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Consequentialism

The previous chapter presented a theory of morality based on a simple idea: that ultimately ethical behaviour should serve your interests, or maximize your welfare. The theory to be considered in the present chapter is based on a similarly simple thought: the thought that ethical behaviour serves everyone's interests, or maximizes the welfare of all. This is the guiding principle of a very popular theory of ethics known as utilitarianism. As we shall see, it is important to ask who "everyone" is, and a number of questions can also be raised about how best to "maximize" well-being. That said, obviously the suggestion that morality involves setting aside your own interests and doing whatever it takes to make the world a better place is hugely plausible. After all, what could be more important than generalized beneficence of this kind?

Historically, utilitarianism has been a prominent theory of ethics focusing on the consequences for all affected parties. Many moral philosophers today reject the classical utilitarian position, but remain committed to the consequentialist framework within which it developed. In essence, the position we wish to consider is the more general view that the ethical acceptability – the rightness or wrongness – of an act depends on whether it results in the best state of affairs possible. On this view ethical acceptability is determined by an action's outcomes, or what it does or does not achieve. The most illuminating contrast here is with theories of ethics on which certain kinds of acts, such as lying and breaking promises, are wrong, irrespective of their outcome. The consequentialist's exclusive focus on outcomes is also at odds with the familiar idea that acts done from unpleasant, or vicious, motives, such as greed or malice, are by their nature wrong. For the consequentialist, motives might tell us something about the agent's character, but they don't tell us anything about the rightness or wrongness of the act.

The Copenhagen Consensus is a think tank based in Denmark. It aims to help governments and philanthropists to identify the best way to spend aid and development funds. In 2008 it arranged an event to which a number of the world's leading economists were invited. The purpose of the meeting was to prioritize investments relating to ten different challenges that face the world, including air pollution, global warming and malnutrition.

The economists were asked the question: What would be the best way of advancing global welfare, and particularly the welfare of the developing countries? They were told that they had an additional 75 billion US dollars of resources at their disposal over a four-year initial period, and they were provided with state-of-the-art knowledge of the problems and possible solutions by leading experts in the different fields.

The economists came up with a prioritized list of 30 solutions to the different challenges. Top of the list was the provision of micronutrient supplements for children (vitamin A and zinc), which related to the challenge of malnutrition. Other solutions relating to malnutrition also came high on the list. Solutions relating to air pollution and global warming came much lower down, and none of them were on the list of 13 interventions on which money should be invested, according to the panel, given the 75 billion US dollars budget restraint.

This may seem a bit strange. The problem of malnutrition is vast and serious, but it is arguable that the problems posed by climate change, say, are much larger in scale. However, the panel looked not only at the size of the problems to be tackled, but also at the costs of solving or mitigating them. Here, interventions on malnutrition were preferred – not only because they have a significant effect, but also because they are cheap and very likely to be successful. In the words of the panel these interventions have "tremendously high benefits compared to costs". The assumption seems to have been that decisions about intervention should be guided by cost-effectiveness: the best options would be those giving the highest return in terms of problems solved per dollar spent.

Deficiency in micronutrients such as vitamin A and zinc is not only a cheap problem to solve – if it is not solved it leads to severe problems for children. Vitamin A deficiency causes an increased risk of illness and death from common infections. Alarmingly, the World Health Organization estimates that up to 250 million children suffer from it. Up to half a million of these children become blind each year. Half of them die within 12 months of losing their eyesight. Many more children suffer from a lack of mental development as a consequence of vitamin A deficiency, whilst a lack of zinc is implicated in, among other things, the

susceptibility to diarrhoea from which nearly 2 million children die annually.

A great deal has already been done to prevent micronutrient deficiency in children living in the poor parts of the world, but according to the experts, there is scope to do much more at the cost of only a few dollars per child. So, although malnutrition in children is assumed to be a smaller problem than climate change, it is still, according to the Copenhagen Consensus 2008 panel, better to spend money on vitamin supplements for children than it is to spend the same amount on initiatives to prevent climate change. This is because attempting to prevent climate change will be much more expensive and the effects of the initiatives are much more uncertain.

One can, of course, discuss the factual claims from which these conclusions are drawn, and in fact many people have done so. However, it is important to see that there is also an ethical issue to be settled. The approach to prioritization applied by the Copenhagen Consensus, i.e. that we should use scarce resources so as to do maximum good, is broadly consequentialist. It is a real example of, and in some ways a test case for, the ethical perspective to be discussed in this chapter.

The consequentialist idea

According to the consequentialist it is not only true, that governments should prioritize resources in line with the logic of the Copenhagen Consensus, but that all of our resources should be used in this way. To be ethically acceptable, actions, characters, practices and policies must always generate the best possible expected total outcome. Let us try to unpack this idea.

The rather artificial sounding situation imagined by the Copenhagen Consensus, whereby an individual has to decide how to spend scarce resources so that it gives the highest possible return in terms of benefits to the people affected is, according to consequentialism, not artificial at all. Rather, this is this moral view essentially what our everyday moral life is like.

The aim of the committed consequentialist will always be to do the things that have the best possible outcome in terms of benefits for those affected, either by doing something good or preventing something bad from happening, or both. Thus, a key feature of consequentialism is its impartiality. All potential beneficiaries matter equally. It doesn't matter *who* benefits. What matters is the *total* quantity, or extent, of the benefit.

In this respect consequentialism contrasts with contractarianism. Ethical egoism, as described in the previous chapter, is partial: it says that, in deciding what to do, you may and should focus on your own

gains. The consequentialist view, on the other hand, is indifferent to who receives the benefits. The only thing that matters are the total benefits, however this happens to be distributed among beneficiaries. This does not mean that your own benefit doesn't matter. The claim is just that it doesn't matter *more* than anyone else's. So consequentialism is not the same as pure altruism, according to which we should only be concerned about others. Your own good matters in within the consequentialist ethical perspective. You are required to consider all equally and not to be *selfless*.

Imagine, for example, that you are trekking in the mountains with some friends when you are suddenly caught in bad weather. You end up taking shelter in a small hut with the prospect of having to survive for up to a week in a cold place before being rescued. Before the trip, each participant agreed to bring food and water for a whole week, warm clothes and sleeping bags (just in case of an emergency). Unfortunately, half the participants have not brought these things with them, and so, through their own fault, they are stuck in the hut with nothing to eat or drink, and little to keep them warm. If you, and the other trekkers who packed the necessary supplies, don't help out, your disorganized friends will probably die before they are rescued. You can help, but by doing so you will become very hungry, thirsty and cold yourself. Should you share what you have?

According to the consequentialist you should. It does not matter that it is not your fault that others are in jeopardy. Nor does it matter that you will suffer along the way. It is no doubt true that you will suffer, but your suffering most likely won't diminish the world's supply of well-being as much as the death of your fellow trekkers, even if you suffer a great deal.

Most people would probably agree with the consequentialist here. Most of us look at the world in consequentialist terms in cases like the one described. However, to be a full-blown consequentialist we need to agree that all moral situations are in principle like the trekking example. This may be asking too much of us, as we shall see later in this chapter. However, before we discuss this claim in more detail, let us try to define consequentialism a little more precisely.

Utilitarianism

We need to start with what moral philosophers call "the good". An understanding of this term will enable us to see exactly how consequentialism differs from other ethical theories on offer. It will also explain why it is often said that consequentialism "defines the right in terms of the good".

