## Framework

Trying to calculate utility in every instance fails. Only a rule-based framework can actually maximize utility. **Chappell 05**[[1]](#footnote-1) gives 6 warrants

Utilitarianism is a much maligned moral theory, in part because it's so easily abused. It's easy for people to misunderstand the theory, and use it, for example, to argue for totalitarianism. But of course utilitarianism properly understood recommends no such thing. In fact, it tends to support our common-sense moral intuitions. Strange as it may seem, utilitarianism recommends that we do not base our everyday moral decision-making on calculations of utility. Why is this? Well, **util**itarianism **says that we ought to** do whatever would **maximize utility. But attempting to reason in a utilitarian fashion** tends to have disastrous consequences, and **fails miserably to maximize utility. Therefore, we ought not to reason in a utilitarian manner. Instead, we should try to** inculcate those dispositions and attitudes, and **abide by** those **principles**, **that** would **tend to promote utility.** That is, we should be honest, compassionate, loyal, trustworthy, averse to harming others, partial towards loved ones, and so forth. We should, in other words, be virtuous rather than scheming. J.L. Mackie (p.91) offers **[There are] six utilitarian reasons for opposing "the direct use of** utilitarian **calculation** as a practical working morality": **1. Shortage of time and energy will** in general **preclude such calculations. 2. Even if time and energy are available, the relevant information commonly is not. 3. An agent's judgment** on particular issues **is** likely to be **distorted by his own interests** and special affections. **4. Even if he were** intellectually able **to determine the right choice, weakness of will would** be likely to **impair** his putting of **it** into effect. **5. Even decisions that are right in themselves** and actions based on them **are liable to be misused as precedents,** so that they will encourage and seem to legitimate wrong actions that are superficially similar to them. **6.** And, human nature being what it is, **a practical working morality must not be too demanding**: it is worse than useless to set standards so high that there is no real chance that actions will even approximate to them.

Thus, act util requires following rules because rules are more accurate than case-by-case calculation.

Following the Constitution is a utility-maximizing rule. 3 reasons.

1. It’s empirically tested. The constitution would not have lasted 200 years if it didn’t increase the pleasure of American citizens.

2. Constitutionality is key to credibility – violating the constitution proves that we’re not trustworthy. Tom **Ginsburg 06** writes[[2]](#footnote-2)

Why might these issues of constitutional design vary across countries? I draw on the literature that treats constitutions as mechanisms for making political precommitments.56 A precommitment means “becoming committed, bound or obligated to some course of action or inaction or to some constraint on future action . . . to influence someone else’s choices.”57 Imagine a constitution written by a single political leader, seeking to establish legitimate authority. The politician can promise to behave in particular ways, for example, not to interfere with the rights of his or her citizens. But there is no reason for citizens to believe mere promises from their leader. A promise at Time 1 only has value if the promisee believes that it will be obeyed at Time 2. **The politician** thus **faces the problem of making** the **promise[s] credible.** This problem is particularly acute when the politician cannot predict the incentives he or she will face in the future.58 If costs and benefits vary in unpredictable ways, the politician’s promise to behave in the specified way may be less believable. To paraphrase Stephen Holmes, why should people believe their leader when sober, knowing that sometimes leaders can become drunk and behave quite differently?59 Facing this problem, a rational constitutional designer might realize that it makes sense to limit her own power, in order to obtain the consent of those she governs. **Democratic constitutions** can **help to serve this role.** As Sunstein has written: “Democratic constitutions operate as ‘precommitment strategies’ in which nations, aware of problems that are likely to arise, take steps to ensure that those problems will not arise or that they will produce minimal damage if they do.”60 **Constitutions help make** the **promises credible by imposing costs on those who violate promises.**61 **By tying their own hands, politicians actually** can **enhance their own authority.**

2 impacts.

a. International credibility solves multiple scenarios for extinction.

