations to be jointly decisive. And regardless of the options available, there is no way to treat strictly *incomparable* considerations as jointly decisive. So, treating conflicting considerations as jointly decisive or mitigating is not always going to be a way of satisfying our obligations to manifest our appropriate commitments to balanced or incomparable goods, or at least to provide assurance of our propensity to consider balanced or incomparable reasons, in the appropriate way.

We have seen that mitigation cannot be a way of manifesting appropriate commitments regarding incomparable goods. So, if a disjunctive

approach (adopting mitigation and randomisation for different kinds of cases) is to save us from an obligation to treat relevantly similar cases differently, it must be that randomisation is appropriate in all cases involving incomparable goods. But we have seen that it isn't (if the wellbeing of different children is incomparable, rather than balanced), or at least we can quickly conclude that it isn't on the basis of an argument akin to one we've already seen: appropriate commitment to incomparable goods sometimes requires us not to randomise, because randomisation entails a risk of at least one of those incomparable goods being comprehensively unattained, and settling for a decision procedure which risks comprehensively doing without a good which one is – and ought to be – committed to the importance of is inappropriate. So, neither mitigation nor randomisation are individually sufficient for saving us from an obligation to treat relevantly similar cases differently, and nor are they jointly sufficient.

5. Checkerboard Solutions

The approach to cases in which conflicting considerations are balanced or incomparable which I have been suggesting looks rather like adopting what Dworkin calls a 'checkerboard' solution – and Dworkin takes it that checkerboard solutions are beyond the pale ([1986]: pp.178-9). Strauss has argued that checkerboarding is not necessarily problematic (2002: §4), but my response to Dworkin is not quite Strauss's. Strauss's discussion shares – or seems to share – an assumption with Dworkin's which I want to reject, namely that checkerboard solutions are necessarily suboptimal since they are ways of accommodating *mistaken* commitments. (Dworkin ([1986]: p. 180); Strauss (2002: p.26)) In fact, if the arguments of §§2-3, above, are correct, checkerboard solutions are sometimes *optimal* ways – or at least *obligatory* ways – of proceeding on the basis of *correct* commitments.

Dworkin believes that checkerboard solutions are ruled out by the value of what he calls *integrity*. This is distinct from both justice and fairness. ([1986]: pp.164-5; Chapter 6) And he thinks that integrity rules out checkerboard solutions because integrity in adjudication is, in part, a matter of (in the legal context) 'conceiving the body of law … as a whole rather than as a set of discrete decisions' (p.167).

But not only is the Manifesting Argument consistent with conceiving the body of law – or whichever domain it is applied to – as a whole; that argument actually requires that we are conceiving of it as a whole, since otherwise it would make no sense to suggest that what we do across various different relevantly similar cases matters by adding up to a single unified picture of what our commitments are. It is completely within the spirit of the Manifesting Argument to *reject* atomistic views of case-by-case decision making, according to which how we have decided other cases is irrelevant for how we should decide in each case. Some arguments which argue only for the permissibility of treating relevantly similar cases differently, are compatible with (and might even encode) such

atomism.[15] But the argument I have been exploring is quite different: it argues for an obligation to treat relevantly similar cases differently, on the decidedly non-atomistic basis that only by considering the allocation of decisiveness to considerations across all the relevantly similar cases can we hope to manifest appropriate commitment to balanced or incomparable goods.[16]

Dworkin is also troubled by the prospect that checkerboard solutions are bound to be unprincipled. His idea seems to be that checkerboard solutions are unprincipled because their operative 'statutory and common law rules', applying in various cases, cannot be brought 'under a single coherent scheme of principle'. ([1986]: p.184)

The considerations relevant in the cases I am interested in, to which the Manifesting Argument or its generalisation applies, clearly cannot be brought under a single *coherent* scheme of principle, on at least one understanding of that: the cases I am interested in are ones in which *conflicting* considerations are balanced or incomparable. I assume Dworkin would say that this is precisely what he objects to, and that is because he rejects a fundamental assumption of the Manifesting Argument as I set it up, above, (though not necessarily of every version of the argument) which is that there are incompatible goods. Indeed, elsewhere he offers an interesting critique of Berlin's pluralism, and argues for the coherence of at least all liberal values (Dworkin (2001)).

