

## The Numbers Problem

Author(s): Nien-Hê Hsieh, Alan Strudler and David Wasserman

Source: *Philosophy & Public Affairs*, Autumn, 2006, Vol. 34, No. 4 (Autumn, 2006), pp. 352-372

Published by: Wiley

Stable URL: <https://www.jstor.org/stable/3876387>

## REFERENCES

Linked references are available on JSTOR for this article:

[https://www.jstor.org/stable/3876387?seq=1&cid=pdf-reference#references\\_tab\\_contents](https://www.jstor.org/stable/3876387?seq=1&cid=pdf-reference#references_tab_contents)

You may need to log in to JSTOR to access the linked references.

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



Wiley is collaborating with JSTOR to digitize, preserve and extend access to *Philosophy & Public Affairs*

JSTOR

NIEN-HÊ HSIEH,  
ALAN STRUDLER, AND  
DAVID WASSERMAN

## The Numbers Problem

In this article we defend a nonconsequentialist answer to a question about morality and numbers: when making a forced choice about saving lives, in which one can save some but not all of the imperiled lives, other things equal, should one choose to save more rather than fewer lives?<sup>1</sup> Others have addressed the question, including Frances Kamm, Rahul Kumar, and Thomas Scanlon, who separately conclude that one should save the greater number.<sup>2</sup> These authors take a procedural approach to the numbers problem, defending similar nonconsequentialist decision procedures for resolving it. We agree with their conclusion favoring the greater number, but not the reasons they offer for it. Indeed, elsewhere two of us argue that the decision procedures these authors endorse cannot provide the answer they seek and that the reasons they adduce in support of these procedures support equally well a broad variety of procedures that provide answers they reject.<sup>3</sup> Perhaps it is time for the non-consequentialist to explore nonprocedural solutions to the numbers

Authors' names are listed alphabetically. For their comments, we wish to acknowledge a great debt to the Editors of *Philosophy & Public Affairs*.

1. John Taurek, "Should the Numbers Count?" *Philosophy & Public Affairs* 6 (1977): 293–316.

2. Frances Kamm, *Morality, Mortality Vol. I* (New York: Oxford University Press, 1983), chap. 6; Frances Kamm, "Precis of *Morality, Mortality Vol I: Death and Whom to Save From It*," *Philosophy and Phenomenological Research* 58 (1998): 939–45; Rahul Kumar, "Unanimity and Aggregation" (Unpublished, University of Pennsylvania Philosophy Department); Rahul Kumar, "Contractualism on Saving the Many," *Analysis* 61 (2001): 165–70; Thomas M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998), chap. 5–9. See also Rahul Kumar, "Defending the Moral Moderate: Contractualism and Common Sense," *Philosophy & Public Affairs* 28 (1999): 275–309.

3. See David Wasserman and Alan Strudler, "Can a Nonconsequentialist Count Lives?" *Philosophy & Public Affairs* 31 (2003): 71–94. See also Michael Otsuka, "Saving Lives, Moral Theory, and the Claims of Individuals," *Philosophy & Public Affairs* 34 (2006): 109–35.

© 2006 by Blackwell Publishing, Inc. *Philosophy & Public Affairs* 34, no. 4

problem. Our aim here is to provide a nonconsequentialist account of why one should save the greater number grounded in substantive rights rather than procedural considerations.

Writers discussing the numbers problem typically ponder the plight of drowning people. We will, too. Imagine, then, that you are a coast guard captain assigned to protecting the public. You learn that scattered across two islands are people who, as far as you know, are similar in morally relevant respects. Each person will die unless you rescue him. Rescue is easy, as you have a good boat; but you have only enough fuel to make the trip to one island. On the first island there are five people; on the second there is one. Is there a moral reason, available to you as a nonconsequentialist, to go to one island rather than the other?

Our argument for rescuing the greater number is simple enough that we can state a preliminary version of it now. Start with the idea that if people are the same in morally relevant respects, then they deserve to be treated in the same way. If you have some precious good that you ought to distribute among them, then treating them in the same way requires distributing the good equally, if you can. In the case of the rescue, it follows that presumptively you should save each person, if you can. But of course you cannot save each person, because there is not enough of the relevant good to go around. You should, then, come as close to an equal division as possible. Going to the island with five people brings you closer to equality than would going to the island with one person. So you should go to the island with five people, not because doing so saves the most lives or otherwise does the most that you can for people, but because it best discharges the particular obligation that you owe to the people on the islands.

In this situation of scarcity, the best is less than perfect. At least one person gets nothing from you, and dies. How do you justify your action to the person who will die because you do not save him? You say that he has no right to be saved, but instead a right to an equal share of your lifesaving resource, at least to the extent that you can give it to him consistently with satisfying the obligations you owe to the other members of the endangered group. Your action satisfies that qualified right to an equal share because you have approximated equality as well as possible. The best approximation of equality leaves him with nothing. As a matter of principle, you cannot save him.

## I

Our argument depends on the idea that one may comply with an obligation to various degrees, that sometimes one should do the best one can with respect to the obligation to distribute things equally, even if in some sense one should do better. In his paper about morality and numbers, Joseph Raz uses a similar idea about degrees of compliance.<sup>4</sup> We find Raz's application of this idea to the numbers problem instructive, though, as will become plain, we depart from it in significant ways. Contrasting our position with Raz's, we hope, will make ours more credible.

