

The Morality of Commonality and Agent Specific Restrictions

Act-utilitarianism holds that an act is right if and only if it is expected to produce a higher general utility than any other alternative action. John Hospers responds that act-utilitarianism is self-defeating and an unlikely comprehensive moral theory. He holds that “there is one principle of fundamental importance which must be an indispensable part of every ethics—the principle of universality.” If an act is right to do for one person facing a certain set of circumstances then it should also be right for any individual facing circumstances that are similar in all morally relevant ways. However, he argues, if individuals act optimifically in each isolated instance then the best outcome is not always reached. There are many instances where violating a general rule would maximize utility in one case, but widespread violations, would undermine the rule and produce a worse state of affairs. Examine Alan Gibbard’s case of corporate fraud.

“An employee [Martha] of a small company, alarmed that high levels of fraud in current business are leading to employees losing their pensions, discovers a way to embezzle from her employer, cover her tracks with an accounting fraud, and give the money to a short-funded organization for the prevention of embezzlement and accounting fraud. The scheme will risk leaving the employees of her company without pensions, but prevent widespread fraud and widespread loss of pensions. What ought she morally do?”

Assume that the expected utility of Martha’s scheme is greater than the expected utility of the status quo. That is, the amount and quality of benefit each person gets from retaining her pension is equal on average between groups and that $(P_c * N_c) < (N_o)$. P_c is the probability that her coworkers will lose their pensions, N_c is the number of her coworkers that would be affected if the scam is discovered, and N_o is the number of

people expected to be spared from losing their pensions as a result of the amount of money that Martha contributes to the short-funded organization. Let us further assume that the cost of the embezzlement to the firm and shareholders does not upset the inequality. Under these circumstances, imposing a risk upon her coworkers appears to be a more optimal course of action for Martha to maximize general welfare than is inaction. Therefore, act-utilitarianism should advocate that Martha has a moral obligation to defraud her employer.

Hospers may observe under the principles of act-utilitarianism and universality, every person in Martha's situation should also embezzle, evade detection, and contribute the money to the short-funded organization rather than recusing themselves from dubious behavior. However, widespread fraud to stop widespread fraud seems not only hypocritical, but self-defeating. Perhaps rule-utilitarianism provides a more viable comprehensive moral standard. It holds that acts may be right only if they do not violate a rule that's observance produces a better state of affairs than an absence of a rule or any other alternative rule. Accordingly, the course of action that would minimize corporate fraud and the hardship it produces would be for all to abide by a law forbidding fraud.

An act-utilitarian should initially respond that in Martha's case, as with most if not all cases of rule exceptions, the individual violation of the rule alters the circumstances for each to follow. The previous construal of act-utilitarianism's prescription would only be accurate if all actors were acting simultaneously, without knowledge of the other actors' intentions. Otherwise, the actors should immediately see

the organization become well funded. The subsequent increase in the likelihood of both the actors' plot being discovered and their coworkers pensions being lost would cause the expected utility of late actors' contributions to decline. Act-utilitarianism would only prescribe Martha's scheme so long as each act continues to maximize utility. In direct response to Hospers, the prior violations of the rule often alter the circumstances faced by each subsequent actor in *morally relevant* ways that undermine the applicability of the principle of universality in many instances.

Secondly, undermining generally good rules or laws is a cost in and of itself. The value of the rule is undermined incrementally and to various degrees by each violation. Hospers suggests that more public violations undermine rules more than violations done in secret. The varying costs to the integrity of the rule should be factored into the utilitarian computation. If utility maximizing exceptions are made to the extent that the rule is completely invalidated, though the costs to the rule are properly accounted, then it seems that the existence of the rule would not have maximized utility in the first place. Act-utilitarianism would not advocate violating any rule that optimally should never be violated. Any other law should have an exception built into it allowing for utility maximizing behavior. Rule-utilitarianism collapses into thorough act-utilitarianism. Individuals face similar drops in their utility when they lose their lifesavings gambling as when they lose their pensions due to fraud. It is true that gamblers at times get enjoyment from the game and that other factors may also generally indicate that losing a pension due to corporate fraud produces a worse state of affairs than does a similar loss due to

gambling. However, imagine a case where the hardship faced by the gambler produces a vastly worse state of affairs than does the employee's loss. Perhaps the gambler lost everything while the employee had only a small portion of her savings in her pension. The gambler's hardship, while sad, does not seem to be as morally significant as does the employee's loss. We would not force the casino to give back the gambler's money because of the hardship that the gambler faces because she lost it—even if the gambler would get more utility from the money than would the casino (as is usually the case). However, we may demand that those guilty of corporate scandals resulting in the loss of employees' pensions repay the victims of their crimes. Even if the gambler's loss produces a worse state of affairs than does the worker's loss, the fact that the gambler consented to the risk of losing her savings seems to make her loss of lesser moral concern. I will argue that because the employees of Martha's firm did not consent to their involvement in the scheme, it would be immoral for Martha to subject them to the risk inherent in her plan and that Martha's obligation not to make her coworkers worse-off arises from the specific claims that they hold over her.

Any consequentialist should astutely observe that the employees of the other firms also did not consent to the risk. Additionally, more pensions would unjustifiably be lost if Martha fails to act. Because each loss of pension would detract from the general welfare at presumably the same average rate, a better state of affairs would be produced by preventing the most losses. Martha remains obligated to use her coworkers to protect the workers of other firms. Philippa Foot finds utilitarianism attractively haunting because "it

can never be right to prefer a worse state of affairs to a better.”

