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# Ordering the Right and the Good, Practically Speaking\*

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## Abstract

A constraint-based deontological view of social decision making treats obligations and rights as constraints on actions. This view, however, does not tell us what is the socially best state of affairs. For that, a consequentialist analysis, such as cost-benefit analysis, can be applied. We ask whether the order of normative analysis makes a difference to the outcome. That is, does it matter whether we first assess which options are admissible and then select the best elements among them, or first rank all elements in terms of their goodness and subsequently select the highest ranked admissible element? We find that it does. In an examination of cases of finance and torture we argue that these path-dependencies are related to moral uncertainty. We provide an argument for why deontology ought to precede consequentialism from a practical standpoint and discuss policy implications that arise from this conclusion.

*Keywords:* consequentialism, cost-benefit analysis, deontology, financial instruments, moral uncertainty, torture

## 1. The Two Filters

A very natural and common method of decision-making in organizations – from firms to government – is to carefully examine the consequences of various courses of action or policies and weigh-up the advantages against the disadvantages and then choose that course of action or policy that maximizes the advantages. If the consequences are assigned a monetary value then the procedure is known as cost-benefit analysis. As a species of applied

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consequentialism, cost-benefit analysis suffers the known defects of such a normative theory. In particular it may override the fact that people have claims not to be maltreated in certain ways. That is, there are deontological reasons that limit what we are permitted to do, irrespective of the benefits of that action; and irrespective of whether that action is related to a personal project or public policy. An outcome that comes about due to inadmissible actions is not to be valued.

There are two basic work arounds for forms of applied consequentialism such as cost-benefit analysis. One is to incorporate deontological considerations into the calculation by assigning negative weights to violations of rights and duties.<sup>1</sup> The other is to integrate a consequentialist evaluation into a two-filter procedure in which actions or policies are filtered for deontological violations in one step and for the best consequences in another.<sup>2</sup> (Note that to deal with the problems of cost-benefit analysis the second filter need not be deontological. It could in fact be any ethical theory, such as a form of virtue ethics.)<sup>3</sup>

The first method is beset with practical and conceptual difficulties. The practical difficulties concern the non-arbitrary assignments of weights to violations of rights and duties. The conceptual difficulty strikes at the very heart of the weighting proposal itself: to introduce such rights is to permit rights and duties to be overridden in certain circumstances – a problematic implication for the deontologist in general.

The second method appears more promising. Rather than embedding rights into the outcomes, rights and duties set the boundaries in which choices or trade-offs are to be made.<sup>4</sup> Despite the intuitive appeal of the two-filter methodology, it has a practical problem, which we address in this paper.<sup>5</sup> The problem concerns the order in which the filters are to be applied. There are two possibilities. One option is to first rank all of the options in terms of the consequentialist evaluation, and thereafter apply the deontological filter, which will remove those elements that are inadmissible. The final outcome is then to choose the element that is ranked highest in the list of remaining alternatives. In these cases we say that the consequentialist filter is applied first.

Alternatively, we first apply the deontological filter, remove the inadmissible elements, and thereafter apply the consequentialist evaluation to choose the best of the remaining ones. The practical question is: does the order of the filters matter? Is there any normative significance to the mechanics of the system? We shall answer both questions in the affirmative.

Before we proceed, we point out two limitations of the analysis. Firstly, so as to focus exclusively on the spillover effects that occur between the two filters, we restrict the analysis to situations in which the two filters considered in isolation do not display a context-dependency. This says that if an alternative is admissible in one context, then it is so in other contexts as well. Similarly, if an alternative is at least as good another other then it is so independent of the context in which the judgement is made, and in particular of the

