

Is public happiness equivalent with the gross domestic product (GDP)?⁹ Money and property may well be pleasures that bring happiness, but they are not ranked as the “greatest good” by ethical theorists. Most ethical thought, beginning with the ancient Greeks, holds intellectual pleasure to be superior to physical pleasure. Mill’s quip was that it was better to be an unsatisfied Socrates than a satisfied pig. So how should *happiness* be defined? The twentieth-century English philosopher G. E. Moore, a friend and mentor of the acclaimed economist John Maynard Keynes, maintained that happiness came from maximizing values such as freedom, knowledge, justice, and beauty. The value of such goods is, however, priceless and immeasurable.

Criticisms of Utilitarianism

The major criticisms of utilitarianism include its acceptance of certain injustice and its nebulous measure of values, as follows:

- Where the “greatest good for the greatest number” necessitates harm or hardship for some, can it be morally justified? Can a person be used ethically as a means to another’s pleasure or happiness without giving informed consent to the arrangement?
- What is “the good”? How is it defined, ranked, and measured? Who makes those decisions?

Bentham and Mill envisioned a quasi-democratic approach to those matters, but the utilitarian model is extremely vulnerable to the “tyranny of majority.” In the Constitution, the Founders of the U.S. government took that into account in creating a republic and not a democ-

racy. The distinguishing features of a republic are pluralism, divided power, checks and balances, tolerance, and protection of minority rights.

The difficulty of ranking and quantifying values also represents a shortcoming of teleological ethics in the context of fundamental rights and social justice. In its most inartful form, utilitarianism breaks down into cost-benefit analysis. Cost-benefit analysis requires comparing, weighing, and balancing, using a common denominator. In some cases, there can be no common denominator—how does one value a life, for example? In such a case, the problem of measuring relative values is exacerbated by attempting simplistic quantification.

One of the most infamous examples of this kind of application of utilitarian analysis occurred in the Ford Pinto case, presented below. Although the case is dated, it is a classic example of utilitarianism gone awry.¹⁰

Deontological Ethics—Rights and Duties

The Golden Rule, or “Do unto others as you would have them do unto you,” is a universal idea with origins in many religious traditions. In Buddhism, it is expressed as “Hurt not others with that which pains yourself.” The “excellent” companies in Peters and Waterman’s best-selling book *In Search of Excellence: Lessons from America’s Best-Run Companies* often displayed the Golden Rule as a core value—with managers treating employees, customers, suppliers, shareholders, and other stakeholders with the same respect they would have liked to receive.¹¹ All but the most extreme cynics believe that

9. The nation measures its collective well-being by the gross domestic product (GDP), an indicator of the national economic results of commerce and expenditures. A 1995 article in *The Atlantic Monthly* proposed a change to GDP in keeping with the values of the citizenry. In “If the Economy Is Up, Why Is America Down?” authors Clifford Cobb, Tad Halstead, and Jonathan Rowe proposed a different measure for the country: a Genuine Progress Indicator (GPI). The GPI would add up the nation’s expenses (GDP), factor in sectors that are usually excluded from the market economy (such as housework and volunteering), then subtract social ills (crime, natural resource depletion, and loss of leisure time). When calculations were made under both indicators, the disparity in results suggested that GDP was no longer an accurate gauge of economic progress.

10. Ford was not applying utilitarian ethics to its reasoning, but rather a simple cost-benefit analysis—maximizing the good of the bottom line for shareholders is not an application of utilitarian ethics. There are many examples of use of cost-benefit analysis that have nothing to do with utilitarian ethical decision making. In addition to the idea of maximizing the good of the shareholders, one occasionally hears a quasi-nationalistic argument for “maximizing the good of Americans,” often in the context of the relatively cheap price of goods that can be obtained from overseas sweatshop labor. From whatever perspective such a maxim might be argued, it is not an ethical one. The ethical theory of utilitarianism seeks to maximize the overall good of all, not a select group.

11. Peters, T. J., & Waterman, R. H. (1982). *In search of excellence: lessons from America’s best-run companies*. New York: Harper & Row.

