

~~CH 107 PR~~ ✓

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ON WHETHER THERE IS A RULE-UTILITARIANISM THAT IS NOT
OBVIOUSLY UNTENABLE AND CANNOT BE COEXTENSIVE WITH
ACT-UTILITARIANISM

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The purpose of this paper is to determine whether there can be a kind of rule-utilitarianism that is neither coextensive with act-utilitarianism nor obviously untenable as a moral theory. I shall focus specifically on the critical responses of McCloskey, Diggs, and Brandt to the attempts of Urmson and Rawls to propound a rule-utilitarian theory that meets these requirements (with the caveat that Rawls, like some of the respondents, only develops some elements that are useful to the theory without embracing the rule-utilitarian view himself).

77 (Urmson, citing various texts of Mill, attempts both to show that the theory advocated by Smart and others is based on a misunderstanding of utilitarian theory) and practice and to develop an alternative interpretation that overcomes the deficiencies in the act-utilitarian view. According to the latter view, any particular action can be judged to be right or wrong by somehow determining whether its overall consequences will promote or harm the general welfare. While "rules of thumb" can be employed in order to save time in judging which action would be right in most cases, the general principle of utility can always be appealed to as the standard of evaluation whenever the rightness of any particular action is in doubt. To deny the appeal to the general principle in any particular case of doubt would constitute

*Urmson thinks that S. is wrong abt
its antecedents - but for this
is not so based, surely? (And U.
wrote this well before S. answered.)*

an instance of "rule-worship," in which the action is judged to be "right" according to some received moral rule even though the same action might not meet the requirements of the principle of utility. Even the critics of rule-utilitarianism agree with Urmson and Rawls that a thoroughgoing act-utilitarianism both can justify particular actions or ~~kinds~~ kinds of action that are morally counterintuitive, such as killing and various kinds of "telishment," and rests on a misunderstanding of the function of rules.

Smart would agree?

Urmson and Rawls argue that the rightness or wrongness of a particular action can be determined only by whether it agrees or conflicts with a particular moral rule or a system of rules defining a type of action, a practice, or an institution. The rule or system of rules can in turn be evaluated by ^edetermining whether its adoption actually does or would possibly promote the general welfare. On this view, the rule or practice defining particular actions has a utilitarian value beyond that of the time that the "rule of thumb" saves the agent. By specifying particular actions as falling under certain practices and systems of rules, and by denying to the agent the appeal to the general principle of utility in deciding what to do in any

stylistic note: items 1 & 2 are (almost) by design faults, 3 is not (it's an alleged virtue.)
 upward to conjoin them thus.

... or of "long th rule." But that is a neurological
remark abt existing rules, & ⁽²⁾ ~~expresses~~; it does not speak to
their motivation, & why? it is not relevant to the rules' power.

1) a linguistic point: 'enjoin' is an illocutionary verb; a rule enjoins just in virtue of being a rule, not in virtue of sanctions; 'restrain' is perlocutionary. If a rule restrains, that may indeed be in virtue of some sort of

?? Who is promoting anything? And do you mean
"in this sense"? ~~the~~ sense of what word or phrase? And ~~is~~
usefulness - where does it come in, given ~~that~~ this?
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best rule or because following it promotes the general welfare.) But (if one can promote the usefulness of rules in this sense), one is also forced to conclude that an action is right (wrong) simply because it agrees (conflicts) with rules defining an established practice, and so one has landed in a moral conventionalism or condition of rule-worship incompatible with the reforming spirit of utilitarianism. This reforming spirit can be revived only if the rule-utilitarian replies that the rules that really obligate us are those which, if they were in practice, would commend themselves to us on utilitarian grounds, and that our following these "ideal" rules will eventually lead to their displacement of the bad "actual" rules.¹ McCloskey seems to reject the appeal to "ideal" rules as irrelevant to established practices, but Diggs and Brandt treat the ideal-actual distinction as a major issue for rule-utilitarianism.

