

# Should Losses Count? A Critical Examination of the Complaint Model

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## Abstract

The Complaint Model is an interpretation of Scanlon's contractualism which holds that (1) an individual can reasonably reject a distribution of well-being when her complaint against that distribution is larger than any other person's complaint against any other distribution. The Complaint Model further holds that (2) the size of an individual's complaint against a distribution is a function of (2a) her absolute level of well-being under that distribution, with the size of her complaint increasing as her absolute level of well-being decreases, and (2b) the size of her loss in well-being under that distribution relative to the level of well-being she could have enjoyed under the distribution most favourable to her, with the size of her complaint increasing as her loss increases.

In this paper, I argue that the Complaint Model should be rejected, because the way in which it takes individuals' losses into account leads to strongly counterintuitive results. In particular, I show that the Complaint Model may sacrifice the well-being associated with the least-well-off, second-least-well-off, etc. positions for the sake of minimizing the largest complaint. I also argue that revisions to element (1) to allow for the aggregation of complaints must either leave the Complaint Model vulnerable to this objection or lead it to collapse into prioritarianism.

The failure of the Complaint Model may lead us to search for an alternative way of taking losses into account. I conclude by arguing that the attractiveness of the Anonymous Pareto principle poses a challenge to any such alternative.

7,500 words (including abstract and endnotes).

## Introduction

Thomas Scanlon's contractualism holds that "an act is wrong if [and only if] its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced general agreement."<sup>1</sup> In order to determine which principles could not reasonably be rejected, Scanlon writes that contractualism would compare, in a way that blocks familiar and straightforward forms of aggregation, the "individual gains, losses, and levels of welfare" that would result from the acceptance of different feasible principles.<sup>2</sup> The following procedure, which has become known as the Complaint Model, offers one way of making such comparisons.<sup>3</sup> According to this model, (1) an individual can reasonably reject a distribution of well-being when her complaint against that distribution is larger than any other person's complaint against any of the alternative distributions under consideration.<sup>4</sup> The size of a person's complaint against a distribution is a function of (2a) her absolute level of well-being under that distribution, with the size of her complaint increasing as her absolute level of well-being decreases, and (2b) the size of her loss in well-being under that distribution relative to the level of well-being she would have enjoyed under the distribution most favourable to her, with the size of her complaint increasing as her loss increases.<sup>5</sup>

In this paper, I argue that the Complaint Model should be rejected, because the way in which it takes individuals' losses into account leads to strongly counterintuitive results. My argument proceeds as follows. In section 1, I develop a simple version of the Complaint Model that offers a clear view of the impact of taking the size of an individual's complaint to depend on her loss. In section 2, I argue, contra Bertil Tungodden, that this element of the Complaint Model does not lead to violations of the transitivity axiom of rational

choice.<sup>6</sup> In section 3, I argue that the Complaint Model should instead be rejected because it asks us to sacrifice the well-being associated with the least-well-off, second-least-well-off, etc. positions for the sake of minimizing one individual's complaint. I also argue that revisions to element (1) to allow for the aggregation of complaints must either leave the Complaint Model vulnerable to this objection or lead it to collapse into prioritarianism. These conclusions may lead us to search for an alternative way of taking losses into account. In section 4, I argue that the attractiveness of the Anonymous Pareto principle poses a challenge to any such alternative.

Throughout, I will make several simplifying assumptions. I shall only be concerned with pairwise choices between distributions involving the same, already existing individuals. I will also assume that no one has claims based on merit or desert; that no one is responsible for her level of well-being; and that no one has entitlements, or special claims. I will also exclude egalitarian concerns of the kind that are motivated by the thought that inequality is bad when and because it is unfair, with the presumption being that it is unfair that some are less well off than others due to no fault to choice of their own.<sup>7</sup> Finally, I shall assume that each of the possible distributions under consideration constitutes a departure from the status quo. Hence we can ignore any moral privilege that might be conferred on a distribution by virtue of the fact that it constitutes the status quo.

## 1.

Scanlon produced the arguments from which the Complaint Model was developed in a bid to find a non-aggregative evaluative model that is not vulnerable to the following well-known criticism of leximin.<sup>8</sup> No matter what the level of well-being of the individuals in question is, leximin takes any potential improvement in the well-being of the occupant of

the better-off position, no matter how great, to be outweighed by any potential improvement in the well-being of the occupant of the worst-off position, no matter how small. As a result, leximin has strongly counterintuitive implications. To illustrate, imagine that a local council must decide how to spend a sum of money on improving the lives of two moderately well-off citizens. The council can either improve a local park (*I*) where Bob likes to walk his dog, or remove an old wall that is obscuring what would be a stunning ocean view from Ann's house (*II*). Improving the park would have no impact on Ann's quality of life, but would make a significant, but not a large contribution to Bob's quality of life. Bob's quality of life would be unaffected by the removal of the wall. Ann's quality of life, on the other hand, would be greatly improved by its removal, since she would greatly enjoy the view from her home, and her house would rise in value. The resulting distributions of well-being are described in Table 1.

**Table 1. Two distributions of well-being**

Distribution	<i>I</i>	<i>II</i>
Individuals		
Ann	49 (moderately well off)	79 (very well off)
Bob	52 (moderately well off)	48 (moderately well off)

Ann is the worst off person under *I*, and Bob is the worst off person under *II*. Ann is much better off under *II* than under *I*. Bob is moderately well off under both *I* and *II*, and slightly better off under *I* than under *II*. One might then readily judge that leximin, which selects distribution *I*, would require Ann to forgo too large an improvement in welfare for the sake of a relatively small improvement in Bob's welfare.

