The Possibility of a General Theory of Normativity in Light of the Number-Counts-Debate

Irina Spiegel

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Abstract: This article revisits Taurek's famous question: Should the greater number be saved in situations of resource scarcity? At the heart of this debate lies a central issue in normative ethics—whether numerical superiority can constitute a moral pro tanto reason. Engaging with this question helps to illuminate core principles of normative theory. Welfarism^{min} presents a pro-number position. The article first outlines Taurek's original argument. It then examines non-welfarist responses and explains why they remain unsatisfactory. Finally, it identifies the main shortcomings of the hybrid welfarism^{min} approach and suggests a possible alternative for more adequately addressing the Taurek problem.

Keywords: Taurek, number-counts-debate, aggregation, welfarism, neo-contractualism.

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1 Introduction

The preservation of human life is a widely recognized and deeply rooted moral norm. In practice, however, circumstances often involve constraints—such as limited time or resources—that render it impossible to save all those in peril. In such scenarios, a choice must be made between saving one individual or group and another. The moral stakes are particularly salient when the decision concerns groups of unequal size. For instance, one might face the choice of rescuing either a single individual from a burning building or ten individuals from a similarly imperiled neighboring building, without the possibility of saving all eleven. Under such conditions of scarcity, and assuming all other factors are equal, is it *morally* justified to prioritize saving the greater number?

This question has already been precisely posed and answered in the negative by Philippa Foot (Foot 1985) and sharpened and also answered in the negative by John Taurek in his famous essay *Should the Numbers Count?* (Taurek 1977). In this essay, Taurek assumes a constructed, abstract case in which only the number of human lives remains as a criterion for the rescue decision. This purely thought-experimental abstraction is necessary to ensure that the normative problems become clear and can be precisely formulated and addressed.

The Taurek question has triggered a controversy in normative ethics that continues to this day. In German-speaking countries, Weyma Lübbe (2008) and Kisten Meyer (2014) in particular have exposed themselves in this field. Both express deontological concerns about a decision based solely on the summarization or aggregation of individuals. While Lübbe has to agree with Taurek's *No Worse Claim* (2008) and continues to regard the question of the greatest number as open and worrying[1], Meyer emphasizes the personal nature and personal equality. However, it will become clear in the following that this by no means solves the problem of aggregation (which repeatedly arises in the justification of norms), but opens up the possibility for further and perhaps more differentiated debates.[2]

The most recent approach to this was presented by Annette Dufner and Bettina Schöne-Seifert (Dufner/Schöne-Seifert 2019). The authors attempt to hybridize the deontological principle of individual equality with the consequentialist aggregation principle (i.e. the number of people involved). They label this approach as *Welfarism^{min}*. It postulates *person-neutral values* and thus ties in with the everyday and widespread intuition to save as many lives as possible. Welfarism^{min} aims to demonstrate a theoretical possibility of the *moral relevance* of the number principle in rescue conflicts.

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[1] *So what do […] consequentialists mean by declaring every saved life to be a "good", regardless of whether it is saved fairly or unfairly? Good for whom, or from which perspective? I think that this question, Taurek's question, deserves an answer and that the answer has not yet been given.* (Lübbe 2008, 85).

[2] Cf. Meyer 2014, 28.

The claim of this paper is that welfarism^{min} does not provide a theoretically viable argument for why the number of lives can have moral relevance. Nevertheless, this attempt is valuable because it benefits the debate on the foundations of normative ethics by showing in which direction one should probably not go.

2 The Problem of Interpersonal Aggregation

In the introduction, we presented a life-saving example with a ratio of 1:10. Taurek himself constructs an example with a ratio of 1:5:

> *The situation is that I have a supply of some life-saving drug. Six people will all certainly die if they are not treated with the drug. But one of the six requires all of the drug if he is to survive. Each of the other five requires only one-fifth of the drug. What ought I to do?* (Taurek 1977, 294)

In the discussion, the numerical ratios are varied in order to show, a.o., that moral intuitions may shift—sometimes significantly—depending on whether the number of lives at stake increases or decreases. For example, the impulse to rescue appears to be stronger in a 1:100 ratio—i.e., to save 100 people rather than one—than in a 1:5 ratio—i.e., to save five people rather than one. Does this stronger intuition correspond to greater normative validity when all other relevant conditions are equal and the only difference is quantity?

People have different intuitions that vary across cultures and are likely rooted in anthropological factors. In any case, Taurek is right to be suspicious of everyday intuitions, whether they are shaped by culture or ingrained through evolution. Yet, he himself appeals to a deeper intuition that is neither common nor widely shared: *the absolute primacy of the individual.* To determine the normatively valid nature of a given intuition, it seems unavoidable to appeal to a general theory of normative justification. However, the deontological framework grounded in Kantian ethics and the utilitarian tradition shaped primarily by Mill remain incompatible to this day, though very few contemporary approaches are purely one or the other. Mixed or hybrid models dominate current discourse, but they often fail upon closer scrutiny. A comprehensive theory of normativity—one that is both consistent and complete—remains out of reach.

2.1 John Taurek's Core Argument

Taurek argues that in situations where we must choose between doing something good for two groups of people or protecting them from harm, we should not consider the number as something that morally legitimizes the decision. Regarding his main example (1:5), Taurek claims that there is no moral reason to give the medicine to all five people just because it will save *more* lives. In doing so, he tacitly assumes that there is something like a *need* to save at least one person in this situation, rather than none. The question now is whether a benevolent person can and should not only want to save at least one person, but also want to save as many as possible.

Suppose the person who needs the full dose (Taurek calls him David) is a friend of yours. You can now save your friend's life or the lives of the five people you don't know. Taurek's intuition (and this intuition is widespread) is that you are allowed to save the life of your friend David rather than the lives of the five unknown people. Taurek here rejects all possible explanations as to why it might be permissible to choose the friend over the stranger. What seems to be decisive is that saving David is not permitted because his death leads to a worse outcome compared to the death of the five strangers:

> *I would not think that the fact that David happens to be someone I know and like would make his death a worse thing in comparison to the deaths of these others than it would be if [...] I didn't know him or knew him but happened not to like him.*(Taurek 1977, 296)

In addition, you are not permitted to save David on the grounds that you are specially *obligated* to do so as his friend.

