

## Chapter Eleven

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### Gewirth's Kantian Consequentialism

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Contemporary Kantian Ethics is engaged in two major and distinct projects. First, many contemporary followers of Kant have been developing and defending Kant's rationalist conception of the foundations of morality. This project is centered on the task of justifying the Kantian view that morality is rationally binding. In the process, an account of rationality, autonomy, and a non-Humean account of the reason-giving, normative authority of moral principles must be provided. Second, contemporary Kantians, primarily following Rawls, have been trying to provide a deontological alternative to utilitarian consequentialism.

These two distinct projects are often conflated by those who assume that all consequentialist theories must be nonrationalist, "teleological" theories; that is, (roughly) theories that begin with an antecedently given theory of the good, and an instrumentalist conception of rationality, and then argue that the right is whatever maximizes the good. In addition, the good is typically identified with a contingent, desire-based or preference-based theory of the good. However, even those teleologists who defend a more realist/objectivist theory of the good still treat states of affairs, rather than persons, as the primary bearers of intrinsic value. These theorists also reject more substantive norms of rationality. All of these "teleological" consequentialist theories are clearly distinct from the Kantian rationalist approach to moral theory.

It has become increasingly clear, however, that the distinguishing, and intuitively controversial, feature of *normative* consequentialism is not its foundational justification, but rather its claim that there are no "side-constraints" or "agent-centered restrictions" on the basic moral requirement to promote the good. Once this is recognized to be the defining characteristic of consequentialism about the right, it follows that one can be a Kantian rationalist about the foundations of ethics, and still end up justifying a consequentialist normative theory. For example, I have argued that Kant's more compelling arguments actually justify the following Kantian consequentialist normative principle: indi-

vidual actions, character traits, rules, and institutions should maximally promote, first, the conditions necessary for free, deliberative rational choice, and, second, the effective realization of rationally chosen ends, including the projects and commitments which are essential to human happiness.<sup>1</sup>

I was under the impression that I was the only person defending this type of Kantian consequentialist moral theory, but several people have suggested to me that Gewirth's theory might also be a form of Kantian consequentialism. After all, Gewirth's "generic rights" to freedom and well-being are also based on the objective needs of rational agents. So what's the difference between his theory and a Kantian consequentialist theory?

In the past, I have responded that Gewirth's arguments commit him to a form of consequentialism, but that he nonetheless insists that his rationalist foundations generate a nonconsequentialist rights theory. This was the chapter I set out to write. But on a more careful reading of his work, especially his recent book *The Community of Rights*, I was surprised to discover that Gewirth does indeed seem to be a Kantian consequentialist. Of course, Gewirth has not emphasized (and perhaps does not appreciate) the consequentialist nature of his theory. Rather than trumpeting the virtues of this unusual form of consequentialism, Gewirth has chosen instead to veil his consequentialism behind a shroud of antiutilitarian emphasis. At the same time, however, he does indeed quietly acknowledge that he is committed to "deontological consequentialism" or a form of "distributive consequentialism," and (despite a lengthy response) he never really denies that his theory is what Nozick famously dubbed a "utilitarianism of rights." Nonetheless, despite these quiet acknowledgments, I am still truly unsure how Gewirth himself will react to the charge of being a card-carrying consequentialist.

On the one hand, Gewirth's particular discussions of sacrificing the innocent assert a rather standard anticonsequentialist position. He insists that one can never justifiably infringe the basic rights of the innocent for the sake of some greater good. For example, he argues that the Principle of Generic Consistency absolutely and unconditionally prohibits inflicting cancer on a few as a means of curing cancer and thus saving countless lives (*HR* 154).<sup>2</sup> He also claims that unlike utilitarianism, his theory could never justify torturing one's innocent mother as a necessary means of preventing a threatened nuclear catastrophe (*HR* 225). On the other hand, in response to objections to his theory, he concedes that his theory is consequentialist (*RM* 216), and indeed "that there is no sharp distinction between 'goal based' and 'rights-based' theories" (*CR* 81). So, he seems to believe that, for some reason, his version of "deontological consequentialism" is immune to the familiar intuitive counter-examples to all forms of consequentialism. After we sort through this apparent conflict, I will argue that given the concessions Gewirth must make to consequentialism, and the gaps in his responses to the familiar intuitive "counter-examples" to consequentialism, he simply is not entitled to his more anti-consequentialist rhetoric. In the final analysis, it is clear that the Principle of Generic Consistency is consistent with an



uncompromising consequentialist normative theory.

