

SCANLON'S AGGREGATION PROBLEM

TIM CAMPELL

University of Buffalo

1. Introductory Sketch of the Aggregation Problem

According to T. M. Scanlon's contractualist formula, an act is right if and only if it can be justified to others based on principles which no individual would reasonably reject.¹ Justifiability to others provides not only the normative basis of the morality of right and wrong but also identifies the property of rightness itself. The basic content of morality lies in justifiability to others based on their personal reasons to accept or reject certain principles. **The structure of Scanlon's contractualism allows only the strongest reasons of a single individual to determine which principles are accepted or rejected. This individualist restriction prevents aggregative moral reasoning.** It means that individuals' personal reasons for rejecting principles cannot be summed. Thus, any judgment about the rightness or wrongness of an act can be seen as a comparison of the two strongest individual claims in favor of or against that act. Whoever has the strongest personal reasons for or against the principle will determine whether we should accept or reject it.

Scanlon believes that allowing aggregative moral reasoning would invite reliance on states of affairs as the guiding consideration for our moral thinking. But according to Scanlon, using states of affairs to decide whether or not to engage in a contractualist framework would undermine the basic motivation for **his position. A distinctively contractualist position would have to take the idea of justifiability to others as basic, rather than as just the motivation for promoting the best states of affairs.**² Scanlon also believes that disallowing aggregative moral reasoning lets contractualism solve certain moral problems in an intuitively appealing way.³ For example, contractualism would not allow the severe burdens of one or just a few people to be outweighed by the small benefits of very many others. In Scanlon's words: "It allows the intuitively compelling complaints of those who are severely burdened to be heard, while, on the other side, the sum of the smaller benefits to others has no justificatory weight, since there is no individual who enjoys these benefits."⁴ We should not feed the Christians to the lions, no matter how many Romans are cheering.

The problem, however, is that there are some cases where numbers do

warrant moral consideration. When two different groups of people face the same harm and an agent can save only one of the two groups (at little or no risk to her own safety), it seems obvious that she should save the larger group. However, if in deciding whether a certain course of action is the right one, we are only allowed to consider the strongest personal claims of individuals, then according to contractualism there would be no moral difference between saving one or the other group since each individual's personal claims to be saved are equal. Scanlon believes that this cannot be right. He gives an argument, which I discuss below, that allows for at least the appearance of limited aggregation in such cases. This argument is widely rejected for various reasons which I discuss later. In fact many have argued that since contractualism cannot deal with cases where numbers matter, it should be rejected based on this crucial deficiency.⁵

In this paper I will show that, contrary to what many believe, contractualism is able to solve moral dilemmas involving numbers in an intuitively appealing way. Rejecting Scanlon's proposed solution to those dilemmas does not give us sufficient grounds for rejecting his theory. I will argue that the two most significant problems with Scanlon's argument are (1) that it discounts the importance of burdens that are non-substantive (**i.e. burdens that have no actual effect on a person's well being, but which a person would want to avoid; for example, the chance of facing a substantive burden that would affect her well being**) and (2) that it takes the frequency of the actual occurrence of certain hypothetical cases involving numbers into account in deciding how to solve those cases within a contractualist framework. These features, far from making Scanlon's argument stronger, place restrictions on the kinds of moral dilemmas involving numbers that Scanlon is able to solve. If Scanlon dropped or altered these features, numbers would no longer pose a problem for his theory.

Here is the layout of the paper: In sections 2 and 3, I will introduce Scanlon's view on aggregation, highlighting some of its problematic aspects. In sections 4-6 I will discuss some very forceful objections to Scanlon's aggregation argument which also suggest that contractualism should be rejected based on the failure of his argument. In sections 7-9, I will show how Scanlon could, in abandoning a few features of his original argument, develop an intuitively appealing solution to problems involving numbers while remaining consistent with the basic idea of contractualism. I'll wrap things up in section 10.

PART I. WHAT PROBLEMS DO NUMBERS RAISE FOR CONTRACTUALISM?

2. Scanlon's Argument and Its Ability to Deal with Numbers

What does contractualism have to say about cases where numbers seem to matter? Scanlon's suggestion is that we follow what he calls the tie-breaker principle. According to this principle, when the harm that two different groups of people face is the same, numbers break ties, and we ought to save the larger group. The rationale behind this is that if an agent were to save the smaller group, any person in the larger group could complain that the principle which allowed this did not take into account the value of saving her, since it lets the agent decide who to save in the same way that it would have allowed had the numbers of people in each group been equal. Since an individual in the larger group would have this reason, but an individual in the smaller group would not, the former would have the stronger claim to be saved, and thus, an agent would be morally required to save this group.

The tie breaker principle has been challenged by Derek Parfit.⁶ Parfit claims that if an agent were to follow the tie-breaker principle, saving the larger group and ignoring the smaller one, **then, given Scanlon's individualist restriction, any person in the smaller group could argue that this did not give her a fair chance of being saved.** This person could argue that everyone deserves the same chance of avoiding harm and that **a more appropriate principle would be one which required the agent to flip a coin in deciding which group to save.** This would give each person in the situation the same 50% chance of being saved. Parfit calls this the equal chance principle. **Neither Parfit nor Scanlon endorse this principle. They acknowledge that since the larger group could have many more people than the smaller group, it would be wrong for an agent to flip a coin and risk having to save the smaller group, letting many more people suffer harm.** Parfit and Scanlon propose different solutions to this problem. Parfit believes that, as long as contractualism is allowed to consider the implications of a principle only for any single person, no person will be able to reject the equal chance principle. This is because cases involving groups of different sizes will be, according to contractualism, relevantly like cases where there is only one person in each group. Since, in cases of the latter sort, giving both people an equal chance of being saved seems appropriate, this will also be an appropriate way to handle cases of the former sort. The only way to avoid this, according to Parfit, is if the people in the larger group are allowed to argue that all of their reasons together outweigh those of the people in the smaller group. This would involve dropping the individualist

restriction.⁷ It would allow different individuals' claims to be aggregated.

