

MORALITY OF CONSEQUENCES: A CRITICAL APPRAISAL

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THE WAR in Vietnam has perhaps stimulated more interest in the moral issues connected with warfare than any recent conflict in history. Never before, at least in recent times, has the theory of the just war received so much attention; never before has there been so much concern over reports of atrocities, e.g., direct attacks on noncombatants, especially women and children, although these were not unheard of in recent wars in which we have been engaged. Even if this unprecedented interest and concern is traceable more to the unpopularity of the war than any growing moral sensitivity on the part of the people, it has to be regarded as a benefit. What is clear is that people, if they permit war at all, do make moral distinctions; they allow attacks on combatants and condemn attacks on noncombatants. What is not clear is the reason behind this distinction, and the underlying question here is one that runs through the whole of morality. Why do people judge certain acts morally right and others morally wrong? Is it because some have bad consequences, others good consequences? Or are there other features of these acts that must be considered morally relevant, at least in some moral judgments? One can presume, of course, that wrongful acts will generally be followed by bad consequences, and in many instances one may be able to conclude that an act is wrongful only after becoming aware of its consequences. But the basic question goes deeper: Is an act wrong precisely and solely because it has bad consequences, or are some acts wrong independently of their consequences?

Anyone acquainted with the recent writings of Catholic authors in the field of general ethics and morality will be aware of a movement toward a consequentialist response to this question. Such writers as Knauer, Schüller, Fuchs, and Crotty are among those who can be identified with this movement.¹ From their writings one can detect a certain dissatisfac-

¹We are referring particularly to the following articles: P. Knauer, S.J., "The Hermeneutic Function of the Principle of the Double Effect," *Natural Law Forum* 12 (1967) 132-62; B. Schüller, S.J., "Zur Problematik allgemein verbindlicher ethischer Grundsätze," *Theologie und Philosophie* 45 (1970) 1-23; Joseph Fuchs, S.J., "The Absoluteness of Moral Terms," *Gregorianum* 52 (1971) 415-58; Nicholas Crotty, C.P., "Conscience and Conflict," *THEOLOGICAL STUDIES* 32 (1971) 203-32. This list obviously represents no more than a sampling of the articles written on this subject. A complete list would have to include the articles written by John Giles Milhaven, *THEOLOGICAL STUDIES* 27 (1966) 288-41; 31 (1970) 106-24; 32 (1971) 407-30, as well as many others. The present articles were

tion with the "deontological" response of traditional Catholic morality and an interest in a more "teleological" approach.² According to this latter view, what one ought or ought not to do depends entirely on the consequences of the act. If the consequences on the whole are undesirable, the act ought not to be done; if they are desirable, it ought to, or at least may, be done. Different ethicists use different terminology in enunciating this principle, and they even vary it considerably, but all are alike in putting the whole moral burden on the consequences of an act. Those who are knowledgeable in the history of ethical thought will know that the Catholic authors mentioned above are plugging into a school of thought which has a long history behind it. It will be the purpose of this article to relate these authors to this thinking and try to bring out some of the problems it presents.

The school of thought being referred to is commonly known as utilitarianism. It has its origins in ancient Greek philosophy (Aristippus and Epicurus), but more recently (from the end of the eighteenth century) it has gained great popularity through the writings of such philosophers as Hume, Bentham, J. S. Mill, Sidgwick, and G. E. Moore. Currently, at least in English-speaking countries, it has been the subject of much discussion and controversy.³ Perhaps the best-known appeal to the utilitarian principle in this country, though on a more popular level, has been that of Joseph Fletcher, whose ethic is allegedly an ethic of love, but who uses the utilitarian principle of the greatest good of the greatest number as the criterion of the loving act.⁴

The utilitarian movement itself has undergone considerable evolution over the past two hundred years. It was originally presented as a theory of ethical hedonism. Pleasure and pain were considered the only intrinsic

selected because their content was more relevant to the discussion pursued in this article, a discussion which is limited to certain features of the problem.

²C. D. Broad distinguishes a deontological, teleological, and logical approach to moral obligation. There are some people who judge that all or at least certain types of action ought to be done or avoided regardless of the goodness or badness of the consequences. This is the deontological approach to obligation. Others hold that everyone in his actions ought to aim at certain ends, e.g., his own happiness or the greatest happiness of the greatest number, etc. This is the teleological application of ought. Still others do not accept any end that everyone ought to desire, but maintain that if a man chooses an ultimate end for his acts, he ought to be consistent in choosing acts which lead to it. This is the logical ought. Cf. *Five Types of Ethical Theory* (London, 1930) p. 162. Today any morality based solely on consequences is called teleological. Deontological morality maintains that there are at least some actions which are right or wrong despite consequences.

³Several of the significant articles that have appeared on this subject have been collected in a volume edited by Michael D. Bayles, *Contemporary Utilitarianism* (Garden City, 1968).

