

In defence of the Priority View

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Introduction

In their paper ‘Why It Matters That Some Are Worse Off Than Others: An Argument against the Priority View’,¹ Michael Otsuka and Alex Voorhoeve argue that prioritarianism is mistaken.² In this reply, I’ll argue that their case against prioritarianism turns out to have much weaker foundations than it might at first seem. Their argument, as a result, is not decisive.

Prioritarianism is a view about distributive justice according to which benefiting a person matters more the worse off she is. Distinctively, the prioritarians in Otsuka and Voorhoeve’s sights understand ‘worse off’ here in absolute terms: being worse off is a matter simply of having less than one might have, and not, in particular, a matter of having less *than others*.³ According to the kind of prioritarians in question, then, how well off anyone else is makes no difference to how well off you are, for the purposes of judging the moral value of distributing benefits to you.

Otsuka and Voorhoeve make their case in three parts. The first part is an argument to the effect that prioritarianism yields the wrong judgment in situations involving the distribution of benefits to a single individual considered in isolation. The second part is an argument—seemingly independent of the first—to the effect that prioritarianism fails to change its strategy appropriately when we move from such one-person cases to cases involving the distribution of benefits among more

¹ *Philosophy & Public Affairs* 37, no. 2 (2009): 171-99.

² I use ‘prioritarianism’ and ‘the Priority View’ interchangeably.

³ There are versions of prioritarianism which do not fit this description, but since these are not the versions that Otsuka and Voorhoeve object to, I ignore them here.

than one individual. The third part comprises defences against four potential objections.

In what follows I first analyse the first two parts, offering objections to them that are not discussed by Otsuka and Voorhoeve in the third. With respect to the argument of the first part, I claim in Section 1 that the intuition upon which Otsuka and Voorhoeve rely is not decisive. It is far from clear that prioritarianism gives the wrong answer in the one-person cases that they describe. It's plausible to have countervailing intuitions in these cases.

I then turn, in Sections 2 and 3, to the argument of the second part of their paper. Here I argue that to the extent that Otsuka and Voorhoeve have an independent argument, based on the 'separateness of persons', against prioritarianism, they are unsuccessful. Prioritarianism, far from ignoring the separateness of persons, is a plausible response to that fact. It may be that prioritarianism fails to take into account justifications that are made available in one-person cases by the 'fact of the unity of the individual'. In Section 4 I argue, however, that even if this is true, that doesn't tell against prioritarianism as a view about distributive justice. Too much still relies on the same non-decisive intuition that underpins their first argument. Finally, in Section 6, I argue that even if my defence fails, there is a way for prioritarians to accommodate that fact without falling foul of the objections that Otsuka and Voorhoeve raise in the third part of their paper.

Section 1: The first argument

The first argument in Otsuka and Voorhoeve's paper begins with an example. We are presented with a one-person case in which the person in question has a 50% chance of developing a very severe impairment (which leaves her unable even to sit up for much of the time) and a 50% chance of developing a slight impairment (which limits the distance that she can walk without difficulty to 2km). She can receive only

one of two treatments, and whichever she receives must be taken before either of these possibilities is realised. She is indifferent between the two treatments. The first treatment has an effect just in case she would otherwise develop the very severe impairment: it moves her from that very severe impairment to a merely severe impairment (now she will be able to sit up, although she will still need others' assistance to move about). The second treatment has an effect just in case she would otherwise develop the slight impairment: it moves her from the slight impairment to full health. On a standard conception of individual utility, the two treatments are of equal expected utilitarian value. In response to this case, Otsuka and Voorhoeve claim that "it would be reasonable for you [a morally motivated stranger] to share her indifference" between the two treatments, at least so long as we assume that "you are considering her fate in isolation from any consideration of how well off or badly off anybody else is (yourself included)".⁴

Prioritarianism, as it's ordinarily understood, wouldn't concede this. According to prioritarians, a given amount of utility has diminishing marginal moral importance, so that it's more morally valuable for someone with the very severe impairment to receive that amount than it is for someone with the slight impairment to receive it. Since the two treatments under consideration are, by hypothesis, of equal utility value, even the smallest degree of prioritarian weighting is enough to tip the balance in favour of the treatment for the very severe impairment. The treatment for the very severe impairment therefore has the highest expected moral value. You should, according to prioritarians, therefore give the person that treatment. You should not be guided solely by her expected utility.

To bring out further the contrast between their own and the prioritarian approaches, Otsuka and Voorhoeve point out that there will also be one-person cases in which "someone who holds the Priority View would conclude that he has decisive moral reason to supply...the treatment for the very severe impairment rather than the slight impairment even [when] the person would rationally prefer the treatment

⁴ 'Why It Matters', pp. 173-4.

for the latter” and without denying that the recommended treatment will have a lower expected utility value. Such cases arise when the greater utility of the treatment for the slight impairment (which follows from the person’s preference for it) is not sufficient for that treatment’s moral value, as judged by prioritarian weightings, to outweigh that of the treatment for the very severe impairment. They conclude that “The Priority View therefore unreasonably mandates provision of a treatment with a lower expected utility for the person concerned.”⁵

Next, Otsuka and Voorhoeve present a case involving more than one person, but which is otherwise relevantly analogous. Prioritarians remain committed to the treatment for the severe impairment when presented with this multi-person case. The case is as follows. You (again, a morally motivated stranger) are faced with a group of people, half of whom will develop the very severe impairment and the other half of whom will develop the slight impairment, and all of whom have the same preferences as the single individual in the first example. Otsuka and Voorhoeve’s considered judgment about this case is that you should *not* be indifferent between the treatment for the slight impairment and the treatment for the very severe impairment. You should provide the treatment for the very severe impairment. The prioritarian judgment in this case accords with both Otsuka and Voorhoeve’s own considered judgment and with the judgments of individuals surveyed by Nord et al. in work which Otsuka and Voorhoeve cite in their article.⁶ All sides are in agreement that morally motivated strangers should not be guided solely by the expected utility of the treatments (and so indifferent between them), but should provide the treatment for the very severe impairment.

