

## Deontology, Consequentialism and Moral Realism

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### Abstract

This Article analyzes hybrid philosophical models that combine deontological and consequentialist principles. Hybrid approaches to political and moral obligation are particularly appealing to moral realists because they enable policymakers to resolve conflicts between different first-order rights or duties, specify minimum levels of rights satisfaction, identify the background socio-political assumptions of modern pluralistic societies, and locate the outer practical limits of the liberal imagination. After identifying both deontological and consequentialist principles in Kantian thought, I consider two important strategies that theorists have used to improve the liberal project through the selective incorporation of consequentialist principles: welfarist consequentialism and rights consequentialism. Finally, I compare Richard Arneson's responsibility-catering prioritarianism and equal opportunity for welfare to John Rawls' 'justice as fairness'. I argue that Arneson's consequentialist sensibilities were constrained by deontological ideals, and that Rawls' deontological sensibilities were constrained by consequentialist principles.

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### Introduction

While philosophical realists try to uncover evidence of the actual existence of objects, and political realists (Morgenthau 1956: 5) analyze the concrete conditions faced by state actors in the international realm, moral realists expose the contextual constraints and hidden background assumptions of moral beliefs. Moral realists often combine deontological and consequentialist principles to resolve conflicts between different first-order rights or duties, specify minimum levels of rights satisfaction and identify the background socio-political conditions that are necessary for any meaningful prioritization of core rights. Such hybrid models of moral obligation make it easier to locate the outer practical limits of the liberal imagination, and preserve the normative legitimacy of deontic values during difficult encounters with decidedly illiberal regimes.

Part I of this Article distinguishes between deontological and consequentialist reasoning, and identifies

aspects of both in Kant's categorical imperative. Part II analyzes various efforts to improve the liberal project through the selective incorporation of consequentialist principles. Part III analyzes the strengths and weaknesses of welfarist consequentialist models, focusing specifically on Arneson's responsibility-catering prioritarianism and equal opportunity for welfare. Part IV analyzes the rights consequentialist underpinnings of Rawls' 'justice as fairness'.

### **I. Hybrid Moral Frameworks**

Moral philosophy is dominated by the distinction between deontology, or the justification of actions that conform to a particular set of duties, and consequentialism, or the justification of actions that advance a desirable set of outcomes. The former determines whether actions are right or wrong, and whether an agent intends to commit acts he considers wrongful, without inquiring too deeply into the ends of the action itself. The latter, however, attaches moral significance to actions rather than the intentions of moral agents, or principles like fairness and justice. (Rawls 1972: 21) Consequentialist reasoning further divides into act-oriented and rule-oriented guidelines. Act-consequentialism defines the good in terms of actions justified by their results, whereas rule-consequentialism defines the good in terms of rules justified by their results. In addition, full rule consequentialism equates the good with the consequences of rules justified by their results, whereas partial rule consequentialism severs the intuitive appeal of following rules justified by their consequences from the moral correctness of those results. In all but the simplest cases, act-consequentialism tends to break down because it assumes that individuals have enough information to determine which actions will necessarily result in the best consequences. (Shaw 2000: 6-26, Darwall 2003: 2)

The traditional critique of consequentialism is that consequentialists make assumptions about the future that simply cannot be verified or confirmed in advance. A consequentialist, for example, might permit theft if it provides benefits to an actor, but it is very difficult to determine if the long-term costs to the

actor will exceed short term gains, or even if the long-term, destabilizing effects on a society in which theft is permitted will outweigh any short term benefits that the actor may derive from the initial act. (Kant 1997: 232-3) Many of these criticisms target act rather than rule consequentialism because the former demands that we choose actions solely because they generate desirable consequences even though it may not be clear what the optimal benefit or consequence might be. Rule consequentialism partially solves these problems by obligating someone to opt for rules likely to produce desirable consequences rather than actions likely to produce consequences, but rule consequentialism becomes incoherent<sup>1</sup> if it forces you to adopt rules that don't necessarily produce desirable consequences. (Hooker 2003: 32)

