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UNIVERSITY OF CALIFORNIA  
Santa Barbara

**The Structure of Commonsense Morality:  
Consequentialist or Non-consequentialist?**

A dissertation submitted in partial satisfaction  
of the requirements for the degree of

Doctor of Philosophy

in

Philosophy

by

Douglas W. Portmore

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July 1998

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*For my parents*

*Linda Hills and Ralph Portmore*

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## ABSTRACT

### The Structure of Commonsense Morality: Consequentialist or Non-consequentialist?

by

Douglas W. Portmore

In this dissertation, I argue that commonsense morality is best understood as an agent-relative consequentialist theory, that is, as a theory according to which agents ought always to bring about what is, from their own individual perspective, the best available state of affairs. I argue that the agent-relative consequentialist can provide the most plausible explanation for why it is wrong to commit a rights violation even in order to prevent a number of other agents from committing comparable rights violations: agents bear a special responsibility for their own actions and consequently a state of affairs where an agent has herself committed a rights violation is worse, from her perspective, than a state of affairs where a number of other agents have committed comparable rights violations. I also argue that agent-relative consequentialism can accommodate moral options despite being a theory which requires agents always to do the best they can.

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## INTRODUCTION

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### **The Structure of Commonsense Morality**

MOST contemporary moral philosophers take commonsense morality to be non-consequentialist in structure. For, as they see it, consequentialism is unable to accommodate our commonsense moral intuitions. In particular, consequentialism seems unable to accommodate either of the following two general intuitions: (1) that there are certain types of acts (e.g., murder) which agents are prohibited from performing even for the sake of preventing numerous others from doing the same, and (2) that agents have, in many instances, the option of either pursuing their own interests or sacrificing those interests for the sake the overall good. But consequentialism is unable to accommodate such intuitions only if it is necessarily agent neutral. And a consequentialist theory need not be agent neutral—that is, it need not give every agent the exact same set of aims.<sup>1</sup> Take ethical egoism for instance. This theory gives different

agents different aims. It gives me the aim of maximizing *my* welfare, but it gives you the aim of maximizing *your* welfare. Nevertheless, ethical egoism is a consequentialist theory, for it ranks actions solely in terms of the value of their resultant states of affairs.

I shall argue that consequentialism can do more than just accommodate our commonsense moral intuitions. I shall argue that commonsense morality is in fact best understood as an agent-relative consequentialist theory, that is, as a theory according to which agents ought always to bring about what is, from their own individual perspective, the best available state of affairs.

My method will be to compare and contrast two rival conceptions of commonsense morality. On one common conception, commonsense morality is taken to be non-consequentialist in structure. But commonsense morality can also be conceived as being consequentialist in structure, and it is this second conception that I shall argue for. I shall not be arguing for the substance of commonsense morality. I shall instead assume that our commonsense moral intuitions are correct and argue that these intuitions are best accounted for within a consequentialist framework. Here it is important to realize that consequentialism and non-consequentialism are not in themselves substantive moral theories; they are merely structures. Consequentialism does not yield any substantive answers concerning what's right and what's wrong until applied to

some particular theory of value.<sup>2</sup> Likewise, non-consequentialism does not yield any substantive answers until some particular set of *constraints* is adopted.<sup>3</sup>

As it turns out, consequentialism and non-consequentialism are both extremely versatile structures which can accommodate almost any set of moral judgments. For instance, consequentialism can even accommodate our intuition that it is impermissible to commit murder for the sake of preventing five others from committing comparable murders so long as it is applied to a suitable axiology, one where the disvalue in committing murder is agent relative.<sup>4</sup> Given this kind of versatility, it will not be very fruitful to try and compare consequentialism and nonconsequentialism in the abstract. So I shall instead compare two substantive moral theories, one consequentialist and the other non-consequentialist. I shall call these two: commonsense consequentialism (CSC) and commonsense non-consequentialism (CSNC).

CSC is the theory we arrive at via *wide reflective equilibrium* when we restrict ourselves to consequentialist theories.<sup>5</sup> In brief, the method is as follows.<sup>6</sup> We begin with our considered moral judgments, those of which we are relatively confident and have made under conditions conducive to avoiding errors. We then propose various alternative consequentialist theories with varying degrees of fit regarding our considered moral judgments. (These consequentialist theories are substantive theories; they consist of some

consequentialist principle, e.g., 'maximize value', applied to a particular theory of value.) But we do not simply settle for the consequentialist theory whose implications most closely match our considered moral judgments. For instance, we do not necessarily adopt the principle 'satisfice value' just because it is in accord with our intuition that agents are sometimes permitted to do less good than they are capable of.<sup>7</sup> For we must give consideration to our other beliefs. Although a satisficing principle may provide a greater degree of fit with our considered moral judgments, the principle will ultimately be unacceptable if it conflicts with some of our other more firmly held beliefs, such as those regarding the nature of rationality.

So before adopting the theory with the greatest degree of fit concerning our considered moral judgments, we must first advance various philosophical arguments intended to demonstrate the relative strengths and weaknesses of rival theories. These arguments will be made on the basis of various other beliefs, beliefs about the nature of morality, reasons for action, moral psychology, value, etc. We then work back and forth between our considered moral judgments, these background beliefs, and the various rival consequentialist theories until an equilibrium is reached in which all three cohere. CSC is that consequentialist theory which coheres best with our entire system of beliefs.

Similarly, CSNC is the theory we arrive at via wide reflective equilibrium when we restrict ourselves to non-consequentialist theories. And what's important to remember here is that we will not simply postulate whatever set of constraints is needed to generate the best fit. Again, this is not narrow reflective equilibrium, where we simply want the best fit between our moral principles and our considered moral judgments. We also want our principles and judgments to cohere with the rest of our beliefs.

Having explained how both CSC and CSNC are to be derived, I should now say something about how I shall compare the two. My thesis is that commonsense morality is best understood as a consequentialist theory. That is, I intend to argue that CSC is more plausible than CSNC. But what makes one moral theory better than another? In general, it seems that one theory is more plausible than another if it coheres better with our system of beliefs. Of course, some of our beliefs will be more pertinent than others. For certain beliefs (e.g., our belief in sub-atomic particles) are just as likely to cohere with one moral theory as another. There are, however, other beliefs that are particularly relevant. For one, our moral judgments about particular cases, both actual and hypothetical, are clearly relevant. Thus, other things being equal, one moral theory is better than another if its implications more closely match our considered moral judgments. But besides our moral beliefs, other background

beliefs must also be considered. Again, these background beliefs include beliefs about the nature of morality, reasons for action, moral psychology, value, etc. But perhaps most important are our beliefs about theory construction. We do have certain beliefs about what a theory should do and what makes one more plausible than another. For example, we think that a theory should do more than just imply the given data (in this case, our pre-theoretical moral intuitions); it should also explain the data. Thus we think that theory building involves more than simply constructing a unique moral principle for each of our moral judgments. Although such a theory would match our intuitions perfectly, it would amount to no more than a mere “shopping list” of our intuitions.<sup>8</sup>

Another thing that we want in a theory is simplicity. Other things being equal, one moral theory is better than another if it yields the same body of judgments with fewer moral principles. Furthermore, a moral theory should give us guidance where our intuitions give out. Although in many cases we have a clear intuition about what’s right and what’s wrong, there are some cases where we are genuinely baffled. In these cases, our intuitions are either absent, unclear, or conflicting. A moral theory should tell us what to do in such situations; that is, it should give us guidance.

Lastly, a theory should be internally coherent, and coherence involves more than mere consistency. Imagine a set of beliefs that are all consistent but

unconnected in any way—in this case, the justification for each of belief would be entirely independent of that of the others. Compare this to another set of beliefs that is not only consistent but also mutually supportive. In this case, some of the beliefs make up part of the justification for others in that set. This makes the second set more coherent than the first. For the more connected and mutually supported a set of beliefs, the more coherent it is. And the more coherent a theory, the better it is.

Much of the work I shall do in comparing CSC and CSNC will be preliminary and speculative, for I shall not be able to fully develop either theory. Giving a full account of even just one of these two would be a monumental task in itself. I shall, therefore, set my sights a fair bit lower. I shall focus on just the two intuitions with which I began this chapter: (1) that there are certain types of acts (e.g., murder) which agents are prohibited from performing even for the sake of preventing numerous others from doing the same, and (2) that agents have, in many instances, the option of either pursuing their own interests or sacrificing those interests for the sake the overall good. I shall argue that CSC can do a better job of accounting for these intuitions than CSNC can.

However, it will not be until the concluding chapter that I shall again take up an explicit discussion of CSC and CSNC. For it will not be until then

that I shall be able to give even a rough sketch of either CSC or CSNC. In order to give such a sketch, I shall first have to work out the details on how each will account for (1) and (2), and this task will consume the body of this dissertation.

In the end, I shall conclude that CSC can do better than CSNC in accounting for (1), and that it can do at least as good a job of accounting for (2). Of course, it does not follow from this that CSC is the correct moral theory, for I shall not be comparing CSC with any other theory. So for all that I will argue, it may be that some third theory is the correct theory. Nevertheless, my arguments will show that the structure of commonsense morality is more plausibly construed as consequentialist than non-consequentialist. What's more, I will show that CSC holds more promise than either of the two most prevalent moral theories in modern moral philosophy: utilitarianism and CSNC. CSC promises to be a theory which combines the strengths of these two theories. It shares with utilitarianism a clear, simple, and intuitive theoretical foundation, and shares with CSNC an accord with our commonsense moral intuitions.

Having explained my project, I shall spend the remainder of this chapter giving a brief sketch of the arguments to follow. First, in Chapter One, I begin by arguing against drawing the consequentialism/non-consequentialism distinction in terms of the agent-relative/agent-neutral distinction. I argue that the

consequentialism/non-consequentialism distinction should instead be drawn in such a way as to allow for a theory which is both consequentialist and agent relative. I then show how agent-relative consequentialism can avoid many of the counter-intuitive implications associated with utilitarianism. For instance, unlike utilitarianism, agent-relative consequentialism is compatible with agents being permitted to pursue their own personal interests at the cost of doing less to promote the overall good. And agent-relative consequentialism is also compatible with its being wrong to commit a rights violation even for the sake of preventing numerous others from committing comparable rights violations.

Nevertheless, agent-relative consequentialism seems to have two significant drawbacks. First, being a theory which requires agents always to bring about the best available state of affairs, it seems unable to accommodate moral options, whereby agents would have the choice of either safeguarding their own interests or sacrificing those interests for the sake of the overall good. Second, although agent-relative consequentialism can prohibit committing a rights violation for the sake of preventing others from committing comparable rights violations, it seems that it cannot prohibit an agent from committing a rights violation for the sake of minimizing the number of rights violations she *herself* commits.

In Chapter Two, I address this second problem. I begin with a discussion of Francis Kamm's recent work concerning '*preventive violations*'—rights violations which prevent a number of others from committing comparable rights violations.<sup>9</sup> Kamm argues that the reason that it is wrong to commit a preventative violation has nothing to do with the idea that the agent's own commission of a rights violation has some special disvalue for her in virtue of her being the agent. (This is the explanation proffered by the agent-relative consequentialist.)<sup>10</sup> She does this by citing an example, the Guilty Agent Case, where intuitively it seems wrong to commit murder even though doing so will minimize one's own commissions of murder.<sup>11</sup> Nevertheless, I argue that, despite appearances, the agent-relative consequentialist can account for our intuition in the Guilty Agent Case.

I then go on to present some counter-examples to Kamm's proposed explanation for the impermissibility of preventative violations. Kamm believes that the explanation for the impermissibility of preventative violations lies with the victim (not the agent) and the nature of the rights she possesses. Kamm claims that the victim possesses a 'constraining right', a right not to be personally violated even for the sake of minimizing comparable violations.<sup>12</sup> If, however, the explanation lies with the victim, we would expect to have the intuition that committing a rights violation for the sake of minimizing the

violations one commits is no less wrong than doing so for the sake of preventing others from committing comparable rights violations. After all, if the explanation lies with the victim, then why would the permissibility of violating her rights depend on whether the agent could thereby prevent herself or others from committing comparable violations? Yet it seems that we do sometimes have the intuition that an agent should commit a rights violation in order to prevent herself from committing more violations of the same right. For instance, it seems that an agent should break a promise now if doing so is the only way to prevent herself from having to break five comparable promises in the future.

In Chapter Three, I explore how the commonsense moralist can account for moral options in a way that coheres with the rest of commonsense morality. In the process, I develop a rather unique account of moral options. I argue that, in most cases, the primary reason an agent has for pursuing her own personal interests is an agent-relative *non-moral* reason. Furthermore, I argue that this agent-relative non-moral reason can sometimes override the agent-neutral *moral* reason we all have to promote the overall good. For, as I argue, we should reject the idea that moral reasons have supreme rational authority. That is, we should deny that moral reasons always trump non-moral reasons. It will, therefore, sometimes be rational to pursue one's own personal interests even where the

balance of morally relevant reasons favors doing something which would better promote the overall good. From this it follows that it will sometimes be morally permissible to pursue one's own personal interests even where the balance of morally relevant reasons favors sacrificing those interests for the sake of the overall good. For, as I argue, we are morally required to perform a given act only if it is irrational to do otherwise. Thus, where it is rational to pursue one's personal interests at the cost of doing less to promote the overall good, it will also be (morally) permissible to do so.

At the same time, it is always morally permissible to do that which the balance of morally relevant reasons favors doing the most. For I argue that an act is morally wrong if and only if there is an alternative act available to the agent which she has both more moral reason to do and more all-things-considered reason to do. Thus, whenever the balance of all reasons (moral and non-moral) favors pursuing one's personal interests and the balance of moral reasons favors sacrificing those interests for the sake of the overall good, there will be a moral option to do either.

In Chapter Four, I explore some of the implications of this account of the permissibility of actions for our understanding of consequentialism. Typically, consequentialism is taken to be about what we should do morally speaking, not rationally speaking. Thus many have thought that we must turn to some other

theory besides consequentialism in order to determine what we should do rationally speaking. But if consequentialism only tells us whether one act is morally better than another, then it cannot tell us whether it is morally permissible to do one over the other. For the permissibility of actions is not simply a function of moral reasons; non-moral reasons are also a factor. In light of this, I argue that we must view consequentialism not just as a theory about what we have the greatest moral reason to do, but also as a theory that tells us what we should do all things considered—that is, consequentialism should be understood as being a theory of rationality. I then go on to show how, on this view, consequentialism is compatible with the idea that agents have a wide range of moral options.

## Notes

<sup>1</sup> A theory is agent neutral if it gives every agent the same set of aims and agent relative otherwise. See Parfit 1984, p. 27.

<sup>2</sup> Classical utilitarianism is a substantive moral theory, because it specifies both a particular consequentialist principle, i.e., ‘maximize value’, and a particular theory of value, viz., hedonism.

<sup>3</sup> On non-consequentialism, there are limits to what agents may permissibly do in the pursuit of value. These limits are called *constraints*. Non-consequentialist theories

differ according to what constraints they adopt. See section 1.4 of Chapter One for a fuller discussion of non-consequentialism and constraints.

<sup>4</sup> See section 4.2 of Chapter One.

<sup>5</sup> The term ‘reflective equilibrium’ comes from John Rawls (1971, p. 20). The distinction between narrow and wide reflective equilibrium was implicit in Rawls 1971 (see p. 49) but wasn’t made explicit until a few years later—see Rawls 1974/75, p. 8.

<sup>6</sup> For a more thorough discussion of wide reflective equilibrium, see Daniels 1979.

<sup>7</sup> The principle ‘satisfice value’ was proposed by Michael Slote (1985, ch. 3) as a more intuitively appealing alternative to the utilitarian principle ‘maximize value’. Unlike utilitarianism, satisficing consequentialism does not require agents to bring about as much good as they can. Rather they are only required to bring about a sufficient amount good.

<sup>8</sup> See Kagan 1989, p. 11.

<sup>9</sup> I borrow this term from McMahan 1991, p. 350.

<sup>10</sup> See Kamm 1992, p. 185.

<sup>11</sup> See Kamm 1989, p. 255 and 1996, p. 242.

<sup>12</sup> See Kamm 1992, p. 185.

## CHAPTER ONE

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### **Agent-relative Consequentialism**

MANY philosophers have noted with curiosity the tendency of utilitarianism to haunt even those who are convinced that it is wrong (Scheffler 1982, pp. 3-4; Foot 1988 [1985], pp. 224-27; Scanlon 1982, p. 103). What convinces so many philosophers that utilitarianism must be wrong is the fact that it has so many counter-intuitive implications, implications which sharply conflict with some of our most firmly held moral beliefs. Nevertheless, these same philosophers are drawn towards utilitarianism because of its incorporation of the very compelling idea that it is always morally permissible to bring about the best available state of affairs. For how could it be wrong to bring about the best outcome?

On the one hand, these philosophers want to reject any view which has the counter-intuitive implications associated with utilitarianism, but, on the other hand, they want to accept the idea that it is always morally permissible to bring

about what's best. However, as they see it, they cannot do both. For they believe (1) that only an agent-relative theory can avoid all the counter-intuitive implications associated with utilitarianism,<sup>1</sup> (2) that only a consequentialist theory can incorporate the idea that it is always morally permissible to act so as to bring about the best available state of affairs, and (3) that all consequentialist theories are, by definition, agent neutral. Thus they perceive themselves to be faced with a rather unattractive dilemma: either bite the bullet and accept many of the counter-intuitive implications associated with utilitarianism or give up the compelling idea that it is always morally permissible to bring about what's best. This, I believe, is why utilitarianism fails to fade from the forefront of moral philosophy in spite of the fact that most contemporary moral philosophers are convinced that it is wrong.<sup>2</sup>

However, this dilemma is, in actuality, a false dilemma. These philosophers find themselves faced with such a dilemma only because they have mistakenly thought that consequentialism is, by definition, agent neutral. That is, they have made the mistake of conflating what are in fact two separate distinctions: the distinction between an agent-neutral and an agent-relative theory and the distinction between a consequentialist and a non-consequentialist theory. Of course, utilitarianism is an agent-neutral consequentialist theory, but a consequentialist theory need not be agent neutral—that is, it need not give

every agent the exact same set of aims.<sup>3</sup> Take ethical egoism for instance, a theory which gives different agents different aims. It gives me the aim of maximizing *my* welfare, but you the aim of maximizing *your* welfare. Clearly, though, ethical egoism is not only an agent-relative theory but also a consequentialist theory. For, as with utilitarianism, it requires agents always to bring about the best available state of affairs. The only difference between the two is that, on utilitarianism, the value of a state of affairs is constant for everyone, whereas on ethical egoism, the value of a state of affairs can vary from one individual to another. For according to ethical egoism, the value of a state of affairs where my welfare has been enhanced at the expense of yours is greater for me than it is for you. But if we can have a theory which is both consequentialist and agent relative, then perhaps we can have a theory which incorporates the compelling idea that it is always morally permissible to bring about the best available state of affairs while avoiding the counter-intuitive implications associated with utilitarianism.

In this chapter, I will argue that the consequentialism/non-consequentialism distinction should be drawn in such a way as to allow for a theory which is both consequentialist and agent-relative. I will then go on to argue (in this and subsequent chapters) that agent-relative consequentialism

need not have any of the counter-intuitive implications associated with utilitarianism.

## 1. THE CONSEQUENTIALISM/NON-CONSEQUENTIALISM DISTINCTION

*1.1 McNaughton and Rawling's View.* Let me begin, first, with a refutation of an increasing popular view on how to draw the distinction between consequentialism and non-consequentialism. The clearest explication of the view I have in mind here comes from David McNaughton and Piers Rawling. They maintain that the distinction between consequentialism and non-consequentialism is best drawn in terms of the distinction between the agent-relative and the agent-neutral (1992, p. 836). On their view, a theory is consequentialist if it gives every agent the exact same set of aims and non-consequentialist otherwise.<sup>4</sup>

However, as Frances Howard-Snyder points out in her paper "The Heart of Consequentialism" (1994), it is a mistake to draw the distinction between consequentialism and non-consequentialism in terms of the agent-relative/agent-neutral distinction, for not all agent-neutral theories are consequentialist. Imagine, for instance, a moral theory which gives every agent the same solitary aim of ensuring that the streets are paved with gold (1994, p. 109). This theory is agent neutral because it gives every agent the same single aim. But is it

consequentialist? McNaughton and Rawling are committed to answering yes, necessarily so, because, as they define consequentialism, all agent-neutral theories are consequentialist. But clearly consequentialism is committed to

BETTER: "The better a state of affairs, the more moral reason an agent has to produce it." (Howard-Snyder 1994, p. 110)

And if consequentialism is committed to BETTER, then the theory in question will be non-consequentialist so long as there is, on this theory, at least one other available state of affairs (e.g., the one where the people have food) which is both exclusive of and better than the one in which the streets are paved with gold.<sup>5</sup>

If there is any other available state of affairs that is both exclusive of and better than the one in which the streets are paved with gold, the implication is that the theory in question requires agents to produce a worse state of affairs over a better. For, on this theory, agents have more moral reason to ensure that the streets are paved with gold than to do anything else; after all, their sole aim is to ensure that the streets are paved with gold. But now if the theory gives agents more moral reason to produce a worse state of affairs than a better, it is incompatible with BETTER and therefore non-consequentialist.

So an agent-neutral theory need not be consequentialist. This alone is enough to show that it is mistake to draw the consequentialism/non-consequentialism distinction as McNaughton and Rawling do. But it is still an open question whether a consequentialist theory can be agent relative. And this is what is most important, because it seems that only an agent-relative theory can avoid the counter-intuitive implications associated with utilitarianism.

