

Can a Utilitarian Respect Rights?

by Harry Massey

Utilitarianism tells us that the right action is that which produces, or tends to produce, the greatest happiness of the greatest number (GHGN). This happiness is "not the agent's own happiness, but that of all concerned" and "utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator" (Mill, Ch. 2, para. 21.)

One charge against utilitarianism is that it conflicts with ordinary moral thinking, particularly with respect to rights. Utilitarianism appears to allow scapegoating or the persecution of minorities provided that the GHGN is maintained. Commonly cited examples are the case of the sheriff who imprisons an innocent man to calm the fears of a local community, and the case of a healthy person being used as an unwilling organ donor to save the lives of a number of sick patients. Utilitarianism seems to suggest that the GHGN is achieved by imprisoning the innocent man or transplanting the organs. However, these examples go against our common moral intuitions and ignore what many would consider as basic rights to justice and life.

Utilitarianism can be divided into two types: act utilitarianism and rule utilitarianism. The act utilitarian believes that the moral rightness of any act depends directly on whether the consequences of that particular act maximise happiness. He may follow general rules of thumb about the consequences of actions, based on experience, but in the end he decides on the particular circumstances of the situation. His decisions would seem to ignore basic rights in the examples mentioned above.

Rule utilitarianism evaluates acts in terms of rules selected for their utility (Hooker, p429); it is a form of indirect consequentialism. Rule utilitarianism looks at action-types rather than particular actions to determine what rules would lead to the greatest happiness if everyone followed them. Following rules, such as "the innocent should not be punished", promotes the GHGN in general since it provides people with a sense of security and protection. Rule utilitarianism would therefore seem to support our everyday moral intuitions about rights. The act utilitarian can challenge this by claiming that the rule utilitarian would have to extend his rules with countless exceptions to deal with the variety of particular situations where we must make a moral decision. Thus, rule utilitarianism simply collapses into act utilitarianism.

In response, rather than thinking of rule utilitarianism in terms of mere compliance with rules, we could instead consider it in terms of the acceptance of rules. Accepting moral rules can provide "a disposition to comply with them, dispositions to feel guilt when one breaks them and to resent others' breaking them, and a belief that the rules and these dispositions are justified" (Hooker, p432). By accepting and internalising these rules, the rule utilitarian can claim that he avoids the collapse into act utilitarianism. In the examples above, the rule utilitarian can therefore still demonstrate a respect for rights.

Some utilitarians, such as Bentham, dismiss the idea of rights although Mill himself defends the concept. Mill states that having a right is "to have something which society ought to defend me in the possession of. If the objector goes on to ask, why it ought? I can give him no other reason than general utility." (Mill, Ch. 5, para. 24.)

Mill states that "the idea of justice supposes two things; a rule of conduct, and a sentiment which sanctions the rule." (Mill, Ch. 5, para. 22.) This sentiment is an animal desire to retaliate for any infringement by the person who has been wronged, not only for

his own benefit but for society as a whole. Society should defend his rights since this provides security, an "extraordinarily important and impressive kind of utility" (Mill, Ch. 5, para. 24.) which no one can possibly do without.

Mill seems to undermine his case somewhat by stating that although justice stands higher in the scale of social utility, "particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice." (Mill, Ch. 5, para. 38.) For example, to save a life it may be necessary to kidnap a doctor and force him to give assistance.

In conclusion, utilitarianism can, at least in some forms, respect rights. Rule utilitarianism can provide general rules, the acceptance of which takes into account our common moral intuitions. In addition, Mill himself defends rights on the basis of utility, in particular by providing security for society. However, Mill acknowledges that there may be exceptional cases where another social duty overrides the need for justice meaning that individual rights could be violated.

References

Hooker, Brad (2000), "Rule Consequentialism" from *Blackwell Guide to Ethical Theory*. Cited in Shafer-Landau, Russ (ed.) (2013, 2nd edn.), *Ethical Theory: An Anthology*, selection 50. Wiley-Blackwell.

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