The curious tension between deontology and consequentialism is central to any understanding of Kantianism. The center-piece of Kant's deontological sensibility is the prioritization of duties over consequences. True freedom (Kant 1965: 34, Neal 1999: 29, Rawls 1972: 256), according to Kant, comes from voluntary, informed obedience to the dictates of moral law, regardless of the circumstances. Tethering moral life to the uncertainties of everyday existence is a prescription for socio-political instability, civil chaos and even extreme moral relativism. The violation of a deontological duty is a per se violation of the moral law; consequences are only secondarily relevant. However, of all of the core components in Kant's system - freedom constrained by obedience to universal moral law, the prioritization of duties over consequences, recognition of the danger of assuming certainty in the selection of optimal outcomes - the Categorical Imperative, which demands that we not only treat others as ends rather than means, but also treat others as we would want them to treat us, seems to leave room for consequentialist tinkering. On the one hand, the Categorical Imperative imposes universal moral duties that will not only stabilize social expectations, but also help to protect individuals from potentially destructive acts committed by others. But the Categorical Imperative also resembles an agreement between persons on a basic set of guidelines that will ensure individual freedom, civil order and the rule of law, and as such it has a quasi-contractualist sensibility

that resembles rule consequentialism. The implicit reasoning behind the Categorical Imperative, in other words, is that if rational agents agree to abide by rules that require them to treat others as ends rather than means, a desirable outcome (universal freedom, morality anchored in law rather than circumstances, stable social expectations) will result. The Categorical Imperative, thus read, preserves the agent-centeredness so central to Kantianism (Scheffler 1982: 41-114, Parfit 1986: 27), but it imposes duties that rational agents, determined to achieve desirable moral and socio-political outcomes, would presumably accept. (Cummiskey 1996: 23-50)

## **II. Better Deontology Through Consequentialism**

Properly understood, the Categorical Imperative emphasizes both obedience to rules consistent with universal moral law regardless of the circumstances and the necessary achievement of desirable ends such as the development of rational faculties that enable individuals to agree to be bound by universal moral rules in a hypothetical, semi-contractual setting. Such a hybrid approach to moral reasoning, either implicitly or explicitly, is far from uncommon. Douglas Portmore, for example, proposed a fairly straight-forward formula: "Take whatever consideration that the non-consequentialist theory holds to be relevant to determining the deontic status of an action and insist that those considerations are relevant to determining the proper ranking of outcomes." (Portmore 2007: 39) This formula yields a hybrid moral framework in which there is at least partial agreement on deontological and consequentialist principles.

We can expand on Portmore's formula in the following manner. In broad terms, the practice of combining deontological and consequentialist principles in a single model can produce two different results. The first is when consequentialist principles constrain deontological ideals. If we conceptualize the Categorical Imperative as a rule-consequentialist narrative, for example, Kant's model becomes a means by which deontic rules are judged desirable solely because they are likely to produce desirable

moral outcomes, such as the rational capacity to associate freedom with obedience to universal moral laws. Combining deontology and consequentialist principles may also operate under a reverse logic in which deontological priorities constrain consequentialist ideals. Satisficing consequentialism, for example, judges actions based on whether they can produce 'good enough' consequences, as opposed to optimizing consequentialist models that judge actions based on whether they produce the 'best' outcomes. (Slote and Petit 1984) But what is good enough could very easily consist of a set of deontological commitments rather than sub-optimal outcomes that we must accept given the limits of human rationality.

All of these attempts to combine deontology and consequentialism provide moral realists with a perfect opportunity to argue, quite explicitly, that liberal theory is both a theory of the right (deontology) *and* of the good (teleology or consequentialism).<sup>2</sup> Clearly any substantive commitment to rules reflects a theory of the good, as does any commitment to rights and procedural norms that enhance autonomy and an individual's capacity to take advantage of opportunities to improve their lives without fear of danger or arbitrary government abuse. The purported neutrality of liberal government, in addition, does not prevent the state from either promoting thick antidiscrimination norms reflecting egalitarian values, or distributing valuable socio-political or economic resources in order to guarantee a minimum economic 'good life' for the vast majority of citizens. Consequently, even though there may be a considerable amount of theoretical disagreement between Kantian liberals and consequentialists (of the non-utilitarian variety), in practice, modern liberal governments recognize that they are promoting a thin theory of the good in legislation and policy choices, even as they purport to embrace, as a core principle of government, formal neutrality. If realistic liberal governance necessarily requires the consideration of both deontological and consequentialist ideals, how can theorists use consequentialism to strengthen the liberal project? In order to answer to this question, we must consider two larger concerns: 1) points of tension between Kantianism and modern liberal objectives, and 2) the methodological shortcomings of deontological reasoning.