The initial premise in Raz's argument may be very liberally paraphrased this way:

- (a) If a person can just as easily save a single person, or that person and another, then saving the two rather than the one would best comply with what he has an obligation to do.<sup>5</sup>

We agree with Raz that (a) is unproblematic: as we see it, in the situation that Raz specifies, failing to save one member of a pair would be a gratuitous failure of obligation because one could just as easily save both members of the pair. We also find insightful Raz's suggestion that what one should do is best understood in terms of compliance with the obligation that one owes to save each person at peril, not in terms of a more general obligation to maximize social good.

Problems for Raz occur, we think, when he makes an inference from (a) to propositions about situations in which complete compliance is impossible because one cannot save all lives in peril. From (a), Raz makes an inference to the following (again we liberally paraphrase):

- (b) If one can save a single person, or two other persons, then one ought to save the two others, because that would best comply with what one has an obligation to do.<sup>6</sup>

4. Joseph Raz, "Numbers, With and Without Contractualism," *Ratio* 16 (2003): 346–67.

5. "Saving all is what he has reason to do. Saving one is only partial compliance with it. If he can comply fully he is at fault if he does not try" (Raz, "Numbers, With and Without Contractualism," p. 353).

6. "Regarding any of the drowning people the guard has reason to save them. It is true that he cannot save all. So if there are three drowning people, his reason to save each of the three, and at the outset he can save each of them, sums up as a reason to save two, never

We find a suitably qualified (b) plausible, but not, as Raz does, because of its similarity to (a). In (a) one has the option of saving everyone, but not in (b). Hence in (a), one can avoid facing the complaint that by not saving a person, one has sacrificed him for the sake of others. In (b), one needs a response to that complaint. Because (b) raises important moral issues absent in (a), the justifications for action in (a) and (b) are importantly different.

Doing the best that one can to satisfy an obligation, as Raz himself observes, must be understood in fundamentally different ways in different contexts. We suggest that doing the best one can to satisfy an obligation varies with the content of the obligation and the nature of the obstacle to perfectly satisfying the obligation. Consider two of Raz's examples.<sup>7</sup> If I have an obligation to repay you \$N, but I do not have that amount, then ordinarily I should give you an amount as close to \$N as I can. If I have an obligation to give you a pair of shoes, however, and I only have one shoe, it would not ordinarily make sense for me to try to satisfy this obligation by giving you the one shoe; ordinarily it would be better for me to give you money, for example. Of course, things need not be so simple as we have so far suggested. It might make sense to give you a single shoe when I owe you a pair if, for example, the intended use of the shoe is as part of a museum display rather than as something to wear. And if I do not have all the money that I owe you, it might make no sense to give you the money that I have, if I know that you want money to buy a particular kind of car, and I happen to have an extra car very much like the one you want. There is no simple answer to the question of what one should do when one's best prospect is to merely partially satisfy an obligation.

If doing the best that one can to satisfy an obligation varies so much with the context and content of the obligation, how does one know that saving more lives rather than fewer, when one cannot save all, is doing the best that one can with respect to the obligation to save lives? Raz gives no answer to this question beyond the questionable analogy

---

mind who. He can save two, has a reason to save them, and, as a result will have completely complied with reason (assuming he has no reason to do more than he can) were he to save two. Therefore, he ought to choose the direction of the many, and he is at fault if he does not" (Raz, "Numbers, With and Without Contractualism," p. 353).

7. Raz, "Numbers, With and Without Contractualism," pp. 348–49.

between (a) and (b). Reflection on the nature of the obligation that one owes to those one might rescue suggests a better answer, we will maintain.

## II

If, as we suggest, the duty to rescue is at least part of the story in numbers cases, the question remains how one should act on the duty when one cannot rescue all in need. Whereas the utilitarian principle contains its own distributive ideal (distribute so as to maximize), the duty of rescue does not, and hence should be understood, we suggest, in conjunction with a concern for equality. Doing so yields plausible results in numbers cases while avoiding the indeterminacy of proceduralism and the ruthlessness of utilitarianism.<sup>8</sup>

We wish to consider a principle favoring, in certain circumstances, the equal division of a good. It may be stated as follows:

(c) If you have some precious good that you ought to distribute among similarly needy people for whose sake you must act, then you should distribute the good equally, if you can.

For simplicity we stipulate that the good would be equally valuable to all the needy people to whom one should distribute it. Although there can be disagreement about what counts as “equally valuable”—would a lifesaving good be equally valuable to a 20- and an 80-year-old?—we include this stipulation to rule out the obvious perversity in distributing equal amounts of a good like food or medicine to individuals, e.g., toddlers and adults, for whom it would have widely differing value in satisfying their needs. We also stipulate that the good must provide some meaningful benefit to those who receive it, and that its division does not destroy its value. Many goods are threshold goods, which by their nature must attain a certain minimum magnitude to have value. Consider, for example, the distribution of medication to prevent bird flu.

8. On the indeterminacy of procedural approaches to the numbers problem, see Wasserman and Strudler, “Can a Nonconsequentialist Count Lives?” There are, of course, many discussions of the ruthlessness of utilitarianism. See, for example, David Wiggins, “*The Right and the Good* and W. D. Ross’s Criticism of Consequentialism,” *Utilitas* 10 (1998): 261–80.

Such medication must be taken twice daily for an extended period in order to have its desired effect. Distributing a smaller dose would allow you to reach more people, but would do nothing for them. Giving each person an equal amount of the subclinical dose would not count as an equal distribution of the precious good; it would be throwing the medication away.

