

## Five Elements of Normative Ethics - A General Theory of Normative Individualism

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**Abstract** The article tries to inquire a third way in normative ethics between consequentialism or utilitarianism and deontology or Kantianism. To find such a third way in normative ethics, one has to analyze the elements of these classical theories and to look if they are justified. In this article it is argued that an adequate normative ethics has to contain the following five elements: (1) normative individualism, i. e., the view that in the last instance moral norms and values can only be justified by reference to the individuals concerned, as its basis; (2) consideration of the individuals' concerns and interests—aims, desires, needs, strivings—insofar as they have a justificatory function; (3) a pluralism of references of these concerns and hence of moral norms and values to all possible elements of actions; (4) the necessity of a principle of aggregation and weighing with regard to these concerns; (5) finally, as a central principle of aggregation and weighing, the principle of relative reference to self and others, operating as a generalizing meta-principle that guides the application of concrete principles and decisions.

**Keywords** Normative ethics · Ethics · Justification of morals · Justification of law · Non-consequentialism · Non-utilitarianism · Non-deontology · Non-Kantianism · Plurality of the elements of action

According to the view set forth in the present article,<sup>1</sup> an adequate normative ethics has to contain the following five elements, to which all adequate normative-ethical theories should be committed: (1) normative individualism, i. e., the view that in the last instance moral norms and values can only be justified by reference to the individuals concerned, as its basis; (2) consideration of the individuals' concerns and interests—aims, desires, needs, strivings—

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<sup>1</sup>This article summarizes the normative ethical theory of a just published book. For this reason it cannot be as specialized as a single-issue-article and cannot take up all current discussions on all special topics. This is attempted in the book. The reader is kindly requested to consult the book to find more argumentation and discussion: Dietmar von der Pfordten, *Normative Ethik*, Berlin 2010.

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insofar as they have a justificatory function; (3) a pluralism of references of these concerns and hence of moral norms and values to all possible elements of actions; (4) the necessity of a principle of aggregation and weighing with regard to these concerns; (5) finally, as a central principle of aggregation and weighing, the principle of relative reference to self and others, operating as a generalizing meta-principle that guides the application of concrete principles and decisions. What are the criteria for an adequate normative-ethical theory? This is not a metaethical article and therefore it cannot take up the discussion in this area. But a short explication seems to be appropriate: Contrary to descriptive ethics, normative ethics has to be “normative”, that is: as a secondary normative order/ideal, it has to be able to criticize and justify primary normative orders like morals, law, politics, conventions etc. by producing some sort of normativity and situating it within our other descriptive beliefs about the world. These primary normative orders—this is a descriptive-empirical claim, which would need some more evidence—have the main aim to mediate between possibly conflicting interests. Henceforth, a normative-ethical theory is adequate if it is able to justify this mediation between possibly conflicting interests of primary normative orders. So a normative ethics is adequate if it provides the best construction to fulfill this task. This can only be achieved by all elements of such a normative ethics together. So one has to discuss not only each of these elements but also the connection of these elements. It is not possible to isolate one element and discuss it separately, because the justification can only be provided by them together. For a further discussion of these metaethical issues see some more extensive argumentation elsewhere (von der Pfordten 2010, 245).

The succession of the five elements proposed here is not arbitrary. Though elements (2) to (5) cannot be derived, in a strictly logical sense, from element (1) or their respective previous elements, there is a certain dependency. Each of the subsequent elements can only be adequately discussed and determined if, and because, the preceding element has been accepted. The ethical justification of normative individualism thus resembles a path with four subsequent forks. At each fork a new decision has to be made about which direction to choose. However, unlike the decision made when following a real path, the theoretical decision that I discuss is not only empirically, but also normatively determined by the preceding decisions. This also shows the external completeness of the five elements of an adequate ethics. Since the five elements are dependent in respect of the aim of justification on each other, no further, independent external element is needed. We could only draw further, more fine-grained internal distinctions.

Since all of these five elements are required for a normative ethics and since they are justified interdependently, considering them in isolation would not make much sense; it would be as pointless as describing, say, only the cogs of a clock rather than the machinery of the clock as a whole. Of course, we can describe properties of the cogs themselves, such as their size or weight or their molecular and atomic structure. But it is their function as an integral part of the clock which makes them distinctive as cogs. When we turn to complex conceptual structures such as ethical theories, we cannot simply isolate their manifest properties as in the case of cogs. The elements of an ethics can only be characterized in terms of their functional relation within the context of ethical reasoning and justification. Hence, a philosophical examination should focus on that correlation rather than analyzing the single elements in detail. Accordingly, all five elements are discussed here together—though at the prize that we cannot examine each of them as comprehensively as we could if we investigated only one of them.

Normative ethics in a narrow sense, understood as moral philosophy, is part of a more comprehensive philosophy of ‘the good’ or of practical philosophy.<sup>2</sup> The present paper is

<sup>2</sup> For a comprehensive ethics of the good cf. Vossenkuhl 2006.

only concerned with a narrow conception of normative ethics, and it does so only from an immanent, philosophical perspective, not from a religious, transcendent one.

Many theories are proposed within the realm of normative ethics. At least four competing groups of theories are especially prominent in the discussion: contractualism, virtue ethics, utilitarianism or consequentialism, and deontological ethics as represented most notably by Kantianism. In addition, there is a bewildering variety of more or less marginal versions of normative ethics, such as discourse ethics, prudential ethics, care ethics, or situational ethics, etc. How to orient oneself within this plurality of different approaches to normative ethics? At least five general responses concerning the question of theory choice suggest themselves: monism, relativism, particularism, pluralism or skepticism. *Monism*, understood as choice of a theory, votes for one of those theories and tries to defend it against the objections set forth by other theories. Advocates of utilitarianism, Kantian ethics or virtue ethics sometimes pursue this strategy. With regard to normative ethics, however, this strategy seems rather questionable. An adequate normative ethics contains central elements of each of the four families of ethical theory—this, at any rate, is the proposal of the present paper. An adequate ethics involves—that will be justified by the discussion of the five elements—at least the following conditions: agreement by the individuals concerned (contractualism), e.g. in medical ethics; reference to consequences and the principle of maximization (utilitarianism), e.g. in social ethics and political ethics; the principle of generalization (deontology) in cases in which an act both presupposes and denies a common practice, as is the case, e.g., with false promises, because an act cannot be justified convincingly as a mediation between potentially conflicting interests if it presupposes and denies such a common practice; and reference to virtues, e.g. in the context of personal relationships.

A *relativism* understood as choice of a theory traces ethics back to different, potentially divergent sources (Harman and Jarvis Thomson 1996; for discussion Rippe 1993). The problem with this strategy is that it allows for contradictory ethical justifications and criticisms of morals. At the end, we would have to regard incompatible theories as equally justified—with the effect that a consistent ethical standpoint concerning moral conflicts becomes impossible.

*Particularism*, understood as choice of a theory, criticizes the general and abstract character of ethical theories and the assumption of ethical principles. It pleads for situational solutions to conflicts (Williams 1985; Dancy 2004).<sup>3</sup> This implies that in morally comparable situations different moral obligations may hold. At the same time, this arbitrarily restricts the possibility for a more abstract and general approach. In that way, particularism establishes a questionable contrast between ethics and other academic or scientific areas of study like history or biology.

*Pluralism*, understood as a choice of a theory, holds that it is not necessary to choose only one theory of normative ethics.<sup>4</sup> It assumes that it is possible to defend and uphold several or even all of these theories. Pluralism in normative ethics is hardly defensible if the pluralist normative-ethical theories contain elements which contradict elements in other theories. In order to show this, one would have to survey all normative-ethical theories, which is impossible here. In respect to the main four groups of theories mentioned above one could—although a more careful and therefore much longer treatment would be necessary—assume the following elements to be contradictory: consequentialism in its

<sup>3</sup> Dancy fails to clearly distinguish between moral and ethical particularism. For discussion cf. McKeever and Ridge 2006; Gesang 2000.

