

Philosophy essays -  
consequentialism  
criminal justice



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## **Consequentialism Criminal Justice**

Consequentialism faces a number of objections. Which are the most serious, and do they render the theory unsuitable as a guide to criminal justice practice?

### 1. Introduction

Substantive moral theories in modern philosophical discourse typically fall into the categories of consequentialist or deontological. Consequentialist theories, which derives from the ethos of utilitarianism, state that, "...agents must always act so as to produce the best available outcomes overall" (Scheffler, 1994). In contrast to this position, deontological moral theories stress that the best overall outcomes are not of primacy significance. In the context of modern philosophical and moral theory, it is generally acknowledged that the consequentialist view is inadequate in terms of a comprehensive and inclusive moral theory.

The following essay will attempt to provide a critical evaluation of consequentialism. The discussion will be focused on the literature and views that relate to the central and most serious objections to this philosophical and theoretical stance. Thirdly, the discussion of these objections to consequentialism will be related to the context of criminal justice practice. This aspect will be borne in mind throughout the following sections and an assessment will be made at the end of the study with regard to the extent to which this moral philosophical perspective is relevant to modern criminal justice practice.

The central thesis or claim of this essay is, in the first instance, that the philosophical stance of consequentialism is not adequate to deal with the complexity of moral issues and especially not adequate or entirely appropriate in terms of the criminal justice system. Secondly, on the other hand it is also realized that the theory of consequentialism does have certain validity in the legal and criminal context and that it cannot be rejected out of hand. Consequentialist or deontological thinking both plays a role in moral theory and by implication in criminal justice. However, it will be suggested that a combination or integration of the two theories is something that should be worked towards in order to retain the best elements of both ideological trajectories. Get help with your essay from our expert essay writers...

## 2. Overview of the philosophy of consequentialism

In essence, consequentialism refers to those moral theories that have as their central tenet the view that the moral judgment of any action is firmly based on the consequence of that particular action. From this perspective and frame of reference, moral actions are not intrinsically or innately moral, but are rather those actions that produce good consequences. Of course, this view immediately raises a number of rather obvious but important issues - such as the assessment of what "good" consequences are and who determines this aspect. This is a component of the argument that will be further expanded on in the idea of value neutrality and value relativity in the following sections. In contrast to consequentialist conceptions, "...standard deontological views maintain that it is sometimes wrong to do what will produce the best available outcome overall" (Scheffler, 1994, p. 2).  
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The term *consequentialism* was first used by G. E. M. Anscombe in the essay *Modern Moral Philosophy*

The defining characteristic or feature of consequentialist moral theories is the fact that normative weight of importance is given to the consequence of any actions and that this normative weighting is a determining factor in ascertaining the moral right or wrong of any action. The following is a more comprehensive and insightful summary of the core meaning of the term.

Consequentialism is the view that morality is *all* about producing the right kinds of overall consequences. Here the phrase “overall consequences” of an action means everything the action brings about, including the action itself. For example, if you think that the whole point of morality is (a) to spread happiness and relieve suffering, or (b) to create as much freedom as possible in the world, or (c) to promote the survival of our species, then you accept consequentialism (Haines, 2006).

In more philosophical terms consequentialism therefore views a moral act or rather the moral ‘rightness’ of any action in terms of the consequences of the act. Furthermore, “...an act is morally right depends only on the consequences of that act or of something related to that act, such as the motive behind the act or a general rule requiring acts of the same kind” (Sinnott, 2006). An essential aspect that has to be taken into account in this philosophical stance is that normative properties are seen to be dependent on their consequences. The acceptance of this basic assumption is what makes the theory consequentialist.

Another aspect that is brought into play in this theory is the aspect of agent neutrality. In other words, formal and strict consequentialist theory assumes a stance of agent neutrality and the focus is only on the consequence of the actions. This is an aspect of the theory that has created dissent and is often used by critics to argue against the theory. This aspect will be expanded on in the following section on the objections to consequentialism.

