The separateness of persons, distributive norms, and moral theory

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It has become commonplace in moral philosophy to claim that teleological moral theories, such as utilitarianism, fail to account for various important moral phenomena recognized by commonsense morality, such as special moral obligations (e.g., obligations to intimates and promissory obligations), moral and political rights, and distributive justice. These moral failings are often traced to a common source: Teleological theories allegedly fail to recognize or respond appropriately to the separateness of persons. Proper recognition of the separateness of persons, it is claimed, supports a quite different, contractualist style of moral theory.

The objection focuses on utilitarianism’s aggregative conception of impartiality. The utilitarian takes everyone’s interests into account by aggregating their interests, balancing benefits to some against harms to others, and distributing benefits and harms so as to produce the best total outcome. While balancing goods and harms may be acceptable within a life, many think that it is not acceptable to balance goods and harms across lives. On the aggregative conception, individual claims may simply be outvoted by a majority. In order to respect the separateness of persons, it is claimed, distributions of benefits and harms must be acceptable, in the relevant sense, to each. This is the contractualist interpretation of impartiality. Contractualist theories seek a kind of unanimity, in contrast to the majoritarianism of utilitarianism.

In this way, appeal to the separateness of persons plays both a negative and a constructive role in moral theory; it shows utilitarian and teleological views to be distributively insensitive, and it motivates the distributional claims of contractualism and other deontological theories. I want to reexamine this appeal to the separateness of persons in moral theory, in particular, the link between the separateness of persons, distributive norms, and different kinds of moral theory. I am skeptical that the separateness of persons can play successfully either the negative or the constructive role.

Because these different moral theories and distributive norms provide accounts of the foundation of moral and political entitlements, we must examine their implications for contexts in which entitlements do not already exist. To do this, we must focus on macro issues of just institutional design, because this will explain how particular entitlements are generated, and micro questions of allocation among individuals none of whom has a prior claim of special entitlement or desert.

1. Utilitarianism and the separateness of persons

The separateness of persons objection is usually applied to hedonistic or desire-satisfaction versions of utilitarianism, but it is supposed to apply in virtue of the utilitarian, consequentialist, or teleological structure that these theories possess. Teleological moral theories define duty or right action in terms of promoting value or the good. Traditionally, teleological theories have been either egoistic or universalistic. Utilitarianism is a universalistic teleological theory that takes the good to be human or sentient welfare or happiness. Utilitarianism, we noted, employs an aggregative conception of impartiality. Treating people impartially involves giving everyone equal consideration, and giving equal consideration involves taking everyone’s welfare into account and balancing some interests against others, if necessary, to produce the outcome that is, on balance, best. Indeed, this interpretation of impartiality is perhaps the principal source of utilitarianism’s appeal. This aggregative conception of impartiality makes utilitarianism person-neutral, because it assigns no moral importance as such to whom a benefit or burden befalls; it is the magnitude of a good or harm, and not whose benefit or burden it is, that affects its moral importance. And person-neutrality implies an aggregative or maximizing decision procedure. If the magnitude of goods and harms is of moral importance as such, but the location of goods and harms across lives is not, we should act so as to maximize net value rather than to achieve any particular distribution.

Person-neutrality affects a kind of impartiality across lives akin to the impartiality that temporal-neutrality effects within lives. Temporal-neutrality is a common view about how one rationally ought to distribute benefits and harms across different stages within the same life; it says...
that the temporal location of a benefit or harm within a life should not affect its rational significance. As such, temporal-neutrality implies that I should be concerned only with the magnitude of a benefit or harm, not its temporal location, and this implies that I should be impartial among the different stages of my life and maximize the total amount of welfare realized over the course of my life, rather than achieve any particular distribution.

In this way, person-neutrality is to interpersonal distribution what temporal-neutrality is to intertemporal distribution. Indeed, many have seen the motivation for utilitarianism’s person-neutrality as extending the familiar maximizing decision procedure from diachronic, intrapersonal contexts into interpersonal contexts. Sidgwick suggested this rationale for utilitarianism, and contemporary critics of utilitarianism have followed him.6

But utilitarianism’s person-neutral interpretation of impartiality is thought by some to be its chief defect. Its aggregative character is not sensitive to issues of distributive justice, and this reflects the fact that it fails to recognize the separateness of persons. This charge has been made by various writers, including Thomas Nagel, John Rawls, Robert Nozick, and Bernard Williams.5 As Rawls writes,

This view of social cooperation [utilitarianism’s] is the consequence of extending to society the principle of choice for one man, and then, to make this extension work, conflating all persons into one. . . . Utilitarianism does not take seriously the distinction between persons.6

Rawls and other critics accept intrapersonal balancing but reject interpersonal balancing. But perhaps the right reaction is not to deny the parity of the intrapersonal and interpersonal cases but to extend distributive considerations from interpersonal contexts into intrapersonal ones. If utilitarianism’s person-neutrality is guilty of failing to recognize the separateness of persons, perhaps temporal-neutrality is guilty of failing to recognize the separateness of person stages. Parity would require that one be concerned with the way in which one distributes goods among the temporal stages of one’s own life (as well as among lives) and not just with maximizing total value over the course of one’s life.7

Friends of the separateness of persons have generally not accepted the parity of intrapersonal and interpersonal cases.8 But they need to explain the asymmetry between intrapersonal and interpersonal distribution. The correct explanation requires articulating the separateness of persons objection. There are metaphysical and normative aspects of the separateness of persons; together they explain the asymmetry between intrapersonal and interpersonal distribution.

The metaphysical separateness of persons is supposed to motivate a normative claim about the unacceptability of uncompensated sacrifices. Because I am a separate person, with one and only one life to lead, it may seem unreasonable to demand that I make uncompensated sacrifices. It may seem that it is reasonable to demand a sacrifice of me if and only if I receive some sufficient compensation in return. The normative separateness of persons involves the distributional constraint that sacrifice requires compensation (SRC). SRC and the metaphysical separateness of persons explains the disanalogy between intrapersonal and interpersonal distribution. If people are temporally extended but metaphysically distinct, there is automatic diachronic, intrapersonal compensation but no automatic interpersonal compensation. Compensation requires that benefactors be beneficiaries, and for compensation to be automatic benefactor and beneficiary must be the same. In the interpersonal case one’s sacrifice of one’s own present good for a greater, future good is acceptable, because there is compensation later for the earlier sacrifice; benefactor and beneficiary are the same.9 This explains why temporal-neutrality is an acceptable norm of intertemporal distribution. But in the interpersonal case, benefactor and beneficiary are different people; unless the beneficiary reciprocates in some way, the agent’s sacrifice will be uncompensated. Because we are separate persons, I am not compensated when I undergo a sacrifice for a greater gain to you; your gains do not make up to me for my losses. The balancing of benefits to one person against harms to another that utilitarianism’s person-neutrality requires would be acceptable if and only if there was interpersonal compensation. But this is what the separateness of persons seems to show: Because different persons are distinct beings living separate lives, there is in general no interpersonal compensation.10 This explains what seems wrong with person-neutrality as a norm of interpersonal distribution.

This rationale for the asymmetry in intrapersonal and interpersonal distribution captures claims made by friends of the separateness of persons objection. Nagel claims that utilitarianism ignores the distinction between persons. . . . To sacrifice one individual life for another, or one individual’s happiness for another’s is very different from sacrificing one gratification for another within a single life.11

A little later Nagel explains this difference by appeal to the plausibility of “the extremely strict position that there can be no interpersonal compensation for sacrifice.”12 Similarly, Nozick writes:

Individually, we each sometimes choose to undergo some pain or sacrifice for a greater benefit or to avoid a greater harm. . . . Why not, similarly, hold that
some persons have to bear some costs that benefit other persons more? But there is no social entity with a good that undergoes some sacrifice for its own good. . . To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. He does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him. . . .

And Rawls uses similar language in explaining the separateness of persons objection.

Each member of society is thought to have an inviolability founded on justice or, as some say, on natural right, which even the welfare of everyone else cannot override. Justice denies that [for example] the loss of freedom for some is made right by a greater good shared by others. The reasoning which balances the gains and losses of different persons as if they were one person is excluded. . .

In this way, the separateness of persons objection appears to be a powerful objection to person-neutral moral theories such as utilitarianism.

2. The Pareto interpretation of the separateness of persons

But we get a decisive objection to person-neutrality just in case the separateness of persons objection establishes the impermissibility of all balancing of one person’s good against that of others. This is the strong interpretation of the separateness of persons objection. . .

The strong interpretation requires two claims: (i) SRC’s claim that compensation is a necessary condition of the moral acceptability of any sacrifice; and (ii) the claim that sacrifice is measured by nonmoral criteria – for instance, in terms of utilities. It seems clear that SRC’s interpretation of sacrifice must be nonmoral if it is to support the prohibition on all balancing. SRC allows us to distinguish between greater and smaller sacrifices, and the nonmoral interpretation of sacrifice tells us to measure the size of a sacrifice in terms of the magnitude of the loss in welfare. And it seems we should measure the size of loss involved in one distribution by comparison with people’s welfare in alternative possible distributions. If there are two possible policies, A and B, and my welfare level is lower in B than in A, then the choice of B imposes a sacrifice on me. When we combine this understanding of sacrifice with SRC’s claim that compensation is a necessary condition of the moral acceptability of any sacrifice, we get the claim a distribution is morally unacceptable if it imposes an uncompensated or net loss of welfare – however small – on one person in order to provide benefits – however great – to others. Only in this way do we get the prohibition on all balancing, characteristic of the strong interpretation of the separateness of persons objection.

