

Utilitarianism, Deontology,  
and the Priority of Right

This article ultimately aims to elucidate the role of an important distinction in moral and political philosophy, that between deontology and teleology. The real issue between teleological and deontological views, I argue, is the appropriateness of the idea of a single rational good in practical deliberation and in the formulation of moral and political principles. Teleologists see one rational good as essential to practical reasoning; without it, moral and political reasoning are often indeterminate and provide no guidance as to what we ought to do. Abandoning a completely rational morality, if we must, is for deontologists an acceptable price to pay to avoid the morally counterintuitive results of teleology; moreover, for Kantians such as Rawls, it is necessary and even desirable in order to provide a secure position for a plurality of intrinsic goods, and for political freedom, equality, and individual autonomy.

## I. THE ISSUE

It is perhaps a moral truism to say that people ought to do what they can to make the world as good a place as possible. But construed in a certain way, this becomes a highly controversial thesis about morality: that the right act in any circumstance is one most conducive to the best overall outcome (as ascertained, say, from an impersonal point of view that gives equal weight to the good of everyone). This is Consequentialism.<sup>1</sup>

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1. Here I follow with some revision Samuel Scheffler's definition. See *Consequentialism and Its Critics*, ed. Samuel Scheffler (Oxford: Oxford University Press, 1988), p. 1.

More simply, it holds Right conduct maximizes the Good. G. E. Moore held this thesis self-evident. Non-consequentialists argue nothing could be further from the truth. So far as they do, it appears (to consequentialists at least) they are committed to the indefensible idea that morality requires us to do less good than we are able to.

John Rawls's teleological/deontological distinction is different. Teleological views affirm the consequentialist thesis that the Right maximizes the Good. But they hold an additional thesis: "the good is defined independently from the right" (TJ, p. 24), or, as Rawls often says, independent of any moral concepts or principles.<sup>2</sup> To see how this view differs from consequentialism, consider a thesis once proposed by T. M. Scanlon.<sup>3</sup> A standard objection to consequentialist views like utilitarianism is that they are indifferent to the distribution of the good; this is purportedly a necessary feature of such views, since they define right and justice as what maximizes overall, or aggregate, good. Scanlon argued there should be a way to incorporate distributive concerns into a two-level consequentialist view. If we treat fairness or distributive equality as a good in itself, then it must be considered along with other goods like net aggregate satisfaction in determining the value of overall outcomes that are to be maximized. Rights could then be introduced at the level of casuistry, to promote the good of equitable states of affairs.

The two-level consequentialist view Scanlon suggests would not be teleological on Rawls's account; it would be deontological. As Rawls says:

If the distribution of goods is also counted as a good, perhaps a higher-order one, and the theory directs us to produce the most good (including the good of distribution among others) we no longer have a teleological view in the classical sense. The problem of distribution falls under the concept of right as one intuitively understands it, and so the theory lacks an independent definition of the good. (TJ, 27)

Rawls's thought may be this: in order to define the distributions (e.g., equal states of affairs) that are intrinsically good, and then practically apply this definition to determine what we ought to do, we must appeal to some process of distribution that can only be described by antece-

2. John Rawls, *A Theory of Justice* (Cambridge Mass.: Harvard University Press, 1971); cited in text as "TJ."

3. T. M. Scanlon, "Rights, Goals, and Fairness," in *Public and Private Morality*, ed. Stuart Hampshire (Cambridge: Cambridge University Press, 1978), pp. 93–112.

dent principles of right or justice. But once we do that, then it is no longer the case that the right is exclusively defined in terms of what maximizes the good. For example, suppose fairness or the equal capacity of persons to realize their good is among the intrinsic goods in a consequentialist view: we are to act in whatever ways best promote fairness or equality of capacity for all persons. It is difficult to see how such vague ends can be specified for practical purposes without appealing to principles or procedures defining peoples' equal basic rights, powers, and entitlements. But once this specification is incorporated into the maximand, the right is no longer simply a matter of maximizing the good. For the concept of the good itself, in this instance, cannot be described without an antecedent nonmaximizing moral principle of right: that people ought to be treated fairly, afforded certain basic rights and powers, and so on. Not only is such a view by Rawls's definition nonteleological; it is also not consequentialist if by this is meant that to maximize the good is the *sole* fundamental principle of right. Incorporating rights or other moral dictates into the maximand is incompatible with this very idea.<sup>4</sup>

Phillipa Foot has said that what makes consequentialism so compelling is "the rather simple thought that it can never be right to prefer a worse state of affairs to a better."<sup>5</sup> But deontological theories, suitably construed, can account for this "simple thought" just as well (for reasons I discuss in Section VI). The force of consequentialism must then lie elsewhere: it embodies a powerful conception of practical reason. If we assume that rationality consists in maximizing an aggregate, and that in ethics it involves maximizing overall good, then we are able to say that there is a rational choice between any two alternative actions, laws, or institutions. Therefore under all conceivable conditions, there is a

4. A question I can only raise here: What role can rights and other distributive concerns really play, once incorporated into the maximand, in a theory that says we ought *always* to act in a maximizing fashion? That basic principle occupies all prescriptive space. If so, then by acting on nonmaximizing precepts made part of the maximand (by, e.g., aiming to respect others' rights), how can we (except accidentally) avoid violating the basic principle of right? This raises problems for "rights-consequentialism" as a moral theory, as well as the "utilitarianism of rights" Robert Nozick suggests in *Anarchy, State and Utopia* (New York: Basic Books, 1974), p. 28.

5. "Utilitarianism and the Virtues," *Mind* 94 (1985): 196–209; also in *Consequentialism and Its Critics*, ed. Scheffler, p. 227. Against this, Foot argues that the idea of "the best state of affairs," impersonally construed, has no reference or applicability in ordinary moral experience.

uniquely rational, hence right, thing to do. Granted, it may not be knowable by us, but the idea of maximizing the good provides a way to assign a truth value to any statement about what persons or groups ought to do. No other conception of rationality offers such practical completeness. Sidgwick, well aware of the force of the idea of maximizing an aggregate, used it quite effectively to argue that hedonism must be true, and that rational egoism and utilitarianism were the only two "rational methods" in ethics.<sup>6</sup> He could not decide which of the two was more rational, but assuming that egoism is not a moral conception at all, then, given Sidgwick's premises, utilitarianism prevails without opposition.

These introductory remarks supply background I later refer to. My aim is to elucidate the teleology/deontology distinction. I begin with the contention that teleological theories are not *moral* theories at all. Will Kymlicka argues that the teleological/deontological distinction relied on by Rawls and others is misleading. Not only does the morally right act not maximize the good; any view which defines the right in this way is not a moral conception.<sup>7</sup> Right actions, Kymlicka says, concern our duties, and duties must be owed to someone. But if moral duty is defined as maximizing overall good, "Whom is it a duty *to*?" (LCC, p. 28). Kymlicka argues for the (Kantian) claim that morality concerns respect for persons, not the good impersonally construed. And the most credible moral conceptions, the only ones worth attending to, hold that "each person matters equally," and deserves equal concern and respect (LCC, p. 40).

Kymlicka's aim here is not to attack teleological views, but to show that Rawls's teleological/deontological distinction cannot do the work Rawls wants; indeed it is "based on a serious confusion" (LCC, p. 21). For utilitarians, Kymlicka claims, are just as committed to equality, equal respect for persons, and fair distributions as everyone else. The difference is they interpret these abstract concepts differently. Here Kymlicka follows Ronald Dworkin's suggestion: "that Rawls and his critics all share the same 'egalitarian plateau': they agree that 'the interests of the

6. *Methods of Ethics* (Indianapolis: Hackett, 1981), p. 406.

7. "To define the right as the maximization of the good . . . is to abandon the moral point of view entirely, to take up a non-moral ideal instead," one he describes elsewhere as "quasi-aesthetic." *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1989), p. 40; cited in text as "LCC." Most references in the text are to Chapter 3 of this book, which is almost identical with Kymlicka's article, "Rawls on Teleology and Deontology," *Philosophy & Public Affairs* 17 (Summer 1988): 173-90.

members of the community matter, and matter equally” (LCC, p. 21). Utilitarians like Hare and Harsanyi, non-utilitarians like Rawls, Nozick, and Dworkin, and even many Perfectionists (Kymlicka mentions Marx), all accept that equal concern and respect is the fundamental moral principle. “All these theories are deontological in that they spell out an ideal of fairness or equality for distinct individuals” (LCC, p. 26). If so, Kymlicka argues, the dispute between utilitarians and their critics cannot be depicted in terms of Rawls’s misleading distinction, or in terms of the priority of the right or the good. At issue in these debates are different conceptions of the political value of equality.

I shall argue (in Sections II and III) that Kymlicka, not Rawls, is culpable of “serious confusion.” He confuses deontology—a claim about the *content* of principles of right—with the principles that are invoked in *justifying* and *applying* the content of a moral view. Moreover, he confuses deontology with a related idea, the priority of right. The priority of right has received a great deal of attention from Rawls’s communitarian critics. This is surprising in view of the fact that Rawls has so little to say about it in *Theory of Justice*.<sup>8</sup> What accounts for this attention, I suspect, is Michael Sandel’s misreading. He identifies the priority of right with deontology, and says both mean that Rawls’s argument for justice as fairness relies on no account of the human good or our interests.<sup>9</sup> Kymlicka rightly argues that Rawls does *not* seek “to derive principles of justice without any idea of people’s essential interests” (LCC, p. 36). But

8. Rawls specifically elaborates on the priority of right on pp. 30–32, and does not take up the idea again until Part III, “Ends,” pp. 449–50. The priority of right is once again discussed at the end of TJ, in Rawls’s account of “The Unity of the Self” (sec. 85). Lately, Rawls has elaborated this idea in Lecture V of *Political Liberalism* (New York: Columbia University Press, 1993), which initially appeared as “The Priority of Right and Ideas of the Good,” *Philosophy & Public Affairs* 17 (Fall 1988): 251–76; cited in text as “PR.” In this lecture Rawls distinguishes between the “general meaning” and the “particular meaning” of the priority of right. *Political Liberalism*, p. 209. He says: “[T]he priority of right means (in its general meaning) that the ideas of the good used must be political ideas, so that we need not rely on comprehensive conceptions of the good but only on ideas tailored to fit within the political conception. Second, the priority of right means (in its particular meaning) that the principles of justice set limits to permissible ways of life: the claims that citizens make to pursue ends transgressing those limits have no weight.” My discussion will be limited to the priority of right in its “particular meaning,” since that is the form of the idea as it appears in *Theory of Justice*, and which is at issue in discussions by Kymlicka, Sandel, and others. The priority of right in its general meaning concerns changes to Rawls’s conception subsequent to *Theory*, and will not be discussed here.