Kant's treatment of universalism and utilitarianism always complicates modern liberal projects that combine deontological and consequentialist reasoning. The universalist strand of Kantianism, for example, is based on the widely held belief that Kant's system of ethics is truly universal. When Kant stated that freedom requires obedience to universal moral laws (Rawls 1972: 254) and that the Categorical Imperative requires all individuals to treat others as ends rather than means, he was advocating universal truths. Universal adherence to these truths demands, in turn, that all persons subscribe to the same comprehensive doctrines (Davion and Wolf 2000: 5-6) , as well as the same deontological duties. In modern pluralistic societies, however, universal adherence to the same comprehensive doctrine is unrealistic. The universal appeal of deontological norms is also questionable, especially in illiberal societies, or political communities prepared to assign equal value to deontological and consequentialist desiderata during the development and implementation of complex social programs.

Kant's treatment of utilitarianism and consequentialism further complicates the task of combining deontological and consequentialist concepts into modern liberal projects. Most political philosophers recognize, for example, that even though it is fairly easy to be consequentialist and not utilitarian, it is almost impossible to be utilitarian and not consequentialist. We also recognize that even though Kant completely rejected utilitarianism, consequentialism is compatible with various aspects of Kantianism, including most notably the Categorical Imperative. As modern liberals analyze the complicated distributive aspects of the modern welfare state, therefore, they must avoid introducing consequentialist desiderata into liberal programs that might sound vaguely utilitarian if they want to remain true to Kantianism.

Liberal realists must also confront the shortcomings of deontological reasoning, the most important of which is that deontic principles are not self-organizing or self-prioritizing. Philosophical or moral adherence to the priority of rights, for example, does not tell you if speech claims should be stronger on

the campaign trail, in an institutional setting, or in the creation of rules to protect children from pornographic speech near elementary schools. (Arneson 2000: 233) At least preliminarily, therefore, rule consequentialism can ‘strengthen’ deontological models by providing ordering principles, ranking criteria, and decisional paths to follow when there is a clash between two or more deontic principles. (Petit 1988: 42-3) Consequentialist strengthening (Petit 1988: 42-3), thus defined, can take many forms, but the challenge for liberals is to find strengthening strategies that do not “abandon (deontic) rules ... when the observance of rules is counterproductive from a consequentialist point of view, and thus ... (does) not affirm the intuition at the basis of deontological theories at all.” (Weinstock 2000: 317)

There are two dominant approaches to improving liberal projects with consequentialist principles. The first, or welfarist consequentialist, approach conceptualizes the distributive aspirations of liberal projects as a complex social welfare calculus, while jettisoning the conceptual devices, hypothetical constructs and background ontological assumptions of deontological theories. The second, or rights-consequentialist, approach assumes that core deontic priorities like rights, duties or fairness are more than just conceptual means to a desirable social end. To the contrary, they are central features of legitimate, well-functioning, pluralistic societies, and any consequentialist tinkering must prioritize deontic values to satisfy core representational and distributive liberal aspirations. In the next two sections, I will analyze both of these approaches.

### **III. Welfarist Consequentialism and Prioritarianism**

Welfarism generally refers to “the view that what makes a state of affairs better or worse is some increasing function of the welfare for persons realized in it.” (Arneson 2002: 325) Some versions of welfarist consequentialism are purely utilitarian, reflecting the view that the maximization of aggregate utility and overall welfare are always desirable, even at the general expense of deontological or moral

concerns. Other formulations of welfare-consequentialism are more “distribution-sensitive” (Arneson 2000: 243) , but regardless of the form, welfarist consequentialists consider deontological priorities central to the liberal project like justice, rights or fairness mere proxies for distributive preferences, decisional sensitivities and equality norms.

Strictly utilitarian formulations of welfarist consequentialism typically make four crucial assumptions: first, deontic values may be considered important or relevant regardless of the identity or preferences of any particular agent; second, deontological values are just one of a host of contributing factors in any individual decision-making process; third, in most situations, no deontic value within that matrix of factors is necessarily more important than any other contributing factor; and fourth, the maximization of aggregate general well-being can secure important distributive ideals or aspirations typically (but not exclusively) associated with the liberal project, even though it may temporarily sacrifice (or strategically deprioritize) deontological concepts. Once they adopt these assumptions, utilitarians sympathetic to the modern liberal project can very easily imagine, through the mechanism of moral satisficing (Sen 2004: 188-9), a configuration of desirable socio-political policies that maximizes aggregate welfare.

