

Anyone Who Had a Heart:
Separateness of Persons and Individual Justification

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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.

Abstract

There is a significant problem with the widely accepted objection that utilitarianism fails to respect the separateness of person. It is, in fact, very difficult to pin down what moral problem this objection isolates. This thesis looks at one possible understanding of the separateness of persons objection; the contractualist understanding. It aims to reply to two problems contractualism, and a contractualist understanding of the separateness of persons objection, can be charged with. It first replies to the vacuity objection introduced by Joseph Raz, and then moves to discussing the more prominent problem of aggregation. I respond to Raz by highlighting a fundamental disagreement between Raz and the contractualist. I respond to the aggregation problem by developing a theory of what makes individuals valuable and what implications this has for aggregation. Having thus responded to both objections, I conclude that the contractualist understanding of the separateness of persons objection has been vindicated.

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Introduction

When faced with conflict cases, a utilitarian trades off benefits and losses across different individuals in order to maximise an impersonal good such as well-being. For instance, a utilitarian might well (i) force Ava to donate her second kidney in order to save Bea's life, (ii) take Ava's second, unused fridge and allocate it to Bea, who has no fridge, (iii) use a drug to save one thousand individuals from going blind, rather than to save Ava's life, and (iv) allocate available benefits to Bea, rather than to both Ava and Bea, so long as distributing benefits and losses in this way secures the most amount of good possible. But there seems to be a significant problem with the trading off of benefits and losses in this way. In each case, the utilitarian seems to ignore, or at least fail to fully appreciate, that Ava and Bea are distinct individuals with their own lives to lead. And, that as such there is a significant moral cost to imposing uncompensated losses on Ava for the benefit of some entirely separate individual Bea. After Rawls, this is termed the separateness of persons objection to utilitarianism. Yet while the separateness of persons objection has been widely taken to be successful, and thus a damning indictment of utilitarianism, it is not without its problems. Perhaps foremost among these problems is the difficulty of saying precisely what it is that the separateness of persons objection picks out.

To illustrate this claim, let's take John Rawls' account of the separateness of persons objection which is still commonly used and recognised. According to Rawls, utilitarianism treats interpersonal trade-offs across individuals as though they were intrapersonal trade-offs. In other words, utilitarianism trades off benefits and losses across different individuals in order to maximise the amount of satisfaction in a society, in the same way in which individuals may trade off benefits and losses in their own lives in order to maximise the fulfilment of their own desires. This is objectionable because interpersonal trade-offs are actually morally problematic in a way that intrapersonal trade-offs are not. In intrapersonal trade-offs, the individual who is suffering a loss is also compensated for this loss by being provided with a benefit. Yet in interpersonal trade-offs, the individual who is suffering a loss is not offered compensation, and a different individual is provided with a benefit instead. Thus, in treating interpersonal trade-offs as though they were intrapersonal trade-offs the utilitarian fails to take seriously the separateness of persons and the full moral impact of imposing sacrifices on one individual, for the sake of another. This leads utilitarianism to license interpersonal trade-offs as acceptable, despite the fact that they appear to be intuitively unacceptable. For

instance, there is no reason for utilitarianism for why the “violation of the liberty of a few might not be made right by the greater good shared by many” (1999, p23). In this, utilitarianism licenses trade-offs which impose sacrifices on some individuals for the larger gains of others in order to maximise the amount of satisfaction across individuals. This violates the separateness of persons.

At first, Rawls’ characterisation of the separateness of persons objection seems successful. For instance, it seems to capture what we object to in rejecting trade-offs in (i), (ii), (iii) and (iv): In both (i) and (ii) Ava is not compensated for her loss, with a benefit being provided to Bea instead. In (iii) and (iv), benefits are maximised across individuals which leads to the fact that in each case, an uncompensated sacrifice is imposed on Ava in order to achieve smaller gains for others.

However, there are at least three immediate problems with this Rawlsian understanding of the separateness of persons objection. First, it has been argued that intrapersonal trade-offs might also be problematic, even if they compensate an individual for an imposed loss. This is because trade-offs between a present time-slice and a future time-slice in an individual’s life might not always be acceptable (Bernard Williams, 1981). For instance, in real life we often discount future harms and future benefits. This is a problem for Rawls’ account since given that even compensated, intrapersonal trade-offs can be problematic, interpersonal trade-offs cannot be problematic due to an absence of compensation. Therefore, this cannot be the only reason why the interpersonal trade-offs in cases (i), (ii), (iii) and (iv) are objectionable.

Second, in many cases, interpersonal trade-offs are considered permissible if they are engaged in for the benefit of individuals who are worse off. It is often intuitively permissible to impose losses on individuals in order to relieve the immediate suffering on another individual. For instance, we think that the redistribution of goods in society is necessary in order to help those individuals in need of support. This suggests that treating all interpersonal trade-offs as problematic is intuitively incorrect. Rather, there seems to be something particularly problematic about certain kinds of trade-offs, such as those engaged in by the utilitarian in (i), (ii), (iii) and (iv).

Third, Rawls objects to utilitarianism by arguing that by treating interpersonal trade-offs as intrapersonal trade-offs, it ends up wrongfully imposing sacrifices on agents who receive no compensatory benefits. But is this so wrong? It seems that under some circumstances, it would be permissible to take Ava’s second, unused fridge and to give it

to Bea. Sometimes, imposing uncompensated sacrifices on an agent is exactly what morality demands, for instance to produce a better outcome¹.

In light of these problems, Rawls' account of the separateness of persons objection in terms of wrongfully applying an intrapersonal principle to interpersonal trade-offs, is unsatisfactory. That is, we intuitively consider there to be a specific moral harm which utilitarianism commits when engaging in the trade-offs in cases (i), (ii), (iii) and (iv), that Rawls' account cannot sufficiently explain.

So far, the most notable understanding of the separateness of persons objection to utilitarianism was rejected. So let's consider how the separateness of persons objection can be understood instead. To begin with, it is necessary to point out that utilitarianism does not actually fail to recognise the fact that individuals are separate persons. Famously, utilitarianism counts each individual for one, and therefore counts more individuals for more. It maximises well-being across individuals which allows it to produce as much well-being as possible in a society. In order to do so, the well-being of each individual is considered. For instance, because Bea is in need of a kidney in (i), there is a utilitarian reason to give Ava's kidney to Bea, so that both individuals can survive. It is for Bea's benefit that Ava's kidney is required. Now, although this refers to only a very basic understanding of what is meant by the separateness of persons, it shows that utilitarianism does not simply fail to appreciate that individuals are distinct human beings. Rather, utilitarianism clearly acknowledges that individuals are distinct and considers this distinction to be part of the reason for engaging in moral balancing across separate individuals. Thus, the separateness of persons objection cannot be understood as charging utilitarianism with actually failing to recognise the distinction between persons. It becomes yet more difficult to understand what exact moral problem the separateness of persons objection isolates.

Let's consider two proposals. First, one suggestion might be that the separateness of persons objection isolates that utilitarianism fails to recognise the moral status of individuals. The moral status of individuals determines that there are some things that cannot ever be permissibly done to an individual² - e.g. forcing an individual to donate her kidney. In engaging in interpersonal trade-offs, utilitarianism ignores such restrictions and thus the moral status of individuals. But this objection does not apply to all four cases. In (iv), no morally problematic sacrifice is imposed on Ava, yet the separateness of

¹ see Joseph Raz, 1986

² excluding, perhaps, very extreme circumstances

persons is still violated. In fact, this objection seems to rather point towards a different problem of utilitarianism, namely the absence of deontological constraints.

Second, one may argue that utilitarianism treats individuals as fungible entities and as a means to an end in order to maximise the utilitarian value of well-being. This ignores that individuals have intrinsic value and ought to be valued as ends in themselves (Yetter Chappell, 2015). Therefore, utilitarianism violates the separateness of persons. However, this objection challenges how utilitarianism treats individuals generally. As a result, it fails to isolate what precisely is morally objectionable about the trade-offs of (i), (ii), (iii) and (iv). What is more, this explanation seems to be based on how the utilitarian conceptualises individuals. But it is not only the conceptualisation of individuals as fungible that is objectionable. That is, surely we object to the trade-offs in (i), (ii), (iii) and (iv) for more substantial reasons than that utilitarianism is conceptualising the individuals involved in a problematic way.

I want to pursue a different idea of how to understand the separateness of persons objection to utilitarianism. For contractualism, an act is right if a principle licensing it can be justified to all individuals involved, based on personal and generic reasons. Hence what constitutes the moral wrong in cases (i), (ii), (iii) and (iv) is that in each case, the distribution cannot be justified to each individual based on personal reasons. Therefore, the separateness of persons is violated in each case.

Before I consider a contractualist understanding of the separateness of persons objection in more detail, I want to look at two observations which may motivate such an interpretation. First, when considering which features are invariably present in cases (i), (ii), (iii) and (iv), it is noticeable that distributions are always made in separation from the individuals involved. In each case, distributions are made from the utilitarian standpoint of an impartial observer who allocates distributions based on how to maximise the impersonal value of well-being. Thus, in each case, a distribution is decided upon and followed through in utter divorce of the individuals concerned by it. Second, it can also be observed that an individual's voluntary agreement renders an intuitively impermissible act of moral balancing permissible. If Ava, who is altruistic and a utilitarian, happily agrees to sacrifice her kidney and to give it to Bea in order to achieve an all things considered better outcome, the trade-off in (i) is no longer objectionable. I propose that although both are obvious observations to make, they still reveal something interesting about the trade-offs of (i), (ii), (iii) and (iv). Given that individuals are capable of moral reasoning, it at least appears peculiar that a utilitarian standpoint assumes that moral principles are something that is determined in divorce from the individuals it is imposed

upon. Moral reasoning in cases (i), (iii) and (iv) concerns, after all, the imposition of potentially life-altering burdens on the lives of individuals. It thus seems potentially problematic that individuals are not consulted or engaged with.

So let's consider Scanlon's moral theory of contractualism. Scanlon offers a theory of moral reasoning which aims to define wrongness, and further defines what kinds of reasons are morally admissible when determining wrongness. Note that Scanlon's account is rooted in two basic assumptions. First, Scanlon states that individuals have equal moral status based on their rational cognitive capacities. Second, Scanlon asserts that individuals share the aim of finding principles of mutual governance. For contractualism, Scanlon argues that what it means for an act to be wrong, is for it to be unjustifiable to individuals. Scanlon writes,

“an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced, general agreement” (1998, p. 153)

For Scanlon, an act is wrong if the principle which licenses it can be ‘reasonably rejected’ by an individual. An individual can ‘reasonably reject’ a principle if her objections to a principle are more weighty than the objections any other individual has against an alternative principle. Importantly, reasons for reasonably rejecting a principle must be based on generic and personal grounds. That is, it is impermissible to reject a principle based on either idiosyncratic or impersonal considerations. Generally, the claim that the reasonable rejection of a principle must be based on personal reasons is known as the ‘individualist restriction’. Reasonable rejectability and the individualist restriction are best illustrated in looking at Scanlon's Transmitter case:

“Suppose that Jones has suffered an accident in the transmitter room of a television station [...] we 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” (1998, p235)

Jones can reasonably reject a principle according to which one should continue the broadcast, based on his objection that this would prolong his painful shocks. His objection

to this principle is stronger than the objections which any of the viewers have against a principle according to which the broadcast should be interrupted. Their objection can merely cite a small loss of pleasure from the interrupted broadcast. Due to the individualist restriction, the viewers cannot reasonably reject a principle according to which the broadcast should be interrupted, by appealing to the aggregate amount of pleasure which is experienced by the many individuals watching the broadcast. Thus, we arrive at the intuitively right answer that the broadcast should be interrupted in order to provide aid to Jones.

I suggest that this case illustrates the appeal of employing contractualism for understanding the separateness of persons objection to utilitarianism. In this light, it is possible to understand the separateness of persons as being respected if a principle can be justified to each individual. As seen in the Transmitter case, the claim of each separate individual is assessed only in comparison to the claims of other individuals, in consideration of the personal reasons each individual has for her claim. This signifies that the personal reasons each individual has for accepting or rejecting a principle are taken into account. Thus, contractualism implicitly recognises that each individual is not merely a distinct individual, but that each individual has her own, separate reasons, and her own life to live which ought to be taken into consideration. Following this, contractualism will only ever impose losses on an individual if the alternative courses of action would impose worse losses on other individuals.

Let's apply a contractualist understanding of the separateness of persons objection to utilitarianism to (i), (ii), (iii) and (iv). This will allow us to see whether such a contractualist understanding offers a satisfactory explanation of what is wrong in each case. I suggest that in each case, the applied principle of distribution cannot be justified to each individual: In (i) and (ii), Ava can reasonably reject a principle which imposes a loss on her for the benefit of a stranger, Bea. Ava can reject such a principle based on the personal reason that requiring her to give up her kidney and her fridge infringes upon the rights she has to her body and her property and affects her well-being. These objections are more stringent than the objections Bea has to principles which deny her access to Ava's kidney and fridge, as her personal reason consists of her wish to access Ava's kidney and fridge for her own benefit. In (iii) and (iv), Ava can reasonably reject a principle which allows her to be disadvantaged in both cases as she, in (iii), has a stronger individual claim to be aided than any of the individuals who might be blind, and in (iv), has a claim to be treated fairly and thus to be given the same benefits as are allocated to Bea. Justification of a principle to each individual expresses respect towards each

individual as a separate and morally relevant person. Through justification, the individual herself as a person is taken seriously, as someone who is owed to be given a justification for any principle decided upon and can reject such a reason since she herself is her own rational persons with reasons to live by.

In this light, I suggest that the separateness of persons objection is best explained along the lines of contractualism, or contractualist justification. This has been proposed by several commentators in the literature³. The aim of my thesis is to defend the contractualist understanding of the separateness of persons objection. I want to vindicate it against two prominent objections in particular. Roughly, the first objection has been put forward by Joseph Raz and charges contractualism with being vacuous. It alleges that since contractualism relies on pre-established moral claims which are merely reaffirmed in justifying them to individuals, contractualism adds nothing of moral value to the pre-established moral claims it relies upon. The second objection is more serious and has been more widely accepted in the philosophical community. This objection argues that contractualism is unable to accommodate aggregative considerations in cases in which they intuitively matter. To be more exact, the charge is that contractualism fails to reflect that there is a duty to save the greater number in simple conflict cases where one has a choice of saving either a larger or a smaller group of individuals.

Along these lines, the thesis is divided into four chapters. In the first chapter, Joseph Raz's objection will be introduced. This objection rejects the moral relevance of contractualist justification, and thus constitutes a hurdle to cross in order to get a contractualist understanding of the separateness of persons objection off the ground. At the same time, evaluating and replying to this Razian objection will lay the groundwork for the following chapters, as it includes a detailed discussion of Scanlon's account of respect. The second chapter will introduce the problem of aggregation and look at two possible replies to it. Derek Parfit has proposed that the problem of aggregation can be solved by dropping the individualist restriction, while Johann Frick has argued that contractualism should be externally supplemented to accommodate the relevance of impersonal considerations. It will be argued that both replies fail to preserve the core of contractualism. The third chapter will analyse the numbers debate which has developed around the problem of aggregation more generally and which largely relies on a maximisation assumption according to which one ought to do more rather than less good. In the last chapter, a theory of what makes individuals valuable I introduced and what

³ Among others, David Brink, 1993, Iwao Hirose, 2014, Michael Otsuka, 2012 (the latter without reference to contractualism)

implications this has for aggregation. It is argued that individuals are in fact incomparable in respect to the intrinsic value which each individual has. Based on the incomparability of individuals, it is ultimately proposed that both consequentialist and non-consequentialist arguments for a duty to save the greater number can be refuted, even by their own lights. I conclude that if there is no duty to save the greater number and to aggregate, the problem of aggregation can be solved. Thus, the contractualist understanding of the separateness of persons objection to utilitarianism is vindicated.

Chapter 1

Justification and Individuals

So far I have suggested that the separateness of persons objection to utilitarianism can be understood through the lens of contractualism. According to this argument, justifying a principle of distribution to all individuals counts as showing proper respect towards the separateness of persons because each separate individual can reasonably reject a moral principle. A principle can be reasonably rejected by an individual, if there exists some other principle, where the largest burden imposed on an individual is smaller than the burden imposed on the individual by the first principle. That is, Ava can reasonably reject a principle if the burden imposed on her under this principle is greater than the largest burdens imposed on another individual by an alternative principle.