Scanlon has a different response. He believes that a person in the smaller group could not demand a fair chance of being saved because this consideration would have no bearing on the substantive burdens faced by the people in each group. According to Scanlon, whenever there are clear substantive burdens faced by individuals, these are the primary considerations which go into deciding who should be saved. Non-substantive burdens, such as risks of being harmed, are secondary to substantive burdens and should only be considered if the substantive grounds for saving one or the other group are unclear, for example if the harm that each group faced was not certain but only probable. The priority of substantive burdens is determined contractually. If a person will certainly suffer harm if she is not saved, this gives her a stronger personal claim to be saved than someone who faces, say, a 50% chance of suffering that same harm (all other things being equal).⁸ However, in the case of choosing who to save when the groups are uneven, being given a fair chance is, according to Scanlon, an irrelevant consideration since in either case some people will suffer substantive harm, and others will be spared from it.

Parfit could respond that even if the substantive burdens for each person in the situation were the same, this would not change the fact that none of these people could reasonably reject the equal chance principle. Since the ultimate stakes would be the same no matter which of the two principles (tie-breaker or equal chance) were followed, contractualism dictates that we must follow whatever principle is fairest for each person. The equal chance principle treats each person fairly. Thus, a person in the smaller group could reject the tie-breaker principle because it allowed her to be treated unfairly. Moreover, if, as a result of following the equal chance principle, the smaller group was saved and the larger group forced to suffer harm (perhaps as the result of an unlucky coin flip), none of the people in the larger group could reject the equal chance principle based on the fact that it did not take into account the value of saving her from harm. On the contrary, the equal chance principle respects these people by ensuring that each of them is given the same chance of being saved as everyone else.

Who has the better argument, Parfit or Scanlon, depends on a number of considerations. For instance, one is whether in giving everyone an equal chance of being saved, the equal chance principle actually disrespects the people in the larger group by not taking into account the full value of saving them from harm. If we thought that the equal chance principle

did disrespect these people, we might ask whether being disrespected in this way is worse than not being treated fairly in virtue of not being given an equal chance of being saved.

Therefore, it is unclear whether Scanlon's treatment of substantive vs. non-substantive burdens allows him to reject the equal chance principle outright. However, for the purposes of this paper, I will be more concerned with what the general implications are of Scanlon's hierarchy of burdens (substantive over non-substantive). I will be arguing later that always allowing a substantive burden to trump a non-substantive one has unacceptable consequences, and in addition, this hierarchy makes it unnecessarily difficult for contractualism to deal with cases involving numbers.

3. Scanlon's Argument and Its Ability to Deal with Different Harms

A much more glaring problem for Scanlon's tie-breaker view is its apparent inability to deal with cases where the harms faced by two different groups of people are unequal. According to the tie-breaker principle, numbers can only break ties in cases where each of the individuals involved faces the same burden. But what about cases where a much larger group faces a slightly lesser, but seemingly comparable harm to that faced by the people in the smaller group? There could be cases in which hundreds of people are in danger of being paralyzed, and on the other side, a case in which only one person faces premature death. It seems that, if the numbers of people facing paralysis were very great, we should save these people, even if it means letting one person die. Scanlon's tie breaker view does not allow this. It suggests that we should always save whoever faces the greatest burden. Is this even plausible? Scanlon does not believe so. Although he does not have a well worked out solution to these types of cases, he gives some tentative suggestions about how contractualism might deal with them:

If one harm, though not as serious as another, is nonetheless serious enough to be morally "relevant" to it, then it is appropriate, in deciding whether to prevent more serious harms at the cost of not being able to prevent a great number of less serious ones, to take into account the number of harms involved on each side. But if one harm is not only less serious than, but not even "relevant to," some greater one, then we do not need to take the number of people who would suffer these two harms into account in deciding which to prevent, but should always prevent the more serious harm.⁹

This seems like an ad hoc solution to the aggregation problem. Why should the individualist restriction, which Scanlon sees as the guiding feature of contractualism, apply in some cases but not others? **Whatever** its merits may be, we will see later that this "relevance" approach is problematic. In any case, **the challenge still remains. One thing a moral theory must be able to do us provide clear and decisive solutions to these problems. In my view, Scanlon has not yet shown that his contractualism can do this.**

This brings us to contractualism's current situation. To recap, Scanlon has given an argument which does not allow the small benefits reaped by many to outweigh the serious harms suffered by a few. This is a result of the structure of contractualism, according to which the strongest individual claim trumps all other claims. He has also endorsed what he calls the tie-breaker principle, which asserts that when different groups of people face the same harm, we ought to save the larger group, since, if we did not, any person in that group could complain that her presence made no difference in how the agent went about deciding who to save. Finally, Scanlon has suggested that when certain harms are relevant to more serious harms, contractualism may allow agents to prevent the lesser harm, provided that the numbers of people suffering this harm are much greater than those suffering the slightly more serious harm.

