



## The Consequentialist Can Recognise Rights

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## THE CONSEQUENTIALIST CAN RECOGNISE RIGHTS

BY PHILIP PETTIT

There have been a number of attempts to show that being a consequentialist, even being a utilitarian, allows one still to recognise rights.<sup>1</sup> I believe that these efforts are well motivated, for I think that any moral doctrine is suspect if one of its effects is to make agents unable to take one another's rights seriously.

This paper is yet another attempt to establish the consistency of a consequentialist disposition with the recognition of rights. My excuse for adding to the literature is that I envisage a different sort of reconciliation from those explored in other attempts. I do not see the consequentialist being moved to acknowledge rights because of calculative fallibility, or a concern for his motivational structure, or the sheer infeasibility of doing otherwise, or any such limiting constraint. I see him being led to recognise rights because that is the best way to promote a certain sort of very desirable consequence.

The paper comes in six sections. The first three clear the ground, dealing respectively with the nature of consequentialism, the nature of rights and the exact point of the question about recognition. The fourth section presents an argument for why no consequence is such that its promotion requires the recognition of rights. The fifth section discusses a sort of case where the assumptions of that argument fail and the sixth, offering an instance of that case, identifies a plausible consequence in the name of which certain rights ought generally to be countenanced.

<sup>1</sup> See for example R. B. Brandt, 'Utilitarianism and Moral Rights', *Canadian Journal of Philosophy*, 14 (1984); Allan Gibbard, 'Utilitarianism and Human Rights', *Social Philosophy and Policy*, 1 (1982); John Gray, 'Indirect Utility and Fundamental Rights', *Ibid*; James Griffin, 'Towards a Substantive Theory of Rights' in *Utility and Rights*, ed. R. G. Frey (Oxford, 1984); R. M. Hare, 'Utility and Rights', *Nomos*, 24 (1982); and T. M. Scanlon, 'Rights, Goals, and Fairness', reprinted in *Theories of Rights*, ed. Jeremy Waldron (Oxford, 1984).

## 1. THE NATURE OF CONSEQUENTIALISM

Consequentialism, as I take it here, is a theory of decision. For any set of alternative options, be they options over acts or policies or motives or whatever, it attempts to identify that which it is right for the agent to take or have taken. Notice that the consequentialist assessment of options may come apart from the evaluation of the agent or even, in a way, of the action. A bad agent may choose the right option. And the right option may result in an inferior action: an action whose consequences are actually worse, as it happens, than the consequences that would have followed on an alternative action.

Standard consequentialism, as I shall call it, is characterised by three claims.

1. Every actual or possible state of the world has an evaluator-neutral value.
2. The right option in any decision is a function of the value to be realised in the world; on the usual paraphrase, it is that which maximises objectively probable value, that which promotes the best objectively probable consequences.<sup>2</sup>
3. The function which determines what is the right decision is also the function which ought to be applied in decision-making; it serves at once to evaluate options and to select them.

These assumptions may be varied individually or in groups. The sort of doctrine which varies just the first has been recently explored by Amartya Sen.<sup>3</sup> It might be cast as agent-relative consequentialism, for what it does is argue that, though each agent will be committed to his or her vision of the good, such perceptions being incommensurable, each ought to do everything possible to promote the perceived good.

The type of doctrine which alters just the second of our three

<sup>2</sup> These phrases are meant to suggest that the value of the option is to be computed in a manner parallel to the computation of expected utility: see Ellery Eells, *Rational Decision and Causality*, (Cambridge, 1982), Chs. 1 and 3, for a survey of some approaches to that computation. The suggestion is standard: see J. J. C. Smart's comments on page 42 in Smart and Bernard Williams, *Utilitarianism: For and Against*, (Cambridge, 1973). The suggestion needs further explication however. I do not mean to insinuate, for example, that a consequentialist's evaluative ordering must satisfy the conditions for being representable in a real-valued utility function: on such conditions, see for example H. A. John Green, *Consumer Theory*, rev. edn., (London, 1976). I do not mean to prejudge the case against a consequentialist counterpart of causal decision theory. And I do not mean to wish any particular view of objective probability onto consequentialists; see Paul Horwich, *Probability and Evidence*, (Cambridge, 1982), Ch. 2.