Thus limited, (c) strikes us as plausible. We will assume it now, and consider some objections to it later. What are the implications? Imagine that you are a person whose responsibility is to act for the sake of others, for example, that you are a parent responsible for the care of several children, a lifeguard assigned to rescue people in trouble at a beach, or an army sergeant whose troops patrol hostile territory. In each of these cases, your role involves acting for the sake of people who depend on you for their safety. Now suppose that you have some scarce good much needed by those for whose sake you act. To make it simpler, suppose that you are the sergeant. You acquire scarce protective armor, divisible only in limited ways, which each person in your troop needs equally. What should you do with the armor? Your obligation, we believe, is complex; it contains both a substantive and distributive component. You owe, *ceteris paribus*, each member of your troop a duty to rescue; in this instance, respect for this duty requires making the soldiers reasonably safe; more concretely, you owe it to them to provide the armor that you have. The obligation that you owe to any particular troop member cannot be understood in isolation, however. You owe it to him in his capacity as a member of your troops. It follows that you should try to make each troop member safe in a way that is consistent with making other troop members equally safe. You should distribute the armor equally, given that you can.

Consider now a small change in this scenario. Call this case *Sarge*. Your troops have come under heavy fire in two isolated outposts, but you have the logistical means to get the newly arrived armor to only one of the outposts. There is a single soldier in the first outpost, five in the second; any soldier who does not receive armor will die. How does the logistical limitation affect what you should do? Even though you cannot give armor to each troop member, you should of course do what you can to satisfy your obligations to each. We propose that the division of the good should be governed by this principle:

(d) If you owe an obligation to distribute goods equally, but you do not have enough of the goods to do so, then you should distribute the goods in a way that best approximates an equal distribution.

We will maintain that the application of (d) to the case of the armor requires that you give armor to the larger group, which constitutes five-sixths of your needy troops.

We have offered a view of the requirements of equality in Sarge that dictates giving the armor to the five of the six soldiers. Part of defending this view (“5/6”) is showing its strength against rivals.<sup>9</sup> There are two obvious rivals: in your straitened circumstances, you may give the armor to none of your soldiers (“0”) and to one of your soldiers (“1/6”).<sup>10</sup> We now consider each rival.

9. For identification of these rivals and the arguments that make them seem plausible, we rely on Larry Temkin, *Inequality* (Oxford: Oxford University Press, 1993), particularly chapter 2.

10. Two other options involve the initial assignment of odds rather than armor. You could give each outpost a lottery ticket, giving each needy soldier a one-half chance of getting the armor. Each would get an equal share of *something*: the chance of getting armor. Or you could give each soldier a lottery ticket, delivering the armor to the side with the winning ticket. This would give the larger group a five-sixth chance of getting the armor: a proportional lottery. Each soldier would get a chance for the armor proportional to the number of soldiers on the two sides. Although the issue is too complex to address here, we believe that the first lottery does not give each soldier an equal or proportional share of a valued good, but merely assigns the real valued good, the armor, in a way that avoids bias and other procedural faults. To believe otherwise, we would argue, is to be committed to a bizarre ontology of value, in which both the chances and the armor have value, so that there is somehow more value after you hold the lottery than before, given that the armor has value independently of it. If that were so, we would have the absurd obligation to hold more and more lotteries, even when we could more straightforwardly divide valued goods equally. We do not have that obligation, however. See David Wasserman, “Let Them Eat Chances,” *Economics and Philosophy* 12 (1996): 29–49. The proportional lottery does not even purport to give each needy soldier an equal share. As its leading proponent, Dan Brock argues it is a compromise between equality and utility. See Brock, “Ethical Issues in Recipient Selection for Organ Transplantation,” in *Organ Substitution Technology: Ethical, Legal, and Public Policy Issues*, ed. Deborah Mathieu (Boulder: Westview Press, 1988), pp. 86–99. Ontological disputes aside, there is another reason to deny the cogency of substituting lottery tickets for armor. Our topic is the distribution of benefits, and there is no sense in which a lottery ticket is a benefit.



A

Consider an argument for *o*.<sup>11</sup> If what one cares about is equality in distribution, then *o* may seem better than 5/6. With 5/6, not everyone gets the same. With *o*, everyone gets the same, namely, nothing. Equality requires giving people the same. Because *o* represents perfect equality and 5/6 does not, one should choose *o*, on this view.

The argument for *o* may seem harsh, because it prescribes not giving lifesaving equipment to people who need it. This charge of harshness is not obviously correct. Even if one thinks that *o* is superior to 5/6 with respect to equality in the distribution of armor, one is not constrained to accept the harsh conclusion that one should, on balance, choose *o* rather than 5/6. One may embrace pluralism, acknowledging that equality has moral significance, but insisting that other morally significant factors outweigh it in this case. For example, one may say that *o* is better than 5/6 with respect to equality, and 5/6 is better than *o* with respect to utility.<sup>12</sup>

The argument for *o* has formal appeal, but lacks moral plausibility. It misunderstands the nature of the obligation that you, as sergeant, owe to your troops. You do not owe them a simple obligation to see that each has identical goods. The obligation is both more concrete and more complex than that. It is an obligation to provide a particular kind of aid that you will share equally among your charges. Failing to rescue when you can, as *o* prescribes, is breaching that obligation because it provides no aid at all. You would misappropriate the armor. Although you would not be taking the remaining suits for your own benefit, as if you sold them for cash, you would be refusing to use them for their purpose. In effect, you hold them in trust for the soldiers, and that trust requires you to give them to the soldiers when they need them. By withholding the suits, you would be violating the terms of that trust, breaching the fiduciary duty it imposed on you.<sup>13</sup>

11. John Broome, "Kamm on Fairness," *Philosophy and Phenomenological Research* 58 (1988): 955–61; Larry Temkin, "Egalitarianism Defended," *Ethics* 113 (2003): 764–82.