In the first part of this chapter, the differences between Gewirth's moral theory and more familiar forms of utilitarian consequentialism are set out and explained. In the process, we will see the clear Kantian elements of Gewirth's theory. In the second and third parts of this chapter, we will examine more carefully Gewirth's arguments for his normative theory. We will see that his theory seems to generate a much more common form of consequentialism than he has yet to acknowledge. In particular, first, his argument for a distribution sensitive theory of the good is inconclusive and perhaps unsound. And second, his arguments for a prohibition on "sacrificing innocents" are not rooted in the Principle of Generic Consistency and prove to be inconsistent with Gewirth's favored interpretation of his basic principle.

Although Gewirth's theory is a "rights-based" theory, the deliberative weight of "rights" is determined by the *value* of the needs they reflect—which seems to thoroughly merge the right and the good. I for one lose the handle on what distinguishes Gewirth's "deontological" consequentialism from other contemporary consequentialist theories.<sup>3</sup> The only clear difference I can see is in his rationalist moral epistemology and the resulting Kantian theory of the good. I am thus left wondering, in the final analysis, what is so "deontological" about Gewirthean consequentialism?

## I: GEWIRTH'S REJECTION OF UTILITARIANISM

The major distinction between Gewirth's theory and utilitarian theories is, of course, that his moral epistemology is thoroughly Kantian in spirit. Like Kant, Gewirth argues that rational consistency is the source of all normative constraints on action. Like Kant, he views the object of moral principles to be rational agency itself. In this respect, Gewirth's "dialectically necessary" argument is much more Kantian than the "dialectically contingent" (coherentist or constructivist) arguments developed by Rawls and his followers. For Gewirth, the requirements of morality are necessary or categorical principles of rational consistency. Rational consistency in turn involves treating all rational agents, or prospective purposive agents, with equal concern and respect. Treating all agents with equal concern and respect involves choosing and acting in light of the equal claim of each person to freedom and well-being—Gewirth's "generic rights." The supreme principle of morality is thus his famous Principle of Generic Consistency (the PGC): act in accord with the generic rights of your recipients as well as yourself (*RM* 135).

This brings us to the second important set of differences with utilitarianism: the Principle of Generic Consistency, not utility maximization, is the supreme principle of morality. But what is the real difference between these two principles? In *Reason and Morality*, Gewirth emphasized that

the PGC, in contrast [to utilitarianism] focuses on the specific duty owed by the agent to his particular recipient ... for the PGC requires that the agent act in accord with the generic rights of his recipients and not all mankind (RM 201).

But this is a distinction without a difference. Gewirth defines a "recipient" in the broadest possible way: anyone affected by my choice of action or inaction is a "particular recipient" of my action (RM 129). In one's deliberation about possible courses of action, he argues,

what is decisive so far as concerns morality is their impact on freedom and well-being, and more generally on the conditions of agency (RM 131-32).

Since Gewirth emphasizes the positive rights of all prospective purposive agents, all of mankind must indeed be considered when considering the generic rights of the recipients of one's action (or inaction).

Indeed, in his recent book, *The Community of Rights*, Gewirth aims to reconcile the supposed conflict between individualistic rights theories and more communitarian concerns. He argues, I think convincingly, that robust positive rights have the same basis as negative rights, and that they thus provide the essential "link between community and rights" (CR 31). As a result of his renewed focus on the positive rights to freedom and well-being, which correlate with substantial positive duties, his originally misleading contrast with utilitarianism is rightly dropped from the discussion. Gewirth now correctly emphasizes the nature of the generic rights themselves in order to bring out the clear contrast between the Principle of Generic Consistency and utilitarianism.