It must also be noted that there are various types or variations of strict, formal consequentialism. For instance, Plain Consequentialism in its moral context is described as follows, "Of all the things a person might do at any given moment, the morally right action is the one with the best overall consequences" (Haines, 2006). For example, if happiness is seen as the highest good then it follows that from the consequentialist perspective right or moral actions are those which create or causes the highest degree of happiness (Haines, 2006).

Another variation of consequentialist theory is known as Plain Scalar Consequentialism. This is described as, "Of any two things a person might do at any given moment, one is better than another to the extent that its overall consequences are better than the other's overall consequences." (Haines, 2006). This view therefore allows for degrees of moral correctness.

There are many other variations of this philosophical and theoretical stance. These include Expectable Consequentialism and Rule- Consequentialism. Rule- Consequentialism is worth noting as it relates to a form of this theory which places community and group good over the individual; which is also

one of the central objections to consequentialism. This form of consequentialism refers to:

An action is morally right if and only if it does not violate the set of rules of behaviour whose general acceptance in the community would have the best consequences—that is, at least as good as any rival set of rules or no rules at all (Haines, 2006).

However, an in-depth discussion of these different varieties of consequentialism would take us too far from the central thesis of this essay. Therefore, the position adopted by Scheffler in his book, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions*, is the approach that will be taken in discussion of the objections to consequentialism. He states that, "I will not be discussing these other variants of consequentialism ... Although I believe that my main lines of argument could be modified to cover them, the only kind of consequentialism that I will actually consider in the book is act-consequentialism (Scheffler, 1994, p. 2).

- Objections to the theory of consequentialism

One of the most serious objections to the theory of consequentialism is that it misses the entire point of morality and the application of ethical theory in the service of legal and civil agencies. This view states simply that it is not the consequences of actions but rather the innate value of these actions that quality them as moral or immoral. In other words, the emphasis from this opposing point of view is on intention rather than on outcomes in assessing moral quality. This view is more fully described as follows. " Various non-  
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consequentialist views are that morality is all about doing one's duty, respecting rights, obeying nature, obeying God, obeying one's own heart, actualizing one's own potential, being reasonable, respecting all people, or not interfering with others—no matter the consequences”(Haines, 2006).

The above view leads to a number of different arguments against the outcomes based thesis of consequentialism. One of the most commonly stated objections is that in certain cases in the application of this theory it would mean that individuals have to be sacrificed for the common good or the best outcomes or consequences. As Lawlor (2004) states, the consequentialist view implies that “...in certain situations, we would be able to maximize well-being by sacrificing or scapegoating an innocent individual” (Lawlor, 2004). Lawlor provides the following telling example of a classic objection to the theory of consequentialist

...the sheriff of a town frames and executes an innocent man in order to appease an angry mob that is demanding justice. The objection states that the consequentialist is committed to the claim that this is what the sheriff ought to do. The critic then claims that it is not plausible that the correct moral theory could demand the sacrifice of innocent individuals in this way, and therefore consequentialism should be rejected (Lawlor, 2004).

The above example serves to illustrate that consequentialism as a theory applied to criminal justice, has certain inescapable flaws in terms of ethics and morality.

The aspect of partiality is also another more technical objection to the validity of this stance. The theory of consequentialism is intended to decide

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on moral goodness or otherwise from an impartial and uninvolved viewpoint and only judge actions based on consequences. An example that is often given in the literature is the view that the happiness of one individual over another is not as important as the outcomes in terms of the greatest amount of happiness. Therefore, ... consequentialism tends to hold that in deciding what to do; you ought to give just as much weight to the needs of total strangers as to the needs of your friends, your family, and even yourself. And since your dollar can usually do more good for desperate refugees than for yourself or your friends, consequentialism seems to hold that you ought to spend most of your dollars on strangers (Haines, 2006).