12. See Larry Temkin, "Equality, Priority, and the Leveling Down Objection," in *The Ideal of Equality*, ed. Matthew Clayton and Andrew Williams (Macmillan: New York, 2000). Temkin writes, "... we should be pluralists. Egalitarians have long recognized, and accepted, this lesson" (p. 155).

13. We do not wish to suggest that whenever you hold goods in trust for others, you are required to distribute rather than withhold the goods, even if they are deserved. Indeed, we

One might think that our argument for 5/6 confuses the value of equality and the value of satisfying the duty to rescue. Indeed, from an arithmetic point of view, 5/6 does not better exemplify equality than 0 does; after all, if each soldier gets no armor, then each gets an equal share, but if five out of six get armor, then each does not get an equal share. We have maintained that the obligation that you, as sergeant, owe to your troops is complex: a duty to rescue them equally. By insisting on the complex character of the duty, do we confuse the duty to rescue and the duty to give equal shares? Why not instead treat them as two simple duties, rather than as a single complex duty?

A duty is a kind of reason. Not all complex reasons can be decomposed into simple reasons, even if those simple reasons are elements in the complex. Consider an example from cooking. Imagine that a recipe for hot chocolate tells you to use equal parts of cocoa and sugar. You are a klutz. Each time you try to use some substantial amount of cocoa and sugar, the amounts come out terribly unequal, sometimes favoring

---

concede that there are cases in which 0 seems more attractive than it does in Sarge. Imagine, for example, that you are a kindergarten teacher (Teacher) with a tradition of giving every member of your class a “kindergarten cub” sticker on graduation day, a symbol of class solidarity. Although those stickers cost next to nothing and peel off within days, in past years students preserved them as cherished mementos. This year, you find that you have miscounted; you have one fewer sticker than students. You should not, we suppose, distribute the stickers you possess to the children, leaving one without a sticker at the graduation ceremony. Instead you should keep the stickers until you have enough for all, perhaps never distributing them if you never get enough, certainly seeking an alternative expressive device if the stickers remain scarce. In any case, it seems that holding a good in trust may sometimes require not distributing it at all. That raises a question: If the impossibility of a perfectly equal distribution may require you in Teacher not to distribute the goods, then why not the same for Sarge?

Teacher and Sarge differ fundamentally. Both involve an obligation to distribute things equally. But there are significant differences in the goods being distributed and hence in the obligations to distribute. Sarge involves the distribution of rescue in the form of armor; Teacher involves the distribution of a pure status good, a symbol of membership in a group of equals. A less than full distribution of that status good strips its value as a good, suggesting that not all class members are equal after all. Indeed, it seems that because distributing the stickers is not really necessary, doing so denies rather than affirms the equality of the students. Giving armor to fewer than all of Sarge’s group, by contrast, does not undermine its value as a good: the armor still deflects shrapnel. Because they need the armor, giving it to most but not all soldiers is the best way to approximate respect for equality in aiding these soldiers, as we later argue. Because Teacher’s stickers cannot serve their wholly symbolic role in student lives, there is no good reason to distribute them.

sugar, other times favoring cocoa. So you decide to create equal parts by using no cocoa and no sugar. It does not solve your problem. Using equal shares of sugar and cocoa is a way of attaining some further end (creating a beverage), not an independently valuable end. Something similar holds for your task as sergeant, we maintain. Respect for equality sets a limit on the ways in which you can provide the benefit in question, and does not form a separate end that has value apart from the provision of that benefit. You do owe an obligation to each needy individual, but you owe it to him as a member of a needy group. It makes no sense to ask what you owe to an individual soldier without asking how satisfying that obligation would affect the satisfaction of your obligation to other troop members. You owe a duty to rescue to each soldier as an equal member of the group. You cannot decompose the relevant obligations.

## *B*

We have argued that in deciding how concern for an equal division of resources for rescue requires you to distribute armor in Sarge, it is wrong to conclude that equality requires a 0 distribution, even though it is impossible for you to divide the armor equally among your soldiers, and 0, in some sense, is the only available option that gives all soldiers the same armor. Our argument appealed to the idea that a 0 distribution would misappropriate resources. The argument against  $1/6$  must proceed differently than the argument against  $5/6$  because  $1/6$ , unlike  $5/6$ , involves no obvious misappropriation: you do not keep the armor or give it to an outsider. You give it to the one, let us suppose.<sup>14</sup> We wish now to show that there is no good reason, rooted in considerations of equality, to choose  $1/6$  rather than  $5/6$ .

The only possible advantage of  $1/6$ , from the perspective of equality, echoes Rawls's difference principle, even though it is not an application

14. It might be thought to involve waste, since four armor suits are not used. However, there would be no more waste here than there would be in the paradigmatic forced choice, where the rescue boat goes to the lone islander, leaving the spaces for the five on the other island empty. The charge of "waste" sounds like nothing more than a utilitarian complaint in a context where the "wasted" goods could be put to use only by denying the good to the one who received it.

of the difference principle that Rawls would likely endorse: one may argue that the superiority of  $1/6$  inheres in the fact that it improves the plight of the worst off. The argument begins with the claim that the one is the worst off, in the sense that he will be worse off if he is not aided than any of the five will be if they are not aided. There are two respects, perhaps related, in which the one would be worse off. First, he would die alone, without the consolation of solidarity with his comrades.<sup>15</sup> Second, he would die comparatively badly off: he would get nothing when the average soldier got five-sixths a suit of armor. On the other hand, if he gets the armor, and the other five do not, then the five enjoy the consolation of their shared fate, and their allotment is closer to the average of one-sixth unit of armor. Invoking the difference principle, one may thus conclude that equality requires  $1/6$ .

