

Act utilitarianism, fairness and rights¹

In its simplest form, act utilitarianism is defined by three claims.

1. What is right? Actions are morally right or wrong depending on their consequences and nothing else. An act is right if it maximises what is good. This is ‘act consequentialism’.
2. What is good? The only thing that is good is happiness, understood as pleasure and the absence of pain. This is ‘hedonism’.
3. Who counts? No one’s happiness counts more than anyone else’s. This is a commitment to equality.

In this handout, we will look at whether act utilitarianism can account for fairness, liberty and rights. For further objections, see the handouts ‘Happiness, pleasure and preferences’, ‘Utilitarianism: problems from calculation’ and ‘Utilitarianism, partiality and integrity’.

Questions of fairness, liberty and rights are questions of justice. Justice is the principle that each person receives their ‘due’. It requires that we treat equals equally, and if what someone is due depends on some quantifiable attribute (e.g. ability in some area), we should treat differences proportionally. In other words, justice is fairness. A situation is unjust, for instance, if someone has more or less than their ‘fair share’, if they are favoured or unfavoured in some way that they do not deserve. Utilitarianism requires us to take each person’s happiness into account equally. It may therefore seem that it respects fairness. But is this so?

‘THE TYRANNY OF THE MAJORITY’

In *On Liberty*, John Stuart Mill was concerned with how, in a democracy, policies that lead to the greatest happiness for the majority could have a very negative affect on the minority. When a government is making laws, should it take into account what the majority of people want and simply overrule the interests or happiness of the minority? This may seem to be the basic principle of democracy, but if this is how laws should be made, then the majority have a form of absolute power. Suppose the majority want to enforce a system of very harsh punishment, e.g. the death penalty for theft, or outlaw homosexuality? Utilitarianism says we should do whatever brings about the greatest happiness. But should there be constraints on what the majority can do to the minority? For instance, should individuals have certain rights, e.g. to freedom of movement, freedom of thought, and freedom of expression, that protect them from such absolute power? Or is it morally permissible to remove these freedoms from some people (which would seem unfair) if it would lead to the greatest happiness overall?

¹ This handout is based on material from Lacewing, M. (2017) *Philosophy for AS and A Level: Epistemology and Moral Philosophy* (London: Routledge), Ch. 3, pp. 229-34

Mill notes that there are two ways that the majority can exercise its power over minorities leading to a 'tyranny of the majority' unless its power is constrained. First, as just noted, it can do so through democratic government. For example, a democratic government could pass a law forbidding people to criticise a particular form of religious belief, or alternatively, a law forbidding them to practice it, if that is what the majority of people in society wanted. He argues that the powers of democratic government need to be limited by a respect and recognition for individual rights and liberties, but, we might think, utilitarianism has no place for these moral concepts.

Mill is also concerned about a second way the majority can exercise power, viz. through the 'tyranny' of social opinion, 'the tendency of society to impose...its own ideas and practices as rules of conduct on those who dissent from them'. Everyone thinks that their way of doing things, what they like and dislike, should be the standard for everyone else. Think of the disapproval of other religious practices, of other cultures' traditions, of homosexuality, of standards of music and taste; think how quickly people are to 'take offence' and think 'something should be done about it', and how such attitudes are communicated in the tabloid press. This disapproval, when socially expressed and endorsed, affects how people think and what they do; they are not free to think, feel and live as they please - even if there is no law preventing them from doing so.

Take, for example, the relationship between men and women. In Mill's day, it was simply 'understood' that women were not equal to men. Women's place was in the home, looking after the children. This made it very difficult for women who didn't want to live like this - if they seriously tried to live 'as men', they faced strong public censure. Much of this 'understanding' has now, fortunately, been left behind, and a utilitarian can condemn it because women equal men in number - happiness is not maximised under sexism. But imagine now a society in which it is 'understood' that the place of people of some minority race in a society should serve those of the majority race. The majority of people are happy, albeit at the expense of the happiness of the minority. How could utilitarianism condemn such a practice (assuming that this policy creates the greatest happiness, i.e. any attempts to make the minority happier would lead to less happiness for the majority)?

RIGHTS AND LIBERTIES

The obvious unfairness of the tyranny of the majority arises from the fact that act utilitarianism does not rule out any type of action as immoral. There are no constraints on pursuing the greatest happiness. For example, if torturing a child produces the greatest happiness, then it is right to torture a child. Suppose a group of child abusers only find and torture abandoned children. Only the child suffers pain (no one else knows about their activities). But they derive a great deal of happiness. So more happiness is produced by torturing the child than not, so it is morally right. This is clearly the wrong answer.