4. Can the Aggregation Problem be Solved in a Non-Circular Way?

Many philosophers have argued that contractualism as a moral theory is circular.¹⁰ Joseph Raz in particular has tried to show that contractualism can only solve the aggregation problem in a circular way. Raz tries to show this by focusing on Scanlon's tentative suggestion that contractualism might be able to come up with a principle which would let an agent save many people from a severe harm, while ignoring one person who faced a slightly worse harm. Scanlon suggests that if an agent followed such a principle, a person in the larger group could reject this principle because

It did not give proper consideration to his admittedly less serious, but still morally relevant, loss. One might then argue that such an individual's claim to have his or her harm taken into account can be met only by a principle that is sensitive to the number of people involved on each side. I am not certain how such an argument would go, but it does not seem to me to be excluded in advance by the general idea of contractualism.¹¹

Here is Raz's response:

The problem is that Scanlon's contractualism does not exclude arguments of that form. It means that a person can object to a principle if, by disallowing aggregation where it is required, the principle does not give that person's harm the weight or role that it merits. And that means that the problem of aggregation has to be solved first, and contractualist arguments far from contributing to its solution cannot be deployed until it is solved.¹²

Here Raz is assuming that a principle still under consideration by the contractualist formula can disallow certain kinds of solutions that are in fact required, but this is not so. Contractualism does not assume anything about what kind of moral reasoning is required until the outcome of the contractualist test. This means that any principle under consideration could not "disallow aggregation where it is required." Any principle disallowing what is required would already have been rejected in reaching a decision about what is required. Raz could argue that, apart from any contractualist considerations, aggregative moral reasoning is required in some cases, but what is important to notice is that contractualism does not make such assumptions, and so is not circular in the way that Raz claims. This is true, not only of the example of aggregation that Raz discusses, but of contractualism's dealings with moral dilemmas in general. By considering only agent-relative reasons for rejecting principles, contractualism excludes an entire class of reasons from "affecting the outcome of the contractualist test."¹³ This is what Scanlon means by excluding impersonal reasons from the contractualist formula. Raz believes that, by excluding impersonal reasons, Scanlon's only aim is to show that claims about right and wrong concern people, and not the intrinsic value of "mountains, or the American condor."¹⁴ But this is not the whole story. It is true that contractualism does not consider these things, but that is because they do not involve reasons that are agent-relative. Non-agent-relative reasons concerning, not just mountains and condors, but people as well, are banned from consideration in contractualism. For example, according to contractualism, one could not reject a principle specifically because it made people's lives worse or because it brought about the worst outcome. These reasons do not reflect personal burdens. In order to be considered by the contractualist formula, reasons must make "an ineliminable (and non-trivial) pronominal back-reference to the person to whom the reason applies."¹⁵ This is what it means for reasons to be agent-relative. They must be in this format: "my burden", "my pain", etc.¹⁶

5. Is Contractualism Better Off Without an Individualist Restriction?

Although I believe Raz's argument rests ultimately on a mistaken conception of the structure of contractualism, he does pose a challenge to contractualism indirectly. The challenge is that if contractualism can solve moral dilemmas involving numbers, it must do so within the confines of the individualist restriction. Otherwise, it invites the circularity charge by allowing other considerations such as states of affairs, to be the wrong-making features of acts, while justification to others is simply an offshoot of this. This gives us reason to reject Parfit's suggestion mentioned earlier, that Scanlon should drop his individualist restriction in order to reach sensible solutions to cases involving numbers. This, however puts contractualism right back where it started in being unable to offer a sensible solution to cases in which a much larger group of people face only a slightly less serious harm than one or a few people. So it seems that Scanlon is faced with a choice between two evils. If he drops the individualist restriction this will make his theory vulnerable to circularity charges, but if he doesn't, he must bite the bullet and admit that saving one person from a more serious harm is always right regardless of how many others face harms that are only slightly less bad.

Biting the bullet is not an attractive option. As one writer puts it: "Can anyone who really considers the matter seriously honestly claim to believe that it is worse that one person die than that the entire sentient population of the universe be severely mutilated? Clearly not."¹⁷ This seems to me, an accurate reflection of most people's sentiments. Not being able to explain why we should save the entire sentient population from mutilation over one person from death leads us to ask why we should take Scanlon's theory seriously at all as a theory of what we owe to each other. On the other hand, dropping the individualist restriction would give us a solution to these cases, but would invite the charge that contractualism is circular or "vacuous" in Raz's words because it does nothing to establish the rightness or wrongness of saving or not saving one of the two groups.

Scanlon acknowledges this problem. He believes that whether or not contractualism would be a stronger theory without an individualist restriction depends on "the way in which elements of the resulting view restrict aggregative arguments."¹⁸ Here, Scanlon is talking about the restrictions on giving small benefits to a great number of people by imposing serious harm on a single person. He believes that in such cases, we should always save the one person, no matter how many

people stand to receive the small benefits. He considers the possibility of replacing the individualist restriction with a principle which blocked aggregation only in cases where the small harms or benefits are not relevant to the severe harm faced by the single person.¹⁹ This is the rationale behind what Parfit calls the triviality principle.²⁰ Scanlon does not try to develop this line of thought, but does not reject it either. Will replacing the individualist restriction with some kind of triviality principle solve the aggregation problem?

6. Problems with Establishing Thresholds of Relevance between Harms

Alistair Norcross has an argument which undermines the idea of a triviality principle. He claims that making some harms irrelevant to others would violate two very obvious and important doctrines involved in comparing harms.²¹ One is transitivity. This is the assumption that, given any three harms, (a), (b) and (c), (a) being the worst and (c) being the most trivial, the relevance of (b) to (a), and of (c) to (b), entails the relevance of (c) to (a). This is based on the assumption that there is

a descending scale of finitely many different harms, from the most serious, such as death, all the way down to the most trivial, such as a minor temporary headache. The difference in seriousness between any two adjacent harms is no larger than is necessary for the lesser harm to be clearly less serious than the greater harm...also...for every harm on the scale harm on the scale above the most trivial, there is some lesser harm that is relevant to it.²²

Norcross refers to this as the “continuity assumption.” He claims that transitivity and continuity together entail that the most trivial harm is relevant to the most severe harm. Moreover, it seems that there is no principled way to deny either one of these assumptions. Preserving transitivity by rejecting continuity would involve establishing a threshold of relevance between two harms on Norcross’s descending scale. In other words, we would have to say that the harm directly below the threshold is not relevant to the harm directly above it. But this seems impossible given that the difference between each of the finite harms on the scale is just small enough to make one clearly morally relevant to the other. Positing a threshold of relevance would be completely arbitrary.

