

Counting People  
&  
Making People Count

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## Declaration

I, Jessica Johanna Tatjana Fischer, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

I confirm that a version of chapter 4 is published in *Philosophy* 96 (2021): 229–252 and that a version of chapter 5 is forthcoming in *Oxford Studies in Normative Ethics*.

This thesis contains 56,618 words.

## Abstract

This thesis concerns the alleged rational requirement, or moral duty, to maximize the good. Such a duty is supposed to be obvious: many philosophers take it for granted that if we can either do some good or do more good, and all other things are equal, we are required to do more good. What could be more obvious, so the thought goes, than that moral agents should be committed to doing more rather than less good? Indeed, such a pro tanto duty to maximize the good is often taken to be a starting point for moral theories.

This thesis casts doubt on the assumption that we have a pro tanto duty to maximize the good, arguing that such a duty is neither as plausible nor as uncontroversial as it first appears. To this end, this thesis does two main things: First, it shows that a pro tanto duty to maximize the good relies on theoretical commitments and structures which are potentially problematic, thus leading us to the conclusion that a pro tanto duty to maximize the good must be defended, rather than presupposed. Second, the thesis develops and critically examines a number of conclusions which we arrive at once we adopt a moral theory which discards such a pro tanto duty to maximize the good. While such conclusions are underexplored in the literature, they hold surprising and rich propositions, e.g. about group-membership and the value of individuals.

Ultimately, this thesis challenges the idea, entrenched in much of our moral theorising, that individuals are subject to a moral requirement to bring about more good rather than less good, and proposes that a moral theory which eschews such maximization is an attractive, rather than controversial position to adopt.

## Impact Statement

This thesis casts doubt on a pro tanto duty to maximize the good, which tells us that, at least when all other things equal, individuals have a duty to do more good rather than less good. The idea that individuals have a pro tanto duty to maximize the good is not only widely accepted in contemporary ethics but is also one of only a handful of ethical concepts which is considered as self-evident and as canon. As such, carefully examining such a duty and showing that it can be challenged constitutes a modest but relevant contribution to the literature: it questions an idea which is generally considered uncontroversial and has often remained free of critical examination.

Yet the work of this thesis also has impact beyond academia: crucially, a pro tanto duty to maximize the good underwrites a large range of popular approaches in governmental distribution of resources, health care, responses to disaster, and individual action. Given recent global developments, it's paramount to evaluate the moral principles which our current institutional responses and social and political policy decisions are, at their very core, based on. My research shows that there are pressing reasons for investigating whether a duty to maximize the good should be accepted as such a foundational principle and as a framework for such decision-making, and points towards an anti-maximizing approach to moral theory which may alternatively be taken to inform policy-making.

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## Introduction

Most people hold that when we can either produce some good, or produce more good, and the costs are equal, we are required to bring about more good rather than less good. In other words, most people believe that we have a *pro tanto* duty to maximize the good. But the idea that we have a *pro tanto* duty to maximize the good is not simply a folk belief. A review of the literature would reveal that a *pro tanto* duty to maximize the good is accepted by the majority of contemporary philosophers.<sup>1</sup> What's more, a *pro tanto* duty to maximize the good is regarded as obvious: the fact that we ought to do more good rather than less good once all other things are equal is taken to be so firmly supported by intuition as not requiring additional support, or perhaps so foundational to our moral thinking as not being further explicable by philosophical argument. Put differently, a *pro tanto* duty to maximize the good is often regarded as moral bedrock, and thus as being beyond analysis and justification. Once all other things are equal, common-sense seemingly tells us that morality simply consists of doing more rather than less good.

In this thesis, I argue that this is a mistake. This thesis casts doubt on the widely-accepted duty to maximize the good by explaining that such a duty is neither necessary nor obvious, and by showing that we have good reasons for challenging such a duty. Further, the thesis motivates, defends, and clarifies the claim that a plausible and attractive moral theory may refrain from positing a *pro tanto* duty to maximize the good and yet succeed at both explaining our common-sense moral judgements and capturing something fundamental about our approach to value. To this end, the first three chapters carefully build up and explicate why a *pro tanto* duty to maximize the good constitutes a commitment which is much more controversial than one might assume, both due to a tension with our common-sense moral judgements and due to a number of underlying theoretical issues. The remaining two chapters inspect the novel conclusions we are led to once we adopt a moral theory which discards a *pro tanto* duty to maximize.

A *pro tanto* duty to maximize the good is deeply embedded in most contemporary moral thinking. Most people associate caring for individuals with helping more rather than fewer people when able to do so. Indeed, many may think it callous or inhuman to not aid more rather than fewer people, or to fail to secure more rather than less good when able to do so at no additional cost. In fact, if someone were to resist the suggestion to do more good at no further

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<sup>1</sup> As Walter Sinnott-Armstrong puts it on the Stanford Encyclopaedia entry on consequentialism, 'most people begin with the *presumption* that we morally ought to make the world better when we can' (2021, original italics).



cost, many might accuse them of committing a fundamental moral mistake. All in all, in both philosophy and beyond, it might easily seem that caring about people and morality just requires us to do more good rather than less good, and that falling short of this requirement constitutes moral failure.

Most obviously, such a concern for maximizing the good is associated with consequentialism. On closer inspection, however, a *pro tanto* duty to maximize the good is also embedded in those accounts which purport to reject consequentialism.

Consequentialism tells us that no matter what we consider to have moral value in the world, the right action to perform is the action which maximizes this good. It thus advances an absolute duty to maximize the good, which is often understood either as being concerned with maximizing a single value such as well-being or a pluralist combination of values. But although consequentialism is initially attractive, many philosophers reject consequentialist accounts on the grounds that they often fail to account for a number of common-sense moral judgements.<sup>2</sup>

In reaction to these worries, many contemporary philosophers choose to embrace non-consequentialism instead. Non-consequentialist moral theories introduce additional values and concerns which place limits on what may be done in pursuit of the consequentialist project of maximizing the good. Non-consequentialist moral theories typically include so-called prerogatives and constraints: while prerogatives exclude individuals from a duty to maximize the good in cases in which this imposes substantial costs on them, constraints stipulate that if the maximization of value interferes with other moral considerations, such as a concern for not wronging individuals, the right action is no longer the action which maximizes the good. Because non-consequentialism avoids the counterintuitive implications of consequentialism, it enjoys mainstream support.

Yet non-consequentialist theories preserve the deeper, theoretical commitments of standard consequentialism.<sup>3</sup> While non-consequentialists firmly reject an absolute duty to maximize as advocated by standard consequentialism, their strategy of rejection remains piecemeal, ultimately safeguarding rather than dismantling the consequentialist thinking which they set out to oppose. This is best illustrated by saying a little more on the accommodations

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<sup>2</sup> For instance, unless subjected to alterations, consequentialism delivers verdicts which license the violation of the liberty of the few in order to produce a greater good for many (Rawls 1971: 23).

<sup>3</sup> This was recently highlighted by Thomas Sinclair (Sinclair 2018).

which non-consequentialists have made in response to two key objections pressed against standardly consequentialist theories like utilitarianism.

Perhaps the strongest objection to standard consequentialism is that it arrives at indefensible conclusions in regard to our treatment of individuals. Many moral philosophers agree that there are certain ways of treating individuals which are impermissible, despite the fact that they would maximize the good. What philosophers generally have in mind are acts like killing or torturing the innocent in order to prevent greater harms, such as a larger number of killings or acts of torture. In each case, killing or torturing seems wrong, even if such actions would maximize the overall good. In response, non-consequentialists have accepted constraints against actions such as killings, which specify what can permissibly be done to individuals. They tell us, for instance, that it's impermissible to violate a constraint against killing or torturing the innocent, whether or not doing so maximizes the good. Such constraints are considered to be imposed on us by what it means to properly respond to the special moral value of individuals.

A second key worry about maximization pertains to cases in which it seems permissible for individuals to prioritize their personal interests and relationships, despite the fact that this fails to maximize the good. For instance, when choosing between saving one's loved one from death or saving five strangers from death, theories like utilitarianism require individuals to maximize the good and thus save the five strangers. But this seems highly implausible. In response, non-consequentialists commonly alter their theory to include agent-relative prerogatives which exempt agents from a requirement to maximize value in cases in which this would impose substantial personal costs on individuals. For instance, individuals can permissibly save their loved one rather than five strangers, given the personal cost that the loss of their loved one imposes on them.

While this might give the impression that non-consequentialism diverges substantially from the structure provided by a consequentialist moral theory, this impression is erroneous. That is, non-consequentialists reject an absolute duty to maximize the good and accept constraints and prerogatives in order to avoid the objections commonly pressed against consequentialism. Yet once constraints and prerogatives are absent, and all other things are equal, non-consequentialists still stipulate that the right action is the action which maximizes the good. In other words, non-consequentialism simply replaces an absolute duty to maximize the good as affirmed by consequentialism with a weaker, pro tanto duty to maximize the good which allows it to include a range of non-maximizing normative considerations and yet require the

maximization of value in their absence. In fact, note that a moral theory only needs to include features such as constraints and prerogatives which require or allow individuals to act in non-maximizing ways, if it posits a pro tanto duty to maximize the good, from which individuals need exemption in the first place (Raz 1993, Sinclair 2018). In the absence of such a duty, constraints and prerogatives are beside the point.

This explains how even non-consequentialists who self-consciously try to move away from consequentialism still accept the intuitive force of the most basic consequentialist idea, namely that in the absence of conflicting concerns, value ought to be maximized. Despite its name then, non-consequentialist theories remain rooted in consequentialist thinking in so far as they accept, seemingly without much question, the central consequentialist tenet that we should maximize the good, all other things equal. Nietzsche said about religion that even when people got rid of religious institutions, they still continued to smuggle in religious ideas through other means. The same can be said about consequentialism: despite their rejection of consequentialism, non-consequentialists still posit perhaps the most consequentialist idea there is – a pro tanto duty to maximize the good.

But there is an alternative ethical approach that offers a more radical opposition to consequentialist thinking:<sup>4</sup> anti-consequentialism rejects any duty to maximize the good, and therefore all consequentialist remnants found in non-consequentialist moral theory.<sup>5</sup> Ultimately, anti-consequentialists surmise that a non-consequentialist framework of constraints and prerogatives is merely putting a band aid on the symptoms of a much more systemic problem, without trying to examine or alter the problem itself (Munoz-Dardé 2005). This problem, so anti-consequentialists tell us, is found in positing a duty to maximize the good, whether pro tanto or otherwise.

To this aim, some anti-consequentialists have sought to apply pressure as to whether a duty to maximize the good can be supported by philosophical argument. At this point, however, it becomes apparent that although consequentialists and non-consequentialists generally stipulate that there is something about goodness that requires us to respond by maximization, they unilaterally fall short of providing independent argumentation in support of such an assumption.

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<sup>4</sup> Sinclair draws this divide, distinguishing between ‘half-hearted non-consequentialism’ and ‘thoroughgoing non-consequentialism’ (2018: 45).

<sup>5</sup> See, for instance G.E.M. Anscombe (1958).

Notably, Samuel Scheffler attempts to provide an argument for such a pro tanto duty to maximize the good, suggesting that because people prefer the good to the bad, rationality requires individuals to bring about the greatest amount of goodness (Scheffler 1988: 1).<sup>6</sup> Yet Scheffler's argument has been deconstructed by David Wiggins, who demonstrates that Scheffler's argument assumes what it sets out to prove: that the right thing is to bring about the most amount of goodness in the world (Wiggins 2006: 215–216). And while Shelly Kagan aims to show that we have a pro tanto duty to promote the good, Kagan's discussion arrives at this conclusion by inference to the best explanation rather than by offering additional grounds for embracing a pro tanto duty to maximize the good (Kagan 1989).

As seen in Kagan's case then, the assumption that we have a pro tanto duty to maximize the good is generally justified by invoking intuitively plausible and attractive claims –such as those mentioned above– which propose that a pro tanto duty to maximize is required by a morality which takes value and respect for individuals seriously. That said, a pro tanto duty to maximize the good has sustained itself based on the strong appeal of such intuition-based suggestions and the resulting evasion of a thoroughgoing philosophical analysis.

Beyond drawing attention to the fact that a widely-held pro tanto duty to maximize the good is assumed rather than established, anti-consequentialists have also applied pressure to the idea that such a duty provides an accurate reflection of how we think about value and individuals, and to the corresponding claim that it, therefore, doesn't require philosophical justification. G.E.M. Anscombe, for instance, opposes a pro tanto duty to maximize the good by proposing that such a duty fails to do justice to our most deeply-held moral values and commitments.<sup>7</sup>

This thesis, too, critically reflects on a pro tanto duty to maximize the good. It tackles the common idea that a pro tanto duty to maximize the good is an innocuous and insignificant assumption to make for a moral theory, and an assumption which can be made with impunity. As such, it builds on the point that a pro tanto duty to maximize the good hasn't been argued for but goes much beyond it by exploring the way in which an anti-consequentialist rejection of a pro tanto duty to maximize the good relates to our common-sense moral judgements and ideas about value. That is, while many might consider anti-consequentialism and its rejection of a pro tanto duty to maximize the good as unattractive and as incapable of accurately capturing our intuitions on value and human worth, this thesis shows that there is something deeply appealing

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<sup>6</sup> See also Scheffler (1982: 123–124) and Scheffler (1985: 418–419).

<sup>7</sup> For critical discussions, see also Foot (1985b) and Wiggins (2006).

about such an anti-consequentialist view. Rather than floundering when challenged with having to account for common-sense judgements about value, anti-consequentialism might just excel at reflecting them.

Criticisms of consequentialism as offered by non-consequentialists generally focus on cases in which consequentialism has counterintuitive implications and are then answered by the addition of e.g. prerogatives and constraints. Overall, this thesis takes a different approach. It often looks at cases in which a pro tanto duty to maximize the good –and thus non-consequentialism if not also consequentialism–delivers attractive conclusions. While these cases are supposed to offer support for a pro tanto duty to maximize the good, this thesis shows that such cases can be viewed in a different light. It proposes that when we start from our common-sense moral judgements and investigate both the cases at hand as well as our moral judgements rigorously, we are regularly led to conclusions which are in fact in tension with a pro tanto duty to maximize the good. This exercise of reflective equilibrium casts doubt on the claims that a pro tanto duty to maximize the good is uncontroversial and presupposed by our attitudes about value and human worth. After all, if anti-consequentialism can explain common cases used to support a pro tanto duty to maximize the good, and if it can even explain them better, anti-consequentialism merits to be taken seriously. Ultimately, the thesis proposes that anti-consequentialist theories offer a plausible theoretical position, which can, if anything, more successfully capture a number of common-sense moral judgements than opposing views.

In addition, this thesis spends some time on inspecting the novel conclusions we are led to once we adopt an anti-consequentialist moral theory which discards a pro tanto duty to maximize value. Given the preponderance of consequentialism and non-consequentialism in the literature, such conclusions are underexplored, despite the fact that they hold surprising and rich ideas. Taking seriously an anti-consequentialist position and examining its verdicts and strategies in detail allows us to arrive at views about the value of individuals and our ethical approach to risk impositions which are otherwise left uncharted.

Yet, the purpose of this thesis is neither to criticize consequentialism nor to defend anti-consequentialism. Rather, the purpose of this thesis is to gain a better understanding of the implications which the acceptance of a pro tanto duty to maximize the good has for a moral theory. The aim is further to investigate whether we might actually have good theoretical grounds for wanting to reconsider an attachment to a pro tanto duty to maximize the good, and to critically reflect on whether a rejection of a pro tanto duty to maximize the good is a viable and

appealing moral position. To be clear, it is not argued that we have conclusive reason to reject a pro tanto duty to maximize, or that such a duty is itself implausible or morally problematic. Rather, a number of piecemeal suggestions are all used to carefully build a case towards the claim that a pro tanto duty to maximize the good is neither necessary nor obvious and therefore constitutes a controversial assumption to make.

For now, it's helpful to have a brief survey of the arc pursued by the five chapters of this thesis. Roughly, those chapters fulfil two different roles: the first three chapters motivate the idea that a rejection of a pro tanto duty to maximize the good constitutes a plausible and attractive option. The remaining two chapters illustrate two points which are found downstream from rejecting a pro tanto duty to maximize the good. Let's outline each chapter in turn.

The first chapter evaluates one avenue for attempting to argue against a pro tanto duty to maximize the good, which starts from what appears to be a counter-example. Ultimately, this pathway is rejected as unsuccessful.

Specifically, this attempt to undermine a pro tanto duty to maximize the good draws on our common-sense judgements about charitable giving. Note that charitable giving seems to constitute an awkward exception to a pro tanto duty to maximize value, since most people believe that it is permissible to donate to a less efficient charity even when one could donate to a more efficient charity at no additional cost. In this chapter, it's argued that contrary to first impressions, our common-sense judgments about charitable giving fail to present a counter-example to a pro tanto duty to maximize the good. I argue that since morally optional acts are essentially personally significant, intrapersonal trade-offs, individuals have an agent-relative prerogative of sacrifice. This prerogative explains why our intuitions about charitable giving can be reconciled with positing a pro tanto duty to maximize the good.

The second chapter provides a structural argument in favour of rejecting a pro tanto duty to maximize the good by engaging with a common objection to standard consequentialism and showing that, on closer inspection, a satisfactory solution to this problem may require us to reject a pro tanto duty to maximize the good.

More specifically, this chapter looks closely at the problem of partiality, which arises when the common-sense judgement that individuals can permissibly prioritize their loved ones when allocating benefits conflicts with the consequentialist requirement to produce a greater good instead. Two existing solutions to the problem of partiality are considered, and it's suggested that both of them leave a number of questions unanswered. Ultimately, it's suggested that as long as

moral theories posit a *pro tanto* duty to maximize the good, they are likely to struggle to accommodate our common-sense judgements about prioritizing loved ones. This is because by adopting a duty to maximize the good, such theories assign a dominating default role to concerns of impersonal value, with personal concerns considered to be structurally subordinate.

The third chapter is the most exploratory piece in this project and pursues a more abstract critique of maximization. It's argued that a *pro tanto* duty to maximize the good relies on the theoretical assumption that the 'moreness' of a good *also* has moral value. But this means that consequentialist and non-consequentialist theories rely on an additional assumption about goodness which has not yet been spelled out or critically evaluated. This chapter aims to do the former: to explain and spell out this underlying theoretical commitment, thus showing that whether or not theories which posit a *pro tanto* duty to maximize are right, maximization is at least more controversial and less obviously true than generally assumed.

This concludes the first three chapters of this thesis, which all make the case for taking seriously the idea that we have good reason to reject a *pro tanto* duty to maximize the good. The remaining two chapters illustrate two points which are found downstream from rejecting a *pro tanto* duty to maximize the good. To this end, both chapters adopt a contractualist viewpoint. Anti-utilitarian in its spirit, contractualism is one of the few mainstream moral theories which eschews a *pro tanto* duty to maximize the good and instead opts for a more individualist approach to morality. Taking up the perspective of a moral theory which rejects any duty to maximize value allows us to make a number of observations –for instance, about the value of individuals and the ethics of risk impositions– which would otherwise remain inaccessible.

More specifically, the fourth chapter engages with a well-known objection pertaining to the numbers of individuals. This objection may be pressed against any theory which rejects a *pro tanto* duty to maximize and aggregation alongside it.

Note that common sense morality seems to tell us that a rescuer who can save either one individual or five other individuals from death has a duty to save the greater number. This, or so the thought goes, is what respect for individuals requires from us. But for those who reject a duty to maximize the good, it appears very difficult to deliver the common-sense conclusion that the rescuer has a duty to save the greater number. In this vein, contractualists have regularly been charged with failing to be able to arrive at plausible answers in rescue cases. In this chapter, I consider two ways to defend contractualists, and those who are happy to reject a duty to maximize the good. First, I examine a new argument by Jay Wallace which defends a duty to save the greater

number while adhering to individual justification. Second, I suggest that common sense morality doesn't as straightforwardly support a duty to save the greater number as it might initially seem. I ultimately explain why a rejection of aggregation and a pro tanto duty to maximize the good may instead reflect an attractive common-sense conception of valuing individuals.

The fifth and final chapter takes a contractualist perspective in order to highlight that, contrary to a common strand of thought in moral philosophy, aggregation is not the only tool for maximization. Rather, theories also engage in maximization if they arrive at moral principles via a reliance on certain kinds of probabilities.

Let's give a bit more detail. So-called 'ex ante contractualism' is the most popular contractualist approach to assessing the permissibility of principles of risk imposition. However, it also gives rise to a puzzle: ex ante contractualism winds up licensing principles which impose large burdens on some, in order to secure smaller benefits for others, despite the fact that such principles are not only counter-intuitive, but also stand in direct opposition to the anti-utilitarian, anti-maximizing spirit of contractualism. This chapter offers a diagnosis of this puzzle of ex ante contractualism. It is argued that individual probabilities of being harmed or benefitted as relied upon by ex ante contractualism are sometimes conditioned by an individual's membership in a group and therefore cannot be justified on purely personal grounds. By nevertheless admitting probabilities which are conditioned by an individual's group-membership, ex ante contractualism finds itself in violation of contractualism's most fundamental tenet of individualist justification and, therefore, delivers maximizing conclusions.

The thesis concludes that a pro tanto duty to maximize the good puts demands on individuals which are, on closer inspection, incompatible with many of our everyday intuitions and standard moral commitments. In a literature dominated by consequentialism and non-consequentialism, this thesis shows that there are good reasons to renounce the common assumption that individuals have a duty to maximize the good, and to instead embark on the road less travelled.



## 1. Charity and Sacrifice

Strict consequentialists consider individuals to be subject to an exceptionless duty to maximize the good. Non-consequentialist philosophers disagree with such an absolute approach, and instead affirm the existence of prerogatives and constraints: agent-relative options or prerogatives stipulate that individuals are exempt from a duty to maximize value if this imposes significant costs on the agent, such as having to sacrifice one's life-aims, one's limbs, or one's loved ones. Constraints tell us that it's impermissible for individuals to maximize value when this would violate certain constraints against harming, such as a constraint against killing the innocent.

But non-consequentialists still believe that we have a *pro tanto* duty to maximize the good, at least if the good at stake is morally relevant, such as saving lives. That is, we don't think that there is a duty to maximize value when making personal decisions or producing morally irrelevant goods. For instance, we don't have a moral duty to wear the clothes which please others most, bake birthday cakes for our friends, or save goldfishes and chocolate pralines from being crushed. Yet if the value at stake is morally significant, and no prerogatives or constraints are present, and all other things are equal, consequentialist and non-consequentialist alike seem to posit that one ought to do more good rather than less good if one can do so at no additional cost. They affirm something like the following:

*Maximization:* Agents have a duty to maximize the good if (i) the good is morally significant, (ii) this imposes no significant costs on the agent and (iii) no other moral considerations such as constraints are present.

However, there seems to be one particularly clear exception to *Maximization*: charitable giving. In particular we can look at a common-sense judgement which seemingly allows individuals to violate *Maximization*. Most people believe that it is permissible to donate one's money or time to a less efficient charity rather than to a more efficient charity, even if one could have donated to the more efficient charity at no additional cost. It seems, for instance, permissible to donate one's lifesavings to a make-a-wish charity which fulfils the wishes of seriously ill children rather than to a malaria charity, even if donating to the malaria charity would save many more lives and secure a greater amount of overall good. Thus, the following is affirmed:

*Suboptimal Charity*: It's permissible to donate to a less efficient charity, even if one could donate to a more efficient charity at no additional cost.

One potential justification of *Suboptimal Charity* turns out to be unsuccessful: since charitable giving imposes significant costs on the agent, one might be tempted to claim that charitable giving is excluded from *Maximization*. But there is a problem with this justification: the significant costs associated with charitable giving would simply entail that charitable giving is morally optional for the agent, rather than morally required. But once the agent is prepared to incur the costs of charitable giving and to donate their lifesavings and is choosing between supporting the make-a-wish foundation or the malaria charity, these costs are no longer relevant. Although more will be said on this in due course, we can already see that an appeal to costs cannot straightforwardly explain *Suboptimal Charity*. This shows that even though prerogatives and constraints are absent, *Suboptimal Charity* permits individuals to produce a lesser good rather than a greater good, thus awkwardly contradicting *Maximization*.

In response, supporters of *Maximization* are bound to be wary of conceding that *Suboptimal Charity* presents a genuine exception to *Maximization*. This is because such a concession seems to sow doubts as to whether we have reason to adopt *Maximization* as a basic moral tenet in the first place. Instead, supporters of *Maximization* are poised to look for a different solution to the challenge posed by *Suboptimal Charity*.

Recently, some non-consequentialists have attempted to answer this challenge by arguing that *Suboptimal Charity* should be rejected. Theron Pummer and Joe Horton claim that the common-sense intuition which alleges that it's permissible to donate to less efficient charities is mistaken, and that such suboptimal donations are, in fact, impermissible (Pummer 2016, Horton 2017b). Thus, so Pummer and Horton conclude, *Suboptimal Charity* is false.

Yet it can be shown that Pummer's and Horton's proposal not only comes at the high price of several counter-intuitive implications, but also fails to go beyond the intuitive appeal of *Maximization*. As such, many might remain unconvinced by Pummer's and Horton's solution to the challenge which *Suboptimal Charity* poses to supporters of *Maximization*. Instead, this chapter presents an alternative solution to reconciling *Suboptimal Charity* and *Maximization*, which suggests that *Suboptimal Charity* fails to present a genuine counterexample to *Maximization*.

I suggest that there is a normative category of prerogatives which has been overlooked: when engaging in acts of moral optionality, individuals voluntarily incur non-negligible burdens

only because this is what is required of them in order to advance a specific purpose they have. But this means that if the agent is required to engage in a different, more efficient act of optionality, they are deprived of the opportunity to perform the precise act of optionality which they chose to pursue. This imposes a cost on the agent, which gives rise to a yet unappreciated agent-relative prerogative of sacrifice. It is this prerogative, or so this chapter suggests, which exempts individuals from the demands of *Maximization* in morally optional cases, and thus reconciles *Maximization* and *Suboptimal Charity*.

The chapter is split into five sections. In the first section, I introduce Pummer's and Horton's rejection of *Suboptimal Charity* and outline why their accounts are themselves rooted in the strong intuitive appeal of *Maximization*. The second section explains how in turn, *Suboptimal Charity* also has strong intuitive support from our common-sense moral judgements, leading to an impasse between intuitions favouring *Maximization* and *Suboptimal Charity* respectively. In the third section, I look closely at Pummer's and Horton's view of moral optionality and propose an alternative approach. The fourth section draws on this analysis in order to argue for the existence of an agent-relative prerogative of sacrifice, which ultimately explains why *Suboptimal Charity* fails to present an exception to *Maximization*. Lastly, the fifth section demonstrates how a number of worries one might have about accepting *Suboptimal Charity* are dissolved by reflecting on the general structure of agent-relative prerogatives.

### 1. Against *Suboptimal Charity*

This section sketches Pummer's and Horton's arguments, which reject *Suboptimal Charity* by proposing that it is wrong to donate to a less efficient charity, when one could have donated to a more efficient charity at no additional cost.

It is important to note at the outset that Pummer and Horton both accept *Maximization*. That is, they both suggest that individuals have a duty to maximize the good, but that individuals are exempt from such a duty in cases of agent-relative prerogatives. For instance, since charitable giving imposes significant financial costs on individuals, Pummer and Horton agree that donating to charity is morally optional (Pummer 2016: 79–80, Horton 2017b: 102). And while there might be good reasons for resisting this claim and, instead, arguing that charitable giving is morally required, settling the question of whether we have a duty to donate to charity is beyond

the scope of this discussion. For the purposes of this chapter then, we can agree with Pummer and Horton on the idea that charitable giving is morally optional.

Pummer and Horton's argument against *Suboptimal Charity* is the following: they suggest that once an agent has chosen to incur the relevant costs and donate to charity, the agent is required to donate to a more efficient rather than to a less efficient charity because they can no longer appeal to the cost of donating to charity in order to explain why they are exempt from *Maximization*. Consider the following case:

*Buttons*: An agent has three options: do nothing, press button A, or press button B. Pressing button A will save the life of Anny, while pressing button B will save the lives of Betty and Becky. On touch, each button will explode and sever both of the agent's arms.<sup>8</sup>

In *Buttons*, the agent can permissibly choose not to press either button, due to the cost which the pressing of either button imposes on her. But if the agent is prepared to sacrifice their arms in order to save others, or so the idea goes, it seems wrong for them to press A and do the lesser good of saving Anny, given that she could just as well press B and do the greater good of saving Betty and Becky. After all, if the agent is prepared to incur the cost of losing their arms, they can no longer appeal to this cost in order to justify why they aren't pressing button B rather than A.

Similarly, in cases of charitable giving, Pummer and Horton suggest that individuals have no justification for donating to a less efficient rather than the more efficient charity, given that donating to a more efficient charity isn't costlier than donating to a less efficient charity (Pummer 2016: 83–84, Horton 2017b: 99,104). That is, once an individual is prepared to accept the non-negligible cost associated with charitable giving, the exemption created by this cost ceases to exist. Thus, *Maximization* applies again, requiring the agent to do more good rather than less good. Therefore, *Suboptimal Charity* is false.

While Pummer and Horton reject *Suboptimal Charity* as a general claim, their acceptance of prerogatives means that they consider it permissible to donate to a less efficient charity once strong personal interests are at play. As Horton puts it,

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<sup>8</sup> This is based on a case offered to me by Joe Horton.

It is likely that we have adequate agent-relative reasons to give to suboptimal charities that would significantly help our family, friends, or the other people to whom we have special ties [or] support projects to which we are strongly attached, such as museums or local conservation projects.

(Horton 2017b: 103)<sup>9</sup>

That is, in cases in which agents have a strong personal interest in donating to a specific, less efficient charity, *Maximization* imposes significant costs on them by requiring them to renounce these personal interests. Agents may, for instance, have a strong personal interest in donating to the make-a-wish foundation because they have themselves experienced a childhood disease. If this is the case, a requirement to donate to the most efficient charity rather than the charity of one's choice imposes an additional cost on the agent's well-being. Still, in the absence of such personal costs, *Maximization* applies, and individuals are required donate to the most efficient charity, if they choose to donate to charity at all.

At this point, supporters of *Maximization* may feel vindicated: Pummer and Horton have explained why it's morally wrong or at least morally blameworthy to donate one's lifesavings to the make-a-wish foundation (Pummer 2016: 78). Thus, *Suboptimal Charity* cannot be defended and fails to pose a challenge to supporters of *Maximization*.

Yet one preliminary point bears highlighting: in order to reject *Suboptimal Charity*, one would expect Pummer and Horton to offer an argument which demonstrates that *Suboptimal Charity* is mistaken. But it's not clear that Pummer or Horton have presented us with such an argument. Pummer and Horton claim that it's wrong to donate to less efficient charities because individuals cannot justify this action given that they could have produced more good instead.<sup>10</sup> Yet this essentially reinvokes *Maximization* and stipulates that in cases of moral optionality, individuals are still required to bring about a better outcome rather than a worse outcome. Further support is only drawn from our intuitions about cases like *Buttons*. But, as highlighted

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<sup>9</sup> See also Pummer (2016: 84) and Horton (2017b: 98–99).

<sup>10</sup> The specific principles Pummer and Horton present in support of their claims are the following: '*Avoid Gratuitous Worseness* (weak): It is wrong to perform an act that is *much worse* than another, if it is *no costlier* to you to perform the better act, and if all other things are equal. (Pummer 2016: 84) and '*Optimific Altruism*: If the only adequate justification for not bringing about an outcome O is that it requires a sacrifice S, and we are willing to make a sacrifice that is not significantly smaller than S to bring about an outcome that is not significantly better than O, and we do not have adequate agent- relative reasons to favor this other outcome, we ought to bring about O' (Horton 2017b: 99).

by Thomas Sinclair, this means that Pummer and Horton are essentially appealing to *Maximization* in order to show that in the context of moral optionality, *Maximization* is right and *Suboptimal Charity* is false (Sinclair 2018: 47).<sup>11</sup> Yet, plausibly, this fails to thoroughly engage with the possibility that cases of charitable giving may just present a genuine exception to *Maximization*.

But perhaps Pummer and Horton were bound to fall short of providing an independent argument for the claim that *Maximization* applies equally in cases of moral optionality, which doesn't already assume that *Maximization* is correct. This is because arguments which show that we do, in fact, have a pro tanto duty to maximise the good –whether in morally optional circumstances or not– are difficult to come by. One reason for this might be that *Maximization* is an assumption which operates at the foundations of our normative thinking. At some point, so the thought goes, our arguments just bottom out and we cannot avoid positing some basic normative claims: people matter, pain is bad, more good is better than less good. For better or for worse, this means that claims like *Maximization* are rarely argued for and that it is often standard practice to assume them.

