6. ON THE FLEXIBLE NATURE OF MORALITY

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ABSTRACT. The purpose of this essay is to study the problem of inherent obscurity of the criterion for maximal utility in utilitarianism. For the sake of convenience of analysis, situations of moral actions are classified into four categories. It is shown that morality is flexible, especially in the positive sense, in that a virtuous action can be taken in various ways and/or to various degrees. For some situations it is inherently unclear what the moral requirement is, and whether it is a maximum or a minimum. It is concluded that the schism of the principle of utility between the principle of the good and the principle of the right seems to be inevitable, and the interpretation of the ultimate criterion for maximal utility should be relaxed or interpreted separately and differently according to the situation of action.

1. INTRODUCTION

In recent developments of utilitarian theory, emphasis has been placed on how to formulate a statement defining a right moral action such that a right action should always produce maximal utility. It was contended by non-utilitarians that a prescription for a right action by act-utilitarianism occasionally does not result in maximal utility. For instance, in some exceptional cases, such as the slave system and the punish-the-innocent-man problem, the prescription in accordance with the principle of utility is said, by non-utilitarians, to be wrong because the prescription seems to them incompatible with the principle of justice. As a consequence, there has been, among utilitarians, a tendency to look for a substitute for act-utilitarianism. Since utilitarian generalization is shown to be "extensionally equivalent" to act-utilitarianism, the recent trend is to develop a form of rule-utilitarianism. In group actions with a threshold effect, there are problems of maximizing conditions and minimizing conditions. To deal with these problems some theories specify the degree or percentage of conformity to rules by agents. Actually, terms for various degrees of conformity, such as "general acceptance", "general conformity" and "currency" have been defined and used.

There is an equally, if not more, important problem which has been, to a certain extent, overlooked, namely, "Has maximal utility to be really 'maximal' in every case?". I find that, although this statement is true for negative duties, it is not necessarily true for positive duties. This point, which I shall call "the inherent obscurity of the criterion for
maximal utility", is not sufficiently expounded by Mill, nor sufficiently interpreted in the existing forms of utilitarianism.

The purpose of this essay is to study this seemingly insignificant and often neglected problem. For the sake of convenience in analysis, I shall propose a classification of situations of moral action, which, though not essential to the solution of the problem, is very helpful because, by virtue of this classification, different interpretations of the criterion for maximal utility can be made for different situations. In light of this classification, it will be shown that the inherent obscurity of the criterion for maximal utility stems essentially from the "flexible nature of morality", especially in the case of morally-virtuous actions. By "flexible nature of morality" I mean the varying nature of the intensity or degree of realization of certain moral actions taken in accordance with positive duties. It will be shown further that this flexible nature of morality makes it difficult to specify whether a moral duty or rule is a maximum or a minimum requirement. Finally, the ultimate criterion for maximal utility, when analyzed with the aid of this classification of situations of moral action, is found to be inapplicable in certain situations if "maximal" is interpreted strictly. Therefore, the criterion or the term "maximal" has to be relaxed or interpreted separately and differently according to the situation of moral action.

This problem, in fact, has been noticed by many philosophers, although only implicitly. For example, David Lyons, David Copp and D.G. Brown have different interpretations of Mill's criterion of wrong conduct. These were compared and commented on by L.W. Sumner. Sumner further points out that Mill's original utilitarianism is not adequate and attempts to explain Mill's theory of terms of the principle of the good and the principle of the right, which Copp calls "a schism in Mill's theory".

Sumner's interpretation, in fact, corresponds to the classification of moral duties into positive and negative ones or, equivalently, to what Mill calls "expediency" and "morality".

2. POSITIVE AND NEGATIVE DUTIES

It is well known that sometimes a moral duty is called a "positive" one or a "negative" one, depending upon whether it is imperative to do a good thing or imperative not to do a bad thing. It is of interest to note that most moral rules are negative. For example, out of the Ten Commandments, only two are positive and the other eight are all negative, starting with "thou shalt not".

A negative duty forbids one to do a certain kind of bad thing. If one does not do such a bad thing, then one is right and if one does it, then one is wrong. For instance, the imperative "One ought not to kill" is a negative moral duty. A special property of most negative duties is that, if one fulfills a negative moral duty, then one is right but one does not have much credit for being right in fulfilling this duty. Most people do not kill, but they are not praised for not killing. (Some exceptions to this property, such that the fulfillment of a negative duty does have a positive credit, will be discussed later, in Section 5.)
To say that a positive duty is to do something good, a negative duty to avoid doing something bad, entails asking the question whether the goodness and badness come before or after the rule. As a utilitarian, I do not believe that duties or rules are a priori, nor do I agree that John Rawls' practice rules are always justified. Instead, I simply interpret utilitarianism as teleological and consequential. That is to say, any virtuous action, moral duty or moral rule contributes to the aggregate good, which is the ultimate end of human life—either individual life or the life of the whole of society. In fact, I define goodness and badness in terms of value: a good action has positive value; a right action has either positive value or zero value; a bad or wrong action has negative value. Thus, as I see it, morality is closely related to, and inseparable from, axiology.