**Nye and Armitage 07**[[3]](#footnote-3)

Soft power is the ability to attract people to our side without coercion. Legitimacy is central to soft power. **If a** people or **nation believes American objectives to be legitimate, we are more likely to persuade them to follow our lead** without using threats and bribes. **Legitimacy can also reduce opposition to**—and the costs of—**using hard power when the situation demands.** Appealing to others’ values, interests, and preferences can, in certain circumstances, replace the dependence on carrots and sticks. Cooperation is always a matter of degree, and it is profoundly influenced by attraction…The information age has heightened political consciousness, but also made political groupings less cohesive. Small, adaptable, transnational networks have access to tools of destruction that are increasingly cheap, easy to conceal, and more readily available. Although the integration of the global economy has brought tremendous benefits, **threats such as pandemic disease and the collapse of financial markets are more distributed and more likely to arise without warning. The threat of** widespread physical harm to the planet posed by **nuclear catastrophe** has existed for half a century, though the realization of the threat **will become more likely as the number of nuclear weapons states increases.** The potential security challenges posed by **climate change raise[s]** the possibility of an entirely **new** set of **threats** for the United States **to consider**… **States** and non-state actors who improve their ability to draw in allies will gain competitive advantages in today’s environment. Those **who alienate potential friends will stand at greater risk.** China has invested in its soft power to ensure access to resources and to ensure against efforts to undermine its military modernization. **Terrorists depend on** their ability to attract **support from the crowd** at least as much as their ability to destroy the enemy’s will to fight.

b. Domestic credibility is key to solve crime. **Tyler 04**[[4]](#footnote-4)

One way to approach the relationship between the police and the public is to consider how **the public impacts** on **the effectiveness of the police in their efforts to combat crime** and maintain social order. Traditional discussions of the effective exercise of legal authority have focused on the ability of legal authorities to shape the behavior of the people within the communities they police. **The ability of the police** to secure compliance with their directives and with the law more generally-the ability **to be authoritative-is** widely identified as **one key indicator of their viability** as authorities (Easton1 975;Fuller 1971).**To be effective** as maintainers of social order, in other words, **the police must be widely obeyed** (Tyler 1990). This obedience must occur **both during personal encounters** between police officers and members of the public (Tyler and Huo 2002) **and in people's** everyday **law-related behavior** (Tyler 1990).

3. The US constitution is a worldwide model for rule of law. Current precedent is still key. **London 01** writes[[5]](#footnote-5)

Fourth, the United States possesses a sense of moral universalism that exists nowhere else. **When one talks about** some sort of example—**a model of** human rights, constitutionalism, subsidiarity, **rule of law**, and property rights—**the U**nited **S**tates **stands alone. It is the model. [For example]** Not long ago several **Hudson Institute scholars** had the opportunity to spend some time in Indonesia, and we **found that Indonesia does not turn** for its models **to China or Japan;** it looks to the United States. **The** new **Indonesian president** is very keen on establishing a form of federalism. What does he **look[s] to**? **The American Constitution.** Fifth and last, the rest of the world looks to the United States for answers. Very recently, an American deputy secretary of state said, “**Everyone’s crisis is America’s crisis**.” Why? **Because the world looks to the U**nited **S**tates **as its model.** As a consequence, there is no question that the United States will maintain its extraordinary leadership.

Rule of law solves extinction. **Rhyne 58**[[6]](#footnote-6)

