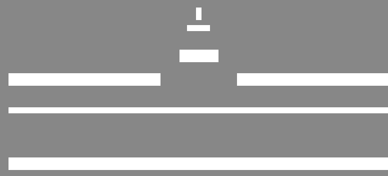
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Grundlagen der Allokationsethik, Muenster: Mentis 2015.

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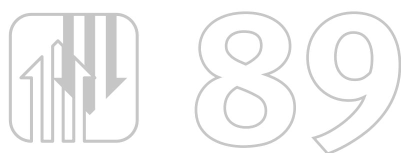

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› Review: Weyma Lübbe: Nonaggregationismus.

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Bettina Schöne-Seifert[1,2]/Annette Dufner[1]

Weyma Lübbe is one of the most resolute contemporary critics of interpersonal welfare aggregation, as it lies at the heart of most consequentialist ethical theories. Her latest book is a rich extension of her numerous articles on this matter. The main object of criticism is the often-presumed moral relevance of welfare efficiency, for instance in rescue conflicts as they occur in health care systems with limited resources. The central philosophical starting point of her discussion is the 'numbers debate' introduced by Philippa Foot and John Taurek, which questions the moral relevance of numbers, as opposed to fairness, when it comes to rescue conflicts between groups of different sizes.

In decidedly anti-consequentialist fashion, Lübbe argues that (a) interpersonal welfare efficiency cannot play any foundational role in normative ethics (ch. 3). She also tries to prove (b) the inconsistency of any attempt to supplement welfarist axiologies by fairness aspects, denying the possibility to assign independent moral relevance to both aspects (ch. 4 and 5). In the constructive part of the book (ch. 5 and 6), she presents (c) her own account of distributive ethics based on the principle of equal concern for persons ("Gleichachtung").

(a) Lübbe's first line of argument attacks the view that it is better *as such* – in a way that transcends mere better-*for-someone* judgments – if more rather than fewer persons survive or are doing well. This criticized betterness judgment about states of affairs aggregates the good across separate individuals and treats it as an overarching impersonal moral value. For those who consider it a task of morality to 'make the world a better place' promoting this value offers a *prima facie* reason for rescuing the greater number in conflict cases.

One strategy of supporting the welfare efficiency principle is based on Pareto cases, in which the survival of persons A plus B is commonly said to be a better outcome than the survival of only one of them. According to Lübbe, however, such seemingly outcome-regarding betterness judgments only make sense as action-regarding *rightness* judgments: One simply *ought* to save both A and B. By this re-interpretation, opting for Pareto improvements would *not* imply the plausibility of impersonal welfare judgments as a moral reason for action. Hence, a pro-Pareto

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position does not necessarily imply that one should rescue the greater number in conflict cases where this comes at the cost of other lives – a point Lübbe defends in great detail.

Other ways of reasoning in favor of the axiological efficiency principle are also doomed to failure, according to Lübbe. Classical utilitarianism has failed this task, and so, Lübbe claims, have references to an impartial spectator or a moral point of view. Allegedly, the latter could only claim that one ought to rescue the greater number in conflict cases, without offering any reason for this (p. 101). Authors who nonetheless endorse the efficiency principle have to admit, according to Lübbe, that they "serve outcomes, not humans" (p. 266), thus inhumanely disregarding every individual's fundamental right to equal concern. Contrary to Lübbe, consequentialists would obviously question this in a twofold way: (1) Why should a benevolent spectator get restricted to rightness judgments? (2) Does the charge of inhumanity apply any more to the welfare efficiency principle than to Lübbe's rule of equal concern with its indolence to huge trade-offs?

(b) Lübbe also criticizes ethical theories which take efficiency *plu*s fairness to be the proper goals in rescue conflicts. Her main opponent in these parts of the book is John Broome who treats both welfare efficiency and fairness as axiological aims. For readers who already find Lübbe's initial criticism of welfare efficiency convincing, there is actually no need for this further argument. For them, the initial argument will suffice to destruct any theory endorsing welfare efficiency, including those that treat it as a *partial* axiological aim. Nonetheless, Lübbe argues explicitly against such combined views and puts forth a number of arguments against them, which make for the most innovative and intricate part of the book. Potentially, these arguments bear on any version of "consequential pluralism".

With remarkable expertise in both decision theory and normative ethics, Lübbe accuses welfare-plus-fairness axiologies to violate indispensible *separability* requirements. Separability implies that the value of one outcome aspect (e.g. efficiency) can be assessed independently of other aspects of this outcome (e.g. fairness). However, instead of clear and separable value contributions of the different aspects, there are in fact complex interdependencies between them, Lübbe argues. This in turn has to result in the failure of such approaches, she insists. Unquestionably, she provides inspiring insights into the interdependencies between formal rationality requirements and substantially normative matters. Still to us, her cluster of inseparability claims remains in need of crucial disentanglement:

(i) That welfare improvement morally *ought* to be viewed as subordinate to and thus inseparable of fairness requirements is the upshot of Lübbe's defended moral view and the whole book's *demonstrandum*.