In the study of aggregate good, there is, unavoidably, the problem of general distribution, which is related to the degree of interest of an agent in value. Therefore, another term, "utility", is generally used to measure this interest in good, whether personal or aggregate. However, in the study of personal ethics, the problem of general distribution rarely comes into play. For the sake of simplicity and as long as there is no confusion, we shall understand "utility" merely as a mathematical function of value. Thus, for our present purpose of studying the flexibility of morality, it is not necessary to distinguish among "good", "value" and "utility". In the following, we shall discuss moral actions in terms of value.

Positive and negative duties have been discussed by David Lyons. These concepts are what he calls quality of principles. He says "A principle is positive or negative according as its application does or does not admit our taking into account positive good that could be produced as well as evil that could be avoided."

Negative duties are similar to the law, in that a society blames those who fail to perform negative duties but does not give much praise to those who do perform them. Negative duties alone are not sufficient to serve the function of morality, because the fulfillment of a negative duty does not generate a high moral value, whereas the objective of morality is to maximize utility. Thus, it is more desirable to have positive moral duties.

However, most positive moral duties can be fulfilled in various ways and/or to various degrees. This causes a difficulty in the interpretation of the ultimate criterion for maximal utility and is, in fact, a crucial point in the establishment of an ethical theory.

3. INTENSITY OR DEGREE OF REALIZATION OF MORAL ACTIONS

That an agent can take a moral action in various ways in obvious and does not need much explanation. Moreover, this property does not have much moral significance. For example, if one wishes to spend, say, five hundred dollars for one's mother's birthday just out of filial piety, one may buy a coat for her or one may accompany her on a sightseeing tour of a large city, say, New York. To buy a coat and to take a sightseeing tour are different actions or, rather, are two different ways to realize filial piety.
That an agent can take a moral action to various degrees is of moral significance and may need some explanation. It means that a moral action can be taken to various degrees of intensity, thus fulfilling a moral duty to various degrees.

For instance, donating is an action that can be taken to various degrees, depending on the amount of money donated and, hence, fulfills charity to various degrees.

On the other hand, there is the situation that the same moral action can admit of various values in various circumstances. For example, saving a life is a moral action that cannot be taken to various degrees, in the sense that a life is either saved or not saved but cannot be saved partly. However, such a moral action can still admit of various values, because the value of the life saved depends upon whose life it is. Voting in an election is another example of this kind of moral action because one either votes or does not vote, but cannot vote partly.

There are still other different situations under which positive moral duties are performed. For some positive duties, when one does not fulfill such a duty, one does not do anything in the opposite direction. For some other positive duties, when one does not fulfill them, sometimes one goes in the opposite direction. In the former case, for example, if one does not donate to a foundation, one does not take money away from the foundation either. However, in the latter case, for example, if one is not kind to others, one may be just cold, or one may be intolerably rude, even insulting, thus expressing something in the opposite direction of kindness.

Moral actions that can be taken to various degrees exhibit what I call "the flexible nature of morality" or "the flexibility of morality". This "flexibility" causes difficulties in setting the requirement of a moral duty or rule, in identifying whether a requirement is a maximum or a minimum and in applying the ultimate criterion for maximal utility. The classification of the situations of moral action, to be presented in the next section, although incapable of surmounting these difficulties completely, does shed some light on the analysis of moral actions and clarify the interpretation of the criterion for maximal utility.

4. CLASSIFICATION OF SITUATIONS OF ACTION

In order to gain deeper insight into and to make a more thorough analysis of the flexibility of morality, the situation of moral action will be classified into four types. A moral action can be taken either in a yes-or-no manner, or in various ways and/or to various degrees. The various ways of action have little moral significance, but the various degrees of action have an important bearing on morality and will be discussed in detail. A mathematical term "discrete" will be borrowed to denote actions of the yes-or-no type and a mathematical term "continuous" will be borrowed to denote actions which can be taken to various degrees.

Note that the term "continuous" does not mean that the action itself is continuous in the time sense, nor does it merely mean a continuous spectrum of values. It means a spectrum of values produced by actions taken to various degrees. For example, saving a life is considered
a "discrete" action because the action of saving, in the moral sense, cannot be taken to various degrees, although the action of saving may yield different values, depending upon whose life it is (a relative, a stranger, a dog, etc.). Besides, I do not hold that there are no degrees on how difficult or dangerous the saving action is, nor do I hold that there are no degrees of blameworthiness for not saving the person, which may depend on what other business the agent has. I mean only that, normally, the action of saving is of a yes-or-no nature. On the other hand, the action of donating is "continuous" because the various amounts of money that could be donated represent various degrees. Similarly, the situation of being kind to others is also "continuous". For example, suppose, on a street, a stranger asks one how to go to a post office. One may briefly tell him how to go there, one may draw a detailed map for him or one may even accompany him to the nearest post office. These various actions of helping have various values and they represent various degrees of kindness. This situation is quite different from the situation of saving a life, where the differences in values are due to the different lives saved.