This argument for  $1/6$  seems dubious. If proximity to the average is what matters, then 0, not  $1/6$ , is the right answer. But 0 is the wrong answer. So one must suspect that  $1/6$  is the wrong answer, too.<sup>16</sup> What, then, is wrong with  $1/6$ ? Consider Sarge\*, a variant on Sarge. Again, your

15. For arguments from equality that appeal to the plight of the worst off, and may thus be used in favor of  $1/6$ , see Larry Temkin, "Equality, Priority, and the Leveling Down Objection."

16. We concede that there are cases, particularly when the value of a good to be divided lies primarily in its symbolic significance, in which being close to the majority matters, and hence in which a broader distribution of a good is not on balance better than a narrower distribution. Imagine that to express affection for their teacher, all thirty students in a class decide that in the last class session, they should all wear a shirt that resembles the same funny Hawaiian shirt their teacher often wears. Unfortunately they can only find five such shirts. The symbolic value of the shirts is destroyed if most students (the majority) do not wear them, e.g., the teacher *may* be saddened that so few of his students feel affection for him. If the broadest possible distribution is five shirts, it would be better not to distribute the shirts at all. Of course, this case is easily distinguished from Sarge because it, like the case of the kindergarten teacher in the earlier footnote, involves a purely symbolic good. But consider a variant on Sarge that involves a good whose nature is mixed. You have only enough armor to save  $1/1000$  of your soldiers, and unless you give the armor to one of the soldiers, all will certainly die. It might seem that even in this case, in which the good being distributed possesses more than mere symbolic value, the best way to respect the equality of your troops is to heed the symbolic value and not give the armor to any of them. One might even imagine the recipient of the armor resenting that he did not share the fate of the others, just as a captain of a sinking ship might resent not being allowed to "go down with his ship." Although perhaps the reaction of the ship captain is understandable when the ship sinks because of a personal failure he feels he must acknowledge, we are not tempted to say that the armor should not be distributed to the single soldier in this variant on Sarge. Because there is life at stake, and not mere symbolic value, it is wrong for Sarge to abandon

troops are in two isolated outposts, equally at risk, a single soldier (Jones), alone at one outpost, and five soldiers together at the other. Because you have already sent the armor toward the five, it is too late to switch to Jones. If you try, you will fail to reach any of your soldiers. So you keep the armor on course for the five. Remembering the difference principle argument for  $1/6$ , you consider improving the plight of Jones by giving armor to only one of the five, Brown. Jones will then have the consolation of sharing his fate with the other four, and he will be closer to the average allotment, now  $1/6$ . But another of the five, Smith, can complain that he gets nothing and will die. Hence the claims of Smith and Jones conflict in Sarge\*. We think that it would be wrong for Jones to press his claim; he should defer to Smith. If a soldier must choose between (1) enjoying the consolation of not dying alone, and being comparatively well off, and (2) knowing that his presumably innocent comrades-in-arms will live, it seems wrong to insist on the consolation or the connected comparative improvement. It is wrong to make oneself better off, when that amounts to merely not dying alone, if doing so comes at the cost of the lives of one's comrades. No decent person would find consolation in the avoidable death of his comrades; the consolation would be tainted, not morally worthy. The utility that the consolation provides should therefore not be counted when deciding whom to save. It is at best, to use Kamm's term, a morally irrelevant utility.

Now return to Sarge. What can be said in favor of saving Jones rather than saving Smith and the others? Not that Jones's life will be saved, since that hardly by itself matters any more, or any differently, than saving Smith's life. All that can be said in favor of saving Jones, then, is that doing so prevents him from suffering the pain of dying alone, something that Smith and the others would not face. Reflection on Sarge\*, however, has already shown that any utility attaching to Jones's concern about dying without his comrades is not morally considerable. It follows that Jones is not made worse off in any morally relevant sense by his death than are the other soldiers by theirs. So an egalitarian distributive principle (such as the version of the difference principle we are considering)

---

his duty to rescue. In this case, perhaps one can do little to satisfy equality, but one can provide some rescue. Unlike Temkin, we see no reason to think that equality is better respected by providing no rescue.

that favors improving the plight of the worst off does not favor Jones. The argument for a  $1/6$  distribution in Sarge fails.

### III

So far we have argued that in cases like Sarge, one has a duty to provide resources for rescue equally to those in one's charge, that when one cannot attain perfect equality, one should approximate equality as closely as possible, and that in Sarge  $5/6$  constitutes the best approximation of equality. Our argument for  $5/6$ , however, has been largely negative, limited to complaints against its obvious rivals. It is possible to state the argument in more positive terms.

Here is our simple argument for  $5/6$ . Giving one suit of armor to each soldier (" $6/6$ ") is ideal, perfect equality. A distinguishing feature of  $6/6$  is that it is the broadest possible distribution of relevant resources. What makes  $6/6$  best is its breadth. The next broadest distribution is  $5/6$ . So it is the next best distribution, from an egalitarian point of view. Our argument relies on this contentious idea:

- (e) The broader a distribution, *ceteris paribus*, the closer it is to an equal distribution.