From this perspective, the theory of consequentialism suggests that it is more beneficial and morally correct in terms of consequence and outcomes to spend money on a stranger than on a family member. Critics state that his view runs counter to moral common sense.

This objection is similar to other refutations of the theory based on the issue of equality. From the consequentialist point of view, it is the total amount of moral goodness that is at stake and not the question of who receives the moral goodness. While, this is on the surface an apparently egalitarian approach which does not discriminate between the happiness of particular individuals, a major objection noted is that, "...such a conception is not egalitarian because it does not care whether happiness is distributed equally or unequally among people" (Haines, 2006).

This is a significant point in that it serves to highlight one of the central flaws of this approach; in that the emphasis is on the estimation of good or



morality only in terms of measurable outcomes. As such, in philosophical terms, it is an objectification and a quantification of moral good and value. The trajectory of this theory tend to ignore to a great extent the more complex issues of where moral value lies and how this moral value relates to individual effort or worth on a more subjective level. This objection is clearly expressed in the following quotation.

If the greatest total can be created only by exploiting the miserable to make the happy even happier, then such consequentialism would seem to say that you should do it. But common sense may rebel against that idea as being unfair or unjust. Hence consequentialism is wrong. See Le Guin (1973), Rawls (1999), Harsanyi (1977), (Haines, 2006).

The above objection illustrates the flaws in consequentialism when taken to its logical conclusion.

Another objection is particularly pertinent to the theme of this essay, as well as to the relationship between consequentialism and questions of judicial morality. This refers to the issue of personal rights. As one commentator notes, Consequentialism "...may ask us to meddle too much into other people's business" (Haines, 2006).

An extreme example of this is a hypothetical scenario where an individual pensioner's money is coercively used to contribute to charity. This charity would allow for saving many lives and maximum consequences that would contribute to the "greater good". In this hypothetical scenario the pensioner is bound and gagged and forced to sign checks. This goes of course against common moral sense but this simplistic example serves to show how  
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consequentialism can be theoretically applied to justify acts that are ostensibly ethically suspected. This example can also be related to the utilitarian ethos of outcomes over individual value or difference. As Scheffler states in *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (1994), "... utilitarianism does not take seriously the distinction between persons" (Scheffler, 1994, p. 2).

The same general objection can also be applied to human thinking. In one sense, consequentialism limits the range and creativity of human thought by reducing all decision to the parameters of overall consequences.

Furthermore, it is also possible that the way of thinking that this leads to fact be both inhuman and immoral (Haines, 2006).

One of the most significant objections to the philosophy of consequentialism is the question of relative and neutral values. This refers to the view that consequentialism, "...makes a substantive claim about the nature of value. It says that all values are neutral" (Smith, 2003). This important aspect, which relates in many ways to the above objections, also includes a conceptual assertion about the nature of obligation." It says that facts about what we ought to do can be analyzed in terms of facts about which of the various things that we can do will maximize value" (Smith, 2003). This is a consequence of the neutrality of value and therefore in its strictest sense does not take into account individual differences and the complexity of moral actions. This is an important consideration in terms of legal and criminal process. In essence, consequentialism is a reduction of possibility and choice from this standpoint.

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The issue of value neutrality has been criticized by a number of commentators. As Jackson (1991) states in *Decision- theoretic Consequentialism and the Nearest and Dearest Objection*, our lives are given meaning and value by the association with that which hold dear. We associate value with friends, family etc. However, in terms of the consequentialist approach, ...the rightness and wrongness of an action is determined by the action's consequences considered impartially, without reference to the agent whose actions they are consequences of. It is the nature of any particular consequence that matters, not the identity of the agent responsible for the consequence (Jackson, 1991, p. 461).

