Moral Contractualism and the Numbers Problem

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Abstract: This paper offers a solution to the Numbers Problem within the general framework of moral contractualism. Its central aims are three — to rescue contractualism from its longstanding problem with interpersonal aggregation; to demonstrate how reasoning within a nonconsequentialist framework like contractualism can accommodate the relevance of numbers; and to provide a rationale for accepting a partially aggregative principle as the correct approach to issues of interpersonal trade-offs.

1. Introduction

Suppose that we can, at no cost to ourselves, rescue either one stranger from death or a greater number of others from the same fate (Life vs. Lives). What should we do? As far as commonsense morality is concerned, the answer is straightforward: We ought to save the greater number.¹ How this commonsense verdict is to be justified, however, has proven to be a surprisingly difficult issue, raising challenges for both consequentialist and contractualist theories of morality.

Standard forms of consequentialism supply us with an initially appealing rationale. We ought to save the greater number because only by so doing will we maximize the sum total of aggregate well-being. Yet this aggregative rationale itself leads to problems in other cases of interpersonal trade-offs. For example, in a choice between saving a person’s life and preventing a large number of minor headaches (Life vs. Headaches), the rationale calls for us to leave the single person to die, provided that more well-being in the aggregate is generated by the alleviation of minor headaches.

Aggregative reasoning of this kind has long been viewed by nonconsequentialists with suspicion.² In its place, leading nonconsequentialists have put forward the suggestion that the fundamental mode of moral justification is individualist rather than aggregative in character.³ In contemporary ethics, the fullest development of such an individualist approach to morality is found in the contractualist theory of T.M. Scanlon. Scanlon institutes into his moral contractualism the condition that the justifiability of a moral principle depends only on its implications for single persons, and not on its implications for collections of people. Under this Individualist Restriction, as the condition has come to be known, considerations of aggregate well-

being do not in themselves carry any justificatory weight in determining the correct principles that regulate our interpersonal conduct. The Individualist Restriction occupies an important place within moral contractualism; as Scanlon says, it is “central to the guiding idea of contractualism, is also what enables it to provide a clear alternative to utilitarianism and other forms of consequentialism.”

The trouble, as Scanlon himself acknowledges, is that contractualism appears to go too far in the opposite direction. No doubt the theory’s individualist focus handles well the case of Life vs. Headaches, yet it also leaves us without a ready explanation for our judgment in Life vs. Lives, where numbers really do seem to matter. Scanlon’s own solution to this conundrum, in the form of his tie-breaking argument, has persuaded few philosophers, and contractualism’s treatment of interpersonal aggregation has remained one of the most heavily criticized aspects of the theory till this day.

In this paper, I aim to develop a novel solution to the Numbers Problem within the individualist framework of moral contractualism. The solution I offer unfolds in several stages. I begin, in Section 2, by presenting a brief overview of the contractualist framework, with an eye towards clearly locating the Individualist Restriction within that theoretical structure. Next, in Section 3, I first disarm two lines of reasoning which threaten to undermine, from the very outset, a contractualist vindication of interpersonal aggregation, and I then consider and reject Scanlon’s attempted solution to the Numbers Problem. This paves the way for the presentation of my own solution in Sections 4 and 5. In these sections, I argue that contractualist reasoning leads to the endorsement of the Limited Aggregation view, which instructs us to take aggregative considerations into account in some cases of trade-offs but not in others, and thereby captures our divergent intuitions in Life vs. Headaches and Life vs. Lives. Along the way, I mark and make use of several distinctions whose significance for contractualist theorizing has not, in my view, been fully appreciated.

If successful, my discussion taken as a whole secures several important results. First, it rescues moral contractualism from the theory’s long-standing problem with interpersonal aggregation. Second, it demonstrates how, starting from an individualist mode of justification, we can nevertheless arrive at a view that allows the numbers to count without directly counting the

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5 Indeed, Scanlon himself has voiced dissatisfaction over his treatment of interpersonal aggregation. As he later remarks, “[w]hen I was finishing my book I was under no illusion that I had solved the problem of aggregation, and the part of the book devoted to this question was the part that seemed to me least satisfactory.” T.M. Scanlon, “Replies,” Social Theory & Practice 28 (2002): 337-58, p. 354.
numbers. Third and finally, it articulates a theoretical rationale for accepting Limited Aggregation as the correct general approach to issues of interpersonal trade-offs.

2. An Overview of Contractualism

In contemporary ethics, the contractualist moral theory developed by Scanlon has distinguished itself as one of the most systematic nonconsequentialist accounts of interpersonal right and wrong, providing a powerful alternative to its consequentialist rivals. At the heart of Scanlon’s theory lie three distinctive theses about the subject-matter of interpersonal morality:

1. The guiding ideal of interpersonal morality is that of justifiability to each person.
2. The substantive account of justifiability to each person is given in terms of the reasonable rejectability of principles that regulate our interpersonal conduct.
3. The determination of a principle’s reasonable rejectability is subject certain constraints, chiefly among which is the Individualist Restriction.

