Paul Hurley, *Against the Tyranny of Outcomes*

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When I first read *Against the Tyranny of Outcomes,* I thought it was going to be an argument *against* consequentialism, but instead the book is actually more modest. Rather than arguing against consequentialism, Hurley is replying to a set of interconnected arguments for consequentialism. The book starts by briefly arguing that consequentialism is 'completely unacceptable' (p. 8). (Hurley's reasons here are familiar claims about the counter-intuitiveness of act-utilitarianism.) But he thinks, despite its obvious drawbacks, people also find consequentialism *unavoidable*, based on more abstract meta-ethical reasons, including its deep connection to common views about the metaphysics of action. I thought the opening salvo claiming that consequentialism was clearly unacceptable was a setup for the arguments to come, but that missed its role in his argument. For Hurley, it is actually more of a fixed point, an *Archimedean point*, that consequentialism is unacceptable. His goal is thus to respond to the more abstract meta-appeal of consequentialism.

Hurley's book is divided into two main parts: the first is focused on ethical arguments and the second part is focused on non-ethical arguments, primarily action theory. My focus is on the ethical arguments, but first I will comment on the second half of the book that links consequentialism with action theory and the philosophy of mind.

One of Hurley's diagnoses of the resilience (if we tone it down a bit from talk of tyranny) of consequentialism, is that consequentialism follows directly from the Standard Theory of Action (and related theories of mind). Hurley explains that the default accounts of mind and action 'hold that actions are rationalized through an appeal to an agent's preferences/desires, and that these are propositional attitudes that rationalize bringing about the outcome that their propositions are true … such outcome-centered non-ethical commitments in turn dictate outcome-centered ethical theory – consequentialist ethical theory' (p. 7). Hurley argues that, if one is to avoid consequentialism, one must embrace an alternative theory of action, and in particular he supports the approach of G.E.M. Anscombe (*Intention*, Harvard 2000) or Michael Thompson (*Life and Action*, Harvard 2008).

It might be surprising to those who accept the Standard Theory of Action that they are thereby also committed to consequentialism. I suspect that one could reject consequentialism for other reasons, but will not explore that line of questioning. I was struck instead by an implication of this half of the book. Since it is The Standard Theory of Action, one of the core arguments of the book is *an argument for consequentialism.* If Hurley is right, one must either abandon the Standard Theory of Action or embrace consequentialism.

Hurley does argue extensively against the Standard Theory (Chapters 4 – 6), and so by undermining the Standard Theory he also undermines background theories of action (and mind) that otherwise would support consequentialism. Anyone interested in the relationship between the metaphysics of action and normative ethics will surely benefit

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from his analysis. I think it noteworthy, however, that he does not argue that consequentialism is *incompatible* with Anscombe or Thompson's Non-Standard Action Theory. I suspect that this is because of his assumption that consequentialism is unacceptable, and that people are only still consequentialist because they think it is unavoidable. Nonetheless, on his view, if you hold the Standard Theory, you must be a consequentialist. And if you accept some non-standard theory of action, you are *not logically required* to be a consequentialist but it is still a viable option.

This brings us to the *ethical arguments* and why consequentialism seems unavoidable. On Hurley's diagnosis, arguments for consequentialism presuppose a series of meta-ethical conflations and confusions, and once one sees these logical errors, consequentialism itself has no appeal at all, and thus it can be summarily dismissed. As we've seen, Hurley thinks it is obvious that consequentialism is 'completely unacceptable' (pp. 8 – 13), and the problem is that consequentialists have been misled by a series of logical conflations into thinking that 'consequentialism is unavoidable' – and he warns, 'the illusion [of its unavoidability] is a dangerous one' (p. 13).

According to Hurley, a major reason that people find consequentialism unavoidable is the abstract idea that 'it is always right to bring about the best outcome, and the rationale for right actions is provided through appeal to the value of outcomes, and every action aims to bring about an outcome and is rationalized through appeal to the value of the outcome that it brings about . . . ' (pp. 6 – 7). Hurley argues that this argument conflates two senses of 'bringing about' – a *constitutive* sense and a *rationalizing* sense. In the constitutive sense, whenever I act, I bring about the outcome that I acted for that reason. This is obviously correct. In the rationalizing sense, the 'intentional performance of actions aim to promote the outcome that rationalizes the performance'. Hurley explains that the constitutive sense is trivial but the rationalizing sense makes the 'tyranny of outcomes unavoidable' but once 'disambiguated, it is prima facie implausible to maintain that every action brings about an outcome on the second rationalizing sense' (p. 14).