Now the terms "positively" and "negatively" will be used to describe the "direction" in which an action is taken. This usage will, in a sense, be different from the terms "positive" and "negative" used to describe positive and negative duties, respectively. "Positively" will be used where an action is taken such that it has a positive value and "negatively" will be used where an action is taken such that it has a negative value. For example, the situation of an act of donating is "positively continuous" and "negatively discrete", meaning that the act of donating has a positive value and can be taken to various degrees, but the act of not donating has zero or a small negative value and can be taken to only one degree.

These situations of action have also been discussed by David Lyons. He defines a property of principle called gradation and classifies principles into comparative and non-comparative. "A principle is comparative or non-comparative according as it does or does not incorporate some requirement of comparing the utility of an act with the utilities of its alternatives." His "comparative" corresponds to my "continuous" and his "non-comparative" corresponds to my "discrete". However, I have a different point of emphasis and find that my classification of situations is more suitable for bringing out the feature of flexibility of morality.

There are altogether four different situations: (1) positively discrete and negatively discrete, (2) positively discrete and negatively continuous, (3) positively continuous and negatively discrete and (4) positively continuous and negatively continuous. For simplicity, they will be called (1) discrete-discrete, (2) discrete-continuous, (3) continuous-discrete and (4) continuous-continuous. These four situations will be illustrated by examples given below.

(1) Discrete-Discrete Situation

A discrete-discrete situation is one such that the action is of the yes-or-no type or that, positively, there is only one degree of taking the action and, negatively, there is also only one degree of not taking the action or taking the action in the negative way.
For example, suppose a person A is the only person who sees another drowning person B, so that if A does not save B, then B will die. Suppose that A is able to swim and save the life of B. In this situation, there is only one degree of saving and there is also only one degree of not saving.

In such a situation, a positive action has a positive value and a negative action has a negative value.

(2) Discrete-Continuous Situation

A discrete-continuous situation is one such that positively there is only one degree but negatively there are various degrees. For example, the Commandment "Thou shalt not steal" is an imperative of such a situation.

A discrete-continuous situation is usually associated with a negative moral principle or duty. In such case, a positive action is usually considered to have a very small positive value or almost zero value and a negative action is considered to have a negative value.

The positive discrete action of a positive duty in a discrete-continuous situation normally has a positive value, but sometimes such an action has an almost zero value. This is because some positive moral duties are transformed into positive duties from originally negative duties. Consider the rule "One ought to repay a loan on the date due". If one repays a loan completely on the date due, then there is only one degree of action, but if one does not return the loan completely on the date due, then one may return a part of the loan so that various amounts will be left unpaid, or one may defer the payment for various periods of time. This example of "returning a loan on the date due" is, in fact, a negative moral duty. It should be more appropriately worded as "One ought not to break the contract or commitment of returning a loan."

In such a situation, a positive action has a very small positive or almost zero value and a negative action has a negative value.

(3) Continuous-Discrete Situation

A continuous-discrete situation is one such that positively there are various degrees of action, but negatively there is only one degree of action. For instance, if one donates, one may donate any amount, but if one does not donate, then there is only one degree of action, that is, one donates no money.

In such a situation, a positive action has a positive value and a negative action has a very small negative or almost zero value.

(4) Continuous-Continuous Situation

A continuous-continuous situation is one such that there are various degrees of action, both positively and negatively. For instance, the Commandment "Thou shalt honor thy father and thy mother" is an imperative for a continuous-continuous situation, because there are various degrees of honoring one's parents and there are also various degrees of dishonoring one's parents.
In such a situation, a positive action has a positive value and a negative action has a negative value.

5. SETTING OF THE REFERENCE POINT

Sometimes a continuous spectrum of action can be changed into an action of discrete form. Usually this is deliberately done under particular circumstances and according to a certain standard.

For example, consider the feeding of children. So far as the quantity of food is concerned, the situation is originally continuous-discrete, just as is the case of donation. Now suppose a certain amount $A$ per day is considered adequate. Any amount less than $A$ is inadequate and, therefore, the act of feeding such an amount is harmful to the children and considered a bad action. Any amount slightly more than $A$ is more than adequate, but the act of feeding such an amount is not harmful to the children and considered a good action. Now the set of possible acts of feeding an amount $B > A$ is a continuous spectrum, but it may be mapped into a discrete act called "adequate-nutrition feeding". The set of possible acts of feeding an amount $C < A$ is also a continuous spectrum, and it may be mapped into a discrete act called "inadequate-nutrition feeding". Or, in order to show the degree of harm done to children due to different amounts of inadequate-nutrition feeding, it may be maintained as a continuous spectrum of action.

