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The Role of Impartial Consequentialism in the United States Government

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The Role of Impartial Consequentialism in the United States Government

A Senior Honors Thesis

Submitted in Partial Fulfillment of the Requirements
for Graduation in the Honors College

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Abstract

When forming a government one must consider how the laws of the state will align with moral principles. One such possible moral principle is called ‘impartial consequentialism’. That is the thesis according to which an action is morally right if and only if it maximizes the aggregate good. This honors thesis will discuss three issues.

The first issue is whether and to what extent impartial consequentialism has influenced the formation of the United States government. The second issue is the apparent conflict between the Bill of Rights and the concept of impartial consequentialism. The third issue involves a potential objection that one might raise to the role of impartial consequentialism in the United States government.

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The Role of Impartial Consequentialism in the United States Government

1. Introduction

This thesis focuses on the role of impartial consequentialism in political systems, specifically the United States government. In this essay, I will consider three things. First, drawing from historical documents I will argue that both in the founding documents and in case law throughout the years, impartial consequentialist ideas have been a significant part of the United States government. Second, I will address the question of how to reconcile the apparent conflict between impartial consequentialism and our government's having a bill of rights. Third, I will consider an objection according to which the United States government should not be based upon impartial consequentialism.

2. Terminology

Throughout this thesis, several philosophical terms will be used. Among these key terms are 'impartialism,' 'consequentialism,' and 'impartial consequentialism.'

'Impartialism' is the thesis that each person has exactly the same value as any other person and that no person has any more or any less value than any other person. For example, at a graduation ceremony, each graduate is given five guest tickets, which they may distribute to whomever they want. In this case, each graduate is given an equal value and therefore given an equal amount of tickets, regardless of whatever other factors might be considered, such as the size of the graduate's family, the wealth of his or her parents, any donations made by the family to the school, the amount of time spent at the

college, or the degree earned by the graduate. All the graduates are viewed impartially and are given the opportunity to each claim five tickets.

Another example of impartiality is in the court of law. Speeding tickets are a violation with which many American citizens are charged at some point in their lives. Not only is the process for receiving speeding tickets uniform and impartial, the legal process dealing with speeding tickets, at least within a district, is equally impartial. In the case of a person going a certain speed over the speed limit in an area and within the sight of a law officer, the person is charged to the degree established by the law, regardless of who the person is or the type of car he or she is driving. Being charged with a speeding violation is very straightforward and objective. Additionally, in most court proceedings, any two people charged with the same speeding violation will be given the same plea options.

Impartialism thus eliminates special relationships. Special relationships between individuals include a person whom the agent cares about, such as a spouse, brother or sister, or a child. For a government, special relationships might be between government officials whose role is so important that without whom the performance of the government would be drastically different. An official such as this might be the president, the Speaker of the House, or another key government officer. Impartialism would entail that each of these key government officers has the same value as any other individual citizen and that for the purpose of decision making should be thought of as the same since they have equal values.

‘Consequentialism’ is the thesis in which whatever action results in the greatest good is the action that morally ought to be taken. Consequentialism is therefore focused

solely on the consequences of an action; it does not take into account past facts, for example, promises that have been made.

To understand the theory of consequentialism more, imagine that I have promised my friend that I am going to run with her and begin training for a marathon. I understand that this endeavor will require a large time commitment, extending over several months. Following through on the commitment, I consistently train over the twenty weeks leading up to the race. All of a sudden, my friend and I are offered the opportunity to go on a luxury cruise, which is slated to occur the same time as the marathon for which we have been training. Both my friend and I are aware that we will never again have the opportunity to go on such a cruise and that we will receive a far larger benefit from going on the cruise than we would gain from running the marathon, but my friend decides that she would prefer to run the marathon rather than go on the cruise, since after the marathon she is planning on going on a lengthy vacation. I have no such plans and could obtain much better consequences from going on the cruise than from running the race since I have also just sustained a running related injury. According to consequentialism, if the overall consequences of going on the cruise are at all more positive than the consequences of running the marathon, I should go on the cruise.