9. Sandel says: “In its foundational sense, deontology opposes teleology; it describes a form of justification in which first principles are derived in a way that does not presuppose

he persists in identifying deontology and the priority of right.<sup>10</sup> In Sections IV to VI, I argue that priority of right is a different notion, one that is central to Rawls's liberalism and the Kantian structure of his deontological view.

My primary aim in this paper is not to attack Kymlicka's otherwise fine treatment of Rawls and liberalism; nor is it simply to expound Rawls's view, though I do a good deal of that. By so doing, however, my ultimate purpose is to elucidate the role of the very important distinction in moral and political philosophy, between deontology and teleology. I criticize Kymlicka's understanding of this distinction only because he presents an influential and especially well-formulated alternative interpretation, one that I believe obscures the central issue.

## II. UTILITARIANISM AND EQUALITY

Kymlicka distinguishes two interpretations of utilitarianism: teleological and egalitarian. According to Rawls's teleological interpretation, the "fundamental goal" (LCC, p. 33) of utilitarianism is not persons, but the goodness of states of affairs. Duty is defined by what best brings about these states of affairs. "[M]aximizing the good is primary, and we count individuals equally only because that maximizes value. Our primary duty isn't to treat people as equals, but to bring about valuable states of affairs" (LCC, p. 27). It is difficult to see, Kymlicka says, how this reading of utilitarianism can be viewed as a *moral* theory.

Morality, in our everyday view at least, is a matter of interpersonal obligations—the obligations we owe to each other. But to whom do we owe the duty of maximizing utility? Surely not to the impersonal ideal spectator . . . for he doesn't exist. Nor to the maximally valuable

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any final human purposes or ends, nor any determinate conception of the human good." "[T]he priority of right means that, of the 'two concepts of ethics', the right is derived independently from the good, rather than the other way around. This foundational priority allows the right to stand aloof from prevailing values and conceptions of the good, and makes Rawls' conception deontological rather than teleological." Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 3, 18. These sentences are simply false, as we shall see.

10. "It has become a commonplace that most contemporary liberal theory is 'deontological'; that is, it gives priority to the right over the good" (LCC, p. 21). "Rawls calls such theories, which give priority to the right over the good, 'deontological'" (LCC, p. 23).

state of affairs itself, for states of affairs don't have moral claims." (LCC, p. 28–29)

Kymlicka says, "This form of utilitarianism does not merit serious consideration as a political morality" (LCC, p. 29).

Suppose we see utilitarianism differently, as a theory whose "fundamental principle" is "to treat people as equals" (LCC, p. 29). On this egalitarian reading,

utilitarianism is a procedure for aggregating individual interests and desires, a procedure for making social choices, specifying which trade-offs are acceptable. It's a moral theory which purports to treat people as equals, with equal concern and respect. It does so by counting everyone for one, and no one for more than one. (LCC, p. 25)

It interprets this notion of treating people with equal consideration by giving equal weight to each person's preferences, regardless of what they are preferences for. This supplies the basis for the utilitarian decision procedure. When we act on this procedure, "then utility is maximized. But maximization of utility is not the direct goal. Maximization occurs, but as a by-product of a decision procedure that is intended to aggregate peoples' preferences fairly" (ibid.).

Kymlicka argues that his egalitarian reading of utilitarianism is superior to Rawls's teleological one. For on the egalitarian reading, our fundamental duty—equal consideration—is owed to persons, not to impersonal states of affairs; the problem of characterizing utilitarianism as a *moral* theory goes away. Moreover, this reading better accords with how utilitarians see their theories.

[I]t is the concern with equal consideration that underlies the arguments of Bentham and Sidgwick, and is explicitly affirmed by recent utilitarians like Harsanyi, Griffin, and Singer. And while this is not his preferred method, Hare too claims that one could defend utilitarianism by reference to a foundational premise of equal consideration. (LCC, p. 25)

Later (in Section III) I consider whether Kymlicka's egalitarian interpretation appropriately depicts utilitarianism. But for now, I aim to focus on Rawls's teleological/deontological distinction. Kymlicka says, once utilitarianism is construed as based in a fundamental principle of equal consideration, it cannot be seen as teleological; it becomes "in

Rawls's classification, a position that affirms the priority of the right over the good" (LCC, p. 26).

In this more compelling form, utilitarianism is a 'deontological' theory, in that the right is not *defined* as the maximization of the good . . . and each individual *is* considered to have a distinct claim to equal consideration. (LCC, p. 32)

These claims and arguments are based in a misunderstanding of the role in ethics of the teleology/deontology distinction.

Distinguish four different stages at which some notion of equality might play a role in a moral conception:

1. The stage of *justification* of substantive moral principles, which involves appeal to some account of practical rationality, its basic principles, and the nature of moral reasoning.
2. In the *content* of substantive moral principles purportedly justified, which provide the ultimate practical standards according to which acts and institutions are right or just.
3. In the *application* of these substantive moral principles to decide what acts are right and what rules and institutions are just.
4. As a subordinate moral rule, required by 2 and 3.<sup>11</sup>

To illustrate, take Justice as Fairness: The content (level 2) of Rawls's principles of justice provides that certain liberties are to be *equally* distributed; that social positions are to be open to all under conditions of *fair equality* of opportunity; and that income and wealth are to be *equally* distributed unless an unequal distribution would improve everyone's share (in which event institutions are to be designed so as to maximize the share that goes to the worst off). Here equality is a feature of each of Rawls's substantive principles of right; it is shown on their face. To justify these moral principles (at level 1), Rawls appeals to ideals of social cooperation and of free and equal persons presumed to be implicit in our conception of ourselves as democratic citizens; on this

11. A fifth level can be distinguished here: equality might be part of a metaethical account of the subject matter of morality. For example, Scanlon's contractualism asserts that morality is the set of principles that free and informed persons, equally situated and suitably motivated, could not reasonably reject, as a basis for public agreement. By contrast, "philosophical utilitarianism" holds that morality's subject matter is individual welfare. T. M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982).



basis he then models a procedure (the original position) that situates them equally, behind a “veil of ignorance.” His argument is that the egalitarian principles of justice would be agreed to from this equal position. Here, equality is a feature of a *procedure* that plays a central role in the *justification* of moral principles. Next, these principles are to be *applied* (level 3) in a separate decision process by legislators, judges, and citizens, who take up various positions of equality derivative from the Original Position (part of Rawls’s “4-stage sequence”). In applying these principles, they determine the egalitarian laws and institutions (level 4) that supply the rules individuals are to observe in their day-to-day activities. Some conception of equality is invoked at each of these levels of Rawls’s argument.

Now, at what levels do utilitarians invoke equality, in particular the principle of equal consideration of equal interests?

1. Justification: Sidgwick appeals to two sets of “philosophical intuitions,” each of which incorporates a notion of equality-as-impartiality among persons, to justify the principle of utility: The self-evident Principles of Justice, and Impartial Benevolence.<sup>12</sup> These “axioms of practical reason,” together with other assumptions, provide “a rational basis for the Utilitarian system” (*Methods*, p. 387). Similarly, R. M. Hare argues that universalizability is part of the meaning of moral terms; along with other assumptions, this provides a basis for an impartial decision procedure in which equal consideration is given to equal interests. The results of this procedure are equivalent to the requirements of the principle of utility.<sup>13</sup> Equality is here a property of the derivation of utilitarianism.

2. The content of the principle of utility: that we are to maximize aggregate utility or welfare. There is, on the face of this principle, no place for equality. Indeed, no independent position is assigned to any distributive concern (which is not to say the principle of utility is not to be used

12. Sidgwick’s Principle of Justice says: “it cannot be right for A to treat B in a manner in which it would be wrong for B to treat A, merely on the ground that they are two different individuals, and without there being any difference between the natures or circumstances of the two which can be stated as a reasonable ground for difference of treatment.” Or, as he says, “individuals in similar conditions should be treated similarly” (*Methods*, p. 380). The “maxim of Benevolence” reads: “each one is morally bound to regard the good of any other individual as much as his own, except in so far as he judges it to be less, when impartially viewed, or less certainly knowable or attainable by him” (*Methods*, p. 382).

13. R. M. Hare, *Moral Thinking* (Oxford: University Press, 1981), pp. 42–43, 111.

as a principle for deciding distributions). This follows from the fact that the principle of utility is a maximizing-aggregative principle. It tells us to maximize a sum, not to share a distribution (or even to maximize a distribution, whatever that may mean). Equality plays no role in defining the substantive content of the principle of utility.<sup>14</sup>

3. Application: Assume that the principle of utility is justified. To apply this principle to decide what we ought to do, we are to give equal weight to the equal interests of everyone. Here equality is a property of a decision process through which we decide our duty, by reference to the principle of utility. Notice that our primary aim (as conscientious utilitarians) in adopting this procedure is not to give equal consideration to everyone's interest. It is to maximize overall utility; that's just what the principle directs us to do. Indeed, there is something peculiar in saying (with Kymlicka) that we are under a "duty" to give equal consideration in this procedure; equal consideration is just what is involved in applying the utility principle to decide what we ought to do. If we fail to do that, it is not that we have violated a duty to anyone; instead we have applied the principle incorrectly.

