Suppose that you can either save five innocent people or save one other innocent person, but you cannot save all six. Can a contractualist explain why you ought to save the five, all other things equal? Does she need to?

Yes, a contractualist is able to explain why you ought to save the five, and it would count against her theory if she were not able to. Although the contractualist is able to explain the rightness of saving the greater number without having to aggregate any individual claims, she is not able to accommodate our intuitions about other sorts of trade-offs, and this should lead us to doubt the correctness of her theory. In this essay, I first briefly outline the criterion of rightness developed by Scanlon – whose formulation of contractualism I focus on – and explain why this might, *prima facie*, fail to explain why you ought to save the five over the one. Then I present two flawed attempts to justify why it is better to save the greater number, before demonstrating that there is indeed a non-aggregative, contractualist principle compatible with our intuition in this case. Finally, I argue that an inability to explain the rightness of saving the greater number would have undermined the case for contractualism, and that although it passes this test, there are other related cases where its anti-aggregative position has implausible implications.

According to Scanlonian contractualism, an action X performed in circumstances C is wrong when and because it is prohibited by principles that nobody who was motivated to find universally-accepted principles for the regulation of behaviour could reasonably reject. X is right just in case it is not wrong, and an individual i can reasonably reject a principle P only if there exists another principle P' against which no other individual has stronger grounds for objection than i does against P – so, we should seek out the principle associated with the least maximum burden required of any one individual. Importantly, in Scanlon's formulation, the reason for objection must come from an individual standpoint: one cannot reject a principle because compared to another it leads to worse outcomes "overall", since the burdens are all considered from the perspective of individuals. In addition, Scanlon rules out appeal to impersonal values like badness and goodness as appropriate grounds for rejection of a principle. Taken together, the "Individualist Restriction" and "Impersonalist Restriction" mean that contractualism resists aggregating the claims of separate persons, and does not allow great sacrifices to be demanded of one individual for the weak benefit of many others.

Whilst this anti-aggregationism may to some be an appealing feature of contractualism, it creates difficulties in explaining why, as seems intuitive, one is required to save more people rather than fewer, all else equal. Suppose we had a principle P_1 which said that the greater number ought to always be saved. Then the single innocent person (whom we'll call A) would object that following P_1 leads to their certain death, which is exactly as large a burden as that borne by each of the other five innocent people (let's call them B, C, D, E, F) under an alternative P_2 requiring that the smaller number be saved. By our definition of rightness above, acting on a principle of always saving the greater number therefore seems impermissible, because A does have grounds to reasonably reject P_1.[*] So, rather than saving the greater number, we would need to adopt a different principle P_3, that we should flip a coin to save the five with probability 50% and the single individual with probability 50%, since this gives each individual a 50% chance of surviving and there is no other principle which reduces one person's burden without increasing another's from an equally-weighty starting point (Taurek 1977).

Scanlon claims that a contractualist can, in fact, explain the rightness of saving the greater number, and attempts to do so by demonstrating that the people in the larger group have grounds for rejecting P_3. If there were only one person in each group, then would seem perfectly reasonable to use a coin toss to decide who to save. But, Scanlon says, the fact we are still using a coin toss with four additional people

[*] Note that one crucial feature of Scanlon's contractualism is that each individual is aware of their position in society when deciding whether or not to object to a principle. Since there is no veil of ignorance in place, A knows that they would be the one to lose out from a principle of saving the greater number; it is not relevant that, in expectation, a randomly selected person would have a smaller burden under P_1 than P_2.

Commented [RS1]: [ramblings]
In order to do this, she needs a principle (i.e. a Kantian maxim) which implies that it is wrong to save only the one. The problem is usually framed as "suppose there is a principle telling you to save the five rather than the one. Then the one person will object to whatever that principle happens to be, with just as strong an objection as all the others on the other rock to the negation of that principle.

Commented [HW2R1]: I think a "principle" for Scanlon might be slightly different from a "maxim" for Kant. But Scanlon isn't very clear about this.

Commented [HW3]: This is a slightly awkward use of prima facie

Commented [HW4]: I don't think this is quite right. There's one version of contractualism (Scanlon calls it "welfarist contractualism") that says this. But Scanlon claims that (welfare) burdens aren't the only grounds on which a principle can be reasonably rejected—we might instead reject a principle because it leads to violations of our rights, for instance.

Commented [HW5]: It would be good be good to label them with these names when you first state them. Otherwise the reader needs to spend a bit of time backtracking and checking which is which.

Commented [HW6]: Grammatically awkward. "Anti-aggregationism" would make sense, as would "anti-aggregative", but I'm not sure this does.