This interpretation establishes a Pareto side constraint. There are several Pareto criteria, which can be defined in terms of people’s welfare or preferences. A situation  is Pareto-superior to another  just in case at least one person would be better off in  than  (would prefer  to  ) and no one would be better off in  (would prefer  ).  is Pareto-inferior to  just in case  is Pareto-superior to  .  is Pareto-optimal just in case there is no situation that is Pareto-superior to it.  and  are Pareto-incomparable just in case at least one person would be better off in  than  (would prefer  to  ) and at least one person would be better off in  than  (would prefer  to  ).  and  are Pareto-indifferent just in case no one would be better off in  than in  (prefer  to  ) and vice versa. The Pareto constraint is this: only outcomes that are Pareto-superior (or -indifferent) satisfy SRC so interpreted; an outcome is unacceptable if it is Pareto-inferior or -incomparable with respect to some other alternative. . . We get a knockdown objection to person-neutrality with an objection to all balancing, which we get by accepting the Pareto interpretation of SRC.

However, the Pareto interpretation sets up an extremely stringent distributional constraint. There are almost always multiple Pareto optima that are Pareto-incomparable. Almost all morally and politically interesting issues can be resolved only by taking actions that distribute welfare in ways that make at least one person at least a little worse off than he would have been under some alternative. Thus, the Pareto interpretation of SRC knocks out much more than person-neutrality; it knocks out any view that redistributes resources (in Pareto-incomparable ways). For instance, it will certainly knock out the kind of egalitarianism that appeals to opponents of utilitarianism, such as Nagel and Rawls. The egalitarian feature common to Nagel and Rawls is the claim that it is morally incumbent to benefit those who are worse off even if we can benefit them less than we could benefit others. And this can require not only that the better-off accept lower prospects so that the worse-off may gain but also that the better-off accept a larger absolute loss in order that the worse-off may experience a smaller absolute gain. . .

In fact, the Pareto interpretation of SRC knocks out any view that recognizes duties of mutual aid in which benefactors are uncompensated or undercompensated. Indeed, it would seem that the only moral or political view that would satisfy the Pareto interpretation of SRC would be the sort of libertarian view that Nozick accepts that recognizes no duties of mutual aid whatsoever. But such a theory would have to assign
rights to people in such a way that each person has a veto over anyone's actions, and even Nozick does not go this far, because he allows for the permissibility of market exchanges that impose negative externalities on third parties. 18

If so, the price of treating the separateness of persons objection as a knockdown objection to the person-neutrality characteristic of utilitarianism is prohibitive. All reasonable moral theories violate the Pareto interpretation of SRC. The friend of person-neutrality should admit that teleological theories violate the Pareto interpretation of SRC and so are vulnerable to the strong interpretation of the separateness of persons objection but simply deny that this is a reasonable objection to these theories.

3. Moralist sacrifices

Because the Pareto interpretation of SRC seems to yield an implausibly strong interpretation of the separateness of persons objection, we should reject it. The Pareto interpretation results from combining SRC with a nonmoral measure of sacrifice. A more plausible interpretation may result from combining SRC with a moralized account of sacrifice or of when a loss counts as a sacrifice. It implies that it is unacceptable to impose unjustified losses or burdens on one person in order that others may benefit.

Though all redistributive theories impose burdens on some so that others may benefit, not all theories impose unjustified burdens so that others may benefit. And friends of the separateness of persons objection whose own moral theories allow some interpersonal balancing may well insist that their objection should be interpreted as relying on the moralized version of SRC.

But on this interpretation the separateness of persons objection no longer presents an obviously decisive objection to person-neutral moral theories. The objection is decisive, in the way its friends believe, only on the implausibly strong interpretation of SRC that shows all reasonable moral theories to be misconceived. On the more plausible, moralized interpretation only unjustified balancing is forbidden. But it is obviously a substantive question when a loss or burden is unjustified and so what sort of balancing is permissible, and person-neutral theories provide one conception of when a loss counts as a sacrifice. It may be that a burden imposed in order that greater good may be done is sometimes unjustified, but this is something that has to be established. Once we drop our objection to balancing per se, it's no longer clear that person-neutrality violates SRC. Properly interpreted, the separateness of persons objection is a conversation starter, not the conversation stopper opponents of utilitarianism have taken it to be.

One conclusion we might draw is that critics of utilitarianism have misunderstood the explanatory asymmetries in their own criticisms. As I said at the outset, many critics want to explain specific complaints about the moral failings of person-neutrality (concerning special obligations, rights, and distributive justice) by appeal to person-neutrality's failure to recognize the separateness of persons. Perhaps they should instead reverse the order of explanation and explain how person-neutrality violates the moralized version of SRC by appeal to these claims about the specific moral failings of person-neutrality.

4. Moral asymmetry

However, the moralized interpretation of the separateness of persons need not be an explanatory dead end. Even if the moralized interpretation does not itself establish when a loss or burden is justified, it may still make some moral structures more plausible than others. For it seems to be a presupposition of deciding when a burden or sacrifice is justified that not all burdens are morally on a par, and this may threaten moral theories that assign no intrinsic significance to different kinds of burden or sacrifice.

A libertarian rights theory that assigns each individual a veto on actions of others that affect his welfare and so forbids all (nonvoluntary) balancing treats all burdens or sacrifices as if they were on a par morally. It does not see any moral difference between the small burdens that duties of mutual aid impose on the superrich and the serious harms to the destitute that such duties aim to mitigate. But once we begin to distinguish between justified and unjustified sacrifices, as the moralized interpretation forces us to, we are likely to see an asymmetry here. So, even if such libertarian theories do not flout any formal feature of SRC, the moralized interpretation of SRC may make such theories seem very implausible.

In a similar way, the focus on when a sacrifice is justified may make some forms of person-neutrality seem implausible. For some person-neutral theories see no loss as intrinsically more significant than any other loss. To be sure, all person-neutral theories require that for a sacrifice to be justified, it must produce at least as large a benefit to someone. But on familiar hedonistic or desire-satisfaction assumptions about value, no kind of loss is intrinsically more important than another; a loss of any kind, $K_1$, can always be balanced by a sufficient number of benefits of any other kind, $K_2$. Of course, the principle of diminishing
marginal utility will tend to constrain the inequalities that efficiency allows. But diminishing marginal utility sets in at different points for different people, and a sufficiently large pool of small beneficiaries can make even a large sacrifice by a small group efficient. So, for instance, it seems possible in principle that a loss of some significant good (e.g., freedom of speech) to one person could be counterbalanced by a large number of comparatively minor gains (e.g., freedom from unwanted disturbance) to others. As long as some sorts of losses are intrinsically more important than others, these sorts of person-neutral conceptions of the moralized interpretation of SRC will be implausible.

When we think about the moralized interpretation of SRC we are likely to think that some sacrifice or losses are morally more significant than others and, in particular, that burdens on those who are worse off are harder to justify than are burdens to those who are better off. In this way, we are likely to think that there is a moral asymmetry in "top-down" and "bottom-up" sacrifice. Call this the moral asymmetry thesis.

Moral asymmetry explains the egalitarian appeal to the separateness of persons objection. For both Rawls and Nagel recognize that their forms of egalitarianism require the better-off to forgo benefits — indeed, sometimes very large benefits — they would otherwise enjoy in order that the position of the worse-off be improved — even if the improvement is fairly small. They can and do defend this sort of balancing by appeal to the moral asymmetry of top-down and bottom-up sacrifices. Moreover, they seem to think that moral asymmetry and the sort of balancing that it requires follow from the right conception of the contractualist requirement that just distributions must be acceptable to each affected party.

Consider Rawls's difference principle. It requires maximizing the position of the worst-off. Rawls defends the difference principle only as applied to the basic structure of society; he does not defend it as a general distributional principle. However, he allows that someone might well extend the argument of justice as fairness to rightness as fairness, and the egalitarian thrust of the difference principle obviously has wider appeal. I shall discuss the difference principle as a general distributional norm that applies to a variety of institutional mechanisms and social policies that determine people's entitlements. In order to distinguish this somewhat wider view from Rawls's difference principle, I shall refer to it as maximin (the name Rawls uses for the decision-theoretic principle used to derive the difference principle from the original position).

It is worth noting that "worst-off" functions within maximin and the difference principle as a definite description, picking out those individu-##als who occupy the worst-off representative position under different distributions, and so may refer to different individuals in different possible distributions (or worlds). It does not function as a rigid designator picking out the same individual in all possible worlds.21

The contractualist nature of the justification of the difference principle is clear. Rawls represents the principles of just institutional design, including the difference principle, as the result of a contract that all would have agreed to under fair conditions. In order to make the contractual circumstances fair, Rawls represents contractors as equal moral persons, and this, he believes, requires placing them behind a veil of ignorance in the original position. The difference principle is acceptable, in the relevant sense, to each just in case it would be chosen in the original position.

