RULE-UTILITARIANISM

MAURO CARDOSO SIMÕES[1]
(Universidade Positivo / Brasil)

Resumo

O objetivo do presente trabalho é examinar se o utilitarismo de regras poderia ter êxito em prover um possível avanço sobre o utilitarismo de atos, de modo a tornar o utilitarismo uma teoria moral viável. Em face deste propósito, levarei em consideração o seguinte: Em primeiro lugar temos que perceber que existem diferentes formulações do utilitarismo de regras, as quais visam responder a contra-exemplos morais, que o utilitarismo de atos não resolve satisfatoriamente. Em minha opinião, se contra-exemplos são bem sucedidos na formulação do utilitarismo de regras como uma alternativa substantiva ao utilitarismo de atos, e se esta alternativa substantiva permanece sob a égide do princípio utilitarista, em seguida, eles teriam conseguido responder a contra-exemplos. Em segundo lugar, apresentarei as principais formulações defendidas por escritores contemporâneos (Brandt e Rawls, especialmente).
Palavras-Chave: Utilitarismo de atos, utilitarismo de regras, Punição, Promessa

Abstract

The purpose of the present work is to examine whether rule-utilitarianism could succeed in providing a possible improvement over act utilitarianism so as to render utilitarianism a viable moral theory. In view of this purpose, I will take the following into consideration: Firstly, we must realise that there are quite a few different formulations of rule-utilitarianism, all of which aim at replying to the moral counter-examples that act-utilitarianism fails to resolve satisfactorily. In my opinion, if counter-examples succeed in formulating rule-utilitarianism as a substantive alternative to act-utilitarianism, and if this substantive alternative remains within the utilitarian principle, then they would have succeeded in replying to the counter-examples. Secondly, I shall present the main formulations advanced by contemporary writers (Brandt and Rawls, specially).
Key-words: Act-Utilitarianism, Rule-Utilitarianism, Punishment. Promise

General Background to Utilitarianism

The contemporaries of Jeremy Bentham (1748-1832) called him a "radical philosopher", one who attempted to put decision-making on a formal and rational basis by finding a general principle by which the various conflicting moral obligations could be estimated. Now Bentham is known as the founder of the ethical system of utilitarianism.

The basic doctrine of the moral worth of acts for the utilitarian is the principle that those acts which, under given circumstances, tend to bring about the greatest happiness of the greatest number of people as their consequences, are morally goods acts. Bentham maintained that what is good is pleasures or happiness - he, as well as J. S. Mill (1806-1873), the other major exponent of classical utilitarianism, used these words synonymously - and what is bad is pain or unhappiness. Of all possible acts that act is best which results in the greatest balance of pleasures over pain. The net balance of pleasures over pain which an act produces is called its utility, hence the greatest happiness principle is alternatively known as the *principle of utility*.

Further, Bentham sought to work out a simple procedure for reaching correct decisions regarding the right line of action to pursue in any circumstances. This is the "hedonistic calculus", which involves quantifying the likely happiness we can derive from performing each action that makes up the choices available to us, and adopt the action that would enable us to attain the greatest happiness for the greatest number. The value of a pleasure or pain will be greater or less, according to the following seven aspects: its intensity, duration, certainty or uncertainty, propinquity or remoteness, fecundity, purity and extent. The idea is that the more intense the pleasures the more it is to be preferred, the longer the duration of the pleasure, the more it is to be preferred, and so on. Pleasures of different values are added but the value of a given pleasure is multiplied by the number of individuals who feel it.

A note on Mill's famous distinction between the quantity and quality of pleasures: Bentham expresses all feelings of pleasure or happiness in purely quantitative terms. J. S. Mill attempts to include qualitative differences as well, estimating feelings of pleasure not only according to their higher or lower qualitative value. However, even though people prefer some pleasures to others, it does not necessarily mean that those they prefer are in any manner superior in quality. If we were to interpret Mill as using different "quality" of pleasure simply to refer to experiences of different kinds, and it is as different kinds that some experiences are preferred to others, then " quality" would be used in a non-evaluative sense. Thus, from this standpoint, we can conclude that the hedonic calculus must still be applied in order to decide between alternative states of affairs. In other words, it goes right back to directing of human's actions to the production of the greatest possible quantity of happiness.