First, he argues that his generic rights, which are based on the "needs for agency," are not based on the contingent, subjective, and idiosyncratic preferences that are the focus of contemporary utilitarians. Gewirth's "needs for agency" are more precise and more circumscribed than mere subjective preferences. As a result, the needs which determine generic rights are objectively comparable; and thus more controversial interpersonal comparisons of utility are unnecessary (CR 50).

Second, he argues that since the moral goal set by his theory is to insure that the necessary conditions of action are available to all prospective agents, the demands of his theory (though extensive) are more limited than utilitarianism (CR 51). In principle there is a clear objective limit to the duties which correlate with Gewirth's positive rights.<sup>4</sup>

Third, he argues that since the goal is for every person to become a self-controlling, self-determining agent, the PGC requires each person to strive to become a productive agent (rather than a preference-satisfied but thoroughly dependent being) (CR 52). Gewirth thus emphasizes that the duty of beneficence is owed only to those who cannot, by their own efforts, help themselves (CR 42).<sup>5</sup>

Fourth, he argues that rights conflicts are not to be resolved by appealing to the relative strengths of preferences and overall utility maximization, but rather



by appealing to "the criterion of the degree of needfulness of action": roughly, if two rights-claims conflict, the right whose object is more needful for action takes precedence (*CR* 45, *RM* 216). In short, rather than resolving conflicts of *prima facie* rights by appealing to the principle of maximizing utility, since rights are based on the needs of agency, we are to perform a cost-benefit analysis which focuses on promoting equally the agency of all prospective purposive agents. Since some goods are more essential to agency than others, rights to these goods take priority.

Here we see quite clearly how the objective value of needs determines the relative weight of rights. For Gewirth, each agent essentially needs freedom and well-being and thus must make a claim against all others to recognize the value of these needs. Rights claims are based on the necessity of needs, and the objective degree of need thus determines the weight of rights. As Gewirth recognizes, this is a "consequentialist criterion" for determining the relative weight of rights (*CR* 175).

This brings us to the fifth and primary contrast with utilitarianism. The PGC, Gewirth insists, utilizes a distributive, rather than an aggregative, conception of maximal freedom and well-being for all. The goal of the PGC is to insure that the necessary conditions of action are available to *all* prospective agents.

I will discuss this principle in greater detail in a moment. But it should be perfectly clear that these five points of contrast all involve the theory of the good that follows from the initial Kantian focus on respect for human agency as the source of all rights. Gewirth's theory, as sketched thus far, is a theory that views persons (that is, prospective purposive agents) as the source of all moral concerns. It is also, as we all know, a rationalist theory that defends the rationally binding nature of moral principles. But none of this, as of yet, is inconsistent with normative consequentialism, for none of these arguments even purports to justify agent-centered restrictions or constraints on the maximization of the good. Gewirth's argument thus seems to prove that each person is rationally duty bound to maximize the possibility that all prospective agents will have the necessary goods of freedom and well-being. Furthermore, despite the importance of the just discussed five points of contrast with utilitarianism, as far as I can see, there is simply no clear sense in which Gewirth's "deontological" theory incorporates a "priority of the right over the good." Indeed, for Gewirth, it is the objective value of needs that determines rights.

## II: GEWIRTH'S "DISTRIBUTIVE CONSEQUENTIALISM"

The most important feature of Gewirth's consequentialism is his distributive conception of the good. Indeed, it might be claimed that this type of distributive conception of the good, since it adds an element of equity to the good itself, adds an important "deontological" component to the normative theory. The goal of the

theory, after all, is not to simply maximize aggregate well-being; instead, it is to insure an *equitable* distribution of the goods that are essential to productive agency. Quite clearly, this aspect of Gewirth's theory of the good calls for additional consideration.

As is well known, utilitarians have embraced an aggregative conception of the good and argued that our more egalitarian intuitions about the distribution of primary social goods are based on the declining marginal utility of goods and other empirical considerations. These egalitarian intuitions are indeed sound, they argue, but they reflect secondary principles the acceptance of which contributes to the maximization of overall welfare. Gewirth, on the other hand, claims to provide a direct justification of distributive equality. He writes that

for the PGC moral duties have a direct axiological content, since they require respect for the freedom and well-being of each individual recipient, so that once again the substantive requirements of distributive justice have primacy, (RM 203).

