

# Selling Arms and Expressing Harm<sup>1</sup>

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## *Abstract*

According to an argument commonly made by politicians, selling weapons to oppressive and aggressive regimes can sometimes be permissible because the sale renders the victims of these regimes no worse-off than they would have been had the sale not been made. We can refer to this argument as *the inconsequence argument*. My primary aim in this paper is to identify one reason why the inconsequence argument will often not succeed in vindicating arms sales to oppressive and aggressive regimes. The inconsequence argument will often not succeed because arms sales to oppressive and aggressive regimes often *do* make the victims of these regimes worse-off than they would have been had the sales not gone ahead. The victims of these regimes are often made worse-off in virtue of the fact that arms sales can generate *expressed harms*, which, unlike some of the material harms often engendered by such sales, are additive (rather than substitutive) in character. As I shall explain, expressed harms are similar to, but also significantly different from, *expressive harms*. The differences are important, for they allow us to construct a reply that can answer the inconsequence argument on its own (consequentialist) terms.

Marshall Cohen once remarked that “the history of international conduct is to an alarming degree the history of unconscionable insolence, greed, and brutality.”<sup>2</sup> One practice in which such insolence, greed, and brutality manifests is the international arms trade. Many states, and private firms within their jurisdiction, regularly supply weapons to vicious regimes that brutally oppress their people and wage unjust wars against their neighbours. They often do this for nakedly self-interested reasons, and with apparently minimal regard for the innocent individuals whose lives are blighted in the process.

Sometimes, however, the politicians who licence these sales attempt to defend their acts by appealing to moral considerations. According to one commonly made argument, which is the subject of this essay, selling weapons to oppressive and aggressive regimes can sometimes be permissible because the sale renders the victims of these regimes no worse-off than they

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<sup>2</sup> Marshall Cohen, “Moral Skepticism and International Relations”, *Philosophy & Public Affairs*, 13 (4), 1984, 299-346, 307.

would have been had the sale not been made. We can refer to this argument, which I shall describe in greater detail in the next two sections, as *the in consequence argument*.

The in consequence argument might be challenged in various ways. My primary aim in this paper is to identify one particular reason why the argument will often not succeed in vindicating arms sales to oppressive and aggressive regimes. The argument will often not succeed because arms sales to oppressive and aggressive regimes often *do* make the victims of these regimes worse-off than they would have been had the sales not gone ahead. The victims of these regimes might sometimes be made worse-off for straightforward empirical reasons. For example, by participating in a particular arms market, firms might drive down prices, thereby enabling oppressive and aggressive regimes to acquire a larger quantity of weapons than they would otherwise have been able to get their hands on.<sup>3</sup> In this essay, I shall argue that victims are often made worse-off in a different way, and that they can be made worse-off in this way even if the aforementioned empirical reasons do not apply. They are often made worse-off in virtue of the fact that arms sales can generate what I shall call *expressed harms*, which, unlike some of the material harms often engendered by such sales, are additive (rather than substitutive) in character. As I shall explain in part III, expressed harms are similar to, but also significantly different from, *expressive harms*. The differences are important, for they allow us to construct a reply that can answer the in consequence argument in its own (consequentialist) terms.

Throughout this essay, I shall refer to oppressive and aggressive regimes as “outlaw states”, and I will start by explaining how I intend this term to be understood. Doing so will provide an opportunity to foreground the political salience of the essay’s topic. The degree of oppression and aggression exhibited by states varies considerably, and the term “outlaw state” might plausibly be thought to identify only the very worst offenders. To illustrate, in the next section I refer to arms sales to apartheid-era South Africa and also to the Special Administrative Region of Hong Kong. Apartheid-era South Africa was an obvious outlaw state, whereas Hong Kong (which is classed by Freedom House as “partially free”, and in the Democracy Index as a “flawed democracy”<sup>4</sup>) is a more contestable case (at least for now). But arms sales to Hong Kong are nevertheless a cause for moral concern, a fact that has been brought sharply into focus by recent developments.

In September 2014, the Hong Kong police deployed teargas against peaceful pro-democracy protesters, and it was subsequently revealed that the teargas had been supplied by a British firm, with the approval of the UK government. British politicians blithely dismissed concerns about the police’s behaviour<sup>5</sup>, and arms sales to Hong Kong continued. In July 2015, the British government issued an open export licence permitting a UK firm to sell to Hong Kong an

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<sup>3</sup> James Christensen, *Trade Justice* (Oxford: Oxford University Press, 2017), 25.

<sup>4</sup> <https://freedomhouse.org/report/freedom-world/2019/hong-kong>; <https://www.in.gr/wp-content/uploads/2020/01/Democracy-Index-2019.pdf>. In their latest report, the authors of the Democracy Index suggest that Hong Kong is in danger of transitioning from a “flawed democracy” to a “hybrid regime” combining elements of both democracy and authoritarianism.

<sup>5</sup> <https://www.caat.org.uk/resources/countries/hong-kong>

unlimited quantity of crowd control ammunition, CS hand grenades, smoke canisters, tear gas, irritant ammunition, and riot control agents.<sup>6</sup>

The conduct of Hong Kong's police force during the 2014 protests was consistent with a more general upscaling of state repression,<sup>7</sup> and in 2019, conditions deteriorated further. A government proposal to allow extraditions to the mainland, where defendants could be tried in China's notoriously political courts, precipitated the highest levels of unrest seen in the region for decades. Hundreds of thousands of demonstrators took to the streets in a protracted series of protests across the city's various districts, and the authorities responded with hundreds of rubber bullets and thousands of rounds of teargas. In June, the British government announced that it would not license any further sales of crowd control equipment, but existing licenses were not revoked.<sup>8</sup>

While the final version of this paper was being prepared, China's authoritarian government sought to end continuing pro-democracy protests in Hong Kong by imposing a controversial new anti-sedition law. Britain has introduced a new arms embargo in response.