Of course, this criticism would be endorsed by a prioritarian or a utilitarian. But Scanlon did not want to endorse the response that these aggregative views offer to this objection to leximin. His solution involved widening the informational basis of evaluation to include gains and losses in the evaluation of the alternatives in this case (see Table 2). As we will see, by using this information, the Complaint Model can give the intuitively right answer in this case without recourse to aggregative reasoning.

**Table 2. The information that the Complaint Model uses in evaluating the distributions of Table 1.**

Individuals	Distribution	<i>I</i>	<i>II</i>
Ann		(2a) Is moderately well off (well-being level 49).  (2b) Could be much better off (by 30 units).	(2a) Is very well off (well-being level 79).  (2b) No other distribution under consideration makes Ann better off.
Bob		(2a) Is moderately well off (well-being level 52).  (2b) No other distribution under consideration makes Bob better off.	(2a) Is moderately well off (well-being level 48).  (2b) Could be somewhat better off (by 4 units).

The Complaint Model does so by considering what objection, or complaint, might be formulated on behalf of each individual against the choice of a particular distribution. To begin with, we can say that when the choice is between *I* and *II* only, Bob has no complaint against *I* being chosen, since no other arrangement under consideration would make him better off. For the same reason, Ann has no complaint against *II*. The largest complaint against principle *I* is therefore Ann's, and the largest complaint against *II* is Bob's. We should therefore compare the complaints in the two emphasised cells of Table 2, and choose *I* if Ann's complaint against it is smaller than Bob's complaint against *II*.

Since Bob's situation would be pretty good under *II*, and since the possible improvement in his situation by switching to *I* would be small, his complaint against *II* is not large. Since Ann would stand to lose a great deal under *I* in comparison with *II*, and since her well-being under *I* is only somewhat greater than Bob's well-being under *II*, Ann's complaint against *I* appears to be larger than Bob's complaint against *II*. It is therefore open to a proponent of the Complaint Model to select *II*.<sup>9</sup>

This inclusion of individuals' gains and losses in the evaluation of distributions seems to fit well with contractualist reasoning. For in reasoning about what would be the morally right thing to do in such cases, people typically make reference not just to how well or badly off the individuals involved would be under the various alternatives, but also to what is at stake for them in the choice between these alternatives, in terms of the benefits they would have to forgo if one or another of the alternatives was chosen. If asked to make a representation to the local council, we naturally imagine Ann saying: "I would greatly benefit from the removal of the wall, whereas Bob would gain only moderately from the improvements in the park. Moreover, Bob would still be pretty well off even without these improvements." Leximin would not allow Ann to put her case in this way, since it does not allow this direct appeal to how much of a difference the choice of *II*, as opposed to *I*, would make to her and Bob. Instead, it allows arguments only in terms of how much difference the choice would make to the least-well-off person, which is an essentially anonymous label, in the sense that it does not necessarily track any named individual across different distributions. In sum, because it assigns moral importance to what is at stake for individuals, the Complaint Model has a claim to be trying to capture an element of moral reasoning that is overlooked by leximin.

To fill out our outline of the Complaint Model, we need to know how elements (2a) and (2b) interact to determine the magnitude an individual's complaint. To my knowledge,

no one has yet offered a way of doing so. The reasoning behind the inclusion of element (2a), however, suggests the following straightforward way of doing so. The reason for including (2a) is that a given loss in well-being is more important when an individual's level of well-being is lower, because providing someone with an extra unit of well-being is morally more important as his absolute level of well-being declines.<sup>10</sup> This suggests that we should replace each individual's level of well-being with the moral value of his level of well-being, where the moral value of an individual's well-being is a strictly increasing function of an individual's level of well-being, with a negative second derivative. (This means that the marginal moral value of an extra unit of well-being is always positive, but diminishing.) We can then equate the size of an individual's complaint against a distribution with the difference between the moral value of his well-being under that distribution and the moral value of his well-being under the distribution which is best for him. In other words, an individual's complaint against a distribution equals the loss in the moral value of well-being he would suffer under that distribution.

By way of illustration, imagine that we are dealing with non-negative levels of well-being only, and that the moral value of an individual's well-being is the square root of her level of well-being. The moral value of each individual's level of well-being under the distributions listed in Table 1 is then given in Table 3. Individuals' complaints (the moral value of well-being that they have to give up under a particular distribution) are listed in Table 4. It follows that the Complaint Model selects distribution *II*.