The fact that the difference principle reflects the moral asymmetry thesis is revealed most clearly by considering the difference principle's plausibility independently of the contractual argument.22 In defending the difference principle in preference to utilitarianism, Rawls writes,

[Utilitarianism implies that] we are to accept the greater advantages of others as a sufficient reason for lower expectations over the whole course of our life. This is surely an extreme demand. In fact, when society is conceived as a social system designed to advance the good of its members, it seems quite incredible that some citizens should be expected . . . to accept lower prospects of life for the sake of others.23

If this is an appeal to the Pareto interpretation of SRC, then it is an objection to all balancing, including the balancing that the difference principle and, more generally, maximin require. For, as Nozick notes, the better-off can complain about the difference principle that it asks them to accept lower prospects for the sake of others.24 Presumably, Rawls is appealing to the moralized interpretation of SRC, rather than the Pareto interpretation.25 He denies that the sacrifices the difference principle requires of the better-off and those that utilitarianism may require of the worse-off are morally comparable. He thinks that the top-down sacrifices that the difference principle requires are justified. He asks us to consider two representative persons A and B, where B is the worst-off member of society and A is among the best-off.

Now B can accept A's being better off since A's advantages have been gained in ways that improve B's prospects. If A were not allowed his better position, B would be even worse off than he is. The difficulty [for the difference principle] is to show that A has no grounds for complaint. Perhaps he is required to have less than he might since his having more would result in some loss to B. Now what can be said to the more favored man? To begin with, it is clear that the
well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life. Secondly, we can ask for the willing cooperation of everyone only if the terms of the scheme are reasonable. The difference principle, then, seems to be a fair basis on which those better endowed, or more fortunate in their social circumstances, could expect others to collaborate with them when some workable arrangement is a necessary condition of the good of all.26

As Nozick rightly complains, this defense of the difference principle is inadequate.27 Precisely because the well-being of each depends upon a scheme of mutual cooperation, the mutual interdependence that Rawls mentions establishes no asymmetry in A’s and B’s positions.

Rawls’s considered reply to the better-off must be different. Rawls denies that the better-off have any moral claim to their benefits; this is the point of his claim that we should treat the distribution of natural talents, as well as the distribution of social advantages, as a common asset.28 The better-off are better off largely by virtue of natural and social advantages that they have inherited. Because these advantages are the products of natural and social lotteries that are outside a person’s control, no one is entitled to benefit from employment of these advantages unrestricted. So the better-off have no prior claim to a larger share of the benefits of social cooperation with the worse-off. They are allowed to benefit from the productive employment of their natural and social assets only on morally acceptable terms.29 And Rawls thinks that morally acceptable terms must reflect the moral asymmetry in top-down and bottom-up sacrifices.30 The worse-off have moral priority over the better-off simply by virtue of being worse off. It is an unjustified sacrifice, which Rawls thinks utilitarianism may allow, if the worse-off who are worse off through the operation of morally arbitrary factors are made worse off for the sake of still greater benefits to the better-off. By contrast, it is not an unjustified sacrifice if the better-off who are better off through the operation of morally arbitrary factors are asked to accept somewhat lower prospects for the sake of benefits to those who are worse off.

In The Possibility of Altruism Nagel suggests that the separateness of persons implies that we must try to solve the "combinatorial problem" about how to balance individuals’ competing claims and interests in a way that is acceptable from each person’s point of view.31 A proper model, Nagel claims, would derive distributional norms from a choice situation in which "the chooser expects to lead all of the lives in question, not as a single super-life but as a set of individual lives."32 Such a model, he thinks, would support moral asymmetry.

Perhaps the model is no more than an image, but it seems to me a useful one, for it renders plausible the extremely strict position that there can be no interpersonal compensation for sacrifice. If one works from that position, then one can arrive at a result similar to that which Rawls derives from his construction. That is, one will feel that first priority must be given, in any principle of combinatorial weighting, to improving the lot of those in the population who are worst off. . . .33

In his essay "Equality," Nagel links acceptability to each, moral asymmetry, and egalitarianism. Egalitarianism, Nagel claims, requires results that are in some sense acceptable to everyone. Where outcomes represent improvements to some that are not Pareto improvements, no result is completely acceptable to everyone. What we must make do with, Nagel claims, is the outcome that is the least unacceptable to the person to whom it is most unacceptable. The unacceptability of someone’s position is a function of both her relative level of well-being (her complaint is worst along this dimension, if she is the worst-off person; her complaint is least serious if she is the best-off person) and the size of her loss (i.e., the amount by which she is worse off than she would have been under some alternative). This kind of egalitarianism, Nagel claims, rests on a sense of moral priority or urgency that attaches to the claims of the worse-off.34

Moral asymmetry plays a similar role in T. M. Scanlon’s contractualist version of egalitarianism in his essay "Contractualism and Utilitarianism." Scanlon’s preferred statement of contractualism is this:

An act is wrong if its performance under the circumstances would be disallowed by any system of rules for the general regulation of behavior which no one could reasonably reject as a basis for informed, enforced general agreement.35

Just as Rawls intends his two principles of justice to apply to the basic structure of society, not to particular actions or outcomes, the objects of reasonable rejection by Scanlon’s contractors are principles, not particular actions or outcomes. However, I think that the contractualist idea applies to the determination of entitlements generally, and so my discussion will extend Scanlon’s ideas more widely.36

According to Scanlon, contractualism reflects the need to justify one’s actions to others on grounds that they cannot reasonably reject.37 This need might be thought to reflect the moralized interpretation of SRC. In situations where no one outcome is preferred by all, there is a sense in which no outcome is acceptable to all, because every outcome imposes losses on some. But we can accept the moralized interpretation of SRC’s claim that no one should have to accept unreasonable or unjustified
burdens. This is naturally expressed in contractualist vernacular as the claims that an outcome or principle is unacceptable if it can be reasonably rejected and that it is acceptable or permissible if no one can reasonably reject it.

But what would count as reasonable grounds for rejection? Scanlon suggests, “Under contractualism, when we consider a principle our attention is naturally directed first to those who would do worse under it.”38 We may wonder why the worse-off are the natural focus. Why not just look to how significantly a principle or outcome affects anyone’s welfare? The focus on the worse-off must reflect a belief in the moral asymmetry of the claims of the better-off and worse-off.

But how should we give priority to the worse-off? Scanlon considers assigning the worst-off a veto, as maximin does, and rejects this as extreme. But his objection seems to be not to the use of a veto per se; he seems willing to assign the biggest complaint a veto, provided we measure the size of a complaint in the right way. He suggests that in assessing a person’s complaint about a distribution we should take into account the size of her relative loss and her absolute level of well-being, as well as her relative level of well-being.39

5. Contractualism, moral asymmetry, and minimax complaint

Indeed, all three views direct our attention to the worst complaint; they disagree over how to measure the size of complaint. Maximin says that the size of someone’s complaint is a function of (i) her relative level of well-being; the worst complaint belongs to the person or position that occupies the worst position under the various alternative outcomes. According to Nagel, the size of someone’s complaint is a function of (i) her relative level of well-being and (ii) the size of her loss (i.e., the amount by which she is worse off than she would have been under some alternative). 40 According to Scanlon, the size of someone’s complaint is a function of (i) her relative level of well-being, (ii) the size of her loss, and (iii) her absolute level of well-being.41 It is unclear exactly how these different measures of the size of a complaint are to be integrated so as to yield a single assessment of the size of a complaint, but these details need not concern us here. The important point is that all three agree that we should make the worst complaint as small as possible, though they measure the size of a complaint in different ways. In this way, each gives the biggest complaint a kind of veto.42 Following Derek Parfit, I will call this general claim that all three share minimax complaint, because it instructs us to minimize the maximum complaint.43

Moreover, all three views link three moral ideas: (a) the contractualist idea that the permissibility of a distribution requires that it be acceptable in the relevant way to each affected party; (b) the moral asymmetry thesis, according to which the claims of those who have bigger complaints or are in some way worse off are morally more urgent such that we must often benefit those whom we can benefit less; and (c) a form of egalitarianism that relies on minimax complaint. The reasoning linking the three theses seems to be something like this. Contractualism implies that an outcome or distribution must be acceptable to each. But because there are multiple Pareto optima, no distribution will be complaint-free. Given moral asymmetry, we approximate unanimity by focusing on the complaints and preferences of those who are in some way worse off, for they have a bigger, more urgent complaint. But then one should focus on the biggest complaint; this is the morally most urgent claim. As minimax complaint claims, this complaint should be made as least bad as possible.

6. Moral asymmetry and minimax

However, these three theses are not so tightly linked. When we moralize sacrifice, we may be led to accept the moral asymmetry of top-down and bottom-up sacrifice, and moral asymmetry does undermine certain versions of utilitarianism and liberalism. To this extent, the separateness of persons objection, properly interpreted, may support some form of egalitarianism. However, minimax complaint is an implausible distributional norm, not required by moral asymmetry.

