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REFORMULATING CONSEQUENTIALISM: RAILTON'S NORMATIVE ETHICS

1. SOPHISTICATED CONSEQUENTIALISM

In the middle third of his *Facts, Values, and Norms: Essays Toward a Morality of Consequence*,[1] Peter Railton's discussion of normative ethics is anchored by two chapters offering intriguing proposals for reformulating the basic structure of consequentialism. Accompanying these chapters are a chapter raising some doubts about the adequacy of a Lockean approach to issues having to do with pollution and a chapter about Kantian and utilitarian theories' abilities to accommodate contemporary concerns about pluralism and dilemma. Here, I want to show how one of Railton's proposals for reformulating consequentialism would enhance consequentialists' ability to deal with the other topics he discusses, and I also want to express some concerns about the purpose to which Railton suggests his other proposal might be put. To set the stage for the first of these tasks, let me begin with a brief review of Railton's first proposal for reformulating consequentialism.

A longstanding objection to consequentialist theories is that they are self-defeating, in that people who are always trying to do as much good as they can often end up producing worse outcomes than agents with non-consequentialist motivations do (p. 151). Partially underlying this objection is the thought, often voiced by proponents of virtue ethics, that the single-minded pursuit of the best possible consequences is incompatible with certain desirable dispositions and character traits, and thus alienates agents from feelings, persons, and projects that could, in the absence of such alienation, be

major contributors to their well-being (pp. 153–154). Underlying each of these objections, as well as others, is the assumption that consequentialist theories are committed to the view that Railton calls *subjective consequentialism*: the view that "whenever one faces a choice of actions, one should attempt to determine which act of those available would most promote the good, and should then try to act accordingly" (p. 165). Subjective consequentialists think, then, that agents ought to consciously aim at bringing about the best possible consequences.

According to Railton, consequentialists ought to repudiate this view and to emphasize, instead, the view that he calls *objective consequentialism*: the view that "the criterion of the rightness of an act or course of action is whether it in fact would most promote the good of those acts available to the agent" (p. 165). Objective consequentialism does not, of course, negate subjective consequentialism, but as Railton points out, objective consequentialism focuses on what makes acts right, whereas subjective consequentialism focuses on what ideal deliberation is like (p. 165). Objective consequentialism is neutral, in principle, about what kind of deliberation agents ought to engage in and "has valuable flexibility in permitting us to take consequences into account in assessing the appropriateness of certain modes of decision making" (p. 168); all it suggests about deliberation is that agents ought to employ whatever deliberative procedures the employment of which will have the best consequences, either by way of the actions they lead to or by way of the feelings, relationships, and other valuable things that they make possible – things that might be unavailable to an agent who is always just trying to do as much good as possible. If the best consequences are achieved by agents' thinking in terms of love and friendship, or in terms of honor and shame, or even in terms of universalizable maxims, then so be it: one's deliberative procedures are only a means, not the end. To mark this outlook, Railton reserves the name *sophisticated consequentialist* for "someone who has a standing commitment to leading an objectively consequentialist life, but who need not set special

stock in any particular form of decision making and therefore does not necessarily seek to lead a subjectively consequentialist life'' (p. 165).[2]

Although this approach to consequentialist theorizing raises new challenges to be addressed, such as by offering a more complex portrayal of consequentialist agents' psychology than is found in the subjective-consequentialist approach (pp. 165–166, p. 167) and it has the obvious benefit of undercutting the two objections mentioned above. For if certain deliberative procedures surpass others in enabling agents to avoid alienation, then the former procedures will receive credit for that in the sophisticated-consequentialist calculus and be recommended accordingly (pp. 163–165). And since sophisticated consequentialism endorses deliberative procedures only to the extent that they do not detract from the production of good consequences, it can hardly be accused of insisting on deliberative procedures that lead to unnecessarily bad outcomes and, thus, leaving consequentialism open to the charge of self-defeat (pp. 166–167 and p. 168).