In the multi-person case, then, prioritarrians’ judgments accord with Otsuka and Voorhoeve’s intuitions, which are also widely shared. Their judgments conflict, on

⁵ ‘Why It Matters’, p. 178.

⁶ See ‘Why It Matters’, p. 174, and Erik Nord, Jose-Louis Pinto Prades, Jeff Richardson, Paul Menzel, and Peter Ubel, ‘Incorporating Societal Concerns for Fairness in Numerical Valuations of Health Programmes’, *Health Economics* 9 (1999): 25-39.

the other hand, with Otsuka and Voorhoeve's intuitions about the one-person case. Otsuka and Voorhoeve cite no survey data at this point to show that these intuitions are also widely shared.⁷ So, the argument should not be construed as an appeal to widespread intuition.

What, then, grounds their assertion, in the face of prioritarian denials, that it would be reasonable for you to share the indifference of the individual in question between the two treatments? (Or, in the variation of the one-person case, that it would be unreasonable for you give the individual the treatment that gives her the lower expected utility, as the prioritarian recommends?) They explicitly deny that this has anything to do with respect for individuals' autonomy over matters that affect only themselves.⁸ Presumably, then, the idea is that when we, the readers, are confronted with the one-person cases we will find that we too share Otsuka and Voorhoeve's intuitions about them, and so oppose the prioritarian denial that the appropriate response is to be guided by the individual's expected utility alone. (It

⁷ Further on, in footnote 32 on p. 192 of 'Why It Matters', Otsuka and Voorhoeve point to research that, they claim, "reports no significant difference between the treatments people would prefer" when "they imagine themselves in a position of a third party thinking about the appropriate treatment for a single person considered in isolation" as compared to "when considering treatments for themselves". I am not convinced that the research that they cite (Peter Ubel, George Loewenstein, Dennis Scanlon, and Mark Kamlet, 'Value Measurement in Cost-Utility Analysis: Explaining the Discrepancy between Rating Scale and Person Trade-Off Elicitations', *Health Policy* [1998]: 33-44) supports this conclusion. That research reports no significant difference between people's judgments when they rate (on a scale between death and 'normal health') conditions imagined to be conditions suffered by themselves and their judgments when they rate the same conditions, as well as the benefit of curing them, when these are imagined to be conditions suffered by others (considered in isolation). But someone's judgment rating, on a scale between death and health, a condition understood as something suffered by others cannot without argument be taken to be equivalent to her judgment about the morally appropriate treatment for such a person. At the very least, the possibility that the rating judgment should be treated as a kind of sympathetic first-personal judgment on behalf of the person being imagined must be ruled out. So far as I can see, nothing in 'Value Measurement in Cost-Utility Analysis' does so.

⁸ 'Why It Matters', pp. 187-8.

would beg the question against prioritarianism, of course, simply to *assume* that morally motivated strangers should be guided by expected utility alone.)

I for one am not sure, however, that I share Otsuka and Voorhoeve's intuition about the one-person cases. It seems to me that it's not at all counterintuitive to suppose that you ought to supply the treatment for the very severe impairment, so disregarding the person's own indifference between the two treatments (and hence the fact that from her point of view, by hypothesis, the two are equally beneficial), but also saving her from the possibility of a life spent "bedridden, save for the fact that [she] will be able to sit in a chair and be moved around in a wheelchair for part of the day if assisted by others".⁹ This judgment holds even if we vary the case slightly so that the person's preferences very slightly favour the treatment for the slight impairment, so that in providing her with the treatment for the very severe impairment you are depriving her of what is from her point of view a greater benefit. In these cases, where we are to consider the person's situation in isolation from how well off or badly off she is relative to others, the most natural explanation for the judgment would be that although the utility that each treatment grants the person in the event that she develops the symptoms for which it's designed is the same (or, in the variation, the utility of the treatment for the slight impairment is very slightly higher) it's nevertheless simply more important to benefit the person if she develops the more severe symptoms than it is to benefit her if she develops the milder ones—precisely because those more severe symptoms *are* more severe. This, of course, is also how prioritarians arrive at their judgment.

If Otsuka and Voorhoeve's intuitions are not widely shared in the same way that their intuitions about the multi-person case are, and if prioritarians can offer a plausible account of the reasoning that their countervailing intuitions reflect, and if we can't identify any irrelevant distorting factors which might give us reason to discount intuitions on one side or the other, then it's not clear that prioritarians should feel under any pressure to renounce their prioritarianism about one-person

⁹ 'Why It Matters', p. 171.

cases.¹⁰ And these antecedents appear to hold, for all that we've seen so far. If I am right about this, then no clear case against (or for) the prioritarian approach arises from consideration of one-person cases. I conclude that Otsuka and Voorhoeve's first argument does not constitute grounds to reject prioritarianism after all. They have, however, a second argument to offer in response to this line of objection. To that argument I now turn.

Section 2: The second argument

Otsuka and Voorhoeve begin their second argument with a concession for the sake of argument. The concession is that prioritarians may be right to judge it a mistake to be guided solely by expected utility in the one-person case. They do not, however, contemplate conceding that this is because a morally motivated stranger ought to apply the *same* weighting criteria in one-person cases and multi-person cases alike. The concession is, rather, that prioritarians may be right to give "*some* extra weight to increases lower down the utility scale",¹¹ so that in the one-person case the decision to treat is the right one.