**Table 3. The moral value of well-being under the distributions of Table 1.**

Distribution	<i>I</i>	<i>II</i>
Individuals		
Ann	7	8.9
Bob	7.2	6.9

**Table 4. The complaints against the distributions of Table 1.**

Distribution	<i>I</i>	<i>II</i>
Individuals		
Ann	1.9	0
Bob	0	0.3

This straightforward way of determining individuals' complaints fits the idea that an individual cannot complain if we choose the distribution under which she is as well off as possible (given the set of distributions under consideration). It also accords with the idea that, when an individual does have a complaint against a distribution, the size of her complaint increases as her well-being decreases. To illustrate this influence of an individual's level of well-being on her complaint, consider the case described in Table 5. Ann's well-being under *III* and *IV* corresponds to her well-being under *I* and *II*. Bob's level of well-being is very low under both *III* and *IV*, and the difference between his well-being under *III* and *IV* equals the difference in his level of well-being under *I* and *II* (4 units). Given our assumption that the moral value of an individual's well-being is equivalent to the square root of his level of well-being, this difference in Bob's well-being was not enough to outweigh the substantive difference in well-being that these alternatives offered Ann in the



choice between *I* and *II*. However, in the choice between *III* and *IV*, this difference in well-being acquires greater force because Bob is now so badly off. Indeed, as Table 6 and Table 7 show, because of his low level of well-being, this difference in well-being now becomes sufficient to give Bob a complaint against *IV* that is greater than Ann's complaint against *III*, so that the Complaint Model selects distribution *III*.

**Table 5. Two distributions of well-being.**

Distribution	<i>III</i>	<i>IV</i>
Individuals		
Ann	49 (moderately well off)	79 (very well off)
Bob	4 (very badly off)	0 (very badly off)

**Table 6. The moral value of well-being of the distributions of Table 5.**

Distribution	<i>III</i>	<i>IV</i>
Individuals		
Ann	7	8.9
Bob	2	0

**Table 7. The complaints against the distributions of Table 5.**

Distribution	<i>III</i>	<i>IV</i>
Individuals		
Ann	1.9	0
Bob	0	2

This completes our development of a simple version of the Complaint Model for a choice between two distributions. I now turn to an evaluation of the model's properties.

2.

Bertil Tungodden has argued that the Complaint Model violates transitivity, which is a central principle of rational choice.<sup>11</sup> Transitivity holds that in a sequence of pairwise choices between alternatives, if the second alternative in the sequence is chosen over the first, and the third over the second, and so on, then the last alternative in the sequence should be chosen over the first. Examining the pairwise choices the Complaint Model would make between the distributions listed in Table 8 illustrates why it appears to violate this condition.

**Table 8. Three distributions of the moral value of well-being.**

Distributions	<i>V</i>	<i>VI</i>	<i>VII</i>
Individuals			
Ann	8	6	4.5
Bob	4	6.5	7
Charlize	4	5	7

Consider first the choice between *V* and *VI*. The complaints for the pairwise choice between *V* and *VI* are given in Table 9. It follows that the Complaint Model chooses *VI*.

**Table 9. The complaints for the pairwise choice between  $V$  and  $VI$ .**

Distribution	$V$	$VI$
Ann	0	2
Bob	2.5	0
Charlize	1	0

It is also straightforward to establish that in pairwise comparison,  $VII$  is chosen over  $VI$ .<sup>12</sup> Transitivity therefore appears to demand that in pairwise comparison,  $VII$  is chosen over  $V$ . The Complaint Model instead chooses  $V$  over  $VII$ .<sup>13</sup> Tungodden concludes that if we endorse transitivity, we should abandon the Complaint Model.

Before judging whether transitivity is indeed violated by this sequence of pairwise choices, we must first make sure that we have individuated alternatives by what John Broome calls “justifiers”: differences which are relevant grounds for our preferences over these alternatives.<sup>14</sup> Now, the Complaint Model claims that the size of a person’s loss is a morally relevant characteristic of a distribution. It follows that when we individuate alternatives by what the Complaint Model claims are justifiers, the alternative “ $V$ -when-compared-to- $VP$ ” needs to be distinguished from the alternative “ $V$ -when-compared-to- $VIP$ ”: though the distribution of well-being in both cases is of course the same, the distribution of losses is not, and this means we are not dealing with the same alternative. It follows that according to the Complaint Model, we are dealing with not three, but with six alternatives: “ $VII$ -when-compared-to- $VP$ ”, “ $VI$ -when-compared-to- $VIP$ ”, “ $VI$ -when-compared-to- $V$ ”, “ $V$ -when-compared-to- $VP$ ”, “ $VII$ -when-compared-to- $V$ ” and “ $V$ -when-compared-to- $VIP$ ”. From transitivity and the fact that the first of these alternatives is preferred to the second, and the third to the fourth, we are not entitled to conclude that the

fifth should be preferred to the sixth. It follows that transitivity is not violated by the sequence of pairwise choices generated by the Complaint Model.

Indeed, we can now see that the argument that the Complaint Model violates transitivity, and should therefore be abandoned, assumes what it sets out to establish. For the Complaint Model only violates transitivity if we assume that two identical distributions of well-being must have the same relevant properties, so that “ $V$ -when-compared-to- $VI$ ” is not relevantly different from to “ $V$ -when-compared-to- $VII$ ”. But this is to assume that losses are not morally relevant, and hence that the Complaint Model is mistaken. The Complaint Model cannot therefore be dismissed on the grounds that it violates transitivity.