Joseph Raz raises a now famous problem with contractualism, that if correct, may well undermine the attempt to understand the of persons objection along such contractualist lines. Raz argues that contractualism is vacuous. To be precise, Raz argues that since contractualism relies on pre-existing moral claims which are used as reasons for reasonably rejecting a principle, contractualism itself adds no moral content. If Raz's objection is correct, and contractualism is vacuous, a contractualist understanding the separateness of persons objection is equally vacuous.

This chapter defends contractualism against Raz's vacuity objection. To this aim, this chapter has four parts. First, I will introduce Raz's vacuity objection. Second, I will offer a reply to this objection which draws on Scanlon's account of respect. Third, I will consider a range of objections to this respect based reply by casting doubt on Scanlon's account of respect. Fourth, I will consider a strong objection which the Razian could advance against the respect based reply in which the Razian maintains that the vacuity of contractualism. I conclude by presenting two reasons for which contractualism is not vacuous.

I. Raz's Vacuity Objection

Raz advances the following objection against Scanlon's contractualism. For contractualism, a principle is right if it cannot be reasonably rejected by an individual. An individual can reasonably reject a principle if the burden imposed on her under this

principle is larger than the largest burdens imposed on some agent in an alternative principle. But what does it mean for one individual to have a stronger reason to reasonably reject a principle, compared to another individual? Raz argues that the reasons based on which individuals reasonably reject a principle rely on pre-established moral claims of right and wrong. For instance, Ava can only reasonably reject a principle according to which she is forced to give her second kidney to Bea, who will die otherwise, if she appeals to a rights over her body. But in appealing to such a bodily right, Ava is already employing a pre-established moral claim. As a matter of fact, it seems that there is little chance that contractualism can successfully avoid such a reliance on pre-established moral claims: In order to determine what counts as a reason for reasonably rejecting a principle, it appears necessary to refer to some kind of pre-existing notion of what is considered to be of value and considered to constitute a valid reason for reasonably rejecting a principle. What is more, this concern seems to be supported by Scanlon's own claim that it is neither possible nor desirable to fully set aside pre-existing "assumptions about other rights and entitlements" (1998, p214). In other words, determining what reasons can be employed for reasonably rejecting a principles requires an independent, separate moral theory, and perhaps even a conception of the good. This takes us well beyond contractualism.

Based on this, Raz argues that contractualism is vacuous. This refers to the claim that what you put into the theory as premises is exactly what you receive as conclusions. Raz writes:

"The suspect feature of Contractualism is [...] is that its test yields results only by presupposing moral views which can only be established independently of it. [...] In brief, you determine the moral outcome in some non-contractualist way, and shape the test to yield the right conclusion, the one you started from, except that now it receives the *imprimatur* of having been established by the Contractualist test." (Raz, 2003, p358).

That is, contractualism adds no moral content to the pre-established moral claims it relies upon as reasons for which principles can be reasonably rejected. Since contractualism itself does not alter the pre-established moral claims relied upon, it does not change the outcome. Thus, contractualism is vacuous; when aiming to determine the right moral principles, we should dismiss contractualism and instead search for moral principles directly.

The claim that contractualism is vacuous is especially pernicious for a contractualist understanding of the separateness of persons. According to this claim, the justification of principles to individuals constitutes nothing but a re-affirmation of valid, pre-established moral claims. Thus, if justifying principles to individuals is vacuous, this suggests that understanding the separateness of persons objection as a concern for justifying principles to individuals is equally vacuous. With this in mind, this chapter sets out to reply to Raz's vacuity objection.

II. Justification and Respect

In light of this, I want to consider two versions of a reply which draws on Scanlon's account of respect. First, I suggest that it is possible to argue that justifying principles to individuals offers an additional expression of respect towards individuals. It shows that individuals are at the center of morality and that they are taken seriously. If this is the case, justifying already valid principles would not simply reaffirm these principles but carry a message, namely that all individuals are respected adequately and equally. Therefore, justifying principles to individuals is no longer vacuous because it has value in itself due to the fact that justification expresses respect.

In order for this reply to succeed we can refer to Scanlon's account of respect. Scanlon's account of respect proposes a reason for why justifying principles to individuals expresses respect for individuals. To be more exact, Scanlon suggests that we value individuals and have reason to protect and preserve them due to the two distinctive rational capacities of human beings: First, individuals have the distinctive rational capacity to have reasons. Being capable of having reasons, individuals have reasons to want to continue living. In this respect, we are able to recognise that their life has value *to them*, which provides us with a reason to protect them. Second, individuals have the distinctive rational capacity to assess reasons and to take an active role in governing their life. Because individuals are the kinds of rational beings who are able to have and to assess reasons, Scanlon proposes that they are also objectively valuable. Respecting the value of human life means to adequately respect these two rational capacities. Crucially, Scanlon then asserts that justifying moral principles to individuals so that they cannot reasonably reject them is required in order to accurately respect the value of human life, and the two distinctive rational capacities of human beings. Therefore, Scanlon concludes that justification to individuals is independently valuable as it expresses our respect towards individuals. In order to follow how Scanlon arrives at this conclusion from the

claim that one ought to respect the two rational capacities of individuals, it is worth looking Scanlon's argument in full:

“We cannot respond to all the reasons that every human creature has for wanting his or her life to go well; so we must select among these reasons; and we should do this in a way that recognizes the capacity of human beings, as rational creatures, to assess reasons and to govern their lives according to this assessment. In my view the best response to these two considerations is this: respecting the value of human (rational) life requires us to treat rational creatures only in ways that would be allowed by principles that they could not reasonably reject insofar as they, too, were seeking principles of mutual governance which other rational creatures could not reasonably reject. This responds to the problem of selecting among reasons in a way that recognizes our distinctive capacities as reason-assessing, self-governing creatures.” (1998, p106)

Importantly, Scanlon enters the argument with having made two fundamental assumptions on which contractualism is based. First, individuals are valuable, which provides a reason to protect and preserve them, and, second, individuals are motivated by seeking principles of mutual governance. The argument progresses via three premises. First, in order to respect individuals we must respond to the reasons which individuals have to live. Second, we must select among the reasons which individuals have in a way which recognises the reason-assessing capacity of individuals. And, third, treating rational creatures according to principles which cannot be reasonably rejected recognises the reason-assessing capacity of individuals. Scanlon concludes that the value of human life requires us to treat rational creatures only in ways which would be allowed by principles that individuals could not reasonably reject. For Scanlon, respecting individuals means to justify principles to each of them⁴.

In light of this, the mere fact that principles are justified to individuals in such way expresses that individuals are respected. This respect is morally relevant since it constitutes a visible and active expression of the fact that individuals and their rationality are respected. It is now possible to reject Raz's vacuity objection by arguing that even if

⁴ We might think that this doesn't capture all aspects of respect: A fearful, hateful individual who considers all others as disgusting and low might still according to principles which no one can reasonably reject out of fear of being reprimanded. This meets the conditions of contractualism but is not respectful towards individuals in any recognisable sense. However, this is just one way to construe respect as respect for the value of individuals on a fundamental level of appreciation. Beyond that, Scanlon explicitly states that he is not giving an exhaustive definition of what it means to respect or value human life (see 1998, p106).

moral principles are already objectively valid, it is still the case that justifying principles to individuals expresses additional respect towards individuals.

However, there is a problem with this respect based reply to Raz's vacuity objection. On this account, it is possible for the Razian to maintain that the principles arrived at do not respect individuals because they are justifiable, but because they are valid, and as such respect individuals. But, importantly, the contractualist wants to be able to claim that the principles arrived at only respect individuals *because* these principles can be justified to individuals. This shows that the contractualist wants to make a claim which is stronger than the suggestion that justification to individuals has value in itself as it expresses respect towards individuals. For the contractualist wants to claim that justifying principles to individuals is necessary for establishing whether pre-established moral claims respect individuals.

This leads us to offering a second version of the respect based reply: Contractualism is not vacuous because the mere fact that pre-established moral claims must be justifiable to individuals adds a new moral constraint. In order to be morally right, principles must respect individuals. But, as seen above, Scanlon has a very specific and demanding account of what showing respect requires, which therefore adds specific moral constraints. First, one significant constraint to what principles count as being respectful of individuals is added by the stipulation that principles can only be reasonably rejected based on personal and generic reasons. That is, moral claims which advance impersonal values do not respect individuals. Another constraint is added by Scanlon's two assumptions of the equal value of individuals and the aim for finding principles of mutual governance. These two principles determine that certain pre-established moral claims can be reasonably rejected by individuals, e.g. reasons based on unjustified inequality. Thus, based on these constraints, Scanlon's account is substantial enough to be able to change the moral outcome of contractualism. Contractualist justification essentially functions as a non-vacuous test for assessing whether pre-established moral claims respect individuals, based on the previous constraints. Contractualism is not vacuous.

III. Challenging the Respect Reply

This reply to the vacuity objection relies heavily on Scanlon's account of respect for individuals and his claim that justification is necessary for such respect. In this light, the Razian can put forward four objections to cast doubt on Scanlon's account of respect.

A first worry might be that many philosophers claim that their moral theory shows respect towards individuals. They offer an account of what counts as respectful and then claim that their account is respectful in this way. So why should we agree to Scanlon's account of respect, rather than to any other one? For Scanlon, what demands respect in individuals is the "capacity of human beings, as rational creatures, to assess reasons and to govern their lives according to this assessment" (1998, p106). Respecting individuals means to treat individuals in a way which recognises the rational capacities. So far, this proposal seems easy enough to agree to. Scanlon's account of what respect requires is similar to existing proposals in the literature, and seems relatively uncontentious. What renders Scanlon's account a little more unique, although not more contentious, is that Scanlon appeals to the specific rational capacities of having and assessing reasons rather than to rationality more generally. However, Scanlon then quickly moves to identifying showing respect towards individuals with treating individuals according to principles which no one can reasonably reject. So let's return to this objection later on, once the connection between respect and justification has been closer examined.

I suggest that this introduces us to a second problem. Even if we accept Scanlon's claim that respect requires recognising the capacities of having and assessing reasons, we still need to accept the additional claim that respect towards individuals requires that we only act on principles which cannot be reasonably rejected. That is, the Razian might question how Scanlon arrives at his conclusion that valuing the rationality of individuals requires treating individuals according to principles which they cannot reasonably reject, from his claim that respecting individuals means to value two rational capacities. There is no obvious connection discernible between respecting rationality on the one hand and the reasonable rejectability of principles on the other. Thus, Scanlon's argument does not provide an argument for *why* respecting the rationality of individuals should require contractualist justification to individuals, but simply grants the claim.

This objection can be challenged in the following way. Returning to Scanlon's argument, one can see that because individuals are rational beings, they are the kinds of beings who have personal reasons to live their life in a certain way. Therefore, respecting individuals means to respect that individuals have reasons and are able to assess reasons. As such, an individual has the capacity to assess the moral principles which affect her life and impose benefits or burdens on her. She also has the capacity to compare her own reasons to object to a moral principle with the reasons other individuals have to object to it. As a consequence, an individual is capable of assessing whether a justification offered in favour of a moral principle is acceptable or whether it should be rejected in light of the

individual's own, stronger objections. Respecting an individual means to respect that in certain cases she has the strongest individual reason to object to a moral principle, which means that she can reasonably reject the licensing of this principle. This also gives us a reply to the first objection. On closer inspection, Scanlon's account of what it means to respect individuals is actually very dissimilar to other accounts. It is also more attractive than other accounts since it connects respect, rationality and justification in an ingenious and intuitively plausible way.

But, one might argue, does Scanlon's account really succeed in respecting individuals? We might think that we respect individuals not only because we follow principles that cannot be reasonably rejected by individuals, but because we act in certain respectful ways towards them. Suppose Bea saves Ava from drowning. Saving Ava's life expresses respect towards Ava because Ava's life has some kind of value which Bea is recognising and reacting to in saving her. It seems problematic to suggest that saving Ava's life respects Ava because Ava could reasonably reject a principle which would allow Bea to walk off. As a result, cashing out respect towards individuals in terms of principles which cannot be reasonably rejected seems counterintuitive, and to misunderstand what it means to respect individuals.

This objection misconstrues Scanlon's account of respect. Saving Ava from drowning because Ava could reasonably reject a principle which would allow Bea to walk off, expresses appropriate respect towards Ava. In recognising that Ava could reasonably reject a principle which would allow Bea to walk off, Ava is recognised as a valuable human being with reasons and aims, and as someone who has claims on Bea. What Bea is reacting to when saving Ava, is that Ava is a human being, who has a strong objection against not being saved by Bea.

There is one more objection to Scanlon's respect account which must be answered. In light of Scanlon's account of respect, it can be objected that the hypothetical nature of contractualist justification actually fails to express the necessary respect towards individuals. Justification in contractualism is highly hypothetical since the assessment of whether a justification can be reasonably rejected consists of comparing the objections against a principle and its alternatives, which one might take each individual to have, based on her personal well-being and status. If one objection is considered to be stronger than the objections of other individuals, the individual's stronger objection prohibits the authorisation of the principle she objects to. Thus, it seems that what is taken into consideration in assessing the permissibility of a moral principle is the strongest individual objection against it. This entails that the assessment of whether a moral

principle is valid is made by objectively comparing the strength of individual objections. Reasonable rejectability, too, can be seen from an objective standpoint and does not require individuals to be engaged in it. In other words, it appears that Scanlon's contractualism can be expressed in objective terms by comparing individual objections to moral principles and finding the strongest claim against it. This is problematic since contractualism now only contains a very hypothetical and superficial form of justification. It is very questionable whether this kind of idealised justification expresses respect towards individuals, given that individuals do not form part of the justificatory process. However, this means that contractualism ultimately falls short of offering justification to individuals. Yet if it falls short of offering such justification, individuals are not respected by Scanlon's own lights. Scanlon offers the following reply to this objection:

“Claims about hypothetical agreement (or non-rejection) might be understood as normative claims, say about what people would agree to, or would not reject, insofar as they were reasonable. But on this construal the hypothetical character of the claim would be idle. All the real work would be done, as in my view, by straightforwardly normative claims about what people could reasonably reject (or refuse to agree to)” (2003, p434)

What matters for contractualism then, is whether principles are justifiable to individuals, and not whether they are actually justified towards individuals. As long as a principle is justifiable to individuals, it respects individuals. Now this seems to still fall short of explaining why justifiability should be sufficient for expressing respect, given that it does not actually address individuals and therefore does not directly respect each individual's capacity to assess reasons.

Perhaps the following offers a more helpful reply: Although objections are compared from an objective standpoint, the objections of each single individual are still being taken into account. This means that existing objections against a principle are still addressed as the objections held by a specific, single individual, and as particular to this individual's context and claims. In this light, individuals are still respected according to Scanlon's account of respect, since principles are still impermissible if a single individual can reasonably reject it. Hypothetical justification, or justifiability, still recognises each individual as someone who is owed to be given a reason for any decision, policy or principle and who could have a reason to reject the latter because she herself is a reason-having and reason-assessing person. What justification to individuals crucially contains,

is that the personal reasons of an individual are taken seriously, as they are directly compared against the personal reasons of others.

In this section, several objections against Scanlon's respect account have been replied to. As a consequence, the Razian cannot reject Scanlon's claim that moral principles are only valid if they can be justified to individuals, by targeting Scanlon's account of respect.

IV. Another Objection to the Respect Reply

I suggest that even if Scanlon's account of respect is found to be consistent, the Razian can offer one more objection to the respect reply offered above. The Scanlonian reply put forward in section II argues that justifiability to individuals constitutes the reason for which moral principles are right, and that justifiability is only fulfilled if certain substantial contractualist constraints are fulfilled. Therefore, contractualism is not vacuous. In this, the contractualist responds to the vacuity objection via appealing to the non-vacuous value of what is required by respect. But I suggest that the Razian can reject this reply by arguing that the role of respect in contractualism is likewise vacuous. By putting in pre-established moral claims which are already considered to respect individuals, the justifiability test will achieve nothing and not change the outcome. In other words, the Razian might arrive at the same moral principles as the contractualist. Yet he can then argue that the moral principles which have been arrived at are right, because they are objectively valid, and not because they are justifiable to individuals. This is because in treating individuals according to objectively valid moral principles, one already expresses respect towards individuals. Raz writes:

“After all we respect people if we treat them as they should morally be treated. But that means that the way they should morally be treated is determined by other considerations (they should not be made to suffer, should be helped in their valuable endeavours, should be protected from destitution, and so on). Once these considerations are determined we know what we ought to do. They are moral reasons, and we should follow them. A byproduct of following them, a byproduct of doing our moral duty, is that we will be respecting people.” (Raz, 2002, p301)

Expressing respect towards individuals does not require justification to individuals, but requires objectively valid moral principles. Therefore, contractualism is still vacuous. In this light, the question dividing the Razian and the Scanlonian is, what renders moral

principles to be the right moral principles: objective validity or contractualist justifiability.