As I have already said, this is not the place to settle that dispute. But those of us willing to believe in incompatible goods might point out that being principled doesn't require adherence to one overarching principle or to principles which are coherent: being principled is a matter of allegiance to principles according to which we decide, whether or not those principles are coherent.[17] In the pejorative sense, 'being unprincipled' means failing to be guided by what matters – and there is no reason to think that treating relevantly similar cases differently on the basis of the Manifesting Argument, for example, is failing to be guided by what matters, in each case. After all, each of the conflicting considerations treated as decisive in some cases are grounded in what matters, and the fact that decisiveness should be shared around matters (for the reasons canvassed in §3, above).

It isn't just that Dworkin rejects incompatible goods, though. He also appeals to a view about what is required by the ideal of self-legislation or

[15] Including some cited in n.**5**, above.

[16] Actually, I think it is hard to see how most checkboard solutions could fail to treat the cases within their domains as a whole. Other rationales for checkerboarding, aside from the Manifesting Argument, such as needing to accommodate the sincere beliefs of radically disagreeing stakeholders, similarly involve treating how other cases are (to be) decided as relevant to how each case should be decided. So, this particular aspect of Dworkin's objection to checkerboard solutions is apt to seem rather odd, whatever you think of the Manifesting Argument.

[17] This is related, I think, to the point about sufficient but non-contrastive reasons raised in n.**14**, above.

autonomy, claiming that 'a citizen cannot treat himself as the author of a collection of laws that are inconsistent in principle, nor can he see that collection as sponsored by any Rousseauian general will' ([1986]: p.189). If this is right, then presumably even if there are incompatible goods, we had better not adopt principles for deciding cases which permit – much less require – us to pursue any of those goods which conflict with each other, at least to the extent that those principles need to be justified by appeal to – or at least need to be consistent with – Kantian self-authorship or Rousseauian general will.

But if there are incompatible goods, grounding conflicting considerations which are balanced or incomparable, why should a rational and morally (or legally, or politically, or prudentially... choose your domain) serious agent not formulate principles for themselves which require them to pursue those various goods, or take those various considerations to be decisive? In the absence of incompatible goods, incoherent principles might be a sure sign of error, just as contradictory beliefs are a sure sign of error (one or other of them must be false, because the facts are all non-contradictory). But if incompatible goods are allowed, incoherent principles won't be dubious on the basis that they couldn't possibly all lead us to act well in respect of what matters: what matters is not itself coherent. In fact, if there are incompatible goods, it might be a sign of error if our commitments, including the principles we give ourselves, are *coherent*: it might be implausible that a coherent set of principles guides us well when what matters is incoherent.

These are, of course, large issues which go well beyond the scope of this paper. But a more manageable point is this: whether acting as people or ex officio, adopting a policy such as the one suggested by the Manifesting Argument can be a way of integrating considerations which are at odds with each other. If we adopt a strategy for dealing with the fact that our commitments conflict, then we integrate them in the way that really matters. Incoherent elements can be parts of the same whole, as when contradictory propositions are elements of the same argument or of the same (unreliable narrator) story, or when a dissonant note and the chord it is played over are both parts of the same musical arrangement.

So, even if integrity is as important as Dworkin thinks, there is no reason to think that all checkerboard responses to the challenge of conflicting commitments and considerations threaten integrity.

6. Comparative Justice

Those subject to treatment dissimilar from the treatment received by others in relevantly similar cases might think themselves ill-used – at least if they receive more harmful or less advantageous treatment. Surely comparative justice must be undermined by the approach I have been motivating and defending. It cannot be fair – and it must wrong those who are disadvantaged – to treat different considerations as decisive in different relevantly similar cases, meaning that we mete out different rewards or punishment, or different distributions of benefits or

harms, in those cases. If Piglet has transgressed in the same way as Pooh, and the minimum available punishment is equally deserved by – but would be equally harmful to – both Pooh and Piglet,[18] Piglet must have a complaint against those who punish him if his punishment is more severe than Pooh's was, simply due to his case being decided in a way that takes desert to be decisive, whereas Pooh's was decided in a way that took wellbeing to be decisive, securing Pooh a reprieve which Piglet is not granted.

How much is there to this objection? If treating relevantly similar cases differently really does offend against comparative justice, then unless there can be conflicting obligations, there can be no obligation to treat relevantly similar cases differently.[19] But I don't think that treating relevantly similar cases differently on the basis that I have suggested *does* have to offend against comparative justice.

