

Can a utilitarian respect rights? by Chris Lyons

I would like to argue that utilitarianism does not respect rights absolutely, but that an absolute upholding of rights is not a practical possibility, and that utilitarianism does, in fact, provide as strong a defence of rights as is possible.

Utilitarianism

Utilitarianism is a form of consequentialist moral theory that holds that the right moral action is that which produces the greatest happiness for the greatest number. It was first proposed by Jeremy Bentham in the early nineteenth century and refined some decades later by his godson, John Stuart Mill. It rejects moral codes based upon customs or traditions, or those handed down by leaders or gods, and holds that it is only the consequences of an action that are relevant, and only those consequences which affect the amount of pleasure or happiness in the world. The goal is to maximize utility, the net amount of happiness or pleasure in the world, and to achieve this, the consequences to everyone affected by an action must be taken into account.

An immediate problem is that actions have consequences that can ripple out like waves into the future and be completely unpredictable. If the proverbial butterfly can trigger a tornado, then waving a newspaper to hail a taxi could do likewise. Yet it would be absurd to attach moral significance to a totally trivial act and to blame someone for a consequence of their action that was entirely unforeseeable. An example of the latter might be the imagined man in Germany, who, in the thirties, risks his life by jumping into a river to rescue a drowning man, only to find some years later that the man was, in fact, Adolph Hitler and that had he acted less bravely he would have prevented World War Two. A way around this difficulty would be to hold that though an act may be wrong the actor is not to be blamed for its unforeseen consequences.

A further distinction that has been made is between act and rule utilitarianism - between the position that each individual act be appraised for its consequences and that rules should be devised (on utilitarian grounds) and then individual actions judged against them. Act utilitarians therefore apply the principle of greatest happiness to the greatest number to each action, whilst rule utilitarians apply it only to the rule against which actions are to be judged.

For each of these approaches there are arguments for and against. An act utilitarian will say that rule utilitarianism doesn't truly maximize utility, as there will be times when following a rule doesn't lead to the best consequences, and that a rule should only, in fact, be regarded as a rule of thumb, not to be slavishly adhered to. The rule utilitarian will point out that act utilitarianism can lead to actions that deeply conflict with our moral intuitions. Two examples are often quoted. In the one a community has been afflicted by a spate of crimes. The authorities find a scapegoat - they arrest and convict an individual whom they know to be innocent - and in doing so restore such peace of mind to the community that utility might be said to have been maximized. The other situation concerns a healthy individual who is killed by doctors so that his organs can be harvested to save the lives of five other individuals. Rule utilitarianism can arguably avoid these scenarios by assigning rights, such as a universal right to life and the right not to be punished, when innocent.

Rule utilitarians would also argue that, in regarding rules as merely rules of thumb, act utilitarianism undermines overall social trust, which will itself lead to less utility. Hence if promises are easily broken, the institution of promise-making becomes undermined, as trust

between individuals is likely to be enhanced when they can predict each others' behaviour, but diminished when they can't.

Rigid adherence to rules though can lead to implausible positions such as that lying is always wrong, even when to do so would save someone's life. A response might be that the rule should be changed to accommodate exceptions, and so it might become – *do not lie except when lying will generate more good*. But this position is identical to act utilitarianism, and in this way, rule utilitarianism collapses back into act utilitarianism.

In practice the two part aspect of rule utilitarianism can be applied to resist its collapse to act utilitarianism and at the same time to counter the criticism that utilitarianism pays insufficient heed to just deserts. Thus legislators can apply utilitarian principles to the passing of laws, whilst judges apply retributive ones to the execution of those laws. Whilst the legislators are thereby primarily concerned with maximizing utility, the judges aren't, and only act in conformity with the legislators' intentions, as they see them.

Rights

Rights are entitlements. They are granted by a person or body and create a duty on that person or body. For someone to have a right it must be possible for him to make a claim if it has been violated. Sometimes, however, rights are only aspirations - proclaimed by those who would like to have them, and who sometimes believe that they already exist in a metaphysical way. Rights may exist from ancient tradition or culture, or they may be believed to be God-given. The US Declaration of Independence, for instance, claims that people are "endowed by their Creator" with the right to life, liberty and the pursuit of happiness. Most commonly though, rights are created by national or international laws, and laid down in national legislatures or in international treaties. Examples of these would be Magna Carta, the French Declaration of the Rights of Man and the Citizen, the American Bill of Rights, and the Universal Declaration of Human Rights. And rights can cover a very large range of issues, such as freedom of religion, the right to a fair trial, the right not to be tortured and the right to be able to engage in political activity. Rights that are merely aspirational might be the desired right to free public transport or free child-care. Debates abound as to who is alleged to have rights – children, animals, workers, entire peoples. Rights may be inalienable, such as the right to life, or forfeitable, such as the right to liberty, or, indeed, waivable, such as the right to have a promise kept. The proliferation of rights has consequences for utility, inasmuch as the rights of some entail the duties of others. A right which might increase utility when its range of applicability is limited, may come to decrease it if it is expanded too far. Hence a society may increase utility by offering free tertiary education to a small proportion of its young people, but lower utility by making it available to all, and having to consequently raise taxes to do so.

Utilitarianism and Rights

It is thought by some philosophers that utilitarianism pays insufficient heed to rights, as well as to justice and deserts. In the case of scapegoating, or punishing an innocent person, for instance, a rule utilitarian would say that a rule that permitted this would lead to a worse outcome than one which forbade it. This may be true, but it may also be false, in which case the utilitarian would have to concede that punishing the innocent could sometimes be justified, and would thus come into conflict with common sense morality, which maintains that an innocent person has a right not to be punished. The utilitarian could point out, however, that whilst our justice system may

endeavour never to punish the innocent (by means of proper process, fair trials etc), it is an imperfect system and sometimes innocent people are, in fact, convicted. But, this being so, the options are only, either, to shut down the justice system and cease punishing anyone, or to admit that the right of an innocent person not to be punished cannot be absolutely guaranteed. The rule utilitarian would say that the latter can only be justified because a rule that permits the occasional miscarriage of justice after due process and a fair trial yields greater utility than one which abolishes punishment all together.

Conclusion

In conclusion, because human processes are not perfect, the utilitarian would have to concede that the greatest happiness for the greatest number is sometimes achieved only by infringing rights, such as the right not to be punished when innocent. But those who are critical of it for this reason, would likewise have to concede that they too cannot guarantee the rights they in principle uphold. Moreover, the utilitarian can show that it is in accepting this shortcoming that the greatest happiness for the greatest number is achieved.

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