We think that (e) is the heart of a plausible egalitarian argument for saving  $5/6$ , in this case the greater number.<sup>17</sup> One might regard the argument's appeal to egalitarian values as a ruse, however. Scanlon, for example, argues that generally the value of equality is exaggerated, that in cases in which equality seems to best explain one's moral judgment, one can often find a variety of other values that better explain that

17. Proposition (e) does not fully specify the egalitarian principle. It does not say, for example, whether breadth is solely a function of the ratio of those aided to those needing rescue, what is relevant to satisfying the *ceteris paribus* clause, or whether it makes sense to compare ratios across contexts. In any case, although it seems plain that ratio matters in assessing equality, it also seems doubtful that equality should be understood in simple ratio terms; if it were, then a rescuer who aided one-third when he could have aided (a different) two-thirds would commit the same wrong, or breach of duty, as one who aided 1000/3000 when he could have aided (a different) 2000/3000. This seems to conflict with the plausible moral judgment that the latter commits a greater wrong or more serious breach. It also assumes something about which we are unsure: that one can meaningfully compare (a) the choice between one-third and two-thirds with (b) the choice between 1000/3000 and 2000/3000. How an egalitarian approach should handle these problems is a subject for another occasion.

judgment.<sup>18</sup> His argument is practical. It depends on the premise that other moral ideas have more explanatory power than equality. One of the most salient of these rival ideas is utility. After all, if equality requires saving the greatest number, then it may generally also advance utility, because typically when more people are saved, there is more utility.

Does the appeal to utility, rather than an equal distribution of resources for rescue, best explain the pull of 5/6? We think not. The advantage of our explanation of numbers cases is apparent in addressing the problem of morally irrelevant utility arising from indirectly saved lives. Recall Sarge. Assume that the lone soldier in the smaller outpost was a medic who was about to return to the field hospital when he came under fire. In that hospital are five other people whom he, and only he, can save because there are no other medically trained personnel within a hundred-mile radius, and if he does not return, they will die. A utilitarian must counsel sending the armor to the one under these circumstances, because it would (very likely) result in saving six lives rather than five.

Various accounts of the numbers problem, including Kamm's, have raised doubts that such indirectly saved lives should be counted.<sup>19</sup> We also doubt that they should be, for a quite distinct reason: the five patients are not part of the group that you, as the sergeant in Sarge, are responsible for protecting. Even if they were your own wounded troops, your duty to protect unwounded soldiers from enemy action may be stronger than your duty to heal wounded soldiers, which is not really your job. In contrast to the utilitarian, we regard some of your duties as role-specific. If there is disagreement about this case, it is only because there may be disagreement about whether Sarge has a special duty to see to the treatment of wounded soldiers as well as to protect unwounded ones, or about the comparative strength of these two special duties. Our approach looks only at the distribution of needed goods among the group for whom the rescuer has a primary duty.

The inclination to identify utilitarian values as the rationale for choosing the greater number may derive from observing that it makes no sense to save the greater number unless one is concerned with doing good, and

18. Thomas Scanlon, "The Diversity of Objections to Inequality," The Lindley Lecture, University of Kansas, 1996, reprinted in *The Difficulty of Tolerance* (Cambridge: Cambridge University Press, 2003): 202–18.

19. See *ibid.*



doing good may seem to be a utilitarian concern. We see no reason to think that the duty to rescue should be viewed as utilitarian. The idea of a duty to maximize or otherwise advance utility is easily distinguishable from the idea of a duty to rescue, which we think is really at the heart of rescue cases. The latter duty does not require you to do all that you can for a person, or even to produce some other optimal quantity of good for a person, but instead requires that you help in specific and limited ways: saving her from danger, and by extension, helping her avoid falling into danger. A duty to advance utility, by contrast, is broader, requiring you to make people better off on every dimension that you can.

Moreover, although the duty to advance utility contains no inherent limit on what one may do to advance utility, the same is not true of the duty to rescue. A lifeguard aiming to maximize utility may, other things equal, throw a person off his lifeboat if he thinks that doing so is the only way to save two others. He could not justify throwing a person off his lifeboat by appeal to the duty to rescue. This is because the duty to rescue is circumscribed by other duties, not outweighed by them, as a duty to maximize utility may often be for those who recognize other values. As we conceive it, the duty to rescue does not command the sacrifice of one not in danger, or already rescued, to save a larger number still in danger. It is not that the passenger acquires rights that trump the lifeguard's duty to rescue; rather, the lifeguard's duty to rescue gives him no reason to toss the passenger overboard. We do not see the rescuer as facing a conflict between duties, even a presumptive one, when he sees a larger number he can only save by jettisoning those he's already rescued. Because he is engaged in fulfilling duties specific to those he has rescued, and not in the general project of advancing utility, he need not invoke a side constraint on killing those already in his boat, as a qualified utilitarian might. He may feel keen regret that he cannot save the others, but no moral conflict.<sup>20</sup>

It still might be argued that the duty to rescue is, if not utilitarian, broadly consequentialist in mandating the pursuit of a goal of equality. Nevertheless, as we have argued, equality in this context is not a goal like truth, beauty, or perfection, whose achievement or approximation competes with the satisfaction of duties to individuals. Instead, the idea of

20. We thank an Editor of *Philosophy & Public Affairs* for suggesting that we draw out this implication of our account.



equality, in the cases that interest us, shapes the content of the duty to rescue: the rescuer owes a duty to rescue members of the group, and she owes that duty equally to each member; the idea of equality therefore properly figures in understanding of how to allocate scarce resources in a rescue. Because she owes that duty to each member of the group, she would breach it by rescuing no one; because she owes a duty to each equally, she would breach it by failing to rescue as many as possible. But her duty to this group does not oblige her to pursue equality in any broader sense.

#### IV

In the preceding section, we argued that our appeal to equality is not utilitarian or otherwise consequentialist. In this section, we will attempt to strengthen this argument, contrasting our approach with other non-consequentialist answers that address the numbers problem.