Accepting continuity while denying transitivity would be equally absurd. This would entail that, in a case where we could prevent only one of three harms, where the relevance between these harms is

intransitive, we would be acting immorally no matter which harm we prevented. Norcross illustrates this with an example:

Suppose, for the sake of argument, (a) that the loss of both arms is less serious than but morally relevant to death; (b) that a broken leg is less serious than but morally relevant to the loss of both arms, but not morally relevant to death; (c) that in a choice between saving one life and preventing one thousand people from losing both arms, it is obligatory to aid the larger group; (d) that in a choice between preventing one thousand people from losing both arms and preventing one million people from breaking a leg, it is obligatory to aid the larger group. (The choice of examples is unimportant.) Consider now three different choices: (i) Save one life or prevent one thousand people from losing both arms. (ii) Prevent one thousand people from losing both arms or prevent one million people from breaking a leg. (iii) Save one life or prevent one million people from breaking a leg. From (b), (c) and (d) it follows that it is obligatory to aid the larger group in (i) and (ii) and the smaller group in (iii). So far, so good. But what happens when we are faced with all three options in one choice? No answer here seems satisfactory.²³

This is because, for each group that we could save, intransitivity suggests that we are morally obligated to save someone else. If we save the one person from death, we are doing something wrong since (c) tells us we are morally required to save the thousand from losing their arms. However, saving the thousand would be wrong since (d) tells us we are morally required to save the million from breaking their legs. Finally, even if we saved the million, we would be doing something wrong since (d) also tells us that broken legs are irrelevant to death and that we should, instead of preventing this harm, save the one person. This might be seen as a *reductio ad absurdum* of Scanlon’s (admittedly tentative) “Relevance” argument. Moreover, if Scanlon dropped his individualist restriction, he could not prevent someone from using Norcross’s argument as a reason for rejecting the triviality principle. Say for example that, in a choice between preventing the death of one person or giving extremely small benefits to millions of people, you decide to save the one person. Suppose that the principle you are following in saving the one person is the triviality principle. According to this principle, the small benefits that these millions stood to receive were simply irrelevant to the harm of the one person. Every person in this group of millions could then reject the triviality principle because it arbitrarily posits a threshold of relevance between harms, and therefore, unduly denies them benefits.

The point is that, if, in deciding whether or not the individualist

restriction should be dropped, Scanlon's primary concern is how this will affect contractualism's ability to restrict aggregation of the kind just mentioned, he is better off keeping the individualist restriction. Without it, any principle trying to restrict the kind of aggregation Scanlon is against will involve positing arbitrary thresholds of relevance between harms.

And so, contractualism is back in a familiar place - not being able to solve cases involving intermediate harms. So far it seems that the structural changes necessary for solving that problem give rise to other problems that are equally challenging. Contractualism is not out of trouble yet. There is still a Scylla and a Charybdis between which it must navigate. I turn now to the issue of how this can be done.

7. The Role of Generic Reasons in Contractualism

An important feature of contractualism is that, in order to determine whether a principle could be reasonably rejected by others, the standpoints which we must consider include not only those to whom justification is owed, that is, those who are affected most directly by our actions, but anyone who might or might not be able to reasonably reject the principle.²⁴ We must consider, not only the "consequences of particular actions, but also the consequences of the general performance or non-performance of such actions and the other implications (for both agents and others) of having agents be licensed and directed to think in the way that that principle requires."²⁵ Why is this so? One of the most obvious reasons is that the general authorization (or prohibition) of certain actions have implications which extend beyond the actual consequences of the actions of agents when they are performed. Because of this, we have to consider what consequences a principle would have if it were generally accepted. Scanlon claims that in doing so, "our assessment cannot be based on the particular aims, preferences and other characteristics of specific individuals."²⁶ This is so because "we cannot know, when making this assessment, which particular individuals will be affected by it in which ways (who will be affected by it as an agent required to act a certain way, who as a potential victim, who as a bystander, and so on)."²⁷ Instead, we must rely on commonly available information about what people have reason to want. Reasons of this sort are what Scanlon calls generic reasons.²⁸ In this section I will argue that, in addition to being an important part of the structure of contractualism, generic reasons are an important part of solutions to problems involving aggregation.

One might ask, if generic reasons are such an important part of contractualism, especially in helping it resolve a glaring problem, why have they not been brought up until now. The answer has to do with Scanlon's view about the kinds of cases involving numbers we have discussed so far. Scanlon believes that if the occurrence of a particular type of case is sufficiently rare, we do not, in considering what principles to follow in those cases, have to give much consideration to what implications those principles would have if generally followed.²⁹ Since the kinds of examples discussed in the first half of this paper are hypothetical and are fairly uncommon, Scanlon does not consider the aspect of generic reasons which, I will argue, is crucial for solving the aggregation problem.

The rareness of particular cases should not influence our consideration of generic reasons. Contractualism is a hypothetical contract theory about morality. It asks what principles anyone would accept, given the aim of finding such principles. As such, any example it considers should be viewed as hypothetical, whether its actual occurrence is common or not. How frequently certain kinds of cases occur may enter as a consideration of what rules should govern certain societies but this rationale seems rather conventionalist and rule-consequentialist in nature. It should not determine how any particular moral dilemma should be solved within a contractualist framework. This is the first substantial difference between Scanlon's view and my own. My contention is that, in discussing particular cases involving numbers, we must consider what implications any principle we use to solve those cases would have if generally followed.