<sup>3</sup> See Amartya Sen, 'Rights and Agency', *Philosophy and Public Affairs*, 11 (1982), p. 30.

assumptions is the well established variety known sometimes as restricted consequentialism.<sup>4</sup> Such a theory says that while the right option in a decision about what rules a person or community should follow may be determined by the function given, the right option among acts which instantiate or infringe such rules is not. The right rule-option is the optimific one, the right act-option is the one which respects the rules. That act-option need not itself be optimific; in certain circumstances the way to maximise probable value may be to break the rules.

Finally, the sort of theory which varies just the third of our assumptions is an approach that I have described elsewhere as restrictive consequentialism.<sup>5</sup> This endorses the assumption that there is an agent-neutral conception of the good available and it accepts that the right option is always that which maximises the probable good. What it denies is that the way to identify that option is always by application of the criterion of rightness. It suggests that in some cases the optimific option may only be accessible to those who restrict or constrain an optimising mode of deliberation.

The agent-relative and restricted forms of consequentialism are unfaithful, in my view, to the central motivating idea behind consequentialism. This is that there is nothing compelling about the notion of the right option unless the right option is that which produces the goods. Under the agent-relative approach, there are no goods which all should be at one in desiring. Under the restricted approach, the production of the goods is thought to be relevant for some options but not, arbitrarily, for others.

The restrictive variety of consequentialism remains true to the motivating idea but it is premised on a controversial assumption. This is that as a matter of fact the way to produce the goods may often be to select one's preferred option on some other basis. This assumption has often been made by consequentialists but it needs a specific defence in every case where a restrictive mode of deliberation is thought to be desirable.<sup>6</sup>

## 2. THE NATURE OF RIGHTS

It is hardly possible to define rights in an untendentious manner. I shall present a definition of which I have argued elsewhere that it captures the central points made about rights by both Robert Nozick and Ronald

<sup>4</sup> See J. J. C. Smart, 'Extreme and Restricted Utilitarianism', reprinted from *The Philosophical Quarterly* in *Theories of Ethics*, ed. Philippa Foot, (Oxford, 1967).

<sup>5</sup> See Philip Pettit and Geoffrey Brennan 'Restrictive Consequentialism', *Australasian Journal of Philosophy*, 64 (1986), pp. 438-55.

<sup>6</sup> See *ibid.*, section 1.

Dworkin.<sup>7</sup> Here I will not speak in defence of the definition other than to say that it is not an account which makes the consequentialist accommodation of rights easy. Intuitively, it is a stringent definition of rights rather than a loose one. Perhaps this observation will be enough to reconcile the reader to my stipulative strategy.

A person's rights are on a par with his wants or needs or merits or whatever. They constitute considerations that others are expected to take into account, at least in certain circumstances, in dealing with that person. They are claims whose satisfaction is presumed to be in the interest of the bearer.

But claims of this kind may relate to a person's interests in either of two ways. They may be designed to ensure either that other people take account of the bearer's interests in their deliberations or, more strongly, that they take account of his interests in their doings: not in all their doings perhaps, but at least in those that are motivated by the pursuit of certain goods, and that occur under suitably normal circumstances.<sup>8</sup> I may consider someone's interests in my deliberations and yet, for reasons of doing the best overall, override those considerations in what I ultimately decide to do. I have no such leeway if I am required to take account of those interests, not just in how I deliberate, but in what, at least under certain conditions, I actually do.

Claims which ensure that a person's interests are taken into account at the level of deliberation, and only at that level, serve, we may say, to promote the person. Claims which ensure the more substantial response serve, in contrast, actually to protect the bearer: specifically, to protect him from all or some actions, in all or some circumstances, that would be inimical to the interests involved. Promotional claims guarantee a certain sort of consideration for the bearer; protective claims guarantee a certain sort of treatment.