But even if prioritarians are right about this, Otsuka and Voorhoeve go on to argue, it's still a mistake to apply the *same* weighting criteria to both types of cases. They invite the prioritarian to imagine a one-person case in which the person in question faces a 50% chance of a utility gain and a 50% chance of a utility loss unless you intervene. If you (a morally motivated stranger, as in all these cases) intervene, the person will face no prospect of either gain or loss. They invite the prioritarian to

¹⁰ Even if Otsuka and Voorhoeve's intuitions are widely shared, prioritarians can argue that their reasoning explains why these intuitions should be rejected. So, the point about intuitions would not be decisive on its own anyway.

¹¹ 'Why It Matters', p. 179.

specify the relevant utility gains and losses so that by her prioritarian lights the expected moral value of not intervening is *just* enough to outweigh the expected moral value of intervening. Then Otsuka and Voorhoeve ask the prioritarian to imagine an analogous two-person case in which—unless you intervene—there is a 50% possibility that one person will receive the gain in utility and the other person will suffer the loss in utility (where these gains and losses are as they were in the one-person case). If you intervene, or if you don't intervene but the possibility just described isn't realised, each will face neither gain or loss. Otsuka and Voorhoeve suggest that the prioritarian ought to give *greater* prioritarian weight to losses in this case than she did in the one-person case. Since in the one-person case the moral value of the non-intervention gamble only *just* outweighed the moral value of intervention, this 'shift' in weighting will suffice to make intervention the appropriate course of action in the multi-person case.

But why ought there to be this 'shift'? Otsuka and Voorhoeve explain as follows:

In the [two-person] case, there is no single person for whom the prospect of a greater gain is the flip side of exposure to the risk of a lesser loss and for whom the prospect of such gain might be worth exposure to such risk. Rather, if you do not intervene, there are two people: a first person who would face just a prospect of a gain, and who would, if this gain materializes, be better off than the second person, and a second person who would face just a risk of a loss, and who would, if this loss materializes, become worse off than the first person. It follows that rather than simply deciding whether the potential gain outweighs the potential loss to the same person [as in one-person cases], in a two-person case you must now decide whether the potential gain to the first person outweighs the potential loss to the second person, who would, if this loss materializes, be worse off than the first person. These differences between the one-person and the two-person case imbue the potential loss to a person with greater negative moral significance

in the two-person case. You should therefore intervene in a two-person case to prevent the second person from facing the risk of loss, thereby also eliminating the first person's prospect of gain, even though this prospective gain is, by hypothesis, just large enough relative to the potential loss to justify refraining from intervention and letting the chips fall where they may in analogous one-person cases.¹²

The first three sentences of this passage ("In the [two-person] case...be worse off than the first person") articulate claims that are obviously and uncontroversially true. The truth of these claims follows from the description of the cases. But the claim in the fourth sentence ("These differences...the two-person case"), and the inference that Otsuka and Voorhoeve draw in the fifth ("You should therefore...analogous one-person cases"), are not obviously or uncontroversially true, and it is open to the prioritarian to deny them.

Let me explain. It's true that in multi-person cases, prioritarians must decide whether gains to some outweigh losses to others. (This is not a question that prioritarians alone face: all views about distributive justice face it.) Prioritarianism is typically formulated by reference to multi-person cases precisely in order to give an answer to this question. It offers a distinctive answer to the question when gains to some outweigh losses to others—an answer which gives voice, in one way, to the common supposition that it matters more, morally speaking, to benefit individuals the worse off they are. Unlike a view—such as the difference principle, on one reading—that gives absolute priority to benefits to the worst off, prioritarians think that sometimes losses to the worse off can be justified by appeal to the extent of the gains of the better off. But unlike utilitarianism, which gives no priority at all to benefits for the worst off, prioritarians think that it's not sufficient for such an appeal to work for the gains to the better off to be greater than the losses to the worse off.

¹² 'Why It Matters', p. 180.

That, then, is the familiar prioritarian approach to justifying the potential losses to those who do worse in the kind of multi-person case that Otsuka and Voorhoeve describe. (I'll outline it in more detail in the next section.) Now, the latter's argument is that this approach should be conceived as a response to the fact that the prospect of sacrifices by a worse off person that is correlated with the prospect of gains for the better off, in the relevant situations, is imbued with a "greater negative moral significance" when the worse off and the better off are different people than when they are the same person. But why can't prioritarians simply deny this, insisting that their approach in multi-person cases is in fact simply a response to the fact that benefits to an individual who is worse off, in absolute terms, matter morally more than benefits to an individual (be she the same or a different individual) who is better off? So far, Otsuka and Voorhoeve have offered no argument to the contrary. They have merely offered an alternative possible explanation that prioritarians are at liberty to eschew. (Recall that the example from Otsuka and Voorhoeve's first argument is not conclusive: the appropriateness of the judgment there that the morally motivated stranger should share, to *any* extent, the one-person case's protagonist's indifference between the two possible treatments is, at this point, still in question.)

In their second argument, for all that we have seen so far, Otsuka and Voorhoeve simply assume that prioritarians will experience the shift in their judgments that Otsuka and Voorhoeve claim that they should. But prioritarians can deny that they do. From a moral point of view, and regardless of the desires of the individual involved, the potential losses and gains have just as great a moral significance as the potential losses and gains in the two-person case. The conclusion that Otsuka and Voorhoeve draw—that "you should...intervene in a two-person case to prevent the second person from facing the risk of loss...even though [the first person's] prospective gain is, by hypothesis, just large enough relative to the potential loss to justify refraining from intervention and letting the chips fall where they may in

analogous one-person cases”—is not licensed. So, this argument moves us no further along than the first did.