So when confronted with the choice between having to reject the foundational idea of *Maximization* or accepting Pummer's and Horton's proposals of dismissing *Suboptimal Charity*, the latter appears like the more appealing option.

## 2. In Conflict with Common-Sense Morality

One problem arises from rejecting *Suboptimal Charity* based on the idea that *Maximization* posits the more basic, and more intuitively attractive claim. This problem is found in the fact that a rejection of *Suboptimal Charity* conflicts with our common-sense moral judgements on at least three different points.

First, a rejection of *Suboptimal Charity* spells trouble for most individuals who use their money and time to support charities in their everyday life. Plausibly, many people who donate or volunteer for charities fail to choose a charity based on concerns of efficiency, and rather make their choice based on a variety of alternative considerations, one of which might just be

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<sup>11</sup> As Sinclair puts it, Pummer and Horton both assume that maximizing the good is 'the morally required standing in the absence of special agent-relative considerations'. Sinclair (2018: 47).

happenstance.<sup>12</sup> But if Pummer and Horton are correct and *Suboptimal Charity* is to be rejected, all of these people are acting wrongly when choosing to give to charity. Following Pummer and Horton, it is wrong to donate to the make-a-wish foundation, and wrong to volunteer by keeping company to someone isolated, given that one could have donated to a malaria charity or volunteered at a soup kitchen instead. But the verdict that the majority of people who donate their money and time to charity act morally impermissibly appears like something we might want to oppose.

Yet those who reject *Suboptimal Charity* are aware of this implication. In response, they might point out that agents who donate to less efficient charities while being unaware of the fact that they are morally required to donate to the most efficient charity are acting blamelessly, and thus merely engage in excusable wrong-doing.

But this response doesn't seem very satisfactory: it still appears implausible to suggest that an agent who donates to the make-a-wish foundation or accompanies people who are isolated or in need is engaged in excused wrong-doing. Intuitively, this judgement fails to understand the genuinely selfless and caring nature of the volunteer's actions, and the fact that they are contributing to the well-being of people who are vulnerable and in need of support.

A second implication seems more worrying. Because Pummer and Horton consider charitable giving to be morally optional, it's still permissible for individuals to do no good at all with their money and time. This implies that on Pummer and Horton's view, it's morally permissible for agents to spend their lifesavings on trivial purposes such as collecting cookie jars, or to simply gamble them away, but morally wrong to donate the same funds to the make-a-wish foundation. But this, again, strongly clashes with common-sense morality: plausibly, the person who spends their lifesavings on helping seriously ill children is acting laudably, while the person who squanders their lifesavings on matters like cookie jars or gambling is doing something more questionable. In fact, common-sense morality seems to tell us that surely it can't be permissible to do the latter, but wrong to do the former: after all, this seems to be the opposite of what

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<sup>12</sup> We may also think that if individuals would follow Pummer's and Horton's conclusion that it is wrong to do a lesser good when one could have done a greater good at no additional cost, many charities would struggle for funding. This affects charities which offer individualized aid, but also charities which support comparatively inefficient aims such as culture, animals, or the environment. Yet this condemns charities which we generally consider to be intuitively valuable, despite the fact that they do not contribute to maximizing the good. Here, Pummer and Horton may respond by adopting a pluralist perspective which allows different kinds of values to be supported, beyond the maximization of well-being.

morality is all about. If it's permissible to do no good at all, it should also be permissible to do a lesser good rather than a greater good.

Third, those who reject *Suboptimal Charity* run into trouble one last time when reflecting on cases in which individuals –somewhat unusually– incur non-negligible costs for their own sake. Consider the following:

*Suicide*: Jane rationally decides to end her own life but has no preferences regarding how to proceed. Jane has the choice between ending her life (1) alone in the woods, producing no good, or (2) right outside a hospital, producing the greater good of ensuring that her organs will be used to save several lives.

Now, some features of this example might render it unattractive. One might think that suicide is actually wrong, and therefore impermissible. Or one may suggest that although suicide isn't wrong, there is still something undesirable about it which renders our intuitions on this case potentially misleading. So, let's add a second case.

*Self-punishment*: James has failed in his assigned task and let down his superiors. To express his deep regret, he punishes himself by slicing off a finger. James has no explicit preference as how to dispose of the finger. He has the choice between (1) leaving it, or (2) dropping it off at the hospital while driving by, so that it can be transplanted onto someone else.

Given that Jane and James are incurring a non-negligible cost and can either bring about a lesser good, or, at no additional cost, a greater good, Pummer's and Horton's rejection of *Suboptimal Charity* has the implication that Jane and James are required to do (2). However, it seems questionable to suggest that Jane is morally required to kill herself in one way rather than another. Rather, barring the violation of any constraints, it seems strongly plausible to say that Jane can end her life in whichever way she chooses, no matter the fact that her organs could save the lives of several other individuals. The same seems to apply to James's finger: although (2) seems to provide the morally superior option, it seems unconvincing to claim that it's morally wrong for James to dispose of his finger in whichever way he likes.



With these points clarified, we can see that *Suboptimal Charity* also has strong intuitive support via our common-sense moral judgements. And with Pummer's and Horton's rejection of *Suboptimal Charity* effectively relying on the intuitive appeal of *Maximization*, it's clear that we've reached an impasse. Moving beyond this impasse of intuitions is the task of the remainder of this chapter.<sup>13</sup>

### 3. Moral Optionality and Intentions

The next three sections aim to solve the challenge which *Suboptimal Charity* poses to defenders of *Maximization* by explaining why individuals are exempt from *Maximization* in cases of moral optionality. More specifically, by arguing that because a duty to maximize the good imposes a cost on individuals whenever they are engaged in morally optional acts, this cost grounds an overlooked, agent-relative prerogative of sacrifice. It is this prerogative which exempts individuals from the demands of *Maximization*, thus reconciling *Maximization* with *Suboptimal Charity*.

But in order to be able to explain the cost which grounds such a prerogative, it's necessary to begin by examining the structure of morally optional acts more generally. To this end, this section outlines Pummer and Horton's view of the structure of moral optionality, explains why their view is mistaken and proposes a more complex approach which takes note of the significance of intentions. Drawing on this discussion, the subsequent section then introduces an argument for the existence of a prerogative of sacrifice.

Let's begin by more closely looking at cases of moral optionality. For the purposes of this discussion, morally optional acts are considered to be any acts which individuals aren't required to perform based on the non-negligible burdens which they impose on individuals.<sup>14</sup> Key examples are, again, *Buttons* and cases of charitable giving. In cases like *Buttons* or charitable giving, individuals have a choice between three courses of action: they can (1) do nothing, (2) incur a non-negligible cost in order to produce a lesser good, or (3) incur a non-negligible cost in order to produce a greater good. We've already seen that Pummer and Horton advance the

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<sup>13</sup> One explanation which defenders of Pummer and Horton may appeal to is that *Maximization* only conflicts with our intuitions in *Suboptimal Charity* because humans are often sentimental and unsystematic creatures. As such, we shouldn't be surprised when our intuitions are mistaken concerning cases that require us to set aside our sentiments and be systematic. Yet this renewed appeal to intuition might do little to convince opponents as it doesn't suffice to show that the common-sense intuition that it's permissible to donate to less efficient charities is mistaken.

<sup>14</sup> This discussion does not pertain to acts which are morally optional based on the fact that they secure morally insignificant goods.

following line of thought: *Maximization* tells us that (2) and (3) are morally optional purely because they impose a non-negligible burden on the individual. But if the individual chooses not to do (1) and is happy to incur the non-negligible burden, then, in the absence of the burden, the agent would be required to act so as to secure the greater good. This is because they can no longer appeal to this cost in order to justify why they aren't acting so as to secure the greater good.<sup>15</sup> Therefore, *Suboptimal Charity* is mistaken.

This highlights that according to Pummer and Horton's view of moral optionality, the two courses of action (2) incurring a non-negligible cost in order to secure a lesser good and (3) incurring the same non-negligible cost in order to secure a greater good, only differ in the amount of good secured by each of them.

But this view of moral optionality is based on failure to properly appreciate the special structure of morally optional acts. The amount of good secured by (2) and (3) isn't the only differentiating factor between both courses of action. Both courses of action are also individuated by the intentions for which they are performed. To support this claim, it's useful to make a quick detour on the role of intentions in moral optionality.

To begin with, it's helpful to draw on insights from the literature on supererogation. So far, we've referred to morally optional acts as any acts in which agents voluntarily incur non-negligible costs while not being morally required to do so. But we only need to think of *Suicide* and *Self-Punishment* to see that not all morally optional cases count as what's commonly understood as 'supererogation'. Supererogation refers to acts which aren't morally required, but which are morally meritorious or "beyond the call of duty". But accidental, unconscious or involuntary actions in which agents don't aim to bring about a morally good purpose, have no moral merit and aren't regarded to be cases of supererogation (Heyd 1982: 116). This is illustrated by considering the following case: imagine that although Jane made a large donation to charity which helped a lot of people, Jane meant to transfer her money between two of her own bank accounts and only accidentally put the money in the charity's account. Despite wanting to retrieve the money she is unable to do so (Archer 2013: 449). Jane's act of giving to charity isn't morally meritorious since Jane had no intention of benefitting others. Thus, Jane's act fails to be an act of supererogation. Similarly, the person who just happens to drop off their severed finger at a hospital while meaning to throw it away, also fails to act in a morally meritorious,

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<sup>15</sup> Archer refers to this common view of moral optionality as 'the Sacrifice View'. See Archer (2018) for two objections to it.

supererogatory manner. Crucially, this illustrates that supererogation includes an intention requirement. As Claire Benn writes, ‘for an act to be supererogatory, it must be intended by the agent under a description of which it is morally good’ (Benn 2018: 111).<sup>16</sup>

This point on supererogation demonstrates that an agent’s intentions for incurring a non-negligible cost are a significant feature of morally optional acts. What’s more, intentions alone are what distinguishes an agent’s supererogatory action from an agent’s morally optional but non-supererogatory action.<sup>17</sup> Therefore, when reflecting on morally optional acts in which an agent voluntarily incurs non-negligible burdens, it’s essential to ascertain with what intention the agent has incurred such a cost.

Psychologically, too, the role of an agent’s intentions is paramount: whenever agents choose to incur non-negligible costs such as losing their arms or lifesavings, they don’t act out of a whim. In fact, incurring a non-negligible cost such as losing one’s arms without any reflection or purpose is barely intelligible. The incurrence of a non-negligible cost which would otherwise be unacceptable to an agent, becomes acceptable only once this cost is required for securing a purpose which is valued higher than the cost to be incurred. Urmson’s soldier who throws himself on an exploding grenade in order to save the lives of his peers wouldn’t have sacrificed his life but for the aim of saving theirs (Urmson 1958). This makes it at least likely that agents generally only incur optional, non-negligible costs *in order to* secure a specific purpose. Therefore, morally optional acts –whether supererogatory or not– are compounds of the incurrence of a burden, and the intention for which the individual chooses to incur this burden. Put differently, an agent’s incurrence of a burden is conditioned by the intention for which the agent chooses to incur said burden.

One way to illustrate this psychological point is to help ourselves to a term which is usually confined to the context of distributive justice. That is, we can capture the special nature of morally optional acts by characterizing such acts as intrapersonal trade-offs. While interpersonal trade-offs describe acts which balance benefits and burdens across the lives of

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<sup>16</sup> Under an alternative view, an action is only supererogatory if it is based on a praiseworthy motivation. For discussion of both views, see Benn (2018). For the purposes of this chapter, I will continue to refer to ‘morally optional’ acts rather than ‘supererogatory’ acts since this includes a greater range of actions, such as *Suicide* and *Self-Punishment*. What’s more, as already seen in these few sentences, it’s still under debate what precisely qualifies as a supererogatory act. Horton himself, for instance, offers a new definition which he takes to arise from his discussion of optionality (Horton 2017b: 100–101).

<sup>17</sup> Generally, this also excludes the previous cases of *Suicide* and *Self-Punishment*. Except, perhaps, on a view which claims that self-regarding actions of supererogation are possible where the agent incurs burdens to benefit herself (Kawall 2003).

different individuals, intrapersonal trade-offs refer to acts which balance benefits and burdens within a single individual's life. For instance, individuals may go to the dentist in order to prevent future toothache or give up their favourite sport in order to invest more time into pursuing their career, or sacrifice time spent with their family. Put differently, intrapersonal trade-offs describe acts in which individuals choose to take on certain burdens for the purpose of securing certain benefits or advancing certain goals and values. As such, it's clear that morally optional acts fall within the remit of intrapersonal trade-offs: individuals deliberately incur burdens and give up something they value in order to secure something which has even greater value to them, e.g. giving up their arm in order to be able to save another person's life, or giving up time with their family in order to volunteer at a shelter.

Having outlined the role which intentions play in the structure of morally optional acts, we can now explain where precisely Pummer and Horton's view of moral optionality goes awry. Once significant personal interests are absent, Pummer and Horton consider a morally optional act to solely consist of an individual's incurrance of a non-negligible cost. Based on this, Pummer and Horton consider (2) incurring a non-negligible cost in order to produce a lesser good and (3) incurring a non-negligible cost in order to produce a greater good to be solely distinguished by the amount of good secured in each of them. But once we've seen that morally optional acts are also individuated by an agent's intentions, and are even conditioned by an agent's intentions, it's clear that this view is too simplistic. We can now redescribe the three different courses of action available to individuals in the morally optional cases at hand in the following way: (1) doing nothing, (2) engaging in intrapersonal trade-off  $T_1$  in which the agent incurs a non-negligible cost *with the intention* to produce the lesser good, or (3) engaging in intrapersonal trade-off  $T_2$  in which the agent incurs a non-negligible cost *with the intention* to bring about a greater good.

Someone defending Pummer and Horton's view of moral optionality might reject this construal of their position as uncharitable. Respectively, Pummer and Horton imply that individuals who are performing morally optional acts such as donating to charity are acting based broad, generic moral ideals or purposes. They might be, for instance, motivated by 'primary agent-neutral reasons [...] rooted in promoting the good or benevolence' or 'the more general aim of reducing human suffering' (Pummer 2017: 80, Horton 2017b: 103). This can be illustrated by returning to the agent in *Buttons*: most likely, it seems that an agent who would be willing to incur the cost of losing her arms would act with the intention of achieving a broad, moral

purpose such as ‘doing good’. But if this is the case, both options open to the agent – (2) doing a lesser good and saving Anny or (3) doing a greater good and saving Betty and Becky – achieve the agent’s intention or purpose of ‘doing good’. Thus, both options (2) and (3) are no longer individuated by different intentions, since they both secure the same intention of ‘doing good’.

While promising, this response trades on the imprecise nature of broad moral purposes such as ‘doing good’. While it may seem that (2) incurring a non-negligible cost in order to produce a lesser good and (3) incurring a non-negligible cost in order to produce a greater good advance the same moral purpose of ‘doing good’, this is actually a mistake. In fact, option (3) advances a maximizing purpose which isn’t advanced by (2): the purpose ‘doing as much good as possible’. Therefore, it’s helpful to distinguish between two kinds of generic moral purposes which agents may have when engaging in morally optional acts: maximizing moral purposes such as ‘saving as many lives as possible’, ‘maximizing well-being’ and ‘minimizing suffering’ and non-maximizing purposes such as ‘saving lives’, ‘securing well-being’ and ‘alleviating suffering’.

With this distinction in mind, the agent faced with a choice between (1), (2), and (3) either has a maximizing or a non-maximizing purpose. If they have a maximizing purpose, then their purpose was all along ‘doing as much good as possible’ rather than ‘doing good’. Thus, the agent’s purpose is fulfilled by (3) doing the greater good rather than (2) doing the lesser good. But an agent’s purpose for the incurrance of a non-negligible cost might also be a non-maximizing moral purpose such as ‘doing good’. Yet given that (3) fulfils the purpose ‘doing as much good as possible’, only (2) fulfils the purpose ‘doing good’, taken by itself. This shows that even if it’s posited, following Pummer and Horton, that individuals are likely acting on generic moral purposes rather than subjective and idiosyncratic reasons, it remains the case that because (2) and (3) secure different moral purposes, they are different acts individuated by intention.

#### 4. The Prerogative of Sacrifice

We now have all the pieces in place for establishing the claim that there is an overlooked agent-relative prerogative of sacrifice in cases of moral optionality which, in turn, reconciles *Suboptimal Charity* and *Maximization*.

Given the previous section, we can say the following about Pummer and Horton’s argument against *Suboptimal Charity*. Following Pummer and Horton, if an agent chooses against (1) doing nothing, they are –barring personal interests– required by *Maximization* to choose (3)

over (2). But, as we've seen, the intrapersonal trade-off present in (3) is an entirely different trade-off than the one present in (2). That is, even if the agent's purpose P for which the agent is intending to incur a non-negligible cost secures a lesser good and is fulfilled by (2), *Maximization* requires the agent to perform (3) and to engage in the intra-personal trade-off of incurring a non-negligible cost in order to secure a greater good.

In other words, *Maximization* requires the agent to engage in a different sacrifice or intrapersonal trade-off than the one they set out to engage in. Why is this significant? Because being required to perform an entirely different sacrifice rather than the sacrifice one set out to perform imposes a cost on the individual. This cost, or so the rest of this section argues, is what grounds an agent-relative prerogative of sacrifice.

To make a case for the existence of this prerogative, we first need to clarify what exactly the cost consists in which allegedly grounds this prerogative. A first cost is likely to be rejected by the likes of Pummer and Horton, but still worth bearing in mind. This cost invokes an underappreciated feature about morally optional acts, namely the fact that they are a powerful tool of agential self-expression. Individuals may choose to take on extreme costs to themselves, specifically in order to advance a normative purpose which is of great value to them, such as saving strangers, benefitting loved ones, or advancing moral or political objectives. Being able to sacrifice one's well-being and even oneself constitutes a unique tool which allows agents to express their personal normative commitments and values and to exert agency in order to advance these values. Some might even consider sacrifices to be the epitome of agent-relative agency: they permit agents to advance their personal values and commitments by literally giving up all they have.

*Maximization* deprives individuals of this tool. While we've already seen that *Maximization* permits individuals to do the lesser good if they have a personal reason for doing so, individuals must have a substantial preference for this justification to be relevant. For those who have weaker preferences, *Maximization* will deprive them of the option to act based on what they care about. This, however, depletes the expressive and emotionally significant role which sacrifice plays in our lives. Sacrifice becomes a vehicle for the maximization of goodness rather than a way in which agents may choose to advocate and advance their most deeply held values and goals.

But let's move on. A different way to cash out the suggestion that *Maximization* imposes a cost on agents in morally optional cases is to propose that a requirement to perform a different intrapersonal trade-off than the one the agent chose to engage in, imposes a psychological cost

on the agent. That is, being required to perform a different intrapersonal trade-off than the one the agent set out to perform denies the agent the opportunity to pursue their own personal interest in pursuing this trade-off. Being denied the opportunity of being able to pursue their own personal interests though, has a significant impact for the agent's psychological and emotional well-being. This, so the thought might go, constitutes the relevant cost imposed by *Maximization*, which should ground an agent-relative prerogative.

Somewhat flat-footed, this approach appears unsuccessful. Pummer and Horton's discussions already consider cases in which the agent's personal interests ground an exemption from *Maximization* based on psychological costs. That is, as seen before, agents are exempt from *Maximization* if producing the greater good rather than the lesser good imposes a cost on agents by depriving them of the ability to pursue a significant personal interest. This, surely, is a concern for the psychological costs imposed on the agent's well-being. Thus, showing that *Maximization* requires the agent in morally optional cases to perform a different sacrifice than the one they intended to perform may well cause psychological costs. But these costs are already taken into consideration by Pummer, Horton, and the principle of *Maximization*, and thus cannot ground an additional agent-relative prerogative.

Yet one might also advance a more intricate answer to the question of what precisely constitutes the cost which *Maximization* imposes on individuals in morally optional cases. It's important to repudiate another sequential picture: the idea that individuals are incurring two separate costs in morally optional cases, a physical cost in incurring a non-negligible burden, and a psychological cost when potentially being required to support a purpose they haven't chosen.

Rather, it's essential to remind ourselves of a point raised in the previous section. Note that the incurrence of a non-negligible cost only becomes acceptable to the agent as part of an intrapersonal trade-off  $T_P$ , if an agent's personal purpose  $P$  is perceived to be more important than the cost incurred. That is, the agent is prepared to incur the non-negligible cost and engage in  $T_P$  on the condition that this secures her intention of achieving purpose  $P$ . But this condition isn't fulfilled by the intrapersonal trade-off  $T_{Not-P}$  which consists of incurring a cost for the purpose of securing a greater good. Thus, agents can appeal to the full physical and psychological cost of having to perform  $T_{Not-P}$  in order to justify why they can permissibly perform intrapersonal trade-off  $T_P$  instead of  $T_{Not-P}$ . Put differently, *Maximization* still imposes the overall cost of performing  $T_{Not-P}$  on the individual.

Let's restate this in some more detail. It is suggested that because a sacrifice is an intrapersonal trade-off, it consists of an act which is performed in order to secure a benefit or purpose P. For instance, sacrifice  $T_P$  consists of 'incurring a non-negligible cost X *for the specific purpose P*'. Requiring agents to incur a non-negligible cost for the distinct maximizing purpose 'doing as much good as possible' changes the entire act which agents are engaging in. That is, it requires the agent to perform a *different* intrapersonal trade-off and sacrifice  $T_{NotP}$ , which consists of 'incurring a non-negligible cost for the purpose of doing as much good as possible' rather than their chosen intrapersonal trade-off and sacrifice  $T_P$ . This means that unless an agent's purpose is already 'doing as much good as possible', *Maximization* requires agents to perform a sacrifice which they didn't intend to perform. This imposes a distinct cost on agents because it requires agents to incur a substantial burden for a different purpose than the purpose which rendered the incurring of said loss acceptable for them in the first place. This cost, or so this chapter argues, exempts individuals from *Maximization* whenever they are engaging in morally optional acts.

For clarificatory purposes, four points are worth highlighting. First, this argument for an agent-relative prerogative of sacrifice doesn't rely on the stronger claim that actions always contain an agent's intentions or are always individuated by an agent's intentions. Rather, it's suggested that morally optional acts constitute a special category of actions, and that in this category, an agent's intention always forms part of an act. When incurring an optional, non-negligible cost, agents are undergoing such a cost precisely for their intention or purpose P, and with P in mind. That is, in a case where the agent has the choice between doing nothing, performing  $T_P$ , or performing  $T_{NotP}$ , they would only undergo the cost for the purpose P.<sup>18</sup> But this means that agents can appeal to the non-negligible cost imposed on them by  $T_{NotP}$  in order to justify why they aren't performing  $T_{NotP}$  but rather performing  $T_P$ . In other words, *Maximization* imposes a non-negligible cost on agents by requiring them to perform  $T_{NotP}$  rather than  $T_P$  which, in turns, exempts agents from *Maximization*, vindicating *Suboptimal Charity*.

Second, in order for the prerogative of sacrifice to apply, morally optional acts must be of the same structure as *Buttons*. This is important to highlight because morally optional acts may sometimes have a different structure. Consider the following case by Kagan:

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<sup>18</sup> In a different context in which the agent is only able to choose between doing nothing and performing  $T_{NotP}$ , the agent might still prefer to perform  $T_{NotP}$ , given that  $T_P$  isn't available. This is because the availability of different options may change our preferences.



*Fire*: Suppose a building is on fire. Upon entering, I find a child and a bird trapped within. Needing one hand free to clear a path back outside, I can save only one of the two.

(Kagan 1986: 16)

In cases of this structure, choices are sequential: individuals initially have a choice between two courses of action (1) do nothing and (2) incur a non-negligible burden. If they opt for (2), they subsequently face a second choice between either (a) doing some good or (b) doing more good. But it's at least partially misleading to discuss *Fire* as a case of moral optionality. It's been pointed out that once the first decision-stage between (1) and (2) is over, and the agent in *Fire* has entered the building, we are no longer looking at a morally optional choice: since the agent is able to save a child's life either at no cost or at the small, agent-relative cost of losing a bird, the agent has a duty to save the child (McMahan 2018: 88). This renders such cases distinct from cases like *Buttons*, in which agents are only faced with a single choice before incurring the non-negligible burden.

Third, it's useful to highlight how the present account aligns with conclusions offered by Jeff McMahan on the same question but provides a more comprehensive argument in support of these conclusions. McMahan offers a defense of *Suboptimal Charity* which states:

[A] a contingent motivation, however irrational, to accept a supererogatory cost to produce a lesser good does not make it cease to be supererogatory to accept that same cost to produce a greater good that one is not motivated to produce at that cost.

(McMahan 2018: 92)

But without further argumentative support, supporters of Pummer and Horton's position are likely to dismiss this characterization of optionality by sticking to their guns and insisting that,

in a choice between costless versions of [doing a lesser good] and [doing a greater good] [...] where doing nothing is not an option, only [doing a greater good] is permissible.

(Bader: 2019: 224–225)

Yet with the concept of agent-relative prerogatives of sacrifice in hand, we're now able to provide argumentative rather than intuitive support for *Suboptimal Charity* and can therefore reveal claims such as Bader's to be mistaken.

Fourth and finally, it's helpful to address what might to many appear as a pressing worry. It seems as if the solution offered in this section doesn't apply in cases in which agents don't care about the charity which they are donating to. Consider an agent who donates to the make-a-wish foundation purely on a whim, and not because they care about this charity in any way. Following *Suboptimal Charity*, this donation is permissible. However, the provided explanation cannot justify this kind of permissibility, given that the agent isn't acting in order to advance a specific purpose. Therefore, the solution of this section fails to vindicate *Suboptimal Charity*.

But we can raise some questions about this scenario. There are two interpretations of this agent's actions. First, the agent might be acting out of a genuine whim if they consider the donation to the make-a-wish foundation to be an appealing option and are moved by this impression. That is, acting on a whim generally means acting based on the appeal of something, such as going for a sudden walk in the glaring sunshine.<sup>19</sup> Construed this way, it seems that the account above still applies: the agent is still donating to the make-a-wish foundation based on being attracted to this specific purpose, in a way which is still purposive: their whim likely wouldn't have led them to donate to a different charity instead, just like one might not go for a sudden walk when it's cloudy.

But on a stronger interpretation of this worry, the agent follows no specific appeal and is entirely indifferent to his action. On this view, the agent is merely plumping for one option rather than another when donating to the make-a-wish foundation, just like one might plump for heads over tails. However, here it's helpful to remember that one of the assumptions we are starting from is that the cost imposed by charitable giving is sufficiently high to ground an

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<sup>19</sup> For an argument for why acting on whims is based on appeal, and can even be seen as a rational action, see Baker (2008). For further discussion of whims and brute desires, see Chang (1998) and Quinn (1993).

exemption from *Maximization*, and thus from a requirement to donate to charity. This makes it more difficult though to imagine an agent who chooses to voluntarily incur the substantial burden associated with charitable giving and yet is wholeheartedly indifferent about the purpose for which they are shouldering this burden. At the very least, or so one might suggest, they are likely to see a vague appeal in doing good, helping people, getting tax breaks, impressing others, or in any other ground for which one might choose to pursue an action despite the fact that it comes at a large expense. But if that's the case, they are indeed acting on a specific purpose, and the previous account applies.

Let's sum up: we've previously seen that Pummer and Horton allow for the moral relevance of agent-relative prerogatives which exempt individuals from *Maximization* in special circumstances, such as when a duty to maximize the good imposes non-negligible costs on individuals by interfering with their personal interests. That is, although Pummer and Horton reject *Suboptimal Charity*, it follows from *Maximization* that when an individual's personal interests are at stake in a case, individuals are exempt from *Maximization*. They are permitted to donate to less efficient charities in cases in which the demands of *Maximization* impose a personal cost on them. But, on closer view, the structure of morally optional acts necessarily entails that *Maximization* imposes non-negligible costs on agents who engage in morally optional acts. This is because morally optional acts or acts of sacrifice, by their very nature, are only ever performed for a specific purpose P: because morally optional acts are intrapersonal trade-offs, we cannot separate the optional incurrence of a non-negligible cost from the agent's purpose for choosing to incur such a cost.

Thus, *Maximization* always imposes non-negligible costs on an agent who is engaging in a morally optional act by requiring them to engage in a different sacrifice or intrapersonal trade-off than the one they had chosen to engage in. Based on this cost, I've suggested that agents have an agent-relative prerogative of sacrifice which exempts agents from *Maximization* in cases of moral optionality. In this light, it's possible to vindicate *Suboptimal Charity* and to reconcile it with *Maximization*. There is no conflict after all.

## 5. The Magic of Prerogatives

With the agent-relative prerogative of sacrifice outlined, we can now move to thinking about some broader implications, and about how the framework of prerogatives may be useful in

tackling those. In particular, I suggest that two worries about accepting *Suboptimal Charity* can be answered once we explain *Suboptimal Charity* by reference to the agent-relative prerogative of sacrifice.

A first, and seemingly powerful worry about accepting *Suboptimal Charity* comes from the thought that it would allow agents to act in reprehensible ways in cases which have the following structure:

*Buttons 2*: An agent has three options: do nothing, press button A, or press button B. Pressing button A will save the life of Anny, while pressing button B will save the lives of Anny and Betty. On touch, each button will explode and sever both of the agent's arms.<sup>20</sup>

*Suboptimal Charity* allows the agent in *Buttons 2* to appeal to the cost of being required to engage in a different sacrifice than she intended, in order to permissibly press A and save Anny, despite the fact that they could have saved both Anny and Betty by pressing B. We can imagine different grounds for this: perhaps the agent has a strong hatred for Betty, or perhaps they are acting on discriminatory grounds, choosing not to save Betty because of her religious beliefs, skin color, class, etc.<sup>21</sup> But no matter what grounds they are acting on, permitting the agent to save Anny and yet to let Betty die gratuitously seems like the wrong judgement to arrive at. Indeed, Pummer and Horton both seem to share the thought that saving just Anny in *Buttons 2* is clearly morally wrong, with Pummer writing

the performance of [doing a lesser good] constitutes a deliberate refusal to do something *much better* at *no extra cost*. This is a serious moral failing.

(Pummer 2016: 87)<sup>22</sup>

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<sup>20</sup> Following McNamara's view of supererogation (1996, 2011), in just saving one child but not saving both children the agent supererogates while nonetheless permissibly suboptimizing (permissibly doing less than what is optimal). This is permissible since, following McNamara, supererogating is not the same as acting optimally or maximizing.

<sup>21</sup> See McMahan (2018: 95). McMahan discusses a case in which a racist who is only willing to save a white person but not a black person.

<sup>22</sup> As Horton puts the same point: 'Because saving both children requires no greater sacrifice than saving only one, saving only one child would be like leaving the other to die when you could save her without any sacrifice, and that would clearly be wrong' (Horton 2017b: 96).

Yet reflecting on agent-relative prerogatives more generally reveals that prerogatives provide a structure which, by its very nature, leaves room for seemingly wrong, reprehensible actions: an agent may make use of their agent-relative prerogative to save their mother rather than five strangers, only because they secretly enjoy watching five people die. Or the agent in *Buttons 2* may choose to exercise their agent-relative prerogative to not incur the loss of their arms not because they mind sacrificing their arms –they’d happily sacrifice them for a different purpose– but simply because they cruelly want Anny and Betty to die.

But even if *Suboptimal Charity* technically fails to charge the agent who refuses to save Betty in *Buttons 2* with moral wrongdoing, we can still consider their actions as offensive and disrespectful, and regard them as a terrible person.<sup>23</sup> Indeed, respect for the autonomous decisions of agents leads us to consider many things as technically morally permissible even if we also consider them to be offensive, disrespectful, and thus morally tainted: people can permissibly make discriminatory choices such as choosing not to be friends with women or decide not to date Christians. Or they may take pleasure in subjecting others to violence as part of their legitimate role in law enforcement. But while these actions seem intuitively morally wrong, they will be morally permissible as long as morality leaves room for the autonomous choices of agents. Along the same lines, allowing for individuals to have the option to engage in personal sacrifices also means that agents have a prerogative to decide on the purpose for which they are prepared to incur non-negligible costs.