The basic component in my conception of rights is the thesis that they are protective rather than merely promotional claims. In this feature indeed I believe that they are distinguished from claims such as those generally thought to be represented by a person's wants or needs or merits. My view is that the protective understanding of rights is deeply embedded in the rights-tradition but I shall not argue that here.<sup>9</sup> I mean to give my conception of rights a purely stipulative status.

Because they are designed to serve the individual in a protective role,

<sup>7</sup> 'Rights, Constraints, and Trumps', *Analysis*, 46 (1987), pp. 8–14.

<sup>8</sup> Even Robert Nozick suggests that rights may be suspended under threat of moral catastrophe. See *Anarchy, State, and Utopia*, (New York, 1974), p. 30n.

<sup>9</sup> This feature is often stressed. See, for example, L. W. Sumner 'Rights Denaturalized' in Frey, ed., *op. cit.*, p. 22.

rights have certain more specific features. I shall mention three. The first feature required by the protective role of rights is that they are untradable across persons; if you like, they are personalised claims. It must be, as the matter is more often put, that an agent's obligation to respect A's right to X is not overridden simply because his violating A's right would minimise the violation by people generally of the right to X on the part of people generally. A's right to X must resist such negotiation; it must be incommensurable, in a sense, with others' rights to X.

Notice that this definition of a personalised claim allows an agent to violate A's right under the following two cases: 1) where violation minimises the violation by A of the right to X on the part of people generally and 2) where violation minimises the violation by people generally of A's right to X. In the first case, the agent cannot simultaneously respect everyone's right to X and it is not surprising that he should be allowed to violate A's. In the second, A is the better protected from invasion of his right by the agent's particular violation and again it is no surprise that violation should be permitted.

The second feature required by the protective role of rights is that they should each make a claim that is untradable, not only across persons, but also against certain other goods. It must be of sufficient importance to override or trump the demands of those goods. It must be, not just a personalised claim, but a privileged one.

That a right is personalised means that it has complete priority over the goal of increasing non-violation by people generally of that right on the part of people generally. That it is privileged means that equally it has complete priority over certain other independent goals: say, that of increasing the GNP of the society. While the protective role of rights connects intuitively with such priority over rival ends, it may seem that it only requires partial priority. The right would still serve in a protective role if it trumped the increase of non-violation but only up to a certain figure, K; or if it trumped the increase of GNP but only up to a certain degree, K.

But there is still ground for maintaining the connection between the protective role of rights and complete priority. This is that the claim to X which is K-prior, as we might say, to a goal G will still be equivalent to a claim – albeit a claim with a different content – that is, completely prior to G. The K-prior claim to X is equivalent to the claim to benign X – BX, for short – where X ceases to be benign when its enjoyment means that G is sacrificed at or beyond degree K. And the claim to BX is bound to be completely prior to G, if the claim to X is K-prior to that goal.

For consider the case if a person can invoke a claim to BX – he can enjoy X without causing a disadvantage of degree K – but the claim is not completely prior to G. In such a situation he may be denied X for the sake

of a promotion of G to a degree less than K. And that means that not only is his claim to BX not completely prior to G; neither is his claim to X K-prior to G.

The third and last characteristic required by the protective role of rights is that they should be precise. A personalised, privileged claim would have little practical effect if it were merely a claim to some X, for example: it would leave the agents against whom protection is required with too much leeway. A right is precise in virtue of a more or less determinately specified content. The specification may be comparative, as when someone is said to have a right to the same amount of X as others. Equally it may be intrinsic, as when X is a determinate good or when the right is said to be to a certain amount of X.

So much for my understanding of rights. They are claims designed to protect the bearer's interests rather than just promote them. And for that reason they are claims which are personalised, privileged and precise. The question then is whether a consequentialist could ever be persuaded to give them countenance.

### 3. THE QUESTION OF RECOGNITION

The question itself needs some clarification. We need to spell out what it would be for a consequentialist, and indeed for anyone, to recognise certain rights. The elaboration required comes at two levels.