2. POLLUTION AND DILEMMAS

In addition to forestalling the two objections mentioned above, the proposal that consequentialism be construed as a criterion of rightness rather than as a mode of decision making enhances consequentialists' ability to deal with the two non-consequentialist topics that Railton discusses. The first of these is the moral permissions and prohibitions that pertain to pollution. Railton explores the Lockean approach to this topic in some depth, beginning with the observation that Lockeanism is commonly seen as supporting relatively *laissez-faire* policies. Railton points out, however, that in the familiar image of Lockean natural rights as establishing a border around each person that others are not allowed to cross without that person's consent, actions that pollute the things within others' borders (such as, surely, their lungs) are strictly prohibited. And although most individual acts of pollution only slightly

harm any given individual, the Lockean approach sets no minimum threshold of harm that must be met in order for a border crossing to be impermissible (p. 191; see also p. 196 and 210). So if you inhale some sulfur dioxide from your city's coal-fired power plant, or even just a single airborne droplet of paint while your neighbor is touching up the trim on his porch, then your borders have been crossed, and you have been wronged. Thus, as Railton puts it, "Lockeanism would, if put into practice, impose much more severe restraints upon individual action than, for example, the most elaborate existing environmental laws and regulations" (p. 219; see also p. 194, 200, and 218). But coupled with this zero-tolerance policy toward actual harms is Lockeanism's stunning indifference to activities that impose grave risks on others that, happily, turn out not to have any effect on them. For example, I might operate an unsafe nuclear reactor on land close to yours (p. 193), and as long as that lack of safety is never manifest (such as in an explosion or, of course, pollution that crosses your property line), then Lockeanism gives you no grounds for complaint. So Railton concludes that Lockeanism "turns out to be vastly restrictive of individual freedom when it comes to pollution-caused harm, but insufficiently restrictive when it comes to pollution-caused risk" (p. 218).

Aside from an initial emphasis on how thoroughly nonconsequentialist the Lockean approach is (pp. 188–190) – with some occasional remarks about needing to supplement Lockeanism with some attention to aggregate effects, at least in the making of laws and public policy (p. 210, 216, and pp. 219–220) – Railton is not explicitly concerned in his discussion of pollution to highlight the advantages of his version of consequentialism over some form of Lockeanism. But what he could have pointed out, had he been so inclined, is that not only sophisticated consequentialism, but even subjective consequentialism, can accommodate an impressive variety of widely held intuitions on this topic. Like Lockeans, virtually all consequentialists are capable of regarding pollution as bad; but they outdo Lockeans in their appreciation of the seriousness of the aggregate effect of a multitude

of instances of an individually trivial harm (such as the harm a coal-fired power plant inflicts on an average resident in an average day) and in their sensible nonchalance toward isolated trivial harms (such as the harm your neighbor inflicts on you when he paints his porch). Moreover, by maintaining that laws are morally defensible if and only if they are for the best, virtually all consequentialists can endorse legal prohibitions on classes of activity that frequently turn out to be harmful, even if a few instances of (what would prove to be) genuinely outcome-improving behavior are thereby discouraged and forgone.

How sophisticated consequentialism outdoes subjective consequentialism can be seen by imagining a society with a long history of recklessly befouling its land, water, and air that is even today, several decades after the beginning of the environmental movement, governed by a president who believes that current environmental regulations unfairly interfere with the activities of companies in the energy, mining, logging, and other industries. In such a society, past practice and current pressures may generate a tendency for even well-intentioned decision makers to undercount or underweight the harmful effects of pollution in subjectively consequentialist analyses of current and potential pollution policies. In such circumstances it might be better, all things considered, for certain decision makers to have an aversion to pollution that goes beyond the aversion to pollution that is already included in any subjectively consequentialist deliberations they may undertake. This sort of direct aversion to pollution – vone not mediated by an interest in morally good consequences – is disallowed by subjective consequentialism, but can be accommodated quite routinely by sophisticated consequentialism. Moreover, sophisticated consequentialism accommodates the intuition that there is a limit to the strength with which this freestanding aversion to pollution should be felt. For example, everyone would agree that this aversion should not be felt so strongly that the policy makers for a city such as New York are thereby moved, in an effort to improve the air, to eliminate the city's ambulance service