Since the PGC focuses on the individual recipients of each action, he argues, the "common good" of the recipients must be understood in the "distributive" sense; namely, "that the good in question is equally common to, equally had by, all the members of the group" (HR 156). Distributive concerns are thus "internal to the end" set by the basic moral principle itself and need not be inductively derived from contingent empirical truths (RM 296).

Gewirth seems to believe that this contrast between distributive and aggregative consequentialism is simple and clear, and he simply asserts that his theory embraces a distributive conception of the common good and assumes that this removes all objections to his consequentialism. But I have never found this contrast to be simple or clear, and Gewirth's discussion of this issue leaves me all the more confused.

Here is why I am confused. First, it is now a commonplace that a distributive conception of the good is consistent with normative consequentialism. So even if Gewirth is right in claiming that distributive equity is *internal to the end* set by the PGC, the PGC would still involve a requirement to promote a moral goal. Whatever the merits of this type of theory of the good, Gewirth's theory still would not justify the type of side-constraints or agent-centered restrictions which distinguish deontological from consequentialist normative theories.

Second, we need to distinguish two issues which may be easily conflated. Gewirth's theory is focused on individual persons and their individual good and not some nebulous impersonal concept of the best overall state of affairs. For Gewirth, a state of affairs is better or worse depending on the degree to which individual agents have their objective needs, as prospective purposive agents, satisfied. As I emphasized above, this is a clear Kantian difference from more "teleological," nonrationalist, versions of consequentialism. So, this is an important point of contrast with classical utilitarianism, but this important Kantian



contrast has nothing to do with "aggregative" versus "distributive" senses of the common good.

As I understand the issue, an aggregative conception of the common good would permit greater objective need-satisfaction for the many to "outweigh" the lesser need-satisfaction of the few. For example, it may require the basic needs of some to be sacrificed so that the basic needs of others can be satisfied. So, we need an additional argument, which Gewirth has not provided, showing that more equal distributions of goods, which limit the degree to which agents can have their objective needs satisfied, are to be preferred to more unequal distributions that allow more agents to have their objective needs satisfied. Since, by hypothesis, more agency-needs will be satisfied under the "aggregative" sense, the aggregative sense is more likely to satisfy the needs of any given generic agent. So, the probability of benefit from the aggregative interpretation is greater than the probability of benefit from the "distributive," i.e., more egalitarian interpretation of the "common good." It thus follows from the aggregative interpretation that "the good in question is equally common to, equally had by, all the members of the group" (*HR* 156), as is required under the distributive interpretation. As I will argue in a moment, this benefit is similar to the benefit to the rich and poor alike of positive rights. It is also similar to the benefits of a fair system of coercive laws and sanctions.

These considerations suggest a more Gewirthean argument for the less egalitarian aggregative interpretation. If each prospective agent is indeed more likely to have the necessary goods of freedom and well-being under an aggregative conception of the common good, then the PGC would require such a distribution. For consider: Gewirth's famous argument for the Principle of Generic Consistency claims to show that every purposive, prospective agent is dialectically committed to claim (4) "I must have freedom and well-being" (*CR* 17).<sup>6</sup> But if a generic agent acts on the distributive understanding of the common good, then it is less likely that they will have freedom and well-being. So, the agent would be accepting the proposition "I may not (that is, it is permissible that I not) have freedom and well-being," which contradicts (4). So each agent must recognize that the universal, equal rights to freedom and well-being correlate with a duty to promote a maximum aggregative common good.

I have argued that the aggregative interpretation seems to satisfy the principle defining the "distributive" interpretation; namely, that "the good in question is equally common to, equally had by, all the members of the group" (*HR* 156). It seems to me that this principle is ambiguous. It should mean that the system of rights must provide a likely benefit to every affected person. Gewirth, however, takes the principle to be the more substantive claim that the goods the rights secure must satisfy an unspecified principle of egalitarian distributive justice. I have tried to show that Gewirth's substantive egalitarian reading cannot simply be assumed. Since this issue receives scant attention in Gewirth's otherwise extensive and detailed arguments, I welcome any clarification of this most central

part of his normative theory.