<sup>4</sup> See for a discussion of the plurality of values: Stocker 1990.

normal form proposes the maximization-principle and deontology and virtue ethics deny it. Virtue ethics refers to personal properties of character while deontology at least in the Kantian form is concentrated on the justification of actions. Contractualism might be combined with all other three theories because it encompasses—as we will see—the first four of the proposed five elements, but it lacks a sufficient principle of mediation or aggregation to lead to a clear decision between possibly conflicting interests.

*Skepticism* understood as choice of a theory, finally, claims normative ethics to be impossible given the plurality of ethical theories. However, such a conclusion hardly holds. After all, any proposal not yet considered might lead to a sustainable normative ethics.

But there is a further and, I take it, more promising way of dealing with the plurality of ethical theories. This possibility may be characterized as an “analytic-synthetic” method. We can analyze the various theories into their elements and then assess them by comparing them with each other.<sup>5</sup> If necessary, additional or modified elements may be added. Finally, they can be brought together by a synthesis. In the confines of this paper, this process of analyzing, comparing and synthesizing cannot be set forth in detail. Apart from some cursory references, only the results of discussing the five elements is presented.

## 1 Normative Individualism

Normative individualism contains two principles:

- (1) *Only* individuals can be the ultimate point of reference of moral obligations and hence the justificatory source of morals and ethics. Collective entities such as nations, peoples, societies, communities, clans, families, or eco-systems, etc. cannot fulfill this function.<sup>6</sup> Accordingly, like the obligated actor the obligating other has to be an individual in the last instance. In other words: the basic moral relation only exists between individuals. We may call this the “principle of individuality” of normative individualism.
- (2) In the last instance, justifications of actions or decisions have to take into account *all* individuals affected by an action or decision, i. e., all “moral patients”. We may call this the “all-principle” of normative individualism.

“Affected” here refers to the relation between the action in question and the morally relevant properties of the individual. A particular action can be in accordance with, or contradict, these properties, and it can do so not only logically but also practically. That is, we have to presuppose a sufficiently probable, not only logically possible, influence.

Within philosophical discourse, the intuitive idea underlying normative individualism appears under various terms and labels: “humanism,” “legitimatory individualism,” “subjecthood of human beings,” “subjectivism,” “self-determination,” “autonomy,” “individuality,” “value of the individual,” “freedom,” “person,” “liberalism,” “democracy.”<sup>7</sup> Which label one chooses does not matter. The important point is their congruence

<sup>5</sup> For a similar combination of theories cf. Patzig 1983, 164, and passim; Patzig 1994, 76; Beauchamp and Childress 2001, passim; on justification: 368–369; Frankena 1973, 52, 70. For an approach to normative individualism in the context of political philosophy cf. von der Pfordten 2001, 2000, 491–513, 2004, 321–346.

<sup>6</sup> For a counter-model to a holistic ethics cf. Siep 2004, 14, 16, 24, 26ff.; Gorke 1999.

<sup>7</sup> For “legitimatory individualism” cf. Höffe 1999, 45ff. For “subjectivism”: Trapp 1988, 304, 310ff.; von Kutschera 1999, 59, 121ff. For “self-determination”: Gerhardt 1999 and 2000, 155ff. For “autonomy”: Beauchamp and Childress 99–140; Schneewind 1998; Feinberg 1986, 27ff.; for “value of the individual”: Hastedt 1998. For “freedom”: von Hayek 1960; for „democracy“: Nida-Rümelin 1999, 162ff.

in content. We can further characterize normative individualism by comparing it with other positions:

- (1) The principle of normative individualism is consistent with the fact that *individuals normally live in a social context*—matrimony, families, neighbourhoods, communities, nations. No reasonable ethics can deny this.
- (2) Normative individualism implies *no egoism*. As a matter of fact, individuals also have altruistic desires and idealist goals. We can empirically observe these altruistic desires and idealist goals in our day-to-day-life. They enter the process of weighing not as objective truths, however, but as individual concerns and ideas. Nor does normative individualism support egoism, for there is no reason why individuals should take an interest in egoism in the long run. In order to understand the ontological-empirical embeddedness of normative individualism, it is important to realize that it does neither presuppose nor support an egoistic view of man.
- (3) Normative individualism does not lead to *relativism* of ethical justification. Admittedly, the individual concerns that are its foundation are dependent on the respective individuals and to that extent contingent; but, first, there are basic needs that any individual has, e.g., the need for fresh air and nourishment; and, second, the contingency of some concerns does not preclude objectivity of deliberation.
- (4) Normative individualism is not to be conflated with *libertarian theories*, e.g. theories of the ultraminimal state as proposed by Nozick (1974, 18) or Gauthier (1986). The limitation of collective coercion to the results of an actual process of coordination, processed by the method of the ‘invisible hand,’ is not identical or a necessary condition of normative individualism. It is even not a justifiable consequence of normative individualism, because libertarian theories prevent the individuals from avoiding market-results which fail to do justice to their interests. If the individuals can foresee that the results of an invisible-hand-process are all-in-all bad for them, they can and in some circumstances even should, according to normative individualism, try to build up institutions beyond the mere invisible-hand-process to secure the fulfillment of their interests.
- (5) Normative individualism is very close to *liberalism*, however. Still, from a legitimacy point of view, normative individualism is more basic than liberalism, for it provides direct reference to those entities that both generate and require legitimation. It is a justifying principle or theory whereas liberalism is a social, political and legal program which applies normative individualism to particular cases. There is no strict legitimacy correlation between the two. As a program, liberalism could also be justified in religious terms or by reference to natural law.
- (6) Normative individualism is not to be identified with *contractualist theories*. Historically, the latter represent one important version of normative individualism. But utilitarianism and some theories of natural law also refer to individuals; hence, to a certain degree, they too can be considered as conceptions of normative individualism. Contractualist theories are just one model or particular version of normative individualism.
- (7) Normative individualism traces ethical justification back to individuals; but this does not preclude that *collective acts or goals* such as social equality are *pursued and supported*; that is, it is consistent with a modest form of communitarism.
- (8) Normative individualism might be incompatible with some meta-ethical assumptions. For instance, it would be incompatible with strong value realism according to which ethical justification can be directly based upon objective values, without regard to the

individuals concerned. Otherwise put: normative individualism is incompatible with the assumption of an immanent intrinsic normativity of values and goods—a normativity, that is, which is independent from the cognition of values by individual human beings. On the other hand, it is compatible with a weak value realism which takes objective values to be effective but maintains that the agent has to take into account their acceptance and cognition by the individuals affected.

- (9) The opposite of normative individualism is the *principle of normative collectivism*: Actions and decisions can have their ultimate ethical justification only in a *collective*, that is, the group, family, clan, nation, people, race, ethnic group, society, economy, legal, cultural, or speech community, neighbourhood, etc. The assumption of normative collectivism is that the justification of at least *some* decisions is not to be traced back to the respective individuals in the last instance but to collectives. Stronger versions of normative collectivism even hold that *all* or at least all *crucial* decisions are to be justified by reference to collectives. Normative individualism and normative collectivism are not contradictory but *contrary*. That is, they do not join to an exhaustive disjunction which precludes other possibilities of ethical justification such as religious justifications, value-objectivistic justifications, or justifications in terms of natural law. However, due to their metaphysical claims, such justifications have lost their credibility in the modern era. Their general acceptance can no longer be expected, let alone demanded. Hence, the present paper does not deal with these types of justification but confines itself to establishing normative individualism against the challenges of normative collectivism.