In order to show whether a feeding is adequate or inadequate, a standard is required. Thus, in some places, rules regarding amount and quality of food are established. In hospitals, the various diets for various kinds of patients are usually specified as rules. In a nursery, the minimum calorie content to be supplied by a lunch for the children may be set by the local government as a rule.

This kind of mapping converts a continuous-discrete situation into a continuous-continuous one, by moving the neutral or reference upwards according to a certain standard. In fact, we have to "admit that people would sometimes be condemned for not performing what was regarded as a positive duty and not to be thought to deserve an particular praise for doing it."15

Consider again the act of donating. In an emergency case, say extreme shortage of food for the very poor, the faculty association of a university may pass a resolution that each faculty member is expected to donate at least the income of one day. Although it is not a law, it more or less transforms a voluntary virtuous action into a matter of moral duty. Thus, the act of donating the income of one day will be generally considered neutral. Any act of donating more than the income of one day will be considered good and that of donating less than the income of one day or not donating at all will be considered bad. Thus, the continuous-discrete situation is changed into a continuous-continuous one by the resolution of the faculty association to serve the purpose of relieving the emergency-situation of food shortage for the very poor. Similarly, "compulsory taxation is founded on the supposition that some level of transfer from the wealthy to the poor is a matter of legal duty."16
On the other hand, the release or reduction of a certain tax and the setting up or increase of a certain exemption can be considered a lowering of the reference point or expected legal contribution. "Sometimes people would not be condemned for infringing on a negative rule and would be praised for adhering to it in, say, circumstances where it was much to one's disadvantage to do so. (Cheating on one's income tax and understating the value of one's foreign purchases for the customs men when crossing the border [are examples of this situation].)"\(^{17}\) This situation is a mapping that converts a discrete-continuous situation into a continuous-continuous one by moving the neutral or reference point downwards.

I admit that, because of the flexibility of morality, "the continuous/discrete distinction by itself (or in conjunction with the positive/negative distinction) cannot tell us which acts to treat as duties and which to leave as morally virtuous or optional."\(^{18}\) The purpose of this essay is only to bring out the "flexibility of morality" clearly through the classification of situations of action, rather than to give "any background principle which can be appealed to as umpire in these cases."\(^{19}\)

However, a crude principle still can be established. All discrete-discrete situations, for duties such as "If able, one ought to save the life of another person in danger", and all discrete-continuous situations, whether for negative duties such as "One ought not to steal" or for positive duties transformed from negative duties, such as "One ought to return a loan on the date due", are obligatory in nature. All situations with a minimum requirement clearly specified, such as "Each faculty member is expected to donate at least the income of one day", are also obligatory. All other continuous-continuous and continuous-discrete situations with no specified minimum requirement, for duties such as "One ought to be kind to other people", are morally virtuous or optional.

6. FLEXIBILITY OF MORALITY

It is generally accepted that it is right or good to fulfill a moral duty or rule. However, because of the flexibility of morality, it is not always clear whether a moral duty or rule is an ideal, a requirement expected from every agent in the situation or something in-between, i.e., whether a moral duty or rule is a maximum, a minimum or something between a maximum and a minimum.

It is in order here to clarify the meanings of "minimum" and "maximum". I shall adopt the usage that a "minimal" rule shall specify the minimum the agent can do without incurring blame. However, it is not so easy to specify a "maximal" rule because, if a "maximal" rule specifies the very best that an agent can do, it is not clear what "the very best" is. "The very best" can mean the very best from among the actions the agent is, physically, mentally and/or financially, able to do, whether or not there is sacrifice on the part of the agent. Or it can mean the very best the agent can do without sacrifice or with small sacrifice. It can also mean the very best action that the agent is justified in believing he can take.

Consider again the example of a drowning person B. To save B, agent A has to suffer at least a small sacrifice, because A has to spend
some time and make some effort and have his clothing become wet and soiled. Normally, it is considered justifiable to suffer this amount of sacrifice. But if there is a heavy storm so that A himself will probably be drowned too, then it is normally considered unjustifiable for A to run such a risk. In this case, saving B is considered a kind of supererogatory action. However, in actual fact, there are firemen who are injured or killed in extinguishing fires and/or saving people trapped in fires, thus doing something more than they are expected to do. Then, is the maximum requirement really as high as the action of saving to the degree of sacrificing life?