and require paramedics to get to their victims, and to take them to hospitals, just using subways and buses. Happily, sophisticated consequentialism shows us where to draw the line: this aversion should have whatever strength will enable it to do the most good. Indeed Railton uses essentially this criterion in order to caution against giving excessive priority to sympathy and non-alienation in personal relationships (p. 161 and 164); clearly it applies equally to impersonal ideals such as environmental ones. Sophisticated consequentialism accommodates these freestanding, unmediated, non-subjectively consequentialist commitments and aversions, and keeps them properly calibrated, too.

Railton's other foray into issues not specific to consequentialism is a contribution to the vigorous contemporary debate over whether traditional, systematic, principle-based moral theories, such as not only utilitarianism but also Kantianism, can be reconciled to the realities of moral pluralism and moral dilemma. On the currently fashionable side of this debate are claims to the effect that the sources of value are more varied and less commensurable than can be recognized by a simple moral system of the traditional kind, and that occasions of moral dilemma – in which an agent is bound to feel morally dissatisfied with any decision he or she makes – are not adequately accounted for by theories with an inordinate emphasis on the simple distinction between the permissible and the impermissible. In response to such claims Railton shows how the resources of both utilitarianism and Kantianism have, in certain respects, been underestimated.

But the bulk of his discussion of these issues is devoted to challenging the conventional characterization of a moral dilemma as a situation in which an agent is under two conflicting obligations. Using a wide range of detailed examples, Railton shows that in many cases, what makes a situation dilemmatic is not that the agent is forced to do something morally impermissible, but that the agent is forced to choose between important values or ideals, or (often as a result) is forced to choose a course of action that, while entirely defensible, carries with it a meaning that the agent would prefer

not to convey: as Railton puts it, "we can be as torn by meanings as by duties" (p. 275). For example, a parent who has reason to believe her child could be a world-class violinist might have to choose between an intensive program of focused instruction for this child along with sacrifices for the rest of the family, and a normal upbringing for the child coupled with lingering doubts that an extraordinary opportunity had been wasted (pp. 269–270). In this case, it is too strong to say that the parent is both obligated to pursue the opportunity and obligated to turn it down, but it is also too facile to say that either path is entirely satisfactory. The former path may inevitably express a priority for the gifted child over her siblings, along with (perhaps) a certain grasping ambition; the latter path, a small-minded impulse toward leveling down or, at least, a lack of appreciation for exceptional potential. Railton points out that any such meanings that attend either path are not up to the agent to impart or withhold at will; the meanings of things done, like the meanings of things said, are largely beyond the agent's control (p. 281). Such meanings, moreover, resist being fully domesticated by traditional moral theories, in the sense that an act might still have an unintended meaning – of disloyalty, intolerance, miserliness, etc. – even if the agent and others are convinced that it is, on balance, altogether morally permissible and, indeed, the very best that can be done in the situation (pp. 281–282). Railton, then, reframes the debate about dilemma and system in terms of the expressive character of acts and the possibility of developing, within traditional moral theories, mechanisms for more adequately accounting for their meanings.

As in his discussion of pollution, Railton is not explicitly concerned in his discussion of pluralism and dilemma to highlight the advantages of his version of consequentialism over other normative-ethical theories. Nevertheless, here too the strengths of sophisticated consequentialism can be seen as contrasting sharply with the shortcomings of subjective consequentialism. Recall that subjective consequentialism requires agents to aim simply at doing as much good as they

can, whatever their circumstances might be, and to bracket any freestanding commitments or aversions as lacking moral authority. All values somehow must ultimately be weighed in the same scale, and any course of action not judged best is to be set aside as not quite measuring up. Tragic choices are to be shoehorned into the same framework as mundane ones, and any lingering feelings of loss, regret, remorse, or guilt may be understandable, but only as baggage often carried by people who wish the world were a better place than it is, with its values being more jointly realizable than they are. Well, clearly this is no way for a moral theory to do justice to the complexities of pluralism and dilemma.