other alternatives that are available. Sen's seminal work on individual choice theory can be used to question the reasonableness of assuming these two context-independencies.<sup>6</sup> The possible context-dependency of a deontological filter is illustrated by Sen's argument that norms of politeness may yield different judgements in different contexts. If you are invited by your host to choose a particular slice of cake, it may be impolite – and therefore inadmissible – to choose the largest piece. Yet choosing that very same slice is admissible when there is a larger one on the plate. Sen's argument that the context may change the meaning of an alternative illustrates the possibility of context-dependent evaluations of alternatives. The outcome that stands for starvation in one situation (i.e., a case in which there are no alternatives to it) may represent fasting in other settings (i.e., when the agent also has the option to eat), and its assessment will therefore differ in the two contexts. Obviously, the analysis of these context-dependencies is very important when examining the practical implications of using either of the filters. However, our aim is to discuss the moral importance of dependencies that result from using the two filters in combination. For this reason, and to avoid unnecessarily burdening the analysis, we shall ignore any context-dependencies that the filters can display on their own. For the same reason, we also ignore cases in which the deontic filter would deem all of the available alternatives inadmissible or in which the consequentialist evaluation of the alternatives displays cycles.

Secondly, we discuss and analyze the filters and their combination primarily in their function as decision procedures rather than as criteria of rightness. As is well known, the two functions need not coincide.<sup>7</sup> If, for example, the greatest happiness is not achieved if we all strive to realize it, then utilitarianism as a criterion of rightness entails that we should not use utilitarianism as a decision principle. It is similarly possible that a deontological criterion of rightness states that we should adopt at least some consequentialist decision procedures. Indeed, Kant argues for precisely this point in the second part of the *Metaphysics of Morals* when he discusses our duty to promote the happiness of others.<sup>8</sup>

Because our focus here will be on the use of both the deontological and consequentialist filters as decision procedures, we say that we concentrate on the practical aspects of the distinction between the right and the good. The main part of our analysis (Sections 2 through 4) explains why the order in which the filters are applied as decision principles is indeed important. This study is not intended to be a discussion of the doctrines of consequentialism and deontology per se. That is, we will not try to provide knock-down arguments for one or the other doctrine but rather to provide arguments about how they should be combined if it is desired that they are combined. It is only section 5 that a normative case for the combination is made. In that section we put forward a justification for a particular order and it is there that we also discuss the filters as criteria of rightness. Rather than committing ourselves to a particular moral view, we employ a “dominance argument” and argue that regardless of one's views about the appropriate criteria of rightness, practically speaking it is always

better to give priority to the right over the good. In other words, when conceived of as decision procedures, we should first apply the deontological filter. (An interesting follow-up question, but one which we shall not go into here, is whether the spillover effects that we discuss cannot also arise between the application of the two views as decision principles on the one hand and as criteria of rightness on the other. Thus, if, as we shall argue, we ought to give priority to deontology on the practical level, then this may affect our views about what we think is right on the theoretic level.)

## 2. The Order-Independence Hypothesis

On a first pass it seems trivially obvious that the order of the filters is irrelevant. If  $x$  is ranked as the best policy on an evaluation of consequences (the particular axiology does not matter), but if its implementation is going to entail a violation of some moral constraint as determined on a deontological evaluation, then it does not matter if  $x$  is removed from consideration before or after determining that it is best. Either way,  $x$  will not be implemented. Nozick was vividly clear about this claim in *Anarchy, State and Utopia*:

... Even if all possible alternatives are ordered first, apart from anyone's rights, the situation is unchanged: for then the highest ranked alternative *that is not excluded by anyone's exercise of his rights* is instituted. Rights do not determine the position of an alternative or the relative position of two alternatives in a social ordering; they *operate upon* a social ordering to constrain the choice it can yield.<sup>9</sup>

Nozick's claim can be interpreted as a purely formal point. It says that: (a) Consequentialism yields an ordering of all alternatives and deontology a division of them between admissible and inadmissible ones. (b) It makes no difference whether we first examine the admissibility of all elements of some set of alternatives  $A$  and then choose the highest ranked ones among the admissible alternatives, or whether we first rank all of the alternatives of  $A$  and then choose the highest ranked admissible ones. Whatever order we apply the filters, the result will be the same.<sup>10</sup>