Contractualism, as it is here understood, is first and foremost a reductive doctrine. The theory reduces normative facts of one kind, namely, facts about the deontic status of actions, to normative facts of another kind, namely, facts about the reasonable rejectability of conduct-governing principles. It thus turns out the core claim of contractualism is one about the metaphysics of normativity. Notably, the theory seeks to explain facts about right and wrong not in some non-normative terms, but in terms of the normative reasons each of us has for accepting or rejecting principles that serve to regulate our conduct and behaviour.⁷

It is worth observing that contractualism does not claim its account of right and wrong exhausts the whole of morality. Instead, the theory is meant to cover only the important domain of interpersonal morality, which centrally has to do with “our duties to other people, including such things as requirements to aid them, and prohibitions against harming, killing, coercion, and deception.”⁸ Scanlon dubs this part of morality “what we owe to each other,” but he is adamant that some of our reasons for action fall outside of its scope.⁹ For example, we have reasons not to flood the Grand Canyon or turn it into a site for trash disposal, and some of these reasons obtain simply because the Grand Canyon is impersonal valuable, and not just because its destruction would negatively affect the interests of persons. That contractualism recognizes the reality of impersonal values is an important point to keep in mind, and I will return to it in Section 5 below.

At its core, contractualism tells us that an act is wrong if its performance under the circumstances would not be justifiable to each of those affected. The theory further advances a substantive account of justifiability, one that holds that an act fails to be justifiable if its performance would

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⁸ Scanlon, *What We Owe to Each Other*, p. 6.
⁹ Ibid., pp. 171-77 and p. 219.
be disallowed by conduct-regulating principles that no one could reasonably reject. Ultimately, the theory locates the moral wrongness of an action in there being an objection of a certain kind to principles that would permit its performance. Here, three aspects of this objection model of moral wrongness call for further discussion.

First, objections to a principle have to be reasonable, in the sense of being supported by good reasons. But the mere presence of a reasonable objection does not all by itself make a principle reasonably rejectable. After all, even good reasons for objecting to a principle need to be balanced against reasons in the principle’s favor. An objection renders a principle reasonably rejectable only if the objection in question is sufficiently forceful.

Second, the forcefulness of a reasonable objection is to be assessed in a comparative manner. This condition is meant to imply that, given a choice between two competing principles, even if one stands to be burdened a great deal more under Principle 1 than Principle 2, one’s objection to Principle 1 need not amount to a reasonable rejection if the alternative principle would impose an even greater burden on someone else. Thus, how forceful an objection is turns on what alternative principles there are and what objections these alternative principles confront.

Third, and important for our purposes, the assessment of a principle’s reasonable rejectability is crucially subject to the constraints imposed by the Individualist Restriction, according to which:

**Individualist Restriction:** Whether a principle is reasonably rejectable depends only on the objections raised by single individuals on the basis of their respective personal reasons for objecting to that principle and its alternatives.

An individual’s personal reasons for objecting to a principle are those considerations having to do with the principle’s implications for her own well-being, interest, or status. Impersonal reasons, such as those having to do with people’s welfare in the aggregate or the grandeur of some natural wonder, do not themselves provide grounds for reasonable objection, since they go beyond the reasons an individual can cite on her own behalf for how she wants to be treated by others.

Thus understood, the Individualist Restriction bars interpersonal aggregation on two distinct fronts. First, by limiting the grounds of reasonable objection to people’s personal reasons, the Individualist Restriction bars consideration of aggregate well-being from directly figuring in the content of an individual’s objection. Second, by insisting that only objections from single individuals may matter for the purpose of reasonable rejection, the Individualist Restriction bars the aggregation of objections across different individuals.

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11 Ibid., 219-20.
The Individualist Restriction flows naturally from contractualism’s most central and most attractive idea, that of justifiability to each person; it gives expression to the distinctively nonconsequentialist thought that an act is wrong only if there is someone regarding whom acting in such a way treats her in an unjustifiable manner. Additionally, the Individualist Restriction affords contractualism clear advantages as a general framework within which to develop an account of interpersonal aggregation. In *Life vs. Headaches*, for instance, the Individualist Restriction provides a principled basis for blocking the problematic transition from the axiological claim that preventing the many headaches maximizes aggregate welfare to the deontic claim that we ought to therefore save the greater number.

The challenge, as evidenced by the case of *Life vs. Lives*, is for contractualism to explain why we should nevertheless save the greater number in at least some cases of interpersonal trade-offs. I begin to meet this challenge in the next section.

### 3. Clearing the Ground

It is tempting to think that the entire project of vindicating interpersonal aggregation within the contractualist framework is doomed to fail. After all, contractualism as a moral theory embraces a mode of justification that is wholly antiaggregative across persons. As we saw in the preceding discussion, contractualism holds that only the personal reasons each individual can cite on her own behalf may matter for determining the correct principles that govern our interpersonal conduct. Given this, any principle of interpersonal trade-offs that allows numbers to count seems to run afoul of the theory’s signature commitment to the Individualist Restriction.

While this line of reasoning is persuasive at first glance, it is guilty of what we may call a level confusion. Contractualism is indeed antiaggregative at the level of justification, in the sense that the justifiability of a moral principle depends only on the personal reasons of single individuals. What the above reasoning overlooks, however, is that an individual might have strong personal reasons for favoring a principle which, as part of that principle’s content, mandates us to sometimes take into account the relevance of numbers. We should therefore clearly distinguish between two levels at which aggregative considerations might enter within the contractualist framework: They might enter at the level of justification, as reasons for accepting or rejecting some principle of interpersonal trade-offs over its alternatives, or they might enter at the level of content, as considerations a principle tells us to take into account in adjudicating cases of interpersonal trade-offs. The Individualist Restriction bars aggregation at the level of justification and not at the level of content.