⁴Joseph Fletcher, *Situation Ethics* (Philadelphia, 1966) p. 95.

good and evil, and the judgment of the individual act was tied solely to this consequential calculus. If an act gave pleasure, or better, perhaps, a greater balance of pleasure than any alternative act, it was at least morally permissible. Initially, personal pleasure was the norm but this was later extended to include the pleasure of others. Some went on to identify pleasure with happiness and made the criterion "the greatest happiness of the greatest number." Others did not go this far, being satisfied with producing the "good" rather than the greatest good or the greatest happiness. Still others were satisfied with a negative utilitarianism, content with a norm that would tell them what one ought not to do. Finally, there have been utilitarians who admit other intrinsic goods besides pleasure or happiness, e.g., knowledge, virtue, power, etc.⁵

It should be clear from the way it has been described that utilitarianism, at least if considered as a method of determining the morality of the human act (the consequential method), is compatible with different theories of value, i.e., theories about what is intrinsically good or evil. It is true that most utilitarians have been hedonists but, as we have seen, there are utilitarians who accept other intrinsic goods besides pleasure or happiness. Catholic authors moving toward consequentialism have not gone into this question to any great extent, but they would undoubtedly not limit intrinsic good to pleasure or happiness. We are not, however, concerned with deciding what are good or bad consequences. What we are concerned with is the validity of a moral system that makes the judgment of an act depend solely on its consequences.

Traditional morality has not ignored the role effects or consequences play in determining the morality of the individual act. It is difficult to see how any moral system could ignore them, since there is probably no human act that will not sooner or later have some bad effects. Traditional moralists have solved this problem by the well-known principle of the double effect. If the evil effects are not intended and are balanced by good effects, an act which is otherwise good is still permissible according to this principle. But it is perfectly clear that in traditional morality effects or consequences have not played a solitary role in determining the morality of an act. They have shared this role with those other elements of the human act commonly known as object, end, and circumstances. Or perhaps it might be better to say that they

⁵ These are called ideal utilitarians. Hedonists also admit other goods besides pleasure. Differences of opinion pertain to whether these goods are intrinsically or extrinsically good. The ideal utilitarians hold that they are intrinsically good. Concern with the theory of value connected with utilitarianism has declined considerably in recent times, probably because all utilitarians tend to agree in practice about what is good. The dispute about intrinsic and extrinsic is perhaps more philosophical than practical.

have shared this role with the object of the act, since it is possible to include effects or consequences under the end (intended effect) and circumstances (other effects).⁶

Knauer actually attempts to explain his whole position in terms of the principle of the double effect and makes this his sole principle in determining the morality of the individual act. To do this, he must extend this principle far beyond its traditional usage; he must apply it even to those acts in which the good is mediated by evil. The only requirement for Knauer is that the good produced be commensurate with the evil involved.⁷ As long as this commensurate good is present, it makes no difference that it is the product of evil. The mediating evil will be only *indirectly* intended, and the act will be morally good. The evil will be *directly* intended (and the act morally bad) only if the good effect is not commensurate with the evil involved. Knauer thinks that he finds support for this position in St. Thomas' treatment of self-defense.⁸

⁶ While unintended effects may be classified as circumstances, it should be noted that there are other morally relevant circumstances besides effects in traditional morality.

⁷ The commensurate good or reason (good consequences or effects) of which Knauer speaks does not fall into the category of "end" in the traditional sense of this term, i.e., *finis operantis extrinsecus*. It is Knauer's position that the commensurate reason is included in the *finis operis* (*finis operantis intrinsecus*), i.e., the moral object of the act. Apart from this reason the act has only a physical object, or what St. Thomas calls a *species naturae* (*Summa theologiae* 1-2, q. 1, a. 3, ad 3). So, e.g., the act of killing in itself has only a *species naturae*; it takes on a *species moris* when one considers the reason behind it. Killing in self-defense is a morally good act; killing out of anger or hatred is a bad act. According to Knauer, one cannot speak of a moral object (*finis operis*) apart from the reason behind the act. One can speak only of a physical object, and if evil, physical evil. This presents no problem in regard to killing, which can be morally good or morally bad. But it does raise questions in regard to actions which have been traditionally regarded as wrong, e.g., adultery, direct killing of an innocent person, etc., independently of whatever reasons the agent might have had. By including the commensurate reason in the *finis operis* or moral object of the act, Knauer attempts to avoid the charge that he is violating the axiom that the end does not justify the means. This has usually been interpreted to mean that a good end or intention (*finis operantis extrinsecus*) will not justify an act which is morally bad *ex objecto*. But if the end is really part of the object and gives it a moral species, there is no question of a morally bad object, i.e., morally bad means. So there is no violation of the axiom.

⁸ *Summa theologiae* 2-2, q. 64, a. 7. The meaning of this article has been the source of much controversy over the centuries. For a brief history of the controversy, cf. Joseph T. Mangan, S.J., "An Historical Analysis of the Principle of Double Effect," *THEOLOGICAL STUDIES* 10 (1949) 41-61. Knauer argues that St. Thomas' total concern in this treatment is that there should be proportion in the defense. Since self-defense is a proportionate reason, taking the life of another is morally permissible. I am not sure this accurately represents the position St. Thomas takes in this article. Before taking up the problem of proportion at all, he makes a much more basic moral statement, namely, that it is natural to defend one's life. This provides for Thomas the basic justification for the use of violence.

Whether Knauer can fit his approach into traditional scholastic patterns is highly questionable, but there is no doubt that he is presenting a morality of consequences. He puts the whole moral burden on the commensurate reason. It is the commensurate value of the goal that justifies the evil caused. His main concern is with an evil means, but he would certainly include any evil associated with the act, whether means or independent effect, in his moral assessment. What is clear is that a commensurate good will justify any evil connected with the act. If this good is lacking, the act will be morally bad, since the evil will be directly intended.