Impartial consequentialism conjoins impartialism and consequentialism. ‘Impartial consequentialism’ is the thesis that whatever action can be taken to achieve the greatest good for the greatest number of people is the action that should be taken, with no specific person having any more or less value than any other specific person.

The implications of impartial consequentialism can be seen in the trolley case introduced by philosopher Philippa Foot. In this initial trolley case, an agent is the only

person on board an out-of-control trolley. The trolley is headed straight down the track at an increasing speed and will surely hit and kill five men who are working further down the track. The agent notices, however, that there is a turn-off in the track which he or she could choose to take. Taking this route, however, the trolley would still strike and kill one man who is working on that other portion of the track. According to impartial consequentialism the agent should choose to take the turn in the track, thereby killing one man, but saving the other five men as that would provide the greatest good.

3. Documentary Evidence

While the term ‘consequentialism’ was not introduced until the twentieth century, the influence of impartial consequentialism is quite apparent in the founding documents of the United States as well as in court cases and other decisions throughout the years.

3.1. Declaration of Independence

In the Declaration of Independence, examples of impartialism alone are rampant. The first quote that often comes to mind when a person thinks of this founding document is, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty, and the pursuit of happiness.” (Jefferson 1776) In this line from the beginning of the Declaration of Independence, it becomes clear that the founders believed that each individual person had as much value as any other individual person.

When considering the impartiality found in the Declaration of Independence it is also important to consider that this document was written not only to form the basis for a

new nation but also as a letter listing the many grievances that the American colonies had against King George III. Many of what the founding fathers considered to be violations of human decency committed by King George III included refusing to allow the formation of laws which would have been “wholesome and necessary for the public good,” (Jefferson 1776) and not allowing large collections of people to be adequately represented in parliament and other representative houses. It can be inferred from the Declaration of Independence that its authors believed that King George III failed to do what he morally ought to have done precisely because he did not treat all of the citizens of the colonies of Great Britain impartially. By their critique of George III’s lack of impartiality in ruling the founding fathers display that they were in favor of treating the citizens of the colonies impartially and acting in accordance with that impartiality so that each person has the same value as every other person.

In addition to being based upon impartialism, the Declaration of Independence also assumes consequentialism. Jefferson states that, “it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and nature’s God entitle them.” (Jefferson 1776) This phrase establishes that government, which derives its power from its citizenry, should act in the best interests of its citizens and, in some sense, gain for its population the greatest possible consequences.

The Declaration of Independence further evinces the assumption of consequentialism when it later declares that, “[...] to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, [...] laying its foundation on such principles and organizing its powers in such form as to

them shall seem most likely to affect their safety and happiness.” (Jefferson 1776) This phrase shows that the founding fathers thought that it is the duty and purpose of government to seek beneficial consequences for its constituents.

The Declaration of Independence clearly assumes that all people are to be considered equal under the government and that whatever actions the government should take so as to protect the negative liberties of its citizens, and that whatever actions might benefit the citizens of a country should apply to all of society, and that it is the case that the Declaration of Independence was substantially built on the ideas of impartial consequentialism.

3.2. The Federalist Papers

Following the surprising victory of the American colonies over a strong, imperial Great Britain, the new nation needed to draft a system of government. The first attempt at this, the Articles of Confederation proved to have a weak central government and therefore was unable to be the lasting form of government for the random assortment of states. The Constitutional Convention was then convened to draft a new framing document for the infant government. While it was clear that the federal government needed to be larger and stronger than it originally had been in the Articles of Confederation, many of the delegates sent to the Constitutional Convention were concerned that having a strong central government would be too large and too powerful especially in light of the tyrannical power of the British monarchy.

In order to defend the Constitution and explain its benefits to a confused and conflicted public, John Jay, James Madison, and Alexander Hamilton joined forces to

write a series of 85 essays over the course of six months. These essays are what is now known as the Federalist Papers and in them can be found much of the founding fathers' reasoning behind the Constitution. Nearly all of the Federalist Papers detail the need for a government that acts impartially and in a way that seeks the most beneficial consequences in the long run and for the majority of the population.