Of course, whether or not individuals have strong personal reasons in favor of adopting a principle that allows for some measure of interpersonal aggregation is a matter for substantive debate, and I will go on to argue for an affirmative answer. For now, the important thing to keep in mind is that the presence of such personal reasons is not ruled out by contractualism from the outset.
Turning next to the case of Life vs. Lives, consider a situation in which we can rescue either A from death or each of B and C from the same fate. It is tempting to reason about the situation in the following way. Each of B and C stands to lose his life if left unaided. But A’s well-being is equally at stake. In the light of the Individualist Restriction, the personal reasons given by the well-being of B and C may not be combined. Nor may the impersonal worseness of the death of two people be directly cited as grounds for saving the larger group. Therefore, the reasoning concludes, the personal reasons on each side are perfectly balanced, leaving us without a decisive basis for saving the greater number.

Despite its seeming plausibility, the above line of reasoning overlooks an important factor. It is a key feature of contractualism that considerations of individual well-being do not exhaust our grounds for reasonable objection. This is as it should be, since the personal reasons we have for how we want to be treated by others are many and varied. No doubt an action can be unjustifiable to us because it diminishes our well-being, but an action can also demean us, disrespect us, or treat us unfairly, and these are all forms of treatment to which we can reasonably object.

Indeed, Scanlon’s own solution to the Numbers Problem appeals to considerations that go beyond a simple concern for individual welfare. Regarding the case of Life vs. Lives, Scanlon has the following to say:

[Either member of the larger group might complain that [a principle which permits us to be insensitive to numbers] did not take account of the value of saving his life, since it permits the agent to decide what to do in the very same way that it would have permitted had he not been present at all... The presence of the additional person [under such a principle] ... makes no difference to what the agent is required to do or to how she is required to go about deciding what to do. This is unacceptable, the person might argue, since his life should be given the same moral significance as anyone else’s in this situation...”

Scanlon’s proposal, in essence, is that giving equal moral significance to everyone’s life requires that when the competing interests of A and B are evenly balanced, the additional presence of C should make a difference by breaking the tie in favor of saving the larger group.

Scanlon’s tie-breaking argument, however, immediately confronts two serious worries. First, if our reason for rescuing the larger group lies in a concern that each individual’s presence should

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12 Scanlon, What We Owe to Each Other, p. 217. See especially Scanlon’s discussion and dismissal of what he calls “welfarist contractualism.”
make a difference to whom we are to save, then it is consistent with satisfying this concern that, rather than saving B and C over A outright, we should employ the device of a weighted lottery, in which the presence of each individual makes a difference by affecting people’s chance of being saved.\footnote{14}

Second, it is unclear how Scanlon’s proposal can account for the intuition that, as the disparity in numbers increases between the two competing groups, we commit a greater wrong if we fail to save the larger group. For whether we are confronted with a choice between saving one life and two others or between saving one life and one million others, Scanlon’s tie-breaking argument generates individual objections with the same force against rescuing the smaller group.\footnote{15}

Worse still, Scanlon’s proposal runs into trouble when we try to generalize it to cases where the harms faced by individuals are unequal in magnitude. Consider a case where we can save either a person’s life or each of a large number of people from a slightly lesser harm, say, permanent paraplegia (\textit{Life vs. Paraplegias}). Intuitively, we should forgo the life-saving option if sufficiently many paraplegias can be thereby avoided. In order for the tie-breaking argument to gain a foothold in this case, however, we must first grant that several individuals’ interests in avoiding paraplegia may \textit{together} create a tie with a competing interest in avoiding death. This is because a single person’s interest in avoiding paraplegia, by itself, is insufficient for this purpose. At this point, a problem emerges for Scanlon. We are right to wonder why the tie-breaking argument does not carry over with equal success to the case of \textit{Life vs. Headaches}. In other words, what is to prevent a tie from being created between several individuals’ interests in avoiding a minor headache and a competing interest in avoiding death, with the result that the additional presence of people facing headaches may now break the tie in favor of saving the greater number?

While Scanlon does not address this problem head-on, his discussion does contain a suggestive proposal. Here is the key passage:

\begin{quote}
[I]t seems that our intuitive moral thinking is best understood in terms of a relation of "relevance" between harms. 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 greater 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,
\end{quote}

\footnote{15} Of course, as the disparity in numbers increases, more individuals are in a position to raise an objection under Scanlon’s tie-breaking argument. But since the force of individual objections may not be combined under the Individualist Restriction, this fact cannot account for the intuition at issue.
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.\(^{16}\)

If we incorporate the distinction between relevant and irrelevant harms into Scanlon’s tie-breaking argument, then Scanlon’s proposal, in effect, is that only competing harms that are relevant may aggregate to create ties, and only harms that are relevant may perform the function of tie-breaking.

I have several misgivings about Scanlon’s proposal even in its improved form. First, it is plainly not enough to merely assert that there is a normatively significant distinction between relevant and irrelevant harms within the context of interpersonal aggregation. What we need is a justification for maintaining that the distinction holds the kind of normative significance that Scanlon in the quoted passage says it holds. But this is a justification that Scanlon nowhere provides.

Second, if Scanlon is right in saying that we do need to take into account the number of relevant harms in deciding which group to save, then it needs to be shown that this kind of aggregation is consistent with the strictures imposed by the Individualist Restriction. Once again, this is an explanatory burden which Scanlon fails to discharge. But until such an explanation is given, the distinction between relevant and irrelevant harms remains unavailable to contractualism as a fix to the theory’s problem with numbers.