What the case of Hong Kong suggests is that arms sales demand moral scrutiny not only when they are made to the most egregious abusers of human rights, but also when they are made to a wider range of states that can reasonably be expected to use the weapons in question for the purpose of internal repression. When I use the term "outlaw state", I shall use it in a broad sense that incorporates this wider range of actors.

## I.

### *The Inconsequence Argument*

According to a common argument, the provision of weapons to outlaw states can be permissible under certain circumstances because it is sometimes inconsequential. Sometimes, the argument goes, a transfer of arms to an outlaw state makes no relevant difference to the lives of that state's victims, for, had the transfer not gone ahead, it would have been substituted by a similar transfer made by a different agent. If government A had not provided weapons, or authorized its firms to do so, government B would have done so, and there was nothing government A could have done to change that fact. This argument was used to defend arms transfers to apartheid-era South Africa<sup>9</sup>, and it was made more recently by former British foreign secretary Philip Hammond. When it was revealed that Hong Kong's riot police had used British-made tear gas against pro-democracy protesters, Hammond remarked: "CS gas

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<sup>6</sup> <https://www.caat.org.uk/resources/export-licences/licence?type=OIEL&region=Hong+Kong+Special+Administrative+Region&n=0>

<sup>7</sup> <https://freedomhouse.org/report/freedom-world/2019/hong-kong>

<sup>8</sup> <https://www.theguardian.com/world/2019/jun/25/uk-halts-sales-of-teargas-to-hong-kong-amid-police-brutality-claims>

<sup>9</sup> Jonathan Glover, "It Makes no Difference Whether or Not I do it", *Proceedings of the Aristotelian Society Supplementary Volume*, 49, 1975, 171–209, 171.

is available from large numbers of sources around the world. To be frank, I think that [i.e., the fact that the riot police used British-made weapons] is a rather immaterial point. They could buy CS gas from the US.”<sup>10</sup> We can call this *the inconsequence argument*.

The inconsequence argument is most likely to be invoked by those who endorse the consequentialist idea that acts are to be morally assessed principally by reference to the quality of the outcomes that they contribute to or cause. As Shelly Kagan notes, “the fundamental consequentialist idea” involves “looking to see what *difference* a given act makes.”<sup>11</sup> When an act appears to make *no* difference – because the outcome with which it is associated would have occurred regardless of whether or not the act was performed – consequentialists struggle to condemn the act in question.

The inconsequence argument is less likely to resonate with those whose conception of morality is deontological in character. While some deontologists can and often do regard the quality of outcomes as relevant to their moral assessments, they also believe that acting to produce the best outcomes can sometimes be morally wrongful. For example, while two innocent people being killed is worse than one innocent person being killed, many deontologists believe that it is morally wrong to kill one innocent person in order to prevent two innocent people being killed. If it can be wrong to act so as to produce an outcome that is better than that which would otherwise obtain, then it can also be wrong to act so as to produce an outcome that is merely no different to that which would otherwise obtain.

Nevertheless, deontologists do sometimes defend actions by appealing to their inconsequential character. Consider Bernard Williams’s famous case of a traveller, Jim, who stumbles onto the scene of an imminent massacre. In Williams’s case, a soldier is about to murder twenty villagers, but tells Jim that he will spare nineteen of his intended victims if Jim kills one of them.<sup>12</sup> Many deontologists believe that Jim is permitted to kill one villager. Moreover, this conviction is not grounded exclusively in the fact that, by killing one, Jim will save many others. Had the soldier offered to spare his intended victims if Jim agreed to kill someone in a neighbouring village, whom the soldier had no intention of killing himself, many deontologists would deny that Jim may accept the soldier’s offer. This implies that it is permissible for Jim to kill the one only because his doing so appears inconsequential: the one will die regardless of what Jim does.<sup>13</sup>

Nevertheless, it might be said that arming outlaw states has less in common with Williams’s original case, and more in common with a variation suggested by Victor Tadros. In Tadros’s case, the soldier intends to kill only one villager. If Jim kills the villager instead, the soldier will reward Jim with some jellybeans that would otherwise be wasted. Tadros suggests that,

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<sup>10</sup> <https://www.theguardian.com/world/2014/sep/30/uk-firm-sold-teargas-hong-kong-review-sales-policy>

<sup>11</sup> Shelly Kagan, “Do I Make a Difference?”, *Philosophy and Public Affairs*, 39 (2), 2011, 105-141, 114 (original emphasis).

<sup>12</sup> Bernard Williams, “A Critique of Utilitarianism”, in J. J. C Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), 98-99.

<sup>13</sup> For related discussion, see Jeff McMahan, “Intention, Permissibility, Terrorism, and War”, *Philosophical Perspectives*, 23 (1), 2009, 345-372, 351.

in this case, “it is surely wrong for Jim to kill”, despite the fact that the villager will be no worse-off than if Jim had declined the soldier’s offer.<sup>14</sup> Perhaps Britain selling weapons to Hong Kong is like Jim killing the villager for some jellybeans, and therefore surely wrong.

However, there is an obvious, and deontologically-salient, difference between what we know about Jim’s actions and what we know about those of many arms exporters. We know that if Jim kills the villager, he will *intend* to cause harm. He will use the villager as a means to obtain the jelly beans. By contrast, for all that we know, many arms exporters merely foresee that the arms they sell may be used to inflict harms upon the innocent. If the weapons in question are not used in this way but are instead used to advance legitimate security interests, it is natural to assume that the exporters’ plan will not be in any way frustrated. This is because, in many cases, it is natural to assume that the exporters’ plan is merely to enhance their wealth, and this plan is realized once the weapons are sold. The plan’s success is not dependent upon the weapons being used for any particular purpose. To make this point even clearer, suppose the weapons are destroyed by a rebel attack almost as soon as they are delivered. Again, the exporters’ plan will not be in any way undermined.