I would like to emphasize, however, that Gewirth's Kantian hierarchy of necessary goods (*RM* 54-63, *HR* 159, *CR* 13-14), and his "criterion of the degree of needfulness of action" which resolves rights conflicts (*CR* 45-46), together entail a corresponding hierarchy in the conception of the common good. As a result, we are required (roughly) to maximize "basic well-being" first, and additive and nonsubtractive goods, second; where the first is lexically prior, in Rawls's sense, to the second (*RM* 340-41, *CR* 46). As a result, Gewirthian consequentialism does not permit, even in principle, the sacrifice of the life and liberty of some merely to increase the wealth or luxury of others. *This* type of important "distribution-sensitivity" is indeed "internal" to the PGC. It follows, however, from the Kantian hierarchy in the theory of the good, and not from an egalitarian "distributive" conception of what constitutes the "common good." So, Gewirth does indeed develop a more Kantian conception of the good. This difference clearly does provide the basis for several important contrasts between the PGC and classical utilitarianism. The PGC, however, is nonetheless a consequentialist normative principle.

### III: OBJECTIONS—TREATING PERSONS AS MERE MEANS

It will of course be objected that Gewirth's Kantian focus on respecting individual rights clearly prohibits the consequentialist sacrifice of some for the sake of others, because such sacrifices treat persons as mere means to the overall good and thus fail to respect individual rights. In order to see the confusion in this objection, we need to first review the analogous libertarian objection to Gewirthian positive rights.

The libertarian argues that the alleged positive rights, by taking from the well-off and giving to the needy, treat the well-off as a mere means to the supposed greater good of others. Thus we get Nozick's famous claim that taxation of earnings from labor is on a par with forced labor.<sup>7</sup> Gewirth correctly responds to this objection by arguing that persons are not treated as a mere means if the underlying principle of action is concerned with protecting the generic rights of all persons. The rich and the poor alike have a positive right to assistance when their basic needs are at stake and a duty to help those in greater need than themselves.<sup>8</sup> The universality and mutuality of rights and duties is not violated when the discharging of the duty falls more on some than on others (*CR* 46-47). It follows that the libertarian cannot simply appeal to the principle of not using persons as a mere means but must first directly respond to Gewirth's argument for positive rights.

The same considerations apply to Kantian consequentialist principles: If there is indeed a duty to maximize the generic goods of all prospective agents (because this respects each agent's right to freedom and well-being), then this duty respects the rights of all and thus it does not treat anyone as a mere means. Indeed, more



## 1. Coercion and Injustice

Gewirth argues that coercion or aggression is justified only against someone who is violating the rights of others (*RM* 215). Gewirth emphasizes the clear legitimate role of coercion as a means of stopping aggressors where an aggressor is someone violating negative rights (*RM* 213). Gewirth also recognizes, and emphasizes in response to libertarians, that the duties correlating with positive rights can be enforced as well. The question is thus: Can coercion and force be used whenever it is truly necessary to secure positive rights? I fail to see how Gewirth can avoid an affirmative response to this question.

The PGC's goal of securing the generic rights of all may indeed require the infringement of the negative rights of some as a necessary means of securing the more weighty negative and positive rights of many others. Since the infringement of the rights of some would prevent the injustice of significant rights violations, the acts of coercion or harm would indeed function to prevent injustice, as Gewirth requires. The duty to protect the more weighty rights of the many would thus require the infringement of the rights of the few.