> *The fact is that I would act to save David's life because, knowing him and liking him, my concern for his well-being is simply greater than my concern for the well-being of those others, not because I recognize some overriding obligation to him.*(Taurek 1977, 297)

If one were obligated to save his friend's life, it would be a moral duty, not just a permissible (not forbidden) act. By excluding these two observations, Taurek believes he has shown that there is no further obligation for David's friend to save David. Taurek also believes that there can be no further demands at all in such situations. Saving David (and not the five strangers) is simply good or better for David's friend. The fact that it is nevertheless permissible to save David thus shows that there is generally no moral obligation to save the five people instead of one person, i.e. this also applies to the anonymous case in which all those involved are strangers to each other. Therefore, it is permissible to save one person instead of five (all other considerations notwithstanding).[3]

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[3]The abstract nature of such thought experiments becomes very clear here. Weyma Lübbe has pointed out that concrete practitioners see little use in such abstract considerations, because realistically such abstract situations never occur. But didn't Einstein carry out similar unrealistic thought experiments? She says: *In theory, in order to make progress in certain respects, one must abstract from other respects [...]. This is no different in ethics mutatis mutandis than in physics: after all, one does not expect gravitational theory to provide immediate information about the optimal angle of inclination of a ski jump. The temptation to translate their insights developed from context-free model examples directly into recommendations for practice is, of course, easier for philosophers than for physicists, since apparently nothing needs to be built here.* In the original German: Man muss 'in der Theorie, um in bestimmter Hinsicht weiter zu kommen, von anderen Hinsichten abstrahieren [...]. Das ist in der Ethik mutatis mutandis nicht anders als in der Physik: Von der Gravitationstheorie erwartet man ja auch keine unmittelbaren Aufschlüsse über den optimalen Neigungswinkel einer Sprungschanze. Der Versuchung, ihre an kontextfreien Modellbeispielen entwickelten Einsichten unmittelbar in Empfehlungen für die Praxis umzusetzen, erliegen die Philosophen, da hier scheinbar nichts gebaut werden muss, freilich leichter als die Physiker."(Lübbe 2004, 18).

This argument can be reconstructed as *reductio ad absurdum*:

(1) If there are no special considerations, it is **not** permissible to save (only) one person instead of the five persons.
(2) It is permissible to save the friend (David) instead of the five unknown persons.
(3) The fact that David is a friend does not reveal any further special requirements (such as a moral obligation).
If (2) and (3) are both true, then (1) must be false. This logically shows that the sheer number of human victims has no *basic* moral relevance. (Cf. Taurek 1977, 295)

Taurek goes one step further: Suppose you were the person who needed the whole drug and in the decision situation either kept the drug all to yourself and saved yourself with it or gave it to the other five people and saved them. If David were this person, then he would be allowed to save himself with the drug. So it is morally permissible to save his life rather than the lives of five other people. What you are allowed to do for David (a person) is the same as what David is allowed to do for himself. If it is permissible for David to give the drug to himself (instead of the other five people), then it is also permissible for you to give the drug to him instead of the other five people. So it is permissible to save one person (David) instead of the other five. Here, the number (alone) does not play a role in establishing a moral norm or duty. (Cf. Taurek 1977, 298)

If Taurek is indeed right (and it appears he is) that in such constellations there is no decisive moral reason to save the greater group—despite the intuitive plausibility of doing so when the numerical difference between the groups is given —then a fundamental normative issue is revealed: the Taurek problem. This problem has been taken up in the debate in various ways and has been criticized from a range of perspectives. Welfarism^{min} is one approach to addressing the Taurek problem.

2.2 The Welfarism^{min}

Welfarism^{min} is a "consequentialist and aggregationist pro-number position". (Dufner/ Schöne-Seifert 2019, 15) In their paper *Die Rettung der größeren Anzahl: Eine Debatte um Grundbausteine ethischer Normenbegründung*[4], the proponents of this position, Annette Dufner and Bettina Schöne-Seifert, attempt to show that it is coherent to save the greater number while respecting each person equally. Welfarism^{min} thus attempts to address the Taurek problem in a hybrid way: Saving the greater number of human lives is morally more plausible and correct because it brings about a better result (*more human lives*) without violating other duties, particularly the principle of equal respect. [5] If every human being is to be respected equally, then respect for five human lives is to be

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[4]Journal for Practical Philosophy/Zeitschrift für Praktische Philosophie Vol. 6, Heft 2, 2019, 15-42: www.praktische-philosophie.org https://doi.org/10.22613/zfpp/6.2.1

[5]In German original: "da sie nicht nur das *bessere Ergebnis* (mehr Menschenleben) herbeiführt, sondern auch nicht gegen andere Pflichten, insbesondere das Gleichachtungsgebot, verstößt." (Dufner/Schöne-Seifert 2019, 17)

valued more highly than respect for one human life. What arguments does Welfarism^{min} have in favor of this hybrid position and against the Taurek position? And: What are the basic assumptions of the hybrid approach of Welfarism^{min}?

It is based on two *axiological* assumptions and one *normative* principle:
(1) In addition to person-relative values, there are also person-neutral values.
(2) Under certain conditions, person-neutral values can be aggregated interpersonally (Dufner/Schöne-Seifert 2019, 19).
(3) Equal respect for all individuals applies without exception (ibid., 29).

The proponents of welfarism^{min} thus presuppose the widespread distinction between moral (normative) and evaluative judgments, as well as a distinction within the evaluative judgments themselves: the person-relative and person-neutral types of value judgments. It is personally good for every rescued person to be rescued, and possibly for every rescuer to be rescued as well. That seems to be the consensus. However, welfarists assume that, in addition to the personal value (of being rescued), there are also person-neutral values that have a subjective origin but are shared by several people (ibid., 18).

They do not state it explicitly, but such person-neutral values are effectively group values. For example, consider the group value judgment: climate change is bad. This means there is an increasingly large group of people who hold this judgment. What is problematic—and not explicitly addressed by the authors—is whether there is something emergent beyond the mere distribution of this value among all individuals who share it. In other words, it remains unclear how the distribution of values can be described epistemologically. Is the group value a mere aggregation[6] or is it more than the sum of the individual values? The authors completely avoid this issue. They merely point out that, in order to assess whether the *more-survivors-are-better* judgment could be morally relevant, and it is irrelevant to determine whether such a group value actually emerges—and how it might emerge, if at all. In doing so, they effectively postulate a constructivist account of group values (ibid., 20).

The authors thus presuppose person-neutral (group) values as a distinct class of values and thereby claim that *good for the group* can be explained in the same way as *good for someone*. It is precisely at this point that Taurek argues that *good for the group* cannot be understood (cf. Taurek 1977, 295). This is indeed incomprehensible as long as the Welfarists cannot explain how such group values come about in the first place and what they actually are. In the absence of a realistic description[7] of the emergence of group values, they lack a solid theoretical foundation for their position. Simply drawing the line between ethical worldviews is, from a scientific perspective, highly unsatisfactory.[8]

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[6]Where does this aggregation take place? Is it within the cognition of each individual involved?