More generally, we might want to say that given the special, agent-relative nature of acts of sacrifice, and the fact that individuals are solely intending to engage in such acts based on a specific personal reason, it is simply up to the individual to decide for what purpose she is prepared to voluntarily sacrifice her arms or property, if she chooses to do so at all. An agent’s arms, for instance, are hers to use, adorn, break, or dispose of, and an agent’s choice to sacrifice her arms is a significant personal decision to say the least. The agent can appeal to the fact that her arms are hers to dispose of in whatever way she likes to as a justification for why it should only ever be up to her to decide how and why she sacrifices her limbs. If the agent decides to sacrifice her arms for the purpose of saving a stray dog, or for no purpose at all, this is the agent’s

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<sup>23</sup> One way to frame these cases is as the agent having a ‘right to do wrong’ to permissibly produce the lesser good. However, this would equally apply to charitable giving more generally, and to all cases in which agent-relative prerogatives permit agents to refrain from producing the greater good. They may all establish an agent’s ‘right to do wrong’. Yet Pummer and Horton have stipulated that they assume that individuals have agent-relative prerogatives and we generally don’t consider individuals to do wrong when prioritizing their loved ones over strangers. The same, I suggest, applies to cases of moral optionality. For discussion of a right to do wrong, see Herstein (2012).

personal choice to make.<sup>24</sup> It might be distasteful, cruel, and morally appalling, but as we've just seen, so are many things which we are able to do in our lives without acting wrongly. Ultimately though, this leaves room for considering individuals who choose to save just Anny in *Buttons 2* as blameworthy, even if they aren't impermissible.<sup>25</sup>

Second, let's say a defender of *Maximization* concedes that individuals have an agent-relative prerogative of sacrifice, and that this exempts them from *Maximization* when engaging in morally optional acts. Such defenders may still insist that the prerogative of sacrifice must have its limits and can be outweighed if the good at stake is large enough. If, for instance, donating to a more efficient charity saves a much larger number of lives than donating to a less efficient charity, the agent's prerogative is outweighed, and she is required to donate to the more efficient charity. As a helpful analogy, we can consider another case:

*Buttons 3*: An agent has three options: do nothing, press button A, or press button B. Pressing button A will save the life of Anny, while pressing button B will save the lives of Betty and Becky, Bessy, Briony and Bonny. On touch, each button will explode and sever both of the agent's arms.<sup>26</sup>

One might argue that, surely, in *Buttons 3*, the agent's prerogative of sacrifice is outweighed by the much greater good produced by saving five lives rather than one life. Thus, it would be impermissible for the agent to sacrifice her arms in order to save just Anny.

But this is not how agent-relative prerogatives work. Indeed, it's important to apply prerogatives consistently: Pummer and Horton allow for the moral relevance of agent-relative prerogatives when suggesting that individuals aren't required to donate to charity since it imposes a burden on them, and by permitting that individuals may donate to less efficient charities if they have a strong personal reason for doing so. But in both cases, prerogatives aren't easily outweighed. For instance, they consistently apply no matter whether the charity of one's personal choice is a little less efficient, or significantly less efficient than the most efficient charity there

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<sup>24</sup> Indeed, in everyday life, people incur non-negligible costs for deeply troubling reasons such as for committing insurance fraud or supporting terrorist organizations. And although we can say that committing insurance fraud or supporting a terrorist organization is morally wrong, it seems odd to say that one of the reasons for which it is wrong for an agent to perform such actions is because the agents could have incurred the burdens for a greater good instead.

<sup>25</sup> See Scanlon (2008).

<sup>26</sup> This case is based on a case offered to me by Theron Pummer.

is. This becomes more obvious when we consider other agent-relative prerogatives: I can permissibly save my brother from drowning rather than two strangers, five strangers or twenty strangers. Thus, it seems inconsistent to suggest that an agent-relative prerogative of sacrifice, unlike other prerogatives, would be easily outweighed if the benefit is increased.

## 6. Conclusion

We can now return to charitable giving. This chapter aimed to vindicate *Suboptimal Charity*, or the common-sense intuition that it's permissible to donate to a less efficient charity, even if one could have donated to a more efficient charity at no additional cost, and to show that *Suboptimal Charity* can be reconciled with *Maximization*. I've considered Pummer's and Horton's claim that the common-sense intuition that it's permissible to donate to less efficient charities should be rejected, and I suggested that it fails to fully settle the debate. Instead, I've suggested that *Maximization* imposes non-negligible costs on agents who engage in morally optional acts, by requiring them to perform a different action than the one which they were motivated to do. Based on these costs, I've concluded that individuals have an agent-relative prerogative of sacrifice which exempts them from *Maximization*. This vindicates *Suboptimal Charity*, explaining why agents can permissibly donate to a less efficient charity, even though they could have donated to a more efficient charity at no greater cost. Ultimately, it also shows that *Maximization* leaves more room than one might assume for accommodating cases in which maximization isn't the appropriate response to value.

With this said, many might still wonder why a generic donation to charity should be regarded as analogous to sacrificing one's arms. Surely, or so one might argue, donating to charity involves a much smaller, much less burdensome cost than losing one's arms. In fact, many philosophers, consequentialists and non-consequentialists alike, think that those of us with sufficient financial means have a duty to donate to charity. They believe that the financial burden imposed by charitable giving isn't sufficient to justify an exemption from a duty to aid. Perhaps, then, we have reason to think that donating to charity and sacrificing one's arms aren't analogous actions.

But whether or not we have a duty to donate to charity is not at issue in this chapter. Following Pummer and Horton, we've been assuming that donating to charity can impose non-negligible burdens on agents which exempt them from a duty to aid. But once we accept that

individuals have an agent-relative prerogative to refrain from donating to charity because this imposes a non-negligible cost on them, we also have to accept that individuals may have an agent-relative prerogative of sacrifice which allows them to determine what sacrifices they are willing to engage in.



## 2. Tilted Scales: Partiality and Maximization

Consider a case called *Saving*, in which we can either save the lives of five strangers or save the life of our loved one (such as a child or partner) but cannot save all six. In this case, the common-sense moral judgement is that we may selfishly choose to save our loved one. This common-sense judgement follows from a view about how we often show special preference to our friends and family. After all, we generally provide support to our friends and family that we do not extend to strangers. Nonetheless, choosing to save our loved one in *Saving* might be said to conflict with the so-called *impersonal* demands of morality. Acting morally, so impersonal views of morality suggest, precisely demands that we set aside our own personal allegiances and preferences and instead pursue so what is impersonally best. The problem of partiality, then, is to somehow accommodate two common moral theses that would appear to be in tension; that there should be some space in our moral theories for agents to act on their partial interests, and that morality is in some sense about acting impartially.

One approach to the partiality problem, is to reflect on what philosophers may call the normative structure of a moral theory: its key commitments and how those commitments relate to one another. So, what kind of normative structure is required of a moral theory for it to be able to successfully accommodate our verdict in *Saving*?

As has long been suggested, impersonal theories such as utilitarianism which include an absolute, exceptionless duty to maximize the good, cannot arrive at this verdict. This is because, on a utilitarian picture, we are required to save five strangers rather than our loved one, simply because saving five people secures a larger amount of goodness. But there may still be hope. More recent moral theories have modified and refined consequentialist frameworks in order to be able to offer a normative structure which accommodates our common-sense verdict about *Saving*. They reject the idea that we have an absolute duty to maximize the good and propose that we merely have a *pro tanto* duty to maximize the good. Since this *pro tanto* duty can be outweighed by a range of other moral considerations, this creates a normative structure which can successfully arrive at the verdict that we may permissibly save our loved one in *Saving*.

In particular, this chapter critically reflects on two ways of justifying partiality against the basic assumption that morality is impersonal: first, Thomas Nagel advances an argument in support of agent-relative moral prerogatives, which exempt individuals from a duty to maximize the good in cases in which maximization imposes a significant personal burden on them. Second,

Scheffler suggests that since our personal relationships are morally relevant, our personal concerns may outweigh impersonal considerations. Yet while both of these solutions to the problem of partiality are illuminating, we might still have some reservations regarding the normative structure advanced by both of them. In particular, this chapter highlights that by accepting a pro tanto duty to maximize the good, both proposals still consider the maximization of impersonal value to be a morally required default in a moral theory. It's argued that, as an implication of this, the normative structure contained in both views, still gives structural priority to impersonal value, thus leaving personal concerns as structurally subordinate. But such a structural asymmetry is vulnerable to the charge that despite delivering the correct verdict, Nagel's and Scheffler's solutions to the problem of partiality still fail to exhaustively capture our common-sense judgements. After all, following common-sense morality, the permissibility of saving our loved one in *Saving* constitutes a fundamental moral concern, rather than an afterthought.

This chapter proceeds in the following way: the first and second section respectively examine Nagel and Scheffler's solutions to the problem of partiality and press some questions against each of them. The third and last section of the chapter draws on a comment by Joseph Raz in order to develop a structural worry about the normative structure contained in both approaches. This worry proposes that as long as moral theories posit a pro tanto duty to maximize the good, personal concerns will continue to remain structurally subordinate to impersonal considerations, thus subtly causing trouble for a normative structure which aims to accommodate our common-sense judgements on *Saving*.

## 1. Nagel and Prerogatives

Many moral philosophers approach the problem of partiality by affirming what is referred to as agent-relative prerogatives. Prerogatives stipulate that in cases in which a duty to maximize the impersonal good imposes significant personal costs on the agent, agents are exempt from having to fulfil this duty. That is, once an agent's health, projects, relationships, or general well-being are at stake, agents can permissibly prioritize these personal concerns over the maximization of the impersonal good. In a case like *Saving*, then, we may permissibly save our loved one due to

the fact that the substantial personal costs of losing our loved one exempts us from a requirement to maximize the good.<sup>27</sup>

Several arguments have been advanced in order to justify the existence of moral prerogatives from within a broadly maximizing vantage point.<sup>28</sup> One attractive avenue suggests that consequentialism must include prerogatives in order to accurately reflect human life and human psychology. That is, we are just the kind of beings who care deeply about their own lives, interests, and relationships, and morality must register this fact. An early argument of this kind is offered by Nagel (1986).<sup>29</sup> Nagel starts from the claim that although morality is impersonal, each individual has a personal standpoint from which their interests feature most prominently. Motivationally, then, an impersonal view of the world is only one aspect of human nature and an aspect which exists alongside personal concerns (Nagel 1986: 202). But since this motivational reality can be recognized even from an impersonal standpoint, it must also be taken into account from such an impersonal standpoint. Nagel writes:

the [objective] standpoint has to take into account the kind of complex beings for whom it is being devised. The impersonal is only one aspect of their nature, not the whole of it. What it is reasonable to ask of them [...] should reflect this.

(Nagel 1986: 202)

Nagel's account suggests that because it is necessary to adequately reflect the motivational and psychological reality of human beings, the stringency of impersonal morality is relaxed in cases in which impersonal demands clash with the substantial personal concerns of individuals. In other words, if a moral theory is to appropriately reflect what human beings are like, it needs to tailor its demands and permit individuals to sometimes prioritize their own interests over impersonal matters. Consequently, morality needs to include prerogatives.

But there is a question to be raised about the kind of motivational justification which Nagel offers in support of introducing prerogatives. While personal concerns are taken into

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<sup>27</sup> Note that once a consequentialist, impersonal theory of morality includes agent-relative prerogatives, it is often also described as non-consequentialist.

<sup>28</sup> For discussions of prerogatives, see Kagan (1989), Kamm (1993), Scheffler (1994), Shiffrin (1991), Slote (1984), and Williams (1981).

<sup>29</sup> For an argument along similar lines, see Scheffler (1994).

consideration by such accounts, it's notable that personal concerns aren't considered to carry any moral significance. Rather, such accounts grant exemptions to a moral duty to maximize impersonal value solely based on the psychological reality of human beings – thus effectively making 'concessions to human nature' (Lazar 2019: 86). All the while, morality itself remains the same: a concern for maximizing impersonal value. In the words of Scheffler, it appears as if on Nagel's account, morality contains "prior" content that must be "reduced" or "modified" when it is brought into contact with human nature' (Scheffler 1992: 125). But this means that Nagel's approach to altering an impersonal account of morality seemingly fails to address our common-sense judgements about *Saving* from within a moral viewpoint.

Perhaps this moves too fast. A better way to understand Nagel's account may be to suggest that the inclusion of prerogatives is a product of engaging in a reflective equilibrium about the nature of both morality and people. It proposes that morality requires us to look, first, at what maximises value in the world, and second, at the nature and the needs of people. But under this description of Nagel's account, prerogatives aren't concessions to the reality of human nature, and moral demands aren't reduced or modified. Instead, a view which supplements impersonal morality with prerogatives stems from careful reflection on what morality can plausibly demand from individuals. This, or so it seems, is what Nagel has in mind (1986: 203-204).

But even on this more charitable interpretation of Nagel's account, the previous worry remains. This is because a motivational justification of prerogatives continues to attribute moral value to impersonal considerations only. In turn, personal concerns are regarded as merely having prudential rather than moral value. This is evident when looking closely at Nagel's comments, which specify that:

this modification takes the form of a relaxation of [the requirements of impersonal morality] through tolerance, as it were, rather than the discovery of new moral reasons that outweigh the original impersonal ones.

(Nagel 1986: 204)

This supports the worry that the inclusion of prerogatives retrospectively alters impersonal morality in order to reflect prudential concerns, while not in fact considering these concerns to be themselves part of our moral framework. In fact, at a different point, Nagel explicitly describes

his account as including ‘*reductions* of moral demands due to tolerance’ (1989: 204, italics added). In other words, rather than being a substantial part of morality, the permissibility of saving our loved one remains a prudential exemption to the demands imposed on us by an impersonal moral theory.

While this tells us that it is all-things-considered permissible to save our loved one in *Saving*, one might be concerned that this approach fails to thoroughly reflect our common-sense moral judgement that it’s *morally* permissible to save our loved one. After all, Nagel’s account of morality ultimately tells us that if it weren’t for the exemptions which were granted solely based on psychological facts, we would still be subject to an absolute duty to maximize the good.<sup>30</sup> As such, it appears that a normative structure which accommodates our common-sense judgements about *Saving* in this way actually falls short of adequately capturing the idea that our relationships with our loved ones aren’t a mere psychological fact in need of accommodation, but a feature which matters for its own sake.

Other justifications of prerogatives found in the literature may succeed at sidestepping this objection. Instead of appealing to the motivational reality of human life, such justifications often appeal to additional moral values in order to ground the existence of moral prerogatives, thus expanding consequentialism’s theory of the good. Some, for instance, invoke the moral value of autonomy (Slote 1985, Shiffrin 1991), or the unconditional value of individuals (Kamm 1993, Lazar 2019) in order to explain why individuals are permitted to favour their loved ones rather than required to maximize the impersonal good in cases like *Saving*. Rather than stemming from a prudential concern and a tolerance of the psychological reality of human nature, the permissibility of saving our loved one, on these accounts, is rooted in the moral value inherent in, e.g., autonomy or individuals. While this seems like an attractive strategy, we should keep the following in mind: according to such justifications of prerogatives and thus solutions to the problem of partiality, our personal relationships to our loved ones and our concerns which arise from them are still not necessarily considered to have moral value, and to be mattering for their own sake. Instead, relationships are morally rather than prudentially relevant only in virtue of being found downstream from the impersonal moral value ascribed to our autonomy or to us as individuals.

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<sup>30</sup> This, so Nagel tells us, is what explains supererogation. People who act supererogatorily submit themselves to ‘the true strength of reasons that they could not reasonably be required to follow strictly, given the mixed character of human motives’ (1989: 204).

But if we are intending to assess a solution to the problem of partiality which roots the permissibility of saving our loved ones in moral rather than prudential value, it's useful to take our leave from the framework of prerogatives. Instead, we may jump to a solution to the problem of partiality which provides a more radical departure from impersonal moral frameworks.

## 2. Scheffler and the Moral Relevance of Personal Concerns

This section examines an approach offered by Scheffler in *Human Morality*, which avoids the worry pressed against the motivational justification of prerogatives by stipulating that personal concerns have themselves moral relevance.<sup>31</sup> Scheffler's view is illuminating but, or so I will argue, it leaves a number of questions open. This is because Scheffler's view accepts a normative structure which, at its core, bears a structural similarity to Nagel's account, thus rendering Scheffler's view vulnerable to a worry which parallels the one canvassed in the previous section.

Following Scheffler, traditional, impersonal construals of morality consider morality and personal interests to be fundamentally opposed to each other, with one advocating for a moral value and the other for a prudential value. This, for instance, can be seen in utilitarianism, or even Nagel's account. Scheffler, however, offers a broader way of thinking about morality and the role personal interests play in it.<sup>32</sup> According to Scheffler's view,

morality attaches unmediated significance to each of two basic propositions. The first proposition is that, from an impersonal standpoint, everyone's life is of equal intrinsic value and everyone's interests are of equal intrinsic importance. The second proposition is that each person's interests nevertheless have a significance for him or her that is out of proportion to their importance from an impersonal standpoint. On the alternative construal, moral norms reflect and attempt to balance these two fundamental propositions.

(Scheffler 1992: 122).

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<sup>31</sup> This is to be distinguished from a different argument for agent-relative prerogatives which Scheffler offers in *The Rejection of Consequentialism* (1982). For Scheffler's claim that he is proposing an account distinct from the latter, see Scheffler (1992: 121 n.4).

<sup>32</sup> Following Scheffler, his view doesn't single out a specific moral theory but is compatible with a range of views, both consequentialist and non-consequentialist (1992: 121).

In other words, Scheffler alters purely impersonal moral theories by suggesting that personal interests ‘are both morally and prudentially relevant’ (1992: 120). Unlike proposals which relax impersonal demands by including prerogatives which exempt individuals from a duty to maximize the good in certain circumstances, Scheffler explains that the personal interests of individuals such as their preferences for their own families, friends, and projects are themselves morally valuable considerations. That is, while impersonal concerns have moral value and we have reasons to secure such impersonal goods, personal concerns are similarly morally relevant, and morality includes our reasons to secure such personal goods. What’s more, Scheffler’s view claims that both impersonal and personal reasons exist in a state of potential congruence and interdependence: while a motivational account like Nagel’s pits impersonal and personal concerns against each other as opposing forces, Scheffler’s view aims to integrate them into one coherent moral viewpoint (1992: 117–121).

Note that if the worry pressed against the normative structure proposed by Nagel’s account is exclusively targeting the fact that such an account fails to allocate moral value to personal concerns, the normative structure provided by Scheffler’s view should satisfy us: by allowing for two distinct sets of moral considerations found in impersonal and personal value respectively, Scheffler’s view is able to suggest that we can permissibly save our loved one in *Saving* because the moral weight of the agent’s personal interests simply outweighs the moral weight of the impersonal demand to do a greater good.<sup>33</sup> This way, Scheffler’s view accommodates *Saving* within the folds of morality, thus ensuring that we no longer require extra-moral exemptions for permissibly being able to save our loved one.

Nonetheless, someone might insist that they find the normative structure offered by Scheffler’s solution to the problem of partiality puzzling. They might articulate this puzzlement by pointing us towards a comment found in Raz’s discussion of Scheffler’s view:

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<sup>33</sup> Scheffler suggests bracketing less promising solutions to the problem of partiality as offered by rule-consequentialism and satisficing consequentialism, as well as three less popular ways of explaining *Saving* which he dismisses (Scheffler 1992): First, the idea that the scope of moral theory is restricted and that, therefore, moral demands may simply not apply to certain personal decisions such as *Saving*. Second, the idea that because morality is extremely demanding it’s permissible for individuals to ignore its demands in certain cases, for instance when making personal decisions such as present in *Saving*. And, the most extreme claim, that morality simply is extremely demanding and if people struggle to live up to it, they are simply failing morally: Based on this claim, it would be wrong to save our loved one in *Saving*. Plausibly, we may choose to follow Scheffler in this suggestion.

Is morality undemanding because it has built in it principles aimed to make it undemanding? Or is it undemanding without such considerations, as a byproduct, as it were, of its general nature? Oddly Scheffler assumes without argument the first of these possibilities.

(Raz 1993: 1312)

There are different ways of interpreting Raz's questions. Raz might be claiming that contrary to what has been said, Scheffler's view is ultimately providing an account of prerogatives similar to Nagel's account: Scheffler's view, so it might be proposed, is still positing an impersonal starting point by accepting the value of impersonal concerns and merely 'building in' certain principles which allow morality to capture the reasons we have for favouring our loved ones. After all, the claim that personal interests have moral value may be understood as essentially justifying prerogatives, and thus justifying exemptions from a duty to maximize the good. In fact, Scheffler's view has previously been interpreted as merely advancing another grounding for prerogatives.<sup>34</sup>

But there are reasons for doubting this interpretation. Although Scheffler critically examines and rejects a wholly impersonal view of morality, we shouldn't assume that his account is attempting to improve or supplement such a view. Rather, Scheffler's view proposes that the moral viewpoint combines both impersonal moral value and personal moral value and starts from a position which attaches equal moral significance to both aspects. Scheffler explains:

Rather than representing a hapless compromise between two powerful but incompatible extremes, [the alternative construal] is seen as the outgrowth of a conviction that morality is sensitive both to the impersonal value of others and to our naturally disproportionate concern with our own lives, and that it therefore strikes a balance between the personal and impersonal points of view. Given this conviction, each of the two extreme positions, rather than seeming notably powerful or compelling, appears simply to be incomplete or one-eyed, for each of them omits one of the two basic factors to which morality is responsive. By contrast, the alternative construal, which is sensitive to both factors, embodies an Ideal of Humanity not only in the sense that it insists on the motivational

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<sup>34</sup> See Wolf (1995) and Lazar (2019).



accessibility of morality, but also in the sense that it expresses a particular normative conception of human life.

(Scheffler 1992: 126)

Although some might continue to doubt this, it seems that Scheffler's view offers a plausible departure from accounts which champion prerogatives and which thus technically permit individuals to favor their loved ones but fall short of regarding impersonal and personal concerns as equally relevant moral contenders.

Alternatively, we might understand Raz's comment as emphasizing that as long as morality is balancing impersonal and personal concerns against one another, impersonal demands will continue to be *rendered* undemanding. Let's get clear on the precise idea here. Scheffler's view still affirms that impersonal moral value imposes extreme demands on individuals, but simply tells us that the moral value of personal concerns tempers these demands. Consequently, just like in Nagel's account, it is still the case that in the absence of such personal moral concerns –counterfactually– morality would solely consist of extremely demanding impersonal demands. This means that even from Scheffler's view which locates morality as being halfway between impersonal and personal concerns, it is still necessary to regulate how both of these concerns are balanced against each other. Thus, Scheffler's view still moderates the strength of the impersonal demands by weighing them against personal concerns.

It might be true that this means that impersonal demands are merely rendered undemanding. But why should we consider this as a problem? Surely a normative structure which balances impersonal and personal considerations is always necessary and not in itself a cause for concern. So far then, the precise worry brought to the fore by Raz's comment remains obscure.

### 3. Tilted Scales

Starting from these suggestions, this section explores a more structural interpretation of Raz's line of questioning. It proposes that the normative structure presented by Scheffler's view may

fail to track our common-sense judgements about *Saving* due to the fact that it still ascribes a structurally subordinate role to personal concerns.<sup>35</sup>

Let's recall the wording of Raz's questions, which ask us: 'Is morality undemanding because it has built in it principles aimed to make it undemanding? Or is it undemanding without such considerations, as a byproduct, as it were, of its general nature?' One way to make sense of Raz's comment is as a challenge: it asks us why we shouldn't think of morality as a naturally undemanding endeavor, rather than as an endeavor which is only rendered undemanding once we've completed the process of weighing up impersonal and personal concerns. Raz is drawing attention to the fact that even under Scheffler's view, morality is only considered to be undemanding because rigorous impersonal demands are held in check by personal concerns. This is illustrated by returning to the explanation which Scheffler's view offers of *Saving*: it tells us that we can permissibly save our loved one because our personal interests, and thus our relationship with our loved one, are morally relevant. But this permissibility is not self-evident. The saving of our loved one is only ruled to be permissible because personal concerns are balanced against the constraining moral value of the impersonal good, and found to be weightier than the latter.<sup>36</sup> If this is correct, one might worry that the relevance of personal concerns remains structurally subordinate when compared to the role of impersonal moral considerations.

This line of questioning is reminiscent of the worry pressed against Nagel's account which suggested that because the normative structure of Nagel's account effectively framed personal concerns as prudential afterthoughts, it fails to capture their moral significance. Yet at this point

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<sup>35</sup> It's helpful to distinguish the line of questioning pursued in this chapter from another worry which may possibly be pressed against this normative structure, viz. Bernard Williams' proposal that impartial moral theories 'provide the agent with one thought too many' (1981: 18). Williams argues that although the claim 'this is my loved one' offers an explanation which justifies the agent in saving their loved one, the fact that a moral theory requires the agent to offer up such an explanation means that it requires the agent to have one thought too many: rather than just being permitted to save their loved one, agents are required to calculate and reflect upon what constitutes the morally right action. This, or so one might suggest, continues to be the case as long as *Maximization* is affirmed: agents are still required to calculate whether or not they are bound to or exempt from the morally required default of maximizing the good. While Williams' proposal is fascinating, this section seeks to raise some slightly different – albeit related – questions. Unlike Williams' point, these questions tackle a worry which is explicitly structural. But just like Williams' point, the questions at hand take as a starting point the fact that it may seem as if individuals are still required to justify the saving of their loved one, even on the non-consequentialist views discussed in this chapter. For some critical discussions of Williams' point, see Baron (2017), Herman (1983), Mason (1999), and Wolf (2015).

<sup>36</sup> As a consequence, it also appears that individuals must still substantiate their personal concerns, which are then offset against the impersonal good in order to determine the permissibility of their action. If, for instance, one's personal concern is found to be insufficiently weighty –perhaps the 'loved one' is really just an old acquaintance– the agent is required to save the five strangers after all since no genuine personal interest is present. But of course, we naturally have an explanation for saving our loved one in *Saving*, namely that they are our loved one. Psychologically, this is what motivates us to save them, rather than several strangers in *Saving*. In fact, it seems that saying 'rather than several strangers' is already engaging in having one thought too many.

it is not yet intelligible why exactly the process of balancing impersonal considerations against personal concerns would itself ensure that morality is demanding rather than undemanding, and thus potentially allocate a subordinate role to personal concerns. Much more must be said on this.

In order to investigate these worries, it's vital to gain more insight into the normative structure advanced by both Scheffler's and Nagel's views. As seen, classic impersonal moral theories such as utilitarianism include an absolute duty to maximize the impersonal good, which more nuanced views temper by admitting additional moral concerns in order to accommodate our judgements about *Saving*. On one end of the spectrum, Nagel includes prerogatives which grant individuals exemptions to a duty to maximize the good based on prudential reasons. While on the other end of the spectrum, Scheffler posits the existence of an entire second set of morally relevant concerns as provided by the personal interests of individuals. Nevertheless, Nagel's and Scheffler's accounts are united in the fact that they continue to posit the idea that in cases in which personal concerns are present, impersonal demands are merely outweighed rather than absent. And that, in the absence of personal concerns, purely impersonal moral considerations continue to be highly demanding. Put differently, both accounts assume a *pro tanto* duty to maximize the good. Notably, this ensures that morality, at its core, remains demanding rather than undemanding.

Scheffler's view may not initially appear to include such strong impersonal demands in the form of a *pro tanto* duty to maximize the good, given that it focuses on how impersonal and personal concerns are more compatible than commonly thought, and in a relationship of potential congruence. Yet there is at least one way of reading Scheffler's description of the impersonal part of morality, which suggests that Scheffler's view implies something like a *pro tanto* duty to maximize the good. Regarding the impersonal part of morality, Scheffler writes:

The moral point of view, according to this [impersonal] strand of thought, is a standpoint that one attains by renouncing any distinctive attachment to oneself, and by acting instead from a thoroughly selfless concern for all [...] a willingness to sacrifice the ordinary interests and concerns of the self.

(Scheffler 1992: 120)

Following Scheffler, the impersonal part of morality then, is highly demanding and stringent, suggesting that Scheffler's view includes a pro tanto duty to maximize the good in all but word.

We need to be even more precise. To fully unpack what it means for the normative structure of a moral theory to affirm a pro tanto duty to maximize the good, it's helpful to explain that this entails the acceptance of *Maximization*, as seen in the previous chapter:

*Maximization*: Agents have a duty to maximize the good if (i) the good is morally significant, (ii) this imposes no significant costs on the agent and (iii) no other moral considerations are present.

As *Maximization* makes plain, theories which affirm a pro tanto duty to maximize the good operate with the assumption that morally significant goods are to be maximized *unless* conflicting concerns are present in the form of costs or other values. As Sinclair puts it aptly, for such theories, 'optimific action is the *morally required default* in the absence of special agent-relative considerations' (Sinclair 2018: 47, italics added). With this in mind, we can now set out to explain why theories which feature this kind of normative structure may fail to treat personal and impersonal concerns as structurally equal, and why this might ultimately spell trouble for their ability to accommodate our common-sense judgements about *Saving*.

The worry at hand is that in a normative structure which affirms a pro tanto duty to maximize the good, impersonal and personal concerns aren't structurally equal contenders, with impersonal considerations being structurally prior to personal concerns. This idea of structural asymmetry is captured by an analogy offered by Sinclair:

The picture is one of a tide of optimizing moral requirements held back by a breakwater protecting the agent's needs (for well-being, for meaningful relationships, and so on). Where the agent's needs are limited or absent, no breakwater is necessary, and the tide floods in with full force.

(Sinclair 2018: 45)

According to Sinclair, the breakwater of personal interests protects individuals against the extreme demands of impersonal value, but it is still a mere barrier against the incessant and extreme demands of impersonal morality: as *Maximization* tells us, once personal interests are

absent, limited, or fulfilled, the tide of impersonal demands floods in with full force and individuals are required to maximize impersonal value.

Yet a normative structure which affirms *Maximization* might be even more unbalanced than Sinclair's analogy lets on. To carve out more sharply the idea that our reason to maximize the impersonal good is the 'morally required default', one might invoke a more mundane picture. Just like most people are required to go to work as a practical default and are only exempted if they have relevant countervailing reasons like sickness or a funeral, individuals are subject to morally required default which obliges them to maximize the impersonal good, unless they have conflicting personal reasons such as the presence of one's loved one. While the exemption for urgent countervailing reasons protects the everyday needs of employees, the default action required of them is going to work. Similarly, *Maximization* tells us that the morally required default is maximization, and that any straying from this default is only permitted within the justified exemptions detailed in *Maximization*.

These analogies illustrate the worry that on normative structures which affirm *Maximization*, impersonal concerns and personal concerns aren't on equal footing. Rather, personal concerns remain structurally subordinate. Because maximization of impersonal value is the default stance taken up by morality, the maximization of impersonal value is always presupposed, while all remaining concerns merely supplement such an impersonal picture: given that we have an omnipresent default reason to maximize the impersonal good, all other moral considerations such as constraints, prerogatives, and alternative values provide structurally posterior exemptions and limits to this default. It is this priority relation, however, which we should be wary about, as it may not provide us with a normative structure which accurately reflects our common-sense judgements about partiality.

Still, someone might reject this suggestion. They may argue that this normative structure doesn't imply that our reason to maximize impersonal value is in some way more fundamental or more important than all other moral considerations we might have, such as reasons to respect side-constraints, to keep promises, to favor our personal interests etc. Rather than implying any kind of priority relationship, they might suggest that both kinds of reasons are simply different in their nature, in a way which coincidentally results in the fact that one reason takes up a larger role than others and thus may –falsely– appear like the morally required default.

To support this claim, they might highlight that a pro tanto duty to maximize the impersonal good applies, merely in virtue of its content, to all cases which contain significant

impersonal goodness. While this means that such a duty will be relevant in the vast majority of moral cases, other normative concerns or values are much more piecemeal and context-dependent. For instance, a prerogative to prioritize our loved ones over strangers only comes to bear in the few moral cases in which our loved ones are affected. Unlike other moral reasons then, a duty to maximize the impersonal good is deeply pervasive in moral decision-making, simply because by referring to the practically omnipresent value of impersonal goodness, it applies to practically all moral contexts.

But contrary to what is proposed in this response, the pervasiveness of a *pro tanto* duty to maximize the good as rooted in its content matter is not the only feature which sets such a duty apart from other moral reasons and duties. There are two more features which explain the mechanism which leads the maximization of the impersonal good to take up the role of the morally required default. To draw out these features, it's helpful to consider a structure which reverses matters for purposes of illustration:

*Maximization P*: Agents have a duty to maximize their personal interests if (i) the personal interest is morally significant, (ii) no other moral considerations are present.