As we have presented them above, normative individualism and normative collectivism cannot be combined. From a normative point of view, this is useful given the justificatory function of ethics. From a descriptive point of view, this were only plausible if ethical justifications or normative systems consisted of single sentences correlated in a strictly deductive way alone. But this, of course, is not the case with complex ethical theories. Consequently, some parts of an ethical theory may be normatively individualistic, others normatively collectivistic. A case in point is Hobbes's political theory. Hobbes construes the establishment of political government by means of a contract in normatively individualistic terms, while his conception of government itself contains no normatively individualistic elements.

Many modern ethical theories, e.g. utilitarianism, Kantian ethics, or contractualism, are in accordance with normative individualism in some of their elements. The case of virtue ethics is more complicated. A first important advantage of normative individualism is that it makes these implications of traditional ethical theories explicit:

- (1) According to Kant's second formula of the categorical imperative, persons (or, more exactly: mankind inherent in each person) must never be "used" as a mere means of acting but must always also be treated as an end (Kant 1968a, b, 429). In the third formula, a world of rational beings is characterized as a "kingdom of ends" which is possible "through the giving of their [the rational beings'] own laws by all persons as members" ("eigene Gesetzgebung aller Personen als Glieder") (Kant 1968a, b, 438). The generality of law involves the consideration of all persons, and according to Kant, this means that persons must be considered as individuals and not as a collective. However, Kant restricts the class of morally significant entities to rational beings and

thus precludes that also non-rational beings like animals and plants are considered for their own sake.<sup>8</sup>

- (2) Classical utilitarianism proceeds by first considering the pleasure and pain of the individuals concerned (Bentham 1988, 1f). On this basis the utility sum is determined. This normative-individualistic starting point persists even if, as in modern preference utilitarianism (Singer 1993), preferences, rather than pleasure and pain, are considered more fundamental. But, as we shall see below, the utilitarian principle of maximizing collective utility, if universally applied, fails to take into account in a comprehensive and adequate way the morally significant properties of individuals.
- (3) For all their differences in detail, all contractualist theories—Hobbes, Locke, Rousseau, Rawls, Gauthier und Scanlon—ultimately start from individuals who form contracts. The differences concern the question how the individuals are to be characterized, which properties are to be considered as decisive, and how the conclusion of the contract is to be understood.
- (4) Virtue ethics does not accept the distinction between categorically obligating morals on the one hand and prudential questions of how to conduct one's life on the other. More importantly, its focus is not on the moral patient but on the agent (Slote 1997, 177). Not the affected other but the agent's character is considered as essential. In that way, the normative individualism of virtue ethics is at best a partial one, confined to the individual agent. It would be precipitous to uncritically follow virtue ethics in this tendency. For it is in fact probably that the goals and desires of the affected other concern not only the actions and consequences but also the character of the agent. Why? We generally believe that our aims and desires are more likely to be respected by agents having a good (moral) character. Accordingly, anyone of us will wish others to have such a character. If and when this wish is appropriate, is another question. The crucial point is this: taking into account the character of agents is compatible with a normative-individualistic focus on others and does not mean that attention must be focused solely on the agent's character

### 1.1 Justification of the Principle of Individuality of Normative Individualism

Why is it that, according to the *principle of individuality*, only individuals can in the last instance justify moral obligations or evaluations?<sup>9</sup>

An answer must start with the meaning and aim of morals and ethics. Morals helps us to determine our character, actions and decisions when we are faced with potentially conflicting aspects, values, and concerns. It does so not only by means of offering advice and recommendations, but also by creating genuine, categorical obligations.<sup>10</sup> In reality this can be experienced by everybody when we face such

<sup>8</sup> In his political ethics, Kant restricts the right of political participation to male, free adults. But one has to distinguish clearly between political participation on the one hand, and being morally or ethically considerable and responsible on the other. Without doubt, Kant held that, given their status as individual rational beings, women and children are morally considerable and responsible. Cf. Kant 1911/1968, Vol. VI., § 46, 314f.

<sup>9</sup> For a modern criticism of normative individualism from a perfectionist-consequentialist perspective cf. Raz 1986, 193ff.

<sup>10</sup> This characterization of morals via the means to achieve its aim seems to be more convincing than a characterization with respect to other contingent properties which can often be found in moral situations, e. g. certain moral feelings like remorse. Otherwise, an especially merciless offender, who does not have these moral feelings, could easily turn a moral interaction into a non-moral one. So this view would contradict the aim of morality to also and even foremost solve conflicts with such pitiless offenders.

categorical obligations by others, e. g. the obligation not to lie, not to cheat, not to hurt etc. But it can also be explained: Interpersonal conflicts cannot be solved with sufficient effect if everybody has to agree because many obligations will not be in accord with the interests of the obliged.

The function of morals, as a part of human culture, is to enable fair and reasonable solutions to possibly divergent options. These solutions lead often to action-guiding, categorical obligations. This requires that the agent and the affected individual (moral patient) do not belong to one single, all-encompassing collective. For in that case, the normative relation between them could only be an internal, not an external one. Thus, we could not explain why they should be subjected to categorical, action-constraining obligations to one another as is conceptually presupposed by any set of morals. Within such a collective, there may be good prudential reasons for preferring one particular solution to a practical conflict over another. Categorical obligations must have their ultimate source outside the collective. Otherwise, they would not be independent from arbitrary decisions by the collective. If solutions to moral conflicts depend on arbitrary decisions made by the collective for its parts, this does not amount to a categorical external moral obligation but only to an internal, immediately effective prudential decision. Collectives require no categorical obligations when it comes to normative decisions. Within the collective, there are no morals and hence no obligations which are based upon external relations, but only the facticity of collective, more or less prudential decisions via internal relations. One might reply that this does not yet justify normative individualism; after all, not only individuals but also collectives are related to each other externally as for instance, when a band of robbers assaults a group of travelers. Why is it that ultimately, the concerns of the individual travelers count and not those of the group as a whole?

As regards collectives such as traveler groups, gangs, families or political communities, internal differences are to be taken into account. Within the group of travelers, any single traveler has the moral obligation to defend the group in situations like the one sketched above. What has been revealed in the previous section applies here as well: the obligation only qualifies as a genuinely moral obligation if it concerns an external normative relation; but it cannot count as a moral obligation if it refers to an internal normative relation that depends, in the last instance, on the decision of the collective. Collectives can always be ethically evaluated with regard to their members. For that reason, collectives as a whole can not be the last point of reference in ethical justifications.

There is an undeniable moral and hence normative asymmetry between morally significant individuals and collectives. We speak of concerns and interests of collectives and thus presuppose the existence of such concerns and interests. But we can always ask whether these collective concerns and interests are in accordance with the morally relevant concerns and interests of the members of the collective. Is, say, a company's activity really in accordance with the moral interests of its employees and shareholders? Does the representative of a family really act according to the moral interests of all family members? By contrast, the inverse does not hold: When individuals are morally affected and do not act as representatives of a collective, the question whether the interests of the individuals are really in accordance with that of the collective cannot reasonably be posed as a normative or moral question but at best as an empirical question. This, at any rate, is the view that the following sections aspire to establish.

Marx's class theory is no counter example to this view, but indeed supports it. For Marx construed his class theory as a naturalistic-historistic theory, not as a normative-moral one



(cf. Leiter 2004, 76ff.). The individuals' views and attitudes are interpreted as expressions of their social affiliation in a particular historical situation. But they cannot be considered as normatively-morally determined by this affiliation.