We can take the illustration put forth by J.J.C. Smart[2]. John Stuart Mill would say that the pleasure to be derived from poetry is of a higher level of quality than the pleasure to be derived from pushpin. But it must be easily seen that a man who enjoys pushpin is likely to become bored with it eventually, whereas the man who enjoys poetry is likely to retain this interest throughout his life. Moreover, the reading of poetry may develop imagination and sensibility, and so as a result of his interest in poetry, he may be able to do more for the happiness of others than if he had played pushpin. In short, both for the man immediately concerned and for others, the pleasures of poetry are, to use Bentham's word, more <u>fecund</u> than those of pushpin.

The rise of act and rule-utilitarianism

The general description of the utilitarian theory of obligation can be given as the doctrine which states that the rightness or wrongness of actions is determined by the goodness and badness of their consequences. On closer examination, however, we can still ask what is meant by the term "actions" in the above definition.

To render the above general definition more precise, we can interpret the meaning of the word "actions" as particular actions or alternatively, classes of actions. If we take "actions" to refer to particular actions, then we are in effect adopting a species of utilitarianism called *act utilitarianism*, whereby the rightness or wrongness of each individual action is assessed directly by its consequences. On the other hand, if we understand "actions" to refer to classes of actions, then some form of *rule-utilitarianism* is obtained[3]. The rule-utilitarian does not assess the consequences of each individual action but the consequences of adopting some general rule, such as "keep promises". In the event of there being several alternatives, he adopts the rule for which the consequences of its general adoption are better than those of the adoption of the alternative rules.

Thus acts and rule utilitarianisms can be termed as two main methods that have been suggested to meet the need for precision in determining exactly what form the appeal to utility should take. This, we find, is not explicitly laid down in the works of classical utilitarians. Since then, the principal burden of defence of utilitarianism has fallen on rule utilitarianism to meet counter-examples that critics advance against act utilitarianism. In order to consider how it sets out to do this, we must first obtain a more complete understanding of both act and rule-utilitarianism.

Act-Utilitarianism

Act-utilitarianism makes the rightness of an action depend directly on the utility it produces as compared with possible alternative action to it. The main feature of the thesis thus consists in applying consideration of utility to this act in this situation.

It is important, too, to note that in considering utility, both direct and indirect consequences must be observed. An example given by R.B. Brandt[4] brings this out clearly: Suppose you are an act-utilitarian. You employ a boy to mow your lawn. He has finished the job and now asks for the pay that you promised him. Do we leap to the conclusion that on utilitarian grounds you should pay him what you promised him only if you cannot find a better use for your money? Perhaps you should not pay him if you can, say, send the small sum to Unicef which would produces far greater happiness than what the boy would feel. But this conclusion is not what the act-utilitarian would come up with, because he would also bring indirect consequences into consideration. For instance, you ought to pay the boy because your reputation for trustworthiness among your neighbours is at stake. It would cost unhappiness to you in the future if people should doubt your trustworthiness and it would cost others uncertainties as to your trustworthiness. More emphatically, it would damage the boy's faith in the words of others, promise keeping, generally.

Now, the act-utilitarian cannot always be weighing consequences both direct and indirect when deliberating on every issue. It is more likely that he must often act from habit or in accordance

with rough rules-of-thumb, such as "keep your promises" and "always tell the truth". However, contrary to what some may believe, this does not affect the value of the act-utilitarian principle, which is put forward as a criterion of rational choice. No doubt when we act habitually we do not exercise a rational choice, but we decide from past decisions made on the act-utilitarian principle, the habits or rules-of-thumb which we should adopt as guides to moral action. These rules are thus a "shorthand summary" of the kinds of acts that usually produce the greatest amount of happiness for the greatest number.