‘Distribution-sensitive’ varieties of welfarist consequentialism, on the other hand, assign weight to specific values or ideals in an attempt to “take (more) seriously the distinction between persons”. (Rawls 1972: 27, Peterson 2010: 435) A prominent example of such a view is prioritarianism, which “assigns greater moral value to bringing about a benefit for an individual, the more badly off the person would be absent this benefit.” (Arneson 2002: 344) In practice, prioritarianism translates into policies that minimize the suffering of the worst-off (Parfit 2002: 81-2, Hassoun 2009: 250), although there are strict priority views that require giving assistance only to the least well-off, and moderate priority views that require giving assistance to members of the least well-off population best positioned to take advantage of any assistance offered to them. (Hassoun 2009: 253-55) Prioritarianism stands in stark



contrast to utilitarianism, which suggests that the principle requirement for distributive justice should be an aggregate increase in overall well-being regardless of whether it improves the conditions of the worst-off. Prioritarianism is also more ameliorative than strict egalitarianism (McCarthy 2008: 2) because it tries to improve the life-prospects of the worst-off individuals using some objective criteria for well-being, rather than comparing the lives of badly off individuals to others. (Arneson 2000b: 341)

Prioritarians often attach additional conditions to the distribution of benefits beyond the initial requirement that any distribution must increase the well-being of the worst-off first. One such condition, according to Dworkin, Roemer, Rawls, Slote, Arneson and many others, is personal responsibility. (Roemer 1996: 263) Attaching responsibility to the distribution of social benefits pulls equally from virtue ethics (Weinstock 2000: 317, Slote 1997: 206), which investigates the character of moral agents, and luck egalitarianism, which tries to reduce inequality by steering benefits towards ‘unlucky people’ who have not prospered, or find themselves at a perpetual disadvantage, through no fault of their own. (Roemer 1996: 233, Arneson 1999a: 228, Cohen G. 1989: 921) Arneson’s ‘responsibility-catering prioritarianism’<sup>3</sup> continues this tradition by “requir(ing) us to maximize a function of human well-being that gives priority to improving the well-being of those who are badly off and ... not substantially responsible for their conditions in virtue of their prior conduct.” (Arneson 2000b: 339) ‘Badly off’ refers, at least in part, to individuals who not only have low well-being, but who also lack the effective opportunity to change and/or improve their circumstances. The ‘substantial contribution’ language also suggests that there is a threshold of individual responsibility beyond which state assistance is no longer merited or deserved, even if the individual is ‘badly off’.

Responsibility-catering prioritarianism suggests that individuals can be held responsible for bad choices, made in a relative state of ‘freedom’, that were not, in some sense, the result of problematic conduct on the part of the decision-maker. Once again, this view stands in direct contrast to strict utilitarian views that look to aggregate increases in general utility rather than fault, luck or lack of

control on the part of the agent. Responsibility-catering prioritarianism also prioritizes policies that will not only increase an individual's control over their own lives, but also steer individuals away from many choices that will cause significant problem later on. As such, it is particularly hard on those who engage in arguably reckless conduct. The example Arneson gives, for example, is two people with equally poor life prospects, but one person arrives at his lot through a string of bad luck while the other loses everything through high-stakes gambling. Most people would conclude that the first individual is more deserving of assistance than the second individual. (Arneson 2000b: 341) Prioritizing benefits to the worst-off who act without fault (in the form of a gain in well-being) is also likely to result in less irresponsible, reckless behavior on the part of the worst-off, and quite possibly the better-off as well. (Arneson 2004: 190)

Arneson's theory of 'equal opportunity for welfare' extends responsibility-catering prioritarianism from determinations of who deserves to benefit the most among the worst-off to an ideal distribution of justice based on the effective equalization of life-options among all persons. When two parties possess equivalent opportunities for welfare based on similarly "equivalent arrays of options" (Arneson 1989: 84), material inequalities between the parties will be "due to factors that lie within each individual's control." (Arneson 1989: 85) Just like many moral theories that distinguish between equality of opportunity and equality of results (or resources), Arneson rejects a strict egalitarian view that demands resource equality, regardless of life-histories, prospects for preference satisfaction in the future or personal virtues. Instead of strict equality of results, Arneson suggests that "equal opportunity for welfare can obtain among a group of persons even though it also turns out to be the case that some of these persons are worse off than others through no fault or voluntary choice of their own." (Arneson 1989: 92) By focusing on equality of opportunity for welfare instead of equality of welfare or the simple maximization of aggregate well-being, Arneson also claims that he can avoid the anti-welfarist criticism that individuals with low self-esteem or poor information may possess material wealth but lack any meaningful opportunity (or even desire) to improve their life prospects. (Roemer 1996: 266)

Equal opportunity for welfare is still broadly welfarist, (Roemer 1996: 366) however, because it is largely dependent upon material well-being assessments. In fact, if non-utility factors are effectively equalized between persons, the only relevant distinction between the outcomes of decision trees chosen by different people is expected welfare. (Arneson 2004: 169-72) Arneson's welfarist sensibilities are also evidenced by the fact that he conceptualizes both equality and responsibility as criteria for the just distribution of resources, rather than overarching moral duties imposed upon agents comparable to rights-claims derived from personhood.