In truly tragic situations, someone's rights are infringed no matter what choice is made. If we take seriously Gewirth's compelling arguments for robust positive rights, then we cannot simply rely on the intuitions of a common sense morality which is much more libertarian. We must instead treat the objective needs of those we can help as equal to the objective needs of those we would hurt by helping. The criterion of the degree of needfulness of action (which resolves rights conflicts) simply provides no basis for a bias in favor of negative rights over positive rights. It thus leaves the limits of justified coercion to be determined by a cost-benefit analysis that focuses on the objective needs of generic agency. So once again we find no basis for limiting Gewirthian consequentialism.<sup>9</sup>

## 2. The Principle of the Intervening Action

In one of his explicit discussions of the issue of the sacrifice of an innocent to prevent, for example, a terrorist nuclear attack and resulting catastrophe, Gewirth argues that an agent who refuses to give in to terrorists is justified because "it is only through the intervening lethal action of the terrorist that his refusal eventuates in the many deaths" (*HR* 230, also see *HR* 183). This is the Principle of the Intervening Action, and he argues that it is the key to avoiding unlimited consequentialism.

Gewirth rightly points out how the existence of another agent complicates the situation in question. First, one simply cannot trust terrorists to fulfill their side of the bargain. The terrorist may cause the catastrophe no matter what one does. Second, by giving in to terrorists one encourages more threats. Third, one's primary responsibility is thus to try to directly stop the terrorists before they can carry through on the threat. Gewirth calls the position that focuses on these types of familiar consequentialist considerations "concrete absolutism."

I would call it "concrete consequentialism." But whatever we call this position, Kantian deontologists are never satisfied when consequentialists change the

subject in this way. They always press on and rule out by stipulation all the other alternatives that exist in real life. If we similarly press Gewirth, his absolutism must give way to his consequentialism. To be brief, he presents no argument whatsoever explaining how the principle of the intervening action follows directly from the Principle of Generic Consistency. Indeed, at this crucial point in the development of his normative theory, mere assertion and the intuitive appeal of the principle replaces his more characteristic careful argumentation. Yet quite clearly much argument is called for.

According to Gewirth, anyone whose objective needs are affected by my choice is the "recipient" of my action (*RM* 129). What is important, he rightly argues, is the "impact [of one's choice] on freedom and well-being, and more generally on the conditions of agency" (*RM* 131-32). Of course, the causal fact that there is an intervening action by another agent is clearly relevant in assessing the likely consequences of one's choices, but it simply does not alter the fundamental moral requirement that we respect both the positive and negative rights of all.

Indeed, the Principle of the Intervening Action simply asserts what must be shown. As Gewirth emphasizes, all agents have a right not to be killed. The question at issue is whether it is sometimes obligatory to kill to prevent more killings. If one responds that it is not because another agent is doing the killing, then one is simply assuming that the duty in question is an agent-relative restriction. This unargued assumption, however, conflicts with the basic PGC requirement to respect the rights of all persons affected by one's choice. Since the persons being killed have a right not to be killed, and since they are going to be killed as a result of my refusal, they are indeed recipients of my action in the sense that is decisive as far as morality is concerned. I thus must act in light of the equal rights of all who will be killed if I refuse and of the person who will be killed if I give in to the terrorists. As we have seen above, all other things equal, the rights of all will be more secure if we accept a principle where the rights of a few give way to the rights of the many. The consequentialist criterion of the degree of needfulness for action requires a cost-benefit analysis of the options. Since the fewer people killed the more objective basic needs are protected, it appears that the right of the many not to be killed may outweigh the right of the one not to be killed.

Much more could be said about the principle of the intervening action.<sup>10</sup> For present purposes, I only wish to focus our attention on the central point: Gewirth has not provided an adequate argument for this principle and, in the final analysis, the "criterion of degree of needfulness for action," which follows directly from the PGC, must determine which course of action is unconditionally obligatory. And this consequentialist criterion, in principle, could clearly justify killing some to prevent others from being killed. So the PGC does not provide a basis for Gewirth's alleged absolute right not to be killed as a means of preventing a nuclear catastrophe. Indeed, in principle, the PGC could even justify killing one as a means of preventing two others from being killed—if all other considerations are indeed equal.



