

Ethics as Scales of Forms

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By

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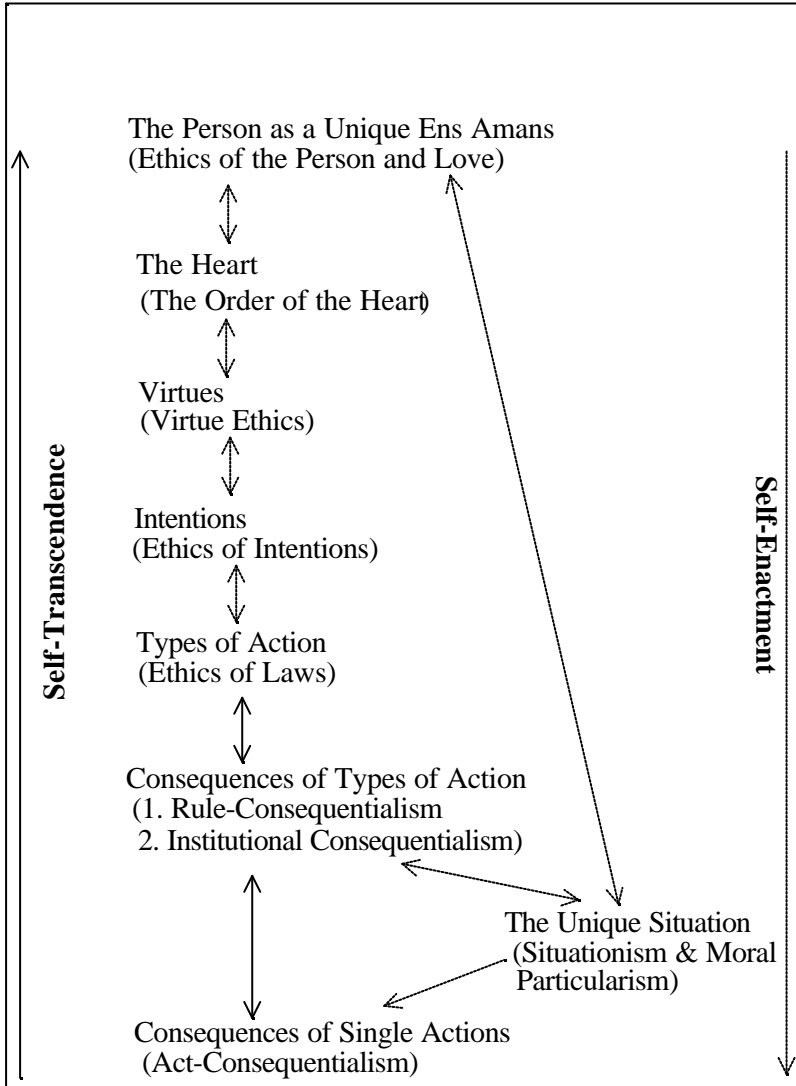
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FIG. 1
A SCALE OF FORMS
FROM CONSEQUENCES OF SINGLE ACTIONS TO
THE VALUE OF THE INDIVIDUAL PERSON



CHAPTER ONE

SCALES OF FORMS AND THEIR APPLICATION TO ETHICS

One of the most pernicious errors in both philosophy and daily life is dichotomous thinking, which assumes that every distinction is a dichotomy, an exclusive “either-or,” such that if something is an *A* it cannot also be a *B*. Around such exclusive alternatives are formed mutually exclusive and warring “isms,” each of which seizes upon one aspect of the truth and denies the others. For example, in ethics utilitarianism or consequentialism maintains that *only* the consequences of actions are morally significant, and furthermore it divides into two main sects: act-consequentialism which maintains that *only* the results of each individual action matter; and rule-consequentialism which maintains that *only* those of observing certain rules matter; and within these there have recently appeared even more sub-sects which I shall ignore in this study. A third form, which I shall call “institutional consequentialism,” focuses upon whole bodies of rules and appears to be less exclusive. Similar assumptions surround the ethics of laws. And the opponents and perhaps some proponents of virtue ethics, justly revived following Alasdair MacIntyre’s *After Virtue*, seem to assume that it must hold that virtues *alone* should count.¹ To ascertain why this mind-set of mutually exclusive “isms” should be so prevalent, and not only in ethics, would be an interesting project, which cannot be pursued here. It must suffice to note that “ism-ism” thoroughly distorts one’s thinking and is a long way from *philosophia*, the love of wisdom. Instead of seeking the truth of the matter, some people seem to spend their time defending their own “isms,” and perhaps carving out new “sub-isms,” and attacking others. The result is the production of counter-examples and counter-counter-examples and of epicycles upon epicycles in order to accommodate within the supposedly all-sufficient “ism” those facts and principles which, despite themselves, its adherents have to admit to be genuine even though they officially claim the contrary.

What, then, could replace such logomachy and polemics? It is certainly not the counter error of mere eclecticism, simply adding “ism” to “ism” and