That normative individualism has a reasoned foundation is also revealed by the following considerations:

First: when an act of agent A affects B's acting, in a way A's act appropriates B's will and actions; they thus shift, as it were, from B to A. For instance, someone stealing another's purse determines the latter's subsequent will and makes him act in relation to this purse. However, since only individuals are agents in the full sense of the word, and since collectives can only act through individuals representing them, the shift of the will and the performance of the act in the last instance always concerns the acting individuals. And hence also the justification must refer to these individuals in order to legitimate this shift. Otherwise, we could not speak of ethical justification in the proper sense.

Second: actions affecting others lead to a discrepancy between the agent's performance and the other's interest. An ethical theory has to take this into account. It has to overcome this discrepancy between the agent's performance and the affected individual's interest by means of ethical justification. Only then can the action be successfully correlated to the affected individual's interest. And this is only possible if the individuals, rather than some collective of agent and other persons, figure as ultimate points of reference.

Third: the interest of individuals in actions manifests itself in actual claims for justification. Also, collectives call for such justifications; but first, they do so only on behalf of their members, e.g., a family for the family members, a club for its club members, a corporation for its shareholders, a state for its citizens, etc. Secondly, satisfying a collective's claim for justification is not sufficient to also satisfy its members' claim for justification.

The fundamental asymmetry between the moral consideration of individuals and collectives, respectively, becomes even more apparent when collectives are dissolved. Setting aside religious or otherwise transcendent justifications, there is no moral reason why a collective should be preserved against the will, that is, the interests and desires of all of the individuals concerned.<sup>11</sup> If all morally relevant individuals agree, a collective's dissolution is not morally objectionable. For instance, it has not been considered as morally questionable—but at best as inexpedient—when the USSR or Czechoslovakia dissolved.

Similarly, we do not consider it morally objectionable when friendships end or when a club decides to dissolve itself. Only disappointed expectations, unfulfilled duties or other concerns and interests related to the collective's preservation can be susceptible to negative moral evaluations; these concerns, but not the ceasing of the collective itself, may lead to duties of compensation or delay. It is morally neutral since the community as such, independently from its acceptance by its members, has no intrinsic value by itself.

It may be neither logically necessary nor empirically provable that all individuals want to decide freely and by themselves.<sup>12</sup> But no ethics can appeal to logical

<sup>11</sup> I set aside here cases in which individuals deliberately consent in the irresolvability of a community, e.g., in the case of matrimony or religious order.

<sup>12</sup> This is a counter-example by Siep 2004, 111f.

necessities or a closed set of empirical data. Rather, it has to draw upon generally accepted facts. It is such a fact that sufficiently mature human individuals, unlike collectives, are both capable and willing to decide pivotal questions concerning their lives on their own.<sup>13</sup>

Admittedly, under certain conditions we are better off relying on experts<sup>14</sup> such as doctors, lawyers, pharmacists or priests. But first of all, this hardly holds for the majority of questions of our life.<sup>15</sup> Secondly, even in cases in which we consult experts, we want to decide autonomously whether and to what extent we rely upon the experts. Thirdly, even if we transfer responsibility to experts, we usually try to keep as much control over their actions as possible. A doctor should only act in accordance with the informed agreement of the patient. He has to inform the patient about the diagnoses and therapies. After all, we don't usually nurture the same kind of close, trusted relationship with experts that we do with family members or friends. Rather, we consult them as strangers for prudential reasons; we seek to achieve results that we could not realize on our own, e.g., to become healthy again, to win a case, to buy certain pharmaceuticals, or to join religious ceremonies. With regard to their function, experts are primarily instruments we use to improve our lives, even though we must not use them as mere means—after all, they are humans and hence morally considerable beings.

Joseph Raz (1986, 199–207) has drawn into question normative individualism by asking: “Is there anything wrong with moral individualism? Are any collective goods intrinsically desirable? I will suggest that some collective goods are intrinsically desirable if personal autonomy is intrinsically desirable. If this is so, then right-based theories cannot account for the desirability of autonomy.” This statement is problematic in several respects. First of all, contrary to what Raz suggests, there is no necessary correlation between normative individualism and a rights-based ethics; for as will be shown in the next section, a rights-based ethics can at best count as *one* possible specification of normative individualism. Furthermore, Raz presupposes that autonomy, construed as freedom of choice with regard to external options of acting and living, is intrinsically good. If autonomy is intrinsically good, Raz holds, it is also intrinsically good to have a sufficiently high number of possible and acceptable options for making autonomous decisions. According to him, the ideal of personal autonomy renders at least some of the corresponding collective goods intrinsically good as well, and this is supposed to refute normative individualism.<sup>16</sup>

Whether this line of reasoning holds, depends upon whether autonomy is an intrinsic good. But for this Raz offers no justification. In fact, autonomy—understood as freedom of choice with regard to external options of acting and living—is not absolutely good but only relatively good: it is not good independently from the concerns of individuals. Autonomy and its degree of goodness depend upon the claims and the evaluation of the individuals in question. We wouldn't appreciate it if someone were forced to freedom of choice to an extent he himself does not find desirable. It would amount to a neglect of normative

<sup>13</sup> This aspect has also been included in German law, cf. § 1626 BGB: “Elterliche Sorge: (2) Bei der Pflege und Erziehung berücksichtigen die Eltern die wachsende Fähigkeit und das wachsende Bedürfnis des Kindes zu selbständigem verantwortungsbewusstem Handeln. [...] (Parental custody, principles (2) In the care and upbringing of the child, the parents take account of the growing ability and the growing need of the child for independent responsible action. [...])”

<sup>14</sup> This is a further argument by Siep 2004, 112.

<sup>15</sup> As Siep suggests.

<sup>16</sup> Raz 1986, 206: “The ideal of personal autonomy entails, therefore, that collective goods are at least sometimes intrinsically valuable.”

individualism. This shows that autonomy is no intrinsic and hence collective good, but is only justified insofar as it is embraced by the individuals concerned. The claim for autonomy in the sense of freedom of choice is a primary and crucial application of normative individualism. For instance, we may imagine a society in which all its members vote against art or certain forms of jobs or certain models of partnership, say, for religious, non-objective reasons. In such a case, theorists promoting intrinsic collective values or goods would have to hold that intrinsic values and goods are to be realized against the declared will of the individuals concerned.

Autonomy, understood as freedom of choice, may even lead to the legitimate decision for a life as a hermit and thus for the negation of any society and all collective goods a society offers. The possibility and legitimacy of this extreme case shows that collective goods in a society cannot be intrinsically valuable independently from individual interests. We can frame this objection to Raz in still more general terms: even if some values or goods existed that are independent from human or otherwise individual evaluations, it would still be necessary that individuals recognize these values and goods and, by means of their own values, aims, or desires, treat them as standards for moral decisions. Otherwise, it would remain mysterious how these values should gain their normative force within an immanent, non-religious framework.

Autonomy does not only mean freedom of choice among external collective options; on a more fundamental level, it also refers to freedom of the will and freedom of action, that is, the very possibility to have a will at all and to act according to this will. But this freedom of will and action is neither a collective value nor a collective good. Rather, it is a natural condition of individual human action.

## 1.2 Justification of the All-Principle of Normative Individualism

Why is it that all individuals affected by an action are to be considered, and not only some of them, say, an elite, as some statements by Nietzsche (1980, 205ff.) suggest? Why, that is, does normative individualism not only contain the principle of individuality but also the all-principle? In other words, what justifies moral universalism? The normatively ethical distinction between moral agent and affected individual, and hence the principle of individuality, presupposes that the moral patient himself is the bearer of morally significant properties. Otherwise, he cannot by himself be morally considerable and have moral standing. This requirement of moral significance holds for all morally considerable individuals alike. And if it is a necessary condition for being morally considerable, nothing counts against the assumption that in principle, all individuals fulfilling that requirement—that is, all individuals having morally significant properties—are morally considerable. This also provides the grounds for an answer to the question of where to draw the line between individuals who are morally considerable and those who are not. The answer is: all individuals who show the concerns in question (aims, desires, needs, strivings) are morally considerable.<sup>17</sup>

The all-principle of normative individualism does not preclude that in some situations of moral deliberation, the concerns of certain individuals are to be treated preferentially, e.g., due to their close personal relationship to the agent.