Philosophers use "the good" to refer to whatever is valuable in its own right. Questions about what *is* good in its own right were discussed in the first part of this book (chapters 2-4). We discovered that at various times it has been held that mental states, satisfied preferences, and objectively listed items such as friendship and knowledge are the only intrinsically valuable things. We also saw that questions about the good are generally treated as questions about what constitutes well-being, or welfare. The point here, however, is this: the consequentialist asserts that, quite generally, the *right thing to do is always to maximize the good*. In other words, ethically speaking, *we should always do whatever will produce the most of what is valuable in itself.*

It can be seen at once that consequentialism can be fleshed out in variety of ways, depending on the theory of the good it incorporates. A form of consequentialism based upon a hedonist account of the good will differ from one based upon preference-satisfaction. Utilitarianism, as we noted above, has been the predominant form of consequentialism. In its classical form, it is the view that morally right action brings about the greatest possible amount of happiness, with happiness being understood in terms of a balance of pleasure over pain. The founding father of what we now think of as utilitarianism is Jeremy Bentham. In chapter 2 we saw that Bentham was a hedonist. He thought pleasure is the only thing that matters, or is valuable, in its own right. Pain is an intrinsic disvalue. In the following passage Bentham explains what he calls the *principle of utility*:

> *By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever, and therefore not only of every action of a private individual, but of every measure of government.* (Bentham 1789, Chapter 1)

According to Bentham, then, each of us should aim to create happiness. Equally, the policies adopted by political institutions are to be assessed by their tendency to bring about, or to thwart, the happiness of citizens. Bentham himself devoted a great deal of time to criticize and improve the criminal code. He was trained as a lawyer, and he considered the penal system in England in the late eighteenth century irrational and immoral. Utilitarian thinking has actually had quite a profound effect on this area.

Punishment uses various devices – fines, imprisonment, sometimes capital punishment – to damage the interests of those who break the

law. The utilitarian worry about this, as Bentham saw, is that it just adds more misery to misery. First, harm is caused by a crime. Then, more harm is done, this time punitively. The punishment of criminals appears, therefore, to be at odds with the principle of utility, since that principle bids us to act always in a way that increases the welfare of all, including criminal offenders.

The utilitarian position is that punishment can only be justified if it prevents more harm than it creates. This may happen directly, when a criminal is held in jail and thereby prevented from committing more crimes, or indirectly, either by reforming the character of the criminal or by deterring potential criminals from engaging in criminal activities. The view that punishment is, on balance and over the long term, beneficial to society and adds to human welfare is accepted by most of those who work professionally in the criminal justice system. Many people would see this as the reason why we punish offenders. However, it is also clear from public controversies about the punishment of criminals who have been violent to wholly innocent victims or abused small children, for example, that others do not share this view. Substantial numbers of people regard punishment as a form of retribution: we are entitled to lock up criminals, not because this will bring about a welcome outcome, though it might, but because they deserve it.

In some places Bentham claims that according to utilitarianism "*the greatest happiness of the greatest number*" is the measure of right and wrong. This is a nice slogan, but it contains a serious ambiguity. It speaks both about the greatest sum of happiness and the greatest number of people affected. Very often these two dimensions of value will be in harmony, since sharing resources between many needy people rather than awarding them to a few individuals will usually result in the highest level of total welfare. However, it is not difficult to come up with examples where this is not the case.

During wars and following disasters such as earthquakes, doctors and paramedics are sometimes forced to make difficult choices about who to help. They may be short of skilled personnel, or lack medicine or equipment. If the aim is to do the maximum good in terms of the number of people who survive, the best policy for the doctors may be, not to help as many as possible, but rather to focus on a smaller group of those who are most likely to survive if treated. This is a tough decision for doctors to make. But in situations of this kind it is normal to try to secure the greater good in terms of the number of people surviving, rather than simply trying to help as many people as possible. This is exactly what is recommended from the utilitarian perspective. The slogan of

utilitarianism should only be "the greatest happiness", while the slogan of consequentialism should be "the greatest good."

As we saw in chapter 2, simple hedonism is not the only account of what is meant by welfare. Bentham's heir and fellow utilitarian, John Stuart Mill, argued for a modified hedonistic position that attached greater value to higher pleasures (e.g. music and poetry) than it does to lower ones (e.g. food or visits to the sauna). He did so to fend off the accusation that his view "that life has … no higher end than pleasure" is a "doctrine worthy only of swine." Reassuring his readers that we are better off as discontented human beings than we would be as cheerful pigs, Mill presented a form of utilitarianism in which higher pleasures are much more likely than lower pleasures to be promoted by morality. Modern utilitarians, such as Peter Singer, are more likely to defend utilitarian positions in which the thing to be maximized – sometimes called the *maximand* – is preference satisfaction. Accordingly, their view is sometimes labelled "preference utilitarianism". For Singer, then, morally right action is action that results in the highest level of preference satisfaction, net of preference frustration.

So what all utilitarian theories of ethics have in common is this: they define right action as action maximizing utility, and they equate utility with welfare. The main difference between the various forms of utilitarianism lies in the way welfare is understood. In the classical accounts of the late eighteenth century and early nineteenth century it was taken to be happiness, which was in turn defined in terms of pleasure and the absence of pain. Mill introduced a distinction between higher and lower pleasures. Later writers have worked with preference satisfaction.

The terms "utility", "the good" and "welfare" are very often used interchangeably in discussions of consequentialism. However, the consequentialist outlook can be combined with the idea that things other than welfare are intrinsically valuable, or good. The British philosopher G. E. Moore (1873–1958) took this path. He defended a non-welfarist form of consequentialism in which the goal remains that of promoting the good, but in which goodness is a property belonging to things other than human welfare. This is sometimes called "ideal utilitarianism". Moore declared that the most valuable states we know of are the pleasures of friendship and aesthetic enjoyment.

Consequentialism: an agent-neutral perspective

The consequentialist approach may be assessed by looking at its application in situations where it is agreed that it would be valuable to promote or prevent a certain kind of consequence – for example, to

prevent innocent people with good lives ahead of them from being killed. In situations like this consequentialists focus solely on achieving the best outcome. They believe that the right thing to do is to maximize positive, and minimize negative, outcomes. Their non-consequentialist critics, unconvinced by this focus, insist that it is necessary to take into consideration things other than outcomes. The following example, provided by the British philosopher Bernard Williams (1929–2003), is illustrative here:

> *Jim finds himself in the central square of a small South American town. Tied up against the wall are a row of twenty Indians, most terrified, a few defiant, in front of them several armed men in uniform. A heavy man in a sweat-stained khaki shirt turns out to be the captain in charge and, after a good deal of questioning of Jim which establishes that he got there by accident while on a botanical expedition, explains that the Indians are a random group of the inhabitants who, after recent acts of protest against the government, are just about to be killed to remind other possible protestors of the advantages of not protesting. However, since Jim is an honoured visitor from another land, the captain is happy to offer him a guest's privilege of killing one of the Indians himself. If Jim accepts, then as a special mark of the occasion, the other Indians will be let off. Of course, if Jim refuses, then there is no special occasion, and Pedro here will do what he was about to do when Jim arrived, and kill them all. Jim, with some desperate recollection of schoolboy action, wonders whether if he got hold of a gun, he could hold the captain Pedro and the rest of the soldiers to threat, but it is quite clear from the set-up that nothing of that kind is going to work: any attempt at that sort of thing will mean that all the Indians will be killed, and himself. The men against the wall, and the other villagers, understand the situation, and are obviously begging him to accept. What should he do?* (Smart & Williams 1973, pp. 98-99)

Of course, there is bound to be uncertainty about what will actually happen when Jim does, or does not, shoot the Indian. Putting this uncertainty and any legal issues aside, however, it is quite clear what should be done from a consequentialist perspective: Jim should *of course* shoot the one Indian. If he does, one person will die, but nineteen will survive. If he does not, the one Indian will still be killed, but along with all his comrades. Jim will feel guilty for the rest of his life if he kills an innocent person, but he is likely to feel at least as guilty if, by refusing to kill the Indian, he ends up feeling responsible for nineteen unnecessary deaths. Thus from a consequentialist perspective the correct decision is obvious: Jim should kill the Indian.