Generally, the adoption of rules-of-thumb has three main advantages for the act-utilitarian. First, it would be timesaving to trust in such rules. Detailed calculation would slow his responses and cause him to miss many opportunities for the probable achievement of good. Secondly, in particular cases, we are all prone to rationalise in our own favour in our on-the-spot reflection; and this happens where our own interests are involved; for instance, take the example brought forth by J. J. C. Smart[5] about the man who is unhappily married. He may think as an act-utilitarian when he is deciding whether to get divorced, but he is likely to conduct a system of calculation based on three counts.

1 - he may exaggerate his own unhappiness and possibly his wife's, too.

2 - he may underestimate the harm done to his children by the break-up of the family, and

3 - he may also underestimate the likely harm done by the weakening of the general faith in marriage vows; all in all to arrive at the conclusion that he should get a divorce

Thirdly, these rule are a relief for the act-utilitarian who tends to be clumsy at abstract thought!

Still, we must realise that in themselves the rules-of-thumb do not justify any action. This is because if the fact of having made a promise on a particular occasion does not change the relative expectable utilities, if no one knows about the promise, then no one will be disappointed. As a result, there will be no effect on the general faith in promise-keeping should we fail to keep it, in which case that particular promise is of no moral effect whatever, and the rule-of-thumb "keep your promises" can be disregarded.

Rule-Utilitarianism

Turning to rule-utilitarianism which constitutes another method to meet the precision required, we find several views of this general type of theory, each with precise suggestions which vary either slightly or considerably from the others. Thus there cannot be an exact representative statement of these views.

Nonetheless, a general formulation of the thesis has been offered by John Hospers and is as

follows: "Each act, in the moral life, falls under a rule; and we are to judge the rightness or wrong-ness of the act, not by its consequences, but by the consequences of its universalization - that is, by the consequences of the adoption of the rule under which this act falls[6]".Thus broadly speaking, actions are to be tested by rules and rules by their consequences.

We have already seen what constitutes act-utilitarianism and rule-utilitarianism. We shall now go further to examine why rule-utilitarianism is seen as an improvement over act-utilitarianism.

Critics have sardonically pointed out that act-utilitarianism would have to approve of cheat-ing on taxes, punishing the innocent, breaking promises (especially the death-bed and desert-island cases). In all circumstances we believe such are wrong. Act-utilitarianism seems to lead us to advo-cate courses of actions inconsistent with our common moral consciousness or our usual ideas about what is ethical. These are but a few of the putative counter-examples to the act-utilitarian theory of obligation.

Let us consider a typical case of a secret promise to a dying man on a desert island. A specific case is given by J. J. C. Smart[7]. A dying friend, the only other person besides me on a desert island, made me promise him that I will see to it that his fortune, over which I have control, is given to a jockey club. When I am rescued from the island after he is already dead and gone, I became the only one who knows about the promise. On act-utilitarian principle, the conclusion I will arrive at is that I ough not to carry out my promise and perhaps give the dead man's fortune to a needy hospital, which presumably can do more good with it. This is because:

1 - the hospital can do more good with the money than the jockey club can;

2 - I do not disappoint the man to know I made the promise because he is dead;

3 - there will be no ill effects that breaking the promise might have my reputation;

4 - what is most important is that on this occasion no one except me knows about the prom-ise, so when I break it I will not be doing any indirect harm by weakening men's general faith in promise-making and promise-keeping, a socially useful institution. The confidence with which the promise will rely upon the promises of others in the future will not diminish. Thus the factors that would keep the act-utilitarian from breaking promises is absent, unlike Brandt's boy-lawn promise case stated earlier.