The appeal of minimax is that by giving the person or group with the worst complaint a veto it gives clear expression to moral asymmetry. The worst complaint is morally more urgent than other complaints; we should always alleviate it first. Losses may not be imposed upon the person or group with the worst complaint, and there is a positive obligation to raise the prospects of the worst complaint as high as possible.44

It is worth noting that ‘the worst complaint’ functions within minimax complaint, as ‘worst-off’ person or position does within maximin, as a definite description, picking out those individuals whose complaint best satisfies the criteria measuring the size of a complaint, and so may refer to different individuals in different possible worlds.

The different versions of minimax incorporate different measures of the seriousness of complaints. Maximin is that version of minimax complaint that measures the size of a complaint in terms of one’s relative position. It gives the person or group with the worst relative level of well-being a veto; we are to minimize the seriousness of that complaint by maximizing the prospects of the worst-off. In many cases we may
agree that the better-off should forgo benefits so that the condition of
the worst-off can be improved. But maximin requires that all but the
worst-off forgo all benefits, however large, so that the worst-off are
improved, however little. In particular, maximin can require that the
worst-off be marginally improved even if this means that those only
marginally better than the worst-off forgo a much larger improvement.
Consider the alternative distributions in Diagram 13.1.45

\[
\begin{array}{|c|c|}
\hline
 & A & B \\
\hline
\text{Smallest Loss} & 5 & 40 \\
\text{Best Worst-off} & 6 & 7 \\
\hline
\end{array}
\]

Diagram 13.1

Maximin requires Best Worst-off, rather than Smallest Loss, even
though B loses much more under Best Worst-off than A does under
Smallest Loss. We may not think that this is right. B may seem to have
a legitimate complaint against Best Worst-off.

The friend of maximin may wonder why A’s situation cannot be im-
proved more efficiently. But these alternatives need not be unrealistic.46

First, if Best Worst-off involves redistribution, there may be high
transfer costs (e.g., because of bureaucratic transfer mechanisms). So
a large loss to the better-off may make for a small improvement to the
beneficiaries of the redistribution.

Second, the goods distributed may not be perfectly divisible. Suppose
Smallest Loss and Best Worst-off represent the results, in terms of
further life expectancy in years, of two different distributions of the
same scarce medical resource. Imagine A and B are individuals and the
question is how to distribute a single pill. In Smallest Loss B gets the
pill; in Best Worst-off A gets the pill. A’s condition is marginally worse
so that he would die somewhat sooner without the pill; but because his
condition falls below a critical threshold, his benefit from the treatment
would be much smaller. Here too we may think that B has a reasonable
argument for Smallest Loss.

Third, more or less divisible resources may produce differential ben-
efits to differently situated people. Consider the impact of two different
health-care policies on two different conditions that afflict equal numbers
of people (Diagram 13.2). Assume that condition B is only marginally
less severe than A, but can be treated much more easily and successfully.

\[
\begin{array}{|c|c|}
\hline
 & A & B \\
\hline
\text{Smallest Loss} & 5 & 40 \\
\text{Best Worst-off} & 6 & 7 \\
\hline
\end{array}
\]

Diagram 13.2

Though Best Worst-off maximizes the prognosis of the worst-off pa-
tients, patients with condition B can fairly complain about Best Worst-
off and demand Smallest Loss.

In these cases someone who is marginally less worse off than the
worst-off seems to have a reasonable complaint about maximin, because
it imposes a much larger comparative loss on her; she is made to forgo
a much larger benefit by adopting maximin than the worst-off secures
under maximin. One way to avoid these objections is to include the size
of someone’s loss in measuring the seriousness of her complaint. This
is basically Nagel’s view; we might call it minimax weighted loss. On
this view, we assign the worst complaint a veto and maximize the sit-
uation of the person with the worst complaint, where the size of the
complaint is a function of both (i) the person’s relative social position
and (ii) the size of her loss.47

This may still not capture all that seems relevant to assessing the size
of a complaint. The significance of a person’s relative social position
and of the size of her loss may be affected by her absolute level of well-
being. We may be less likely to give priority to smaller losses of the
worst-off over the significantly larger losses of the somewhat better-off
if the somewhat better-off are still leading miserable lives or if the worst-
off are very well off indeed. Similarly, we may be less impressed with
a large loss to someone whose level after the loss is still (absolutely)
very high.

A natural conclusion is to include absolute level of well-being as a
measure of the size of a person’s complaint. This, I think, is Scanlon’s
view. We might call the version of minimax complaint that measures
complaints this way tri-measure minimax complaint. According to it, we
assign the worst complaint a veto and maximize the situation of the
person or group with the worst complaint, where the size of a complaint
is a function of (i) a person’s relative social position, (ii) the size of her
loss, and (iii) her absolute level of well-being.

Tri-measure minimax complaint is perhaps the most plausible version
of minimax. But my discussion will focus on the general structure of
minimax theories rather than any particular version. They all claim that
losses may not be imposed upon the person or group with the worst complaint and that the worst complaint should be minimized.

If we restricted our attention, as Nagel recommends, to individual pairwise comparisons, then some version of minimax complaint might seem an appropriate distributional principle. When one thinks simply of contests between individual complaints, moral asymmetry implies that the most serious complaint should be minimized and that the worst complaint should, therefore, be given a veto.

But this restriction to individual pairwise comparison ignores the cumulative moral force of individual complaints. Where one complaint stands against a great many complaints that are individually somewhat less serious, it is less clear that the individually most serious complaint should always win.

All of our examples so far have concerned same-number comparisons in which we have varied only absolute and relative position and size of loss. Now consider a different-number comparison between two educational policies for the handicapped (Diagram 13.3). Assume that we have a fixed number of resources to devote to special education. Also assume, somewhat artificially, that we can quantify both the severity of handicaps and the amount of benefit that different policies would produce. One handicap is marginally more severe and also more rare. Because this handicap is more severe, it is harder to overcome than the other, and so education of these children is more resource-intensive. One policy (Hardship) gives educational priority to those with the worse handicap, while the other (Benefit) gives priority to the larger group with the smaller handicap.

\[
\begin{array}{|c|c|}
\hline
A-Children & B-Children \\
\hline
\text{Benefit} & \text{improve by 5} & \text{improve by 20} \\
\hline
\text{Hardship} & \text{improve by 20} & \text{improve by 6} \\
\hline
\end{array}
\]

Diagram 13.3

Condition \(B\) is much more common than condition \(A\), but \(A\)-patients have a bigger complaint than \(B\)-patients. Assume that \(A\)-patients and \(B\)-patients are at the same absolute position where further years of life are substantial goods, say, 25 years old. \(A\)-patients are marginally worse off, and they stand to lose marginally more if Benefit is enacted (15 years) than \(B\)-patients do if Hardship is enacted (14 years). It follows that Hardship maximizes the prognosis of those with the worst complaint, however we measure the seriousness of complaints. And so all three versions of minimax agree in requiring Hardship. But representatives of \(B\)-children can fairly complain about Hardship and demand Benefit. Though Hardship can be defended by noting that the complaint of each \(A\)-child is worse, individually, than that of any single \(B\)-child, it implies a much greater total loss than Benefit, and one can arguably claim that \(B\)-children possess a greater collective complaint.

Or we might take a structurally isomorphic case and vary the details. We might consider a different-number variation on the two health policies (Diagram 13.4).

\[
\begin{array}{|c|c|c|}
\hline
 & A-Patients & B-Patients \\
\hline
\text{Benefit} & \text{improve by 5} & \text{improve by 20} \\
\hline
\text{Hardship} & \text{improve by 20} & \text{improve by 6} \\
\hline
\end{array}
\]

Diagram 13.4

Condition \(B\) is much more common than condition \(A\), but \(A\)-patients have a bigger complaint than \(B\)-patients. Assume that \(A\)-patients and \(B\)-patients are at the same absolute position where further years of life are substantial goods, say, 25 years old. \(A\)-patients are marginally worse off, and they stand to lose marginally more if Benefit is enacted (15 years) than \(B\)-patients do if Hardship is enacted (14 years). It follows that Hardship maximizes the prognosis of those with the worst complaint, however we measure the seriousness of complaints. And so all three versions of minimax agree in requiring Hardship. But the patients with condition \(B\) can fairly complain about Hardship and demand Benefit. Though each \(A\)-patient can defend Hardship by noting that his complaint is worse, individually, than that of any single \(B\)-patient, Hardship implies a greater total loss, and \(B\)-patients can arguably claim to possess a greater collective complaint.

By giving those with the greatest individual complaint a veto, minimax complaint does not record the moral significance of any less serious losses and so is unable to see how a much larger number of such losses might render justified some losses to those with the worst individual complaints. This reflects its fundamentally antiaggregative character. But in this respect, minimax holds those with less severe complaints – even if the complaints are only marginally less severe and no matter how many of them there are – hostage to improvements to those with more severe complaints – no matter how small a number they are. This seems to be a good illustration of the dictatorship of the worst (indi-
individual) complaint. Though the dictatorship of the worst complaint may be more benign than other forms of dictatorship, it is still unreasonable. Moral asymmetry reflects the fact that some complaints are morally more urgent than others. But moral asymmetry is itself a scalar phenomenon. If so, it seems inappropriate to give any one complaint, even the worst complaint, an absolute veto.

