

UTILITARIAN THINKING IN CONTEMPORARY MORAL PHILOSOPHY: A DEFENCE*

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Utilitarianism is a moral theory which has a distinctively Anglo-American tradition. It has been a constant driving force behind many political and social programs in modern history. But these days utilitarianism cannot be said to be the dominant doctrine in English-speaking philosophical academia. I shall mention and examine in this paper some recent and most influential criticisms of utilitarianism. The conclusion will be that though utilitarianism can be plausibly criticised, the alleged defects of utilitarianism are often exaggerated.

I. *Utilitarianism and Distributive Justice*

‘Utilitarianism’ is used in various ways. I shall use the word rather restrictively: following the terminology of Amartya Sen and Bernard Williams,¹ I stipulate that utilitarianism consists of (1) welfarism, (2) consequentialism, and (3) the maximization principle. I do not connect it with any particular view on meta-ethics or human nature. Welfarism is a doctrine where data to be considered in evaluating a situation include only happiness or welfare or utility (‘pleasure’ would be too narrow) that is experienced by people or by sentient beings there. Consequentialism is a doctrine where data to be considered in evaluating an act include only its actual or reasonably expected effects. The maximization principle is a doctrine where the ultimate moral aim is the maximization of total happiness (total utilitarianism) or average happiness (average utilitarianism). This doctrine presupposes that each individual’s utility is commensurable and can be added together.

On this definition, therefore, a certain kind of non-hedonism that finds intrinsic value in what is irreducible to individuals’ experience, such as the pattern of fair distribution or the beautiful scenery nobody sees, is not utilitarian because it is incompatible with welfarism, though it can accept consequentialism and the maximization principle. And what Robert Nozick called ‘utilitarianism of rights,’² which aims at maximizing the realization of rights,

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¹ A. Sen and B. Williams, ‘Introduction,’ *Utilitarianism and Beyond*, ed. A. Sen and B. Williams, Cambridge, 1982, pp. 3 f.

² R. Nozick, *Anarchy, State, and Utopia*, New York, 1974, p. 28.

is by the same token not utilitarian. Furthermore, deontological doctrines cannot be utilitarian, primarily because they deny consequentialism in claiming that certain acts such as deliberate homicide or lying are intrinsically so evil that they are never permissible even when their effects are desirable all things considered. These considerations suggest both welfarism and consequentialism may conflict with commonsense morality. But the maximization principle, the third component of my definition of utilitarianism, is more counter-intuitive since it excludes considerations of distribution. It may seem to deny any idea of justice too, for justice is often regarded as a principle about distribution of goods among different individuals.

It may be objected, however, that utilitarianism can be one criterion of justice, because the formal feature of justice is nothing but a universalist claim that differential treatment merely based on the identity (not the significant characteristics) of individuals is unjustifiable. Utilitarianism passes this test; the utilitarian maxim 'everybody is to be counted as one, nobody for more than one' complies with the claim of justice: 'treat equals as equals.' Nevertheless, utilitarianism may contradict the dictates of justice as commonly conceived. It may allow or even require sacrificing certain individuals' rights or welfare in order to maximize the total or average happiness.³ We can concede there may be such cases in which we need to impose some burdens on certain people for the greater happiness of many others. But in this case the justification of the former's burdens does not concern justice. Rather, they suffer undeserved and unjust burdens but their burdens is justified as a necessary evil for the achievement of some more important goal.

The idea of justice can be incompatible with utilitarianism, not simply because few of us are utilitarians pure and simple, but because utilitarianism has no idea of individual intrinsic entitlement. It is suggested by utilitarians' difficulty in explaining the idea of justice. Justice gives each individual his or her proper lot and prohibits its encroachment. When the individual can claim for the lot on his or her account, then the lot is called his or her 'right.' In utilitarianism, however, justice has no intrinsic significance, and prohibitions, duties and rights provided by moral or legal rules are merely *prima facie* ones. They may be helpful as rules of thumb for the maximization of utility, but nothing more. Jeremy Bentham wrote in a remarkable note in *An Introduction to the Principle of Morals and Legislation*:

[J]ustice, in the only sense in which it has a meaning, is an imaginary personage, feigned for the convenience of discourse, whose dictates are the dictates of utility, applied to certain particular cases. Justice, then, is nothing more than an imaginary instrument, employed to forward on certain occasions, and by certain means, the purposes of benevolence.⁴

John Stuart Mill was more susceptible to commonsense morality and sense of justice.