*1.2 Howard-Snyder's View.* Howard-Snyder claims that all consequentialist theories are agent neutral, for she believes that we must interpret BETTER (which is, on her view, the heart consequentialism) to read: "the better a state of affairs *from an agent-neutral point of view*, the more moral reason an agent has to produce it" (1994, p. 113). Yet she anticipates someone objecting: where does this leave those theorists who both deny that there is any fact of the matter as to which of two states of affairs is better from an agent-neutral point of view and yet assert that there is more moral reason to produce one than the other? Her response is to claim that such a position is inconsistent with consequentialism as she defines it (1994, p. 114). But this is no response at all. Since her intention is not to give a stipulative definition of consequentialism, she cannot respond to this objection by merely stipulating that consequentialists

must take some states of affairs to be better than others from an agent-neutral point of view.

So let us imagine someone who refuses to accept that some states of affairs are, from an agent-neutral point of view, better than others and see whether such a person is necessarily a non-consequentialist. Imagine, for instance, someone who believes that there is no impersonal viewpoint from which to make agent-neutral evaluations (see, e.g., Taurek 1977). On such a view, the state of affairs in which five lives are saved ( $S_1$ ) is not, as many suppose, five times better than the state of affairs in which only one life is saved ( $S_2$ ), for there is no impersonal viewpoint from which  $S_1$  can be seen as five times better than  $S_2$ .  $S_1$  is better from the point of view of each of the five, but  $S_2$  is better from the point of view of the one.

On Howard-Snyder's view, anyone who accepts such a view is necessarily a non-consequentialist. Yet such a theorist can hold that agents are always morally required to bring about the best available state of affairs. Of course, in this case, 'the best' must be taken to be elliptical for 'what is, from the agent's perspective, the best', for there is, on this view, no other sense of the best. Nevertheless, this theory seems to be consequentialist. As with all (maximizing) consequentialist theories, it directs agents to always bring about the best available state of affairs. The only difference between this theory and

other (maximizing) consequentialist theories is a difference in value theory. For instance, whereas on utilitarianism, the value of a state of affairs is always the same for everyone, on this theory, the value of a state of affairs will sometimes vary from one individual to another. But this is just how we should expect consequentialist theories to differ: in terms of their value theory. For there is a long history of first classifying consequentialist theories as those which adopt the sole principle, 'promote value',<sup>6</sup> and then dividing the various types of consequentialist theories in terms of their differing theories of value. Thus, what differentiates utilitarianism from other consequentialist theories is its welfarist theory of value. Furthermore, what differentiates classical utilitarianism from other types of utilitarianism is its hedonism.

Now since the theory we are considering shares with all consequentialist theories an exclusive commitment to the principle 'promote value', it is only natural to classify it as a consequentialist theory. The theory differs from other consequentialist theories only in its theory of value. Whereas some consequentialist theories (most notably utilitarianism) have adopted an agent-neutral theory of value, this consequentialist theory adopts an agent-relative theory of value.

So we should reject Howard-Snyder's narrow reading of BETTER. An acceptable reading of BETTER is: the better a state of affairs *from the point of*

*view of the agent*, the more moral reason she has to produce it.<sup>7</sup> Note, however, that on this reading, deontology is compatible with BETTER. To illustrate, consider a deontologist, named Deon, who holds that agents have but one duty: keep their promises. Deon can accept BETTER provided that he also accepts what I will call the anti-promise-breaking theory of value (APB), the view according to which all the following are true: (1) the only thing of intrinsic value is a kept promise and the only thing of disvalue is a broken promise; (2) the disvalue of a broken promise is agent relative in the sense that the extent of its disvalue varies according to whether or not the evaluator is the agent in question; (3) the agent-relative disvalue of a broken promise is, from the agent's perspective, greater than the disvalue in any number of other agents breaking their promises, and (4) the agent-relative disvalue of a broken promise is 'moment relative' (Broome 1991, pp. 9-10) such that the disvalue in breaking a promise now is, from the agent's *present* perspective, greater than the disvalue in her breaking any number of other promises in the future.

According to APB, the best available state of affairs for any agent at any time is the one where she refrains from breaking any promises she is currently in a position to break. This is true even where breaking a promise now would prevent her from breaking numerous promises in the future.

If Deon accepts APB, he can also accept BETTER. For, according to Deon's deontological theory, an agent always has more moral reason to keep a promise than to break it. And according to APB, keeping a promise will always bring about what is, from the agent's present perspective, the best available state of affairs. Thus, so long as Deon accepts APB, he can also accept BETTER: the better a state of affairs from the point of view of the agent, the more moral reason she has to produce it. In fact, Deon can even accept that agents should always bring about what is, from their own individual perspective, the best available state of affairs. For according to APB, the best available state of affairs is always the one where the agent refrains from breaking whatever promises she is currently in a position to break.

But if a non-consequentialist like Deon can accept BETTER, then BETTER cannot be the heart of consequentialism as Howard-Snyder claims. Although all consequentialists must accept BETTER, not all non-consequentialists need reject it. But what then is the heart of consequentialism? The answer, I believe, lies with our reason for thinking that Deon is a non-consequentialist in spite of the fact that he believes that agents should always bring about the best available state of affairs.

Let us assume that Deon does accept APB. In this case, Deon believes, just as all consequentialists do, that agents should always promote value. But

what sets Deon apart is the fact that his belief that agents should always promote value is derivative. It is derivative of his belief that agents should never break their promises taken together with his belief that the best available state of affairs for any agent at any time is the one where that agent refrains from breaking any promises she is currently in a position to break. For the consequentialist, on the other hand, the belief that agents should always promote value is non-derivative. It is for the consequentialist the most fundamental of all moral beliefs, the one from which all others are derived.

So consequentialists and non-consequentialists can agree on which acts are right and wrong. They can even accept extensionally equivalent theories. For maximizing consequentialism applied to APB yields a theory extensionally equivalent to Deon's deontological theory—on both theories, it is never permissible to break a promise and always permissible to do otherwise. But although extensionally equivalent, these two theories are importantly different in that they disagree about what makes acts right and wrong. So although both may agree that agents should never break whatever promises they are currently in a position to break, they will necessarily disagree about why they should never do so. According to the consequentialist who accepts APB, it is always wrong to break a promise because the state of affairs where one breaks a promise is always worse than the one where one doesn't. Deon, on the other

hand, holds that it is wrong to break a promise, not because it brings about a worse state of affairs, but because, for instance, it involves treating a person as a mere means.

This is an important difference, because it means that consequentialists are constrained in a way that non-consequentialists are not. Consequentialists may prohibit only those acts (i.e., act tokens) which produce sub-optimal states of affairs. Thus, the consequentialist can prohibit promise-breaking (i.e., the act-type) tout court only if APB is true. Non-consequentialists, on the other hand, are not constrained in this way. The non-consequentialist can prohibit promise-breaking even if APB is false. Unlike the consequentialist, the non-consequentialist can accept that it is sometimes wrong to do that which would bring about the best available state of affairs.

I propose then that consequentialism is the view that all acts (i.e., act tokens) are permissible (or not) in virtue of their propensity to promote value. This is what all consequentialists accept and all non-consequentialists deny. It is thus the true heart of consequentialism. This version of the distinction between consequentialism and non-consequentialism leaves room for consequentialists to adopt whatever theory of value they see fit. Thus, they are not artificially limited to a purely agent-neutral theory of value as they are on Howard-Snyder's version of the distinction. Also, my version of the distinction leaves room for

non-consequentialists to claim that certain acts are permissible in virtue of their good consequences. For instance, a non-consequentialist can claim that it is permissible to kill an innocent person in order to save a billion lives precisely because doing so would have such good consequences. A non-consequentialist need only deny that *all* acts are permissible (or not) in virtue of their propensity to promote value. So non-consequentialists can care about the value of an act's consequences. This just can't be all that they care about.

*1.3 Consequentialism.* I have argued that consequentialism is the view that all acts are permissible (or not) in virtue of their propensity to promote value. It follows from this that a theory is consequentialist only if it takes the permissibility of actions to be solely a function of the value (or goodness) of their resultant states of affairs. I mention this entailment only because it makes clear that consequentialist theories can differ not only in their theory of value but also in the type of function they employ. That is, a consequentialist theory need not employ a maximizing function (as does utilitarianism) but can instead employ a *satisficing* (Slote 1985, ch. 3), or even a *maximizing* (Scheffler 1994, pp. 26-30), function. According to maximizing consequentialism, an act is permissible if and only if it produces a state of affairs which is at least as good as any other available to the agent. According to satisficing consequentialism,

an act is permissible so long as it produces a state of affairs which is “good enough.” And, according to maximising consequentialism, an act is permissible if and only if maximizes the minimal level of well-being.

So although consequentialists are committed to the permissibility of actions being some function of the value of their resultant states of affairs, they are not committed to any particular function (maximizing or otherwise). It is a mistake to infer that consequentialism must be maximizing just because utilitarian is. Utilitarianism is only a species of consequentialism. So we should be careful not to confuse the consequentialist aspect of utilitarianism with any of its other features.

It is also a mistake to infer that consequentialism must be agent neutral from the fact that utilitarianism is. Consequentialists are no more committed to agent-neutrality than they are to a maximizing function. Consequentialists are not committed to any particular axiological view. Thus, consequentialists can accept that the value of certain states of affairs is dependent on the position of the evaluator *vis-à-vis* the state of affairs being evaluated. For instance, the value of a state of affairs where X has committed murder in order to prevent five others from committing comparable murders may depend on whether the evaluator is X or just some innocent bystander.

Why would the value of a state of affairs be dependent on the position of the evaluator? Well, it may be that a person's own role in bringing about a certain bad state of affairs is particularly relevant to her evaluation of it. For morality may well require that agents take note of their responsibility for those states of affairs which they themselves bring about (Sen 1993, p. 143). This is important, because it means that a consequentialist can accept that it is wrong to commit murder even in order to prevent five others (each with identical motives and intentions) from committing comparable murders. For the state of affairs where X commits murder may, from X's perspective, be morally worse than the state of affairs where five others commit murder.

At this point I should clarify a number of issues. First, it should note that when I refer to the state of affairs brought about by an action, I am not just referring to the causal effects of that action. As I take it, the state of affairs brought about by an action includes the fact that the agent in questioned performed the act that she did. Thus consequentialism should be understood as employing a very broad notion of consequence. As Scheffler puts it:

When I speak of the act-consequentialist as requiring agents to produce the best overall outcomes or states of affairs, I do not mean that the act-consequentialist divides what happens into the

act and the outcome, and evaluates only the latter with his overall ranking principle. Rather, the act itself is initially evaluated as part of the overall outcome or state of affairs (1982, pp. 1-2 [fn. 2]).<sup>8</sup>

Therefore, one of the consequences of murdering someone is that one has committed murder. And thus the consequentialist can be concerned not only that there be fewer murders but also that agents refrain from committing murder themselves.

Second, it may seem curious to have a consequentialist claiming that the reason X should not commit murder even in order to prevent five others from committing murder is that the state of affairs where X commits murder is, from her perspective, *morally* worse than the state of affairs where five others commit murder. For John Rawls (who has greatly influenced our understanding of consequentialism) has claimed that consequentialists must define the good independently of the right (1971, p. 25). As Rawls sees it, a deontological (i.e., a non-consequentialist) theory is, by definition, “one that either does not specify the good independently from the right, or does not interpret the right as maximizing the good” (1971, p. 30). So, according to Rawls’s definition, the

theory I call consequentialist here would be deontological since it fails to specify the good independently from the right.

However, there is in fact no reason to insist that consequentialism specify the good in non-moral terms. I take it that the worry is that if we interpret consequentialism so broadly, we will thereby collapse the distinction between consequentialism and non-consequentialism. But this is not the case. It is true that if we interpret consequentialism as I have been suggesting, it will be (logically) possible to have two theories, one consequentialist and the other deontological, which are extensionally equivalent. I have admitted as much in section 1.2 of this chapter—recall that consequentialism applied to APB is extensionally equivalent to Deon's deontological theory. Nevertheless, the possibility of extensional equivalence does not collapse the distinction. Although extensionally equivalent, APB-consequentialism and Deon's deontology are importantly different. Consider that they have different truth conditions. For instance, the truth of APB-consequentialism is dependent on APB being true. The truth of Deon's deontology, on the other hand, is not at all dependent on the truth of APB. Even if APB is false, that is, even if refraining from breaking a promise does not always produce a better state of affairs, Deon (the deontologist) can still hold that agents should always refrain from breaking their promises. For a deontologist, unlike a consequentialist, can accept that it is

sometimes wrong to do that which would bring about the best available state of affairs.

Thus, what distinguishes consequentialism and non-consequentialism is not a difference in which acts they hold to be permissible but rather a difference in what reasons they give for why certain acts are permissible. The consequentialist holds that all acts are permissible (or not) in virtue of their propensity to promote value. The non-consequentialist denies this. For instance, the non-consequentialist can hold that certain acts are impermissible, not because they produce less good than some alternative act, but because they are instances of a certain prohibited act-type, e.g., instances of murder.

So a consequentialist need not always specify the good in non-moral terms. The consequentialist can, for instance, hold that the reason it is wrong for an agent to commit murder even in order to prevent five others from committing murder is that the state of affairs where the agent commits murder is, from her perspective, *morally* worse than the state of affairs where five others commit murder. This is crucial, because the consequentialist must claim more than just that the state affairs where one commits murder is prudentially worse than the state of affairs where five others commit murder. Of course, it is true that committing murder is often a costly enterprise, for murderers often incur legal, social, and emotional costs. But the consequentialist must hold that the state of

affairs where X commits murder is not just prudentially worse but also morally worse. Otherwise, X could just choose to bear the prudential costs of being a murderer. In this case, committing murder in order to prevent five others from committing murder would be seen, not as an impermissible act, but as some sort of supererogatory act. This, of course, is absurd.

So the consequentialist must hold that the state of affairs in which X commits murder ( $S_1$ ) is, from X's perspective, *morally* worse than the state of affairs in which five others commit murder ( $S_2$ ), because only then will X not only be prudentially required, but also morally required, to refrain from committing murder in such cases. And it seems that the consequentialist can do so with some plausibility. For the consequentialist can hold that agents bear a special responsibility for their own actions and that consequently the agent's own commissions of murder are especially disvaluable for her.<sup>9</sup>

Finally, I should make clear that the claim that  $S_1$  is, from X's perspective, morally worse than  $S_2$  is an objective claim. It may seem, however, that it is a subjective claim since whether or not  $S_1$  is worse than  $S_2$  depends on the position of the evaluator—that is, on whether she is X (the agent) or some innocent bystander. There is, after all, a long tradition of taking objective claims to be those whose truth do not depend on either the position or perspective of the assessor. For many philosopher take the objective view to be the “view from

nowhere.” As Nagel puts it, “a view or form of thought is more objective than another if it relies less on the specifics of the individual’s makeup and position in the world...”<sup>10</sup> Nevertheless, there would seem to be such a thing as “positional objectivity.”<sup>11</sup> Consider the claim ‘The sun is setting’. The truth of this claim is position-dependent, for if two people, one on the East coast and the other on the West coast, both at the same time assert that the sun is setting, it can turn out that one is correct and the other incorrect. Yet this is not to say that it is subjective claim. It obviously is not. For whether the sun is setting here and now is not dependent on anything in the mind. Nor does it depend on anyone in the here and now observing that the sun is setting. The claim ‘The sun is setting’ is true here and now if and only if the sun is indeed setting here and now. The claim then has *positional objectivity*.

The claim ‘ $S_1$  is worse than  $S_2$ ’ is objective in the same sense that the claim ‘The sun is setting’ is: it has positional objectivity. Whether  $S_1$  is worse than  $S_2$  does depend on whether the evaluator is  $X$  (the agent) or some innocent bystander, but it does not depend on anything so subjective as the evaluator’s particular tastes and preferences. So we should not think that its truth is dependent on  $X$  having any particular desires. The consequentialist can claim that the state of affairs in which  $X$  commits murder is especially bad for  $X$  even if  $X$  is the type of person who enjoys committing murder.

*1.4 Non-consequentialism and Constraints.* Non-consequentialism is the view according to which not all acts are permissible (or not) in virtue of their propensity to promote value. For instance, a non-consequentialist might hold that it is impermissible to commit murder because doing so involves violating the victim's right to life and that violating such a right is always morally impermissible. However, this alone is not enough to distinguish the non-consequentialist from the consequentialist, for the consequentialist can also claim that the reason it is impermissible to commit murder is because doing so involves violating the victim's right to life. The consequentialist can even hold that it is always morally impermissible to violate such a right. The difference is that for the consequentialist, the principle 'it is never permissible to violate a person's right to life' cannot be fundamental. Instead, it must be derived from some consequentialist principle such as 'it is never permissible to do other than that which brings about the best available state of affairs'. The principle 'it is never permissible to violate a person's right to life' can be derived from this consequentialist principle so long as the consequentialist adopts a value theory analogous to APB, that is, one in which the disvalue in committing murder is lexically prior to all other values and is both agent relative and moment relative.

For the non-consequentialist, on the other hand, the principle 'it is never permissible to violate a person's right to life' is fundamental and thus acts as a

constraint, a constraint on agents' freedom to pursue value.<sup>12</sup> There is no appeal to murder being particularly bad from the agent's point of view. Instead there is an appeal to the potential victim's right to life, which acts as a moral barrier against her being sacrificed or used (without her consent) for the sake of the achievement of some other end.

Unlike the consequentialist, the non-consequentialist can incorporate *constraints* on her theory. Constraints limit what agents may permissibly do in the pursuit of value.<sup>13</sup> In many instances, such constraints arise as the result of potential victims' possessing certain rights. For instance, the constraint against murder can arise from the right to life. But constraints need not be grounded in rights. Constraints can also arise as the result of the non-consequentialist's adopting certain principles or doctrines. For instance, without even appealing to the rights of potential victims, we can ground the constraint against murder in the Doctrine of Double Effect, which prohibits intending harm even for the sake of minimizing harm overall. Lastly, constraints can arise as a result of special obligations, i.e., positive duties.<sup>14</sup> Having an obligation limits what an agent may do in the pursuit of value, for obligations entail prohibitions against doing that which precludes fulfilling those obligations.<sup>15</sup>

*1.5 A Terminological Note.* As we have seen, there are many philosophers who insist that we reserve the term ‘consequentialism’ for agent-neutral theories.<sup>16</sup> And as we have seen, many of these philosophers make the mistake of conflating the consequentialism/non-consequentialism distinction with the agent-neutral/agent-relative distinction.<sup>17</sup> But there are some who recognize that these are in fact two separate distinctions, and who nevertheless insist on reserving the term ‘consequentialism’ for agent-neutral theories (e.g., Broome 1991, pp. 3-6; Kagan 1998, pp. 63 & 310). They usually appeal to the fact that this is way the term is commonly used.

I actually have no strong objection to using ‘consequentialism’ in this way so long as it is recognized that there is in this case a more important and fundamental distinction than the consequentialism/non-consequentialism distinction. For we need a distinction that groups egoism and utilitarianism together while separating both from deontological theories.<sup>18</sup> Some suggest calling this distinction the teleological/deontological distinction (Kagan 1998, p. 63; Broome 1991, pp. 3-6). Others prefer to call it the axiological/deontological distinction (e.g., Vallentyne 1987, pp. 21-32).<sup>19</sup>

Although I do not have any strong objection to these other labels, I do, for two reasons, prefer to label this distinction the consequentialism/non-consequentialism distinction. First and foremost, I fear that unless we label it

the consequentialism/non-consequentialism distinction, philosophers will continue to neglect this very important and most fundamental distinction. And so I believe that this terminology is apt to lead to more penetrating theory criticism and more creative theory construction.<sup>20</sup> My other reason for preferring this terminology is because the other terminologies make the term 'consequentialism' superfluous. For instance, on the Kagan/Broome terminology, the term 'consequentialism' is only useful as shorthand for 'agent-neutral teleology'. But it seems a shame to reduce what has had such a central place in recent moral philosophy to something superfluous.

The only fact that speaks in favor of the Kagan/Broome terminology is common usage. Admittedly, consequentialism is commonly used to refer exclusively to agent-neutral theories.<sup>21</sup> But common usage is not much of a selling point if it rests on a common mistake. And it is common for philosophers to confuse the consequentialist aspect of utilitarianism with some of its other features. For instance, prior to Michael Slote's influential work (1985), it was common to view maximizing as definitive of consequentialism. Yet, at present, most philosophers acknowledge that consequentialism can employ a satisficing function instead of a maximizing function. Therefore, we should not adopt the Kagan/Broome terminology just because it is more in keeping with common usage.

Lastly, while addressing terminological issues, I should note that what I have called consequentialism up to now should more accurately be called act-consequentialism. Roughly then, a theory is act-consequentialist if and only if it “selects” all acts in virtue of their propensity to promote value. This less formal definition of act-consequentialism can be easily transformed into definitions of rule-consequentialism, motive-consequentialism, and the like. For instance, a theory is rule-consequentialist if and only if it “selects” all rules in virtue of their propensity to promote value.

Nevertheless, I will continue throughout the rest of this dissertation to use ‘consequentialism’ where I really mean ‘act-consequentialism’, and I will continue to define consequentialism as the view according to which all act are permissible (or not) in virtue of their propensity to promote value.

## 2. THE AGENT-RELATIVE/AGENT-NEUTRAL DISTINCTION

Having explained the consequentialism/non-consequentialism distinction, I can now turn to the agent-relative/agent-neutral distinction. I have said that a theory is agent neutral if it gives every agent the exact same set of aims and agent relative otherwise. This is a relatively informal way drawing the distinction, and unfortunately this informality leaves room for confusion. Consider that there is a sense in which some very typical agent-relative theories give every agent the

same set of aims. Take ethical egoism for instance. In one sense, it gives every agent the same aim: 'maximize your welfare'. But in another sense it gives different agents different aims, because the indexical 'your' refers to different individuals when addressed to different agents. Thus, it gives me the aim of maximizing *my* welfare, but it gives you the aim of maximizing *your* welfare.