now using one set of principles, laws, goals, etc., and then another without rhyme or reason. Even pluralism, which rightly recognises the manifold nature of reality, is not enough, for it merely places the varied aspects of reality side by side without trying to find some deeper unity. Instead, what we need is a way of systematically combining the partial truths grasped by each “ism” into a whole in which their distinctions are maintained while their opposition is overcome. That suggests that we should look for a unity underlying and differentiating itself into those partial truths. That is precisely what Collingwood offers in his conception of a scale of forms, as set out in *An Essay on Philosophical Method*. In a scale of forms what may seem to be mutually exclusive forms or species of the same genus, constitute a series of levels each one of which incorporates the previous level and hence is a fuller and more adequate realisation of the common essence. Thus in the scales of forms of knowledge, as constructed by Plato, Descartes, Locke and others, the higher forms are more truly knowledge than the lower, and the lowest is hardly knowledge at all. I think that Collingwood’s conception needs amendment, and, indeed, he himself later amended it in one respect and implicitly recognised four different types of scales of forms. But because this study is not *about* Collingwood and scales of forms but *uses* and modifies them when necessary, I shall say only a little more about them here, though in the Appendix, I set out the main features of Collingwood’s conception of scales of forms and also summarise Collingwood’s own applications of scales of forms to ethics. Ethics does seem a particularly fruitful field for applying scales of forms, as Collingwood’s own examples suggest. For example, the three types of consequentialism, the ethics of laws and virtue ethics, as we shall see, are all necessary to the moral life, and need each other, and other levels as well. And they do so in a systematic manner: the assessment of the consequences of our actions needs guidance by laws and the observance of laws needs to be expressed through attention to the former; and observance of laws requires the virtues for it to be properly motivated and directed, while virtues, genuinely to be virtues, need to be expressed through the observance of moral laws, and thence in turn through appropriate consideration of likely consequences both of types of actions and of particular actions. Here we find a two-way relationship: of presupposition by each lower level of the next higher level, and the necessity of each higher level to enact and express itself appropriately in and through the next lower. That, in brief, is the scheme of a scale of forms that will be used in this study.

As for the matter for the scales, that will be taken, as by Collingwood, from *within* ethics, from partial and therefore rival conceptions of what is right and good, of what we should do, become and aim for. Rival theories *about* ethics, such as emotivism, relativism and “intuitionism” do contain partial truths and err by denying others, but as yet I do not see how they form a scale. And for the specific ingredients for a scale, I propose in the next eight chapters to take the question, “To what aspects of the agent can moral qualities be attributed?,” and the answers that have been given to it. The answers given to that question constitute significant proportions of both the phenomena of the moral life and the “isms” in ethics. Then in the final four chapters we shall consider the question of the wider sets of values and ends which the previous scale has presupposed, plus how the two scales can be related. That will include consideration of the “isms” of “deontological” ethics versus “axiological” ethics, those of duty versus those of value. To some extent that coincides with another, that between, respectively, emphasis upon “the good man” and “the good for man.” It would be foolish to suppose that the scale or scales to be constructed will answer all questions in ethics, and at appropriate points I shall mention in passing some other questions and the one-sided answers which have been given to them.

Fig. 1 presents in graphical form a summary of the whole scale that will be constructed. The upward dialectical nature of the scale, the presupposition of each higher level by the previous level, is indicated by “self-transcendence.” This, I would argue, is an essential feature of human life, that properly to attain anything in life we must aim at something more important in it, as in the familiar “paradox of happiness,” that the pursuit of happiness is self-defeating unless we devote ourselves to something other than our own happiness. Likewise, the downward requirement of each lower level by the one above it is indicated by “self-enactment,” that for each higher level properly to be itself, it must, *ceteris paribus*, go forth and enact itself in and through that lower level, as intentions are not really intentions unless expressed and enacted in appropriate actions as and when the occasion arises except if one has had good reasons for changing one’s mind in the meantime or has genuinely forgotten what one intended to do. But frequent changes of mind and forgettings, unless they have a pathological basis, suggest that the persons in question do not form genuine intentions, otherwise they would have thought things out more carefully and then would have had fewer reasons to change their minds or would have made more of an effort to remember what they meant to do.

This terminology of “higher” and “lower” could be inverted into one of “surface” and “depth,” or lateralised into one of “outer” and “inner,” each signifying, with respect to the individual person, what is furthest and so least important and what is closest and so most important. The point of this, irrespective of the terminology employed, is the dual dependence of each aspect of the person and his activity: the lower, shallower or outer presupposing the higher, deeper or inner; and the latter requiring to be enacted and expressed in and through the former.

The danger with any intellectual schematism is that the data of experience may be distorted or denied if they cannot be properly assimilated to it, rather than the schematism adapted so that it can properly assimilate them. That is precisely what the conception of a scale of forms will be invoked to do in respect of the distortions and denials of the relevant “isms.” It would be wholly against the intention of this study if the scale of forms itself were to be forced upon its subject-matter and not to be adapted to it. For example, act-consequentialism, as well as obviously being a sub-form of consequentialism, is also a sub-form of “situationism,” which claims that all action should be evaluated and decided in terms of the individual situation at hand, and frequently situationists elaborate their principle in terms of the consequences of the particular action in the individual situation. Moreover, one prominent version of situation ethics is derived from the ethics of love, and, further, from the specifically Christian ethics of love, as shown by the dotted line in Fig. 1. How then should it fit into the proposed scale? I have found it more convenient to deal first with the consequences of individual actions, as what is furthest from the agent, and thus with act-consequentialism; to follow that with the consequences of particular types of acts and then of whole bodies of types of actions; and finally to deal with the individual situation in general and with some notable versions of situation ethics and moral particularism, as also presupposing laws and the ethics of laws. Furthermore, the proponents of situation ethics have some valid points to make which are independent of the valid arguments of act-consequentialism and which therefore should be considered in their own right. The consideration of consequences of actions and consequentialism also raises another problem of procedure: whether to deal with what is common to its three versions, which do form a scale among themselves, before or after the specific features of the three versions. I have found it convenient first to set out the general importance of the consideration of likely consequences, next to examine the specific

importance and deficiencies of each form, and finally to set out the deficiencies common to all consequentialisms.

Another messy aspect is that what is the next higher level for most purposes may not provide answers for all, and so some questions left open by the next lower may have to be carried forward to yet another level. This has proved to be especially the case with the questions that the ethics of law raises. Some can be answered straightaway in terms of intentions but others only in terms of virtues, which are more inclusive than intentions, and both intentions and virtues raise the question of a unifying fundamental intention or virtue. Hence I have found it more convenient to treat intentions and virtues together as jointly answering some of the questions raised by laws.