At a first level, it must be said that the question does not bear on whether the consequentialist can approve of institutional arrangements under which something like a right to X is supported by sanction. A consequentialist might think that the way to maximise probable value was to have such a system of sanctions without believing that the right to X made any distinctive claims on the consequentialist agent. He would deprive it of such claims if he held that in his own behaviour a consequentialist ought to consider only the overall consequences, including the consequences associated with the sanctions, in deciding whether to trespass against someone's right to X. In such a case he could hardly be said to recognise the right to X; the right, as David Lyons puts it, would have no moral force for him.<sup>10</sup>

To recognise a right to X must be to conduct oneself personally in a certain way. It cannot be just to endorse an institutional pattern under which the right is given the support of legal or civil sanction. But this said, further clarification is immediately required.

At a second level, it must be added that the question of recognition does

<sup>10</sup> See David Lyons, 'Utility and Rights', reprinted in Waldron, (ed.), *op. cit.*

not bear just on whether the consequentialist happens not to infringe on something like the right to X in his personal behaviour. He might respect the right in this behavioural sense without giving it any serious recognition. He might respect it in this sense indeed without even realising that there was an alleged right on which he failed to infringe.

To recognise a right to X must be to do more than just happen, more or less accidentally, to respect it. It must be to respect the right, because it is a right. The consequentialist who claims to recognise a right must not just behave appropriately. He must behave appropriately because he reasons appropriately.

The anti-consequentialist who upholds rights will wish to introduce a third level of elaboration. He will say that properly to recognise rights is to see them, not just as constraints on the selection of options, but also as criteria of evaluation. I have nothing to say about this claim, since it is obviously incompatible with the consequentialist framework of discussion. I do not think it is persuasive but I shall not try to argue that point here.<sup>11</sup>

Given our two levels of elaboration, it is clear that the question of whether the consequentialist can recognise rights bears on whether he can find reason in selecting his options to constrain consequentialist calculation. Can he identify a consequence whose furtherance requires that he make certain choices, not by application of the consequentialist criterion of evaluation, but by reference to what people's rights are? Is there any consequence which is important enough, and unusual enough, to legitimate a rights-restrictive consequentialism?

#### 4. THE CASE FOR A NEGATIVE ANSWER

It seems that no such consequence may be available. There is an abstract argument which appears to establish that no prospective consequence could ever provide the consequentialist with a reason to adopt a restrictive strategy. This argument would tell *inter alia* against the possibility of a rights-restrictive consequentialism.<sup>12</sup>

Suppose that a consequentialist proposes to go rights-restrictive within a certain sphere of activity. In dealing with other people, or at least certain other people, he decides that short of some drastic circumstances he will allow his actions to be dictated by a certain set of rights which he concedes to them. Suppose in particular that he adopts this course because he believes that he can thereby further an important consequence C and by furthering it maximise probable value.

<sup>11</sup> For some relevant considerations see my *Judging Justice*, (London, 1980), Ch. 10.

<sup>12</sup> The argument is implicit in the case made in Lyons, *ibid.*



The abstract argument against rights-restrictive consequentialism begins from the observation that such an agent has to recognise the following possibility: that there will be some occasions on which his restrictive strategy will lead him to select a non-optimific option. Those will be the occasions when C is not available or relevant or, more plausibly, when other considerations make it relatively unimportant. In such cases the optimific option will be the rights-infringing one but the restrictive consequentialist's approach guarantees that he will miss out on that alternative.

This observation suggests that if the consequentialist is serious about maximising probable value then he should try to guard against such failures to optimise. What is the lesson then for the would-be restrictive consequentialist?

In a strong version, the lesson would seem to be that he ought to give up calculating in rights terms and on every occasion decide what he ought to do in the light of all relevant considerations. Those considerations will include the prospect of achieving consequence C and while this may lead the agent mostly to respect others' rights – that is, respect them behaviourally – it will sometimes be overridden by the rival considerations that counsel infringement.