### 3. The Principle of Comparable Cost

There is one final response that we need to consider. Gewirth emphasizes that positive duties are limited by the Principle of Comparable Costs (*RM* 140, 189, 351). One is not required to take on a loss that is comparable to the harm one would be preventing or alleviating. For example, there is no duty to die to prevent a death; or to give up one's freedom to protect another's freedom; or even to donate a kidney to save a life (*CR* 51, 61). In general, Gewirth claims, if a person, A, has a right to freedom and well-being, then she has a right to anything Y that may be necessary for her freedom and well-being *unless* someone else, B, already has a right to Y *and* Y is as necessary for B as it is for A (*CR* 61).<sup>11</sup>

There are actually two principles at work here not one. Gewirth has combined a Principle of Comparable Cost with a Principle of First Possession. If we leave aside the claim that B "already has a right to Y," then the claims of A and B would be equal. It would thus be an open question whether, for example, C should kill B to save A or let A die to save B. Both would have antecedent rights to life which correlate with C's duty to choose in such a way that respects their rights. The principle of comparable costs would then have to appeal to the criterion of degree of needfulness of action, and it would thus have no independent significance. The right of first possession would serve simply as a tie breaker when all else is equal. (Of course, the right of first possession is itself controversial, and it thus must be justified by the PGC.)

Returning to the Principle of Comparable Costs: Gewirth's focus is on the individual's right to pursue "*their* own purposes, in accordance with their own rights to freedom and well-being" without being excessively hindered by the rights of others (*CR* 61). He concludes:

"An accommodation must, then, be reached between persons' duties to help others and their rights to be free purposive agents on their own behalf. This accommodation is indicated in the PGC's injunction to act in accord with the generic rights of one's recipient *as well as oneself*. It would be morally wrong to emphasize either side of these poles to the exclusion of the other." (*CR* 61-62)

Now I am really confused again. This makes it sound like my interests constitute one pole and the interests of everyone else constitute the other pole. Does this mean that my interests count for fifty percent and everyone else counts for fifty percent? If so, this is a far cry from the equality that is supposed to be at the heart of the PGC. But if this is not what Gewirth means, and if we are not supposed to weight equally all interests (including one's own) according to the criterion of degree of needfulness for action, then Gewirth has provided us with no explanation of how we are supposed to accommodate the two poles.

Furthermore, as Shelly Kagan has shown, any argument which simply appeals to the costs to the agent succeeds in weakening positive rights only by also undermining negative rights.<sup>12</sup> Any general right to give disproportionate weight to my own projects would also subordinate the negative rights of others in such a way

that I could harm the fundamental interest of, say, ten others to prevent a similar kind of harm to myself. Since Gewirth emphasizes that, in the derivation of the PGC, positive and negative rights have the same basis, an "accommodation" would also have to be reached between a person's duties not to harm others and the agent's own right to be a free purposive agent. I assume that Gewirth would not be pleased with this counter-intuitive result.

It is likely that Gewirth's focus on simple two-person cases lends initially plausibility to his argument. The universality and mutuality of human rights includes my rights too, he argues, and thus I am not required to starve to prevent someone else from starving. In these simple two-person cases, we have a tie in the degree of needfulness for action, so there is indeed no duty to starve. If we move away from two-person cases, however, to more complex multi-person conflicts, the issue is not so simple. It is simply not as plausible to claim that my essential needs are not outweighed by the equal essential needs of many others.

Of course, according to "intuitive common sense morality," I can give disproportionate weight to my own interest and projects. But as Scheffler has shown, providing a rationale for this type of agent-centered prerogative is no simple task.<sup>13</sup> Since Gewirth's theory emphasizes the "agent-neutral," non-relative nature of the value of freedom and well-being, I do not see how the PGC can provide a rationale for an agent-centered prerogative.

So Gewirth's three responses fail to limit or constrain his consequentialism. We are thus in need of additional arguments that show us how to avoid consequentialism and yet still emphasize the mutuality and equality of positive rights that provide the basis for the ideal of a Community of Rights.

## CONCLUSION

I began by drawing attention to the two major and distinct projects that are the focus of contemporary Kantian ethics. Gewirth has contributed a great deal to both of these projects. He has provided one of the most influential Kantian arguments for the rational necessity of morality, and he has also provided a promising alternative to utilitarianism. We have seen, however, that he is uncomfortable with the consequentialist nature of his basic normative principle. He has thus appealed to various secondary principles in unsuccessful attempts to limit his consequentialism. I have tried to show that thus far his attempts to constrain his clear consequentialism have been unsuccessful. It thus appears that, whether he likes it or not, he has established the dialectical necessity of normative consequentialism. In the process, he has also demonstrated the possibility, and perhaps even plausibility, of a Kantian consequentialist moral theory.