[7]Here, a description from the "point of view of the universe" would be crucial. (Cf. Sidgwick 1981, 382).

[8]The following are unsatisfactory: *The typical way in which consequentialists speak of "states of the world" to be evaluated, along with their ethical meta-maxim to make the world a better place, expresses this Welfarism^{min} position. Whether or not one shares this view—while its relative weight in morally relevant decision-making situations may remain open—marks a significant boundary in*

Since the authors cannot offer an axiological theory from the "standpoint of the universe", they must inevitably refer to lifeworld practice: People often speak and act in relation to collective values that are neutral to individuals, which are often ascribed moral relevance. For example: "The pandemic is bad". This person-neutral value judgment becomes morally relevant when deciding how to distribute scarce intensive care beds to the sick. In these situations, the "more survivors are better"-judgment often acts as a decisive argument. What is wrong with that?

A number of strong objections have been raised against the normative relevance of interpersonal value judgments, first and foremost by Taurek himself. Dufner and Schöne-Seifert attempt to refute these objections.

3 Criticism of the Welfarist Critique

Three main objections have been raised against welfarism: first, the argument from incomprehensibility; second, the impartial observer argument; and third, the degradation argument.[9] The criticisms welfarists have directed at these arguments will, in turn, be critically examined in what follows.

3.1 The Argument of Incomprehensibility

Already for Taurek it was not comprehensible why interpersonal aggregation should be normatively decisive in pure Taurek cases. Weyma Lübbe also considers this as ultimately unjustified. (Lübbe 2008) Her *rational choice*-based analysis of the Pareto principle in relation to rescue conflicts of the Taurek type supports the Taurek position.

According to the Pareto principle, saving both a person and a group is better than saving either a person or a group (Lübbe 2015, 105). Lübbe understands this "better", i.e., the "Pareto-optimal better", informatively, not normatively. According to Lübbe, such interpersonal aggregations are expressions, not reasons for judgments, i.e., not genuine normative judgments (Lübbe 2008, 76). /For more details on Weyma Lübbe's approach, see section 4.3. The so-called *reinterpretation thesis* is categorically rejected by Welfarism's proponents as an *anticonsequentialist strategy.* (Dufner/Schöne-Seifert, 2019, 23).

To think that the Pareto case is *better* than the conflict case does not necessarily presuppose an aggregation of values as a *moral* criterion. The Pareto case and the conflict case are two different reference systems. In the Pareto case, instrumental rationality or prudence is essentially at work, whereas the conflict case is essentially about moral

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ethics. In the original German: Die unter Konsequentialisten übliche Redeweise von den zu bewertenden „Weltzuständen", ihre ethische Meta-Maxime to make the world a better place [...] bringen diese Welfarismus^{min}-Position zum Ausdruck. Sie zu teilen oder nicht zu teilen (wobei ihr relatives Gewicht in moralisch relevanten Entscheidungssituationen offenbleiben kann), markiert eine wichtige Grenze in der Ethik. (Dufner/Schöne-Seifert 2019, 21).

[9]Cf. Dufner/Schöne-Seifert 2019, 22.

judgment. The two authors themselves point out that these areas must be carefully considered separately (Dufner/Schöne-Seifert, 22). Therefore, they cannot accuse Lübbe (and they do not do so directly) of applying the aggregation criterion in the rational Pareto case, but not necessarily considering this criterion to be justified in the moral conflict case.

3.2 The Argument of the Impartial Observer

The second argument is the impartial observer argument, which was raised against welfarism—originally by Taurek himself. It holds that the aggregation of person-neutral value judgments necessarily presupposes an impartial perspective (Taurek 1977, 298). In other words, the mere summation of personal values cannot, by itself, yield impartiality with respect to what is *normatively* right or wrong.

The welfarists argue, however, that impartiality need not necessarily be normative. There is also an *evaluative* (person-independent) perspective of impartiality (Dufner/ Schöne-Seifert 2019, 24), from which one can "assess and compare aggregates of human well-being" (ibid.), for example, that an earthquake with few casualties is less severe than a famine with many deaths. However, the question remains: what does this impartial *evaluation* contribute to the *normative* justification of the decision to combat the famine rather than the consequences of the earthquake in a conflict situation? This seems to be merely a reformulation of the earlier problem concerning the emergence of person-neutral group values. Even evaluative impartiality fails due to the lack of a robust (scientific) theory of aggregated group values.

3.3 The Payoff of the Degradation Argument

The strongest argument that Welfarism$^{\min}$ appears to be the so-called *degradation argument*. According to Taurek, it is a normative fundamental principle[10] that individuals, *as persons* or subjects (or, one might say, as *mental* and sentient beings), possess not an objectifying, aggregable *quantity*, but a phenomenal *quality*, in contrast to inanimate objects. He says:

> It is not my way to think of them as each having a certain objective value [. . .] If it were not for the fact that these objects were creatures much like me, for whom what happens to them is of great importance, I doubt that I would take much interest in their preservation. (Taurek 1977, 307)

The two welfarists point out, however, that this constitutes a fundamental exclusion.

> Those who assign objective value to the saving of persons neglect the subjective well-being and suffering of those affected. But those who consider the internal perspective to be decisive lack a 'currency' in which an overall value

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[10]Kirsten Meyer formulates this point as follows: Taurek claims that "one *ought not* to regard people as objects whose value can be aggregated." In the original German: "man *solle* Menschen nicht wie Objekte ansehen, deren Wert sich aggregieren lässt." (Meyer 2014, 20).

could be aggregated. In the first case, persons are impermissibly degraded;
in the second, the comparative judgment—that one outcome is better than
another—cannot be justified.[11] (Dufner/Schöne-Seifert 2019, 25).

What more could be said about the degradation argument, without directly and once again invoking Kant's postulate of the infinite value of human life? Perhaps this: A human being is an individual with subjective, mental aspects (mind), and also a being with objective, physical aspects (body). There is an exclusion at work here, insofar as the welfarists have not yet shown how they intend to theoretically *describe and* explain the objectivity and normativity of aggregating subjective (phenomenal) values. Unless welfarists can offer a robust theoretical framework that explains the normativity of aggregating mental states, the core issue—how to reconcile subjective welfare with objective moral evaluation—remains unresolved.

The thesis could now be that, without a convincing solution to the mind–body problem, it will not be possible to aggregate individuals' subjective evaluations objectively. The problem lies precisely in accounting for *the mental*, raising the question: Can we grasp the root of normativity without understanding what *consciousness* is for?