(ii) That an action's accordance with certain fairness requirements cannot be read off any *primitive* outcome description is important and quite uncontested. Rather, depending on one's theory of fairness, any particular action's fairness might only be assessed in the light of certain contextual issues. Take, as Lübbe does, an example based on a case by Peter Diamond, in which persons A and B symmetrically and vitally compete for one transplant kidney. And let us accept the widely shared fairness intuition that the organ should be allocated in accordance with an equal-chance procedure. Thus, whether any particular allocation of the kidney is fair in this sense, can only be answered in light of the complete precedent allocation procedure including the latter's counterfactual alternative outcome. In other words, an assessment of the fairness of the outcome is inseparable from the question of which other possible outcomes one could have produced. Fairness *in*separability of *this* kind is thus to be granted. However, whether this finding demonstrates that a decision respecting 'Diamond fairness' *cannot* be modelled within rational decision theory, as Lübbe argues, is a matter of ongoing dispute.

(iii) Way beyond 'Diamond fairness', Lübbe argues that an action's moral rightness cannot be assessed separately of *further* contextual issues. Under the umbrella of agents' moral responsibility ("Zurechenbarkeit") she pleas for various constraints such as the action/omission distinction, the non-responsibility for harm occurring despite fair treatment, or the non-responsibility for harm occurring outside one's duties to help persons in considerable need (§§ 24-27, 60). Many proponents of welfarist ethics would deny that such restrictions are plausible.

(iv) A last *inseparability* observation adduced against the idea of a welfare-plus-fairness axiology is that both items fail to make a constant context-independent contribution to an outcome's goodness. Lübbe illustrates this point with the analogy of a tea drinker whose preference for sweetened tea cannot be subdivided into preferences *as such* for unsweetened tea and for sugar. We grant that aspects relevant for moral (or taste) judgments will change their weight when considered in various combinations or contexts. But we are unconvinced that this rules out the assumption of an independent causal contribution as such.

In sum, Lübbe's major argument from inseparability disintegrates into various formal and substantial claims, all of which deserve scrutiny. Which constraints to welfarism seem plausible, how they can be justified, and how they can best be modelled in decision theory seem to be intertwined but lastly distinct issues.

(c) The constructive part of Lübbe's approach is based on the notion of equal concern. For her, this concept goes much beyond the idea that everyone's welfare should count alike, as in classical utilitarianism. It requires that in conflict cases resources should either be divided equally (if divisible), distributed on the basis of a procedure granting equal chances, or else distributed according to *rules* that lie in the interest of every potentially affected person. Despite their blindness to outcome matters, such common interest rules can have the *side* effect of promoting efficiency: Unless the risks of ending up in an emergency are systematically unequal, it is usually in everyone's interest to maximize her chances of rescue, and to agree to rules that will statistically have this effect. Strangely, the fact that this would also have to apply to conflict cases with unequal numbers remains unmentioned by Lübbe.

Even if the practical convergence between Lübbe's justification of efficiency in a "constractualist" tradition (p. 243) and the disputed aggregationist justification might be welcome, differences in theoretical justification remain categorical: shared *ex ante* interests versus legitimate trade-offs when it comes to tragic conflicts. This clash becomes vital in cases *without* shared ex ante interests. Here, Lübbe seems forced to grant equal chances even at the potential cost of thousands of lives – a fact that also remains unmentioned: If someone knows that, with high probability, he will end up in an emergency and will be competing with a very large group, then it will not be in his interest to adopt a rule that will have the effect of promoting efficiency. As a result, Lübbe has to grant equal rescue chances in such cases, even though this can result in the death of thousands.

Lübbe's ethical approach also produces operational difficulties – a fact that she explicitly admits. Whether rescue chances are distributed equally and which allocation rules will improve everyone's welfare chances, inevitably has to be estimated in a casuistic way (p. 241). This need for casuistry might after all appear no less problematic than the need to balance welfare and fairness in different contexts, as required by efficiency *plus* fairness positions.

Although *Nonaggregationismus* is a technical and at times somewhat meandering read, it presents a sophisticated contribution to fundamental disagreements in ethics and one may hope for an English edition. It will be most interesting for welfarists who – as prioritarian consequentialists, indirect consequentialists or even partial deontologists – call for fairness oriented-efficiency constraints but remain fearless of certain inseparabilities.