³ It may be said that distributive concerns can be counted in the values to be maximized in utilitarian calculation. But it would lose the welfarist component of utilitarianism and make its extension too wide. The proposed theory belongs to what S. Scheffler, *The Rejection of Consequentialism*, Oxford, revised edition, 1994, p. 30, calls 'the distribution-sensitive forms of consequentialism,' but not to utilitarianism. I think the narrow definition of utilitarianism by Sen and Williams is more helpful in focusing both the strength and the weakness of classical utilitarianism.

⁴ *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart, London, 1970 (*The Collected Works of Jeremy Bentham*), p. 120 note b2.

In the fifth chapter of *Utilitarianism*, he pointed out the necessary connection between justice and rights, and thereby divided justice and the other realm of morality. Injustice does not mean all moral offenses but violations of rights. Justice demands respecting rights, but not beneficence or charity. Still, in trying to make sense of individual rights Mill wrote:

To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes to ask why it ought, I can give him no other reason than general utility.⁵

But it would not explain the weight which rights and justice can have in opposition to a total goal in ordinary moral discourse, even though 'general utility' includes the interest of security which is strengthened by a system of rights.

After all, utilitarianism can conflict with the age-old formula of justice, 'suum cuique.' It is true the formula in itself is nearly void of content because it says nothing of what 'suum' means, but utilitarianism has no idea of 'suum' whatever unless in connection with the general utility. Justice is a distributive principle which regards the separateness of, and the difference between, persons as morally important.

But we should take notice of these two points. (I) I said justice is a distributive principle. But the word 'distributive' here is to be understood more widely than commonly understood. (II) Many of those critics of utilitarianism who point out the incompatibility between individual rights and utilitarianism argued above claim that it does not respect individual persons and treats them as mere means to the aims of such super-persons as the whole society. But their claim would be unfair without several important qualifications.

(I) Every principle of justice is distributive in a broad sense in that according to it each person is given his supposed due lot. But there are two ways to judge the justice or injustice of the distribution: according to the end-state or according to the procedure of acquisition.

On the former kind of criterion, the proper lot to be given a person is decided by his situation or characteristics or deserved acts. The examples include 'to each according to his work,' 'to each according to his need,' 'to each according to his effort,' and 'to each according to his ability.' Persons who are equal by a relevant criterion must receive equal shares. It is distributive justice as was first conceived by Aristotle. On the procedural criterion, however, it is right that goods be acquired and transferred in accordance with some proper procedural rules. Inequality in wealth or welfare may occur or widen in consequence of rightful transactions, but it is not unjust at all. One may say voluntary exchange and lottery are paradigmatically just in this sense, however arbitrary the result of distribution is from the viewpoint of desert or need.

It goes without saying that equality of result is a criterion based on end-state. But equality of opportunity also has a feature of an end-state criterion, though it is often contrasted with equality of result. The reason it is not purely procedural is that it requires not the result of individual activity but the initial opportunities available to persons be equalized whatever circumstances in the past led to the initial condition. And the same thing can

⁵ Mill, 'Utilitarianism,' in *Essays on Ethics, Religion and Society*, ed. John M. Ronson, Toronto, 1969 (*Collected Works of John Stuart Mill*, vol. x), x, 250.

be said about human rights theories, since they require equal distribution of basic rights. Hence it is difficult to treat distributive justice purely as a matter of procedure without any regard for the end-state. But there can be greatly different views on how to demarcate the realm of procedural criterion and that of end-state criterion. For example, if one follows Rawls in thinking we have no morally legitimate rights to our natural endowments and talents and hence to the benefits derived from them, the end-state criterion would be applied quite broadly. According to Nozick, whose entitlement theory of justice belongs to the procedural criterion, patterned principles or end-state conceptions of distributive justice would bring incessant state interventions with the results of voluntary transactions, and it also has a defect in that it ignores the historical entitlements to goods as if they were manna from heaven. It may be objected to Nozick's theory, however, that the simple sweeping application of the procedural criterion of distributive justice tends to give rise to social inequality and pays no attention to the idea of desert or merit.

Distributive justice is often examined only in terms of end-states, but it can take a form of a criterion of distributive procedure too. Anyway, non-utilitarian distributive principles are not restricted to end state criteria; they can be procedural, too.