Section 3: The separateness of persons

At the end of their presentation of the second argument, Otsuka and Voorhoeve say of the shift that they take to be justified when we move from one-person to multi-person cases:

The Priority View...cannot countenance any such shift. Given that the separateness of persons renders such a shift appropriate, it follows that the Priority View is not adequately responsive to this morally significant fact.¹³

It's true that the Priority View cannot countenance any such shift. But, as I've argued, the case hasn't yet been made that the shift is appropriate. Asked to imagine the point at which, in a one-person case, it becomes appropriate to take the chance of losses for the sake of potential gains, a prioritarian can say that she is *eo ipso* imagining precisely the point at which it becomes appropriate to take the chance of losses to one for the sake of potential gains for another in a multi-person case. In the final sentence of the passage just quoted, however, Otsuka and Voorhoeve make a suggestion that might seem to represent an objection to that denial. The suggestion is that “the separateness of persons renders such a shift [between one-person and multi-person cases] appropriate”. Could this, finally, be a reason to reject prioritarianism?

The ‘separateness of persons’ objection is most famous as an objection to utilitarianism. The problem with utilitarianism, it is said, is that it treats

¹³ ‘Why It Matters’, p. 180.

interpersonal balancing of losses and gains as a rational decision procedure for an individual life would treat *intrapersonal* balancing of losses and gains. But it's not appropriate to treat interpersonal balancing in this way, because of the fact of the separateness of persons. As David Brink argues, however, if that fact implies that (the prospect of) losses to a person can be compensated only by (the prospect of) gains to that very same person, then the only separateness-of-persons respecting distributive options are Pareto improvements.¹⁴ Moves to Pareto-incomparable distributions are prohibited, since by definition they involve losses to some in exchange for gains to others. But this prohibition is an implausibly restrictive condition to impose upon an acceptable distributive theory. As Brink points out,

it would seem that the only moral or political view that would satisfy [this interpretation of the moral implication of the separateness of persons] would be the sort of libertarian view that Nozick accepts that recognizes no duties of mutual aid whatsoever. But such a theory would have to assign rights to people in such a way that each person has a veto over anyone's actions, and even Nozick does not go this far, because he allows for the permissibility of market exchanges that impose negative externalities on third parties.¹⁵

The fact of the separateness of persons is better interpreted as expressing the idea that "it is unacceptable to impose *unjustified* losses or burdens on one person in order that others may benefit...not all burdens are morally on a par, and this may threaten moral theories that assign no intrinsic significant to different kinds of burden or

¹⁴ See Brink, 'The separateness of persons, distributive norms, and moral theory', in R.G. Frey and Christopher W. Morris (eds.), *Value, Welfare, and Morality* (Cambridge: Cambridge University Press, 1993), pp. 252-89, at pp. 253-8. Strictly speaking, moves to Pareto-indifferent distributions are also separateness-of-persons respecting, as are moves to Pareto-inferior distributions. We can safely ignore these complications here.

¹⁵ 'The separateness of persons', pp. 257-8.

sacrifice".¹⁶ Different theories of distributive justice can then be seen as employing competing understandings of what counts as an unjustified loss. Utilitarian theories are said not to take the fact of the separateness of persons seriously because their conception of an unjustified sacrifice is inadequate. A sacrifice is unjustified, according to a utilitarian, if and only if there is an alternative distribution in which there is a greater total number of units of utility. But this doesn't discriminate between units of utility being enjoyed by those who are enjoying very many units and units of utility being enjoyed by those who are enjoying very few. The familiar and counter-intuitive consequence is that utilitarianism would count a very badly off person's sacrifice of one unit of utility as justified if the alternative was for a very well off person to sacrifice two units of utility.

Both egalitarian and prioritarian theories avoid this counter-intuitive consequence. Each reviews the sacrifices that a given distribution implies, in light of available alternatives, for those in it. Each asks whether those sacrifices give individuals in the distribution a justified complaint. Comparative egalitarian theories of the type that Otsuka and Voorhoeve favour count a sacrifice unjustified, at least from the purely egalitarian perspective, when an alternative Pareto-optimal distribution is available in which the degree of inequality is smaller—either because “badness inheres in the relational property of some being less well off than others”¹⁷ or because “one must justify any claim on resources in light of the comparative strength of the claims of others.”¹⁸

For comparative egalitarians, a person's complaint under a given distribution is greater to the extent that she is worse off relative to others in that distribution.¹⁹

¹⁶ 'The separateness of persons', pp. 258-9, my italics.

¹⁷ 'Why It Matters', p. 183.

¹⁸ 'Why It Matters', p. 183.

¹⁹ If a person's complaint were determined *solely* by the extent to which she is worse off than others, then a view that aimed to minimise the complaint of the worst off person would recommend levelling down, as would a view that aimed to minimise total complaints (those who had been levelled down would have no complaint, being, as a result, no worse off than others). To avoid this implication, these

Egalitarians may then aim to minimise the greatest complaint, or they may instead aim to minimise the total weight of complaints. For example, given the availability of only the distributions presented in the table below, the first strategy would opt for distribution D1, whereas the second might (given certain ways of weighting complaints) opt for distribution D2.