But sophisticated consequentialism, with its endorsement of non-subjectively-consequentialist decision procedures, has more to say on these matters. First, in regard to pluralism, even a sophisticated consequentialist with a monistic conception of the good can allow that it may well be productive of the best possible consequences for agents to (mistakenly, in this view) regard the sources of value as plural and incommensurable. For such an attitude, on the part of agents, may be essential to their effectively pursuing the many disparate endeavors that the monistic sophisticated consequentialist would recognize as contributing to the maximization of (the one) value. Second, in regard to cases of moral dilemma in which (as conventionally understood) the agent perceives herself to be under two conflicting moral obligations, sophisticated consequentialism can allow, again, that it may be productive of the best possible consequences for agents to be so loath to act in certain ways that they cannot escape viewing them as wrong – even when acting in one of those ways is the only way to make the best of a bad situation. Even any resulting guilt, though perhaps serving no purpose (perhaps the agent's aversion to acting in that way doesn't need any strengthening, and it would be ideal if the agent could just let herself off the hook), may be a small price to pay for the good achieved by the aversion in question. Third, in regard to the cases of moral dilemma that Railton foregrounds – those in which no course of action is obligatory but each is

fraught with unwanted meaning – sophisticated consequentialism can offer similar accommodation. For just as it might be desirable for agents to always regard certain ways of acting as wrong, so likewise it might be desirable for agents to be very reluctant to perform actions that carry certain meanings, such as priority for one of one's children over another or (on the other side of the case discussed above) disregard of a child's unique potential.

Of course, in all these cases what sophisticated consequentialism has to offer is rather limited: in effect, little more than a somewhat condescending (if well-intentioned) permission to accord moral significance to values, commitments, and aversions whose moral significance sophisticated consequentialism officially denies. And Railton, it is clear, is after more: an account of pluralism and dilemma, and especially of the expressive character of choices and actions, that can be fully integrated into a systematic moral theory. This, Railton rightly notes (p. 282), we are still lacking. But sophisticated consequentialism is as promising a point of departure as any.

3. VALORIC UTILITARIANISM

Like Railton's first proposal for reformulating the basic structure of consequentialism, his second one is motivated by certain familiar objections to consequentialist theories – in this case, objections to certain standard forms of utilitarianism. These objections flow from the observation that the act-utilitarian principle that right actions maximize overall utility has (at least when coupled with some innocuous assumptions) several counter-intuitive implications, such as that all individuals are under an all-things-considered obligation to produce as much utility as they can, that it is reasonable to expect (normatively, if not predictively) people to produce as much utility as they can, and that people are liable to criticism, if not official punishment, whenever they fail to produce as much utility as they can (pp. 238–239). To cope with these difficulties, some utilitarians reject the act-utilitarian principle and propose a different criterion of rightness, such as the

rule-utilitarian principle that an act is right if and only if it conforms to the rules whose general acceptance would maximize overall utility.