Equal opportunity for welfare is vaguely egalitarian because it involves inter-personal comparisons between persons (or rather between the decision paths of life options of similarly situated persons) (Arneson 1999b: 490-2, 488-97) , but it still prioritizes policies that benefit individuals whose choices, given the constraints they face, reflects a reasonable amount of expected risk and reward. (Arneson 1999b: 492-3) The 'badly off' who deserve assistance are blamelessly vulnerable, assuming that their effective decision-trees and life options have been reasonably equalized with others.

Like many hybrid moral theories, however, Arneson must restrict the practical scope of a deontic ideal like equality in order to maximize the chances of achieving a desired consequence or outcome. Arneson's solution consists of special defenses for the unavoidable inequalities likely to result when two people with similar life options, decision trees and expected welfares experience dramatically different opportunity prospects. Unexpected catastrophes or 'black swan' events, for example, could drastically change the life-prospects of two people with 'equivalent arrays of options'. The same is true for people who opt for choices that lower their lifetime expected welfare, not because they want to engage in an irresponsible high-stakes gamble, but because they choose to sacrifice their interests for emotional or political reasons. (Arneson 2002: 324) In both cases, Arneson must restrict the scope of his vision to account for past inequalities of opportunity that cannot be completely suppressed by any conscious or unconscious decisional calculus, as well as future inequalities of opportunity for welfare

that cannot be fully anticipated or discounted because they were not caused by irresponsible decision-making. (Roemer 1996: 267)

#### **IV. Justice as Fairness and Rights-Consequentialism**

Unlike welfarist consequentialists, rights consequentialists must consider the largely protective purposes of rights (i.e. rights-bearers are protected from majoritarian tyranny and provided a forum for the airing of their views), as well as the background assumptions of rights-consciousness, including the belief that neither rights, nor the well-being derived from them, are tradable (Peterson 2010: 436) because rights inhere in persons and cannot be exchanged for the rights of others. Rights consequentialists must also suppress the instinct to look for optimistic outcomes that deprioritize rights. Unlike moral satisficers or rule consequentialists, rights consequentialists must believe that the 'best' outcomes are necessarily co-extensive with the prioritization of rights. (Petit and Brennan 1986: 441)

Rights-consequentialism focuses on the ways in which institutions translate rights-claims into desirable outcomes. In Rawls' worldview, that translation centers on the two principles of justice in *Theory of Justice*. The metaphorical centerpiece of *Theory of Justice* is the original position, which Rawls characterized as a "procedural interpretation of Kant's conception of autonomy and the categorical imperative." (Rawls 1972: 256) The original position consists of a set of assumptions about the basic needs and desires of similarly situated persons, all operating under a veil of ignorance. (Rawls 1972: 136) It is designed to reflect the reasonable assumptions of all persons capable of reflection, without any pre-existing moral ties to, or prior knowledge of, the strengths and weaknesses of other parties. As such, it is a hyper-stylized version of subjectivity, motivated by the need to secure freedom and minimize coercion (Rawls 1972: 496-504) within an environment constrained by social circumstances subject to empirical verification. These 'circumstances of justice' include a scarcity of resources and the unequal distribution of natural talent. Given these constraints, Rawls developed two principles of

justice from a hypothetical ‘choice situation’. The first principle guarantees equality of opportunity between persons, while the second principle (difference principle) redistributes resources in order to benefit the least advantaged members of society. (Rawls 2001: 43) The difference principle essentially treats the distribution of talents in society as a common asset. (Rawls 1972: 75-83)

The original position operates within a broader framework called ‘justice as fairness’ that prioritizes fair equality of opportunity in the distribution of entitlements (such as opportunities attached to offices and positions open to all) rather than absolute equality of results. Fair opportunity, in other words, constrains the difference principle (all inequalities must be arranged to confer the greatest benefit to the least advantaged), not the other way around. (Card 2000: 176-7) As such, the procedural orientation of justice does not provide an exact measure of the range of permissible inequality in the distribution of entitlements. (Rawls 1972: 283) It protects an individual’s right to pursue entitlements and social welfare benefits through fair procedures that ignore irrelevant social differences, but it does not guarantee that an individual will necessarily receive desired benefits, or even that the benefits received will correspond to deeply held notions of moral desert or fitness. (Nozick 1974: 228-9)