4. Rules: Almost any utilitarian view will provide a place for equal consideration via the precept of formal justice—treat similar cases similarly—in the ordinary administration of law (e.g., Sidgwick, *Methods*, p. 380). And other requirements of fairness (equal rights of certain kinds, etc.) may be argued for on the basis of utility. These rules will occupy a central position in casuistry and common-sense moral reasoning on most utilitarian views.

Now return to Kymlicka's claim: that utilitarianism "spells out" an idea of fairness or equality for distinct individuals, and thus incorporates the priority of right and "is as 'deontological' as any other" view (LCC, p. 26). Utilitarianism provides a place for some notion of equality on three of the four levels I have designated, and it is by reference to utilitarians' claims with respect to one or more of these levels (particularly 1 and 3) that Kymlicka grounds his argument against Rawls. It does not incorporate any conception of equality into the substantive content of the principle of utility itself. But it is just the substantive content of moral principles—not their justification, application, or derivative

14. The exception is the rare occasion where two alternatives result in equal utility. Then, as Sidgwick argues on the basis of the axiom of Justice, utilitarianism requires the more equal distribution. James Griffin, *Well-Being* (Oxford: Oxford University Press, 1986), pp. 208–15, makes the same point.

rules—that Rawls is referring to in his teleological/deontological distinction, and when he claims that (classical) utilitarianism is teleological.

To explain: Any plausible moral conception must incorporate an account not just of what we (singly and collectively) ought to do, but also of the final *ends* we ought to realize (directly or indirectly) through our actions. The former specifies a moral conception's account of Right; the latter, its conception of the Good. Rawls, along with Sidgwick, Kant, and many other philosophers make such claims. Deontological views are often discussed as if they have no account of the Good, and are not concerned with the consequences of our acting on the principles advocated. But this surely is a misinterpretation of Kant and modern Kantians such as Rawls and Scanlon. (I doubt it even applies to W. D. Ross, Prichard or any other serious Intuitionist view.) Any deontological theory that does not take consequences into account in formulating its principles, or in applying them to reach moral judgments, is not due serious attention.<sup>15</sup> That is simply not the issue between deontological and teleological (or consequentialist) views.

Rawls defines moral conceptions as teleological when their substantive moral principles hold that actions and institutions are right and just only if, given available alternatives, they most effectively promote the greatest amount of the good, as defined independently of any moral concepts or principles. There are three noteworthy features of this definition. First, right conduct is defined as nontrivially instrumental. Second, the goodness of states of affairs promoted by right conduct is independently specified, describable purely in terms used in the natural or social sciences. Third, the good is uniquely defined, as a dominant end.

Many moral views can admit that right acts in some sense promote the good. In Kant, for example, all have a duty to promote the Realm of Ends; each person's doing so is, we might say, instrumental to realizing this ideal community. But here the goodness of this end is not an independent variable that is being promoted; this good is just defined as the state of affairs in which conscientious moral agents all freely act on and from the moral law. By acting and willing according to this principle, all treat the humanity of others as an end in itself. Moreover, to say this good is "maximized" when everyone does his or her duty really adds nothing; and it misleads us as to the structure and content of Kant's

15. As Rawls says: "All ethical doctrines worth our attention take consequences into account in judging rightness. One that did not would simply be irrational, crazy" (TJ, p. 30).

principle of right. By contrast teleological views (1) define the good independent of any moral concepts; and then (2) define the right purely in instrumental terms of principles of expedience, i.e., as what most effectively and probably realizes the greatest amount of good.

It is characteristic of teleological views, so defined, that they rely on a "dominant end" (as opposed to an inclusive one),<sup>16</sup> or what Rawls has lately come to call a conception of "the one rational good." The need for a single, dominant end stems from the fact that teleological views depict right conduct in terms of what *maximizes* an aggregate. If one is to give any real content to that idea, then some basis must be provided for comparing different goods and diverse activities. Since one cannot maximize more than one thing, there must be one ultimate end that supplies this standard for comparison and therewith the final object of all right activity.

So defined, teleological views occupy a narrow position within the spectrum of possible moral conceptions. Yet Rawls contends this position has dominated the history of ethical thought. The teleological doctrine of the one rational good is to be found, in his judgment, in the perfectionist ethics of Plato, Aristotle, Augustine, Aquinas, Loyola, Leibniz, Wolff, and Nietzsche, and in the classical utilitarianism of Bentham, Edgeworth, and Sidgwick, and their modern disciples.<sup>17</sup> Indeed, odd as it may seem, Rawls sees classical utilitarianism as the culmination of this tradition. Earlier I said the real attraction of teleological views is that they provide a way to make sense of the idea of how there can be a uniquely rational course of action under all conditions. Given that aspiration, "Hedonism is," Rawls says, "the symptomatic drift of teleological theories insofar as they try to formulate a clear and applicable method of moral reasoning" (TJ, p. 560). Here Rawls echoes Sidgwick's argument that pleasurable consciousness is the only reasonable "Ultimate Good," if we are to "systematize human activities."<sup>18</sup> For Sidgwick, like Mill and Bentham, it is not (contra Kymlicka, LCC, p. 25) a concern for equality,

16. See TJ, pp. 552f., 565f. on dominant ends.

17. See "Social Unity and the Primary Goods," in *Utilitarianism and Beyond*, ed. Sen and Williams, p. 160. See also TJ, pp. 553–54 on Aquinas and Loyola, p. 556 on Sidgwick; and *Political Liberalism*, pp. 134–35.

18. Sidgwick says: "If however [hedonism] be rejected, it remains to consider whether we can frame any other coherent account of Ultimate Good. If we are not to *systematize human activities* by taking Universal Happiness as their common end, on what other principles are we to systematize them? It should be observed that these principles must not only enable us to compare among themselves the values of the different non-hedon-

but concern for a rational morality with which to resolve conflicting norms and combat appeals to intuition and sentiment, that historically provided the impetus to teleology, and ultimately to utilitarianism.<sup>19</sup>

Now, Kymlicka does not deny that utilitarianism, when complied with, maximizes overall utility. He does not even deny that happiness is a good for utilitarians.<sup>20</sup> So in some sense, he seems to concede that for utilitarians, right conduct maximizes the good. What he wants to deny is Rawls's (purported) claim that for utilitarians acts are right "*because*" they maximize the good. On the egalitarian interpretation, acts are right, not because they maximize the good, but *because* they are required by an egalitarian decision procedure that requires giving equal weight to everyone's interests. Equal consideration, not maximum utility, is the "fundamental goal" of these egalitarian utilitarian theories (LCC, p. 31). Maximum utility is merely the state of affairs that happens to be realized by giving equal consideration to everyone's interests in this required procedure. What Kymlicka means here is that because utilitarians incorporate in some fashion equal consideration as a major premise in their

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istic ends which we have been considering, but must also provide a common standard for comparing these values with that of Happiness; unless we are prepared to adopt the paradoxical position of rejecting happiness as absolutely valueless. For we have a *practical need* of determining not only whether we should pursue Truth rather than Beauty, or Freedom or some ideal constitution of society rather than either, or perhaps desert all of these for the life of worship and religious contemplation; but also how far we should follow any of these lines of endeavor, when we foresee among its consequences the pains of human or other sentient beings, or even the loss of pleasures that might otherwise have been enjoyed by them" (*Methods*, p. 406, emphases added).

19. See J. S. Mill's claim near the end of his essay, "Bentham": "We consider, therefore, the utilitarian controversy as a question of arrangement and logical subordination rather than of practice; important principally in a purely scientific point of view, for the sake of *systematic unity and coherency of ethical philosophy*. . . . to [Bentham] systematic unity was an indispensable condition of his confidence in his own intellect. And there is something further to be remarked: whether happiness be or not be the end to which morality should be referred—that it be referred to an end of some sort and not left in the domain of value feeling or inexplicable internal conviction, that it be made a matter of reason and calculation, and not merely of sentiment, is essential to the very idea of moral philosophy; is, in fact, what renders argument or discussion on moral questions possible. That the morality of actions depends on the consequences which they tend to produce, is the doctrine of rational persons of all schools; that the good and evil of the consequences is measured solely by pleasure or pain, is all of the doctrine of the school of utility, which is peculiar to it" (emphases added; *Essays on Politics and Culture* by J. S. Mill, ed. Gertrude Himmelfarb [New York: Doubleday, 1962], pp. 114–15). For Rawls's reconstruction of this history, see TJ, pp. 554–60.

20. "Utilitarians do, of course, believe that the right act maximizes happiness, under some description of that good" (LCC, p. 23).

arguments for the principle of utility, this makes their view non-teleological. Kymlicka is then resting his case against Rawls by appealing (as he says) to the “justification of utilitarianism” (LCC, p. 25), “the ultimate ground of the theory” (LCC, p. 29), i.e., how utilitarians view the requirements of practical reasoning. But we must distinguish principles of right *conduct* from principles of moral *reasoning*. (In Rawls’s view, this marks a distinction between what he calls the Right and the Reasonable.) The former are a subset of the latter in any complete moral theory. That is, once their validity has been established, principles and precepts of right conduct are to be used in moral reasoning by conscientious moral agents, but not all principles of moral reasoning supply standards for right conduct. Instead, they serve a different role in helping us discover, justify, or apply those principles of Right that we appeal to, to decide what it is right to do. The utilitarian principle of equal consideration is, in this sense, not a principle of right *conduct* at all. It is a principle of moral *deliberation*. It specifies no duty that moral agents can act on, nor does it provide a substantive standard by which to assess whether acts and institutions are right or just.