This quotation therefore points to the obvious moral and logical disparity that exists in consequentialist theory. Commenting on these views by Jackson, Smith states that. "... Jackson's suggestion is thus that ... consequentialism 'is in conflict with what makes life worth living' because it 'would, given the way things more or less are, render the morally good life not worth living' (Smith, 2003).

- Consequentialism and Criminal Justice Practice

The criticisms of consequentialism raise a number of fundamental questions that are important in ascertaining the relationship with criminal law and justice practice. In one sense it can be argued that the practice of theory of consequentialism has practical value and application in criminal justice. However, as has been discussed, the flaws and fault lines that critics of this theory suggest also makes it a very dangerous theory to accept at face

value, without any dissenting views or interrogation of the way that it functions from a moral and ethical point of view.

One of the dominant objections to this theory from an deontologist perspective is that the theory amounts to an abrogation of personal responsibility and the dependence of a system of rules and measurement instead of reasoning and exploration of the action that are being dealt with.

This view is illustrated by the following example:

There's no element of personal decision; you simply calculate, and do what the numbers tell you to do, as if you were a machine. You tell your victim, 'Sorry, it's not me, you understand, I'm just an instrument of the greater good'

(Vuletic, 1994).

In a legal context, the possible implications of consequentialism can be seen in analysis of the concept of fault. Fault in a legal sense is also known as culpability or blameworthiness. This is a vital aspect of criminal law.

However, in terms of the theory of formal consequentialism, there is "... no independently viable conception of fault" (Huigens, 2000). Furthermore, fault is seen as an irreducibly retrospective concept, and "... the inveterately prospective orientation of deterrence theory's underlying consequentialism cripples its efforts to give an adequate account of fault" (Huigens, 2000). In other words, the theory of consequentialism does not adequately deal with aspects of legal and criminal practice, such as fault, and this example therefore confirms the main thesis of this essay: that consequentialism has flaws as an ethical and moral philosophy in terms of legal and criminal

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justice practice. The debate between these often vastly different philosophical and ethical systems can be seen as a debate relating to the moral justification for imposing criminal liability and punishment. According to one commentator this debate is "... perennially mired in the philosophical standoff between the deontological and consequentialist camps, with partisans on each side pointing out the relative theoretical shortcomings of the other" (Robinson & Cahill, 2006). The central points of this debate are summarized as follows. Those with a deontological perspective are:

...inclined to argue...that a purely utilitarian conception of crime and punishment might easily be used to rationalize infliction of punishment, either too much or too little, without a due regard for moral fault of the offender, however difficult that metric is to determine as a practical matter.

(Robinson & Cahill, 2006)

On the other hand, the consequentialist view is that the deontological perspective is misguided and cannot be sufficient in terms of criminal and legal process, practice and demands.

The consequentialists, in their turn, counter... that the quixotic attempt to preserve of a kind of cosmic balance between desert and culpability, by itself, is hardly a sufficient reason to tolerate the substantial social costs incurred by infliction of state-sponsored punishment, even on those who arguably deserve to be punished in some fashion (Robinson & Cahill, 2006).

While this argument can be sustained almost indefinitely with different viewpoints and counter-arguments, as is the case in many reviews and

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studies of the subject, yet in the final analysis the question of whether consequentialism is an adequate philosophy and ethical structure in terms of criminal and legal ethics, has to be answered. If we take into account the above arguments against consequentialism and their validity in terms of their moral and ethical “rightness” propounded by the consequentialist philosophy, it becomes obvious that consequentialism is not in itself a totally acceptable and appropriate theory or ethical philosophy. It is equally obvious that this theory requires adjustment and rethinking in order to make allowance for the many valid arguments against its implementation in criminal law and justice

- Conclusion

It should be noted that there is a positive side to the philosophy of consequentialism. Bailey (1997) refers to this as a, “... certain healthy sense of realism about what life in society is like” (Bailey, 1997, p. 9). This means that the theory of consequentialism has a certain practical application in terms of legal and criminal process and that there are certain “trade-offs” in terms of moral certainty that are necessary in dealing with criminal behavior in the everyday world. “Consequentialism demands that we grapple with these costs as directly as we can and justify their incurrence. It forbids us to dismiss them with moral sophistries or to ignore them as if we lived in an ideal world” (Bailey, 1997, p. 9).