**Law and courts** exist to **protect every citizen** of the United States in his person and property and in his individual rights and privileges under the Constitution. The ultimate power to change or expand the law in our system remains with its source, the people. They can elect as lawmakers those who will vote for wise laws and vote out of office those who do not. They can also amend the Constitution as experience dictates the necessity of change. In these days of soul-searching and re-evaluation and inventorying of basic concepts and principles brought on by the expansion of man’s vision to the new frontiers and horizons of outer space, we want the people of the world to know that we in America have an unshakable belief in the most essential ingredient of our way of life—the rule of law. The **law** we honor **is the** basis and **foundation of our** nation’s **freedom** and the freedom for the individual which exists here. And to Americans our freedom is more important than our very lives. **The rule of law has** been the bulwark of our democracy. It has **afforded protection to the weak, the oppressed, the minorities,** the unpopular; it has made it possible to achieve responsiveness of the government to the will of people. It stands as the very antithesis of Communism and dictatorship. When we talk about “justice” under our rule of law, the absence of such justice behind the Iron Curtain is apparent to all. When we talk about “freedom” for the individual, Hungary is recalled to the minds of all men. And when we talk about peace under law—peace without the bloodbath of war—we are appealing to the foremost desire of all peoples everywhere. The tremendous **yearning of all peoples for peace can only be answered by** the **use of law to replace weapons in resolving international disputes**. We in our country sincerely believe that mankind’s best hope for preventing the tragic consequences of nuclear-satellite-missile warfare is to persuade the nations of the entire world to submit all disputes to tribunals of justice for all adjudication under the rule of law. We lawyers of America would like to join lawyers from every nation in the world in fashioning an international code of law so appealing that sentiment will compel its general acceptance. Man’s relation to man is the most neglected field of study, exploration and development in the world community. It is also the most critical. The most important basic fact of our generation is that the rapid advance of knowledge in science and technology has forced increased international relationships in a shrunken and indivisible world. Men must either live together in peace **or in modern war we will surely die together**. History teaches that the rule of law has enabled mankind to live together peacefully within nations and it is clear that this same **rule of law offers our best hope** as a mechanism to achieve and maintain peace between nations. The lawyer is the technician in man’s relationship to man. There exists a worldwide challenge to our profession to develop law to replace weapons **before** the dreadful holocaust of **nuclear war** overtake our people.

Thus the standard is **consistency with the constitution**.

## Contention

Rehab is unconstitutional. Supreme Court agrees that retribution ought to be prioritized. **Egelko 11**[[7]](#footnote-7)

**The** only **purposes of imprisonment are “retribution, deterrence and incapacitation, not rehab**ilitation**,” said the Ninth U.S. Circuit Court of Appeals** in San Francisco**, relying on the** U.S. **Supreme Court’s** recent **interpretation of a 1984 sentencing law.** The ruling, written by one of the court’s most conservative judges, Andrew Kleinfeld, overturned a Hawaii man’s two-year sentence for violating the terms of his release and sent the case back to the trial judge to impose a shorter term.The defendant, Leon W. Grant, was convicted of bank fraud in 2004 and sentenced to two days in jail, about $38,000 in restitution and five years of supervised release. He had almost completed the five-year period when he violated the terms of his release by using drugs and alcohol. The judge sent him to prison for three months for a first violation, then gave him a suspended sentence a second time but told him it was his last chance. A few months later, the court said, Grant’s parole officer found him at a bar where he had just drunk a glass of sake. Federal guidelines called for a prison term of three to nine months, but U.S. District Judge David Ezra said Grant needed two years behind bars to have a chance to sober up and get his life together. Ezra said Grant was “out of control” and needed a “real time-out and serious treatment” in a place where he would have to accept it. The Ninth Circuit had authorized prison sentences for rehab in an earlier case. But **the** U.S. **Supreme Court** took a new look at the sentencing law this June and reached a different conclusion. The high court **said federal law used to be based on** a “faith in **rehab**ilitation,” **but that Congress had changed the rules in 1984 because** of a concern that **“rehab**ilitation … **had failed.”**

## Framework Frontlines

Omitted

## Contention Cards

Rehab is unconstitutional. Mistretta v. United States proves.