To see this, it is easy to imagine that there may be several ways to argue for the principle of aggregate utility, some of which incorporate egalitarian premises, others not. This all depends upon the foundational assumptions of a moral view: its account of the nature of morality, practical reasoning, and moral motivation. For example, egalitarian premises are not invoked in the argument that the principle of utility is self-evident, relied upon by some of his predecessors, and by Sidgwick himself at one point (*Methods*, p. 507). Nor do they play a significant role in earlier attempts to justify utilitarianism by natural theology and divine commands (as in Paley), or in the argument recited by Mill (above, note 19).<sup>21</sup> Moreover, as Kymlicka recognizes, equal consideration is not a major premise in the sympathetic spectator arguments Rawls appeals to, purportedly to show that utilitarianism is teleological (LCC, pp. 27ff.). But the fact that some arguments for utilitarianism might appeal to egalitarian premises and others do not has no effect on the *content* of the principle of utility or our duties under that principle. Utilitarian philosophers with different justifications could still agree in their moral as-

21. See the account of the early utilitarians by J. B. Schneewind, *Sidgwick’s Ethics and Victorian Moral Philosophy* (Oxford: University Press, 1977), pp. 122–29.

assessments of the world and peoples' actions within it. They could agree (and would, given the same information, etc.), because the substantive standard they apply to assess acts and institutions is the same moral principle, which says that right acts maximize aggregate utility. What *makes* these acts right is not equal consideration. That is an epistemological requirement, appealed to as part of the justification of the principle of utility, or to apply it to assess the rightness of actions and states of affairs in the world. Acts are right or wrong independent of the actual or hypothetical assessments of moral reasoners giving equal consideration to the interests of everyone. They are right "because" they maximize the good, not "because" equal weight is given to equal interests in justifying or applying that aggregative standard of right.

Why is Kymlicka so averse to the teleological interpretation of utilitarianism? It is because he thinks the "fundamental principle" of a moral theory must specify a duty to persons, not impersonal states of affairs. On this test, teleological utilitarianism is not a *moral* theory, but a "quasi-aesthetic" one, since it provides no answer to the question, "Whom is maximizing utility a duty *to*?" But whom is Kant's categorical imperative, or Rawls's difference principle, a duty *to*? (Persons? Is it specific persons, the class of all persons, or what?) These questions have no answers, since these principles, like the principle of utility, are not themselves duties *to* anyone, but state standards we are to apply to decide the rules that specify our duties to people. A better test of moral principles, to decide whether they specify duties and therefore principles of right conduct, is the question, "Whom is this principle a duty *for*?" In the case of the principle of utility, the answer on direct utilitarian views is "everyone capable of understanding and acting on it." But what about the principle of equal consideration of everyone's interests? As a subordinate moral rule (at level 4) this principle states a formal precept of fairness we are to observe in certain settings. But in the abstract decision procedures Kymlicka relies on to ground his argument, there *is* no answer to the question, "Whom is giving equal consideration to everyone's interests a duty *for*?" The reason is that, in this form, this principle is not a principle of right conduct at all; instead it is a deliberative principle that is part of a (hypothetical) procedure which serves as a criterion for appraising whether or not individuals' and institutions' conduct is right, as measured by the principle of utility.

What leads Kymlicka to so misconstrue the point of the teleology/

deontology distinction? It may be that he uncritically accepts utilitarians' standard defense against the claim that their doctrine is insensitive to distributions. The standard rejoinder here (an argument Mill attributes to Bentham) is that utilitarianism *is* concerned with fairness and distributions, since the principle of utility respects all men as equals by observing the rule "everybody to count for one, nobody for more than one."<sup>22</sup> Rawls says utilitarians fail to take seriously the distinction between persons (TJ, p. 27). But, Kymlicka says, this "utilitarian principle of distribution does recognize the distinctness of persons" (LCC, p. 32). It is only because Rawls conceives of utilitarianism as teleological that he is unable to recognize equal consideration as a principle of distribution, and appreciate that utilitarians do see persons as distinct, with "distinct claims to equal consideration" (LCC, p. 31).

What kind of "principle of distribution" *is* equal consideration? Is it a principle of right conduct, or of "right" deliberation? What good is being distributed here, and by whom is it being distributed? Again, distinguish equality or fairness as a feature of,

1. Distributions of *goods* (happiness, or resources such as liberties, opportunities, and income and wealth).
2. *Actual decision processes* we use to distribute those goods (e.g., markets, majority rule, trials, etc.).
3. A *hypothetical decision process* that tells us how we ought to distribute these goods, or rights of participation in actual decision procedures.

The "utilitarian principle of distribution" Kymlicka and utilitarians rely on to claim utilitarianism is sensitive to questions of justice and fair distribution, is *not* a principle for the distribution of goods. It is not even a principle that is to be incorporated into any actual decision process we use to determine the distribution of goods. It is a formal principle that is part of a hypothetical decision procedure that (on many accounts) no one may ever actually apply or appeal to, but which serves as the standard that determines if actual distributions of goods, and of rights of participation in actual decision procedures, are right and just. This is not what critics have in mind when they claim utilitarianism "puts no value on the distribution of good" and "gives no weight to distribution . . ." (Rawls); or "utilitarianism . . . is much too hooked on

22. John Stuart Mill, *Utilitarianism*, Chap. 2, paragraph 36.



the welfare *sum* to be concerned with the problem of distribution . . ." (Sen); or that for utilitarians "questions of equitable and inequitable distribution do not matter" (Williams).<sup>23</sup> They have in mind distributions of *good(s)*, i.e., of happiness, or of the resources and opportunities that enable people to achieve happiness and lead a good life. Equal consideration in a hypothetical decision process is *not a good* in this sense. It is a purely procedural prescription that provides no guarantee of *substantive equal treatment*. Indeed, it puts no substantive restrictions *whatsoever* on the distributions of goods. It is in this sense that utilitarianism is insensitive to distributions. Its substantive principle of distribution directs that we maximize aggregate good, letting shares fall where they may. Division of goods is simply instrumental to overall utility. This is precisely the sense in which utilitarianism is a teleological view.<sup>24</sup>

To sum up, though utilitarianism incorporates equality as a property of the justification of the principle of utility, and of the decision process through which that principle gets applied, it does not leave any place for equality in the content of that principle. On its face, this standard of right conduct directs that we maximize an aggregate. As a result neither equality or any other distributive value is assigned independent significance in resulting *distributions of goods*. Kymlicka claims that, because Rawls sees utilitarianism as teleological, he misdescribes the debate over distribution by ignoring that utilitarians allow for equality of distri-

23. John Rawls, "The Independence of Moral Theory," *Proceedings and Addresses of the American Philosophical Association* 47 (1974–75): 19. Bernard Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), p. 142; A. K. Sen, *On Economic Inequality* (Oxford: Clarendon Press, 1973), p. 23.

24. I do not mean to claim that Kymlicka is wholly in error. With respect to Harsanyi's average utilitarianism his assertion of its deontological status may be correct. But this does not advance his case against Rawls. For Rawls explicitly says that average utility "is not a teleological doctrine, strictly speaking, as the classical view is, and therefore it lacks some of the intuitive appeal of the idea of maximizing the good" (TJ, p. 166). But the reason he says this has nothing to do with the reasons Kymlicka argues, viz., the fact that Harsanyi assumes universality in his justification of average utility. For classical utilitarians like Sidgwick and Hare appeal to universality too. Average utility is nonteleological, on Rawls's account, because the *content* of that principle directs that we maximize a state of affairs which incorporates a distributive standard, viz., average utility (per capita), the *average share* of each existing person, not total utility summed across existing and future beings. It is only *aggregate* utility doctrines (classical utilitarianism and the co-ordinal utilitarianism of Arrow, Kolm, et al.) that Rawls claims are teleological. See Rawls, "Social Unity and the Primary Goods," pp. 173–83, on co-ordinal utilitarianism.

bution too. But the distribution debate Rawls is concerned with is a (level 2) debate over how what is deemed good (welfare, rights, resources, etc.) within a moral theory is to be divided among individuals. It is *not* a (level 3) debate over the distribution of consideration in a procedure which *decides* the distribution of these goods. Nor is it a (level 1) debate over the principles of practical reasoning that are invoked to justify the fundamental standard of distribution.

### III. THE JUSTIFICATION OF UTILITARIANISM

Now I consider Kymlicka's argument on its own terms, to assess whether it is correct to interpret utilitarianism as egalitarian. Kymlicka argues utilitarianism is "deontological" because it is based in a "fundamental goal" of equality, made manifest through the principle of equal consideration incorporated into utilitarian procedures. Kymlicka speaks here as if it were pure coincidence that utilitarian procedures maximize the good. He says that on his egalitarian interpretation utility is maximized. "But maximization of utility is not the direct goal [but the] by-product of a decision procedure that is intended to aggregate peoples' preferences fairly" (LCC, p. 25). But surely the appropriate question here is, why are we to aggregate preferences, and then maximize, in the first place? I argue that this has little to do with equal consideration, or occupying a universal or objective point of view. It is only because utilitarians make certain fundamental assumptions, explicitly or implicitly, about rationality and the ultimate good that they are led to maximize the aggregate.

In a separate presentation of his argument, Kymlicka says:

The requirement that we maximize utility is *entirely derived* from the prior requirement to treat people with equal consideration. So the first argument for utilitarianism is this:

1. people matter, and matter equally; therefore
2. each person's interests should be given equal weight; therefore
3. morally right acts will maximize utility .<sup>25</sup>

Kymlicka's reconstruction matches R. M. Hare's assertion that his argument for utilitarianism is based in a general "right to equal concern and

25. Will Kymlicka, *Contemporary Political Philosophy* (Oxford: Oxford University Press, 1990), p. 31 (emphases added), hereafter cited as "CPP" in text.

respect. . . . a precept which *leads straight to* Bentham's formula and to utilitarianism itself."<sup>26</sup> As Hare interprets this right, it requires "equal weight to equal preferences, counting everybody for one" (Frey, p. 110), and it is this requirement that purportedly leads "straight to" maximizing aggregate utility.