Commented [HW7]: Is what you say in the footnote accurate, given what Scanlon says in section 4 about taking "a broader and more abstract perspective"?

present means that we have not placed any positive weight on their lives – and this fails to show them the respect that we ought to. From this, Scanlon concludes that acting based on P_3 is not permissible, and we must save the greater number. However, this argument is not successful for at least two reasons. First, it is not the case that no positive weight would be placed on the lives of the four additional people by following P_3. If the coin toss indicated that we should go to the larger group, then we would presumably save the lives of persons *C* through *F* as well as that of person *B* (Otsuka 2006). Yet this is sufficient to demonstrate that P_3 does not fail to place positive weight on their lives, since we could instead have decided to save *B* alone. Second, Scanlon's argument proves too much. If we were following P_1 in a new situation where you could save either two people (*A* and *A'*) or the same five as earlier, our decision would still be to save the five. According to Scanlon's reasoning, *A'* would be able to reasonably reject P_1, because our action has not changed in response to them appearing in the scenario (i.e., we have failed to place positive weight on their life). But clearly then this argument does not necessarily imply we should save the greater number, since it can also be used to justify the opposite (Hirose 2014, ch. 7).

A different approach is adopted by Kumar (2001) to try to demonstrate that contractualism can accommodate a requirement to save the greater number, based on a "neutralising" process which supposedly occurs when multiple individuals have equally weighty competing claims. Kumar argues that we should pair up individuals whose claims cancel each other out across groups (i.e., in the situation described by the titular question, pair up *A* with *B*), and then proceed to saving everybody in the group which has some outstanding claims. But, as Otsuka (2006) identifies, although this reasoning explains why you should save the greater number, it fails to explain why you should save anybody at all in instances where the two groups are of the same size. Since in such a case, all claims would be eliminated, it would seem that there are no outstanding obligations for you to meet, and saving nobody would be entirely permissible. Presumably the contractualist would not want to accept this result, and so she should set aside Kumar's strategy for explaining the rightness of saving the greater number.

There is, however, one viable explanation open to the contractualist which both avoids relying on aggregation and leading to especially counter-intuitive implications: the "Anonymous Pareto Principle". Developed by Hirose (2001), it rests on two premisses that a contractualist would be willing to accept as principles:

> **i)** Distributions which are permutations of each other are equally good. *[Impartiality]*
>
> **ii)** If one option φ Pareto-dominates an alternative ψ (that is, some individual is strictly better off under φ and nobody is strictly worse off), then φ is better than ψ. *[Pareto]*

From the above, we can show that it is better to save the greater number, and therefore that one ought to do so, provided no deontic constraints are violated (as is the case here, where the only choice is between saving five or saving one). As the rescuer, we can choose between either row **X** or row **Y** in the table below, corresponding to saving the smaller or greater number respectively. By **i)**, distributions **Y** and **Z** are equally good, and by **ii)**, distribution **Z** is better than **X**. This implies that **Y** is better than **X**, and so we have explained within a contractualist framework why the greater number should be saved.

	A	*B*	*C*	*D*	*E*	*F*
X	Alive	Dead	Dead	Dead	Dead	Dead
Y	Dead	Alive	Alive	Alive	Alive	Alive
Z	Alive	Dead	Alive	Alive	Alive	Alive

The contractualist should be glad that she has a way to explain why we ought to save the greater number, as an inability to do so would have counted against her theory. Although the purpose of an ethical theory is not to perfectly line up with instinctive morality, a theory's being at odds with our intuitions in a

Commented [RS8]: I don't totally get how this solves the problem as formulated earlier, that there's a symmetry in burdens between P1 and P2. Maybe the claim is that, once we consider the importance of putting positive weight on each individual's life, people B-F have not only a reason to reject P3, but also a stronger reason to reject P2 than person A does to reject P1?

Commented [HW9R8]: I don't think that's the claim, at least not the one that Scanlon makes.

Commented [RS10]: There's also the point discussed in Hirose (2014) that Scanlon's attempt to rule out a weighted lottery is too fast and fails. But so what if we either need to save the greater number or do a weighted lottery, what's so bad about the latter? (I guess it's that it does reliably [on occasion] lead to intuitively worse outcomes than just always saving the greater number, and we don't want to have to commit to that.)

Commented [RS11]: (There's a separate argument that we're doing covert aggregation made in Otsuka 2001)

Commented [HW12]: I'm confused. Are you suggesting a case where there's actually 3 options, not 2?

Commented [HW13]: This doesn't sound right. The only plausible way to do the elimination (I'd guess) is by comparing different options pairwise. And, if you did that, there wouldn't be any claims eliminated when you compare either of those options to doing nothing.