8. Generic Reasons and Numbers

Generic reasons, I believe, add a new dimension to our understanding of cases involving numbers which is generally overlooked. When considering such cases, most people consider only the consequences for the people involved in that particular case. This is an understandable reaction given that, in cases where different groups of people are facing some harm, the numbers are the most salient feature of the case, and it seems that appealing to the numbers is good enough to determine the rightness of saving the larger group. What a contractualist must argue is that such problems are not mere math problems. Numbers do not provide a bare account of the rightness of saving the larger group. A principle which relies on numbers will only be acceptable if no

individual has a personal reason for rejecting it. Once it is acknowledged that justification to others counts twice; that is, in terms of the burdens imposed on the people who are most directly affected by the actions of an agent, and in terms of what individuals in general would have reason to want, a solution to problems involving aggregation presents itself.

The model I have in mind is roughly this: When confronted with situations involving aggregation, first, we have to consider the possible consequences of accepting or rejecting some principle for each person in the specific example. In doing so, we must hold true to the individualist restriction. We must consider only the reasons that individuals have for accepting or rejecting some principle. Second, we must consider the consequences for everyone of such a principle if it were generally followed. If such a principle would, in general, make things worse for individuals, then this is one consideration in favor of rejecting the principle. Again, we must be careful not to wander outside the confines of the individualist restriction. These two considerations make up the generic reasons in favor of or against certain principles. Finally, we must weigh all the reasons people have for rejecting a principle to see whose claims are actually the strongest. We must decide whether the generic reasons that an individual has for rejecting the principle are stronger than the generic reasons that any other individual has for accepting it.

This brings us to the second substantial difference between my view and Scanlon's. In order for Scanlon to accept this model, he will have to give up the view, discussed at the outset of the paper, that substantive burdens always trump non-substantive ones. This is because, as we will see, when we consider what implications a principle would have if it were generally followed, one particularly important consideration will be how it affects a person's chances of being saved if he ends up in a certain situation. Revising this part of Scanlon's view in order to solve his aggregation problem is not an ad hoc maneuver. There are already good reasons to deny this precedence of substantive over non-substantive burdens. One of them is that there could be cases where, on one side, a single person faces premature death and on the other, millions of people each face a 99% chance of dying prematurely. According to Scanlon's hierarchy of burdens, we should save the one person, since she is the only one who faces a substantive burden. The others face the non-substantive mere chance of a burden. But this cannot be right. If we saved the one person in this case, it is almost certain that millions of people would die. A theory which allowed this would be as implausible as a theory which allowed everyone in the universe to be mutilated in order to save one person. If Scanlon allowed substantive and non-

substantive burdens to be considered concurrently, instead of one having precedence over the other, he could avoid this implausible consequence, and also, as I will show, offer a better overall answer to his aggregation problem.³⁰

9. Cases

In order to see how the abovementioned method can be used to solve the aggregation problem, we need to see how it applies in specific examples. Here I will be considering both examples where the numbers of people in each group are unequal but the harms they face are the same and cases where the harms faced by each group are unequal.

First, consider:

Shipwreck. A ship explodes, sending three people flying in different directions. Two people land very close to each other, but the other person lands far away from these other two. As the captain of the rescue boat, you have two options. On your first option you can throw your (only) life preserver to the two people. If you do, these two people will be saved, but the other person will drown. On your second option you can throw the life preserver to this person, but if you do that, then the other two people will drown. What should you do?

Here it is fairly obvious that you should save the two people. What (may not) be so obvious, is what generic reasons people have for accepting a principle allowing that action. To determine what those reasons are, we should consider what, if agents were generally licensed to save the larger group, the chances would be that anyone who might end up in a situation like Shipwreck would have of being saved. In order to do this, consider any three (randomly selected) people who might end up in a similar situation. Since anyone could end up in this kind of situation, we should assume that 'people who might end up in a similar situation' picks out everyone.³¹ Since the chances of any given person out of three ending up in the smaller group is 1/3 and for that same person, the chances of ending up in the larger group is 2/3, each person would have a 2/3 chance of surviving if agents were generally required to save the larger group in such cases, but only a 1/3 chance of being saved if agents were required to save the smaller group. Since people in general would have reason to want a principle which gives them a better chance of being saved, such a principle, it seems, could not be reasonably rejected by anyone. One should notice that the single person in the smaller group also has these reasons, and although the harm he faces strengthens his

claim to be saved, if you were to save him and let the two drown, he could argue that, in saving him, you acted on a principle which actually gave him a worse chance of being saved, given his situation. It was only by luck that he ended up in the smaller group and was saved.

This example shows how contractualists could determine what agents who are faced with such situations are morally required to do. Those moral requirements will, of course, change depending on the specific features of each particular case. There may be cases in which the person who ends up in the smaller group had a greater chance of ending up by himself. In cases like Shipwreck, this is not true. In that case there is nothing different about any particular individual that would make it more likely that she would end up in the smaller group. But it does seem possible that this might happen and, when it does, whether the person in the smaller group should be saved instead of the people in the larger group will depend on whether everybody in general would have reason to accept a principle which allowed this. To see how these considerations might yield different results, we need to consider some more examples. Suppose that,

Sharks. Three surfers fall off their boards and will be eaten by sharks unless rescued. However, because one of these surfers is far away from the other two, you, the captain of the rescue boat, only have time to save one group. However, there is an additional feature to the case: because this one surfer frequently preferred to surf alone, instead of with friends, his chances of being alone in a single group were greater than his chances of being in the larger group. Who should you save?