In Federalist Paper 10 James Madison explains the dangers of factions in the new government; and throughout the course of this essay the writer of the Constitution explains that if each differing political opinion were given credence and the consequences of following these different factions were ignored, then the factions would have the possibility to overtake the infant government. As a result of allowing factions to harm the government, the government would then be unable to protect the rights and liberties of its citizens.

Federalist Papers 15 and 16, written by Alexander Hamilton, detail the necessity of the preservation of the union of the states. It becomes clear through Hamilton's writings that the founding fathers believed that the point of the government is to make laws and decisions that protect the safety and purport the interests of its citizenship. Therefore, by unifying the diverse states within one government comprised of three separate branches—the executive, legislative, and judicial—the goal of the government was clearly to obtain the best possible consequences for the majority of people.

Hamilton furthers the idea that the United States government should utilize the concept of impartial consequentialism in Federalist Paper 23, "The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union." In this essay Hamilton states that, "The principal purposes to be answered by union are these—

the common defense of the members; the preservation of the public peace,” (Hamilton 1787). In this phrase it is clear that Hamilton believed that the primary motivation for creating a strong central government was to provide the best possible consequences for the citizens of the United States.

Federalist Paper 57, written by James Madison, will be the last of the federalist papers that I will discuss. In this essay Madison neatly encapsulates the founding fathers’ need for an impartially consequentialist government by stating, “The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.” (Madison, *The Federalist Papers* 1788). In other words that it should be the goal of each government and political system to have rulers who seek the wisdom to pursue the greatest common good for society.

3.3. The Constitution

The Constitution is the single most important document to the United States government. It is the document to which all other laws and statutes are subservient. It outlines the different branches of government and the powers and limitations of each. The Preamble of the Constitution begins: “We the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.” (James Madison 1787) It is in this preamble that we can read the minds of our founding fathers nearly 230 years after its ratification. The

Constitution was written and therefore the United States federal government was formed to benefit the citizens of the United States and by ensuring tranquility, providing defense, promoting welfare, and securing liberty for its citizens. The Constitution not only states that it will be the foundation for a government that acts impartially toward all its citizens, it outlines the consequences for which the government will work to maintain.

3.4. Over the Course of Time

While analysis of the founding documents has shown that the founding fathers and framers of the Constitution set the United States government into action with the ideas of impartiality and consequentialism, one might wonder if these same ideas were maintained within the government over the course of two centuries. By looking at a few key Supreme Court cases it can be determined that impartial consequentialism within the government has, in fact, been maintained.

The first case that will be discussed is *Schenck v. United States*. In 1919, the Supreme Court case of *Schenck v. United States* was raised. In this court case, a small group of men was accused of distributing leaflets urging resistance to conscription and, as a result, of attempting to obstruct the draft. The court decided that such actions created a clear and present danger to society as a whole. While this court case and the Espionage and Sedition Acts that it was based on largely limited the freedom of speech found in the First Amendment, it does so on the basis of impartial consequentialism. It is from the decision in *Schenck v. United States* that the famous line is drawn: that the freedom of speech should not protect a person who yells fire in a crowded theater and, as a result, creates a panic since creating such a panic could significantly harm a large number of

people. This court case also established the judicial test of looking for a clear and present danger in order to analyze if the actions of a person are constitutionally protected and permissible, in the case of Schenck—the actions were not permissible. Again, we see that the government is concerned with achieving and protecting long-term consequential benefits for the greatest majority of its population.