In order to avoid such confusion, McNaughton and Rawling (1995, pp. 34) have suggested the following formalization of the distinction. In order to determine whether a given theory is agent relative or agent neutral, begin by transforming all the theory's aims/rules into the following form:

$$(x)(xS[\dots])$$

where 'xS[...]' stands for 'x should ensure, to the best of x's abilities, and in so far as there is no conflicting duty of greater weight, that [...]'. Next classify each aim/rule as either agent relative or agent neutral. Classify it as agent relative (AR) if there is an ineliminable occurrence of 'x' (bound by the initial quantifier) within the square brackets and as agent neutral (AN) otherwise. The result is a clear and formal procedure for determining whether a given theory is agent neutral or agent relative. It is agent relative if it contains at least one agent-relative aim/rule and agent neutral otherwise.

To illustrate, consider the following aims/rules:

- (1) AR:  $(x)(xS[x \text{ does not murder the innocent}])$
- (2) AN:  $(x)(xS[(y)(y \text{ does not murder the innocent})])$
- (3) AR:  $(x)(xS[x\text{'s welfare is maximized}])$
- (4) AN:  $(x)(xS[\text{aggregate welfare is maximized}])$
- (5) AN:  $(x)(xS[xS[\text{aggregate welfare is maximized}]])$

(1) represents an agent-relative constraint against murdering the innocent. (2), on the other hand, is agent-neutral. It gives everyone the same aim: 'ensure that no one murders the innocent'. (3) is the agent-relative aim which ethical egoism gives to all. (4) is the agent-neutral aim which utilitarianism gives to all. And lastly, (5) is just another way of formulating utilitarianism. Note that although there is in (5) an occurrence of 'x' within the square brackets, it is still an agent-neutral aim. The occurrence of 'x' within the square brackets can be eliminated without a change in ethical content, for we can transform (5) into its equivalent (4). Thus it is important that the occurrence of 'x' within the square brackets be ineliminable, because we can transform any aim/rule which has no occurrence of 'x' within the square brackets into one that does by simply adding a redundant 'xS[...]' within the square brackets.

There is, however, a problem with McNaughton and Rawling's formalization. Their formalization requires that all aims/rules be formulated according to the following template:

$$(x)(xS[\dots])$$

Thus they insist that (6) be formulated as (6'):

$$(6) \quad (x)(x \text{ is a parent} \rightarrow xS[x\text{'s children do not starve}])$$

$$(6') \quad (x)(xS[x \text{ is a parent} \rightarrow x\text{'s children do not starve}])$$

At first McNaughton and Rawling claimed that there was no *ethical* distinction to be drawn between (6) and (6') (1991, pp. 174-75). There is however a significant ethical difference between (6) and (6'). For consider the following case. Suppose a woman named Jane knows that if she has a child, she will not be able to ensure that it does not starve. Nevertheless, Jane voluntarily sets out to have a child. Predictably, she has a child and it starves to death. Has she done anything wrong? Well, not according to (6). (6) did not even apply to her until she became a parent. And once a parent we can suppose that she did, *to the best of her abilities*, ensure that her child did not starve. So the fact that she knew even before trying to get pregnant that she was not going to be able to

ensure that her child would not starve is irrelevant on (6). But on (6') it is very relevant. (6') directs her to ensure, to the best of her abilities, that it not be the case that she is both a parent and her child starves. She could have ensured that this not be the case by refraining from having a child, yet she choose to have a child anyway. Clearly, then, she did not act as she should have according (6'). So there is quite a significant moral difference between (6) and (6').

McNaughton and Rawling now recognize that this is so.<sup>22</sup> Yet they still insist that all rules/aims be transformed according to the template: (x)(xS[...]). They claim that they do not lose anything by this.<sup>23</sup> For although (6') is not equivalent to (6), it is to be preferred to (6), because it captures something which (6) misses, namely, that one should not have children if one cannot ensure that they will not starve. But what McNaughton and Rawling fail to see is that there are certain aims/rules that are more plausible when left like (6) than when transformed into their (6')-like counterpart. Consider:

(7) (x)(x is a parent with a child in school  $\rightarrow$  xS[x goes to PTA meetings])<sup>24</sup>

(7') (x)(xS[x is a parent with a child in school  $\rightarrow$  x goes to PTA meetings])

Arguably, (7) is more plausible than (7'), because the fact that you wouldn't be able to attend PTA meetings is no reason to refrain from having children. Suppose for instance that PTA meetings are always held on Wednesday evenings and that your job requires you to attend a board meeting every Wednesday night. Should you refrain from having children? According to (7') the answer is yes. You should, to the best of your abilities, ensure that it never be the case that you are a parent with a child in school and you do not go to PTA meetings. Now given your commitment to be at a board meeting on every Wednesday night, the only way you can ensure this is to refrain from having children. But this seems an insufficient reason to refrain from having children.

Thus (7) is far more plausible. It does not imply that you must refrain from having children just because you have a commitment to attend a board meeting every Wednesday night. (7) is of your concern only after you have become a parent with a child in school. Once a parent, it directs you to ensure, to the best of your abilities, and insofar as there is no conflicting duty of greater weight, that you go to PTA meetings. But, in this case, you do have a conflicting duty: your prior commitment to attend a board meeting every Wednesday night. So, according to (7), you may permissibly have children even though you know you won't be able to attend PTA meetings.

Now if (7) is more plausible than (7'), then McNaughton and Rawling are wrong to insist that all aims/rules be put in the form  $(x)(xS[\dots])$ . The problem with McNaughton and Rawling's formalization is that it is unable to capture one of the two methods by which a theory can give different agents different aims. One way for a theory to give different agents different aims is to include an indexical in the specification of a universally applicable aim/rule. For instance, ethical egoism gives every agent the aim of maximizing their own welfare—this aim/rule is universally applicable since it applies to everyone. Nevertheless the content of this aim varies depending on who it is addressed to. Addressed to me it tells me to maximize my welfare, but addressed to you it tells you to maximize your welfare. McNaughton and Rawling's formalization is a clear and simple way of determining whether an aim/rule contains such an indexical device.

But there is another method by which a theory can give different agents different aims which McNaughton and Rawling's formalization ignores. A theory can give different agents different aims by addressing a certain aim/rule to only some specified subset of agents—for instance, those who are parents with a child in school. Thus, (7) specifies the subset of agents who are parents and gives them an aim (i.e., attend PTA meetings) which it does not give to other agents. McNaughton and Rawling have no way to capture this other

method. By insisting that all aims/rules be put in the form  $(x)(xS[\dots])$ , they force all aims/rules to be universally applicable. There is no way given this template to have a rule which speaks to only a subset of agents.

Nevertheless, I think we can fairly easily revise McNaughton and Rawling's formalization to fix this problem. I suggest the following. First begin by transforming, as concisely as possible,<sup>25</sup> all a given theory's aims/rules into one of the following two forms:

Form A:  $(x)(xR[\dots])$

Form B:  $(x)([\dots] \rightarrow xR[\dots])$ <sup>26</sup>

where 'xR[...]' stands for 'x has a *pro tanto* moral reason to ensure that [...]',<sup>27</sup>

Next classify each aim/rule as either agent neutral or agent relative: agent relative if there is an ineliminable occurrence of 'x' (bound by the initial universal quantifier) within a pair of square brackets and agent neutral otherwise. Finally, a theory is agent relative if it contains at least one agent-relative aim/rule and agent neutral otherwise.

On this account, all three of the following rules are agent relative.

(8)  $(x)(xR[x \text{ tells the truth}])$

(9)  $(x)([x \text{ is the bio-parent of } n \text{ children}] \rightarrow xR[n \text{ children are adopted}])$

(10)  $(x)([it \text{ is Earth Day}] \rightarrow xR[x \text{ plants a tree}])$

The result is a clear and formal way of determining whether an aim/rule is agent relative or agent neutral and thus a clear and formal way of determining whether a theory is agent relative or agent neutral.

### 3. FOUR TYPES OF NORMATIVE THEORIES

The consequentialism/non-consequentialism distinction cuts across the agent-relative/agent-neutral distinction, yielding four distinct types of theories. One type of theory is agent-neutral consequentialism. We are already quite familiar with this type of theory. A classic example is utilitarianism. Utilitarianism is consequentialist because it holds that all acts are right and wrong in virtue of their propensity to promote value. And it is agent-neutral because it gives every agent the same single aim: the maximization of aggregate welfare.

Another type of theory which we are already quite familiar with is agent-relative non-consequentialism. A typical example of such a theory is Kantianism. Kantianism is non-consequentialist because it holds that acts are permissible or impermissible in virtue of their passing or failing (respectively) the Categorical Imperative Test. The actual/probable consequences of an act are, according Kantianism, irrelevant to determining its permissibility. And

Kantianism is clearly agent relative. For instance, it gives me the aim that I not make any false promises, but it gives you the aim that you not make any false promises.

A third type of theory is one which is both agent-relative and consequentialist. A classic example of such a theory is ethical egoism. Ethical egoism is clearly agent relative. As we have seen, it gives different agents different aims. But it is also clearly consequentialist, for it holds that all acts are permissible (or not) in virtue of their propensity to promote that which is valuable, which in this case is personal welfare.

Finally, a fourth type of theory is agent-neutral non-consequentialism. For an example of such a theory, recall the theory according to which everyone has the solitary aim of ensuring that the streets are paved with gold. This theory is agent neutral because it gives everyone the same single aim. And it is non-consequentialist because it denies that all acts are permissible (or not) in virtue of their propensity to promote value. Instead, it holds that all acts are permissible (or not) in virtue of their propensity to promote the aim of ensuring that the streets are paved with gold.

#### 4. AVOIDING THE COUNTER-INTUITIVE IMPLICATIONS ASSOCIATED WITH UTILITARIANISM

Having clearly explicated both the agent-neutral/agent-relative distinction and the consequentialism/non-consequentialism distinction, I can now return to the central claim of this chapter: that consequentialism can avoid the counter-intuitive implications associated with utilitarianism. But first, what are these counter-intuitive implications to which I refer? Well, I believe that they fall into two broad categories corresponding to the two main objections to utilitarianism.

One common objection to utilitarianism is that it is too demanding, for it permits agents to devote time, energy, and resources to their own personal interests only in so far as doing so serves to promote the overall good. Thus, on utilitarianism, it is permissible to attend to one's personal projects and commitments only when focusing one's attention elsewhere (e.g., on world hunger) would not do more to promote the overall good. And given the sorry state of the world we live in, this will be almost never.

Nonetheless, utilitarians are quick to point out that, despite the sorry state of the world, one normally would not be required to neglect all of one's personal projects and commitments. Human nature being what it is, people need to give a certain amount of attention to such things in order to function effectively as promoters of the overall good. But to many, the utilitarian's

response seems inadequate, because unless a theory permits agents to give proportionally greater weight to their own interests, it is still too demanding (see Scheffler 1982, ch. 2).

The other main objection to utilitarianism is that it is, in a sense, too permissive, for it permits doing anything for the sake of maximizing the overall good. It even permits torturing and murdering the innocent, so long as doing so will bring about the best overall state of affairs. Thus, utilitarianism sharply conflicts with our sense of justice and the idea that there are certain types of actions which are strictly prohibited no matter how good their consequences.<sup>28</sup>

In the next two sections, and in the following chapters, I will argue that consequentialism can avoid both of these objections. I will show that utilitarianism's counter-intuitiveness stems not from its consequentialism, but from its agent-neutral theory of value.

*4.1 The Too-demanding Objection.* Before turning to agent-relative consequentialism, I will first consider whether agent-neutral consequentialism is able to avoid the too-demanding objection. Initially, it seems that it can so long as it employs a satisficing function instead of a maximizing function. For on satisficing consequentialism, an act is morally permissible so long as its

outcome is “good enough” (Slote 1985, ch. 3); it need not be the best available option.

Satisficing consequentialism represents a new criterion of rightness and should not be confused with “strategic satisficing,” a decision procedure.<sup>29</sup> Strategic satisficing involves selecting the first ‘good enough’ option to become epistemically available in situations where the best available option is not easily determinable. A utilitarian (i.e., maximizing utilitarian) might adopt such a decision procedure in situations where choosing the first good enough option is likely to produce better results than attempting to select the best available option. For, in some situations, the process of selecting the best available option is exceedingly difficult and prone to error (Mulgan 1993, p. 122).

Satisficing consequentialism, on the other hand, is a criterion of rightness. On satisficing consequentialism, agents are permitted to select sub-optimal options (provided that that option is good enough) even where a better option is known and just as readily available (Mulgan 1993, p. 122). To illustrate, consider one of Slote’s examples:

*The Hotel Manager:* The manager of a resort motel discovers, late one evening, that a car has broken down right outside the premises. In the car is a poor family of four who haven’t the money to rent a cabin, but the

manager has the power and authority to offer them a cabin gratis, and she in fact decides to do so. But in acting thus benevolently, she doesn't go through the complete list of all the empty cabins in order to put them in the best cabin available. She simply goes through the list of cabins till she finds one in good enough repair and large enough to suit the family. (Slote 1989, p. 26)

Slote uses this example to support the idea that it is sometimes morally acceptable to do less good than one is in a position to do. For even if the hotel manager knows of a better cabin (say, one with a better view), one which she could put the family in without any additional cost to herself, the staff, or the company, she still does nothing wrong in choosing the adequate but sub-optimal cabin. The cabin is, as Slote says, "good enough." And Slote claims that "ordinary morality permits one sometimes to do less than the most or best one can do for others so long as what one does produce a large or sufficient amount of good for others" (Slote 1989, p. 27).

But as Tim Mulgan points out in his paper "Slote's Satisficing Consequentialism" (1993), this claim is ambiguous between the following two interpretations:

*The Individual Interpretation:* “one does a large or sufficient amount of good for others if and only if one produces a large or sufficient amount of good *for each individual* who is in a position to benefit from one’s actions.” (Mulgan 1993, p. 126)

*The Total Interpretation:* “one does a large or sufficient amount of good for others if and only if the total amount of good one produces *for other people in general* is above a certain threshold.” (Mulgan 1993, p. 126)

Now if the Individual Interpretation of ‘good enough’ is correct, then it seems that satisficing consequentialism will be just as demanding as utilitarianism (Mulgan 1993, p. 126). Given the state of our world, a theory which required agents to make everyone fairly well off before devoting time, energy, and resources to their own personal projects would in practice be just as demanding as utilitarianism. In our sorry world, there are so many who are so far from being fairly well off that one could dedicate one’s whole life to helping such people and still die not having come close to making everyone fairly well off.

So if the satisficing consequentialist is to avoid the too-demanding objection, she must adopt the Total Interpretation of ‘good enough’. However, under this interpretation satisficing consequentialism is not at all plausible.

Under this interpretation, it is sufficient to do a certain amount of good for others and then stop, even where there are still others in great need whom one could help at no additional cost. Clearly, this is absurd. There is no total amount of good which is good enough such that it is permissible to refrain from doing even more good where one could do so at no additional cost to oneself. For consider how absurd it would be for the hotel manager to restrict use of the cabin to only two of the four family members if the cabin can fit all four. The hotel manager can't claim that she does enough good in helping the two. If she can help the four just as easily as the two, then she must either help all four or none at all.<sup>30</sup>

So although satisficing consequentialism can in theory avoid the too-demanding objection, it cannot do so without adopting an absurd interpretation of 'good enough'. Thus satisficing consequentialism does not seem to be the answer to our concern that utilitarianism is too demanding. I will now turn to agent-relative maximizing consequentialism to see whether it can avoid the too-demanding objection.

Agent-relative maximizing consequentialism can avoid the too-demanding objection provided that a certain theory of value is correct. For if the value in an agent's promoting her own interests is agent relative (i.e., greater for her than it is for others), then consequentialism needn't be too demanding. In

fact, it won't be very demanding so long as there are a number of instances in which the agent-relative value in an agent's promoting her own interests outweighs the agent-neutral value in having the overall good maximized.

As further proof that consequentialism needn't be too demanding, consider that the least demanding of all moral theories, ethical egoism, is, as we have seen, a consequentialist theory. On ethical egoism, agents are never required to sacrifice their own interests. But although ethical egoism is the least demanding in this sense, it is in another sense still too demanding. It is too demanding in that it never permits agents to sacrifice their own interests for the sake of doing something which would better promote the overall good. Ethical egoism only trades one extreme for another. Utilitarianism never permits an agent to bring about less overall good than she is capable of. But ethical egoism is just extreme on the other end: it never permits an agent to sacrifice her own interests for the sake of the overall good. Ideally, what we want is a theory that gives us options, whereby it would be permissible either to pursue one's personal interests or to sacrifice those interests for the sake of the overall good.

Of course, agent-relative consequentialism need not be as extreme as ethical egoism—that is, it need not require that we always pursue our own interests. Nevertheless, it still seems problematic, for it seems unable to

accommodate the many moral options we take there to be. It is, after all, a theory which requires us always to bring about the best available state of affairs. To illustrate, consider the following case—I call it the Weekend. I can either spend this weekend working on this chapter or volunteering for Oxfam (and assume, for the sake of simplicity, that these are my only choices). Here we have the intuition that I am permitted to work on this chapter even if I could do more to promote the overall good by volunteering for Oxfam. Agent-relative consequentialism can account for this intuition so long as it is true to say that the state of affairs which would be brought about by my spending this weekend working on this chapter is, from my perspective, at least as good as the state of affairs which would be brought about by my spending this weekend volunteering for Oxfam. But the problem is that in this case, agent-relative consequentialism seems to imply that I am morally required to spend the weekend working on this chapter, for doing so would bring about what is, from my perspective, the best available state of affairs. Yet intuitively, we believe that I am permitted to sacrifice the interest I have in working on this chapter in order to do something which would better promote the overall good, e.g., volunteer for Oxfam.

So it seems that although consequentialism can avoid implying that I am morally required to volunteer for Oxfam, it can do so only at the cost of

implying something just as implausible, namely, that I am prohibited from volunteering for Oxfam. Thus, even if consequentialism isn't necessarily too demanding in the sense that it always requires agents to sacrifice their own personal projects and commitments for the sake of doing something which would better promote the overall good, it is necessarily too demanding in that agents are almost always required to do something and only rarely have any options. What we want is a moral theory that accounts for the presence of a great many agent-centered options—that is, options either to pursue one's personal interests or sacrifice those interests for the sake of the overall good.

So it seems that consequentialism is unable to accommodate the great many options we (commonsense moralists) take there to be. Nevertheless, I will argue that things are not as they seem. In Chapter Three, I take up the issue of how the commonsense moralist can account for moral options. And then, in Chapter Four, I argue that consequentialism can account for moral options in exactly the same way the commonsense moralist can. But first I will, in the following section and chapter, consider the too-permissive objection.

*4.2 The Too-permissive Objection.* Many philosophers have argued that consequentialism is too permissive in that it permits agents to violate the rights of others in certain circumstances. They claim that even if consequentialism

were to take rights violations to be intrinsically bad, it would still be too permissive in that it would permit agents to violate the rights of others for the sake of minimizing rights violations overall. As they see it then, consequentialism can go so far as to accommodate our intuition that it is, for instance, wrong to commit murder even in order to prevent numerous deaths (from say natural causes). But even so, it would still permit an agent to commit murder in order to prevent numerous others from committing comparable murders. According to these philosophers, then, there is at least one very important commonsense moral intuition with consequentialism cannot accommodate, no matter what value theory it be applied to. namely:

*I<sub>1</sub>*: an agent should not violate a person's rights even in order to prevent a number of other agents (each of whose motive, intention, and character are morally on a par with that of the agent in question) from committing comparable rights violations.

Now the only reason these philosophers believe that consequentialism cannot accommodate *I<sub>1</sub>* is that they assume that consequentialism is necessarily agent neutral.<sup>31</sup> They assume that consequentialism must necessarily give everyone the same aim, whereas, in order to accommodate *I<sub>1</sub>*, it would have to give different agents different aims—it would, for instance, have to give me the

aim that *I* not violate anyone's rights but you the aim that *you* not violate anyone's rights.<sup>32</sup> Yet, as I have argued, a consequentialist theory need not be agent neutral. But once we realize that a normative theory can be both agent relative and consequentialist, it should become evident that consequentialism can accommodate *I*. In fact, consequentialism can accommodate *I* so long as it is applied to an axiology according to which the following are true: (1) the value of a state of affairs where a rights violation has been committed is agent relative in the sense that its value varies according to whether or not the evaluator is the agent in question, and (2) the disvalue in an agent committing a rights violation herself is, from her perspective, greater than the disvalue in a number of other agents committing comparable rights violations.<sup>33</sup>

However, it is not enough for a normative theory to entail what we take to be intuitively correct moral judgments. A normative theory should also provide some sort of plausible explanation for our judgments. And it is here, according to some philosophers (most notably Frances Kamm), that consequentialism fails. Here, the consequentialist must hold that the explanation for why it is wrong to violate a person's rights even in order to prevent a number of others from committing comparable rights violations lies with the agent, specifically, with the special disvalue that her commission of rights violation would have for her. In contrast, many philosophers accept what is considered a

more traditional (deontological) explanation for  $I_1$ , one where the explanation lies with the potential victim and the nature of the rights she possesses.

Nevertheless, in following chapter, I will argue that the consequentialist explanation for  $I_1$  is in fact more plausible than the traditional (deontological) explanation. I will argue that the consequentialist explanation is superior, because it explains more while also being in greater accord with our commonsense moral intuitions.

## Notes

<sup>1</sup> Only an agent-relative theory, a theory which gives different agents different aims, can avoid the counter-intuitive implications associated with utilitarianism. For instance, only an agent-relative theory can prohibit an agent from committing murder for the sake of preventing numerous others from committing comparable murders.

<sup>2</sup> This explanation for the perseverance of utilitarianism was first given by Samuel Scheffler in *The Rejection of Consequentialism*, pp. 3-4.

<sup>3</sup> A theory is agent neutral if it gives every agent the same set of aims and agent relative otherwise (see Parfit 1984, p. 27).