Many rights involve restrictions placed on how people can treat each other. For instance, I have a right that other people don't kill me (the right to life). I also

have a right to act as I choose as long as this respects other people's rights (the right to liberty). One of the purposes of rights is to protect individual freedom and interests, even when violating that freedom would produce greater happiness. For example, my right to life means that no one should kill me to take my organs, even if doing so could save the lives of four other people who need, respectively, a heart, lungs, kidneys and a liver. Utilitarianism, we may object, doesn't respect individual rights or liberty, because it doesn't recognise any restrictions on actions that create the greatest happiness.

Some utilitarians simply accept this. We have no rights. But, they argue, as long as we consider situations realistically, then whatever brings about the greatest happiness is the right thing to do. For example, in the case of the tortured child or killing me to use my organs, in real life, other people would find out and become very upset and fearful that the same could happen to them or their children. So these actions wouldn't lead to the greatest happiness. Counterexamples that appeal to very unlikely scenarios are unhelpful, because they have little to do with real life. In real life, act utilitarianism gives us the correct moral answer.

However, even if this is true (which we may question), the theory still implies that if it was very unlikely that anyone would find out, then it would be right to torture children (in the circumstances described). But other people finding out isn't what makes torturing children wrong. By leaving out rights, utilitarianism misses something of great moral importance, so it can't be the right theory of morality.

MILL ON JUSTICE

In *Utilitarianism*, Mill discusses the problem of whether utilitarianism can give a plausible account of justice, which he calls 'the only real difficulty in the utilitarian theory of morals'.

First, he analyses what justice is and argues that at its heart, it is about the moral rights of the individual. We think of each of the following kinds of action as a violation of justice:

1. violating someone's legal rights;
2. violating someone's moral rights (laws are sometimes wrong, so their legal rights are not always the rights they should have in law);
3. not giving someone what they deserve, in particular failing to return good for good and evil for evil;
4. breaking a contract or promise;
5. failing to be impartial when this is required, e.g. in relation to respecting rights, what people deserve or cases of public interest;
6. treating people unequally.

What is distinctive about justice is that it relates to actions that harm a specific, identifiable individual, who has the right that we don't harm them in this way. Duties of justice are 'perfect' duties. We must always fulfil them, and have no choice over when or how, because someone else has the right that we act morally. (There are other cases of wrongdoing, e.g. not giving to charity, in which no

specific person can demand this of us. Instead, we have some choice in how we fulfil the obligation to help others. These are 'imperfect' duties.)

But why do we have the rights that we have? Mill says that '[w]hen we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion.' And the reason why society should protect us in this way is the general happiness. The interests that are protected as rights are 'extraordinarily important'. They are interests concerned with security. We depend on security for protection from harm and to be able to enjoy what is good without fearing that it will be taken from us. The rules that prohibit harm and protect our freedom are more vital to our interests than any others. And so we protect these interests with rights, and these become the subject of justice. This contributes most to happiness in the long term. Hence, Mill says, 'I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality'.

Discussion

On Mill's view, we only have a right if our having that right contributes to the greatest happiness in the long run. We may wonder whether the rights that we usually take ourselves to have (e.g. related to individual liberty) really do this. For example, would society be more happy if people had less freedom in some cases? This is an important debate in political philosophy.

A clearer objection is that Mill's theory of rights doesn't offer a strong defence of individual rights in particular cases. Suppose there is an occasion where violating my rights will create more happiness than not. As we said above, a right protects the individual's interest against what may compete with it, e.g. the greater happiness on this occasion. Hence, my right to life prevents my being murdered to save the lives of many others. But if the ground of rights is the general happiness, this protection seems insecure. On the one hand, we have the demands of the greatest happiness, e.g. we can create more happiness if we kill one person to save five. On the other hand, we have the individual's right, but this turns out to be just the demands of the greatest happiness as well. If my rights are justified by general utility, then doesn't the happiness created by overriding my rights justify violating them? Utilitarianism can't offer any other reason to respect my right in this particular instance.

Mill can respond that this approach to conflicts between rights and happiness in individual cases doesn't understand utilitarianism in the right light. We need to consider happiness 'in the largest sense'. Rights protect our permanent interests, and thus serve the general happiness considered over the long term. We should establish that system of rights that would bring the most happiness, and then defend these rights.

But now we can object that Mill has given up on act utilitarianism. Mill seems to recommend that we don't look at the consequences of each act taken individually to see whether it creates the greatest happiness. He recommends that we create rights, which are a kind of rule, and enforce them even when they conflict with happiness in certain situations. Thus, he says,

[j]ustice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation.

When rights are involved, the right action is not the one that creates the greatest happiness, but the one that respects the right. It seems that, in the end, Mill must adopt rule utilitarianism to provide his account of rights and justice.