It is a fact that law represents a somewhat lower requirement than morality. More accurately, the minimum requirement of morality is as high as, or slightly higher than, that of law, so that morality covers certain areas not covered by law. That is to say, an illegal action is usually considered immoral too, but an immoral action is not necessarily illegal. For instance, stealing is illegal and is also regarded as a morally-bad action. However, cheating in an examination by a college student is regarded as very bad conduct and the student will receive some sort of academic punishment, but legal punishment still does not apply.

To show clearly how the requirement of a moral duty or rule varies with the situation of action, the different situations of action enumerated previously will be considered separately.

(1) Discrete–Discrete Situation

For an action in the discrete–discrete situation, consider again the example of a drowning person, discussed in the previous section. Further, assume that there is a heavy storm such that, if A is going to save B, there are only two possibilities, both saved and both drowned, with probabilities 6/10 and 4/10, respectively. The value of not saving is one life (that of A). The expected value of saving is 2 X 6/10 = 1.2 lives. Thus, from the societal point of view, saving has a greater utility than not saving. But does society have the right to require or expect A to save B? This is a case of supererogatory action and it is generally accepted that supererogatory actions are expected of only heroes, sages, martyrs, devoted preachers, etc., but are never expected of ordinary people. Therefore, the decision should be left to A himself. If A is heroic or has a very strong feeling of moral satisfaction, probably he will try to save B. If A is an average man (not necessarily a coward), then probably he will not. Thus, in this sense, the problem is not whether or not the moral rule is a maximum requirement, but that it is simply impossible to set up any moral rule.

For a non-supererogatory action in the discrete–discrete situation, consider the moral rule "One ought to vote in an election". Since one can do nothing more than vote in the election, this moral rule seems to be a maximum requirement. Since the situation is discrete–discrete, if one does not vote, then one breaks the rule. Therefore, at the same time, this rule seems to be a minimum requirement as well. Thus, in this case, it is unclear whether the requirement is a maximum or a minimum.

Furthermore, if the moral rule is considered a minimum requirement, then there is a further problem in that there are normally a large number of people who do not meet the "minimum" requirement. In the
case of voting, a rate of 70% or 80% is considered good. That is to say, normally there are 20% or 30% of the people who do not meet the "minimum" requirement.

My explanation of this phenomenon is that, for one reason or another, one is sometimes ready to accept the blame for doing a small bad thing such as not voting, just as one sometimes parks a car in a non-parking area, running the risk of breaking the traffic regulations and receiving a ticket as penalty. In fact, nobody is perfect and the fulfillment of moral requirements, whether maximum or minimum, is of a statistical nature.

(2) Discrete-Continuous Situation

For an action in the discrete-continuous situation, consider the rule "One ought not to tread on the grass". Since, in this case, the best one can do is just keep off the grass, this moral rule seems to be a maximum requirement. Since it is impossible to set a criterion for a minimum amount of treading, this rule seems to be a minimum requirement as well.

An action in the discrete-continuous situation is similar to one in the discrete-discrete situation in that, if the moral rule is considered a minimum requirement, then there is a further problem in that there are normally a large number of people who do not meet this "minimum" requirement. In the grass-treading problem, there are normally lots of students, and even staff and faculty members, who tread on university lawns.

(3) Continuous-Discrete Situation

For an action in the continuous-discrete situation, consider again the case of donating as a fulfillment of the duty "One ought to be generous" or "One ought to donate in certain circumstances". Suppose a businessman has a total wealth of a million dollars and he donates ten thousand dollars to a foundation. His action is good, but certainly not maximal, because he could donate more. Then how much ought he to donate? According to a literal interpretation of the ultimate criterion, it seems that he ought to donate his total wealth of one million dollars because, as long as he could donate more, his donation is not maximal. But do we really expect him to donate all his property? Or do we really believe that donating all his property is the best action? By no means! In actual fact, one is never required or expected to denote all of one's wealth or income. First, the businessman in the above example has a right to his property. If he were expected to donate all his property, then all wealthy people would be expected to do the same thing and the ideal society would become one with no private property at all. This concept is even more extreme than communism. Second, even if the businessman does not keep his property for himself or his family, he still can use it to do some other good things later on and he does not have to donate all his property once and for all. Therefore, if he donates ten thousand dollars out of one million, he has already done a good thing. Normally, society or any member of society will not judge his action according to the ultimate criterion for maximal utility and expect him to donate more. In fact, it seems that nobody will believe that society is in a position to do so.
Thus, it can be seen that, for an action in the continuous-discrete situation, it is almost impossible to define or specify the requirement of a moral duty or rule, let alone to answer the question whether the requirement is a maximum or a minimum.