David Strauss (2002: §2) has pointed out that so long as there are good reasons for treating even relevantly similar cases differently, there is no violation of comparative justice: the facts of the particular cases, and the fact of their similarity, are only some of the considerations which can legitimately – and perhaps ought to be – taken into account. The argument of §§2-3, above, amounts to a demonstration of another kind of reason (in addition to those Strauss considers) to approach relevantly similar cases in a particular way – a reason to do with the importance of manifesting or otherwise responding properly to genuinely balanced or incomparable conflicting considerations. In so far as that argument can be offered as a demonstration of a relevant reason to treat various cases differently despite their similarity, different treatment will be no more objectionable from the perspective of comparative justice than different treatment of cases on the basis of their involving different considerations from each other would be: the facts about the importance of reassurance cited in the argument I have given are as normatively relevant as the facts of particular cases are, so what is permitted according to comparative justice must be determined by those facts too.

Furthermore, if Pooh is treated differently from Piglet according to the rationale I've been suggesting, Pooh's treatment and Piglet's treatment are equally determined by (jointly) fully justifying normative reasons. If – as must be the case

[18] In order for these to be relevantly similar case which call for different treatment (according to our argument), it needs to be that the *minimum* available punishment is equally deserved but equally harmful in each case. Otherwise, mitigation might be the proper way of reconciling considerations of desert and of wellbeing (see §4.2, above). But there might be plenty of cases like this. Even if there are very few sets of cases in which the *conceivable* punishments are so course-grained that we cannot impose a less severe punishment than is strictly deserved, in the interests of wellbeing, there are presumably cases in which the only pragmatically available or morally acceptable options are that coarse-grained.

[19] Of course, if there *can* be conflicting obligations, then even if we have an obligation not to treat similar cases differently, grounded in comparative justice, there might still be an obligation to treat them differently, grounded in the considerations described in §§2-3. Although I think that obligations can conflict, I leave that possibility aside here. The assumption that *reasons* or considerations can conflict (which is necessary for the arguments we are considering) does not, of course, require us to accept that *obligations* can conflict.

if the Manifesting Argument or a generalisation of it is to apply – *F* is *apt* to be treated as decisive in *a*, in virtue of its being sufficient (in conjunction with the other facts of the case) to justify *φ*-ing in *a*, and *G* is *apt* to be treated as decisive in *b*, in virtue of its being similarly sufficient to justify *not-φ*-ing in *b*, then Pooh's treatment in *a* (decided by *F*) and Piglet's treatment in *b* (decided by *G*) are similarly well motivated by appropriate reasons, even though we *φ* in Pooh's case but don't *φ* in Piglet's.

As I said in the previous section, Dworkin and Strauss only consider cases in which either *F* or *G* are *not* really apt to be taken as decisive in their own right, because one or other of them is only *thought* to be important by some stakeholders (but isn't really). That is why they represent checkerboard solutions as compromises, from the point of view of optimal justice (albeit justified compromises, in Strauss's case). But in the cases I am interested in, both *F* and *G* are in perfectly good standing in respect of fully justifying a treatment of a case (given the other facts of the case), regardless of any 'second-order' principles concerning the importance of respecting even mistaken opinions. So, neither Pooh nor Piglet should think that their treatment is *arbitrary*: in each case, their treatment is motivated by a perfectly respectable decisive consideration.[20]

Nor should either think that their interests are being treated as less important than the other's. It might be tempting for Piglet to argue: "the wellbeing implications for us of the minimum available deserved punishment was just as much a relevant consideration in Pooh's case and in mine (and not just in the sense that *some* wellbeing facts were relevant in each, but in the stronger sense that *the same kind and degree* of wellbeing threat was associated with that punishment for each of us); yet in *Pooh's* case those implications were treated as decisive and in mine they were not, which fails to properly respond to the *equal importance of Pooh's wellbeing and of mine*".

This argument would have some considerable merit, were it not for the fact that in the cases in question wellbeing considerations are ex hypothesi incompatible with considerations of desert, and balanced or incomparable with them. Often, it is inappropriate to treat equally important wellbeing considerations as decisive in some cases but not in relevantly similar others, because that amounts to a problematic kind of *preferential* treatment: where the objectively relevant consideration, taken together, point in one direction, the agent's preferences have been allowed to send them in another; or, if they have done what happens to be required by the objectively relevant considerations taken together, they have done so accidentally, motivated by preference rather than by due regard for those considerations. (If this has what you take to be an unduly Kantian flavour to it, remember that the considerations for which regard is due might be facts about a particular person's wellbeing, rather than facts about one's

[20] This point is related, again, to the point about sufficient but non-contrastive reasons raised in n.**14**, above.