In the following chapters I shall not attempt to deal with each level or form in full but only with its essential features. Doubtless in some at least of the detailed amendments to and elaborations of the central tenets of the “isms” and their sub-forms, there will be positive and valid suggestions. But not everything can be considered at the same time, and in this study I am primarily concerned with the wood and want to avoid losing sight of it in trying to examine all the trees. And so I shall by-pass much of the very detailed discussions of the merits and demerits of particular moral systems which have been published. They often take the form of objections, replies, counter-replies, and so forth, because they tend to arise from disputes with some other exclusive and hence competing “ism.” Ironically, in such debates the advocates of an exclusive “ism” fail to do justice to the positive elements in their own position, because, denying or interpreting in their own terms the positive elements in other “isms,” they cannot show how their own affirmations are required by those of the other “isms.” Likewise, the critics of another “ism,” by criticising it solely or mostly from within their own, are perhaps likely to make its adherents yet more defensive. In contrast, the arguments of this study will be primarily “internal” and aimed at showing (a) that each level has an important and necessary place within ethics, and (b) that, *within its own terms*, each form or level in the scale, thus its “ism,” logically needs completion by what its “ism” denies and so it should take its proper place in a scale which encompasses them all. This will mean that there will be some recapitulation, repetition and anticipation in each case. For the overall aim is to show that each “ism,” by wrenching its particular form or level from the whole of which it is both essentially a part and an essential part, destroys that form or level, as if the body could exist without the heart and as if the heart

could not only exist apart from the whole body but could do by itself all that it takes the other organs and systems to do.

In each chapter I shall refer to and quote exponents of the relevant “ism”—some older and some more recent, some well-known and some less known—so as to show that these are real issues and not merely abstract possibilities. Inevitably only the main and most relevant points made by each author can be mentioned and examined. As for the positive content of the scales, various references, especially towards the end, will indicate that it owes a lot to Max Scheler but at times only in broad outline and general suggestions.

Much of the following argument relates to all forms of personal action and existence, as the examples will show, and not just to obviously moral activity. That raises the question of just what distinguishes the moral from the non-moral. The usual view seems to be that there are distinctive moral moments and aspects of life which stand out against a non-moral background. But some moral systems claim, explicitly or implicitly, that the whole of life is a moral concern. In short, I shall show that the whole of life is potentially of moral significance and that some aspects and moments are morally urgent, such that a responsible attitude is required throughout it, although specifically moral concerns and considerations are likely often to be latent and implicit rather than manifest and explicit.

Two final preliminary points. This study is primarily concerned with the facts themselves, the constituents of the scales of forms, the aspects and levels of the person and the objective values and ends which we should appreciate, pursue and realise, and only secondarily with the exclusive “isms” that unfortunately are formed around them. To focus attention upon the “isms” would be to commit the very error that I am seeking to overcome. And the endnotes will be used primarily for references with some short additional comments, and longer incidental discussions will usually be put in Additional Notes at the ends of the relevant chapters.

Note

1. As MacIntyre complained about some critics of *After Virtue*, and pointed out that on pp. 150-2 he himself had said that virtue requires laws just as laws require the virtue of justice (*Whose Justice? Which Rationality?*, ix).

CHAPTER TWO

CONSEQUENCES OF SINGLE ACTIONS

1. The Importance of the Consequences of Actions

We shall begin at that which is furthest from the person himself, namely, with the consequences of his actions, and thus with judging his actions, and ultimately himself, as good, worthless or bad accordingly and thus only as the quite separable and distinct causes of those consequences. “Utilitarianism” is the historic name for the doctrine that actions are to be appraised and then only as useful, useless or counter-productive for a given end. Hence it evaluates them in terms of what they bring about, and hence their consequences. But it has mostly also incorporated the assumptions that happiness is the only good (eudaimonism), and specifically that happiness equals pleasure (hedonism). Therefore it would be better to use the more recent term “consequentialism” for the doctrine that *only* the effects of actions can, and should, be counted as good or bad, irrespective of the particular end or ends which actions should promote.

Furthermore, it is now usual, and rightly so, to distinguish between “act-consequentialism” which asserts that the consequences of *single* acts are to be calculated and evaluated with respect to the end or ends to be achieved, and “rule-consequentialism,” which asserts that what is to be calculated and evaluated are the results of acting according to rules to perform or abstain from certain *types* of action. Previously, utilitarians failed to make it clear, even to themselves, which they had in mind. In addition, there is a consequentialism of whole bodies of rules, as advocated by Hayek who developed some of Hume’s ideas, which affirms that what matters is the effects of the whole body of rules and laws upon the persons subject to them, and thus of each rule upon the rest. But, before we come to those specific forms, it will be more convenient to state now the general case for action in accordance with estimates of consequences—the necessary places that such estimates occupy in the proper conduct of human life, and thus the real truths that

consequentialism articulates. The following applies to all actions, or perhaps every action and its likely consequences may be liable to scrutiny in the following ways.

(1) Actions themselves are obviously successful if they achieve their aims, unsuccessful if they do not, and counterproductive if they achieve the opposite of what is intended: any attempt to repair a machine will be successful if the machine then works properly; unsuccessful if the fault persists; and counterproductive if the machine ends up in an even worse condition or causes damage, or yet more damage, when used. Assessment of actions must include assessment of their success, failure and counter-productivity, and therefore of their consequences.