To see the vital importance of these effects for our actual moral decision-making, assume simply that our decision-makers are moral agents and not robots: they are critically reflective about what is right and wrong and good and bad and are concerned about getting their answers to moral problems correct. Assume further, as is reasonable, they are not able to multitask in the application of the different filters, in the sense that they cannot simultaneously determine what is "right" (deontology) and what is "good" (consequentialism).<sup>11</sup> Now, as no political philosopher of any normative stripe or decision theorist can give our decision-maker any hint as to what she ought to do in this circumstance she assumes the

order-independence hypothesis to be true and decides to evaluate consequences first. Suppose that this filter returns  $x$  as “best”. Next, she applies the deontological evaluation filter. The problem now is that  $x$  will enter into the deontological consideration with an imputation of being “best”. If our erstwhile decision-maker happens to be unable to completely compartmentalize the filters, this imputation will infect and affect the deontological analysis. To use Philippa Foot’s more theatrical language: the evaluation of consequences has “spellbinding force” because there is a rather simple and robust thought that lies behind it, “that it can never be right to prefer a worse state of affairs to a better”.<sup>12</sup> And it is precisely this that can lead to a spillover from one filter to the other, which in turn will create path-dependencies such that the final outcome will depend on the order in which the two filters are applied. The source of this dependence is moral uncertainty, which is the circumstance in which we do not know which exact deontological or consequentialist standard is to be applied or, if we do, what kind of recommendations they yield.<sup>13</sup> We can think of at least two effects that can result. One we will call the “deliberation effect”, the other the “habituation effect”.

### **3. The Deliberation Effect**

If we assume there is such moral uncertainty and combine this fact with a normatively competent but cognitively limited decision-makers, then a deliberative space will open up. This, we claim, is one explanation of order-dependence. Consider the circumstance in which we do not know precisely what the content of a deontological standard is. In such cases the information that a policy is best by some standard can undermine its inadmissibility. Here a very recent and controversial case in the financial markets is instructive. A decision-maker in a financial regulatory authority has to decide whether or not to approve a particular investment instrument offered by a bank. The instrument involves a bet on when a reference individual will die (in this case 500 citizens of a named country between the ages of 70 and 90 years old). If the reference individual dies earlier than expected as estimated by a medical report, the investor wins. If she lives longer, the bank wins.<sup>14</sup>

For the sake of argument, suppose the accepted axiology of the consequentialist filter is a cost-benefit analysis and it returns the result that the state of affairs which incorporates this instrument is better than the one which does not because it will lead to the greatest growth of the economic pie. With this problem solved our decision-maker turns to the deontological filter. To keep matters simple, she believes that the appropriate deontological norm to apply is exactly the one embedded in Article 1 of the basic law governing her country, and this states that “human dignity shall be inviolable”.

Assuming that compartmentalizing the filters is extremely difficult, if not impossible, she will not be able to approach this problem neutrally because she is informed about what is “best” by the consequentialist analysis. This will provide her with reasons for interpreting

the meaning of the inviolability of human dignity differently from how she would have done so in the absence of this information. She may now in fact look for arguments in support of the policy; whereas without the information she would not have done so and ruled out the instrument without further ado.

What does such an argument look like? It will make use of the fact that “human dignity” is a vague and contestable concept. There is no straightforward determination of its content and domain of application.<sup>15</sup> On the one hand she may consider the view that human dignity is some general value independent of any particular individual and is violated when it is priced in any way whatsoever. On the other hand she may entertain the view that human dignity refers to some property that inheres in each and every specific human life. In the first case, the financial instrument is clearly in violation of the deontic constraint; in the second it is not a violation because betting on the time of death of the reference individuals has nothing to do with a specific human life but on statistical human lives – and statistical lives cannot reasonably be said to possess dignity. Hence it would be false to say that the reference individual is being used in any way, because nothing is being done to her. Hence her dignity, however defined, is left unblemished. In addition, if our decision-maker happens to be a coherentist, she will have reason to accept the second interpretation on the grounds that it is consistent with the consequentialist evaluation. The instrument is then more likely to be approved. Had the analysis begun with the deontological filter she may well have decided that the instrument violates the deontological standard by appealing to completely different reasons and completely different conceptions of dignity.<sup>16</sup>

