

Kongress der Deutschen Gesellschaft für Philosophie

München, September 2011

Sektion: Theoretische Ethik

Vortragstitel: Does the “Separateness of Persons” support Moderate Moral Side Constraints?Autor: Dr. Annette Dufner, E-Mail: annette.dufner@uni-muenster.de

It is well known that libertarians like Nozick believe the separateness of persons supports deontological side constraints. According to side constraints, we are never allowed to commit certain rights violations, even if doing so would prevent several similar rights violations. Nozick's reason for this alleged supporting relationship is that the one rights violation is not like a sacrifice that a social mass entity undergoes in order to maximize its own good. The wording of Nozick's reason sounds remarkably similar to John Taurek's argument according to which we *never* have reason to rescue the greater number--not even if doing so can be accomplished *without* committing a rights violation on the way. If we could either rescue one person or several persons from drowning, Taurek would suggest tossing a coin. Does the libertarian argument in favour of side constraints entail Taurek's view? Or can libertarians maintain that the separateness of persons speaks in favour of the more moderate constraint according to which we should only avoid maximizing outcomes when doing so actually involves a rights violation?

For Nozick, the separateness of persons supports the idea that utilitarianism needs to be fixed with deontological side constraints. He distinguishes between an end goal structure and a side constraint structure of individual rights. If the rights protection is an end goal, then this could give reason to violate that very right if by doing so more extensive violations of the same right could be prevented. If one could prevent the killing of five people by killing a single person, the end goal structure would recommend doing so. This, so the argument goes, is to be avoided. Hence, rights protection should have the structure of side constraints, which forbid the violation of the right as a means to any end goal, including the goal of protecting the identical rights of a larger number of persons.¹

At this point utilitarians will obviously object that one might respect the separateness of persons *more*, by protecting *more* persons from rights infringements. Nozick answers this utilitarian challenge with his appeal to the separateness of persons: "... there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives."²

¹ Nozick, *Anarchy, State, and Utopia*, pp. 26-33, 48.

² Nozick, *Anarchy, State, and Utopia*, p. 32-33.

This passage displays striking similarities with passages by John Taurek who also seeks to defend a deontological constraint by appeal to the separateness of persons. In his very similar wording the alleged role of the separateness of persons is even more explicit. He writes: “This [the deontological thesis] reflects a refusal to take seriously in these situations any notion of the sum of two persons’ separate losses.”³ A page later he adds the following thought about the possibility of ignoring side constraints: “I do not see that I can thereby spare a single person any greater pain.”⁴ Taurek’s idea seems to be that there is no single entity or person that will suffer the disadvantages. This allegedly means that we ought not to look at the aggregated amount of suffering. Separateness is supposed to speak against adding. In this sense, Taurek’s interpretation of the appeal to separateness is a negative argument against views that support adding.

However, it is not clear that libertarians and other deontologists want to be against adding in literally all cases. If we could either rescue one person or rescue five, in both cases *without* violating anybody’s rights, most deontologists would presumably want to say that it is better to rescue the five. Being against adding in all cases means that we have to be indifferent when confronted with this choice. Taurek’s use of the “social entity” as implying that we should not add up in any cases is a rather extreme position: He suggests tossing a coin in these cases. Most deontologists will want to say something more moderate: We should avoid adding up *only* in cases in which rescuing the five would require violating someone’s rights, for example by requiring us to actively kill the one. If nobody’s rights are at stake and we have to decide whether to help one or a group of five, we should help the five.

Can the separateness of persons speak in favour of the more moderate deontological position? Obviously, the claim that the separateness of persons speaks against adding in all cases is not able to establish the connection with the moderate position, because this claim will lead to the extreme position held by Taurek. If Nozick wants to hold the more plausible moderate deontological position he needs to argue that we should avoid adding only if this would require an impermissible use of another person by ourselves, as in the case of killing one to rescue five.

The emphasis on the impermissible active killing of the one in this formulation of side constraints seems to direct our attention at actions in addition to separateness. Now we have to ask how a supporting relationship between separateness and actions could get fleshed out. For one thing, we first have to specify that the supporting relationship would have to run from the separateness of persons to *my* actions, rather than to actions in general. Otherwise, we

³ Taurek, “Should the Numbers Count?” p. 308

⁴ Taurek, “Should the Numbers Count?” p. 309.

would be back to where we started. We would face the question whether it might not be irrational to reduce the total number of mortal actions if we can do so by committing one mortal action. The supporting relationship would have to run from separateness to a prohibition of *my* mortal actions.

The idea might be that we have to view the separateness of persons from an “egocentric perspective”. The proposal could then run as follows. I have some sort of privileged first-personal relationship with myself and am the author of my own actions in a way in which I can never be the author of other people’s actions. As a result I am particularly responsible for my own actions. We may stick to some general terminology and call this perspective agent-centered. If this is our perspective on separateness, then the moderate side-constraint view might indeed follow. Saving the larger number would be impermissible whenever it would require that I actively commit an illegitimate act.

This is an interesting result. It is interesting because it seems to be in conflict with the way in which Nozick’s view is generally categorized.⁵ According to the general view, libertarians like Nozick hold a patient-centered, rather than an agent-centered deontological view. The patient-centered view demands that nobody should *be* treated in an impermissible way and that it is impermissible to treat persons as a mere means to one’s own ends. The agent-centered view, on the other hand, focuses on our capacity as agents and says our primary duty consists in “keeping our own moral house in order” by never committing an impermissible act.

When trying to construct an argument in favour of moderate deontological side constraints, it turns out that the patient-centered view alone does not yield the desired result. The patient-centered view alone only gives us reason to avoid the use of persons as mere means. Of course our killing the one in order to rescue the five would imply using him as a means for rescuing the others. But in a relevant sense the rights violations against the five will be exactly the same: Someone will use them as a mere means by killing them. Since the patient-centered view on its own only gives us reason to avoid the use of persons as mere means, it might well demand that we ought to avoid uses as mere means of the larger number.

The one way of avoiding this, that we have seen so far, would be to follow Taurek’s interpretation of the appeal to separateness as demanding a refusal to add in all cases, because there is no social entity that will enjoy the aggregated benefit of the outcome. But this will lead to the extreme position that we should avoid adding even in cases in which no rights violation on our part is involved.

⁵ Scheffler, *Consequentialism and Its Critics*; Kamm, *Intricate Ethics*.

In the end, I argue that libertarians have two options, each of them with a disadvantage:

On the one hand, they can argue that the separateness of agents and the separateness of victims matter equally and lend positive support to a concern for one's own actions *and* for the situation of victims in general. In order to generate a decision between the two attitudes, they can then hold that the separateness of persons also supports the argument against adding. Taken together this view will yield the desired result with regard to side constraints. The disadvantage is that the view will speak against adding in all cases, because we lack an argument that restricts the prohibition against adding to cases involving rights violations and that can itself be derived from the separateness of persons. This means that the view would turn out to be more extreme than libertarians might have wanted.

Alternatively, they can solve this problem by arguing the separateness of agents matters more than the separateness of victims. This will yield the more popular moderate view that we should never commit a rights violation ourselves, but that we may or should be concerned about the greater number whenever doing so does not require us to commit a rights violation. The disadvantage of this view is that there seems to be no argument for why the separateness of agents should matter more that derives itself support from the separateness of persons. The separateness of persons seems to lend equal support to the agent-centered and the victim-centered interpretation of deontological constraints. This second option would therefore require libertarians to give weight to the agent-centered view over-proportionally to what the separateness of persons seems to support.