Bernard Williams tends to agree with this conclusion. However, he strongly disagrees that the conclusion is obvious. He argues that there are similar situations in which the contrast between the possible outcomes is less stark, and where the right decision may be to do what brings about a suboptimal outcome. The alternative, non-consequentialist view emerging seems to be that what matters, from a moral point of view, is not only the *consequences* of what we do, but what we *do* in itself. If Jim does not shoot one Indian, then twenty Indians will be shot, but *he* personally will not shoot any of them.

As we shall see later in this book, some philosophers believe that there is a moral difference between doing something and causing something to happen as a consequence of not doing something, as in Jim's case. This is an example of what is called an "agent-relative" morality: here the position of the agent makes a difference to what it is morally right to do. It is Pedro's choice to kill the Indians. Why should Jim let himself get caught up into Pedro's murderous schemes? Jim is not responsible for what Pedro does. Something like this, at any rate, might be argued by a non-consequentialist in this case.

The ethical egoism discussed in the previous chapter is a different kind of agent-relative moral view. Here, it matters morally whether the consequences befall the agent or someone else – and the preferred act is always the one which benefits the agent the most. As we shall see, other agent-relative positions hold that what matters is whether an outcome is intentionally caused by the actions of the agent or by someone else.

Suppose we alter the example of Jim and the Indians slightly. Now Jim has the choice to either kill one of the Indians, or let another person kill the Indian and beat another very badly. Legal issues aside, many people would say that *of course* Jim should *not* kill the Indian. Not because of the way the consequences add up, but because killing someone is an extreme act that one should do only in the most exceptional situations. For the consequentialist, on the other hand, whether or not Jim should kill the Indian in this situation depends on how the consequences add up. They may very well add up in such a way that Jim should not kill the Indian – for example, because the harm he will suffer by killing the Indian will be more than that experienced by the Indian who is going to be beaten up if he refrains from doing so. In the consequentialist perspective, then, the conclusion that Jim should refuse to kill the Indian cannot be taken for granted. It all depends on how the consequences add up.

An important point to notice here is that, as far as a consequentialist is concerned, judgments about the right action to take are impersonal: whether the situation is seen from the point of view of the agent, in this case Jim, or a third party is irrelevant. In this respect

consequentialism is an agent-*neutral* ethical theory, rather than an agent relative one. The morally preferred line of action does not depend on whether you see the situation from the point of view of the acting person, or from the point of view of a benevolent spectator, for example. In principle, there is no difference between the way the moral agent should see his or her situation and the way an ideal independent observer would view the same situation.

Does the end always justify the means?

In the case described above, it was assumed that there are powerful ethical objections to the killing of innocent people. We also contemplated the idea that it may be morally right to kill an innocent person if it is the only way to prevent someone from doing something much worse. In a familiar phrase, the *end* (preventing innocent people from being killed) justifies the *means* (killing an innocent person). In the case of Jim, as described by Bernard Williams, it might be considered that there are mitigating circumstances if the Indian Jim is considering killing is begging to be killed.

However, there are bound to be other cases in which no such mitigating circumstances can be identified, and in these cases the consequentialist view, which allows the end to justify the means, becomes problematic. One case of this sort has been presented by the Australian philosopher H. J. McCloskey (1969, pp. 180-181). He asks us to imagine a sheriff in a town in the southern part of the USA, perhaps sometimes in the 1960s, who is faced with a difficult dilemma:

A white girl has been raped. In the local community, it is widely believed that a certain black man is guilty of committing the crime. However, the sheriff knows that the man is innocent. But, he also knows that if he does not press charges against the man, riots against black people will probably break out and these riots, given the very tense situation, will probably end in a loss of life. What would we want the sheriff to do in this fictional, but not entirely unrealistic, case?

It appears that, from a consequentialist point of view, the sheriff should frame the black man, thus ensuring that he is sent to prison, and perhaps even executed, for a crime of which he is not guilty. Obviously, however, this is completely at odds with our beliefs about justice and fairness. The case therefore seems to show that utilitarianism, and consequentialism more generally, are flawed ethical theories. The problem, as McCloskey sees it, is that utilitarianism allows the end to justify unjust means.

There are roughly two ways in which the consequentialist can respond to this kind of case. The *first* is to point to indirect negative

consequences which may follow if those who are responsible for enforcing the law, like the sheriff, ignore it for the sake of expediency. Public trust in the criminal justice system is an important factor in the smooth functioning of modern society. In the case we are considering, for example, it can be anticipated that riots might well occur if it were discovered that the sheriff has framed a young black man to appease a white mob. So there are very good consequentialist reasons why those who are responsible for upholding the law should act with integrity and not allow exceptions based on short-sighted consequentialist calculations.

Critics of consequentialism can reasonably point out that this response will not always be available. Thus the circumstances might be such that the miscarriage of justice would never be discovered. The sheriff may be a person of high moral standards who decides to deviate from his law-abiding principles only in this very exceptional case. What happens then? At this point the consequentialist needs to offer a *second* line of response. The argument has to be that exceptional cases call for exceptional responses, and that it is actually an advantage of consequentialism that it allows for this. In any case, in real-life cases of this troubling sort, consequentialist decisions are sometimes made.

This may sound outrageous, or even corrupt. However, history does indeed provide examples of consequentialist decisions and policy-making. In Denmark after the Second World War and the German occupation, for example, there was a judicial purge. A number of people were convicted for collaborating with the German occupational forces during the war. Such collaboration was not illegal during the war, so the convictions had to be based on retrospective laws – a practice flouting the usual norms of criminal justice. This strategy seems to have been accepted by those in positions of authority in order to avert greater social ills. There was an extremely tense situation just after the war, of course. There was a real possibility that people would take the law into their own hands, which would have resulted in much worse consequences, as happened in some other European countries. Later, when things had calmed down, a lot of cases were dropped.

Levels of moral thinking

The discussion of the previous section raises a more general problem, namely: how should the consequentialist view the pre-theoretical moral norms, or rules, that we all take for granted and apply day-to-day? Where these norms clash with consequentialist guidance, are they to be given up and replaced by the principle of maximizing good

consequences? What is the relationship between consequentialism as an ethical theory and common-sense morality?

Consider some ordinary precepts of morally acceptable behaviour: keep your promises, don't steal, don't attack the innocent, and so on. Such norms play an important role in human life. They help to create some order in our lives. They make social life reasonably predictable. They also simplify deliberation about how to act – basically they narrow the options.

Now suppose you are a consequentialist. You are not equipped with the precepts above. As a result you have to engage in some very demanding thought when you deliberate about what to do. Nor is there any respite from this: as a consequentialist you face questions about the best thing to do from the moment you open your eyes in the morning and unremittingly throughout the day.