This observation is not intended to demonstrate that deontologists should endorse the inconsequence argument. Here is a brief sketch of a plausible deontological reply to that argument. Proponents of the inconsequence argument treat the disadvantage of others as an opportunity for personal or communal gain. This is disrespectful. The disadvantaged individuals in question are the victims of outlaw states, and their disadvantage consists both in their vulnerability to those states and in the fact that – in the cases to which the inconsequence argument is supposed to apply – there are actors willing to supply their abusers with weapons.

Treating others’ disadvantage as an opportunity for gain is not the same as treating the *mitigation* of others’ disadvantage as an opportunity for gain. The mitigation of others’ disadvantage is treated as an opportunity for gain in a wide variety of seemingly innocuous practices. For example, a funeral director treats someone’s death as a source of gain. But the gain is achieved by attempting to ameliorate the suffering that the death engenders, to wit, by providing friends and relatives with a vehicle through which to honour, mourn, and bid farewell to the deceased.

By contrast, what the inconsequence argument seeks to vindicate is sheer exploitation. The gains reaped derive not from the mitigation of disadvantage, but from its facilitation.

While I think this deontological objection has potential, I shall not pursue it here. Instead, I shall set it aside, and develop an alternative reply to the inconsequence argument. While this alternative reply grows in the same soil as certain deontological considerations – considerations relating to the harms that can be expressed through certain kinds of action – I will endeavour to show that it can be embraced by consequentialists. As indicated above, I believe that this alternative strategy is valuable, for it shows that the inconsequence argument can be met on its own terms.

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<sup>14</sup> Victor Tadros, “Duress and Duty”, in Saba Bazargan and Samuel C. Rickless (eds.), *The Ethics of War: Essays* (New York: Oxford University Press, 2017), 104.

Before I proceed, I should note one feature of my approach. Although the primary aim of the inconsequence argument is to show that particular arms sales create no bads that would not otherwise exist, I will assume, while evaluating this argument, that the sales to which it is applied create no *goods* that would not otherwise exist. An implication of this assumption is that if, contrary to what the inconsequence argument suggests, a particular sale *does* create bads that would not otherwise exist, the sale would be impugned on consequentialist grounds, for the sale creates no goods that could outweigh those bads. I make this assumption for three reasons. First, in certain parts of the paper, the assumption is necessary to make exposition less unwieldy than it would otherwise be. Second, it enables us to focus our attention on the argument under scrutiny, and to avoid being distracted by extraneous considerations. Third, it reflects the manner in which the inconsequence argument is most likely to be used in practice. When politicians can point to potential goods associated with making an arms sale that would otherwise be made by others, and not just to the absence of bads, it is these goods that they are most likely to emphasize. In such cases, the inconsequence argument is less likely to be invoked.

Before I turn to pursue my primary aim, we should pause to get clearer about the nature of the argument we are assessing. More specifically, we should distinguish between two distinct forms that the inconsequence argument can assume, and briefly note several problems that each form might encounter.

## II.

### *Retrospective and Prospective*

The inconsequence argument can be invoked retrospectively or prospectively. An arms seller who invokes the argument retrospectively says “the sale *did not* make a difference, and was therefore permissible”. An arms seller who invokes the argument prospectively says “the sale *will not* (or likely will not) make a difference, and is therefore permissible”. To be clear, whether an application of the inconsequence argument is retrospective or prospective is not determined by the time at which it is made. Philip Hammond was defending the sale of teargas to Hong Kong after the sale had been made, but this does not mean that his defence was necessarily retrospective in character. Hammond might have been claiming, after the fact, that prior to the sale being made, the relevant officials reasonably believed the sale would not make a difference, and was permissible for that reason. This claim would be an example of a prospective application of the inconsequence argument, despite being advanced after the sale was made.

Let us consider each version of the argument in greater detail, beginning with the retrospective version. A potential problem with this version of the argument is that it is insensitive to what is indicated by available evidence prior to a sale being made, and to how exporters interact with that evidence. Consider the following case.

#### *Evidence*

Prior to a sale being made, the available evidence, which is seen by the seller, strongly suggests that the sale will make a relevant difference. This is because the evidence suggests that the weapons to be sold are not being offered (in the same quantities or at the same price) by other suppliers. However, after the sale is made, it transpires that the weapons sold *were* offered (in the same quantities or at the same price) by other suppliers, and that the sale therefore did not make a difference.

The upshot of the retrospective version of the inconsequence argument is that the sale in *Evidence* was permissible. In one sense, this conclusion is plausible. It is plausible to conclude that the sale in *Evidence* was permissible *relative to the facts*.<sup>15</sup> As a matter of fact, the sale did not make a difference. If we accept that a usually impermissible act can be permissible when inconsequential, it is plausible to conclude that the sale in *Evidence* was permissible in a fact-relative sense.

However, there is another sense in which the verdict reached by the retrospective version of the inconsequence argument is mistaken. While it is plausible to conclude that the sale in *Evidence* was permissible in a fact-relative sense, we should conclude that the sale was impermissible *relative to the evidence*. If the available evidence suggested that the sale would make a difference, and if we accept that the sale would have been impermissible in the fact-relative sense if it *had* made a difference, then there were weighty moral reasons for the exporter in *Evidence* not to make the sale. A potential problem with the retrospective version of the inconsequence argument is that it overlooks these reasons. Given the gravity of the decision to transfer arms to an outlaw state – given, that is, the severity of the adverse effects that such a transfer could have on the basic interests of innocent people – it is morally important that exporters be guided by the available evidence.

A related potential problem with the retrospective version of the inconsequence argument can be brought into focus by considering the following case.

#### *Ignorance*

An arms sale to an outlaw state does not make a difference. Prior to the sale being made, the available evidence suggested that the sale would not make a difference. The official responsible for authorizing the sale did not consult the evidence.