The problem of rule-utilitarianism becoming coextensive with act-utilitarianism arises in two respects for McCloskey. First, in order to avoid the charge of "rule-worship," the rule-utilitarian is driven to admit particular exceptions to the rules within the various practices and institutions. If the number of exceptions becomes large enough, little will be left of the binding force of the original rules, and the cat will soon be out

of the bag: the agent will want to decide in every case according to the ultimate principle of utility. Secondly, in cases in which there is a conflict of duties or practices involving a particular action, one must decide by grading the practices according to a hierarchy of importance, if one is to preserve their force. But it seems silly, for example, always to prefer the practice of promising to that of truth-telling. Alternatively, however, one is forced to appeal to the ultimate principle of utility in order to judge in the particular case, so that the possibility of the act-utilitarian cat being let out of the bag is as great for cases of conflicting duties as it is for cases of exceptions to them.

For McCloskey, rule-utilitarianism is caught between the horns of a dilemma: in order to avoid the charge of "rule-worship," rule-utilitarianism is forced in critical cases to become coextensive with act-utilitarianism; and in order to avoid being reduced to act-utilitarianism, rule-utilitarianism must treat rules in a way that opens it to the charge of "rule-worship" or moral conventionalism in the first place. One further aspect of the theory (poses *problems*) problems for its tenability for McCloskey.) Since duties referring to truth-telling, promising, stealing, and punishment seem to be based on practices, rule-utilitarianism might be able to account for them adequately as a moral

theory. However, other duties, such as those of developing one's talents, treating others as ends, and not killing, are morally obligatory independently of the sanctions of institutional rules (are recognized intuitively as duties to which one is bound by one's conscience), and apply to actions that are logically prior to general practices.² The inevitable options for rule-utilitarianism for McCloskey are thus as follows: a position coextensive with that of act-utilitarianism, a position liable to the charge of "rule-worship," and a position irrelevant to many moral obligations.

Diggs amplifies the value and the liability of the kind of rules that can serve as the rules for rule-utilitarianism. He distinguishes three kinds of rules that define three different kinds of practice. 1. The broadly instrumental rules or "practical maxims" refer to any particular relation of means and ends, such as "if you want to get the nail into the wall, use a hammer." (This kind of rule can be learned as one goes along,) and can be modified and improved according to the agent's conception of the "best rule." 2. The rules of a job are "legislated" to the agent, and he is obligated to follow them as part of the practice they define. They tend to be held "in force" by external sanctions or

*Expl. meaning? Such rules are appropriate in the
we must know are poisonous, how to land the airplane,
how to ~~use~~ use the dynamite: in what sense can we
learn such rules as we go along?*

*I don't see why one's theory
should not say: (1) In cases covered
by a "practice" rule, do so--&--so; (2) in
other cases, but ones in which alternative
would differ significantly in utility, do such &--*

rewards or penalties, and to serve the goal of a "boss" or employer extrinsic to the immediate interest of the agent. This is the kind of rule that in Digg's view is capable of binding agents to certain kinds of action in the rule-utilitarian theory. 3. The rules of a game are adopted by agents whose practice is an end in itself and not a means to some extrinsic goal. This kind of rule can serve as the rule of "bosses," who follow them simply so that the game which they enjoy can go on. In addition, certain subsets of rules of this kind of rule, by defining various styles or manners in which games can be played, provide analogies for certain moral rules independently of rule-utilitarian theory. This kind of moral rule adds a quality to a practice engaged in for its own sake, rather than performing the "police function" of binding the agent to a practice that serves a goal extrinsic to the practice itself (as does rule #2 or the rule-utilitarian rule).³

Digg's objection to rule-utilitarianism, aside from the fact that it cannot account for moral rules of the kind resembling subset rule #3, is that the theory cannot have both "rules" and "utility" at the same time. A moral rule binds or obligates only by being an "actual" rule or the "rule in force," not by being the best rule or the rule serving the general welfare. The rule that

Seems to me you are overlooking a 3d alternative -
that the agent is obliged to follow R on the
ground that having the rule "follow R" maximizes
utility - & obliged to do so even tho in the particular
case, some other act would have
greater util.
binds may happen to be the best rule also, but the
properties of bindingness and utility are independent,
and must be so if rule-utilitarianism is not to be
reduced to act-utilitarianism. For if the agent is
obligated to follow a rule only if it maximizes utility
in a particular case, then the rule is a "practical
maxim" or rule of type #1, and the agent has adopted
the standpoint of act-utilitarianism.⁴