#### **4. The Habituation Effect**

The habituation effect concerns the effects of moral discourse itself. Rather than being the result of moral uncertainty it can be seen as creating it. If some action or policy is inadmissible it will not be considered and discussed seriously. But once it is, we may in fact become habituated or at least open to the acceptability of the act or policy, given the perceived beneficial consequences – Foot’s “spellbinding nature of consequentialism”. We may no longer deem it to be categorically morally inadmissible. That is, when we start with a consequentialist evaluation we may end up overriding our fundamental deontological stance. If we are concerned about getting our answers to moral problems right, caution may lead us to err on one side or the other depending on the nature of the risk involved. If it means preventing harm to a very large number of people we may indeed alter our deontological stance from an “absolutist” to a “threshold” one simply on the grounds that consequentialist evaluation has accustomed or habituated us to the admissibility of a particular practice in particular circumstances.

The best example of the habituation effect is the case of the discussion of the pros and cons of the US government policy with regard to torture (and in particular Guantánamo). We

may begin with a belief that torture is simply morally wrong under all circumstances, but if we are presented with the consequences of the prohibition in a particular case (some real-life version of a “ticking bomb” scenario) we may in fact end up deeming it to be admissible if a threshold of benefit or harm is reached. In such a case, the focus of the discussion actually is dominated by the consequentialist evaluation because it is not the admissibility of the action or policy that is then at stake but the empirical question of whether or not a threshold has or will be met and the benefits that could occur. The upshot will be that a policy of torture may find approval if a consequentialist evaluation precedes a deontological one. Even if we are fundamentally against torture, we may, in the light of the size of the harm that may be inflicted, look for, or construct, arguments that obfuscate the application of the deontological categories. To uphold our deontological constraint, we can, as George Bush’s administration did, play with the description of torture methods and call water boarding an “enhanced interrogation technique” that was highly effective in providing large amounts of information and which apparently was instrumental in preventing terrorist attacks in the UK and USA.<sup>17</sup> But if we did not know that torture could generate the best outcome we would have chosen an entirely different policy.

In the two examples that we have discussed here we have focused on acts or policies for which the positive consequences (by whatever standard) can lead to an undermining of their inadmissibility. The other scenario is also possible: the negative consequences of an action or policy can undermine the admissibility of that action or policy. This is the case with paternalistic state interventions. Paternalism involves the restriction of a freedom or liberty to do something in order to achieve better outcomes. The negative effects of, for instance, a financial crisis can be used as an argument against the admissibility of certain freedoms – and the impermissible regulation of our activities.

## **5. Ordering the Filters**

The sequence of the filters thus matters in practice when either there already is a deliberation effect or when habitation can occur. What lessons are to be drawn from this? Is there a preferred order?

First, note that the path-dependency from one filter to the next is less likely to occur or be less pernicious if the deontological filter is applied first. The reason is simple: placing the evaluations in this order reduces or eradicates the autonomous signaling effect of our moral deliberations; or rather, an informational spillover from one filter to another is less likely to occur. This is so because the deontological filter merely excludes some of the alternatives and the normative imputation attributed to the remaining alternatives (“being admissible”) is weaker than that of the consequentialist filter (“is best” or “better than”). The deontological constraints filter is binary: it returns an “either-or” answer; the consequentialist evaluation filter is graded: it returns a ranking of alternatives. It is precisely this asymmetric informa-

tional structure that is the source of the consequentialist evaluation filter undercutting the deontological one.

An alternative explanation of the asymmetry is that each filter represents a different set of normative reasons. Deontological evaluation gives us a reason not to do something (it is a safeguard) while consequentialist evaluation gives us a reason to do it (it is enabling). That is, while a deontological filter is an exclusionary reason a consequentialist filter is an inclusionary one. Hence, if we perform a consequentialist evaluation first we have already provided reasons for doing something, which a deontological evaluation now has to reject. From a psychological standpoint the evaluative task has been made somewhat steeper than if we first deliberate on excluding an alternative irrespective of its social value. Starting with a consequentialist analysis is more likely to create a “framing effect”: the way a problem is posed affects the way we respond to it. So merely from this perspective it is clear that the sequence of the filters will matter. The deliberation and habituation effects that result from the informational spillovers merely act on and highlight this different evaluative structure.