Third and finally, if we do succeed in developing a justification for allowing only relevant claims to aggregate, and if we further succeed in showing that this justification is compatible with contractualism’s Individualist Restriction, then the tie-breaking argument simply becomes redundant. We can then directly appeal to this justification in vindicating interpersonal aggregation within the general framework of moral contractualism, without resorting, in a roundabout way, to the reasoning of the tie-breaking argument. My goal in the next two sections is to unearth precisely such a justification.

For ease of exposition, I will call the principle which mandates us to always maximize aggregate well-being in deciding whom to save Pure Aggregation. The diametrically opposing principle, which mandates us to always satisfy the individually strongest interest in trade-off situations, irrespective of the number of competing interests that are also present, I will call Pure Antiaggregation.

To preview, the argument in what follows develops in two major steps. First, in Section 4, I articulate a contractualist rationale for rejecting the dictates of Pure Aggregation. The challenge, however, is to ensure that such a rationale does not overgeneralize in ways that preclude us from

\(^{16}\) Scanlon, *What We Owe to Each Other*, pp. 239-40. Scanlon here draws on ideas from Kamm. See Kamm, *Morality, Mortality Volume 1*, chapters 8-10.
being sensitive to numbers in cases such as *Life vs. Paraplegias*. Next, in Section 5, I put forward what I call the argument from equal consideration in favor of saving the greater number in cases like *Life vs. Lives* and *Life vs. Paraplegias*. The argument seeks to establish that individuals have strong personal reasons, based on the ideal of equal consideration, for rejecting the dictates of Pure Antiaggregation. It will thus emerge from my discussion that what contractualist reasoning supports is the Limited Aggregation view, which avoids the reasonable objections to both of its alternatives.

4. Normative Disabling

The contractualist case against Pure Aggregation might seem very straightforward. In thinking about the case of *Life vs. Headaches*, contractualism’s Individualist Restriction focuses our attention on the personal reasons each individual can cite on her own behalf for wanting to be saved. Since an individual’s interest in avoiding death is obviously weightier than any one person’s competing interest in avoiding a minor headache, we are straightforwardly led to the conclusion that we should save the life of the single person, irrespective of the aggregate well-being generated by the alleviation of minor headaches.

But this simple way of diagnosing the defect of Pure Aggregation lands contractualism in a serious problem; it disables contractualism from discerning any morally relevant difference between *Life vs. Headaches* and *Life vs. Paraplegias*. After all, a person’s interest in avoiding paraplegia, too, is less weighty than a competing interest in avoiding death. If contractualism is to have any hope of capturing the correct verdict in the latter case, we need a more nuanced rationale for rejecting Pure Aggregation.

To this end, consider two types of conflict between our practical reasons. In the first, a practical reason may carry less normative force than a conflicting reason, and it is in this sense outweighed. An outweighed reason, however, need not lose its normative force as a genuine reason. For instance, I have a stronger reason to save A’s life rather than prevent B’s paraplegia, but this does not mean B’s interest in avoiding paraplegia is a normatively irrelevant consideration.

But our practical reasons can conflict in deeper ways. In certain contexts, a consideration which typically constitutes a reason for action can be robbed of its normative force altogether. The following example provides one illustration:

*Rare Stamp*: A rare stamp is on sale at a neighborhood shop, with a going price of $900. Being an avid stamp collector, I correctly judge that acquiring the stamp would greatly improve the quality of my collection. Money, however, is tight, so I immediately begin to look for ways to obtain the necessary fund. After exhausting all available avenues to no avail, it occurs to me that I am the beneficiary of my uncle’s will, who is happy and
flourishing at the age of seventy-two. Hastening the death of my uncle, if I so choose, will allow me to secure my inheritance early.\textsuperscript{17}

Do I have a reason to bring about the death of my uncle under the prescribed circumstances? I have the clear intuition that the answer here is No, and I think we should take this intuition at face value. Even if I am in urgent need of money to further some hobby project of mine, the fact that I can obtain the necessary fund only by hastening the death of my uncle — say, by hiding his asthma medication behind a shelf in the attic — is not a reason for me to prematurely end his life.

In saying this, I do not mean to suggest that one’s interest in furthering one’s own projects is not typically reason-providing. Rather, my contention is that a consideration which is typically reason-providing can lose its normative force in certain contexts. When this happens, we may say that the consideration in question is disabled, which differs from its being simply outweighed.\textsuperscript{18}

It might help our understanding of normative disabling in the practical domain by considering a seeming analogue in the epistemic domain, in the form of undercutting defeaters. Suppose that as I wander through a gallery, I chance upon a room whose walls appear to me as if they are painted blue. Typically, my perceptual experience that the walls are painted blue is a good reason for me to believe that the walls are indeed painted blue. But suppose that I am later informed by a gallery staff that the room I chanced upon is illuminated in such a way that ensures the walls appear blue whatever color they are painted. In view of this change in my evidential circumstance, the reason-giving force of my perceptual experience is undercut; the experience is no longer a reason for me to believe that the walls are painted in the color that I perceive.\textsuperscript{19}

The general point to which I am calling attention is that the reason-giving force of a consideration is not invariant across contexts. This is true of reasons for belief as well as reasons for action. Now, what explains the occurrence of disabling in the practical domain? Here is a proposal that I find attractive. When a consideration which is typically reason-providing is disabled, I suggest this is

\textsuperscript{17} The case draws its inspiration from one presented by Scanlon. See Scanlon, What We Owe to Each Other, p. 156.