In a weaker version, the lesson drawn is that while the agent may initially select his option on the basis of people's rights he should always do a check to ensure that this is a case where C is sufficiently important to warrant that choice. He may eschew straightforward consequentialist calculation but he should give such calculation supervisory control of his decision-making.

In both versions the lesson extracted from the original observation is that for any consequence C which seems to motivate a restrictive strategy, the appropriate consequentialist response is to say that the consideration in question should rather be internalised in the agent's deliberations. According to the strong version, C should be internalised at a first order level; according to the weak, it should be internalised higher up. Although it does away with all hope of accommodating rights, the response proposed will not seem unattractive. It picks up the assumption often associated with consequentialism that the moral agent should not limit his perspective in any way. He acts *in loco deorum* and it is his business always to see that he does his best by the world. Under this assumption, the rights-restriction will look like a self-denying ordinance which leads the agent, without good reason, to alienate control of his particular choices.<sup>13</sup>

<sup>13</sup> On these themes see Philip Pettit, 'Social Holism and Moral Theory', *Proceedings of the Aristotelian Society*, 86 (1985–86) and Philip Pettit and Robert Goodin, 'The Possibility of

## 5. A CASE FOR A POSITIVE ANSWER

But however attractive the line in this regard, the argument on which it is based is suspect. It assumes something which there is good reason to question. This is that for every deliberatively relevant consideration such as that involving consequence C, the consideration can be internalised in deliberation at first or second order level. In particular, it can be internalised there without any self-defeating effect; the consequence in question can be simultaneously pursued and furthered.

This assumption is questionable, for a reason already marked in the hedonistic paradox. It may be that one cannot attain pleasure so long as the prospect of pleasure is a crucial factor in one's deliberations. And it may be that one cannot attain C, if consideration of C figures among the "pro"s and "con"s of one's particular decisions.

More recently canvassed examples than the hedonistic paradox show that the assumption is certainly false. Instead of pleasure, consider spontaneity. Suppose that a consequentialist agent decides that within a certain sphere of activity – say, in a game or in casual social interaction – one of the most important things to ensure is that he is spontaneous. Suppose that in order to promote such spontaneity he decides that he ought to go restrictive within that sphere, selecting his options on some other basis than comprehensive calculation. Is the argument of the last section likely to tell against the line that he adopts?<sup>14</sup>

Certainly not. The reason is that spontaneity cannot be deliberatively internalised without self-defeat. It is calculatively elusive, in the sense that if the agent calculates over it at first order level, he cannot hope to achieve it. And it is calculatively vulnerable, in the sense that even if he intrudes calculation at a second order level, monitoring some appropriate restrictive procedure, he must equally despair of its realisation.<sup>15</sup> To be spontaneous is to be uncalculating and no calculative pyrotechnics can allow spontaneity to be deliberatively internalised. In Jon Elster's phrase, it is an essential by-product, not something that can be pursued in one's individual choices.<sup>16</sup>

The upshot of these reflections is clear. The argument of the last section

Special Duties', *Canadian Journal of Philosophy*, 16, (1986), pp. 651–76. See also Conrad Johnson, 'The Authority of the Moral Agent', *Journal of Philosophy*, 82 (1985).

<sup>14</sup> See J. J. C. Smart, 'Benevolence is an Overriding Attitude', *Australasian Journal of Philosophy*, 55 (1977).

<sup>15</sup> The notions of calculative elusiveness and calculative vulnerability are introduced in Pettit and Brennan, *op. cit.*

<sup>16</sup> See Jon Elster, *Sour Grapes*, (Cambridge, 1983), Ch. 2.

goes through only on the assumption that C is a calculatively robust consequence, not an elusive and vulnerable one like spontaneity. If the consequentialist can identify a calculatively elusive and vulnerable consequence C in order to justify a rights-restriction, then his position will be proof against such a line of objection. It will be a position which consequentialists who admit the importance of C will find it difficult to resist. Is there an appropriate consequence in the offing?