Now, what is peculiar about the Kymlicka/Hare claim here is that, though both present utilitarianism as grounded in equal respect for *persons*, classical utilitarian doctrine has been far more generous. It is not just the desires and interests of persons that are to be given equal consideration, but those of *all sentient beings*. Hare himself, in the same article, speaks of utilitarianism as a "morality of universal equal concern for all sentient beings" (Frey, p. 116). If so, it is misleading to claim that utilitarianism seeks to treat *people* as equals; in a Pickwickian sense perhaps, i.e., along with many other animal species in the universe. Kymlicka's premise (1) above should read: "sentient beings matter, and matter equally." For being a person is not a necessary condition for equal consideration of one's interests in utilitarian procedures.

Why do so many utilitarians (Bentham, Sidgwick, Hare, Singer) hold this striking thesis? Because they make certain assumptions about the nature of the Good. As Sidgwick argues, the "ultimate good" is pleasurable consciousness. It is a good no matter where it occurs. Beings other than persons experience this good. And, as the second principle of Impartial Benevolence directs, "As a rational being I am bound to aim at good generally . . . not merely at a particular part of it" (*Methods*, p. 382). It follows that, in utilitarian decision procedures the experiences or welfare of all sentient beings must be weighed in the balance equally along with those of persons, in deciding what we ought to do.

The inclusion of all sentient beings in the calculation of interests severely undermines the force of any claim that utilitarianism is an "egalitarian" doctrine, based in some notion of equal concern and respect for persons. But let us assume Kymlicka can restore his thesis by insisting that it concerns, not utilitarianism as a general moral doctrine, but as a more limited thesis about political morality. (Here I pass over the fact that none of the utilitarians he relies on to support his egalitarian interpretation construe the doctrine as purely political. The drift of modern utilitarian theory is just the other way: utilitarianism is not seen as a

26. R. M. Hare, "Reply to Mackie," in *Utility and Rights*, ed. R. G. Frey (Minneapolis: University of Minnesota Press, 1984), p. 107. Kymlicka relies on this article to support his claim that Hare's view can be construed as egalitarian.

political doctrine, to be appealed to by legislators and citizens, but a nonpublic criterion of right that is indirectly applied [by whom is a separate issue] to assess the nonutilitarian public political conception of justice.) Still, let us assume it is as a doctrine of political morality that utilitarianism treats persons, and *only* persons, as equals. Even in this form it cannot be that maximizing utility is "not a goal" but a "by-product," "entirely derived from the prior requirement to treat people with equal consideration" (CPP, p. 31).

Kymlicka says, "If utilitarianism is best seen as an egalitarian doctrine, then there is no *independent commitment* to the idea of maximizing welfare" (CPP, p. 35, emphases added). But how can this be?

(1) What is there about the formal principle of equal consideration (or for that matter occupying a universal point of view) which would imply that we maximize the *aggregate* of individuals' welfare? Why not assume, for example, that equal consideration requires maximizing the division of welfare (strict equality, or however equal division is to be construed); or, at least maximize the multiple (which would result in more equitable distributions than the aggregate)? Or, why not suppose equal consideration requires equal proportionate satisfaction of each person's interests (by for example, determining our resources and then satisfying some set percentage of each person's desires).<sup>27</sup> Or finally we might rely on some Paretian principle: equal consideration means adopting measures making no one worse off. For reasons I shall soon discuss, each of these rules is a better explication of equal consideration of each *person's* interests than is the utilitarian aggregative method, which in effect collapses distinctions among persons.

(2) Moreover, rather than construing individuals' "interests" as their actual (or rational) desires, and then putting them all on a par and measuring according to intensity, why not construe their interests *lexically*, in terms of a hierarchy of wants, where certain interests are, to use Scanlon's terms, more "urgent" than others, insofar as they are more basic needs? Equal consideration would then rule out satisfying less urgent interests of the majority of people until all means have been taken to satisfy everyone's more basic needs.

(3) Finally, what is there about equal consideration, by itself, that re-

27. Cf. W. K. Frankena, "Some Beliefs About Justice," in K. E. Goodpaster, ed., *Perspectives on Morality* (Notre Dame: University of Notre Dame Press, 1976), pp. 93-106, for a similar account on equal justice.

quires *maximizing* anything? Why does it not require, as in David Gauthier's view, optimizing constraints on individual utility maximization? Or why does it not require *sharing* a distribution?

The point is just that, to say we ought to give equal consideration to everyone's interests does not, by itself, imply much of anything about how we ought to proceed or what we ought to do. It is a purely formal principle, which requires certain added, *independent* assumptions, to yield any substantive conclusions. That (1) utilitarian procedures maximize is not a "by-product" of equal consideration. It stems from a particular conception of rationality that is explicitly incorporated into the procedure. That (2) individuals' interests are construed in terms of their (rational) desires or preferences, all of which are put on a par, stems from a conception of individual welfare or the human good: a person's good is defined subjectively, as what he wants or would want after due reflection. Finally (3), aggregation stems from the fact that, on the classical view, a single individual takes up everyone's desires as if they were his own, sympathetically identifies with them, and chooses to maximize his "individual" utility. Hare, for one, explicitly makes this move. Just as Rawls says of the classical view, Hare "extend[s] to society the principle of choice for one man, and then, to make this extension work, conflat[es] all persons into one through the imaginative acts of the impartial sympathetic spectator" (TJ, p. 27).

If these are independent premises incorporated into the justification of utilitarianism and its decision procedure, then maximizing aggregate utility cannot be a "by-product" of a procedure that gives equal consideration to everyone's interests. Instead, it defines what that procedure is. If anything is a by-product here, it is the appeal to equal consideration. Utilitarians appeal to impartiality in order to extend a method of individual practical rationality so that it may be applied to society as a whole (cf. TJ, pp. 26–27). Impartiality, combined with sympathetic identification, allows a hypothetical observer to experience the desires of others as if they were his own, and compare alternative courses of action according to their conduciveness to a single maximand, made possible by equal consideration and sympathy.

The significant fact is that, in this procedure, appeals to equal consideration have nothing to do with *impartiality between persons*. What is really being given equal consideration are desires or experiences of the same magnitude. That these are the desires or experiences of *separate*

*persons* (or, for that matter, of some other sentient being) is simply an incidental fact that has no substantive effect on utilitarian calculations. This becomes apparent from the fact that we can more accurately describe the utilitarian principle in terms of giving, not equal consideration to each person's interests, but instead equal consideration to equally intense interests, no matter *where* they occur. Nothing is lost in this redescription, and a great deal of clarity is gained. It is in this sense that persons enter into utilitarian calculations only incidentally. Any mention of them can be dropped without loss of the crucial information one needs to learn how to apply utilitarian procedures.

This indicates what is wrong with the common claim that utilitarians emphasize *procedural* equality and fairness among persons, not substantive equality and fairness in results. On the contrary, utilitarianism, rightly construed, emphasizes neither procedural nor substantive equality among persons. Desires and experiences, not persons, are the proper objects of equal concern in utilitarian procedures. Having in effect read persons out of the picture at the procedural end, before decisions on distributions even get underway, it is little wonder that utilitarianism can result in such substantive inequalities. What follows is that utilitarian appeals to *democracy* and the democratic value of equality are misleading. In *no* sense do utilitarians seek to give persons equal concern and respect.

To conclude this part of my discussion: Kymlicka says that what gives utilitarianism its "plausibility," what "motivates" it is a concern to treat others as equals. But then he himself goes on to argue persuasively how implausible utilitarianism is as an interpretation of equality (CPP, Chap. 2). I have argued the egalitarian account of utilitarianism is implausible, and that the force of that doctrine must lie elsewhere: in defining right conduct as what maximizes the one rational good, utilitarianism provides a way to understand how there can be a rational moral choice under all circumstances. That is the very feature of utilitarianism which makes it a teleological view. Later I discuss how deontology combined with the priority of right are important concepts in defining the structure of a Kantian view. By denying that these notions are of any consequence, Kymlicka would obscure the difference between Kantian and other moral conceptions. The attitude encouraged by his proposal—"we are all Kantians" (utilitarians, perfectionists of all kinds, and philosophical liberals, alike)—impoverishes moral theory. Nowhere is this more evident than in his treatment of Rawls's account of the priority of right.

## IV. THE PRIORITY OF RIGHT AND UTILITARIANISM

Throughout his discussion of utilitarianism, Kymlicka, like Michael Sandel and others, identifies deontology with the priority of right.<sup>28</sup> But these are different concepts. Like deontology, the priority of right describes the structure and substantive content of a moral conception, not its procedural justification.<sup>29</sup> It is not then a claim about the order of justification of a moral conception. (So, contrary to Sandel, the priority of right does not aim at justifying a moral conception “aloof from prevailing values and conceptions of the good.”<sup>30</sup> And contrary to Kymlicka, a moral conception does not achieve the priority of right simply because it relies on assumptions of equality in the argument to principles of right.) Unlike deontology, the priority of right does not describe how moral principles of right internally relate the concepts of the right and the good. Rather, it describes, in the first instance, the place of principles of right in the *practical reasoning* of moral agents motivated by a sense of right and justice; how they, singly and collectively, are to apply principles “given from the first a definite content” (TJ, p. 32), in deciding their good and what they ought to do. The “priority” of the priority of right refers to the *lexical ordering* of principles of right and justice in individual and social deliberation. It is but one among several priorities Rawls assigns to those principles (along with the priority of justice over efficiency, the priority of liberty over the difference principle, and the priority of moral worth over nonmoral values). In each case Rawls means the serial ordering of principles of right conduct over considerations of a different kind. (See TJ, pp. 42–43<sup>n</sup>.; 302–3.)

What then is the priority of right? Almost any moral conception holds that in the deliberations of moral agents, moral principles and the reasons they provide are to take precedence over other considerations. Utilitarians, for example, hold that reasons of overall utility override what any individual or group may do to realize their desired ends. But the priority of right is not simply a formal claim about the overridingness of moral reasons. It refers to the substantive limits placed on the kinds of considerations that can count as reasons in practical deliberation, which stem from the *content* internal to principles of right. The

28. See notes 9 and 10 above.

29. That the priority of right presupposes the justification of principles is indicated by Rawls's claim, “Once the conception of justice is established, the priority of right guarantees the precedence of its principles” (TJ, p. 564).