The foregoing does, however, help us realise that the Complaint Model has a pragmatically undesirable characteristic when we face a choice between three or more alternatives. Though, for simplicity, I have not proposed a way of determining individuals’ complaints in such cases, it is easy to see that the fact that such complaints will depend on the alternative distributions that are available will mean that whether one distribution is better than another will depend on the alternatives under consideration. To illustrate: suppose we choose a single distribution from the distributions listed in Table 8. Whichever we choose, we may instead prefer a different distribution if one of the unchosen distributions is eliminated from the feasible set. Suppose we choose  $VI$  when faced with the choice between all three. If we eliminate  $V$  from the set of alternatives under consideration, we now choose  $VII$  instead of  $VI$ . As we have seen, this change of preference between  $VI$  and  $VII$  is not irrational if we take losses to be relevant characteristics of alternatives. But the possibility of this pattern of choice does make the Complaint Model an inconvenient tool for decision-making in a choice between three or more alternatives. For if we employ it, we cannot always proceed by the pairwise appraisal and elimination of less good alternatives, or by several other methods that rely on

evaluating a sub-set of all feasible alternatives before moving on to consider a remaining smaller group of alternatives for final evaluation. We must instead form our judgement on the basis of the simultaneous comparison of all feasible alternatives.

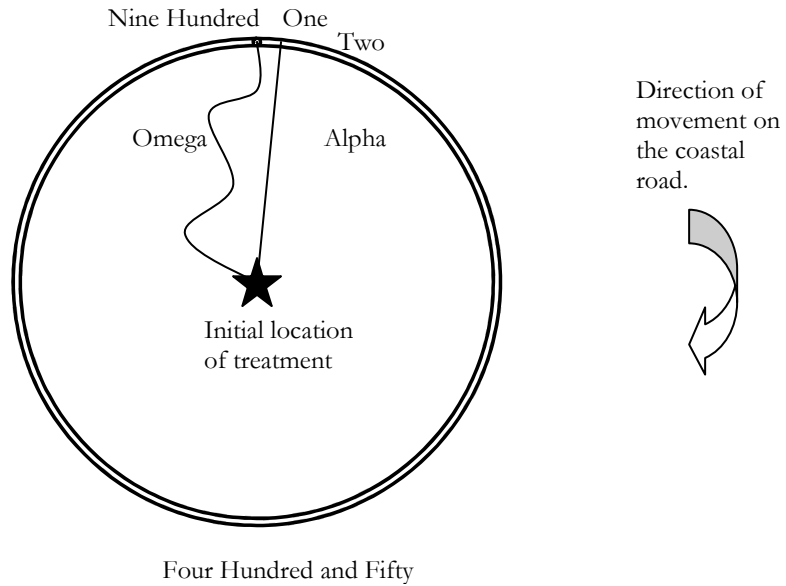
This fact alone does not disqualify the Complaint Model. If individuals' losses are indeed of moral importance, we will simply have to accept this inconvenient consequence. I conclude that the Complaint Model cannot be rejected on the basis of its formal decision-making properties. Instead, we should directly examine the plausibility of the Complaint Model's choices.

### 3.

Suppose that due to a natural disaster, 900 inhabitants of a circular island, called One, Two, Three, ..., Nine Hundred, have contracted a disease which steadily worsens each sufferer's condition with death resulting after 1,000 days. The decline takes place in such a way that the moral value of preventing one day's decline is equal throughout the progression of the disease. The affected individuals are all young adults who, before being affected, had excellent life prospects. A treatment exists which can permanently halt the progression of the disease; after treatment, an individual remains in the condition he was in on the day of treatment. This treatment must be brought to the affected individuals. The entire supply of the treatment is with us in the centre of the island, while the 900 affected individuals are spread out, equidistant from each other and in order from One to Nine Hundred, along the entire coast of the island. It takes one day to drive from one inhabitant to another. The island has a coastal road, which is passable in clockwise direction only. Only two roads, called Alpha and Omega, lead from the centre to the coastal road. On Alpha, which leads to the individual called One, it takes one day to reach the coast. On Omega, which leads to

the individual called Nine Hundred, it takes two days to reach the coast. If we take road Alpha, One gets treated on day 1, Two gets treated on day 2, Three gets treated on day 3, etc., and Nine Hundred gets treated on day 900. If we take road Omega, Nine Hundred gets treated on day 2, One gets treated on day 3, etc., and Eight Hundred Ninety-Nine gets treated on day 901. A total waiting time of 1 day means the individual suffers only a small decline in health, and can still lead an excellent life. A total waiting time of 901 days means an individual will be reduced to a state just somewhat better than death. This situation is represented in Figure 1. The resulting distributions of waiting times are depicted in Table 10. (Given our assumptions, these translate straightforwardly into distributions of well-being, with a waiting time of 1 day equivalent to the moral value of excellent life prospects, a waiting time of 901 days equivalent to the moral value of the well-being attained by someone with a life just somewhat better than death at a young age, and the moral value of the well-being of persons who wait for a time in between these extremes declining linearly in waiting time.)

**Figure 1. The Island Disease Case**



**Table 10. Two distributions of waiting times in days.**

Distributions	Alpha	Omega
Individuals		
One	1	3
Two	2	4
Three	3	5
...	...	...
Eight Hundred Ninety-Nine	899	901
Nine Hundred	900	2

Which road should we take? The Complaint Model will favour Omega over Alpha, because Nine Hundred's complaint against Alpha is greater than anyone else's complaint against Omega. Since the levels of well-being associated with the least-well-off, second-

least-well-off, etc. positions are all lower under Omega than under Alpha, the Complaint Model therefore asks us to sacrifice the well-being associated with every position for the sake of lessening one individual's loss.

