

Philosophy 104, Ethics, Queens College, Spring 2005  
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Continuing our discussion of criticisms of utilitarianism...

I. Criticism #3: Utilitarianism has difficulty accounting for our notions of justice.

Consider a situation in which better consequences arise from performing an injustice.

For example, sacrificing an innocent to quell an angry mob.

In general, utilitarianism, which is forward-looking, seems to conflict with justice, which is backward-looking.

Justice is a complicated issue.

Mill's discusses five concepts of injustice, and argues that utilitarianism can account for them all, in terms of social utility.

- 1) Breaking the law, e.g. driving uptown on Lexington Avenue.
- 2) Breaking the moral law, e.g. stealing.
- 3) Not giving some one what he/she deserves, e.g. paying back a loan.
- 4) Promise-breaking
- 5) Unfairness, e.g. unequal distribution of wealth or other social goods.

Much of the utilitarian account depends on emphasizing the precedent effect.

If you break a promise, you encourage others to break their promises.

Similarly for other infringements of justice.

Mill sees injustice as infringement of rights, which are defended by utility, p 71.

So, Mill is arguing that utilitarians generally seek justice.

And if there are odd cases in which an apparent injustice is licensed, we might have to give up our intuitions about what is the right thing to do.

That is, maybe sometimes sacrificing an innocent is morally acceptable.

Another aspect of the utilitarian account would entail emphasizing long-term benefits of seeking justice.

Consider: Who should we pay better, the harder worker or the needier worker?

The surface utilitarian answer is to pay the needier one.

But long-term considerations may push us to pay the harder worker better.

It may be better to provide incentives to workers, and not alienate the harder workers.

That is, utilitarianism may be able to account for notions of justice by appeal to long-term benefits.

One of these benefits is the precedent effect: How will my actions encourage others to behave?

Justice and utilitarianism are sometimes incompatible.

Utilitarianism requires we look forward, justice that we look backward.

In these cases, either we give up our notions of justice or we give up utilitarianism.

The borderline cases are difficult, and perhaps irrelevant.

II. Criticism #4: Utilitarianism has difficulty accounting for our notions of rights.

This relates, in an obvious way, to criticism #3.

For example, consider the peeping tom, who secretly adds his own happiness.

It looks like the utilitarian defends the peeper.

One response to criticisms #3 and #4 is to adjust the theory.

If our intuitions about justice and rights are so strong, we can just add rules to insure that rights are protected and that justice is served.

This leads to Rule Utilitarianism:

The right act is the act that conforms to the general rule that creates the greatest happiness for the greatest number.

### III. An aside on preference utilitarianism

The above theory is Hedonistic Rule Utilitarianism.

We could alternatively adopt Preference Rule Utilitarianism:

The right act is the act that conforms to the general rule that creates the greatest fulfillment of personal preferences for the greatest number.

Note that utilitarianism is a family of theories, not just one theory.

### IV. How rule utilitarianism avoids the problems of rights and justice

Should you peep?

In this instance, you might gain more pleasure than anyone loses.

But which rule should we follow:

Rule #0: Peep if you want.

Rule #1: Do not peep.

If we adopt the former, some people would get caught.

Then, the overall unhappiness of those whose rights are violated outweighs the titillation of the peepers.

So, I shouldn't peep.

### V. Problems with rule utilitarianism

Adopting rule utilitarianism means losing the flexibility that was the great advantage of classical utilitarianism.

Imagine yourself in a situation in which you have to choose either to follow a general rule that creates great consequences, or to break the rule because of the better consequences that would result by doing so.

A rule with an exception is still a rule.

That is, we might adopt the following rule:

Rule #2: Peeping is prohibited, unless you can be sure not to be caught.

This rule creates greater happiness (or fulfillment of preferences), than Rule #1.

We are back to evaluating individual acts, to see if they are the exceptions which we should build into the rules.

On Monday, we will surely start Kant.