The sale made in *Ignorance* is permissible in both a fact-relative and evidence-relative sense. But there is nevertheless *a* sense in which the official appears to act wrongly. Two considerations account for this. First, the proposition, supported in this case by the evidence, that an arms sale to an outlaw state will not make a difference to the outlaw state's subjects is counter-intuitive. Weapons are what we might call *other-affecting* products. Unlike pizza or a novel – which are *self-affecting* products purchased primarily for the effects that they induce in the consumer – weapons are designed to enable the user to affect others. To be sure, the user seeks to affect others as a means of altering her own situation – as a means to greater power or security, say – but she seeks to affect others nonetheless. We would not usually expect a consumer to purchase weapons if she did not anticipate being able to use those weapons to affect the lives of second-parties (to injure, to kill, to intimidate, and so forth).

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<sup>15</sup> Derek Parfit, *On What Matters: Volume One* (Oxford: Oxford University Press, 2011), Ch. 7.

Moreover, we would not usually expect a consumer to buy weapons from a particular supplier unless that supplier has some virtue – he supplies weapons of a higher quality or at a lower price, for example – that distinguishes him from other vendors. For this reason, prior to consulting the particulars of a specific case, one should be guided by the presumption that providing weapons to an outlaw state will make a difference.

Second, the particular difference that one should presume will be made concerns the basic interests of innocent people. Weapons are used not merely to affect second-parties, but to severely compromise their physical wellbeing. Moreover, outlaw states, by definition, often act in ways that are antagonistic to the basic interests of the innocent. For this reason, prior to consulting the particulars of a specific case, one should be guided by the presumption that providing weapons to an outlaw state will affect the lives of others in a seriously adverse fashion. The official in *Ignorance* appears to act wrongly because she fails to be guided by these two presumptions.

I have described the issues raised in the preceding paragraphs as “potential” problems with the inconsequence argument. I have described the issues in this way because, as I have said, my ultimate aim in this paper is to respond to the inconsequence argument in a manner congenial to consequentialists, and there are differences between consequentialists that have implications for how these issues should be appraised.

At least some of the relevant differences can be captured by the distinction between *subjective* and *objective* consequentialism.<sup>16</sup> Objective consequentialism evaluates acts in relation to the outcomes that they produce. Right acts are those that produce outcomes that are at least no worse than the alternatives. By contrast, subjective consequentialism evaluates acts in relation to the decision-making procedure via which they were selected. Right acts are those that the actor selects using a decision-making procedure that is consequentialist in character.

Subjective consequentialists can condemn the arms sales in both *Evidence* and *Ignorance*. This is because, in both cases, the sellers disregard evidence that a consequentialist decision-making procedure would take into account. By contrast, objective consequentialists might not condemn these sales. This is because the outcomes produced by the sales are not relevantly different to the outcomes that would have materialised had the sales not gone ahead.

The retrospective version of the inconsequence argument faces the potential problems that I have identified because it is concerned exclusively with actual outcomes, and is therefore inevitably insensitive to questions about what evidence is available *ex ante*. By contrast, the prospective version of the inconsequence argument is concerned with expected outcomes, and can therefore take such questions seriously. The prospective version of the inconsequence argument says that an arms sale is permissible if the seller has reasonably inferred from the available evidence that the sale is unlikely to make a difference.

The prospective version of the inconsequence argument could potentially issue judgements that conflict with objective consequentialism – e.g. it could approve a transfer that, contrary

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<sup>16</sup> Peter Railton, “Alienation, Consequentialism, and the Demands of Morality”, *Philosophy and Public Affairs* 13 (2), 1984, 134-171, 152.



to reasonable expectations, ends up making a difference – but because it takes seriously the kinds of considerations that would be taken into account by a consequentialist decision-making procedure, it might appeal to subjective consequentialists.

However, the prospective version of the inconsequence argument has shortcomings that are relevant for a subjective consequentialist evaluation. These shortcomings are epistemic in nature. It will often be very difficult to establish that an arms transfer to an outlaw state will not make a difference, and this fact limits the argument's applicability. In order to establish that transfers to a particular state will not make a relevant difference, it is not sufficient to point out that there are other suppliers willing to sell to that state. A variety of further questions have to be considered. How much of which products is the recipient requesting, and when? How much of which products are being offered by other suppliers, and when? Are other suppliers capable of satisfying demand at a given time? Are other suppliers likely to refuse or revoke export licences for any requested products? At what price are other suppliers offering their products? Specifically, are other suppliers offering goods at a higher or lower price?

Suppose that Britain and the US both offer weapons to Bahrain, but that Britain offers weapons more cheaply. A consequence of Britain selling the weapons is that the Bahraini government can free up resources in its budget, which it will either use to acquire more weapons or devote to alternative projects. In the case of outlaw states that are willing to expend some resources meeting the needs of (some subset of) their citizens, there is one (defeasible) reason to support cheaper arms sales that free up resources in their budgets. In other cases, freeing up resources in an outlaw state's budget might be a consideration that tells against cheaper arms sales. Which kind of case one is dealing with is a further question that an exporter must be able to answer.

It is also important to note that arms transfers are not always authorized on a one-by-one basis. In many cases, governments authorize an indefinite number of sales over an extended period. For example, the British government sometimes issues what are called "Open Individual Export Licences" (OIELs). These impose no limits on the quantity of what is sold, and no record of value is maintained. (The 2015 license authorizing sales to Hong Kong that I mentioned in the introduction was of this kind.) If an exporting government does not even know how much of which weapons it has allowed to be transferred, it cannot plausibly claim to know that the transfer is unlikely to make a difference.

These limitations of the prospective version of the inconsequence argument are all of a practical kind, and the concerns relating to OIELs could be addressed with relative ease. For, governments could simply refuse to issue such licences for the sale of weapons to outlaw states. This might compromise efficiency, but that would be a good thing. This is a situation where throwing a wrench or two into the gears of market efficiency is to be actively encouraged.

Let us assume that, in at least some instances, arms sellers can reasonably infer from the available evidence that an arms transfer will not increase the harms that an outlaw state is capable of inflicting (relative to a scenario in which that transfer is not made). Let us also assume that, in at least some subset of these instances, an arms transfer *will not* increase the

harms that an outlaw state is capable of inflicting. In these cases, are there reasons that consequentialists can appeal to in order to condemn the sales in question? In order to answer this question (which I will answer affirmatively), we must first distinguish between two types of transfer.