I want to look at two replies to this objection and reject them. Two successful replies will be put forward instead. First, Raz's account of respecting individuals by following objectively valid principles seems to often ride roughshod over the kind of respect required by Scanlon's account of respect. This is because Raz's account doesn't actively recognise and respect the ability of individuals to assess reasons. Individuals are expected to comply with general moral reasons without ever having to engage with the reasons themselves, in the same way in which rules can blindly be followed without engaging with their motivations or outcomes. Denying individuals the involvement and participation in moral reasoning treats individuals as if they are incapable of making moral choices themselves. Thus, Raz's account seems to fail to reflect and to recognise the extent of the rational capacities of individuals.

In reply, a Razian may argue that this misinterprets Raz's account. Raz's account relies on recognising the force of moral reasons, and not on following rules. More specifically, Raz argues that there are moral reasons for action which consist in "the fact that actions possess certain evaluative properties making them worth performing, etc. or bad, etc" (2003, p347). According to this, assessing the presence of such evaluative properties, and therefore of moral reasons, relies on the cognitive capacities of individuals and on their ability to assess reasons. Thus, Raz's account seems to be able to appropriately recognise and reflect the cognitive capacities of individuals. What is more, the Razian might respond by claiming that contractualism itself, in practice, involves enforcing principles on individuals who don't agree with them, thus not considering them as individuals with cognitive capacities. For instance, contractualism would impose a duty to aid in certain circumstances on selfish individuals who value themselves over others. However, as seen before, contractualism relies on the basic assumption that individuals are motivated by their search for principles of mutual governance and are therefore assumed to minimally care for the interests of other individuals. If individuals do not share this assumption, contractualism is not applicable to them⁵.

Following this, it is possible to offer a different reply to the Razian objection. This draws on the assumption that all individuals are searching for principles of mutual governance. It is helpful to briefly return to Rawls. Rawls rejects a view of society as a mere administration of social resources. Rawls suggest that if the object of society would

⁵ The fact that contractualism cannot accommodate such individuals within its moral theory might well constitute a different problem for contractualism.

be the administration of social resources, utilitarianism would constitute a fitting approach to justice in such a society and it would also be appropriate to survey distributions from the perspective of an impartial spectator. But this is not the case, as Rawls conceives of society as “a scheme of cooperation for reciprocal advantage” (2003, p29). Here, a just society is considered to be made up of free and equal citizens taking part in a scheme of co-operation. Scanlon, however, takes up this view and applies it to morality, rather than to a political society. For Scanlon, all individuals have the aim of finding principles of mutual governance and start from a point of mutual respect for each other. For Scanlon, morality is considered as having to be acceptable to all individuals, as morality exists for the benefit of everyone’s advantage and is engaged in deliberately by individuals. One might think that if Raz would accept such a view of the role of morality, he ought to also accept that moral principles ought to be justifiable to each individual.

In reply, the Razian can reject this view of morality and argue that morality exists independently of whether individuals aim to participate in a scheme of mutual governance and mutual benefit. Even if all individuals would live as self-centered and physically isolated hermits, and no one would participate or aim to participate in morality, moral reasons would still exist. For instance, we would still have a moral reason to protect individuals from destitution and harm.

With this in mind, it remains that we still haven’t found a successful reply to the Razian objection that contractualism is still vacuous. However, I now want to suggest two new and successful replies, each of which proposes a different way to reply to Raz’s vacuity objection. Raz suggests that a moral account is vacuous if it doesn’t change the moral outcomes of the account (2003, p358). But this might be wrong. We don’t just want a moral account that produces the right moral principles. We want a moral theory which provides us with the right moral principles for the right reasons. Suppose somehow utilitarianism would offer the right moral principles. It would still seem problematic that utilitarianism arrives at these principles via using incorrect moral reasoning such as that only pain has intrinsic negative moral value and only pleasure has intrinsic positive moral value. So perhaps we can think of vacuity differently: An account is non-vacuous, contra Raz, so long as it either changes the outcomes or changes the justification for those outcomes. Along these lines, Scanlon’s account is non-vacuous, just so long as he is right to think that we arrive at the right moral principles because these principles can be justified to individuals. This reply shows that Scanlon’s account is not vacuous. That is,

Scanlon's assertion that it is respect and therefore justifiability that should determine how we arrive at moral principles is a crucial point.

Bear in mind that an account can be wrong, and still be non-vacuous. This is why I want to put forward another reply which argues that Scanlon's account is not only non-vacuous, but that it is also correct in its reliance on respect. I suggest that morality involves more than the acting in accordance with what morality demands. It involves a certain attitude of appreciation. The following claim by Scanlon will also offer some insight.

“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.”
(2003, p434)

For Scanlon, the process of mutual justification is relevant because it reflects how individuals value and regard one another. That is, it is not about whether morality can be seen as respecting individuals and their rationality, or whether our view of the role of morality requires justification. What is drawn attention to in the above quote, is that morality is about how individuals interact with one another. For an individual, to act according to moral principles towards another individual is not only about following moral reasons, or even the considerations which offer us reasons. It means to recognise that the other individual has a certain moral standing, the same as herself, and to recognise the implications of this. The implications are not merely that there are many moral reasons to treat the other in certain ways, e.g. not making them suffer, protect from destitution. The implications are that individuals are seen as special entities of value which ought to be treated in a certain way and whose claims and interests impose constraints on what we can do. This is why we owe it individuals to treat them accordingly. We can now reply to the Razian by pointing out that the contractualist account of respect is no vacuous. Justifiability is morally required since it expresses a fundamental appreciation of individuals and of who they are.

It should be highlighted that this is precisely where Scanlon and Raz come apart. Although Raz might accept the first objection that vacuity can also be avoided by offering new and different reasons for arriving at principles, it is unlikely that Raz would accept this second reply. For Raz, it remains the case that what matters is that we follow moral

reasons and valid moral principles. Therefore, there is no reason for Raz to presume that such valid moral reasons must reflect the value of interpersonal recognition and interaction between individuals in any way⁶. In light of this, the nature of the disagreement between Raz and Scanlon has been revealed to occur at fundamental level of how we conceive of morality. Nevertheless, if we agree with Scanlon's interpersonal view of morality, then contractualism offers an attractive, and certainly non-vacuous proposal.

In conclusion, this chapter has set out to reply to Raz's vacuity objection, and has evaluated a range of possible challenges to it. In the course of this, we have been introduced in more detail to Scanlon's account of respect which crucially underpins his contractualism. I have concluded that there are two successful replies to make: First, it matters not only what principles are arrived at, but for what reasons they are being arrived at. Therefore, it is incorrect to charge contractualism with being vacuous. Second, for Scanlon, the following of moral reasons is not all that matters for morality, as we generally think that morality involves an appreciation of the value of human beings. Since this value of human beings is respected through justifying principles to individuals, such justification adds an important moral constraint onto moral principles.

Chapter 2

Aggregation, the Individualist Restriction, and Equity

There are two individualistic aspects to be found in contractualism. First, principles have to be justified to each individual. This was discussed in the last chapter. Second, principles can only be reasonably rejected by an individual based on an individual's personal reasons, such as, for instance, a reason referring to the individual's own well-being. This excludes the possibility that a principle may be reasonably rejected based on impersonal or aggregative reasons, e.g. the greater good. This is known as the 'individualist restriction' of contractualism. However, the individualist restriction is strongly opposed

⁶ Unless, one might think, there is an objectively valid reason that moral principles should work in such a way. But this, too, would then be a moral reason.

by a number of commentators for the following reason: the individualist restriction entails that principles cannot be rejected based on aggregative considerations. For the contractualist, no number of weaker claims can be combined so as to outweigh a smaller number of stronger claims. This leads to a substantial problem. By adhering to the individualist restriction and banning aggregation, contractualism is led to arrive at incorrect conclusions. Or at least at conclusions which contradict deeply held intuitions in these cases. If contractualism arrives at incorrect conclusions, this also constitutes a problem for understanding the separateness of persons objection in contractualist terms. At the moment, it seems that if understood in contractualist terms the separateness of persons objection would go too far in its rejection of aggregation. The problem of aggregation then threatens contractualism as a moral theory of analysing right and wrong, as well as a contractualist understanding of the separateness of persons objection.

This chapter will evaluate two proposals which each defend contractualism against the problem of aggregation. Each solution argues in favour of altering the structure of contractualism so as to render it capable of accommodating aggregation when it is intuitively appropriate to do so. To this aim, the chapter is structured in three parts. In the first part, I begin by developing the problem of aggregation in more detail. In the second part, I analyse Derek Parfit's suggestion that contractualism should abandon the individualist restriction in order to accommodate our intuitions about aggregation. In the third part, I consider a pluralist proposal put forward by Johann Frick, who argues that contractualism only constitutes one out of several moral considerations in the domain of interpersonal morality. I reject each proposal and argue that in each case, the proposed alterations disband the core commitments of contractualism.

I. The Problem of Aggregation

Let's begin by having a closer look at the individualist restriction. In favour of his individualist restriction, Scanlon highlights that the individualist restriction expresses "particular forms of concern that we owe to other individuals" (1998, p219). This seems to be referring to the particular concern contractualism has for individuals and Scanlon's claim that contractualism only aims to outline morality within the bounds of the domain of interpersonal morality. The individualist restriction is introduced by Scanlon's claim that "the justifiability of a moral principle depends only on various *individuals'* reasons for objecting to that principle and alternatives to it" (1998, p229). That is, principles can only be reasonably rejected based on personal reasons. Personal reasons are reasons

which are “tied to the well-being, claims, or status of individuals in [a] particular position” (1998, p219). This crucially excludes any reasons which refer to impersonal considerations, such as the value ascribed to natural beauty, art or the greater good, and any reasons which contain aggregative considerations such as group claims. It is the latter item on this list that is of particular interest for us, as it denotes that the individualist restriction includes an absolute rejection of aggregation. Let’s remind ourselves of the Transmitter Case:

“Suppose that Jones has suffered an accident in the transmitter room of a television station [...] we 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” (1998, p235)

Utilitarianism recommends that one ought to do what produces the greatest aggregate amount of well-being and thus continue the broadcast instead of aiding Jones (assuming enough people are watching and enjoying the game). This seems to be intuitively incorrect⁷. Contractualism is able to deliver the intuitively correct answer that one ought to relieve Jones’ suffering by employing the individualist restriction: Every individual watching the World Cup can only ever appeal to her own claim to continue to receive pleasure from watching the game and is barred from referring to the aggregate amount of pleasure received by all individuals together. Therefore, no individual can reasonably reject a principle which allows us to aid Jones, as every individual’s reason is outweighed by Jones’ much greater claim to aid. In other words, the individualist restriction is what allows contractualism to get to the intuitively correct answers in many cases in which we object to interpersonal trade-offs and aggregation as engaged in by the utilitarian. This includes cases (i), (ii), (iii) and (iv).

Nevertheless, several commentators have rejected the individualist restriction precisely because of its absolute rejection of aggregation. As an illustration, Derek Parfit offers the following case:

“*Life Boat*: White is stranded on one rock, and five people are stranded on another. Before the rising tide covers both rocks, we could use a life boat to save either White or the five.” (2003, p376)

⁷ However, a Prioritarian might conclude that we should turn off the broadcast.

Parfit points towards the fact that it is widely recognised that we have a duty to save the greater number in this case. This is generally understood to imply that it is morally impermissible to save White, rather than the five individuals. But if one follows the individualist restriction, White's individual claim to be saved and the individual claims to be saved of every individual on the second rock are all equally strong. White can reasonably reject a principle which prescribes a duty save the greater number in Life Boat, based on the fact that such a principle ignores that his claim to be saved is as strong as the claim of each of the five individuals. Thus, contractualism rules that it is permissible to save White in Life Boat. This shows, so the Parfitian objection goes, that in cases in which claims are of equal strength and in conflict with each other, the individualist restriction is too demanding. It does not recommend saving the greater number but seems to allow the counter-intuitive conclusion that it is permissible to save White. But, problematically, Parfit states that this contractualist rejection arrives at the wrong conclusion: Intuitively, in cases like Life Boat, aggregation is permissible, and even necessary in order to ensure that more rather than fewer individuals are saved. The contractualist rejection of aggregation through the application of the individualist restriction is incorrect. This constitutes a major problem for contractualism.

Note that Scanlon is aware of the fact that contractualism fails to accommodate our intuitions in Life Boat. As a solution, Scanlon proposes an argument for a duty to save the greater number which he takes to successfully establish such a duty without relying on aggregation. Scanlon suggests what he calls a tie-breaking argument. He argues that once White's claim is tied with the claim of one of the individuals in the larger group, the tie between them is broken by the presence of additional individuals in the larger group. White, so Scanlon argues, cannot reasonably reject a principle for saving the greater number. This is because once White's claim has been considered it is tied with the equally strong claim of another individual in the larger group, while the four remaining claims of the four other individuals break the tie in favour of saving the greater number. Without going into detail, it is safe to say that Scanlon's argument fails to avoid aggregation, or at least fails to avoid a reliance on group claims. After all, it still refer to the fact that there are more individuals on one rock rather than the other. Scanlon's argument is unsuccessful in establishing a reason to save the greater number which still preserves the individualist restriction⁸. As such, Parfit's challenge still stands. As long as

⁸ See Otsuka, 2006 and Wasserman and Strudler, 2003

contractualism cannot accommodate our basic intuitions and thus accommodate aggregation in certain cases such as Life Boat, it seems to fall short of offering a satisfactory moral theory.

II. Parfit's Proposal

In light of the fact that the individualist restriction is unable to accommodate aggregation in Life Boat, Parfit proposes that contractualism should abandon the individualist restriction. This, so Parfit claims, is necessary for contractualism to accurately reflect the moral significance of impersonal aggregative considerations, such as the ones leading us to conclude that one ought to save the greater number in Life Boat. Parfit proposes that even after abandoning the individualist restriction, contractualism is still able to rely on its core idea of justifiability to individuals. Regarding reasonable rejectability, Parfit argues that "it would be no less plausible to claim that, in rejecting some principle, each person could appeal to the burdens that this principle would impose not only on her, but also on other people" (2003, p388). That is, contractualism can simply be slightly altered, so that individuals will be able to reasonably reject principles based on both personal and impersonal reasons.

It is important to draw attention to the fact that this Parfitian proposal renders an understanding of the separateness of persons in contractualist terms impossible. Consider our original case (iii), using a drug to save thousand individuals from going blind, rather than to save Ava's life. The abandonment of the individualist restriction would make it possible for each of the thousand individuals to appeal to their aggregate burden and thus reject a principle according to which Ava's life should be saved. Including aggregative and impersonal considerations will allow group claims to outweigh individual claims. Contractualism, in this altered format, would no longer be helpful for understanding the separateness of persons.

But we might be moving too fast here. In fact, some have objected to the Parfitian proposal by suggesting that it is not feasible for contractualism to abandon the individualist restriction. Since the individualist restriction lies at the very heart of contractualism, in abandoning it contractualism might lapse into inconsistency, circularity or dissolution. I will consider several arguments for rejecting Parfit's proposal and argue that it ultimately signals a dissolution of the contractualist core.

(i) Otsuka, Inconsistency, and Circularity

Michael Otsuka advances two arguments for why contractualism cannot coherently abandon the individualist restriction (2006). In his first argument, Otsuka suggests that the abandoning of the individualist restriction would render contractualism inconsistent, given that Scanlon's main motivation for contractualism is Scanlon's anti-utilitarian and anti-aggregative stance. Otsuka argues that the individualist restriction is designed to prevent aggregation. Equally, the requirement that principles must be justified to *each* individual is also designed to prevent aggregation. Therefore, Otsuka argues that for contractualism to abandon the individualist restriction means for contractualism to abandon its original anti-aggregative motivation. It cannot abandon the individualist restriction and its anti-aggregative motivation, without also abandoning its anti-aggregative motivation for the requirement that principles must be justified to each individual. This reveals an inconsistency.