Again, here you should save the larger group. The fact that the surfer frequently surfed alone does not seem to affect this decision in the slightest. Do the generic reasons favor this answer? One might argue that the generic reasons which favored your saving the larger group in Shipwreck cannot be the reasons in favor of saving the larger group in Sharks. In this case the single person in the smaller group could not argue, if you were to save him, that the principle allowing this gave him a worse chance of being saved. This is because his chances of ending up in either group were not the same as everyone else's. His preferences gave him a better chance of ending up alone, and therefore he has a stronger claim than anyone else to be saved. This line of argument, however, is mistaken. This is because, when we consider what implications a principle would have for everyone if generally followed, lone surfing is not part of the body of commonly available information about what people have reason to want. This body of information includes things like certain basic rights, health

care, etc. These are things that anyone would have reason to want.³² However, not everyone would want special privileges for lone surfers. This consideration is too particular to count as generic. So a principle allowing you to save him based on his preference for lone surfing is not what people in general would want. People in general would not want a principle which required an agent to save the lone surfer unless lone surfing was a trait commonly shared by all people, or perhaps had some commonly understood importance to people. But, since this is not the case, the surfer cannot use his situation as a reason for our saving him. Instead, the generic reasons favor the larger group. In general, a principle requiring the agent to save the larger group would protect everyone better, since if they were to end up in that situation, they would have a greater chance of being saved. However, there are cases where the generic reasons do favor the person in the smaller group. For example, suppose that:

Organs. Five patients will die unless they receive a much needed organ. One needs a heart, another, a kidney etc. You, the doctor have a choice to drug one of your healthy patients who is in the hospital for a routine checkup (and who happens to have the right tissue compatibility) and distribute his organs to each of these five patients. If you do, you will take one life, but save five. Otherwise, the one healthy patient will live, but the five ailing patients will die. What should you do?³³

This example has moral implications which are very different from those in either Shipwreck or Sharks. First of all, since people in general are more likely to be healthy patients than patients who need an organ transplant, and because things such as routine checkups are part of almost every person's life, any person would, in general, have reason to want a principle which prohibited an agent from killing the healthy patient. Perhaps this principle could be stated in terms of protecting the vulnerable. There is also a very general demand that doctors in particular not be licensed to harm the patients whom they are supposed to help. So the generic reasons against you killing the one to save the five include both the fact that people in general would not want agents to behave in this way, and a reason against having doctors in particular be licensed to do that kind of thing.³⁴ These generic reasons seem strong enough to create a moral requirement that the doctor not kill the healthy patient.

So far, I have suggested how contractualism can solve certain cases where different groups of people faced the same harm. An attractive quality of this method is that it can also be used in cases where the harms faced by the people in each group are different. Consider for example, a case in which you could either save one person from certain death or

two people from paralysis.³⁵ If you saved the two people from paralysis, the person in the smaller group could object that this imposed a certain burden on him, the burden of premature death. But anyone could object that if a principle allowing the agent to save the two from paralysis were generally implemented, this would, in general, give everyone a worse chance of a lesser burden. This is because, any one person out of three who might end up in this situation³⁶ would have a 1/3 chance of ending up in the smaller group by himself and face premature death, but a 2/3 chance of ending up in the larger group facing paralysis. Assuming that a 2/3 chance of paralysis is better than a 1/3 chance of death, any of these people would want a principle giving them this chance. Since such a principle requires the agent to save the one person, this is what he must do. Also, since this one person faces a greater harm than either person in the larger group, he has a stronger generic reason for wanting to be saved than either of these people. Since the generic reasons favor saving the one person, this is what is morally required of the agent.

However, what the agent is morally required to do changes if the numbers of people suffering the slightly lesser harm are great enough. If, for example, the choice is between saving one person from death or one hundred people from paralysis, the agent should save the larger group, for if agents generally acted in this way, any one person out of any hundred who might end up in such a situation would suffer the comparatively less bad 1/100 chance of death instead of a 99/100 chance of paralysis. In this case, although the substantive harm of the person in the smaller group is greater than anyone else's harm, it is not enough to outweigh both the substantive harms of any person in the larger group and the abovementioned generic reasons in favor of saving these people.³⁷

A more challenging type of case for contractualists arises when the harm that a single person faces is much worse than the harms which a much larger group of people face. Consider, for example, a choice between letting an innocent person, let's call him Jones, die so that a million people can be spared from some small harm such as a slight headache for an hour,³⁸ or saving Jones and allowing the million to suffer the headaches. Many will feel that it would be horrible to let Jones die so that we could spare any number of other people from a harm which, in comparison, seems insignificant to the one Jones faces. Do the generic reasons favor our saving Jones? One might argue that they are actually in favor of letting him die since, a principle generally allowing this would mean that for any one person out of any one million people who might end up in this situation, this person would have only a 1/1,000,000

chance of dying, but an almost certain (999,999 to 1) chance of suffering a slight headache. Which one is more preferable? Norcross suggests that it would be worse to suffer the slight headache. He invites us to imagine the following case which I will call:

Headache. You are settling down to spend the next twenty-four hours at home, reading, watching movies, eating and sleeping, when you feel the onset of a moderate headache. You know from experience that this headache will last for twenty-four hours, unless you take your favourite brand of pain-killer. Alas, the medicine cupboard is bare. However, the nearest pharmacy that sells your brand is only three miles away, less than a ten minute trip in your car. So, you jump in the car, purchase pain-killer, and spend a pain-free twenty-four hours. Were you irrational to do that?...Of course not. Suppose we add the following detail. You have just read an article in a reliable publication that claims that the type of car journey you are considering increases your chances of death over staying home, by one in a million. Does that change our original judgment about the rationality of your action? No. Most, if not all, of us were already aware of the risks of traveling by car, when we made our original judgment. Many of the things we do to improve our quality of life involve similar small risks of death [and]...many of them, such as driving (or walking) to the cinema to see a good movie...are clearly rational.³⁹

Since most of us routinely take such risks, they do not mean that much to us. Most of us, however, would want to avoid pain even if that pain were very slight. The generic reasons then, seem to favor letting Jones die since, any principle which allowed that would give everyone a better chance of a more preferable outcome. Are we morally required, then to let Jones die? We are not, because when we weigh the generic reasons of each individual in both groups as well as the generic reasons applying to everyone in general, Jones' burden (death) gives him a generic reason which outweighs both the generic reasons of any person in the larger group (a slight headache for an hour) combined with the generic reason (an almost certain chance of having a slight headache for an hour) which any individual who might end up in that situation would have if a principle allowing us to save Jones were generally implemented. Since the considerations in favor of saving Jones outweigh all other considerations, we are morally required to save Jones.

