

Can a utilitarian respect rights?

By Roger Salmons

Utilitarianism is a consequentialist ethical paradigm under which the moral worth of an action depends solely on its consequences. An action is judged to be right if it produces, or tends to produce, the greatest happiness of the greatest number – the so-called “greatest happiness principle” (GHP). There are a number of variants of the paradigm. Act utilitarianism is a particularist interpretation under which each individual action is assessed against the GHP. In contrast, under the generalist interpretation of rule utilitarianism, the GHP is used to determine general rules, and actions are then assessed against these rules. Under either interpretation, the GHP can be applied either to the aggregate happiness of the relevant population, or to the average happiness of a population member.¹

While utilitarianism has a certain intuitive appeal, it has been subject to a number of criticisms. In particular, it is claimed that it could lead to grave injustices in the pursuit of general happiness. For example, it would allow an innocent person to be convicted of a crime that they did not commit if they were a plausible suspect and the increase in happiness of the local community (e.g. due to reassurance or a desire for vengeance) outweighed the suffering of the unfortunate individual – the so-called “scapegoat” objection. Similarly, the GHP might be used to justify slavery, the torture of individuals, enforced euthanasia for the harvesting of organs, or the persecution of minorities if these result in net increases in overall happiness. While the nature of these potential injustices varies, they all fall under the general heading of infringement of individual rights.

The notion of rights has its foundations in the Kantian moral paradigm. Kant believed that because humans are rational and autonomous, they should be treated as ends in themselves, and never solely as means to the ends of others. This implies that they have certain inalienable rights. The idea is taken up by John Rawls in his *Theory of Justice*, where he proposes that each person should have an equal and extensive set of basic liberties (the Liberty principle). Furthermore, this principle is to have lexical priority over two other justice principles that regulate the distribution of social and economic advantages (the Fair Opportunity principle and the Difference principle). Rawls defines basic liberties to include: political liberties (the right to vote and stand for office); freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person; the right to hold property; and freedom from arrest and arbitrary seizure. As the forgoing objections illustrate, there is a *prima facie* case that utilitarianism may be incompatible with, at least some of, these basic liberties.

At first sight then, the idea of rights seems to be at odds with utilitarianism. Indeed, some act utilitarians would argue that while the examples of potential injustices highlighted above are unfortunate, they have to be accepted if they result in overall happiness being maximized. However, there are ways in which the issue of rights can be addressed within a utilitarian paradigm.

One way to take account of rights is to impose them as a constraint on the utilitarian calculus, so that general happiness is maximized subject to not infringing the basic rights of any individual. Rawls terms this the “principle of restricted utility” (*Justice as Fairness*, 120, 126) under which average utility is maximized subject to the protection of basic liberties and – in most cases – the provision of equal opportunities and a guaranteed minimum income sufficient to meet basic needs. This can be thought of as a utilitarian variant of his principles of justice, with average rule utilitarianism replacing the difference principle for determining the distribution of economic benefits.² While Rawls is

¹ For a fixed population size, the two measures are completely equivalent.

² Rawls calls terms this a mixed conception of justice (*Theory of Justice*, 49).

concerned with the distribution of economic benefits, the principle of restricted utility can be applied more generally to the broad range of moral decisions and would prevent the types of injustices highlighted above.

Of course, this approach does not actually incorporate the idea of rights within the utilitarian paradigm; merely imposing them as a constraint on it. However, an alternative approach that explicitly recognises individual rights is provided by John Stuart Mill in his essay *On Liberty*. While this is concerned with the nature and limits of power which the state should be able to exercise over the individual, the arguments contained within it apply equally to the application of rule utilitarianism to moral decision-making in general.

Mill rejects the notion of an abstract right “*independent of utility*” and argues that “*utility is the ultimate appeal on all ethical questions*”. However, he recognises that “*it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being*” (*On Liberty*, 136). He goes on to clarify the definition of interests as those “*which, either by express legal provision or by tacit understanding, ought to be considered as rights*” (*On Liberty*, 205). Put simply, individual rights should be taken into account explicitly when applying the GHP in the formulation of moral rules. But these are not exogenous rights as is the case in restricted utility. Rather, they are rights that are determined endogenously within the utilitarian paradigm, with the system of rights being chosen so as to maximize general happiness.

For example, returning to the scapegoat objection outlined above, if it is widely known that innocent people can be punished for crimes that they did not commit, then people cannot be sure that they will not become the next scapegoat. The resultant fear and insecurity can be expected to depress human happiness. If this negative impact is sufficient to outweigh any positive impacts – if such impacts exist – then the GHP would support granting people the right not to be punished unless proven guilty; or more generally, a right against victimization.

While this approach, providing a justification of rights rather than taking them as axiomatic, has a certain attraction, it can be criticised on two counts. The first objection is that it relies on people knowing that the injustices occur and hence that they may become victims. If the injustices were somehow kept secret, there would be no negative impact on happiness, and hence no utilitarian justification for the granting of rights. However, this does not seem a very persuasive argument. Moral rules are intended to define what “ought” to happen – not just reflect what “does” happen. As such, they should be formulated under the assumption of perfect information, irrespective of whether this reflects the actual situation, or not.

A second objection is more serious. Because they are generated from applying the GHP, they are not really rights at all. Rather, they should be considered as “happiness rules”, just like any other rule that might be generated under the GHP. Furthermore, because it relies on the calculation of the net impact on general happiness, the resultant system of rights may not include all those commonly held as being fundamental. For example, it is not clear that the negative impacts of slavery would necessarily outweigh the economic benefits to the rest of society in the GHP calculation. Indeed, it is not clear how one would measure the scale of the two impacts on a comparable basis. Of course, one could argue that it is the commonly held view that is incorrect and that if a particular “perceived right” cannot be justified, it should be jettisoned.

So, can a utilitarian respect rights? It seems clear from the foregoing discussion that yes, they can – either by accepting them as constraints on the maximization of general happiness in a mixed conception of justice, or by explicitly integrating them into a rule utilitarian paradigm. While the latter is more intuitively appealing, as it provides a theoretically rigorous justification for the existence of rights, it is likely to be subject to significant practical difficulties and there is no

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guarantee that it would replicate the widely accepted definition of human rights. Consequently, in practice, the mixed conception of justice is likely to provide the best way for utilitarians to respect rights.

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