In order to defend the claim that contractualism can coherently abandon the individualist restriction, a Parfitian could offer the following reply. It was shown in the previous chapter that the justification of principles to individuals expresses respect towards individuals. This means that the justification of principles to individuals does not exclusively rely on an anti-aggregative motivation. This is not to say that anti-aggregative concerns are not relevant for the motivation of expressing respect, given that aggregation is supposed to fail to respect individuals. But it does mean that the requirement for justification to individuals can be motivated in separation from the individualist restriction. As a result, contractualism would not become inconsistent by abandoning its individualist restriction, so long as it is still retaining the requirement that principles must be justified to each individual.

Let's consider Otsuka's second argument, which purports that abandoning the individualist restriction leads contractualism to lapse into circularity. According to contractualism, an individual can reasonably reject a principle if her objection to the principle is stronger than anyone else's objection to an alternative principle. Since an individual's objection is subject to the individualist restriction, it can only refer to the individual's own well-being, claims or status. The individualist restriction bestows contractualism with a substantive, non-circular reason for which individuals can reasonably reject principles, which is not itself dependent on or characterised by the wrongness of a fact: The reference to individual reasons of well-being or status provide a substantive consideration, ensuring that "the magnitude of a person's complaint is determined by factors other than the rightness or wrongness of doing that which

minimizes the complaint of the person with the greatest complaint” (2006, p131). If the individualist restriction would be dropped, then individuals could reasonably reject principles based on any impersonal and aggregative consideration. This has the consequence that in this form, the contractualist definition of what makes an act wrong would be constituted by the fact that an act is disallowed by principles which can be reasonably rejected. But problematically, reasonable rejection can now be based on simply stating the wrongness of an act, as it is no longer limited to an appeal to an individual’s own well-being, claims or status. Otsuka concludes that without the individualist restriction, contractualism is circular.

Although plausible, I suggest that this assessment of contractualism leaves a key question unanswered. We can accept that dropping the individualist restriction would render contractualism circular. But if we insist on preserving the individualist restriction simply to uphold the non-circularity of contractualism, it seems that the individualist restriction is preserved for the wrong reasons. It ensures that contractualism is non-circular without evaluating whether contractualism is also correct, or valid in its non-circularity and in its individualist restriction. So we shouldn’t merely ask why a contractualist cannot coherently abandon the individualist restriction but whether we have reason to not *want* to abandon the individualist restriction. The question is whether the individualist restriction can be motivated by an additional reason other than the fact that it is necessary for propping up contractualist non-circularity.

This leads us to the following point. In the individualist restriction, contractualism assumes that individuals have special personal objections against moral principles which affect them. But why should we follow contractualism in only referring to personal reasons? What is so especially problematic about the idea that individuals could appeal to impersonal and aggregative considerations, other than an already anti-aggregative presumption? Answering this question would allow us to reject Parfit’s proposal and the abandonment of the individualist restriction.

(ii) Scanlon and the Motivation for the Individualist Restriction

In order to find an answer to this question, let’s return to examining the initial argument Scanlon proposes when introducing the individualist restriction. This might provide us with clues for how to think about the individualist restriction and its role in contractualism, and will make it easier to assess whether contractualism can coherently abandon the individualist restriction. In his discussion of the individualist restriction,

Scanlon highlights that his concern is only with one part of morality, viz. with ‘what we owe to each other’. Scanlon continues to assert that impersonal reasons, however, “represent a category of value, or of morality in the broader sense, that is distinct from what we owe to each other” (1998, p222). Because impersonal reasons belong in a different category of value, principles cannot be reasonably rejected based on them. Apart from this claim, Scanlon offers the following in support of the individualist restriction:

“Reasons for rejecting a principle thus correspond to particular forms of concern that we owe to other individuals. By definition, impersonal reasons do not represent forms of such concern. They flow from the value of those objects themselves, not [...] from anything having to do with my relation to other people” (1998, p219, 220)

This means that individuals owe other individuals no concern about the impersonal reason they might have since impersonal reasons ‘flow’ from the value of that which is impersonally valued, such as the Grand Canyon, a rare animal species or aggregate well-being. In turn, Scanlon suggests that personal reasons flow from the relation in which we stand to other people. Scanlon is here referring to the relationship of mutual recognition that holds between individuals. According to contractualism, this relationship of mutual recognition is “worth seeking for its own sake” (1998, p162). That is, Scanlon argues if we value standing in a relation of mutual recognition with others, then it follows from this that we owe others particular forms of concern, viz. concern for their personal reasons.

But Scanlon’s argument is far from clearing things up. Rather, it is quite unclear what Scanlon means by the claim that “particular forms of concern that we owe to other individuals” must flow from the relation we have to other people and not from objects which are valued. So Scanlon’s claim can be objected to because it falls short of explaining why concern for personal reasons is assumed to follow from valuing a relation of mutual recognition. As it is, Scanlon’s argument needs much more clarification in order to offer a substantial defense of the importance of the individualist restriction.

(iii) Kumar and the Relationship of Mutual Recognition

An argument put forward by Rahul Kumar offers the kind of elaboration Scanlon’s argument is in need of. Kumar suggests that justification to another individual is “a matter

of asking oneself what one could imagine saying to another in the face of his challenge to the permissibility of your relating to him in that way” (2012, p14). By providing justification to the other individual which is only based on personal, rather than impersonal reasons, the individual expresses that the relationship between herself and others is being valued for itself. This is because one is recognising the individual character of the other’s complaint and in turn offers a matching, individual reply which the other cannot reject. Kumar clarifies how to understand these claims by putting forward this passage from Thomas Nagel:

“If one abandons a person in the course of rescuing several others from a fire or a sinking ship, one could say to him ‘You understand, I have to leave you to save the others.’ [...] One could even say, as one bayonets an enemy soldier, ‘It’s either you or me.’ But one cannot really say while torturing a prisoner, ‘You understand, I have to pull out your finger-nails because it is absolutely essential that we have the names of your confederates’; nor can one say to the victims of Hiroshima, ‘You understand, we have to incinerate you to provide the Japanese government with an incentive to surrender.’” (2012, p67)

This helps us to understand Scanlon’s claim that a concern for another individual’s personal reasons results from valuing the relation of mutual recognition one has with the other individual. Justification based on personal reasons can thus uniquely express that an individual values the relationship of mutual recognition which exists between her and other individuals: In offering personal reasons, and not impersonal reasons to an individual, one recognises that the other individual’s claim is a personal one, and that it can only be replied to by offering personal reasons in return. In offering impersonal reasons, one would not take the personal claim and challenge of the other individual seriously, and thus not value the relationship of mutual recognition that holds between two individuals.

However, in defense of the claim that contractualism should drop the individualist restriction, a Parfitian can reject this argument and assert that impersonal reasons are equally valid for offering justification to individuals which they cannot reasonably reject. A Parfitian might say that explaining to a prisoner that he is being tortured because one needs to find out the names of his confederates is still a substantial and valid reason, given

that finding his confederates might be necessary to prevent greater harm in the future⁹. This, one might argue, are reasons which the prisoner should accept even if they are not personal reasons. At the same time, it appears to me that Nagel's two examples against the permissibility of appealing to impersonal reasons are rather uncharitable choices, in view of the fact that both cases involve the committing of grave and unimaginable harms. Both cases already load the die in favour of the contractualist and against the aggregator by describing sacrifices in the name of benefits that seem dubious.

In reply, a Parfitian could suggest a case in which, if one passes a car accident where one could help an individual who is in great pain, one could say to him 'You understand, I have to leave you to suffer because I'm on my way to stop the Grand Canyon from being destroyed'. The Parfitian can say that saving the Grand Canyon from being destroyed is a substantial reason to give to the individual who is suffering. Thus, the Parfitian can argue that contrary to Scanlon's and Kumar's claims, in merely offering a substantial justification to the other individual the individual is already taking the other's challenge seriously and already recognising that the other has a claim on her. The challenge is addressed by offering justification, no matter whether this justification is based on personal or impersonal reasons. Therefore one might be lead to doubt whether Scanlon's and Kumar's claim that a relationship of mutual recognition is only valued when justification is based on personal reasons can offer a strong enough reason against the abandoning of the individualist restriction.

(iv) Value and Contractualism

I suggest that there is an additional reason for which our concern which we owe others is limited to a concern for an individual's personal reasons. I want to offer an explanation of why individuals can only appeal to personal reasons about themselves when reasonably rejecting a principle which draws on the value of individuals. I conclude that contractualism cannot reject the individualist restriction without dissolving itself.

Let's return to the part of Scanlon's argument where he claims that "impersonal reasons ... flow from the value of those objects themselves" (1998, p219, 220). I suggest that this shows that Scanlon is concerned with the fact that when an individual would be referring to impersonal reasons in order to reasonably reject a principles, she would be referring to the *value* of these impersonal considerations. Such as the value of the Grand

⁹ Making the same claim about Nagel's second example regarding the victims of Hiroshima seems problematic.

Canyon, of a rare species or of an aggregate amount of well-being. Suppose that the individualist restriction would be abandoned and an individual could reasonably reject a principle based on such an impersonal reason. The individual's giving of such a reason suggests that the impersonal considerations she is referring to are objectively valuable. This is because they are admissible as reasons for reasonably rejecting a principles, which implies that contractualism recognises that impersonal considerations have moral value. This means that when Parfit suggests that contractualism should abandon the individualist restriction and allow impersonal reasons as reasons based on which principles can be reasonably rejected by individuals, Parfit proposes that the impersonal considerations from which these reasons flow have value alongside individuals, from whom personal reasons flow.

However, recognising that impersonal considerations have value is not possible for contractualism. This is because this step suggests that impersonal considerations are valued in a way which is at least somehow analogous to the valuing of human life. But this contradicts the core of contractualist theory. Let's remind ourselves again that Scanlon is specifically writing on 'what we owe to each other' which he describes as a "narrower domain of morality having to do with our duties to other people, including such things as requirements to aid them, and prohibitions against harming, killing, coercion, and deception" (1998, p6). Scanlon repeatedly emphasizes that this part of morality is based on the recognition that human life is valuable. Based on this recognition, Scanlon moves to argue that to recognise the value of human life means to recognise that we are required to treat others only according to principles that they could not reasonably reject. That said, contractualism and 'what we owe to each other' is based on the assumption that individuals, but nothing else, are valuable for their own sake. It follows from this that considerations which contribute, increase or express an individual's well-being, claims or status have a value which is derived from the value which the individual herself is recognised as having. These are personal reasons. Personal reasons reflect what is considered to be of value by contractualism: the individual herself.

In comparison, impersonal considerations are declared as being valuable to broader morality by Scanlon, but as inadmissible in contractualism's narrow conception of 'what we owe to each other' as this theory is focused only on expressing the valuing of human life. Thus, the value of human life and individuals is to be found in a different category than the non-contractualist value of impersonal considerations and cannot be introduced into contractualism in form of impersonal reasons without a change in contractualism's fundamental concept of value.

Could a Parfitian argue that impersonal considerations simply count among the things which individuals themselves value and that impersonal considerations should therefore count as reasons? Individuals might be very invested in projects which preserve the Grand Canyon or which are aimed at decreasing the amount of suffering across the world. Surely the fact that individuals have these projects renders these impersonal considerations into reasons relevant to the individual. But I suggest that this objection can be easily replied to. If an individual wishes the Grand Canyon would be preserved for its beauty, this gives others a reason not to destroy the Grand Canyon because she wishes that the Grand Canyon be preserved for its beauty. Thus, this reason is a personal reason as it is for the individual's sake and not for the Grand Canyon's sake that others have reason to refrain from destroying the Grand Canyon.

Altogether, I have suggested that the reason for why contractualism cannot abandon the individualist restriction is not merely found in the aim to avoid circularity. Contractualism cannot abandon the individualist restriction because the individualist restriction is itself an integral part of contractualism. It is the purpose of contractualism to describe which duties individuals have towards each other and these duties are based but on one value: the value of individuals.

III. Frick's Pluralist Proposal

This section will consider a different proposal for explaining how contractualism can require us to save the many in Life Boat without violating the individualist restriction. That is, without allowing that principles can be reasonably rejected based on impersonal or aggregative considerations. While Parfit's proposal was aimed at changing the structure internal to contractualism, Johann Frick's pluralist proposal claims that contractualism should be externally supplemented. According to Frick, judgements of right and wrong in the domain of interpersonal morality must take contractualist considerations as well as impersonal considerations into account. Let's begin by introducing Frick's proposal, before discussing a number of problems with it.

(i) Frick's Proposal

Johann Frick has suggested that in order for contractualism to be able to offer the correct conclusion in cases like Life Boat, contractualism has to be modified. This is due to the fact that contractualism by itself is incapable of accommodating all properties which we

consider to be intuitively wrong-making, as it has insufficient resources for doing so. This is a concern also highlighted by Raz who suggests that the moral relevance of numbers and aggregation must be established outside of contractualism¹⁰, given that contractualism only accounts for special kinds of reasons, viz. what we owe to each other. In view of these considerations, Frick's pluralist proposal argues that although contractualism is set out as offering an account of whether an act is right or wrong in the domain of interpersonal morality, contractualism fails to capture all relevant aspects of interpersonal morality. For Frick, contractualism only captures one class of pro tanto moral reasons relevant to the domain of interpersonal morality, which is in itself insufficient to assess whether an act is right or wrong in interpersonal morality. Thus, Frick proposes that contractualism gives an account of 'equity', rather than an account of rightness and wrongness in interpersonal morality. He writes that the moral notion of equity "subsumes the specific class of pro tanto reasons captured by the contractualist formula" (2015, p221). In other words, it is equitable to act according to a principle which cannot be reasonably rejected by individuals based on personal reasons. Or, principles which cannot be reasonably rejected are principles which are equitable. For Frick, equity constitutes one pro tanto reason for determining right and wrong in interpersonal morality, alongside other pro tanto reasons relevant for determining right and wrong. Contractualism then, is not an account of right and wrong, but an account of 'equity'.

This allows Frick to argue that in order to determine right and wrong *all things considered* in the domain of interpersonal morality, other morally relevant concerns have to be balanced against equity. Here, Frick refers to impersonal concerns such as aggregate well-being. He writes that "an action's consequences in terms of people's well-being constitute an *independent* right- or wrong-making property of that action" (2015, p222). Therefore, they must be considered when making an assessment of whether a principle is right or wrong interpersonally. This means that impersonal concerns and 'reasons of well-being' are weighed against 'reasons of equity' - of satisfying the strongest individual claim - in order to determine which action is right. For instance, principles can satisfy the strongest individual claim and therefore be equitable, and yet be wrong because other moral considerations must be taken into account when determining whether an action is right or wrong, such as consequences and outcomes.

Frick's proposal offers an attractive account despite modifying contractualism significantly. It does not force contractualism to drop any of its core tenets such as the

¹⁰ Raz, 2003, p348

individualist restriction and instead restricts what a contractualist account provides: not a reply to whether a principle is interpersonally right or wrong, but an assessment of equity. Frick opens up contractualism to being externally supplemented by impersonal considerations of aggregate well-being. This accounts for the shortcomings of contractualism as it allows us to include aggregative concerns when determining right and wrong. The pluralist proposal allows us give the intuitive correct reply to Life Boat. According to contractualism, it is equitable to save either the single individual or the greater number of individuals in Life Boat. Yet the fact that saving the one is equitable is ‘swamped’ by the aggregate well-being produced when saving the greater number. Due to its success in accounting for Life Boat, Frick’s pluralist proposal has been positively received by Scanlon who mentions it as a potentially successful way to avoid contractualism’s problem of aggregation¹¹.

At first, one might think that Frick’s proposal is of no consequence for a contractualist understanding the separateness of persons objection. As seen, Frick’s proposal doesn’t change the general structure of contractualism. However, I suggest that for a contractualist understanding the separateness of persons objection, Frick’s proposal is as problematic as Parfit’s proposal. This is because Frick stipulates that contractualism no longer by itself determines whether a principle is right or wrong. Contractualism now only supplies one pro tanto reason for considering a principle right or wrong, viz. whether a principles is equitable. Understanding the separateness of persons in contractualist terms would reject utilitarianism for not considering equity, but cannot reject utilitarianism for employing impersonal reasons and aggregation.