## NOTES

1. David Cummiskey, *Kantian Consequentialism* (Oxford: Oxford University Press, 1996).

2. I use the following abbreviations for Gewirth's texts: *RM: Reason and Morality* (Chicago: University of Chicago Press, 1978); *HR: Human Rights* (Chicago: University of Chicago Press, 1982); *CR: The Community of Rights* (Chicago: University of Chicago Press, 1996).

3. The only essay that I have found that clearly raises this issue is Erick Mack's article "Deontology, Negative Causation, and the Duty to Rescue" in Gewirth's *Ethical Rationalism*, ed. Edward Regis Jr. (Chicago: University of Chicago Press, 1984), esp. pp. 147-52. Despite an extensive reply to Mack's objections to his account of negative causation (pp. 233-41), Gewirth does not respond to the questions about the deontological nature of his normative theory.

4. Although Kant also embraced a robust conception of positive duties, most contemporary Kantians have embraced a more minimalist conception of beneficence. I believe that Gewirth's view is both right and more akin to Kant's own view than the more minimalist view (see *Kantian Consequentialism*, ch. 6). Still I suspect that others will find even Gewirth's robust positive duties of beneficence to be too demanding and thus unacceptable and un-Kantian.

5. Although I believe that Gewirth's point is a good one, in many cases the agent in need might be able to succeed only by great individual effort where some assistance would greatly increase the probability and ease of success. Similarly, in many cases, with sufficient personal effort, agents may still be able to maintain the freedom and well-being necessary for agency despite intuitively unacceptable active interference and even aggression from others. Since the point of the PGC is that all agents have an equal claim to freedom and well-being, the focus should not be on the difficult notion of possible success by one's own effort, but rather on whether the aid in question is likely to make the conditions necessary for successful action available to all prospective agents. We can simply say that if an action or social policy perpetuates a dependency which is in conflict with individual productive agency, then the action does not promote the goal set by the PGC. This would avoid the difficult problem of specifying what persons "can" and "cannot" do by their own effort.

6. Gewirth's dialectical argument goes as follows: Purposive action presupposes that the agent accept: (1.) "I do x for end or purpose, E." And thus (2.) "E is good." Since freedom and well-being are the necessary conditions of purposive action, I must accept (3.) "My freedom and well-being are necessary goods." Thus (4.) "I must have freedom and well-being." Thus (5.) "I have rights to freedom and well-being." That (5) follows from (4) is established with an indirect proof: suppose that the agent rejects (5), then the agent must reject (6.) "All other persons ought at least to refrain from removing or interfering with my freedom and well-being." The agent would then accept (7.) "Other persons may remove or interfere with my freedom and well-being." Thus (8), "I may not (it is permissible that I not) have freedom and well-being." Since (8) contradicts (4), (5) follows from (4). This argument is controversial but I am interested in what follows from the argument, if it works.

7. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 169.

8. Thomas Scanlon's argument that the priority of negative rights is based on a bias of the fortunate that is embedded in common sense morality may be relevant here

("Rights, Goals, and Fairness" in *Consequentialism and Its Critics*, ed. Samuel Scheffen (New York: Oxford University Press, 1988).

9. It is, of course, not always the case that there will be such an evil agent who is responsible for the harms in question. For example, in Gewirth's example of causing cancer in some to cure cancer for millions of others, there is no terrorist agent causing the cancers that one refuses to prevent.

10. In particular, we might consider how the principle would affect our positive duties and how it fits in with Gewirth's principle of negative responsibility.

11. I have rewritten Gewirth's principle because I found his version a bit confusing. I think he meant to say "unless someone else has a right to that [Y] and [both persons equally need Y for action]" (CR 61). At any rate I believe that I have not distorted Gewirth's point.

12. Shelley Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989).

13. Samuel Scheffler, *The Rejection of Consequentialism* (Oxford: Oxford University Press, 1994).