### III.

#### *Conditional and Unconditional*

Notice that there are two distinct acts that a proponent of the inconsequence argument could be trying to defend: the *unconditional* sale of weapons and the *conditional* sale of weapons, the relevant condition being that the sale is not expected to make a difference. What I shall call a “conditional exporter” sells weapons to outlaw states only if the sales are not expected to make a difference. An “unconditional exporter”, by contrast, sells weapons regardless of whether the sales are expected to make a difference.

Conditional and unconditional exporters are distinguished by the nature of their intentions. As Thomas Scanlon notes, in order to establish what an agent intended, it is necessary to consider “which of the various features of what she realized she was doing were features she took to count in favor of acting in this way”.<sup>17</sup> A conditional exporter takes the fact that a proposed sale is not expected to make a difference as counting in favour of going ahead with that sale (and takes the fact that a proposed sale *is* expected to make a difference as counting against going ahead with the sale). By contrast, an unconditional exporter does not attribute to these facts any normative significance.

It is sometimes maintained that the intention with which an agent acts can affect the permissibility of her action. If intentions are relevant to permissibility in this way, we could appeal to this fact in order to criticize the actions of unconditional exporters. We could argue that, since an unconditional exporter sells weapons regardless of whether the sales are expected to make a difference, his action is impugned by his intentions. The sale is morally wrong regardless of whether or not it is expected to make a difference.

However, my aim here is to develop a reply to the inconsequence argument that is congenial to a wide range of consequentialists, and while the mental states of agents are sometimes subjected to evaluation from a consequentialist perspective<sup>18</sup>, consequentialism is not commonly associated with the belief that an act’s permissibility can be affected by the intention with which it is performed. Moreover, I wish to demonstrate that consequentialists have resources with which to condemn the acts not only of unconditional exporters, but also of *conditional* exporters, who intend to sell weapons to outlaw states only when the sale is not expected to make a difference. I will argue that consequentialists can criticize conditional and unconditional sales alike by appealing to the normative significance of *perceived* intentions (or

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<sup>17</sup> T. M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2009), 10.

<sup>18</sup> Robert Merrihew Adams, “Motive Utilitarianism”, *The Journal of Philosophy*, 73 (14), 1976, 467-481.

of what I will call the *object-centred meaning* of an act), and of the effect that perceived intentions can have on those by whom they are perceived.

As a first step in this argument, we can note that intentions have sometimes been regarded as relevant to permissibility (by deontologists) in virtue of their ability to affect the *meaning* of one's action. To illustrate this point, Scanlon notes that missing a friend's wedding because one has to undergo surgery means something significantly different to missing a friend's wedding in order to attend an event at which a well-known celebrity is making an appearance.<sup>19</sup> Missing your friend's wedding for the latter reason reveals something significant about how you conceive of your relationship; it expresses the judgement that you attribute relatively little value to the relationship. Scanlon goes on to argue that meanings attributable to an agent's intentions can sometimes render an act impermissible. For instance, the wrong of discrimination can sometimes be explained, at least in part, by appealing to the fact that discriminatory acts "involve a kind of insult".<sup>20</sup> Such acts are wrong, in part, "because of their meaning – the judgement of inferiority that they express and thereby help to maintain."<sup>21</sup>

Now, for present purposes, it is important to distinguish between what we might call the *subject-centred meaning* of an act and the *object-centred meaning* of an act. An act's subject-centred meaning is determined by the intentions of the person who performs it (the subject). By contrast, an act's object-centred meaning is determined by how the subject's intentions are perceived by the person acted upon (the object). The subject-centred and object-centred meanings of some acts coincide. Think of a white-hooded figure holding aloft a burning cross in the American South. But some acts have subject-centred and object-centred meanings that diverge (at least in certain contexts). To illustrate, consider the following two cases.

#### *Funeral*

Brenda is supposed to attend the funeral of her stepmother, but doing so will mean missing a football game that is being broadcast at the same time. In order to get out of attending the funeral, Brenda claims to have been stricken with terrible food poisoning. Brenda is a very good liar, and the family buys her excuse.

#### *Party*

Carol is friendly with two colleagues, Dana and Ed, whom she originally met at her church. Dana and Ed have been suspended from work for making homophobic comments to their new co-worker, Fay. Fay's birthday is approaching, and Carol receives an invitation to her party. Carol would like to attend, but will be away on holiday. Carol declines the invitation, and Fay takes this as a homophobic snub.

In each of these cases, the subject-centred and object-centred meanings of an act diverge. They are able to diverge because the subject's intentions are *opaque*, and can be interpreted in multiple ways.

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<sup>19</sup> Scanlon, *Moral Dimensions*, 65-66.

<sup>20</sup> *Ibid.*, 72.

<sup>21</sup> *Ibid.*, 73.

We are now in a position to identify two distinct ways in which an act can be objectionable in virtue of its meaning. (When I describe an act as “objectionable”, I mean that the act has some feature that gives us a reason to think that we ought, morally, to refrain from performing the act, but that the act might be permissible all-things-considered.) First, an act can be objectionable in virtue of its subject-centred meaning. The objectionable character of the relevant acts can be explicated in terms familiar from deontological ethics. We can say that an act is objectionable in virtue of its subject-centred meaning when the subject’s intentions are inadequately responsive to the interests or moral status of the object. Second, an act can be objectionable in virtue of its object-centred meaning. An act is objectionable in virtue of its object-centred meaning when the subject’s intentions are *reasonably perceived* to be inadequately responsive to the interests or status of the object, and regardless of whether or not they actually are inadequately responsive. I will suggest that this second form of objectionableness can be recognized by consequentialists.