Is this order-dependence something that we should be concerned about? Suppose a procedure selects alternative  $x$  if we apply the deontological filter first whereas it chooses  $y$  if we were to start with the consequentialist filter. All that this seems to allow us to say is that we deem  $y$  to be inadmissible in one context (the one in which we start with the deontological filter) whereas it is admissible in another context (the one where we start with the consequentialist analysis). Thus, without further arguments the analysis is compatible with both the view that the interrogation techniques used by US military were inadmissible and the view that the Bush administration was right in arguing that the circumstances necessitated a different moral stance towards such techniques. Similarly, a closer assessment of a financial instrument that involves the betting on the time of death of individuals may well reveal that an initial rejection of the proposal was in fact based on vague and inarticulate notions of dignity and that on closer inspection we find that the proposal is in fact morally unblemished from a deontological standpoint.

Yet, there is a “dominance argument” in favor of applying the deontological filter first; or to use Rawls’s terminology in a rough and ready way, of placing the “right” before the “good”. We have discussed the filters in their function as decision procedures but we now turn to the normative views that could underlie them. We distinguish three such views and argue that on each view, either it does not matter in which order the filters are applied as decision procedures, or the deontological decision procedure should come first.

For a first view, take Nozick’s deontological constraints. Someone adopting such a view should give priority to the deontological filter insofar as the constraints in question do not refer to the very same consequences the consequentialist filter refers to. Doing so decreases the probability that she would be undermining the very notion of moral constraints that is central to her view. In those cases in which the deontological constraints do refer to the

same consequentialist considerations, the order of applying the filters will not matter – the consequentialist considerations are already discussed or considered in the application of the deontological filter, and spillover effects will thus not occur.

The second view is the one from what can be termed “weak pluralism”: the use of the two filters is based on a conception of morality in which both deontological and consequentialist perspectives are of roughly the same importance. Now, we saw that the order-dependence occurs when there are spillover effects – that is, when the consequentialist exercise infects the deontological analysis or vice versa. But such infection – even if considered a process of reflective equilibrium – undermines the foundation of weak pluralism which assumes that the two perspectives are of equal importance. Since, as we argued, the spillover effects basically occur if the consequentialist filter is applied first, a weak pluralist would prefer that order. In other words, to accept infection is to give priority of the good over the right, which is not the idea for a doctrine of weak pluralism, although a more consequentialist oriented individual will find this acceptable.

The third argument is the most interesting and somewhat paradoxical: even a consequentialist would order the deontological filter before the consequentialist one. To see this, and clearing the ground of any discussion about the foundations of consequentialism, it is fair to say that many consequentialists believe that most of the familiar deontological intuitions (for example, protection of basic human rights) can be accounted for by consequentialism. Some prominent utilitarians, for instance, are prone to argue that the textbook counterexamples to utilitarianism fail to do justice to the sophisticated nature of the consequentialism involved.<sup>18</sup> The claim is that these examples – the conviction of the innocent to bring peace and order, the killing of a bystander to save the lives of five others, etc. – restrict the scope of the analysis unjustifiably by only focusing on the direct consequences of the action. A wider, context transgressing, perspective would take account of the negative effects resulting from people finding out that innocent people can be convicted, that people’s lives may be sacrificed to save those of others, etc. Adopting such a wider perspective would show that consequentialism is compatible with our deontological intuitions, or so it is argued.<sup>19</sup> From this argument it can be seen why undermining deontological constraints is something of which we should be very cautious. It may well be the case that consequentialist considerations will run counter to the deontological constraints when we only consider some particular context. However, if the consequentialist argument for the compatibility with deontological considerations when we transgress particular contexts holds, then the deontological evaluation has to precede the consequentialist evaluation. Or to put it another way, a sophisticated consequentialism coincides with constraint-based deontology because a sophisticated consequentialist sheriff will recognize the negative effects of executing the innocent despite the beneficial welfare effects. This is tantamount to imposing a deontological evaluation prior to a consequentialist one. A sophisticated consequentialist sheriff will

determine that the “good” ought to follow the “right”, practically speaking.