I take it that, in so doing, the Complaint Model goes against our intuitive judgement. For even if one regards as significant the fact that Nine Hundred would be a great deal better off under Omega than under Alpha, and that this improvement in his situation would be purchased at a relatively small loss in everyone else's well-being, the force of these reasons in favour of Omega is intuitively outweighed by the following reasons in favour of Alpha: Though Nine Hundred would be badly off under Alpha, if we took road Omega, another person would simply end up in an even worse situation than Nine Hundred would be in under Alpha. Moreover, under Omega, Nine Hundred's move into the best-off position would come at a cost to the well-being of the occupant of that position and well-being of the occupant of every other position.

Given this counterintuitive result, I believe the Complaint Model should be rejected. The question then naturally arises whether the Complaint Model can be revised to avoid this result. One revision that is of particular interest is proposed by David Brink.<sup>15</sup> Brink notes that the Complaint Model leads to counterintuitive conclusions in cases of a different kind, in which we can save either one person from very serious harm, or a great many people from slightly less serious harm, and we cannot save both the one and the many from harm. In such cases, the Complaint Model would require us to save the one from very serious harm, since the one's complaint against the decision to save the many is larger than any other person's complaint against the decision to save the one. Brink regards this result as unacceptable, and proposes replacing the aim of minimizing the largest complaint with the following rule: a single complaint should be outweighed by a sufficiently large number of smaller complaints that are "close enough" to it in magnitude, but should not



be outweighed by any number of smaller complaints that are not close enough to it in magnitude.<sup>16</sup> Call this the “Aggregate-Complaints-When-Close-Enough” Model.

It is easy to see that the case described in Table 10 also defeats this model: Nine Hundred’s complaint against Alpha is almost four hundred and fifty times as large as anyone else’s complaint against Omega. It is therefore plausible to assume that, in Brink’s view, the difference in the size of individuals’ complaints would be too large to allow for the smaller complaints to counterbalance the single largest complaint. The “Aggregate-Complaints-When-Close-Enough” Model will therefore reach the same conclusion as the Complaint Model: it will tell us to choose Omega when, intuitively, we should choose Alpha.

What would happen if we replaced Brink’s aggregative rule by a more familiar form of aggregation, and simply aimed at minimizing the sum of complaints? It is easy to confirm that in the case described in Table 10, we would then arrive at the intuitively correct conclusion. However, we would also no longer have a distinctive evaluative model: for the aim of minimizing the sum of complaints—i.e., the sum of losses in the moral value of well-being—is just a different way of expressing the aim of maximizing the sum-total of moral value. Including information on losses in our decision-making would therefore be an unnecessary exercise: we would simply return by a roundabout route to the prioritarianism to which the Complaint Model was meant to provide an alternative.

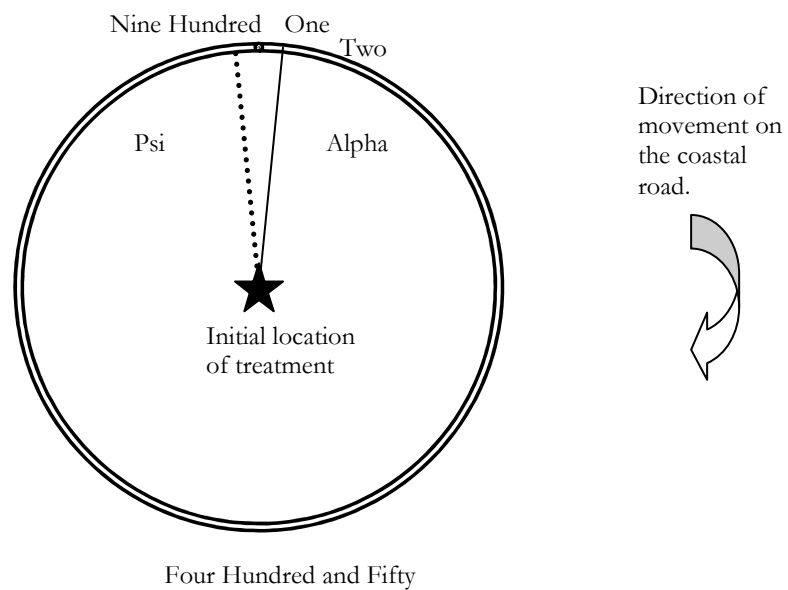
#### 4.

In sum, the way in which the Complaint Model and the “Aggregate-Complaints-When-Close-Enough” Model take account of losses violates considered case judgements, while the straightforward summing of losses leads us back to prioritarianism. These conclusions

may lead us to attempt a different way of sometimes giving comparatively larger losses disproportional weight. Such an account might also give independent weight to aim of improving the well-being attached to each position, thereby attempting to avoid the objection raised in the previous section.

The following Symmetrical Island Disease Case forms a test case for such an account.<sup>17</sup> Suppose that it is possible to reach Nine Hundred by a straight road Psi, on which it takes just as long to reach Nine Hundred as it does to reach One by road Alpha. This situation is depicted in Figure 2; the concomitant distributions of waiting time are represented in Table 11.