To begin with, you have to outline all the alternative courses of action which are open to you during the day. This alone is a massive task. Instead of doing what you normally do – for example, going to work or university – you must first consider the myriad courses of action open to you. You could visit someone. You could stay home and write a letter to a newspaper. You could volunteer to work for a humanitarian organization. You could … And so on. It is obvious you have a huge number of options to consider.

Going into a little more detail, for each course of action you must identify and estimate all the consequences: you must calculate the impact of each option on the welfare of all affected parties for now *and* the future. You must then calculate the total expected welfare for each course of action in order to be able to decide which action gives the largest total sum of welfare. On top of this, you will, perhaps, be obliged to consider how doing one thing in the morning will affect your ability to do another thing in the afternoon.

This whole exercise is not only complicated, time-consuming and fraught with uncertainty – it is impossible: thorough-going consequentialism, applied to practical deliberation, is quite simply self-defeating. The consequentialist therefore has a good *consequentialist reason* not to think in consequentialist terms all the time. Rather, it appears to be a better strategy to deliberate in terms of simple common sense moral precepts most of the time, or possibly an adjusted subset of these precepts that brings about the best expected overall consequences. Paradoxically, the consequentialist ideal is best served when it is at least partly ignored.

Bentham and Mill recognized that we need "rules of thumb" to be able, in practice, to apply the principle of utility, and later discussions have put even more emphasis on the role of rules. Indeed some

contemporary utilitarians defend what they call "rule-utilitarianism". In this theory the role of consequentialist thinking is not to assess individual acts, but rather to assess enduring rules of conduct. Hence, the principle of utility for these later writers is not "Do whatever maximizes welfare in the present situation" but "Abide by rules whose observance by all would maximize welfare".

Rule-utilitarianism has been widely criticized for two main reasons. First, it has proved hard to specify rules that qualify as maximizing. Life is simply too complex. But second, why should we follow the rules that would give the best outcome if all comply, when we know that a significant number of people won't do the same? The notion that we should abide by rules even when we know others aren't doing so, and even when secretly breaking the rules would be more beneficial, has been disparaged by the more traditional act-utilitarians as "rule worship". Such worship, it is said, is hardly in the spirit of consequentialism.

Today, rule-utilitarianism is a minority view, albeit it has some quite prominent supporters. In any event, the idea that, as a consequentialist, one often needs some simple, pragmatic rules, or guides to conduct, is very much alive. According to an influential articulation of this idea, we need two levels of moral thinking. At the everyday, *intuitive* level, we use conventional moral precepts as our guide. However, sometimes, in a quiet moment of reflection perhaps, we step back from ordinary moral practice and switch to a *critical* level of moral thinking at which we assess and adjust the everyday precepts. In this picture the consequentialist principle serves as a moderator of common-sense ethical thought – a criterion against which we can assess and adjust the moral norms and strategies that normally guide our actions.

Animal ethics: reform or radical change?

To continue the animal ethics theme from previous chapters: What attitudes do consequentialists have to animal ethics? The use of animals in the production of food and other human consumables such as leather is an integral part of western culture. Until quite recently, most viewed this use as a necessity, or at any rate not a matter for moral debate. However, since at least the 1960s our awareness of the negative effects of intensive farming on animal welfare has grown. Animal welfare worries an increasing number of people. Calves in veal crates, hens in small battery cages, and tethered or stalled sows, are some of the better-known practices causing public concern. What is the consequentialist to make of this?

The utilitarian Peter Singer has argued powerfully and vociferously since the 1970s that the interests of animals are on a par with human interests.

> *I am urging that we extend to other species the basic principle of equality that most of us recognize should be extended to all members of our own species. ... Jeremy Bentham incorporated the essential basis of moral equality into his utilitarian system of ethics in the formula: "Each to count for one and none for more than one." In other words, the interests of every being affected by an action are to be taken into account and given the same weight as the like interests of any other being. A later utilitarian, Henry Sidgwick, put the point in this way: "The good of any one individual is of no more importance, from the point of view (if I may say so) of the Universe, than the good of any other." ... The racist violates the principle of equality by giving greater weight to the interests of members of his own race, when there is a clash between their interests and the interests of those of another race. Similarly the speciesist allows the interests of his own species to override the greater interests of members of other species. The pattern is the same in each case.* (Singer 1989, pp. 152-153)

For utilitarians like Singer what matters ethically is simple yet radical in its implications: it is the interests of anyone, or any living being, affected by what we do, including all sentient creatures. In particular, the *species* of beings affected by what we do is irrelevant. The way we treat animals currently, Singer argues, is objectionable in the same way as racism. Indefensibly, it attaches moral significance to a difference between "us and them" that makes no difference. It is a clear case of "speciesism".

This view has serious implications for modern animal production. In intensive farming the basic interests of animals are often set aside so that production can be efficient, and to allow consumers to buy cheap meat and other animal products. But in affluent regions of the world, at least, access to inexpensive food is not actually *needed*. Indeed most people in the west could manage without any meat or other animal products at all. With suitable adjustments to diet and lifestyle, their current level of welfare could be maintained. They might even enjoy greater welfare in the long run, in virtue of their better health and extended longevity. At any rate, Singer's argument is quite straightforward: we should all stop eating meat and other animal products. This would solve the welfare problem in animal production, since if we all cease to consume animal products there will be no farm animals around to suffer. However, there are two obvious problems with this approach.

First, as is now being demonstrated increasingly in the organic sector, there is an alternative approach on offer. Farm animals can be provided with better lives and, at the same time, most humans in the rich parts of the world at least can enjoy affordable animal products (assuming that the price of organic products will fall when organic production or other forms of alternative production become more wide-spread). Livestock welfare can be maintained at what is arguably a level where the lives of the animals are worth living Is this not better from a utilitarian point of view? Of course, animals would still have to be slaughtered, but this need not be a problem for the utilitarian as long as the animals are killed in a painless way and are replaced by other animals which live equally good lives. Singer agrees with this point in principle, but he argues that in practice this is not how things will work out. He asserts that if we don't stop eating meat, animal production will continue to be more or less the same, unaffected by concerns about animal welfare. He clearly doesn't believe that welfare friendly animal production will ever prevail.

This leads to the second problem. Despite approximately 50 years of debate about the way farm animals are treated, only a very small fraction of people in the West have become vegetarians. Meanwhile popular consumption of meat has steadily increased internationally with rising levels of prosperity. Against Singer, this suggests that the consequentialist needs to adopt a more pragmatic and piecemeal approach to changing people's behaviour.

Consequentialists who want to improve conditions for farm animals could, for example, pursue the strategy of improving *animal welfare*. Instead of insisting that we all become moral vegetarians, this approach looks for ways to reform animal production. This can be achieved, to some extent, by means of revised animal welfare legislation. Thus, in Europe during the last four decades, laws have been passed, first in individual countries, and later at the EU level, to outlaw methods of animal production that are perceived as cruel – for example, the confinement of veal calves in crates without access to straw and the once common use of battery hens. Also, minimum requirements for space and other resources such as the provision of straw have been established at law.

Highly motivated consumers can, of course, be encouraged to seek out, and buy, specially labelled animal products that have been produced in a welfare friendly manner. If large numbers of consumers buy products of this kind, a knock-on effect on the manner in which other animals are treated is likely. This approach has been reasonably successful in some areas. In Denmark for example, between 30-40% of eggs and milk consumed in 2010 came from alternative production systems.