In *Maximization P*, the maximization of personal interests constitutes the morally required default, as it is to be fulfilled once any conflicting considerations are absent. While implausible, *Maximization P* serves us as an illustration of how *Maximization* does indeed contain an ordering of reasons by priority, with a duty to maximize the impersonal good being not just about a different realm but a structurally more fundamental concern.<sup>37</sup>

At the same time, *Maximization P* shows that it is the *duty to maximize* value which renders this concern structurally prior to other normative reasons and duties. This is because maximization constitutes a way of responding to value which is more demanding than any other responses we might have, such as appreciation or respect. Moreover, it is because a duty imposes a much more stringent demand than a mere reason.

We can now see that there are three features which render the maximization of impersonal value as found in *Maximization* structurally prior to other normative reasons: first, because its content matter is impersonal value, a duty to maximize impersonal value applies to

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<sup>37</sup> For an alternative, pluralist perspective, see Frick (2015).

the vast majority of normative cases and is highly pervasive. Second, because it stipulates that the appropriate response to impersonal value is maximization, it is highly demanding. Third, because it imposes a duty and requirement, it is stringent and does not leave much room for agency which is permissible but not required.<sup>38</sup> Or, as Sinclair puts this point, ‘there is no room for permissible non-optimific action in the space left by the absence of others’ claims and other special agent-relative conditions’ (Sinclair 2018: 47). As a result of these three features, the maximization of the impersonal good constitutes the morally required default for views which endorse *Maximization*, and thus a feature which is structurally prior to other moral concerns.

In response, many might consider the dominating default role of maximization as a strength rather than as a cause for concern. Of course, or so they might suggest, morality is ultimately about bringing about more rather than less impersonal value. However, given our initial aim of assessing whether the normative structure offered by views such as Nagel’s and Scheffler’s can accurately reflect our common-sense judgements about partiality, there are some questions left to answer.

In fact, what we’ve referred to as structural priority may pose a problem for accommodating our common-sense judgements about partiality and thus our verdict in *Saving*. Indeed, some might worry that it poses a general problem for accommodating our common-sense judgements about all moral reasons which are posterior to a concern for maximization, e.g. side-constraints against killing or breaking promises. This is because a moral theory which affirms that the morally required default is maximizing impersonal value tells us something about the *nature* of morality. Just like being an employee is ultimately about working, with days off being the exception, a moral theory which accepts *Maximization* tells us that morality is ultimately about maximizing impersonal value, with non-maximization being the exception. While concerns beyond impersonal value carry normative significance and shape the normative landscape, they take up a role which is structurally different to the foundational role played by a concern for maximizing impersonal value, and they remain subordinate to this concern for maximization.

Someone might still push back at this point and reject the idea of the structural priority of impersonal demands. They might propose that personal concerns and impersonal concerns are found on the same structural level in a moral theory. Perhaps, or so they might suggest, we have an absolute right to save our loved one, and we also have a *pro tanto* duty to maximize the

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<sup>38</sup> This follows along similar lines as Scheffler’s characterization of impersonal morality as pervasive, stringent, and overriding (Scheffler 1992).

good which applies when this does not conflict with our absolute rights. Nothing in this structure, or so they might point out, suggests that personal concerns are subordinate to impersonal ones.

This objection can be answered but also draws attention to an important point. It's essential to highlight that personal concerns are subordinate to impersonal considerations not because they are taking up a position which is literally temporally or lexically secondary. Rather, personal concerns are subordinate from a purely structural viewpoint which evaluates what kind of considerations are more or less foundational for a moral theory. Even if we stipulate that we have an absolute right to save our loved one, and a further, *pro tanto* duty to maximize the good which applies when this does not conflict with such an absolute right, the *pro tanto* duty to maximize the good still provides the more foundational moral concern in virtue of being the moral default. This is precisely where the structural asymmetry is located: a *pro tanto* duty to maximize the impersonal good constitutes the starting position which we assume in the absence of additional concerns, the home we live in unless we go away. By being the morally required default, then, a *pro tanto* duty to maximize the good tells us that at its most basic level, morality concerns itself with the maximization of impersonal value, rather than with anything else.

But this kind of normative structure might just fail to fully reflect our common-sense judgements about *Saving*. Following these common-sense judgements, our relationships with our loved ones matter morally *in the same way* in which impersonal concerns do. But theories which affirm *Maximization* cannot deliver this conclusion. This is because, as outlined above, they still consider the saving of our loved one to be a concern which is structurally subordinate to a requirement to maximize the impersonal good. We, foundationally, have a *pro tanto* duty to maximize the impersonal good, and are only secondarily permitted to save our loved one. Our concern for the people we love most in the world is therefore still morally subordinate and less fundamental than a concern for bringing about more rather than less impersonal value in the world. This is why, for instance, personal interests and the favouring of our loved ones still has to be vindicated and carved out against the default of maximizing, rather than providing a concern which stands on an equal footing with the latter.

It might be suggested that this structural problem can be avoided by more sophisticated accounts of consequentialism, which deploy a slightly different structure.<sup>39</sup> Sophisticated accounts of consequentialism adopt a pluralist axiology and consider the good to consist of a

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<sup>39</sup> As defended in Railton (1984), Portmore (2011), and Pettit (2018).



range of values such as happiness, knowledge, respect, friendship, attachment, and autonomy. They also come apart from classic accounts of consequentialism in regard to their theory of the right. Rather than contending that the consequentialist calculus bears on the single acts of individuals, sophisticated consequentialists argue that situated individuals should act on whichever dispositions or ideals will lead to the overall, long-term promotion of the good. Thus, the good, consisting of a range of different values, is to be maximized in the long run, rather than in each single act performed. Sophisticated accounts of consequentialism explain that it's permissible for the agent in *Saving* to save their loved one rather than five strangers, given that the agent is acting on a disposition which promotes the greater good in the long term; the good here being constituted not only by happiness but by the value of the relationships we have with others. In fact, this relates to a previous point: accounts which solve the problem of partiality by justifying the existence of prerogatives by appeal to values such as autonomy or the value of individuals may fall under the umbrella of sophisticated accounts of consequentialism.

Yet note that the explanation of *Saving* as offered by sophisticated consequentialists is only possible in a space which is specifically carved out for this purpose: it is because relationships are considered intrinsically valuable that one can permissibly save one's loved one rather than several strangers in *Saving*, thus delivering the intuitively plausible common-sense judgement. Yet there is still a cut-off point:<sup>40</sup> for instance, when choosing between saving one's loved one or one thousand strangers, the value of the relationship with one's loved one still has to be weighed against the impersonal value of saving one thousand strangers in order to determine whether this is an instance in which agents can permissibly save their loved one because this will lead to a greater long-term good, or whether the greater long-term good will be achieved by saving one thousand strangers instead.

That is, in accounts of sophisticated consequentialism, personal value is still weighed against the overall good produced in cases which aren't clear-cut in order to determine which course of action secures the greater long-term good. In other words, due to its pro tanto duty to maximize value, sophisticated consequentialism implies that personal interests only remain protected from the demands of impersonal morality as long as the impersonal good produced doesn't vastly outweigh the personal good at stake. Thus, the maximization of the impersonal good, again, remains the morally required default.

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<sup>40</sup> See Woodcock (2010) for a discussion of whether this constitutes a problem for sophisticated consequentialism.

At this point, someone might repeat a point raised above, namely that the balancing of conflicting normative values and demands forms a natural and unavoidable part of moral theory. As long as we aim to avoid a monist or overly simplistic view theory of value, balancing different moral concerns will remain a familiar aspect of morality, rather than a problem to examine.

But this response misunderstands the inquiry of this chapter. It's been pointed out that because Nagel and Scheffler still include a *pro tanto* duty to maximize the impartial good, and, moreover, consider this duty to constitute the morally required default, they are operating with tilted scales: rather than balancing equally weighted normative concerns or values against one another, they balance a structurally prior against a structurally posterior concern. After all, *Maximization* tells us that *unless* there is a justification for not maximizing, value is to be maximized. Or to return to Raz's words, morality is still considered to be naturally demanding rather than undemanding.

Yet a critic might also rebuff these worries for a different reason. They might insist that none of what has been said furnishes us with a substantial objection to Nagel and Scheffler's solutions to the problem of partiality. Especially Scheffler's view continues to present an attractive option for those who seek to avoid the problem of partiality given that Scheffler's view allocates moral value to personal concerns, thus capturing the intuition that our relationships matter morally.

In response, we can remind ourselves that the goals of this chapter are modest. This chapter essentially seeks to question what kind of normative structure a moral theory needs to contain in order to exhaustively capture our common-sense judgements about *Saving*. On the way, it seeks to clarify a structural worry one might have about views which, like Nagel and Scheffler's proposals, endorse *Maximization*, given that *Maximization* may, unexpectedly, make it difficult to arrive at a satisfactory solution to the problem of partiality. In other words, this section doesn't aim at offering a knock-down objection to Scheffler's view, but draws on it in order to explore how normative structures may accommodate our judgements about *Saving*.

If the positing of a *pro tanto* duty to maximize value potentially poses a challenge for cashing out our views about partiality and the significance of personal relationships, is there another way to go? Now, it's possible to drop the assumption that individuals have a *pro tanto* duty to maximize the impersonal good. In this case, the simple fact that the life of the individual's loved one is at stake and the fact that these people and relationships are of fundamental significance to the individual suffices to explain why agents can permissibly save their loved one,

rather than several strangers, in *Saving*. This view of *Saving* seems closer to how we generally tend to think about fundamental personal interests such as the people we love. And while rejected by many, it's important to highlight that this approach isn't entirely outlandish. After all, certain moral theories like contractualism or virtue ethics don't posit a pro tanto duty to maximize the good. While such views are often criticized for this feature by those who consider a pro tanto duty to maximize value to be indispensable, perhaps their approach chimes better with our common-sense moral judgements about personal relationships than one might initially think. That is, if we believe that morality aligns with the reality of human life, rather than alienating us from this life, one may question whether positing a pro tanto duty to maximize the good is apt or instructive, and whether it should ever serve as a starting point.

#### 4. Conclusion

This chapter has examined how moral theories attempt to accommodate the common-sense moral judgment that individuals can permissibly save their loved one rather than five strangers in *Saving*. This chapter has argued that if the impersonal strand of morality imposes incessant, omnipresent demands on us, e.g., through a pro tanto duty to maximize the good, which can only ever be bracketed but never eliminated, morality may, in fact, fail to reflect our common-sense moral judgements about partiality. This is because the permissibility of saving one's loved one rather than five strangers remains structurally posterior – an afterthought to be accommodated, and to be justified, rather than an equally foundational part of morality.

All in all, I suggest that we have at least some reason to wonder why precisely we posit a duty to maximize the good in the first place. Reflecting on this question is the task taken on by the next chapter. Here, I question whether a pro tanto duty to maximize the good arises from the values we care about, or whether it constitutes an additional commitment in need of defence.

### 3. The More, The Merrier?

There is something attractive in the idea of maximization. In fact, it seems that it is the idea of maximization which renders consequentialist moral theories so ‘spellbinding’: because more good is better than less good, the right action to perform is the action which maximizes this good (Foot 1985: 198).

Standard consequentialist moral theories like utilitarianism, however, manifest these deeply attractive ideas at their own peril. As a result of their commitment to an absolute, unconditional requirement to maximization, they deliver a number of implausible conclusions which have led philosophers to reject standard consequentialist views and to adopt non-consequentialism instead:<sup>41</sup> non-consequentialist moral theories avoid the counter-intuitive conclusions produced by standard consequentialism by including prerogatives and constraints which limit the original and absolute requirement of value maximization.

All the while, non-consequentialist theories, somewhat unexpectedly, continue to affirm some of the basic maximizing commitments which have made consequentialism so attractive in the first place. Once all other things are equal, non-consequentialists still affirm a maximizing theory of the good according to which, for specific values such as well-being, more value is better than less value. Non-consequentialists also still accept a maximizing theory of the right which tells us that once prerogatives and constraints are absent and all other things are equal, the right action is the action which maximizes the good. Together, we can refer to these foundational theoretical commitments as a commitment to the *pro tanto maximization of the good*, henceforth to be referred to as *Pro Tanto*.

Non-consequentialists respond to the counter-intuitive conclusions delivered by standard consequentialism by adopting prerogatives and constraints while retaining the maximizing commitments of *Pro Tanto*. Yet one might also opt for an entirely different approach. Anti-consequentialists consider the counter-intuitive conclusions delivered by standard consequentialism as ‘a *symptom* of a prior mistake’, with this prior mistake being located in the maximizing commitments of *Pro Tanto* (Munoz-Dardé 2005a: 266). Therefore, anti-consequentialists reject any kind of maximizing theory of the good or maximizing theory of the right.

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<sup>41</sup> Alternatively, others adopt theories of sophisticated consequentialism which alter consequentialism’s theory of the good so as to include a much broader conception of value.

Are there any grounds for agreeing with anti-consequentialists and doubting *Pro Tanto*? Some might say ‘no’. After all, if one values people and their well-being, how could one deny that more well-being is better than less well-being once all other things are equal? And if goodness matters at all, how could one plausibly choose less good over more good?<sup>42</sup> Indeed, sociologically, *Pro Tanto* dominates the current literature, as most philosophers consider its axiological maximization and a maximizing theory of the right as uncontroversial. But this wide-spread acceptance of *Pro Tanto* also means that its maximizing commitments are rarely articulated and challenged. In fact, there are only a handful of philosophers who have pursued this task.<sup>43</sup>

This chapter sets out to challenge *Pro Tanto*. In particular, it suggests that the maximizing claims of *Pro Tanto* are neither obvious nor necessary, but reliant on a number of additional theoretical stipulations. To this end, the chapter proceeds in three sections.

The first section delineates the different ways in which *Pro Tanto* limits maximization while retaining, at its roots, a maximizing theory of the good and the right. It also highlights that *Pro Tanto* accepts that for some goods, the appropriate response is respect rather than maximization. This includes valuing one’s friends, the relationship with one’s brother, one’s cat, or the lessons taught by one’s grandparents. Not only does valuing these things not require maximization, but for some of them, it is somewhat unintelligible to even talk of maximization. In light of this, *Pro Tanto* limits its maximizing commitments to impersonal values such as well-being.

Sections two and three suggest that *Pro Tanto* assumes rather than argues for the claim that values such as well-being are to be maximized rather than respected. The second section investigates *Pro Tanto*’s maximizing theory of the good which states that when all other things are equal and we are faced with a value like well-being, more good is better than less good. In other words, this section challenges the assumed link between valuing a good and considering more of this good to be better than less of this good, which *Pro Tanto* upholds for values such as well-being.<sup>44</sup> That is, while many may agree with *Pro Tanto* and regard such axiological maximization as platitudinous for impersonal values, this chapter explains why it is not. Instead, it is argued that axiological maximization relies on a theoretical and potentially controversial assumption about value: the stipulation that more good is better than less good cannot be upheld unless we

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<sup>42</sup> See Samuel Scheffler (1982). Also quoted by Wiggins (2006).

<sup>43</sup> For discussions see Foot (1985b), Munoz-Dardé (2005a), Raz (2016), Scanlon (1998), Wiggins (2006). See also Frick (2020).

<sup>44</sup> This assumption is highlighted in Munoz-Dardé (2005a).

also regard the mere moreness of a good to itself have moral value. But positing that the moreness of a good has moral value constitutes an additional theoretical commitment in need of justification and defense. The third section raises a similar concern about a maximizing theory of the right, suggesting that such a theory presupposes a specific assumption about how we determine the strength of reasons.

Those who endorse *Pro Tanto* may well be able to defend these assumptions about goodness and rightness which underlie its maximizing claims. But the fact that both a maximizing theory of the good and theory of the right depend on hitherto unarticulated assumptions reveals that those who support *Pro Tanto* need to defend, rather than simply assume, the claim that certain values are to be maximized. Ultimately, this casts doubt on the idea that *Pro Tanto* is as uncontroversial as it is often taken to be.

### 1. Tempering Maximization

*Pro Tanto* tells us that, out of two options, we have more reason to pursue the better option, and that the better option is the option which contains more rather than less value. But *Pro Tanto* qualifies these claims in numerous ways even beyond the admission of constraints and prerogatives, and only advances such maximizing claims when these qualifications are absent. In other words, it might often be the case that the all-things-considered better option is the option with fewer things of value rather than the option with more things of value.

In our everyday lives and in practical decision-making, we don't always want more rather than fewer items of value. While it may, at first blush, appear that we ought to maximize values such as economic prosperity or the safety of nuclear installations, the value of most good things is satiable.<sup>45</sup> Therefore, there are many goods which we are only required to maximize until the point of satiety rather than indefinitely. Further, we generally have a range of other reasons which bear on our decision-making and the value of our options. While it may appear better to have more chocolate bars rather than fewer chocolate bars, storage space and health concerns count against maximizing candy. So when choosing between five and twenty-five chocolate bars, five chocolate bars might just be the better option. In fact, consequentialism itself can take into account the fact that goods are satiable and that other reasons bear on the value of options. This

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<sup>45</sup> For the claim that such values are generally to be promoted see Pettit (1991: 238).

is why it doesn't tell us pursue the greater number of things of value but generally tells us to pursue the better option.

*Pro Tanto* follows along the same lines. Those who advance *Pro Tanto* affirm that things of value aren't to be maximized in such circumstances. Some goods are satiable and sometimes we have conflicting reasons which tell against maximization. In each case, *Pro Tanto* tells us to take all of these concerns into consideration in order to determine which option is best, all things considered.

In a different concern, *Pro Tanto* accommodates the fact that there are many goods to which promotion or maximization isn't the appropriate response (Anderson 1993, Scanlon 1998). Some values require us to respond to them in different ways. When reflecting on the value of friendships, for instance, maximization fails to properly value this good. This is because friendships are appropriately valued by respecting them rather than by maximizing them. As Scanlon puts it:

We would not say that it showed how much a person valued friendship if he betrayed one friend in order to make several new ones, or in order to bring it about that other people had more friends.

(Scanlon 1998: 89)

Indeed, there are a range of other goods to which maximization seems like a failure to properly value the good, such as the relationship with one's brother, one's love of opera, or the lessons learned from one's grand-parents. Rather than maximization, valuing these goods appropriately involves an intricate combination of beliefs, emotions and dispositions (Scheffler 2011).<sup>46</sup> As Johann Frick explains:

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<sup>46</sup> Scheffler proposes that non-instrumental valuing of any X involves at least the following four elements: '1. A belief that X is good or valuable or worthy, 2. A susceptibility to experience a range of context-dependent emotions regarding X, 3. A disposition to experience these emotions as being merited or appropriate, 4. A disposition to treat certain kinds of X-related considerations as reasons for action in relevant deliberative contexts' (Scheffler 2011: 32). For a discussion of Scheffler's account of valuing, see Theunissen (2019: 90-95).

For only certain kinds of things *can* be promoted: Specifically, note that promoting is not really a response that it is possible to have towards *particular* entities, such as particular persons or animals. What could it mean to “promote” Tim Scanlon, or Baloo the bear?

(Frick 2020: 64)

In response, *Pro Tanto* can suggest that the better option is the option which respects the value of friendship, and thus the option to stay loyal to one’s friend, or the option which shows the appropriate beliefs and emotions towards the lessons learned from one’s grand-parents. There are some values, and some things of value then, which aren’t to be maximized, but where valuing them requires us to react with a different response instead.

However, *Pro Tanto* also tells us that there are other values to which maximization is still the appropriate attitude. This generally refers to impersonal values such as well-being, pleasure, or beauty. Frick’s comment continues:

Rather, what can be promoted are *abstracta*, such as properties (well-being; wisdom) or universals (bears), which we can cause to be realized or instantiated to a greater or lesser extent in a state of affairs.

(Frick 2020: 64)

Taking together these concerns, we now see that although *Pro Tanto* substantially tempers maximization, it still affirms maximization once the preceding qualifications are absent.<sup>47</sup> Importantly, we’ve seen that these qualifications are twofold: on the one hand, maximization is constrained in cases in which goods are satiable or we have conflicting reasons which tell against maximization. On the other hand, we’ve noted that there are two types of values, and that maximization is only the appropriate attitude to one type of value, with attitudes like respect being the appropriate attitude to the other.

Following this, we can recognize that *Pro Tanto* affirms foundational, maximizing commitments on two levels: first, *Pro Tanto* still affirms axiological maximization or the idea that once conflicting reasons are absent and we are discussing an impersonal value like well-being,

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<sup>47</sup> The list of qualifications offered above is open to being extended and might well be incomplete. Independent of the number and content of the qualifications embraced though, *Pro Tanto* applies in their absence.



more value is better than less value. Second, *Pro Tanto* still affirms a maximizing theory of the right in virtue of accepting a maximizing conception of rationality which proposes that we have more reason to secure the option which is better (Munoz-Dardé 2005b: 269, Scheffler 1985: 414). This, of course, sometimes might be the option which has fewer rather than more things of value (fewer chocolate bars, fewer friendships). What's more, in cases in which all other things are equal and we are discussing an impersonal value like well-being, we have stronger reason to pursue the option with more value rather than the option with less value.

Both of these maximizing commitments are widely accepted and are often presented as obvious and uncontroversial. Yet, on closer inspection, we can raise questions about both of these features. In the remainder of this chapter, this task is pursued by proposing that *Pro Tanto* covertly posits additional and controversial commitments about the good and the right in order to establish maximization, thus revealing that maximization is neither necessary nor obvious.

## 2. Value and Maximization

Let's first address the idea that, all other things equal, more value is better than less value. Axiological maximization tells us that valuing something implies that more of a good is considered better than less of a good. Properly valuing well-being, for instance, simply means to value more well-being over less well-being (again, it's important to note that axiological maximization is qualified in the ways outlined above and doesn't apply to large range of situations and values). While axiological maximization seems attractive, deconstructing the idea that more value is better than less value reveals it to be more contentious than one might surmise. In particular, it is suggested that axiological maximization cannot be arrived at without postulating an additional theoretical assumption about the good.

To begin with, it's helpful to consider a comment by Philippa Foot. In a seminal discussion of goodness, Foot challenges the idea that morality is about the goodness of states of affairs by suggesting that it's difficult to pin down from what point of view we are supposed to be evaluating the goodness of states of affairs. Foot argues that the goodness of a state of affairs necessarily refers to a specific point of view from which goodness is assessed and is therefore speaker-relative (Foot 1985b). While a rainy morning might be a bad thing for hikers, it's a good thing for vegetable farmers. Foot further proposes that one might attempt to solve this problem by suggesting that goodness simpliciter as aimed at by morality can be described as a certain

‘shared end’, such as securing the greatest good for a society. Yet this strategy, so Foot continues, already assumes what was asked to be proven, namely what precisely we mean when we suggest that morality is about the goodness simpliciter of a state of affairs.<sup>48</sup>

Foot’s suggestion that we need a criterion or point of view from which we determine the goodness of a state of affairs may also point us towards a worry about the assumed link between valuing something and the claim that more of this value is better than less of it. Assuming that well-being is good, what point of view are we taking up when stating that this already implies that more well-being is better than less well-being?

Let’s consider this a bit further by returning to the previous point about friendship. Following Anderson and Scanlon, it was said that maximization is not always the appropriate response to value. Some values, like friendship, are to be respected rather than promoted. Given that we value friendship for its own sake, and thus value each particular friendship for its own sake, more friendships aren’t necessarily better than fewer friendships. That is, valuing friendship means respecting one’s friend for who they are, for instance by being prone to certain emotions and dispositions in regard to one’s friendship with them. It means caring about them, supporting them when needed, sharing in their joys and miseries, and showing loyalty and partiality to them. It’s possible that in certain contexts, one has additional reasons to value more friendships over fewer friendships, such as when needing help moving heavy furniture. But in such cases, separate concerns which are unrelated to what it means to appropriately value friendship provide us with reasons for why, in such a specific context, more friendships are valued over fewer friendships. As a result, or so it was said above, those who suggest that valuing friendship requires us to value more friendships over fewer friendships have failed to fully grasp the value of friendship.

This discussion suggests that even in the absence of reasons which conflict with value promotion (such as a lack of storage space for chocolate bars), valuing a good doesn’t require us to adopt a maximizing view according to which more of this good is better than less of this good. Put differently, imagine we are asked to rank options which contain different amounts of value –such as the option of having one friendship and the option of having two friendships– according to betterness. Neither rationality nor normativity require our ranking to reflect this difference in amounts of value: we can rank both options as equally good. Yet this is true not only of options regarding friendship but applies generally to all options which contain different

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<sup>48</sup> For a reply to Foot, see Scheffler (1985).

amounts of value, no matter what kind of value we are referring to. Logically, valuing a good and considering more of it to be better than less of it are two separate claims.

Initially, it appears as if *Pro Tanto* acknowledges this logical separation. After all, *Pro Tanto* accepts that for many things such as friendships, the appropriate way to value them isn't maximization. But this impression is misleading. While *Pro Tanto* registers that there are some values which aren't to be maximized, and that for those values valuing a good and valuing more of it isn't synonymous, the buck stops there. For all remaining goods such as impersonal values, *Pro Tanto* fails to register and reflect this further distinction. This is because for values such as well-being, its axiology stipulates how this good is to be ranked: without particular argument or explanation, *Pro Tanto* asserts that for impersonal values such as well-being, more value is better than less value.

Yet one might wonder why impersonal values like well-being would require a different response than the value of friendship, and why we should follow maximizers in the claim that such values require not respect, but maximization. Take the value of beauty. It seems that someone who values beauty and considers one option which contains some beauty and another option which contains more beauty, may plausibly rank both options equally. This might seem like an implausible and outlandish suggestion to begin with, but more can be said to explain this claim.

Consider someone who reflects on both yesterday's sunset over the bay and today's sunset over the bay. Although yesterday's sunset was more beautiful than today's sunset over the bay, they might still not consider the former to be a better option than the latter. They might suggest that they value the beauty of each sunset for its own sake, just like they value each of their friends for their own sake: they appreciate the beauty of each sunset for what they are seeing in front of them, for its colors and nuances, its shapes and shadows. Because they value the beauty of each sunset for its own sake, they value the mere *presence* of beauty, rather than the amount of beauty. Beauty, however, is present in both options. Therefore, they are indifferent to the amount of it and might not consider the option which contains yesterday's sunset to be better than the option which contains today's sunset.

A closely related point is made by Raz. Reflecting on cultural goods, Raz proposes that we care about the good-making features of goods such as novels and plays, rather than about their comparative rankings. We might, for instance, care about a novel's mastery of language, its insight, plotting, and playfulness, and care about how these features interact with each other.

But this in itself provides us with no grounds to consider a novel which scores higher on the good-making features of novels as a better option when compared to a book which scores slightly lower on those features (Raz 2016: 152). As Raz puts it:

While my interest should be guided by good-making features, why need it be guided by the relative excellence of works [...] I do not know of any reason why it should.

(Raz 2016: 153)

Still, many will be unconvinced by this point. They might suggest that despite the fact that valuing a good doesn't generally require us to consider more of this good to be better than less of this good, valuing impersonal goods like well-being does require us to adopt such a maximizing view. Referring to Frick's previous suggestion, they might insist that while valuing particular entities such as friends may require respect, valuing impersonal values is entirely different: it is in the very nature of impersonal values such as well-being, that –all other things equal– more value is better than less value. This is just what it means to value well-being, or so they might say. Therefore, for impersonal values like well-being, it's still true that the option with more well-being is better than the option with less well-being.

In light of the fact that this suggestion effectively appeals to intuition, contradicting it might appear tricky. Still, the remainder of this section is dedicated to thinking more closely about the commitments which proponents of this suggestion are committed to. To be more precise, this section argues that an insistence that more value is better than less value contains a potentially inappropriate concern with the amount of value in an option, rather than with the value itself. This concern can be disclosed by showing that axiological maximization requires the stipulation of an additional theoretical assumption. After all, given that ranking more value over less value isn't strictly required, it seems likely that a theory which claims that more value is better than less value relies on an additional axiological assumption which allows it to deliver such a stipulation. This assumption, or so this section submits, posits that the amount of a value itself is regarded as a good.

One way of bringing out this additional axiological assumption proceeds by borrowing a point from Ruth Chang. In a point reminiscent of Foot's worry about the goodness of states of

affairs, Chang explains that whenever we rank different options, we rank them according to a *covering value* (Chang 1997). That is, whenever we rank different options, there is necessarily a value in virtue of which this ranking is arrived at. For instance, while reading the newspaper is better than reading a novel in regard to the covering value ‘informativeness’, reading a novel is better than reading the newspaper in regard to the covering value ‘entertainment’.

While the upcoming argument doesn’t rely on Chang’s point, using Chang’s point – perhaps in a different way to what she intended – is helpful in illustrating how it’s possible to deconstruct a ranking of options in order to determine the covering value employed in it. For instance, a ranking which rates reading an insightful novel over reading a less insightful novel, allows us to infer that both options are being compared in regard to the value ‘insightfulness’. Similarly, a ranking which stipulates that, all other things equal, an option with more value is better than an option with less value, allows us to infer the value in virtue of which both options are being compared.

One proposal might highlight that ranking more instances of X over fewer instances of X means that a larger quantity of X is considered to be better than a smaller quantity of X. Thus, or so this proposal goes, both options are ranked according to the covering value ‘*quantity of X*’. This would mean that not only X is valued, but so is the quantity of X, as the latter supplies the covering value in virtue of which a ranking is arrived at.

But a defender of *Pro Tanto* might be quick to explain why the assumption that the ‘quantity of X’ has moral value is innocuous. For many things we value, it would indeed be cause for concern if valuing X would imply that we also value the quantity of X. For instance, as said before, people value their friends, but not the quantity of friends. Yet once we exclusively refer to impersonal values such as well-being, as set out at the beginning of this section, valuing X seems closely connected to valuing the quantity of X. This is because just like whenever we refer to water in everyday language or cases of practical reasoning, we implicitly refer to quantities of water, it seems that whenever we refer to well-being in cases of decision-making or reasoning, we refer to quantities of well-being. Therefore, valuing well-being seems to straightforwardly indicate a valuing of the quantity of well-being, rendering it difficult to value well-being without valuing the quantity of well-being. Thus, it’s uncontentious for *Pro Tanto* to posit the additional assumption that the quantity of X is good alongside X.

Perhaps we can refocus the point by moving more carefully. It was only suggested that the covering value employed by a maximizing axiology could be ‘the quantity of X’ because such

an axiology ranks larger quantities of X over smaller quantities of X. So, in isolating a concern for the ‘quantity of X’, we might have misplaced our focus. A ranking which considers an option with more X to be better than an option with less X is only arrived at by comparing both options in regard to their value increase or moreness – the mere fact that one has more than the other. This is also illustrated by returning to our previous example: if one values the option with more beauty over the option with less beauty, one doesn’t just value beauty. One also values the moreness of beauty, or mere fact that there is more beauty in one option than in the other. All other things equal, it is only in virtue of this covering value that the option which includes more beauty can plausibly be ranked over the option with less beauty.

Nevertheless, some may insist that for any X which refers to an impersonal value like well-being, X is synonymous with the moreness of X. Valuing well-being properly, so the thought may well be, just means to value more well-being higher than less well-being. As a result, valuing the moreness of X is already implied in valuing X, and thus doesn’t pose an additional axiological assumption for *Pro Tanto*.

But this returns us to the point that valuing a good and considering more of this good to be better than less of this good are two different claims. Crucially, this also applies to well-being, as the claim ‘I value well-being’ doesn’t imply the claim ‘I value more well-being more highly than less well-being’. Put differently, it’s possible to value well-being, but to not consider more well-being to be more valuable than less well-being any more than one considers red to be more of a color than blue.<sup>49</sup>

Having seen how this response falls short, we can recognize that a theory which ranks an option with more of a good to be better than an option with less of this good, cannot arrive at this ranking without relying on a further value: the value in virtue of which the ranking is arrived at. This reveals that a maximizing axiology also considers the moreness of a good to be of moral value.