30. See note 9 above.

priority of right is a claim about how the substantive content of a (Kantian) moral conception restricts the desires and interests moral agents can take into account, individually and collectively, in formulating their purposes and rationally deciding what they ought to do. Principles of right and justice are prior and therefore govern our deliberations, not just about what we may do, but also about the ends and interests that individuals and societies may legitimately pursue. As such, the priority of right defines a notion of *permissible ends*, and (morally) *admissible conceptions of the good*. Admissible conceptions of the good are those whose ends and activities accord with the requirements of the principles of right.<sup>31</sup>

To illustrate, take standard accounts of practical rationality (for example, utility maximization, or Rawls's deliberative rationality, TJ, sec. 64). Whatever their differences, most contemporary accounts agree that practical reasoning basically involves reflecting on our ends as given by our desires and interests, ranking their priority and making them consistent, and then deciding the most rational means (effective, likely, inclusive, pleasurable) for realizing them. Call this "ordinary deliberation." Now the priority of right implies that there is something about the content and structure of moral reasoning that cannot be captured by ordinary deliberation alone, as guided by principles of rational choice or utility maximization. In the practical deliberations of conscientious moral agents—persons with an effective concern for right and justice—their moral motives are not given parity with other desires and interests, and balanced off against them in ordinary ways. This does not mean moral motives and the reasons they provide are simply to be assigned an added weight in ordinary deliberation according to their importance

31. In *Theory*, Rawls says, "The principles of right, and so of justice, put limits on which satisfactions have value; they impose restrictions on what are *reasonable conceptions of one's good*" TJ, p. 31 (emphases added). I use the term "admissible conceptions of the good" (taken from "Fairness to Goodness," *Philosophical Review* 84 [1975]: 536 at 549) rather than "reasonable conceptions of the good," since Rawls uses the latter term in a sense different than in *Theory* in his more recent book, *Political Liberalism*. In its current usage "reasonable comprehensive doctrine" does not imply that a conception of the good necessarily satisfies principles of justice. See *Political Liberalism*, pp. 58–61. Rather, the aim of Rawls's overlapping consensus argument is to show how a well-ordered society is stable when all reasonable comprehensive doctrines in fact converge on the principles of justice (ibid., Lecture IV). For a discussion, see my "Political Liberalism and the Possibility of a Just Democratic Constitution," in a Symposium on Rawls's Political Liberalism, *Chicago-Kent Law Review* 69 (1994): 619, at 633–46.



or their intensity. They are assigned no weight at all in the ordinary sense; indeed they do not even figure into our ordinary calculations where we balance one set of interests off against others, to decide the most rational thing to do. To seek to incorporate moral desires into one's deliberations or utility calculations in ordinary ways simply misconstrues what moral desires are desires for. Moral desires (according to Kantian views) are (highest-order) desires with a certain content: that all our other desires, interests, plans and activities (as captured by, say, a utility function) meet the requirements of principles of right.

The priority of right asserts then that the reasons supplied by moral motives—principles of right and their institutional requirements—have *absolute* precedence over all other considerations. As such, moral motives must occupy a separate dimension in practical reasoning. Suppose then a supplementary stage of practical reasoning, where the interests and pursuits that figure into ordinary deliberation and which define our conception of the good are checked against principles of right and justice. At this stage of reasoning, any ends that directly conflict with these moral principles (e.g., racist ends or the wish to dominate others), or whose pursuit would undermine the efficacy of principles of right (e.g., desires for unlimited accumulation of wealth whatever the consequences for others), are assigned no moral value, no matter how intensely felt or important they may otherwise be. Being without moral value, they count for nothing in deliberation. Consequently, their pursuit is prohibited or curtailed by the priority given to principles of right.

The priority of right then describes the hierarchical subordination in practical deliberation of the desires, interests, and plans that define a person's rational good, to the substantive demands of principles of right.<sup>32</sup> Purposes and pursuits that are incompatible with these principles must be abandoned or revised. The same idea carries through to social and political deliberations on the general good. In political deliberative procedures, the priority of right means that desires and interests of individuals or groups that conflict with the institutional requirements

32. As Rawls says, ordinary practical reasoning is to be "framed within definite limits. The principles of justice and their realization in social forms define the bounds within which our deliberations take place" (TJ, p. 563). This claim is echoed in *Political Liberalism*, where Rawls says (p. 209): "The priority of right gives the principles of justice a strict precedence in citizens' deliberations and limits their freedom to advance certain ways of life. It characterizes the structure and content of justice as fairness and what it regards as good reasons in deliberation."

of principles of right and justice have no legitimate claim to satisfaction, no matter how intense peoples' feelings or how large the majority sharing these aims. Constitutional restrictions on majority rule exhibit the priority of right. In democratic procedures, majorities cannot violate constitutional rights and procedures to promote, say, the Christian religion, or any other aspect of their good that undermines others' basic rights and opportunities. Similarly, the institutional requirements of Rawls's difference principle limit, for example, property owners' desires for tax exemptions for capital gains, and the just savings principle limits current majorities' wishes to deplete natural resources. These desires are curtailed in political contexts, no matter how intense or widely held, because of the priority of principles of right over individual and general good.<sup>33</sup>

The priority of right enables Rawls to define a notion of *admissible conceptions of the good*: of those desires, interests and plans of life that may legitimately be pursued for political purposes. Only admissible conceptions of the good establish a basis for *legitimate claims* in political procedures (cf. TJ, p. 449). That certain desires and pursuits are permissible, and political claims based on them are legitimate, while others are not, presupposes antecedently established principles of right and justice. Racist conceptions of the good are not politically admissible; actions done in their pursuit are either prohibited or discouraged by a just social scheme, and they provide no basis for legitimate claims in political procedures. Excellences such as knowledge, creativity, and aesthetic contemplation are permissible ends for individuals so long as they are pursued in accordance with the constraints of principles of right. Suppose these perfectionist principles state intrinsic values that it is the duty of everyone to pursue. (Rawls leaves this question open. cf. TJ, p. 328.) Still, they cannot supply a basis for legitimate political claims and expectations; they cannot be appealed to in political contexts to justify limiting others' freedom, or even the coercive redistribution of income and wealth (cf. TJ, pp. 331–32). This is because of the priority of right over the good.

Now return to Kymlicka's argument. Kymlicka says *both* Rawls and utilitarians agree on the premise of giving equal consideration to everyone's interests, and that because utilitarians afford equal consider-

33. See TJ, pp. 449–51. See also *Political Liberalism*, p. 190, where Rawls says, "The fact that we have a compelling desire in such cases [of constitutional essentials and basic justice] does not argue for the propriety of its satisfaction any more than the strength of a conviction argues for its truth."

ation, "they must recognize, rather than deny, that individuals are distinct persons with their own rightful claims. That is, in Rawls's classification, a position that affirms the priority of the right over the good" (LCC, p. 26). Since "Rawls treats the right as a spelling-out of the requirement that each person's good be given equal consideration," there is no debate between Rawls and utilitarians over the priority of the right or the good (LCC, p. 40).

On the contrary, Rawls denies equal consideration of interests, and he denies it *because* of the priority of right.<sup>34</sup> To explain: A central feature of utility-maximizing views is the *homogeneity* of desires: In applying the principle of utility, (rational) desires are (1) taken as given and (2) their satisfaction is taken as having value, no matter what they are desires for; all desires are then (3) put on a par in deliberation, and (4) assessed according to their intensity, to decide what is right to do. These four features describe what it is to give equal consideration to equal interests in utilitarian calculations. The priority of right rejects each of them: (1) Desires are not taken as given; their content must be compatible with principles of right. (2) If they conflict with principles of right they are not, to use Kant's term, "worthy" of satisfaction;<sup>35</sup> therefore their satisfaction is to be assigned no value whatsoever in political decisions. (3) Nor are desires put on a par in deliberation, and assigned importance according to intensity; instead, certain interests are deemed of greater urgency than all others.<sup>36</sup> In Rawls's account, then, moral persons are said to have "highest-order interests" in developing the moral powers necessary for social cooperation; the primary social goods needed to realize these powers take priority over their desire for other goods in political deliberation.<sup>37</sup> (4) As for the sheer intensity of a majority's desires and convictions, it has no independent moral weight; only

34. See here Rawls's distinction between being fair to persons and being fair to interests or conceptions of the good. "Fairness to Goodness," *Philosophical Review* 84 (1975): 536–54, at p. 554: "We should not speak of fairness to conceptions of the good, but of fairness to moral persons. . . . it is fairness to persons that is primary and not fairness to conceptions of the good as such."

35. See the essay "Theory and Practice," in *Perpetual Peace and Other Essays* (Indianapolis: Hackett, 1983), p. 63 / Ak. 278.

36. See T. M. Scanlon, "Preference and Urgency," *Journal of Philosophy* 82 (November 1975): 655–69, on the notion of urgency of interests.

37. Moreover, the primary goods themselves are ranked in order of relative importance by the principles of justice (the basic liberties have priority over all the rest, and fair opportunities have priority over income and wealth. See "Social Unity and the Primary Goods," p. 166).

if majority preferences accord with prior principles of justice do they establish a basis for legitimate laws and social policies.<sup>38</sup>

There is nothing equivalent to these restrictions in utilitarianism. Granted, in the deliberations of conscientious utilitarian agents, the principle of utility is to override all other considerations.<sup>39</sup> Moreover, once the principle of utility has been applied and the balance of satisfactions decided, utilitarians even have a basis for encouraging some ends and traits of character, and discouraging others. But we have no way of knowing beforehand what these admissible and inadmissible ends and traits are. Whether toleration of diverse religious confessions, or nondiscrimination against racial minorities, are desirable or not is a factual question, wholly contingent on the content and weight of peoples' desires at the time. Nothing internal to the substantive content of the principle of utility restricts the ends that make up individual and collective good. Restrictions on ends that subsequently *do* arise are just those needed to maximize aggregate utility. This is a consequence of giving equal weight to equally intense interests. No concept of impermissible ends is defined, from the outset, by the utilitarian principle of right.