The general point we are trying to get across is that there is a world of difference between the theoretical conclusions we reach in the study and the practical and policy implications of these conclusions in the messy arena of politics and commerce. In particular, in the real world, even committed consequentialists who are very clear about their goal – in the present case, an end to methods of animal production in which animals suffer needlessly – will have to give careful consideration to *strategy*, and here a good dose of pragmatism is necessary. A key issue is gradualism. Is a radical shift in practice or a gradual reform the best course? Which would be more likely to succeed, especially given that most people do not share Singer's unconditional anti-speciesism, and given indeed that most people do not look at ethical problems as consequentialists?

Obviously, these are difficult questions. It would be much easier if all individuals were convinced consequentialists – or would it?

Too demanding?

The consequentialist principle that you should act always so as to maximize the good certainly appears to be attractive. It seems to enjoin us simply to do as much good as we can in the world, which is hardly a controversial-looking ethical injunction. The principle, however, contains the word "always". Quite literally, it says that you are always obliged to do whatever is in your power to bring about good outcomes (and prevent bad ones). It doesn't matter who benefits. It may be your mother. It may be a burglar who has injured himself climbing through your window. It could be someone trying to raise funds for a cultural project in Canada, and if all sentient creatures are in the moral circle it could be a seagull.

This means that whenever you use your time or spend money you should do so in a way that generates the largest returns in terms of doing good or preventing bad. Given the problem with which this chapter began – the plight of the hundreds of millions of people who go hungry to bed every day – this has dramatic implications.

In a well-known paper Singer (1972) argued that most people in affluent countries should change their way of life radically. They should focus on helping poor people rather than trying to obtain things that are surplus to their needs. Singer's argument invoked the following innocuous-sounding principle: "if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it". Singer calls this the "minimal principle".

The minimal principle is less demanding than most forms of consequentialism, since it requires the prevention of the bad, not the promotion of the good. Nevertheless, it can still be quite demanding. For example, if you can find an international charity that will channel your savings into aid programmes working with starving families, you should do this before you do most of the things you and your family presently take for granted.

Are others also obliged to help? Of course, Singer asserts they are. However, importantly, he does not consider the fact that many will *not* help a valid excuse for not helping. He argues:

> *… if I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing. … the fact that there are millions of other people in the same position, [as regards the opportunity to help starving people], as I am, does not make the situation significantly different from a situation in which I am the only person who can prevent something very bad from occurring. Again, of course, I admit that there is a psychological difference between the cases; one feels less guilty about doing nothing if one can point to others, similarly placed, who have also done nothing. Yet this can make no real difference to our moral obligations. Should I consider that I am less obliged to pull the drowning child out of the pond if on looking around I see other people, no further away than I am, who have also noticed the child but are doing nothing?* (Singer 1972, pp. 231-233)

It can be seen, then, that consequentialism is bound to have a profound effect on the lives of those who try to live in accordance with it. In order to comply with it, you would have to organize your life so as to generate income to be passed on to starving people or others in similarly bad situations. Of the income you generate, you are entitled to retain only what you need to prevent you and your family from starving or descending into some other form of misery, and to ensure that you are able to continue to work and provide money for the poor. Ultimately, of course, your family are not to be treated by you as more important than anyone else.

But what kind of life is that? It would probably be a difficult philosophy to sell to anyone – apart from the odd individual who aspires to saintly canonization. Not even Singer himself has been able to live up to his own prescription, though he does donate a substantial amount of his salary to charities.

Consequentialism is in real trouble if the demands it makes on people are so high that they give up. Devoted consequentialists like Singer take this to show, of consequentialism, not that it should be abandoned, but rather that it should promoted with sensitivity and realism. Thus, in a recent book about how to help the poor, *The Life You Can Save* (2009), Singer describes some achievable goals. For example, we should give up certain luxuries such as bottled water and instead give what is thereby saved to effective charities. But before we infer, perhaps cynically, that he is dropping his principles, we should note that Singer's reason for lowering the level of ambition is *itself* consequentialist: by focusing realistically on what can be done, he thinks that he can motivate more charitable behaviour than he would if he were to set the bar too high.

That said, some consequentialists have recently come to the conclusion that the standard form consequentialism presented above is indeed too demanding. To use a term first introduced by the American philosopher Samuel Scheffler, they have argued that consequentialism needs to allow for an "agent-centred prerogative", permitting us to apply consequentialist thinking only after we have addressed the needs and well-being of ourselves and those dear to us. This view deals more or less satisfactorily with the issue of consequentialism being too demanding (depending on how much we are allowed to keep for ourselves).

However, to some this halfway-house – an expedient blend of consequentialism and licensed moral parochialism – will come across as little more than an arbitrary, *ad hoc* solution. They will no doubt want to look for a new theoretical starting point, as we shall also do in the next chapter.

Key points

- The aim of this chapter was to describe and discuss the consequentialist principle that we should always aim to bring about the best outcome. The key feature here is impartiality: *who* benefits is of no importance, since all that matters is the total size of the benefit.
- Consequentialism requires a definition of the good, or the thing to be maximized. Utilitarianism is the specific variety of consequentialism in which the good is defined in terms of welfare. There are different forms of utilitarianism, depending on one's definition of welfare.
- An important feature of consequentialism is that it adopts an agent-neutral perspective to our actions. It says that, in principle, there is

no moral difference between, say, my killing someone or my not preventing someone else from killing the same person.

- Another feature of consequentialism that has attracted attention is that it always allows the end to justify the means – even where the means are very obviously unjust. The consequentialist can defuse alarm at this feature, to some degree, by pointing to the positive indirect consequences of upholding norms of justice.
- Living in accordance with the consequentialist principle would be very onerous. Nor would it be very productive in consequentialist terms. Hence, consequentialists tend to agree that in normal circumstances we should act in accordance with conventional moral precepts. Consequentialism is, however, still very important, as it enables us to critically assess and adjust these precepts.
- Debates often arise over the most effective moral strategy from a consequentialist perspective, and they are bound to do so, given that most people do not share the consequentialist view. Here, one can either be radical, and argue for dramatic changes to our way of life, or adopt a more pragmatic stance, allowing piecemeal reform.
- Finally, we discussed the allegation that consequentialism makes demands we could never fulfil. It was conceded that this allegation gives us a further reason to adopt a piecemeal approach to moral progress.

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7
Ethics of Rights

In 1967 the British philosopher Philippa Foot (1920–2010) published what was to become a celebrated paper on the ethics of abortion. In the paper Foot presented some brilliant "thought experiments" to test our moral intuitions. In philosophical circles and beyond, these experiments have been repeated, altered, and argued over, ever since. Foot's main interest was in aspects of our moral thinking that seem to take us outside the consequentialist perspective. Here is a scenario that has occupied several philosophers, among them the American Shelly Kagan:

> *Imagine that there are five patients, each of whom will soon die unless they receive an appropriate transplanted organ: one needs a heart, two need kidneys, one needs a liver, and the fifth needs new lungs. Unfortunately, due to tissue incompatibilities, none of the five can act as donor for the others. But here is Chuck, who is in the hospital for some fairly routine tests. The hospital computer reveals that his tissue is completely compatible with the five patients. You are a surgeon, and it now occurs to you that you could chop up Chuck and use his organs to save the five others. What should you do? … Your choices are these: do nothing, in which case five people will die and one person will live; or chop up Chuck, in which case Chuck will obviously die but five people will live. From the utilitarian standpoint the results certainly seem to be better if you chop up Chuck. After all, if everyone counts equally, then it is simply a matter of five versus one. Obviously, it is a horrible result that Chuck will end up dead; but it would be an even worse result if five people end up dead. So the right thing to do – according to utilitarianism – is to kill Chuck.* (Kagan 1998, p. 71)

That conclusion is troubling, isn't it? Surely any moral theory that requires, or even permits, us to kill Chuck is deeply flawed. Some might go so far as to say that it is part of the

purpose of morality to rule out cold-blooded cost-benefit analysis of this sort. But how is that to be achieved? The obvious answer is that people have rights, including the right not be killed in a grotesque organ harvest. In an ethical theory rights must be given due emphasis. Otherwise we can't explain why we shouldn't chop up Chuck.