<sup>4</sup> Actually, they formulate their view in terms of rules not aims: a theory is agent relative if it contains at least one agent-relative rule and agent neutral otherwise.

<sup>5</sup> I'm not claiming that this is a plausible theory. I'm only claiming that it is at least conceptually possible to have a theory which is both agent neutral and non-consequentialist.

<sup>6</sup> Consequentialists typically aim at maximizing the good. But, as Michael Slote (1985) rightly points out, consequentialism needn't be maximizing; it can instead be

*satisficing*. The principle ‘promote the good’ is meant to be neutral between such variants.

<sup>7</sup> To say that one state of affairs is, *from the agent’s point of view*, better than another is not to say that it is merely subjectively better. Rather it is to say that it is objectively better from the agent’s point of view. See Sen 1993.

<sup>8</sup> See also Williams 1973, pp. 86-7; Broome 1991, p. 4; and Sosa 1993, pp. 102-22. I favor giving ‘outcome’ the broadest possible reading, that is, as a complete world history—see Feldman 1986.

<sup>9</sup> This may not seem plausible to a utilitarian, but I’m not arguing against utilitarianism. I’m arguing that commonsense morality is best construed as being consequentialist in structure. So, I need only that this claim seem plausible to the commonsense moralist.

<sup>10</sup> See 1986, p. 5.

<sup>11</sup> For a more thorough discussion of ‘positional objectivity’ see Sen 1993, pp. 126-45.

<sup>12</sup> Constraints needn’t be absolute. There could, for instance, be a constraint against murdering an innocent person for the sake of less than *n* lives.

<sup>13</sup> Some philosophers view constraints as limiting what we may do in the pursuit of *any* goal, not just the goal of promoting value—see, for instance, McNaughton and Rawling 1991, p. 168. But this view seems mistaken. For consider that the constraint against murder doesn’t limit what an agent may do in pursuit of the goal of never committing murder.

<sup>14</sup> See Kagan 1989, p. 4.

<sup>15</sup> I should note that even an agent-neutral theory can incorporate constraints. Take for instance the theory according to which all agents have the same positive duty to ensure that the streets are paved with gold. On this theory, there is a constraint against doing anything which thwarts that goal. Thus, a ruler would be forbidden from using the state’s coffers to ensure that the people have food unless there would be enough left over to pave all the streets with gold. He would thus be restricted from pursuing the best available state of affairs, the one where the people are fed. (Here I’m assuming

that a certain axiology is taken for granted, one according to which it would be better that the people have food than that the streets be paved with gold.)

<sup>16</sup> There are however a number of philosophers who are perfectly willing to allow for agent-relative consequentialist theories—Sen 1982; Dreier 1993; Kamm 1996, p.239; Hurka 1993, p. 60; and Anderson 1993, pp. 30-1.

<sup>17</sup> McNaughton and Rawling are clearly making this mistake.

<sup>18</sup> Egoism and utilitarianism share an important feature which deontological theories lack. Both egoism and utilitarianism make the rightness of actions depend solely on considerations of value.

<sup>19</sup> Kagan classifies those theories which require agents always to promote value as teleological (1998, p. 63). But teleology is sometimes given a broader use, one which seems more in keeping with its root in the Greek word '*telos*', meaning goal or aim. For instance, William Frankena has defined 'teleological ethics' as the doctrine "which makes the determination of the rightness of an action wholly dependent on an estimate of its actual [or] probable conduciveness to *some* [emphasis mine] end" (1983, p. 331). On this broader definition, there are agent-neutral teleological theories which are non-consequentialist. The theory which requires everyone to ensure that the streets are paved with gold (see section 1.1) is a case in point. The theory is teleological, for it makes the rightness of an action wholly dependent on its productiveness towards the end of having the streets paved with gold. And as we saw in section 1.2, the theory is also both agent-neutral and non-consequentialist. Thus, given this definition of teleology, it is a mistake to do as Kagan (1998, p. 63) does and classify those theories which are both agent neutral and teleological as consequentialist. For this reason I prefer the term 'axiological' to the term 'teleological'—the former concerns value where the latter concerns any end valuable or not. Peter Vallentyne also prefers the term 'axiological' to the term 'teleological' but for other reasons (see 1987, pp. 21-32).

<sup>20</sup> In recent years, the most interesting work in theory construction has come from those philosophers who have been willing to broaden our notion of consequentialism—see,

e.g., Slote (1985) and his “satisficing consequentialism” and Sen (1982; 1983; 1993) and his “positional consequentialism.”

<sup>21</sup> But, as I have pointed out, there are quite few philosophers who don’t use ‘consequentialism’ in this way—see fn. 16.

<sup>22</sup> They state this in an unpublished paper entitled “On Conditional Rules.”

<sup>23</sup> Ibid.

<sup>24</sup> ‘PTA’ abbreviates ‘Parent-Teacher Association’.

<sup>25</sup> This caveat is necessary, because otherwise it would be possible to substitute the conjunction of  $(x)(Fx \rightarrow xR[\phi])$  and  $(x)(\sim Fx \rightarrow xR[\phi])$  for its equivalent  $(x)(xR[\phi])$  when listing a theory’s aims. And if ‘ $\phi$ ’ doesn’t contain an occurrence of ‘ $x$ ’, then a theory which had  $(x)(xR[\phi])$  as its sole aim could come out either agent neutral or agent relative depending on whether the theory’s aims were listed singly as  $(x)(xR[\phi])$  or conjunctively as  $(x)(Fx \rightarrow xR[\phi])$  and  $(x)(\sim Fx \rightarrow xR[\phi])$ . I thank Matthew Hanser for bringing this problem to my attention.

<sup>26</sup> In Form B, the contents inside the brackets of the antecedent do not have to be the same as the contents inside the brackets of the consequent.

<sup>27</sup> I prefer to talk about *pro tanto* reasons as oppose to *prima facie* duties as McNaughton and Rawling do. See Kagan 1989, p. 17.

<sup>28</sup> I borrow this way of categorizing the objections to utilitarianism from Shelly Kagan (1989, pp. xi-xii).

<sup>29</sup> I borrow this term from Tim Mulgan (1993, pp. 121-22).

<sup>30</sup> Here I’m supposing that the cost of letting any of them use the cabin is sufficiently great as to make helping the family supererogatory. I’m also supposing that the cost of helping all four is no greater than the cost of helping just one. Given these suppositions, it seems that so long as the manager is willing to incur the cost of helping the two, she must help all four since there is no added cost in doing so.

<sup>31</sup> For some examples of philosophers who seem to think that consequentialism is necessarily agent neutral see, Kagan (1989) p. 8; McNaughton and Rawling (1991) pp. 167-168; and Scheffler (1982) pp. 1-3.

<sup>32</sup> These are obviously different aims, for sometimes my aim will be achieved only at the expense of yours—as where the only way I can prevent you from violating someone's rights is to violate someone's rights myself.

<sup>33</sup> The idea that consequentialism can accommodate  $I_1$  in this way is not new. See, for example, Broome (1991) ch. 1; Dreier (1993) esp. p. 23; and Sen (1982).

## CHAPTER TWO

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### **Consequentialism and Rights**

IN section 4.2 of the previous chapter, we saw that the agent-relative consequentialist can account for our intuition that it is wrong to commit a rights violation even in order to prevent a number of other agents from committing comparable rights violations—again, I refer to this intuition as *I<sub>1</sub>*. According to the agent-relative consequentialist, the explanation for *I<sub>1</sub>* lies with the fact that there is a special disvalue for an agent in her committing a rights violation—special in the sense that it is greater for her than it is for others. Her commission of a rights violation is especially bad from her point of view, because agents have a special concern (or responsibility) for their own agency, for what they do as opposed to what they merely let happen.

According to this explanation then, it is wrong to violate a person's rights even in order to prevent a number of other agents from committing comparable rights violations because doing so would bring about the worse of the two alternative states of affairs. Of course, where I say "the worse" here I mean this

to be elliptical for "what is from the agent's perspective the worse." For we have to take note of the fact that given the special concern agents have for their own agency, the value of a state of affairs where a rights violation has been committed will be agent relative. That is, the value of such a state affairs will differ depending on the position of the evaluator *vis-à-vis* the act which constitutes the rights violation. Specifically, it will differ according to whether or not the evaluator is the agent in question. This, of course, is the consequentialist explanation for  $I_1$ .

But not all philosophers think that the consequentialist explanation best accounts for  $I_1$ . For instance, Frances Kamm offers a very different sort of explanation for why it is, for instance, wrong to kill one person even in order to prevent five others from being killed. She believes the explanation lies with the fact that the one who stands to be killed for sake the five has what she calls a "constraining right" against being killed, that is, a right not to be killed even for the sake of minimizing the number of comparable rights violations.<sup>1</sup> Of course, the five possess the same right, but the agent in this case comes up against only the right of the one, for it is only the right of the one which she is considering violating.

So on Kamm's view, the rationale for our judgment that it is wrong to kill the one for the sake of the five has nothing to do with the idea that the

agent's act has some special disvalue for her given her personal perspective. Rather Kamm claims that "the agent's own act is special only in that it makes [her] come up against the constraining right" of her would-be victim.<sup>2</sup> And this constraining right acts as a barrier against the permissibility of treating her in certain ways, for instance, against the permissibility of treating her as a means to the minimization of rights violations. So for Kamm, the explanation for why it is wrong to kill the one for the sake of the five derives from something about the victim, not from something about the agent (as it does in the case of the consequentialist explanation). And that something about the victim is that she has a constraining right against being killed. Kamm calls this the traditional explanation for  $I_1$ .

I will argue that the consequentialist explanation for  $I_1$  is in fact more plausible than the traditional (deontological) explanation. I will argue that what we should be most concerned with is not  $I_1$  but another more general intuition. And I will show that, whereas the consequentialist explanation can account for both  $I_1$  and this more general intuition, the traditional explanation can account only for  $I_1$ . But first I will show that whereas there is apparently no clear case where our intuitive response conflicts with what the consequentialist explanation implies, there are a number of cases where our intuitive response conflicts with what the traditional explanation implies. So, in other words, I will argue that the

consequentialist explanation is superior because it explains more while having none of the counter-intuitive implications associated with the traditional explanation.

#### 1. KAMM'S PROPOSED COUNTER-EXAMPLE TO THE CONSEQUENTIALIST EXPLANATION

Frances Kamm claims that in order to determine which of these two explanations best accounts for  $I_1$ , we should try to ascertain whether or not we have the following intuition:

$I_2$ : an agent should violate a person's rights if doing so is the only way (short of doing something morally worse) to minimize the number of times she *himself* commits comparable rights violations.

For she believes that if the explanation for  $I_1$  lies with some special concern agents have for their own agency, we should expect to have  $I_2$ . After all, if agents are so concerned not to commit rights violations *themselves*, shouldn't they try to minimize the number of rights violations *they* commit?

On the other hand, if the explanation for  $I_1$  lies with the fact that the potential victim possesses a constraining right (a right which it is impermissible to violate even for the sake of minimizing comparable rights violations), we

should expect to have the intuition that committing a rights violation in order to prevent *oneself* from committing comparable rights violations is no less wrong than committing a rights violation in order to prevent *others* from committing comparable rights violations. For, if the explanation lies with the victim, why would the permissibility of violating her rights depend on something about the agent, that is, why would it depend on whether the agent could thereby prevent herself or others from committing more numerous rights violations?

As it turns out, Frances Kamm has the intuition that it is wrong for an agent to commit a rights violation even in order to minimize the number of times she herself commits comparable rights violations. And she uses the following example to elicit the same intuition from us.<sup>3</sup> She calls it the Guilty Agent Case: A Mr. Smith has previously planted a bomb with the intention of killing five innocent people. However, he has come to regret this and now wishes to save the five. Unfortunately, though, the only way to save the five at this point is to throw a sixth innocent person (who is currently under no threat) onto the bomb. Thus, Smith faces the following choice: (1) do nothing—in which case it will come to pass that he has intentionally killed five, or (2) throw the sixth person onto the bomb—in which case it will come to pass that the he has intentionally killed one.

So apparently Smith can minimize the number of murders he commits by

throwing the sixth person onto the bomb. Yet clearly we have the intuition that it would be wrong for him to do so. Kamm concludes, therefore, that the explanation for  $I_1$  must not lie with any special concern agents have for their own agency. For if the only reason we think that it is wrong for an agent to kill in order to prevent others from killing is that we believe agents should be especially concerned to avoid being killers *themselves*, then we should have no objection to an agent killing in order minimize the killings *she* commits. Yet apparently, in the Guilty Agent Case, we do. Hence, Kamm concludes that we should reject the consequentialist explanation in favor of the traditional explanation.<sup>4</sup>

The agent-relative consequentialist could account for our intuition in the Guilty Agent Case by claiming that the disvalue in committing murder is not only agent relative but also moment relative. That is, she could claim that the disvalue in committing murder in the present is, from the agent's present perspective, greater than the disvalue in committing any number of murders in the future (or past). However, to claim that the disvalue in committing murder is moment relative is quite a bit more controversial than to claim that it is agent relative. For there is no apparent plausible rationale for why the disvalue of murder should be moment relative. Why would agents have a special responsibility for what they do in the present as opposed to what they will do in

future or have done in the past? On the other hand, there is an obvious and plausible rationale for why the disvalue of murder is agent relative: agents have a special responsibility for their own actions. This is something all commonsense moralists (whether consequentialist or non-consequentialist) are likely accept.

Nevertheless, I will argue that the agent-relative consequentialist can account for our intuition in the Guilty Agent Case without having to claim that the disvalue of a rights violation is moment relative. I will argue that the agent-relative consequentialist can explain our objection to throwing the sixth person onto the bomb in terms of the special concern agents have for their own agency. I suggest that we need only realize that what concerns an agent most in regards to her agency is not the actual consequences of her actions but the nature of her actions.

As I take it, the nature of an act is dependent upon a number of things: (1) the objective probability of the act having certain kinds of causal consequences; (2) the value of such consequences occurring; (3) the intention with which the act was performed; (4) the epistemic position of the agent; and so on. But what really defines for us the nature of an act is that which it is not dependent upon, namely, luck and subsequent agent intervention. So, two acts can be identical in nature and yet have very different consequences. For

instance, two men may both fire a gun with the intention of killing someone. But if by chance a bird happens to fly into the path of one of the two bullets, their acts will have very different consequences. Nevertheless, the two acts may still be identical in nature.

But whether or not an act of a given nature has certain causal consequences is not just determined by luck; it can also be determined by whether or not some other agent subsequently intervenes. Consider a case in which a man plants a car-bomb with the intention of killing its owner. Whether or not this man's act ultimately causes anyone's death may depend not only on various chance occurrences but also on whether or not some other agent chooses to intervene. For suppose that someone witnesses the man planting the bomb. In this case, whether or not the witness chooses to call the bomb squad will affect the outcome. But regardless of what the witness does, the nature of the man's act remains the same. For as I take it, the nature of an act is set the instant it is performed.

Coming back to the Guilty Agent Case, then, we should consider the fact that Mr. Smith has already done something terribly wrong in planting his bomb, and that this is true regardless of whether or not his bomb ends up killing the five. He has committed an act of a certain evil nature; he has committed what I will call an act of *premurder*—an act causally sufficient to bring about the death

of an innocent person performed with the intention of doing so.<sup>5</sup> Now Smith may be able to change the outcome of this prior act, but he cannot change its nature. For he cannot change what his intention was in performing the act, nor can he change any of the other factors which have determined his act's nature.

The fact that he cannot change the nature of his act is, I believe, very important. For it seems that what matters most (morally speaking) is not the outcome of an agent's act but its nature.<sup>6</sup> And if the nature of an agent's act is more important than its contingent outcome, it follows that Mr. Smith should, in his current situation, be more concerned about refraining from committing any further act of *premurder* than he is about preventing the five from being killed, even though they stand to be killed as result of his previous act of *premurder*. i.e., his act of planting the bomb.<sup>7</sup> In this way, it is possible to explain our intuition that it is wrong for Smith to throw the sixth person onto the bomb in terms of the special concern agents have for their own agency.<sup>8</sup>

It is the nature and not the outcome that matters most, because it seems that for any two acts identical in nature we should have the same moral assessment regardless of whether or not the two, by chance or intervention, have different causal consequences. To illustrate, consider a variant of the Guilty Agent Case, a case in which a Mr. Smithers has planted a bomb in a room with the intention of killing the five innocent people within. There is another man,

however, a Mr. Jones, who can save the five by throwing a sixth (innocent) person onto the bomb. He is the only one who can save the five, and he can do so only by throwing the sixth person onto the bomb. In this case there are again two possible outcomes. If Jones intervenes, only one person dies. Alternatively, if Jones chooses not to get involved, the five will die as a result of Smithers's previous action.

Like Mr. Smith, Mr. Smithers has come to regret his action and now wishes to save the five. Unfortunately though, in this case, he hasn't the means. He is helpless. All he can do at this point is reflect upon his action. And of course in doing so, he will realize that what he has done is utterly reprehensible. But now suppose that he learns to his surprise that the five didn't die— unbeknownst to him Mr. Jones saved the five. Should he now revise his original assessment of his action, knowing now that, contrary to what he had previously believed, his bomb didn't kill the five? Should he think that what he has done is any less evil than he had first supposed? It seems not. Of course, as it turns out the consequences of his actions are not as horrible as he had originally thought. But it doesn't follow that he should reproach himself any less. For our assessment of an act needn't depend upon our assessment of its actual consequences; it should instead depend upon our assessment of what were its probable (or counterfactual) consequences. For instance, consider a person who,

after betting his entire life savings on a long-shot to win the Kentucky Derby, realizes that he has done something incredibly foolish. Such a person shouldn't change his assessment of his action even if by luck his horse wins. He shouldn't conclude from the fact that his horse has won that betting his life savings on such a horse isn't as foolish as he had once thought. Similarly, Mr. Smithers should not change his assessment of his action even after he discovers that its actual consequences are not as horrible as he had once thought. It seems that it is the nature of an act, as opposed to its actual consequences, which should determine for us whether, and to what extent, it is morally reprehensible.

If I am correct in thinking that Smithers's act is equally reprehensible whether or not Jones saves the five, then we should also think that Smith's act is equally reprehensible whether or not he saves the five. For if we compare this version of the Guilty Agent Case to the original, we find that there is only one essential difference: in this case, the person who planted the bomb and the person who is capable of saving the five (by throwing a sixth innocent person onto the bomb) are two separate individuals, whereas in the original version, they are the same individual. But why should this change anything? Why would Mr. Smith be able to affect the degree to which his previous act is morally reprehensible anymore than Mr. Jones can affect the degree to which Mr. Smithers's previous act is morally reprehensible? It seems that nothing

Smith does now can make what he has already done any less wrong. Therefore, throwing the sixth person onto the bomb will not serve to minimize the number of immoral acts he commits. Instead, it will only increase that number by one.

Of course, what I'm denying here is that there is such a thing as moral luck: on my view, the extent to which one's actions are morally reprehensible cannot be contingent upon such things as chance occurrences and subsequent agent intervention. Admittedly, the view that moral luck does not exist is controversial. And unfortunately I haven't the space here to defend it. Nevertheless, it is important to note that the effectiveness of Kamm's counter-example is contingent upon us believing that moral luck does exist. For if moral luck does not exist, it would seem that what should concern an agent most in regards to his own agency is the nature of his actions as opposed to their actual consequences. We could then explain why Mr. Smith should not throw the sixth person onto the bomb in terms of the special concern he has for his own agency.

So only those who are convinced that there is moral luck will see Kamm's Guilty Agent Case as being an effective counter-example to the consequentialist explanation. For the rest us, we will want a different sort of case from that of the Guilty Agent Case, a case that can be used to test whether or not we have  $I_2$  without our having to take a stand on whether or not moral luck exists. I will present two such cases in the following section.

## 2. TWO COUNTER-EXAMPLES TO THE TRADITIONAL EXPLANATION

In trying to come up with a test case for  $I_2$ , we should be careful to avoid Kamm's mistake of choosing a test case where the agent has already done something wrong. This is a mistake because if the agent has already done something wrong we have a problem in determining what the relevant act-type is. For instance, in the Guilty Agent Case it is not immediately clear whether Smith should be most concerned to minimize his acts of murder or his acts of *premurder*. Here, we must take a stand on the existence of moral luck in order to determine which is the relevant act-type.

A better example for testing whether or not we have  $I_2$  is thus one where the only way a person can prevent himself from committing numerous instances of a certain immoral act-type *in the future* is to perform one instance of that act-type now. With this sort of example, there will be no question what the relevant act-type is. For here there is only one act-type to be considered. The problem is, however, that it is very difficult to come up with this sort of example. In fact, I don't think it can be done where murder is the act-type in question. Consider again the Guilty Agent Case. In this case, killing the sixth person is *the only way* for Smith to save the five from being killed by his bomb. And it is important that it is the only way, because presumably killing must be a last resort. If there had been any other more acceptable way of saving the five, as

for instance by diffusing the bomb, there would have been no question about it being wrong to throw the sixth person onto the bomb. So I am trying to imagine a case where an agent has not previously initiated any lethal causal process (as this is what has led to the Guilty Agent Case being problematic) but where it is nevertheless true that *the only way* for the agent to prevent himself from committing numerous murders in the future is to commit one murder now. But it is difficult to imagine there being such a case. For it seems anyone with the means to kill others will have the means to kill himself. And it seems that an agent should kill himself if that is the only way to prevent himself from murdering innocent people in the future.

In order to avoid such difficulties, I will now switch from discussing cases involving murder to cases involving theft. For, where stealing as opposed to killing is at issue, there is no need to find a case where the only way of preventing oneself from committing a greater number of morally bad acts in the future is to commit an instance of that act-type now. Although there may well be other ways besides committing an act of theft now which would prevent oneself from committing a greater number of thefts in the future (e.g., committing suicide), it is enough for our purposes that all these alternatives be morally worse than committing an act of theft. This type of case seems to be the best we can do in our effort to develop a test-case for  $I_2$ .