**Figure 2. The Symmetrical Island Disease Case**



**Table 11. Two distributions of waiting time in days.**

Distributions	Alpha	Psi
Individuals		
One	1	2
Two	2	3
Three	3	4
...	...	...
Eight Hundred Ninety-Nine	899	900
Nine Hundred	900	1

The following facts about this case appear relevant. First, Nine Hundred's loss under Alpha would be far greater than anyone else's loss under Psi. Second, the sum of the smaller losses that everyone except Nine Hundred would incur under Psi is equal to Nine Hundred's loss under Alpha. Third, from the perspective of the well-being attached to various positions, Alpha is just as good as Psi. Any account that gives comparatively large losses disproportional weight would therefore have to conclude that only Psi is permissible. By contrast, accounts that hold that the sum of smaller losses balance a larger loss when the two are equally large, or that hold that only the well-being attached to various positions matters, would have to be indifferent between Alpha and Psi.

Which of these perspectives on this case is correct? The following might be said from Nine Hundred's perspective in favour of judging that only Psi is permissible in this case.<sup>18</sup> "If you choose Alpha, you will consign me to suffering and debilitation for the rest of my life from which you could almost completely spare me by choosing Psi instead, under which I would be in almost perfect health. The cost to others of choosing Psi over Alpha is, in each case, a far smaller loss of one rather than 900 day's worth of decline in health.

Moreover, this loss to others does not even outweigh my loss in the aggregate. Surely, when everything else is equal, the great loss you could spare me provides decisive reason to choose Psi over Alpha.”

On the other hand, we might defend indifference between Alpha and Psi as follows against Nine Hundred’s argument. “This case presents us with two ways of organising a queue for aid to which each person has an equal claim and without which everyone would die. Since the queues are not yet formed, no one has a claim to any particular place in the queue on the basis of the status quo. Furthermore, it purely a matter of brute luck which places people could occupy in the queue. The fact that you could only either occupy a place at the front of the queue or at the end, whilst everyone else could only be placed in one of two adjacent positions therefore does not give you a claim to be placed at the front of the queue. Instead, we should assess the options open to us from the perspective of how much good we can do for each position in the queue. Assessed in this way, the two alternatives open to us are equally good. The badness of your situation if we chose Alpha and placed you at the back of the queue is equivalent to the badness of the situation of Eight Hundred Ninety-Nine if we chose Psi and placed him at the back; the goodness of your situation if we chose Psi and placed you at the front of the queue is equivalent to the goodness of the situation of One if we chose Alpha and placed him at the front. The same equivalence between Alpha and Psi holds for every other position in the queue. We should therefore be indifferent between Alpha and Psi.”

When we consider this case in isolation, it is not an easy matter to decide which of these arguments is most persuasive: the considered judgements of those I have discussed it with divide roughly along the lines outlined, and my own views are uncertain. I believe, however, that the argument in favour of indifference between Alpha and Psi is strengthened by consideration of the following case.<sup>19</sup> Suppose that, alone among all

infected individuals, One has a version of the disease that progresses twice as fast after the first day. We must choose between road Alpha and road Chi, on which it takes one day to reach Nine Hundred. The distribution of “waiting time equivalents” under Chi is therefore identical to Psi except in the case of One, whose condition at the time of treatment on day 2 would be equivalent to anyone else’s condition after waiting 3 days.

Nine Hundred could argue as follows in favour of Chi.<sup>20</sup> “If you choose Alpha, you will consign me to suffering and debilitation for the rest of my life from which you could almost completely spare me by choosing Chi instead, under which I would be in almost perfect health. The cost to others of choosing Chi over Alpha is one or two day’s worth of decline, which is a far smaller loss than 900 day’s worth of decline in health. Moreover, this loss to others just barely outweighs my loss in the aggregate. Surely, this bare outweighing is not enough to cancel out the moral force of the great loss you could spare me by choosing Chi over Alpha.”

In this case, it strikes me that this reasoning leads to the wrong conclusion. No one, I believe, has a claim to be moved to the front of the queue for medical attention when this would not improve any position in the queue and would worsen the situation at some point in the queue. Moreover, the reasoning used above in favour of indifference between Alpha and Psi seems to me to offer the best explanation for this judgement. Since both the misfortune of contracting the disease and the possible queue positions are matters of brute luck, no one has a claim to occupy any particular position in the queue. We should therefore assess the options open to us from the perspective of how much good we can do for each position in the queue. Assessed in this way, Alpha is better than Chi, since the second position in the queue is better under Alpha than under Chi, and no position is worse.

This reasoning supports the idea that the aim of preventing a comparatively large loss should not be pursued when doing so would violate a principle known as Anonymous Pareto. This principle states that a first distribution is better than a second when the levels of well-being attained by individuals in the first distribution can be re-assigned among them to yield a distribution that is Pareto-superior to the second, in the sense that no one in the permuted first distribution would be worse off than in the second, and at least one individual would be better off. (In this case, since a permutation of Alpha is Pareto-superior to Chi, Anonymous Pareto requires that we choose Alpha rather than Chi.) Anonymous Pareto gives general expression to the idea that when individuals' possible levels of well-being are due to arbitrary factors, we should direct our attention to the well-being attained by the least-well-off, second-least-well-off, etc. positions, and should favour a first distribution over a second distribution when the first is better for at least one position and worse for no position.<sup>21</sup>

Now, I believe that someone who would defend the choice of Psi over Alpha in our previous example would face the following dilemma. The first possibility is to choose Chi over Alpha. As explained, this strikes me as counterintuitive. The second possibility is to opt for Alpha in this choice between Alpha and Chi. Someone who took this view would then have to explain why the aim of preventing larger losses is not decisive when Anonymous Pareto speaks in favour of one distribution, but can still be decisive in other cases. Put differently: if the aim of minimizing comparatively large losses is of moral importance, why should it always be lexically inferior to the aim of improving the well-being attained by each position? At present, I cannot see a satisfactory answer to this question. The most attractive way to avoid this dilemma seems to be to accept indifference between Alpha and Psi and to favour Alpha over Chi. But this would rule out an account in which comparatively large losses can carry disproportionate weight.