(ii) Objections

I argue that, like Parfit’s proposal, Frick’s pluralist proposal might not actually be able to offer a solution to how contractualism can accommodate Life Boat. If we are able to dismiss Frick’s proposal, it is still feasible to understand the separateness of persons objection in contractualist terms. In light of this, I want to look at some objections to Frick’s account.

First, one might allege that Frick’s proposal is inconsistent because of its volatile stance on aggregation. That is, Frick’s proposal readily accepts that contractualism, or an assessment of equity, excludes aggregative considerations based on the individualist

¹¹ see “Contractualism and Justification”, Draft from 2017

restriction. However, Frick's pluralist proposal re-introduces aggregative considerations at a different level. Once it is clear whether a principle is equitable or not, Frick's proposal suggests that aggregative considerations or 'reasons of well-being' must be considered to determine whether a principle is right or wrong. But if Frick's proposal is adamant on the relevance of aggregative considerations, why does Frick accept contractualist reasoning as it is? In view of the fact that Frick's proposal denies the relevance of aggregative considerations at its contractualist stage, only to import aggregative considerations as an additional pro tanto aspect of interpersonal morality at its 'all things considered' stage, Frick's proposal looks rather erratic.

This objection misconstrues the pluralism behind Frick's proposal. Frick's pluralist proposal suggests that reasons of equity which are arrived at by exclusively considering personal reasons are considered as one pro tanto reason which exists alongside other pro tanto reasons such as aggregative considerations. It is therefore fully acceptable for reasons to be inconsistent with each other. The advantage of Frick's pluralist proposal is that it allows us to distinguish between different kinds of reasons we might have, such as complaints-based reasons and aggregative reasons. This is an advantage Frick's account has over Parfit's suggestion that contractualism should abandon the individualist restriction. Parfit's proposal runs into problems since abandoning the individualist restriction introduces aggregative considerations as reasons based on which principles can be reasonably rejected by individuals, rather than as objective and independent reasons existing in favour of certain principles. Having distinguished the different kinds of pro tanto reasons we have for considering an act right or wrong in interpersonal morality, Frick's proposal allows us to weigh them against each other by carefully assessing what reasons of equity swamp reasons of well-being because of its urgency or strength, and vice versa.

However, the necessity of weighing up different pro tanto reasons against each other leads us to a second potential objection. Frick brings up briefly the problem of determining at which point reasons of well-being start to outweigh reasons of equity, but proposes that this determination is left to one's ethical judgement. But what does Frick mean by this? Frick suggests that one needs an individual's ethical judgement in order to determine in which cases reasons of equity prevail and in which cases they are swamped by reasons of well-being. Frick's proposal seems to simply align reasons of equity and reasons of well-being for a principle and if they pull in opposite directions, nothing further can be said other than referring to an individual's ethical judgement. This seems to entail that the resulting principles in cases of harm are arrived at by weighing up reasons against

each other and deciding based on one's ethical judgement, which, presumably, is also strongly led by intuitions. Now unfortunately this gives little, if not too little guidance on what is right or wrong, given that the latter is now down to an individual's judgement between reasons of equity on the one hand and reasons of well-being on the other, with no guidance of how to adjudicate between them. Problematically, Frick shows that we cannot rely on contractualist reasoning alone, but offers no advice on how to think about cases in which people have conflicting intuitions and judgements, i.e. the cases for which a systematic moral theory was supposed to give answers to in the first place.

Frick can be defended by introducing a point made by Michael Otsuka. Otsuka recommends following the method of reflective equilibrium in order to justify one's beliefs about our duties to save from harm in cases such as Life Boat, in which our intuitions come apart from the conclusions offered by moral systems such as utilitarianism and contractualism. The method of reflective equilibrium requires us to check whether our intuitions about cases such as Life Boat "gain support from more general principles that capture those morally relevant factors or distinctions that appear on reflection to constitute one's reasons for these intuitions" (2006, p134). These general principles are then themselves examined. This looks similar, yet much more helpful and methodic than Frick's appeal to using one's ethical judgement to decide between reasons of equity and reasons of well-being. Thus, Frick can be defended by referring the method of reflective equilibrium as a way to arrive at more established and considered ethical judgements between reasons of equity and reasons of well-being.

Yet it can still be argued that Frick's pluralist proposal has eroded what is special about contractualism. That is, contractualism as introduced by Scanlon points towards the crucial moral significance of individual complaints and determines that a principle is wrong if it can be reasonably rejected by an individual. This provides us with a precise and purposeful guideline of how to arrive at ethical judgements. We merely need to compare principles according to whether they can be reasonably rejected by individuals. Yet if this precise guideline is re-categorised as determining whether a principles is 'equitable' and subordinated under Frick's pluralist proposal and the method of reflective equilibrium, the unique aim and ability of contractualism has been cut: its simple structure of comparing the reasonable rejectability of principles for determining whether a principle is right or wrong. So what's left of contractualism if this is correct?

This objection still misconstrues what Frick is aiming for. Frick recognises the special structure and aim of contractualism and merely reduces what contractualism is able to establish by integrating it into a broader pluralist framework. Yet the contractualist

structure and conclusions are preserved, as Frick still requires contractualist reasoning to determine whether a principle is equitable, namely whether it can be reasonably rejected by individuals. That is, although reduced, contractualism still has an important role in determining one pro tanto aspect of interpersonal right and wrong. It looks as if Frick's proposal can simply narrow what contractualism aims to establish and is therefore suddenly able to solve all of contractualism's problems regarding cases such as Life Boat by introducing a separate pro tanto reason of well-being which coexists with reasons of equity.

I suggest that there are two objections to Frick's proposal which we haven't considered yet. If we think about contractualism in terms of equity and in terms of merely supplying one pro tanto reasons for establishing whether a principles is right or wrong, contractualism is a means for determining the strongest individual complaint which signifies reasonable rejectability and therefore renders a principle wrong. But contractualism, as argued in defending the individualist restriction against Parfit's proposal, cannot be reduced to this in the face of its additional moral claims and commitments. It is based on the value of justifying principles to individuals which is necessary to respect individuals, and it is based on the individualist restriction which indicates that only individual are considered to be of value. That is, Frick's proposal sparks two problems.

First, Frick's proposal is but another way to eliminate the individualist restriction, just by an approach external instead of internal to contractualism. As such, it runs into the same problem with which the abandonment of the individualist restriction was charged. That is, it was shown before that contractualism has a very strong motivation for excluding impersonal considerations when aiming to establish right and wrong of interpersonal morality, internally and externally to its account. Because contractualism regards the individual to be of ultimate and superior moral value in interpersonal morality, while objective states of affairs or aggregates of well-being have no comparable value, the objections individuals have to moral principles are morally significant for establishing interpersonal morality while reasons of well-being are not. In allowing reasons of well-being to provide a pro tanto reason relevant for interpersonal morality, Frick's pluralist proposal relinquishes one of the foundations of contractualist thought and the superior value contractualism assigns to individuals.

Second, Frick's proposal undermines the value which contractualism assigns to the justification of principles to individuals. If reasons of well-being count towards principles of right and wrong in the same way in which reasons of equity do, then justification

becomes superfluous in the form contractualism understands it. That is, contractualism understands the justifiability of moral principles to individuals as necessary as only such justifiability to individuals expresses respect towards the value of individuals and their rational capacities of being able to have and being able to assess reasons. Frick's proposal, however, by allowing non-contractualist reasons to count towards establishing right and wrong, abandons this foundational concern about justification, rendering such justification superfluous. It seems that this leads us to basically adopting a Razian account which stipulates that the justifiability of moral principles is vacuous, since what really matters is whether principles are objectively valid. Principles must not be justified to individuals but must be justified simpliciter. In other words, it means eliminating the basis of justification on which contractualism is built. Considering both the first and the second problem, it now appears as if Frick's pluralist proposal can only keep contractualist reasoning in the form of supplying reasons of equity if it essentially abandons both of contractualism's individualist moral commitments.

This chapter has introduced the problem of aggregation, or the claim that contractualism fails to account for our basic intuition that in some cases, we ought to aggregate. We ought to, for instance, save five rather than one individual in Life Boat. I have argued that the problem of aggregation cannot be solved by altering the structure of contractualism so that it can take aggregative considerations into account. To be more exact, I have looked at two different proposals for how to modify the structure of contractualism either internally or externally. I have concluded that as soon as impersonal, aggregative considerations are admitted into determining right and wrong, the foundation of contractualism is abandoned. Since the value of human life is the ground on which contractualism is built, individuals can reject principles only based on personal reasons, hence preserving the individualist restriction and contractualist non-aggregation. Importantly, a reliance on personal reasons is a manifestation of the original motivation of contractualism, of the value of human life.

Chapter 3

The Numbers Debate

According to the aggregation problem, contractualism is unable to account for the commonly held intuition, illustrated in Life Boat, that when having the choice between saving a smaller number of people from death or a larger number of people from death, one has a duty to save the greater number¹². Unless, of course, it were to drop the individualist restriction. That is, it is commonly accepted among most people -and most philosophers- that there is a duty to save the greater number in Life Boat¹³. Indeed, the opposing intuition that it is permissible to save the single individual strikes most people as contrary to our respect for human life and is often described as an implausible, irrational and even “lunatic” idea (Tyler Doggett, 2013, p313).

¹² Note that a duty to save the greater number is understood in the literature as implying that it is morally impermissible to save the single individual.

¹³ I focus on Life Boat since Life Boat is the case most commonly referred to in the literature

With this in mind, one might be resolved to reject contractualism for its failure to account for one of our most commonly held intuitions. One might even be led to think that in presenting a comprehensive moral theory which nevertheless cannot reflect our commonly held intuitions, contractualism is not much different to consequentialism (Otsuka, 2006). Further, it might be thought that contractualism thereby fails to reflect the moral importance of the separateness of persons. This is because taking seriously the moral importance of the separateness of persons, is considered to still account for the commonly held intuition that there is a duty to save the greater number. In fact, the aggregation problem has caused some commentators to abandon an understanding of the separateness of persons objection through a contractualist lens (e.g. David Brink 1993). But such conclusions are premature. It seems to me that instead of bending over backwards in order to show how contractualism could accommodate the intuition that there is a duty to save the greater number, it is worth questioning whether there really is a duty to save the greater number.

In this chapter, I cast doubt on the claim that one ought to save the greater number in Life Boat and conclude that the debate suffers from a stalemate in which each side denies the premises of the other. To this aim, the chapter is split into four sections. In the first section, I present two reasons for questioning the commonly held intuition that one has a duty to save the greater number in Life Boat. In the second section, I look at several real-life cases in order to examine the maximisation assumption, which is often considered to underlie the number advocate's intuition. In the third section, non-consequentialist arguments for a duty to save the greater number are shown to equally rely on a maximisation assumption. I then provide reason to question such a maximisation assumption. In the fourth section, I look at arguments which express scepticism towards the claim that there is a duty to save the greater number and propose that, they, too, rely on questionable assumptions. I conclude that both number advocates and sceptics of a duty to save the greater number fail to engage with each other due to a lack of any shared premises. This exposes the need for an argument which can successfully engage with both positions.

I. The Number Advocate's Intuition

In this section I suggest that the intuition that there is a duty to save the greater number may not be as securely held as it first appears. To remind ourselves, Life Boat is offered as a neutral test case and thought experiment. As such, it isolates the feature of the number

of individuals at stake and allows us to assess whether they carry any moral weight. In Life Boat, all other considerations are eliminated and all other things are equal. However, for two reasons, I doubt that Life Boat really is such a neutral case. Indeed, I propose that the initial framing of Life Boat is already conducive to the formation of the intuition that there is a duty to save the greater number. If this is correct, it helps to explain the disrepute of the intuition that it is permissible to save the few.

First, I suggest that the harm of death threatening the individuals in Life Boat unduly influences our intuitions about the numbers in Life Boat. Our intuitions about cases in which death or serious harms such as maiming, torture or paralysis are at stake, are much stronger than in otherwise identical cases that involve small, rather than large, harms. Consider, for instance, the case where one can either distribute one ice-cream to one child or five ice-creams to five other children. While a person who is fonder of children may prefer giving ice-creams to the five children, I suggest that it seems fully permissible to give one ice-cream to the single child. It then seems that in some cases in which claims are tied, one might legitimately choose to give a benefit to the single individual. But since it would also be permissible to keep all ice-creams to oneself and walk away, the ice-cream case is actually disanalogous to Life Boat. After all, the rescuer's duty to aid in Life Boat makes it wrong for the rescuer to walk away.

So let's instead consider Analgesic, where an individual has a serum which can either cure the headache of one person or the headaches of five other persons. It is wrong for the individual to walk away and waste the serum¹⁴. Now what if the individual decides to give the serum to the single person? Based on the number advocate's claim that one has a duty to save from pain the greater number, the individual has acted wrongly as it is wrong to cure a single person if one could instead cure five persons. But I propose that it seems intuitively permissible for the individual to make either choice; she can permissibly opt to help the one or to help the five. In fact, it seems problematic to stipulate that in choosing to cure the headache of the single person, the individual is committing a moral wrong¹⁵.

With these cases in mind, it seems that if the harm in Life Boat were to refer to headaches or broken limbs, the intuition that there is a duty to save -or aid- the greater number might not be as widely shared. I suggest that people are more likely to have the intuition that there is a duty to aid the greater number once the threat at stake is death.

¹⁴ If a headache is regarded as too trivial to create a duty to aid in the rescuer, let's stipulate it to be an intense and painful migraine.

¹⁵ One might follow Elizabeth Anscombe and ask "who is wronged?" (1967). I will engage with this reply in section IV.

This is because people react emotionally to the prospect of death and its absoluteness, in a similar way in which people react emotionally and with repulsion to the prospect of torture. People are more likely to consider ‘deaths’ rather than ‘headaches’ as something to be generally minimised in the world. In other words, due to the maximisation of the harm at stake in Life Boat, one might intuitively be led to show more concern for additional individuals and therefore support the relevance of numbers. In response, the number advocate might suggest that the different emotional reactions to Analgesic and Life Boat track that the moral relevance of the number of individuals increases with increasing severity of the harms involved. In other words, it is not a purely emotional, irrational response to treat Life Boat and Analgesic differently. It is rather a reflection of the much larger moral weight which the imposition of a much greater harm carries.

However, if the number advocate would opt for this reply, he already concedes that the fact that we ought to save the greater number in Life Boat does not reflect a general claim that we ought to save the greater number if claims are tied. This leaves the number advocate with the weight of explaining why, if the number of individuals matter, they matter in Life Boat but not in Analgesic. And why, if there are considerations which would justify ignoring the numbers in Analgesic, these are outweighed by an increase in the severity of harm in Life Boat. Therefore, in order to test whether one’s intuition support a duty to save the greater number in conflict cases between a smaller and a larger group of individuals, looking at Life Boat is not sufficient. Instead, one should assess whether one supports this duty for all cases with all ranges of harms, from headaches to broken limbs, and from broken limbs to torture and death. All in all, the stipulation of death as the harm threatening the individuals in Life Boat signifies that not all other moral considerations are eliminated in Life Boat. In stipulating death, instead of headaches or broken limbs, Life Boat contains an additional morally relevant feature which is likely to be conducive to the formation of the intuition that there is a duty to save the greater number.

Second, there is reason to think that the commonly held intuition that there is a duty to save the greater number in Life Boat is more of an assumption, then a reflected intuition. Consider a case where a rescuer has to choose between saving a group of individuals with blue eyes and a group of individuals with green eyes. Intuitively, eye colour is a morally irrelevant feature and the rescuer may save either group. Now consider the case where the rescuer has to choose between saving a group of men and a group of women. Although gender might have moral relevance in some special circumstances (e.g. biological purposes), it is at least unclear whether gender should play a role in influencing

the rescuer's decision in this case. Indeed, many people will feel positive that it should not influence the choice made. Now in Life Boat, the rescuer is asked to decide between a group with fewer individuals and a group with more individuals. Most people have the intuition that the numbers matter. But although this might be the most popular intuition, the moral relevance is being assumed, rather than argued for.

In this light, I suggest that although Life Boat is designed to allow us to assess our intuitions with regards to the moral relevance of the number of individuals, it seems that this challenge is not engaged in with the necessary scrutiny. Given that other factors such as gender are inconclusive for deciding whom to save, why should the number of individuals be an exception? It seems equally plausible to suggest that when choosing which groups of individuals to save, the number of individuals that make up each group is irrelevant in the same way in which the gender and eye colour of the individuals in both groups is irrelevant.