This method solves particular cases of the kind just mentioned in an intuitively appealing way. It is consistent with the intuition that any number of slight headaches would not be enough to create a moral requirement for an agent to let the one person die in order to prevent these headaches. We can see that, as the number of people with

headaches increases, the substantive burdens of any one person in that group remains the same, and the generic reasons which anyone could offer against our saving Jones do not change in any way that would be significant for any individual. For example, if the number of people facing slight headaches were increased to a billion, a principle which generally allowed the agent to save Jones from death and let these billion suffer their headaches, would mean that any person, if they ended up in that situation, would have a 999,999,999 to 1 chance of suffering a slight headache. Since the difference between this chance and the 999,999 to 1 chance (which we saw in the previous example), of suffering a slight headache makes almost no difference to any particular individual, the increase in numbers does not change the moral requirement to save Jones. In fact, as the number of people suffering slight headaches approaches infinity, the chance which any person, who might end up in such a situation, would have of suffering a slight headache approaches 100%. But this does not make any difference since, even if it could reach 100%, this would still not be a strong enough reason to ignore Jones, since a 100% chance of suffering a slight headache for an hour does not give anyone a reason that can outweigh Jones' reason.

We also see that there is nothing about this solution which violates the transitivity involved in comparing different kinds of harms. We saw in section 6 that a principle which allowed an agent to save Jones which relied on the claim that small harms like slight headaches, are not relevant to greater harms such as death, denies the transitivity and continuity assumptions, and would involve an arbitrary threshold of relevance between harms. But the argument I have given does not violate transitivity or continuity. A contractualist can even admit that, if the numbers of people suffering slight harms were great enough, letting an innocent person die in order to spare them from those harms might be better than allowing them to suffer the slight headaches. But since contractualists do not rely on the goodness of outcomes to solve moral problems, this fact would not, according to contractualism, be enough to determine what we ought to do in those situations.

Here I will address one more worry. Scanlon considers the idea that if cases like the one involving Jones arose frequently, the masses of people suffering headaches could appeal to what he calls intrapersonal aggregation — the aggregation of small inconveniences within an individual life, in order to outweigh the reasons a single person facing death might offer for our saving him.⁴⁰ We can certainly imagine possible worlds where we are frequently faced with the choice to save one person from death or billions from slight headaches and if we kept allowing the

headaches, billions of people would continually suffer throughout their lives. Scanlon is worried that this kind of situation would fall within the range of cases where the aggregated pains of the many are relevant to the severe burdens of the few, and since we have to consider, in each individual case, what the consequences of our actions would be if they were regularly performed, one might think that the right thing to do in a case like that of Jones would be to let him die and prevent the headaches. Of course Scanlon rejects this conclusion since he does not think cases like Jones arise frequently enough for us to consider what would happen if a principle favoring Jones over the masses were frequently implemented. However I do not have this luxury. I have claimed that the actual frequency of hypothetical cases should not influence how we consider which principles are acceptable and so it may seem that I am committed to the implausible view that we should always save the single person from death even if this will mean constant suffering for the masses.

However, I don't think I am committed to this. To see why, first, imagine one scenario in which such cases arise frequently, but where the billions of people suffering slight, one-hour headaches are different each time a dilemma arises. Suppose, for example, that after saving Jones and letting everyone else in the world suffer slight headaches with no other negative consequences, another person, Smith is in the same danger. However, this time, saving Smith will not mean more pain for everyone else here on Earth. Instead, let's suppose that saving Smith will mean slight one-hour headaches for billions of people on planet X. As long as the headaches that result are suffered by different people, it seems plausible that we should save the single person from death. Thus we can frequently follow the principle that would allow us to save Jones without worrying about the intrapersonal aggregation of the masses giving them a reason to reject that principle. Scanlon's worry is the result of his confusing a principle which, if followed regularly, would have accruing negative consequences, and a principle which explicitly allows those negative consequences. The latter would be a principle which allowed the same people to suffer continuously by adding small harms to their already diminished welfare, and it seems like anyone would have good reason to reject such a principle.

10. Conclusion

I have argued that contractualism can deal with cases involving numbers if it considers the general implications of principles for everyone, not

just in cases that are common, but in any hypothetical case. It also must allow substantive and non-substantive burdens to be considered together, instead of giving substantive burdens precedence over non-substantive ones. The method I have suggested for solving Scanlon's aggregation problem is based on the idea of acting in accordance with principles which any individual would have good reason to want. Since, in general, a reasonable individual would want to have a better overall chance of being spared harm, it would be reasonable for her to reject a principle that would reduce her chances of being saved from that harm. An example of such a principle would be one which allowed a potential saver to save a smaller group of people rather than a larger group from suffering the same harm. Since this principle would, if generally followed, reduce the chances of being saved for everyone, every individual has reason to reject it, and accept an alternative principle which increases their chances of being saved. This way of dealing with numbers also covers cases where the harms faced by different groups are unequal. Here, the consideration that any individual would want a better chance of suffering a lesser burden also applies. The general acceptance of a principle meeting these standards requires that a potential saver act in different ways depending on the specifics of his situation. He may be required to save the people in the larger group if the harm they face is not as bad as the harm that those in the smaller group face, but still quite serious. He may be required, on another occasion, to save the smaller group if their harms would be much more serious, or if the difference in numbers between the groups is not very great. This method, rather than relying on states of affairs or on impersonal reasons, relies on principles that no individual would reasonably reject. This makes it a solution that is intuitively appealing and, at the same time, consistent with the basic idea of contractualism.