Such a move, however, can elicit the thought that something crucial has been lost, in that it can seem that there is something morally noteworthy about acts that maximize overall utility, and that this noteworthiness is obscured by any departure from the act-utilitarian principle. To give expression to this thought – to provide an outlet for utilitarians' desire to characterize utility-maximizing acts as somehow morally special – Railton outlines what he calls *valoric utilitarianism*. On this view, instead of utilitarians' burdening their standard of rightness with serving the purpose of identifying what is morally special about utility-maximizing acts (which they do by insisting that only those acts are *right*), utilitarians should refer to such acts as *morally fortunate* ones (p. 241): an act is morally fortunate if it maximizes overall utility, and the same designation can be applied to eligible agents, motivations, characters, rules, institutions, distributions of resources, and other things (pp. 240–243). When the concept of moral fortunateness is reserved for utility-maximizing acts, utilitarians are free to adopt a standard of rightness whose implications are more intuitive than are those of the act-utilitarian principle. To illustrate this possibility, Railton proposes the principle that an act is right if and only if "it would conform to normative practices – comprising rules, motivations, dispositions, etc. – that would be morally fortunate" (p. 243). A valoric utilitarian with this standard of rightness is able to express the moral noteworthiness of utility-maximizing acts – by calling them morally fortunate – but, clearly, espouses a standard of rightness that is different from the act-utilitarian one. So this sort of utilitarianism avoids the unattractive implications mentioned above and "accommodates the commonsense thought that certain sorts of action – torture, deception, the sacrifice of innocents – are wrong even when, owing to unusual circumstances, they are beneficial" (p. 244).

I have two concerns, however, about valoric utilitarianism coupled with a non-act-utilitarian standard of rightness (such as the one just considered). First, I worry that such a theory is open to an objection analogous to one that Railton lodges against rule utilitarianism. Any form of rule utilitarianism, Railton points out, will regularly allow agents to act in sub-optimal ways (as it must, in order to avoid being equivalent to act utilitarianism). Sometimes, these ways will be so sub-optimal as to discredit any theory that regards them as permissible. So, alluding to a familiar utilitarian complaint against deontological theories, Railton criticizes rule-utilitarian theories by saying that " 'Let the rules with greatest acceptance utility be followed, though the heavens fall!' is no more plausible than '*Fiat justitia, ruat coelum!*' " (p. 169). Now although I join Railton in rejecting rule utilitarianism, it is hard for me to see why this same objection should not apply to the form of valoric utilitarianism under consideration. For "Let the acts that conform to morally fortunate normative practices be done, though the heavens fall!" does not appear to have any greater plausibility: it is hard to see how rule utilitarianism's toleration of sub-optimal conduct is worse than this form of valoric utilitarianism's.

Railton may anticipate this criticism of this form of valoric utilitarianism in mentioning that

> if it is to overcome some of the difficulties facing existing indirect utilitarianisms [such as the form of rule utilitarianism just discussed], the valoric account may have to avoid certain idealizations and abstractions. For example, it may have to attach primary significance not to the question "Which practices would be most fortunate if generally observed?" but rather "Which practices are most fortunate given circumstances as they are and will be?" (p. 243)

But I fear that Railton may overestimate the extent to which rule utilitarians' focus on the former question leads them to propound theories that neglect the latter question. For many rule utilitarians plausibly argue that the practices that would be most fortunate if generally observed would require agents to take due account of circumstances as they are and will be:

they argue that the practices that would be most fortunate if generally observed would include both a prohibition on conduct with especially bad consequences and provisions for coping with disobedience of the practices that would be most fortunate if generally observed.[3] I wonder, then, whether this form of valoric utilitarianism is superior to rule utilitarianism in regard to disallowing the kinds of sub-optimal conduct that Railton regards as discrediting the latter.

My second concern about valoric utilitarianism coupled with a non-act-utilitarian standard of rightness is based on the obvious tension between applauding all utility-maximizing acts as morally fortunate and condemning some of them as morally wrong. Admittedly, it is not inconsistent to call an act both morally fortunate and morally wrong and, as Railton argues, this form of valoric utilitarianism does not give inconsistent answers to the question of whether a particular act is "most highly valued from a moral point of view" or to the question of whether a particular act "would be right or wrong" (p. 244). And I think Railton is also on safe ground in claiming that if an agent asks "whether he has more reason to do what is morally fortunate or what is morally right," then he is asking a question about practical reason in general, and about the way in which moral considerations provide (or do not provide) reasons for action, that goes beyond the scope of moral theory proper (p. 244).[4] I want to focus, however, on the question of whether an agent has more *moral* reason to do what is morally fortunate or what is morally right. I think that an agent would not be out of line in expecting a moral theory to provide an answer to this question, and yet it is not clear to me whether the form of valoric utilitarianism under consideration can provide one unproblematically.