(4) Continuous-Continuous Situation

For the continuous-continuous situation, even Mill does not specify a maximal required duty. David Lyons points out, "Mill would wish to rank alternative acts according to their utilities (their instrumental values) but is not committed to calling an act that falls below the top of such a ranking (that fails to maximize utility) wrong. In order for an act to be wrong, Mill quite clearly says, sanctions must be fitting." 21

Let us consider again the moral rule "One ought to be kind to other people". Even if the various ways of being kind are not taken into consideration, one still can be kind to other people to various degrees. Then, to what degree ought one to be kind? Certainly this is also a situation where it is almost impossible to define or specify the requirement of a moral duty or rule, not to mention whether their requirement is a maximum or a minimum.

7. SCHISM IN UTILITARIANISM AND INTERPRETATION OF THE ULTIMATE CRITERION

From the above analysis it can be seen that, because of the flexibility of morality, the interpretation of the ultimate criterion for maximal utility is not a simple matter. It seems inevitable to interpret the various situations of action separately and slightly differently. In the following, actions in the four situations will be assigned values. Then, using the concept of schism in utilitarianism, it will be stated whether the principle of good or the principle of the right is applicable in each situation. Finally, the interpretation of the ultimate criterion for maximal utility will be considered separately and differently for each situation.

(1) Discrete-Discrete Situation

This situation corresponds to some positive duties. The example of saving a drowning person belongs to this situation. The action of saving is a "discrete" one having a positive value, and the action of not saving is a "discrete" one having a negative value.

For this situation, either the principle of the good or the principle of the right may be applied. The "discrete" action of saving a drowning person may be judged to be either good or right, and the "discrete" action of not saving may be judged to be either bad or wrong.

For this situation, there is no difficulty in applying the ultimate criterion, because the comparison and weighting are between a positive value and a negative value and it is obvious that the positive value is the maximal one. It is even not necessary to know the magnitudes of the values for the comparison and weighting.

However, whether the ultimate criterion should be applied or not is a different story and depends upon whether or not the action is a
supererogatory action. In the former case, since the action needs a big
sacrifice on the part of the agent, the action is normally not required
nor expected of the agent. Thus, the ultimate criterion for maximal util-
ity should be relaxed. Besides, the action of not doing anything posi-
tively should be judged to be neutral with zero value instead of being
bad or wrong with a negative value. In the latter case, such as voting
in an election, the action is normally expected, or even required, of the
agent. (Voting is a rather complex problem because of its threshold ef-
fact and, strictly speaking, it has to be studied as a probabilistic sys-
tem.) The ultimate criterion for maximal utility, in this case, is clear and
should be applied.

The action of voting is good or right and has a positive value,
and the action of not voting is bad or wrong and has a negative value,
although the magnitude of the negative value is normally considered not
large.

(2) Discrete-Continuous Situation

This situation corresponds to negative duties, such as "One ought
not to steal". An action of not stealing is a "discrete" one having almost
zero value and an action of stealing is a "continuous" one having a
negative value.

For this situation, the principle of the right should apply. The
"discrete" action of not stealing is right and the "continuous" action of
stealing is wrong.

For this situation, the ultimate criterion for maximal utility is
valid, because the almost-zero value of the action of not stealing is ac-
tually the maximal one compared with various actions of stealing, in
various ways and to various degrees, all of which have negative values.

(3) Continuous-Discrete Situation

This situation, like the discrete-discrete one, also corresponds to
some positive duties, such as "One ought to donate in certain circum-
cstances". The action of donating is a "continuous" one having a positive
value and the action of not donating is a "discrete" one having zero
value.

For this situation, the principle of the good should apply. The
"continuous" action of donating is good and the "discrete" action of not
donating is neither good nor bad, but is neutral.

For this situation, it is almost impossible to define or specify the
requirement of the moral duty or rule. Therefore the ultimate criterion
for maximal utility has to be interpreted in a different way. For example,
a donation of ten thousand dollars certainly has a smaller value than a
donation of twenty thousand dollars. However, for a moral judgment of
the donation of ten thousand dollars, the value of ten thousand dollars
should be compared only with the zero value of the action of not donat-
ing, but should not be compared with the value of various amounts of
money that could be donated.
As discussed above, for this situation, an arbitrary minimum requirement can still be specified as a rule. This is equivalent to raising the reference point.

(4) Continuous-Continuous Situation

An action in this situation can be taken to various degrees, both positively and negatively. For example, being kind to other people is such an action. The action of being kind is a "continuous" one having a positive value, and the action of being unkind is a "continuous" one having a negative value.

For this situation, the principle of the good should apply. The "continuous" action of being kind is good and the "continuous" action of being unkind is bad.

For this situation, under particular circumstances, it is still possible to specify the requirement of a moral duty or rule somewhere in a continuous region according to a certain standard, thus fixing, raising or lowering the reference point. Once specified, any action fulfilling or more than fulfilling the requirement is considered good and that fulfilling less than the requirement is considered bad.