Normally we should be certain that the promise made to the dying man ought to be kept. We feel that somehow he would be immoral to break a promise, either secretly or openly. We feel that if something is wrong when people know about it, it is just as wrong when it is done in se-cret. Yet, according to the act-utilitarian principle, this condition is relevant. If some act with bad consequences is never known to anyone, this ignorance does mitigate the bad consequences, for it undeniably keeps the act from setting an example. The rule-utilitarian thus attempts to provide an alternative conclusion which is more congenial to our usual idea of ethics. He points out that if

we introduce a policy of not keeping solemn promises when nobody knew about them, the consequences would be bad. This is because thenceforth no one would have any reason whatsoever to believe that a promise would be kept, if the person who made the promise could break it in secret and thought that by breaking it he could do the most good.

Another counter-example brought forth by critics is that of punishing of innocent. A case put by D. W. Brock[8] is representative. In a town predominantly inhabited by whites, a black has allegedly raped a white woman. Riots ensued, and beatings and lynching of blacks are taking place. The critics point out that it could not be inconsistent for an act utilitarian to argue that false evidence be produced against an innocent black for the crime and thereby stopping the violence against blacks. For it could be the case that there are no better utilitarian alternatives than punishing the innocent black to avert a major disaster. The act-utilitarian could claim that such cases are extremely rare, when specified in enough detail to be plausible.

Again, in accordance with the reasoning of the rule-utilitarian, the general policy or practice of punishing the innocent is a very bad one as it uproots one of the basic premises of our legal system; i. e. an innocent person should not be condemned. To state it formally, "punishing the innocent as scapegoat when you think that it will produce more happiness" would be a bad rule to follow. We condemn the act because this <u>rule</u>, if adopted, would have bad consequences, not because this particular <u>act </u>itself has bad consequences.

Rule utilitarian's would generally want to formulate an utilitarian theory which does not conflict with conventional moral judgments and rules of conducts which are actually operative in society. However, we should be cautioned against the idea that rule-utilitarian may be insisting on complete congruence with those convictions. Though they do not necessarily advocate an explicit revision they do diverge in degree and kind from such conviction. A plain man would be inclined to consider each of the generally accepted moral maxims as unconditionally binding from its own nature. Rule-utilitarian would want to say that these obligations are not intrinsically right but that they have to be assessed in their moral worth through an examination of their consequences, whether immediate or remote, direct or indirect. Bearing this is mind, some of the traditional rules, for instances, about marriage and divorce, sexual relations, euthanasia, are bound to arouse the suspicion of the rule-utilitarian.

In conclusion, to justify the duties such as to keep promises, act-utilitarian appeal to the expectation created by the promisor in the promise who will be disappointed if the promise is not kept and the effect upon men's faith in the institution of promise-keeping. This is why desert-island and death-bed promises are particular problems. Much development of rule-utilitarianism has been motivated by the desires to find an utilitarian theory not subject to such problems.

Brandt's formulation of Ideal Rule-Utilitarianism

In "*Toward a Credible Form of Utilitarianism*"[9] Richard B. Brandt has made the most careful attempt in developing an *Ideal Rule-Utilitarianism* (IRU) that might have avoided the difficulties encountered by Lyons whilst providing an actual alternative to act-utilitarianism. He focussed on the problem of determining a set of rules for an imperfect society, acknowledging, for reasons which overlap with but are somewhat different from Lyon's, that IRU savors a bit of the utopian[10].

He turned his attention to a set of rules that would make concessions to the fact that not only are ordinary people not capable of perfectly fine discriminations, but not being morally perfect, people of ordinary conscientiousness tend to abuse a moral rule whenever it suits their interest. In other words, the best moral code has to allow for the fact that people are what they are. To test rightness by the requirements of the moral code adoption of which by <u>everyone</u> would maximize utility is thus to depart from the real world. Brandt therefore suggests that we should drop the notion of "adoption" and replace it by "recognition", meaning by "recognition by all" simply "belief by all that the rules formulate moral requirements".[11]

He proposes a modification of the theory to make it more comprehensive. He incorporates a consideration of the existing (*de facto*) moral beliefs within a given community into the test for the set of rules. This Brandt claims results in a more "credible" form of rule-utilitarianism. It is as follows: "(…) the best whether an act is right is whether it is compatible with that set of rules which, were it to replace the moral commitments of members of the <u>actual society</u> at the time, <u>except where there are already fairly decided moral convictions</u>, would maximize utility[12]".