First, if the theory says that there is sometimes or always more moral reason to do what is morally fortunate, then it becomes mysterious what role the notion of moral rightness is playing in the theory's economy of moral reasons. I think the notion of moral rightness is widely understood to have a certain primacy in moral reasoning, and thus it would be

rather counter-intuitive for a moral theory to deny that you always have more moral reason to do what is right. Such a theory might even be accused, as Railton notes act utilitarianism sometimes is (pp. 238–239), of turning 'right' into a mere term of art, with none of the action-guiding force one might reasonably expect for it to have. On the other hand, if the theory says that there is always more moral reason to do what is right, then it seems that the notion of moral fortunateness is the one drained of its action-guiding force; 'morally fortunate' is reduced to being a merely descriptive term no more inherently normative than is 'utility maximizing'. And then it becomes mysterious how the notion of moral fortunateness is not ultimately superfluous.

My concern, of course, is not with valoric utilitarianism itself. My concern is only with using valoric utilitarianism's notion of moral fortunateness to make way for the adoption of a non-act-utilitarian standard of rightness. As far as I can tell, the most promising route for utilitarians and other consequentialists is to welcome valoric utilitarianism's notion of moral fortunateness, but to integrate it into what I see as the most promising theoretical structure for such theorists: Railton's framework of sophisticated consequentialism.

NOTES

[1] Peter Railton (2003): *Facts, Values, and Norms: Essays Toward a Morality of Consequence,* Cambridge: Cambridge University Press. All page references except those in note 3 are to this book.

[2] As Railton acknowledges (p. 288, n. 31), he was not the first proponent of consequentialism to suggest that it be construed as a criterion of rightness rather than as a mode of decision making. But previous writers' gestures in this direction had been sporadic enough for many critics to proceed, with reason, on the assumption mentioned above (namely, that consequentialist theories are committed to the view that Railton calls subjective consequentialism).

[3] On the inclusion (in the practices that would be most fortunate if generally observed) of a prohibition on conduct with especially bad consequences, see Richard B. Brandt (1998): *A Theory of the Good and the Right,* Amherst, N.Y.: Prometheus Books [first published in 1979], pp. 291–292; D.W. Haslett (2000) 'Values, Obligations, and Saving Lives', in

Brad Hooker, Elinor Mason and Dale E. Miller (eds.), *Morality, Rules, and Consequences,* Edinburgh: Edinburgh University Press, pp. 71–104 (see esp. pp. 97–100); and Brad Hooker (2000): *Ideal Code, Real World: A Rule-consequentialist Theory of Morality,* Oxford: Oxford University Press, pp. 98–99.

On the inclusion (in those same practices) of provisions for coping with disobedience of those same practices, see Brandt (*op. cit.*), pp. 297–299; Jonathan Riley (2000), 'Defending Rule Utilitarianism', in Hooker, Mason and Mill (*op. cit.*), pp. 40–70 (see esp. pp. 56–62); and Hooker (*op. cit.*), pp. 81–84.

I should admit, however, that limitations in my understanding of Railton's view might have led me to make remarks, and to cite passages, that miss Railton's point. For Railton might regard theories that focus on "practices [that] would be most fortunate if generally observed" as doomed from the start, with their subsidiary attempts at taking account of "circumstances as they are and will be" inevitably being too little, too late – perhaps akin to consequentialists' misguidedly trying to solve the problem of alienation by "giv[ing] a more prominent role to the value of nonalienation in our moral reasoning" (p. 156). Regrettably I cannot assess the soundness of this stronger objection here.

[4] Railton also mentions the moral point of view as just one of several at p. 155, pp. 179–180, n. 5, pp. 184–185, n. 34, and p. 186, n. 42. He also acknowledges, however, that "Moral considerations are often supposed to be overriding in practical reasoning" (p. 155).

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