The priority of right then describes how the content internal to principles of right is to regulate the individual and collective deliberations of moral agents.<sup>40</sup> It puts limits from the outset on their decisions about individual and collective ends and the measures that are needed to realize them. Principles of right define the range of admissible conceptions of the good. This means Rawls does not share with utilitarians the principle of equal consideration. To give equal consideration to equal interests does not, as Kymlicka claims, "affirm the priority of the right over the good" (LCC, p. 26); it is its repudiation.

38. Rawls says as much in defining the priority of right: "The principles of right, and so of justice, put limits on which satisfactions have value; they impose restrictions on what are reasonable conceptions of one's good. In drawing up plans and in deciding on aspirations men are to take these constraints into account. Hence in justice as fairness one does not take men's propensities and inclinations as given, whatever they are, and then seek the best way to fulfill them. Rather, their desires and aspirations are restricted from the outset by the principles of justice which specify the boundaries that men's systems of ends must respect. We can express this by saying that in justice as fairness the concept of right is prior to that of the good. A just social system defines the scope within which individuals must develop their aims. . . . interests requiring the violation of justice have no value" (TJ, p. 31); see also TJ, p. 450).

39. See Hare, *Moral Thinking*, pp. 50–61.

40. See, *Political Liberalism*, p. 209, quoted in note 32, above.

## V. PERFECTIONISM AND THE PRIORITY OF RIGHT

The priority of right is further clarified by contrasting it with Perfectionism. My aim here is to show how essential the priority of right is to the Kantian liberalism argued for in *Theory of Justice*. Kymlicka contends the priority of right is ambiguous: Rawls uses this notion not just (1) in a “teleology-versus-deontology sense,” but also (2) in an “anti-perfectionistic sense,” to argue “that our legitimate entitlements are not tied to the promotion of any particular view of the good life” (LCC, p. 35). But this cannot be an issue of the priority of right, Kymlicka says, for perfectionists affirm that priority in so far as they too give “equal weight to each person’s interests” in devising a scheme of distribution. (LCC, p. 34) Consequently, “Rawls and a perfectionist do not disagree over the relative priority of the right and the good. They just disagree over how best to define and promote people’s good” (LCC, p. 35).

The priority of right, I have argued, is not a claim about giving equal consideration to persons or interests in deliberative procedures. It concerns the structure of the practical reasoning of moral agents who affirm the principles of right and justice that are part of Kantian views. Now, deontological principles, by definition, do not direct us to maximize one rational good. Moreover, on Kantian views, these principles are explicitly designed to leave persons free rationally to determine, revise, and pursue their good, so long as it conforms to certain moral conditions. Conscientious moral agents are then to appeal to deontological principles to *monitor* the ends and pursuits that might otherwise be a part of their rational good as determined via ordinary practical reasoning. “[T]he idea is to approximate the boundaries, however vague, within which individuals and associations are at liberty to advance their aims and deliberative rationality has free play” (TJ, p. 566).

Now, practical reasoning does not have “free play” in *any* sense under teleological perfectionism (as Rawls defines it), nor are its principles of right designed to provide “boundaries” within which persons are to deliberate on and pursue their good.<sup>41</sup> That is because the principle of

41. In *Theory of Justice*, Rawls distinguishes teleological, or “strict perfectionist theory,” which holds that we are to maximize the one rational good, from “perfectionism [of an] intuitionistic form,” which is a pluralistic doctrine holding that a teleological principle of perfection is but one among several moral principles, and is to be balanced off against them. Rawls says the latter doctrine is “a far more reasonable view.” See TJ, p. 326. The bulk of his criticisms are directed against teleological perfectionism. The perfectionism

perfection *uniquely* defines people's ultimate good, and defines for each individual what it is always rational, hence right, to do. It is rational, hence right, to maximize the one rational good (be it contemplation as in Aristotle, the Vision of God in Aquinas and Loyola, or whatever). Instead of envisioning two separate dimensions of deliberation in which, first, rational, then reasonable principles are applied to determine our ends and what we ought to do, perfectionism says there is but *one* standard for deliberation: each person's ascertaining the most effective means under one's circumstances for realizing the one rational good. According to Perfectionism, rational principles to determine one's good, and reasonable principles of right are one and the same. As such, the principle of perfection completely occupies all deliberative space. That is because "the dominant end of a teleological theory is so defined that we can never finally achieve it and therefore the injunction to advance it *always* applies" (TJ, p. 566). Consequently (as Rawls says of the principle of utility), the principle of perfection "is not really suitable for a lexical ordering" of the very kind defined by the priority of right. Strictly construed, reasoning according to the principle of perfection provides no place for the regulation and monitoring of our free rational decisions about our ends and pursuits by reasonable principles of right. As a result, no place is left for free deliberation on our final ends, no place for a plurality of intrinsic goods, or for the autonomy of practical reason.

This contrast between justice as fairness and teleological perfectionism suggests why deontology and the priority of right are central to Rawls's liberalism. Among the assumptions integral to Rawls's liberalism (at least as presented in *Theory*) are: *First*, there are a plurality of intrinsic goods, and a plurality of ways of life that it is rational for individuals to pursue. Deontology is a natural consequence: given the diversity of intrinsic goods and ways of life that affirm them, justice is not definable in terms of what maximizes one rational good. Assume now that a person's good is the way of life he/she would rationally choose from the ideal perspective Rawls calls "deliberative rationality." A *second* feature of Rawls liberalism is the assumption that, whatever a person's rational good is (so defined), having the *freedom* to deliberate on, revise, and rationally pursue a *conception* of the good is a part of each

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Kymlicka attributes to Marx (correctly or incorrectly) would be classified as intuitionistic perfectionism on Rawls's account, since it incorporates an equality principle along with a principle of perfection.

person's good; it is a precondition of our living a good life. But if so, then an account of practical reasoning is needed that incorporates deontological principles of right into peoples' deliberations about their good. *This* is the role of the priority of right; it establishes that these moral principles have absolute precedence in deliberation over all other reasons and principles, and so circumscribe individuals' freedom to choose and pursue a way of life. Reasoning in this way enables a person to satisfy a *third* feature of Rawls's liberalism: that a condition of anyone's realizing one's rational good (at least in a "well-ordered society") is that his/her ends and pursuits be consistent with institutional requirements of justice. By deciding on and pursuing a rational plan from within the range of admissible plans defined by the priority of right, a person's good is legitimate and so respects the limits of justice, satisfying this precondition of living a good life. Which brings us to the final issue:

#### VI. THE PRIORITY OF RIGHT AND THE FULL THEORY OF THE GOOD

To conclude, I indicate how the priority of right plays a role in the definition of individual and social good in justice as fairness.<sup>42</sup> This will convey a better idea of how deontology and the priority of right come together in a Kantian view. The priority of right is a defining feature of Rawls's "full theory of the good."<sup>43</sup> The basic idea of the full theory is that the good of moral persons—conscientious moral agents motivated by a sense of right and justice—cannot be defined independently of principles of right and justice. Acting not just on but also from (for the sake of) these principles and their institutional requirements is an essential aspect of their good. Now there is nothing unusual about the idea that justice, as a virtue or an end, can be part of a person's good. But in Rawls's Kantian account, this idea is worked out in several distinctive ways, each of which presupposes a structured background supplied by the priority of right.

42. My account here relies on Rawls's account in *A Theory of Justice*. Certain subtleties are introduced in *Political Liberalism* which I cannot go into in detail. See note 8, above. I omit a fuller discussion here, primarily because it is the account in *Theory* that has been the focus of discussion and criticism of Rawls's account of the priority of right (by Kymlicka, Sandel, and others). For a discussion of how *Political Liberalism* departs from the account of the Good set forth in *Theory*, see my "Political Liberalism and the Possibility of a Just Democratic Constitution," in *Chicago-Kent Law Review* 69 (1994): 619, at 622–46.

43. "I have supposed first that rational plans satisfy the constraints of right and justice (as the full theory of the good stipulates)" (TJ, p. 550).

How does the priority of right figure into the full theory? According to Rawls's "thin theory of the good," a person's good is formally defined in terms of a rational plan of life, the plan of life a person would choose under the ideal conditions of "deliberative rationality."<sup>44</sup> Rawls assumes a *partial similarity* in free and equal moral persons' rational plans: whatever else their conception of the good may be, they all have a "highest-order" interest and corresponding desire to develop and exercise the moral powers that enable them to engage in social cooperation (the capacities to understand and apply fair terms of social cooperation, and formulate, revise, and pursue a rational plan of life.)<sup>45</sup> On the basis of the account of rational plans, together with these essential interests, Rawls argues for the primary social goods as a necessary ingredient of the rational plans of free and equal moral persons. This is the "thin theory of the good," and it constitutes that aspect of Rawls's argument that he calls "the Rational." Contrary to Sandel's misreading, it is not so thin that it does not involve substantial claims about the good of moral persons (e.g., realizing their moral powers). Combining the thin theory with the set of moral assumptions Rawls calls "the Reasonable" (the veil of ignorance, the formal constraints of right, etc.), we have the argument from the Original Position. Contrary to Kymlicka's misreading, these reasonable principles do not constitute the priority of right. It enters in only once the principles of justice have been established, as part of the full theory of the good.

The priority of right, we have seen, is in the first instance a claim about the structure of practical reason of moral agents motivated by an effective sense of justice. In drawing up their rational plans to decide their good, they are not to balance their sense of justice off against other desires and interests, but are to assign it a special place in their deliberations. The objects of this desire—principles of right and justice—are

44. Roughly, a plan of life is rational for a person if it incorporates the primary desires, interests, and pursuits that are of fundamental significance to him (taking into account the Aristotelian Principle); involves a scheme of activities that enable him to realize these ends and pursuits in an effective manner (as defined by the principles of rational choice); and would be freely chosen by him under the ideal conditions of deliberative rationality (involving critical reflection on his ends, making them consistent, full information, etc.) See TJ, pp. 408–9; see also, *Political Liberalism*, pp. 176ff.