#### 6. A CONSEQUENTIALIST REASON FOR RECOGNISING RIGHTS

Any consequence that is likely to justify a rights-restriction will consist, presumably, in a benefit accruing to those whose rights are respected. If such a benefit is to be calculatively elusive and vulnerable, then that must be because the knowledge on the part of rights-holders that the agent was calculating over the benefit, or the absence of knowledge that he was restricting such calculation, would undermine the possibility of attaining the benefit. We assume that such knowledge is within reach of the rights-holders; later we shall defend the assumption.

We know for sure that there are elusive and vulnerable consequences attending the sort of calculative restrictions associated with love and friendship and the like. Take the benefit of emotional security which my child enjoys so far as he knows that I will recognise certain of his claims without having first to establish that doing so is for the best overall. This benefit will cease to accrue to him if he comes to think that I am an unreconstructed consequentialist in my every choice and that his emotional security is just one consideration internalised, at whatever level, in my deliberations. He will not be able to see me any longer as loyal and loving; at best he can see me as a worthy do-gooder at whose hands he benefits, when he benefits, by an accident of circumstance: the circumstance that this is how I think I can do best by the world.<sup>17</sup>

The question then is whether there is any consequence which attends the rights-restriction in the way in which emotional security attends parental loyalty. Is there any benefit that I confer on rights-holders by such a restriction? In particular, is there any calculatively elusive and vulnerable benefit; any benefit which would be undermined by their coming to think that I was not sticking to the restriction but was rather internalising consideration of the benefit in my deliberations?

There are a variety of benefits associated with someone's enjoying rights

<sup>17</sup> See Pettit, 'Social Holism and Moral Theory', *op. cit.* and Pettit, 'The Paradox of Loyalty', *American Philosophical Quarterly*, forthcoming.

and it is arguable of a number of these that they are calculatively elusive and vulnerable consequences generated by others' recognising those rights.<sup>18</sup> I shall focus on the dignity which is usually said to accrue to a rights-holder. This is an intuitively important benefit and it is one that is often explicitly cited in the literature.<sup>19</sup>

The analysis of dignity is a tricky topic but I do not need to go into it here. All I have to assume is something which I think will be granted on all sides. This is that a person retains dignity in his treatment by another only if he preserves a certain dominion over how he fares at the other's hands: only if that other agent is not free to do to him whatever he wills, or even whatever some beneficent plan requires. The person must be able to block certain sorts of behaviour – those, as we might say, which invade his personal space – even if he retains the power sometimes to license them: the power to loose as well as join. If he cannot exercise such a veto, then he is merely a pawn in the enterprises of the other.

Dominion is a calculatively elusive and vulnerable benefit. That becomes clear once you spell out the conditions which are intuitively necessary to enjoy it.

1. For certain sorts of choice, and certain sorts of circumstance, you must generally be free from interference by others in the choice you make.
2. The sorts of choice and circumstance in question must be publicly salient, so that your freedom from interference is not at the mercy of another's definitional sophistry. If circumstances are required to be normal, for example, it must be clear what counts as normal and what not.
3. You must have a basis for believing that you reliably enjoy this freedom from interference, being in a position to have recourse against any interference that does occur. The basis may be legal, for example, consisting in knowledge of the rule of sanction. Equally it may be moral, consisting in the knowledge that certain considerations against interference are accepted as compelling.

Could a non-restrictive consequentialist hope to guarantee the dominion of those with whom he deals? Clearly not. If the people in question see him

<sup>18</sup> Other candidates are mentioned in Philip Pettit, 'Can the Welfare State Take Rights Seriously?', in *Law, Rights, and the Welfare State*, eds. Denis Galligan and Charles Sampford, (London, 1986).

<sup>19</sup> See Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton, 1980), Ch. 7.

for a non-restrictive consequentialist, then they must recognise that he will interfere in their choices whenever he thinks that that is for the best overall. This circumstance is not publicly salient and so they must see that they do not enjoy any dominion in relation to him.