<sup>17</sup> The selection resulting from this I have discussed elsewhere: Cf. von der Pfordten 1996, 237–240; 1999, 262–276.

## 2 Aims, Desires, Needs, Strivings (Concerns and Interests)

If all individuals concerned are the ultimate point of reference for moral justifications or obligations, resp., the question is, which property or aspect of individuals should be considered as normatively decisive? There is a bewildering plurality of proposals: striving for self-preservation (Hobbes 1991, 117), actual agreement (Locke 1988, 330), will (Rousseau 1992, 54; Kant 1968a, 393ff.), pleasure and pain or utility (Bentham 1988; Mill 1998), rights (Nozick 1974, IX; Dworkin 1977, 184ff.), needs (Marx; Apel 1973, 425), liberties (von Hayek 1960), interests (Patzig 1994; Hoerster 2003; Höffe 1999, 55f.), preferences (Arrow 1963, 11ff.; Gauthier 1986), well-being (Griffin; Raz 1986), abilities (Amartya Sen 1995), fictional agreement or justification (Scanlon 1998, 189ff.; Habermas; Koller 1996, 361–393).

Within the confines of this paper, only a cursory justification for a selection can be given: if one takes individuals seriously, one cannot externally prescribe them a particular property. Instead, one has to let them decide for themselves which aspect of their individuality should be considered as morally decisive, even if their decision might be irrational. Of course, within the abstract framework of an ethical theory, such a decision is not possible for particular individuals and conflicts. But at least we have to assume theory elements that take seriously the individuals' own decisions and self-determinations. This shows, e.g., the lack of plausibility of hedonism. It may well be that some of our normatively relevant properties can be traced back to pleasure and pain or contain at least aspects of pleasure and pain. However, as decision making beings, we insist on our ability to take a reflective stance towards our more bodily needs and strivings for increasing pleasure and reducing pain and to evaluate and judge them by our own will and mental capabilities. For instance, we continue a match in spite of hurts; we help others where necessary even if this causes inconveniences for us. The claim for evaluating and judging our bodily strivings is a crucial expression of our individuality and self-understanding. An ethical theory that is committed to normative individualism has to do justice to this claim.

Two aspects seem to be crucial with regard to the self-determination of individuals; each of them forms a kind of continuum. The first aspect is the distinction between *bodily* and *mental* features of relevant properties. The second aspect is the distinction between the individual's *subjective manifestation* of what is meaningful to her or him and its more or less *objective evaluation* by others.

### 2.1 The Continuum Between Bodily and Mental Features

The first aspect—the continuum between *bodily* and *mental* features—has already been indicated above when we introduced *strivings*, *needs*, *desires*, and *aims* (*intentions*, or, generally: *the will*). These four concepts are semantically ambiguous and not well defined, but we may render them more precise in the following way: *strivings* are purely vegetative-bodily properties whose function is to sustain bodily integrity, beyond the mere effects of physical forces. They can be characterized as the local and temporary inversion of general physical entropy and can only be found in micro-organisms, plants, animals and human beings but not in inanimate matter such as stones or water. Human strivings, e.g., are those for bodily temperature balance. Strivings of plants are, for instance, that their leaves turn to sunlight and take up water from the ground, against the natural direction of gravitation. *Needs* often have a bodily basis, but they can be mentally influenced, e.g.,

with regard to when and to what extent they are satisfied. Only human beings and animals have *needs*, e.g., for food, water, excretion, warmth, etc. *Desires* sometimes also have bodily components but are primarily mental phenomena. Unlike needs, their mental components can completely override possible bodily components; they can modify the need or even suppress it altogether. Although it is primarily humans who have desires, higher animals can have them as well, e.g. the desire for company, protection, entertainment, new experiences, etc. The line between needs and desires is not sharp. For instance, in higher animals, the sex drive is a need, whereas when we speak about humans, we would rather speak of a desire for sexual unification. After all, humans can also be celibate. Finally, *aims (intentions)* are purely mental properties and, as far as we know, they can be had only by humans, even though recent studies show that some higher animals can also make use of tools in a purpose-oriented way. Examples for aims are as follows: the aim to change society, to gain social acceptance, to write a book, to achieve a certain job position, to travel, etc. Aims can relate to other aims by a means-end-relation. We can distinguish then between higher and lower level aims. For instance, the lower level aim to get into the train serves the higher level aim to reach one's destination on time. Aims can also be correlated with more complex plans and long time projects.

The continuum between bodily and mental features of higher animals is asymmetrical. Notably with humans, the bodily components of strivings and needs are judged and evaluated by the mental components of desires and intentions. To a significant degree, the self-understanding of humans is based upon these evaluations and judgment. From early childhood onwards, we try to evaluate our strivings, needs, and finally also our desires by means of our aims and intentions, and try to bring them into accordance with the latter.

For example, we withdraw from the need to immediately drink something or stroll around in the train station's book store if this would undermine our aim to reach the train. Aims and intentions—or, more abstractly: our will or our self-determination—are a central expression of our identity as human individuals. For that reason, the actual avowals of our will (or, in the case, e.g., of surgery: our assent) have to have priority. With beings that have no intentions or aims, correspondingly their desires, needs, or striving have to be taken into account.

## 2.2 The Continuum Between Subjective Manifestation and Objective Evaluation

The second aspect involved in ethical consideration is, as mentioned above, that of a continuum between an individual's subjective manifestation of needs, desires, etc., and its evaluation by others. The agent's moral obligation to consider others necessarily presupposes judgments about their normatively relevant properties. According to the first aspect explicated above, with human beings, this is in the first place a person's actual will in the sense of aims and intentions. But in every day life, this will may not always be formed, or be discernible, or it cannot be taken into account. For instance, comatose persons have no present, actual will. Unless those who are affected by our actions are right in front of us, we cannot recognize their present, actual will. This is also the case, for instance, when we want to send a present to a friend and do not know whether he or she will like it. Also, someone's actual will can be inconsistent with his present or former declarations of his will or his presumable will. We may imagine a wine lover who is about to sip at his wine and does not know that it is poisoned. No doubt, in that particular situation, the wine lover's will is directed towards drinking the wine. However, it is based upon his false presumption

that there is only wine in the glass. It contradicts his actual, former or presumable higher order will not to be poisoned. In such cases, on behalf of the respective individual instead of the present concrete will, we can draw upon a cascade of substitutes. In the first place, there is a present, abstract higher order will. In a next step, it can be substituted by the former actual will. This is particularly important in the case of patients who are no longer able to give their consent but who have given their advance directive before. However, sometimes an individual's former will cannot be determined or may be inconsistent. In such cases, a further substitution is required: concrete presumptions about the subject's actual will have to be taken into account, that is, we have to refer to the presumed will of the individual in question. To that end, we can draw upon the individual's former statement about his or her values, as well as upon his or her desires, needs, and strivings. If this is of no help, we finally have to refer to the abstract aims, desires, needs, and strivings of a comparable individual or the typical member of a comparable group (that the individual in question is a part of). We may take it for granted that it is in accordance with the general will of most people that, under certain circumstances, their hypothetical will is taken into consideration. Thus, the following cascade seems plausible: present concrete will, present abstract will, abstract and higher order will, former actual will, presumable will, hypothetical will.