\textsuperscript{18} We should further distinguish normative disabling from the phenomenon of reasons being excluded. The pioneering work on exclusionary reasons is of course due to Joseph Raz. Joseph Raz, Practical Reasons and Norms (Oxford: Oxford University Press, 1999), Chapter 1. Raz defines exclusionary reasons quite broadly, as any second-order reason not to take some first-order reason into account in one’s practical deliberation. Importantly, an excluded reason is nevertheless a genuine reason, albeit one that should not be taken into account in an agent’s deliberation. By contrast, when the normative force of a consideration is disabled, it is no longer a reason at all under the circumstances. To see how disabling can come apart from excluding, consider a case in which my psychology is such that I am easily and consistently misled by the reason-giving force of my own interest as compared to the interests of others. In certain contexts, I might have a second-order reason not to take my prudential concerns into account in my deliberation, so as to avoid the distorting effects of my own psychology. But this need not imply that my own interest is normatively disabled under the circumstances.

because the presence of some value makes it inappropriate for the consideration to weigh against the value in question.\(^\text{20}\)

Consider, again, the case of *Rare Stamp*. There, the improvement of my stamp collection runs up against the preservation of my uncle’s life. If you, like me, think that I do not have a reason to end my uncle’s life under the circumstances, you are apt to wonder why. After all, such an improvement does give me a reason to adopt other means instrumental to its realization, such as taking out a short-term loan or calling up a friend for assistance.

On the proposal I am here advancing, disabling occurs because the value of human life sets certain limits on what kind of benefit may appropriately weigh against a life’s preservation; it is inconsistent with the value of human life for the improvement in the quality of stamp collection to count in favor of bringing about a person’s death. No such inappropriateness exists when the option under consideration is instead taking out a short-term loan, since this option does not similarly put anyone’s life in serious jeopardy.

This account of disabling, I believe, holds important lessons for how we should think about the issue of interpersonal aggregation. In deciding between saving a person’s life and curing a large number of headaches, each person’s interest in avoiding a minor headache, much like an interest in improving one’s stamp collection, is simply too trivial to ground a reason in favor of leaving another person to die. In other words, the reason-giving force of such a minor interest is disabled in a life-and-death context, for the value of human life makes it inappropriate for the alleviation of a minor headache to weigh against another person’s survival.

A proper contractualist analysis of *Life vs. Headaches* would then run as follows. It is true that preventing the many headaches generates more well-being in the aggregate. But, under the Individualist Restriction, aggregative considerations do not themselves provide grounds for reasonable objection; only personal reasons matter. Now, Pure Aggregation instructs us to forgo the life-saving option in *Life vs. Headaches*. Is such a principle reasonably rejectable? Yes. But not for the simple reason that an interest in avoiding death is weightier than any competing interest in avoiding a minor headache. Rather, the reason is that an interest in avoiding a minor headache is one whose normative force the value of human life disables. By allowing these disabled interests to count, the person facing death may rightly object that Pure Aggregation fails to properly respect the value that her life has.

This way of rejecting Pure Aggregation enables contractualists to discern a key difference between *Life vs. Headaches* and *Life vs. Paraplegias*. In the former case, the reason-giving force of each person’s interest in avoiding a minor headache is wholly disabled. Consequently, no one

facing a minor headache is in a position to raise a *reasonable* objection if we do not take her interest into account at all in our process of adjudication; her interest is in this sense normatively *irrelevant*.

By contrast, while an individual’s interest in avoiding permanent paraplegia is less weighty than a competing interest in avoiding death, it is nevertheless weighty enough to be a relevant consideration, one that retains its reason-giving force even in a life-and-death context. As a result, an individual who stands to become permanently paraplegic deserves a hearing within contractualist reasoning; the possibility of its being unjustifiable to her to choose the life-saving option remains open.

Before I proceed, let me briefly note one particularly attractive feature of my contractualist rejection of Pure Aggregation. Too often, in thinking about cases like *Life vs. Headaches*, noncontractualist critics of Pure Aggregation freely move from the claim that a single headache is a normatively irrelevant harm because it is so trivial to the conclusion that a large number of headaches are too normatively irrelevant. But when this transition is made in the absence of an explicit commitment to contractualism’s Individualist Restriction, it contains a highly questionable assumption, namely, if some harm considered on its own is trivial, then an aggregation of such trivial harms must be itself trivial.21

On the present proposal, by contrast, the aggregate well-being generated by the alleviation of many headaches is irrelevant, not because it is trivial, but because the Individualist Restriction limits our attention to only the personal reasons each individual can cite on her own behalf for wanting to be saved. For this reason, a contractualist can happily grant the axiological claim that a non-trivial amount of aggregate well-being is produced if we prevent the many headaches, while still holding onto the deontic claim that we ought to nevertheless choose the life-saving option.

5. Equal Consideration

The central task of this section is to unearth an individualist justification for saving the greater number in cases in which we clearly should. I begin, however, by addressing two theoretical questions. First, what exactly is the theoretical ambition of contractualism in relation to the Numbers Problem?