For this situation, the ultimate criterion for maximal utility has to be relaxed, i.e., so interpreted that the value of any good action should be compared only with all possible bad actions, but not with all other possible good actions.

8. IMPLICATIONS AND CONCLUSIONS

The discussion and analysis of the flexibility of morality presented in this essay have been restricted to the interpretation of the principle of utility, with the conclusion that, in continuous-discrete and continuous-continuous situations, the term "maximizing" or "maximal utility" should not be interpreted literally or strictly, but the meaning should be relaxed. However, this "fact" of the flexibility of morality imposes a difficulty to utilitarianism and entails a basic question: Is utilitarianism still a tenable ethical theory? My answer is "yes" and I shall now expound this important and delicate point.

In recent years, rights-theorists greatly outnumber utilitarians. A strong objection to utilitarianism by rights-theorists is that rights-theories are "person-relative", whereas utilitarianism is "person-neutral". The main charges against utilitarianism are that utilitarianism is unconstrained and that the specification of maximal utility constitutes a violation of human rights. Now I endeavor to defend utilitarianism briefly, concentrating on these two points.

The problem of constrainedness is quite straightforward. I simply contend that utilitarianism is constrained rather than unconstrained. As interpreted by D.G. Brown, Mill's concept of wrong conduct is characterized by "harm to others". Therefore, that "one ought not to do any harm to others" can be considered a constraint in utilitarianism. If agent A ought to do no harm to others, then, in reciprocity, others also ought to do no harm to A. In other words, the rights of A are protected from being violated.
The problem of maximal utility is more delicate. Most philosophers, whether utilitarians or non-utilitarians, still interpret the principle of utility literally and strictly. This leads to the misconception that utilitarianism addresses only the maximization problem of utility, but is indifferent to the general distribution problem. For instance, R.G. Frey admits of replaceability, utilitarian sacrifice and trade-offs. J.L. Mackie, as a rights-theorist, writes, "... on a utilitarian view, transferring a satisfaction from one person to another, while preserving its magnitude, makes no moral significance. ... the maximizing of utility may turn out to require that his well-being should be sacrificed, without limit, in order to promote that of others."  

My view of utilitarianism is that it is not indifferent to the general distribution problem. I admit that classical utilitarianism has certain weaknesses and leaves some parts of the theory crude, obscure, and not adequately elaborated. With the constraint "no harm to others", the recognition of the flexibility of morality and the relaxation of the interpretation of the principle of utility in continuous-discrete and continuous-continuous situations, utilitarianism is no longer "person-neutral". This objection then becomes pointless.  

However, this interpretation might entail another question: Does this interpretation make utilitarianism non-utilitarianism? My answer is "no". The reason for my answer can most readily be seen from the distribution point of view. Let us consider a simple hypothetical situation. Suppose a society has ten members with equal intelligence, ability and contribution, so that, theoretically, a uniform distribution of wealth seems to be an ideal situation. (In general I do not believe in egalitarianism, but for this particular case, egalitarianism seems to be justified.) Suppose there are altogether 20 units of wealth. Thus, an ideal distribution would be that each member has a wealth of 2 units. Now suppose that, due to some historical development, the present distribution is that nine members each have a wealth of 1 unit, and the other member, A, has a wealth of 11 units. In this case, from the utilitarian point of view, is it justifiable for any member to take away 9 units from A by robbing, cheating or any other means, so as to re-distribute them to the other nine members and make the distribution uniform? My answer is "Certainly not!" The original distribution is no doubt a bad one. However, it is the responsibility of the government, the political system, or society at large to look into this problem and to implement some practical measure to improve the distribution, but this is not the responsibility of any individual member of the society. Any member of the society, in taking any action, is still constrained by the precept "no harm to others" and is definitely wrong in stealing, robbing, or using any other means that harm A.  

However, this constraint does not contradict or refute the ideal of a uniform distribution (for this particular example). In fact, if we admit the flexibility of morality and relax the principle of utility, aggregate utility is still the ultimate end of human beings and some objective function, say a social welfare function, can still be used for the ultimate criterion for maximal utility. A detailed explanation of this point is beyond the scope of this essay and will not be given here. In any event, to admit the flexibility of morality does not imply the refutation of utilitarianism and, hence, utilitarianism is still utilitarianism.
This interpretation of utilitarianism in terms of flexibility of morality is, in fact, compatible with and close to R.M. Hare's two levels of thinking and Samuel Scheffler's hybrid views in terms of "agent-centered prerogative". But this is far beyond the scope of this essay and will not be discussed here.

Finally, I shall draw the following few conclusions from the above analysis.

(1) Morality is sometimes flexible, especially in the positive sense, in that a virtuous action can be taken in various ways and/or to various degrees.