Numbers may not always be decisive. It may be false that there is always some number of less serious claims that would outweigh some smaller number of more serious claims. No number of minor perquisites (e.g., smartphones) to those with much less serious complaints is going to make up for significant losses (e.g., lower levels of nutrition or basic medical care) to those with the worst complaints. But, as in the cases I’ve considered, numbers do sometimes seem decisive, and are perhaps always relevant. If so, then we cannot accept any version of minimax that gives the worst complaint a veto across the board.

This shows that we need to distinguish moral asymmetry and minimax complaint. Minimax complaint presupposes and so implies moral asymmetry, but moral asymmetry does not imply minimax complaint. Moral asymmetry requires that we give moral priority to those who have bigger complaints, but only minimax complaint is antiaggregate. We can accept moral asymmetry without accepting minimax complaint; and if we do accept the former, we should reject the latter. On no reasonable way of measuring the seriousness of complaints should we give a veto to the worst (individual) complaint. Other things being equal, many only marginally less severe complaints ought to combine to outweigh a few marginally worse complaints.

We can and should still try to justify actions to each individual, as contractualism claims. But such a justification can appeal to group complaints as well as individual complaints. If moral asymmetry is correct, we can justify asking someone to make a sacrifice in same-number cases by showing that another individual has a more serious complaint about any alternative than he does to this sacrifice. But in different-number cases we can justify asking someone to make a sacrifice by showing that the alternatives impose significant sacrifices, and so generate significant, even if marginally less serious, complaints on a much larger number of people. Though our complaints may be individually somewhat smaller than yours, as a group we may have a bigger complaint. If so, the antiaggregate character of minimax complaint represents an implausible interpretation of the moralized version of SRC and so an implausible moral response to the separateness of persons.

7. Teleological ethics re-examined

What does this conclusion imply about the negative role that the separateness of persons is supposed to play in moral theory? Does the moralized interpretation of the separateness of persons objection undermine utilitarianism and other teleological moral theories? The moralized interpretation of SRC suggests the moral asymmetry thesis, and moral asymmetry seemed to support minimax theories that assign the worst complaint a veto. But whether or not we accept moral asymmetry, we should not accept minimax complaint. But if we reject minimax complaint, the moral appeal to the separateness of persons loses its antiaggregate punch. If the separateness of persons loses its antiaggregate punch, it’s no longer clear that the separateness of persons objection, even in its moralized form, is compelling. How teleological theories are to be squared with the separateness of persons depends on whether we accept moral asymmetry.

8. Moral asymmetry?

If we let the numbers count and we reject moral asymmetry, utilitarianism and other teleological theories are easily reconciled with the separateness of persons. For then a sacrifice is justified just in case it is efficient, that is, if and only if it produces at least as large benefits to some as it imposes burdens on others. But we saw (in Section 4) that person-neutral moral theories do not seem to moralize sacrifice in a plausible way if they count no kind of loss as intrinsically more serious than another. In this way, hedonistic and desire-satisfaction utilitarianism do not seem to moralize sacrifice in the right way.

These claims may seem to commit us to moral asymmetry, because moral asymmetry just is the view that losses to those who are in some way worse off are morally more serious than losses to those who are less badly off in such a way that it’s morally required to benefit the worse-off even if we can confer a smaller benefit on them than we could on the better-off. But we could distinguish some kinds of losses as intrinsically more serious than others without embracing moral asymmetry. To see this, consider Nagel’s claims about egalitarianism. He introduces egalitarianism, by contrast with utilitarianism, as relying on a claim about the urgency of certain needs.

It [egalitarianism] also resembles utilitarianism formally, in being applied first to the assessment of outcomes rather than actions. But it does not combine all points of view by a majoritarian method. Instead, it establishes an order of
priority among needs and gives preference to the most urgent, regardless of numbers.\textsuperscript{50}

Later he illustrates the egalitarian commitment to asymmetry with the example of a parent's choice between a move to the country that would benefit her first child who is normal and happy and enjoys the outdoors and a move to the city that would benefit her second child who suffers from a painful handicap and would be helped by the availability of special medical and educational facilities in the city. Nagel asks us to assume that the move to the country would provide a somewhat greater benefit to the first child than the move to the city would provide to the second child.

If one chose to move to the city, it would be an egalitarian decision. It is more urgent to benefit the second child, even though the benefit we can give him is less than the benefit we can give the first child.\textsuperscript{50}

These claims about the greater urgency of the needs of the worse-off may seem equivalent to moral asymmetry. However, Nagel's claims here are ambiguous in ways that threaten the equivalence. His first claim connects egalitarianism with a notion of moral priority or urgency that attaches to kinds of needs and benefits;\textsuperscript{51} call this urgency of needs. It implies, among other things, that we should meet a more urgent need before a less urgent one. His second claim connects egalitarianism with a kind of urgency and priority that attaches to people or social positions;\textsuperscript{52} call this urgency of person or position. Of course, the two kinds of urgency are connected. Having a more urgent need that is unmet, \textit{ceteris paribus}, makes one's position more urgent, because it makes one worse off or gives one a bigger complaint. For the most part, and for most of my discussion, these two kinds of urgency go together. But they can come apart, and it is important to decide whether to recognize genuine urgency of person or position, that is, such urgency as cannot be explained in terms of urgency of needs. Urgency of person or position, as distinct from urgency of needs, would give the person with a bigger complaint a stronger moral claim to any kind of benefit than a person with a smaller complaint has to any kind of benefit. But this is a very strong claim; it would imply that it is morally required to confer a trivial benefit on someone who is worse off even at the cost of not meeting an urgent need of someone who is marginally better off. If we find this doubtful, as I do, then we should not recognize urgency of person or position.

But it is only urgency of person or position that clearly implies moral asymmetry. If we accept urgency of person or position then we must accept moral asymmetry's claim that we should benefit those who are worse off or have a bigger complaint even though we can benefit them less than we could benefit others. But urgency of needs does not obviously imply this. The crucial question is whether the urgency of a need affects the size of the benefit we confer by meeting the need. Only if the answer is no does the greater urgency of some needs imply moral asymmetry. But this is not clear. We might distinguish the value of meeting needs and other goods and claim that by meeting a need we confer a greater benefit than by providing other goods. In a similar spirit, we might distinguish some needs as more urgent or basic than other needs, and we might think that the urgency or basiness of a need reflects the size of the benefit we confer by meeting it. But if this is how we understand the greater urgency of some needs, recognition of their urgency does not demand moral asymmetry. For the demand to meet more urgent needs first can be explained entirely in person-neutral terms; by meeting more urgent needs first, we confer a greater benefit and promote more value. If so, then we may admit the greater urgency of some needs without yet being committed to Nagel's precise claims about the case of the handicapped child. We might admit that a larger share of the handicapped child's basic needs remain unmet, in comparison with the healthy child, and conclude that nondivisible resources (as in Nagel's example) should be directed toward improving the situation of the handicapped child - but precisely because this is the most beneficial use of scarce nondivisible resources. If we really had a clear case where we would be doing more good for the healthy child than we could do for the handicapped child, then perhaps it would be less clear that there was a moral requirement to benefit the handicapped child nonetheless, as moral asymmetry would require.

The greater urgency of certain needs (say, those of the handicapped child) seems fairly robust. For instance, we do not think that the greater urgency of the needs of the worse-off is hostage to facts about the diminishing marginal utility of meeting less urgent needs and desires of the better-off. So a person-neutral account of the greater urgency of some needs in terms of the greater value of meeting them cannot rest on traditional hedonistic or desire-satisfaction theories of value or welfare. It must rest, instead, on objective or normative, rather than purely conative, claims about value or value. So the strategy of accommodating these claims about the greater urgency of the claims of the worse-off without commitment to moral asymmetry is available only to person-neutral moral theories incorporating objective or normative assumptions about value and not to more traditional hedonistic or desire-satisfaction forms of utilitarianism.
9. Moral asymmetry within a teleological theory

I have tried to suggest how some of our egalitarian intuitions may be accommodated by suitable adjustments in our evaluative assumptions. If so, we need not accept moral asymmetry. A teleological theory could accommodate a kind of moral urgency, which the moralized version of the separateness of persons supports, along traditional lines, provided it employs the right structure within its theory of value. But I have only raised a question about the need for moral asymmetry. Because I am uncertain about moral asymmetry, I propose to see if a teleological theory could accommodate it.

The prima facie difficulty is that moral asymmetry implies that the rightness of an act is not directly proportional to the value the act produces, and this seems inconsistent with traditional formulations of the teleologist’s conception of the relation between the good and the right.

We might try to construct a moral theory that is otherwise teleological by attending to the virtues and vices of minimax complaint. This theory would incorporate moral asymmetry by looking to the size of an individual’s complaint and giving priority to those who have more serious complaints, but it would reject minimax’s antiaggregative features. Unlike traditional teleological theories, it would allow the moral importance of a benefit or harm to be affected not simply by its magnitude but also by the size of the complaint of the person whom the benefit or harm befalls; but, unlike minimax complaint, it would aggregate over complaints and benefits and harms. We might call this view weighted complaint minimization, or simply complaint minimization. As a first approximation, it says that it is permissible to demand a sacrifice of someone if and only if the consequences of doing so generate complaints at least as small as any alternative. Complaint minimization must take into account (a) the number of complaints and (b) the size of individual complaints – where the size of individual complaints might be measured, as tri-measure insists, in terms of the (i) relative position, (ii) size of loss, and (iii) absolute level of well-being. Some version of complaint minimization promises to integrate minimax’s claims about moral asymmetry without its antiaggregative character.