The deontic values justified under justice as fairness are anchored to well-defined distributive outcomes, and dependent upon the acquisition of primary goods. (Rawls 1972: 72) The latter, in Rawls’ view, are “things that people in a well-ordered society may be presumed to want, whatever their final ends.” (Rawls 1999a: 260) As a result, justice as fairness achieves desirable social outcomes through rights maximization by making two crucial assumptions: first, social arrangements in which individuals possess more primary goods (including rights) are preferable to arrangements in which individuals possess fewer primary goods; and second, at minimum, society should redistribute assets, talents and resources in order to minimize the suffering of the worse off (maximin). (Rawls 1972: 92, Cohen J. 1989: 727-8) By ensuring that the worse-off retain the right to share assets and talents accidentally (as opposed to deliberately) acquired, in other words, modern liberal governments can achieve socially

desirable outcomes.

Throughout the entire explication of justice as fairness, Rawls largely remains true to the rights-consequentialist ethos. At no point, for example, does he suggest or imply that the rights guaranteed by justice as fairness are tradable, or that the outcomes generated by the two principles of justice are worth pursuing even if a society decides not to prioritize rights. He also manages to avoid inadvertently importing utilitarian desiderata by focusing on primary goods rather than well-being, and ‘least-well-off’ (maximin) rather than aggregative distribution. (Roemer 1996: 128)

But Rawls over-estimated the appeal of justice as fairness outside of societies already inclined to prioritize core deontic values like rights and fairness. Without a more realistic re-examination of the kinds of societies likely to accept the core deontic precepts of justice as fairness, the distributive outcomes envisioned by the two principles of justice may never be realized outside of the liberal community. Rawls addressed this issue squarely in *Political Liberalism* by scaling back the transformative aspirations of the liberal project to societies in which deontic values like rights and procedural justice are already widely accepted. Such a strategy exposes the non-minimalist distributive aspirations of liberal societies, and acknowledges the legitimate cultural and socio-psychological limits of rights-consciousness in pluralist, modern democracies. Acts are judged by the desirability of consequences that are likely to improve societies already prepared to accept liberal norms and priorities.

Political liberalism, briefly, is a free-standing, non-comprehensive political view, as opposed to a ‘comprehensive’ doctrine which, for example, might cover “all recognized values or virtues within one rather precisely articulated system”. (Rawls 1993: 13) It is merely a ‘political’ conception of justice that requires no further commitment to another comprehensive doctrine, and therefore differs from conceptions of justice based on religious doctrine or deeply held philosophical beliefs. (Rawls 1993:

13) Political liberalism also differs both from comprehensive political doctrines based on religion or Kantian foundationalism, as well as a “mere *modus vivendi*”<sup>4</sup>, or a temporary agreement between two nations which survives only as long as the power balance between the two nations remains stable. Adherence to such an agreement is not based on a genuine belief in the fairness and legitimacy of institutional arrangements. The agreement is not valid, in other words, “for its own sake, or on its own terms.” (Rawls 1993: 148)

At the heart of political liberalism is the concept of reasonable pluralism.<sup>5</sup> According to Rawls, modern democratic societies should only be expected to handle conflicts between individuals and groups espousing very different, but reasonable viewpoints. Rawls excludes ‘unreasonable’ perspectives from public discourse in the name of institutional stability. These exclusions are one of the unfortunate byproducts of pluralism. They are the debt that democratic diversity owes to the nation-state and civil society. Even though political liberalism contains sociological and analytical flaws that exclude some of the very groups who stand to gain the most from pluralism, diversity and tolerance, Rawls does not believe that modern pluralistic societies require the airing of all political views in order to be morally legitimate.

In retrospect, Rawls was always concerned about duties *and* consequences. In the *Theory of Justice*, for example, he did not content himself with a procedural mechanism (the original position) for generating and evaluating first-order Kantian duties and universal moral duties like the Categorical Imperative. He also provided a complex epistemological and ontological foundation for the distributive priorities of the modern welfare state, an ambitious undertaking that required a careful calibration of means and ends. *Political Liberalism* does not substantially alter the substantive content of the distributive project laid out in *Theory of Justice* (i.e. basic principles of justice, maximin and the distributive critique of utilitarianism), but it does scale back the reach of this project to societies already inclined to accept rights consciousness and the overlapping consensus. It also considers a desirable outcome of

responsible governance that Rawls barely addressed in *Theory of Justice*: political stability.