We now turn from consequentialism to the rights-based approach to ethics. As we have seen, consequentialism takes many forms, but it has at least one defining feature: what makes an act right or wrong depends entirely on its consequences – on its propensity to promote the good – and nothing else. The consequentialist places no *constraints* on the promotion of the good. So far as the utilitarian is concerned, for example, if an action maximizes welfare it is the morally correct thing to do. This appears to clash with the very widespread conviction that we possess *rights*. A right is, precisely, a moral constraint. It "trumps" other considerations in ethical reasoning. If other people ignore your rights, they are morally wrong – not prima facie wrong, or wrong, other things being equal, but wrong *period*. Others have a moral (and not merely a legal) *duty* to respect your rights.

Let us return to the hospital and Chuck. The consequentialist approach to this case looks seriously wrong-headed. A surgeon cannot legitimately use Chuck in the way envisaged. Why, though? This turns out to be a less simple question than we first think, but few would hesitate before saying that Chuck's rights here, and specifically his very fundamental right to live, would be violated by the proposed surgery. The consequentialist simply overlooks the ethics of rights.

The "ethics of rights" is in fact a rather diverse collection of ethical positions taken up by various writers historically – it is perhaps better described as the "ethics of rights *tradition*". Writings in this tradition have one defining feature: they insist that there are ways of promoting the good as the consequentialist demands that are *morally impermissible*, or prohibited. Another way to put this is to say that they impose *constraints* on the promotion of the good. The surgeon can promote the good – i.e. collective welfare – by chopping up Chuck, but a constraint on this in the form of a right to life prohibits him from doing so.

Unsurprisingly, defenders of consequentialism are unlikely to concede that their theory *entails* that Chuck should be chopped up. They will point to various potentially catastrophic outcomes of a policy of organ "sharing". The public would become wary of visiting hospitals for fear of being harvested themselves. The needy, on the other hand, would

have a strong incentive to contact hospitals with details of vulnerable people with vital organs they are really not making the most of. "My son is 21 and in the middle of a degree in Supply Chain Management! Could you not use his uncle's liver? He's depressed … and he has gout!" But this kind of speculation is not enough to defuse the worry. The point is that the consequentialist would be logically committed to chopping up Chuck *if* that were the way to promote the overall good. That in itself seems to be enough to show that there's something serious amiss with consequentialism.

The ethics of rights has a long and complex history, but in that history the writings of the German enlightenment thinker Immanuel Kant (1724–1804) loom large. Kant conceived of ethics primarily in terms of the twin notions of duties and rights. He believed that moral duties and the rights that correspond to them ultimately derive from a fundamental, or governing, duty to act in accordance with, and out of respect for, what he called the *categorical imperative*. If asked why we should respect this imperative, the answer, according to Kant, is that it would be irrational not to do so. The requirements of morality are, fundamentally, requirements of rationality. In its most trenchant version the categorical imperative runs:

> *Act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never merely as a means to an end.* (Kant 1993, p. 30)

Let us try to unpack what it is Kant is saying here. In conversational English he is saying: "In your conduct always treat yourself and others as ends, not merely as means to an end." What does it mean to treat another person as an end, or as a means to an end? Treating someone as a means implies either that you act selfishly, or that you *use* that person as a vehicle to reach some other goal which is not shared by him or her. Roughly speaking, it means *ignoring* the fact that others have their own goals, dignity, integrity, will and freedom. We can simplify matters somewhat, and combine these features, and say that you treat another as a means when you do not take his or her *interests* as a rational and moral being (sufficiently) into account.

Conversely, treating a person as an end involves taking him or her seriously as an equal human being with interests that ought not to be ignored just to further some other end. Note, by the way, that Kant did not claim that you should treat persons *solely* as ends in themselves. That demand would make it impossible for you to so much as buy a newspaper, because in doing so you would in one way be treating the newsagent a means of satisfying your desires. Kant's position is that you

should *also* treat the seller as an end – for instance, by paying the full amount for the paper.

This connects the ethics of rights tradition with an ideal of *moral equality*. Consequentialism is, or can be, one way of trying to respect moral equality. In it, each person's welfare counts for as much as that of any other individual. However, because the focus is on maximizing totals, this is compatible with sacrificing one or some for the greater good. The American philosopher John Rawls (1921–2002), objected to utilitarianism on the grounds that it fails to give equal protection to all: only the abstract "good" counts and we are, in a certain sense, all "means" – or, more vividly, tools – to the end of promoting the good. This is the only sense in which we are "equals" in utilitarianism (Rawls 1971).

The ideal of moral equality expressed or encompassed by Kant's categorical imperative is very different: as rational beings, capable of deliberation and of acting accordingly, we are all equals. The same categorical imperative applies to all, because the laws of rational thought are the same for all rational beings. We therefore owe exactly the same kind of respect to all rational beings. The ethics of rights tradition enshrines this ideal of equality by ascribing certain (equal) rights to each and every one of us.

In ethics courses today Kant is typically set against Mill. Mill represents consequentialism. Kant is by contrast the sternest *deontologist* (from the Greek *dei* = it is right). In his writings Kant tends to shine the spotlight on duties more than rights. However, very little hangs on this. If I have a duty to tell the truth, you have a right to be told the truth. If I have a right not to be attacked, you have a duty to refrain from attacking me, and so on. Barring some fringe cases, we can say that duties and rights are two sides of the same ethical coin.

According to Kant only persons have rights, and in practice that means that only humans have rights. However, some have argued that even non-human animals can be bearers of rights. Thus the American philosopher Tom Regan claims that animals have rights, and should never be treated merely as a means to others' ends.

Rights, according to Regan, belong to beings that can accurately be described as "subjects-of-a-life". Subjects of this kind are psychologically sophisticated: they have desires, beliefs, some form of memory, and the ability, however limited, to anticipate the future. These mental capacities are important because creatures that have them lead *lives that matter to them*. Thus a pet dog that waits for its owner's return from work and prefers one brand of tinned food to another is leading a life that matters to it. In Regan's view, any creature leading a life that

matters to it has the right to be treated as an end in itself. We have this right, but so do quite a number of animal species (Regan 1983).

From the basic right to be treated as an end various other rights flow: for example, Regan takes a categorically abolitionist view of animal experimentation and livestock farming. It is wrong to take the life of a healthy animal that does not pose a threat or otherwise harm it no matter what the beneficial consequences may be for others. But the details of Regan's position need not detain us here. The main point to grasp is that he draws the rights boundary with a concept – the "subject-of-a-life" concept – that brings some animals into the group of rights bearers.

For the rest of this chapter we will focus on humans as bearers of rights. However, most of what is said would in principle be applicable to animals, assuming that the animals are included among those beings that are bearers of rights.