	<i>Person A</i>	<i>Person B</i>	<i>Person C</i>	<i>Person D</i>
Distribution D1	7	7	14	14
Distribution D2	6	14	14	14

Prioritarian theories, meanwhile, count a sacrifice of benefits unjustified if an alternative distribution is available which realises prioritarian value to a greater degree, where the prioritarian value of a unit of benefit is greater the worse off in absolute terms its recipient is. For such theories, a person's complaint is greater to the extent that alternative available distributions would have made her better off in non-comparative terms. The aim is then try to minimise the total weight of complaints.²⁰ There may not be much to choose, in practice, between the second egalitarian strategy and the prioritarian strategy. But there might be some situations in which differences would become apparent. For example: for very high values of x (i.e. when everyone is extremely well off), some prioritarians might be indifferent between distributions D3 and D4 below, because at these high levels the marginal moral value of benefits has diminished to zero. But the comparative egalitarian's

views would have to see complaints as determined in part by other considerations. Nothing that Otsuka and Voorhoeve say suggests that they view a person's complaint as determined solely by the extent that she is worse off than others.

²⁰ Contrast Rawls's difference principle, which (on standard interpretations) understands complaints in the same way, but aims to minimise only the greatest complaint.

inclusion of a comparative component in the determination of a person's complaint would lead egalitarians to favour distribution D4.

	<i>Person A</i>	<i>Person B</i>	<i>Person C</i>	<i>Person D</i>
Distribution D3	x	x	x	$(x - 10)$
Distribution D4	x	x	x	x

Prioritarianism and the egalitarian theories favoured by Otsuka and Voorhoeve are both much more plausible responses than utilitarianism to the fact of the separateness of persons. Whichever of the two is ultimately the more plausible overall, it should be clear that each avoids the fundamental problem with utilitarianism. Neither ignores the fact of the separateness of persons in multi-person cases.

Otsuka and Voorhoeve's claim that prioritarianism isn't adequately responsive to the fact of the separateness of persons can't plausibly be construed, then, as a challenge to the prioritarian strategy in multi-person cases. Although they might not agree with the prioritarian method for determining the strength of a person's complaint, it would be odd to suggest that that method, considered as an approach to multi-person cases, doesn't take the separateness of persons seriously in the same way that utilitarianism, in those same cases, doesn't take the separateness of persons seriously. So, the problem is not that when prioritarians turn from one-person cases to multi-person cases, they adopt a strategy for the latter which isn't adequately responsive to the fact of the separateness of persons.

Instead, the problem must be supposed to lie with the absence of any *change* in strategy when prioritarians turn their attention from one-person cases to multi-person cases. Now, the strategy which they hold constant is, as we have seen, a perfectly plausible response to the separateness of persons in multi-person cases. So, if prioritarians' strategy doesn't but *ought* to change when we turn from one-person

cases to multi-person cases, that must be because their *one*-person strategy is faulty. But of course there is no fact of the separateness of persons to fail to respond to in one-person cases. So, the objection cannot be, ultimately, that prioritarians pay insufficient attention to the separateness of persons. If anything, it must be instead that they pay insufficient attention to the *unity of the individual* by failing to change their strategy when they turn from multi-person cases to one-person cases. But what could justify this charge? The intuitions about one-person cases that Otsuka and Voorhoeve appeal to are not decisive, as we saw in Section 1 above.

Section 4: The unity of the individual

Later on in their paper, Otsuka and Voorhoeve say something that might substantiate the charge that prioritarians pay insufficient attention to the unity of the individual. They consider (in response to a line of objection different from the one I've been pursuing) a one-person case analogous to the one-person cases that I discussed in Section 1 above. That case is as follows. A child has a 50 percent chance of ending up with a disability and a 50 percent chance of ending up able bodied. The child's parent must decide to move either to the city or to the suburbs before it is known whether the child will end up with a disability. Moving to the city will be good for the child if she ends up with a disability, but bad for her if she ends up able bodied. Moving to the suburbs will be good for her if she ends up able bodied, but bad for her if she ends up with a disability. The benefit to the child of moving to the suburbs if she ends up able bodied is substantially greater than the benefit to her of moving to the city if she ends up disabled.²¹

In the multi-person variant of this example (due originally to Thomas Nagel), the parent has two children, one of whom is able bodied and the other of whom has the

²¹ See 'Why It Matters', p. 188.

disability. The other details are held constant. As Otsuka and Voorhoeve point out, “[a] defender of the Priority View must maintain that one has just as much reason to move to the city in [the] one-child case as one does in the two-child case.”²² But as with the one-person cases that they present at the beginning of their paper, they dispute this: one has, they claim, less reason to move to the city in the one-child case than one does in the two-child case. The reason that they offer here is as follows:

[E]ven if the child turns out to have a disability in our one-child case, one can justify a decision to move to the suburbs on the grounds that one was looking after that very same child’s interest in flourishing in the event that he had turned out able bodied.²³

The point here is that there is a particular kind of justification for exposure to the risk of a bad outcome that’s available only in one-person cases. That justification appeals to the fact that the person who is exposed to the risk of the bad outcome and the person who faces the prospect of gain for the sake of which the risk of the bad outcome was not eliminated *are the same person*. By contrast, consider the multi-person cases that I discussed in Sections 1 and 2 above, or Nagel’s original case. In these cases, decisions which expose people to the possibility of facing the worst of the outcomes described in the relevant case (for the sake of the prospect of gains to others who are exposed to the possibility of better outcomes) can’t be justified to those people by appeal to the idea that it is for the sake of the prospects of gains *to them* that they are exposed to that possibility. The only available justifications appeal to the prospect of gains *to others*.

If the availability of this special ‘unity-of-the-individual’ justification in one-person cases required a change in strategy when we turn from the multi-person cases to the one-person cases, then the charge that prioritarians—who do not change their

²² ‘Why It matters’, p. 188.