The resulting principle is:

> An act is right if and only if it conforms with that learnable set of rules, the recognition of which as morally binding, roughly at the time of the act, by all actual people insofar as these rules are not incompatible with existing fairly decided moral commitments, would maximize intrinsic value[13].

The implications of this formulation are obvious:

1 - Whether an act is right depends in some degree on such factors as the proportion of the conscientious over the actual population and the existing fairly decided moral beliefs at the time.

2 - Included in the rules would be ones which are, in Brandt's own words "rather similar to W. D. Ross's list of *prima facie* obligation"[14]. Examples are, rules about keeping promises and contracts, debts of gratitude such as those owing to parents.

3 - The rules would be few in number because an upper limit on quantity is set by the ability

of ordinary people to learn or apply them. The above gives this formulation of IRU its alternative name, "Credible Rule-Utilitarianism".

According to this formulation, then, the ideal rules would be relatively few in number. But we can hardly construe this to be an advantage to Brandt's IRU, since in this simpler version it is still rather difficult to determine just what the ideal rules are. Brandt does not formulate them but suggests that they would resemble Ross's *prima facie* moral rules.

Furthermore, there is a temptation to construct the rules so they yield the particular judgments we want, whether or not it is clear that moral code would take precisely that form. After all, the utilitarian may begin to apportion praise and blame among members of the community according to whether their actions conform to the traditional non-utilitarian code of morals and not according to whether they are right or wrong from the utilitarian standpoint. This is a real threat to the plausibility of Brandt's rule utilitarianism. It leaves open the possibility of already formed and decided immoral views into the code when the utility maximizing principle is used within the background of the society's existing social institutions.

The utilitarian defending Brandt's thesis may say that we must admit it is not a fair philosophical critique of Nietzschean ethics, for example, to point out that racist psychopaths such as Hitler and Goebbels are prone to misinterpretations and consequently apply its teachings dangerously. However, he should realise that legislator of public regulations and advocates of guides to public morality must consider the likelihood of the occurrence of such corresponding events.

 Lastly, one of the most prominent features of moral beliefs in societies such as ours is a sensitivity to unfairness (or injustice). In consequence, Brandt's validated set of rules will be determined not merely by considering utility, but also by fairness. On such a theory, thus, non-utilitarian factors are introduced indirectly. Brandt has tried to include fairness in the consideration of utility in his rule-utilitarian account, but failed.

Rawls: The concept of Rules

John Rawls is the first to shift the appeal to utility from the level of particular actions to that of rules or practices, notably to avoid the embarrassing counter-examples which plague act-utilitarianism. Another form of rule-utilitarianism is Ideal Rule Utilitarianism (IRU) of which there are two formulations, one by David Lyons and the other by Richard B. Brandt. It is called such because its rules are supposed to amount to "ideal rules" or "ideal prescriptions" for the agent's community, constituting a sort of utilitarian grounds, it would be best if everyone in the given community try to conform to and adopt as moral rules.

In his paper, "Two Concepts of Rules"[15] John Rawls sets out to show the importance of

the distinction between justifying a practice and justifying a particular action falling under it and to explain the logical basis of this distinction. He claims that the utilitarian who has a proper understanding of rules would be able to deny in a way consistent with utilitarian considerations, that promise-breaking or punishment of the innocent is sanctioned by his moral philosophy.

He examines two conceptions of rules. The first conception is that which is often termed as rules-of-thumb. It pictures rules as summaries of past decisions arrived at by the <u>direct</u> application of the utilitarian principle to particular cases. Thus, if a case occurs frequently enough one supposes that a rule is formulated to cover that sort of case. On the summary view, therefore, particular cases are logically prior to rules. He considers an example of a rule which could arise in this way:[16] Suppose that a person is trying to decide whether to tell someone who is fatally ill what his illness is when he has been asked to do so. Suppose on reflection the person decides, on utilitarian grounds, not to answer truthfully. On the basis of this and other like occasions he formulates a rule to the effect that when asked by someone fatally ill what his illness is, one should not tell him. In this example, the rule is used as a guide, something to be laid aside in extraordinary cases when there is no assurance that the generalization will hold and the case must therefore be treated on its merits.