(II) A number of recent critics of utilitarianism, including Rawls and Nozick, argue that utilitarianism overlooks the separateness of persons. H. L. A. Hart formulated this argument in four claims.⁶ I find them interrelated and partly overlapping, but I believe they can be summarized as follows:

- (a) What matters on utilitarianism is not individuals but pleasure and happiness alone. Hence the trade-off of utility between different persons is considered possible.
- (b) By the same token, utilitarianism is neither individualist nor egalitarian. It is impartial only in valuing different persons' utility equally. On this view, it makes no moral difference how welfare is distributed among them, so even gross inequality of happiness could be justified.
- (c) But the mere increase in total pleasure is not valuable in itself. Nobody experiences the collective sum of different persons' pleasure or happiness. Society is not such a subject of experiences.
- (d) It is a requirement of prudence that an individual should sacrifice his present pleasure for his greater future pleasure. On the analogy of this requirement, utilitarianism claims a person's pleasure may be sacrificed for the greater pleasure of a different person. But this claim is mistaken, because it overlooks the difference between different persons as if the difference were like that between the selves of the same person at different times and as if separate persons were parts of one super-person.

Hart did not totally subscribe to these four claims, but he did find them 'a profound and penetrating criticism.'⁷ I doubt whether they are so successful.

Firstly, claims (a) and (b) are misleading in that both of them imply pleasure and happiness is separable from a subject who experiences them. Happiness necessarily presupposes its subject: it must be *someone's* happiness. Utilitarianism does respect individuals in respecting their happiness or welfare. Next, claims (c) and (d) are also misleading in that they

⁶ H. L. A. Hart, 'Between Utility and Rights,' *Essays in Jurisprudence and Philosophy*, Oxford, 1983, pp. 200-202.

⁷ *Ibid.*, p. 202.

falsely suggest that utilitarianism presupposes a super-person such as 'mankind' or 'society' that experiences the aggregate happiness or pleasure. Utilitarianism does not deny that it is only individual persons (or sentient beings) that experience happiness. Utilitarianism is individualist in that it insists the total utility is nothing but the sum of the utility of each individual. (It may be said that utilitarianism is hardly individualist because it mistakenly supposes different people's utility can be added together. It is an important objection to utilitarianism, but it is to be distinguished from the objection mentioned above.) I even think claim (b) is less individualist than utilitarianism in a sense, for (b) finds some intrinsic value, not reducible to that of each person's happiness, in certain ideal distributive patterns such as 'according to one's need' or Rawlsian maximin principle. That value does not belong to anybody, but to the state of affairs as a whole.

The reason why utilitarianism may not be individualist would not be that it presupposes the existence of a super-person who enjoys aggregate happiness but that it does not give each person moral rights to a fair or equal or minimal share. Of course it is unacceptable to many of us, but it is not so simply false as the claim that there are subjects who experience the total sum of different people's happiness. Moreover, most people believe an increase in total pleasure or happiness is desirable if it does not burden anyone, even though they do not believe in such super-persons. Then, after all, claim (c) proves to be hardly successful as an objection to utilitarianism.

Claims (a) and (c) say utilitarianism permits the trade-off of utility between different persons. It is correct, but it is too weak as an argument against utilitarianism, because the interpersonal trade-off of utility does not ignore the separateness of persons or presuppose each person is a part of an organic social entity. X may be not compensated for his burden by Y's benefit however great the latter is, but it does not follow that the judgement that it is better to give Y a greater benefit by X's smaller burden is untenable. We may justify interpersonal trade-off of utility simply on the following premise: the separateness of persons is not always an overwhelming consideration in moral arguments. Indeed, very few people respect present interests so highly as to denounce *every* attempt to burden someone in order to benefit other persons. Therefore, although utilitarianism allows interpersonal trade-off of utility, we cannot simply reject utilitarianism on that score.