But isn’t this an odd claim to make? Someone might propose that this claim seems wrong for other things of value. For instance, we wouldn’t say that more pound coins cannot have more value than fewer pound coins unless we regard the mere ‘moredness’ of pound coins as itself of value. But perhaps we would: after all, more pound coins only have more value than fewer pound

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<sup>49</sup> This is also evident in moral theories such as Kantianism and virtue ethics, which consider well-being to have moral value and yet include no concern for valuing more well-being over less well-being. As Anderson puts it in her description of a Kantian position: ‘intrinsic value cannot be increased by increasing the numbers of its bearers. So intrinsic value [...] doesn’t vary by degrees. It is nonscalar’ Anderson (1997: 97).

coins because we've stipulated this value in contemporary society. Once pound coins have gone out of use in the future, this might no longer be true, as can be seen with now defunct currencies. Therefore, it is only if we value the moreness of pound coins, that more pound coins are better than fewer pound coins. And, crucially, money is fungible – unlike the other, intrinsically valuable goods we've considered.

This shows that axiological maximization and its claim that more value is better than less value requires us to postulate an additional axiological commitment, which appears controversial at best: a commitment to considering the moreness of X to be itself of moral value. With this said, we can see that there is nothing necessary or self-evident in axiological maximization and the claim that valuing well-being means to consider more well-being better than less well-being. We might just value well-being, like friendships and sunsets, for itself and for the individual who is benefitted rather than for its amounts. Be that as it may, this discussion makes plain that those who question or deny axiological maximization are following a valid route of inquiry, rather than an entirely dubious endeavour.

### 3. Reasons and Maximization

This section raises some questions about the second level of maximization found in *Pro Tanto*: its maximizing theory of the right. In particular, it raises a worry which parallels the worry pushed against axiological maximization, highlighting that maximization can only be arrived at via additional assumptions. Effectively, what this section doubts is whether we have stronger reason to pursue what's better.

As seen before, a maximizing conception of rationality underlies consequentialist thinking, and also forms part of the deep intuitive appeal of consequentialism.<sup>50</sup> Between two options, maximizing rationality asks us to determine which option is all-things-considered better and then tells us that we have a stronger reason to pursue the better option. Most importantly though, it tells us that if the value of two options is comparable and we find that one option has more value than the other, we have stronger reasons to pursue the option with more value, given that it is considered to be the better option. For our discussion, it's essential to recall that this view is qualified in the ways outlined above and that, therefore, it is best illustrated by continuing to look at the impersonal value of well-being. For values like well-being, *Pro Tanto*'s maximizing

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<sup>50</sup> For discussion, see Munoz-Dardé (2005a) and Scheffler (1985).

theory of the right suggests that because an option with more value is better than an option with less value, we have a stronger reason to pursue the option with more value.

Again, we can draw on existing debates in order to motivate our discussion. Wiggins expresses concerns about a maximizing theory of the good according to which '[acting] in accordance with the ethical is one and the same as to realize as much value as possible' (Wiggins 2006: 221). Wiggins throws light on the fact that conceptualizing doing the right thing as a concern for securing amounts of value not only presupposes a very specific assumption about rightness but may also fail to capture how we think about rightness in common parlance and everyday life (Wiggins 2006).

While Wiggins doesn't go beyond raising questions, we can develop his concern about understanding rightness as a concern for securing the greatest amount of value. Note that once two options are comparable in regard to their value –qualified, as usual, and referring to an impersonal value such as well-being–, we need to determine the strength of reasons we have in favour of each option in order to ascertain which option provides us with the stronger reasons. Here, a maximizing theory of the right tells us that just like mass gives you gravitational force and more mass gives you a stronger gravitational force, value provides us with reasons for action, and the option with more value provides us with stronger reasons for action. The suggestion seems to be that there is a natural or obvious dependence between value and the strength of reasons.

But it appears that this –again– relies on an additional theoretical claim; a claim about how to determine the strength of reasons. This claim states that, all other things equal, the more value, the stronger the reasons we have for pursuing an option. Yet this claim can be challenged. While there is a necessary dependence between mass and gravitational force due to the fact that an increase in mass –physically, unavoidably– leads to an increase in gravitational force, there is no necessary dependence between value and reasons, as illustrated by the discussion of friendship. As a result, one might well choose to question the claim that there is an obvious dependence between value and reasons which tells us that an increase in amount of value leads us to an increase in the strength of reasons.<sup>51</sup> In fact, it seems that *Pro Tanto* can only arrive at the claim that the option with more value provides us with stronger reasons for action by presupposing that the strength of reasons is determined by the amount of value present in an option.

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<sup>51</sup> Yet even if such an argument could be provided, one might suggest that reasons don't aggregate. For a discussion of the aggregation of reasons, see Munoz-Dardé (2005b).



Here we can return to our previous example. Consider choosing between today's beautiful sunset over the bay, and yesterday's even more beautiful sunset over the bay. Yesterday's sunset is the option with more beauty. If we take beauty to provide us with reasons for action and accept the assumption that the strength of reasons is determined by the amount of value in an option, then it seems like we have stronger reasons to choose yesterday's sunset. But we can also think about this in a different manner. Since we take the value of beauty (and not the amount of beauty) to provide us with reason for action, we care about beauty itself: the stunning view, the deep colors, the feeling of space and awe, the fleetingness of the moment. But, as said in the previous section, both options contain these aspects. If we care about beauty in itself, then, it seems reasonable to pursue either option and to suggest that both options provide us with equally strong reasons to act.

Again, Raz's comments shed more light on these ideas. Raz argues that when choosing between two cultural goods such as books or plays, we might not have stronger reasons to choose the better book or play. Raz writes:

So, again: is there no reason for everyone to prefer the better book? I am not sure. I am inclined to think that we have an epistemic reason to believe that, other things being equal, we are more likely to find something responding to reasons we have in a better book than in a good but less good one. It is a weak epistemic reason, but when all else is equal it has some force. What I do not see is how it is a practical reason for reading the better book. More accurately, that the book is good, has some valuable features, is a reason to read it. My doubt is about the claim that as between two good books, the features that make one the better book or the fact that they make it the better of the two provide a reason to read it rather than the other good book, or that in the given circumstances they enhance the strength of the reason to read it.

(Raz 2016: 151)

Rather, Raz distinguishes between 'caring about the substance of the reason and caring about it as being a reason' (Raz 2016: 151). If we focus on just the substance of our reasons, we might find that the valuable features of both the good book and the better book render them equally

worthy of being read. And it is these good-making features, so Raz tells us, which should guide our decision-making. In turn, choosing the better book over the good book merely because it is *better* might, in fact, fail to appreciate the features which render any good book valuable in the first place, and instead be based on a hollow concern for betterness (Raz 2016: 149–152).

Let's take these points together. The value present in each of two options provides us with reasons to secure this value. But it's plausible to suggest that these reasons are furnished by the mere presence of value rather than by the amount of value. Thus, both options would provide us with equally strong reasons for action. If we, contrary to this idea, stipulate that the option which contains more value necessarily provides us with stronger reasons for action, we are not merely responding to the reasons which originate in the presence of a value. We are also responding to the mere fact that more value is present in one option than in the other option. In other words, we are considering the moreness of value itself as providing us with reasons for action. Ultimately, analogous to what we've seen in our discussion of axiological maximization, it is only by stipulating that the moreness of value provides us with reasons for action that we can arrive at the conclusion that the option with more value provides us with stronger reasons for action than the option with less value. After all, if all that we care about, and all that we consider to be a source of reasons for action, is the value itself –beauty, well-being– and the features of this value, then this source is present in both options.

Yet in some cases, or so a critic might insist, the option with more value unquestionably provides us with stronger reasons for action. If I value my friend's happiness and I'm choosing between an option which somewhat increases their happiness and an option which greatly increases their happiness, I plainly have stronger reasons to pursue the latter option. Recalling a point from the start of this chapter: if one values people and their well-being, surely we have a stronger reason to choose an option with more well-being over an option with less well-being?

While this response is initially attractive, three points bear mentioning: first, the main aim of this section is to raise questions about a maximizing theory of the right which, all other things equal, claims that the option with more value provides us with stronger reasons for action than the option with less value. To this end, it was suggested that such maximization relies on an additional assumption about the strength of reasons which tells us that the moreness of value impacts the strength of reasons we have for one option. Thus, employing a maximizing theory of the right which, for values such as well-being, reduces rightness to amounts of value is more controversial than we might think. Yet the aim of this section isn't to establish that this

additional assumption is untenable. It is merely to propose that whether we have stronger reasons to pursue the option with more value rather than the option with less value is still a substantive philosophical question rather than a self-explanatory truth. In response to this, it is not much of an objection to propose that there are *some* cases in which the better option with more value provides us with stronger reasons for action.

Second, there is a clear explanation we can appeal to in order to explain why, in some cases, we have stronger reasons to pursue the option which has more value. In such cases, it is not the moreness of value itself which gives us a stronger reason to pursue the option with more value. Rather, we might well have an additional reason to pursue the option with more value, which is provided by a different concern or value. For instance, it may be because I'm entering a photography contest for the most beautiful sunset picture that I have a reason to opt for the more beautiful sunset over the less beautiful sunset.

Third, the previous point might leave some readers unsatisfied, as it fails to address why it seems plausible to suggest that the option with more well-being always provides us with stronger reasons than the option with less well-being. Yet this is precisely the purpose of this section: to cast doubt on whether we necessarily have stronger reasons to pursue the option with more well-being. We consider well-being to have value because we consider people to have value – it is *their* well-being that we care about. The well-being of people, however, is present in both options: the option with more well-being and the option with less well-being. So, unless we have an additional reason which explains why the option with more well-being provides us with stronger reasons to pursue this option than the option with less well-being does, it seems that we might at least doubt whether we have a stronger reason to pursue what's best.

#### 4. Conclusion

*Pro Tanto* underwrites most approaches in contemporary moral philosophy, both consequentialist and non-consequentialist. It affirms maximization on two levels, for our theory of the good and our theory of the right, and thus proposes that for impersonal values such as well-being, (a) more value is better than less value, and (b) the option with more value provides us with stronger reasons for action than the option with less value. Both of these aspects of *Pro Tanto* are generally considered to be deeply plausible – hence the wide acceptance.

It was the aim of this chapter to challenge the plausibility of these claims. More specifically, it was proposed that either maximizing claim cannot be arrived at without the stipulation of additional theoretical assumptions. This is because, first, the claim that more value is better than less value relies on a commitment to valuing not only a good but also the moreness of this good. Second, the claim that more value provides us with stronger reasons to act relies on the assumption that the moreness of a good itself provides us with additional reasons for action.

Plausibly, both assumptions can be justified and arguments in support of them might not be too hard to come by. But by offering such arguments, defenders of *Pro Tanto* will have already conceded the main claim of this chapter: that those who affirm *Pro Tanto* need to argue for, rather than assume, that appropriately responding to values like well-being requires us to maximize in addition to engaging with and respecting them.

## 4. Counting People and Making People Count<sup>52</sup>

The moral theory of contractualism precludes any pro tanto duty to maximize the good. Adopting an individualistic starting point, it states that an act is wrong if an individual has an objection against a general principle licensing it which is more weighty than the objections any other individual has against an alternative principle. Thus, the individual with the strongest objection can ‘reasonably reject’ a principle. One of the key features of contractualism is a concern for individualist justification, which stipulates that individuals can only reasonably reject principles based on personal reasons, or reasons which are based on the individual’s own ‘well-being, claims, or status’ (Scanlon 1998: 219). It is as a result of this concern for individualist justification that contractualism bars claims which aggregate harms and benefits across individuals and thusly maximize value.

Contractualism and its concern for individualist justification are best illustrated by looking at T.M. Scanlon’s famous *Transmitter Room*:

Suppose that Jones has suffered an accident in the transmitter room of a television station ... [W]e cannot rescue him without turning off the transmitter for fifteen minutes. A World Cup match is in progress, watched by many people ... Jones’ hand has been mashed and he is receiving extremely painful electrical shocks.

(Scanlon 1998: 235)

Following individualist justification, each of the many world cup viewers is barred from appealing to the aggregate loss of well-being which would be experienced by all of them in order to oppose the interruption of the broadcast. Instead, each world cup viewer can appeal only to their own, very minor inconvenience of not being able to watch the game. By contrast, Jones has a very

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<sup>52</sup> A version of this chapter is published in *Philosophy* 96 (2021): 229–252.

strong objection against a principle which licences the continuation of the broadcast based on his extreme pain,<sup>53</sup> and can therefore reasonably reject any such principle.<sup>54</sup>

Yet, for some time, philosophers have suggested that contractualism would be more plausible if it cast aside the concern for individualist justification (Parfit 2003). They point to several cases in which individualist justification commits contractualists to conclusions that might seem highly implausible. Consider *Rock*, a case in which a rescuer can save either the life of one individual who is trapped on one rock, or the lives of five individuals who are trapped on a second rock, but cannot save the lives of all six. Suppose all these individuals are strangers to the rescuer. Common-sense morality seems to tell us that the rescuer in *Rock* has a duty to save the greater number of individuals. Saving only the single individual, the thought goes, would be morally wrong. And, in effect, theories which affirm a pro tanto duty to maximize the good can successfully deliver this verdict: typically, such theories permit the aggregation of benefits and burdens across individuals –at least if individual claims are of similar strength as found in *Rock*– as this allows them to maximizing value interpersonally.<sup>55</sup> In *Rock*, a pro tanto duty to maximize the good tells us that, because the rescuer can either save fewer lives or save more lives, and all other things are equal, they have a duty to save the greater number.

But thanks to its rejection of maximization and aggregation, contractualism seems unable to capture this intuition. This is because individualist justification stipulates that each of the five individuals on the second rock can appeal only to their own personal claim of wanting to be saved. Since the individual on the first rock can equally well appeal to his personal claim of wanting to be saved, contractualism seems to yield the result that it is permissible for the rescuer to save either the many or the few (Anscombe 1967, Munoz-Dardé 2005).

That might be too quick. Perhaps what would be best for each individual in *Rock* is a principle requiring the rescuer to decide which group to save by flipping a coin. That would give everyone a fifty-fifty chance of being saved (Taurek 1977). It might be this ‘lottery principle’ that contractualism really supports.

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<sup>53</sup> Following Scanlon, contractualism considers objections as put forward from ‘generic viewpoints’, rather than by specific individuals (1998: 204–205): This means that even if Jones would personally prefer to endure the pain because of his intense passion for football and wouldn’t reasonably reject a principle which allows for the transmission to continue, it’s still the case that the latter principle could be reasonably rejected. It could be reasonably rejected from the generic viewpoint of someone in Jones’s situation.

<sup>54</sup> Any fully aggregative theory, including prioritarianism or forms of pluralist egalitarianism, may allow for Jones’s suffering to be outweighed by the aggregated losses of the world cup viewers, as long as the number of world cup viewers is high enough.

<sup>55</sup> Although they may only accept an account of limited aggregation which bars aggregation in cases in which the claims of individuals are of disparate strength (Voorhoeve 2014).

But either way, contractualism seems unable to capture the apparently common-sense idea that the rescuer has a duty to save the greater number. This problem for contractualism has become known as *the numbers problem*: as long as contractualism retains individualist justification and bars aggregation, it seems unable to arrive at the conclusion that the rescuer should save the greater number.

While the philosophical literature discussing cases like *Rock* goes back further, debate of the numbers problem for contractualism began in earnest around two decades ago (Taurek 1977). Scanlon himself, inspired by Frances Kamm, suggested that the presence of additional agents on the second rock can break the tie between the groups, since those additional agents can otherwise complain that their presence isn't recognized. Unless our decision procedure changes once additional agents are added, *Rock* would be indistinguishable from a case in which there is only one individual on each rock (Scanlon 1998: 235, Kamm 1998: 116–117).

However, this Scanlon-Kamm argument was subsequently charged by a number of philosophers with failing to adhere to individualist justification. It's been argued that the complaints of additional agents on the second rock can only break the tie in favour of a duty to save the greater number when considered *together* with another agent's claim, thus violating individualist justification (Otsuka 2006).<sup>56</sup> In light of several objections along these lines, I think it is fair to say that this charge stuck, and that this first wave of debate over the numbers problem yielded no solution for contractualism.

More recently, the debate has been reignited. A second generation of possible solutions to the numbers problem has been put forward. Frick has suggested that contractualists should be pluralists, who allow for reasons of well-being alongside concerns of reasonable rejectability (Frick 2015). And several other philosophers have defended contractualist forms of 'limited aggregation', which effectively allow individualist justification to be overridden in cases in which individual objections are sufficiently similar in strength (Voorhoeve 2014). Since both of these approaches at least significantly weaken the commitment of contractualists to individualist justification, I will set them aside here. I want to instead consider whether the numbers problem

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<sup>56</sup> For a defense of the Scanlon-Kamm argument, see Kumar (2001), with Otsuka (2006) responding. For a different objection to the Scanlon-Kamm argument which also proposes that the argument violates individualist justification, see Munoz-Dardé (2005b). Munoz-Dardé explains that the Scanlon-Kamm argument assumes that a change in the number of individuals is morally significant, rather than establishes it. For an alternative worry about the Scanlon-Kamm argument, which suggests that contractualists may reject the argument by denying that it's possible to perfectly balance individual claims against each other, see Wasserman and Strudler (2003). See Scanlon (2017) for a new argument in support of a duty to save the greater number. For further discussion of Otsuka's reply to the Scanlon-Kamm argument, see chapter 5, section 3 of this thesis.

is really a devastating problem for contractualists who are more whole-heartedly dedicated to individualist justification.

Indeed, there are good reasons to persevere with individualist justification, controversial as it may be. First, in the absence of individualist justification, contractualism risks becoming redundant or circular, since no constraints are imposed on the reasons to which individuals can permissibly appeal in order to reasonably reject principles (Otsuka 2006, Ridge 2003).<sup>57</sup> Second, individualist justification is the key anti-maximizing element which sets contractualism apart from consequentialist and non-consequentialist moral theories which affirm a pro tanto duty to maximize the good: individualist justification embodies the idea that individuals are of ultimate moral value, while states of affairs and aggregates of well-being carry no moral significance (Scanlon 1998: 229). This is captured by Otsuka, who suggests that individualist justification protects individuals

from the tyranny of the majority that would arise if moral principles could be collectively imposed by the combined force of the reasonable consent of the greater number over the individually much stronger but far less numerous reasonable objections of a small minority.

(Otsuka 2006: 129–130)

Third, individualist justification contains the intuitively compelling idea that we should determine morally correct principles by way of reasons which are acceptable to each individual.<sup>58</sup> But this is undermined by an appeal to aggregate reasons or impersonal value. Moreover, individual justification is arguably constitutive of what it means to recognize and respect individuals as reason-assessing, rational creatures (Scanlon 1998: 106). Fourth, and most important for my discussion in this chapter, it's premature for contractualists to forsake individualist justification, because there are at least two solutions to the numbers problem which uphold individualist justification, and which are yet to be fully explored.

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<sup>57</sup> For further discussions of the charge of circularity previously levelled against contractualism, see Raz (2003).

<sup>58</sup> As Scanlon puts it: 'recognizing the value of human life is a matter of respecting each human being as a locus of reasons, that is to say, recognizing the force of their reasons for wanting to live and wanting their lives to go better' (Scanlon 1998: 105). In other words, contractualism assesses the wrongness of moral principles by assessing the personal reasons of individuals because, following Scanlon, this is what it means to acknowledge and treat individuals as 'reason-assessing, self-governing' persons (Scanlon 1998: 106).



To begin with, Jay Wallace has offered a new argument which aims to establish a contractualist duty to save the greater number while adhering to individualist justification (Wallace 2019). Wallace argues that once contractualists consider what principles individuals would agree to *before they know what position they themselves occupy in a rescue case*, they will arrive at a duty to save the greater number without having breached a concern for individualist justification. Yet, on closer inspection, Wallace's argument falls short on a number of grounds. The first section of this chapter is dedicated to Wallace's solution and introduces three objections which may be pressed against it.

The second section of this chapter is dedicated to developing a new solution to the numbers problem for those contractualists who are more hesitant about abandoning individualist justification. The new solution affirms the permissibility of saving either group in *Rock* while explaining why this affirmation is much more compatible with common-sense morality than often assumed. I argue in favour of this solution by introducing two mundane cases in which the permissibility of saving either the lesser or greater number is intuitively plausible. I then gesture towards an argument for why the permissibility of saving either group not only coheres with the contractualist project at the level of intuition but also at the level of our theoretical value judgements.

Ultimately, this chapter suggests that moral theories which oppose the aggregation of burdens and benefits and a pro tanto duty to maximize the good –such as contractualism– fail to be tripped up by the objection that they cannot deliver the correct conclusion in rescue cases like *Rock*. What's more, this chapter draws out a view about the value of individuals which reflects a number of our value judgements on the topic, but which can only be accepted by those who affirm such an anti-consequentialist view: on closer investigation, being an anti-consequentialist then, might just have more advantages than we are led to think.

### 1. Rejecting Wallace's Solution

Let's start by introducing Wallace's solution to the numbers problem and by sketching why it both adheres to individualist justification and can overcome two common objections.

Wallace argues that contractualists should consider which principles regarding the behaviour of rescuers individuals would be able to reasonably reject *before they know what position they are occupying in the world* (Wallace 2019: 215–219). This is what is generally referred to as

reasoning from an *ex ante perspective*. Without knowing what position they will occupy in the world, Wallace suggests that individuals would assess principles in regard to whether or not a principle maximizes their own chances of being saved, should they ever be in need of aid. Note that the probability that each individual will end up in a larger group of people if ever in need of aid is greater than the probability that they will end up in a smaller group of people. Thus, from an *ex ante* perspective, individuals would reasonably reject a principle which permits rescuers to save the few. Instead, they would maximize their chances of being saved by agreeing to principles that require rescuers to save the greater number. Due to the fact that individuals only appeal to personal reasons in the form of their own probabilities of being saved, Wallace's argument upholds individualist justification.

Wallace's approach may not appear entirely new, since *ex ante* solutions to deciding how to approach *Rock* have previously been advanced (Taurek 1977, Otsuka 2006).<sup>59</sup> Yet two standard objections have been pressed against such solutions. First, the claim that contractualists should assess principles from an *ex ante* perspective in which individuals don't know their position can appear *ad hoc*. Why should principles be assessed from an *ex ante* perspective rather than from an individual's actual, fully-informed perspective? Second, contractualists may oppose engaging in *ex ante* reasoning because it potentially leads back to the kind of unattractive utilitarian conclusions contractualists set out to avoid.

That second worry needs more explanation. Once we posit a certain view about rationality, reasoning from an *ex ante* perspective can quickly permit the imposition of substantial burdens on the few, in order to secure smaller benefits for the many. *Transmitter Room* serves to illustrate this: from an *ex ante* perspective, each individual knows that their chance of being the severely injured individual is minuscule, but that their chance of being a world cup viewer is very large. Thus, from an *ex ante* perspective, each individual would maximize their expected well-being by agreeing to a principle which would permit the continuation of the broadcast. This is a conclusion that utilitarians accept, but which contractualists universally reject, and which is discussed in more detail in chapter 5.

But Wallace is alive to these two objections. He offers a single solution to both. He suggests that in the vast majority of cases, contractualists will continue to compare the immediate (rather than *ex ante*) claims of individuals. However, things are different in cases in which individual claims are equally strong and therefore tied, as in *Rock*. In those cases, individual

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<sup>59</sup> Note that Taurek and Otsuka's arguments are not contractualist.

claims are ‘inconclusive’: they leave open which course of action the rescuer ought to take. Wallace writes:

As we have already seen, the later objections of the individuals on the two different rocks have already been determined to be *inconclusive*, insofar as they are countered by precisely symmetrical objections that can then be brought by other individuals to alternative principles. The idea is that, *in this dialectical context*, the fact that we all have ex ante personal reasons to reject principles permitting rescuers to save fewer might make it reasonable for each of us to reject such principles, as a general basis for regulating our interactions with each other.

(Wallace 2019: 216–217, italics added)

This appeal to inconclusive claims can answer both of the foregoing objections. First, the need for more guidance in cases where claims are tied removes the appearance of ad hocness in the move to assessing claims from an ex ante perspective. Second, because principles are only assessed from an ex ante perspective in such tied cases, Wallace’s argument doesn’t cause contractualism to collapse into utilitarianism. In *Transmitter Room*, for example, individual claims are not inconclusive about what we should do, and so there is no need for us to move to assessing individual claims from an ex ante perspective.

In establishing a duty to save the greater number without jettisoning individualist justification, Wallace’s argument seems to throw a lifeline to contractualists who are reluctant to give up the core idea of their moral theory. However, on closer inspection, it appears that Wallace’s solution is vulnerable to three objections.

### 1.1. The Objection from Motivation

In order to offer answers to the two standard objections, Wallace heavily relies on the premise that individual claims are tied and therefore ‘inconclusive’ in *Rock*. I want to show that this premise cannot motivate Wallace’s move to ex ante reasoning.

Note that out of the two possible contractualist responses to *Rock* outlined in the introduction, Wallace's argument isn't addressing the idea that the rescuer is required to toss a coin in *Rock* in order to give equal chances of being saved to all individuals. If the rescuer in *Rock* were required to use this kind of decision-procedure, it would mean that individual claims in *Rock* would not be inconclusive—they would deliver a single right course of action for the rescuer.

Wallace must therefore be assuming that contractualism does not yield an obligation to toss a coin and instead yields the permissibility of saving either group. On this view, the rescuer may decide which group to save by following an inkling, flipping a coin, throwing a die, running a lottery, or choosing on a whim. We can understand Wallace as arguing that the move to ex ante reasoning is warranted by the need to provide further direction to rescuers.

Here is a worry about Wallace's proposal: it seems to follow that the possibility that tied claims could render several moral options permissible is regarded as unsatisfactory, and as implying a need for further moral input. But this doesn't seem quite right. Consider a two-person case in which a rescuer can save either Jill or Joan but cannot save both of them. Let's call this *Choice*. Given that Jill and Joan's claims are tied, it seems permissible for the rescuer to save either of them.<sup>60</sup> Thus, Jill and Joan's claims are, according to Wallace, inconclusive. But if the existence of inconclusive claims is considered to license a move to ex ante reasoning, then this equally applies to *Choice*. Just like *Rock*, we should consider *Choice* to be morally unresolved, and likewise strive to gain additional moral guidance through ex ante reasoning. Yet this seems false. In *Choice*, the existence of tied claims, and the resulting permissibility of multiple options, seems unobjectionable. It is perfectly permissible for the rescuer to save either Jill or Joan. In *Choice*, no further moral guidance is required. Intuitively, then, Wallace's argument delivers the wrong conclusion about *Choice*.

A defender of Wallace may insist that Jill and Joan's claims are, indeed, inconclusive in *Choice*, and require us to move to ex ante reasoning in order to gain further moral input. They may highlight that from an ex ante perspective, many options would be considered permissible in *Choice*, such as picking whoever is nearest, plumping, or flipping a coin. Thus, the fact that the permissibility of multiple options is intuitively unobjectionable in *Choice* can be explained even when engaging in ex ante reasoning and doesn't indicate that Jill and Joan's claims aren't inconclusive.

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<sup>60</sup> Wallace can't appeal to the possible suggestion that the rescuer ought to flip a coin, since he has ruled it out in *Rock*.

Alternatively, it's possible that *Choice* is a special case in which the fact that several options are permissible doesn't deeply trouble us and doesn't push us to seek additional moral guidance. Even then, there might still be a general reason to seek out additional moral guidance through ex ante reasoning in cases in which claims are tied. If it's possible to obtain any more guidance on which action to perform in cases in which claims are tied, surely rescuers will want to access it. For instance, even though the permissibility of several options isn't troubling in *Choice*, rescuers might still prefer to know whether they should rather flip a coin to decide between Jill and Joan, or directly plump for one of them.

But the reasoning of both replies seems to me mistaken. The fact that tied claims render several options morally permissible doesn't by itself justify a move to ex ante reasoning. *Choice* illustrates that we don't generally expect morality to be uniquely action-guiding. Once several courses of action are rendered permissible by a moral principle, it's irrelevant that morality doesn't direct us towards one single option. In fact, we normally don't think that there is anything inconclusive about views which tell us that multiple options are morally permissible. Thus, what matters is that agents adhere to the correct moral principle by pursuing one of the permissible courses of action, irrespective of *which* action they choose.

Put differently, given that there is no requirement for morality to isolate a single right action, the fact that individual claims in *Rock* render several options permissible cannot justify a move to ex ante reasoning. Morality has already spoken, as it were, and no further moral guidance is required.<sup>61</sup>

This is not to dismiss the rescuer's own desperate wish for accessing further moral guidance when being faced with several permissible options in *Rock*. Far from it. Instead, the rescuer's plea for more guidance is best understood as a reflection of the grave tragedy of the situation. After all, although the rescuer is choosing between morally permissible options, all options are terrible ones, and the choice between them is a terrible one to have to make.

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<sup>61</sup> In reply, one might suggest that some permissible options are better than others. But we are now no longer looking for the morally *right* action, but for the morally *best* one. This changes the question and steers away into conspicuously consequentialist waters.

## 1.2. The Objection from Counterintuitive Implications

Even if the previous objection could be answered, there is a second objection to Wallace's argument. Wallace's argument leads to counter-intuitive, maximizing conclusions which contractualists are likely to find objectionable. This can be seen in the following case. In *Charity*, an individual is planning to donate a third of her relatively low yearly income to charity and, without having any specific preference, is choosing between three charities which tackle poverty: Oxfam, the Hunger Project, or Local Poverty Action.<sup>62</sup> Contractualists like Wallace and Scanlon tend to believe that donating such a large portion of one's income is morally optional in light of the significant burden it imposes on the individual, even if the individual might be required to donate a smaller portion (Scanlon 1998: 152, 224). Let's stipulate that Oxfam is the most efficient charity in this case because it saves the greatest number of lives per pound donated. Many contractualists, Wallace included, may still want to claim that the individual in *Charity* isn't required to donate to Oxfam but can permissibly choose to donate her money to any of the three charities (Wallace 2019: 206–207). Indeed, as argued in chapter 1, this conclusion reflects an intuitive and popular way of thinking about charitable giving.

Wallace's argument leads to the opposite conclusion. Because the individuals aided by all three charities have tied claims, and all three options are regarded as morally permissible, *Charity* would be assessed from an ex ante perspective. Yet from this standpoint, individuals would agree to a principle which requires agents to donate to Oxfam in *Charity*, as this will maximize each individual's chances of benefiting, should they ever find themselves in need of aid.

There are two reasons for why Wallace should resist this conclusion. First, notice that a duty to donate to the most efficient charity has severely counter-intuitive implications.<sup>63</sup> It suggests that even though it's morally permissible for the individual in *Charity* to spend most of her income on frivolous knick-knacks, it's morally wrong for her to donate this money to the Hunger Project or Local Poverty Action. But suggesting that individuals who ignore the sufferings of others and spend their money on their own amusement are doing the right thing, while individuals who choose to use their money to help others act wrongly seems like a troubling

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<sup>62</sup> If the agent has an agent-relative preference for donating to a specific charity, for instance due to a familial connection, forgoing such a preference is itself considered to be a burden and agents can permissibly donate to a less efficient charity. See Pummer (2016) and Horton (2017b).

<sup>63</sup> As discussed in the first chapter.

verdict. Intuitively, or so it seems, we make the opposite moral judgement. Second, while philosophers sympathetic to the effective altruism movement conclude, similarly, that one has a duty to donate to the most efficient charity even in cases in which one could permissibly refrain from donating (Pummer 2016, Horton 2016), Wallace himself rejects their conclusion, arguing that contractualists have no reason to affirm that individuals are under a ‘standing requirement to maximize the impartial good’ (2019: 206).<sup>64</sup>

Indeed, the fact that Wallace’s argument delivers such maximizing conclusions in *Charity* also undermines the anti-maximizing thought that motivates individualist justification and further conflicts with the contractualist idea that reasonable principles are principles which foster relations of mutual recognition, rather than principles which best advance each individual’s interest (Scanlon 1998: 194). This raises a worry which will be pursued by the subsequent chapter: that despite appearances, an ex ante approach to assessing claims may just fail to adhere to a concern for individualist justification.

### 1.3. The Objection from Deontic Cycling

Let’s now suppose that a defender of Wallace is able to offer a justification for assessing principles from an ex ante perspective, and willing to accept these implications about *Charity*. Even though, or so one might worry, Wallace’s argument remains open to criticism.

Note that once we accept Wallace’s argument, his position comprises both of the following claims: first, that in cases in which the claims of individuals are tied, contractualists ought to move to an ex ante assessment, and, second, that in cases in which claims aren’t tied, contractualists ought to employ the standard approach of comparing the immediate claims of individuals. But affirming both claims comes at a cost. To see how, let’s start by considering the following two cases:

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<sup>64</sup> For further discussion, see chapter 1. For objections to Pummer’s and Horton’s position, see McMahan (2018) and Sinclair (2018).