(2) For the continuous-discrete and continuous-continuous situations of action, it is often unclear what the moral requirement is and whether it is a maximum or a minimum. However, under particular circumstances a minimum requirement may sometimes be set, thus changing a virtuous action into a matter of duty.

(3) As a consequence of (2), for continuous-discrete and continuous-continuous situations of action, it is often difficult, or even impossible, to formulate moral rules.

(4) The interpretation of the ultimate criterion for maximal utility should be relaxed or interpreted separately and differently for the four different situations of action.

Thus, the schism of the principle of utility between the principle of the good and the principle of the right seems to be inevitable and indispensable. Taking all situations of action into consideration, I propose a new formulation of the ultimate criterion for maximal utility, as follows.

A moral action in a discrete-discrete situation or a discrete-continuous situation is right if and only if it causes no harm to others and, among all feasible alternatives, has the maximal value or utility for others; a moral action in a continuous-discrete situation or a continuous-continuous situation is good if and only if it has a positive value or utility for others; a moral action is wrong if and only if it has a negative value or disutility for others.

ENDNOTES


See Note 1, 63-75.


See Note 4. L.W. Sumner says,

Mill never wrote a treatise in ethics. The essays on ethical subjects, including utilitarianism itself, are short pieces intended for popular consumption... But they are composed with too little exactness to please the philosopher. And above all they are too slight—a mere pencil sketch of a theory—to support close analysis... The deeper truth, however, is that Mill's theory undermines the adequacy of the standard distinction between forms of utilitarianism.

See Note 4. L.W. Sumner says,

Mill holds not one theory but an ordered pair. His theory of the good (what Mill calls practical reason) evaluates actions in terms of their consequences—the goodness of acts is a function of their utility. But it equally evaluates all other products of human choice (rules, conventions, policies, lives, political systems, societies) in terms of their utility. At this level the theory is not (exclusively) act utilitarian but it is not (exclusively) rule utilitarian either.

Mill's theory of the right (what he calls morality) evaluates actions in a manner which certainly includes essential reference to rules.

David Copp, "The Iterated-Utilitarianism of J.S. Mill", in *New Essays on John Stuart Mill and Utilitarianism*, ed. Wesley E. Cooper, Kai Nielsen, and Steven C. Patten (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1979), 75-99. David Copp says, "On such interpretation there is a schism in Mill's theory of practical reason which I think it is clear Mill would not tolerate".

What Copp originally means by schism is perhaps the separation of Mill's principle of the good into act-utilitarianism and rule-utilitarianism. But Wesley E. Cooper interprets it as a schism of Mill's theory into the principle of the good and the principle of the right, as he says, "Sumner tries to show that this schism between Mill's principle of good and his principle of right is motivated by a complex view of moral decision-making, ...". I think the original schism meant by Copp is not as important as the clarification and distinction of the principle of the good and the principle of the right. Therefore what I mean here by "schism" is rather Cooper's interpretation, but not the original schism of Copp. See W.E. Cooper, "Introduction", in *New Essays on John Stuart Mill and Utilitarianism*, ed. Wesley E. Cooper, Kai Nielsen, and Steven C. Patten (Guelph, Ontario: Canadian Association for Publishing in Philosophy, 1979).

In a private communication, Professor Jan Narveson raised this question.
ON THE FLEXIBLE NATURE OF MORALITY


10 See Note 1, 23-5.

11 L.W. Sumner, private communication.

12 See Note 1, 23-5.

13 Jan Narveson, private communication. Narveson points out in comments on my original draft, "Obviously there are an infinite number of distinguishable specific things I could do any of which would count as repaying a loan. And some of these might well be more admirable than others. I can repay it in such a way as to impose a fair amount of trouble on you (I give you a check which is in a foreign currency--; you have to exchange it, which is time consuming and perhaps costs you a few dollars. Or . . .). And as you say, I can do any number of things, which differ greatly in their blameworthiness, which would be ways of not repaying it strictly on time. (I give you the full amount, in cash, but one day late; I never bother to do anything about it all and move to Missouri; I . . .)". Strictly these cases belong to the class of not repaying a loan completely on the date due. However, since the substantive difference between these cases and the case of repaying properly is relatively small, these cases are considered trivial and are ignored.

14 The materials in this section are almost all inspired by the comments on the original draft given by Professor L.W. Sumner.

15 See Note 8.

16 See Note 11.

17 See Note 8.

18 See Note 11.

19 Ibid.

20 Jan Narveson, in his comments on my original version, gives a counterexample of discrete donation: "But one can easily imagine cases where there is a maximum amount that it is possible to give for the purpose in question. E.g., I donate a sum toward poor little Jennifer's hospital bills; if I give 100% of the bill, then that is all there is to do, whatever my resources." I admit that, for specific situations like this example, the donating action is discrete, but my example of donating refers to donating in general.


24 See Note 22.