One may wonder whether complaint minimization can count as a teleological theory. For complaint minimization takes the value to be promoted to be the satisfaction of complaints in proportion to their seriousness, and the seriousness of a complaint is a moral property of that complaint; whereas teleological theories are often assumed to define the moral property of rightness in terms of the promotion of some nonmoral value(s). This assumption is sometimes taken to follow from the claim that teleological theories, unlike deontological theories, must specify the right in terms of the good and specify the good independently of the right.53

But teleological theories should eschew these constraints; they need only define the right in terms of the good and conceive of the good as distinct from the right. Unless the good is distinct from the right, defining the right in terms of the good will be circular. But if the right that the teleologist defines in terms of the good is all-things-considered permisibility, then she can define the good in any other way, without circularity. In particular, the teleologist can give an account of the good in terms of moral properties, even right-making properties, so long as these are not themselves all-things-considered right-making properties. If so, this answers the prima facie difficulty for incorporating moral asymmetry within a teleological theory. For complaint minimization does make all-things-considered rightness directly proportional to moralized value, and the moralization of value does not itself disqualify a theory as teleological.

Of course, complaint minimization, as it stands, is seriously incomplete. It does not provide a metric for integrating the three measures of the seriousness of a complaint nor a metric for integrating number of complaints and size of complaints. Some complaints may be lexically prior to others so that no number of less serious complaints of a certain type (e.g., snowmobile deprivation) could outweigh any number of more serious complaints of a certain kind (e.g., nutrition or education deprivation); but other complaints, though more serious than some, will not be lexically prior to them.54 For the time being, I must treat complaint minimization as if it were an intuitionistic doctrine (in Rawls’s sense), because I am not in a position to state the principles that articulate these metrics.55 But this is not to say that such weighting and priority principles cannot be constructed. Presumably less abstract investigation of situations in which the different variables pull in different directions would aid the construction of such principles.

10. Contractualism re-examined

I have questioned whether the separateness of persons can play the negative role of undermining all utilitarian and teleological moral theories. Can it play the constructive role of supporting contractualist moral theories? Rawls, Nagel, and Scanlon all think that the separateness of persons provides support for contractualism, and they link contractualism with moral asymmetry and moral asymmetry with some form of
vides a clear way to model the question of when a loss or sacrifice is justified.

A nonmoralized _ex post_ unanimity condition results, we have seen, in a Pareto constraint that gives each person a veto. This naturally lends itself to a ban on aggregation and interpersonal balancing. And this, we have seen, imposes an intolerable distributional constraint. The explicit moralization of Rawls's contract makes it less clear that the relevant kind of unanimity is incompatible with aggregation. It's simply not clear that an individual trying to advance his prospects, subject to ignorance about which possible life he will lead, would choose to maximize the minimum relative position, regardless, among other things, of the number of occupants of the various relative positions. So it is doubtful that the difference principle or maximin would be chosen over complaint minimization by parties in the original position.

Scanlon thinks Rawls weakens his argument against aggregative views, such as average utilitarianism, by exchanging an _ex post_ agreement among different individuals with conflicting interests for the _ex ante_ choice of a single self-interested individual under ignorance. Scanlon's idea seems to be that by reducing an interpersonal combinatorial problem to a problem of one person weighing and combining different possibilities for himself we lose objections to interpersonal balancing that an _ex post_ agreement brings out, because we are no longer required to justify distributive norms to each affected party.

But there is a justification that can be offered to each affected party for whatever distributive norm would be chosen in the original position, namely, that this is the norm that he would have agreed to in fair initial conditions. If a party does not accept this justification, because he's not interested in what would be chosen in these circumstances, then we can dismiss his complaint as that of someone who is not interested in morally justifying his conduct to others, much as we might reject the complaint of someone whose objection to a distribution relies on the nonmoralized Pareto interpretation of SRC.

Scanlon's contractualism is in pretty much the same boat, though this may be less clear because the moralization of his contract is somewhat less prominent. For reasons that need not concern us, Scanlon formulates his version of contractualism in terms of principles or outcomes not being rejectable, rather than in terms of their being acceptable. But he recognizes that some parties would refuse assent to an _ex post_ agreement that imposed any burden on them — even if every alternative agreement imposed far greater burdens on others — if only because they were not interested in finding terms of interaction that could be justified to all. This is the force of his trying to identify distributive norms that
cannot be reasonably rejected. But this raises the question of what would count as reasonable grounds for rejecting a distributive norm or outcome. This seems to be a moral question, in part because it involves determination of when a sacrifice or burden is morally unjustified. But whereas Rawls's version of contractualism provides a reasonably clear way to model this question -- namely, in terms of what any arbitrary individual would choose behind a thick veil of ignorance designed to exclude morally arbitrary information -- Scanlon offers fairly little guidance.

So the abstract statement of contractualism does not tell us how to evaluate the reasonableness of a complaint or a rejection of an outcome or principle; a fortiori it does not tell us that we should not aggregate complaints in determining their reasonableness. This is clear on one natural paraphrase of Scanlon's contractualism. Because contractualism is motivated by the "desire to justify one's actions to others on grounds that they could not reasonably reject," we might naturally formulate it as the claim that

(a) An action, outcome, or principle that one favors is permissible if and only if others cannot reasonably reject it.

But (a) has no antiaggregative commitments. A distributive norm that minimizes the individually worst complaint may be reasonably rejectable by others collectively. However, Scanlon sometimes formulates contractualism as

(b) An action, outcome, or principle is permissible if and only if no one can reasonably reject it.

Formulation (b) seems to be ambiguous between (a), which does not rule out aggregation, and

(c) An action, outcome, or principle is permissible if and only if no single individual can reasonably reject it.

If an individual can reasonably reject an action, outcome, or principle, because he is a member of a large class of people with serious individual complaints, then even (c) carries no antiaggregative punch. Formulation (c) will rule out aggregation only if the only ground an individual has for reasonable rejection is the size of his own complaint, that is, only if (c) is interpreted as

(d) An action, outcome, or principle is permissible if and only if no one person has a bigger complaint about it than someone (else) does about some alternative.

Formulation (d) alone would imply minimax complaint. But none of the more abstract statements of contractualism and its appeal commits us to (d).

These are reasons to separate the three layers of Scanlon's position -- contractualism, moral asymmetry, and minimax complaint. Given the underlying motivation of justifying one's actions to others, the most natural formulations of contractualism are (a) and (b). They imply neither moral asymmetry nor a ban on aggregation; they are compatible with any form of teleological theory. But just as the question when a sacrifice is justified may lead us to deny that all benefits and losses are morally on a par, the criterion of reasonable rejectability may lead us, as Scanlon believes, to focus on those who are in some way worse off and have larger complaints. But even if we accept moral asymmetry and its relevance to the reasonableness of a person's complaint, this doesn't prohibit us from aggregating. Indeed, if we're concerned to justify our conduct to others, we should allow that others may have a collective complaint that is larger than the complaint of the person with the worst individual complaint. So we can and should reject the third layer of Scanlon's view -- minimax complaint -- even if we accept the first two layers. Moreover, the first two layers of Scanlon's view are compatible with a teleological view such as complaint minimization.

Nagel contrasts the unanimity that egalitarianism seeks with the majoritarianism of utilitarianism; whereas majoritarianism is aggregative, the requirement of unanimous acceptability is antiaggregative. It is true that utilitarianism is aggregative. Moreover, it is true that unanimity is antiaggregative if the agreement is not moralized. But this sort of unanimity implies the Pareto constraint, and this leads to the intolerable distributional constraint that condemns Nagel's egalitarianism as much as utilitarianism.

Nagel acknowledges this and suggests that the pairwise comparison that minimax complaint invokes is the closest that we can come to unanimity.

So let me return to the issue of unanimity in the assessment of outcomes. The essence of such a criterion is to try in a moral assessment to include each person's point of view separately, so as to achieve a result which is in a significant sense acceptable to each person involved or affected. Where there is a conflict of interests, no result can be completely acceptable to everyone. But it is possible to assess each result from each point of view to find the result that is least unacceptable to the person to whom it is most unacceptable. This means that any other alternative will be more unacceptable to someone than this alternative is to anyone. The preferred alternative is in that sense the least unacceptable, considered from each person's point of view separately. A radically egalitarian
policy of giving absolute priority to the worst-off, regardless of numbers, would result from always choosing the least unacceptable alternative, in this sense.

But it is puzzling to claim that minimax complaint is the closest that we can come to unanimity. For minimax complaint involves, as we have seen, the dictatorship of the worst complaint. This may be a benevolent dictatorship, or one that is morally required (though I have denied this), but it is a dictatorship. It would be natural to construct a spectrum of voting procedures, running from dictatorship, at one pole, through majorities and various supermajorities to unanimity, at the other pole. But if we do this, it seems implausible to think that minimax complaint is the closest we can come to unanimity, because dictatorship seems to be the farthest thing from unanimity.