Both of the continua are correlated insofar as the first continuum determines the starting point for the second one, namely, the aim of the present concrete will. The substitutes within the second continuum have to take into account the preceding levels of the first continuum, that is, the desires, needs, and strivings. The following table shows this correlation, beginning in the upper left:

	present concrete will	present abstract will	former actual will	presumed will	hypothetical will
aims	X	X	X		
desires		X	X	X	
needs			X	X	X
strivings				X	X

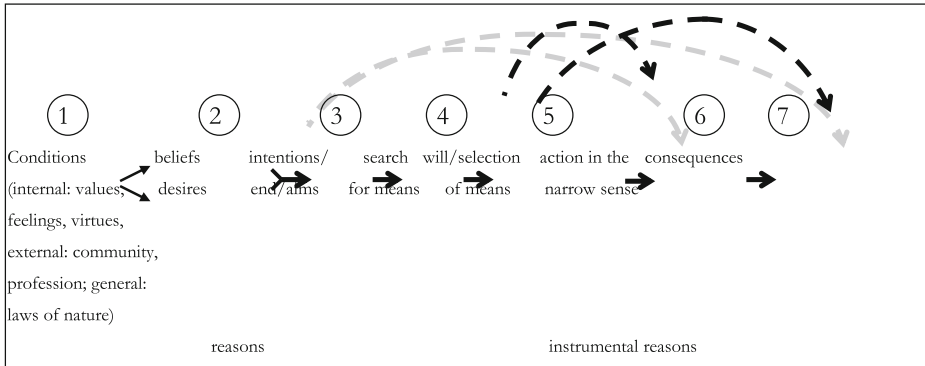
In order to handle the variety and complexity of these aspects, it is reasonable to subsume them under a single term. The synonymous terms “concerns” and “interests” suggest themselves here, given that one does not take them in an egoistically reduced sense. “Concern” and “interest” can be understood subjectively, in the sense of the present or former actual will, but also in the more objective sense of the presumed or hypothetical will, that is, the presumed or hypothetical desires, needs, and strivings (Patzig 1994). Furthermore, one can distinguish between the agent's own interests and the interest of the other, the individual affected by the agent's action (von der Pfordten 2001, 211ff.). To a significant degree, the concept of an interest or concern is determined by its function within morals. But it can also be applied in other contexts of life. For instance, we have an interest that the weather is fine without morally expecting others to influence the weather accordingly.

### 3 Pluralism of References in Moral Evaluations and Obligations

In principle, the concerns of moral patients can pertain to all aspects of an agent's action in the widest sense. For that reason, it is important to analyze the concept of action. A

complete, full-fledged action in a comprehensive, morally relevant sense contains at least the following seven elements<sup>18</sup>:

Elements of an action in the widest sense:



[The *straight* arrows indicate temporal succession and a causal or quasi-causal relation. The *bent* arrows indicate reference and content of the agent’s intentions. In a complete, fully unfolded action, the agent’s intentions and will regularly refer to the action and part of its consequences. Among the consequences, only the morally and ethically relevant ones play a role, that is, those that concern others and are predictable or avoidable by the agent. Almost all of these elements and their interrelation(s) are the object of controversial discussions. However, this does not affect the claim of the plurality of references of concerns. For this reason, we can also set aside at this point the well-known controversy between Williams, Scanlon, Dancy, Patzig, Nida-Rümelin and others about whether desires or reasons motivate actions.]

A complete, full-fledged action involves, then, the following elements:

- (1) the *internal*, *external*, and *general conditions* of the action, that is, as *internal conditions*: values, feelings, thoughts, habits, emotions, needs, strivings, virtues, mental states and general convictions of the agent; as *external conditions*: the community within which the agent lives, his or her competences, profession, property; finally, as *general conditions*: the society’s moral, political or economic situation, its social order, laws of nature, etc.
- (2) the agent’s concrete *convictions (a)* and *desires (b)* that, in the course of a process of deliberation, determine the action-guiding intentions or aims. This process also includes external processes such as conversations and consultations. The crucial convictions will usually be evaluative or normative. But descriptive convictions can also play an important role.
- (3) the agent’s action guiding *aims* or *intentions* which may also include multi-level intentions.

<sup>18</sup> Of course, there are actions that contain only some of these elements. For instance, going out for a walk does not have to have any particular intended or morally relevant consequences. Action theory sometimes does not consider consequences as part of actions in a descriptive sense. However, from a moral point of view the consequences may well be relevant. Hence, it seems reasonable to integrate them in an ethical conception of action.

- (4) the process of *developing the concrete will*, that is, descriptive means-ends-considerations and assessments of proportionality;<sup>19</sup> by choosing appropriate means, these considerations and assessments lead from action guiding aims to the concrete will to act. Again, the conditions mentioned above may play a role, e.g., preferences that make the agent choose one rather than another means. And again, the will forming process also involves external elements such as conversations or consultations.
- (5) *the will to act or to omit an action* resulting from the will-forming process; it manifests itself in *the selection of a means* and immediately directs the action or omission of an action. Frequently, there will be several wills since various partial actions are required for achieving the intended end.
- (6) the agent's *acting or omitting an action* as an immediate behaviour and outer result of the process of deliberation, that is, the external action in a narrower sense.
- (7) The *consequences* of the action or the quasi-consequences of the omission insofar as they were intended or at least anticipated, avoidable and go beyond the sheer action or omission as such.

My central claim concerning this third element is that all of these seven elements of an action, understood in a wide sense, are equally relevant, since the concerns of the moral patient can pertain to all of them in the same way. By contrast, consequentialists hold that interests or moral evaluations or obligations only, or, at least, primarily refer to consequences of actions; the other elements of actions are at best considered as contributing to the best consequences. Hence, according to the view proposed in the present paper, this position is to be dismissed.<sup>20</sup> This also holds for those more recent versions of consequentialism that also take into account actions in the narrow sense insofar as they satisfy interests (Trapp 1988, 317; Birnbacher 2003, 176f.). Consequentialism has been clearly formulated already by Bentham;<sup>21</sup> it necessarily follows from hedonism, since pleasure and pain are only passive, non-intentional states. Interests, by contrast, are active and intentional or at least quasi-intentional; hence, they can be directed to all of the above mentioned elements of actions that may be in conflict with the other's interests. Modern utilitarianism did not draw adequate consequences from the fact that the widely accepted shift from hedonism to preference-utilitarianism undermines the focus on consequences. There is no reason why preferences about attitudes of character, intentions, or actions cannot be maximized.

What can be said in favor of the pluralist thesis? First of all, we can observe that individuals *de facto* refer to all elements of actions. Most people not only have an interest that others do not harm them, but also that they do not have a violent character, do not generate the will or intention to harm, do not make preparations to harm, do not consider harmful means and do not perform harmful actions (though this does not imply that these interests are also legitimate and generate normatively-ethical obligations). Also, the criminal law does not only sanction the effectively performed action but, in numerous delicts, also the mere attempt.

<sup>19</sup> Descriptively: means and aims must be possible, and the means has to be appropriate for achieving the aim; evaluatively: the means must be necessary, that is, it must be the best or most modest means; it must not be disproportional in relation to the aim.

<sup>20</sup> For further objections cf. the comprehensive criticism of consequentialism offered by Nida-Rümelin 1993.

<sup>21</sup> Bentham 1988, 70: "The general tendency of an act is more or less pernicious, according to the sum total of its consequences: that is according to the difference between the sum of such as are good, and the sum of such as are evil."



Consequentialism neglects these plural references of our interests without offering an acceptable reason for this neglect.