The second Supreme Court case that will be discussed in this thesis is the ever important *Marbury v. Madison*. In this 1803 case, the problem presented was far less important than the precedence which the decision of this case set. William Marbury had been appointed a federal judge position by former president John Adams just before Adams left office and was replaced by the newly elected president Thomas Jefferson. James Madison, as Jefferson's Secretary of State, did not deliver the judicial commission to Marbury and, as a result, Marbury sued Madison for withholding his commission. While the Supreme Court did hear Marbury's case, the justices held that the Judiciary Act of 1789, which had allowed *Marbury v. Madison* to be brought before the Court, was unconstitutional. In declaring that the act of Congress had overextended the power of the courts beyond the Constitution, it initially appears that the Supreme Court constrained itself. This is actually the opposite. Rather, it established the precedent of judicial review. The Supreme Court could now declare laws and acts of Congress to be unconstitutional, thereby reestablishing the impartially consequentialist Constitution by creating both the ability and the necessity for the government to check itself and make sure that it is acting in the best long-term interests of all its constituents. Additionally, the case of *Marbury v. Madison* furthered the ideas of impartial consequentialism in that the court was concerned with the consequences of laws passed by Congress regarding the

government and which would affect the citizens in a possibly negative way. Therefore the court ensured that it would have judicial review to keep Congress and the president from overstepping their descriptions as detailed in the Constitution.

The final Supreme Court case that I will discuss is *Brown v. Board of Education of the City of Topeka, Kansas*. This pivotal case involved a consolidation of four cases from separate states that all related to the racial segregation in public schools as protected by the previous Supreme Court case of *Plessy v. Ferguson* which allowed segregation of services so long as the services were substantially equitable. The plaintiffs in the case of *Brown v. Board* argued that racial segregation violated the Equal Protection Clause in the Fourteenth Amendment. The Supreme Court decided in favor of the plaintiffs in its unanimous 1954 decision and held that the 'separate but equal' facilities that had been instituted were unequal and therefore did, in fact, violate the Fourteenth Amendment. The Court additionally ruled that racial segregation of education had an extremely detrimental effect on the education and personal growth of African American citizens. The decision of this case was incredibly impartially consequentialist in its reviewing of the Constitution. Not only did the court's opinion reinforce the value of each person as equal to the value as every other person, regardless of race, it also considered the detrimental consequences that had occurred since *Plessy v. Ferguson* and predicted positive consequences from the integration of public schools.

The use of impartial consequentialism in the United States government is not exclusive to the framing documents and the judicial authority of the courts, however. There have been multiple occasions where the government took great risks in order to accomplish what they believed to be the greatest benefit for the greatest number of

American citizens. One such example of this is the Manhattan project and the bombing of Nagasaki and Hiroshima in August 1945. In 1945 the United States had been involved in World War II for nearly four years and while Germany had surrendered and victory was declared in Europe in May of 1945, the war in the Pacific carried on with nearly no end in sight, a multitude of troops, from both the United States and other countries including Japan, were facing death and defeat daily. In an effort to stop the fighting and the loss of more troops the United States government made the decision to apply technology that had been developed under the title of the Manhattan Project. The Manhattan Project involved the splitting of the uranium atom resulting in an atomic bomb. On August 6, and 9, 1945 two atomic bombs were dropped by the United States on Hiroshima and Nagasaki, two cities in Japan, and less than a week later on August 15 Japan did, in fact, surrender thus ending the bloodshed of the second World War.

While the death toll caused by the atomic bombs was large and the destruction they caused was awful; the reasoning for dropping the atomic bombs was impartially consequentialist in nature. The United States government believed that causing a quick and sudden end to the war would help to save American lives and society, and as a result, further the benefits and liberties of their citizens.

4. Bill of Rights versus Consequentialism

While the majority of founding documents and cases throughout the years have relatively obviously been based on the strong foundation of impartial consequentialism, the Bill of Rights and subsequent amendments to the Constitution are difficult to reconcile with the idea of a consequentialist government. A consequentialist government

should ideally have enough power so that it can have the most resources and ability to fulfill its purpose and obtain for its citizens positive and beneficial consequences. The apparent conflict between the rights recognized in the Bill of Rights and impartial consequentialism comes from the fact that consequentialism implies that only future results of an action should be factored in when considering an action; however, with the inherent rights held by citizens, the government has an obligation to respect those rights even if doing so might result in negative consequences.