Besides adherence to the principles of justice, securing stability for the 'right reasons' is the main objective of political liberalism, and in order to achieve this objective, Rawls was prepared to exclude 'unreasonable' doctrines as well as downplay the appeal of alternative socio-political arrangements that provide some measure of stability. The stability provided by universal acceptance of a single comprehensive doctrine by all citizens in modern pluralistic societies is rejected out of hand because of the totalitarian, and even despotic, character of such views. 'Stability for the right reasons', by contrast, consists of an overlapping consensus on non-comprehensive moral views. But he also rejects the *modus vivendi*, not because it is incapable of providing some kind of stability, but because the stability it provides is not in Rawls view, a desirable socio-political outcome. Regardless of how stable a *modus vivendi* arrangement may appear to be, at its heart, it is little more than the fortunate byproduct of a temporary equilibrium point reflecting the strengths and weaknesses of distrustful opposing parties. (Rawls 1999b: 432) For Rawls, the concept of a *modus vivendi* is similar to the concept of 'civil peace', designed primarily from the desire for self-protection and security. (Rawls 1993: 159) Parties to an overlapping consensus, on the other hand, support the agreement "for its own sake, or on its own merits, regardless of "changes in the distribution of powers among views." (Rawls 1993: 433)

Rawls preoccupation with stability in *Political Liberalism* is the clearest indication that he was more prepared to take advantage of consequentialist reasoning in his later work than his early work. While he never suggests that the two principles of justice are anything other than moral duties that all citizens living in pluralist democracies with an overlapping consensus and a robust understanding of public reason should embrace regardless of the circumstances (Arneson 2000a: 247), those circumstances remain stable (both morally and politically) precisely because reasonable pluralism excludes unreasonable views inconsistent with the overlapping consensus from the public arena. To a much higher degree than in *Theory of Justice*, therefore, Rawls constrains both the substantive content, and



the transformative reach, of justice as fairness to a specific set of consequences or outcomes likely to exist in pluralist societies.

## **Conclusion**

Moral realists construct complex philosophical and political narratives for many reasons. When the stated objective of such an enterprise is to strengthen the modern liberal welfare state, however, theorists have to consider Kant's deceptively complicated treatment of consequentialism, the methodological and political limits of consequentialist and deontological reasoning, institutional responses to the 'fact' of pluralism in modern democratic societies, the tension between material well-being and self-fulfillment, and the distributive implications of persistent inequality and opportunity disparities.

Welfare consequentialists and rights consequentialists sympathetic to the liberal welfare state approach the aforementioned problems very differently. Welfare consequentialists like Arneson reject utilitarian views geared towards the maximization of aggregate utility and overall welfare at the general expense of egalitarian concerns and any consideration of personal responsibility as a second order justification for differential distributions of scarce socio-economic goods, as well as resourcist views that emphasize the acquisition of primary goods in the calculus of guaranteeing equality. The critical nexus for Arneson is the relationship between well-being satisfaction (through the prioritarian calculus) sufficient to relatively equalize life opportunities, and personal responsibility on the part of the moral agent. The former provides individuals with the means to make life-choices that they feel good enough about to take responsibility for their actions, and the latter provides the state with a way to distinguish, for purposes of dispensing distributive justice and scarce public resources, between reasonable claims worthy of serious consideration, and relatively unreasonable claims that should be ignored, discouraged or punished. Arneson's background sympathy for welfarism and consequentialism suggests a deep

suspicion of rights consciousness as an automatic guarantor of need satisfaction, but in order to secure a cherished goal of liberal rights advocates – substantive equality – he had to fashion a decision-tree equalization formula that focused on equality of opportunity for welfare rather than equality of results. In effect, Arneson’s consequentialist sensibilities were constrained by deontological ideals.

Rights consequentialists like Rawls, on the other hand, consider rights a core primary good that cannot be traded for other goods, reduced to a mere preference or sacrificed in order to maximize the aggregate welfare of a political community.<sup>6</sup> Justice as fairness prioritizes the protection of rights, while the two principles of justice ensure that any distribution of public resources not only benefits the least well-off first, but also reinforces the status of recipients as rights-holders. However, Rawls’ realist sympathy for the consequentialist underpinnings of Kantianism and the practical demands of the modern welfare state lead him to prioritize the rights, duties, moral stability and institutional norms of societies in which an overlapping consensus already exists. Unlike Arneson, therefore, Rawls’ deontological sensibilities were constrained by consequentialist principles.