The moral of the story is clear. We saw that the order-dependence between deontological and consequentialist decision principles is closely related to moral uncertainty. It either follows from or creates it. One heuristic in such cases is a dominance argument and it is precisely such an argument that we propounded. Regardless of one’s moral views, either the order the filters does not matter or it is better to start with the deontological filter. Hence, the dominant strategy for policy-makers to follow is to give practical priority to the right over the good.

## **6. Implications for Policy**

Thus far the aim of this paper has not been about a justification for the order in which the two filters ought to be used if they are to be used and not about the justification for using the two filters in the first place. We now would like to turn to the normative case for the two filters and point out some concrete policy implications.

If individual rights are taken to be inviolable, and if those rights capture all relevant deontological considerations, then the decision process in which individuals first exercise rights and in which a social decision-maker next chooses the best outcome among the remaining possibilities, is perhaps the most familiar example of a two-filter process in which the deontic filter has priority. In such cases, the social decision-maker *only* has to consider consequentialist considerations; the deontological filter is determined completely by rights.<sup>20</sup> On the other hand, if individual rights are merely *prima facie*, or if they do not cover all relevant deontological constraints, then the social decision-maker has a role to play in the application of the deontic filter as well. It is in these cases that the order becomes relevant.

Let us point out the obvious and note that both filters are indeed relevant. At the heart of the justification of the deontological filter stands our desire to protect the individual with her particular aims and designs on life. If rights do not sufficiently protect the individual, the social decision-making mechanism should include a deontological filter to make up for this. Yet, a deontological filter alone will not, generally speaking, be sufficient to tell us what to do. This is self-evident: once we have excluded the inadmissible options all kinds of choices can be left. Take some simple every-day cases that social decision-makers have to deal with. Suppose a city council has examined options for the building of a new test runway for its aerospace industry. There will generally remain more than one set of project plans after some options have been excluded such as the expropriation of private land (government takings). One option may mean filling in part of a river (with all its ecological ramifications); another may be to take up the options to purchase land farmers have voluntarily offered to sell (with all its economic and social ramifications). A consequentialist decision-procedure such as cost-benefit seems the obvious choice here, given that we are dealing with the allocation of scarce resources. This will be no different for other impor-

tant everyday issues such as finding ways of disposing nuclear waste or building urban ring roads to relieve traffic congestion in urban centers.

Given our argument in this paper, we can say that there is a strong case for giving deontological considerations priority in the two-filters if our moral priors are democratic commitments. As we have explained, the problem with a purely consequentialist approach to social decision-making (such as pure cost-benefit analysis), is that taken as both a criterion of right and a decision procedure the social decision-maker will have less qualms about overriding the integrity of individuals and thus the very foundation of a democratic ethos.

To sum up: a two-filter approach to social decision-making with a deontic filter having practical priority has far reaching implications in democracies. Here are two examples. For security policy it means that torturing actual or suspected terrorists or prying in on the private lives of individuals are not permissible policy alternatives. Putting aside the fanciful case of world-destroying bombs, this means that democratic governments have to consider other policies, such as addressing the root causes of terrorism or accepting to live with higher risk levels. Or less dramatically, consider urban planning. Suppose there is a shortage of building land in a capital city and that prime land is being taken up by garden allotments. A two-filter approach with the deontological filter coming first would protect the owners of these allotments from expropriation by a city council on cost-benefit grounds that real estate development is in the public interest. Instead a city council would have to come up with other plans, even by finding projects that stem the migration into the city, with the upshot that the natural environments will also receive protection. If rights are no longer inviolable, or if they do not capture all relevant deontological constraints, a two-filter approach with the deontological filter coming first is a way of guaranteeing that the worst abuses of power are hemmed in.

## Notes

<sup>1</sup>See Sven Ove Hansson, "Philosophical Problems in Cost-Benefit Analysis," *Economics and Philosophy* 23 (2007): 163–183. A fuller length treatment can be found in Eyal Zamir and Barak Medina, *Law, Economics, and Morality* (Oxford: Oxford University Press, 2010).

<sup>2</sup>The "filter" terminology was introduced by Robert E Goodin, "Laundering Preferences," in *Foundations of Social Choice Theory*, ed. Jon Elster and Aanund Hylland (Cambridge: Cambridge University Press, 1986), 75–101.