Commented [RS14]: Premiss **i)** seems reasonable for a contractualist - it's a different way of expressing impartiality.

On the other hand, premiss **ii)** seems like it must violate either the Individualist or Impersonalist Restriction, because it's talking about properties of the group? I guess the only comparisons that're been made are pairwise between an individual's allocation in state φ vs ψ, so maybe that's OK? But it's not obvious to me how you'd put this premiss more explicitly into terms of non-rejectable principles.

Commented [RS15R14]: [Otsuka 2006 has an intuitive objection to Hirose's argument, but I don't find either of his formulations of it compelling. Maybe a contractualist would(?), but I don't see why]

Commented [RS16R14]: > suppose a two-rock case in which you can save either P1 or P2 from death and everything else is equal except for that fact that P2 would benefit a little more than P1 from being saved because he would go on to live for forty years and a day, whereas P1 would go on to live for forty years only. The anonymous Pareto principle dictates the saving of P2, but intuitively you ought to toss a coin.

Commented [RS17]: Although someone like Taurek might argue that saving the greater number *does* violate a deontic constraint of respecting the person in the smaller group, etc?

Commented [HW18]: The more common term is commonsense morality.

simple, non-pathological scenario such as choosing whether to save more or fewer people would nonetheless be *prima facie* evidence against it. Seen in this light, it is thus good news for the contractualist that she is able to deliver the expected verdict in the titular rescue case without needing to compromise on her theory's normative claims, although not required for the success of her project. There is no consistent ethical theory we know of which delivers only intuitive judgements, and even if we discovered one it would be rather surprising for it to be true, given what we know about the flaws and biases of human cognition. So, it would be incorrect to state that the contractualist "needs" to be able to explain the rightness of saving the greater number: doing so is undeniably desirable, but not essential.

Indeed, if the contractualist were presented with a genuine dilemma between getting the "wrong" result in a rescue case on one hand or giving up anti-aggregationism on the other, it is likely that she would prefer to take the former option. Consider the following modified scenario:

> You have one dose of medicine which can either be administered in full to one individual to save them from death or shared between five million individuals to save them all from paraplegia.

Intuitively, it seems that the right course of action is to save the five million from paraplegia. But the contractualist is not able to accommodate this intuition: because we only consider reasons for rejection from an individual standpoint and the burden of death is greater than the burden of paraplegia, it makes no difference that there are millions more that would suffer in the second group than in the first. Non-aggregation is what distinguishes contractualism from rule-utilitarianism, by ensuring that common-sense rights are protected and interpersonal tradeoffs in welfare prohibited. However, it is also exactly what leads to unintuitive judgements in many numbers-based problems, like the one presented above. The contractualist believes that this scope insensitivity is a price worth paying for a theory that is individual-centric and leaves space for rights. While the conflict between contractualism's judgements and our intuitions in such cases does certainly undermine their plausibility, it does not entirely rule out the possibility of them being correct ~~entirely~~. Again, there is no need for the contractualist to be able to accommodate our intuitions in every case – it would suffice for her to show that rival theories are incompatible with our intuitions to a greater extent or in more salient respects.

To conclude – yes, a contractualist is able to explain why you ought to save the greater number, by appealing to the Anonymous Pareto Principle. An inability to accommodate this strong intuition would indeed have counted against her theory, though not fatally undermined it. Even with this particular wrinkle ironed out, though, contractualism still leads to unintuitive conclusions in other rescue cases. These results are a necessary consequence of its anti-aggregationism, and a compelling reason to doubt the theory's correctness.

Bibliography

Hirose 2001: Saving the greater number without combining claims | Analysis | Oxford Academic

Hirose 2014: Four Responses: Kavka, Kamm, Scanlon, and Schelling | Moral Aggregation | Oxford Academic

Kumar 2001: Contractualism on saving the many | Analysis | Oxford Academic

Otsuka 2006: Saving Lives, Moral Theory, and the Claims of Individuals - OTSUKA - 2006 - Philosophy & Public Affairs - Wiley Online Library

Otsuka 2000: Scanlon and the claims of the many versus the one | Analysis | Oxford Academic

Scanlon 1998: What We Owe to Each Other

Commented [HW19]: This should maybe be "all and only". After all, a theory that gives *no* judgements at all could be said to only give intuitive judgements.

Commented [RS20]: [I also like the example of taking away 1 util from lots of poor people's lives to add 1 million to a rich person's – see Parfit's arguments presented here]

Commented [HW21]: Doesn't Scanlon explicitly claim that he can? I thought that paraplegia was mentioned as one of the harms that are 'relevantly similar' to death.

Commented [HW22]: This avoids the ambiguity between those intuitions being "entirely correct" versus it not "entirely ruling out" the possibility.