Of course, it's true that both unanimity and dictatorship distribute vetoes. But unanimity gives each a veto, whereas dictatorship gives only one a veto. It would seem that we come closer to giving everyone a veto (unanimity) by giving some, collectively, a veto (as in various kinds of majorities) than by giving one a veto (as in dictatorship).

Nagel's claims are perhaps more plausible when we see that he is moralizing the unanimity condition by appeal to moral asymmetry. He suggests that we trade in the notion of what is acceptable for what is not unacceptable. Then the closest we can come to unanimity is to find what is least unacceptable. But because of moral asymmetry, a burden that befalls someone who is worse off or has a bigger complaint is, ceteris paribus, morally more unacceptable than one that befalls someone who is better off. If so, it might seem that a distribution that minimizes the maximum complaint is least unacceptable and so closest to unanimity.

But this follows only if we have already restricted ourselves to pairwise comparisons. If we have not, then it's open to us to think that in determining the unacceptability of a distribution we can count not only how big a complaint an individual has but also how many individuals have a complaint about that distribution. But this would be to assess the unacceptability of a distribution according to complaint minimization, not minimax complaint.

Nagel suggests one other line of argument from a unanimity condition, moralized by moral asymmetry, to minimax complaint. One way of formulating moral asymmetry, as we have seen, is in terms of the greater moral urgency or importance of certain needs, when compared with other needs and goods. Now we might think that moral asymmetry, so understood, requires a lexical voting procedure and that minimax complaint secures a kind of unanimity within such a procedure.

Each individual's claim has a complex form: it includes more or less all his needs and interests, but in an order of relative urgency or importance. This determines both which of them are to be satisfied first and whether they are to be satisfied before or after the interests of others. Something close to unanimity is being invoked. An arrangement must be acceptable first from the point of view of everyone's most basic claims, then from the point of view of everyone's next most basic claims, etc.

Notice, however, that this view does not rule out aggregation within a level of urgency. If there are conflicts at the most basic level, then the least unacceptable distribution would presumably be the one that minimized failure to meet these most basic claims. But perhaps minimax complaint is not intended to be antiaggregative in this sense; perhaps it is intended to be antiaggregative only across levels of urgency. This links a kind of unanimity with a kind of prohibition on aggregation.

But the obvious question is why we should adopt this lexical voting procedure. The lexical character of the procedure ensures that no single most basic need can go unmet in order to meet any number of less basic needs. But why should we employ this procedure as a general matter? Nagel seems to think that the lexical procedure follows from recognition of moral asymmetry. But all asymmetry claims is that, other things being equal, it's morally more important to satisfy a more basic need than a less basic need. But other things may not be, and often seem not to be, equal when we pit one basic need against many only marginally less basic needs. Moral asymmetry is a scalar phenomenon. Though we acknowledge that a single less urgent need makes a smaller claim than a single more urgent need, we should recognize that the less urgent need does make a counterclaim. But then when we turn from same-number cases to different-number cases, it seems reasonable to recognize a greater counterclaim. Though the many make counterclaims that are individually smaller, they make a counterclaim that is collectively greater. If so, the right response to moral asymmetry should be aggregative in the way complaint minimization is.

Minimax complaint does not fall out of contractualism or moral asymmetry without additional premises. One kind of egalitarianism requires minimax complaint and not simply moral asymmetry. But Nagel has offered no argument for linking this kind of egalitarianism with contractualism and moral asymmetry.

We might summarize the relations among contractualism, moral asymmetry, and minimax complaint as follows. Because contractualism and moral asymmetry are not committed to minimax complaint, our worries about minimax complaint threaten neither moral asymmetry nor contractualism. So our worries about minimax complaint do not threaten the contention that the separateness of persons plays a constructive role in moral theory by providing a motivation for contractualism. But it is important to note that, given the moralized understanding of SRC and,
consequently, of the kind of unanimity that contractualism seeks, the separateness of persons does not itself support a distinctively nonteleological form of contractualism. This is not simply the claim that contractualism and teleological ethics are compatible, because a form of utilitarianism could, in principle, be agreed to in the right sort of contract. Rather, I agree with critics of utilitarianism that a suitably moralized contract should rule out traditional utilitarian aggregation in which no kind of loss is intrinsically more significant than another. But I insist that a suitably moralized contract must produce distributional norms that do aggregate over losses or complaints that have been suitably weighted according to their moral significance.

11. Conclusion

My concern here has been with abstract structural issues about the relationship between the separateness of persons, moral theory, and distributive norms. The separateness of persons objection purports to show that there is something wrong with the structure of utilitarian or teleological moral theories and that we should accept instead a distinctively nonteleological form of contractualism. The only version of the test the separateness of persons objection imposes that such theories obviously flunk is the strong version that rests on the Pareto interpretation of SRC. But because every reasonable moral theory flunks that test, it is no objection to teleological theories.

However, there is another, more plausible version of the separateness of persons objection that rests on a moralized version of SRC. And the moralized interpretation of SRC may seem to undermine utilitarianism and support contractualism. The moralization of SRC suggests the moral asymmetry thesis that top-down sacrifice is less serious than bottom-up sacrifice. Moral asymmetry may seem to demand that we make affairs least unacceptable to those for whom they are most unacceptable. This leads to minimax theories that assign the worst complaint a veto. Because minimax theories are antiaggregative, this interpretation of the separateness of persons may seem to be a good objection to utilitarian and other teleological theories. It may also seem to support a version of contractualism. The contractualist demands that we combine the points of view of different persons not in an aggregative fashion but in a fashion that makes distributions acceptable in the relevant way from each point of view. Because of conflicts among different points of view, no distribution will be acceptable to each point of view. We need to moralize the kind of unanimity that contractualism seeks, and we do this by appeal to moral asymmetry. But when we try to find the least unacceptable distribution, moral asymmetry seems to tell us to focus on those with the biggest complaints and to make them as small as possible.

However, minimax theories are not the right way to represent moral asymmetry. Though they measure the seriousness of a complaint differently, they all give a veto to the worst complaint, and this establishes the dictatorship of the worst complaint. And the dictatorship of the worst complaint fails to register the moral significance of complaints other than the worst complaint. Because, other things being equal, many only marginally less severe complaints can combine to outweigh a few marginally worse complaints, we should reject the antiaggregative character of minimax and aggregate over benefits and harms that have been suitably weighted for their importance. Teleological views can make these claims, even if they are not available to traditional hedonistic and desire-satisfaction versions of utilitarianism. If so, the separateness of persons objection, even in its most plausible form, does not undermine all teleological moral theories. Moreover, any suitably moralized interpretation of unanimity should allow such aggregation. If so, the versions of contractualism that can be motivated by the separateness of persons are not distinctively nonteleological. This means that the separateness of persons can play neither the negative nor the positive role that its friends have claimed it does.

Notes

1 In a similar way, McKerlie distinguishes the “positive connection” and the “negative connection” that might be claimed to hold between the separateness of persons and moral theory; see Dennis McKerlie, “Egalitarianism and the Separateness of Persons,” Canadian Journal of Philosophy 18 (1988):205–26.


7 One way in which distribution might be important is compatible with temporal-neutrality. A life might be worse if it contained a highly inequalitarian distribution of goods. Perhaps a good life is a kind of organic whole whose value is not reducible to the sum of the value of each of the parts. Cf. G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1903), secs. 18–22; and C. I. Lewis, *An Analysis of Knowledge and Valuation* (La Salle: Open Court, 1946), pp. 491, 494–5. If an arrangement of goods is itself an important good within a life, then temporal-neutrality’s commitment to maximization of value over the course of one’s life will itself require a certain distribution.
9 This defense of temporal-neutrality depends on the assumption that it is persons, rather than person stages, that are the normatively relevant units. For discussion and defense of this assumption, see my “Rational Egoism and the Separateness of Persons,” in J. Dancy, ed., *Reading Parfit* (Oxford: Basil Blackwell, 1993).
10 I will not here question the assumption that interpersonal compensation is problematic. But this assumption deserves scrutiny. If we accept the plausible claim that the relation that matters in discussions of personal identity is psychological continuity, then the welfare of distinct people is arguably interdependent in a way that makes possible some forms of interpersonal compensation. Cf. my “Rational Egoism, Self, and Others,” in O. Flanagan and A. Rorty, eds., *Identity, Character, and Morality* (Cambridge, Mass.: MIT Press, 1990); and Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), ch. 15.
12 Ibid., p. 142.
15 My reading of the separateness of persons objection might be compared with Parfit’s Objection to Balancing; see Parfit, *Reasons and Persons*, sec. 115.
16 Notice that my discussion does not use the actual situation as a baseline for assessing Pareto-superiority, -optimality, -inferiority, -incomparability, or -indifference. In the process of determining entitlements, none yet exist; so it’s inappropriate to use the status quo as a baseline. The baseline must be alternative possible distributions.
18 Contrary to what Nozick explicitly claims (Anarchy, State, and Utopia, p. 161). Think about how operation of the market within a system of private property rights in the means of production and bequest produces concentrations of property rights that adversely affect the bargaining position of people not party to those market exchanges (e.g., future members of the working class). These negative externalities of the market show that voluntary market exchanges are not always Pareto improvements. Nozick must also resist the implication of the Pareto interpretation of SRC that Pareto improvements are sufficient grounds for demanding a (compensated) sacrifice, for he presumably believes that nonvoluntary Pareto improvements are impermissible.
20 Ibid., p. 17.
21 Consider three possible distributions.