(2) Whether or not an action is performed in order to bring about certain results apart from the action itself, it is likely to have effects beyond itself and at least some attention should be given to them, for they may be undesirable and could outweigh any good inherent in the action itself or in the results it is meant to bring about. Hence effects or consequences can be categorised as intended or unintended, and it would be irresponsible not to consider the possibility of unintended effects which would be undesirable. Similarly consequences can also be categorised as central or side-effects. The latter pair is not quite the same as the former, because a side-effect can also be intended. Indeed, if one way of bringing about *A* will also bring about a desirable side-effect *B*, then that will be an additional reason for choosing that way of achieving *A*, and thus the accompanying realisation of *B* becomes an intended result though not the central aim. To go to an appointment in London by train rather than by car may also permit me to prepare better for the appointment, as well as being as quick and costing about the same. Conversely, the likelihood of adverse side-effects can and should at least give us cause to stop and estimate if they outweigh the benefits of the central effects, as tragically happened with thalidomide.

(3) Furthermore, all actions have one set of undesirable side-effects, that they require and expend resources, if only of attention and time. Hence the question of the efficiency of an action always arises as well as that of its effectiveness: Are the means employed the most efficient way of achieving the goal? Less efficient means waste resources which could be used for other purposes, and likewise ineffective means not only fail to achieve the aim but also are themselves wasted in futile efforts. It follows that in reality there is no mere inefficiency nor mere failure, but that all inefficiency and failure entail some degree of counter-productivity. The servant, in the Parable of the Talents, who buried the money that his

master had entrusted to him, proved an unprofitable one, because, although the money remained intact, merely storing it incurred his master the “opportunity cost” of not gaining any return on it.¹ That all action, in this world at least, has its costs entails that it is not the case that the end justifies the means, but, on the contrary, that the end must be worth the means. That I want a new car does not by itself justify the expenditure of the money that I have available or could borrow, for there are always other and possibly better uses to which I could put it. Economics is the “dismal science” because it dashes fond hopes and wishful thinking about obtaining things for nothing and without any possibility of unwanted results.

(4) Each action has its generic, specific and individual aspects, to which the questions of effectiveness and efficiency will apply. Thus the generic act of helping a friend to get a job can be realised in specific ways such as mentioning him to employers whom one knows and who have suitable vacancies, directing him to employment agencies and websites that deal with what he can do, helping him with his studies for a relevant vocational qualification, and so on. And each specific action is executed in an individual action or set of actions, such as mentioning him to a particular employer or helping him with his accounting homework tonight. It follows that the individual action has to be appropriate to the specific course of action and that in turn to the generic action: it would be useless to advise someone looking for work in a finance department to take an “A” level course in history. What one intends to do has to be thought through and carried out in the way that is most likely to be successful.

(5) That last consideration is also illustrated by the next higher level of types of action and the ethics of laws, which, so far from being opposed to this lower level of the consideration of consequences, must logically express and fulfil itself through it, at least from time to time. Not only are some individual and collective laws and rules aimed at beneficial consequences, or the avoidance of harmful ones, such as a regime for keeping fit and legislation to promote public health, but each law or rule has to be executed in specific ways and those in turn in individual actions in order to be appropriate to the specific or individual situation. Thus the obligation to pay a debt can be executed by paying in cash, by cheque or with “plastic,” and in person, via an agent, through the post or on-line. It is no use to leave the payment to the last minute and to intend to do it on-line without having determined whether or not one’s creditor has a website with that facility, or to send a cheque by second-class post for delivery in the morning. Moreover, as we shall see in a moment and again in the next

chapter, acting according to one rule or law can have the consequence that one thereby breaks another, and one law may generally have consequences that breach others. No responsible action according to rules and laws can neglect the possibility of such consequences.

(6) In private and public life there are many decisions which are rightly made in the light of the consequences of the courses of action open or attractive to us, such as moving house when one can afford something bigger or better, or changing one's job when there is no threat of redundancy. On the one hand, we are not be obliged to do so nor obliged not to do so, and, on the other, it would be foolish to do so without consideration of all the favourable and adverse consequences. And there are occasions when we may be subject to a law which obliges us to make certain decisions in the light of the consequences of the courses of actions which are possible there and then, as when trustees, who are obliged by their responsibilities to do their best for the persons or organisations in their charge, have to decide how to invest the funds that they have in trust and thus to balance the chances of higher returns against those of greater risks.

In summary, all responsible action must pay some attention to its likely results, in terms of success, failure, counter-productivity, beneficial and harmful side-effects, and efficient use of time and resources. The road to Hell is not paved with good intentions, for, had the intentions been genuinely good, the likely results would have been estimated and weighed against each other, and thus fewer policies likely to result in more harm than good would have been initiated. Time and time again we see governments totally ignoring the lessons of economics and history, and once more embarking upon costly but futile schemes, while congratulating themselves upon their noble purposes and condemning their critics as mean-spirited and hard-hearted. Likewise scatter-brained, thoughtless, careless and impulsive individuals refuse to think about what they are letting themselves and others in for. And considerations such as these apply to the results both of single acts and of actions according to rules. It is the former that we shall now examine in more detail.

2. The Importance of the Consequences of Individual Actions

The specific difference of act-consequentialism is that it holds that the single action, and each single action, must be judged by an estimation of