*Case 1: You can either: (a) add 40 years to the life of one person, or (b) add 40 years to the lives of each of one hundred people.*

*Case 2: You can either: (c) add 45 years to the life of one person, or (d) add 40 years to the lives of each of one hundred people.*

In Case 1, the claims of individuals are tied. Therefore, so Wallace's argument tells us, principles should be considered from an ex ante perspective. This leads to the conclusion that you ought to choose (b) in Case 1 and add 40 years to the lives of one hundred individuals. In Case 2, things are different. As the single person has a marginally stronger claim, claims aren't tied, and Wallace's argument tells us to stay with the standard contractualist approach of comparing the immediate complaints of individuals. Because the single individual's claim to gain 45 years outweighs the claims of each of the one hundred individuals to each gain 40 years, you ought to choose (c) in Case 2 and add 45 years to the life of the single individual. To be clear, Wallace's argument tells us that you are morally required to save the many in Case 1, but also morally required to save the single individual in Case 2. This looks odd at best, and inconsistent at worst: both cases are identical aside from one small difference, and yet Wallace's account offers two substantially different verdicts on them.

In reply, Wallace may point out that Scanlon's tie-breaking argument is equally vulnerable to this charge of inconsistency and that even though Scanlon's tie-breaking argument may not be successful by itself, Scanlon has already responded to this kind of objection. Scanlon's tie-breaking argument also tells us that because claims are tied in Case 1, you ought to save the greater number in Case 1, but because claims aren't tied in Case 2, you ought to save the single individual in Case 2. In an effort to avoid this counter-intuitive conclusion, Scanlon has argued that harms should be grouped together if they aren't identical, but still 'morally relevant' to one another (Scanlon 1998: 238–241). Scanlon explains that two harms are morally relevant to one another if they are of similar severity, such as breaking an ankle and breaking a foot, or breaking a foot and breaking a hand. For the sake of argument, we may assume that, in Case 2, gaining 40 years and gaining 45 years of life are of similar severity and thus can be grouped together as morally relevant. Scanlon's argument continues by stating that morally relevant individual claims can be roughly considered as tied. Because they are morally relevant, a claim to gain 40 years and a claim to gain 45 years can thus be considered as tied in Case 2. But once the claims of individuals are considered tied in Case 2, Scanlon's tie-breaking argument can be applied to Case



2 just like it can be applied to Case 1, and thus deliver the conclusion that you ought to save the greater number in both cases.

Wallace could adopt this strategy. He could argue that individual claims which are morally relevant to one another should be roughly considered as tied, and, therefore, also warrant an assessment from an ex ante perspective. As a result, Wallace's account can also arrive at the conclusion that you are required to save the greater number in both Case 1 and Case 2. But adopting Scanlon's reply to the inconsistency charge comes at a cost, saddling Wallace with the same damning objection which has been pressed against Scanlon. Parfit has pointed out that Scanlon's solution gives rise to what has been known as *deontic cycling* (Parfit 2003:384, Halstead 2016: 789–802). Deontic cycling is best explained by considering the following case:

*Case 3: You have to choose between three courses of action:*

*(X) add 45 years to the life of one person*

*(Y) add 40 years to the lives of each of one hundred people*

*(Z) add 35 years to the lives of each of one thousand people*

It was already assumed, for the sake of argument, that gaining 40 years is morally relevant to gaining 45 years. But there needs to be some number of years lower than 40 years which is no longer morally relevant to 45 years since it can no longer be considered as being of similar severity. Let's say, again for the sake of argument, that gaining 35 years is no longer morally relevant to gaining 45 years. (This could also be some other number, but it's important to note that there must be some number of years for which it is the case that that number of years is no longer relevant to 45 years. So, some version of the argument below must succeed.)

So, what should you do in Case 3? Recall that once claims are morally relevant to one another, they can be considered as tied and, following Wallace's argument, this means that you ought to save the greater number. Now, because 45 years and 40 years are morally relevant to one other, rather than choosing (X) and adding 45 years of life to one person, you ought to do (Y) and add 40 years of life to one hundred people. Thus,  $Y > X$ . But because 40 years are also morally relevant to 35 years, you also ought to do (Z) add 35 years of life to one thousand people rather than (Y) add 40 years of life to one hundred people. Thus,  $Z > Y$ . However, you still need to compare (X) and (Z). Since claims of gaining 35 years and claims of gaining 45 years aren't

morally relevant to one another, we simply compare the immediate claims of individuals rather than move to ex ante reasoning. Since, therefore, the numbers don't count, you ought to do (X) and add 45 years of life to one person rather than (Z), add 35 years of life to one thousand people. Thus,  $X > Z$ . But this leads you to have cyclical preferences:  $Z > Y > X$ , but  $X > Z$ .<sup>65</sup>

One solution to this problem is offered by accounts of limited aggregation, which explain why it's plausible to have such cyclical preferences by outlining why there is a substantial distinction between harms which aggregate and harms which do not.<sup>66</sup> But there is one main problem with the proposal that Wallace could feasibly accept an account which permits the aggregation of harms once harms are similar in severity, but bars aggregation once they are disparate in severity. As discussed before, Wallace's account relies on the claim that in cases like *Rock*, individual claims are inconclusive, as this both staves off existing worries about ex ante reasoning and motivates the proposal. Claims are, so Wallace suggests, 'inconclusive, insofar as they are countered by precisely symmetrical objections that can then be brought by other individuals to alternative principles' (Wallace 2019: 216–217). But of course, if harms are not of equal severity and therefore not symmetrical, this means that Wallace can no longer motivate a move to ex ante reasoning by appealing to the idea that individual claims are inconclusive.

In this light, Wallace might simply accept the seemingly inconsistent conclusions of *Case 1* and *Case 2*: you are morally required to save the many in *Case 1*, and the single individual in *Case 2*. This isn't inconsistent, so Wallace may reason, because although the individual claim of receiving 40 years and the claim of receiving 45 years are similar in strength, they still aren't the same: the single individual with the stronger claim prevails and ought to be aided in *Case 2*, simply because they have a stronger claim. This is sufficient for a verdict, so one might suggest, and all that matters for contractualists.

While this renders Wallace's position slightly more plausible, note that this response doesn't actually dissolve the initial worry. In light of the very small difference between *Case 1* and *Case 2*, morally requiring the saving of the greater number in *Case 1* but firmly denying it in *Case 2* continues to look like an unsatisfactory position.

All in all, Wallace's new and attractive pathway for allowing contractualists to reconcile their adherence to the individualist restriction with the common intuition that rescuers ought

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<sup>65</sup> For other problems which arise when attempting to avoid deontic cycling, such as violations of the independence of irrelevant alternatives, see Halstead (2016).

<sup>66</sup> For discussion, see Voorhoeve (2014: 76–79) Kamm (2007: 297–298), Tomlin (2017: 236 n. 11).

to save the many in *Rock*, falls flat on three counts, ultimately hanging contractualists out to dry. What's more, looking closer at Wallace's argument makes plain that an acceptable solution to the numbers problem needs to fulfil desiderata beyond a concern for individualist justification. A satisfactory solution to the numbers problem must flow naturally from the core ideas of contractualism and exemplify the anti-maximizing spirit behind a concern for individualist justification, rather than just adhering to the letter of that concern.

## 2. The Numbers Problem Revisited

The remainder of this chapter defends a hitherto underexamined solution to the numbers problem which upholds individualist justification and flows more naturally from contractualism. The proposed solution holds that it is permissible for the rescuer in *Rock* to save either group and explains why this verdict is much more compatible with common-sense morality than initially thought.

As is evident from earlier discussion, the anti-aggregative permissibility of saving either group has long been maligned in the literature and is generally rejected off the bat.<sup>67</sup> Philosophers consider this option not only to be counter-intuitive, but also to express a failure to respect the value of human life. Surely, the thought goes, rescuers should be moved by the fact that there are more individuals to be saved and more lives to be lost in one group than in the other. Thus, to treat the decision to save either group as permissible is regarded as failing to properly value individuals. It is in this light that this solution to the numbers problem is conceptualized as 'bit[ing] the bullet'; for contractualists, affirming the permissibility of saving either group is supposed to be a painful concession to make (Wallace 2019: 215).<sup>68</sup>

I want to deny this. I argue that the permissibility of saving either group in *Rock* is much more compatible with common-sense morality than is often assumed, and therefore constitutes an intuitively plausible conclusion to accept, rather than a bullet to bite. I commence by sketching two cases in which common-sense morality tells us that it's intuitively permissible for

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<sup>67</sup> It's also been proposed that it's permissible for the rescuer to save either group but that rescuers have a strong 'nonmoral reason' to save the greater number (Wallace 2019: 215). This nonmoral reason is provided by the impersonal value of human life. However, the charge pressed by the numbers problem claims that contractualists can't explain the intuition that saving either group is intuitively morally wrong. Note that suggesting that rescuers have *nonmoral* reasons for saving the greater number allows contractualists to deliver the intuitively correct conclusion about what the agent should do in some non-moral sense of 'should', but it doesn't answer the charge that it's morally wrong to save the few. For discussions of this, see Wallace (2019) and Munoz-Dardé (2005b).

<sup>68</sup> It has also been labelled a 'lunatic' idea (Doggett 2013:313).

individuals to save either the smaller group or the larger group. I then offer some reasons to think that the permissibility of saving either group in *Rock* coheres with our value judgements more generally, by drawing on the common-sense idea that we value individuals for their own sake. Finally, I return to the practical implications of this position.

## 2.1. Charity

Following the discussion of the previous section, one might suggest that assuming a duty to save the greater number in *Rock* is inconsistent with supporting another, similarly common-sense intuition already discussed in chapter 1: that one can permissibly donate to any cause in *Charity*.

Following the widely shared idea that individuals have a pro tanto duty to maximize the good, individuals are required to secure more rather than less good once all other things are equal. This pro tanto duty to maximize the good is exemplified in the dominant assumption that individuals have a duty to save the greater number in *Rock*. Effectively, it threatens the theory of contractualism which includes no concern for maximization. But a pro tanto duty to maximize the good may itself conflict with similarly compelling intuitions, leading us to doubt its initial plausibility. Perhaps, then, the contractualist should not worry about failing to accommodate the idea that when costs are equal, one ought to secure more good rather than less good.

If we posit a pro tanto duty to maximize the good, then this duty would deliver the wrong conclusion in *Charity*. As a reminder, in *Charity*, an agent chooses between donating a third of her income to Oxfam, the Hunger Project, or Local Poverty Action. Here, because the agent can save a greater number of individuals at no additional cost by donating to Oxfam, donating to Oxfam constitutes the better act from an impartial perspective. Therefore, from the assumption that there is a duty to perform the better act when costs are equal, it would follow that the agent in *Charity* has a duty to donate to Oxfam.

But, as I emphasised earlier, most people, at least outside the philosophical movement of effective altruism, find this conclusion counterintuitive: it seems permissible for the agent in *Charity* to give her own money to whichever cause she chooses. What's more, a duty to donate to Oxfam in *Charity* has the highly implausible implication that it's morally wrong for the agent to help people in need by donating to the Hunger Project or Local Poverty Action, but morally permissible for the agent to spend her money on knick-knacks. In response, it might be suggested that there are circumstances in which the agent does have a duty to perform the better act in

*Charity*. What if the individual in *Charity* has the explicit aim of alleviating poverty? Having done research and knowing very well that donating to Oxfam would better fulfil this aim, surely it would be irrational for the individual to nevertheless donate to the Hunger Project or Local Poverty Action.

Even if someone who explicitly aims to do as much good as possible should give to Oxfam in *Charity*, most people who give to charity do not have this explicit aim. People generally don't aim to 'do as much good as possible' when donating to charity. Rather, people care about and empathize with individuals in need and want to advance their claims. And, since the Hunger Project and Local Poverty Action both fight poverty by advancing the claims of individuals in need, just like Oxfam, it seems permissible for people to donate to any of those three causes. What's more, the fact that it might be irrational for this individual to donate to the Hunger Project or Local Poverty Action in light of her aims does not suffice to show that it would also be morally wrong for her to do so.

A critic might insist that *Rock* and *Charity* are morally disanalogous and hence reject the claim that a duty to perform the better act in *Rock* is incompatible with the permissibility of donating to any cause in *Charity*. They might argue as follows: while the rescuer in *Rock* is morally required to save someone, acting is optional for the agent in *Charity*, given that acting imposes a substantial burden on the agent. But since any course of action in *Charity* is morally optional, a duty to perform the better act cannot apply. What is more, the respective burdens which each of the three possible donations impose on the individual is precisely what exempts the individual from a requirement to donate. Even if the individual is prepared to donate to the Hunger Project or Local Poverty Action, the individual can still appeal to the financial burden which donating to Oxfam would impose on her in order to explain why she is not required to donate to Oxfam.

This suggestion, of course, is subject to an argument by Pummer and Horton who insist that individuals have a duty to maximize the good if they are prepared to take on a morally optional burden. In the first chapter, this point was rejected. It was argued that a pro tanto duty to do the greater good can be reconciled with the idea that it's permissible to donate to a less efficient charity based on the fact that individuals have an agent-relative prerogative of sacrifice which exempts individuals from such a duty. But notably, this discussion depends on the precarious claim that charitable giving is supererogatory based on costs which it imposes on individuals. As alluded to in the conclusion of the first chapter, this is a claim we might not want to adopt. Instead, we might choose to follow Scanlon who writes:

[I]f you are presented with a situation in which you can prevent something very bad from happening, or alleviate someone's dire plight, by making only a slight (or even moderate) sacrifice, then it would be wrong not to do so. It is very plausible to suppose that this principle, which I will call the Rescue Principle, is one that could not reasonably be rejected, at least not if the threshold of sacrifice is understood to take account of previous contributions (so that the principle does not demand unlimited sacrifice if it is divided into small enough increments).

(Scanlon 1998: 224)

But if we side with Scanlon on this, it's possible to deny that there is a disanalogy between *Rock* and *Charity* which explains why there is a duty to perform the better action in *Rock* but not in *Charity*. To see this, it's helpful to properly assimilate both cases, e.g., by conjecturing that affluent individuals are morally required to donate a substantial part of their income -let's say a third- to charity. Let's call this *Required Charity*. If moral optionality is the only distinction between *Rock* and *Charity*, it would follow from this that individuals ought to perform the better action in *Required Charity* and donate to Oxfam.

But this seems open to question. One may maintain that it's implausible to think that the individual in *Required Charity* acts wrongly if they choose to support the Hunger Project or Local Poverty Action. The individuals in need who would be helped by both of these charities merit and require our support just like individuals who would be aided by Oxfam. They, too, have strong claims to our assistance. And, as Wallace has emphasized, there is no reason for contractualists to share a commitment to maximizing the impersonal good, as commonly asserted by proponents of effective altruism. Thus, contractualists are able to deny that the individual would be required to donate to Oxfam in *Required Charity*.

Note that the only thing which currently resembles morally required donations is taxation. Yet it's clear that tax revenue isn't allocated according to what does the most good: even when leaving aside pluralist causes such as culture, taxes are still used to fund treatment for ailments such as hair loss or nail infections although many more lives could be saved if funds

were allocated differently (Voorhoeve 2020).<sup>69</sup> Now of course there may be other justifications for this, but it's important to keep in mind that this use of tax revenue is generally considered unobjectionable.

In summary, the appeal to moral optionality cannot explain why agents intuitively don't have a duty to donate to the most efficient charity in *Charity*. Thus, despite the fact that both claims are rooted in common-sense morality, it's not possible to consistently affirm both a duty to perform the better action in *Rock* as well as the permissibility of performing any action in *Charity*.

Giving up the intuition behind *Charity* might seem to some people to be the more attractive option. After all, affirming the duty to donate to the more efficient charity in *Charity* would nicely reflect the very strong intuition behind *Rock*, namely that individuals should be moved by the fact that there are more lives to be saved in one group than in the other. In addition, it seems possible to explain why the intuition in *Charity* appears appealing. In many real-life cases we simply don't know which charity is better than others, so even if we accept the intuition about effectiveness in the hypothetical case, this is clearly disanalogous from real-world cases in which our intuition of wide discretion would still persist. But it is far from *obvious* that we should give up the intuition in *Charity* rather than the intuition in *Rock*. So, giving up the claim that there is a general duty to save the greater number cannot be as contrary to common-sense morality as opponents of contractualism often assume.

In the remaining sections of this chapter, I argue that the option of giving up the intuition in *Rock*, and hence rejecting a general duty to save the greater number, is preferable to giving up the intuition in *Charity*. I also gesture towards a deeper explanation of why individuals can permissibly choose to save either group in both *Rock* and *Charity*.

## 2.2. Mother

I want to look at another widely shared common-sense intuition that is inconsistent with the pervasive idea that the rescuer in *Rock* has a duty to save the greater number. In *Mother*, Jane is the mother of three children, and has to make a decision about which of her children to save from death. She can either save Anny, or she can save both Betty and Cady, but she cannot save

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<sup>69</sup> Voorhoeve refers to the small ailment of onychomycosis, a common fungal infection which affects toenails, and which can ultimately lead to nail loss. For a further discussion of taxation, see Feinberg (2003).

all three. What should Jane do? Jane loves all her children. The loss of any of them would be devastating for her. Indeed, having to choose between her children in this way is one of the worst decisions Jane could ever be faced with, and she would gladly give her own life if that would allow her to save them all. Jane desperately looks for any considerations which could help her in making this harrowing choice. She considers in vain whether she could save all three of them, whether one of them may have a higher chance of survival, or whether she could find help elsewhere. At this point, those who support a duty to save the greater number in *Rock* will tell Jane that she ought to save as many of them as she possibly can.

Yet suppose that in this tragic case, after having exhausted all other options, Jane chooses to save Anny. It might be reasonable to ask Jane why she saved Anny rather than Betty and Cady. But would we consider Jane to have acted wrongly for having saved Anny rather than Betty and Cady? I suggest not. We just don't think Jane is obligated to choose the option which maximizes the number of lives saved. We respect her choice as a mother who is trapped between two tragic options, and who chooses to save Anny.

Plausibly, one may suggest that the special features of this case render *Mother* disanalogous to *Rock* and therefore explain why Jane, unlike the rescuer, doesn't have a duty to save the greater number. I will consider four such explanations and show why each of them is unsuccessful.

First, it appears that *Mother* is set apart from *Rock* by special psychological features, as Jane's situation is extremely psychologically demanding. Deciding between the lives of her children is inconceivably painful for Jane, understandably impairing her ability to rationally and level-headedly assess her options.<sup>70</sup> Perhaps Jane cannot reasonably be expected to make the right choice and save the greater number. However, this explanation can be contested. Say Jane has nominated a proxy to choose in her place. Given that this individual is representing Jane, they may act in whichever way they believe to be reflective of Jane's interest. Here, it still seems that Jane's proxy could permissibly save Anny. But this can no longer be justified by reference to the psychological burden imposed by this choice, meaning that such a burden cannot furnish an explanation for why Jane doesn't have a duty to save the greater number.

A second explanation might draw attention to the special duties a mother has towards her children. One may suggest that a mother's duty to save her children is much stronger than a rescuer's duty to save strangers. For instance, a mother might have a duty to save her children even if this means risking her own life. Thus, Jane's duty towards each of her children may be

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<sup>70</sup> For a vivid description of the mother's burden in Sophie's-choice-type cases, see Tadros (2016: 228).



uniquely stringent and powerful in a way which doesn't aggregate, meaning that Jane's duty to save Anny cannot be outweighed by her respective duties to save Betty and Cady.

This explanation falls short. Although a mother's duty to aid her children differs in strength to a rescuer's duty to save strangers, we have no reason to think that it also differs in kind. But a mere difference in strength cannot plausibly by itself make a difference to whether duties aggregate or not.

Third, one might appeal to the special duties that a mother has towards her children in a different way. One might propose that mothers have a very strong duty to treat each of their children equally. Thus, Jane might be required to give equal chances to be saved to each child, for instance by flipping a coin.

This, too, seems mistaken. It seems rather cruel to expect Jane to fetch and flip a coin before being able to permissibly save her children. Indeed, should Jane fail to do so and opt to save right away, it seems counter-intuitive to suggest that Jane acted wrongly. Just like it seems permissible for Jane to save the many or the few, it seems permissible for her to save either party without first flipping a coin.

A fourth explanation points us towards the fact that permissible partiality is a factor in *Mother*, but not in *Rock*. As discussed in chapter 2, permissible partiality generally exempts individuals from a duty to bring about the greater good in cases in which individuals would be required to sacrifice their loved ones. For instance, an individual can permissibly save their loved one's life rather than the lives of five strangers (Williams 1981).<sup>71</sup> Thus, we may think that Jane is exempt from a duty to save the greater number because she loves all of her children.

However, the explanation from permissible partiality doesn't actually justify why Jane can permissibly save Anny. The concept of permissible partiality generally exempts individuals from a duty to bring about the greater good in cases in which bringing about the greater good would impose substantial costs or sacrifices on them, such as the loss of a loved one. But this isn't what's going on in *Mother*. Given that Jane will lose at least one of her children either way, a duty to save the greater number doesn't impose a substantial sacrifice on Jane. Hence, Jane's exemption from a duty to save the greater number cannot be justified by appealing to permissible partiality.

Still, returning to *Mother*, common-sense morality, then, tells us that in this tragic case, it's intuitively permissible for Jane to save either Anny or Betty and Cady, yet this cannot be explained by appealing to the special features of this case. Thus, *Mother* offers a key

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<sup>71</sup> For further discussion of permissible partiality, see chapter 3.

counterexample to the claim that there is a general duty to save the greater number. Again, we find that denying a duty to save the greater number is less in conflict with common-sense morality than opponents of contractualism typically assume.

### 2.3. Valuing Individuals and Permissibly Saving the Few

The last two sections considered the contractualist conclusion that the rescuer in *Rock* doesn't have a duty to save the greater number and argued that this conclusion is in fact much more in line with common-sense morality than is often suggested. Still, some questions for the contractualist remain: in particular, a reader might worry that while a contractualist bar on aggregation has been shown to be compatible with common-sense morality in several cases, we have yet to offer independent, valid argumentation in favour of the conclusion that it's permissible to save either group in *Mother* and *Rock*. In other words, aside from a concern for adhering to the contractualist framework and individualist justification, do we have any other reason for thinking that both Jane and the rescuer can permissibly save either group?

Answering this question comprehensively and providing an argument for why the permissibility of saving either group coheres with our value judgements more generally is beyond the scope of this chapter. However, let me indicate a possible direction in which such an analysis might go.

Whenever we assess and compare individuals and individual claims, we do so in light of a 'covering value'. A covering value is a value in virtue of which meaningful comparisons are made between two bearers of value. In regard to a covering value, a bearer of value may be equal, better, or worse than another. For instance, when comparing cheese and chalk in regard to the covering value 'goodness as a housewarming gift', cheese is better than chalk, but when comparing both in regard to the covering value 'goodness as a toy', chalk is better than cheese (Chang 1997: 5–7). Individuals can be compared in regard to a vast number of different covering values: in regard to their ability to play chess, their quality as a conversation partner, their coffee-making skills, their generosity, their amount of well-being etc.

So how do we assess *Rock*? Contractualism tells us to compare and rank individual claims in regard to their strength. However, this doesn't help us decide what to do in *Rock*, given that all claims in *Rock* are of equal strength and thus tied. Therefore, we need to apply a different covering value when assessing *Rock*. We may, for instance, compare the individuals in *Rock* in

regard to morally relevant covering values such as intrinsic value, moral status, capacities, rationality, or well-being. Indeed, we might stipulate that the individuals in *Rock* are equal in regard to these covering values (even if this is unlikely to be the case in regard to all of them). Because the value of individuals is equal in regard to each of these covering values, we can aggregate the value of individuals in regard to these values and secure more value by saving the many than by saving the few. Thus, so the thought goes, we ought to save the greater number. In other words, if our aim is to secure as much value as possible in regard to such covering values as well-being or intrinsic value, then a duty to save the greater number delivers on this goal.

Worryingly, this approach seems to treat individuals as mere vessels for these covering values.<sup>72</sup> In particular, this approach reduces our concern for saving individuals in *Rock* to a concern for securing and maximizing *amounts* of value and thus fails to recognise and value each individual for their own sake. Or, as Samuel Scheffler puts it, sacrificing one bearer of value in order to save a greater number of bearers of value seems to ‘giv[e] the value that things have priority over the things themselves’ (Scheffler 2018: 110).

Properly valuing individuals when assessing *Rock*, or so we might think, should involve valuing individuals in a way which isn’t derivative from the amount of value which each individual adds to this world.<sup>73</sup> That is, we should assess individuals in regard to ‘value for one’s own sake’. Indeed, valuing individuals for their own sake is a familiar and common-sense way of valuing individuals, as it generally captures how we value our loved ones.<sup>74</sup> This can be seen in *Mother*, where Jane loves Anny for being Anny, Betty for being Betty, and Cady for being Cady.

In fact, using the idea of love, Kieran Setiya has recently argued that the rescuer wouldn’t have a duty to save the greater number but can permissibly save either group in *Rock*.<sup>75</sup> Setiya

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<sup>72</sup> For discussion of the worry that individuals might be treated as mere vessels for value, see Regan (1983) and Yetter Chappell (2015).

<sup>73</sup> Taurek expresses a similar idea, suggesting that we don’t care about individuals solely for the value which they contribute to the world. In a memorable quote, he writes: ‘It seems to me that those who, in situations of the kind in question, would have me count the relative numbers of people involved as something in itself of significance, would have me attach importance to human beings and what happens to them in merely the way I would to objects which I valued. If six objects are threatened by fire and I am in a position to retrieve the five in this room or the one in that room, but unable to get out all six, I would decide what to do in just the way I am told I should when it is human beings who are threatened. Each object will have a certain value in my eyes. If it happens that all six are of equal value, I will naturally preserve the many rather than the one. Why? Because the five objects are together five times more valuable in my eyes than the one. But when I am moved to rescue human beings from harm in situations of the kind described, I cannot bring myself to think of them in just this way’ (Taurek 1977: 306).

<sup>74</sup> Williams imagines a world in which, by means of replication, there are type-persons and token-persons. Even though all token-persons are of the same type, when we love someone, this love is individualized for a token (Williams 1973: 80–81).

<sup>75</sup> Taurek (1977) offers a similar argument from partiality. However, unlike Taurek, Setiya offers an explanation for why it’s possible to generalize from cases of partiality.

starts by asserting that what justifies individuals in permissibly saving their friend or wife rather than several strangers is their love for them. Setiya continues by arguing that we don't love individuals based on any specific reasons or personal traits, but we love them simply for their humanity. Given that we love individuals simply based on their humanity, Setiya states that 'just being human is enough to warrant the intense concern that we devote to our close friends and family' (Setiya 2014: 275–276). Briefly put, Setiya concludes that because love for an individual permits us to save them rather than several strangers and the single individual in *Rock* warrants love and partiality in virtue of their humanity, the rescuer can permissibly save the single individual.

However, as Sinclair points out, if the rescuer in *Rock* doesn't actually have any favouring dispositions towards the single agent in *Rock* and hasn't met them, it's difficult to see how the rescuer could love them and thus have an attitude of permissible partiality towards them (Sinclair 2020a).<sup>76</sup> Still, Setiya's reflection on the worth of human life is worth further consideration. Specifically, I want to draw attention to a significant implication of valuing individuals for their own sake, rather than for the value they add to this world. I suggest that when valuing individuals in regard to the covering value 'value for one's own sake', the value of individuals is *incomparable*.<sup>77</sup> Consider a comment by David Wasserman and Alan Strudler as found in their discussion of the Scanlon-Kamm argument:

A nonconsequentialist might plausibly regard lives and claims to their rescue as having incommensurable or noncomparable value- equal only in the important sense that none is greater than any other. But if so, it is not clear how those claims can be balanced at all: Things having incommensurable value cannot be measured (balanced) on a single scale.

(Wasserman and Strudler 2003: 90)

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<sup>76</sup> See also Scheffler (2011). Scheffler argues that we can only be emotionally attached to bearers of value and thus value them in a heightened way if we've actually been acquainted with them.

<sup>77</sup> Some have suggested that Taurek (1977) is implicitly referring to the incommensurability or incomparability of lives in his rejection of aggregation (Alexander 1998, Hsieh, Strudler and Wasserman 2007). Yet Taurek isn't explicit about this point.

Here, it's important to further unpack the idea that the value of individuals is incomparable. It is often suggested that two bearers of value are incomparable if one bearer of value is not better than the other, worse than the other, or equally as good as the other in regard to a covering value (Chang 1997). Upon reflection, any time we compare the value of two individuals in regard to the covering value 'value for one's own sake', we will find that two individuals  $S_1$  and  $S_2$  are incomparable. This is because any individual  $S_1$  is neither better than, worse than, nor equal to any other individual  $S_2$  in regard to the covering value 'value for one's own sake' given that the value of each individual is grounded in, and individuated by each person:  $S_1$ 's value is grounded in  $S_1$ ,  $S_2$ 's value is grounded in  $S_2$ , etc. After all, the grounds for which we consider an individual  $S$  to have value have their source *in her being S*, rather than merely in her being a bearer of value with certain features.<sup>78</sup> A crucial implication of the claim that the value of individuals is incomparable in regard to the covering value 'value for one's own sake', is that the value of individuals cannot be aggregated in respect to this covering value. As a result, we can no longer make sense of the claim that saving a larger number of individuals secures more value than saving the few.

Because some things are individuated to individuals and therefore incomparable, they cannot be aggregated across individuals. Other things, however, don't fall within this category as they can be abstracted from the individual. This point is also reflected in Taurek's reply to Parfit's discussion of the number problem.

When we move from saying 'He has greater weight than any of these ten', to saying 'But taken together they have greater weight, or more weight, than he has', the expressions 'more weight' and 'greater weight' do not undergo a change in sense or meaning. They have the same meaning in both comparisons. However, when we move from saying 'She will suffer greater pain, or more pain, than any of these many' to saying 'But when taken together the many will suffer more pain, or greater pain, than she will', the expressions 'more pain' and 'greater pain' do undergo a change in sense or meaning. I understand their meaning in the first comparison. I do not understand their meaning in the second.

(Taurek 2021: 313–314)

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<sup>78</sup> For a recent discussion of valuing individuals for their own sake, see Frick (2020).

Because we care about an individual's suffering for their own sake –unlike their weight–, an individual's suffering is individuated to each person. Thus, if we care about valuing individuals for their own sake rather than as vessels for value, each individual's suffering is incomparable. In view of this incomparability, we arrive at the conclusion that it may be permissible to save either group in *Rock*.<sup>79</sup>

Indeed, one possible way to reading contractualism nicely aligns with this suggestion: it tells us that the incomparability of the value of individuals may be what underpins the individualist restriction. That is, many have questioned why the individualist restriction bars an appeal to aggregative reasons. Yet if properly valuing individuals for their own sake requires us to recognize that the value of individuals is incomparable, this worry can be answered. The individualist restriction rules out aggregation because it treats people as bearers of unique, incomparable value and as we have seen this kind of value cannot be aggregated – and neither can the claims of individuals, given that they are grounded in this value.<sup>80</sup> In other words, the individualist restriction can be justified as a way of respecting persons as individuals rather than as mere bearers of value.

One challenge for presenting an argument for why the permissibility of saving either group in *Rock* coheres not only with the contractualist framework but also with our theoretical value judgements more generally is to specify the value which individuals have for their own sake. This includes responding to two key objections. First, one may argue that the value of individuals is in fact non-aggregable not because individuals have incomparable value, but because individuals have infinite value. Second, one may propose that the value of individuals in regard to the covering value 'value for one's own sake' isn't incomparable, but roughly equal or on a par.<sup>81</sup> However, more work must be done on carving out such an argument for the permissibility of saving either group, with this section offering no more than a rough outline.

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<sup>79</sup> For a different argument to the conclusion that the value of individuals is incomparable, and thus causes problems for the claim that the rescuer obviously has a duty to save the greater number, see Walden (2020). Walden argues that because the other persons in *Rock* are the rescuer's partner in their moral reasoning of determining what action to take, the rescuer cannot compare their value, and, doing so, is failing to engage in specifically moral reasoning. As Walden puts it 'in comparing the value of those at risk, [the rescuer] has stopped treating them as *partners* in her moral reasoning and begun treating them as objects encountered in a decidedly first-personal *singular* form of reasoning. And this is not moral reasoning' (Walden 2020: 124). Indeed, Walden's argument seems to fit well with a contractualist view which considers morality to be concerned with what's acceptable to each generic viewpoint.