So far, the proponents of Welfarism[min] have not succeeded in refuting the objections to interpersonal value aggregation in pure Taurek cases. One may well judge a deadly volcanic eruption to be worse than a lightning strike that claims a single life (Dufner/Schöne-Seifert 2019, 26), but in the context of scarcity, such a judgment is not an instance of interpersonal value aggregation—it is rather a judgment made by an *observer* or *decision-maker*. It is somewhat disingenuous of the two authors to accuse Kantians and Taurekians of "withdrawing from shared evaluative practice" (ibid.) in relation to this very intuition, which is precisely what gives rise to the problem in the first place. In fact, the reverse is true: as long as a rescue situation involves a Pareto-optimal context (i.e., no scarcity of resources), no one would think to weigh the deadly volcanic eruption against a lightning strike. It is only under conditions of scarcity that a fundamental normative or moral problem arises—and this applies both to symmetric constellations (e.g., one life versus many lives) and to asymmetric ones (e.g., one life versus the headaches of many people).

It is especially the asymmetric cases that proponents of Welfarism[min] invoke to demonstrate that even rights-based ethicists ultimately presuppose person-independent values—or duties derived from them—in order to avoid ending up with morally objectionable omissions. Morally, it is uncontroversial that, in a conflict situation, one ought to save a person's life rather than someone else's hat, or rather save a life than treat another's migraine—or even the migraines of 1,000 people. A person-relative comparison might reveal who experiences and evaluates what as worse for themselves (ibid., p. 31).

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[11]In the original German: "Wer der Rettung von Personen objektiven Wert zuschreibe, vernachlässige das subjektive Wohl und Wehe der Betroffenen. Wer aber die Innenperspektive für entscheidend halte, habe keine ,Währung', in der sich eine Gesamtgröße aggregieren lasse. Im ersten Fall würden Personen unzulässig degradiert, im zweiten Fall ließe sich das Besser-als-Urteil nicht begründen."(Dufner/Schöne-Seifert 2019, 25)

What the Welfarists find problematic is that, after such a person-relative comparison, one would still choose to save a single life even when an alternative would be to protect 1,000 patients from a disease that would certainly lead to death within a year (ibid.). Yet this is precisely the normative problem that ethicists who uphold the primacy of the individual—and reject collective or aggregated values—continue to grapple with.

Kirsten Meyer has proposed introducing a significance threshold to indicate when, in situations of scarcity, fair procedures (e.g., lotteries) should be applied, since fairness cannot otherwise be guaranteed (Meyer 2006, 141). The Welfarists criticize this suggestion by claiming that the significance judgment would have to be context-independent—that is, fixed. But this does not appear to be necessary. The significance judgment can be understood as an intersubjective judgment, such as: "Migraine treatment is significant compared to treating a nosebleed, but not significant compared to saving a life". (Dufner/Schöne-Seifert 2019, 32) This judgment does not presuppose a person-neutral value, as the Welfarists claim, but is instead generated intersubjectively—i.e., it would be coordinated with the persons involved (either implicitly or explicitly). At this point, a developed theory of judgement or a *theory of normative judgement alignment* would be helpful, in which the framework of *judgement aggregation* could prove useful.

But doesn't Welfarism^{min} also presuppose a fixed significance threshold, precisely the kind they accuse their critics of adopting—one that cannot be derived from any value aggregation? This becomes evident "when the rescue of A is weighed against a person-neutral aggregate of many treatments of lesser illnesses—for example, one thousand migraine patients. At the latest here, everyday shared morality [...] demands the protection of the individual against excessive trade-offs with the interests of others [...]" (Dufner/Schöne-Seifert 2019, 32). In other words, just at the point where they, too, would have to specify a threshold of significance, they retreat into everyday moral intuition.

However, the welfarists seem to have one more ace up their sleeve: everyday political, social, and especially economic practice.[12] This practice involves countless interpersonal evaluations and even calculations involving human lives—though pure Taurek-style cases rarely arise, because of the complexity of real-world contexts. In everyday practice, especially in politics, actions are often ethically justified in ways that are inconsistent with the principles of normative ethics.

4 Three Non-Welfarist Approaches to Dealing with the Taurek Problem

While proponents of pure welfarism have no real decision-making or action problem—they simply choose the option that maximizes aggregate collective welfare—pure rights-based ethicists are, in Taurek-style cases, essentially unable to make a decision at all. If they

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[12]It is often observed that, in attempting to justify trade-offs, politicians frequently find themselves in a justificatory bind—ultimately appealing to Article 1 of the German Basic Law or to Kant's categorical imperative, while their opponents invoke the very same sources.

were also strong Kantians, they would (procedurally speaking) even have to legally prohibit any decision based on the aggregation of human lives.[13] Both extreme positions are rightly rejected by Dufner and Schöne-Seifert as inadequate. While pure welfarism flattens individual claims, strong rights-based ethics tends to leave the decision to chance (or, for the theologians among them, to God), even when the difference in the number of lives at stake is (relatively) very large.

Besides pure welfarism and pure rights-based ethics, Dufner and Schöne-Seifert identify further ways out of the problem: the lottery procedure, tie-breaking, and the so-called "quasi-contractualism"[14]. They contrast these three approaches with their own position: the hybrid "tamed welfarism" (ibid., 34). This section will firstly analyze the three non-welfarist approaches.

Taurek himself does not explicitly prohibit the aggregation of value or welfare in pure Taurek cases. He merely states that in such cases, there is no moral reason to prefer saving the greater number over the smaller (Taurek 1977, 303). Since inaction is not an option for a benevolent rescuer, Taurek introduces the idea of a coin toss—but without elaborating on it further. Taurek remains somewhat metaphorical here, so the coin toss cannot simply be interpreted as a prescribed course of action—i.e., "flip a coin and possibly let the larger group die", as the welfarists put it (Dufner/Schöne-Seifert 2019, 30). Rather, what Taurek is implying is that there should be fair and impartial procedures for making such decisions—procedures that ensure each person has an equal chance of being saved. What is at stake is the right to equal treatment or equal moral consideration—not a right to be actually saved via coin toss. This does not exclude the possibility that a fair procedure could result in the larger group being saved. But it is the fair procedure itself that plays a norm-generating role—not the sheer number.