its likely consequences in promoting or hindering a given goal or end, or set of goals and ends.² No sane and responsible conduct can neglect such considerations. Nowhere in life can we act solely by laws and rules. Not only are there always exceptions, but the very application of any rule or law requires at least a glance at the likely consequences of the individual action to be taken in order to fulfil and execute the intention to follow the relevant rule or law. For example, a responsible doctor does not automatically prescribe the same medicine or other treatment for every case of a given illness or injury, for he must be open to the possibility that there may be complications such that the usual treatment will be ineffective or do more harm or good. To do his duty by his patients he must be ready to vary his prescription in detail in order to achieve the same goal, that of curing or, at least, alleviating the illness or injury suffered by his patient. As Emerson said, “A petty consistency is the hobgoblin of little minds.” And not only petty consistencies: a general, like Robert Nivelle in 1917, whose strategy and tactics are always to attack, will soon be defeated by those who appreciate the maxim of wiser Frenchmen, that at times it is necessary *reculer pour mieux sauter*. Always to do the same *specific* thing will, sooner or later, entail not doing the same *generic* thing, and always to do the latter requires readiness not to continue to do the former. This not only applies to actions specifically performed in order to achieve something beyond themselves, but also to those whose purpose lies in themselves: I am not being a good and generous neighbour if I give a bottle of whisky to the alcoholic next door who implores me for one. As mentioned above, even in a system of laws and rules, the individual action may have consequences that require that it should not be performed, as when, contrary to Kant’s and Aquinas’ opinions, to give a truthful answer to the question posed by an intending murderer about the whereabouts of his target, would result in aiding and abetting the crime.³ The likely consequences of the single action are always a consideration that may need to be borne in mind when possible.

3. The Limits to Considering the Consequences of Single Actions

But can they be the *only* relevant considerations as maintained by act-consequentialists? Can act-consequentialism be practised or does it condemn itself *in its own terms* by proving futile or counter-productive? As a partial truth it is incontestable, but can it be the whole truth? These

are the central questions to be asked next about it, and any others are irrelevant or concern only minor details.

We can dismiss, on two grounds, the argument that it is impracticable because we cannot foresee all the effects of our actions, because: (a) estimations of the effects of at least some of our actions are required generally by any responsible moral system, as we have seen; and (b) the degrees of remoteness and of difficulty of estimation can be reduced by the rational and morally responsible choice of more determinate, proximate and practicable goals, such as the well-being of oneself, one's dependants and those with whom one comes into contact, instead of indeterminate, distant and impractical goals such as the greatest good of the greatest number, as in fact Mill proposed.⁴ Common sense and not abstract system-building is what we need in life and therefore in moral theory.

Nevertheless, act-consequentialism has fatal flaws: to live by it is logically impossible, and, even when modified, it is practically impossible for most of the time when people have to co-operate with each other.

(1) Like Kant's ethics and situation ethics, act-consequentialism requires each single act to be assessed, and this is logically impossible. For to stop and consider the consequences of an intended or possible action or whether it conforms to the Categorical Imperative, is itself an action. Therefore the agent must stop and consider the consequences of stopping to consider the consequences of the action in question or whether it conforms to the Categorical Imperative. But to do that is again an action whose consequences, etc., have to be considered before its performance, and so on *ad infinitum*. Therefore nothing could be begun, and if the performance of some other act were to be required along with and after that of every act, then, similarly, no act could ever be completed. It is a fallacy to assume that what can be done some of the time can be done all of the time, and so it is logically necessary that only *some* actions can be assessed in terms of their likely consequences, etc.

(2) The previous point is not a merely logical quibble, for it has practical applications, namely, those situations in which we have insufficient time to consider the likely consequences of any action, or whether its maxim could be a universal law, or really is the loving thing to do, etc. So, then, how can we recognise those occasions when we must consider the likely consequences, from those when we need not? In particular, just what do we do in those situations in which there is no time to stop and think and so we must act immediately or not at all? The answer is that we can learn to grasp their salient features in a global apprehension and immediately select what we think will be the best course of action to take. A batsman facing a

fast bowler has less than half a second to select the best stroke to cope with the ball and the field. Through practice he acquires a repertoire of strokes and the skill to adjust them so that he can choose, adjust and execute the appropriate one unreflectively and instantly. In life generally, we learn to recognise recurring patterns of events and what we can and cannot do about them, so that, when there is no time to stop and think, we can often make an immediate judgment about what is likely to be the best thing to do. Practical knowledge and judgment consist of essentially tacit powers to recognise familiar situations, to acquire tacit repertoires of appropriate actions, and quickly and even immediately to select from the latter what is likely to be most appropriate to the former when we meet an example of it. And this practical knowledge therefore also includes the ability to recognise the exceptional and the urgent. We can tacitly apprehend that something is different or that something must be done immediately. For we take the normal for granted because of its familiarity and consequently what is abnormal tends to stand out and strike our attention. We tacitly rely on the exceptional to announce itself, and could not do otherwise. None of this helps the consistent act-consequentialist, for it exhibits our continuing reliance upon regularities and patterns in things and events, so that we can act in rule-guided ways in relation to them. Nevertheless, anyone confronting a novel but urgent situation will have to respond more or less blindly, whatever action he takes, including that of doing nothing and so letting events take their course, and therefore not every action can be judged beforehand by its likely consequences. Conversely, if there is nothing to suggest that the situation is exceptional apart from giving no time for reflection, in default of anything else we can responsibly do only what *in general* is likely to result in taking these *types* of action in situations of this *pattern*. With experience, practice and luck, we may be able to make some tacit adjustments as we proceed, but, in novel and urgent situations, we cannot know beforehand just what is the precise course to take. Hence we shall have to act in accordance with a the usual rule and not according to the prescriptions of act-consequentialism. It is notable that so ardent an advocate of act-consequentialism as Smart concedes this need for rule-guided conduct for much of the time.⁵ True, he takes rules to be rough guides and rules of thumb, but nevertheless they are rules and ones, as he says, normally to be followed when there is time to estimate consequences or it is counter-productive to do so. Yet he regards this as being consistent with his position, rather than its refutation, and much of his argument consists of railing against the “law worship” of rule-utilitarians who do not allow any exceptions. It is clear that what Smart

wants, and all that he can logically argue for, is a readiness to recognise exceptions, but who does not do this in one way or another? Only Kant, perhaps. Even the Pharisees, rigid in their adherence to often petty laws, allowed a shepherd to rescue a sheep on the Sabbath as an exception to the law prohibiting work on that day.⁶

(3) If a consistent act-consequentialism were logically possible, then it would thereby make it an absolutely universal and exceptionless rule or law that we should always act according to estimates of the consequences of the actions open to us. Far from being the antithesis of law-guided action, it would be its apotheosis, once more equal to Kant's system, in which likewise there is only one law, to perform only those actions the maxims of which conform to the Categorical Imperative. Again, Smart recognises this dialectical inversion of total act-consequentialism into the acknowledgment of but one, exceptionless law, and the parallel with Kant.⁷ But because act-consequentialism is impossible, as Smart implicitly concedes, its prime role is to deal, not with the normal, usual and routine, but with the exceptional, and then often only in part, as when we realise that a normal course of action would result in the breach of a more important rule or law.