Maybe we should rather interpret the argument against trade-off not as denouncing it absolutely but as claiming that utilitarianism allows trade-off of utility *too easily*. It is true that utilitarianism has nothing to say about patterns or procedures of distribution insofar as the total utility is maximized. And it means that it takes the separateness of persons less seriously than commonsense morality does. But there is a strong argument to deflate the supposed importance of the separateness of persons. If we think personal identity consists in the existence of some entity which remains one and the same from birth to death and whose existence is all-or-nothing, then we tend to regard the separateness of persons as a deep fact. But, following Derek Parfit,⁸ we may also think of personal identity in a reductionist way: we may think that a person substantially changes over his lifetime and that personal identity from birth to death consists only in the continuity over time of psychological relations such as memory and intention. On this reductionist view, we would consider separateness of persons less important, because we think personal identity is im-

⁸ D. Parfit, *Reasons and Persons*, Oxford, 1984, part III.

portant *because of* psychological relationship, not *vice versa*. We would then regard a person's life as less integrated, because we do not believe in an unchanging entity which supports personal identity over time. And if we accept reductionism on personal identity in this way, we may regard an early self and a later self of one person as different persons in a morally relevant sense: they are very much like different persons who exist at the same time. Thus we would not think the boundaries between different persons are so deep as to make interpersonal trade-off of utility impossible or almost unjustifiable, for if we think *intrapersonal* trade-off of utility over a long time is ever permissible, we would also think interpersonal trade-off is permissible in some cases. Trade-off of utility between selves of a person that are psychologically related over time can be compared with that between different persons. The analogy between those two kinds of trade-off is legitimate despite claim (d).

Claim (d) seems plausible only because it contrasts (i) voluntarily giving up one's own present benefit for one's own greater future benefit (which is all right) with (ii) sacrificing a person's benefit against his will for some other person's greater benefit (which may be unjust). The two cases are not parallel, however. We should rather compare (i) with (iii) *voluntarily* giving up one's own benefit for some other person's greater benefit, and compare (ii) with (iv) sacrificing a person's present benefit *against his present will* for his own greater future benefit. Cases (i) and (iii) are all right because they do not violate the agent's autonomy, even though the trade-off of utility is interpersonal in case (iii). And cases (ii) and (iv) may be unjust because they violate the victim's autonomy, even though the trade-off is intrapersonal in case (iv).

I admit that even if we accept the reductionist view on personal identity we do not have to accept utilitarianism too, because the separateness of persons (and the difference between temporal selves in one life) may morally matter in support of distributive considerations. But we would then weigh distributive concerns less and/or widen their scope: we would be concerned not only about interpersonal distribution but also about intrapersonal intertemporal distribution. Both changes are contrary to claim (d).⁹

Lastly, claim (b) correctly implies that distributive considerations, especially equality, have no intrinsic value on utilitarianism. But if we think the separateness of persons is less sharp, as I argued, we would tend to evaluate distributive considerations more instrumentally and less intrinsically.

II. *Some Other Problems with Utilitarianism*

The preceding discussion shows the plausibility of the familiar charge that utilitarianism does not take the separateness of persons seriously is much more limited than at the first glance. Moreover, utilitarianism is convincing in that, unlike Kantian deontology and some religious moralities, it squarely takes account of happiness in the evaluation of situations and acts; and it looks fair in that it weighs every person's happiness equally. But utilitarianism has been criticised for reasons other than distributive considerations, too. I

⁹ In the last three paragraphs I owe a great deal to Parfit, secs. 111–118 and L. A. Mulholland, 'Rights, Utilitarianism, and the Conflation of Persons,' *Journal of Philosophy*, 83 (1986), pp. 323–340.

shall now discuss some of them.

1. The Vagueness of 'Utility'

The first difficulty is: What is happiness or utility or well-being, which is to be maximized, whether as a whole or in the average, according to utilitarianism? Aristotle, if not Plato, already was fully aware of the vagueness of 'eudaimonia.' Bentham seems to have thought of utility in terms of pleasure and pain. But both have various sorts. Are they ever cardinally commensurable? *A fortiori*, how can we add together different persons' happiness? It must be possible to compare different persons' pleasure in not only ordinal but also cardinal terms for us to do the addition. It seems to require too much. For example, how can and should we compare an artist's bliss in creative activity, an athlete's satisfaction found in a gruelling race, and a gourmet's palatal pleasure? Some writers use such concepts as satisfaction of desires or preferences instead of utility. But these concepts are not much clearer than utility, though they may sound more exact. How can we measure intensity of desires? Can we know for certain a person's preferences in hypothetical cases? And the problems with interpersonal comparison of utility linger here, too.