The amendments to the Constitution do not seem to have any problem with impartialism as each right is recognized to be had by each individual citizen. Therefore maintaining that each person has the same value as every other person.

A good way to reconcile the concept of consequentialism with the constraining Bill of Rights and additional amendments with one another is by paying attention to exactly what the Bill of Rights states. As an example, the Bill of Rights states in the First Amendment that, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” (Madison, The Charters of Freedom 1791). As we can see, it is the freedom to *exercise* the rights delineated in the Bill of Rights that the Constitution, Declaration of Independence, and other founding documents identify as the goods that the government is morally required to impartially maximize. Additionally, by recalling that the founding fathers were significantly influenced by John Locke and by examining the wording of the amendments to the Constitution, it becomes clear that the freedom to exercise the rights which are listed in the Bill of Rights is a negative liberty. Negative

liberties are those freedoms that occur in the absence of obstacles and constraints. One example of a negative liberty is the pursuit of happiness, regardless of any other constraints placed on a person such as labor or taxes, that person maintains their ability to pursue happiness, the pursuit of happiness is also not something that is given to a person by another person or a government, rather it is already existent in the person's abilities. Let us now continue to examine the First Amendment, it specifies not that the government gives a person the freedom of religion, speech, the press, or assembly, but rather that Congress must not create any law that would prohibit the exercise of those inalienable rights. This same language is carried throughout the other amendments to the Constitution, each stating that the rights entailed are not *given* by the government but rather are to be *recognized* by the government such that their being exercised cannot be limited by the government. This language helps to clarify that the good that the founders were concerned with maximizing is negative freedom.

5. A Potential Objection

I have argued that the Declaration of Independence, Federalist Papers, the Constitution, and various court cases evince reliance upon impartial consequentialism that identifies the good with negative freedom. Someone might, however, object to my argument. Perhaps the strongest such objection is that impartial consequentialism might force the government to act unjustly. Take the following scenario, which comes from Kai Nielsen:

“A magistrate or judge is faced with a very real threat from a large and uncontrollable mob of rioters demanding a culprit for a crime. Unless the criminal is produced, promptly tried, and executed, they will take their own bloody revenge on a much smaller and vulnerable section of the community. The judge knows that the real culprit is unknown and that the authorities do not even have a good clue as to who he may be. But he also knows that there is within easy reach a disreputable, thoroughly disliked, and useless man, who, though innocent, could easily be framed so that the mob would be quite convinced that he was guilty and would be pacified if he were promptly executed.” (Nielsen 1972)

Nielsen’s story presents defenders of impartial consequentialism with a dilemma: either to frame the man to avoid riots in the town, or to reject impartial consequentialism and not frame the man. Nielsen ultimately argues that the assumption that impartial consequentialism would entail the framing of the man in order to avoid riots is not correct, since consequentialism is more concerned with long-term consequences than with short-term consequences. The long-term consequences of a judge acting unjustly are far worse than the consequences of the riot, argues Nielsen, for once the information that the judge had knowingly convicted an innocent man was made public, the people’s faith in the justice system and the government would be destroyed and the society would be greatly hurt.

Another scenario of this objection involves affirmative action. Affirmative action is “an active effort to improve the employment or educational opportunities of members of minority groups and women,” (Dictionary n.d.). Affirmative action

began following an executive order by former president John F. Kennedy in 1961 and included a provision that government entities should take action to make sure that job applicants were not discriminated against on the basis of their race, religion, or ethnicity; gender was added as another category in 1967. The purpose of affirmative action was established to ensure fair access and employment opportunities for people of a minority or previously disadvantaged groups of people such that the demographics of a workforce are at least proportional to the demographics of that geographic area.

To the claim that the United States government is based on the moral principle to impartially maximize the negative freedoms of its constituents, someone might object that one cannot reconcile this moral principle with affirmative action. A person who holds this view might say that affirmative action creates a problem for the government's moral obligation—as, I have argued, it assumes—to impartially promote negative freedom. For, affirmative action gives minority citizens more job opportunities than citizens who are the majority and that this action seems to give a benefit, rather than not violate a right. Since affirmative action has been found to be constitutional in several court cases, it might seem that the courts and the government must not identify the good with negative freedom.