In presenting their own respective positions, Fuchs demands a *proportionate* reason and Schüller a *greater good* to justify any evil involved in a human act. Crotty simply states that the evil connected with human acts can be justified if these acts are *promotive of human welfare*.⁹ It would be interesting to compare these norms with Knauer's, as well as with the great variety of norms used by different utilitarians, but it would distract us too much from the purpose of this article, which is to consider these positions primarily insofar as they put the moral emphasis totally on consequences.¹⁰ Although Knauer, and to a lesser

The question of proportion seems secondary; even if one is justified in using violence, one may do wrong by using more than is necessary. Also, when he takes up the question of proportion, Thomas is not speaking of a proportionate end justifying a violent means, but rather of a proportionate means, i.e., a means that does not go beyond the requirements of the goal. It is quite possible to speak of self-defense as a proportionate reason for violence against an aggressor, and interpret Thomas' basic statement on the morality of self-defense in this way. But even if justifiable, it would not do full justice to his position. A faithful rendering of this position would state that, according to Thomas, self-defense is a proportionate reason for *proportionate* violence against the aggressor. Where Knauer clearly goes beyond Thomas is in generalizing this rule.

⁹ When Crotty says that these acts can be justified, he does not mean that they are good. He follows the distinction some Protestant ethicists use between right and good. An action which involves evil, but which is promotive of human welfare, may be right but it is not good. Knauer, Schüller, and Fuchs rely more on the distinction between moral evil and premoral (ontic, physical) evil. An act may be morally good according to this distinction even though it involves premoral evil.

¹⁰ Our failure to deal with other problems connected with a consequential morality should not be interpreted as a lack of appreciation of these problems. It would be interesting, e.g., to discuss whether the principle of consequences is really a principle of morality or simply a principle of responsibility. If one is thinking in terms of actual, or perhaps even probable, consequences, how can he expect to make an objective moral assessment of an act unless he limits himself to more or less immediate consequences? To illustrate this difficulty, one author presents the fictitious case of the doctor who was called in to save the life of the infant Adolf Hitler. Is an objective estimate of his obligation possible on the basis of consequences? He can certainly make a judgment on the basis of *foreseen* consequences, and this will solve the problem of responsibility, but it may be far from reflecting the objective morality of the act.

extent Fuchs, have gone to some pains to fit their approach into traditional scholastic categories, there can hardly be any question that all these authors are tending toward consequentialism.¹¹

Once a moralist or ethicist has worked out a basic moral principle or norm, the next question that arises concerns the application of this norm. Thus, let us suppose that one proposes or accepts the principle of commensurate reason, or proportionate reason, or one of the other consequentialist norms. How does one use this norm in practice? Does it become an immediate measure of individual acts, or is it used rather in the formulation of rules?

In raising this question, we are moving into an area of great controversy among contemporary utilitarians and their adversaries. There is some reason to believe that J. S. Mill himself believed the rules themselves to be the expression of the greatest good of the greatest number. Observing the rules, then, would produce the best consequences. As he says, men by this time "have acquired positive beliefs as to the effects of some actions on their happiness; and these beliefs which have come down are the rules of morality for the multitude, and for the philosopher until he succeeds in finding better."¹² It appears from this that Mill would expect the individual to rely on the rules rather than on a personal application of the utilitarian norm to the individual act. In fact, Mill questions the "strange notion that the acknowledgement of a first principle is inconsistent with secondary ones."¹³ There is some justification, then, for thinking that according to Mill the basic utilitarian calculus is reflected in our moral rules and there is no need for the individual to apply it directly to individual acts.

Whatever may have been Mill's understanding of utilitarianism, in the hands of some of his followers it became act-oriented.¹⁴ According to act-utilitarianism (also called extreme utilitarianism), the utilitarian principle is applied immediately to the individual act. If the good effects of the act are greater on the whole than the bad effects (or however the

¹¹ Fuchs does not seem as much concerned with making the proportionate reason part of the *finis operis* or the moral object of the act. He takes the stand that the moral judgment must be made of the whole act: object, end, and circumstances. It cannot be made of the object independently of the other elements. All these elements are pre-moral in themselves, i.e., considered apart from the other elements of the act, so that any evil in the object will be pre-moral. There is no question, therefore, of the object being a *morally* bad means, and hence no violation of the axiom that the end does not justify the means. This principle would be violated only if a morally bad act (the judgment being made on the basis of all three elements) was justified by appealing to another intended act (judged morally good on the same basis). It is a little difficult to see how this would work out in practice.

¹² J. S. Mill, *Utilitarianism* (New York, 1910) p. 22. ¹³ *Ibid.*

¹⁴ Responsibility for this orientation is frequently attributed to G. E. Moore, *Ethics* (London, 1912) pp. 7-45.

principle be stated by the individual ethician), the act may be performed, even if it goes contrary to a rule. Rules are no more than summaries of past experiences; they tell us nothing about the present act. Judgment of the present act calls for an immediate application of the principle of consequences.

It should be said immediately in defense of act- or extreme utilitarians that in spite of their theoretical position on rules they admit their practical need and usefulness. They admit that most people have not the time, the ability, the training, or the objectivity to work out a teleological calculus of their own acts. These people will achieve a utilitarian goal more often by following the rule than by going against it on the basis of their own calculus. Some utilitarians will go so far as to say that rarely, if ever, will the conditions that would warrant going against a rule be verified in practice.