So consider what I call the Unfortunate Situation Case. John, who has become heroin addict through his own choosing, finds himself in the following unfortunate situation: He is flat broke and out of heroin. If he doesn't get another fix sometime in the next couple hours, he will start to go through withdrawal. And John knows from past experience that while in a state of withdrawal, he is unable to control his actions; he will in fact do anything to get a fix when in such a state.<sup>9</sup> However, there is a way to prevent himself from falling into such a state, but only by stealing pain-killers from Bob, a man who suffers from chronic back-pain. The problem is that this will result in Bob experiencing great agony, for Bob is just about to board a plane and will certainly need his pain-killers during the cramped flight. But if John doesn't steal Bob's pain-killers now, he will end up in a situation later where he will be in withdrawal and have no way to get his next fix except by committing five individual acts of theft, each morally on a par with stealing Bob's pain-killers. Thus, the only way for John to prevent himself from committing these five acts of theft (short of doing something morally worse than theft) is to steal Bob's pain-killers. John, then, has essentially only two options given his current situation: (1) steal Bob's pain-killers now, or (2) end up in a situation later where he can be certain to commit five comparable acts of theft.

In this case, it seems that no matter what, John will end up doing

something wrong for which he will be culpable. But it does nevertheless seem morally preferable for him to commit the one act of theft now as opposed to the five acts of theft in the future. It seems that John should, in his circumstances, steal Bob's pain-killers, this being his best option morally speaking.

I suspect most will share my intuition. Those who don't are probably just having difficulty imagining that stealing Bob's pain-killers could be the only way (short of doing something morally worse than theft) for John to prevent himself from committing five acts of theft in the future.<sup>10</sup> So let us consider another case where this difficulty is avoided: the Promise Case. Mr. Collins has made six separate promises, one to each of six friends. (Label these six promises: P1 through P6. And assume that the consequences of breaking any one of these six promises is morally on a par with the consequences of breaking any other.) In order to fulfill P1, Collins must be in New York in June. In order to fulfill any of P2 through P6, Collins must be in Hawaii in July. Now at the time Collins made these promises he was capable of fulfilling all six, and he had intended to do so. However, since then he has lost (by gambling) half of the money which he had saved in order to buy the plane tickets. Thus, he can no longer afford to fly both to New York in June and to Hawaii in July. Of course, he has no one but himself to blame for being in this predicament, but it is nevertheless no longer possible for him to fulfill all six promises.

In this case there is no difficulty imagining that the only way for Collins to avoid breaking promises P2 through P6 is to break P1. And clearly we have the intuition that he ought to do so. For it seems morally preferable for him to break the one promise as opposed to the five. Yet, interestingly, we don't think that Collins ought to break P1 in order to prevent five others from breaking comparable promises. So again, we see that although we have the intuition that an agent should not commit a morally bad act in order to prevent numerous others from committing the very same act-type, we do think that an agent should do so in order to prevent himself from committing more numerous instances of the very same act-type in the future.

So we have found that we have the following intuitions: in the Unfortunate Situation Case, we believe that John should steal Bob's pain-killers, and in the Promise Case, we believe that Mr. Collins should break P1. Yet we would expect to have the opposite intuitions were the traditional explanation for  $I_1$  correct. For on the traditional view, the explanation for why (for instance) it would be impermissible to steal from Bob even in order to prevent numerous others from committing comparable rights violations lies with the fact that Bob has a constraining right against being stolen from, a right which acts as barrier against the permissibility of treating him as a means to the minimization of comparable rights violations. On the traditional view, it is simply impermissible

for an agent to march through such a barrier even in order prevent herself (or others) from violating that same barrier numerous times in the future.<sup>11</sup> Yet intuitively, we believe that it is permissible for John to treat Bob as a means to the minimization of the rights violations he commits. Thus, the traditional explanation must not be the correct explanation for why we think it is wrong to violate a person's rights even in order to prevent numerous others from committing comparable rights violations.

But our intuitions in the Unfortunate Situation Case and the Promise Case are not the only intuitions for which the traditional view cannot account. As we will see in section four, the traditional view also has difficulty explaining why an agent should not commit a morally bad act in order to prevent numerous others from committing instances of the very same act-type, where the act-type in question is not one which involves committing rights violation. But before proceeding to do so, I will take a small step back and respond to those who may find fault with my earlier dismissal of Kamm's counter-example to consequentialist explanation for *I<sub>1</sub>*.

### 3. AN OBJECTION

Someone might raise the following objection. Minimizing one's acts of *premurder* doesn't amount to the same thing as minimizing the number of rights

violations one commits, because an act of *premurder* only results in someone's rights being violated if it causes someone's death. Therefore, Smith does in fact minimize the number of rights violations he commits by throwing the sixth person onto the bomb, even if he does thereby increase the number of acts of *premurder* he commits. And so, if we have  $I_2$ , we should still think that Smith should throw the sixth person onto the bomb.

In response, I could argue that because an act of *premurder* does always at least constitute a threat on a person's life, it is thereby a violation of that person's rights, whether or not it ends up causing her death. But regardless, I want to argue that this objection amounts to a mere technicality. For the issue is not just whether an agent should commit a rights violation in order to minimize the number of rights violations she commits but, more generally, whether an agent should commit a bad deed in order to minimize the number of bad deeds she commits—where a bad deed can, but need not, involve the commission of a rights violation.

Thus, it was a mistake to focus on rights violations in the first place. What we should be most concerned to account for is not  $I_1$  but the more general intuition:

$I_a$ : an agent should not commit a morally bad act even in order to prevent a number other agents (each of whose motive, intention, and character are

morally on a par with that the agent in question) from committing instances of the same relevant act-type.<sup>12</sup>

And so, we shouldn't be concerned with whether or not we have  $I_2$  but with whether or not we have

$I_b$ : an agent should commit a morally bad act if doing so is the only way (short of doing something morally worse) to minimize the number times she *herself* commits instances of the same relevant<sup>13</sup> act-type.

Therefore, we have reason to reject the consequentialist explanation only if there is a counter-example to  $I_b$ . So even if Kamm's Guilty Agent Case is a counter-example to  $I_2$ , it poses no threat to the consequentialist explanation since it is not a counter-example to  $I_b$ . According to  $I_b$ , Smith should not throw the sixth person onto the bomb, because he would thereby only increase the number of bad deeds (in this case, acts of *premurder*) he commits.

#### 4. WHY THE TRADITIONAL EXPLANATION CANNOT ACCOUNT FOR $I_a$

So we have found that what we should be most concerned to account for is not  $I_1$  but the more general  $I_a$ . For we have the intuition that it is wrong to commit a morally bad act in order to prevent numerous others from committing instances

of the very same act-type even where the act-type in question is not one which involves the commission of a rights violation. For example, consider what I will call the Wrongful Conception Case: a case where a woman has been warned by her doctor that any child she conceives this month will (because of some temporary medical condition she has) be born mildly retarded—not so retarded as to be unlikely to have a life worth living but retarded enough to make life less fulfilling than it is for a person of normal intelligence.<sup>14</sup> (Assume that it is true both that if she waits a month she will be able to conceive a normal, happier child and that there is no particular reason why she shouldn't wait besides her eagerness to be a mother.)

Now call the act of conceiving a child under these circumstances “ $\phi$ .” What's interesting is that not only do we think that it would be wrong for a woman to  $\phi$  but also that it would be wrong for a woman to  $\phi$  even in order to prevent a number of other women from  $\phi$ ing. But this intuition presents a problem for the traditional view, because there can be no rights-based explanation for our intuition that it is wrong for a woman to  $\phi$  even in order to prevent a number of other women from  $\phi$ ing. For  $\phi$ ing doesn't violate anyone's rights. It might, on first glance, seem that the child who is born retarded as result of his mother  $\phi$ ing has his rights violated. But this not true, for had his mother not  $\phi$ ed he would not exist, and it seems implausible to suppose that an

act which causes him to exist with a life worth living can be one which violates his rights.<sup>15</sup>

So whereas the traditional (deontological) explanation can only account for  $I_1$ , the consequentialist explanation can account for both  $I_1$  and the more general  $I_a$ .

## 5. CONCLUSION

I have argued that there are two good reasons to think that the consequentialist explanation provides a better explanation for  $I_1$  than the traditional explanation. First, the consequentialist explanation can explain some things which the traditional explanation cannot. For instance, the consequentialist explanation can explain our intuition that a woman should not  $\phi$  even in order to prevent a number of other women from  $\phi$ ing—something which the traditional explanation is at a loss to explain. But the traditional explanation doesn't just fail to explain some things which the consequentialist explanation can explain. What's worse is that its implications regarding certain cases are counter-intuitive. For instance, the traditional explanation implies that in the Unfortunate Situation Case, John shouldn't steal Bob's pain-killers and that in

the Promise Case, Mr. Collins shouldn't break P1. In fact, we have the opposite intuitions.

So I have shown not only that consequentialism can accommodate  $I_1$ , but that it can provide a more plausible explanation for  $I_1$  than the one deontologists have traditionally given for it. Ironically, then, it is the same commonsense intuition (i.e.,  $I_1$ ) which in the past has led so many philosophers to reject consequentialism which now, given our new understanding of consequentialism as a theory that can be agent relative, leads us to believe that commonsense morality might best be understood as a consequentialist theory.

## Notes

<sup>1</sup> Kamm 1992 & 1996.

<sup>2</sup> Kamm 1992, p. 185.

<sup>3</sup> See Kamm 1989, p. 255 and 1996, p. 242.

<sup>4</sup> See Kamm 1989, p. 255 and 1996, pp. 242-243.

<sup>5</sup> To say that an act A is sufficient to cause an event E is not to say that E will necessarily follow if A is performed but only that E will follow (or, at least, that it is likely follow) so long as no agent intervenes in the process by which A causes E. *Premurder* differs from attempted murder then in that an act of attempted murder need not be causally sufficient to bring about death. Someone may attempt to commit murder and yet fail, not because someone intervened, nor because of any freak chance event, but because the person chose, out of ignorance perhaps, a means which was insufficient to bring about death. For example, someone who puts poison in someone's

food with the intention of killing him has committed an act of attempted murder even if out ignorance he didn't use a sufficient quantity of the poison to be lethal.

<sup>6</sup> I owe this idea to McNaughton and Rawling (1993) p. 92. However, I cannot be sure that they would agree with the way I have drawn the distinction between an act's nature and its outcome, for they do not explain what exactly they take the distinction to be. Also, I should note that whereas they accept this claim as just a "commonly held intuition," I consider it to be somewhat contentious. Shortly, I will explain just what I believe its plausibility hinges on.

<sup>7</sup> This is not to say that an agent should not be concerned with the consequences of his prior actions. Although it is impermissible for Smith to throw the sixth person onto the bomb in order to save the five, it would be impermissible for Smith to lie, for instance, in order to save the five. Also, there is no implication that it would be impermissible for an agent who has fired a missile at five to later (after realizing that he has made a terrible mistake) redirect the missile onto one if the death of the one would be merely a foreseen side-effect of saving the five. For if the death of the one is unintended, the act of redirecting the missile would not be an act of *premurder*.

<sup>8</sup> Kamm is aware of this general strategy for escaping from her counter-example whereby the consequentialist claims that what an agent should be most concerned to minimize is something other than actually violated rights (See Kamm 1996, p. 244). However, she never comments on whether she thinks that such a claim is itself plausible, for she believes that although this strategy may allow the consequentialist to generate the intuitively correct response in the Guilty Agent Case, it will not save the consequentialist view from the implication that an agent should violate someone's rights now in order to prevent himself from committing a greater number of comparable rights violations in the future—something which she assumes is also counter-intuitive. However, I will, in section four, argue that the opposite is true.

<sup>9</sup> I don't believe that it is too far fetched to suppose that John can know that he will be unable to control himself in such a state. But if you believe that it is always possible for

someone withdrawing from heroin to control his actions, then let us imagine that John is withdrawing from some hypothetical drug where he has no control over his actions when in withdrawal.

<sup>10</sup> Perhaps one might be thinking that John could prevent himself from committing acts of theft in the future by committing some victimless crime in front of a police officer. But we should suppose that the jails are overcrowded and that the only way John can get himself incarcerated is by doing something even worse than what he is certain to do if he isn't behind bars. Also, let us suppose that he is on a waiting list to get into a drug rehab program; but for now, he is on his own.

<sup>11</sup> Kamm (1996) p. 249.

<sup>12</sup> Initially, it may seem obvious that an agent should never commit a morally bad act. But consider that there are cases (e.g., the Unfortunate Situation Case) where an agent has placed himself in a situation where no matter what he does now it will come to pass that he has done something morally bad. And if, in such a case, the choice is between doing something morally bad and something morally worse, it seems true to say that the agent should in such circumstances do something morally bad.

<sup>13</sup> A morally bad act can sometimes be described as instances of two or more different act-types. For instance, Smith's act of throwing the sixth person onto the bomb can be seen both as an instance of murder and as an instance of pre-murder. So, in the Guilty Agent Case, Smith has a choice: he can throw the sixth person onto the bomb and thereby minimize the murders he commits or refrain from doing so in which case he will minimize his acts of pre-murder. According to *I<sub>b</sub>*, Smith should refrain from throwing the sixth person on the bomb, because the relevant act-type is pre-murder, not murder. For, as I have argued, it is the nature of an act which determines which act-type (i.e., act description) it should fall under.

<sup>14</sup> I borrow this example from Parfit (1976) pp. 100-101.

<sup>15</sup> See Parfit 1984, chap. 16 for a fuller discussion of this issue.

## CHAPTER THREE

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### **Commonsense Morality and Not Being Required to Maximize the Overall Good**

IN this chapter, I will digress from the main line of argument. In fact, I will not discuss consequentialism at all. Instead, I will consider whether moral options can be defended within the context of an overall defense of commonsense morality.

Commonsense morality is a hodgepodge of numerous and varied moral judgments. It follows then that a defense of moral options should not be conducted in isolation from the rest of our moral beliefs. Although one strategy for defending options may initially seem plausible, the strategy will ultimately have to be abandoned if its implications are unacceptable in light of our other commonsense moral beliefs (Kagan 1994, p. 315). The challenge then is to give a defense of options which coheres with the rest of commonsense morality.

In this chapter, I intend to take up this challenge. I will argue for a rather unique way of accounting for options. Then, in the following chapter, I will

show that consequentialism can accommodate moral options by giving the very same account.

## 1. INTRODUCTION

Let us call the act which would, in a given situation, maximize the overall good “*M*.”<sup>1</sup> According to commonsense morality, there are two general types of situations in which an agent is not morally required to do *M*. First, there are those situations in which the agent is prohibited from doing *M*—such prohibitions are known as *agent-centered constraints*. Second, there are those situations in which the agent is permitted to do *M* but also has the option of doing something else instead—such prerogatives are known as *agent-centered options*.

It is the acceptance of these two general exemptions from being morally required to do *M* which distinguishes commonsense morality from its leading rival, utilitarianism. Hence, many contemporary moral philosophers have sought to defend commonsense morality by accounting for the existence of both agent-centered constraints and agent-centered options. However, an adequate defense of commonsense morality must do more than just account for the existence of constraints and options. That is, it must do more than just explain why there are, in some situations, constraints and, in other situations, options.

Rather, it must account for the presence of an option in all the various situations we take there to be one—and likewise for constraints.

Many philosophers have proceeded to defend commonsense morality as if it was sufficient to merely give an account of some typical constraints and some typical options. Such a defense is adequate only if there is some single explanation accounting for all constraints and some single explanation accounting for all options. Yet it is doubtful that such is the case. Neither constraints nor options share enough in common to allow for such a singular account.

Consider constraints. The typical situation in which there is a constraint against doing *M* is one where doing *M* involves infringing upon someone's right not to be treated in a certain way. But there are also less typical situations where an agent is prohibited from doing *M*, not because doing *M* involves treating anyone in a prohibited fashion, but because the agent has a positive duty to do something else.<sup>2</sup> For instance, if faced with the choice between either saving my child or some stranger's child, I am, according to commonsense morality, required to save my own child even if saving the stranger's child would do more to promote the overall good (call this the Drowning Case). In this case, I am prohibited from doing *M*, because doing *M* precludes doing that which I am morally required to do, namely, saving my child.

Now some philosophers have sought to defend agent-centered constraints by arguing that persons have a certain sort of inviolability which protect them from being treated in various ways.<sup>3</sup> But although the inviolability of persons may explain why it is, for instance, wrong to commit murder even in order to minimize murders, it cannot explain why, in the Drowning Case, it is wrong for me to save the stranger's child. After all, saving the stranger's child would not involve "violating" anyone. Thus, the inviolability of persons cannot account for why I am prohibited from saving the stranger's child.

The same type of problem exists for any attempt to give a singular account of options, for there are at least two very different sorts of options. First, there is most familiar sort of option, where doing *M* requires making some excessive personal sacrifice, and so the agent has the option of either safeguarding her interests or sacrificing those interests for the sake of the overall good. This sort of option is called an "agent-favoring" option, because it permits an agent to favor herself over others.<sup>4</sup> But agents also have the option of favoring others over themselves. An agent may, for instance, forgo some great benefit to herself even in order to confer a lesser benefit upon another. Such options are called "agent-sacrificing" options.<sup>5</sup>

Most recent attempts to defend agent-centered options (e.g., Samuel Scheffler's appeal to the natural independence of the personal point of view<sup>6</sup>)

have failed to account for agent-sacrificing options.<sup>7</sup> Yet, commonsense morality is clearly committed to the existence of such options. For instance, it seems perfectly permissible for me to sacrifice my life in order to save the life of another even if it would be better, impersonally speaking, that I be the one who lives—imagine, for instance, that I am much younger and so have more worthwhile life ahead of me.

Given the disparities among both constraints and options, then, it seems very unlikely that there will be either a single explanation for all constraints or a single explanation for all options. Therefore, the defender of commonsense morality will have to do more than just account for certain typical constraints and certain typical options. The defender of commonsense morality will have to account for the absence of a moral requirement to do *M* in every situation in which we deny that there is such a requirement.

In this chapter, I will explore how the defender of commonsense morality might proceed in this task. I will argue that there are, at least, three different explanations for the absence of a moral requirement to do *M* and that the commonsense moralist must appeal to all of these in order to account for the vast array of constraints and options we take there be.<sup>8</sup> In the process, I will develop a unique defense of options, one which is consistent with commonsense morality as a whole.

## 2. THE FIRST TYPE OF EXPLANATION

One way to account for the lack of a moral requirement to do *M* is to show that there is no moral reason to do *M*. For where there is no moral reason to do *M*, there can be no moral requirement to do *M*. It seems that a necessary condition for being morally required to perform a given act is that there be at least some moral reason to do so.<sup>9</sup>

Shelly Kagan, however, has argued that this sort of explanation is unavailable to the commonsense moralist. For, according to Kagan, the commonsense moralist is committed to the existence of a “*pro tanto* reason” to promote the overall good. That is, Kagan believes that the commonsense moralist is committed to there always being at least some moral reason to promote the overall good.<sup>10</sup> And if there is always a moral reason to promote the overall good, there must always be a moral reason in favor of doing *M*.

However, it would appear that Kagan is mistaken, for there seem to be a number of situations in which there is no moral reason to do *M*. For instance, consider the case where a man has made a sizeable donation to charity. Let us suppose that, although there was nothing better that he could have done with the money, there was something more he could have done to promote the overall good. That is, he could have benefited himself in the process by requesting a public ceremony for the purpose of announcing his gift, something which would

have enhanced his popularity and prestige within the community. But even if requesting this ceremony would have served to promote the overall good, it seems that there was absolutely no moral reason for him to do so, for it would have promoted the overall good only in so far as it would have promoted his own welfare. If anything, then, it seems that he had a moral reason to forgo the ceremony, for his act seems all the more noble given that he sought nothing for himself in doing it.

Again, consider the case where a man can either stay up late watching television or go to bed early and get a good night's rest. Assume that these are his only choices and that the effects on others will be the same whichever he chooses. Assume also that he would be better off going to bed early and that he knows this to be true. Yet suppose that he chooses to stay up anyway. In this case, he has failed to do *M*. But although he surely had a prudential reason to go to bed early, he didn't have a moral reason to do so. For his failing to go to bed early does not seem the least bit morally objectionable. Here then is another case where there is absolutely no moral reason to do *M*.

These and other cases like them suggest that commonsense morality assigns no positive value to an agent benefiting herself.<sup>11</sup> The fact that an act will enhance the agent's own welfare does not give her any *moral* reason to perform it. And so Kagan is wrong to think that the commonsense moralist is

committed to there always being some moral reason to do *M*. For when doing *M* is better than some alternative act (in terms of the overall good it produces) only because it produces more good for the agent, there is absolutely no moral reason for the agent to do *M* instead.

I have argued that there are situations where there is no moral requirement to do *M* precisely because there is no moral reason to do *M*. Yet even if I am right about this, the commonsense moralist cannot use this explanation to account for all the situations in which she denies the existence of a moral requirement to do *M*. For according to commonsense morality, there are some situations in which there is a moral reason to do *M* but nevertheless no moral requirement to do *M*. Consider again the Drowning Case, where I must choose between either saving my child or some stranger's child. As I set up the case, to do *M* is to save the stranger's child. Yet, despite this, commonsense morality holds that I ought to save my own child. But clearly the commonsense moralist would not want to claim that there is no moral reason which speaks in favor of saving the stranger's child, but only that I have an overriding moral reason to save my own child. In this case, the fact that saving the stranger's child would do more to promote the overall good does count in favor of saving the stranger's child. After all, if it was some other agent who was faced with the same choice, and she had no special relationship to either child, she would be

required to save the other child (that is, not my child) precisely because doing so would better promote the overall good. Clearly, then, there are some situations in which there is a moral reason to do *M* but no moral requirement to do *M*.