4.1 The Individualist Lottery

The coin toss, originally proposed by Taurek himself, was taken up in the subsequent debate and critically discussed—especially in regard to the 'fifty-fifty' chance distribution in the Taurek case (e.g., Kamm 1993, Scanlon 1998). When more than two individuals are involved, a simple coin toss is no longer sufficient to ensure equal chances—unless the individuals are aggregated into groups that then face off *as groups* via coin toss. If the individuals were instead paired off against one another, the persons in the larger group would have a higher probability of being rescued. For this reason, Scanlon proposed the so-called tie-breaking procedure. It would go too far to go into detail here about Scanlon's tie-breaking approach[15] and Timmermann's critique of it, so only the main point of Timmermann's objection shall be outlined here. His criticism is that the tie-breaker assumes a *special* role. None of the individuals involved can be certain that their equal chance will not ultimately be overridden by the tie-breaker, since any one person

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[13] As in the ruling of the German Federal Constitutional Court on February 15, 2006, declaring the Aviation Security Act of January 15, 2005 unconstitutional.

[14] This term is coined by Dufner and Schöne-Seifert themselves to give Weyma Lübbe's position a distinctive label. (Dufner/Schöne-Seifert 2019, 33).

[15] We will return to this in more detail later.

could randomly assume the role of the tie-breaker—and thereby *aggregatively* favor the group in which the tie-breaking occurs. Timmermann sums it up clearly:

> *The goodness of actions is still driven by the conjunction of people's claims. Scanlon's account relies on aggregation, if not on quantification of a combined objective value. The two should not be confused. Individual claims of persons can never simply be paired up with, and struck off by, the weight of another, admittedly equal claim. Equal claims call for arbitration, not for arbitrariness.* (Timmermann 2004, 109)

He therefore proposes a so-called *individualist lottery.* In the Taurek case (1:5), a wheel of fortune with six segments is used—one per person. The individual (anonymized or not: A, B, C, D, E, F) who is lucky receives the medication. If person A is lucky, then the five unlucky individuals must accept the outcome, because the procedure itself gives everyone an equal chance (and, from a contractualist perspective, it cannot reasonably be rejected by anyone seeking to maximize their own chances). If person B is lucky, then she is saved. Moreover, there exists a *moral duty*[16] to distribute the remaining medication to other individuals in need who can be adequately treated with the leftover dose. The same holds true if person C is the lucky one, and so on. But if David is lucky, the other five go without—this is the lottery of life. No aggregation across persons occurs here, nor does any randomly selected person assume a special role. (Cf. Timmermann 2004, 111)

Everyone has an equal chance of winning this lottery. Beyond that, however, in the Taurek case, there is the possibility that some individuals may benefit from the good fortune of others. This additional chance increases with the size of the group; that is, individuals in the larger group have a *de facto* higher chance of being saved, but *de jure* this would not be illegitimate, since each person would have had the same influence on the decision-making process. The losers may lament their unfortunate fate, but they cannot object to the procedure itself, to which they could reasonably have consented. (ibid.)

And yet: the larger a group becomes, the less plausible such a lottery wheel seems —already at a ratio of 1:100, or even much earlier. The welfarists rightly point this out (Dufner/ Schöne-Seifert 2019, 32). However, they too quickly skip over the procedure of the individualist lottery in favor of interpersonal aggregation. They overlook the fact that this procedure can *sometimes* establish individual equality of chances—thus (as in the Taurek case) constituting a necessary (even if not necessarily sufficient) condition for a fair procedure.[17]

The main weakness of this approach stems from its vulnerability to the "law of large numbers. That is, a *natural* aggregation plays a decisive role in the distribution of

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[16]This duty would be moral and rational in the Pareto-optimal sense. See Chapter 4.3 for more details.

[17]John Broome also argues that this procedure is necessary in certain contexts: *selecting randomly is the only way to satisfy the demands of fairness when people's claims are equal. In the end we may be forced to the conclusion that the only merit of random selection is the political one of guarding against partiality and oppression.* (Broome 1984, 55).

chances. Even if person-neutral values are not directly aggregated interpersonally, a certain *natural aggregation* of individuals (not of their well-being) in fact plays a relevant role in determining who is saved and who is not. However, our normative intuition demands that we compensate for the natural inequality in the distribution of fortune and misfortune—namely, the luck of belonging to one group rather than another.

Besides fairness understood as equal opportunity, there is another strong social intuition related to compensating for natural inequalities of chance[18] This goes far beyond a merely individualized, randomized equality of opportunity where *de facto* or naturally a larger aggregation (or group) counts. The welfarists, however, see this as confirmation of person-neutral (collective) value aggregation. But this would be a non sequitur. While the number of persons does play a role in determining which individuals receive the drug, it is not such that this *naturally given* aggregation or group is identical to a person-neutral value. Therefore, we must look for a procedure that is aggregative, but not *value*-aggregative—one that neither affects the *primacy* of the individual or their equal respect, nor presupposes person-neutral or collective values. The tie-breaking argument (originating with Kamm and Scanlon) already approaches this intention. The following will therefore explore the non-consequentialist but aggregative tie-breaking argument. The work of Jan Gertken offers a good framework for this.

4.2 Tie-Breaking and Aggregation of Reasons

When there are large differences in the number of lives saved, it becomes counterintuitive to completely disregard the normative significance of those numbers. In this respect, the insistent welfarists rightly raise an important point. Jan Gertken has proposed a way in which interpersonal aggregation—and thus the number of lives saved—can be normatively relevant without resorting to consequentialism.[19] The core idea is formulated by Gertken as follows:

> *Every person in need gives the agent a reason to save them, and all these reasons are equally strong. Moreover, there are no further reasons that the agent must consider in rescue conflicts of the kind under consideration. Therefore, overall, more reasons of the same strength speak in favor of saving the larger number than for any of the relevant alternatives. Consequently, all things considered, the strongest reasons support saving the larger number.*[20] (Gertken 2016, 271)

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[18]e.g., a hereditary disease.

[19]His argument follows Scanlon's contractualist core idea: *An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced, general agreement.* (Scanlon 1998, 153)

[20]In the original German: Jede Person in Not gibt dem Akteur einen Grund, sie zu retten, und alle diese Gründe sind gleich stark. Zudem gibt es keine weiteren Gründe, die der Handelnde in Rettungskonflikten der betrachteten Art berücksichtigen muss. Daher sprechen insgesamt mehr Gründe derselben Stärke für die Rettung der größeren Anzahl als für irgendeine der relevanten Alternativen. Folglich sprechen auch alles in allem die stärksten Gründe dafür, die größere Anzahl zu retten.(Gertken 2016, 271).

Gertken argues that it is reasons (grounds), not values (welfare), that are aggregated. He assumes that each individual has a morally relevant property that provides the decision-maker or agent with a reason to rescue them. In the Taurek scenario, this means that conflicting actions are supported by reasons of equal strength. The aggregation of these equally strong reasons favors the action supported by the greater number of such reasons (ibid.).