The error here, he argues, is related to another conflation that leads to an illegitimate 'outcome centered constraint on value'. Here the mistake is conflating the idea that it is 'always right to do what's best' with the idea that 'it is always right to do what brings about the best outcome'. Hurley's objection is that the best action may involve *non-deontic values* that are not captured by the idea of the *non-deontic value of outcomes.* For example, he says, 'Kantians provide rationales for deontic evaluations through non-deontic values such as freedom, the value of persons as ends in themselves, and the goodness of wills. Aristotelians appeal to the virtues, to the value of relationships such as friendship, etc. in their accounts of what acting rightly requires' (p. 15).

Hurley fully develops these three closely related arguments in Chapter 3, and shows that consequentialists are mistaken to think that the 'compelling idea' that 'it is always right to do what's best' supports consequentialism over deontology. Deontologists can agree that we ought to do the best action (the Action Idea), but argue that the best action often does not bring about the best outcome (the Outcome Idea). Hurley describes the three related arguments as 'the trunk of the consequentialist tree' (p. 52).

Although Hurley does a thorough job undermining these three arguments, this is just one type of tree in the consequentialist forest. Near the end of the chapter, he seems to recognize this. He writes, 'the failure of these arguments does not rule out consequentialist ethical theories, it merely reveals that these alleged sources of support for them are illusory'. Hurley concludes that 'with the distinction between senses of bringing about in view, however, the burden of proof would appear to fall squarely on the consequentialist' (p. 71). I would add that his arguments seem most conclusive

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against recent theories by Dreier, Portmore and others, that attempt to consequentialize deontology. In Chapter 2, Hurley focuses on these arguments and argues that the conceptual errors sketched above undermine the consequentializing approach. I highly recommend both Chapters 2 and 3. It is less clear, however, why he thinks that these arguments undermine all forms of consequentialism (p. 51).

As I read the literature, standard consequentialists provide specific responses to Kantian arguments for deontological constraint and agent-centred options. It would have been helpful if Hurley had provided some examples of the conflations in these arguments. Hurley does mention Shelly Kagan, *in a footnote,* as an example of someone who commits these logical fallacies. *Perhaps* Kagan's extensive argument, in *The Limits of Morality* (Oxford 1989), relies on these conflations. But clearly, Kagan does not argue for consequentialism at the level of abstraction of Hurley's discussion. If Kagan did, it would have been a much shorter book! Instead, Kagan systematically considers possible rationales for deontological constraints on bringing about the best outcome, and agent-centred options to not maximize the good. And I have argued that a Kantian conception of the *foundations and justification* of morality, fails to provide a non-consequentialist justification for options or constraints (*Kantian Consequentialism*, Oxford 1996; and 'Dignity, Contractualism, and Consequentialism', *Utilitas* 2008; and elsewhere).

It is important to take note of the structure of Hurley's argument here. Just as he assumes that consequentialism is unacceptable, Hurley's argument presupposes that Kantian and Aristotelian positions indeed provide clear and sound justifications for constraints and options. Hurley is correct that *if* one is convinced by non-consequentialist Kantians or Aristotelians, *then* the abstract idea that *it is always right to do what's best* does not imply that outcomes determine the best action. And one will also reject the idea that outcomes rationalize actions. His argument thus explains how (some) Kantians and Aristotelians should respond to these particular consequentialist objections to their views.

In considering the scope of his argument, beyond these particular arguments, it is noteworthy that Hurley's exclusive focus is on action theory and *act*-consequentialism. Hurley does not evaluate consequentialist approaches that have *different focal points* than action, most obviously rules and motives (for the distinction between factors, focal points and foundations, see Kagan, *Normative Ethics*, Westview Press 1988). In a footnote (page 9 fn.14), Hurley recognizes that his focus is narrowly on *act* consequentialism, but he says that he has identified a 'shortcoming for any form of consequentialism, regardless of focal point(s)' and that he will say more in Chapter 7. When I read this, it seemed *prima facie* implausible. How can objections to act-consequentialism, objections which emphasized the ways in which it fails to incorporate our normal motives, rules and practices that rationalize action, also provide an argument against a consequentialist who takes rules, motives, virtues and/or practices as their focal points?

At any rate, Hurley does not consider other focal points in Chapter 7, but he does clarify why he does not discuss alternatives to act-consequentialism. Hurley thinks that the only motivation for developing these alternatives, since we all agree that act-consequentialism is completely unacceptable, is that consequentialism seems 'unavoidable' for meta-ethical reasons. Since Hurley has shown that it is not unavoidable, there is now no reason to consider these alternative focal points (154). From a consequentialist perspective, Hurley's argument starts and ends with the conviction that consequentialism is unacceptable.