The rejection of consequentialism does not preclude that in certain, e.g. political, cases only the deliberation of predictable consequences will lead to a decision. This may be the case, for instance, with regard to questions such as whether, how, and where a ring road or a public swimming pool is to be built. That is, the abstract thesis that our interests generally refer to all elements of an action is compatible with the fact that in particular cases the interests are, for good reasons, focused only on single elements of an action.

The thesis of plural references of interests and, consequently, of obligations, contradicts Kant's view that the good will is the primary moral factor in actions. Kant famously begins the first section of his *Groundwork* with the sentence: "Es ist überall nichts in der Welt, ja auch außer derselben zu denken möglich, was ohne Einschränkung für gut könnte gehalten werden, als allein ein guter Wille." ("It is impossible to think of anything in the world, or indeed even beyond it, that could be considered good without limitation except a good will.") Thus, unlike other elements of actions, the good will is claimed to be good without restriction, that is, categorically and absolutely good.<sup>22</sup> If this also means that the will is the primary object of moral obligations—as we may interpret Kant—, it contradicts our above mentioned plurality thesis. At the same time, Kant's arguments following the sentence just quoted are convincing: according to them, natural dispositions such as courage and resoluteness, as well as external goods such as power and wealth, are not good at all costs but can lead to morally bad actions. But the question is not whether other elements of actions also are, or can be, absolutely good but whether Kant's claim that the good will is absolutely good is convincing. It is not even clear what is to be understood by the good will. Ameriks, e.g., distinguishes three possible interpretations. The will may be understood as (1) the single intention in every particular action, (2) persons' general capability for free choice, or (3) the good and fully individual character (Ameriks 2000, 45, 51, 54). The problem with the second and third possibility is not only that there is not much textual evidence for them in the *Groundwork*; the problem consists in their lack (in 2) or over-determination (in 3) of the correlation to concrete moral decisions (Ameriks 2000, 54, 58). If we rely upon the more plausible first interpretation, the question is how Kant justifies his claim. The claim is immediately followed by the denial of the absolute goodness of natural dispositions or external goods. Clearly, this denial does not support the claim of the absolute goodness of the good will. It might as well be relatively good. Also, the plausible claim that the good will is a necessary condition for the happiness of a human being (Kant 1968a, b, 393) does not prove its being absolute and unconditional. Something being the condition for something else is not necessarily absolute and unconditional by itself.

The deeper and central foundation for Kant's claim is to be found within the systematic structure of his ethics. The only source of moral obligations, according to Kant, is the moral law within the agent which directly and by itself obligates the will. The maxims as subjective principles of will are subjected to the normativity of the objective principles of will, the moral law (Kant 1968a, 400). At this point, the immediate connection between the marking of a primary moral object of reference and the source of moral obligation becomes particularly apparent. By construing the moral law as a "factum of reason," Kant transfers it to the individual person and assigns to it the leading normative role; thus, the contingent will can be subjected to the absolute will. Kant's theory of the absolutely good will thus depends upon the assumption of the a priori moral law within the individual person. This assumption, however, is a speculative metaphysical one and, hence, can neither be verified

<sup>22</sup> Cf. for such a view: Ameriks 2000, 50; Schönecker and Wood 2004, 41.

nor falsified. In an ethics committed to the principle of metaphysical parsimony, it cannot be taken for granted.

With regard to this third element of an adequate normative ethics, a further question has to be addressed: what happens if agent and patient are identical, that is, what about duties to oneself? In this particular case, it also seems plausible to assume a plurality of the possible references of concerns. For within one person, the parts of an action or the parts of different actions can also come in conflict with one another.

#### 4 The Necessity of a Principle of Aggregation, Weighing or Balancing

In the case of possible or real conflicts, the individual's concerns have to be weighed against each other or aggregated in order to reach a justified moral or ethical decision. A comparable principle of deliberation or aggregation, respectively, is maintained by utilitarianism (as a maximizing principle or sum principle), by deontological ethics (as a generalization principle), and by almost all other ethical theories except for egoistic ethical theories such as Nietzsche's or situational, decisionist ethics.

Even if agent and patient are identical, that is, even if duties to oneself are in question, such a process of aggregation, balancing or weighing is required (setting aside the question of whether these duties to oneself are to be considered as moral duties at all). For also in that case, normative ethics only becomes relevant when there are potentially conflicting concerns. If there is only one single concern that is not in conflict with any other concerns, there is no need for moral considerations in a narrower sense; ethics then only comes into play in the wide sense of a theory of the good life.

#### 5 The Principle of Deliberation Regarding the Self- and Other-Relativity of Individual Concerns

With regard to the fifth element, we would have to discuss all material and procedural deliberation and aggregation principles: the contractual principle, the discursive principle, the equality principle, the maximization principle, the maximin principle, the Pareto principle, the satisficing principle, the generalization principle, etc. According to the critical view maintained in the present paper, all of these principles are legitimate to a certain degree; however, they are either too abstract and for that reason only combine the four elements addressed so far. This means that they cannot materially direct the deliberation or aggregation, respectively (contractual principle, discursive principle). Or, they are too concrete and hence only apply to certain cases (equality principle, maximization principle). Within the confines of this paper, this critical thesis can only be sketched in a cursory way and only with regard to three of the mentioned principles. Afterwards, an alternative proposal for a meta-principle is set forth that can direct and guide the application of the more concrete principles.

According to one version of the *contractual principle*, an action is a moral action if and only if it can be justified against other actions by reasons that cannot be reasonably rejected (Scanlon 1982, 116; 1998, 189ff.). Nobody can deny that this is a necessary condition for moral actions, at least in the context of interpersonal relations. However, this condition does not contain more than what is already involved in the four elements of an adequate normative ethics explicated above: one has to distinguish between the agent and the other, and one has to do so such that they are considered (1) with regard to their concerns (2) that

are not confined to one element of action (3) and are to be subjected to reasonable deliberation or aggregation, respectively (4). However, the contractual principle says nothing about *how* this deliberation or aggregation should proceed.

The *maximization principle of utilitarianism*, if universally applied, contradicts normative individualism insofar as it takes seriously the individuals and their interests only as the starting point but not as the end of deliberation.<sup>23</sup> It allows that for the sake of maximal total utility the interests of single individuals are only taken into account in a reduced form or are even totally neglected. It thus denies the normatively individualistic distinction between particular individuals. One may think of examples in which renegeing a promise would be more profitable than keeping it. Nevertheless, we expect promises to be kept. It is not that these cases are cognitively or morally too demanding<sup>24</sup> and might be avoided by a two-level-strategy, as Hare (1981) proposes. Rather, it is a case of general injustice, based upon principles, in cases in which the concerns of individuals must not be subjected to collective maximization. There are cases in which neglecting basic concerns such as physical and psychical integrity cannot be justified. The general prohibition of torture is a manifestation of this ethical constraint. As a sole deliberation principle, the principle of maximization thus only seems justified for a certain area of ethical questions: for collective projects in which central individual interests, notably individual rights, are not violated; these may be, for instance, collective and/or political decisions that do not particularly affect individual rights, say, a community's application for the Olympic Games, the improvement of the school system, or of the road network, a state's financial budgeting, etc.

As a criterion of moral evaluation, the *principle of generalization* is to be distinguished from the logical principle of universalization which is not relevant to the moral evaluation of single actions.<sup>25</sup>

In its Kantian version, the principle of generalization justifies prohibitions and commands the violation of which both presupposes and undermines a shared practice. This concerns cases in which the agent's actions are only successful because they are not in accordance with common practice (Patzig 1983, 156). Cases in point are insincere promises or other forms of lying. Though this is plausible, it only precludes some actions that are in conflict with common institutions. Even the general prohibition to kill could not be justified alone on the basis that the attempt to kill someone does not logically or even practically presuppose that nobody else tries to kill the agent. No doubt, a society in which mutual killings are common once in a while would not satisfy the interests of most of us. Still, the assumption of such a society is not inconsistent.