## Conclusion

In a choice between distributions, the case for paying attention to losses in addition to the well-being attached to various positions rests on the following ideas: what is at stake for individuals is of moral importance, and smaller losses can not straightforwardly be summed to balance a single larger loss. Though these ideas have seemed appealing to some, I have argued that two models of decision-making that are based on them fail to yield plausible conclusions. I have also argued that it is not easy to see how one might incorporate them into *any* plausible model of decision-making. This may be simply taken as a challenge; it may also prompt us to reject these ideas about the distinctive importance of comparatively large losses. Rejecting them would have the following consequence for Scanlon's contractualism. Whether an individual could reasonably reject a distribution would depend only on the well-being attached to the least-well-off, second-least-well-off, etc., position under that distribution and its alternatives; individual losses would not count.<sup>22</sup>

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<sup>1</sup> T.M. Scanlon, *What We Owe to Each Other*, (Cambridge, Mass.: Harvard University Press, 1998), p. 153. I have included the phrase in brackets because Scanlon takes this claim to be a characterisation of a certain kind of moral wrongness. See also p.4 of *What We Owe to Each Other*, where Scanlon writes: "an act is wrong (...) if and only if it would be disallowed by any principle that such people could not reasonably reject", and also Scanlon, "Précis of *What We Owe to Each Other*," *Philosophy and Phenomenological Research* 66 (2003): 159-61, p. 160: "An action is wrong just in case any principle that permitted it would be one that someone could reasonably reject."

<sup>2</sup> See Scanlon, "Contractualism and Utilitarianism," in Amartya Sen and Bernard Williams, editors, *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), pp. 122-3. See also *What We Owe to Each Other*, p. 227 and p. 243.

<sup>3</sup> Though he does not discuss it in any of his published writings, Derek Parfit is generally credited with formulating the Complaint Model on the basis of some remarks in Scanlon's "Contractualism and

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Utilitarianism,” pp. 122-3. The Complaint Model is also hinted at in Thomas Nagel, “Equality”, in his *Mortal Questions* (Cambridge: Cambridge University Press, 1979), pp. 106-27, especially p. 125. It is discussed in David Brink “The Separateness of Persons, Distributive Norms, and Moral Theory,” in R.G. Frey and C.W. Morris, editors, *Value, Welfare, and Morality* (Cambridge: Cambridge University Press, 1993), pp. 252-89; Michael Otsuka, “Saving Lives, Moral Theory, and the Claims of Individuals,” *Philosophy & Public Affairs* 34 (2006): 109-35, pp. 131-3; Sophia Reibetanz, “Contractualism and Aggregation,” *Ethics* 108 (1998): 296-311; Scanlon, *What We Owe to Each Other*, pp. 229-30; Bertil Tungodden, “The Value of Equality,” *Economics and Philosophy* 19 (2003): 1-44, pp. 32-7; and Bertil Tungodden and Peter Vallentyne, “On the Possibility of Paretian Egalitarianism,” *Journal of Philosophy*, 102 (2005): 126-54, p. 147.

<sup>4</sup> Scanlon, *What We Owe to Each Other*, p. 229.

<sup>5</sup> These claims are an interpretation of Scanlon’s remarks in “Contractualism and Utilitarianism,” pp. 122-3. See also *What We Owe to Each Other*, p. 227 and p. 243.

<sup>6</sup> See Tungodden, “The Value of Equality,” pp. 32-7.

<sup>7</sup> For recent formulations of this position, see Larry Temkin, “Equality, Priority, and the Levelling Down Objection.” In Matthew Clayton and Andrew Williams, editors, *The Ideal of Equality*. (Basingstoke: Palgrave, 2002), pp. 126-61. Brink, in “The Separateness of Persons”, pp. 264-5, proposes that we should take account of such egalitarian considerations by basing the size of a person’s complaint against a distribution on (2c) her level of well-being relative to others under that distribution. This would be in addition to having the individuals complaint depend on elements (2a) and (2b). Nothing of importance to my argument depends on excluding element (2c) from the determination of the size of a person’s complaint.

<sup>8</sup> “Contractualism and Utilitarianism,” pp. 122-3.

<sup>9</sup> See Scanlon, “Contractualism and Utilitarianism”, pp. 122-3.

<sup>10</sup> See Parfit, *Equality or Priority?* The Lindley Lecture (Lawrence: University of Kansas, 1991), pp. 24-5.

<sup>11</sup> See Tungodden, “The Value of Equality,” pp. 32-7. Tungodden and Vallentyne, “Paretian Egalitarianism,” p. 147 argue that it also violates the closely related condition known as Independence of Irrelevant Alternatives (or as Tungodden and Vallentyne call it, “Condition Alpha”). My argument that the Complaint Model does not, despite appearances, violate transitivity also implies that it does not violate the PIA/Condition Alpha.