Recall a remark earlier made that contractualism does not claim its account of right and wrong exhausts the whole of morality. Instead, the theory is only meant to capture one important part of morality, which Scanlon dubs “what we owe to each other.” Now, some philosophers have put forward the suggestion, as a way for contractualism to avoid the Numbers Problem, that the

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21 John Halstead makes this criticism against critics of Pure Aggregation in his “The Numbers Always Count,” *Ethics* 126 (2016): 789-802, at 794-95. The criticism is mainly directed at Alex Voorhoeve’s defense of Limited Aggregation. The assumption is also found in Tadros’s defense of Limited Aggregation. Tadros, “Localized Restricted Aggregation,” p. 175.
theory should make better use of the kind of moral pluralism to which it is antecedently committed. The suggestion is that while saving the lesser number in a case like Life vs. Lives would not be wrong under the contractualist ideal of justifiability to each person, it would still be wrong all-things-considered, once non-contractualist, aggregative reasons are brought into the picture.22

This suggestion does have some appeal, but I believe it is not one that a contractualist should accept. Although contractualism’s theoretical ambition does not extend to the whole of morality, the theory is nevertheless meant to provide a complete account of interpersonal morality, part of whose content is our duty to aid other people. How our duty to aid operates in cases of interpersonal trade-offs should therefore be of central concern to contractualism. In short, unless contractualists are prepared to make the hugely concessive move that their theory offers only an incomplete account of interpersonal morality, they should not settle for the suggestion as it stands.23

In saying this, I might give the impression that contractualism should in no way appeal to aggregative considerations in resolving the issue of interpersonal aggregation. This brings me to the second question I want to raise, namely, what role, if any, may considerations of aggregate well-being play within a contractualist mode of justification?

One thing is clear — contractualism’s Individualist Restriction bars considerations of aggregate well-being from directly figuring in the content of reasonable objections. Someone who objects to Pure Antiaggregation by directly calling our attention to the fact that it is a worse thing if there are more deaths will have done nothing to show that she herself is treated in an unjustifiable manner. After all, this is not an objection that she may raise on her own behalf.

To be sure, some philosophers deny the very idea of aggregate value.24 They deny that there is any more disvalue in the deaths of a million people than the death of a single person. This is no part of the contractualist view.25 What a contractualist denies, in keeping with the Individualist Restriction, is that facts about aggregate well-being can themselves supply grounds for reasonable objection. The distinctively nonconsequentialist element in contractualism lies in the denial that, in the domain of interpersonal morality at least, an action can be wrong simply because it fails to maximize aggregate value. To put the point differently, what a contractualist denies is not axiological aggregation, but the direct relevance of aggregative axiology to interpersonal morality.

23 Interestingly, Johann Frick has recently proposed that contractualism should scale back its theoretical ambition in precisely this way. See Johann Frick, “Contractualism and Social Risk,” Philosophy & Public Affairs 43 (2015): 175-233, at 219-33.
24 For example, Taurek, “Should the Numbers Count?”
25 See Scanlon’s discussion of impersonal values in What We Owe to Each Other, pp. 218-23 and his discussion of the significance of impersonal pain and suffering on pp. 177-87.
But this leaves open the suggestion that aggregate value can play an indirect role in the contractualist framework. It is this suggestion that I aim to explore in what follows. Specifically, my suggestion is that facts about aggregate well-being can serve as the background against which individuals can derive personal reasons for rejecting principles of interpersonal trade-offs that are wholly insensitive to numbers.

The general phenomenon of impersonal values playing an indirect role in generating personal objections should be a familiar one to contractualists. Consider the following passage from Scanlon:

Impersonal reasons do not, themselves, provide grounds for reasonably rejecting a principle. But these reasons do play a significant role in determining other grounds for reasonable rejection… So, for example, part of what it means to say that the Grand Canyon is of value is that visiting and enjoying it is worthwhile. From the point of view of those who might engage in these activities in the future, then, there is reason to reject a principle that would allow someone to decide to flood the Grand Canyon without taking these benefits into account. These reasons for rejecting a principle are what I called above personal reasons, but their force as reasons depends in part on further judgments of impersonal value, namely the judgment that these objects are worth seeing and should be admired.26

The last sentence here is key. For someone who desires the preservation of the Grand Canyon, it matters, in assessing the force of her objection to the canyon’s destruction, to take into account the fact that she has good reasons to want to engage with the Grand Canyon in the appropriate ways, reason that are provided by the impersonal value of the Grand Canyon itself. But it remains to be seen how the impersonal value of aggregate well-being can give rise to personal reasons in favor of saving the greater number.

To resolve this issue, I begin with an idea underlying Scanlon’s attempted solution to the Numbers Problem. The idea is that we have reasons to treat everyone’s interest with equal consideration, violations of which give rise to personal objections under the contractualist framework. Scanlon develops this idea in the direction of his tie-breaking argument, claiming that giving everyone’s interest equal moral significance in Life vs. Lives requires the presence of some individuals to play a tie-breaking role. Scanlon’s move, as we have seen, proves unsuccessful in the end. I plan to develop the idea of equal consideration in a different direction.

What does it take to treat the same interests of two different individuals with equal consideration? A natural answer is that when the interests of two individuals, A and B, are in fact equally weighty, one should regard the satisfaction of their interests as equally important. Of course, when the interests of A and B cannot be jointly satisfied, the conflict may be resolved by flipping

26 Scanlon, What We Owe to Each Other, p. 220.
a fair coin or simply making a choice between the two parties. What equal consideration rules out, absent special justification, is the judgment that the interest of one party is more worthy of fulfillment than that of the other.