What this means is that although the commonsense moralist might be able to use this first type of explanation in order to account for some of the situations in which there is no moral requirement to do *M*, she cannot use it to account for all such situations. The commonsense moralist must then appeal to some other explanation in order to account for the absence of a moral requirement to do *M* in those situations where there is a moral reason to do *M*.

### 3. THE SECOND TYPE OF EXPLANATION

In the Drowning Case, I have a moral reason to do *M* (i.e., save the stranger's child) but no moral requirement to do *M*. I suggested that the reason for this is that I have an overriding moral reason to save my own child. Here, then, is another way of accounting for the lack of a moral requirement to do *M*: there is no moral requirement to do *M* unless the balance of moral reasons supports doing *M*.<sup>12</sup> It seems that the mere presence of a moral reason for doing *M* (although necessary) is not sufficient to generate a moral requirement; the support of the balance of moral reasons is also necessary.<sup>13</sup> So another way the

commonsense moralist can account for the lack of a moral requirement to do *M* is to deny in certain cases that the balance of moral reasons supports doing *M*.

By appealing to this explanation, the commonsense moralist can account for the absence of a moral requirement to do *M* in a great many situations. For one, she can account for why I am not morally required to do *M* where doing *M* involves sacrificing my interests.<sup>14, 15</sup> For instance, she can claim that the reason why I'm not required to do *M* in the Drowning Case is that the agent-relative (moral) reason I have to save my own child outweighs the agent-neutral (moral) reason I have to do *M*. Similarly, the commonsense moralist can account for why I am not morally required to commit murder even in order to prevent a number of others from committing comparable murders. Here, she need only claim that the agent-relative (moral) reason I have to avoid being a murderer *myself* outweighs the agent-neutral (moral) reason I have to minimize murders.<sup>16</sup> Thus, this explanation enables the commonsense moralist to account for both types of agent-centered constraints—both those that stem from positive duties and those that stem from negative duties.

However, it may appear that this explanation will be useless in trying to account for agent-centered options. Kagan explains:

If, in some particular case, the balance of morally relevant reasons did not favor promoting the overall good but favored instead promoting the

agent's own interests—then it seems that these reasons would still go on to generate a moral *requirement*. Admittedly, the agent would not be morally required to promote the overall good, but she *would* be morally required to promote her interests. Yet this is not at all what the advocate of ordinary morality wanted to defend. What we were looking for was a defense of a moral *option*, according to which the agent would still be morally permitted (although not required) to do the act with the best results overall.<sup>17</sup>

Of course, Kagan must admit that we can, via this explanation, account for a moral option in at least a few cases, cases where the agent-relative (moral) reason one has to pursue one's own interests is equal in strength to the agent-neutral (moral) reason one has to do *M*. But this is little consolation. For we believe that there is a moral option in a great many situations, not just in those few rare instances in which the agent-relative (moral) reason one has to promote one's own interests equals the agent-neutral (moral) reason one has to do *M*. Nonetheless, I will argue that the commonsense moralist can, via the second explanation, account for a moral option in more than just a few rare cases. I suggest that the commonsense moralist need only claim that the agent-relative reason one has to pursue one's own interests is in many cases an *imperfect reason*.

I can best explain the notion of an imperfect reason by means of an analogy with what Kant called an “imperfect duty.” Consider for instance the duty to be charitable, a duty which Kant took to be “imperfect.” It is for Kant an imperfect duty because although it may prescribe that I be charitable to some certain extent, it never requires that I be charitable on any particular occasion. On any given occasion, I have the option of choosing whether or not to be charitable.

In the same sense, the reason I have to spend time working on this chapter is imperfect. That is, it provides me with a reason to spend a certain amount of time next week working on it, but come Monday afternoon I may reasonably choose to do something else which I have reason to do—exercise, for instance. Now if I fail to spend anytime next week working on this chapter, then I will have failed to act in accordance with my reason for working on this chapter. But there is no particular day or time next week in which I’m rationally required to work on this chapter. On any given day, I have the rational option of either working on this chapter or doing something else which I have reason to do—unless, of course, I have procrastinated and left it to do at the end of the week.

So now let’s consider a typical case in which we think that there is a moral option and see if this notion of an imperfect reason can help us account

for its existence. The case I have in mind is this: I can either spend this Saturday with my family or volunteering for Oxfam. (Assume that doing the latter is what would best promote the overall good.) In this case, commonsense morality claims that I have the (moral) option of doing either—assuming of course that this Saturday is not special in anyway, that it is not my wife's birthday, for instance.

If the commonsense moralist is going to appeal to this second explanation in order to account for why I'm not morally required to volunteer for Oxfam this Saturday, she must claim that I have a strong agent-relative (moral) reason to spend time with my family. But we shouldn't think that this reason opposes my volunteering for Oxfam this Saturday. Given that it is an imperfect reason (that is, a reason which only requires that I spend a certain percentage of my free time with my family), it only opposes my spending all my free time volunteering for Oxfam. Likewise the reason I have to volunteer for Oxfam is imperfect. Thus it is a mistake to suppose that the balance of moral reasons must support either spending this Saturday with my family or volunteering for Oxfam. In actuality, what the balance of moral reasons supports is spending a certain amount time doing each. But, as far as this Saturday is concerned, I have the option of doing either.

So contrary to what Kagan claims, the commonsense moralist can, via the second explanation, account for a moral option in more than just a few rare cases. But we may still wonder whether we can, via this explanation, account for all moral options. For instance, we may wonder whether we can account for a moral option in the following case (I call this the Burning Building). A young boy is trapped in a burning building. As it happens, I am the only one who can save him from an otherwise certain death. Unfortunately, though, there is no way to save the boy without suffering severe burns in the process. Let us suppose that the burns will not be so severe as to be life-threatening, but that they will be severe enough to cause permanent disfigurement and necessitate weeks of hospitalization.

In this case, I'm certainly not required to make such a sacrifice in order to save the boy. But it is equally certain that I am permitted to do so. In fact, it seems that such action would be (morally) heroic. According to commonsense morality, then, I have a moral option in this case. However, there doesn't seem to be any way for the commonsense moralist to account for this fact via the second explanation. First of all, it may not be plausible for the commonsense moralist to claim that the reason which opposes doing *M* in this case is a moral reason. For as we saw in section two, the mere fact that an act will be detrimental to one's own self-interest cannot count as a moral reason against

doing it. Thus, the commonsense moralist must argue that, by undertaking the rescue, I would be imposing heavy burdens not just on myself but also on those I care about, and so consequently I have a moral reason to refrain from undertaking the rescue. But even if the commonsense moralist can succeed in making such an argument, it seems that the second explanation is still unable to account for an option. This doesn't seem to be a case where the agent-relative (moral) reason I have to safeguard my own interests is exactly equal in strength to the agent-neutral (moral) reason I have to save the boy. Nor does it seem to be a case where the reasons involved are imperfect. For it would be absurd to claim that I have an imperfect duty to make such sacrifices; I wouldn't be derelict in my duty even if I were always to refuse to make such sacrifices.

So even if we can, via the second explanation, account for why I am not morally required to save the boy (by claiming that I have an overriding moral reason to refrain from saving the boy), it seems that we cannot do so without implying that I'm morally required to refrain from saving the boy. And this is unacceptable to the commonsense moralist, because the commonsense moralist holds that, although I'm not required to save the boy, I am permitted to do so. But perhaps there will be some other explanation which will enable us to account for a moral option in this case.

#### 4. THE THIRD TYPE OF EXPLANATION

In the Burning Building, the balance of moral reasons must either support saving the boy or refraining from saving the boy. And so it seems that I must either be morally required to undertake the rescue or morally required to refrain from undertaking the rescue. Yet we believe that I have the (moral) option of doing either. The only way out of this dilemma is to deny that the support of the balance of moral reasons is sufficient to ground a moral requirement.

As it turns out, the commonsense moralist must deny that the support of the balance of moral reasons is sufficient to ground a moral requirement. For according to commonsense morality, it is sometimes morally permissible to do other than that which the balance of moral reasons supports doing. Consider the following example from Susan Wolf's "Above and Below the Line of Duty":

It is another Tuesday morning and you envision another afternoon of office hours ahead, when you get a call telling you that your philosophical heroine is in the states on a rare visit. In fact—the caller here apologizes for the late notice—she is giving a lecture this very afternoon at another university in a nearby town. There would even be a place for you at dinner. Should you go, or instead drive to your own office just in case some of your students want to complain about their grades?<sup>18</sup>

Intuitively, the answer is that you should go to the lecture even if doing so will benefit only yourself. Not only does it seem rational for you to go, it seems (morally) permissible for you to go. Yet in this case, the balance of moral reasons supports attending your office hours. After all, there is clearly a moral reason for you to attend your office hours—we all have a moral reason to honor our commitments, and agreeing to hold office hours on Tuesday afternoons is a kind of commitment. And there doesn't seem to be any moral reason which opposes your attending your office hours. Of course you have a strong reason to go to the lecture instead, but surely this reason is not a moral reason. For as we have seen, the fact that doing something would benefit oneself does not, according to commonsense morality, count as a moral reason for doing it. Besides, if you did have a moral reason to go to the lecture, you would need some sort of excuse not to go. Yet even if you had no prior commitments, you wouldn't be morally required to go to the lecture. You could instead choose to stay home and stare at the ceiling. Such a choice would be imprudent but not immoral. Compare this to why we think that you do have a moral reason to attend your office hours. In this case, if you fail to attend your offices hours, you need to justify yourself. You can't just skip your office hours in order to stay home and stare at the ceiling—it would be wrong to do so.

So you have a moral reason to attend your office hours and no moral reason not to. Clearly then, the balance of moral reasons supports attending your office hours. Here then is a case where the balance of moral reasons supports doing one thing, and yet, intuitively, it seems that it is both rational and (morally) permissible to do another. Nor is this an unique case. For many of our personal projects (e.g., stamp collecting) benefit no one but ourselves, and yet we think that it is permissible to spend time and resources on such projects even where the balance of moral reasons favors doing something else instead (e.g., volunteering for Oxfam).

Such cases show that we must reject the idea that moral reasons have supreme rational authority. That is, we must reject the idea that moral reasons always trump non-moral reasons such that even the weakest moral reason outweighs the strongest non-moral reason. For in Wolf's example, it seems that the opposite is true: you should skip your office hours and go to the lecture because the non-moral reason you have for going to the lecture outweighs the moral reason you have for attending your office hours.

But as I mentioned earlier, we think not only that it is rational for you to go to the lecture, but also that it is permissible for you to go. Interestingly then, it seems that non-moral reasons affect not only what it is rationally for one to do, but also what it is morally permissible for one to do. But why does the presence

of a strong non-moral reason for acting otherwise change not only our judgment about what it is rational to do but also our judgment about what it is permissible to do? Why don't we just say that in the circumstances it is rational to do something other than that which you are morally required to do? Well, it seems that commonsense rules out *a priori* the possibility of an agent being morally required to do one thing while at the same time being rationally permitted to do another. Thus, we commonsense moralists appear to be internalists about morality and reasons for action: we hold that there is a moral requirement to perform a given act only if there is no other act which it would be rational to perform instead.<sup>19</sup> (Note that what it is rational to do is what one has most reason to do all things considered, where both moral and non-moral reasons are taken into account.)

If we were externalists about morality and reasons for action, we would expect that were we to take a case where it is rational to do what one is morally required to do (namely, X) and imagine a series of variants on that case in which there is an ever stronger self-interested reason to do something else (namely, Y), we would eventually arrive at a case where it is rational to do something other than that which one is morally required to do. However, we never do arrive at such a case. For as soon as we are willing to say that it would be rational to do Y, we become unwilling to assent to there being a (moral) requirement to do X.

To illustrate, consider a case where I have promised to hold office hours and have nothing better to do. Clearly, in this case, what I should do, all things considered, is hold office hours as promised. And it seems that I'm also morally required to do so. But now let us imagine a series of variants on this case in which I have an ever stronger self-interested reason to do something else. At some point we are willing to say that what I should do, all things considered, is renege on my promise to hold office hours. Yet, once we get to this point, we are no longer willing to assent to there being a moral requirement to hold office hours. Wolf's example is a case in point. The self-interested reason you have to take advantage of this rare opportunity to see your philosophical heroine outweighs the moral reason you have to hold office hours, the result being that you are no longer morally required to hold office hours. (Of course, you may well be required to make it up to those students who showed up and waited in vain.)

To sum up, we have learned two things. First, it is sometimes rational to do other than that which the balance of moral reasons supports doing. Second, a necessary condition for being morally required to perform a given act is that there be no other act which it would be rational to do instead. From these two it follows that we are not always morally required to do what the balance of moral reasons supports doing. Thus, the support of the balance of moral reasons is not

sufficient to ground a moral requirement. If an agent is morally required to do X, then not only must the balance of moral reasons support doing X, but the balance of all reasons, both moral and non-moral, must support doing X.

So now we have another way of accounting for the absence of a moral requirement to do *M*. In some situations, where even the balance of moral reasons supports doing *M*, there will nevertheless be no moral requirement to do *M* because of an overriding non-moral reason to do otherwise. For instance, in the Burning Building I am not required to do *M* (i.e., save the boy) even though it is what the balance of moral reasons supports doing, because I have an overriding non-moral reason to safeguard my own welfare.

But unlike the second explanation, this explanation does not commit us to a requirement to refrain from rescuing the boy. Using this explanation, we are not only able to account for why I'm not morally required to undertake the rescue (i.e., *M*) but also for why I'm not morally required to refrain from undertaking the rescue. I'm not required to undertake the rescue because the balance of all reasons supports refraining from doing so. But nor am I required to refrain from undertaking the rescue, for the balance of moral reasons supports undertaking the rescue. So, I am neither required to undertake the rescue nor to refrain from undertaking the rescue. Yet, I must do one or the other. Therefore, I have the (moral) option of doing either.

The third explanation can also account for agent-sacrificing options. Take, for instance, the case where I can save another man's life only by sacrificing my own. In this case, it seems that although I am not morally required to sacrifice my life, I am permitted to do so. What's more, I am permitted to make this sacrifice even if it would be better, impersonally speaking, that I be the one who lives. So this too is a case where I have a moral option. We can account for an option in this case just as we accounted for an option in the Burning Building. I am not morally required to sacrifice my life because the balance of all reasons favors refraining from doing so, and I'm not required to refrain from making the sacrifice because the balance of moral reasons supports making the sacrifice.<sup>20</sup> Since I must do one or the other, and since neither are required, it follows that I have the (moral) option of doing either.

### 5. THREE POSSIBLE OBJECTIONS

Having presented this view, I would now like to address three possible objections. The first objection has to do with my characterization of the commonsense moralist as being an internalist about morality and reasons for action. I have claimed that, according to commonsense morality, one is morally required to perform a given act only if there is no other act which it would be

rational to do instead. This view is needed to explain the fact that when non-moral reasons oppose and outweigh the otherwise decisive moral reasons one has for doing X, we conclude that it is not only rational, but also (morally) permissible, to refrain from doing X. If we were externalists about morality and reasons for action, we would expect to conclude only that it is rational, and not that it is morally permissible, to refrain from doing X.

David Brink, however, has argued that we should reject internalism because its acceptance entails an inability to take seriously the amoralist challenge: “Do I always have reason to do what I’m morally required to do?”<sup>21</sup> The internalist must simply dismiss this question as being conceptually confused. But Brink argues that it should be taken seriously. He says, “Philosophical reflection and common sense thinking about the stringency of moral demands can make us wonder whether there is in fact good reason to act on moral considerations. For this reason, the amoralist challenge not only seems intelligible but deserves to be taken seriously.”<sup>22</sup>

However, Brink is mistaken in thinking that the internalist cannot take this type of skepticism seriously. The internalist cannot take seriously the question “Do I always have reason to do what I’m morally required to do?” but she can take seriously the type of skepticism which gives rise to the question, namely, skepticism about “whether there is in fact good reason to act on moral

considerations.”<sup>23</sup> For there is nothing inconsistent about being an internalist and questioning whether there is good reason to act on moral considerations. An internalist may, for instance, wonder whether non-moral reasons might not always trump moral reasons. The internalist may even question whether moral considerations can ever give rise to reasons for action.

The only difference between the internalist who questions whether we ever have reason to act on moral considerations and the externalist with the same doubts is that whereas the externalist can hold that moral considerations give rise to moral requirements even if they can't give rise to reasons for actions, the internalist cannot. If moral considerations don't give rise to reasons for action, then the internalist must deny that they give rise to moral requirements. But this difference is a rather trivial one. For what does it matter whether moral considerations can generate moral requirements if they can't generate reasons for actions? Either way moral considerations will play no role in our practical deliberations.

Another possible objection has to do with the seeming lack of any rational options on my view. That is, someone may wonder whether I have only traded a moral requirement for a rational requirement. For instance, in the Burning Building Case, I am not morally required to attempt the rescue, because the balance of all reasons supports refraining from doing so. But, if the balance

all reasons favors refraining from attempting the rescue, then I must be rationally required to do so. Thus, my view implies that it is sometimes irrational to do what is morally best.<sup>24</sup> And I suspect many will find this implication unacceptable.

In response, I would first like to point out that, on my view, there will in most cases be a rational option wherever there is a moral option. For most moral options arise as a result of clash between imperfect reasons, and where a moral option arises out of such a clash, there will be as much a rational option as there is a moral option. For instance, consider again the case where I must choose between either spending this Saturday with my family or volunteering for Oxfam. In this case, I have not only a moral option but also a rational option.

But back to the Burning Building Case. On my view, it would indeed be irrational for me to attempt the rescue. Or, more accurately, it would be irrational for me to attempt the rescue so long as I am more concerned not to risk my life than I am to try to save the stranger's life. Thus, this rational requirement is conditional on my having a certain preference ranking, one which ranks my refraining from attempting the rescue above my attempting the rescue. But if the rational requirement is conditional in this way, then I need not regard someone else who decides, in the same situation, to attempt the rescue as being

irrational, for she may just have a different preference ranking. Furthermore, if it would be rational for me change my preference ranking, then there is a sense in which I am rationally permitted to attempt the rescue. For if I change my preference ranking (as we are assuming that I may rationally do), it will, then, be rational for me to attempt the rescue.<sup>25</sup>

Nevertheless, so long as I do prefer to refrain from attempting the rescue, I will be rationally required to do so. But I don't think this is the least bit objectionable. For a rational option is no more than an option to do what one prefers doing. For instance, at a restaurant we typically have to choose between either having soup or salad with our entrée. And this is clearly a case where we take there to be an option to choose either. Yet we don't think that it would be rational for someone to choose soup even if, all things considered, she prefers salad.<sup>26</sup> If she prefers salad over soup, all things considered, then she is rationally required to choose salad. So we shouldn't find it objectionable that I am rationally required to refrain from attempting the rescue if that is what I prefer to do.<sup>27</sup>

Lastly, someone might object that if what I have most reason to do is conditional on my preferences, I will sometimes be rationally required to violate an agent-centered constraint in order to fulfill my preferences.<sup>28</sup> Not necessarily. It may be that the moral reasons in favor of respecting constraints

are so powerful that no reason stemming from a personal preference can override them. But in actuality, it seems that sometime agents are rationally required to violate constraints. For instance, in Wolf's example, you seem to have an overriding reason to break your promise to hold office hours. And of course, were you to experience severe chest pain on a Tuesday afternoon, it would be foolish of you to put off going to the emergency room in order to attend your office hours. Similarly, it is seems permissible to steal bread from a wealthy grocer if this is the only way to keep your children from starving.

## 6. CONCLUSION

Rather than trying to account for certain typical constraints and certain typical options, as most defenders of commonsense morality have done, I have chosen a different tack. I have chosen to explore the various ways in which one might account for the lack of a moral requirement to do *M*. I have discovered that there are at least three different ways to account for the lack of a moral requirement to do *M*, and I have argued that the commonsense moralist must employ all three if she is to account for the full array of constraints and options we take there to be. These are (1) to deny that there is always a moral reason to do *M*, (2) to deny that the balance of moral reasons always supports doing *M*, and (3) to claim that something besides the support of the balance of moral

reasons is necessary to ground a moral requirement, and then deny that this further condition is always met.

There are two advantages to my approach. First, because my focus has not been on any particular type of constraint or option, I have avoided the common mistake of overlooking the need to account for less typical constraints and options. Second, because my focus has been on finding general strategies for defending commonsense morality rather than on a defense of any particular intuitions, I have been able to offer a coherent defense of both constraints and options. Too often, philosophers have defended options and constraints in isolation from one another, only to end up with incompatible defenses.<sup>29</sup>

Of course, I don't pretend to have given anything close to a full defense of commonsense morality. Rather, I have sacrificed the defense of particular intuitions for sake of a general defense of commonsense morality's most central features. But I believe that it is important to first take this more general approach so that we can be assured of a coherent defense.

## Notes

<sup>1</sup> When I speak of the overall good, I talking about the greatest net some of impersonal (i.e., agent-neutral) good.

<sup>2</sup> See Kagan 1989, p. 4.

<sup>3</sup> See, for instance, Kamm 1996, chaps. 9 and 10.

<sup>4</sup> Slote 1985, p. 11.

<sup>5</sup> Ibid.

<sup>6</sup> See Scheffler 1982.

<sup>7</sup> Slote 1985, p. 20.

<sup>8</sup> Shelly Kagan was the first to set out these three possible explanations for the lack of a moral requirement to do *M*. See Kagan 1994, p. 346.

<sup>9</sup> Kagan 1994, p. 334.

<sup>10</sup> Kagan 1989, p. 42.

<sup>11</sup> In this respect commonsense morality differs from virtue ethics. See Slote 1990.

<sup>12</sup> When I say that the balance of moral reasons supports doing *M*, I mean that the balance of moral reasons favors doing *M* above all else.