duties.) In cases where this preferential treatment is problematic, that might be because the agent ought to be acting ex officio, in such a way as to make their preferences irrelevant; or it might be because, even though they are acting only as a person, the objectively relevant considerations are simply too important to allow space for preference. Piglet might think that his treatment has been meted out by an agent in one of these positions, and he might be right: he might have a reasonable complaint if Pooh enjoys some benefit as a result of preferential treatment which he, Piglet, does not. But neither Pooh nor Piglet *has* been subject to preferential treatment if their cases are treated differently on the basis of the Manifesting Argument or its generalisation. In so far as they act on the basis of that argument, the agent who punishes Piglet and shows clemency to Pooh is motivated by their acknowledgement of the objectively relevant considerations that argument brings to light, and not by preference at all.

Despite not being unduly *preferential*, treating Pooh and Piglet differently might be thought to violate the equal importance of their wellbeing in some other way. Perhaps similarly important considerations simply must always play the same role in determining treatment in various cases. But the point of the Manifesting Argument is to show that that is not the case, so we are at risk of begging the question if we argue that the problem with the Manifesting Argument is simply that it licences dissimilar roles for similarly important considerations in different cases. Unless there is a flaw in the argument, it shows that similarly important considerations *don't* need to always play the same role in determining treatment in various cases. So, not giving Pooh's and Piglet's wellbeing the same (decisive) role in determining their treatments might not mean failing to treat them as similarly important. Indeed, the lesson of the Manifesting Argument is that sometimes *because* of the similar importance of two considerations (not merely despite it, and certainly not in violation of it), those considerations ought to be given different roles in different cases.

References

Isaiah Berlin, [1988] 1990. 'On the Pursuit of the Ideal', reprinted in H. Hardy (ed.), *The Crooked Timber of Humanity* (London: Fontana Press)

Ruth Chang, 2015. 'Value Incomparability and Incommensurability' in I. Hirose & J. Olson (eds.), *The Oxford Handbook of Value Theory* (Oxford: OUP)

Ronald Dworkin, [1986] 2006. *Law's Empire* (Portland: Hart Publishing)

_____, 2001. 'Do Liberal Values Conflict?' in R. Dworkin, M. Lilla & R. B. Silvers (eds.), *The Legacy of Isaiah Berlin* (New York: New York Review of Books)

Joel Feinberg, 1974. 'Noncomparative Justice', *The Philosophical Review* 83(3): 297–338

Norman G. Gillespie, 1975. 'On Treating Like Cases Differently', *The Philosophical Quarterly* 25(99): 151–8

H. L. A. Hart, [1961] 1997. *The Concept of Law* (Oxford: OUP)

Michael Lavin, 1988. 'Why We Do Not Have to Treat Like Cases Alike', *The Journal of Value Enquiry* 22: 313–8

Leibniz, [1710]. *Theodicy*
_____, []. *Shorter Texts*
Gary W. Levvis, 1991. 'The Principle of Relevant Similarity', *The Journal of Value Enquiry* 25: 81–7
Andrei Marmor, 2005. 'Should Like Cases be Treated Alike?', *Legal Theory* 11: 27–38
Philip Pettit & Christian List, 2011. *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: OUP)
Alexander R. Pruss, 2006. *The Principle of Sufficient Reason: A Reassessment* (Cambridge: CUP)
Theron Pummer, 2016. 'Whether and Where to Give', *Philosophy & Public Affairs* 44(1): 77–95
Joseph Raz, [1999] 2003. 'The Truth in Particularism', reprinted in *Engaging Reason: On the Theory of Value and Action* (Oxford: OUP), originally in Brad Hooker and Margaret Little (eds.) *Moral Particularism* (Oxford: Clarendon Press) 48–78
Frederick Schauer, 2018. 'On Treating Unlike Cases Alike', *Constitutional Commentary* 33: 427–50
Justin Snedegar, 2017. *Contrastive Reasons* (Oxford: OUP)
Michael Stocker, 1990. *Plural and Conflicting Values* (Oxford: Clarendon Press)
David A. Strauss, 2002. 'Must Like Cases Be Treated Alike?', Chicago Public Law and Legal Theory Working Paper no. 24, available to download via: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=312180
John M. Taurek, 1977. 'Should the Numbers Count?', *Philosophy and Public Affairs* 6(4)
Sarah Worthington, 2006. *Equity* (2nd Edition) (Oxford: Clarendon Press)
Leo Zaibert, 2021. 'Figuring Things Out, Morally Speaking', *Philosophy* 96: 553–76