This approach is based on two assumptions: (1) Reasons can be aggregated. (2) "More reasons of the same strength supporting the same action are collectively stronger than fewer reasons." (ibid., 272) Since the equally strong reasons come from different individuals, the aggregation is interpersonal. Gertken considers this unproblematic because the aggregation of reasons already occurs in intrapersonal decisions: For example, when deciding between two fields of study, such as philosophy or computer science, if I am equally interested in both, an additional reason (e.g., better job prospects) can tip the balance in favor of computer science. Gertken concludes that such aggregations are also possible interpersonally.

But is this really the case? The notion of the *strength of reasons* is likely problematic here. This assumption suggests interpreting reasons gradationally—that is, quantitatively—thus bringing them close to "value scales."[21] But where is the criterion for the *strength* of reasons supposed to come from? That remains unclear. Just as with value aggregation, there is a lack of a developed theory here as well—this time, a *theory of reasons.*

Gertken now argues that in rescue conflicts, for reasons of fairness, the reason to save each individual is *equally strong*, and individuals should always have the same chance of being saved, without there being any reasons other than the reason to save itself. (ibid., 273) If this is the case, then the rescue conflict can only be decided by the *aggregatively* added tie-breaking reason. Gertken states in this regard:

> *Whether it is unfair to deny someone a chance at a certain good is to be determined in light of the non-fairness-based reasons [i.e., here solely the aggregative reasons] that speak for or against the relevant options. In particular, it follows that if non-fairness-based reasons overall most strongly support saving the larger number, then it is not unfair to save the larger number. Therefore, anyone who accepts the aggregation step of the tie-breaking argument cannot criticize the argument for failing to adequately account for the significance of fairness.[22]*(Gertken 2016, 273)

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[21]Lübbe also points out that consequentialism can consistently speak of reasons, meaning values can function as reasons. See (Lübbe 2016, 277)

[22]In the original German: Ob es unfair ist, jemandem keine Chance auf ein bestimmtes Gut zu geben, ist im Lichte der nicht-fairnessbasierten Gründe[23] zu bestimmen, die für beziehungsweise gegen die relevanten Optionen sprechen. Damit gilt insbesondere: Wenn nicht-fairnessbasierte Gründe alles in allem am stärksten dafür sprechen, die größere Anzahl zu retten, dann ist es nicht unfair, die größere Anzahl zu retten. Wer den Aggregationsschritt des tie-breaking-Arguments akzeptiert, kann das Argument daher nicht dafür kritisieren, dass es der Bedeutung von Fairness nicht angemessen Rechnung trägt.(Gertken 2016, 273).

Thus, a non-fairness-based reason (the number) is invoked *alongside* the always equally strong fairness-based reasons. Consequently, this approach hardly differs from the minimal hybrid welfarism. Therefore, there is no criticism from Dufner and Schöne-Seifert of Gertken, as both approaches appear compatible. The difference between welfarism and the contractualist tie-breaking argument lies in the fact that Gertken does not presuppose person-neutral values and instead emphasizes Scanlon's contractualist *argument of reasonable rejection* (Scanlon 1998, 153). The contractualist claim here is that no (rational) person would reject the tie-breaking procedure. The (only) apparent difference is that Gertken's aim is not to realize the greatest *value* or to achieve the *best* outcome, but rather to aggregate reasons in a fair tie-breaking manner. In any case, Lübbe is also right here (Lübbe 2016, 278): it is unclear what is meant by "reason", i.e., the concept is so underdetermined that welfarist optimization calculations can indeed function as "reasons", bringing with them the resulting aggregation problems. Furthermore, it remains unclear what it even means for reasons to be "aggregated" if they are not simply "summed up" across persons.

Gertken's attempt to give significance to numbers in rescue conflicts is nevertheless important, because he tries to address the problem of large differences in numbers. However, his reasons-based tie-breaking argument is hardly suitable for this purpose. On the one hand, one could argue that tie-breaking does not necessarily reflect large numerical differences, but that the difference of even a single person suffices. On the other hand, if a single person can already be decisive, then all the more so two persons, and so forth. Why even a single person should count as a decisive reason remains unexplained both in Gertken's approach and in all other tie-breaking approaches. The main opponent of the welfarists remains Weyma Lübbe, who advocates a contractually inspired non-aggregatism.

4.3 The Quasi-Contractualism

In the entire debate, Lübbe's *Quasi-Contractualism*[24] is, on the one hand, the most elaborated and, on the other hand, the most honest, since Lübbe admits that she cannot solve the Taurek problem at a fundamental level, yet still points out certain ways out of the deadlock. This approach deserves a more detailed examination than can be provided here. It will be presented here only cursorily and in outline form, thereby highlighting the weaknesses of the welfarist critique of this approach.

The core idea of the study *Nonaggregationism: Foundations of Allocation Ethics* is Lübbe's critique of the so-called "aggregation argument", which underpins welfarist or consequentialist approaches that justify saving the many according to the principle of efficiency or optimization. (Lübbe 2015, 95.) As described above, Taurek provided an argument—one that cannot be easily dismissed—against the aggregation of what is personally "better" across individuals in favor of what is supposedly collectively "better".

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[24]This term was coined by Dufner and Schöne-Seifert to capture the particularity of Weyma Lübbe's *contractualism*, as it only partially aligns with classical and modern contractualism. (Dufner/Schöne-Seifert 2019, 33)

The aggregation argument is based on the Pareto consideration that the survival of persons A *plus* B constitutes a *better* outcome than the survival of only one person, A or B. According to Lübbe, the Pareto principle can also be interpreted in a moral sense, meaning it can be applied in non-consequentialist contexts as well. That both person A and person B are saved is not inherently better, but should be the case if it is a Pareto situation rather than a conflict situation. This non-consequentialist interpretation leads to accepting Pareto optimization as a sufficient normative reason for action. Therefore, the consideration of the Pareto principle in moral conflict cases *can* (but does not have to) serve as a justification for saving the greater number.

The core of Lübbe's argument is as follows: Suppose there is only one dose of a medication that could save either Peter and Maria or David. (Lübbe 2016, 257) The logical plausibility of the welfarist efficiency argument in such a case relies on just two premises: (1) the *Pareto premise*: it is better if Peter and Maria survive than only Peter. And (2) the *indifference premise*: it is "equally good if Peter and Maria survive instead of only Peter, and that it is equally good if Peter survives as if David survives." (ibid.) By transitivity, an optimizer then concludes that it is better if Peter and Maria survive than if only David survives. (ibid.) Isn't that simply logically trivial? Lübbe demonstrates that the indifference premise, as formulated, cannot be correct.