From equal moral standing to rights

The ethics of rights tradition, then, can be seen as just one way of fleshing out the ideal of moral equality. Everyone should be treated with equal respect, always. However, this certainly does not mean that we should all have the same level of income, or comparable possessions. It means that we possess identical dignity, value, or worth, and that every one of us has the *right* to be treated as such.

Within the ethics of rights tradition there are other ways of conceptualizing our equal moral worth. The most prominent is the idea of *natural rights*. The word "natural" should not be misunderstood. Its association with biological nature, and again, with that which is self-evident, can easily mislead. What is meant by natural rights is simply *fundamental* rights that need (and in some versions of the idea can have) no further grounding. These fundamental rights are something we all have, simply in virtue of our status as human beings, and not in virtue of our nationality, our efforts, race, sex, religion or any other feature. This is why there is a close affinity between the concept of natural rights and the concept of *human* rights (as the latter are set out, for example, in the UN declaration of human rights.)

Now, an important point: it is one thing to say that we are on the same moral footing, or that we all possess the same moral worth. But it is quite another to say that we all have the same *rights*. Nevertheless, rights seem to be a straightforward expression of our equal worth. By giving – or acknowledging – a fundamental right, say, to your life and possessions, I affirm that your life cannot be sacrificed for the sake of others: you are worth as much as they are, and vice versa. And this

returns us to the crucial point of difference between the ethics of rights tradition and consequentialism: the former disputes the latter's idea that morality consists of maximizing welfare come what may. The rights of individuals must be respected, and these rights sometimes block any move toward maximizing welfare.

What is a right?

A good way of conceptualizing rights is to conceive them as follows:

> If a person *P* has a right, R, then:
> (1) *P* is permitted to do R, and
> (2) no one is allowed to interfere with *P* doing R.
> And all this under the condition that
> (3) by doing R, *P* does not violate the rights of other people.

Suppose Angus has the right to healthcare. By (1) He is permitted access to healthcare. By (2) no one is allowed to interfere, for example, with his going to hospital. Now for a crucial distinction: is the right in question *negative* or *positive*? A negative right involves that no one is allowed to obstruct Angus from going to hospital and seeking a doctor. However, no one is morally obliged to support Angus. His possession of this negative right does not entail that others are obliged to build a hospital, serve as doctors, give him medicine, and so on. It merely entails that others must refrain from doing something, namely obstruct Angus' pursuit of healthcare.

A *positive* right is, very often, much stronger. It entails that others are obliged to help Angus. So we need to add a fourth item to the list when we are talking about positive rights. Where positive rights are at issue:

> (4) others have a duty to assist *P* in doing/achieving R.

This simple, yet highly significant distinction is all too often overlooked. Furthermore, we need to pay close attention to (3). Suppose Angus does have a right to healthcare. This does not entail that Angus has the right to run over Bonnie on his way to hospital, because Bonnie also has a right to her life and limbs.

In theory, many things can be claimed as rights: life, liberty, food and shelter, the opportunity to take a holiday … the list is pretty open-ended. Historically, the ethics of rights tradition has been quite moderate in its claims and concentrated on basic necessities: life, liberty and the pursuit of happiness, understood in falling degrees from the negative to the positive – e.g. you might have some (modest) claims against others to ensure your survival. Nevertheless, your life and liberty is mainly negatively protected. On the other hand, in recent

years, especially in the human rights field, there has been much more emphasis on positive rights.

How do rights do their job?

The American jurisprudent Ronald Dworkin (1931–2013) introduced a powerful metaphor to explain how rights work which we will expand on here. Imagine that all of our various claims on others ("Do that for me", "Don't interfere with me doing this", "Assist me with the other") form a deck of cards (Dworkin 1984). Some cards have more moral value than others. If one of your friends asks you to help her out for a few hours because her baby is sick and she cannot afford a babysitter and another asks you to come over to chat, then, very probably, the first friend's "card" will have higher value. Rights function as *trumps* in this card game: they override all other claims. If you have a positive right to medical assistance in a certain situation, that right trumps other claims, including the claim that your local municipality could save a lot of money by not treating patients who will not or cannot pay for themselves.

Trumps, then, express the basic idea in the ethics of rights tradition that individuals have some very strong claims against others, and crucially a moral claim not to be sacrificed for the greater good. If the surgeon asks Chuck to give up his organs to save the lives of five people, Chuck is entitled to refuse. It would be very nice, in fact heroic, of him to make this sacrifice. It may also be true that total human well-being would be hugely increased by the organ harvest. But he has a right *not* to do so. His right to life functions as a trump against the claims of the ailing five.

Naturally, the deck cannot be a collection *only* of trumps. That would result in social deadlock. On the other hand, we would probably wish to claim more than just one trump – more, say, than the negative right to life. The card game metaphor with an emphasis on trumps nicely illustrates the logic of a rights discourse. It also illustrates a fundamental problem: what are we to do when two trumps are played? We will return to this below.

Since not every card in the deck is a trump, there will be some situations where trumps do not come into play. Does this mean that *morality* does not come into play? After all, if our basic moral standing is expressed in rights, and rights function as trumps, it looks as though any situation that does not involve trumps does not involve morality. Those in the ethics of rights tradition disagree on this matter. Some would indeed be prepared to say that insofar as no rights are involved in a situation, there is no "moral truth" to be found. Morality takes a holiday.

This view does at least have the merit of capturing many people's (incidentally, strongly anti-consequentialist) intuition that some areas of our lives have to be free of moral directives. But others would say that, once trumps are out of play other, admittedly less authoritative, moral reasoning takes over, including quite possibly consequentialist reasoning. Thus your feeling (if you have it) that it would be wrong to pursue your social life rather than assisting a friend without the money for a babysitter need not be based on deontological respect for rights. For all that has been said, it could be grounded in a consequentialist belief that it would be unethical, in the situation at hand, not to do the thing that contributes most to net welfare.

It remains the case, however, that the thrust of the ethics of rights is toward the view that, once rights are out of the picture, "true" or "mandatory" morality is at rest. This is definitely not to deny that unselfish contributions to the welfare of others are commendable or praiseworthy. The point is merely that it is not *morally obligatory* to make such contributions.

Some problems with rights

Rights do not always conform as neatly with common-sense moral beliefs as they do in the case of Chuck. In this last section, we will discuss two kinds of case where there is divergence.

The morality of killing: Some believe that in extreme situations, such as war, ordinary morality is suspended. Probably this is at least psychologically true. However, it is controversial to say that the demands of morality are shelved just because the circumstances are adversarial. Indeed this seems to undermine the very point of rights and morally guided action.

In war we often encounter the problem of *collateral damage* – in plain words, the killing of innocent civilians. Warfare almost inevitably means that we kill or maim innocent people. How can this be reconciled with the fact that these innocents have an absolute right to life?

The radical answer is to maintain that the killing of innocents violates people's basic rights, so there is no justification for collateral damage, and hence for any warfare that involves it. But such *pacifism* appeals to very few since most people find it intuitively right to defend yourself against an aggressor, e.g. if your country is attacked. The human capacity to inflict grievous harm is truly frightening and in the light of that most find it ethically justified to defend yourself or those that are innocent.

Very few advocates of the ethics of rights have been pacifists, and a variety of attempts to solve the rights-in-war conundrum have been

made. The most important is the *doctrine of double effect*. This is the doctrine that it is sometimes morally permissible to harm, or even kill, people, if the harm or death is "foreseen" but "not intended" by the agent. Of course, this doctrine doesn't licence foreseen harm come what may. The agent's intention must be to do something that is in some sense out-weighs the regrettable, foreseen harm.