The people involved may be optimistic about the treatment they will receive at the consequentialist's hands. They may even savour the fruits of his ameliorative concerns and have reason for being grateful that he is not guided by ill will. But whatever blessings they partake in, they will not enjoy dominion or dignity. They will have to recognise that they are pawns in the consequentialist's beneficent scheme.

The consequentialist may hope to overcome these problems if there is a rule of law introduced whereby it becomes costly for him to interfere in the choices of others. But that hope is forlorn. Those with whom he deals will see that as a consequentialist he is bound to interfere in their choices, at whatever personal cost, so long as that is what seems optimistic to him.

If he is seriously concerned about dominion then the only recourse for the consequentialist is to make clear to those within his sphere of influence that appropriate constraints limit his consequentialist calculations. He must make it manifest that in the circumstances specified he acknowledges their absolute discretion. This is just to say that if he cares about dominion and dignity then the consequentialist will have reason to impose upon himself an appropriate sort of rights-restriction.

And so we reach our desired conclusion. Contrary to the argument of the second last section, it may well be that a consequentialist can recognise rights. This conclusion is as far as I intend to go in the present context. It is a relatively substantial result in itself and to reach anything firmer or more detailed would require a shift to a different level of argument.

But before closing I would like to make some additional comments. They are designed to forestall an objection that may be made even at the abstract level at which I have been arguing. This is, in a first formulation, that it is unwarranted of me to assume that rights-holders will know how an agent deliberates when he decides how to behave towards them. The objection highlights the fact that in my argument I do make an assumption about the scrutability of any agent to the rights-holders he is liable to affect. But the assumption need not be so strong as to hold that they will know how he deliberates. It may be, rather more weakly, that they will not take him to be deliberating in the rights-restrictive mode, unless he shows that he is doing so, and perhaps goes to some pains to show this. My picture is that, if the consequentialist thinks about dignity, then he should realise that he will not promote the good unless he restricts calculation over it and makes it clear that this is what he is doing.

Still, the objection can be recast to challenge the weaker assumption too.

It can be said that, for all that I have argued, the proper course for a consequentialist concerned with dignity is to continue to calculate over it but to try to convince rights-holders that he is not doing so. Here I must concede that were such dissemblance possible then the considerations which I have brought forward would make it seem optimal. Happily however there are other considerations to be added. I shall mention three.

The first is that in many circumstances what is required of an agent in order to show that he accepts the rights-restriction on how he deliberates will also be sufficient to ensure that he does so; it will preclude the sort of dissembling envisaged. This holds for the case of the agent who is personally familiar to the rights-holders, since every hesitation and reservation will give the game away. It also holds for the case where the agent is a corporate entity like the state, since the deliberations of such an agency are a matter of public record.

The second consideration is that the consequentialist agent who tries to dissemble has to conceal his deliberative mode, not only from those who are actually affected by his decision, but also from all those who might ever stand to him in such a relationship. If such people see him play games with others then they will expect him to do the same in his behaviour towards them.

The third consideration is that even where it is possible, dissembling will involve effort and risk of exposure and that it will be attractive, therefore, only so far as the hidden calculation is likely to reveal occasions where the optimistic option is to infringe on a right. This consideration is the most important of all, because under the normal circumstances for which a rights dispensation is designed the infringement of a right is rarely going to be optimal. The reason is that dignity, as we might put it, is a holistic benefit.

Suppose that an agent violates A's right to X on occasion 1, and that this shows that he was not being true to the rights-restriction; the occasion is one on which normal circumstances obtain. This violation will show A that the agent cannot be taken to accept that restriction on any occasion, not just on occasion 1. And it will reveal this, not just to A, but to any other party with whom the agent is liable to relate. Thus the single infringement will mean, not just that he does not further A's dignity on occasion 1, but that he cannot further anyone's dignity on any future occasion. And it will mean this so far as any rights-restriction goes, not only the restriction in respect of the right to X.

The upshot is that dissemblance is an implausible strategy for the consequentialist who is concerned with dignity. That concern is far more likely to issue in genuine recognition of appropriate rights than in such a

costly and hazardous course of action. Our earlier conclusion still survives.<sup>20</sup>

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