Even though it may be toned down in practice, the theory of act-utilitarianism runs into serious difficulty in dealing with some actions that have been traditionally recognized as morally wrong. One author presents the case of a sheriff in a southern town faced with the alternatives in a rape case of framing a Negro suspect (whom he knows to be innocent) or carrying on a prolonged search for the real culprit.¹⁵ The immediate indictment and conviction of the suspect would save many lives, as well as prevent other bad consequences, so that it would clearly be the best thing to do from the viewpoint of consequences. The act-utilitarian would seem committed in theory to this alternative, in spite of the fact that it goes against traditional norms of justice.

Another author, referring to the problems raised by act-utilitarianism, made the following observation:

It implies that if you have employed a boy to mow your lawn and he has finished the job, you should pay him what you promised only if you cannot find a better use for your money . . . that when you bring home your check you should use it to support your family and yourself only if it cannot be used more efficiently to supply the needs of others . . . that if your father is ill and has no prospect of good in his life, and maintaining him is a drain on the energy and enjoyment of others, then, if you can end his life without provoking any public scandal or bad example . . . it is your positive duty to take matters into your own hand. . . .¹⁶

¹⁵ This case was first introduced by H. J. McCloskey in an article in the *Philosophical Review* 66 (1957) 466-85. The whole problem of the utilitarian approach to punishment was treated subsequently by the same author and responded to by T. L. S. Sprigge in two articles published in *Inquiry* 8 (1965) 249-63, 264-91. Alan Donegan discusses the same problem briefly under the formality of what he calls "Caiaphas's Rule" (Jn 18:14) in a paper read at the University of Pittsburgh. All these articles have been reprinted in *Contemporary Utilitarianism*.

¹⁶ Richard Brandt, "Toward a Credible Form of Utilitarianism," *Contemporary Utilitarianism* (Garden City, 1968) pp. 146-48.

It is because of such problems that many have abandoned act- or extreme utilitarianism for what is called rule-utilitarianism or restricted utilitarianism. In rule- or restricted utilitarianism the teleological or consequential norm is the basis for the rule itself. The assumption is that the rule is calculated to produce the best consequences. Given this assumption, the norm for the individual act becomes the rule rather than a consequential calculus of the act itself. So, even if the consequences of following the rule in a particular act may be bad, one is still obliged to do so because observing the rule leads to the best consequences on the whole.

Rule-utilitarianism obviously attaches an importance to rules and tries to give them a theoretical role they do not have in extreme utilitarianism. The rule is not just a summary of the past but an expression of the utilitarian principle.¹⁷ Observance of the rule is called for even where nonobservance might lead to better consequences. By calling for observance in these circumstances, rule-utilitarianism seems to evade the charge made above against act-utilitarianism. It would not permit the punishment of an innocent man, the violation of a promise or other covenant even in a case where this might lead to good results. In this respect rule-utilitarianism seems more in accord with ordinary moral convictions.

But many doubt that there is any real difference between act- and rule-utilitarianism and consequently do not feel that the latter escapes the charges made against the former. They argue that if there really is a situation in which the consequences of violating a rule would be better than those of observing it, one would have to ask whether the rule itself is the best utilitarian rule. The best utilitarian rule, which would maximize good consequences, would be one which allowed for this exception. So the rule-utilitarian, unless he accepts his rules uncritically, cannot avoid applying his consequential calculus to the individual act, and if he does apply it, it is difficult to see how he can avoid making the same exceptions the act-utilitarian makes.

There is undoubtedly good logic in this position and it certainly calls for a response, but not all rule-utilitarians would respond to it in the same way. Some would want to cling to a pure rule-utilitarianism and allow for no exceptions.¹⁸ Others would allow for exceptions, but not

¹⁷ No rule-utilitarian has ever worked out a set of rules on a utilitarian calculus. Like everyone else, the rule-utilitarian starts with the *de facto* rules. The immediate issue is whether these are the best rules from a utilitarian viewpoint... and therefore closed to exceptions. I think the answer to this would have to be in the negative.

¹⁸ McCloskey distinguishes four different kinds of restricted utilitarianism. According to the *pure* theory, the principle of utility is appealed to only when considering the rules in practice, and never when considering the rightness or wrongness of actions. McCloskey says that restricted utilitarians write as though they wish to defend this view, but none of them

based on the appraisal of a single act; they would demand that the appraisal be made of the practice. Their concern is centered around the question: What would happen if everybody did that? Behind this concern is the assumption that a single act may not have bad consequences, whereas a practice might. They would allow an exception only when the practice would not have bad consequences. They frequently illustrate their position with a rather trivial example. If one person walks on the grass, no harm is done; but if everyone walks on the grass, the lawn will be ruined. The same would be true of voting or paying taxes, or even promising or lying. This concern for the consequences of a practice, which is certainly a healthy one, would seem, at least superficially, to distinguish the rule-utilitarian from the act-utilitarian. The latter often claims that the conduct of others is irrelevant to the moral judgment of his act unless there is some causal connection, e.g., through bad example. In this case it would have to be considered one of the consequences of his act and included in the moral assessment. But if others were not influenced by his conduct (because the act was done secretly), he would not have to be concerned, and if what he wanted to do would not have bad consequences otherwise, he could go ahead and do it.