The Pareto premise—that saving Peter and Mary instead of only Peter is preferable—appears morally unproblematic. The more lives that are saved without endangering or worsening the condition of others, the more plausible this seems. It also does not appear necessary to assume a person-neutral value such as "human life" here. That as many human lives as possible should be saved—without putting others at risk—can even be regarded as a *normative* law. This law is *structurally* aggregative, because it is contractualist in nature, functioning as a kind of (explicit or implicit) agreement among individuals. It is not an aggregation across individuals toward a collective value. The aggregation here would simply be unanimity, as none of the self-interested individuals would object to it. This reveals that the normative problem does not lie in aggregation *per se*—after all, there are *many* people. Rather, the problem lies in *what* is being aggregated and *how* this aggregation takes place. Contractualist approaches are undoubtedly also aggregative. However, in this framework, the approvals or disapprovals of individuals are coordinated in such a way that it leads to a vote, i.e., also to a form of aggregation.[25]

It is a subtle and important contribution by Lübbe to have questioned the indifference premise and, with it, the conclusion of the *welfarist* aggregation argument. It is her insight that the inference from two premises to the conclusion (by transitivity) is valid only under the following condition:

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[25]There are already various aggregative models of such voting procedures, especially in *social choice theory* and in the newer and more general theory of *judgment aggregation*. While there are still many problems and paradoxes in these models, especially with respect to specifically "democratic" forms of aggregation, the approaches remain promising.

> *When all three individuals are taken into account, the* indifference premise
> *states that it is morally equally right to save Peter and let the other two die as
> it is to save David and let the other two die. However, when this evaluation
> is applied to the concrete decision situation addressed in the (classically de-
> bated) David example, it becomes clear that the premise is false. In the David
> scenario, Peter and Mary can each be saved with half of a scarce medication,
> whereas David requires the entire dose. If one saves only David, nothing
> remains for Peter and Mary. But if one saves only Peter, then although
> nothing remains for David, Mary is left to die even though the second half of
> the medication, sufficient to save her, is still available.*[26] (Lübbe 2016, 258)

And further, with insightful words:

> *This clear moral distinction between the two alternatives, which are al-
> legedly to be regarded as equal according to the indifference premise, is based
> on a* difference in accountability*: Not all items that appear in outcome de-
> scriptions of decisions about the allocation of scarce resources are indepen-
> dently avoidable by the decision-maker. Therefore, they cannot be indepen-
> dently judged as morally good or bad and together ("aggregated") constitute
> the moral value or disvalue of the action. Parts of outcomes that are not
> independently avoidable are only* alternatively*, not* cumulatively*, morally at-
> tributable to the decision-maker.*(ibid.)[27]

This insightful observation sufficiently weakens the aggregation argument[28], such that
it can still be used as a pro tanto reason in Taurek cases. But what constructive con-
tribution can Lübbe herself make to arrive at normatively robust decisions in concrete
conflict situations where many lives are at stake?

Lübbe's allocation ethics is based on a strong conception of equal respect. It demands
that, in conflict situations, resources—provided they are divisible—be distributed fairly,

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[26]In the original German: "Bei Einbezug aller drei Beteiligten besagt die Indifferenz-Prämisse, dass
es moralisch gleich richtig ist, Peter zu retten und die beiden anderen sterben zu lassen wie David
zu retten und die beiden anderen sterben zu lassen. Wenn man diese Bewertung auf die konkrete
Entscheidungssituation bezieht, von der das (in der Debatte klassische) David-Beispiel handelt, dann
sieht man, dass die Prämisse falsch ist. In der Situation des David-Beispiels kann man mit jeweils der
Hälfte eines knappen Medikaments Peter und Mary retten, aber nur mit der gesamten Dosis David.
Wer nur David rettet, kann für Mary und Peter nichts mehr tun. Wer dagegen nur Peter rettet, der
kann zwar für David nichts mehr tun. Aber Mary lässt er sterben, obgleich die zweite Hälfte des
Medikaments noch für ihre Rettung verfügbar ist." (Lübbe 2016, 258)

[27]"Dieser klare moralische Unterschied zwischen den beiden Alternativen, die gemäß der Indifferenz-
Prämisse angeblich als gleich zu bewerten sind, beruht auf einer Zurechenbarkeitsdifferenz: Nicht
alle Items, die in outcome-Beschreibungen zu Entscheidungen über die Vergabe knapper Ressourcen
auftreten, sind für den Entscheider unabhängig voneinander vermeidbar. Dann können sie auch
nicht unabhängig voneinander als moralisch gut oder schlecht bewertet werden und zusammen („ag-
gregiert") den moralischen Wert oder Unwert der Handlung begründen. Teile von outcomes, die
nicht unabhängig voneinander vermeidbar sind, sind dem Entscheider nur alternativ, nicht kumula-
tiv moralisch zurechenbar."(Lübbe 2016, 258).

[28]For a detailed discussion: See Lübbe 2008, 79.

on the basis of a procedure that guarantees equal opportunity. Resources or chances are allocated according to rules that serve the interests of all involved. These principles do not necessarily exclude a regulation that accounts for efficiency. As long as the risks of falling into an emergency situation are not *systematically* unequally distributed in a societal context, it is in everyone's interest to increase their chances of rescue and to agree on rules that (statistically) improve these chances. Therefore, if in a rescue conflict it is *ex ante* equally likely for each person to belong to one group or another, then it is in the interest of all parties that, in the conflict, the larger group be saved. (Lübbe 2015, Chap. 5–6; Dufner/Schöne-Seifert 2019, 29) Thus, a norm would be generated by unanimity.

This conception thus contains a *contractualist* element of prior voting. Taurek also addresses this in the second half of his famous essay, albeit not in detail. So what do the welfarists criticize about this contractualist-inspired ex-ante approach, besides the fact that there are likely also ideological differences here?

The problem they identify is that there are many cases in which no ex-ante vote takes place and the affected individuals also know exactly which group they belong to: Here, Lübbe seems forced to guarantee equal chances even at the possible cost of thousands of lives [...]. If someone knows that they will most likely be in an emergency and competing with a very large group, it will not be in their interest to enact an efficiency-promoting rule. As a result, it appears that in such cases Lübbe must guarantee equal chances of rescue, even if this may lead to the death of thousands. (Cf. Dufner/Schöne-Seifert 2019, 34)

However, this is a strongly distorted representation of Weyma Lübbe's awareness of the problem. The strands of general normative justification and the concrete, contextual application of norms are parallelized in Lübbe's work. Her allocation ethics is more an ethics of norm application than a fundamental theory of norm justification. Lübbe draws heavily on medical and legal domains, which already contain laws and regulations. In problem areas not yet regulated, one must proceed *casuistically*, whereby saving a large number of people is not automatically excluded. Casuistry is essentially nothing other than the *judgment* of a concrete case without subsuming it under a rule or law, but rather *comparing* it with another, already existing, similar case. However, this often leads into a "balancing trap," where there are no clear decision criteria. This problem is also present in hybrid approaches such as *Welfarismus^{min}*, where the principles of equality and welfare (efficiency) must also be weighed against each other on a case-by-case basis to avoid ending up with shady ("objectionable"[29]) utilitarianism.