Rawls calls the other conception of rules the practice conception. Here, rules are pictured as defining a practice: "It is the mark of a practice that being taught how to engage in it involves being instructed in the rules which define it…Those engaged in a practice recognize the rules as defining it[17]".

In contrast with the summary rules, the practice rules are logically prior to particular cases, as there cannot be a particular case of an action falling under a rule of a practice unless there is the practice in the first place. This point is illustrated by the game of baseball. A person could throw a ball, run or swing a peculiarly shaped piece of wood anytime i.e. regardless of whether there is a game or not, but he could not steal base, or strike out, or draw a walk, actions which could only happen in a game. The rule-like practice which constitutes the game must be presupposed before he could be described as doing those actions.

Excuses and exceptions are provided for in the formulation of the rule i. e. an exception is rather a qualification or a further specification of the rule, and thus any appeal to an exception is an appeal to a rule and not to utilitarian considerations. Appeal to the latter applies only to the justification of the practice, never to acts that fall under a practice. If a person wants to carry out an action specified by a certain practice, then there is no way to do it except to follow the rules which define it. For instance, if one wants to play a game one does not treat the rules of the game as guides as to what is best in particular cases. It follows that if a person is engaged in a practice and if he is asked why <u>he</u> does what <u>he</u> does, his explanation or defence lies in referring the questioner to the practice.

In the case of promising, rules about promising are not to be interpreted in accordance with

the summary conception. This, Rawls point out, is because the rules that promises should be kept could not have arisen from its being found in past cases to be best on the whole to keep one's promise; for there could not have been any cases of promising unless there were already the understanding that one keeps one's promises as part of the practice itself. Thus, when I say "I promise" I would be promising given the existence of the practice. Moreover, the man who defends his promise-breaking on the grounds that the consequences of doing so are better on the whole is as absurd as the batter who argues that it would be better on the whole if he were allowed four strikes. A game allowing four strikes instead of three would not be baseball at all.

In the case of punishing the innocent, the criticism against utilitarianism fails in the same manner to make a distinction between the justification of the general system of the rules which constitutes penal institutions and the justification of particular applications of these rules to particular cases. It has to be realised that when an innocent man is punished, he is not logically in any actual sense "punished" , for it is not in the way of any retribution for a crime he never did commit. Rawls would rather use the term "telishment" for the punishment of the innocent, as he recognizes that it no longer the structural practice we know as punishment. The rules of the practice of punishment are such that no official should have discretionary power to inflict penalties whenever he thinks it is for the benefit of the society.

To summarise:

(a) A particular act is only what it is because the rule exists; and someone logically can only perform the practice governed act through conforming to the rule which defines it and makes it possible.

(b) Appeal to the utility principle rather than to the practice and its rules is therefore logically inappropriate for justifying particular actions governed by practices.

(c) Exceptions are not made to the rules, but rather justified exceptions are included within and are part of the rules of the practice.

(d) The appeal to utility, therefore, enters only at the level of justifying the practice and the exceptions allowed under it.

The distinction, Rawls feels, enables him to state utilitarianism in such a manner as to defend utilitarianism against objections which have traditionally been brought against it in connection with punishment and the obligation to keep promises.

The conflict of Rules

In the many forms, rule-utilitarianism is invented largely as a way of meeting the objec-

tions that act-utilitarianism comes across. However, as we have seen, there are diverse problems that meet each formulation. We will now consider one basic difficulty that each invariably incurs before we come to any conclusion as to whether rule-utilitarianism could possibly improve on act-utilitarianism. This difficulty is that it does not seem to give a coherent account of what we ought to do if two useful moral rules conflict. Suppose two rules dictate contradictory actions: how are we to decide which one we ought to break? The rule-utilitarian theory should provide for the resolution of moral perplexities that arise when there are conflicts of obligations.