Although one can hardly criticize the rule-utilitarian for his concern over the consequences of a practice, the logic that would rule out every individual exception on this basis has to be questioned. If bad consequences will not follow when one or a few persons perform a certain act, but only when everyone does, the only logical conclusion one can come to (according to a morality of consequences) is that not everyone should do it. One can hardly conclude that no one should do it and set up an exceptionless moral rule.¹⁹ But there is undoubtedly some ambiguity here. One or two acts may not have bad consequences outside of a practice, but if they are part of a practice they may contribute to the damage resulting from the practice. As part of the practice, then, they will have bad consequences. It is possible, of course, that individual acts, e.g., walking on a path after the grass has already been beaten down,

hold to it in an undeviating way. According to the *mixed* variety of rule-utilitarianism, the principle of utility justifies the rules in practice, but is also used as a secondary rule which competes with other rules on the level of the individual case. *Unconditional* rule-utilitarianism considers the rules as allowing for no exceptions. *Conditional* rule-utilitarianism allows for exceptional cases, e.g., stealing by a starving man from a wealthy person. The mixed and conditional varieties are obviously meant to meet difficulties which the pure and unconditional variety cannot handle.

¹⁹ Marcus Singer concludes that *no one* should violate the rule in this case by introducing the principle of generalization (cf. below). Whether he does this validly may be questioned, but he admits that he cannot come to this conclusion on the basis of consequences alone. Cf. *Generalization in Ethics* (New York, 1961) pp. 90 ff.

even if they are part of a practice, may not contribute to the damage. When relating individual acts to a damaging practice, the rule-utilitarian must limit himself to those acts which are part of the practice and contribute to the damage. A rule that will bear utilitarian investigation can cover only those acts which are univocal in regard to bad consequences. Thus, it can forbid walking on a lawn (still damageable) in a place where others either have walked or are likely to do so with a certain frequency. It could not forbid walking on the grass in an isolated spot where others would not likely follow or walking on a path where the lawn is already ruined. But if the rule-utilitarian limits himself, as he should, to acts which are univocal in regard to bad consequences, he will not, as David Lyons points out, condemn any act which should not be condemned by the act-utilitarian as well.²⁰

Lyons also points out that the act-utilitarian cannot consider the conduct of others irrelevant to the moral judgment of his own act apart from scandal on his part. He shows clearly that the act-utilitarian cannot, at least in many cases, define his own act in terms of consequences unless he knows how others are going to act. For instance, the man who fails to vote cannot know whether his act will have bad consequences unless he knows what others are doing about voting. If he fails to vote in a situation in which his vote is necessary for victory, his failure will have bad consequences; otherwise it will not, or at least not such bad consequences. A knowledge of the conduct of others is obviously necessary for a consequential judgment of his own act. This may not always, or even often, be easy to come by, but it is still necessary. So an act-utilitarian may be just as dependent on a consideration of the conduct of others as a rule-utilitarian.

There is another factor that tends to bring act-utilitarianism closer to rule-utilitarianism. We have seen that the conduct of others is morally relevant to a consequential description of one's act. It is also true that the judgment which one makes of his act is morally relevant to the conduct of others. We are dealing here with what is called the principle of generalization.²¹ One who judges that an act is right for him, whether on consequential or other grounds, implicitly judges that it is right for anyone in the same situation. The same act cannot be right for him and wrong for everybody else, or even anybody else. Thus, for instance, if one judges that it is all right for him to have sexual relations with his fiancée with whom he is deeply in love and planning marriage, he must allow this

²⁰ *Forms and Limits of Utilitarianism* (Oxford, 1965) chaps. 2-4. Lyons admits a type of rule-utilitarianism, which he calls ideal rule-utilitarianism, which cannot be reduced to act-utilitarianism, but he does not find this very satisfactory (*ibid.*, pp. 136 ff.).

²¹ Singer, *op. cit.*, pp. 13-33.

for everyone in the same situation, if he is to be consistent.²² So, when a person makes a moral judgment in a particular situation, he is making a judgment that must be valid not only for his own conduct but also for everyone else in that situation. What he is really doing is making a rule, or if a rule is already in existence (as in the present case) he is qualifying it. He is not making an isolated judgment of his own act; indeed he cannot.

It may be, of course, that the situation one is judging is unique in the sense that it is not likely to be repeated in all its details. It would be meaningless in such a case to speak in terms of an explicit rule or, if it were an exception, an explicit modification of a rule to include it. James Gustafson in an article on abortion presents a case that would fall into this category.²³ After enumerating several tragic circumstances connected with the case, he concludes that an abortion would be justifiable because of the accumulation of really serious problems connected with the continuation of the pregnancy.²⁴ The likelihood that such a case would be repeated in all its relevant details is perhaps very slight. But the judgment is still generalizable. Also, even though not repeatable *in specie infima*, the case may fall under a more general category that could be verified in practice more frequently. In other words, if all the circumstances in the case add up to very serious harm or need, there may

²²The rules of sexual morality have been traditionally considered closed. Unfortunately, utilitarians and those promoting a morality of consequences have been preoccupied with the problems of lying, promising, and punishment of the innocent, so that little thought has been given to these rules. But one author, Knauer, when asked explicitly about the application of his principle of commensurate reason to the sexual area, did respond in a final note to his article. He was questioned about the case of the woman who commits adultery to rescue her children from a concentration camp, or the woman for whom prostitution is the only way to keep from starving. Knauer could not see his way clear to allowing either of these two cases, since he looked upon both as yielding to a kind of extortion. Making a living or saving one's children from a concentration camp would not be a commensurate reason to justify such yielding. Life or freedom have no value if they result from yielding to extortion. Cf. *art. cit.*, p. 162, note. This response might surprise those who would expect a morality of consequences to open up many doors. But it must be admitted that other consequentialists might make a different assessment.

²³"A Protestant Ethical Approach," in *The Morality of Abortion*, ed. John T. Noonan (Cambridge, 1970) pp. 107 ff.