In reply, the number advocate might deny that the numbers of individuals in a case such as Life Boat is a feature comparable to the features of eye colour or gender. Contrary to eye colour and gender, the number of individuals carries moral weight from the outset. This is because the number of individuals is a feature specifying the presence of individuals, who clearly have moral value in themselves, and not the presence of certain attributes of individuals which carry no particular moral value. The number of individuals informs us about how many individuals are involved, each of whom must be adequately recognised and respected. Therefore the number advocate can argue that in not considering the number of individuals to be morally relevant, one is failing to take seriously the presence of each individual.

There are two problems with this defense. First, as already alluded to earlier, the number advocate's reply assumes that the number of individuals in Life Boat somehow aggregates and is, therefore, morally relevant. It does not provide any substantial argument for aggregation. This leads us to the second problem. I suggest that even if one considers the number of individuals to have some kind of moral relevance which should be taken into account, it is again unclear what justifies the claim that one has a *duty* to save the greater number. Number advocates not only assume that aiding the greater number matters in Life Boat, they assume it to be decisive and to ground a duty to save the greater number.

It was then shown, first, that the framing of Life Boat is conducive to forming the intuition that there is a duty to save the greater number. This questions the popularity and alleged obviousness of the latter, and simultaneously casts doubt on the claim that it is

'lunatic' to consider the permissibility of saving the single individual. Second, I have argued that the popular intuition that there is a duty to save the greater number is little more than that: it is assumed rather than argued for.

II. The Maximisation Assumption

In the previous section we have seen that the number advocate relies on the assumption that the numbers are morally relevant in the Life Boat case. Conveniently, the number advocate's assumption that the numbers matter can be supported by reference to a more general maximisation assumption which is often employed in moral philosophy. The maximisation assumption claims that that one ought to produce more of a good, rather than less of a good if one is able to do so, and is what lies at the heart of consequentialism. As Samuel Scheffler puts it, "so far as morality is concerned, what people ought to do is to minimise evil and maximise good, to try, in other words, to make the world as good a place as possible" (1988, p1). If one is giving out ice-creams to children, one ought to make ten children happy by giving ice-creams to them rather than just giving an ice-cream to one of them. If one is able to save London rather than Luton from annihilation, one ought to save London. It can easily be seen how number advocates who argue that we have a duty to save the greater number rely on the maximisation assumption: There is a duty to save the greater number in Life Boat, since saving the greater number does more good than saving the single individual. One ought to save the greater number since saving the greater number ensures that more individuals can live their life, experience happiness, pursue their dreams etc. In short, the number advocate's assumption that there is a duty to save the greater number is propped up by the maximisation assumption: Since we ought to do more good rather than less good, we ought to save the greater number.

However, I suggest that real life choices involving the saving of lives, are in fact not guided by the maximisation assumption. Bearing in mind that the maximisation assumption appears to be highly plausible, this might give us pause. Consider the two following examples:

- (i) In mass casualty incidents in which the number and severity of injured individuals exceeds available resources, triage is implemented. Triage separates casualties into five levels which determine their priority for treatment: patients with major injuries who require immediate treatment, patients with injuries which require urgent but not immediate treatment, patients with minor injuries who will be given delayed

treatment, patients who are unlikely to be saved given the limited amount of resources available, and patients who are dead. The first level of patients are prioritised over all other levels, and the fourth level of patients are unlikely to be given treatment¹⁶.

(ii) The WHO provides guidelines on how to expand universal health coverage in light of limited resources. The WHO recommends that the achievement of the near universal coverage of cost-effective treatments of high priority services is to be prioritised (e.g. birthing assistance). This means that unless there is near universal coverage of such services in an area, medium or low priority services will not be provided. Equally, no cost-intensive high priority services will be provided (e.g. bypass surgery, chemotherapy)¹⁷.

The number advocate might argue that both cases follow the maximisation assumption: In (i), the prioritisation of individuals with higher chances of survival maximises the number of lives saved overall. In (ii), the prioritisation of universal coverage of cost-effective treatments of high priority services equally ensures that as many lives as possible are saved. The aim in both cases is to maximise the good produced with the limited resources provided.

But this consequentialist reply can be rejected. In fact, certain constraints are imposed on the distribution of resources in both cases, which diverge from the maximisation assumption. In (i), individuals with minor or medium injuries which are not life-threatening could be left entirely untreated for a prolonged amount of time in order to use available resources to attempt to save the lives of individuals in level four. These have suffered catastrophic injuries and are likely left to die given the excess of their injuries. In (ii), resources could be spent on funding cost-intensive life-saving treatments rather than on medium level cost-effective treatments. That is, instead of spending funds on treating asthma, bypass surgery could be used to save more lives. In each case more good could be done by saving more lives. The maximisation assumption is not put into action since guidelines in both (i) and (ii) are also motivated by values other than maximisation. In (i), the value to be concerned with is dignity and respect. Despite the extraordinary circumstances, individuals are still to be treated with dignity and respect, meaning that individuals with easily curable injuries will not be abandoned in order to maximise

¹⁶ see Lowes, A.J., Cosgrove, J.F. (2016) and Palmer, A., Hebdon, J. (2015)

¹⁷ Making fair choices on the path to universal health coverage: Final report of the WHO Consultative Group on Equity and Universal Health Coverage, World Health Organization 2014

resources on individuals who have a very small chance of survival as it is. In (ii), the WHO's main values are both fairness and benefit maximisation. Focussing funds on cost-intensive high priority services to save a smaller number of individuals would be to the detriment of all other individuals who are in need of health services and thus unfair.

But a more flexible utilitarian with prioritarian leanings might find a way of saying that (i) and (ii) follow the maximisation assumption. According to the maximisation assumption, one should always do more good rather than less good. In (i) and (ii), so the utilitarian can argue, this simply means the maximisation assumption calls for a different course. In (i) and (ii), the greatest good is not secured only by saving the most lives, but also by allocating resources most efficiently and by helping those who are worse off. Thus, the guidelines in (i) and (ii) merely aim to maximise the good as construed in such a way. We are then still following the maximisation assumption.

I want to give a new example that the consequentialist cannot deal with. Consider a pattern which has been highlighted and discussed by Alex Voorhoeve (2014). Health services around the world use resources to treat minor ailments and injuries such as flus, hangnails and ear infections instead of using those resources to save more lives. This offers a reply to the prioritarian defence as it presents a case in which it cannot be claimed that the good is maximised by helping the worse-off and by allocating resources in the most efficient way. If this were the case, all resources should be allocated to treating severe illnesses and to improve the survival chances and quality of life of individuals with life-altering and life-threatening illnesses.

As a matter of fact, it seems difficult to imagine health services to work much differently: Suppose health services in England would start to maximise the good by offering treatment only for very major injuries and would pour all funds into life-saving research. In this case, we would have a very different practice of medicine than the one we are currently faced with. So either our current medical practices which we consider to be reasonable, are morally problematic, or it is incorrect that we ought to maximise healthcare according to the maximisation assumption¹⁸. If we think that the maximisation assumption does not apply in healthcare, it can be rejected as a moral constraint.

This section was aimed at evaluating whether our approach to saving individual lives in real life cases of health care and emergencies contains the maximisation assumption used by the number advocate in Life Boat. This was shown not to be the case. In many

¹⁸ Rather, I suggest that health services are set up so that they are able to respond to every individual's right to health and to deliver healthcare to whomever requires it. This takes priority before the aim to maximise the good produced. This is also reflected in the WHO's aim for universal health coverage, which stipulates that each individual has a right to health.

real life cases concerning the saving of lives, the maximisation assumption is not applied. As indicated by our intuitions in the previous cases, factors beyond maximising the good are considered to be morally relevant. For instance, fairness and an individual's right to health. Thus, the right thing to do is not necessarily whatever maximises the good. Therefore, a duty to save the greater number in Life Boat cannot be justified by reference to the claim that saving the greater number maximises the good.

III. The Non-Consequentialist Argument

I suggest that the number advocate can still maintain his claim that one ought to save the greater number. Let's remind ourselves that many number advocates are in fact non-consequentialists, or philosophers who hold mixed positions. For instance, the intuition that there is a duty to save the greater number is shared by non-consequentialists such as Frances Kamm and Michael Otsuka. They reject consequentialism and the claim that we ought to maximise the good in morality. Rather, they affirm that there are constraints which determine the permissibility of moral actions. These constraints are based on moral considerations such as fairness and the rights of individuals. For instance, it is impermissible to use Ava's kidney in order to save Bea's life since Ava has a right to her body, and it is impermissible to treat Ava unfairly by allocating a benefit to Bea instead of distributing it fairly. As such, the non-consequentialist number advocate's claim that there is a duty to save the greater number will not be grounded in the consequentialist maximisation assumption.

Now, what positive arguments are given by non-consequentialist number advocates in order to establish a duty to save the greater number in Life Boat? As the literature offers a great number of such arguments, it is impossible to do justice to them. However, I suggest that there is a common thread running through most non-consequentialist arguments in favour of a duty to save the greater number, which merits closer examination. A large number of such non-consequentialist arguments proceeds along the following lines: It is argued that the non-consequentialist constraint which the rescuer must adhere to when making a decision whom to save in Life Boat, is a constraint on how we may treat individuals. According to this, each individual must be shown respect and must be treated in accordance with her elevated moral value as a human being. It is then claimed that in order to treat each individual in accordance with her moral value, one ought to save the greater number. The following examples clarify this claim.

First, consider Kamm's argument for a duty to save the greater number in Life Boat (2011). Kamm argues that each individual must be treated according to her equal significance. Kamm then claims that treating each individual according to her equal significance requires recognising that it is better that more, rather than that fewer, individuals are saved. This, for Kamm, is analogous to how it is better to save two individuals, rather than one individual in a non-conflict case. Kamm suggests that choosing to save fewer individuals, when one could save more, fails to take into account the equal moral significance of the five individuals on the second rock in Life Boat. Second, a Razian argument for the duty to save the greater number is based on respect for each individual (Raz, 2003). Respect for each individual in Life Boat, or so one might think, means to be aware that each individual has herself reasons to want to continue living her life. Thus, respect for each individual gives the rescuer a reason to want each individual to be rescued for their own sake. In order to respect as many individuals as possible in such a way, one has a duty to save the greater number.

Both arguments suggest that in order to treat all six individuals in Life Boat in accordance with their moral value, the rescuer ought to save the greater number. In each case, saving the greater number ensures that the greater number of individuals is treated in the required way, e.g. appreciated in their equal significance or treated with respect. This approach to establishing a duty to save the greater number can be found in many other arguments put forward in the literature. Note that like Kamm and Raz, each argument appeals to a different value which is argued to reflect that each individual is treated appropriately and in accordance to her moral value. For instance, Martin Peterson argues that each individual ought to be treated with fairness (2009), Tom Dougherty appeals to the altruistic end of wanting to alleviate a stranger's need (2013) while Hsieh et al. appeal to a duty to distribute resources equally between individuals (2006). Nevertheless, all arguments proceed according to the same method and conclude that in order for individuals to be treated in accordance with the respective values listed, one ought to save the greater number. In other words, they all agree that in order to adhere to the non-consequentialist constraint of showing respect for individuals, one ought to save the greater number.

I suggest that these non-consequentialist arguments all rely on a maximisation assumption¹⁹. This is the case since each argument maximises whichever value is

¹⁹ And although there are some non-consequentialist arguments for a duty to save the greater number which do not directly rely on such maximisation, these arguments have been shown to be unsuccessful (Otsuka, 2006).

supposed to appropriately show respect for individuals. It argues that one ought to recognise the equal significance of more rather than fewer individuals, ought to respect more rather than fewer individuals or treat more rather than fewer individuals fairly. In other words, there is a duty to save the greater number because one ought to do more good, rather than less good. I explain why this should be considered as problematic as soon as the following clarification has been made.

Such a non-consequentialist maximisation assumption is to be carefully distinguished from the previously discussed consequentialist maximisation assumption. According to consequentialist maximisation, the right course of action is the course of action which maximises the good. But since this maximisation assumption was shown to be mistaken, it cannot ground a duty to save the greater number. Now, the non-consequentialist number advocate proceeds differently. He argues that constraints determine the right moral action and that although consequences matter, they only matter if they do not conflict with moral constraints. Life Boat is a case in which all other things are equal, and a case in which no other moral constraints apply. This leaves only one moral consideration to be taken into account: showing respect for each individual. This consideration makes it wrong to walk away and save no one as this would fail to show respect for individuals. At this point, this leaves the two options of either saving the single individual or saving the greater number, both of which seem to show respect for individuals and are not ruled out by non-consequentialist constraints. So how to decide which one is the right action to pursue? Here, the non-consequentialist maximisation assumption comes into play. In light of the fact that doing more good cannot possibly conflict with any other moral considerations in Life Boat, one ought to follow Scheffler and make the world as good a place as possible. That is, if no conflicting moral considerations exist, one ought to pursue the action which produces more good rather than the action which produces less good. In Life Boat, this means showing respect for more rather than for fewer individuals. Therefore, one has a duty to save the greater number.

However, I want to express some scepticism towards such a non-consequentialist maximisation assumption based on three observations made by David Wiggins. First, Wiggins suggests that maximising the good presumes that there is such a thing as a ranking of state of affairs. However, as Wiggins suggests, this is not an obvious assumption to make. The goodness of acts and state of affairs is often judged in context of its circumstances and one's personal involvement (2006). Thus, it is difficult to genuinely rank state of affairs in an objective manner.

But this is not the only assumption made. Second, Wiggins proposes that it is very difficult to establish the claim that the right thing to do is to produce the best state of affairs. One may not, for instance, simply assume that the criteria for assessing goodness in a state of affairs is constituted by its consequences, as this, so Wiggins reasons, steals the conclusion (2006, p216). Wiggins concludes from this that the claim that one ought to produce more rather than less good, is neither a grammatical nor a logical truth and that it is entirely unproven. Furthermore, Wiggins goes as far as laying stress on the fact that the claim that the right action corresponds to the action which maximises the good constitutes a misconstrual of ethical language.

It is clear from Wiggins' insights that the non-consequentialist reliance on the maximisation of values constitutes a problem. It constitutes a problem as so far as it is merely assumed, rather than argued for, that the right thing to do in Life Boat is to maximise respect shown to individuals. In response to this, the non-consequentialist number advocate might be eager to underline that even if the maximisation of value is an assumption, this has little significance. After all, he might continue, moral philosophers regularly make assumptions. Philosophers, for instance, assume that all individuals have equal moral status, or assume that pain is bad. Although these claims are commonly accepted in the literature, so the non-consequentialist number advocate may continue to claim, they also constitute unproven assumptions. Given that it is common to work with assumptions in the literature, and even ground arguments on them, why should it be problematic to assume that one ought to do more good rather than less good if this does not conflict with other values? For what it's worth, the claim that we ought to do more rather than less good and aim to create a better world is surely a particularly plausible and obvious assumption to make.

But this reply ignores that the two aforementioned assumptions are not analogous to the non-consequentialist maximisation assumption. First, there is an awareness in the literature that the assumption that all individuals have equal moral status is problematic and in need of further justification. A debate exists and is continuously growing. Yet there is no such awareness of the fact that the non-consequentialist maximisation assumption, too, is without justification. Second, it is correct that there is little argument for the assumption that suffering is bad²⁰. But our intuition that pain is bad is not a questionable assumption as it is based more or less unanimously²¹ shared among individuals. Yet the intuition that one ought to maximise the good across individuals is a very different

²⁰ Of course, not in all cases. Suffering can be needed, useful or desirable.

²¹ Let's exclude the very few individuals who enjoy pain and those who are medically unable to feel pain

contention to make. It is not only somewhat removed from individual experiences, but also constitutes an abstract moral distinction which cannot necessarily be assumed as self-evident.