It becomes evident that the complete moral code of rules necessarily contain higher-order rules which tell us what we are to do when the lower-order rules conflict. Perhaps third-order rules conflict; and so on up, the order of precedence among rules depending on the basis of the relative utilities of the rules themselves.

Evidently this is difficult when we have to keep in mind that there are escape-clauses that have to be taken into consideration. It makes one wonder whether plausible concrete proposal for such a set of rules is possible. But the real stumbling block is yet to come. It must be remembered that the question we are considering is not "Which of the these two rules should I break on this occasion?" but "Given that these two rules might conflict and that therefore one of them must be abandoned or modified; which would it do least harm to abandon or modify?" For, if a rule, A, is to be considered superior in the hierarchy to another rule, B, because it is more useful, it must be treated as superior on all occasions of conflict. Rule B would in effect, be modified to read "always do X, unless doing X necessitates breaking A".

Nowell-Smith shows us that this is virtually impossible, by considering the following cases[18]:

Case 1 - I have promised to dine with you and while I am on my way I find someone seriously injured in an accident. Unless I take him, he cannot hope to get to hospital in time, but to do this I have to break my promise. It is obvious to most of us that in this case the "good Samaritan rule" should override the "promise-keeping rule".

Case 2 - I have promised to attend a cabinet meeting at which a decision is to be made on peace or war; moreover, my vote may be decisive. In this case the man involved in this accident has only broken his ankle. It seems equally obvious here that the pomise-keeping rule must override the "good Samaritan rule".

Thus, as Nowell-Smith has pointed out, starting with (1) it is easy to construct a slide to (2) by increasing the importance of the promise and decreasing the severity of the injury, showing in effect, that any intention to place either rule above the other in the hierarchy would be frustrated.

According to S. T. Toulmin[19], if two rules conflict we are allowed to argue the case on its merits, as if we were extreme (act) utilitarian. But this is absolute folly. It will not do to say that

we should apply the principle of utility to each case as it comes up by weighing the consequences of each action. To do so would be apply the principle at the wrong place and get us back to act-utilitarianism. As we have seen, rules are laws, not rules-of-thumb. Thus the very conception of a hierarchical code of rules to yield directions for conduct involves contradictions when we try to get it into sharp focus. The problem of the conflict of rules remains unresolved.

For a more plausible solution to the problem perhaps we should turn to R. B. Brandt[20]. He advocates a consistent "remainder-rule", which is a top-level rule giving adequate directions for all cases for which the prescriptions of the lower-level rules are conflicting. But first, as he has pointed out himself, the remainder-rule is not the rule-utilitarian principle itself, for

> the rule-utilitarian principle states that an act is right if and only if it conforms with the rules of a certain kind of code. If one of the rules of the code were the rule-utilitarian principle, it would contain reference to a code which presumably would itself contain again the rule-utilitarian principle, and so on *ad infinitum*"[21].

He then offered a formulation of a possible remainder-rule:

> One is obligated to perform an action if and only if a person who knew the relevant facts and had them vividly in mind, had been carefully taught the other rules of this code, and was uninfluenced by interests beyond those arising from learning the code, would feel obligated to perform that action[22].

As a result, conscientious people would have established in them a built-in sense of obligation to do or avoid certain things. So the suggested remainder-rule would in effect be, to take whatever course of action would leave morally well-trained people least dissatisfied. Thus this issues would not present too much of a difficult for the rule-utilitarian to surmount.

Conclusion

Generally, utilitarians aim at introducing order into the tangle of ethical rules by putting forth the thesis that there is a single procedure that could be applied uniformly to all ethical problems. They appeal to the sentiment of generalized benevolence, that is, the disposition to seek happiness for all mankind.