The most desirable result of moral realism within the liberal tradition is a constructive dialogue between modern democratic societies and illiberal regimes. Constructing such a model of dialogue is always challenging, even when decision-makers remain sensitive to the practical limits of political justification. But the endeavor cannot succeed without the careful combination of consequentialist and deontological principles.

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## NOTES

<sup>1</sup> Hooker's version of rule utilitarianism prioritizes the collective internalization of rule adoption norms. (Hooker 2003) ("An act is wrong if and only if it is forbidden by the code of rules whose internalization by the overwhelming majority of everyone everywhere in each new generation has maximum expected value in terms of well-being (with some priority for the worst off). The calculation of a code's expected value includes all costs of getting the code internalized. If in terms of expected value two or more codes are better than the rest but equal to one another, the one closest to conventional morality determines what acts are wrong."). The internalization of rules may solve the incoherence problem, but internalization (i.e., embracing the rule for its own sake) seems to sever the last remaining link to consequentialism.

<sup>2</sup> As Rawls famously observed in the *Theory of Justice*, "the good is defined independently of the right, and then the right is defined as that which maximizes the good." (Rawls 1972: 21-22)

<sup>3</sup> 'Maximizing function' includes the use of public resources to benefit the worse-off who are not, in the strictest sense, responsible for their own socio-economic shortcomings.

<sup>4</sup> Rawls took great pains to demonstrate the practical advantages of political liberalism relative to the unrealistically universalistic ambitions of its predecessors, but he does not deny that there may be situations in which a modus vivendi might be the only viable option. The modus vivendi may not be perfect (let alone ideal), but it is infinitely preferable to its potentially totalitarian cousins - universal agreement on comprehensive doctrines, unchecked communitarianism and even perfectionism. Not surprisingly, a great deal of effort has been spent on the rehabilitation of the modus vivendi idea in Rawlsian space, either as part of an on-going critique of

political liberalism 'from below', or as a defense of specific institutional or collective contexts in which *modus vivendi* arrangements have yielded stable, legitimate, and effective environments characterized by trust rather than internecine strife or pure self-interest. (Mills 2000: 191)

<sup>5</sup> Rawls' definition of 'reason' is a curious combination of Kantianism, contractarianism and political sociology. Continuing a tradition starting with Kant's theory of personality, Rawls distinguishes reason from rationality in four important senses. Reason, first and foremost, stems from the capacity to abide by rules of fair cooperation and respect while operating under the assumption that other similarly situated persons will do the same. While it might be perfectly rational for individuals, so situated, to violate rules of fair cooperation in order to further their own ends, it is not reasonable for them to do so. Second, reasonable persons are willing to recognize the independent validity of claims raised by other individuals, whereas rational persons may not. Rawls essentially assumes that the concept of reason is fundamentally 'public' in character, whereas rationality need not be. Third, Rawls' definition of reason has a contractarian character reminiscent of the agreement between individuals in the 'original position'. (Rawls 1972: 17-22) Reason, in this sense, stems from an implicit contract between persons with highly developed moral sensibilities. These sensibilities permit individuals to imagine rules of social conduct and cooperation applicable all persons, recognize the difference between personal gain (individual rationality) and the general welfare (reasonableness), and choose the latter in many avenues of social life. Finally, reason stems from Rawls' understanding of the basic sociology of modern democratic societies. In particular, Rawls believes that most people living in democratic societies possess political preferences that are not reducible to either pure altruism or pure self-interest. This basic socio-political assumption, combined with Rawls' elaborate understanding of liberal reason, provides the crucial link between reasonable pluralism, moral stability and political stability. In effect, reasonable pluralism obtains in societies in which there might be substantial disagreement on many matters, but very little disagreement on the importance of fundamental liberties related to participation, recognition, dissent, freedom of speech and liberty of conscience.

<sup>6</sup> Rawls rejects welfarism because it often discounts responsibility and fault in the calculus of human well-being. Instead of rejecting welfarism altogether or assuming that meaningful freedom of choice is possible without some measure of control over, or access to, desirable welfarist goals, Arneson tries to equalize the decision paths (or trees) of individuals such that "the expected value of each persons' best (= most prudent) choice of options, second-best ... nth best is the same. The opportunities that persons encounter are ranked by the prospects for welfare they afford." (Roemer 1996: 264-5)

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