(4) We require rule-consequentialism not only in urgent situations but in the whole of life. For no estimation of what is likely to happen, and no thinking at all, is possible without the recognition of things and events as being instances of given types and as exhibiting recurring patterns. Only by learning that *A* is usually followed by *B*, can we surmise, and not blindly guess or assume, that by doing *A*_{*i*} we may be able to bring about *B*_{*j*}. This does not mean that we cannot apprehend what is unique or what cannot be assimilated to our existing categories and classifications, and that we cannot, necessarily tacitly, adapt the latter to the former. But a knowledge of causal relations among pure singularities would necessarily be of use only once in each case, and would give no guide to the future. Even when I do *A* for the first time, see that *B* follows, and surmise that *B* will follow upon my next performance of *A*, I act on a general presupposition that like will tend to follow like, without which it would be impossible to gain any grasp of events in the world. Hence only as I act in similar ways in similar situations, shall I acquire an awareness of more or less dependable causal sequences in the light of which I can estimate that if I perform acts of type *A* in situations of type *B*, then events of type *C* will follow. It follows that I can act as the act-consequentialist would have me do—by estimating the individual results of this individual action—only insofar as I have previously acted in a consistent, and therefore rule-guided, manner, according to *types* of situation and actions and *patterns* of results. Far

from rule-consequentialism collapsing into act-consequentialism, as is usually argued by opponents of the latter, act-consequentialism is logically and practically dependent upon the former. As argued above, the importance of taking into account the consequences of individual acts, in a large part, derives from the role played by rules and laws in our lives, and the need properly to adapt to varying situations the ways by which they are fulfilled.

(5) Furthermore, act-consequentialism and other forms of situationism are parasitic upon the observance by others of an ethics of specific roles and their duties. Human co-existence and co-operation can go only a short way and achieve only a little unless the participants can rely on others to act in regular ways and, in particular, to do as they have agreed to do. A daily and weekly routine enables everyone to know in advance what he is expected to do and can rely on others to do, and when and in what ways he can please himself. The more complex life becomes, the more this is necessary, and the more each can rely on others, the more diverse can be the life that all may lead. The division of labour is not just an economic principle in the narrow sense. Indeed, as the derivation of “economy” shows, it is the more or less spontaneous falling into differentiated roles and routines among the members of a household that is the paradigm of co-operation for mutual benefit. But a situationist or act-consequentialist who really acted as he professed to believe, would not be bound by any such considerations. That, by an explicit or tacit agreement, he was always to do one job and the others theirs, would have no binding effect. Each day he would work out anew what, in view of the consequences of the courses of action open to him, would be the best thing for him to do. In his calculations he would assume that the others would follow the agreed routine, and, indeed, without that assumption there would be little that he could calculate: compare driving on the public highway when it is busy with driving a dodgem car at a fun-fair. The consistent situationist or act-consequentialist would therefore trade upon the fact that others will continue to conduct themselves according to routines, roles, rules and laws which he himself does not observe. “Materially,” even if not “formally,” he would be in the same position as the “elect,” “pneumatics,” “superior souls” and “supermen” *vis-à-vis* the damned, “psychics,” inferior beings or “herd.” But to the extent that the act-consequentialist acted in that way, the others would not be able to count upon him, and the whole arrangement for co-operation would at least partially break down, as it does with those who are scatterbrained, temperamental and inconsistent. If most of us, let alone all, were to be situationists or act-consequentialists,

then none of us could be. Exceptions presuppose rules: a “psychic” bid in bridge or a *ruse de guerre* is logically possible only if there are accepted rules for bidding and conducting military operations; and the more such exceptions are practised, the less they are effective. Effective action with and among others is possible only if each knows for the most part what the others are likely to do. Hence we all must usually act in routine and predictable ways, and therefore be guided by rules.

In summary, it is important, responsible and obligatory in a variety of situations, as outlined above, to decide what to do by an estimate of the likely consequences of each course of action, including inaction, open to the agent there and then. But to do so presupposes, in more ways than one, that we primarily conduct our lives according to routines, roles, rules and laws. It is both logically impossible in that way always to decide what to do, and practically impossible to do so for most of the time. Act-consequentialism, if it could be consistently acted upon, would soon prove to be impracticable, and so it refutes itself. Action primarily according to rules and laws is not immediately incoherent and certainly is more practicable in respect of the consequences of so doing. But are rules and laws themselves to be evaluated and adopted solely in respect of the consequences the beneficial consequences of acting according to them, and therefore is rule-consequentialism a sufficient account of them? To those questions we now turn.

Additional Notes

1. The Categorical Imperative and an Infinite Regress

It may be objected that Kant’s requirement that each act be tested against the Categorical Imperative need not always lead to an infinite regress because once the agent has tested a proposed action against the Categorical Imperative, then he can be assured that all actions of that type are ones that either he should perform or ones from which he should abstain. In this way he can build up, or be taught, a body of case law which will enable him to make at least some immediate judgments by recognising straightaway the *type* of situation and the *types* of action possible within it and so to discern what he should and should not do on an increasing number of occasions. That is true, but when the agent has to act blindly

whatever he does, he cannot tell if his actual choice is universalisable or not. Neither can he act upon the universalisable maxim of “Always choose whatever you think to be the best course of action,” for he has, *ex hypothesi*, no such option.