45. To say these are "highest-order interests" means they are to be supremely regulative of each person's pursuit of his good. It does not mean the moral powers are worth realizing for their own sake. That has to be argued for, which is the role of Rawls's congruence argument (TJ, Chap. 9). See also *Political Liberalism*, Chap. 5, secs. 7 and 8.



assigned a supremely regulative position, so that they come to monitor decisions about all other ends and pursuits that make up one's conception of the good. As such, reasonable principles of justice come to *channel*, *complement*, and *comprise* the good of moral persons motivated by an effective sense of justice:<sup>46</sup>

(1) Principles of justice channel the good in that they frame the deliberations of moral persons with an effective sense of justice, i.e., a desire to act on these principles. This means that the good of moral persons comes to be defined as the rational plan of life a person would freely choose, in deliberative rationality, from among the range of morally admissible conceptions of the good, those schemes of ends, pursuits, and activities that satisfy the limits of principles of justice. Any desires and interests that conflict with or undermine these principles must be abandoned, or revised and brought into accord with them. This is one way in which principles of right conduct have priority within moral persons' conceptions of the good.

(2) With the principles of justice in place, Rawls defines the concept of *moral worth*. A good, or morally worthy, person is one who has to a high degree the qualities of moral character that it is *rational* for persons in a well-ordered society to want in one another. Primary among these are the virtue of justice and the various political virtues that go along with it. The virtue of justice for Rawls is a firmly settled highest-order disposition to act on and from principles of justice for their own sake. People who have this virtue effectively restrict their deliberations and aims, and draw up their claims so that they respect the priority of principles of right. They not only want to be reasonable and have an admissible conception of the good for its own sake, but these desires effectively regulate all their activities. Whether or not this virtue is a good thing for the person who has it (i.e., fits with his rational plan), it *is* a good, hence is rational, for each person in a well-ordered society to want *others* to have the virtues of justice, and to be firmly disposed to honor institutional requirements. In this way, principles of right *complement* each person's conception of the good: That others have these virtues is among the background conditions of realizing one's own admissible conception of the good.

46. The three ways develop Rawls's claim regarding the priority of right (TJ, p. 32): "Thus certain initial bounds are placed upon what is good and what forms of character are morally worthy, and so upon what kinds of persons men should be."

(3) Finally, the priority of right enables Rawls to argue that justice is itself rational, a good not just for others, but also for the person who has the virtue of justice: justice (being a just person, having moral worth, and promoting just institutions) is a final end that is worth pursuing for its *own* sake, whatever one's admissible conception of the good. Or we might say, being effectively disposed to respect the priority of principles of right in one's deliberations, sentiments, and actions is itself an intrinsic good for moral persons. A person whose rational good incorporates the priority of right in these ways acts with "full autonomy." For that person, the Right and the Good are "congruent." There are several strands to Rawls's congruence argument as presented in *Theory of Justice* (the argument from the capacity for justice and the Aristotelian principle, and the argument from social union being the most noteworthy). It would take us too far afield to discuss any of them. But the basic idea behind congruence is to show that it is rational to be reasonable for its own sake. Exercise and development of one's capacity for justice, having the virtues of justice, promoting just ends and institutions, and being a member of the well-ordered society of justice as fairness, are intrinsic goods; they are among the final ends affirmed in the rational plans of free and equal moral persons in a well-ordered society.<sup>47</sup> In this way, principles of justice come to *comprise* the rational good of moral persons.

Now, finally, we can bring together deontology and the priority of right. Recall Rawls's definition of a deontological theory: "one that either does not specify the good independently from the right, or does not interpret the right as maximizing the good" (TJ, p. 30). Rawls says Justice as Fairness is deontological "in the second way" (ibid.). I assume he omits the first because of the thin theory. But the thin theory is what it says it is, viz., a partial account of the human good that is part of Rawls's procedural argument to the principles of justice. It is not intended to be a complete account of our good or of the good of moral persons in a well-ordered society. Once these principles are established, then given the priority of the right, it is part of Rawls's full theory of the good that justice as fairness is deontological also in the first way. (1) The good of moral persons with an effective sense of justice is the *reasonable* plan of life that is *rational* for them to choose in deliberative rationality. Here,

47. See *Political Liberalism*, pp. 207–8 on the intrinsic good of a well-ordered political society.

what plans of life are reasonable (or legitimate) cannot be defined independently of Rawls's principles of justice. (2) The same is true of the moral worth of persons: justice and the political virtues, the qualities of character it is rational to want in others, cannot be defined without reference to principles of right. (3) And assuming the congruence argument can establish that it is rational to want to exercise one's own capacity for justice, have moral worth and the virtue of justice, support just institutions, and promote the realization of a well-ordered society, all for their own sake, then justice is an *intrinsic* good of moral persons, one that cannot be defined independently of these principles of right.

As part of Rawls's full theory of the good, the priority of right reveals the Kantian structure of his view. Kant refers to a "paradox of method" that follows from his "critical examination of practical reason."

The paradox is that the concept of good and evil is not defined prior to the moral law, to which, it would seem, the former would have to serve as foundation; rather the concept of good and evil must be defined after and by means of the law.<sup>48</sup>

This is the very passage Rawls refers to, in introducing the priority of right (TJ, p. 31n), and it brings together the priority of right and deontology. Rawls's view is Kantian in part because it envisions that the good of moral agents is (partially) constructed, built up, as it were, out of principles of right in the three ways I have mentioned. This implies we cannot completely define the good (of moral persons) without referring to nonmaximizing principles of right. That is one kind of deontological view, and the priority of right enables Rawls to make sense of it. Nothing comparable to this is found in utilitarianism and perfectionism, even if they do allow in some form, as Kymlicka maintains, for equal consideration of each person's good. This is because they take the good as the independent and prior notion, and define the right as maximizing this good and therefore as subordinate to it. The priority of right reverses this order: in deciding their good moral persons subordinate their rational ends and pursuits to the requirements of deontological principles

48. *Critique of Practical Reason*, trans. Louis White Beck (Indianapolis: Bobbs-Merrill, 1956), Ak. 62–63 / Beck, p. 65. See also Kant's claim: "Had one previously analyzed the practical law, he would have found . . . not that the concept of the good as an object of the moral law determines the latter and makes it possible, but rather the reverse, i.e., that the moral law is that which first defines the concept of the good—so far as it absolutely deserves this name—and makes it possible" (ibid., Ak. 64 / Beck, p. 66).

of right; their rational good then comes to be partially defined by reference to these antecedent moral principles.

## VII. CONCLUSION

I conclude with some general remarks about teleology/deontology. What, in the end, is the point of this distinction? Three things, commonly taken to be at issue in debates over consequentialism, are not at issue.

First, the teleology/deontology distinction does not mark a contrast between moral conceptions that take consequences into account and those that do not. No significant position has ever held consequences do not matter in ascertaining what is right to do. (I simply assert this here, for it would take a good deal of historical exegesis to demonstrate.)

Second (as argued in Sections II and III), teleology/deontology is not a distinction regarding the principles invoked in justifying a moral conception or substantive moral principles. It concerns rather the substantive content of moral and political principles, how they relate the concepts of the Right and the Good.

Third, teleology/deontology is not a distinction between views that require occupying an objective and impartial standpoint in moral judgment versus those that rely simply on a personal point of view. Kantian views, like Rawls's, require judgment from an impartial, objective perspective as much as any teleological view, and distinguish different kinds of reasons (public and nonpublic) on this basis; where they differ is in their accounts of this objective perspective and the principles it is appropriate to reason from in this point of view.<sup>49</sup>

Now the distinction that proponents of this third approach draw between (objective) agent-neutral versus (objective) agent-relative reasons touches on, but in the end obscures, the real issue between teleology and deontology. For the idea of agent-neutral reasons, defined as ascertainable from an impersonal perspective, assumes from the outset the appropriateness of the idea of the one rational good in defining what we have reason to do. This just presupposes what deontologists, like

49. Again, I simply assert this, without detailed argument against sophisticated depictions of the issues. See Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), p. 143; see also Thomas Nagel, *The View From Nowhere* (Oxford: Oxford University Press, 1986), Chaps. 8, 9.

Kant and Rawls, refuse to admit. This is the real issue between teleological and deontological views.

The importance of the teleology/deontology distinction, then, is that it marks a division between views that rely on some idea of a single rational good, and those that do not. That idea plays a fundamental role in the formulation of moral principles, and in our conception of moral and political deliberation.<sup>50</sup> Once specified, the one rational good enables us completely to define right and justice in maximizing terms, as those courses of conduct that ultimately are most conducive to causing this independently specifiable state of affairs to obtain. This simplifies moral and political deliberation: all conflicts between prevailing norms and disparate ends are resolvable by ascertaining which combination of ends and courses of action promote the greater overall balance of good. And this in turn provides a rational morality, one that defines for all choices a uniquely rational thing to do.

Deontologists deny there is but one rational and ultimate good in terms of which all other values and activities are to be ordered and justified. Morality cannot then be reduced to an overriding duty (such as impartial benevolence) to maximize the sum total of good in the world without regard to how it gets distributed. This complicates deliberation, requiring a plurality of principles, which must be balanced off against one another in intuition, or (as in Rawls's case) assigned priority rankings over limited domains. The complete rational systematization of conduct is thereby relinquished. But systematicity of conduct is not, for deontologists, such a desirable end that it warrants abandoning the plurality of intrinsic goods, political freedom, equality of basic rights and opportunities, and the autonomy of individuals.<sup>51</sup>

50. I am grateful to an anonymous editor of this journal for suggesting this particular way of emphasizing the distinction between teleology and deontology and its importance.

51. Cf. Rawls's claim, "Although to subordinate all our aims to one end does not strictly speaking violate the principles of rational choice . . . it still strikes us as irrational, or more likely as mad. The self is disfigured and put in the service of one of its ends for the sake of system," TJ, p. 554.