With all these difficulties, however, it may be answered as follows: True, it is not easy to give an equivocal definition of happiness or utility, but we can use these concepts with profit in everyday life, and we often compare different persons' utility by considering, for example, whether it would be better or worse to be exactly similar to some person in his situation than to be exactly similar to another person in her situation; if these concepts work in practical problems, it is all right; indeed the meaning of them does not vary very much in an actual particular society, even if it does in the academic world; hence the meaningful discussion on good or happy life.

I think this answer is only partially successful. What matters is not each person's idea of happiness, however helpful it is in private morality, but the public criterion of happiness. Perhaps the concept of happiness remains vague but works satisfactorily in everyday life. But it is mainly limited to the private domain, where the difference in the idea of happiness does not lead to serious problems, since these days each person is fortunate to be largely free to pursue his or her own idea of happiness. But utilitarianism chiefly tries to regulate social or public institutions and decisions, not private behavior. It would be inconvenient if there were greatly conflicting ideas of happiness or utility or if the results of an interpersonal comparison of utility varied according to various persons in the public sphere. There each individual is under many obligations to society and other persons, and authorities have special prerogatives (for example, tax) allegedly for the public good. Hence the necessity of a public standard of conduct and policy that would be recognized and, hopefully, consented to by most of the citizens. I am not sure that the maximization principle of utility or happiness passes that test. There would be a fairly common understanding of what circumstances amount to misery. But the same cannot be said about happiness. (By the way, it offers in practical situations some support to negative utilitarianism, which aims at the minimization of suffering rather than the maximization of happiness.) Nevertheless, the above difficulty is not a decisive argument against utilitarianism unless a convincing alternative to it is offered. Insofar as principles of justice cannot provide public criteria of justice of actions and institutions, we cannot single out utilitarianism for the

vagueness of public criteria.

2. Impracticality

The second difficulty with utilitarianism is its alleged impracticality.¹⁰ Utilitarianism requires people to be impartial and equally concerned about everyone's happiness. This requirement is criticised from two diametrical directions.

On one hand, utilitarianism seems too demanding for human nature. Most if not all people are egoistic to a degree; each person is much dearer to himself or herself than others. Even if they are not so egoistic in an individualist sense, they do not pay equal attention to every human being but prefer their own families, communities, tribes and nations: they are collective egoists. *Some* egoism is desirable even on utilitarianism, since it is often the very person that can best achieve his own happiness because he knows better than any other his own desires, character and circumstances and because the sense of self-realization greatly contributes to his happiness. But real people tend to be more egoistic, both individually and collectively, than utilitarianism allows. Perhaps so much of egoism should be restrained. But it would be futile simply to demand that everyone should respect all human beings' happiness equally and maximize total happiness. It would take tremendous costs to enforce such abstract and demanding requirements. Worse, standards of behavior too demanding for ordinary people to comply with could weaken the sense of respect they have for moral principles in general. Perhaps it is only prohibition against such acts that positively harm or offend others that can be enforced in a society. But such rules would not amount to utilitarianism.

On the other hand, it is claimed by other critics of utilitarianism that if each of us became a paragon of utilitarian morality, paying equal respect to all people's happiness and having no motivations other than to increase the total sum of utility, then we would be less happy. The reason is claimed to be that it is the nonuniversal, personal aims of each person that give meaning to his or her life, or that socially beneficent institutions such as promise-keeping or family are efficient not because each particular act in accordance with their rules maximizes utility but because people following them without any utilitarian calculations tend to do so as a whole. I think the cogency of these claims is questionable. A selfless benevolent practitioner of utilitarianism may find his or her own life fully meaningful, and utilitarians can follow the rules of social institutions as a rule of thumb, not as an exact criterion in terms of the resulting effects of an act. Even if those claims are cogent, however, they do not seem to be very damaging to utilitarianism, though they are intellectually intriguing arguments. For, as I argued, real people are quite egoistic and far from being utilitarian, and there seems no realistic prospect of change in this respect in the near future.

I shall mention another objection to the impracticality of utilitarianism. Friedrich Hayek claims utilitarianism is based on the wrong assumption that one can know all about the effects of one's particular acts.¹¹ According to Hayek's social philosophy, morality and legal rules are not inventions by anyone but spontaneous orders which have grown in the process of history. People who follow successful rules do not usually know why

¹⁰ J. L. Mackie, *Ethics*, Harmondsworth, Middlesex, 1977, ch. 6, secs. 2-3.