The problem is that Hurley is wrong to think that consequentialists are simply trying to mend their theory in light of its *obviously objectionable* nature. Hurley assumes that

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act-consequentialism is a *decision-making* procedure, as opposed to a *right-making* characteristic. But consequentialists have been *tyrannized by this conflation* form the birth of utilitarianism. John Stuart Mill first draws the distinction when he is responding to *common* objections in Chapter 2 of *Utilitarianism* (1861), and Mill's accounts of justice, liberty, full gender equality and much more, presuppose it. The distinction was clearly set out in Bales' article 'Act-Utilitarianism: Account of Right-Making Characteristics or Decision-Making Procedure?' (*American Philosophical Quarterly*, 1971). The internal consequentialist rationale is also the centre piece of R.M. Hare's two-levels of moral thinking, critical and intuitive (*Moral Thinking*, Oxford 1980). And the distinction also plays a significant role in Peter Railton's reply to alienation objections to consequentialism ('Alienation, Consequentialism, and the Demands of Morality' *Philosophy and Public Affairs*, 1984). In addition, since John Rawls' 'Two Concepts of Rules' (*The Philosophical Review*, 1955), most consequentialists have (or should have) appreciated that rules are often constitutive of practices, from promise-keeping to punishment, and that their benefits result from the rules of the practice playing an ineliminable role in our decision-making. Indeed, David Hume also emphasized this point in his account of justice as an artificial virtue.

Alternative focal points and 'indirection' is not a begrudging response, or concession, to deontologists and common-sense intuitions, as Hurley seems to assume. The internal logic of consequentialism naturally distinguishes decision-making procedure from a standard of rightness, and also justifies incorporating different focal points into a consequentialist approach.

In his final chapter, Hurley does finally address a specific standard consequentialist normative theory, Philip Pettit's *The Robust Demands of the Good* (Oxford 2015). Although Pettit's approach is also a form of *act*-consequentialism, at least Hurley here recognizes, for the first time, that consequentialists typically distinguish motives and reasons for action, from the principle that justifies motives, rules and practices. In addition, Pettit's indirect form of act-consequentialism explicitly incorporates the values of 'honesty, friendship, freedom, and respect' that in his first chapter Hurley claims have no place in consequentialist decision-making. Pettit argues that a consequentialist would encourage the development of dispositions to act in light of these goods, 'to interact with others honestly, to treat others with respect, and to nurture friendships' – and Hurley accepts Pettit's account! (p. 156). So, it seems that Pettit successfully incorporates the constitutive values of action that Hurley had claimed are excluded by consequentialism (8 – 13). To be clear, Pettit incorporates the very values, into his action theory, that Hurley argued are ignored and excluded by consequentialism.

I expected Hurley to show that Pettit nonetheless conflates the *constitutive* and *rationalizing* conceptions of outcome, or that he unacceptably imposes an *outcome constraint on value*. But surprisingly, he does not draw on these arguments from the core of his book. Instead, Hurley adopts Pamela Hieronymi's distinction between (i) good and bad reasons and (ii) the right and wrong kind of reasons (pp. 150 – 51). Pettit's reasons are indeed *good reasons*. But Hurley asserts that they are the *wrong kind* of reasons, simply because they are consequentialist reasons. Consequentialism replaces good reasons of the right kind, with good reasons of the wrong kind. As Hurley explains it, 'In place of the quest for good reasons of the right kind to intend to act and intentionally act, it substitutes the quest for outcome-centred reasons of the wrong kind to bring it about that I intend to phi and intentionally phi. The tyranny of outcomes thus results in the systematic alienation of rational agents from good reasons of the right kind' (p.151).

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This critique clearly begs the question by assuming, and not showing, that Pettit's consequentialist reasons are reasons of the wrong kind. Since he has produced no account of *non-consequentialist reasons of the right kind*, it is question-begging to stipulate that the consequentialists replace good reasons of the right kind with good reasons of the wrong kind.

Of course, if one already thinks that consequentialist reasons are the wrong kind of reasons, this will provide a nice description of what you think is wrong with the account. But if you are a consequentialist, you will find the entire discussion unconvincing. And of course, if consequentialism is correct, the consequentialist will not be alienated from good reasons of the right kind. Indeed, if consequentialism is correct, Hurley and other deontologists are systematically alienated from good reasons of the right kind.

Although Hurley does not undermine all forms of consequentialism, roots and trunk, as he claims, *Against the Tyranny of Outcomes* provides a convincing reply to consequentializers, shows that some influential arguments for consequentialism involve implausible and question-begging conceptual conflations, and provides an insightful exploration of the interrelation of action theory and ethics.

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