<sup>80</sup> Although the relevance of individual complaints is grounded in the incomparable value which each individual has for her own sake, individual complaints can still be compared in regard to their strength.

<sup>81</sup> Chang has argued that parity constitutes a fourth evaluative relation in which two bearers of value can stand to each other. Two bearers of value are on a par if they are comparable in regard to a covering value, but are not better than, worse than, or equally as good as each other (Chang 1997, 2002). More precisely, parity arises if the different

## 2.4. Practical Implications: Charitable Giving and Policy Making

So far, I've suggested that permitting the rescuer to save either group in *Rock* is compatible with common-sense morality and may even accurately reflect our concern for valuing individuals for their own sake. It now remains to return to *Charity* and similar concerns which arise in the context of public policymaking.

It's now possible to explain why one should reject a duty to save the greater number in *Rock* rather than the claim that it's permissible to donate to any cause in *Charity*. The Hunger Project and Local Poverty Action help *different* people than Oxfam. Different people need our help and different people are aided through different charities. We care about donating to charity because we care about each individual for their own sake and care about aiding them for their own sake. In other words, while it's possible to take a stance similar to the position of a public health official and aim to maximize well-being by donating to the most efficient charity, this may fail to appropriately value those individuals who are in need of support.

In fact, public officials may have to make decisions slightly differently than individuals. When making social policy decisions for the benefit of a society, they may have to compare options in regard to the amount of well-being each option brings about, or the amount of lives it secures and therefore use aggregative reasoning. This is because it may be the specific role and task of a public official to maximally benefit the well-being of the people, just like it is the task of a bodyguard to protect their client. Thus, they may allocate foreign aid to the charity which will save the most lives or redirect a terror threat from a crowded city to a small village. But, again, this is a feature of their public role. If, outside of their official capacities, an individual regards other people as vessels for value rather than as being valuable for their own sake, they are no longer properly valuing individuals, and possibly have abandoned the task of assessing what they owe to others.

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contributory values of a covering value *V* are balanced across both bearers. However, Chang herself writes that incomparability between bearers of value is possible if there are only two contributory values to a covering value and each bearer of value carries only one aspect of each contributory value and those two aspects are incomparable with one another (Chang 2013: 83–84). This is the case in regard to individuals: unlike many other covering values, the covering value 'value for one's own sake' cannot be reduced into different contributory values given that its sole contributory values are the respective value each affected person has for her own sake. Thus, contributory values cannot be balanced across persons and individuals cannot be on a par in regard to the covering value 'value for one's own sake'.

### 3. Conclusion

Most philosophers presume that in cases like *Rock*, the rescuer has a duty to save the greater number and would act wrongly if he saves the few. In this chapter, I have suggested that this isn't as obvious as is generally assumed.

The common assumption that rescuers have a duty to save the greater number has been especially troubling for contractualists given that it conflicts with the core idea of their theory, individualist justification. I have rejected one recent argument by Wallace which attempts to arrive at a contractualist duty to save the greater number while upholding individualist justification. More specifically, I've argued that Wallace's argument mistakenly construes morality as uniquely action-guiding and has implausible implications in cases involving charitable giving.

I then proposed that contractualists should respond to the numbers problem by accepting the conclusion that it's permissible for the rescuer to save either group.<sup>82</sup> In support of this, I first introduced two cases in which it is intuitively permissible to save the few, showing that this option is much more in line with common-sense morality than is often assumed. I then gestured towards an argument for why the permissibility of saving either group not only coheres with the contractualist project at the level of intuition but also at the level of our value judgements more generally. Although in need of much more work, such an argument suggests that blindly saving the greater number may itself demonstrate a failure to properly value individuals for their own sake.

It might finally be objected that while the permissibility of saving either group might work on an individual level, it cannot be sustained in large-scale conflicts, where one might have to choose between saving one life or saving a million lives. Yet it's important to note that we have now shifted our focus to problems of public policy, and social and political decision-making. Indeed, the role which numbers play in public policy-making still needs careful and detailed investigation – a task which is beyond the remit of this chapter and thesis.

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<sup>82</sup> I've left open whether or not a procedural approach is required, which is beyond the purview of this chapter. Employing a randomizing procedural approach which gives equal chances to be saved to all individuals seems fully compatible with valuing individuals for their own sake, but whether or not contractualism requires such a procedure must be considered elsewhere. Employing a weighted lottery which gives proportional chances to both groups is often considered a promising approach since it gives the larger group a greater chance to be saved while still giving some weight to the smaller group. However, one might worry that a weighted lottery actually fails to adhere to individualist justification given that its proportional chances reflect the number of individuals in each group. For discussion of this, see chapter 5.



Still, there are a few brief replies available which can be sketched here. First, it has been suggested that in the extreme circumstances that arise when numbers are inflated in this way the commitments of ordinary morality may be suspended, just like they are in circumstances of war (Sinclair 2020b). Second, as it was suggested above, it may seem more plausible to compare and aggregate individuals in regard to the amounts of value they add to the world when making public policy decisions. Like a bodyguard sworn to protect her client, policy makers, in their public role, simply have the very task of maximizing well-being across a population. As such, aggregation which may be unjustifiable to individuals, becomes permissible when performed by a figure who isn't curtailed by such concerns. Third, it's been argued that the scarcity of resources imposes limits on what demands individuals can reasonably make, and on whether individuals can still demand to be saved if the same resource could be used to save a million lives instead (Munoz-Dardé 2005b). This is because there are also a variety of social values at play in population-level policy decisions, which are absent in individual conflict cases, and which may direct us to aiding the greater number (Munoz-Dardé 2013). Considerations of social stability, equality, and fairness may not be reducible to the number of individuals benefitted or to a concern for maximizing the good, and yet only arise on a population level.

Ultimately though, the role of numbers in policymaking is still puzzling, as it remains unclear how precisely numbers and alternative social and political values should determine policy-making. In light of this, the question of large numbers remains a topic for future work, as it presents a unique theoretical challenge which only a separate discussion could do justice to.

## 5. The Individualist Objection<sup>83</sup>

Should we be able to access benefits, based on our membership in a group? At first blush, such benefits may strike us as uncontroversial. One may plausibly appeal, for instance, to one's membership in the winning team, in order to justify a claim to a share of the prize. However, in other cases these membership benefits strike us as objectionable and as grounding legitimate complaint from others –as in the case of providing tax breaks for legally married couples.<sup>84</sup> Following Scanlon, contractualists are interested in the personal claims of individuals. This focus means that contractualists must take seriously the questions of what counts as an individual's claim and whether individual claims are legitimate in cases in which they arise as a result of an individual's group-membership.

These questions, or so I argue, are especially difficult in cases where we must determine the permissibility of risk impositions. And taking these questions about individual claims seriously may lead us to rethink an approach to risk which is popular among contractualists, and the puzzle this approach gives rise to. So-called *ex ante* contractualism determines the claims of individuals by considering the probabilities of being harmed or benefitted which a principle of risk imposition imposes on individuals. But it also leads to a puzzle: *ex ante* contractualism delivers principles which license the imposition of large burdens on some, in order to secure smaller benefits for others, despite the fact that such principles stand in direct opposition to the individualist, anti-utilitarian spirit of contractualism.

This chapter provides a diagnosis of this puzzle: it argues that claims which cannot be justified on grounds other than by appeal to an individual's group-membership fail to constitute truly individual claims. Yet an individual's probability of being harmed or benefitted may be conditioned by an individual's group-membership –as when, for instance, an individual's probability of being selected for jury duty is conditioned by the size of the group from which jurors are chosen. This means that claims which appeal to these kinds of probabilities cannot be justified on grounds other than by appeal to an individual's group-membership and therefore fail to constitute truly individual claims. This, so the chapter concludes, is what gives rise to the puzzle of *ex ante* contractualism.

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<sup>83</sup> A version of this chapter is forthcoming in *Oxford Studies in Normative Ethics*.

<sup>84</sup> Once we exclude justifications based on perfectionist or traditionalist values, which attach value to marriage as an institution, or on instrumentalist grounds such as the incentivization for having children.

The chapter is structured as follows: the first section outlines the puzzle of ex ante contractualism, while the second section motivates the contractualist tenet of individualist justification. The third section argues that claims which are exclusively based on group-membership fail to adhere to individualist justification. Drawing on this analysis, the fourth section offers a diagnosis of the puzzle of ex ante contractualism. Ultimately, this chapter investigates what implications the adoption of a contractualist position which rejects a pro tanto duty to maximize the good, has on our views about risk imposition and group-membership more generally. It suggests that, surprisingly, the aggregation of claims is not the only mechanism for value maximization: a more subtle, but equally effective route for delivering maximizing principles is provided by a reliance on probabilities which reflect group-membership.

### 1. The Puzzle of Ex ante Contractualism

In what follows, I look at how contractualists deal with risk, and explain the puzzle of ex ante contractualism which at least some of them face.

Contractualism tells us that a moral principle is wrong if and only if it can be ‘reasonably rejected’ by individuals (Scanlon 1998: 85). A moral principle can be reasonably rejected by an individual if the complaint that the individual has against that principle is stronger than the complaint that any other individual has against any alternative principle. Contractualism also imposes a constraint on the types of complaints which individuals may advance by stating that individuals can only put forward complaints which are based on *personal grounds*, such as an individual’s well-being, status, or rights. This concern for individualist justification bars individuals from advancing aggregative complaints which appeal to the summed-up complaints of several people. As such, the contractualist constraint of individualist justification provides a safeguard against maximizing principles which permit the imposition of large burdens on some, in order to secure smaller benefits for others.<sup>85</sup> Individualist justification, then, lies at the core of contractualism’s anti-utilitarian spirit.

But what can contractualism tell us about the permissibility of risky activities? Decision-making in medical, infrastructural, political, social and various other domains depends on having

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<sup>85</sup> In addition, the fact that individuals can only reasonably reject principles based on personal complaints also excludes individuals from appealing to impersonal values such as beauty, nature, or the goodness of states of affairs. This is often referred to as *the impersonalist restriction*.

a framework for evaluating what kinds of risks we may permissibly impose on individuals. Yet in order to arrive at moral principles which regulate the permissibility of risk impositions, contractualists first need to settle on how to determine the complaints which individuals have against principles of risk imposition.

Here, contractualists are often urged to choose between assessing individual complaints from an *ex ante* or an *ex post* perspective.<sup>86</sup> *Ex ante* assessments consider the complaints which individuals have against a principle of risk imposition by evaluating the prospects which individuals have in light of the probabilities of harm imposed on them by a principle. Accordingly, an individual's complaint against a principle of risk imposition is stronger if it is more likely that the harm will materialize, and weaker if it is less likely that the harm will materialize. Unlike *ex ante* contractualism, *ex post* contractualism considers the complaints which individuals would be able to make once an imposition of risk has played out, and its results have been imposed on individuals. Thus, an individual has an *ex post* complaint if a risk of harm materializes and ultimately imposes an actual harm on them.

Many find *ex post* contractualism to be attractive: given its focus on the perspective of the individual who turns out to be most burdened, *ex post* contractualism seems to capture the contractualist concern for the strongest individual complaint much more accurately than *ex ante* contractualism. Indeed, *ex post* contractualism was originally favored by Scanlon himself as the appropriate contractualist approach to the ethics of risk imposition (Scanlon 1998). However, *ex post* contractualism also delivers intuitively troubling conclusions. Consider the following case:

*Dangerous Treatment*: 100 children are given an experimental treatment against a virus which will otherwise leave them paraplegic. Since the treatment imposes a 1/100 probability of death on each of them, one of them is likely to die as a result of the treatment, while the other 99 children will be cured.

Following *ex post* contractualism, *Dangerous Treatment* is impermissible, since it is likely that a child will die as a result of the treatment, and that child will then be able to reasonably reject any principle permitting the treatment.<sup>87</sup> But this seems overly cautious. Plausibly, every child has

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<sup>86</sup> For discussions of *ex ante* and *ex post* contractualism, see Ashford (2003) Frick (2015) Fried, (2012), Horton (2017a), James (2012), Kumar (2015), Lenman (2008), Otsuka (2015), and Reibetanz Moreau (1998).

<sup>87</sup> There is, of course, no absolute certainty that one of the children will die.

reason to accept a very small, 1/100 probability of death in order to secure a very large, 99/100 probability of avoiding paraplegia.

A second, more damning objection to ex post contractualism points out that ex post contractualism prohibits many everyday social activities (Frick 2015).<sup>88</sup> Activities such as driving or aviation render it highly likely that individuals will die as a result of them, ex post contractualism states that these individuals can reasonably reject principles which license such activities.<sup>89</sup> Yet this seems clearly amiss.

In comparison, ex ante contractualism can avoid both of the charges pressed against ex post contractualism on account of its focus on probabilities. First, ex ante contractualism rules *Dangerous Treatment* permissible because it is in each child's interest to secure a 99/100 probability of avoiding paraplegia at the cost of a 1/100 probability of death. Second, ex ante contractualism generally allows risky social activities such as driving, since each individual's probability of being harmed is minuscule, especially when compared to the benefits many people receive from these activities. Given these advantages, ex ante contractualism has been the more popular option in recent discussions of contractualism and risk.

Intuitively attractive though it may be, one forceful objection has been pressed against ex ante contractualism, which is the object of this chapter. Ex ante contractualism delivers implausible conclusions in cases such as the following:

*Human Experiment:* At  $t_1$  a doctor organises a lottery among a group of 100 paraplegic children, which selects [one] of them by a random process. At  $t_2$ , he conducts medical experiments on [the selected child], foreseeing (but not intending) that [the child] will die in the course of the experiments. He knows for certain that the knowledge gained in this way will allow him to cure the remaining [99] children of their paraplegia.

(Frick 2015: 204)<sup>90</sup>

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<sup>88</sup> As long as alternatives to it wouldn't result in an even greater number of deaths or harms.

<sup>89</sup> For defences of ex post contractualism, see Reibetanz Moreau (1998) and Otsuka (2015). See Holm (2018) for a discussion of Frick's objection to ex post contractualism. Alternatively, ex post contractualists may choose to bite the bullet and advocate for the extremely severe regulation of social activities.

<sup>90</sup> Number of children to be experimented on changed from 10 to 1.

Ex ante contractualism regards *Human Experiment* as structurally identical to *Dangerous Treatment*. It suggests that because each child's 1/100 probability of being experimented on is outweighed by their 99/100 probability of being cured, being part of the lottery is in the interest of each child. Thus, it rules *Human Experiment* permissible. Yet following our common-sense moral attitudes, experimenting on children as seen in *Human Experiment* seems clearly wrong.

Two ways of defending ex ante contractualism have been offered. In the first approach to solving the problem of ex ante rules, Frick advocates in favor of a slight alteration to ex ante contractualism. He suggests that a principle of risk imposition can be reasonably rejected by an individual if it can be reasonably rejected at any causal stage of a procedure. Frick introduces the following test:

*Decomposition Test:* If a rule or procedure can be decomposed into a sequence of distinct causal stages, each of which involves the voluntary action of some agent (or of a surrogate for human agency, such as a programmed machine), then it is permissible to adopt and act on this rule or procedure only if the actions it requires at every stage are justifiable to each person *at that time*.

(Frick 2015: 205)

The decomposition test stipulates that in order for a principle to be justifiable to all individuals at an ex ante perspective, it must be justifiable not merely at the outset  $t_1$ , but at all other causally relevant ex ante stages of a procedure  $t_2$ ,  $t_3$ , etc. Notably, *Human Experiment* fails this stipulation, because it can be reasonably rejected by the child who is chosen for experimentation at the causal stage  $t_2$ .

The second approach to solving the problem of ex ante rules is offered by Rahul Kumar and Kera Gordon-Solmon. They argue that intuitively objectionable principles of ex ante risk imposition can be reasonably rejected by an individual's appeal to their right to determine how their body is being used (Kumar 2015, Gordon-Solmon 2019). Kumar and Gordon-Solmon propose that individuals have good reason to want to retain the 'decision-making authority over the use of [their] body' and to not want to be viewed as resources which can be put to the use of others (Kumar 2015: 37, Gordon-Solmon 2019: 283). This means that *Human Experiment* can be

reasonably rejected at  $t_1$ , as each child can complain that the lethal experimentation authorised by *Human Experiment* violates their decision-making authority over their body.

Both responses point to aspects of *Human Experiment* which are morally salient. But these morally salient aspects might well be contingent to *Human Experiment*, and the impermissibility of *Human Experiment* might well be overdetermined. In other words, although both defences of ex ante contractualism are seemingly able to explain the impermissibility of *Human Experiment*, this doesn't entail that they've isolated the special wrong-making feature which unifies all cases in which ex ante contractualism produces problematic verdicts. Rather, both defences fall short of explaining the following case:

*Mountain Trip*: High up in the mountains, Tilly will be crushed by a falling boulder, leaving her paraplegic. At  $t_1$ , you can throw a rock in the boulder's way which will redirect the boulder towards a far-away crevasse in which 1000 mountaineers are trapped. As the mountaineers are too tightly packed to move out of the boulder's pathway, the boulder will crush and kill one of them.

Tilly's complaint against certain paraplegia outweighs each mountaineer's complaint against a very small, 1/1000 probability of death. Thus, ex ante contractualism licenses *Mountain Trip* despite the fact that this delivers the implausible conclusion that the death of one mountaineer is preferable over Tilly's paraplegia. Yet both previous defences of ex ante contractualism cannot deliver the conclusion that *Mountain Trip* is impermissible. First, there are no separate causal stages in this case: there is no causal stage  $t_2$  at which the mountaineer who will ultimately be killed could reasonably reject *Mountain Trip*.<sup>91</sup> Second, redirecting the boulder towards the trapped mountaineers doesn't violate anyone's decision-making authority over their body since such an action doesn't 'make use of anyone's body in any way' (Kumar 2015: 38). This shows us that not all cases of the problem of ex ante rules are intuitively objectionable because they treat individuals as resources.

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<sup>91</sup> Frick anticipates that automated, 'randomizing procedures' may at times eliminate additional causal stages beyond  $t_1$  (Frick 2015: 205). In *Human Experiment*, for instance, it is possible for the doctor to eliminate the causal stage  $t_2$  by setting up a machine at  $t_1$ , which will automatically choose ten children and experiment on them at  $t_2$ . But *Mountain Trip* doesn't feature any automated procedure or deliberate set-up. It merely contains a naturally falling rock. For another objection to Frick's decomposition test and a discussion of randomizing procedures, see Gordon-Solmon (2019).

In addition, neither defence addresses the fact that *Human Experiment* and *Mountain Trip* are mere illustrations of a broader, structural feature of ex ante contractualism: because ex ante contractualism proceeds by comparing individual probabilities, it necessarily –mathematically– licenses the imposition of large burdens on some in order to secure smaller benefits for others, in all cases in which both very low probabilities of being harmed and very high probabilities of being benefitted are imposed on individuals.<sup>92</sup> Indeed, Scanlon highlights this general problem for ex ante contractualism in his initial rejection of an ex ante approach to assessing risks. He points out that ex ante contractualism licenses rules which seem to be in the interest of all individuals, but which ultimately impose excessive, intuitively unacceptable burdens on some in order to secure smaller benefit for others. Yet this kind of excessive burdening of some, in order to secure smaller benefits for others, so Scanlon stresses, is something contractualists would want to reject (Scanlon 1998: 208–209).<sup>93</sup> In effect, it seems to return contractualists to the maximizing conclusions utilitarianism delivers, despite the fact that contractualism was designed to oppose such verdicts.

This leaves us with a puzzle. Given that contractualism deliberately sets out to exclude maximizing principles through individualist justification, how is it possible that a contractualist approach to risk winds up licensing the imposition of large burdens on some, in order to secure smaller benefits for others? Where has ex ante contractualism gone wrong? The rest of this chapter is dedicated to providing an answer to the diagnostic question of how the puzzle of ex ante contractualism arises in the first place.

## 2. Individualist Justification

The upcoming diagnosis of the puzzle of ex ante contractualism claims that ex ante contractualism mistakenly admits complaints which violate individualist justification. In order to be able to appreciate why this is deeply worrying for contractualists, it's important to expand on the motivation behind a contractualist concern for individualist justification.

Individualist justification stipulates that individuals can only advance complaints based on personal grounds and thus bars individuals from appealing to the aggregated claims of several

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<sup>92</sup> This is also highlighted in Horton (2017a).

<sup>93</sup> While rejecting ex ante contractualism at this point, Scanlon has recently shown sympathy for it (Scanlon 2013).



individuals. Let's remind ourselves that the attraction of such a bar on aggregation is often illustrated through the following case:

*Transmitter Room*: Suppose that Jones has suffered an accident in the transmitter room of a television station [...] and we cannot rescue him without turning off the transmitter for fifteen minutes. A World Cup match is in progress, watched by many people, and it will not be over for an hour. Jones [...] is receiving extremely painful electrical shocks.

(Scanlon 1998: 235)

If aggregation is permitted, each viewer can appeal to the displeasure which an interruption of the match will cause to millions of viewers, in order to outweigh Jones' complaint and to reasonably reject the interruption of the match. But this seems like the wrong conclusion. Barring aggregation delivers the more plausible verdict that because Jones has the strongest complaint, Jones can reasonably reject the continuation of the match.

Although many agree that aggregation is objectionable in cases like *Transmitter Room*, they also reject an absolute bar on aggregation as proscribed by individualist justification. In what's referred to as *the numbers problem*, it's pointed out that in a rescue case in which one can save either one individual or two individuals from death, but cannot save all three, individualist justification permits us to save the single individual. But this conclusion, so the objection goes, is strongly implausible.<sup>94</sup>

The numbers problem has been covered by the previous chapter, but is really a question which can be left aside for this examination: the pertinent question for now is merely whether contractualists have independent reason for persevering with individualist justification, despite its potentially controversial upshots.

It first bears noting that while *Transmitter Room* nicely illuminates the anti-maximizing spirit of individualist justification, it offers no independent grounds for accepting the latter. This is because embracing individualist justification isn't necessary in order to deliver the conclusion that one ought to save Jones in *Transmitter Room*. A requirement to save Jones can, for instance, be accommodated by a theory of limited aggregation which stipulates that aggregation is

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<sup>94</sup> For the first articulation of this objection, see Parfit (2003). For Scanlon's response, see Scanlon (1998: 232–234). For further discussion of Scanlon's response, see Otsuka (2006) and Munoz-Dardé (2005b). For further discussion, see chapter 5.

impermissible if harms differ significantly in severity, such as in *Transmitter Room*, but permissible if the severity of harms is relevantly similar, such as in the numbers problem.<sup>95</sup>

In search of an independent foundation for adopting individualist justification, one might turn to a concern for the separateness of persons. The separateness of persons objection to utilitarianism tells us that imposing substantial burdens on the few in order to secure smaller benefits for the many fails to treat individuals as distinct persons (Rawls 1971: 23). Following such a concern, interpersonal trade-offs across different individuals such as present in cases of aggregation are considered objectionable and as violating the separateness of persons.<sup>96</sup> At first, this avenue seems to locate a specific and powerful reason for accepting individualist justification and its bar on aggregation.<sup>97</sup> Yet spelling out precisely what the separateness of persons objection is supposed to refer to, and explaining why its violations are normatively salient, is surprisingly taxing. This is brought to the fore by cases of mutual aid, in which interpersonal trade-offs are often permissible or even morally required, as well as by the fact that there is substantial ambiguity in the literature as to how to define the separateness of persons objection.<sup>98</sup> With this in mind, it seems that understanding individualist justification as being motivated by a concern for the separateness of persons is of little help for contractualists.

Here's what actually provides contractualists with independent grounds for adopting individualist justification: moral principles must be justifiable to individuals based on personal grounds because we must be able to justify our actions *to them*. In fact, it is this concern for justifying ourselves to others which leads us to moral conclusions:<sup>99</sup>

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<sup>95</sup> For an approach of limited aggregation, see Alex Voorhoeve (2014).

<sup>96</sup> For articulations of the separateness of persons objection, see Gauthier (1963), Nagel (1979), Nozick (1974), Rawls (1971) and Williams (1981).

<sup>97</sup> At one point, Scanlon's objection to aggregation seems to express a concern for the separateness of persons. He writes: 'A contractualist theory [...] allows the intuitively compelling complaints of those who are severely burdened to be heard, while, on the other side, the sum of the smaller benefits to others has no justificatory weight, since there is no individual who enjoys these benefits and would have to forgo them if the policy were disallowed' (Scanlon 1998: 230).

<sup>98</sup> For debates on how to understand the separateness of persons objection see Brink (1993) and Raz (1986). For more recent discussions, see Chappell (2015), Norcross (2008), Otsuka (2012), Segall (2019), and Voorhoeve and Fleurbaey (2012). In fact, one way to cash out the separateness of persons objection is by understanding it along contractualist lines and as requiring trade-offs to be justifiable on individual grounds. After all, individualist justification, by barring aggregation, treats individuals as separate from one another. However, it seems likely that the fact that contractualism bars aggregation and thusly adheres to the separateness of persons is easily confused with the idea that contractualist justifiability is also what the separateness of persons objection is about. Nevertheless, both concepts may yet have fundamentally different ideas at their heart.

<sup>99</sup> As Scanlon puts it at a different point: 'Morality is drained of its special significance if it is taken to be simply about the relative strength of the reasons that there are. It is important, in order to account for the special significance of moral conclusions, to recognize that what is at stake are the reasons we can offer one another in a process of mutual justification' (Scanlon 2003: 434).

The contractualist ideal of acting in accord with principles that others (similarly motivated) could not reasonably reject is meant to characterize the relation with others the value and appeal of which underlies our reasons to do what morality requires. This relation, much less personal than friendship, might be called a relation of mutual recognition.

(Scanlon 1998: 162)

Thus, the process is one of not only individualist but mutual justification, in which principles are justified from one individual to another. This process is essential to morality because it reflects a concern for mutual recognition which reveals how individuals value each other as self-governing, reason-assessing creatures and how they value the mutual relationship in which they stand with one other. That is, for an individual to justify herself towards another person means to recognise the other as a rational, reason-assessing person with the same moral standing as herself, and to recognise the implications of this.<sup>100</sup>

Firstly, this involves recognizing that there are reasons to treat the other person in certain ways, such as reasons not to make them suffer, or reasons to protect them from destitution. Secondly, this requires recognizing that there are certain constraints on the grounds which an individual can permissibly appeal to when justifying themselves to another person. These constraints include an exclusion of reasons which cannot be justified on purely personal grounds, such as aggregative reasons. This is because when appealing to aggregative reasons in order to justify themselves, the individual is failing to take seriously the personal claims of the opposing individual and the fact that the other individual has her own, separate reasons, and her own life to live. As such, the individual fails to value the other as a reason-assessing individual who is owed justification.

With this outlined, it will be assumed that contractualists have at least good *pro tanto* grounds for holding onto individualist justification and its limit to personal complaints.

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<sup>100</sup> For further discussion of mutual justification, see Kumar (2012).

### 3. Collective Complaints

Having seen why individualist justification bars aggregative complaints, this section proposes that there is a second type of complaint which equally violates individualist justification. Although more elusive than aggregative complaints, complaints which are exclusively justified by appeal to an individual's group-membership also cannot be justified on personal grounds.

How can complaints fail to be justifiable on personal grounds without being aggregative? To give but a rough outline, consider the following: when advancing an aggregative complaint, an individual is adding the claims of other people to their own claim, and then appealing to the resulting sum. Thus, aggregative complaints *explicitly* rely on the claims of other people. In comparison, when presenting what we may call a *collective complaint*, an individual is advancing a complaint which cannot be justified on grounds other than by appeal to an individual's membership in a group with others. Collective complaints therefore *implicitly* rely on the claims of other people.

A deeper understanding of collective complaints can be gained by outlining their two key features: first, collective complaints must include an appeal to a *collective property*. Collective properties are properties which can only be held collectively, and which cannot be held by individuals themselves. Examples of collective properties include being married, being a team-member, being a co-habitant, being co-plaintiff, or being a fellow countryman. Each of these is a collective property since in the absence of others and in the absence of the respective collective, an individual cannot possibly be married, be a team-member, be a co-habitant, co-plaintiff or a fellow countryman. Second, collective complaints must have no independent personal justification: if a complaint can be justified by an appeal to personal grounds alongside its appeal to a collective property, it doesn't constitute a collective complaint.

What renders collective complaints truly collective is found in the second feature: collective complaints cannot be justified on grounds other than by appeal to a collective property. But collective properties are constituted by the presence of other people, and therefore cannot be justified based on personal grounds. Accordingly, collective complaints cannot be justified on personal grounds and violate individualist justification. Attention to individualist justification then, should lead contractualists to bar individuals from advancing collective complaints.

Let's consider some cases. First, it's helpful to look at a case in which a complaint fails to constitute a collective complaint, because it only fulfils the first but not the second feature.

*Relay Team*: A community decides whether to discontinue the small financial benefit awarded to each member of the local relay team. Together with Mac and Milly, Mia has been running for the local relay team. Mia is unhappy about the proposed change.

Mia's complaint against the repeal of team benefits fulfils the first feature of collective complaints since it appeals to the collective property of Mia's membership in the relay team. Yet Mia's complaint fails to fulfil the second feature of collective complaints because it can still be justified on personal grounds. In particular, Mia's complaint can be justified by appeal to Mia's personal contributions to the relay team: Mia has attended practice, run races, visited events, etc., and thusly earned her benefits. Because Mia's complaint in *Relay Team* can be justified on such personal grounds, it doesn't constitute a collective complaint.

Keeping this in mind, we can move on to a case which contains a collective complaint:

*Council Tax Breaks*: A government decides whether to repeal council tax breaks for households with multiple occupants. Mia, who lives in a two-person household, is unhappy.

We need to be careful here. There is a question about whether Mia has a complaint based on the fact that she will lose out financially as a result of *Council Tax Breaks*. But what I'm interested in is the question of whether Mia may appeal to the fact that she is part of a two-person household, in order to advance a complaint against *Council Tax Breaks* which states that she is deprived of something she has a claim to.

Note that a complaint of this kind appeals to the fact that Mia is a co-habitant in a two-person household, and thus appeals a collective property: just by herself, Mia cannot be a co-habitant, just like Mia, just by herself, cannot be the sole member of the relay team. Yet unlike in *Relay Team*, Mia's complaint fulfils the second feature of collective complaints. Mia's complaint in *Council Tax Breaks* cannot be justified on grounds other than by appeal to Mia's collective property of being a co-habitant. Thus, Mia's complaint is collective. As a result, a concern for individualist justification should lead contractualists to bar Mia from advancing her complaint, just like contractualists would bar her from advancing an aggregative complaint.

Let's say a little more on why Mia's complaint in *Relay Team* can be justified on personal grounds, while Mia's complaint in *Council Tax Breaks* falls short of such an individualist justification. In *Relay Team*, Mia's complaint arises from the fact that she herself has been working hard by running races and attending practice, and that her benefits which she has earned as a reward for this work are being threatened. The fact that Mia's contributions as a runner have taken place within the context of a team of runners is downstream from Mia's efforts. It is based on these efforts that Mia's complaint cannot be reduced to her group-membership in the relay team but is entirely justifiable based on personal grounds. It might be suggested that just like Mia has been putting in efforts in *Relay Team*, Mia's has made the effort of moving into a two-person household in *Council Tax Breaks*. But there is a slight difference here. In *Council Tax Breaks*, Mia hasn't done anything –hasn't contributed or exerted herself in any way– which would merit a financial benefit or render the receipt of such a benefit plausible in any other way. Mia's complaint cannot but appeal to the fact that because she is part of a two-person household, she has a claim to tax breaks. In *Council Tax Breaks*, her group-membership in a collective is front and centre in Mia's complaint, and thus unlike her complaint in *Relay Team*, where her group-membership is only found downstream from additional, personal efforts which provide an independent justification for her complaint.

There are ways of understanding this analysis of collective complaints which might seem attractive, but which are based on various misinterpretations. Spelling out how three of these ways go awry allows us to gain a richer understanding of collective complaints.

A first misreading might invoke a popular and widely accepted definition of individualist justification in order to reject the idea that collective complaints violate individualist justification:

*Individualist Restriction:* In rejecting some moral principle, we must appeal to this principle's implications only for ourselves and for other *single* people.

(Parfit 2011: 193)

Introduced by Derek Parfit, this definition of individualist justification bars individuals from advancing aggregative complaints because aggregative complaints appeal to the implications which a principle has for other people. Collective complaints, however, only appeal to the

implications which a principle has for the individual herself and, therefore, fail to violate the individualist restriction.