²⁴The moral judgment must rest on morally relevant details. Many of the details that would make an act unique may not be morally relevant. Jonathan Harrison gives the example of a "red-haired man with one eye, a wart on his right cheek, and a mermaid tattooed on his left forearm (telling) a lie on a Tuesday" (*Contemporary Utilitarianism*, p. 36). Obviously these details, although they make for the uniqueness of the act, are not morally relevant. So the moral act may not be as unique as a full description of the act might lead one to believe. But it may not always be easy to determine what details are morally relevant.

be other cases in which the circumstances, though quite different, would add up to the same degree of harm or need. To be consistent, one who would allow an abortion in the present case would have to allow it in all other cases that fall into the same general category. Thus, even though a case might not be repeatable *in specie infima*, it might well be repeatable on a more generic level. It would involve, then, or at least presume, a modification of the rule on this level. So it can be said that anyone making an exception for himself is either qualifying the rule or at least presuming a qualification of the rule at some level. This is obviously true of the rule-utilitarian. It must also be true of the act-utilitarian, or anyone else for that matter, however unique his exception may be.

The only difference between the act-utilitarian and the rule-utilitarian in this respect is that the latter would be more inclined to make specific qualifications wherever possible (e.g., taking what belongs to another is wrong except when one is starving), since this would have a less weakening effect on the rule. Act-utilitarians, who are not as interested in secondary rules, would tend to settle for a more generic qualification, e.g., the principle of consequences itself.²⁵ But this difference is on the practical level and would not in any way put a theoretical gap between them.

To sum it all up, then, rule-utilitarianism is not as independent of a consideration of the individual act as it wants to claim, nor is act-utilitarianism as independent of the conduct of others or of rules. Whether he admits it or not, the act-utilitarian is involved in and involves the conduct of others in his moral judgments of individual acts. His judgments also imply the generalizations from which rules are made. So one is hard put to find any discernible theoretical difference between act-utilitarianism and rule-utilitarianism. It can hardly be alleged, then, that rule-utilitarianism can effectively evade the charges made against act-utilitarianism. If the act-utilitarian must allow (on the basis of good consequences) acts which go against common convictions, so must the rule-utilitarian. Nor can the rule-utilitarian condemn any act that would not also be condemned by the act-utilitarian.

The Catholic authors who have been moving toward consequentialism have not discussed the role of norms as thoroughly as recent utilitarians; therefore it is not easy to identify them as act-utilitarians or rule-utilitarians. Crotty seems to come closer to act-utilitarianism than the

²⁵ Exception-making criteria make for what Lyons calls concise rules. Rules listing specific exceptions (exempting conditions) he calls expanded rules (*op. cit.*, pp. 125 ff.). It would be clearly impossible to include a taxative list of exceptions in some rules, e.g., the rule of secrecy. The best one could do would be to include the exception-making criteria.

others, since he maintains that norms are just rules of thumb which tell us more about the past than about the present; they are no more than summaries of the past. The morality of the individual act must be worked out on the basis of its consequences. The other authors seem more rule-oriented, though by no means toward a pure rule-utilitarianism; rules are open to exception on the basis of the principle of consequences.

Although Knauer does not treat other norms very explicitly, it is quite clear that his principle of commensurate or proportionate reason is central to his moral system and that other norms are subject to it. Schüller, while insisting that the admission of a first principle (the greater good must be preferred) does not automatically do away with secondary or middle-ground rules, insists as well that these rules are subordinate to this principle. The only unconditional or exceptionless norm will concern a good which is superior to any conceivable good. The implication seems to be that few, if any, secondary rules would involve such a good. They should give way, then, when a higher good is the alternative. He does not come to any definite conclusions regarding such exceptions, but suggests that our rules pertaining to taking one's own life or the life of an innocent person may not be completely closed to exceptions for this reason. He intimates the same possibility regarding the rule of indissolubility where a sacramental or consummated marriage is concerned.

In his analysis Fuchs, like Schüller, though rule-oriented, takes the position that there are probably no exceptionless norms of human behavior. This stand derives from his view, in which he follows Knauer very closely, that an act cannot be judged morally apart from the circumstances in which it is performed and the intention of the agent. Since it would be impossible to foresee all possible combinations of acts (objects), circumstances, and intentions, it would be equally impossible to set down an absolute or exceptionless norm. Fuchs would therefore have to attach a rider to every rule, e.g., killing is wrong except when there is a proportionate reason.

In attaching to rules an escape clause of this kind, Fuchs does not want to weaken them or detract from their real worth. They do point to values or nonvalues in the premoral sense. If they are nonvalues, e.g., taking human life, they may never be the object of a human intention and may be actuated only for a proportionate reason, i.e., some higher value. Also, rules can be considered universal in the sense that we cannot think of any exception to them. Whatever one may say on the level of theory, e.g., that theoretically such a norm is open to exceptions, on the practical level one cannot conceive of any proportionate reason that would justify violating them. Finally, some norms may be stated as universals in the

sense that they are valid for ordinary cases (*ut in pluribus*). They are meant to be valid for the cases that ordinarily occur, and hence for ordinary living.