<sup>13</sup> Kagan 1994, p. 334.

<sup>14</sup> An agent's interests are not limited to what's in her *self*-interest. An agent's interests include all that she has a concern for, and so may include states of affairs which do not coincide with the her own self-interest. For instance, an agent may take a special interest in the development of a cure for AIDS and may even be willing to sacrifice her own life and well-being for the sake of its fruition. See Kagan 1989, pp. 3, 233-4.

<sup>15</sup> In cases where doing *M* requires sacrificing one's interests, the commonsense moralist can, using this second explanation, account for the lack of a moral requirement to do *M* only if the interests involved are not purely self-regarding interests. The second explanation involves postulating an overriding moral reason to do something other than *M*. But, as we saw in section two of this chapter, the fact that doing something would be in one's self-interest cannot count as a moral reason for doing so. Thus, the interests involved cannot be purely self-regarding. Instead, the interests involved have to be something like the interest I have in protecting my child. In this case, it is plausible to suppose that the reason I have to protect my child is a moral reason which in certain situations can override the moral reason I have to do *M*. In

section four, I will discuss how the commonsense moralist can account for the lack of a moral requirement to do *M* in cases where doing *M* involves sacrificing purely self-regarding interests.

<sup>16</sup> See Portmore 1998.

<sup>17</sup> Kagan 1994, p. 338.

<sup>18</sup> See Wolf 1986, p. 142.

<sup>19</sup> This type of internalism is what David Brink would call 'strong agent internalism about reasons'—see Brink 1986, chap. 3.

<sup>20</sup> The balance of moral reasons supports making the sacrifice, for although I clearly have a moral reason to save the man's life, I have no *moral* reason to safeguard my own life. According to commonsense morality, my own welfare is irrelevant to what I have a moral reason to do. Of course, it is possible to imagine a case where there will be others besides myself who would be adversely affected by my death—for instance, the case where I have dependents. But in this case, it seems that I don't have the option of sacrificing my life.

<sup>21</sup> See Brink 1986, pp. 23-41.

<sup>22</sup> *Ibid.*, p. 33.

<sup>23</sup> *Ibid.*

<sup>24</sup> Shelly Kagan (1991, pp. 919-28) raises the same sort of objection against Michael Slotes's suggestion that non-moral reasons might generally undermine the *pro tanto* reason to promote the overall good (see pp. 897-928 of the same issue).

<sup>25</sup> This response comes from Bratman 1994, pp. 325-32.

<sup>26</sup> I am not just talking about a preference for the taste of one over the other. Rather I am talking about an all-things-considered preference for salad over soup. So, although someone might crave the cream of mushroom soup, she may still prefer salad for dietary reasons.

<sup>27</sup> At this point, one may ask: what if I prefer to attempt the rescue? In this case, both the balance of all reasons and the balance of moral reasons will support attempting the

rescue. So won't there be a moral requirement to attempt the rescue? Not necessarily. Perhaps there is some other necessary condition which is not yet met. Nothing I have said so far implies that these two necessary conditions are jointly sufficient. But, for the moment, let us suppose that the two are jointly sufficient as I am inclined to think that they are. In this case, I would indeed be morally required to attempt the rescue if I prefer attempting the rescue to refraining from attempting the rescue. And this may seem objectionable, because intuitively we want to say that attempting the rescue is something supererogatory. But perhaps a supererogatory act is just an act which one is required to do given a certain preference ranking. So, for instance, the act of attempting the rescue is a supererogatory act because only those who have a saintly concern for others are required to do it. This conception would explain some interesting phenomena. For one, we often feel the need give excuses for not doing supererogatory acts. Second, moral saints don't typically view their actions as being beyond the call of duty. For a more detailed account of such phenomena, see Hale 1991, pp. 272-85.

<sup>28</sup> Kagan raises this objection against the account of agent-centered options which Michael Bratman gives in his "Kagan on 'The Appeal to Cost'." See Kagan 1994, p. 350.

<sup>29</sup> See Kagan 1994, p. 351.

## CHAPTER FOUR

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### **Consequentialism and Options**

IN section 4.1 of Chapter One, I left off having only briefly discussed a potential problem for consequentialism: its seeming inability to accommodate the numerous moral options we (commonsense moralists) take there to be. For instance, it seems that whether I spend this weekend working on this chapter or volunteering for Oxfam, I will not be doing anything wrong—again, I call this case the Weekend. Yet it seems that the consequentialist is committed to at least one of these two alternatives being impermissible. For according to (maximizing) consequentialism, agents are required to do whatever will bring about the best available outcome. So if working on this chapter is what will bring about the best outcome, then I am morally required to do so. Alternatively, if volunteering for Oxfam is what will bring about the best outcome, then I must do this instead. It seems the only way that it could turn out that I have the option of doing either is if both are exactly equal in their propensity to bring about what's best. But although this might happen to be true

in this particular case, it seems that it won't be true in every case. Thus consequentialism seems unable to accommodate all the options we take there to be.

However, things are not as they seem. In this chapter, I will argue that consequentialism can accommodate moral options in much the same way that the commonsense moralist does. In the previous chapter, we saw that the commonsense moralist has two general strategies for accommodating moral options. One involves an appeal to imperfect reasons. The other involves an appeal to some overriding non-moral reason for doing other than what the balance of moral reasons supports doing. (These strategies were developed in sections three and four of Chapter Three, respectively.) In this chapter, I will show how the consequentialist can adapt these strategies for the sake of accommodating a wide range of moral options.

#### 1. HOW ONE CAN BE REQUIRED TO DO THE BEST ONE CAN AND STILL HAVE OPTIONS

It seems that it is because (maximizing) consequentialism is a theory which requires agents always to do the best they can (that is, always to bring about the best available state of affairs) that it is only able to leave agents with but a few options. But is this right? Consider that prudence is widely thought to be a

theory which requires agents to do the best they can, specifically, to do whatever will maximize their own welfare over time. Yet we believe that we have many prudential options—far more than can be accounted for by those rare instances in which two or more acts are exactly equal in their propensity to maximize one's welfare. So perhaps if we can discover how it is that prudence leaves room for so many options, we can thereby find a way for consequentialism to do the same.

At first glance, prudence seems to suffer the same liability associated with (maximizing) consequentialism: an inability to accommodate options except in those rare instances in which two or more acts are equal in their propensity to bring about what's best. Consider the choice between either spending the next hour reading or exercising (for the sake of simplicity, assume that these are my only choices). In this case, it seems that whichever I choose I will not be acting imprudently. Yet it is not clear how prudence can account for such an option. After all, it seems unlikely that my welfare will be enhanced by exactly the same extent whichever I do. And if it turns out that one of these activities does have a greater propensity to enhance my welfare, then wouldn't I be prudentially required to do that activity?

Perhaps not. It seems that what is best prudentially speaking is that I spend a certain amount of time reading and a certain amount of time exercising.

I should spend some of my free time exercising, because it is important to keep fit. Similarly, I should spend some of my free time reading philosophy. For if I don't keep abreast of the current literature, my scholarship will suffer. Let's suppose then that I need to spend approximately four hours a week exercising in order to keep fit and ten hours a week reading in order to keep up with the current literature. In this case, there seems to be no reason (from a prudential standpoint) to prefer spending any given hour reading as opposed to exercising or *vice a versa*. So long as in the end I spend approximately four hours a week exercising and ten hours a week reading, it makes no difference whether I read now and exercise later or exercise now and read later. Either way my well-being will be the same in the end. So when it comes to this next hour, I have no greater reason to read than to exercise and *vice a versa* (that is, assuming that I haven't especially neglected one more than the other).

What this proves is that even a theory which requires agents always to bring about the best available outcome can accommodate a great many options. For it turns out that there are many more cases in which two or more acts are equal in their propensity to bring about what's best than we had ever thought possible. Our mistake was to take too narrow a view of our practical choices. We looked at the choice between exercising now and reading now and concluded that it was unlikely that each would promote my welfare by exactly

the same extent. But if we instead take a wider view of things, we arrive at a different conclusion. If we look at the choice between (1) exercising now and reading later and (2) reading now and exercising later, we find that, whichever I choose, my welfare will be promoted by exactly the same extent. This is true given the fact that what I have to gain by reading or exercising doesn't so much depend on when I do so as on how often I do so. For instance, how valuable it would be for me to exercise depends on how often I plan on exercising, for if I plan on exercising only this once, then I have little to gain by doing so. But so long as I do plan on exercising regularly, it seems that I will reap the same benefits whether (for instance) I do so in the mornings or evenings.

However, someone might object that even if initially (1) seems to be just as good as (2), it will almost always turn out that one is better than the other, if only because I am likely to prefer one over the other. So even if (1) is otherwise just good as (2), (2) will be prudentially better than (1) if I prefer (2) to (1). And so it seems that the problem of a lack of options returns, for now I am prudentially required to do (2). Well yes, but I still have the option of doing (1) in the sense that I am rationally permitted to change my preferences. And if my preferences change, it will be rational for me to do (1). So I have an option in the sense that I may do whichever I prefer doing. And as we saw in Chapter Three (see section five), this is only sense in which there ever is an option.

Now it seems that consequentialism can accommodate moral options in exactly the same way that prudence accommodates prudential options. To illustrate, let's consider again the case I call the Weekend, for the choice I face here is relevantly similar to the choice between reading and exercising. Like reading and exercising, working on this chapter and volunteering for Oxfam are activities that I needn't engage in any particular time in order to achieve what there is to be achieved in doing them.

Let's suppose, for instance, that I must finish this chapter within the next two weeks in order to submit it by some deadline. But assume that I need only spend one of the next two weekends (both of which I have free) working on it in order to finish. In this case, it seems that, other things being equal, the best state of affairs two weeks from now (at least from my perspective) is the one where I have spent one weekend finishing this chapter and the other volunteering for Oxfam. Whether I spend this weekend volunteering for Oxfam and the next working on this chapter or *vice a versa*, I will bring about the best available state of affairs. So even though I am morally required to bring about the best available state of affairs, I still have a moral option. I have the option of either spending this weekend working on this chapter or volunteering for Oxfam. That is, I have the option of doing whichever I prefer doing.

By accommodating options in this way, the consequentialist is employing one of the same strategies employed by the commonsense moralist, namely, the one which involves an appeal to imperfect reasons. For imperfect reasons arise in just the sort of case we've been discussing, cases where there is a reason to spend a certain amount of time engaging in a given activity but no reason to engage in that activity at any particular time. And so we find that the consequentialist can accommodate many options in exactly same manner that the commonsense moralist does.

## 2. OTHER OPTIONS

Even if consequentialism can accommodate a number of moral options, we should still wonder whether consequentialism can account for all the moral options we take there to be. So let's consider again the case I first brought up in Chapter Three: the Burning Building. Recall that in this case I have the option of either saving the boy and suffering severe burns in the process or allowing the boy to die while safeguarding my own welfare. Given that the boy is likely to have a long and happy life should I save him, we will suppose that what's best, impersonally speaking, is that I suffer the burns and save the boy. But clearly I am not morally required to make such a sacrifice. Yet just as clear is the fact that I am permitted to do so—we would in fact think of my doing so as

something morally heroic. Here, then, is another situation in which we take there to be a moral option. Yet it is not clear how even an agent-relative consequentialist can account for such an option. Recall that what allowed the consequentialist to account for a moral option in the Weekend was the fact that whether I spend this weekend volunteering for Oxfam and the next working on this chapter or *vice a versa*, the same state of affairs will obtain two weeks from now. But the consequentialist cannot say anything similar about the Burning Building. The consequentialist could claim that I should make such sacrifices only so often and that consequently it makes no difference whether or not I choose to make the sacrifice on this particular occasion so long as I do in the end make such sacrifices often enough. But this is extremely implausible. We don't think that people are ever morally required to make such sacrifices. Nor is the problem just that there are a few uncommon situations where the consequentialist is unable to account for the presence of a moral option. As we will see in the next section, there is a whole class of options which consequentialism seems unable to account for.

### 3. AGENT-SACRIFICING OPTIONS

As I discussed in the beginning of Chapter Three, there are two very different sorts of options. First, there is the more familiar sort of option, what Slote calls

an 'agent-favoring option'. An agent-favoring option is an option to either safeguard one's interests or sacrifice those interests for the sake of the overall good. The option I have in the Burning Building is a paradigmatic instance of such an option. There is also another sort of option, what Slote calls an 'agent-sacrificing option'. An agent-sacrificing option can exist even when doing what would best promote the overall good requires no sacrifice. This sort of option exists where an act would bring about less overall good than some other permissible act, but would bring about at least as much good for everyone but the agent. In this case, the agent has the option of favoring others over herself. For instance, an agent may permissibly forgo some great benefit to herself in order to confer a lesser benefit on another. Such an option exists in what I shall call Burning Building II. Here, everything is as it is in the Burning Building except that in this case it not a young boy but a very old man who is trapped inside. Assume that the old man is terminally ill, with only days to live. In this case, the best thing I can do in terms of maximizing the overall good is to refrain from rescuing the old man. The small benefit the old man would gain in having his life extended for a few more days does not outweigh the tremendous pain I will undoubtedly suffer should I rescue him. Nevertheless, commonsense holds that I am permitted to rescue him.

There seems to be no way for the consequentialist to account for such an agent-sacrificing option. The consequentialist can account for the fact that I am permitted to save the old man if he is someone close to me, my father for instance. In this case, the agent-relative consequentialist can with some plausibility claim that the state of affairs where I save my father is, from my perspective, better than the state of affairs where I don't. Nevertheless, we believe that I am permitted to rescue the old man even if he is a complete stranger. Yet if the old man is a stranger, it seems that consequentialism must prohibit his rescue. For the consequentialist cannot plausibly claim that it would be better, from my perspective, that I endure such a great sacrifice only to provide a complete stranger with some proportionally smaller benefit.

Nevertheless, I will argue that things are not as they seem. In the following sections, I will show how consequentialism can accommodate moral options in such cases as the Burning Building and Burning Building II. But I will proceed in a rather roundabout fashion. I will begin with a discussion of the necessary and sufficient conditions for being morally required to perform one act over another and then derive the necessary and sufficient conditions for being permitted to perform one act over another. As a result of these discussions, it will become evident that we must radically revise our understanding of consequentialism. Consequentialism will have to be

understood in such a way as to be able to tell us not only what we have moral reason to do, but also what we have all-things-considered reason to do. So understood, consequentialism is compatible with a wide range of moral options. For in this case, the consequentialist can accommodate moral options by claiming that there is, in certain circumstances, an overriding non-moral reason to do other than that which the balance of moral reasons supports doing—this is the second of two strategies which I mentioned in the introduction to this chapter.

#### 4. TWO NECESSARY AND JOINTLY SUFFICIENT CONDITIONS FOR BEING MORALLY REQUIRED TO DO ONE THING OVER ANOTHER

Let 'Rxyz' stand for 'x is morally required to do y over z'<sup>1</sup>, where x ranges over agents and both y and z range over acts open to x. I have chosen to make 'R' a three-place predicate rather than a two-place predicate (where 'Rxy' would stand for 'x is morally required to do y') because I want to be able to capture the fact that certain moral obligations are conditional. That is, sometimes there isn't simply an obligation to  $\phi$  but only an obligation to  $\phi$  if and only if one is not going to  $\psi$ . For instance, such a conditional obligation exists where an agent has the option of doing either  $\phi$ ,  $\varphi$ , or  $\psi$  and has an obligation to  $\phi$  over  $\varphi$  but no obligation to  $\phi$  over  $\psi$ .

To illustrate, consider the following case—the Lunch Case.<sup>2</sup> Imagine that on my way to meet to a colleague for lunch, I pass by a bar and notice a pay-per-view fight playing on their wide-screen TV. I'm tempted to stop and watch the fight, but I promised my colleague I would meet him for lunch. So I continue on my way. A couple blocks further along, I come across a burning building. A bystander tells me that the fire department is on their way but won't arrive for another ten minutes. A man in a wheelchair is on the second story balcony crying for help. He obviously isn't going to last for ten minutes, however any attempt to rescue him would be very dangerous.

Let 'i' stand for the self-interested act of heading back for the bar and watching the televised fight, let 'd' stand for the dutiful act of continuing on to meet my colleague for lunch, and let 's' stand for the supererogatory act of rescuing the man from the burning building. Assume that these are my only options and that they are all mutually exclusive of one another.

In this case, I am not necessarily required to do d, for clearly I may do s instead. It would be foolish of me to think that I shouldn't rescue the man just because it would mean missing my lunch appointment. Yet, if I decide not to rescue the man (e.g., because it is too dangerous), I cannot turn back for the bar and watch the fight instead. If I'm not going to do s, I must do d; I cannot do i.

Expressed in terms of 'R' then,  $R_{pdi}$  but  $\sim R_{pds}$ —here, 'p' stands for 'Portmore'.

But besides demonstrating the need for making 'R' a three-place predicate, the Lunch Case shows that a necessary condition for  $R_{xyz}$  is that x has more moral reason to do y than to do z, formally,

$$[1]: (x)(y)(z) [(y \neq z) \rightarrow (R_{xyz} \rightarrow M_{xyz})],$$

where ' $M_{xyz}$ ' stands for 'x has more moral reason to do y than to do z'.

Consider that, under normal circumstances, agents are morally required to keep their promises. Yet in the lunch case, I am not required to keep my promise; I may do s instead. Why? The reason seems to be that I have more moral reason to do s than to do d. Thus, a necessary condition for being morally required to do y over z is that there be more moral reason to do y than to do z.

It just seems absurd to require an agent to  $\phi$  over  $\psi$  if she has more moral reason to  $\psi$  than to  $\phi$ . To do so would be to make it wrong to choose to do what one has more moral reason to do over what one has less moral reason to do, for being required to  $\phi$  over  $\psi$  entails that it is wrong to  $\psi$  over  $\phi$ . But how could it ever be wrong to choose to do what one has more moral reason to do? Of course, if deontologists are correct, it will sometimes be wrong to choose to do what will bring about a better outcome—deontologists believe that agents are

sometimes prohibited from doing that which brings about the best outcome. But the only reason it even makes sense for deontologists to make such a claim is because deontologists deny that all reasons for actions derive from the value of their consequences. That is, if it is at all plausible to claim that agents are sometimes prohibited from doing that which would bring about the best outcome, then agents must sometimes have more moral reason to do other than that which brings about the best outcome. So moral theorists may disagree about what kinds moral reasons there are and about from whence these reasons arise, but they should all agree that an agent is morally required to  $\phi$  over  $\psi$  only if the agent has more moral reason to  $\phi$  than to  $\psi$ .

Nevertheless, the fact that there is more moral reason to  $\phi$  than to  $\psi$  is not sufficient to ground a moral requirement to  $\phi$  over  $\psi$ . For there are cases where an agent has more moral reason to  $\phi$  than to  $\psi$  and yet is not required to  $\phi$  over  $\psi$ . One such case is the Lunch case, where I clearly have more moral reason to do  $s$  than to do  $d$  and yet am not required to do  $s$  over  $d$ . Another such case is the Lecture Case—Wolf's example from section four of Chapter Three. In this case, you have more moral reason to hold office hours; yet it seems that you are permitted to attend the lecture instead.

But if agents are not always required to do what they have more moral reason to do, then what else is necessary for being required to  $\phi$  over  $\psi$ ? Well,

in Chapter Three. I argued that a necessary condition for being morally required to do X is that the balance of all reasons, moral and non-moral, supports doing X. Plausibly then, a necessary condition for being morally required to  $\phi$  over  $\psi$  is that there be more all-things-considered reason to  $\phi$  than to  $\psi$ . formally,

$$[2]: (x)(y)(z) [(y \neq z) \rightarrow (Rxyz \rightarrow Axyz)],$$

where ' $Axyz$ ' stands for ' $x$  has more all-things-considered reason to do  $y$  than to do  $z$ '.

So there are two necessary conditions for being morally required to  $\phi$  over  $\psi$ . First, there has to be more moral reason to  $\phi$  than to  $\psi$ . Second, there has to be more all-things-considered reason to  $\phi$  than to  $\psi$ . Now these two necessary conditions would seem to be jointly sufficient. For if there is more moral reason to  $\phi$  than to  $\psi$ , then there is at least a *prima facie* obligation to  $\phi$  over  $\psi$ . And if there is a *prima facie* obligation to  $\phi$  over  $\psi$ , then there is moral requirement to  $\phi$  over  $\psi$  absent some decisive reason not to  $\phi$  over  $\psi$ .<sup>3</sup> But if there is more all-things-considered reason to  $\phi$  than to  $\psi$ , then clearly there is no decisive reason not to  $\phi$  over  $\psi$ . Thus we can conclude from the fact that there is both more moral reason and more all-things-considered reason to  $\phi$  than to  $\psi$  that there is indeed a moral obligation to  $\phi$  over  $\psi$ . So we now have both the

necessary and sufficient conditions for being morally required to  $\phi$  over  $\psi$ .

Formally,

$$[3]: (x)(y)(z) \{(y \neq z) \rightarrow [Rxyz \leftrightarrow (Mxyz \& Axyz)]\}.$$

#### 5. THE NECESSARY AND SUFFICIENT CONDITIONS FOR BEING PERMITTED TO DO ONE THING OVER ANOTHER

Having determined the necessary and sufficient conditions for  $Rxyz$ , we can now derive the necessary and sufficient conditions for  $Pxyz$ , where ' $Pxyz$ ' stands for ' $x$  is morally permitted to do  $y$  over  $z$ '.<sup>4</sup> For clearly an agent is permitted to  $\phi$  over  $\psi$  if and only if she is not required to  $\psi$  over  $\phi$ , that is, formally,

$$[4]: (x)(y)(z) [(y \neq z) \rightarrow (Pxyz \leftrightarrow \sim Rxyz)].$$

If  $x$  is required to do  $z$  over  $y$ , then it would be wrong for  $x$  to do  $y$  over  $z$ . Thus  $x$  is permitted to do  $y$  over  $z$  only if  $x$  is not required to do  $z$  over  $y$ . And if  $x$  is not required to do  $z$  over  $y$ , then  $x$  is permitted to do  $y$  over  $z$ . Therefore,  $x$  is permitted to do  $y$  over  $z$  if and only if  $x$  is not required to do  $z$  over  $y$ , and so we get [4].