2. Exceptions to Technical and Non-Technical Rules

Act-consequentialists assimilate all rules to those of technique. Therefore they assimilate exceptions to rules to exceptions to rules of technique, that is, to cases where a harmful result is brought about instead of a beneficial one, and following the rule is right or wrong only as the results in each case are good or bad. But consider Aquinas’ and Kant’s example, or, rather, the case which they refused to admit to be an exception. There telling the truth to the intending murderer would result in aiding and abetting him in his intention to murder. The observance of one non-technical rule, always to tell the truth (but there is no such duty, only ones not to lie and not to remain silent when harm would result and when asked a reasonable question, unless one has a prior duty of confidentiality not to divulge the truth to anyone or to the particular questioner), would result in the breach of another and more important non-technical rule, never to murder or abet murder. To avoid the latter, it is necessary not to tell the truth, and, if one suspects that silence will not prevent the intending murderer from finding his victim and if one were to have no chance of overpowering and disarming him, it would be necessary to lie, and to lie convincingly, in order to send him elsewhere. This, to the plain man, is the obvious thing to do when it is necessary to breach one moral law in order to avoid breaching a higher one. Here the rules are right in themselves, and exceptions occur only when more important ones will be breached. Hence it may be possible to formulate further rules, such as choice of the lesser (or least) evil, to cover some such cases.

Notes

1. Mt 25: 14-30, Lk 19: 12-27.
2. A forthright argument for act-consequentialism has been given by J. J. C. Smart in his “An outline of a system of utilitarian ethics.” See also his “Extreme and restricted utilitarianism.” But Smart spends much of his time railing against

rule-consequentialism and fails equally to do justice to it and to the truth in his own act-consequentialism. We shall find similar failings in Joseph Fletcher's *Situation Ethics*—see below, Ch. Five, §2.

Three useful collections of articles defending and criticising both act and rule consequentialism are: Hooker, B., Mason, E., and Miller, D. E., (eds) *Morality, Rules and Consequences*; Pettit, P., (ed) *Consequentialism*; and Scheffler, S., (ed) *Consequentialism and Its Critics*.

3. Kant, "On a supposed right to lie from altruistic motives," ("Ueber ein vermeintes Recht aus Menschenesliebe zu luegen"). All references to Kant's other works will be given as follows:

CPR = *Critique of Pure Reason*, with page numbers for both the first and second editions;

CPPR = *Critique of Pure Practical Reason*, with page numbers for that of the Royal Prussian Academy;

G = *Grundlegung zur Metaphysik der Sitten*, with page numbers for the second edition and, in brackets, for that of the Royal Prussian Academy.

MM = *Metaphysik der Sitten*, with page numbers for the translation by Mary Gregor and, in brackets, for the edition of the Royal Prussian Academy.

Curiously, Aquinas (ST IIA-IIae, 109, 110) agrees with Kant on lying, but otherwise he allows exceptions when higher laws would be broken, e.g. allowing that a man may steal to feed his starving dependants if no other course is open to him (ST IIA-IIae, 66,7), while Hume, a consequentialist of whole bodies of law, is a rigorist on this (*Treatise*, II 2) and presumably on all other such matters.

4. *Utilitarianism*, Ch. 2.
5. "Outline," 42-5, where he also concedes the disutility of calculating the effects of expressions of warm emotions (they would then appear "unnatural" and so have the opposite effect), and quotes G. E. Moore (*Principia Ethica* 162) who said that, according to act-consequentialism, one should never act upon it. But that goes too far the other way.
6. Mt 12:11.
7. "Outline," 11-2.

CHAPTER THREE

CONSEQUENCES OF TYPES OF ACTION

1. The Importance of the Consequences of Types of Action

It is important that there be rules and laws in human life for the consequentialist reasons to be listed below, and that the consequences of following them be assessed and that they be repealed, amended and supplemented accordingly. The following points summarise and expand those made in the previous chapter about the need for rules and laws in respect of estimating the consequences of single actions. These are the valid elements in rule-consequentialism, some of which may perhaps be undervalued by its partisans.

(1) It is possible to estimate the consequences of individual actions only in the context of actions performed according to rules formed by induction from what has been found generally to happen. In particular, a system of rules and laws enables people going about their daily business, and especially the participants in a co-operative enterprise, more economically to co-ordinate their individual actions for their mutual benefit, especially in the form of roles, functions and routines.

(2) Many aspects of individual and social life, neither obligatory nor prohibited in themselves, are responsibly to be decided largely in terms of their effectiveness, uselessness or counter-productivity for promoting the relevant purposes, and this may require that a rule is followed: for example, to keep fit by undertaking some exercise every day, and to conduct a joint enterprise more effectively by allotting specific and recurrent duties and responsibilities to each member of a group. The latter also reduces the demands upon whomsoever is in charge of an organisation, for he does not need to make all the decisions.¹ It follows that the rules, regulations and institutions established for such purposes are not held to be sacrosanct, and it is a serious error to make them sacred cows and shibboleths, uncriticisable and immune to any reform, as if they had been delivered on tablets of stone. For what matters is their results, their comparative benefits and costs, and that is what they are to be judged by.

In some cases the point is simply that there be a rule, as on which side of the road to drive, rather than what it specifically enjoins.

(3) Similarly, to enable people to fulfil more effectively the duties incumbent upon them, such as taking reasonable steps not to harm the persons and property of others, a set of rules is often necessary, again as with traffic regulations to promote safety on the roads.