There is a third observation by Wiggins which is worth mentioning. Suspicion might be aroused by the fact that the non-consequentialist so happily agrees with the consequentialist on a duty to maximise in Life Boat. The non-consequentialist number advocate prescribes to the idea that one ought to maximise the good in Life Boat and to maximise the compliance with the moral constraint of showing respect to individuals, despite the fact that the non-consequentialist also strongly opposes maximisation as a general principle. This suspicion is developed by Wiggins, who asks whether there is not “something strange, moreover, in taking [a] duty for granted at first and then subsuming it within a single or overarching rule of right action?” (2006, p220). In Life Boat, the non-consequentialist number advocate purports that the rescuer has a duty to show respect towards each individual. This means that the rescuer’s duty to respect individuals is a duty which is separately owed to each single individual in Life Boat. In light of this duty, Wiggins proposes that a duty to maximise the showing of respect towards individuals signifies that it is no longer the showing of respect towards each individual which is regarded as valuable, but the *maximisation of the showing of respect*. Thus, ‘showing respect towards individuals’ is considered valuable as an impersonal value, of which it is better to have more rather than less. In a duty to save the greater number built on maximisation, the moral value of showing respect towards each individual is subsumed under a separate rule of right action. This, of course, being the maximisation of respect. It is easy to see why this might constitute a problem for a non-consequentialist number advocate, as the showing of respect is no longer the guiding and relevant moral consideration in this case. Instead of responding to one’s duty towards individuals, it seems that a non-consequentialist duty to save the greater number relies on an impersonal maximisation aim.

Nevertheless, I suggest that the non-consequentialist number advocate can reply that this misunderstands his argument. According to the non-consequentialist number advocate, a duty to save the greater number is not based on the aim to maximise respect for the sheer sake of maximising the good. Respect is maximised for the sake of the individuals to be respected. That is, the aim to maximise respect towards individuals is not a rule of right action which exists in separation of the duty to respect each individual, or under which the latter is subordinated. Rather, it can be argued that a duty to respect individuals already implicitly contains a duty to respect individuals to the greatest extent

possible. In other words, maximisation can simply be assumed to be part of what it means to have a duty to show respect for individuals, and is therefore re-introduced on a more basic level. However, I suggest that the number advocate's reply is not entirely satisfying, as it still fails to explain why duties are understood as already containing a maximisation principle. This leads us back to the previous claim that the non-consequentialist number advocate relies on an unproven maximisation assumption.

Perhaps the fact that the maximisation assumption is unproven does not tell us to necessarily hurry to question it. But supposing that it is acceptable to go along with such an assumption ignores that a duty to save the greater number in Life Boat should not be embraced lightly. After all, such a duty denies the single individual in Life Boat any chance of survival. Indeed, I suggest that it is worrisome that the flip-side of a duty to save the greater number claims that it is morally wrong to save the life of the single individual. It appears to me that ruling the saving of a life as constituting a morally wrong act in the context of Life Boat is a strong claim to make, which one should be wary of. Given that what seems to be the wrong course of action in Life Boat is leaving all six individuals to die, it seems intuitively questionable to mark the saving of a life as morally wrong, even if the former is considered to be wrong to a larger degree.

Whether or not one accepts the latter worry as a problem for the number advocate, it was shown that the non-consequentialist number advocate relies on a questionable maximisation assumption. Not enough has not done enough to establish a duty to save the greater number in Life Boat.

IV. Scepticism of a Duty to Save the Greater Number²²

A few moral philosophers have questioned whether there is a duty to save the greater number in Life Boat. They have proposed that the number of individuals in either rock is entirely irrelevant, or does at least not ground a duty to save the greater number. Therefore, it is morally permissible to save either the single individual or the greater number in Life Boat. The only condition relevant is that the rescuer's choice is based on a fair and intelligible method for determining whom to save²³. This section assesses whether there are substantial grounds for rejecting a duty to save the greater number based

²² Although I am taking the term from the literature, scepticism of a duty to save the greater number is in no way analogous to scepticism in epistemology. Sceptics of a duty to save the greater number merely doubt something which most people consider to be obvious.

²³ For Taurek, this mean flipping a coin. For Munoz-Dardé and Foot, this excludes reasons based on morally irrelevant and discriminatory features, such as gender, religion etc. (Anscombe, Munoz-Darde)

on the arguments provided in the literature. However, I conclude that arguments which question a duty to save the greater ultimately also rely on questionable assumptions, in the same way the number advocate does. This makes it difficult to communicate between both basic standpoints.

There are two kinds of arguments worth considering. First, John Taurek famously argues that the numbers are irrelevant in Life Boat and argues for the conclusion that we should flip a coin in order to determine whether to save the single individual or the greater number. Taurek points out that each individual has the same claim and stands to suffer the same harm of death in Life Boat. Taurek writes:

“It is the loss to the individual that matters to me, not the loss of the individual. But should any one of these five lose his life, his loss is no greater a loss to him because, as it happens, four others (or forty-nine others) lose theirs as well. [...] Five individuals each losing his life does not add up to anyone's experiencing a loss five times greater than the loss suffered by any one of the five” (1977, p307)

Suffering, so Taurek stipulates, does not aggregate across individuals. For each individual, death is equally bad, no matter whether one individual dies, or five individuals die. Therefore, no greater harm is done if the single individual is saved. Five deaths, or fifty deaths, are no worse than one death. In light of this, Taurek suggests that one ought to give an equal chance to be saved to each individual in order to reflect one's equal concern. Based on this, Taurek concludes that one ought to flip a coin between saving the single individual and saving the many. This reveals that for Taurek, the number of individuals has no moral relevance.

Second, thoroughness requires the mentioning of arguments presented by Elizabeth Anscombe (1967) and Véronique Munoz-Dardé (2005). Both propose that the number of individuals in Life Boat does not ground a duty to save the greater number, but allow for it to carry moral relevance. According to Anscombe and Munoz-Dardé, one has a conclusive reason to offer aid to the individuals on each rock, as they are all in need of such help. But they also stipulate that conclusive reasons do not aggregate. Therefore, they both conclude that the number of individuals does not offer a conclusive reason to save the greater number and does not ground a duty to do so. It is permissible to save the single individual. However, contrary to Taurek, Anscombe and Munoz-Dardé acknowledge that the greater number of individuals on one rock may be regarded as

morally relevant. That is, the number of individuals offers a reason based on which one may permissibly choose to save the greater number, rather than the single individual.

The two arguments canvassed offer an interesting proposal of how to question the commonly held claim that there is a duty to save the greater number. Contrary to claims by the number advocate, it is shown to be plausible to think about the nature of individuals and the nature of reasons in terms of non-aggregation. However, this also constitutes a problem since both arguments start from arguable assumptions of non-aggregation. First, Taurek assumes that it is inadmissible to rely on impersonal values and group claims, and purports that this entails that the number of individuals is irrelevant. Taurek offers no argument to those who do not share the premises his conclusion is built on. Similarly, Anscombe and Munoz-Dardé stipulate that conclusive reasons do not aggregate and hence assume the non-aggregation of reasons, rather than they establish it. But non-aggregation constitutes an equally questionable assumption which is denied by the number advocate. With this in mind, those who express scepticism towards a duty to save the greater number fall short of offering an argument for such scepticism which functions independently from their questionable assumption of non-aggregation.

We have arrived at a long-standing problem in the literature²⁴: There is a stalemate between those who assume that one ought to aggregate and maximise and that, therefore, there is a duty to save the greater number in Life Boat, and those who assume non-aggregation and deny such a duty. Since each denies the premises of the other, both number advocates and sceptics of a duty to save the greater number have somehow barred themselves from engaging with one another. Here, it becomes increasingly difficult to either prove or disprove either position by the lights of the other.

In conclusion, this chapter has cast doubt on the commonly held intuition that there is a duty to save the greater number. It has then proceeded by questioning both the consequentialist and the non-consequentialist maximisation assumption which are used by number advocates in order to establish the claim that there is duty to save the greater number. However, existing arguments in the literature which express scepticism towards a duty to save the greater number were shown to equally rely on the questionable assumption of a strict denial of aggregation. That is, although the maximisation assumption is highly questionable, we have seen that denying it might not move forward the debate. In order to cast serious doubt on the non-consequentialist number advocate's claim that there is a duty to save the greater number, we need an argument which shows

²⁴ highlighted, e.g., by Rob Lawlor (2006) and Shelly Kagan (1988)

that by the number advocate's own lights, there is no duty to save the greater number. This is the task of the last chapter.

Chapter 4

What Respect Requires

In this chapter, I present an argument designed to bridge the stalemate between the two different sides of the numbers debate. I argue that since individuals are essentially incomparable with one another, it is unintelligible to appeal to maximisation in order to determine whom to save in Life Boat. I therefore conclude that even by the non-consequentialist's own lights, there is no duty to save the greater number. Thus, it is permissible to save the single individual in Life Boat.

This chapter is split into four parts. In the first part, I introduce a new case, which serves to reinforce the idea that it is permissible to save the single individual, and motivates the search for an argument which can successfully establish this claim. In the second part, I argue that there is reason to believe that despite the equal moral status of all individuals, individuals are incomparable in respect to the intrinsic value which grounds such status. The third part of the chapter contains a new argument which states that once we take into account the incomparability of individuals in respect to their intrinsic value, it becomes more difficult for the consequentialist, and impossible for the non-consequentialist, to argue for a duty to save the greater number based on maximisation. In the last part I briefly survey some possible objections.

I. Mother

Let's consider a new numbers case. In *Mother*, Jane is a mother of three who has to decide between taking a life boat to save one of her children and taking it to save two of her children. She cannot save all three. She can either save Annie who is trapped on one rock, or Beth and Caitlin who are trapped on a second rock.

What should Jane do? The number advocate tells Jane that if she wants to express respect towards her children, if she wants each of them to live for their own sake, and for each of them to grow up, respect for her children requires her to save the greater number. Since the best she can do is to enable as many of her children as possible to have the chance of growing up, she ought to save Beth and Caitlin rather than Annie. But does Jane really have a duty to save Beth and Caitlin, rather than Annie, considering this also means that she ought to let Annie die? Let's consider the case in more detail.

We might think that Jane cares intensely for all her children and wants each of them to do well. She has raised each of them and wants to see them grow up and live their own life. Choosing between them is the worst decision Jane has ever had to make and, if possible, she would sacrifice her own life in order to save them all. In order to reach any decision on what to do, Jane desperately looks for any considerations which could help her to make this choice. She considers whether any of them have a higher chance of survival if the tide comes in, or whether she can find help anywhere else. But none of her daughters knows how to swim and no further help can be found. Jane loves Annie, Jane loves Beth and Jane loves Caitlin and the loss of any one of them will be devastating for her.

Suppose that Jane opts to save Annie, the single individual. In light of this, it seems reasonable to ask Jane why she chose to save Annie rather than Beth and Caitlin. But would we charge Jane with wrong-doing for having saved the single individual? I suggest not. It seems counter-intuitive to claim that it is wrong for Jane to save the life of her daughter Annie. That is, I suggest that in *Mother*, it does not seem self-evident that Jane has a duty to save more rather than fewer of her children. Given the circumstances of Jane's choice, it seems that the number of individuals on either side might not even have featured in Jane's considerations on the matter: what matters for her is that her children are threatened and that she ought to make a choice between them. And indeed, somehow it appears that Jane has done her duty as a mother by saving one of her children and by

saving Annie. That going to the first rock allows her to save one of her children seems to suffice to render Jane's choice intuitively permissible.

I want to go one step further and, first, suggest that the intuition that it is permissible to save the single individual in Mother is correct, and, second, provide a justification for this intuition. So far, although it seems intuitively permissible for Jane to save the single individual, it is not clear why this is the case. The claim that all of them are her children does not seem to suffice. Bearing this in mind, I want to consider two possible explanations. Both explanations are based on the idea that in referring to a mother and her children, Mother contains special features which render it permissible for Jane to save the single individual. As such, Mother would be disanalogous to Life Boat and the fact that Jane can permissibly save the single individual would be of no consequence for the rescuer's duty to save the greater number.

First, a mother's choice between her children is highly psychologically demanding. It might simply be too much to bear to decide between one's own children. Such exceptional circumstances might impair Jane's ability to assess her options clearly and abstractly. Thus, one might argue, the circumstances are such that Jane simply cannot be expected to make the morally required choice. Yet in reply, one may suggest that the psychologically demanding nature of the case can be contested by supposing that Jane asks another individual to make the choice in Mother in her place. The individual is representing Jane and may act in whatever way he believes to be in the Jane's interest. As such, he can also permissibly save Annie. But given that the choice in this case is no longer highly psychologically demanding, its demanding nature cannot furnish an explanation for why Jane, or her placeholder, may save the single individual in Mother.

A second possible explanation could highlight 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 child even if this means risking her own life and limb. Thus, perhaps Jane's duty to save Annie cannot be outweighed by her duty to save Beth and Caitlin respectively, since her duty towards each of her children is uniquely stringent. But this explanation can be equally rejected. Although a mother's duty to aid and protect her children is different in strength to a rescuer's duty to aid individuals, it might not be different in kind. Both kinds of duties are owed to an individual in virtue of their moral standing. A mother's duty to aid might be stronger than a rescuer's duty to aid, but it seems problematic to claim that this strength determines that a mother's duty cannot aggregate, although a rescuer's duty can. This is because if one structurally aggregates, so does the other, unless a specific difference can be pointed out.

Both explanations then fall short of establishing an argument for why the fact that Jane is the mother of Annie, Beth and Caitlin should be the source of Jane's permissibility of saving Annie. The failure of the previous explanations makes Mother look more and more like Life Boat. We are then still searching for an argument which can explain why Jane does not have a duty to save the greater number in Mother.

II. The Incomparability of Individuals

To begin with, consider the following proposal. One might be led to think that Jane does not have a duty to save the greater number because of the way in which her daughters are valued by her. That is, perhaps her daughters are of infinite value to Jane²⁵. And since two individuals of infinite value cannot be aggregated to produce even more value than one individual has, it does not make sense for Jane to speak of doing more good rather than less, by saving the greater number. Each option involves the same infinite amount of good. We might think that all individuals are generally of infinite value in the very same way and that, therefore, the maximisation of individuals saved in Life Boat is unintelligible. But assigning infinite value to individuals also seems slightly overblown, as it implies that it might be impermissible to ever impose harms on an individual, even if this is necessary for saving one's own life²⁶. However, I suggest that what we can take from this proposal is that we need to have a closer look at how precisely we value individuals.

Here, I propose that the value of individuals might be considered to be incomparable. To outline this idea more precisely, we need to start by clarifying what incomparability refers to. Ruth Chang writes that "two items are incomparable if it is false that any positive, basic, binary value relation holds between them with respect to a covering consideration, 'V'." (2015, p208). This refers to the three possible positive binary value relations of one item being better than the other, one item being worse than the other, and both items being equally good. The covering consideration V refers to the fact that comparability or incomparability between two items never exists simpliciter but always in respect to a covering consideration, or covering value. For instance, a career in law and a career as a violinist are often cited as an example of incomparability in respect to their 'goodness as

²⁵ see Wasserman and Strudler, 2003

²⁶ For instance, consider a case in which I can permissibly harm or kill another individual who poses an innocent threat to me in order to save my own life.

careers'. That is, a career in law is not better, not worse and not equally good when compared with a career as a violinist (Chang, 1997).

It is obvious that individuals are comparable in respect to many covering considerations such as appearance, well-being, happiness etc. This aligns with the fact that we often compare individuals with each other in real life. We compare what we look like, compare incomes, ambitions and careers, and compare levels of well-being. But in what is more to the point, individuals are also comparable in respect to the covering consideration of their moral value. Human beings are generally all considered to have equal moral value based on their equal moral status. That is, in the literature individuals are generally considered to have moral status, or some other sort of special moral standing, which signifies that others have to act towards them in certain ways. It is the moral status of individuals which determines what is permissible and impermissible to do to individuals and which imposes constraints on others. Based on their equal moral status, all individuals must be shown equal respect. One might say that just like two pianists are equally good in respect to musical talent, all individuals are equally good in respect to their moral status.

But there is a crucial observation to make here. Note that pianists are bearers of the value 'musical talent'. What is of value in a great pianist is the pianist's musical talent. Each pianist, we might think, is essentially a container of musical talent and if two pianists are equally good, they have the same amount of musical talent. More precisely, a pianist is considered to be a bearer of the value 'musical talent' based on a non-normative consideration: her playing the piano.