Brenda’s act in *Funeral* can be regarded as objectionable in virtue of its subject-centred meaning, whereas Carol’s act in *Party* is potentially objectionable in virtue of its object-centred meaning. Given Carol’s close association with Dana and Ed, and given their shared religious association (which could perhaps credibly be identified as the source of their homophobic attitudes), it might be reasonable to interpret Carol’s declination of Fay’s invitation as a homophobic snub. Moreover, since a homophobic snub is an especially pernicious form of insult, an act that can reasonably be interpreted as a homophobic snub can also reasonably be interpreted as inadequately responsive to the interests and status of its object.

It is important to note, however, that an act that is *potentially* objectionable in virtue of its object-centred meaning can be vindicated by remedial action undertaken by the subject. The subject can alter a *primary* act’s object-centred meaning by executing *subsidiary* acts that influence the object’s interpretation of the primary act. Through these subsidiary acts, the subject can communicate to the object that she does not in fact endorse the attitudes that, when taken in isolation, the primary act appeared to express. For example, Carol could apologize for not attending Fay’s party, explain her reasons for not attending, and suggest to Fay that the pair meet up to socialize on some other occasion.

Let me elaborate on the nature of acts that are objectionable in virtue of their object-centred meaning. These acts are capable of inflicting what – to coin a term of art – we might call *expressed harms*. In one sense, an expressed harm is similar to an *expressive harm*, a concept familiar from the legal-theoretic literature. These two kinds of harm are similar inasmuch as they are each produced by the expression of certain ideas or attitudes.<sup>22</sup> But there are also important respects in which the two kinds of harm differ. To begin with, an expressed harm is a function of the attitudes that are attributed to certain agents, by the victim, in light of the agents’ actions. The agents in question do not actually have to have the attitudes that are attributed to them. By contrast, in order for an expressive harm to occur, the agents in question do actually have to possess the relevant attitudes. As Elizabeth Anderson and Richard Pildes explain, the notion of expression that they have in mind when explicating expressive harms

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<sup>22</sup> Richard H. Pildes and Richard G. Niemi, “Expressive Harms, ‘Bizarre Districts’, and Voting Rights: Evaluating Election-District Appearances after *Shaw v. Reno*”, *Michigan Law Review*, 92 (3), 1993, 483-587, 506-507.

refers to ways in which people “express their cognitive states”.<sup>23</sup> To borrow a distinction presented by Simon Blackburn, we can say that the idea of an expressed harm rests on an *intensional* account of expression – whereby “a person can express a belief or attitude that she does not hold” – whereas the idea of an expressive harm rests on a *revelational* account of expression – “whereby an action reveals something further true of the agent.”<sup>24</sup>

There are two further potential differences between expressed and expressive harms. I conceive of expressed harms as lacking two features that expressive harms are sometimes thought to possess. According to one account, an expressive harm can occur (1) without the relevant ideas or attitudes being successfully communicated to the victim, and (2) if the relevant ideas and attitudes *are* successfully communicated, without the victim experiencing any kind of distress engendered by their communication.<sup>25</sup> In other words, an expressive harm is constituted by the activity of the agent who creates it. It inheres in the transmission of certain ideas or attitudes, not in their receipt, and not in any kind of reaction accompanying their receipt. As Blackburn observes, these features render expressive harms a “fundamentally non-consequentialist” idea.<sup>26</sup>

Expressed harms lack these features. They cannot be inflicted without being experienced by a victim. On the contrary, they are constituted, at least in part, by their victim’s experience. This feature of expressed harms is significant, because it removes one reason for consequentialists not to recognize expressed harms as normatively important. What positive reasons do consequentialists have to recognize expressed harms as normatively important? The general answer to this question is that consequentialists care about the quality of outcomes, the quality of outcomes is often regarded as a function of the welfare enjoyed by individuals, and expressed harms are welfare-reducing. Expressed harms reduce welfare by insulting their victims, but, as we shall see, the nature of these insults must be conceptualized differently by different forms of consequentialism.

If expressed harms can be recognized by consequentialists, they can help us to reply to the inconsequence argument on its own terms. More specifically, they can help us to demonstrate how arming outlaw states *does* make an adverse difference to the lives of those states’ victims, even when weapons would inevitably have been supplied by someone. It is to the task of formulating this reply that we should now turn our attention.

#### IV.

##### *Replying to the Inconsequence Argument*

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<sup>23</sup> Elizabeth S. Anderson and Richard H. Pildes, “Expressive Theories of Law: A General Restatement”, *University of Pennsylvania Law Review*, 148 (5), 2000, 1503-1575, 1506.

<sup>24</sup> Simon Blackburn, “Group Minds and Expressive Harm”, *Maryland Law Review*, 60 (3), 2001, 467-491, 474.

<sup>25</sup> *Ibid.*, 470.

<sup>26</sup> *Ibid.*, 471.

An unconditional transfer of weapons to an outlaw state can be regarded as straightforwardly objectionable in virtue of its subject-centred meaning. An unconditional exporter intends to sell regardless of whether the sale is likely to make a seriously adverse material difference to the lives of innocent people. In other words, the fact that a particular sale is not likely to make a seriously adverse difference to the lives of innocent people is not something that the exporter regards as counting in favour of that sale. To be sure, he does not intend to *make* an adverse difference, but nor does he intend to *avoid* making an adverse difference. As I said, he intends to sell *regardless* of whether the sale is expected to make a difference. Such an intention is plainly inadequately responsive to the interests and status of the innocent people in question. By contrast, a conditional transfer of weapons to an outlaw state is not straightforwardly objectionable in virtue of its subject-centred meaning. A conditional exporter intends to sell only if the sale is expected to be inconsequential. Such an intention is not plainly inadequately responsive to anyone's interests or status.