Classical utilitarianism as expounded by Bentham and Mill is ambiguous on the important issues as to show the principle of utility is to be applied. When it is stated that actions are right in proportion as they tend to promote happiness, is it talking about particular occasions, or about

general types of actions? Accordingly, the theses of act and rule utilitarianism are founded.

For the act utilitarian, the rightness or wrongness of each action is assessed directly by its consequences. However, this runs foul of counter-examples that critics brought forth. They have pointed out that he have to approve the breaking of promises and other moral obligations all in circumstances in which we believe such acts are wrong.

Rule utilitarians are supposed to advance their thesis to improve upon act-utilitarianism. In the course of doing this, they have advanced elaborate versions in recent years. Generally speaking, acts are to be regarded as right only if they conform to rules that can be supported on utilitarian grounds. The utility of an individual act is not considered, but the application of a rule and its consequent utility e.g. the rules that promises ought to be kept. Exceptions are not made to the rules, but rather justified exceptions are included within the rules. This change seems to enable utilitarianism to cope with the embarrassing counter-examples.

Notes

[1]Pós-Doutor em Filosofia pela National University of Singapore; Pós-Doutorando em Filosofia pela University of Cambridge; Doutor em Filosofia pela UNICAMP. Professor Titular da Universidade Positivo; Professor Adjunto do Unicuritiba Centro Universitário e da Facinter.

[2] J. J. C. SMART. "An Outline of A System of Utilitarianism Ethics" In: J. J. C. SMART and Bernard WILLIAMS. *Utilitarianism: for and against*. London: Cambridge University Press, 2005 (24th), pp. 9-12

[3]Richard BRANDT, in his book *Ethical Theory*, published in 1959, introduced the terms "act-utilitarianism" and "rule-utilitarianism" to mark the distinction. These terms have since come be used generically to cover a family of alternative theories.

[4] Richard BRANDT. "Toward A credible Form of Utilitarianism". In: *Contemporary Utilitarianism*. Ed M. D. BAYLES. New York: Doubleday & Co., 1968.

[5] J. J. C. SMART. "Extreme and Restricted Utilitarianism". In: *Contemporary Utilitarianism*. Ed M. D. BAYLES. New York: Doubleday & Co., 1968. His article is a defence of act as against rule-utilitarianism, although he used the terms "extreme" and "restricted" instead of the more appropriate words "act" and "rule" respectively. The latter pair of terms were only introduced by R. B. Brandt in his book, *Etical Theory* (Englewood Cliffs, New Jersey: Prentice-Hall, 1959).

[6] John HOSPERS. "Rule-Utilitarianism" In: *Ethics in Perspective*. Eds. K. J. STRUHL and P. R. STRUHL. New York: Random House, 1975, p. 111.

[7] J. J. C. SMART. *op. cit.*, pp. 62-63.

[8] D. W. BROCK. "Recent Work in Utilitarianism". In: *American Philosophical Quarterly*, vol. 10, n. 4, October, 1973, pp. 241-269. See H. J. McCloskey. A non-utilitarian approach to punishment. In: Michael D. Bailes (ed.) *Contemporary Utilitarianism*. New York, 1968.

[9] BRANDT. op. cit.

[10] Ibid., p. 169.

[11] Ibid., p. 171

[12] Ibid., p. 171-172.

[13] Ibid., p. 172.

[14] Ibid., p. 166.

[15] John RAWLS. Two Concepts of Rules. In: **Contemporary Utilitarianism**. ed. M. D. Bayles.

[16] Ibid., p. 85.

[17] Ibid., p. 87.

[18] P. H. NOWELL-SMITH. "Some reflection on Utilitarianism". In: *Canadian Journal of Philosophy*. Vol. 2, n. 4 (June, 1973), pp. 421-422.

[19] S. T. TOULMIN. *An examination of a place of Reason in Ethics*. Cambridge: Cambridge University Press, 1950, pp. 146-148.

[20] BRANDT. *op. cit.*, pp. 177-178.

[21] Ibid., p. 177.

[22] Ibid., p. 177.

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