But the value of individuals does not work in the same way. Suppose that individuals are valued as bearers of the value 'moral status'. This suggests that individuals are containers of value, in the same way in which a pianist is a container of musical value. But this is not how we think about the value of individuals. We value individuals in themselves, and not as mere containers of value. This becomes clear when seeing that individuals are considered to have moral value, and to have 'moral status' because of their other normatively relevant features. That is, a number of different reasons have been advanced for justifying why we ascribe moral status to individuals. These reasons refer to the special features individuals possess, such as rationality, cognitive capacities or autonomy²⁷. For instance, we have seen in previous chapters that Scanlon grounds the

²⁷ See, for instance, Quinn, 1984, Feinberg 1980, Kamm, 2011. Such accounts are often considered to be underinclusive and there is a debate in the literature about the moral status of individuals with cognitive impairments, as well as infants. However, this will not be considered here due to a lack of space. Some

value of individuals in their cognitive capacities to have reasons and to assess reasons (Scanlon, 1998, p106). Based on these justifications, it seems that what merits the ascription of moral status to each individual are the cognitive capacities²⁸ of each individual. Hence we value individuals because they possess such cognitive capacities. But still, I suggest that this alone doesn't quite capture why we value individuals. Considering individuals to have moral value because of the presence of the features of rationality and cognitive capacities would confer value on rationality and cognitive capacities in itself. It would ignore the individual who possesses them.

Therefore, I propose that we value individuals because we value the kinds of beings individuals are in virtue of the fact that they have cognitive capacities. I suggest that when claiming that individuals have moral status because of their cognitive capacities, what we mean is that we value that each individual is therefore a self-conscious, autonomous human being who has her own mind, emotions, aims, and reasons. Thus, one might state that what we value about individuals is their intrinsic value held in virtue of being an autonomous and unique human being. For instance, one values a friend, a neighbour, a stranger and, indeed, all individuals, for the unique person each of them is. This intrinsic value of individuals is the basis on which each individual is ascribed moral status.

In light of this, I propose that individuals are in fact incomparable in respect to the covering consideration of 'intrinsic value'. Individuals are separate beings, each with their own thoughts, emotions, aims and reasons and each with their separate mind and self-consciousness. When taking those features together, they create the unique life an individual leads. With this in mind, each individual is not better, not worse and not equally good than any other individual in respect to their intrinsic value. Ava might be a better swimmer than Bea, and Ava and Bea might be equally good at playing the piano, but Ava and Bea are incomparable with one another when it comes to their intrinsic value. We value each of them because Ava and Bea are each a unique and incomparable person. It is this intrinsic value which demands respect in others, but an individual's intrinsic value is also the ground for which she is a unique human being. In respect to their intrinsic value, each individual is incomparable to any other individual.

However, even if individuals are incomparable in respect to their intrinsic value, why should this have any moral significance? Individuals might also be incomparable in regard to their DNA and their biography, but these features are not considered to carry

accounts ground moral status in interpersonal relationships or offer other grounds but I also will not have space to consider these options.

²⁸ I will refer to cognitive capacities as a placeholder for whatever is considered to ground moral status, assuming accounts of moral status that are grounded in cognitive or cognitive-related capacities

moral weight. Furthermore, individuals are still comparable in respect to covering considerations such as their happiness and well-being. In other words, what is the relevance of this discussion of the value of persons for our aim to reply to the number advocate?

III. The Incomparability Argument

Having seen that individuals are incomparable in respect to their intrinsic value, this section argues that this incomparability is of key importance for assessing whom to save in Life Boat. I will begin by briefly pointing out why the incomparability of individuals is problematic for a consequentialist number advocate. I will then turn to the main object of this chapter and offer an argument which questions the non-consequentialist number advocate's claim that there is a duty to save the number. I will argue that a duty to save the greater number based on showing respect towards individuals can be rejected by the non-consequentialist number advocate's own lights.

A basic consequentialist argument might suggest that there is a duty to save the greater number since saving the greater number secures more good, or, in this case, more well-being. This argument, it seems, is based on the fact that the well-being of individuals can be compared, aggregated and maximised across individuals. Based on such interpersonal aggregation, one has a duty to save the greater number since saving the greater number secures more well-being. However, a more flexible consequentialist is likely to suggest that the good is not defined in such simple terms as amounts of well-being, but in broader terms of securing whatever produces more good, rather than less good. But if a consequentialist aims to more generally produce the greater good, it is less obvious what choice one ought to make in Life Boat. Although saving five individuals secures more well-being, more utility and more lives saved, saving the greater number does no longer obviously secure more good, unless one already takes one of those to be the single correct indicator for measuring the good. Aiming to determine which option secures the most good simpliciter in Life Boat is much more difficult in light of the incomparability of individuals in respect to their intrinsic value:

Based on the incomparability of individuals in respect to intrinsic value, individuals cannot be regarded as bearers of the same quantifiable moral value. Therefore, they cannot be ranked or weighed against one another. Consider the following analogy. One must choose between one's goal of having a family, and one's goals of having a career, health and friendships. In respect to one's covering consideration of 'goodness of life',

the four values are incomparable. This means that realising three goals is not better, not worse and not equally good than realising one goal. Therefore, the fact that there are three aims on one side and one aim on the other is not an instructive consideration. The same, one might think, applies to Life Boat: All six individuals are incomparable in regard to their intrinsic value, as they each have a life and world of their own for which each of them is valued. The value secured when saving one individual is not comparable to the value secured when saving another individual. That means that saving one individual is not better, worse or equally good than saving another individual. Therefore, saving five individuals is not better, worse or equally good than saving one individual. At this point, it is false to claim that saving the greater number secures more good. Therefore, the consequentialist cannot establish a duty to save the greater number based on the claim that one ought to pursue whatever course of action secures the most good.

Having furnished a reply to the consequentialist number advocate, it's time to return to the main aim of this chapter. I suggest that the incomparability of individuals in respect to intrinsic value also allows us to provide a reply to the non-consequentialist argument in favour of a duty to save the greater number, without having to deny the maximisation assumption and stipulate non-aggregation. Remember that the non-consequentialist argument for a duty to save the greater number relies on the claim that the one constraint on how to determine whom to save in Life Boat is the constraint that all individuals must be shown equal respect, due to their equal moral status. The non-consequentialist number advocate then claims that since one ought to maximise the good if no other constraints are present, one ought to maximise the showing of respect towards individuals in Life Boat. Therefore, one ought to show respect towards more rather than towards fewer individuals. This produces a non-consequentialist duty to save the greater number.

However, I suggest that the non-consequentialist number advocate fails to capture what is entailed by showing respect towards individuals. So what does it mean to show respect? It was argued in the previous section that individuals are ultimately considered to have moral value because of their intrinsic value. That is, I have argued that what we consider to be of moral value and worthy of respect in each individual is not simply the moral status which each individual is ascribed to have. We value individuals in virtue of the reason for which individuals are ascribed moral status in the first place: because of the intrinsic value which each rational and unique human being has. But by itself, this is of little help. At this point, the non-consequentialist number advocate's argument in favour of a duty to save the greater number has not been affected. Respect towards

individuals, that is, might still be maximised in spite of the fact that the intrinsic value to be respected is also incomparable across individuals.

Therefore it is necessary to assess what is required by showing respect towards an individual and towards the intrinsic value of an individual. Here, it will be helpful to consider Harry Frankfurt's discussion of respect. Frankfurt argues that respect for individuals requires taking into account all significant aspects regarding an individual's person and her circumstances. In Frankfurt's words, showing respect towards an individual requires dealing with an individual "exclusively on the basis of those aspects of his particular character or circumstances that are actually relevant to the issue at hand" (1997, p8). Frankfurt also argues that a failure to recognise all relevant aspects of an individual not only expresses a lapse in respect, but further signifies that the individual's "very existence is reduced" (1997, p12). This means that not recognising all significant aspects of a person signifies a denial of the individual person and her unique existence.

This illustrates that showing respect for the intrinsic value of an individual means to actively appreciate and recognise all significant aspects of the individual when dealing with her. In other words, showing respect towards the intrinsic value of an individual includes absorbing the significant aspects of an individual when dealing with her. These aspects however, amount to an individual's intrinsic and incomparable value. This means that showing respect towards an individual is always an individualised and equally incomparable act. Showing respect for Ava entails recognising all significant aspects of Ava's person, while showing respect for Bea entails recognising all significant aspects of Bea's person. Since the intrinsic value of Ava and Bea is incomparable, respect for the intrinsic value of Ava and Bea is also incomparable. Given that respect for an individual always refers to the intrinsic and incomparable value of an individual, we might say that respect for different individuals, too, is incomparable. That is, in respect to the covering consideration 'goodness as respect'.

With this in mind, it is no longer feasible for the non-consequentialist number advocate to maximise the showing of respect towards individuals in Life Boat. This is because showing respect towards one individual in Life Boat is incomparable with showing respect towards another individual in Life Boat. Showing respect towards five individuals is not better, worse or equally good as showing respect towards the single individual. This means that by the lights of the non-consequentialist constraint to treat individuals appropriately and to show respect towards each of them, there is no duty to save the greater number.

I suggest that this captures why it is intuitively permissible for Jane to save the single individual in Mother. The personal nature of Mother implies that Jane is intensely aware of the unique and incomparable nature of the individuals between whom she has to decide. The respect Jane has for Annie, for Beth and for Caitlin respectively, is dependent and defined by the unique and significant aspects of Annie, Beth and Caitlin. Hence the respect she has for Annie is not of equal value to the respect she has for Beth or for Caitlin. Thus respect for her daughters cannot be maximised. This explains why intuitions differ between Mother and Life Boat in regard to the permissibility of saving the single individual. It appears that the personal relation between Jane and her daughters heavily suggests that for Jane, her daughters are incomparable. I propose that this is what inspires the intuition that Jane can permissibly save Annie. However, when weighing up one's intuition in Life Boat, there is no implied, intuitive awareness of the incomparability of the intrinsic value of the individuals in Life Boat, since the individuals in Life Boat are strangers to one other.

To conclude, even if we accept the non-consequentialist number advocate's maximisation assumption, respect for the intrinsic value of individuals is incomparable and can therefore not be aggregated and maximised across individuals. Before concluding this thesis, I want to briefly consider a few objections to this incomparability account.

IV. Objections to the Incomparability Argument

A substantial worry might be the number advocate's claim that more is lost if the greater number is not saved. Suppose that one may choose between (a) creating a real life case of Life Boat with the possibilities of either saving one or saving five, and (b) creating a real life case of Life Boat 2.0 with the possibilities of either saving one or saving fifty. It appears that even if one affirms that there is no duty to save the greater number and that in both cases, it is permissible to save the single individual, it appears that one might choose to create (a), since the permissible loss of five is a smaller tragedy than the permissible loss of fifty. Or as the number advocate would put it, more is lost if fifty die. The number advocate can argue that although we are saddened deeply when we hear of the death of one individual, we might be saddened to a more significant degree, when we hear of the death of five, or fifty individuals. In Life Boat, it just seems that it is a greater tragedy if five individuals die on the second rock than if one individual dies on the first rock. If five individuals instead of one individual die, more lives are lost, entailing more

happiness lost, more future experiences lost, and more life goals, aims and reasons lost and going unfulfilled. More individuals who would otherwise be living and pursuing their lives and dreams, are deprived of this opportunity and we are saddened for their sake. It is simply a greater tragedy overall if five, or fifty individuals die than if one individual dies. Denying that the death of fifty is a greater tragedy than the death of five individuals, or so the number advocate might conclude, seems to express a lack of care and appreciation for the additional lives lost, for each for their own sake.

But note that this does not entail that there is a duty to save the greater number. I suggest one could make the concession to the number advocate that it is in fact a greater tragedy if more die, rather than if less die. Even then, one can still argue that although it is a greater tragedy if more lives are lost, this is not what is relevant when determining whom to save in Life Boat. What is relevant is what is required by the aim of expressing respect towards all individuals. Thus, the incomparability argument is still successful.

Another, and very similar problem, might be the question of whether a world in which five are rescued and will be able to pursue their lives, is not better than a world in which only one is rescued. Here, too, we might accept the claim that a world in which the five individuals are saved might be a better place than a world in which just one individual is saved. Yet even if the world is a 'better' place if more are saved, I have argued that respect for individuals means that one can permissibly save either party. How, one might ask, should we establish which consideration should ultimately determine the rescuer's decision- betterness or respect? For once, if the non-consequentialist number advocate proposes that the impersonal good produced outweighs the respect we owe to individuals, it looks very much as if the non-consequentialist is a consequentialist after all. Yet furthermore, it simply seems that when assessing which of our existing principles better explains what we ought to do in Life Boat, it is the respect for individuals which is the more fundamental principle.

I want to mention one last problem. One might think that at some point, aggregate consequences always matter. At some point, if we keep increasing the numbers, consequences will be able to outweigh a duty to respect individuals. Although this objection is in need of a much lengthier reply, I follow Munoz-Dardé here and suggest that different reasons come into play once very large numbers are reached (2005). That is, once one must decide between saving one and saving a million individuals, reasons related to social and political efforts, related to the availability of resources and additional duties not to allow genocide or ecocide take prominence. Importantly, these are not

necessarily impersonal reasons or duties as they are owed to each individual affected. For instance, I owe it to each human on earth not to destroy the earth.

This chapter has argued that for a consequentialist concerned with maximising the good, where the good is defined in a more flexible way than merely 'well-being', it is no longer obvious that saving the greater number in Life Boat secures the greater good. This is because the incomparability of individuals in respect to their intrinsic value implies that the saving of five individuals does not secure more good or value than the saving of just one individual. Second, I have offered a reply to the non-consequentialist number advocate which shows that, even by his own lights, there is no duty to save the greater number in Life Boat. This is because showing respect for individuals requires us to take into account the intrinsic value of individuals, which is incomparable.

This finally allows us to reply to the problem of aggregation with which contractualism has been charged. It was shown that the common intuition that there is a duty to save the greater number is wrong, and that it is in fact permissible to save either the single individual or the greater number in Life Boat. This is identical to the conclusion offered by contractualism, that since no individual can reasonably reject a principle according to which it is permissible to save either party, it is permissible to do so. Therefore, contractualism is giving the correct reply for what to do in Life Boat; the contractualist understanding of the separateness of persons objection has been vindicated.

Conclusion

This thesis has looked at two problems with a contractualist understanding of the separateness of persons objection. First, I have argued that Raz's vacuity objection can be rejected by appealing to a broader understanding of vacuity, and by accepting Scanlon's understanding of morality. That is, when determining whether an act is right or wrong, moral reasons are not the only relevant consideration. Rather, an act ought to reflect a certain appreciation of the moral standing of other individuals. Second, I have suggested that contractualism can be charged for failing to take into account the intuition that one has a duty to save the greater number in the Life Boat case. I have rejected two proposals by Parfit and Frick which attempt to modify contractualism in order for it to be able to accommodate aggregation by arguing that both proposals essentially dissolve the core of contractualist theory. I have proceeded by introducing the debate around aggregation more generally and have cast doubt on both the commonly-held intuition that one ought to save the greater number in Life Boat as well as on the maximisation assumption according to which one always ought to do more good rather than less good. In the last chapter, I have introduced a new argument which denies that we have a duty to save the greater number in Life Boat. In this argument, I have sketched an account of how we value individuals and have proposed that individuals are incomparable in respect to their intrinsic value. Further, I have argued that an appreciation of the intrinsic value of individuals is what is required in order to adequately show respect towards individuals in Life Boat. Once this intrinsic value is taken into account, it is no longer possible to

aggregate or maximise in Life Boat, which allows us to ultimately reject the existence of a duty to save the greater number. The contractualist was thus be shown to arrive at the correct principle in Life Boat: It is permissible to save either the single individual or the greater number.

This thesis has rejected two objections against a contractualist understanding the separateness of persons objection to utilitarianism. Based on this, a contractualist understanding of the separateness of persons is now much more attractive and lends itself to be analysed in more detail.

However, in view of the aim of vindicating a contractualist understanding of the separateness of persons objection, it is necessary briefly gesture towards two limitations of this thesis. Regarding the problem of aggregation, this thesis is restricted to replying to cases such as Life Boat, in which claims are identical and we have a choice between saving a smaller number of individuals or a larger number of individuals. However, many problematic cases of aggregation revolve around numbers and non-identical claims. For instance, should we save a thousand individuals from paralysis rather than to save one from death? I suggest that no, but these kinds of cases are in need of much more discussion. Moreover, there remains a problem with how to cash out reasonable rejectability in contractualism: Although contractualism gives several indicators of how to assess whether a reason can be reasonably rejected based on its constraints and assumptions, it still is not clear how to adjudicate in cases involving a diverse range of goods. Sometimes, it is just unclear whose claim is the strongest, which also makes it very unclear whether the separateness of persons has been violated in certain cases. But this is a task for another day.

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