From [3] and [4], it follows that  $x$  is permitted to do  $y$  over  $z$  if and only if it is not the case that  $x$  has both more moral reason and more all-things-considered reason to do  $z$  than to do  $y$ . formally,

$$[5]: (x)(y)(z) \{(y \neq z) \rightarrow [Pxyz \leftrightarrow \sim(Mxzy \ \& \ Axzy)]\}.$$

Given [5], we can account for a moral option in the Burning Building, that is, we can explain not only why I am permitted to undertake the rescue, but also why I am permitted to refrain from undertaking the rescue. Let 'u' stand for 'undertake the rescue' and let 'r' stand for 'refrain from undertaking the rescue'. In section four of Chapter Three, I argued that I have more all-things-considered reason to do  $r$  but more moral reason to do  $u$ . Obviously then: (1) I don't have more all-things-considered reason to do  $u$  than to do  $r$  and (2) I don't have more moral reason to do  $r$  than to do  $u$ . Now from (1) and [5], it follows that I'm permitted to do  $r$  over  $u$ . And from (2) and [5], it follows that I'm permitted to do  $u$  over  $r$ . So I am permitted to do  $r$  over  $u$  and  $u$  over  $r$ . Yet I must do one or the other. Therefore, I am permitted to do either. That is, I have the moral option of doing either.

Likewise, we can account for a moral option in the Burning Building II. In Burning Building II, it seems that I again have more all-things-considered reason to do  $r$  but more moral reason to do  $u$ . So if we go through the same

series of steps as above, we arrive at the same conclusion: I have the moral option of doing either u or r.

Now this account of moral options is really just a more elaborate and formal version of the account given in section four of Chapter Three. But the point of these formalizations is not just to elaborate on the previous account. For these formalizations enable us to account for another puzzling feature of commonsense morality, the intransitivity of Pxyz. And this fact should increase our confidence in the correctness of these formalizations, for, other things being equal, the more a set of principles can explain the more plausible they are.

Pxyz is (2)(3)-intransitive.<sup>5</sup> That is, Pxz does not follow from the conjunction of Pxy and Pzy.<sup>6</sup> To illustrate, consider again the Lunch Case. In this case, it seems that I am permitted to watch the fight rather than attempt the dangerous rescue. And it seems that I am permitted to attempt the rescue rather than keep my promise. Yet it doesn't follow that I am permitted to watch the fight rather than keep my promise. In fact, it seems that the opposite is true: I may not watch the fight if this will preclude me from keeping my promise. In this case, it seems that the moral reason I have for keeping my promise outweighs the non-moral reason I have to watch the fight. Thus there seems to be both more moral reason and more all-things-considered reason to do keep my promise. So, Ppis and Ppsd, but ~Ppid.

[5] allows us to account for this intransitivity. I'm permitted to do *i* over *s*, because I have more all-things-considered reason to do *i* than to do *s*. And I'm permitted to *s* over *d*, because I have more moral reason to do *s* than to do *d*. But I am not permitted to do *i* over *d*. I have both more moral reason and more all-things-considered reason to do *d* than to do *i*, and so, given [5], I am morally required to do *d* over *i*.

## 6. MAXIMIZING CONSEQUENTIALISM AND OPTIONS

I have argued that the permissibility of actions is not solely a function of moral reasons. An act is morally permissible if and only if there is no other available act which the agent has both more moral reason and more all-things-considered reason to do. This account has important implications for our understanding of consequentialism. Typically, consequentialism is taken to be exclusively about what we have moral reason to do: the better a state of affairs, the more moral reason we have to produce it. But if consequentialism only tells us whether we have more moral reason to do *z* than to do *y*, then it cannot tell us whether we are permitted to do *y* over *z*. For in order to know whether we are permitted to do *y* over *z*, we must know not only whether we have more moral reason to do *z* than to do *y* but also whether we have more all-things-considered reason to do *z* than to do *y*. So if we want consequentialism to tell us which acts are

permissible and impermissible (and this is precisely what a moral theory should be able to tell us), then we must conceive of consequentialism in such a way that it tell us both what we have moral reason to do and what we have all-things-considered reason to do. I suggest therefore that we conceive of consequentialism as the view according to which all reasons for action derive from the value of their consequences. On this view, there is more moral reason to do  $y$  than to do  $z$  if and only if the state of affairs where one does  $y$  ( $S_y$ ) is, in terms of moral value, better than the state of affairs where one does  $z$  ( $S_z$ ), and there is more all-things-considered reason to do  $y$  than to do  $z$  if and only if  $S_y$  is, all things considered, more valuable than  $S_z$ .

On this conception, consequentialism is compatible with the idea that agents have a wide range of moral options. Take, for instance, the case I call Burning Building II. In this case, it seems that what I should do, all things considered, is refrain from rescuing the man—unless of course I care more about this man's welfare than I do about my own. The consequentialist can account for this by claiming that the state of affairs where I refrain from undertaking the rescue ( $S_r$ ) is, from my perspective, better (all things considered) than the state of affairs where I undertake the rescue ( $S_u$ ). But although I have more all-things-considered reason to do  $r$  than to do  $u$ , I have more moral reason to do  $u$  than to do  $r$ — $S_u$  is, in terms of moral value, better

than  $S_r$ . Thus I am also morally permitted to do  $u$ , for I always have the moral option of doing that which produces the morally best outcome. So the consequentialist can account for the fact that agents often have the (moral) option of either safeguarding their own interests or sacrificing those interests for the sake of the overall good. In fact, there will be such an option wherever the state of affairs in which one safeguards one's interest is all-things-considered better but morally worse than the state of affairs in which one sacrifices those interests for the sake of the overall good.

However, there are a number of potential objections regarding this account of moral options. First, it seems that, on my account, a moral option exists only in those cases where it is, all things considered, irrational to do what the balance of moral reasons supports doing. And some philosophers object to this, claiming that it is always at least rationally permissible to do what the balance of moral reasons supports doing.<sup>7</sup> But there is on my view a perfectly good sense in which agents are always rationally permitted to do what the balance of moral reasons supports doing. Consider again the Burning Building. In this case, it is irrational for me to rescue the boy only if I care more about avoiding permanent disfigurement than I do about the boy's life. For if I care more about the boy's life than about avoiding permanent disfigurement, it would then be irrational for me to refrain from rescuing the boy. But what shouldn't be

overlooked is that fact that I'm rationally permitted to change what I care about most. So even if I do care more about avoiding permanent disfigurement than about saving the boy, I am still rationally permitted to save the boy (which is what the balance of moral reasons supports doing) in that I am rationally permitted to change my preference ranking. Therefore, there is a real sense in which agents are always rationally permitted to do what the balance of moral reasons supports doing.

Another potential objection stems from the fact that certain acts which would normally be considered supererogatory are, on my view, morally required. To illustrate, consider again the Burning Building. The act of rescuing the boy from the burning building would normally be viewed as supererogatory. However, on my view, an agent is morally required to rescue the boy so long as she is more concerned about the boy's life than about avoiding permanent disfigurement. For if her concerns are weighted in this way, she has more all-things-considered reason to rescue the boy. And since she also has more moral reason to rescue the boy, it follows, on my view, that she is then morally required to rescue the boy.

However, this is a valid objection only if an act cannot be both supererogatory and morally required. But although it would certainly be odd to think that an individual act-token could be both supererogatory and obligatory, it

doesn't seem so odd to think that the same act-type could be both supererogatory and obligatory if it was never both for the same agent in the same set of circumstances. I can claim, therefore, that the act of rescuing the boy from the burning building is supererogatory for most. Nevertheless, those who take such a saintly interest in the welfare of others as to care more about saving the life of a stranger than about avoiding grave harm to oneself are, on my view, morally required to perform extremely unselfish acts, such as that of rescuing the boy from the burning building. My view even implies that what Mother Theresa did for the poor of Calcutta was nothing beyond what she was morally required to do—I'm assuming that she cared more about these people than she did about those things which she sacrificed for herself and so did her work without reluctance.

Admittedly, this seems, at first, quite unpalatable. But this is only because we see Mother Theresa as someone who was extraordinary, someone who did far more for the poor of Calcutta than anyone had to. Yet there is, on my view, a perfectly good sense in which Mother Theresa did far more than she (or anyone else) had to. For no one, including her, is ever required to take such an all-consuming interest in the welfare of strangers. Had Mother Theresa chosen a different path in life, one which lead to more mundane pursuits, she would not have been required to do what she did for the poor of Calcutta. On

my view, then, what's extraordinary about Mother Theresa is not that she did more than she was required to (she didn't), but that she cared more for these people than most.

Although unselfish acts such as those of Mother Theresa and that of rescuing the boy from the burning building are not, on my view, supererogatory for individuals like Mother Theresa, they are still extraordinary. For these acts demonstrate an extraordinary concern for the welfare of others. The fact that my account preserves this sentiment should remove at least some of the initial sting from this objection. This objection should certainly not be considered an obvious *reductio*. One should consider whether the merits of my view warrant toleration of these somewhat counter-intuitive implications.

One last objection that I should address has to do with whether my view is really consequentialist, since, unlike traditional consequentialist theories, it is about more than just morality. Well, provided that my arguments in Chapter One for defining consequentialism as the view according to which all acts are either permissible or impermissible in virtue of their propensity to promote value are sound, it is in fact as much a consequentialist theory as utilitarianism. On my view, all acts are either permissible or impermissible in virtue of their propensity to promote value. My theory differs from traditional consequentialist

theories only in that it denies that the permissibility of actions is simply a function of moral value. On my view, non-moral value must also be considered.

## Notes

<sup>1</sup> To say that  $x$  is morally required to do  $y$  over  $z$  is not to say that  $x$  is obligated to do  $y$ . For there may be some other act which  $x$  is permitted to do instead of either  $y$  or  $z$ . What does follow from the fact that  $x$  is morally required to do  $y$  over  $z$  is that it is impermissible for  $x$  to do  $z$  if doing  $y$  is an option. So  $x$  is obligated to do  $y$  if and only if  $x$  is morally required to do  $y$  over all other available options, that is,  $(x)(y)(z)[(y \neq z) \rightarrow (Fxy \leftrightarrow Rxyz)]$ , where 'Fxy' stands for 'x is obligated to do y'.

<sup>2</sup> This case is adapted from Frances Kamm's case of the same name. See her 1996, pp. 313-14.

<sup>3</sup> There is a decisive reason to  $\phi$  over  $\psi$  if and only if there is, on balance, more reason to  $\phi$  than to  $\psi$ . If there is only as much reason to  $\phi$  as to  $\psi$ , then the reason is not decisive.

<sup>4</sup> To say that  $x$  is permitted to do  $y$  over  $z$  is not to say that  $x$  is permitted to do  $y$ . It is only to say that  $x$  is permitted to do  $y$  if  $z$  is the only other available option. Thus,  $x$  is permitted to do  $y$  if and only if  $x$  is permitted to do  $y$  over all other available options, that is,  $(x)(y)(z)[(y \neq z) \rightarrow (Gxy \leftrightarrow Pxyz)]$ , where 'Gxy' stands for 'x is permitted to do y'.

<sup>5</sup> The '(2)' and '(3)' refer to the second and third places of this three-place predicate.

<sup>6</sup> Frances Kamm was the first to point out the intransitivity of Pxyz. See her 1985 and her 1996, ch. 12.

<sup>7</sup> Shelly Kagan has raised this objection to my view in correspondence.

## CONCLUSION

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### **Commonsense Consequentialism**

COMMONSENSE consequentialism, or CSC for short, is the theory according to which agents ought always to bring about what is, from their own individual perspective, the best available state of affairs. Strictly speaking, it is neither a theory of prudence nor a theory of morality. Rather it is a theory of rationality, a theory that tells us what to do in light of all reasons, both prudential and moral. It tells us that what we have most reason to do, all things considered, is bring about what is, from our own individual perspective, the best available state of affairs. Furthermore, it tells each of us what that state of affairs is. For CSC is a substantive theory which applies the consequentialist principle, 'maximize net value', to an agent-relative theory of value in order to yield substantive answers about what we ought to do.

Throughout this dissertation, I have sought to spell out what some of these answers are. I shall now give a brief summary of them. In Chapter Two, I argued that on CSC it is wrong to commit a bad deed for the sake of preventing a number of others from committing comparable bad deeds, but not wrong to do so for the sake preventing oneself from committing more such deeds. Agents bear a special responsibility for their own actions; consequently, an agent's own commission of a bad deed is especially bad for her given her position as the agent. The state of affairs in which an agent has herself committed a bad deed is, from her perspective, worse than the state of affairs in which (for instance) five others have committed comparable deeds. But, of course, the state of affairs in which an agent has committed only one bad deed is better than the one in which she has committed five; so she should commit a bad deed for the sake of minimizing the number of bad deeds she commits.

None of this implies that the state affairs in which an agent has herself committed a bad deed is worse than the state of affairs in which (for instance) a hundred have done so. On CSC, there are certain *thresholds*. For, at some point, the agent-relative disvalue in an agent committing murder herself is outweighed by the agent-neutral disvalue in a greater number of other agents committing murder. So it is not necessarily wrong on CSC to murder an

innocent person for the sake of saving a hundred from being murdered.

Another interesting aspect of CSC is that it leaves open the possibility for a moral distinction between intending and foreseeing harm. For if the harm one intends is evaluatively worse than the harm one merely foresees, there will be a moral distinction between intending and foreseeing harm on CSC. I have not considered whether there is such an evaluative difference, for my focus has been on the do/allow distinction. Nevertheless, just as it is plausible to suppose that agents have a greater responsibility for the harm they cause than for the harm they allow, it also seems plausible to suppose that agents have a greater responsibility for the harm they intend than for the harm they merely foresee. And, as I have suggested in Chapter Two, the existence of such responsibilities can affect how an agent should evaluate states of affairs in which such harms have occurred. It is reasonable, then, to assume that the implications of CSC will be in accord with our intuitions in cases where we feel that it is permissible to cause unintended harm for the sake of preventing greater harm.

In Chapter Four, I argued that CSC leaves agents with ample moral options. First, there is a moral option wherever two or more acts are equal in their propensity to bring about what's best. And, as I have shown, this is the case in surprising number of instances. But CSC can also accommodate moral

options in cases where none of the acts available to the agent are equal in their propensity to bring about what's best: Agents have a moral option where ever the state of affairs in which one safeguards one's interests is all-things-considered better, but morally worse, than the state of affairs in which one sacrifices those interests for the sake of the overall good. In such cases, the agent has the option of bringing about either state of affairs.

So we have seen that CSC can accommodate two very important commonsense moral intuitions: (1) that there are certain types of acts (e.g., murder) which agents are prohibited from performing even for the sake of preventing numerous others from doing the same, and (2) that agents have, in many instances, the option of either pursuing their own interests or sacrificing those interests for the sake of the overall good. What's more, CSC can do just as good a job in accounting for (2) as any other theory; for, as we saw in the last two chapters, the most plausible way of accounting for moral options is exactly the way in which CSC accounts for moral options. And CSC can do a better job of accounting for (1) than CSNC can. For as I argued in Chapter Two, the consequentialist has a more plausible rationale for (1) than the non-consequentialist has, one that accounts for more of our commonsense moral intuitions while avoiding the counter-intuitive implications associated with the

non-consequentialist's rationale.

Of course as I have already admitted, this rather preliminary and limited discussion of CSC is not enough to show that CSC is the correct theory about what we ought to do. It is, however, enough to show that CSC has great promise and deserves further study. CSC holds the promise of a theory that can combine the best of two leading rivals: utilitarianism and deontology. It exhibits the features that we find most attractive about utilitarianism. For one, it has the same clear and intuitive theoretical foundation. What is it that one ought to do? Utilitarianism and CSC give the same seductive answer: minimize the bad and maximize the good. Even those who ultimately reject this answer admit that it is initially compelling; for it seems odd to think that one could ever have more reason to produce a worse state of affairs than a better.<sup>1</sup> Second, CSC shares utilitarianism's simplicity. Like utilitarianism, it is comprised of only one simple principle: 'maximize net value'. CSNC, on the other hand, contains many principles, some of which conflict at times. Thus things are further complicated by the need for second-order principles that can resolve such conflicts.

So CSC incorporates some of utilitarianism's best features, but more importantly, it avoids its worse feature: its counter-intuitive implications.

Because utilitarianism conflicts with so many of our moral convictions, most philosophers have insisted that it must be wrong and have advocated some form of deontology instead. But deontology lacks the clear and simple theoretical foundation which is so attractive about utilitarianism. So although utilitarianism is not the view which most philosophers hold, it is, in the words of Scanlon, “the view towards which they find themselves pressed when they try to give a theoretical account of their moral beliefs.”<sup>2</sup> But now there is a way to avoid being torn between the theoretical simplicity of utilitarianism and the intuitiveness of deontology, for we can have both in CSC. And we can have both in one coherent package; for, as I have argued, CSC coheres well with our various beliefs about value, morality, and reasons for actions.

## Notes

<sup>1</sup> See Foot 1988 [1985], p. 227; Scanlon 1982, p. 103; Scheffler 1988, pp. 1-2 and 1982, pp. 3-4.

<sup>2</sup> Scanlon 1982, p. 103.

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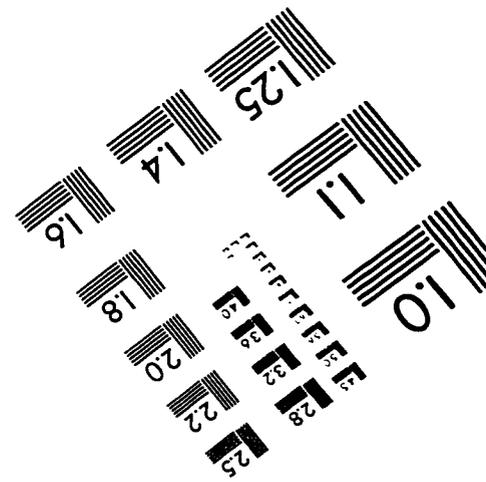
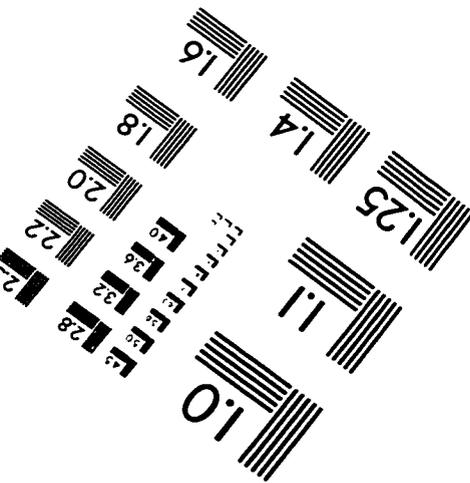
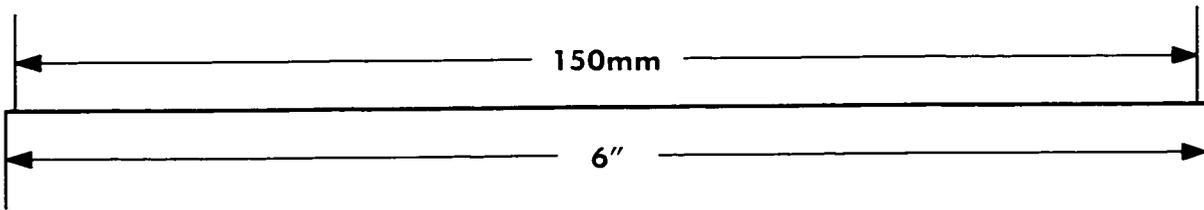
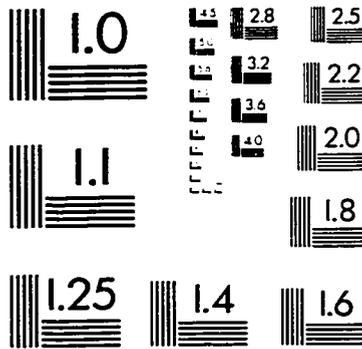
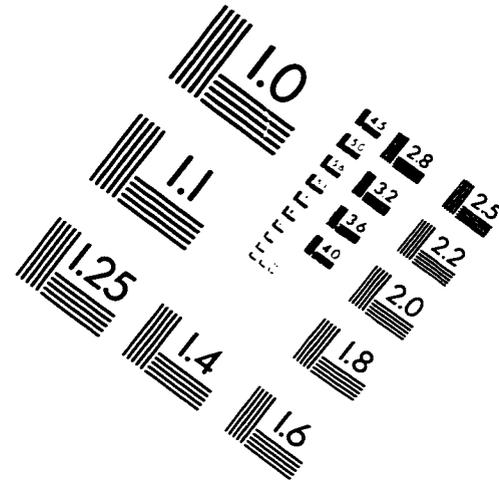
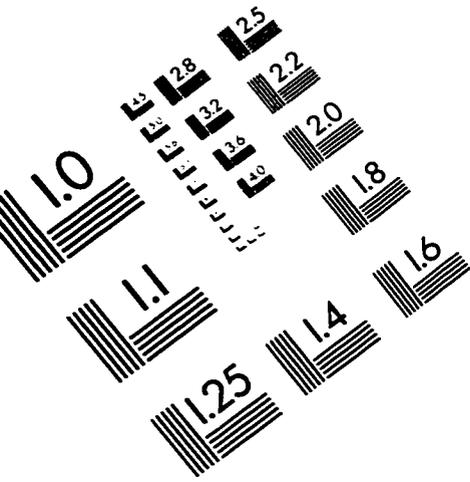
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