While an unconditional transfer can be regarded as objectionable in virtue of its subject-centred meaning, it is not obviously objectionable in virtue of its object-centred meaning. This is because the intentions of an unconditional exporter are likely to be opaque. The relevant objects may therefore misinterpret the exporter's intentions, and believe that the exports are in fact conditional. Similarly, while a conditional transfer need not be regarded as objectionable in virtue of its subject-centred meaning, it might be regarded as objectionable in virtue of its object-centred meaning. Again, this is because the intentions of the exporter are likely to be opaque. The relevant objects may believe that the exports are in fact unconditional, and therefore suffer expressed harm engendered by communication of the intentions that unconditional transfers embody.

In precisely what way can an arms sale be regarded as objectionable, by consequentialists, in virtue of its object-centred meaning? In light of the discussion in the previous section, we can say that these sales have the capacity to inflict expressed harms. But how, exactly, should the insults that are constitutive of these harms be conceived by consequentialists? To be more precise, how (and in what way) can an arms sale that is perceived to be unconditional be regarded as insulting by a consequentialist?

The answer to this question will vary depending on the type of consequentialism that one endorses. Let us begin with subjective consequentialism. For subjective consequentialists, right acts are those selected by a consequentialist decision-making procedure. One acts rightly by consciously aiming to produce outcomes that are at least no worse than the available alternatives. From the perspective of subjective consequentialism, a perceived unconditional exporter is perceived as failing to deliberate in a consequentialist manner. This is because an unconditional exporter sells weapons regardless of whether, by doing so, he will produce outcomes that are worse than the available alternatives. These are outcomes in which some people's interests are undermined, and in which the undermining of their interests cannot be justified on consequentialist grounds. From a subjective consequentialist perspective, victims of outlaw states can feel insulted by perceived unconditional exports because the seller who initiates these exports appears to have attributed to their interests less weight than consequentialist deliberation requires.

Now let us consider objective consequentialism. According to objective consequentialism, the right acts are those that actually produce outcomes that are at least no worse than the available alternatives. On this view, one does not have to deliberate in any particular way in order to act rightly. Suppose that, when deciding how to choose between two actions, one of which will produce a bad outcome (in which some people's welfare is undermined), and one which will produce a good outcome (in which some people's welfare is improved), I choose how to act by flipping a coin. Suppose that, by chance, the act selected by this decision-making procedure, and the act that I therefore perform, is the one that produces a good outcome. According to the objective consequentialist, I act rightly by performing this act. However, while the objective consequentialist is disbarred from saying I have acted wrongly, she can nevertheless say that my behaviour exhibits a bad attitude. I have risked performing an act that would be wrong by objective consequentialist standards, and which would undermine the welfare of certain individuals without a moral justification. Those whose welfare might have been undermined can be insulted by the attitude that my behaviour exhibits.

Perceived unconditional exporters act in a manner that is morally comparable to my coin-flipping behaviour, and thereby exhibit an attitude that objective consequentialists can regard as bad. These exporters demonstrate an apparent willingness to act in a manner that would be wrong by objective consequentialist standards, and which would undermine the welfare of certain individuals without a moral justification. Those whose welfare might have been undermined can be insulted by the attitude that this behaviour exhibits. The message conveyed to them is that the exporter in question attributes insignificant weight to their interests.

For now, it is sufficient to observe that arms sales to outlaw states *could* inflict expressed harms (i.e., if their objects perceive the sales to be unconditional). I will return to the question of whether these sales are *likely* to inflict expressed harms (whether their objects are likely to perceive the sales as unconditional) presently.

The observation that arms transfers could inflict expressed harms in addition to any material harms that they engender does not immediately pose a challenge to the inconsequence argument. As it is typically conceived by its proponents, the inconsequence argument refers exclusively to the material harms that sales enable outlaw states to inflict on their victims. But the argument could easily be reframed to be more accommodating. A suitably reframed version of the argument would claim that when *any* harms associated with a particular sale – material *or* expressed – will inevitably be inflicted by some agent, the harms in question can be inflicted permissibly.

However, once it is conceded that arms transfers can cause expressed harms, the inconsequence argument begins to lose purchase. This is because the concession prompts the realization that relevant expressed harms can be inflicted not only by sales, but also by offers, and by other related acts such as invitations to arms fairs. To illustrate: every two years, London hosts the Defence and Security Equipment International event (DSEI), to which the British government invites representatives from a variety of outlaw states. Past invitees have included representatives from Bahrain, Oman, Qatar, and Saudi Arabia<sup>27</sup>, each of which is

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<sup>27</sup> <https://www.caat.org.uk/issues/arms-fairs/dsei/delegations>

classified as “not free” by Freedom House, and as an “authoritarian regime” in the Democracy Index. While an invitation to this event is not a guarantee that the government will approve any particular arms sale to these states, it does send an especially perspicuous message that Britain is open for business. To the victims of these outlaw states, this message is likely to be expressively harmful. The invitations can reasonably be interpreted as suggesting that the interests of those routinely brutalized by these regimes are given inadequate weight in the practical deliberations of the British government.

Now, the crucial point is that, unlike sales, offers (and other related acts) from one state do not substitute for offers from another. Arms sales, and the material harms with which they are associated, are such that if they are enacted by one state, they will not be enacted by another state. But offers, and the expressed harms with which *they* are associated, are a different matter. Offers from multiple states can be, and are, made simultaneously. Moreover, they are made alongside any sales. If these offers inflict expressed harms, as seems likely, these harms are *additive* rather than substitutive. To these harms, the inconsequence argument has no application.

Earlier, I noted but did not explore the possibility that, given the opacity of exporters’ intentions, an unconditional sale that is objectionable in virtue of its subject-centred meaning might be unobjectionable in virtue of its object-centred meaning, and that, conversely, a conditional sale that is unobjectionable in virtue of its subject-centred meaning might be objectionable in virtue of its object-centred meaning. In short, the issue is that the members of a receiving state might misinterpret a sending state’s intentions.