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Suppose (1) is the actual world. A is worst off in (1). Maximizing the position of the worst-off is to be understood as requiring that we move from (1) to (2), where C is the worst-off. Thus, “the worst-off” does not refer to the same person in all worlds, and maximin does not require us (always) to maximize the position of the person who is worst off in the actual world (thus, maximin does not treat [3] as preferable to [1]). This shows that the difference principle treats “the worst-off” as a definite description, rather than a rigid designator.
22 Insofar as the moral asymmetry thesis both supports the difference principle and is relevant to its stability in a well-ordered society, it is relevant to the contractual argument for the difference principle. But I think the relationship between moral asymmetry and the difference principle is easier to see (even if only initially) in the noncontractual setting.
23 Ibid., p. 178.
26 Ibid., p. 103.
27 Nozick, *Anarchy, State, and Utopia*, pp. 192–6. Also notice that because ‘worst-off’ functions as a definite description, rather than a rigid designator, it is not necessarily true that B would have been even worse off than he is if the difference principle had not been adopted, because someone else might occupy this worse worst-off position. What is true is that someone would
have been even worse off than B is if the difference principle had not been adopted.


29 Nozick, of course, rejects this first part of Rawls’s reply. He suggests, perhaps, that treating the distribution of natural endowments as a common asset wrongly involves giving others property rights in your person (cf. *Anarchy*, p. 229), and he explicitly asserts that one’s entitlements need not be “deserved all the way down” in order to be legitimate (ibid., p. 225). But neither of these claims seems to affect Rawls’s point. The claim that people’s talents should be treated as a common asset does not give the community property rights to individuals’ talents; to treat natural talents as a common asset is only to see a social product that takes individuals’ unearned natural talents as inputs as an appropriate object of equitable distribution. In doing so, we do not deny that individuals are entitled to their natural abilities; we do not give the community the right to compel individuals to employ their talents productively; we do not give the community the right to deny individuals the opportunity to employ their talents productively; and we do not even deny individuals the right to benefit from the productive employment of their talents; we deny only that individuals are entitled to all the benefits that they can get others to concede to them from the productive social employment of their talents.


32 Ibid., p. 141.

33 Ibid., p. 142.


36 My focus will not be on individual, discrete actions and outcomes — the focus that Rawls and Scanlon rightly resist — but on institutional mechanisms and policy decisions that generate entitlements and significantly affect people’s life prospects. For instance, Nozick’s objection that liberty upsets patterned principles (*Anarchy, State, and Utopia*, 160–4) seems to assume that patterned principles directly regulate the justice and injustice of particular, discrete transactions among individuals. Rawls or Scanlon can reply that contractualist principles regulate directly matters of institutional design, rather than particular transactions (cf. *Theory of Justice*, pp. 87–8). The worries that I shall raise for views like those of Rawls and Scanlon do not make this mistake, but focus on the implications of these views for institutions and policies that determine entitlements and affect people’s life prospects.


39 Ibid.


42 Nagel is willing to let the claims of those with the biggest complaints be overridden in some circumstances, but he seems to regard this as an anti-egalitarian element in his views (“Equality,” pp. 124–5). Also, after noting that his own view is fundamentally antiaggregative, Scanlon allows that the question how “aggregative considerations can enter into a contractualist argument is a further question too large to be entered into here” (“Contractualism and Utilitarianism,” p. 123). These qualifications on the antiaggregative character of their views make it difficult to know whether my criticisms would trouble them. Insofar as they take this antiaggregative feature to be a principal virtue of their positions and reject person-neutral views because these views are aggregative, they should have difficulty accepting my conclusions.

43 My discussion of minimax complaint owes much to lectures Parfit gave at Harvard in the spring of 1989, which are developed in his book manuscript, “On Giving Priority to the Worse Off.”

44 Presumably, friends of minimax complaint would endorse the *lexical* version of minimax complaint: First, we minimize the maximum complaint; then, subject to this constraint, we minimize the next-worst complaint; and so on until, subject to the constraints imposed by previous stages, we minimize the smallest complaint (cf. Rawls, *Theory of Justice*, p. 83).

45 Rows indicate distributions under different norms or policies, while columns indicate persons or groups. Unless otherwise indicated, the size of different groups is the same. The numbers measure life prospects, or significant effects on life prospects, by whatever nonmoral index the reader thinks appropriate (e.g., utilities or primary goods).

46 The Smallest Loss and Best Worst-off counterexample is a case in which “chain-connection” does not hold (cf. ibid., p. 80). Rawls claims that the difference principle applies even in cases (worlds) where chain-connection does not hold (ibid., pp. 80–3).

Of course, *Theory of Justice* does stress practical as well as theoretical virtues in theories of justice (e.g., ibid., pp. 90, 95, 138, 140, 142, 318, 320, 501). This practical focus may allow Rawls to discount unrealistic counterexamples to the difference principle. But we can address issues of practicality after trying to settle theoretical issues. Moreover, the theoretical differences between maximin and, more generally, minimax complaint and their rivals do have significant practical implications.

47 I shall not discuss the version of minimax complaint in which the size of complaint depends on the size of a person’s relative loss ([ii]) alone, because I don’t think it captures the intuitions that motivate moral asymmetry. As such, this version of minimax complaint has no egalitarian commitments. It would appear to preclude all egalitarian transfers from the better-off to the worse-off that reduce the total social product. Thus, for example, it would condemn Distribution 2 in
whereas any robust version of moral asymmetry would presumably insist on it. This version of minimax complaint resembles Gauthier’s view, though he treats the state of nature as the baseline in assessing losses, as I do not. See David Gauthier, *Moral by Agreement* (Oxford: Clarendon Press, 1986), pp. 14, 133–46.


50 Ibid., p. 124.

51 Ibid., p. 117.

52 Ibid., pp. 117–18, 122–5.


54 Cf. ibid., pp. 42–3.

55 Cf. ibid., p. 34.


58 Ibid., pp. 12, 120.

59 Ibid., pp. 17, 119, 121, 138, 139.

60 Indeed, the difference principle itself requires aggregation as long as representative social positions (e.g., the worst-off) are sufficiently coarse-grained as to include subgroups at different levels of well-being and the level of a representative position is defined as the average of the levels of its subgroups.

61 Rawls argues against unrestricted utilitarianism on the ground that it is not a stable distributional norm, because its stability would require those whose interests might be sacrificed in order to maximize total or average utility to identify their interests with the interests of others in a way that is psychologically unrealistic, as well as morally unattractive (Theory of Justice, pp. 177, 500). But when we notice that maximin involves a dictatorship of the worst complaint, we may doubt its stability. For its stability would seem to require the entire population of those who are marginally less worse off than the worst-off – no matter how large this population is – to identify their interests completely with those of the worst-off – no matter how small a population this is.


63 This is similar to the idea, which some have accepted, that if we model (i) the interpersonal combinatorial problem on (ii) the problem of how an individual would combine the interests of different individuals if she imagined living these lives *seriatim*, then we are committed by temporal-neutrality to utilitarianism’s person-neutrality. Lewis endorses this way of modeling the interpersonal combinatorial problem; see Lewis, *Analysis of Knowledge and Valuation*, pp. 546–7. Nagel and Hare both find utilitarian commitments in this model. See Nagel, *Possibility of Altruism*, pp. 138–9; and R. M. Hare, *Moral Thinking* (Oxford: Clarendon Press, 1981), pp. 110–11. But the model does not require the utilitarian conclusion. It would do so only if (iii) the individual treated these distinct lives (to be lived *seriatim*) as if they were parts or stages of one single superlife. Then the requirement of temporal-neutrality (see Section 1 of this chapter) would require utilitarianism’s person-neutrality. But the question is precisely whether it is reasonable to understand (ii) as (iii). 64 Scanlon doesn’t want to say that a distribution is permissible if it imposes severe hardships on self-sacrificing people who are willing to accept them, as we would have to if the operative notion was acceptability. Because people could reasonably reject such burdens, even if they do not, contractualism won’t permit this distribution if it’s formulated in terms of reasonable rejectability (“Contractualism and Utilitarianism,” pp. 111–12).

65 Ibid., p. 111.

66 Ibid., p. 116.


68 Cf. ibid., p. 117.

69 Ibid., p. 123.


71 Nagel, “Equality,” p. 117. Notice that it is urgency that attaches to needs, rather than persons or positions, that Nagel appeals to here.

72 Of course, Rawls and Scanlon concede this (Theory of Justice, pp. 15–16; “Contractualism and Utilitarianism,” p. 110), but they think a version of minimax complaint is the most plausible result of the right sort of contract.

73 In this way, my views about the relation between contractualism and teleological ethics are quite different from those of John Harsanyi in “Morality and the Theory of Rational Behavior,” reprinted in A. Sen and B. Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1985).