The notion of exception is in no sense foreign to traditional morality. In some instances moral rules themselves have been qualified to exclude certain cases. The prohibition of killing, for instance, has been qualified to the point where it is limited to the direct killing of an innocent person. Specifically excluded is killing in legitimate self-defense, killing of combatants in a just war, and capital punishment. Excluded also is indirect killing of an innocent person where there is a proportionate reason. Similarly, in regard to taking what belongs to another, the act of stealing is defined in such a way that it excludes certain acts of taking something from another, e.g., taking what is necessary to relieve extreme need. Finally, it is generally recognized that the law of charity does not bind where it would cause serious harm to observe it. And these are just a few of the exceptions allowed in traditional morality.

The present issue is whether these rules must remain open to further exceptions, and on a consequential basis. Also, what of those norms which have not been qualified in any way up to the present, e.g., the prohibition of adultery, fornication, etc.? The Catholic moralists we have been dealing with have all committed themselves at least to the theory that all rules are subject in one way or other to the principle of consequences. In other words, whatever their status, rules will yield to consequences. As mentioned, Fuchs takes a somewhat guarded position on the practical level. He admits that some norms may be closed to exception on the practical level, in the sense that we cannot conceive of any good that would justify the violation of these norms. So, although his theoretical position is more liberal than that of traditional morality, it is not clear how far away from it he would be in practice.

I suppose it would be very difficult to prove that all our current norms are closed to all future refinement, even if one does not take the stance that morality depends solely on consequences. But whatever the future may hold, many would agree that some of our norms are presently closed to exceptions.²⁶ Fuchs takes this position, or at least a similar position, even in respect to a morality based solely on consequences, when he says that some norms, though theoretically open, are practically closed to

²⁶ Ramsey suggests that the rule against rape, e.g., might be one in which no morally significant change might be expected; cf. "The Case of the Curious Exception," in *Norm and Context in Christian Ethics*, ed. Gene H. Outka and Paul Ramsey (New York, 1968) pp. 127 ff. For a lengthy but interesting critique of Ramsey's position on exceptionless norms, cf. Donald Evans, "Paul Ramsey on Exceptionless Moral Norms," *American Journal of Jurisprudence* 16 (1971) 184-214.

exceptions. But it is just as possible that rules will be tightened up as it is that some relaxation might be introduced. This has happened in the past in regard to slavery. It may also be happening in the present in respect to capital punishment, which is being questioned in many places today. In the future, killing as punishment may be considered immoral. Even today capital punishment is the last example of physical punishment remaining in our penal codes. This gives reason to expect that, along with flogging and other forms of physical punishment, it will give way in a society moving progressively away from this type of punishment. The future may also find it more and more difficult to justify killing in war, since it may become more and more difficult to fulfil the conditions of the just war.

The basic problem with a morality based solely on consequences is not precisely that it remains open to exceptions but rather that it seems to call for, or at least allow, exceptions which go against commonly held convictions. When faced with acts which people generally consider wrong, but which according to all available evidence have overriding good effects, utilitarians will frequently appeal to hidden effects to condemn them. We have seen that the rule-utilitarians attempted to do this by concentrating on the effects of a practice rather than the effects of the individual act. Other utilitarians tend to appeal to long-range effects, "secondary effects" (bad example, weakening of character, etc.), and insist that the consequential calculus be thorough and include all such effects.

There is no doubt that these are important cautions, but, as Marcus Singer points out, this line of reasoning begs the question.²⁷ It is not as it ought to be: "This act is not useful, therefore it is wrong." It is rather: "This act is wrong, therefore it cannot be useful." In other words, the principle of consequences is not being used as a criterion. The conviction that the act is wrong derives from some other criterion and the judgment is made independently of consequences. Moreover, it would be very difficult to prove that every act which went against common convictions would have decisive hidden effects, or that it would be impossible for an act which was commonly considered wrong to be without overriding bad effects.

One of the criteria on which these common convictions are based is that of justice, and it is in this area particularly (but not solely) that many ethicists find a morality of consequences inadequate. David Lyons argues very convincingly that the principle of consequences simply cannot handle problems of justice and fairness, and if it is followed, it will often conflict with justice. To illustrate his position, he uses the

²⁷ *Op. cit.*, pp. 209 ff.

example of a car that has stalled on a hill.²⁸ The car has six occupants, but five can push it up the hill without any great strain. Since this is the case, maximal utility (the best consequences) will be achieved if only five push and one rests.²⁹ Let us suppose that X wants to rest. It may well be that the others would like to rest too. Why X? If he just opts out, his action would undoubtedly affect others and lead to bad consequences, e.g., hard feelings, quarreling, etc. But if he just feigns pushing, he can exploit the maximizing condition and avoid these bad consequences. Thus the best consequences will be produced.

There is an obvious conflict here between justice or fairness and utility. X is being clearly unfair, even though the best consequences are being produced. The only reason his action does not have bad consequences is that the others are pushing their weight. The benefit he receives is parasitic on the efforts of others. But if he pushes to satisfy the demands of justice and a just distribution, less value will be produced than if such a distribution were not called for. The principle of consequences here would clearly call for unfair conduct and thus conflict with justice.

An ideal utilitarian might argue that unfair conduct leads to a loss of intrinsic good because a just or fair distribution is itself an intrinsic good. According to an ideal utilitarian, an act would have to be considered from this angle before an assessment of consequences could be made. Thus, in the case above, if X does his share of pushing, he loses the good of rest but contributes to the good of a just distribution. But if he does not push, he gains the good of rest and does not contribute to a just distribution. Which alternative would maximize the good produced? David Lyons points out that in the ideal utilitarian approach fairness would not always win out, since the contribution to fairness may not always be that important. Yet the traditional argument for fairness would call for it universally, since no one can be justified in exploiting or trying to exploit others.³⁰

²⁸ *Op. cit.*, chap. 5.