<sup>12</sup> In the pairwise choice between *VI* and *VII*, the complaints are listed in the following table.



Distribution	<i>VI</i>	<i>VII</i>
Individuals		
Ann	0	1.5
Bob	0.5	0
Charlize	2	0

It follows that the Complaint Model chooses *VII*.

<sup>13</sup> In the pairwise choice between *V* and *VII*, the complaints are listed in the following table.

Distribution	<i>V</i>	<i>VII</i>
Individuals		
Ann	0	3.5
Bob	3	0
Charlize	3	0

It follows that the Complaint Model chooses *V*.

<sup>14</sup> Broome, *Weighing Goods* (Oxford: Blackwell, 1991), chapter 5.

<sup>15</sup> See “The Separateness of Persons,” pp. 265-70.

<sup>16</sup> See “The Separateness of Persons,” pp. 265-70; and Scanlon, *What We Owe to Each Other*, pp. 238-9. For a critical discussion of this view, see Reibetanz, “Contractualism and Aggregation.”

<sup>17</sup> A case of this kind was first proposed by Derek Parfit in “Justifiability to Each Person” *Ratio* 16 (2003): 368–90, p. 383n16. Parfit mentions the case without further discussion of it.

<sup>18</sup> I am indebted to Michael Otsuka for the thoughts expressed in this paragraph.

<sup>19</sup> Parfit draws the same conclusion from a case of this kind in “Justifiability to Each Person” *Ratio* 16 (2003): 368–90, p. 383n16. Parfit simply states his view that Alpha would be the only correct choice in this case. I attempt to give a fuller account of the reasons for this judgement and its relation to the Anonymous Pareto principle.

<sup>20</sup> I am indebted to Michael Otsuka for the thoughts expressed in this paragraph.

<sup>21</sup> The Anonymous Pareto principle has been challenged by Frances Kamm in her *Morality, Mortality Vol. I: Death and Whom to Save from It* (Oxford: Oxford University Press, 1993), pp. 101-2 and chapter 8 on the grounds that it ignores what is at stake for individuals in a given choice. Kamm’s argument is based on the

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following purported counterexample to Anonymous Pareto. Ann, Bob, and Charlize are involved in a shipwreck. Charlize is an excellent swimmer, and would make it to shore alone, though the swim would give her a nasty cold. Ann and Bob will die without our help, however. Unfortunately, they have drifted away from each other, and we can only save one of them before the other drowns. If we save Bob, we can costlessly pick up Charlize, who will thereby be spared her cold. If we save Ann, Charlize must make it to shore alone. These two possibilities are outlined in the following table.

Distributions	Save Ann	Save Bob
Individuals		
Ann	Lives	Dies
Bob	Dies	Lives
Charlize	Catches a cold	In good health.

Since the worst outcome is the same in both cases, while the second-worst outcome is better if we save Bob's life and Charlize from catching cold, Anonymous Pareto requires that we do the latter. Kamm argues, however, that this type of reasoning would fail to recognize the fact that Bob and Ann's lives are at stake in this decision; by comparison to their potential loss, Charlize's cold is insignificant. Rather than letting Charlize's loss tip the balance, she argues, we should toss a fair coin to decide between saving Bob's life and Charlize from a cold or saving Ann's life. Tossing a fair coin is the right way to recognise that Ann and Bob have an equal claim to the indivisible resource of our aid, both because it eliminates partiality and bias in our decision-making and because it ensures the fair distribution of something of value: a 50 percent chance at being saved. (See also Michael Otsuka, "The Fairness of Equal Chances" [unpublished] for a review and defence of these reasons for tossing a coin in this case.) It follows, Kamm concludes, that we go wrong in this case if we do not take account of what is at stake for individuals.

On closer inspection, however, this case is not a counterexample to Anonymous Pareto. Consider the two reasons we have for tossing a fair coin in order to decide between saving Ann and saving Bob (and sparing Charlize a cold). We can here set aside impartiality, since Anonymous Pareto is also impartial. Now turn to the second reason: that since it is not possible to satisfy both Ann's and Bob's equal claims on our aid, the best we can do is give them each something else of value, viz. an equal chance at survival. Now, if an equal chance is of value, then the previous table does not really contain all the relevant distributions of

benefits. Instead, the choice is between the three distributions listed below. But then it is no longer the case that Anonymous Pareto recommends saving Bob rather than tossing a fair coin, since given our assumption that a chance is a benefit, tossing a fair coin has higher benefits associated with the least-well-off position than saving Bob. On the other hand, if an equal chance is not a benefit, then I believe that the only permissible option is to save Bob's life and save Charlize from a cold, so that the case again does not represent a counterexample to Anonymous Pareto.

Distributions Individuals	Save Ann	Save Bob	Toss a fair coin	
			Heads	Tails
Ann	Lives	Dies	Lives	Dies
Bob	Dies	Lives	Dies	Lives
Charlize	Catches a cold	In good health	Catches a cold	In good health

<sup>22</sup> I am grateful to Gustaf Arrhenius, Richard Bradley, Krister Bykvist, Cecile Fabre, Marc Fleurbaey, Michael Otsuka, Derek Parfit, and Leif Wenar for helpful comments. Earlier versions of this paper were presented to the LSE Choice Group in October 2004 and October 2006, and to the Oxford Moral Philosophy Seminar in October 2006. I thank those present for their comments.