Lübbe's quasi-contractualism is ultimately an honest *judgment*-based approach (which does not give the impression of having solved the Taurek problem), as opposed to the somewhat presumptuous *value*-based welfarism (which does give the impression of having solved the problem). This welfarist path appears to lead into a dead end. And it seems (and Lübbe confirms this) that we still do not know the correct theoretical path for

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[29]e.g., because a healthy person could be instrumentalized as an organ donor for five sick persons.

general normative justification. What we *do* know for certain (intuitively) is that the *equal respect* of all individuals holds as a normative or moral axiom.

It is plausible to assume that if welfare aggregation across individuals is not a general principle of moral or normative justification, then it also cannot be decisive in conflict situations involving saving differently sized groups. For here, too, one would be aggregating across person boundaries if one were to decide solely based on group size. (Cf. Lübbe 2004, 14) In the case of the scarce medication (David vs. Peter and Mary, but also in Taurek's "David vs. five people"), one would still *not* tend to follow the number reflexively. Rather, one would consider how to ensure equal chances, for example by lottery (or another random procedure).

> *Practically everyone tends to abandon this principle when the group competing with A numbers in the dozens or even hundreds.* **Where is the non-hybrid theory** *[emphasis added by I.S.] that explains this — that is, instead of switching principles when there are "too many deaths" can remain consistent with itself in* **all** *[emphasis added by I.S.] example cases?*[30](Lübbe 2004, 14)

The problem of general normative justification thus remains unresolved to this day. However, this does not necessarily mean that it could not (eventually) be solved one day.

5 Conclusion: Why does Welfarism^{min} fail?

The authors of Welfarism^{min} claim to have plausibly shown that a hybrid theory of norm justification is indispensable, as otherwise high numbers of sacrifices would have to be accepted in conflict situations. They therefore maintain the possibility of a hybrid approach, although to date no convincing theory for it seems to exist. For example, the hybrid "consequentialization project" fails due to the arbitrary weighting of individual (collective) values. (Dufner/Schöne-Seifert 2019, 34) Likewise, the so-called "indirect consequentialism",which enforces "quasi-decision-proof personal protection rules", is not a convincing hybrid approach, since such rules presuppose the primacy of *collective* welfare or *collective* value. (ibid., 35) For the welfarists, this is no reason to abandon the search for a hybrid theory. They point to new decision-theoretical refinements and counterfactual adjustments of the welfarist approach that lead to "more complex contextualizations of moral evaluations", but not to "simple algorithms". (ibid., 37) They mean that the investigation of the fundamental elemens of normative ethics is moving more toward "complexity", rather than simplification in the sense of a manageable set of normative laws, axioms, or basic procedures.

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[30]Praktisch jeder pflegt jedoch von diesem Grundsatz abzurücken, wenn die mit A konkurrierende Gruppe sich nach Dutzenden oder gar Hunderten bemisst. **Wo ist die nichthybride Theorie** [hervorgehoben von I.S.], die das erklärt – also, anstatt das Prinzip zu wechseln, wenn es "allzu viele Tote" gibt, in **allen** [hervorgehoben von I.S.] Beispielfällen bei sich selber bleiben kann? (Lübbe 2004, 14).

It seems, however, irrelevant how complex the hybrid theories of welfarism may become. Welfarism faces a fundamental unresolved problem: the aggregative calculation of *person-relative* (well-being) values into a *collective* (well-being) value across person boundaries. Regardless of how complex and epicyclical the decision-theoretic models may get, the fact remains that welfarism lacks a theory of *subjective* and *objective* (collective) values—one that could explain how *person-neutral* values arise, which could then serve as necessary conditions for normative justification. While books, for example, can still be aggregated according to the efficiency principle within the welfarist approach, this aggregation procedure proves fundamentally problematic when attempting to calculate human life, because it simply contradicts the normative basic intuition or normative axiom not to treat people as objects but to respect them as subjects. Taurek succinctly articulated this normative axiom and thereby clearly brought it to light. Indirectly, he also demonstrated how fundamentally different consequentialist and deontological approaches to normative justification remain—approaches that, despite all attempts at hybridization, remain incompatible to this day.[31]

The difference between the two paradigms of normative justification is evident in the pro vs. anti-number debate regarding whether the person-neutral value judgment—that it is better if the greater number of people survive—is an acceptable pro tanto reason for moral decision-making. (Dufner/Schöne-Seifert 2019) The welfarists claim to have demonstrated the "comprehensibility and evaluative plausibility of such judgments" (Dufner/Schöne-Seifert 2019, 38). It may be that—viewed from everyday, lived experience—such judgments sometimes *appear* more plausible[32], but this does not mean that this is the correct path to a convincing *theory* of normative justification. The fact that we cannot derive *all* moral judgments from individual claims does not necessarily validate welfarism^{min}. It only shows that, to this day, we lack a fundamental theory of normative justification.

Rights-based (deontological) approaches have been outlined demonstrating that, even in conflict situations, saving a large number of lives can be normatively justified—though not universally—without assuming person-neutral values or aggregation across individual. Through her approach, Weyma Lübbe has convincingly demarcated—using decision-theoretic and contractually inspired arguments—the specific domains where further inquiry and research remain necessary.

It is evident that every contractualist theory is also an aggregative theory (i.e., not non-aggregative), but it differs fundamentally from any welfarist theory in that it does *not* aggregate values (or welfare) across person-boundaries. Instead, it aggregates or coordinates *individual judgments* (arguments, propositions) in a *constrained* manner. The aim is therefore not to aggregate individual values into collective values and then interpret these as a sufficient normative basis for saving the greatest number of people. Rather, individual approvals or rejections — that is, the judgments themselves — are

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[31] One might almost say like quantum mechanics and Einstein's theory of relativity in today's theoretical physics.

[32] For a long time, it was also *commonly* plausible to assume that the sun revolves around the earth.

aggregated to generate general and concrete norms or to describe their genesis. Lübbe's central question can thus be reformulated as follows: Where is a convincing theory of judgment aggregation that could prove itself as a general (indeed, fundamental) theory of normativity and thereby also solve the Taurek problem?

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