The use of affirmative action as an objection to my claim that the moral principle that underlies the United States government is impartial consequentialism where the good is identified as negative liberty becomes more complicated in light of recent court cases involving private and religious businesses. These court cases have involved contraceptive mandates that were included in the Patient Protection Affordable Care Act. The act required employers to pay for their employees' artificial contraception should the

employee want it. The businesses would be forced to pay a substantial fine if they did not comply with the mandate in providing contraceptive coverage. In the case of *Burwell v. Hobby Lobby Stores* the owners of the store held specific religious convictions such that they believed the use of artificial contraception to be immoral and against their religious doctrines. In a similar case, *Little Sisters of the Poor Home for the Aged v. Burwell*, the plaintiffs are part of an order of nuns and the Roman Catholic Church who operate a hospital. The Catholic Church also holds that artificial contraception is immoral and the Little Sisters of the Poor have refused the mandate to pay for contraception for their employees on the grounds that it violates their First Amendment right to practice religion freely. Both the Hobby Lobby and the Little Sisters of the Poor cases present the problem similar to the affirmative action problem: since the United States government has required these mandates, then it seems to have violated the principle to impartially maximize negative liberties.

The affirmative action and Affordable Care Act mandate objections are similar to Kai Nielsen's magistrate objection. For in each case, impartial consequentialism seems to conflict with what many believe is just. The affirmative action and Affordable Care Act objections differ from the magistrate objection, however, in several ways. One way is that the magistrate objection is not concerned with a government defending negative liberties, but it is only concerned with promoting the safety and well-being of the citizens. The affirmative action and Hobby Lobby and Little Sisters of the Poor objections on the other hand focus on the idea that a government with such specific mandates that violate at least some negative liberty is not truly based upon impartially maximizing the negative liberties for its citizens.

While the objections of affirmative action and the Affordable Care Act mandate seem to undermine my claim that the United States government was based on, and continues to be based on such negative-freedom impartial consequentialism, affirmative action is in agreement with negative-freedom impartial consequentialism in that affirmative action does not give a person an advantage over anyone else, it simply removes any previous disadvantages or societal biases. The Affordable Care Act mandate is still quite a point of contention even within the government, since in *Burwell v. Hobby Lobby Stores* in 2014 the Supreme Court held that closely held businesses, in other words businesses which had constant and important contact with their owners, were not mandated to provide contraceptive coverage or pay the fine for not doing so, as the Court decided that it did violate the owners' negative liberty to have the ability to practice their religion. This decision of the Court weakened the action of Congress and the president in as far as that action had gone to hurt the negative liberties of the business owners. From this recent decision we are able to effectively watch the government straighten itself out, in a way similar to the *Marbury v. Madison* decision. The case and decision of *Burwell v. Hobby Lobby Stores* indeed only adds to the argument that the government is truly concerned with impartially protecting the long-term negative freedoms for its citizens, despite the need for occasional adjustments.

6. Conclusion

This thesis has discussed the definitions and applications of impartiality, consequentialism, and impartial consequentialism. I first argued that impartial consequentialism was used in the framing of the United States government and that

evidence for this claim can be found in the Declaration of Independence, the Federalist Papers, the Constitution, and in case law and tactical planning throughout the years. Then I presented the conflict between the Bill of Rights and an impartially consequentialist government and reconciled the two concepts by explaining that the United States government is impartially consequentialist and that it is concerned with protecting the negative freedoms of its citizens and that those negative freedoms are the liberty to exercise the rights listed in the Bill of Rights. Finally, I presented an objection that a person might have with a government being based on impartial consequentialism, using affirmative action and the contraceptive mandate found in the Affordable Care Act in a method similar to Kai Nielsen's magistrate and mob scenario. In conclusion, the United States government was created on the basis of impartial consequentialism and an impartially consequentialist government should be concerned with protecting the negative liberties of its citizens.

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