²⁹ We are dealing here with what David Lyons calls "maximizing conditions." He also speaks of "minimizing conditions." These will prevail in a situation in which less than the required number are observing a rule which has certain threshold effects, so that the good will not be produced anyhow. In the example given above, if three of the occupants refuse to push the car, the good consequences will not be achieved, since it will take five to get the car up the hill. There is no obligation on X to push in this situation. Similarly with lying, killing, etc.: if everyone is lying, killing, etc., the good consequences resulting from the practice of telling the truth, respecting the lives of others, etc., will not be achieved. Some refer to these as "state of nature" situations; cf. *op. cit.*, pp. 128 ff.

³⁰ The exaggerated notion of justice, epitomized in the saying *fiat justitia, ruat caelum*, is not being recommended here. There may be times when justice should give way to consequences or other considerations (*Summa theologiae*, 1-2, q. 94, a. 4).

Lyons points out another problem with the ideal utilitarian position. Suppose that one of those who helped push the car up the hill decided not to ride any farther with the group. On the ideal utilitarian view, he would be producing intrinsic evil (unfair distribution), since he participated in the effort without sharing in the benefits. This is indeed a trivial example, but the problem becomes more real in the case of the soldier on the winning side who is killed or maimed in the war as well as the soldier on the losing side who survives intact. We do not ordinarily accuse such people of causing intrinsic evil.

In his book on ethics, William Frankena also argues against the adequacy of utilitarianism as a moral system.³¹ After admitting that his arguments against act-utilitarianism would seem to point in the direction of rule-utilitarianism, he goes on to say that there is a decisive argument even against rule-utilitarianism that would require one to adopt some kind of mixed deontological theory. He presents the argument this way. Suppose there are two rules, only one of which can be adopted. They produce the same amount of good but distribute it in different ways. The rule-utilitarian could not choose between them; each one would serve equally well. But one rule gives the benefits to a relatively small group without any merit on their part; the other distributes the benefits over a larger part of the population. On the basis of justice, the second rule would be morally preferable. The point he is making is that a rule may maximize the amount of good that can be achieved and yet be unjust in the way it distributes it. He admits that Mill's norm, the greatest good of the greatest number, avoids this charge, but only because it includes the principle of justice as well as the principle of utility. The principle of utility itself would not provide for justice.

Frankena argues that even the position of the ideal utilitarian, who recognizes a fair distribution of goods as an intrinsic good, is not adequate. First, Frankena is not convinced that a pattern of distribution is a good thing in itself. But even if one does accept it as an intrinsic good, he thus "admits that the criterion for determining whether a distribution is just is not the principle of utility, but something else, for example, equality. He may still hold that utility is the criterion of rightness, but he cannot hold that it is the criterion of justice."³²

These two ethicists show that the demands of justice differ from the demands of utility and can even come into conflict at times. A utilitarian might want to continue a defense of his system by maintaining that these differences, and subsequent conflicts, are only apparent, and that the principle of justice is merely a refinement of the principle of conse-

³¹ *Ethics* (Englewood Cliffs, 1963) pp. 32 ff. ³² *Ibid.*, p. 35.

quences. He might argue that the principle of justice was arrived at through an empirical study of the consequences of just, and unjust, acts. When one appeals to the principle of justice, therefore, he is really and ultimately appealing to the principle of consequences, since the former is merely a derivative of the latter. But this forces the utilitarian into the position in a conflict situation where he either has to deny that there is injustice or else appeal to hidden bad effects. He will more often attempt the latter (since he is facing common convictions), although this is often not very convincing. But in choosing this course, he is admitting that the principle of justice is a more reliable guide than the principle of consequences. He is also admitting that somewhere along the line other considerations, e.g., equality, have replaced consequences in practical importance in some areas of morality. If he still wants to maintain that consequences are the only consideration, he can do this only on a highly theoretical plane and against very persuasive indications.

It may be best to organize the conclusion of this discussion around the question originally presented. Is an act wrong because it has bad consequences, or does it have bad consequences because it is wrong (for other reasons)? That teleological or consequential considerations are decisive in some moral judgments has never been in question. In traditional moral theology the principle of the double effect has been the guideline for this type of moral judgment. The current question is rather whether consequential considerations are always decisive in moral judgments. Our discussion leads us to conclude that on the practical level the principle of consequences is not a very reliable guideline, at least in comparison with so-called secondary rules. The act-utilitarians themselves admit this. The rule-utilitarians even attempted to interdict the application of the principle of consequences to the individual act, but only at the cost of inconsistency. A consistent adherence to the principle of consequences would reduce rule-utilitarianism to act-utilitarianism. On the theoretical level, the possibility of conflict, even frequent, between secondary rules and the principle of consequences leads one to suspect that these rules cannot be explained entirely in terms of consequences. It is much easier to explain these conflicts if one postulates factors other than consequences behind these rules, with which consequences can come into conflict. The only alternative to this is to deny the conflicts by appealing to hidden consequences, but this seems a much less credible approach. Consequentialism, then, is difficult to establish on the theoretical level and dangerous to apply on the practical level. Those Catholic authors who are moving in this direction must turn their attention to both of these problems in future discussions.

If pressed, they might be forced to acknowledge in the end that it would be better to rely, for instance, on considerations of justice rather than consequences in assessing certain classes of conduct. Such a standard may illuminate far more adequately and make much more secure such cases as that against the direct killing of the innocent.