Our appeal to the idea of equality to warrant choosing the greater number raises the recalcitrant question with which Elizabeth Anscombe provoked the controversy over numbers: who is wronged if you do not choose the greater number?<sup>21</sup> Violating the obligation to give equal shares in simple rescue cases typically involves a straightforward wrong. If you have enough food for two starving hurricane victims with roughly the same nutritional needs, and you give all the food to one of them, the other can complain that he was denied an equal share. (Unless your decision was purely gratuitous, he can also complain about discrimination, on the basis of whatever factor caused you to deny him the food he needed as much as the other.) In such a simple case you face no scarcity of resources for rescue, so those you do not rescue can complain that you failed to satisfy an obligation that you could have satisfied: you could have given the complainant his share without giving anyone else less than his share.

In a scarcity case, by contrast, you cannot give everyone an equal share of anything that matters. If in Sarge you give the armor to the one

21. Elizabeth Anscombe, "Who Is Wronged?" *The Oxford Review* 5 (1967): 16–17.

instead of the five, you could not give the armor to the five as well.<sup>22</sup> To give them armor, you would have to deny it to the one. The five, then, do not have as simple a complaint as the victim in a simple case of unequal distribution. Still, we maintain, each of the five may reasonably claim to have been wronged. They may complain that the rescuer failed in a duty that he owed them: to come as close to equality as he could have; and that they lost out as a result. This seems to be a weaker complaint than the typical victim's. Yet that is as it should be, since the wrong in failing to come as close to equality as one can when one cannot achieve it does not seem as egregious as the wrong in failing to achieve equality when one can.<sup>23</sup>

The complaint we assign members of the greater number not rescued in scarcity cases also seems less direct than the complaint available in simple failure-to-rescue cases. In the simple case, the victim can point to the goods he should have received; he has a specific claim that could have been, but was not satisfied. In scarcity cases, the victims could not have had their claims satisfied without denying the satisfaction of equally valid claims. Their complaint is only that the rescuer did not come as close as he could have to an equal distribution, and failing that, wrongfully thwarted the legitimate interests of those not saved.

It is helpful to contrast this complaint with that yielded by a utilitarian account. If the obligation to save the five rather than the one derives from the obligation to maximize utility, the five have the same complaint as everyone else: that the rescuer failed to maximize. On a utilitarian view, the victims have no special standing to complain; the rescuer has failed the world at large, even if five individuals happen to bear the brunt of his failure. In the case of equality, however, a breach of the complex duty that we have described appears to give the victims special standing to complain. The rescuer was obliged to treat them as equals, and treating them as equals required him to approximate equality as closely as possible in the face of scarcity. By failing to do so, the rescuer treated

22. We recognize that Sarge is not a paradigmatic rescue case, because the troops have not yet been injured or stranded. It is at best a prospective rescue. For moral purposes, however, we do not see that this difference matters.

23. An Editor of *Philosophy & Public Affairs* asks whether the one saved might also have standing to complain. We leave this interesting and difficult question open, but we think that the answer may depend on whether, as in Sarge, the one had a prior relationship with the five.

them as less than equal, denigrating their moral standing, and that gives them grounds for a personal complaint.

It may also be instructive to compare this complaint with the one that would arise under the balancing approach advocated by Kamm, Kumar, and Scanlon. On that approach, the equal claims of individuals in the larger and smaller groups are paired off, and balance or neutralize each other, leaving the unbalanced claims of the additional members of the larger group.<sup>24</sup> Although this appears to give a complaint to particular individuals and a straightforward answer to the question of who is wronged, the appearance is illusory, because there is no nonarbitrary basis for identifying those unbalanced individuals. Not surprisingly, the proponents of this approach vacillate between claiming that a subset of the larger group is wronged and that all its members are.<sup>25</sup> We regard it as an advantage of our approach that, by contrast, it treats all the members of the larger group as wronged, because they have not been treated as equals, i.e., no subset of the group even appears to have a distinct grievance.

There is yet another sense in which our account renders a better interpretation of the complaints of those wronged in numbers cases. It explains, as other accounts cannot, the robust intuition that failing to save the greater number is a worse wrong when there is a comparatively large disparity between the size of the groups to be saved, for example, that it is a worse wrong when the rescuer chooses one rather than five than when he chooses four rather than five. Our approach plausibly accounts for this judgment in terms of the magnitude of the rescuer's breach of her duty to distribute scarce rescue as broadly as she can. Distributing rescue to the smaller number in the face of a larger disparity is morally worse because it represents a greater departure from equality. In choosing one over five, the rescuer opts for a far narrower distribution

24. On Scanlon's "marginal difference" approach, for example, one of the additional members has the possibly distinct complaint that his presence fails to make a difference to the resolution of the conflict. He argues, "In such a case, either member of the larger group might complain that this principle did not take account of the value of saving his life, since it permits the agent to decide what to do in the very same way that it would have permitted had he not been present at all, and there was only one person in each group" (Scanlon, *What We Owe to Each Other*, p. 232).

25. See Wasserman and Strudler, "Can a Nonconsequentialist Count Lives?"

than she does in choosing four over five, and she falls even farther short of her duty to equally rescue the imperiled individuals.