Brandt agrees with Diggs and McCloskey that the
rules of rule-utilitarianism, in the sense of actual
rules defining established practices, can lead to a
moral conventionalism. However, for Brandt, the "rules
in force" of rule-utilitarian theory need not always be
the actual rules of a practice, nor need they define a
practice or an institution. Brandt gives a positive
twist to two insights that have negative import for
rule-utilitarianism for McCloskey: that ideal rules,
rather than the actual rules, are what would be the best
rules if followed in any practice or institution; and
that certain moral rules can be binding even if they
define no practices or institutions at all. Brandt tries
to incorporate the tenable aspects of rule-utilitarianism
into an "Ideal Moral Code" theory, that can avoid the
problem of a conventionalism of actual rules, and preclude
the necessity of reducing rule-utilitarianism to act-
utilitarianism in critical cases.

In resolving the problem of the conventionalism of actual rules for rule-utilitarian theory, Brandt revives the revolutionary or at least reformist character of the utilitarian spirit (apparently possible only for act-utilitarians in the views of McCloskey and Diggs). If the actual rules do not seem to promote the general welfare as well as some ideal rules would, then the former are not necessarily obligatory:

the Ideal Moral Code theory has the advantage of implying that the moral rules recognized in a given society are not necessarily morally binding. They are binding only in so far as they maximize welfare, as contrasted with other possible moral rules.⁵

It seems that Brandt aims at reintegrating that which Diggs regards as functionally split: the elements of rule and utility in rule-utilitarianism. But can Brandt accomplish this synthesis of functions without reducing rule-utilitarianism to act-utilitarianism? He thinks that one can, if one maintains the reference of rules to actual practices even as one changes or reforms the actual rules in light of the ideal rules:

an institutional system forms the setting within which the best (utility-maximizing) moral code is to be applied, and one's obligation is to follow the best moral rules in that setting - not to do what the best moral rules would require

for some other, more ideal setting.⁶

In the critical cases in which there are conflicts of duties or in which particular actions cannot be evaluated by referring them to general practices or institutions under which they fall, the rule-utilitarian need not transform himself into an act-utilitarian by applying the general principle of utility in the particular case. He can simply opt for the intuitive recognition of an action as either morally enjoined, prohibited, or permitted, and the internal sanction of his own conscience can substitute in these cases for the binding force of the external sanction otherwise provided by practices or institutions.

*Does this mean he mt simply
choose to be a utilitarian?*

I think that the Ideal Moral Code theory of Brandt yields a rule-utilitarianism of a not obviously untenable, if somewhat modified, form. The ideal rules of the Code allow the rule-utilitarian to keep to the high road of institutional reform, without becoming mired in the bogs of conventionalist stagnation or engulfed in the act-utilitarian overthrow of all institutions. The Code also permits one to recognize certain actions as morally obligatory independently of either established practices or utilitarian consequences. Whether the rule-utilitarian can concede this occasionally independent evaluative function to the Code, in exchange for its assistance in

areas that really matter to him, is a difficult question to answer. It seems, in any case, that Brandt's formulation of rule-utilitarianism aims at this concession as a way of yielding a tenable theory without reducing it to act-utilitarianism. ⁷

This seems to me a nice job, tho
I have a few doubts abt rather
important features of it. See
my notes on 8 & 10, esp. The one
on 8 suggests how, I think, th whole
thing abt rule-worship is simple-
minded. See Notes on th "act-
adequacy assumptn," in tht connectn.

R.A.

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Notes

1. McCloskey, H.J., "An Examination of Restricted Utilitarianism," in Gorovitz, Samuel, ed., Mill: Utilitarianism. Indianapolis: The Bobbs-Merrill Company, Inc., 1971, pp. 211-12.
2. Ibid., p. 211A.
3. Diggs, B.J., "Rules and Utilitarianism," in Gorovitz, supra note 1, pp. 321-22.
4. Ibid., p. 313.
5. Brandt, R.B., "Some Merits of One Form of Rule Utilitarianism," in Gorovitz, supra note 1, p. 340.
6. Ibid., p. 340.
7. The ideas of Urmson and Rawls referred to in this paper can be found in Urmson, J.O., "The Interpretation of the Moral Philosophy of J.S. Mill," in Gorovitz, supra note 1, pp. 168-174; and in Rawls, John, "Two Concepts of Rules," in Gorovitz, supra note 1, pp. 175-194.