¹¹ F. A. Hayek, *The Mirage of Social Justice*, London, 1976, pp. 17-23.

they are so successful. If they ever try to maximize utility by means of their inevitably imperfect knowledge, they would destroy the system of rules which are unconscious results of social evolution. But it is doubtful Hayek's epistemological objection to utilitarianism is convincing. It seems to ask too much for the status of 'knowledge.' True it is important not to have illusions about human ability to predict the future, but we need not think our expectations will always be belied. Human conditions are those of imperfect knowledge, neither those of perfect knowledge nor those of utter ignorance. We do not regard acting with imperfect knowledge as irrational if we cannot know any more. Suppose we believe it is more than probable that a certain public policy would greatly lessen some people's misery. In this case it would sound too passive to claim that to do nothing is better because such a policy could destroy a spontaneous order which is beneficent in some ways unknown to us.

3. Agent-relativity

Related to the impracticality objection, utilitarianism is sometimes criticised for seeing the world from an impersonal viewpoint, or, so to say, from nowhere and hence neglecting personal or agent-relative values. Suppose person X can rescue either Y or Z from a house in a fire. Y is X's young son and Z is a stranger to X but a uniquely talented doctor who, if rescued, would benefit people a great deal by curing more of serious patients. Whom should X rescue? On utilitarianism X should rescue Z, while commonsense morality would demand him to rescue Y because of the parental relationship. Or suppose scientist L is requested to do certain morally dubious projects (say, animal experimentation) to which L is opposed on principle. If he declines the offer, the job would be taken up by another scientist, M, who has no scruples about it. And suppose that if L takes up the job, he can successfully sabotage the project and hence cause much less harm than M. Utilitarianism requires L to accept the offer, but many believe that it unjustifiably compromises his integrity and conscience.¹²

It is undeniable that utilitarianism conflicts with commonsense morality in those cases. But utilitarians may answer as follows. Personal relations and moral integrity are fine. They do contribute to the happiness of people as they are. But these concerns should not mask unreflected self-indulgent sentiments, however plausibly they are depicted. Commonsense morality should be revised as far as it encourages naive self-centered feelings against impartial benevolence. Indeed, if all of us become utilitarians, it is probable not only total utility but also the utility of each of us is increased, because each benefits from people's impartial benevolent acts instead of from his single-handed pursuit of his agent-relative values.¹³

¹² Those cases are adapted from R. M. Hare, *Moral Thinking: Its Levels, Method and Point*, Oxford, 1981, p. 138 and B. Williams, 'A Critique of Utilitarianism,' J. J. C. Smart and B. Williams, *Utilitarianism: For and Against*, Cambridge, 1973, pp. 97 f.

¹³ See, Parfit, ch. 4.

4. Different Kinds of Pleasure

The next difficulty with utilitarianism is concerned with its welfarist aspect. All kinds of utility or happiness are matters of indifference for utilitarianism: all of them are given equal weight. But many of us regard certain pleasures as morally less important than other kinds of pleasure. They include malevolent pleasure such as found in watching other people's misery; pleasure based on false belief; and 'lower' simple pleasure, which is highly estimated only among those who have hardly experienced higher pleasures. John Stuart Mill famously introduced the idea of difference of quality in pleasure in his *Utilitarianism*. The idea is coherent and appealing. But the coexistence of the two standards—quantity and quality—of pleasure makes the meaning of utilitarianism very vague, unless the two standards are commensurable in some way.

It would be helpful to mention here Ronald Dworkin's rather tenuous criticism of utilitarianism.¹⁴ According to him, unrefined utilitarianism is incompatible with the right to 'equal respect and concern' of persons in that utilitarianism counts in moral calculations not only 'personal preferences' people have about distribution of goods to themselves but also 'external preferences' they have about that to other people. He suggests counting of external preferences means counting twice some people's utility. Hence 'rights as trumps' (Dworkin's phrase) against utilitarian considerations are needed where not only personal but also external preferences are liable to play a part in public decisions.

Such external preferences as those based on racial discrimination, envy, spite or grudge certainly seem inappropriate in moral calculation. But it is not clear that *every* external preference is incompatible with 'equal respect and concern,' as many external preferences are quite laudable (e.g., those for abolishing racial discrimination), which Dworkin acknowledges. Rather, it may be plausibly claimed that the exclusion of external preferences is unequal because preferences of egoistic persons would play a greater role than those of altruistic persons. Dworkin writes as if the total amount of each person's personal preferences were the same, while that of each person's external preferences were not so. But it is not shown. It is sufficient for the equal respect of persons that each person should be given morally overwhelming basic rights. It does not require the total exclusion of external preferences from public decisions.