However, this view does not answer the question whether consequentialism is an adequate philosophy in terms of criminal justice practice. Theorists like Samuel Scheffler suggest a different approach, where the rigid demands of

consequentialism are ameliorated to some extent, so as to produce a more flexible stance. He argues that, " ... it is possible to provide a rationale for the view that agents need not always produce the best possible overall outcomes" (Scheffler, 1994). This view is also concerned with more integrative solutions between consequentialism and other moral and ethical stances. Theorists like Walgrave argue in the light of the modern emphasis on restorative justice that, "... proponents must combine maximal informalism with maximal legal guarantees for the rights and freedoms of all participants" (Walgrave, 2000).

Samuel Schaffer in his book, *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions* (1994) argues for a view of consequentialism which rationalizes that agents do not always have to produce overall outcomes; although this view is difficult to substantiate within the framework of consequentialism. He goes on to argue "...for a hitherto neglected type of moral conception, according to which agents are always permitted, but not always required, to produce the best outcomes" (Scheffler, 1994 ) This again points to the possibility that theorists like Scheffler see in value of adjusting and varying the strict and formal aspects and structure of consequentialist theory. However this view does not necessarily avoid the essential differences between consequentialist philosophy and more open-ended and flexible views of ethics.

On the whole, in the final analysis the above essay has pointed to that critiques and failings of the consequentialist view of moral and ethical aspects pertaining to criminal process. While this theory is limited it also

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serves some important legalistic purposes and the contemporary debate centres' on reducing these objections and criticism of consequentialism through the possible assimilation and integration of this theory with other stances and philosophical points of view.

Thus, the criminal justice practice should not solely rely on the theory of consequentialism as not all actions, which are treated as good and useful from the point of view of consequentialism, can be seen as positive and practicable if reviewed on the criminal justice practice.

### Bibliography

- Bailey, J. W. (1997), *Utilitarianism, Institutions, and Justice* , New York: Oxford University Press.
- Haines, W. (2006). " Consequentialism" in *The Internet Encyclopedia of Philosophy* , Available: . Last accessed 3 November 2007.
- Huigens K. (2000), *The dead end of deterrence, and beyond*, William and Mary Law Review. Available: Last accessed 3 November 2007.
- Information Delight. (2003). *Defining consequentialism*. Available: . Last accessed 3 November 2007.
- Jackson, F (1991). " Decision Theoretic Consequentialism and the Nearest and Dearest Objection", *Ethics* , vol. 101, pp. 461-482.
- Lawlor, R. (2004), Hooker's Ideal Code and the Sacrifice Problem. *Social Theory and Practice* , vol. 30, no. 4, pp. 583+.



- Robinson P & Cahill M. (2006), *Law without Justice: Why Criminal Law Does not give people what they deserve*. New York: Oxford University Press.
- Scheffler, S. (1994), *The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions*, Clarendon Press.
- Sinnott-Armstrong, W. (2006). "Consequentialism" In *The Stanford Encyclopedia of Philosophy*. Available: . Last accessed 3 November 2007.
- Smith, M. (2003). *Consequentialism and the Nearest and Dearest Objection*. Available: . Last accessed 3 November 2007.
- Vuletic, M. (1994). *Deontological Objections to Consequentialism*. Available: . Last accessed 3 November 2007.
- Walgrave, L. (2000). "Restorative justice and the republican theory of criminal justice: An exercise in normative theorizing on restorative justice' " In *Restorative justice: Philosophy to practice*, ed. Heather Strang and John Braithwaite, pp. 165-183. Burlington, Vermont: Ashgate Publishing Company.