It seems likely that conditional sales are more liable to misinterpretation than unconditional sales. That is, it seems more likely that conditional sales will be seen as unconditional than it does that unconditional sales will be seen as conditional. When an exporter provides or offers weapons to an outlaw state, it is providing the tools with which that state’s victims can expect to be abused. This is an immensely antagonistic gesture. These victims will often have no reason to give the exporter the benefit of the doubt, no reason to believe that the exporter made the sale only because it believed that doing so would be inconsequential. In other words, victims often have no reason to believe that the exporter regards itself as in any relevant way constrained by their interests. To use a phrase familiar in the literature on expressive harms, appearances matter, and, in the kinds of cases with which we are concerned, appearances are hardly flattering. An outlaw state’s victims are most likely to regard an arms exporter as guilty until proven otherwise.

Could it be reasonably established that a conditional exporter really is what it claims to be? Might such an exporter engage in subsidiary acts that vindicate the primary act of exporting? Simply claiming to be a conditional exporter is clearly not enough. Might one prove one’s credentials by pointing to other cases in which export licences to outlaw states have been refused or revoked when it appeared that a sale would make a difference? The problem here is that such decisions could have been motivated by one of several different reasons. They *could* have been motivated by concern for the outlaw state’s victims, but they could also have been motivated by self-interested considerations. Perhaps a particular licence was refused because there was a risk that the sale in question would compromise national security or alienate an ally. Perhaps the officials in question were motivated by a concern for their own



reputation as perceived by the electorate. Or perhaps the officials who dealt with certain sales in the past really were motivated by other-regarding concerns, but it cannot be inferred from this that the officials dealing with sales in the present are similarly motivated.

It might be said that expressed harms associated with sales and offers to outlaw states could be nullified not by ceasing trade, but by ensuring that sales and offers are made with an adequate degree of discretion. Expressed harms occur because those affected are aware of sales and offers being made. But if sales and offers were executed covertly, there would be no expressions by which one could be harmed. In other words, the suggestion is that a problem which, in some cases, is partly attributable to opaque intentions could be ameliorated by introducing still greater opacity. Accepting this would be a highly counter-intuitive conclusion. Most activists believe that the arms trade is marked by a dearth of transparency, not a surfeit.

I think that the appropriate response to this argument is that, as anti-arms-trade campaigners have established, we have weighty independent reasons to call for greater transparency in the arms trade. Transparency is needed to root-out corruption, to ensure that existing rules are followed, and to limit the extent of transfers that are likely to cause material harm. Since transparency is crucial for these reasons, the expressed harms that transparency makes possible must be addressed by other means.

I have not shown that it is *impossible* for a genuinely conditional exporter (if any actually exist) to ensure that its intentions are accurately perceived. I have suggested that doing so will be very difficult, but there are some subsidiary acts that one could imagine succeeding. One possibility is that an exporter could share its profits with the victims of the outlaw state that it arms. Suppose that, after selling teargas to the Hong Kong police, Britain had donated a sizeable share of the proceeds to Hong Kong's pro-democracy movement. If Britain had done this, the arms sales would have constituted a redistribution of resources from Hong Kong's increasingly repressive government to its increasingly embattled democratic adversaries. And Britain would have engineered that redistribution. It is possible that such an act might prevent any expressed harm from occurring. Whether it is the kind of act that Britain, or any other professedly liberal-democratic state, would ever actually go through with is, of course, another question.

## V.

### *Conclusion*

Politicians often defend arms sales to outlaw states by claiming that the sales in question make no morally-relevant difference to the lives of the recipients' victims. According to this defence, which I have called the in consequence argument, a government will often make no morally-relevant difference by selling arms to an outlaw state because, if the government in question had not sold the weapons, weapons would have been sold by some other government. This argument appeals to the consequentialist idea that acts are to be assessed principally in

relation to the outcomes that they produce. Right actions produce outcomes that are at least no worse than the alternatives. Because a government that sells weapons to an outlaw state allegedly produces outcomes no worse than those that would have materialized had it not sold the weapons, selling the weapons is claimed to be permissible.

It is now clear that the inconsequence argument trades on an important but implicit assumption, namely, that the only harms to which arms sales to outlaw states can contribute are the harms that the recipient outlaw state will itself use the weapons to inflict. This assumption is important for the inconsequence argument because, in cases where there are multiple potential suppliers, these contributions to harm are substitutive: they substitute for contributions that would otherwise have been made by a different supplier.

We have seen that this crucial assumption is false. Arms trading harms its victims not only by enabling the harms inflicted by recipients, but also by expressing the often-malign attitudes of sellers. In this way, arms sales can be insulting. They can reveal the disrespectfully small degree of significance ascribed by sellers to the interests of their victims. Importantly, this disrespect is expressed not only by sales, but by offers, and offers are additive rather than substitutive in character. They can be, and often are, made by multiple sellers simultaneously. Each offer constitutes an additional insult.

The insulting character of arms sales is most easily recognized in the case of explicitly unconditional exports, that is, in cases where the seller clearly intends to sell regardless of whether doing so will make an adverse difference to the lives of the recipient state's victims. In the case of explicitly conditional exports, where the seller clearly intends to sell only if sales will *not* make an adverse difference, the insulting character of arms sales may be less apparent. But intentions are often opaque. We have to consider the object-centred meaning of sales, in addition to their subject-centred meaning. In other words, we have to pay attention to how sales may be perceived. Since conditional sales (if any are actually ever made) will often be mistaken for unconditional sales, the former will often be just as insulting – just as expressively harmful – as the latter.

The expressed harms inflicted by arms sales to outlaw states must be taken seriously by consequentialists. These harms are bads that must be accounted for in the consequentialist calculus. To be sure, the fact that an arms sale inflicts an expressed harm is not in itself a decisive consideration against the sale. An overall consequentialist assessment must weigh the harms that arms sales produce against any goods that they might create. Still, the fact that arms sales to outlaw states inflict expressed harms is important. It demonstrates that arms sales to outlaw states can produce harms that would not otherwise have existed *even* in cases where there are multiple potential suppliers. When politicians invoke the inconsequence argument, they seek to make us lose sight of this fact. We must not.