A couple of examples will help. Doctors sometimes give terminally ill patients pain killers such as morphine which are known to hasten the patient's death. If the intent, however, is to relieve pain, double effect can be invoked to explain why this is an acceptable practice. Occasionally, pregnant women develop uterine cancer. When they do, the normal clinical response is to surgically remove the womb, and unless it is at an advanced stage of development the foetus will die. The Catholic Church regards this as an exception to its prohibition on abortion on the grounds that it is not an intentional killing of the foetus. The death of the foetus is a foreseen outcome of the procedure, but the surgeon's intention is to save the woman.

Returning to the subject of war, collateral damage can be looked at through the prism of double effect. Thus, it might be suggested that the intention of the 2003 "shock and awe" bombings of Baghdad was to hit military targets, although it was anticipated that civilian deaths – men, women and children – would follow. This rendered the attacks acceptable.

Critics maintain that this way of conceptualizing moral issues is incompatible with the ethics of rights. It simply seems too convenient that people's rights suddenly present no obstacle when the harm being done to them is merely foreseen, but not intended. Suppose we dump dangerous nuclear waste in the sea, and people protest, saying it will harm people in the future. It is hardly an excuse to say that we "only foresee" and "do not intend" harm. Here, defenders of the doctrine of double effect will say: "Ah! But dumping nuclear waste in this example is illegitimate because the dumping does not have a sufficiently productive, intended outcome. The goal must outweigh the harm done." But it is arguable that this only serves to deepen the difficulty. The response seems to be saying that a person's rights can be put to one side only when action infringing them leads to a better outcome. This appears to be a straightforward example of consequentialist thought. At this point the whole rights-edifice then seems to be redundant, if not downright self-defeating.

Conflicts of rights: Another problem for the ethics of rights-tradition arises when rights conflict with one another. So far we have concentrated on the basic right to life, but of course other rights are usually added to this. One familiar right in the ethics of rights tradition

is the right to *bodily integrity*. This is related to, but differs from, the right to life. It protects you from wanton injury and maiming by others of the sort that does not kill you. Let us assume that people have this right to bodily integrity. Adapting a famous example of Thomas Nagel's (1986), imagine that you and your friend survive a car crash. However, your friend is in dire need of medical treatment. In fact, he will die very soon if he does not get to a hospital, and of course the car you were driving in is in pieces. You enter a house, asking for help, but frighten the elderly woman who lives there and she runs into the bathroom to hide, locking the door behind her. The old lady is also the owner of a mint condition Ferrari Testarossa which will surely get your friend to hospital in good time. You decide to grab the lady's grandchild and twist the child's arm, forcing the woman to hand over the key to the car.

The problem is, of course, that you are violating at least one right (the innocent child's right to bodily integrity) to safeguard another man's right (your friend's right to life.) Intuitively, the way to resolve this conflict is to compare the gravity of each violation. However, this is not a satisfactory course. First, it implies that we *can* sacrifice one person's interests in order to promote another's. This is exactly the kind of move that the ethics of rights was devised prevent. Second, if we are to compare violations, we need a measure of gravity. But that leads us on to a slippery slope which leads back to the measurement of *welfare*. After all, what other plausible criterion could you use to measure the gravity of a rights violation? But this reiterates the problem we encountered when we discussed the doctrine of double effect: that under the fine veneer of rights lurks the quicksand of consequentialism.

Some proponents of the ethics of rights opt for a radical solution: they insist that we should not allow comparisons of welfare to enter our deliberations. This position is often accompanied by the claim that what matters is not what happens as seen from a point of view "outside" the concrete moral situation, where we can make judgments such as "a minor or major infringement of rights", or "the total sum of rights violations", and then opt for the lesser of two or more evils. Rather, what is morally relevant is only how *you* behave, *not* what happens in the big picture. It is *your* duty to make sure that you do not infringe anyone's rights, but it is not your duty to act so as to minimize the number of violations, or maximize the number of rights-respecting acts. As the American libertarian philosopher Robert Nozick (1938–2002), a leading modern proponent of the ethics of rights, once put it, there is no place for a "utilitarianism of rights".

This might solve the immediate theoretical problem. But it comes at a high price. For common sense surely dictates that it is often *morally* better to violate a "small" right in order to prevent the violation of a

"bigger" right by another person. It would surely be morally acceptable to borrow a rowing boat without permission when by doing so one can prevent the drowning of three children. Perhaps common sense is wrong here. However, the notion that in borrowing a rowing boat without permission you commit a greater moral wrong than you would in allowing three children to die, seems to fetishize rights at the expense of human decency. Moreover, if one of the points of the ethics of rights tradition is to express a robust kind of *respect* for people, it seems odd to ignore the plight of people in serious jeopardy in the name of an abstract moral concept like the concept of rights.

We have drawn a picture of the ethics of rights where there is no possible compromise or overlap between that theory and consequentialism. However, maybe future philosophical studies will show that the border line between these theories is rather porous. The British philosopher Derek Parfit (2011) has recently developed some ingenious arguments to that effect. For instance, insofar, or because, an agent is not irrational by giving up a "lesser" right (e.g. his ownership or property rights to a rowboat) in order for a "higher" right to be fulfilled (e.g. saving the lives of the drowning children), one is not using that agent merely as a means when one takes his boat without his permission. Maybe some of the major ethical theories are indeed "climbing the same mountain from different slopes", to use Parfit's phrase. However, Parfit's arguments are highly controversial and there is no consensus in the philosophical community that he is right.

Key points

- The ethics of rights, just like consequentialism, has strengths and weaknesses. On the upside, it is an intuitively much more palatable way of fleshing out the ideal of moral equality and respect – or equal human worth – than the equivalent idea in consequentialism that "everybody's interests are to be taken into account, but this might mean sacrificing *your* interests". Moreover, it creates a kind of haven where the demands of morality do not intrude – or at least not with full force – and this is in accordance with many people's experience of moral life. Finally, it captures our firm intuitions in cases such as the one of Chuck.
- On the downside, the ethics of rights tradition faces a dilemma. It could allow for comparisons when rights-claims collide, but this threatens to undermine the distinctiveness of rights theory and turn the ethics of rights into a circular form of consequentialism. Alternatively, the ethics of rights could uphold a strict rights-and-duties scheme offering no place for comparisons, but this would

threaten to distance it from common sense. Arguably, it would also involve fetishizing the concept of rights instead of caring about and, in that rather different sense, respecting people.

- A third alternative would be insist that rights and duties guide human conduct up to a point, but allow that when rights are in conflict comparisons are appropriate and perfectly proper. It could also be agreed that when we are in reasonable doubt (or when there are no rights at issue) we should be guided by some sort of consequentialism. Such a pluralistic theory will not appeal to purist advocates of the ethics of rights. However, it seems to overcome many of the difficulties philosophers have identified in the discussion of the ethics of rights tradition.
- Rights theorists might retort that morality is not neat and clear-cut. Sometimes we face hard choices. Ethics – not as a result of our incompetency or lack of a precise moral theory – is sometimes unavoidably tragic. It does rather seem, however, that the ethics of rights-tradition conjures moral tragedies where none exist. By insisting on the sanctity of minor rights, protecting relatively marginal interests, it allows *much* worse tragedies to happen. This flies in the face of common sense.

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