Consider a simple illustration. Suppose we decide that, if A’s life is ever threatened, we will devote X amount of valuable resources to the saving of A’s life. Suppose we also decide that, if B’s life is ever similarly threatened, then we will devote to B only half of the amount of resources we would devote to A. Holding fixed that the lives of A and B do not differ in any morally relevant respects, our decisions reveals an inequality in the consideration we show to the interests of A and B. B may rightly object, on her own behalf, that her interest in avoiding a lethal threat is unjustifiably given less importance than A’s interest in avoiding the same. Moreover, the inequality at issue is revealed by a difference in the amount of value that we are prepared to forgo for the respective interests of A and B. Call this understanding equal consideration in the value-forgoing sense.

I want to now argue that failing to save the greater number in Life vs. Lives also violates the ideal of equal consideration in the value-forgoing sense. My argument makes indirect appeal to claims about aggregate value. Consider, once again, the situation in which we can rescue either A from death or each of B and C from the same fate. What objection can each of B and C raise on her own behalf against a decision to save A?

Let us begin by reframing the normative situation in Life vs. Lives in terms of two options that involve forgoing value. On the one hand, there is the option of saving A’s life, which involves forgoing the aggregate value of saving two other lives. On the other hand, there is the option of saving the lives of B and C, which involves forgoing the value of saving one other life. We may now ask: If I opt to save A’s life under the circumstances, does my decision violate equal consideration for the interests of all involved?

Now, in deciding to save A under the circumstances, I judge that A’s life has the kind of importance that provides me sufficiently strong reason to forgo the aggregate value of saving two other lives. If I judge A’s life to have this kind of importance, then equal consideration requires that I regard B’s life as equally important. This means that I should regard B’s life, too, as sufficiently important to be able to counterbalance the opposing disvalue of the deaths of two people.

Next, if the importance of B’s life gives me sufficiently strong reason to save her even when opposed by the disvalue of two deaths, then my reason to save B is even stronger in a situation where the importance of her life is opposed by the disvalue of just one death. In other words, if the balance of reason tells in favor of saving a person’s life at the cost of two deaths, then the balance of reason would be even more in that person’s favor when the cost is not two deaths but only one.
And now we come to the realization that *Life vs. Lives* describes precisely a situation in which the controlling moral question is: Is there stronger reason to choose the option that saves A’s life at the cost of two deaths or the option that saves B’s life (together with C’s) at the cost of one death? Equal consideration for the lives of A and B implies that the reason to choose the latter option is stronger. We may formulate the underlying principle of equal consideration as follows:

**Equal Consideration 1** (EC1): If X’s interest and Y’s interest are equally weighty and V1 is more valuable than V2, equal consideration requires that if one judges that there is reason of a certain strength to forgo V1 for the sake of X’s interest, then one judges that there is comparatively stronger reason to forgo V2 for the sake of Y’s interest.

In effect, if one decides to save A in *Life vs. Lives*, then each of B and C may raise a reasonable objection in the following terms: If you regard A’s life as being so important that it provides you with sufficiently strong reason to forgo two other lives, then since my life is just as important, giving equal consideration to the importance of my life means that you should regard yourself as having comparatively stronger reason to forgo just a single life for my sake.

The next step in my strategy is to generalize this argument from equal consideration to the case of *Life vs. Paraplegias*. To do so, we need to first ask what equal consideration in the value-forgoing sense requires when the harms faced by individuals are unequal. Consider another simple illustration. Suppose we decide that, if A’s life is ever threatened, we will devote X amount of valuable resources to the saving of A’s life. Suppose we also decide that, if B is ever threatened with paraplegia, no amount of resources will be devoted to the alleviation of B’s plight. These decisions reveal an inequality in the consideration we show to the interests of the two parties. B may rightly object that, while her interest in avoiding paraplegia is indeed less weighty than A’s interest in avoiding death, we should nevertheless be prepared to allot to her an amount of valuable resources that is proportional to the relative weightiness of the respective interests of A and B. The following principle thus seems to me to have great intuitive force:

**Equal Consideration 2** (EC2): When X’s interest is weightier than Y’s interest, equal consideration requires that the values one judges oneself to have sufficiently strong reason to forgo for the sake of their respective interests should not be disproportional to the relative weightiness of their interests.

Now, suppose I decide to take the life-saving option in *Life vs. Paraplegias*; I judge that the life of the person I save has the kind of importance that provides me with sufficiently strong reason to forgo the aggregate value of preventing a very large number of paraplegias. Equal consideration then requires that I not assign disproportionally less importance to the interest of each of those individuals facing paraplegia. But if the aggregate value of preventing paraplegias becomes sufficiently large, to the extent it may well dwarf the value of saving a life, then it would be disproportional to regard myself as having sufficiently strong reason forgo this very large amount of value for the sake of saving a life, yet I have no stronger reason to forgo significantly less value
for the sake of preventing a person’s paraplegia. In other words, when there are sufficiently many paraplegias at stake, choosing the life-saving option stands to violate the proportionality constraint introduced by EC2. When this happens, each of those individuals facing paraplegia may reasonably object that her interest is not given equal consideration.

Let me note that the foregoing rationale for saving the greater number in Life vs. Paraplegias does not extend to the case of Life vs. Headaches. This is so for two reasons. First, as I said in Section 4, the reason-giving force of an individual’s interest in avoiding a minor headache is wholly disabled when it runs up against a competing interest in avoiding death. Because of this, no one facing a minor headache has even the standing to raise a reasonable objection based on the ideal of equal consideration, for the simple reason that her own interest is normatively irrelevant in the situation. In short, a disabled interest should not be given equal consideration; it should be given no consideration at all.