5. Conclusion

After all, the most formidable criticism of utilitarianism is on the apparent lack of distributive considerations as an intrinsic value. I already somewhat deflated the importance of them, especially the equality of end-states. But it does not mean that distribution does not matter morally. Thus, utilitarianism may permit maintaining public order by punishing an innocent suspect for anonymous crimes. It is incompatible not only with distributive justice in a narrow sense but with procedural justice and with the idea of human rights.

Utilitarians would of course reply as follows. It is hardly imaginable in a real world that utilitarianism justifies such acts that are blatantly contrary to a widely held sense of

¹⁴ R. Dworkin, *Taking Rights Seriously*, Cambridge, Mass., 1977, ch. 9.

justice, because the demand of justice or of human rights protects the weighty interest of the sense of security. And where different interests conflict, whether actually or potentially, we implicitly endorse utilitarian decisions. People do not prohibit driving cars for the reason that it inevitably causes many fatal traffic accidents; they also allow and even eagerly demand dangerous constructions for public convenience. It may be justifiable that a few people be burdened for the much greater benefit for others. It is a principle most of us indeed accept.

I find some truth in this reply. But it is one thing to accept some unidentifiable person's serious burden beforehand for *much* greater benefit to come; it is another to accept some (especially identifiable) person's burden simply because it is necessary in order to increase total or average happiness no matter how it is distributed.

III. *The Continuing Relevance of Utilitarianism*

So far I have examined some objections to utilitarianism. My tentative conclusion is that utilitarianism in its classical form does have difficulties, but that they are often exaggerated by its critics. Therefore, it is understandable some important contemporary theorists' doctrines are largely utilitarian in spirit, if not in detail. Lastly, let me mention a few of them.

First, some writers belonging to the Law and Economics movement take maximization of wealth as a criterion of jurisprudential decisions instead of maximization of utility, which is beset with the problems of interpersonal comparison.¹⁵ They can thus make many proposals in almost every field of law by the application of the economic standard of efficiency or maximization of wealth, which is calculated in terms of willingness to pay. Still it is doubtful why efficiency should be so important. Utility matters by the very reason that it represents the quality of people's situation, but efficiency is only indirectly connected with the absolute level of happiness.

Next, R. M. Hare answers to objections to utilitarianism by distinguishing two levels of moral thinking: the intuitive level for everyday behavior and the critical level for conflicts of everyday principles.¹⁶ Hare regards the prescriptive aspect of moral judgement as a kind of preference and demands that not merely one's own but all people's preferences should be equally respected in moral thinking on the critical level. He thinks this way of thinking produces the results that are most acceptable to people. He thus avoids some of impracticality problems of utilitarianism, but it is not clear why one should treat all preferences in moral discourse, however contradictory they may be to each other, equally.

I have already argued that reductionism in personal identity problems offers some support to utilitarianism. There I largely relied on Derek Parfit's discussion. He also argues that commonsense morality can be self-defeating because of agent-relative considerations, and that we cannot appeal to the idea of rights in moral discussions on future generations, whose existence and identity themselves may depend on our decisions. Both arguments point to impartial, utilitarian thinking in ethics.¹⁷

¹⁵ R. A. Posner, *The Economics of Justice*, Cambridge, Mass., 1981, chs. 3-4.

¹⁶ Hare, *Moral Thinking*.

¹⁷ Parfit, parts I, IV.

It is a matter of controversy how successful their arguments are. But at least, utilitarianism succeeds in throwing doubt on the rationality of self-interest and in underlining the importance of an impartial point of view. It also makes it easier to take into account the welfare of future generations and non-human animals. Their welfare does not fit easily in the human rights theories that are dominant today. For future generations are simply nonexistent at present and animals apparently have no capacity to have rights. Even those who do not agree with utilitarianism cannot deny its significance in the problems about their welfare.

Utilitarianism is not the remnant of some bygone age, but a living participant in contemporary practical debates. Utilitarianism in its purest form may be untenable because it has no intrinsically distributive considerations, but utilitarian thinking in a broad sense always proves fruitful in morality.

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