**Cesar 01**[[8]](#footnote-8)

Fifteen years later, **in the** U.S. **Supreme Court decision Mistretta v. United States, the court told us that "rehab**ilitation as a sound penological theory came to be questioned and, in any event, **was** regarded by some as **an unattainable goal for most cases." The decision goes on to cite a Senate Report** from 1984 **that explained the "outmoded rehab**ilitation **model" for federal** criminal **sentencing, and recognized that** the efforts of the criminal justice system to achieve **rehab**ilitation of offenders **had failed.**

The Eighth Amendment requires proportionality. **Amar** (No Date)[[9]](#footnote-9)

Rummel was distinguished **in Solem v. Helm, the Court stating** unequivocally **that** the **cruel and unusual punishment**s clause **"prohibits** not only barbaric punishments, but also **sentences** that are **disproportionate to the crime** committed," and that "[t]here is no basis for the State's assertion that the general principle of proportionality does not apply to felony prison sentences."190 Helm, like Rummel, had been sentenced under a recidivist statute following conviction for a nonviolent felony involving a small amount of money.191 The difference was that Helm's sentence of life imprisonment without possibility of parole was viewed as "far more severe than the life sentence we described in Rummel."192 Rummel, the Court pointed out, had been eligible for parole after 12 years' imprisonment, while Helm had only the possibility of executive clemency, characterized by the Court as "nothing more than a hope for 'an ad hoc exercise of clemency."'193**In Helm the Court also spelled out** the "objective **criteria" by which proportionality** issues **should be judged**: "(i) the **gravity of the offense and the harshness of the penalty**; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions."194 Measured by these criteria Helm's sentence was cruel and unusual. His crime was relatively minor, yet life imprisonment without possibility for parole was the harshest penalty possible in South Dakota, reserved for such other offenses as murder, manslaughter, kidnapping, and arson. In only one other state could he have received so harsh a sentence, and in no other state was it mandated.195

1. Chappell 05 (Richard, PhD in Philosophy from Princeton, Philosophy, Et Cetera, http://www.philosophyetc.net/2005/06/indirect-utilitarianism.html) [↑](#footnote-ref-1)
2. Tom Ginsburg (Professor of Law and Political Science, University of Illinois, Urbana-

   Champaign). “LOCKING IN DEMOCRACY: CONSTITUTIONS, COMMITMENT, AND INTERNATIONAL LAW.” 2006. <http://works.bepress.com/tom_ginsburg/12/> [↑](#footnote-ref-2)
3. Joseph Nye (University Distinguished Service Professor at Harvard University, and previous dean of Harvard University's John F. Kennedy School of Government) and Richard Armitage (13th United States Deputy Secretary of State, the second-in-command at the State Department, serving from 2001 to 2005), “CSIS Reports – A Smarter, More Secure America”, 11/6, 2007 <http://www.csis.org/component/option,com_csis_pubs/task,view/id,4156/type,1/> [↑](#footnote-ref-3)
4. Professor Of Psychology at New York University. Enhancing Police Legitimacy Tom R. Tyler *Annals of the American Academy of Political and Social Science* , Vol. 593, To Better Serve and Protect: Improving Police Practices (May, 2004), pp. 84-99 [↑](#footnote-ref-4)
5. Herbert I. London (President of the Hudson Institute and Profesor Emeritus at NYU). “The Enemy Within.” 1 April 2001. [↑](#footnote-ref-5)
6. Charles S. Rhyne, Washington lawyer, Law Day Speech for Voice of America delivered on the first Law Day, 1958 [↑](#footnote-ref-6)
7. Bob Egelko. “Court makes it official: Prison is not for rehab.” SF Gate. December 5th, 2011. <http://blog.sfgate.com/crime/2011/12/05/court-makes-it-official-prison-is-not-for-rehab/> [↑](#footnote-ref-7)
8. Eusebio Cesar (Catholic layman who works for the Church). “A Review of the USCCB Pastoral Letter Responsibility, Rehabilitation, and Restoration.” April 5th, 2001. http://www.catholicculture.org/culture/library/view.cfm?recnum=3548 [↑](#footnote-ref-8)
9. Vikram David Amar, Justia US Law, Proportionality, <http://law.justia.com/constitution/us/amendment-08/13-proportionality.html>, Soelm v. Helm was a 1983 Case. [↑](#footnote-ref-9)