²³ ‘Why It matters’, p. 188.

strategy—fail to pay sufficient attention to the unity of the individual would be vindicated. But it's not clear that the availability of the special justification does require a change in strategy.

To see this, consider that the unity-of-the-individual justification is available to us in other cases where it is not normally supposed to threaten a view about justice which doesn't change its strategy in light of the availability of the justification.²⁴ Before I illustrate this point, it's important to emphasise that I take prioritarianism to be a view about distributive justice, rather than, as would be implausible, a view intended to capture the whole of morality.²⁵ It would be implausible to understand it in this latter way because there are surely moral reasons, such as reasons arising from promise-making and reasons relating to the duty of civility, for example, which are not adequately captured by prioritarianism. (It might nevertheless be the case that prioritarian reasons always *trump* these other reasons, so that the prioritarian thing to do is always the all-things-considered right thing to do.) The reason that it's important to emphasise this will become clear shortly.

The unity-of-the-individual justification that's available in one-person cases of the kind under discussion for exposing someone to the risk of loss for the sake of the chance of a greater gain is also available (it wouldn't, at any rate, be incoherent) when the person in question deserves a particular loss in light of some moral wrong

²⁴ If 'to justify' is a success verb, so that the mere availability of a justification *entails* that what it purports to justify is, in fact, all things considered the right thing to do, then I can insert 'potential' or 'apparent' (or the like) before the relevant instances of 'justification' (and so on) in order to make the argument.

²⁵ In his well-known Lindley Lecture discussion of prioritarianism, on which Otsuka and Voorhoeve's paper focuses, Derek Parfit says that he will be discussing "the ethics of distribution" (Parfit, 'Equality or Priority?', *The Lindley Lecture* [Lawrence: University of Kansas, 1991], p. 2). It's not clear whether Parfit takes the subject of the ethics of distribution to be coextensive with the subject of distributive justice; it's possible to find evidence both for and against such a reading in the Lindley Lecture. However, I think that it's fairly standard among those who think about it to see the debate about prioritarianism as a debate within the sphere of distributive justice.

that he has committed. For example, suppose that Andy has killed someone and deserves, on some retributive theory of just punishment, to spend ten years in prison. You are a morally motivated stranger who has the power to bring it about that Andy spends ten years in prison, or else is exposed to a 50% chance of being in prison for fifteen years and a 50% chance of immediate freedom. Since this is a one-person case there is a sense in which there is a unity-of-the-individual justification available for exposing Andy to the risk of longer imprisonment for the sake of the chance of immediate freedom.²⁶ That justification appeals to the fact that the person who would be exposed to the risk of the bad outcome and the person who would face the prospect of gain for the sake of which the risk of the bad outcome was not eliminated are the same person: both are Andy. Presumably and plausibly, however, advocates of the retributive theory of just punishment in question will not be persuaded that what you ought to do is expose Andy to the risk rather than sentence him to the ten years that he deserves. The supposed justification for exposing Andy to that risk simply and shouldn't get any purchase in a morally motivated stranger's deliberations about what to do here.

I suggest that it is open to prioritarrians to view the unity-of-the-individual justification that's available in one-person cases, and invoked by Otsuka and Voorhoeve as grounds for deviating from the prioritarian approach in such cases, in the same way that advocates of the retributive theory of just punishment in Andy's case view it. From the mere fact that there is a justification available for deviating from the requirements of prioritarianism—a justification which is applicable in some cases concerning “what one person ought to give another, where that one person is

²⁶ So as to make sure that nothing else is motivating judgments about this case, we can imagine that no one is interested in Andy's fate (perhaps neither he nor his victim have family or friends), and that for some reason this case is being decided in secret by people who will never be involved in any other cases.

not simply the other's agent"²⁷—it can't be inferred that the deviation is a requirement of distributive justice.

Of course, some justifications for deviations from what a person takes to be the just course of action are justifications about which we would want to say that they justify taking the apparent deviation to be, in fact, what justice demands. (And therefore that the person's original conception of justice was mistaken.) But that's not settled by the mere availability of the justification.²⁸ The question that prioritarians face, therefore, is as follows. Does the unity-of-the-individual justification that Otsuka and Voorhoeve appeal to warrant taking the deviation from prioritarianism that that justification recommends to be what justice in fact demands? To concede this would be to concede that the prioritarian view is mistaken.

Now, if prioritarianism were motivated solely by considerations that don't apply in one-person cases, then the unity-of-the-individual justification wouldn't conflict with the prioritarian motivation. It would be, in that case, hard to see how prioritarians could resist making the concession described in the preceding paragraph. For whereas retributive theorists are motivated by considerations that both apply and give them clear grounds to disregard the unity-of-the-individual justification in one-person cases, nothing in the prioritarian motivation would give prioritarians reason to disregard that justification in such cases. For example, if prioritarians were motivated by concerns about how people fare in relation to others (I don't mean to suggest that it would be plausible to suppose that they are), then that motivation would give them no grounds to disregard the unity-of-the-individual justification in one-person cases in which relational considerations simply don't apply. For nothing would explain why the unity-of-the-individual justification in such cases should have no force.

²⁷ 'Why It Matters', p. 189.

²⁸ See note 24 above about the way I understand 'to justify' for the purposes of this argument.