But what does it mean to have a better state of affairs? Martha’s coworkers do not seem to share in this improvement of general welfare that follows if she minimizes the number of people that lose their pensions. Utilitarianism rests upon an entity largely external from the perpetrator, suffer, benefactor, or beneficiary. Though each of these contributes to the overall utility, each interest is susceptible to complete overriding in order to maximize the total benefit. However, as Foot later argues, better or worse states of affairs are relative to the speaker. “One will say ‘a good thing’ where another says ‘a bad thing,’ and it is the same state of affairs.” How can it be determined that my good state of affairs is better for me than it is bad for you? Similarly, how do we know if my good state of affairs is better than yours is. It seems unlikely that it is simply majority based. Consider cases of justice. The number of plaintiffs should have no bearing on whether the defendant should be found guilty. Such interpersonal comparisons of welfare seem impractically difficult if not impossible. A better general state of affairs can only be conclusively defended when all are better off. Even this value judgment remains speaker relative. It simply holds for every speaker. As Foot concludes, it is counterintuitive to regard states as good or bad in regard to some nonexistent impersonal point of view. Samuel Scheffler responds that no reference to a common state of affairs is needed to make the point that if something is bad, it seems worse the more it happens. He states that, “even if Foot’s claim is granted, the defender of agent-centered restrictions can hardly say that it is meaningless to assert that circumstances can arise in which a certain

moral rule will be violated several times unless I violate it once.” Consequently, Scheffler finds agent-centered restrictions to be paradoxical.

In the absence of a common good, from where else would obligation arise? Bernard Williams goes along with consequential depictions of failure to maximize general utility and argues for the self. He argues that because an agent’s projects are what make life worthwhile to him and because an agent’s morality is a particularly dear project that “it is absurd to demand of such a man that he step aside from his own project...” In this light Kai Neilson is correct in finding agent-centered restrictions to be little more than an unwillingness to carry out the difficult and dirty obligations of ethics. Such restrictions seem to be merely “moral evasiveness.”

However, framing the discussion in terms of the agent-centeredness biases the debate. We should rather be willing to examine any place from where the restrictions of Martha’s actions may arise. A more viable alternative derivation of restrictions to maximizing good outcomes or minimizing the bad is found when the focus is instead placed on the sufferer. Judith Jarvis Thompson finds that deflecting bad things from one large group to another smaller group is only morally permissible when neither group has a higher claim against the bad thing from happening to them. While “[Thompson] leaves it open precisely just what sorts of things might give the one more claim,” she does state that “there is no prima facie duty to refrain from interfering with the existing states of affairs just because they are existing states of affairs.” This seems to bring us back to the original consequentialist objection to my restriction on maximizing behavior. In

Martha's case, all employees equally share in their claim not to be made worse-off without their consent. None of the employees have acted in a way to forsake their claim to their pensions nor have any elevated claim against losing their pensions. Furthermore, coincidental susceptibility of some rather than others is of no moral significance. This suggests that because neither group of employees has more of a claim to their pensions there is no reason not to attempt to minimize the hardship.

It does not necessarily follow that because each employee has an equal claim against the bad from happening, each also has an equal claim on Martha for her to produce the state of affairs that favors him. As Foot notes, intuitively, we tend to find that failure to protect is less immoral than actively causing harm. To understand this moral intuition take Thompson's argument further and examine over whom the perspective victim has a claim with respect to negative versus positive rights. Negative rights cannot be applied to an impersonal common entity, because only unanimous inaction will leave my right respected. To say I have a negative right is to say that I have a claim over *each* actor, for *that* actor to refrain from violating my right. Positive rights are less specific. Most positive rights can require only one person to act while others fail to respond to my claim. Consider the case of the drowning child. Suppose many people are present when a helpless child falls into water and begins to drown. The child has claim over each person present to save him. It is true that if none acted that we all would be morally culpable for neglecting the child's claim over us collectively. However, if one person jumps in and saves the child while I do nothing, I am not morally responsible to the child for my

inaction. Cases may be constructed in which positive rights also are actor-specific.

However, negative rights are always *absolutely* so. Accordingly, perhaps the employees of other firms have a claim over all others to protect them from corporate deviants. This claim may obligate Martha to contribute to the short-funded organization and it could well be fulfilled by her fully funding the organization. However, this positive claim cannot arbitrarily mandate total extraction from a few other vulnerable individuals.

Martha's coworkers have a claim *specifically* over Martha that she ought not subject them to risk without their consent. Her coworkers claim over Martha cannot be fulfilled by any other. However, other employees' positive claims may be. Consequently, because Martha's coworkers have a *specific* claim over her restraint from forcing risk upon them, while the employees of other firms have a merely general claim over everyone, in which Martha only shares responsibility, to protect them from losing their pensions, Martha must first fulfill the claim specifically over her before she responds to a claim to which she owes only partial responsibility.

Consequently, I agree with Thompson that morality of deflecting something bad from one party to another depends on whether either party has more of a claim against it than another. By extending this argument to over whom the claim is applied it seems that we reach a consensus with Foot that the distinction between doing and allowing is a moral one. Because negative claims are specific to each individual, while each actor only shares in the obligation to fulfill positive claims, it is imperative upon the actor to respect negative claims primarily and positive claims secondarily.

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