Put negatively, if the principle of generalization is construed along the lines of M. G. Singer's "argument of generalization" (1975, 86)—that is, in the sense of: "if everybody did X, the consequences were negative. Hence, nobody ought to do X"—, it is already restricted to the evaluation of consequences. It is, then, only relevant to certain cases in which consequences are cumulated, as in the notorious prohibition to cross the lawn.<sup>26</sup> But even in unfair cases, the principle of generalization does not hold universally. Some actions may be negative if all acted in the respective way; but given that not everybody has an interest in performing the action in question, there is no reason why the action should be

<sup>23</sup> Rawls 1971, 29: "[U]tilitarianism is not individualistic [...]."

<sup>24</sup> But cf. Birnbacher 2003, 194f.

<sup>25</sup> The principle of universalization is: If the action *a* is good for *A*, it is also good for any other similar person under similar circumstances. Cf. Wimmer 1980, 231–235; Schroth 2001, 11ff.

<sup>26</sup> Cf. the criticism in Birnbacher 2003, 136.

forbidden to those who wish to perform it (Birnbacher 2003, 157f.). For instance, imagine that it would have negative consequences if everybody were golfing. Still, this does not justify the general prohibition of golfing if de facto only a few want to play golf, anyway, and if this has no serious negative consequences.

What may a general principle that is significant for any moral conflict and at the same time appropriate as a principle of deliberation look like? Within the fifth element, the first and most fundamental aspect is that from the perspective of deliberation and aggregation, the concerns are considerable to different degrees. But how can these differences be determined? At first view, normative individualism seems to suggest not only that the concerns of moral patients are to be considered but also their interests in their own interests, that is, their second-order evaluation of their own first-order concerns. However, in such a case of deliberation individual persons might gain certain advantages for themselves by assigning particular weight to their own concerns. One has to render the evaluation of concerns more objective. A solution is offered by the following “principle of self- and other-relativity of individual concerns”:

The more the origins or the realization of the concerns or the interests of a morally considerable individual depend on others or a community, the more the respective concerns and interests have to be relativized in the process of deliberation, and the more the community may decide according to its common goals.

What does it mean to say that the origins or the realization of one’s concerns depend on others or a community? There may be two reasons for such a dependency: (1) historically and retrospectively, a certain shared practice figures as a necessary condition for the development of a certain concern, e.g., the emergence of a certain sport such as jogging as condition for the desire to go jogging; (2) instrumentally and prospectively, a certain practice can only be realized with others or in a particular community with its particular institutions, e.g., the interest to communicate with others, or to make use of certain infrastructural facilities.

Ideally, the relative self- and other-dependency of individual concerns takes the form of a continuum. At the one end, there are concerns that depend on others only to a minor degree or not at all. At best, they may be supported by others, such as life, physical integrity, thinking, etc. These interests can be realized all over the world, in all cultures and societies. For them, in particular, the principle of equality holds. The interest not to be tortured, for instance, combines the interest in one’s own physical integrity and the interest in self-determination—both of which are not community-dependent; it thus increases their strong dependency on the individual. For that reason, the interest not to be tortured must remain unaffected by relativizing deliberations as much as possible (cf. von der Pfordten 2006, 149–172).

At the other end of the continuum, there are concerns which are almost totally dependent upon others or the social community, such as, e. g., the interest to communicate with others, to work together with others, to visit public institutions such as museums or to make use of the public transport system, interest in social aid, a common economy, in natural resources such as clean air, or the sustaining of the community. For these strongly community-dependent concerns, notably the maximizing principle holds because the concerns’ dependency on the community justifies the common decision. Single individuals have in these cases no legitimate veto to hold up against the aim of collective maximization. In between the two extremes, there is, e.g., the interest to be treated with respect, to be informed about facts of personal relevance, interests in employment, freedom of speech, use of one’s own goods, etc. In these cases it is much more difficult to choose a single principle. Decisive for the choice are several factors like the relative dependence of the interests on the community and the importance for the bearer but also the content of the interests. Many principles are candidates for the application. And even a combination of principles is

possible.<sup>27</sup> Very rough and preliminary guidelines for a decision are explained in the following paragraphs.

We can, then, distinguish three kinds or zones of concerns or interests: (1) concerns of an *individual zone* which are not dependent on particular others, e.g., body, life, physical and psychic integrity—concerns, that is, that can be localized within the symbolic boundary of the body; (2) concerns of a *relative zone* which partially depend upon others or a community, e.g., the freedom of action, of speech, of religion, of profession, help by others in cases of distress; (3) concerns of a *social zone* which almost completely depend upon others or a community, e.g., the interest in shared activities in public or private life, in culture and sports, in natural resources, access to economic infrastructure, equal opportunities, etc.

In order to deliberate between potentially conflicting concerns, one can now refer to this tripartite scheme of zones, rather than to the abstract principle of self- and other-relativity. To that end, one has to relate the potentially conflicting interests to those different zones. The next crucial question is, then, whether there are conflicts between concerns belonging to the same or to different zones.

### 5.1 Conflicts Between Concerns of the Same Zone

In this case, two principles seem plausible:

- (1) If there is a conflict between interests of the individual zone, the principle of equality holds. If, for instance, lives have to be weighed against each other, all individuals concerned have to be considered. There is no reason why the life of one person should be attributed a higher value than the life of another.
- (2) If there is a conflict between interests in the relative zone, one has to distinguish the following cases: the principle of equality also holds for deliberations of individual actions, e.g., when two persons aspire to a job. There is no reason why one profession should be more valuable or more important than another. However, when it comes to conflicting concerns, further aspects that extend beyond those found in the individual zone have to be taken into account. To the realm of private exchange of goods, for instance, the Pareto principle applies. Everybody can seek his advantage by agreeing to contracts. It can be assumed that nobody will agree into something that he believes to be a disadvantage for him. When considering the public distribution of goods, in contrast, community-related references will play a more important role since the goods in question have been produced in collaboration. Here, Rawls's difference principle suggests itself at least as a starting point for argumentation.
- (3) When it comes to conflicts between concerns in the social zone, the other- and community-dependency of interests becomes most effective. In that case, the maximization principle seems most plausible. The community can aim at optimizing the sum of shared interests, e.g., interests concerning political projects.

### 5.2 Conflicts Between Interests of Different Zones

Here, deliberations are more complicated. Some cursory remarks may suffice.

- (1) Generally, concerns of the individual zone have absolute priority. After all, we could not justify why the personal concerns of single individuals should be subordinated to

<sup>27</sup> Cf. for details: von der Pfordten 2001, 453ff.

- those of the other zones. For instance, one must not put others at risk for the sake of pursuing, say, one's own job ambitions or public plans such as building measures; also, torture is not permitted as a means for promoting the common welfare, etc.
- (2) Similarly, concerns belonging to the relative zone—such as the desire for a certain profession—have priority in relation to concerns of the social zone such as cooperative projects. The individual person must be conceded the freedom to decide whether he or she prefers to join cooperative projects or rather wants to work on his or her own. The individual must not be forced, say, for the sake of his family's interest, to choose a particular job or a particular partner.

The meta-principle of the self- and other-relativity of individual concerns that has been proposed as the fifth element of ethical justification calls for further specification—e. g. its relation to more specific principles of aggregation, distinctions such as those made between duties of omission and duties of assistance, the relation of duties and rights, etc. These questions have to wait for another occasion.

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