But if the prioritarian view is motivated, as it might plausibly be supposed to be, by something like the thought that distributive justice is centrally concerned with protecting people from bad outcomes, where these are understood in non-relational terms, then this does give prioritarians grounds to disregard the unity-of-the-individual justification in one-person cases. For to act on that justification would be to act in a way that conflicted with the prioritarian motivation. Prioritarians would be able to explain why the unity-of-the-individual justification in one-person cases should have no force, just as retributive theorists do.²⁹

²⁹ This defence of prioritarianism commits prioritarians to the view that if in a unity-of-the-individual case one maximises the relevant individual's expected utility (as the individual rationally prefers) as opposed adopting the prioritarian approach, one commits an *injustice*. This may seem counterintuitive, whereas it's not counterintuitive to think that one commits an injustice by offering someone who deserves ten years in prison a fifty-fifty shot at immediate freedom. Does this represent a serious objection to my argument?

I think that the counterintuitiveness in the prioritarian case can be explained in part by a suspicion of the idea that it could be unjust to act in a way that was preferred by all affected—a suspicion that is silenced in the punishment case by the deep hold that considerations of desert and retribution have on our thinking about just punishment. (Which is not to say that the same suspicion is never raised in relation to retributivism.) But it is not obvious that the suspicion is well-founded: not only retributivists but also strong egalitarians and advocates of proportional justice are committed to seeing some acts as unjust even though they may be preferred by all affected. (Larry Temkin has written extensively on this point. See for example his 'Egalitarianism Defended', *Ethics* 113 (2003), pp. 764-82.) Note that although such views may have counterintuitive implications in 'levelling down' situations, the counterintuitiveness is not usually supposed to be simply the result of their taking this to be an issue of justice and injustice.

The counterintuitiveness in the prioritarian case may also be explained in part by the supposition that justice doesn't have application in what in footnote 31 below I call unity-of-the-individual cases. I say more about this in Section 5 below. It's worth noting, however, that the supposition that justice doesn't have application in cases involving *only one individual* (apart from the distributing stranger) doesn't license the inference that justice doesn't have application in unity-of-the-individual cases, since the latter cases need not involve only one individual. See footnote 30 below.

Since the prioritarian can explain her reactions to one-person cases in this way, we are thrown back once more upon our intuitions about one-person cases and way that the prioritarian motivation applies in them. But given that these intuitions are not decisive, as we saw in Section 1, that means that prioritarians can resist the present argument against their view.

It's in this connection that it matters that Otsuka and Voorhoeve's argument turns out to be not that prioritarians ignore the separateness of persons but that prioritarians ignore the unity of the individual.³⁰ For it seems right to think that taking the separateness of persons seriously is a necessary condition of any plausible theory of distributive justice. (On this point, see Section 3 above.) If Otsuka and Voorhoeve's argument demonstrated the availability of a separateness-of-persons justification for deviations from the prioritarian approach in these cases, it would, therefore, be much harder to resist the conclusion that distributive justice itself demands those deviations, and so that prioritarianism is mistaken.

Indeed, the argument of sections III and IV of their paper presents matters as if the objection is a separateness-of-persons objection to the prioritarian approach in standard³¹ multi-person cases: having conceded, for the sake of argument, the legitimacy of a prioritarian approach in unity-of-the-individual cases, they argue that there ought to be—but by prioritarian lights can't be—a shift in approach when we turn to standard multi-person cases. Their appeal to the separateness of persons at

³⁰ In footnote 8 at p. 175 of 'Why It Matters', Otsuka and Voorhoeve note that there are ways in which their one-person cases can be transformed into multi-person cases without producing any change in their intuitions about them. But in such cases the criticism that they offer of prioritarian recommendations about how the morally motivated stranger for act remains, in effect, that prioritarians ignore the unity of the individual. So, the possibility of a multi-person presentation of their one-person intuitive case does not show that in the standard multi-person cases that I've been discussing, they have an objection to the prioritarian approach.

³¹ I'll use this qualification henceforth to distinguish the cases I mean from multi-person cases that are variants on the one-person cases in the way noted in footnote 29 above. I'll class the latter types of case (including the one-person cases) henceforth as unity-of-the-individual cases.

this stage suggests that the problem is with the prioritarian approach in standard multi-person cases, and they propose a comparative egalitarian approach instead.³²

But, as I argued in Section 3, it's perfectly plausible to suppose that the prioritarian approach in standard multi-person cases is adequately responsive to the separateness of persons. So, if a shift is appropriate, that must be because prioritarians get things wrong in unity-of-the-individual cases. As we've now seen, however, prioritarians have the resources to resist this charge too.

Section 5: The domain of prioritarianism

Suppose, however, for the sake of argument, that all things considered prioritarians ought to concede Otsuka and Voorhoeve's point and refrain from applying the prioritarian approach in unity-of-the-individual cases. This would still not tell in favour of the egalitarianism that they seek to defend over prioritarianism. For the fact that prioritarianism gets these kinds of cases wrong doesn't tell us anything about the comparative merits of prioritarianism and egalitarianism in standard multi-person cases.

Of course, if it is essential to prioritarianism that it applies to both unity-of-the-individual cases and standard multi-person cases, then its failure in unity-of-the-individual cases tells against it in all cases. But prioritarians might argue that it isn't essential to prioritarianism that it applies to unity-of-the-individual cases. They might follow a suggestion that Otsuka and Voorhoeve make and argue that prioritarianism applies only to cases involving interpersonal conflict—cases in which the available options are Pareto incomparable.³³ As Otsuka and Voorhoeve point out, this would be to diverge from the view described by Derek Parfit in his lecture 'Equality or Priority?', since Parfit there describes that view in terms of an analogy

³² They repeat the emphasis on the separateness of persons at 'Why It Matters', p. 192.