Proponents of the various balancing procedures, as we argue elsewhere, cannot explain this difference.<sup>26</sup> The rescuer in both cases commits the same procedural error in failing to balance;<sup>27</sup> the fact that more lives are lost as a result of that error when she chooses one over five than when she chooses four over five has no obvious moral relevance on a procedural account. If all the members of the larger group are wronged by the refusal to balance, as proceduralists sometimes maintain, then the same number of people will be wronged in both cases. Even if only the “excess” members of the larger group are wronged, however, it is not clear why the rescuer commits a greater wrong when that excess is greater. It is not as if she separately refuses to balance each of the excess members of the larger group, slighting each of them individually; rather, she makes a single decision not to balance. Since the rescuer does not commit separate or serial wrongs, the proceduralist has no more basis for adding up the wrongs to the excess members of the larger group to yield a greater wrong than she would have for adding up the harms to each of them to yield a greater harm. It is an advantage of our account, we maintain, that it identifies a distinctive wrong that occurs in the choice for one rather than five, and does so without resorting to consequentialism.

## V

We conclude by considering some apparent difficulties for our approach. In defending our answer to the numbers problem, we discuss rescue provided by a sergeant for his troops and a lifeguard for people on his beach. These cases differ from standard numbers cases in significant ways. For example, the person providing rescue is no stranger to the prospective beneficiaries. He stands in a special relationship to them. Because of these relationships a sergeant must rescue his troops and a

26. See Wasserman and Strudler, “Can a Nonconsequentialist Count Lives?”

27. Scanlon’s balancing procedure, for example, in effect recognizes only minimal differences in the size of groups at risk: it pairs off equal claims of individuals in larger and smaller groups, and lets the existence of any remaining unbalanced claim determine the choice of which group to favor. On Scanlon’s approach, the choice for one rather than five seems morally no different than the choice for four rather than five; both choices ignore at least one unbalanced claim.

lifeguard must rescue those on his beach. In a paradigmatic numbers case, however, the rescuer is a stranger to those he might rescue. There is, *ex ante*, no special relationship. We maintain, however, that the very circumstances that impose a duty of rescue on the stranger may also establish a special relationship to the group within the ambit of that duty.

This may suggest an uncomfortable contingency in the duty to rescue. Imagine that you come upon a beach and see two groups drowning; you can, without risk or significant cost to yourself, row from shore and rescue either but not both groups. You have a duty to rescue; we have argued that that duty requires you to distribute your rescue efforts as equally as possible and thus to save the larger group. What if, however, as you are just pulling out on the boat, a third, even larger group drifts within reach? Do you lack the same duty to the members of that group, or does the overall group to which you owe that duty now encompass them, compelling you to change your rescue plans? If the latter, what of your special relationship to the original two groups?

We concede that such questions present a challenge for our view, and that its full development requires a more complete account both of the contact required to establish a special relationship and of the scope of that relationship. Far from considering the need for such an account a weakness in our position, however, we think it illustrates a truth about special obligations: they do depend to a significant extent on the fortuities of acquaintance. If you had met and married one of the other people trapped in Bernard Williams's burning building, your obligation would be to save that person, not the person who is in fact your wife, giving it no more thought than you would give to rescuing your wife in the real world.<sup>28</sup> Special obligations are basic to a nonconsequentialist morality, but there need be no moral basis for the fact that you have acquired some special obligations rather than others.

The analysis we have developed also raises questions about how to appraise failures of varying magnitude in approximating equality. In the standard situation we have been describing, the rescuer has a choice between saving one of six and five of six. We have argued that the latter is a far better approximation of equality, suggesting that the former involves a needlessly large departure from equality. Yet what of a

28. Bernard Williams, "Persons, Character, and Morality," reprinted in *Moral Luck* (Cambridge: Cambridge University Press, 1981), p. 18.

situation, sadly familiar, where a rescuer can only save a small fraction of those in need? Imagine a man with a boat that has only enough space to rescue five of the thousands of people stranded on the islands within reach of his boat, and enough gas to go to only one island. The islands vary in the number of people on them, from one to five. It seems plausible that the rescuer should go to one of the islands with five people, and that he would act wrongly if he went to one of the islands with only one. Nonetheless, saving five out of thousands may not seem like a much better approximation of equality than saving one.

Should we regard his wrong in saving one as less significant than that of the rescuer in the standard case, or instead look only at the numerators? Both responses have some plausibility. It will not do, though, to say that he has an obligation only to the five (which five?)<sup>29</sup> who can fit on his boat. If that were the case, both he and the rescuer in the standard case could fully satisfy equality, and that would miss not only the tragedy of the situation, but the rescuer's own sense that his response, while as good as it could have been, was still deficient. It appears that neither ordinary morality nor our account dictates an answer in this case. Sharing an indeterminacy with ordinary morality does not strike us, at least for the kind of case we are considering, as a weakness.

We have reviewed several ways in which our account captures ordinary judgments not only about the central claim that it is better to save more lives when one cannot save all, but also about who is wronged by a failure to do so, and about the nature of the wrongs that occur. Our account, we think, has a distinctive virtue. It explains how in a world of limitless need and limited resources, we sometimes do the best we can and still feel an appropriate sense of imperfection, inadequacy, and frustration.

29. Our approach can also accommodate a second reason, suggested in the parenthetical, why the extent of the scarcity appears to weaken the force of the rescuer's obligation to distribute as broadly as possible: unlike in Sarge, it may not be clear who has a complaint, or what the nature of the complaint is. If Sarge gives the armor to the one rather than the five, the five have a clear complaint, since they would have been saved if he had done his duty. But no group of five islanders can complain that it should have been rescued; at most, it can claim a chance of rescue equal to that of any other group of five, and greater than that of any other group (since any smaller group should have no chance). Can a group of four islanders complain, since they represented a better distribution than the one chosen, even though they should not have been rescued either? Probably not. In any case, the fact that even groups of five can claim at most a chance of rescue equal to that of any other group of five may seem to make the rescuer's breach of duty less serious.