But this proposal overlooks that we have at least three reasons for rejecting this definition of individualist justification. First of all, contractualists should be wary of cashing out individualist justification in terms of a principles' implications or outcomes, given that they ultimately care about recognizing individuals, and about the relationships that hold between them. Such an interpretation of individualist justification not only seems potentially coloured by Parfit's consequentialist sympathies. It also seems inappropriate in light of the task at hand, which consists of identifying the core tenet of a moral theory constructed with the purpose of eschewing a utilitarian, outcome-centric approach.

Second, contrary to what the individualist restriction as offered by Parfit may indicate, a bar on collective complaints aligns with Scanlon's own discussion of individualist justification. Scanlon distinguishes between two types of complaints: 'reasons arising from the points of view of individuals' and 'reasons corresponding to the claims of groups of individuals' (Scanlon 1998: 231). And while Scanlon explicitly discusses aggregative reasons as belonging to the latter group, we have no grounds for presuming that complaints 'corresponding to the claims of groups of individuals' are exhausted by aggregative reasons. In fact, given that collective complaints are exclusively justified by appeal to a collective property such as group-membership, collective complaints straightforwardly 'correspond to the claims of groups of individuals'.

Third, collective complaints fall within the concerns which originally motivate the constraint of individualist justification, as they were outlined in the previous section. This is because, like aggregative complaints, collective complaints exclusively arise from the viewpoint of a collective and thus fail to arise 'from the points of view of individuals' (Scanlon 1998: 231). But since principles are justified to individuals rather than collectives (or individuals qua members of collectives), advancing a complaint which exclusively arises from the viewpoint of a collective fails to recognize and respect the person to whom one is offering justification. In other words, just like aggregative complaints, collective complaints fail to take seriously the personal claim of the other individual. Therefore, collective complaints impede the mutual justification of principles between individuals and violate individualist justification.

The proposal at hand might be misinterpreted in a second way. One might claim that a bar on collective complaints brings along the exclusion of certain other individual complaints which contractualists would be adamant to keep, such as, for instance, complaints against being

arbitrarily favoured or disfavoured.<sup>101</sup> That is, Scanlon describes how any principle which arbitrarily favours, or disfavors certain individuals allocates a ‘privileged moral status’ to some individuals, but not to others (Scanlon 1998: 219). By failing to provide a reasonable justification for the differential treatment of some individuals, the principle elevates the moral status of those individuals who are favoured and lowers the moral status of those individuals who are disfavoured. Each individual, however, has a personal reason to not want to be treated in a way which arbitrarily and unjustifiably singles them out for a disadvantage and thus allocates a lower moral status to them. Consider the following case:

*Unequal Pay*: Milly is arbitrarily paid less than her colleagues.

One might suggest that Milly’s complaint against being paid less than her colleagues and thus being arbitrarily allocated a lower moral status cannot be justified on grounds other than by appeal to the collective property of Milly’s membership in her group of colleagues.<sup>102</sup> Thus, Milly’s complaint is collective and violates individualist justification.

Let me show why Milly’s complaint isn’t collective. While Milly’s complaint depends on the collective property of Milly’s membership in her group of colleagues and thus fulfils the first feature of collective complaints, it doesn’t fulfil the second one: although downstream from Milly’s membership in a group of colleagues, the relevant property in *Unequal Pay* refers to the fact that Milly is paid less than her colleagues. But ‘being paid less than one’s colleagues’ isn’t a collective property, since it isn’t held by Milly’s colleagues. Thus, Milly’s complaint in *Unequal Pay* can be justified on personal grounds, namely by appeal to Milly’s personal interest in not being disfavoured arbitrarily.

This brings out a general point: many individual complaints rely on collective practices or collective endeavours and thus rely on collective properties. We only need to think of the complaints individuals have in contexts such as promise-breaking or the provision of social goods. But while such individual complaints clearly supervene on collective properties, they can generally be justified on personal grounds downstream from these properties. By contrast, what I’m worried about is cases in which complaints don’t only supervene on a collective property but

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<sup>101</sup> This is also often labelled as a concern about fairness. I will follow Scanlon in referring to non-arbitrariness instead.

<sup>102</sup> I am indebted to Jay Wallace for this point.



are themselves collective in so far as they can be reduced to an appeal to the relevant collective property. Such complaints fail to be justifiable on personal grounds and therefore must be excluded by thorough-going contractualists who take the constraint of individualist justification seriously.

In a third misunderstanding, someone might dismiss the proposal on collective complaints as a moot point. They might draw attention to the fact that in cases like *Council Tax Breaks*, it is irrelevant whether or not Mia has a complaint based on the fact that she lives in a two-person household. This is because even if Mia should have such a complaint, it will be outweighed by the complaints based on arbitrary disfavouring which all individuals in single-person households have against such unfair tax breaks. In effect, collective complaints will standardly be outweighed by conflicting complaints, as individuals with the latter can reasonably reject principles which arbitrarily disfavour them based on collective properties. Therefore, the category of collective complaints is superfluous.

While it might be true that collective complaints are oftentimes outweighed, the category of collective complaints remains normatively significant, for three reasons. First, collective complaints advantage individuals who are part of collectives—such as those living in multiple-person households—over individuals who aren't—such as those living in single-person households—and thus technically allow individuals to reap benefits purely based on their group-membership. Consequently, allowing individuals to advance collective complaints assigns normative relevance to brute group-membership, and technically promotes principles which permit the burdening of some, in order to provide smaller benefits to others. For contractualists who set out to controvert maximizing principles of such ilk by adopting individualist justification, these seem like egregious affirmations to make.

Second, the concept of collective complaints finds applicability in unusual cases. Specifically, it's helpful in cashing out complaints which fail to be aggregative, but which aren't fully personal either. Consider the following example: responding to the numbers problem, Scanlon proposes that contractualists can arrive at a duty to save the greater number without aggregating claims. Scanlon claims that when choosing between saving one individual or two individuals, the presence of the second individual in the larger group breaks the tie between both groups, since the individual otherwise has a complaint against not being recognized (Scanlon 1998: 232–234). Michael Otsuka rejects Scanlon's argument by highlighting that the second individual can only break the tie between both groups if their claim is considered *together* with

the first individual's claim. This, so Otsuka points out, seems to violate individualist justification (Otsuka 2000: 291). Yet, evidently, Scanlon's argument doesn't employ aggregation. So, what's going on here? Equipped with the concept of collective complaints, we can explain that the second person's complaint against not being recognized violates individualist justification because it advances a collective complaint: it cannot be justified on grounds other than by appeal to the collective property of being a member in the group of two individuals. In brief, the concept of collective complaints allows contractualists to make sense of complaints which non-aggregately violate individualist justification, and to reflect them from within their own framework.

Third, the category of collective complaints turns out to be paramount for the puzzle of ex ante contractualism. This is because many complaints which appeal to an individual's ex ante probabilities are in fact collective complaints, and thus barred by individualist justification. The remainder of this chapter focuses on establishing this point.

#### 4. Diagnosing the Puzzle of Ex ante Contractualism

Let's return to our initial puzzle: we've been wondering why ex ante contractualism winds up delivering principles which license the burdening of some in order to secure smaller benefits for others, despite the fact that contractualism specifically sets out to avoid such maximizing principles. This puzzle arises in cases in which both very low probabilities of being harmed and very high probabilities of being benefitted are imposed on individuals –as in *Human Experiment*.

In this section, a diagnosis of the puzzle of ex ante contractualism is outlined: I explain that, oftentimes, complaints which appeal to an individual's ex ante probabilities of being harmed or benefitted are in fact collective complaints and therefore violate individualist justification. This allows us to see that it is the admission of collective complaints which are in violation of individualist justification, that causes ex ante contractualism to counter-intuitively license principles which impose large burdens on some, in order to secure smaller benefits for others.

To begin this outline, it's helpful to reflect upon a feature of ex ante contractualism which is often taken as a strength of this view. Following ex ante contractualism, an individual's ex ante probabilities may rise or fall according to the number of people affected by a principle. For instance, an individual's ex ante probability of being called for jury duty is higher if the population pool from which jurors are selected is smaller and lower if the population pool from

which jurors are selected is larger. In other words, there is a sense in which ex ante contractualism is indeed sensitive to the number of people. All the while, we might have thought it impossible to count the numbers without aggregating, and without violating individualist justification. Yet it seems as if ex ante contractualism succeeds at this feat: because an individual's probability of being harmed or benefitted by a principle only appeals to the individual's well-being, a complaint which appeals to such probabilities remains individualist in its justification, while taking the number of individuals into consideration (Frick 2015: 201). Striking this kind of balance might be thought a rather fine achievement for contractualists.

Still, one might also take a different perspective. One might wonder whether the fact that ex ante contractualism is sensitive to the number of people signals that there is something amiss with ex ante contractualism which has so far escaped our notice. Note that ex ante contractualism can count the numbers due to the fact that it allows for an individual's ex ante probabilities to correspond to the size of a population. Yet such correspondence seems highly pertinent to the puzzle of ex ante contractualism. After all, each child's probability of death in *Human Experiment* is only 1/100 because they are part of a population of precisely 100 participating children. With that said, the way in which ex ante probabilities may correspond to population size requires closer scrutiny.

Let's tease out in more general terms how an individual's probabilities sometimes correspond, and sometimes fail to correspond to population size. I suggest that individual probabilities are either *number-dependent* or *number-independent*.<sup>103</sup> Individual probabilities are number-independent if they in no way correspond to the number of individuals in a population. Consider the following example:

*Lightning Strike:* On average, an individual has a 1/1000 probability of being hit by lightning in any given year.

In *Lightning Strike*, an individual's 1/1000 probability of being hit by lightning is entirely independent of the number of other individuals who are exposed to the same risk. Whether the

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<sup>103</sup> This is to be distinguished from an existing and very common distinction between two different kinds of probabilities: In probability theory, the probabilities that two events occur are *dependent* if the fact that one event occurs affects the probability that the other event will occur. The probabilities of two events are *independent* if the occurrence of one event doesn't change the probability that the other event will occur. This distinction has also been used to shed light on ex ante contractualism. See Rowe (2019).

individual is the only person on earth, or one of billions of other people, their probability of being hit by lightning remains the same. Thus, in *Lightning Strike*, an individual's  $1/1000$  probability of being hit by lightning is number-independent. Instead, the individual's probability depends on alternative factors, such as the physical prevalence of lightning.

By contrast, individual probabilities are number-dependent if they necessarily correspond to the number of individuals in a population in one out of two ways. First, individual probabilities are number-dependent if they refer to a fixed number out of a population. Consider the following example:

*Councillor Duty*: In a village, 10 councillors are chosen by lot every year, and the village has an eligible population of 1000. Thus, each eligible individual has a  $10/1000$  probability of being selected as councillor every year.

In *Councillor Duty*, each individual's probability of being selected as councillor changes if either the number of required councillors or the population size changes. If, for instance, the town's population doubles, each individual's probability of being selected as councillor decreases from  $10/1000$  to  $10/2000$ . This is because the numerator of each individual's  $10/1000$  probability is the number of individuals on whom the burden of being councillor will be imposed, and the denominator is the population size out of which those individuals are chosen. Thus, each individual's probability necessarily corresponds to the number of individuals on whom a burden will be imposed and to the number of individuals in the population, rendering it number-dependent.

Second, individual probabilities are also number-dependent if they refer to a fixed fraction out of a population:

*Jury Duty*: In a large city, 10 jurors are required for every 1000 inhabitants in order to fill judiciary needs. Thus, each eligible individual has a  $10/1000$  probability of being selected for jury duty in a year.

In *Jury Duty*, each individual's  $10/1000$  probability of being selected for jury duty consists of a fixed fraction out of a population. This fraction remains the same, seemingly independent of the

number of individuals in the city's population: whether the city has thousands or millions of inhabitants, each individual's probability to be selected for jury duty remains 10/1000.

But this merely obscures a more subtle way in which individual probabilities are number-dependent in *Jury Duty*. Note that each individual's 10/1000 probability of being selected depends on there being a need for jurors to regulate civil life in the first place, and on every individual's membership in the city's population of at least 1000 individuals. This is clear from the fact that once the city's population shrinks below 1000 individuals, each individual's probability becomes a fixed number probability which has the number of individuals required as jurors as numerator and the population size as denominator. For instance, should the city's population shrink to 900, each individual's probability of being selected for jury duty rises from 10/1000 to 10/900, at least if we assume that the number of required jurors remains the same. Thus, each individual's 10/1000 probability of being selected for jury duty is number-dependent, since it corresponds to the number of individuals in the population being 1000 or higher.

This breakdown provides us with a better understanding of how probabilities may correspond to population size, and, by extension, with insight into how ex ante contractualism succeeds at counting the numbers without aggregating: simply put, ex ante contractualism works with complaints which, in virtue of appealing to number-dependent probabilities, directly reflect the number of affected individuals. Crucially, the distinction between number-independent and number-dependent probabilities —with the latter corresponding to population size— presents us with a new angle from which to analyse the puzzle of ex ante contractualism.

Let's start by looking at *Dangerous Treatment*, the case in which ex ante contractualism provides plausible conclusions. In *Dangerous Treatment*, each child has a 1/100 probability of death from receiving an experimental treatment against a virus which will otherwise leave them paraplegic. But just like in *Lightning Strike*, this probability is entirely independent of the number of people affected. Whether the experimental treatment is given to 1, 5, 100, or 1,000,000 children, each child's 1/100 probability of death remains the same. This is because each child's 1/100 probability of death depends on medical factors regarding the nature of the treatment and is unaffected by population size. Thus, probabilities are number-independent in this case.

In contrast, ex ante contractualism delivers implausible conclusions in *Human Experiment*. On closer view, we can see that probabilities are number-dependent in this case, given that each child's 1/100 probability of death necessarily corresponds to the number of other children

affected alongside them.<sup>104</sup> Given that the current description of *Human Experiment* underspecifies the case, it remains open in which of the two ways outlined probabilities are number-dependent.

On the one hand, individual probabilities in *Human Experiment* are fixed number probabilities analogous to *Councillor Duty* if it's stipulated that the doctor's experimentation on one child will lead him to discover the formula for a curative treatment against paraplegia, which allows him to cure any number of children, be it 99, 200 or 1000 children. In this scenario, should 1000 rather than 100 paraplegic children be affected, each child's probability of being experimented on falls to 1/1000. Either way, we can see that each child's probability has the number of experimented children as its numerator and, crucially, the population size as its denominator.

On the other hand, individual probabilities in *Human Experiment* are fixed fraction probabilities analogous to *Jury Duty* if we assume that experimentation on one child allows the doctor to produce a treatment which allows him to cure exactly 99 children from their paraplegia. Should 1000 rather than 100 paraplegic children be affected, the doctor would have to experiment on 10 children rather than one child in order to cure everyone. Thus, each child's 1/100 probability would remain constant even if the number of paraplegic children increases. Nevertheless, if the number of paraplegic children falls below 100, each child's probability becomes a fixed number probability, with the number of experimented children as its numerator and the population size as its denominator. Should, for instance, only 90 paraplegic children be affected, each child's probability would rise from 1/100 to 1/90. Thus, each child's 1/100 probability in *Human Experiment* depends on their membership in a group of at least 100 paraplegic children.

This allows us to get a more detailed picture of the technical considerations which lead ex ante contractualism to deliver maximizing principles in cases in which both very low probabilities of being harmed and very high probabilities of being benefitted are imposed on individuals. Number-dependent probabilities decrease an individual's ex ante probabilities of being severely burdened by increasing the number of people across whom such a risk is spread. This occurs until an individual's probabilities against being severely burdened are small enough

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<sup>104</sup> This also applies to *Mountain Trip*: each mountaineer's 1/1000 probability of death is number-dependent because it corresponds to the 1000 trapped mountaineers. It is only together that the 1000 mountaineers take up all the possible spaces which the boulder could land in, thus ensuring that one mountaineer will be killed.

to be outweighed by competing complaints against lesser burdens. This is evident in *Human Experiment*, where every child's ex ante complaint against death is decreased to a complaint against a 1/100 probability of death due to the fact that the risk is spread across 100 children. As a result, consideration of number-dependent probabilities causes ex ante contractualism to license the imposition of large burdens on some in order to secure smaller benefits for others, in all cases in which both very low probabilities of being harmed and very high probabilities of being benefitted are imposed on individuals.

Let's put all these strands together. Contractualism's tool for excluding maximizing principles is found in the constraint of individualist justification, which states that individuals may only advance complaints which are based on personal grounds. This anti-utilitarian constraint is violated by both aggregative and collective complaints. Now, it was already said that complaints which correspond to population size through relying on number-dependent probabilities can avoid the charge of aggregation. But they cannot avoid the charge of constituting collective complaints. As seen before, complaints are collective if, first, they appeal to a collective property, and second, they cannot be justified on grounds other than by appeal to a collective property. In cases in which complaints appeal to number-dependent probabilities, both of these features are generally fulfilled: first, number-dependent probabilities are a collective property, since, just like being a team-member, number-dependent probabilities only arise collectively and are only held by individuals in virtue of their membership in each respective population. Second, individual complaints which appeal to number-dependent probabilities in cases like *Human Experiment*, cannot be justified on personal grounds beyond an appeal to such probabilities.<sup>105</sup>

We can now provide a diagnosis of the puzzle of ex ante contractualism. Why does ex ante contractualism wind up licensing the imposition of large burdens on some, in order to secure smaller benefits for others, despite the fact that contractualism specifically sets out to avoid such principles? Answer: because by allowing individuals to advance collective complaints, it impermissibly proceeds via an avenue which is closed off by individualist justification.<sup>106</sup> In effect,

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<sup>105</sup> Complaints which appeal to number-dependent probabilities may sometimes fail to fulfil the second feature of collective complaints because they can be justified on personal grounds. This could be, for instance, a personal reason against being disadvantaged arbitrarily.

<sup>106</sup> Rawls and Scanlon both suggest that when individuals are choosing moral principles from behind a veil of ignorance, an appeal to ex ante probabilities is impermissible. Yet if an appeal to probabilities cannot always be justified on personal grounds and advantages collectives, this may provide support to the Rawlsian and Scanlonian claim that individuals ought not to have knowledge of probabilities when choosing moral principles. See Rawls (1999) and T.M. Scanlon (2003). For a recent challenge to Rawls' claim, see Buchak (2017).

this is analogous to how contractualism winds up licensing the imposition of a large burden on Jones, in order to secure smaller benefits for the scores of tv viewers if it violates individualist justification and admits aggregative complaints in *Transmitter Room*.

This diagnosis has substantial implications for ex ante contractualism. It entails that it is impermissible for contractualists to determine individual complaints by reference to probabilities if the latter are number-dependent, just like it's impermissible for contractualists to determine individual complaints in *Transmitter Room* by employing aggregation. Thus, ex ante contractualism, in its standard form, cannot be used to determine individual complaints in risk cases with number-dependent probabilities.

Let's quickly sketch and reject four ways in which this diagnosis of the puzzle of ex ante contractualism might be viewed as delivering implausible conclusions. For the first worry, let's look at a problem which arises from a slightly different context. Following the discussion of the numbers problem in the previous chapter, some philosophers might be tempted by the idea that we don't have a duty to save the greater number but suggest that fairness demands that we adopt a decision-procedure which reflects the presence of each individual. Thus, they might advocate for the procedural approach of running a weighted lottery, which assigns a proportional chance of being saved to each group.<sup>107</sup> In a rescue case in which one could either save one individual or two individuals, a weighted lottery assigns a 1/3 chance of being saved to the single individual and a 2/3 chance of being saved to the two individuals. Yet following the previous discussion, weighted lotteries rely on number-dependent probabilities: when assigning a 2/3 probability to be saved to the larger group, for instance, the numerator is the number of individuals affected in total (3), and the denominator is the number of individuals present in the smaller group. But this means that the procedural approach of running a weighted lottery in rescue cases violates individualist justification.

However, those contractualists attracted to the solution of weighted lotteries may consider the fact that the current discussion rules out weighted lotteries as a point of critique: they might suggest that a weighted lottery is an appealing solution to the numbers problem and superior to affirming the plain permissibility of saving either group, given that it includes a concern for fairness.

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<sup>107</sup> For discussions of weighted lotteries, see Broome (1998), Huseby (2011), Hirose (2015), Kamm (1998), Saunders (2009) and Timmerman (2004).



But this might not need to worry us. As Kumar has argued, a weighted lottery is ‘under motivated’ as a contractualist solution to the numbers problem, given that it focuses on the outcome of each having a probability of being saved, rather than on the relationships between individuals (Kumar 2012: 146). And, what’s more, the fact that weighted lotteries include an illegitimate appeal to number-dependent probabilities proves what some might have suspected all along: that the fact that weighted lotteries reflect the number of individuals is no virtue, but a vice.<sup>108</sup> Weighted lotteries then, should be rejected by contractualists since they fail to adhere to individualist justification.

For the remaining three worries, let’s return to the discussion of risk cases. The second objection suggests that the proposed diagnosis might well deliver the wrong conclusion in the following case:

*Spoilt Treatment*: 100 children are given an experimental treatment against a virus which will otherwise leave them paraplegic. Due to a storage accident, one dose has been rendered toxic. There is no way of telling which dose has been spoilt and no way to secure further doses. Thus, one of the children will die from receiving the toxic dose, while the other 99 children will be cured.

Following the previous discussion, each child’s 99/100 probability of being cured appears to be number-dependent in *Spoilt Treatment*. This is because each child’s probability of death is dependent on the presence of the 99 other children: the higher the number of children who have already received non-toxic doses, the higher each remaining individual’s probability of receiving the toxic dose. If probabilities in *Spoilt Treatment* are number-dependent, this renders complaints in *Spoilt Treatment* inadmissible. Yet this verdict seems problematic: intuitively, *Spoilt Treatment* appears to be like *Dangerous Treatment*, and unlike *Human Experiment*. Just like in *Dangerous Treatment*, it seems permissible to impose a very small probability of death on each child in order to secure a very large probability of avoiding paraplegia.<sup>109</sup>

This worry can quickly be dispelled. Appearances notwithstanding, probabilities in *Spoilt Treatment* aren’t number-dependent. Each child’s 1/100 probability of death isn’t a collective property because it doesn’t depend on each child’s membership in the group of 100 children.

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<sup>108</sup> Otsuka (2006) seems to be hinting towards such a worry.

<sup>109</sup> For this case and for discussion of it, I’m grateful to Alec Walen.

This is evident from the fact that even if only 1, 10, or 50 children receive doses of the experimental treatment, each child's probability of death remains at 1/100. In similar vein as *Dangerous Treatment*, each individual's 1/100 probability of death arises as a result of alternative factors.

Second, one may suggest that the probabilities of harm which are imposed on individuals by risky social activities such as driving are number-dependent, since they roughly correspond to population size. This is evident from the fact that one stands a greater chance of being harmed when driving in a densely populated area than when driving in a sparsely populated area. If correct, this means that the present proposal bars individuals from appealing to the very low probabilities imposed by social activities such as driving in order to agree to principles which permit such activities.

This problem, too, is unsubstantiated. On closer view, probabilities of harm imposed by social activities such as driving fail to be number-dependent. This is because population size is just one among several causal factors which determine individual probabilities. Other, more significant causal factors include the technical safety of cars, local traffic laws, speed travelled at, urban planning etc. Simply put, in cases such as *Human Experiment*, each child's probability of death is only low enough to make participation in the lottery plausible for each child because it is decreased by the fact that a sufficiently large number of other children are participating alongside them. But the low probability of harm which is imposed on individuals through social activities such as driving is not a product of risk dispersal, but a product of technological and infrastructural factors e.g., factors of road safety. After all, this is why even the only inhabitant of an abandoned town exposes themselves to a risk of death while driving.

Third, following a bar on complaints which appeal to number-dependent probabilities, it may seem as if *Human Experiment* cannot be reasonably rejected by individuals. Yet if *Human Experiment* cannot be reasonably rejected and is therefore permissible, this delivers precisely the verdict which we set out to avoid.

This point is based on a misunderstanding. The present diagnosis of the puzzle of ex ante contractualism suggests that because complaints which appeal to number-dependent probabilities violate individualist justification, they are inadmissible according to contractualist moral theory. This doesn't convey a negative moral verdict but conveys no moral verdict at all. As such, the present diagnosis doesn't rule *Human Experiment* permissible. It simply states that if

all we have to go on in a case are collective complaints, then contractualism cannot admit these complaints and, therefore, is unable to reach any moral verdict.

Still, one question remains: in light of these implications, how should contractualists assess cases of risk? Should they opt for a hybrid approach which applies ex ante contractualism in some cases, and ex post contractualism in others?<sup>110</sup> Or adopt ex post contractualism after all? While answering the question of how contractualists should respond to risk is a project for another time, one might consider this discussion as impetus for challenging the sharp boundary between ex ante and ex post approaches. Such a challenge might be pursued by re-evaluating Scanlon's own proposal that risk impositions are permissible once 'reasonable precautions' have been taken (Scanlon 1998: 209). Scanlon suggests that an individual's probability of being harmed might inform our reasoning, not by constituting and thus diminishing an individual's complaint, but by indicating what level of care agents must apply when proceeding with a risky action. Such precautions, we might think, simply aren't taken in cases like *Human Experiment*.

To summarise, this section has argued that ex ante contractualism mistakenly admits collective complaints into its considerations, despite the fact that such complaints are excluded by individualist justification. This mistake has had two major upshots. First, an apparent virtue: the admission of complaints which rely on number-dependent probabilities allows ex ante contractualism to count the numbers without aggregating. On the flipside of this virtue, admitting complaints which rely on number-dependent probabilities licenses the imposition of large burdens on some, in order to secure smaller benefits for others, and thus spawns the puzzle of ex ante contractualism.

## 5. Conclusion

The main aim of this chapter was to provide an analysis of the puzzle of ex ante contractualism and to explain why ex ante contractualism may possibly deliver maximizing principles despite the fact that such principles stand in direct opposition to the anti-utilitarian spirit of contractualism.

The kind of reasons moral theorists may appeal to depend on their larger theoretical commitments. Thorough-going contractualists, or so I have argued, must only be concerned with complaints which can be justified to individuals on personal grounds, and therefore exclude group-based, collective complaints from their reasonings. It is because ex ante contractualism

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<sup>110</sup> For a hybrid account, see Walen (2020).

fails to exclude collective complaints and instead relies on them to arrive at moral principles, that it winds up licensing maximizing principles which permit the imposition of large burdens on some, for the smaller benefits of others. According to the diagnosis of this chapter then, misunderstandings of the nature of individualist justification and of probabilities have obscured that there is something amiss with ex ante contractualism: by allowing individuals to advance collective complaints, ex ante contractualism violates the core tenet of individualist justification.

## Conclusion

The aim of this thesis was modest: to cast doubt on the common assumption that individuals have a pro tanto duty to maximize the good. Most people believe that that when faced with the choice of doing some good or doing more good (at no additional cost), we are under a moral duty to do more good. This duty to maximize is taken to be not only intuitively compelling, but so foundational to our moral thinking that it is hardly in need of justification – if indeed further justification is even possible.

Yet this thesis has questioned the claim that we have a pro tanto duty to maximize the good and explored what it would mean to adopt a moral theory which repudiates such standardly assumed maximization. In order to critically assess this picture, this thesis sought to motivate and build up to a conceptual rather than piecemeal approach to challenging a pro tanto duty to maximize the good by advancing deeper worries about positing such a duty. The thesis then explained what such conceptual challenges to stipulating a pro tanto duty to maximize the good might look like. Finally, the thesis ended by exploring two issues which arise down the line from adopting a moral theory which eschews any duty to maximize the good.

In more detail, these steps unfold in the following manner: the first chapter explored the option of arguing against a pro tanto duty to maximize the good via counter-example. It was suggested that our common-sense judgements about charitable giving are incompatible with affirming a pro tanto duty to maximize the good. This is because most people believe that it's permissible to donate to a less efficient charity such as the make-a-wish foundation, even though one could have donated to a more efficient charity which does much more good at no additional cost. But while this initially appears to present a counter-example to a pro tanto duty to maximize the good, this chapter illustrated how proponents of such a duty can draw on a rich body of non-consequentialist tools in order to accommodate potential counter-examples. In particular, it's proposed that maximizers may appeal to the structure of agent-relative prerogatives in order to explain why individuals are exempt from maximization in cases in which this imposes a relevant burden on them – in this case the burden of being denied the ability to use sacrifices as a means of personal expression. That said, the first chapter set the scene for the remainder of the thesis: given that counter-examples can often be accommodated and go only so far as an avenue for challenging a pro tanto duty to maximize the good, a more conceptual approach is required.

The second chapter set its sights on such a conceptual approach by reflecting on what kind of normative structure a moral theory needs to have in order to successfully reflect our common-sense judgements about partiality. It's argued that although non-consequentialist theories which reject absolute maximization but affirm a pro tanto duty to maximize the good can technically deliver the conclusion that partiality towards our loved ones is permissible, the normative structure contained in such theories may just fail to exhaustively capture how we think about partiality. This is because a normative structure which affirms a pro tanto duty to maximize the impersonal good still gives structural priority to impersonal value, leaving concerns of partiality as a mere afterthought to be accommodated, rather than as an equally foundational part of morality. With this said, we no longer need counter-examples in order to suggest that we have at least some substantial grounds for challenging the idea that a duty to maximize the good is a plausible and well-supported component of moral theorizing.

In effect, the task of further challenging a pro tanto duty to maximize the good is taken up by the third chapter. Containing the theoretical core of this thesis, this chapter aimed to show that value maximization is neither necessary nor obvious. After all, given that certain values like friendship are to be respected rather than maximized, we can ask why the appropriate response to values like well-being should be maximization rather than respect. Instead, value maximization, whether in our theory of the good or our theory of the right, relies on additional theoretical assumptions about goodness and rightness which are unarticulated and undefended. Given that maximization cannot simply be posited but relies on such potentially controversial assumptions, any commitment to maximizing value must be defended via argumentation, rather than presumed. That is, while a pro tanto duty to maximize the good might appear obvious and uncontroversial at first, closer investigation revealed that such a duty depends on stipulating a number of assumptions which are yet to be argued for.

The fourth chapter engaged with the common worry pressed against theories which take the previously outlined worries about maximization seriously. That is, a view which opposes maximization is often rejected on grounds that it cannot account for the fact that we have a duty to save the greater number in rescue cases. In this chapter, the supposedly objectionable permissibility of saving either group in a rescue case is shown to be more compatible with common-sense morality than often thought, and as capturing an attractive approach to valuing individuals. All in all, this chapter is essential for repudiating the popular idea that anti-consequentialism can be shown to fall short by reflecting on our duties in rescue cases.

Last but not least, the fifth chapter revealed that once we take non-maximizing moral theories seriously and adopt them as our starting point, we still have lessons to learn. One of these lessons is found in the fact that value maximization isn't confined to the standard maximizing mechanism of aggregating benefits and burdens. Rather, this chapter explained that there is a further, more subtle mechanism which allows moral theories to maximize value by relying on number-dependent probabilities. Anti-consequentialists who reject maximization, then, need to be careful to not unwittingly engage in maximization when evaluating cases of risk imposition which might invoke such probabilities. In fact, given that such a reliance on probabilities isn't yet recognized as containing maximization, it's likely that maximizing principles are much more wide-spread than often assumed.

The thesis indicated that a rejection of maximization and the adoption of an alternative, non-maximizing moral theory, is not as controversial as often assumed. But if this is correct, then this leaves those who posit a pro tanto duty to maximize the good as their starting point, with the task of providing independent moral justification for the stipulation of such maximization. In addition, this also demonstrates that non-maximizing theories such as contractualism aren't as problematic as they are sometimes painted to be but offer potentially attractive moral avenues. Still, those who posit non-maximizing approaches are, likewise, left with more work to do, if they are to win over those who consider a pro tanto duty to maximize compelling: namely to further explore what independent grounds we might have for embracing their respective moral theories.

At this point, we might want to express some puzzlement as to why, in contemporary moral and political philosophy, the affirmation of a pro tanto duty to maximize the good is as commonly accepted as it is. One suggestion is that, given that a pro tanto duty to maximize the good is often taken to be essential for reflecting our concern for respecting and valuing individuals, and offers an initially attractive view, it might just be that such a duty has too rarely been subjected to questioning. Yet properly respecting and valuing individuals, or so this thesis has indicated, may potentially demand the casting aside of maximizing aspirations and the adoption of a closer focus on individuals. Still, much more needs to be said on this, and this thesis only takes a small step towards exploring our reasons for, and implications of, adopting a moral theory which rejects a pro tanto duty to maximize the good.

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