³³ See 'Why It Matters', p. 189.

which suggests its applicability to unity-of-the-individual cases, which don't involve any interpersonal conflict.³⁴ But that in itself needn't be thought a particularly damaging blow. Nor need prioritarians deny that the unity-of-the-individual cases that Otsuka and Voorhoeve present are cases in which you are faced with a moral choice. Prioritarianism, they can reply, simply doesn't cover all moral choices, any more than egalitarianism does.

Otsuka and Voorhoeve have a more serious objection to versions of prioritarianism that apply only to cases involving interpersonal conflict. This objection is that "the following is surely a moral choice to which the Priority View is meant to apply: whether to provide an indivisible good to the only person who can enjoy it or to waste that good by giving it to nobody in a multi-person case."³⁵ Now, it's not clear to me that it is especially unpalatable for prioritarians to deny that their view applies to this choice. Otsuka and Voorhoeve object that "it is...only if the Priority View applies to such choices that Parfit could have argued on behalf of its superiority to egalitarian approaches in handling leveling down cases."³⁶ But this isn't strictly true. Comparative egalitarian approaches don't have the option of treating this as a one-person case to which their view doesn't apply, precisely because the mere presence of more than one person brings into play comparative considerations that might make a difference to the choice. They can't, therefore, avoid the levelling down objection by simply leaving other moral considerations to take care of the relevant cases. So, a prioritarianism of the kind I'm envisaging, in virtue of being able to treat levelling down cases as forms of one-person case to which it doesn't apply, would still secure the desired superiority over the relevant egalitarian approaches.

³⁴ The analogy compares the badness of being worse off with the difficulty in breathing that's induced by high altitude—something that has nothing to do with whether anyone else exists or with their altitude if they do. See 'Equality or Priority?', p. 23.

³⁵ 'Why It Matters', p. 190.

³⁶ 'Why It Matters', p. 190, n. 29.

All the same, it might seem implausible to treat the relevant type of levelling down case as outside the purview of distributive justice, as the envisaged prioritarianism would. So, suppose that prioritarians should instead say, as Otsuka and Voorhoeve suggest that they might, that “in order for a choice to be a moral choice to which the Priority View applies, it must be a choice that is sensitive to how people fare in relation to others (even if, as in the case just described involving an indivisible good, it does not involve interpersonal conflict)”.³⁷ Otsuka and Voorhoeve say, by way of objection to this approach, that

such a retreat is not open to [the prioritarian], since he will have thereby built sensitivity to relational considerations into what is meant to be a moral choice that triggers application of the Priority View. The Priority View will have become comparative in nature simply by virtue of the account of the relevant sort of moral choice that is being supposed. This view would thereby lose its claim to be a ‘distinctive view’ that provides a genuine and attractive alternative to views that are essentially comparative in nature.³⁸

But this isn’t true. The kind of sensitivity to relational considerations that the envisaged prioritarianism incorporates operates at a different level from the kind of sensitivity to relational considerations that the competing egalitarian views incorporate. Incorporating relational considerations as triggers for the *application* of a view is different from incorporating relational considerations as components in the *view’s content*.³⁹ And it’s not arbitrary to select relational considerations as triggers

³⁷ ‘Why It Matters’, p. 190.

³⁸ ‘Why It Matters’, p. 190.

³⁹ If prioritarians are motivated, as above I suggested they might be, by the aim of protecting people from bad outcomes, understood in absolute terms, then to incorporate relational considerations as a trigger for the application of their view might seem to be in tension with that motivation. But it might be that prioritarians who incorporate relational considerations as a trigger are motivated in some other way. In any case, what I’m arguing here is merely that to incorporate relational considerations as a

for the application of prioritarianism: choices in regard to situations in which how people fare in relation to others is at issue are paradigmatically choices in which considerations of distributive justice come into play.

The fact that it applies (on the present approach) only where the question of how different people fare in relation to each other can be sensibly asked hardly shows, then, that prioritarianism itself is comparative, or that it isn't superior to comparative views. For within the range of applications to which it is restricted, it doesn't, unlike comparative views, appeal to comparative considerations in its explanation of why some distributions are to be preferred to others. Since one set of situations in which it applies are situations in which some of the competing comparative views implausibly suppose there to be something good about levelling down—a mistake that it doesn't make—its advantages over those views remain. Prioritarians, I conclude, can beat the retreat that Otsuka and Voorhoeve open to them without falling into the trap that Otsuka and Voorhoeve have set.

Section 6: Conclusion

Since it's plausible to see prioritarianism as a view which pays appropriate heed to the fact of the separateness of persons in standard multi-person cases, and since it's also plausible to see the prioritarian motivation as warranting rejection of what I've called the unity-of-the-individual justification in cases where it might seem to apply, the plausibility of Otsuka and Voorhoeve's case against prioritarianism turns out to rest largely on their intuitions about the appropriate course of action for a morally motivated stranger in one-person cases such as the one they present in their first argument. But, as I argued in Section 1, it's not clear that their intuitions count decisively. Even in response to the presentation of the one-person case that Otsuka

trigger for the applicability of a distributive principle needn't entail incorporating them in the content of that principle.

and Voorhoeve themselves offer, prioritarrians, at least, seem unlikely to share those intuitions. In light of all this, there's no reason to see Otsuka and Voorhoeve's own intuitions about these cases as grounds for egalitarianism rather than as reflections of their commitment to it.

Moreover, even if they are right to question the appropriateness of the prioritarian approach in unity-of-the-individual cases, prioritarrians can restrict the applicability of their approach to situations which involve interpersonal conflict without thereby falling foul of the objections that Otsuka and Voorhoeve offer against that restriction. I conclude, then, that their argument against the Priority View doesn't succeed.