<sup>3</sup>We thank an anonymous referee for pointing out the generality of the filter structure.

<sup>4</sup>Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 28ff is the classic statement of this view.

<sup>5</sup>Further conceptual issues as raised for instance by Amartya K Sen, "Rights and Agency," *Philosophy and Public Affairs* 11, no. 1 (1982): 3–39 will be set aside.

<sup>6</sup>Amartya K Sen, "Internal Consistency of Choice," *Econometrica* 61, no. 3 (1993): 495–521.

<sup>7</sup>See R Eugene Bales, "Act-Utilitarianism: Account of Right-Making Characteristics or Decision-Making Procedure?" *American Philosophical Quarterly* 8 (1971): 257–265, Derek Parfit, *Reasons and Persons* (Oxford:

Oxford University Press, 1984), and David O Brink, "Utilitarian Morality and the Personal Point of View," *Journal of Philosophy* 83, no. 8 (1986): 417–438 for discussions of the distinction.

<sup>8</sup>Immanuel Kant, *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 1797/1996).

<sup>9</sup>Nozick, *Anarchy, State, and Utopia*, 166. Emphasis in the original.

<sup>10</sup>For a formal argument for independence that makes use of rankings of choice situations, see Rosemary Lowry and Martin Peterson, "Cost-Benefit Analysis and Non-Utilitarian Ethics," *Politics, Philosophy and Economics* 11, no. 3 (2012): 258–279).

<sup>11</sup>This behavioural assumption is supported by recent cognitive research on multi-tasking that suggests the occurrence of cognitive bottlenecks when we try to solve two abstract problems simultaneously. See, J Borst, N.A. Taatgen, and H van Rijn, "The Problem State: A cognitive bottleneck in multitasking," *Journal of Experimental Psychology: Learning, Memory, and Cognition* 36, no. 2 (2010): 363–382.

<sup>12</sup>Philippa Foot, "Utilitarianism and the Virtues," *Mind* 94, no. 374 (1985): 198

<sup>13</sup>For a lengthy treatment of moral uncertainty, see Ted Lockhart, *Moral Uncertainty and Its Consequences* (Oxford: Oxford University Press, 2000).

<sup>14</sup>The investment instrument was offered by the Deutsche Bank under the name of *Kompass Life 3*. The reference individuals were US citizens. The financial regulatory authority was the Association of German Banks. The Deutsche Bank withdrew *Kompass Life 3* from the market in February 2012 in the wake of a protest by investors and the threat of legal action. To avoid any misunderstandings, we note that our analysis has no reference to any debates or decisions actually made. Similar financial instruments and their moral status are discussed in Michael Sandel, *What Money Can't Buy* (2012). Lockhart, *Moral Uncertainty and Its Consequences* discusses a similar problem that occurs with abortion decisions.

<sup>15</sup>See P Kaufmann et al., *Humiliation, Degredation, Dehumanization: Human Dignity Violated* (Heidelberg: Springer, 2011) for a discussion of the underspecification of the concept of dignity.

<sup>16</sup>There are similar problems with euthanasia because "voluntariness" is equally as underspecified as "dignity". See Martin van Hees, "Voluntariness, Suffering and Euthanasia," *Philosophical Explorations* 6, no. 1 (2003): 50–64.

<sup>17</sup>George W Bush, *Decision Points* (Crown Publishers, 2010), 180.

<sup>18</sup>Classic examples can be found in Richard B Brandt, *Morality, Utilitarianism, and Rights* (Cambridge: Cambridge University Press, 1992) and J.C.C. Smart's essay "An Outline of a System of Utilitarian Ethics" in J. C.C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973). A general discussion is provided by Douglas W Portmore, "Consequentializing Moral Theories," *Pacific Philosophical Quarterly* 88 (2007): 39–73.

<sup>19</sup>See James Dreier, "Structures of Normative Theories," *Monist* 76 (1993): 22–40.

<sup>20</sup>It is worth pointing out that the two-filter methodology can also be used when there is no social planner. In fact, a purely competitive market exchange shares the same structure. See James M Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor: The University of Michigan Press, 1962), 267ff.