(4) General rules and laws may need to be executed in specific ways which must be chosen in terms of their effectiveness and efficiency for that function, or be qualified in specific ways. For example, promises can be made orally, by gesture and in writing. For many important and complex matters, the last is rightly preferred and so now it is a rule of custom and usage. Again, because of the importance of keeping promises, we need to bear in mind a supplementary rule not to make them rashly but to consider the consequences of having to keep them, so as not to commit ourselves to what we should have foreseen to be beyond our power or what we would later regret.

(5) As with individual actions, rules and laws are likely to have consequences that need to be taken into account, either as incurring costs and other disadvantages or promoting additional benefits: parents whose habit and implicit rule is to give their children whatever they ask for thereby produce spoilt children. On a larger scale, one great benefit of an education in classical economics is the disposition it inculcates to look for unintended consequences, especially those harmful ones which may outweigh the intended and beneficial results: price-control drives goods off the shelf; minimum wages decrease opportunities for employment; and a generous system of benefits encourages people to qualify for them, or not to disqualify themselves for them as by genuinely seeking employment or honestly admitting that they are again fit for work. Yet again, the road to Hell is not paved by good intentions but by spuriously good ones which have never considered the consequences.

(6) These last examples demonstrate that among the consequences to be considered are the effects of observance of an individual rule upon the observance of other rules, which can often frustrate the purposes to be promoted by them.² Another example is that detailed and constant monitoring of the departmental functions within an organisation, in order to ensure that they are effectively and efficiently performed, can prove counter-productive by diverting effort, time and resources away from those functions to the tasks of form-filling and box-ticking required by the monitoring. This has brought us to the “institutional consequentialism” of Hume and Hayek which focuses upon the importance of consideration of

the likely consequences of a whole body of laws, and hence of particular laws upon each other and especially the whole, and not just of each particular law by itself.

The likely consequences, for good and bad, of the following of a rule or law, or of the whole body of rules and laws, clearly need to be borne in mind, and in some cases, at least, are decisive.

2. The Limits of Evaluating Rules and Laws by their Consequences

We now turn to rule- and institutional-consequentialism and the claim that rules and laws, either singly or together, can and should be judged solely by their consequences, and thus be treated as rules of technique, for doing actions of type *A* in situations of type *B* in order to produce results of type *C*.

(1) A narrowly consequentialist attitude is liable to look for manifest benefits, and, if it sees none, to declare the rule, law, role or institution redundant. Some earnest reformers of the law wish to dispense with all the formalities of wigs and gowns, the use of “m'lud” and “m'learned friend,” and the “dock” in criminal courts. But these formalities, these rules of dress, address and layout, do perform an important function, namely, to make it clear that serious business is in hand; that rights, property, liberty and even life are at stake; that the individual persons of the judge and the barristers are irrelevant; and that they are servants of the law and the court and colleagues in the task of administering justice. Generally rituals and formalities are what Collingwood called “magic,” the practices that sustains the emotions needed for the activities of daily life.³ Customs and usages that have grown up over the years may perhaps not be wholly suitable to current conditions, yet they may have functions and bring benefits of which even the practitioners may not be aware.⁴

(2) Not all rules are ones of technique. Games have two sorts of rule, as has been pointed by Searle.⁵ A rule such as “second player plays low” in whist is a merely technical one, which prescribes what is usually the best thing to do in that position. But there are clear exceptions, such as when one has the ace of the suit, or the king if the ace has already been played, lest it be trumped the next time when that suit is led. But that each player follows suit, if he has a card of that suit, is not a technical rule but a “constitutive” one. It, with the other constitutive rules, *defines* what whist

is, and what the players must do to be playing that game. They are the rules to which the players commit themselves always to follow. Not to observe these rules is not to play the game, and to pretend to do so, when not doing so, is to *cheat* or to commit a foul. It is one thing to make a “psychic” bid in bridge, to deceive the opposition into thinking that one has a strong hand instead of a weak one, in order to inhibit them from confidently bidding their own hands and thus from reaching a sound high-level contract. In doing so, one also deceives one’s partner, possibly with disastrous consequences if he has a good hand. But it is quite another to deceive the opposition, but not one’s partner, by using an undeclared convention or by a system of secret signals. These are breaches of the constitutive rules. Even so, constitutive rules are themselves judged and amended in the light of their consequences for the enjoyment of playing the game. Hence in tournament bridge, uttering bids was replaced by silently pointing to symbols on a board in order to eliminate the private transfer of additional information to one’s partner by tone of voice. So too in other activities: company law, since the introduction of limited liability, has been constantly amended in order the more effectively to balance the interests of directors, shareholders, customers and the general public. The constitutive rules of an activity prescribe what may, must, and must not be done within the conduct of that activity. Within them, the participants may adopt, change and abandon whatever strategies and policies they find to be effective or ineffective. But the constitutive rules are what they are obliged *always* to keep, so long as they are engaged in it and until those rules are supplemented, amended or revoked by mutual agreement or the competent authority.

(3) What holds the participants to the constitutive rules of a practice is something that cannot be included in the rules themselves: that is, that the participants bind themselves to observing the rules of the practice, and thus to keep this promise. A declaration of such a promise, such as the oaths of allegiance for MPs and judges, may be required, but such declarations themselves require in turn an essentially tacit resolution to keep them. The self-imposed obligation *always* to observe the rules and never to breach or flout them, and in turn to keep this implicit or explicit promise, cannot itself be a rule to be judged upon its consequences, for it is a precondition of *any* constitutive rule. Without it, constitutive rules become ones merely of technique, which no one is *obliged* to keep and which consequently cannot be broken. The manager of an investment fund does not break his code of practice and relevant commercial law if he does not track the market. On the contrary, he does his duty to his investors by