Second and relatedly, since no one is in a position to object if we do not take into account interests having to do with the alleviation of minor headaches in a life-and-death situation, there is a strong contractualist basis for altogether excluding such aggregative considerations from having even an indirect bearing on our adjudication of interpersonal trade-offs. This marks yet another important difference between Life vs. Headaches and Life vs. Paraplegias. In the latter case, while people’s interests in avoiding paraplegia, taken individually, are indeed less weighty than a competing interest in avoiding death, to simply ignore these interests is something to which each of those facing paraplegia can reasonable object. Although contractualism forbids aggregate value from having a direct bearing on interpersonal morality, I have suggested that these aggregative interests may nevertheless matter in an indirect way, as part of the background for assessing whether equal consideration is shown to the interests of different individuals.

I think the rationale I provide for saving the greater number is plausible in its own right, but it might help to convince those who remain skeptical by noting several advantages of my proposal. First, my proposal generates an explanation for why, as the disparity increases between the competing groups, we commit a greater wrong if we fail to rescue the greater number. This is because my proposal allows aggregative considerations to matter, albeit in an indirect way. In Life vs. Lives, for example, when B is in a group of two, and we decide to save A instead, we in effect say that A’s life is important enough to give us sufficiently strong reason to forgo the value of saving two other lives, but it is not the case that B’s life gives us comparatively stronger reason to forgo the value of saving one other life. But when B is in a group of a million, and we once again decide to save A, the inequality in the consideration we show to the lives of A and B is even greater. In effect, we say that while A’s life gives us sufficiently strong reason to forgo the value of saving one million lives, B’s life does not provide us with comparative stronger reason to forgo the value of saving just one single life. B therefore has an even stronger personal objection, based on the ideal of equal consideration, when he is in a group of a million than when he is in a group of two.
Second, my rationale does not invite the reply that we should employ the device of a weighted lottery in resolving cases like *Life vs. Lives* and *Life vs. Paraplegias*. Recall that what makes Scanlon’s tie-breaking argument susceptible to this reply is that weighted lottery allows each individual’s presence to make a difference. But my proposal does not rely on the idea of allowing individuals to make a difference. Instead, it relies on the comparative weight of the reasons we judge ourselves to have, and how these judgments relate to the ideal of equal consideration as specified by EC1 and EC2. In general, when one’s decision runs contrary to a valid requirement of equal consideration, the correct way to resolve this violation is not to run a lottery, weighted or not, but to conform one’s conduct to what equal consideration requires.

I will end this section by considering one final objection to my proposal. The objection can be put in simple and direct terms: Why go through all this trouble to allow aggregative considerations to matter in this roundabout way? Why not just admit that we should save the greater number because it produces more aggregate well-being overall? I have two things to say in reply. First and most obviously, such an admission would lead us right back to the implausible implications of unrestricted aggregation; accepting the verdict that we should prevent many minor headaches at the cost of leaving someone to die, I submit, is simply too big of a bullet to bite. This in one way explains why contractualism’s Individualist Restriction provides a promising starting point for theorizing about the issue of interpersonal aggregation, for it removes the central difficulty in account for the correct verdict in cases like *Life vs. Headaches*.

Moreover, even setting aside the case of *Life vs. Headaches*, an explanation for why we should save the greater number that directly appeals to aggregative reasons would leave something significant unaccounted for. In thinking about the case of *Life vs. Lives*, Elizabeth Anscombe astutely raises the question who in particular is wronged if we do not save the greater number? I think the correct answer to Anscombe’s question is that everyone in the larger group is wronged; saving the lesser number under the circumstances would be unjustifiable to each of them. But if the ultimate reason for saving the greater number lies directly in considerations of an aggregative kind, then no one in the larger is in a position to say, on her own behalf, that she has been treated unjustifiably. For this reason, my contractualist rationale for the saving the greater number, which embeds aggregative considerations within an ideal of equal consideration, violations of which allows each individual to raise a complaint on her own behalf, is well positioned to give the correct answer to Anscombe’s question. My proposed solution to the Numbers Problem therefore has much to recommend it.

Here is where we stand. The argument from normative disabling indicates that Pure Aggregation yields results in cases like *Life vs. Headaches* that fail to accord with respect for the value of human life. On the other hand, as we have just seen, Pure Antiaggregation fares no better; it violates the ideal of treating people’s interests with equal consideration. These are grounds to reasonably reject both principles. The correct approach to interpersonal trade-offs, then, is the Limited

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Aggregation view, which instructs us to count the numbers in *Life vs. Lives* and *Life vs. Paraplegias* but not in *Life vs. Headaches*, and thereby avoids the reasonable objections that plague both of its alternatives.

**Conclusion**

The Numbers Problem has long fixated the attention of moral philosophers, and in my view, deservedly so. The challenge of accounting for the moral relevance of numbers is one with which any moral theory vying for our allegiance must grapple, and the challenge is recalcitrant and vexing not least because it imposes more than just one condition of adequacy. In addition to capturing the correct verdicts in the leading cases of *Life vs. Lives*, *Life vs. Paraplegias*, and *Life vs. Headaches*, a satisfactory solution to the Numbers Problem should give the correct answer to Anscombe’s question and explain why we sometimes commit a greater wrong when there is more at stake. I have in this paper put forward a contractualist treatment of interpersonal aggregation, one that hopes to do justice to these many aspects of the Numbers Problem in a systematic and unified way. If there is one overarching theme to my discussion, it is this: We should not expect the Numbers Problem to admit of an uncomplicated solution.