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Notes

1. Scanlon (1998) p. 197
2. See Scanlon (1998) p. 142.
3. I will generally be using the word 'Contractualism' to mean Scanlon's Contractualism.
4. Ibid. p.230.
5. Norcross (2002), Miller (2002), Parfit (2004), Raz (2004).
6. See Parfit (2004).
7. F.M. Kamm has made this same suggestion for similar reasons. See her "Owing, Justifying and Rejecting" *Mind* 111: 323-354.
8. Scanlon elaborates on this idea in his reply to Parfit (2004).
9. Scanlon p. 239-240.
10. Gauthier (2003), Gibbard (2003), Kamm (2002), Pettit (2000), Raz (2004) Thomson (1990).
11. Ibid. p. 240-241.
12. Raz p.66 [italics added].
13. Raz, p.59.
14. Ibid.
15. Ridge, p. 475.
16. A point emphasized by Suikkanen (2005).
17. Norcross (2002) p. 307.
18. Scanlon (2004) pp. 131
19. Ibid.
20. Parfit, pp. 85.
21. Norcross (2002), (1999) .
22. Norcross (2002) p. 307.
23. Ibid. p. 308.
24. Scanlon (1998) p. 202.
25. Ibid.
26. Ibid.
27. Ibid.
28. Some confusion may arise here as to how agent-relative reasons based on a principle's particular effects on an individual differ in kind from reasons relying on concerns such as how people would be affected if that principle were generally accepted. This distinction, however, is misleading. Generic reasons include both: a principle's effects on each individual and the general consequences of this principle for persons in general. Whenever we consider possible reasons for rejecting or accepting principles, eligible reasons will include both of these considerations. And so generic reasons can be seen as a conjunct of the two.
29. Ibid p. 238
30. In discussing the way in which substantive and non-substantive burdens strengthen reasons for or against principles, I will be appealing to our intuitions. A more thorough account of how these different kinds of burdens interact is an issue worth pursuing but is beyond the scope of this paper.
31. One might object that people who never travel on boats do not count as part of this class, but that is not true. Even if a person has never traveled by boat, and does not plan on it, this does not mean that he could never end up in such a situation.
32. The serious skeptic will ask how we could possibly know what is on this list. Is there always a way of determining what it would be most reasonable to want? I believe that, ultimately, this list will have vague boundaries and there will be difficult boundary cases. However, hard cases seem to pose a challenge for every theory. There is no reason why they should pose a unique problem for contractualism.
33. I take this example from Harman's 'Ethics and Observation' in *Moral Discourse and Practice: Some Philosophical Approaches*, ed. Stephen Darwall, Alan Gibbard, Peter Railton (New York: OUP, 1997).
34. Why this distinction? Well, as it turns out, the fact that doctors in particular should not harm healthy patients is not the only generic reason one could offer for him not cutting up the healthy patient. Even if some random person who never took the Hippocratic oath, and had read a handbook on how to surgically remove organs sneaks into the room and kills the healthy patient, anyone could reject a principle allowing this since any person would, in general, have more of a chance of ending up in the healthy patient's situation than in the shoes of one of the five unhealthy ones. So I think there is a good reason to mention the distinction.
35. In this case, and from this point on, the reader should assume that the nature of the cases discussed is similar to that of Shipwreck or Sharks, in that there are no particular features, as there were in Organs.
36. Again, here I am assuming that this means everyone.
37. Again, here I am relying on the intuition that the fact that a principle allowing agents to save the single person from death, instead of 100 people from paralysis, would give anyone who ended up in that situation a 99% chance of being paralyzed, is enough to overcome the fact that the one person faces a harm which is slightly less severe.
38. An example I owe to Alistair Norcross. See his 'Great Harms from Small Benefits Grow' *Analysis* April, 1998: p. 152-158.
39. Ibid. p. 154.
40. Scanlon does not actually consider Norcross's headache case, but

one similar to it involving an accident in a TV transmitter room. We are asked to imagine whether it would be right to stop the TV show for fifteen minutes in order to save the single person from an hour of severe pain, or allow the millions watching TV to continue enjoying themselves. See p. 235 of *What We Owe to Each Other*.

AN INTERVIEW WITH MICHAEL WALZER

Winter 2006
Princeton University

Each year The Dualist includes an interview with a modern philosopher chosen by the staff. This year, Michael Walzer graciously agreed to answer questions posed by The Dualist and by the Stanford Philosophy Department. Michael Walzer has written on a wide range of topics in political and moral philosophy, including just war theory, economic justice, nationalism and ethnicity, pluralism, and tolerance. Among his most influential publications are Just and Unjust Wars (Basic Books, 1977), Spheres of Justice (Basic Books, 1983), and Arguing about War (Yale University Press, 2005). He is also editor of the political quarterly Dissent.

Debra Satz:

Whether and how do the arguments in Just and Unjust Wars apply to the “war” on terror?

Michael Walzer:

Insofar as the “war” on terror is mostly police work, they don’t apply: the relevant issues have to do with civil liberty and executive authority, not with justice in the sense that the word has in just war theory. But there are useful comparisons to be made between the “rules of engagement” for soldiers and for police—for example, the rules with regard to innocent bystanders are stricter for police than for soldiers in battle, and it would be interesting to ask why that is so. But when the “war” on terror takes the form of a real war, as in Afghanistan, then all the arguments about just and unjust wars apply.

Satz:

On your theories in Spheres of Justice, what do you think of the recent Supreme Court decision on campaign finance?

Walzer:

I have a mixed view of campaign finance. On the one hand, it is important to make sure that money doesn’t distort the results of democratic elections (as it commonly does), and this clearly requires fairly strict regulation of campaign contributions. On the other hand, the giving of time, energy, and modest amounts of money to a candidate or a party is an important way of registering the intensity of one’s