The Ford Pinto Case—A Teleological Terror

In the late 1960s, foreign competition in smaller and cheaper cars was beginning to make serious inroads on the U.S. domestic automobile market. Ford Motor Company, then headed by Lee Iacocca, came up with a plan to meet the competition head on: to develop, build, and sell an automobile “weighing no more than 2000 pounds and costing no more than \$2000.” That automobile was the Ford Pinto. To meet an artificially imposed deadline of the 1971 model year (to get a jump on the competition), the normal drawing-to-production time for the Pinto was drastically compressed into two years, from the usual schedule requiring almost twice that long. The compressed schedule meant that tooling for production was occurring simultaneously with design, curtailing the ability to accommodate design problems along the way. When completed, crash-testing of the models proved problematic: ruptured gas tanks and dangerous leaks occurred at almost any speed of impact. The problem was obviously the location of the tank. Yet modifying the design to change the tank location and to rectify the problem would require retooling, more money, and a later public introduction of the Pinto—none of which were acceptable to management.

After considering the costs and benefits, Ford did nothing to change the defective design. As a result, in the first seven years after the introduction of the Pinto, upwards of 500 fire-related deaths were attributable to its defective design. Ford engineers later testified that 95 percent of the victims would have survived if the fuel tank had been relocated on the vehicles. Further, the regulatory oversight agency for automotive safety, the National Highway Traffic Safety Administration (NHTSA), later amended its standards to require rupture-proof tanks on the Pinto and cars like it, prompting a massive recall by Ford. As a result of tragic deaths in Pintos, dozens and dozens of civil lawsuits were filed against Ford and millions of dollars in punitive damages were awarded to victims. It is estimated that the case ultimately cost the company more than \$1 billion. In addition, in at least one case, Ford was charged with criminal homicide when, in 1978, seven years after the introduction of the dangerous and defective vehicle, three teenage girls burned to death when their 1973 Pinto was struck from behind by a van.

Ford’s defenses ranged from a claim that the Pinto was “no more unsafe” than any other vehicle of its class (foreshadowing Ford’s defense of its SUV)^a to the fact that it met federally established standards for crash safety (standards that the company and its competitors had lobbied hard to keep well below the state of the art).

The actors in this real-life tragedy did not employ ethical reasoning.

a. A separate and in-depth case study on the Ford/Firestone product liability case is included in the case study “Auto Safety at Ford” in Part Three of this text.

humans should do what is right by treating others with dignity. People have a duty, a moral obligation, to do so. In everyday discussion, that duty is signified by the word *ought*. In the Judeo-Christian tradition this “ought” is positively expressed: people are obligated to love their neighbors as themselves; people ought to treat others as they would want to be treated.

The Inadequacies of the Golden Rule

However, in the New Testament, Jesus had a more demanding standard—not simply to love your *neighbors*, but also your *enemies*:

I say unto you love your enemies, bless them that curse you, do good to them that hate you, and pray for them that spiteful-

ly use you and persecute you.... For if you love those who love you, what reward have you? Do not even the common people do the same? Be you therefore perfect....

Loving one's own or those that reciprocate love is expected. According to Jesus, the ethical dimension of the rule is as applied to "others," or those outside one's conventional circle of caring.¹²

Modern critics also point to the narrowness and potential chauvinism of concepts of the Golden Rule. There is an implicit premise in the rule that people want and expect *the same* treatment as others. Modern and post-modern concepts of humanity and history are more inclusive of the diverse and multicultural wants and expectations of people. At the time most of these ethical theories were conceived, they were, in fact, fairly narrowly directed. The ancient Greek concept of ethical virtue and moral and intellectual excellence was reserved for white, male, propertied Greeks only—no women, no slaves, no foreigners. For the most part, it was only in the twentieth century that a more inclusive concept of human rights emerged to include all people.

A corollary of the Golden Rule is ethical testing of an action by "stepping into another's shoes." With a broader and more inclusive vision of the goals of society, "stepping into the shoes" requires not just considering what would be preferable to a person, but what would be preferable to that person if he or she had the wants and expectations of the individual affected.

Immanuel Kant also was concerned that the Golden Rule would be perversely applied. A sadomasochist, for instance, desires to hurt and to be hurt; thus, that person could rationalize that it is right to harm others and to be harmed because hurting and being hurt is how he or she wants to be treated. A businessperson, too, might believe that inflicting economic harm and being the recipient of that harm is acceptable since it is part of the dog-eat-dog order of

the business world.

Kant's categorical imperative, first discussed in Chapter 1, was at least, in part, an attempt to combat the possibility of this kind of corruption of the Golden Rule. Kant addressed this inherent problem by building his universal rule on basic premises regarding the fundamental rights and duties of people—something that the common understanding of the Golden Rule lacked.

The Categorical Imperative

The Kantian formulation of the Golden Rule, *the categorical imperative*, states:

One ought to act such that the principle of one's act could become a universal law of human action in a world in which one would hope to live.¹³

Kant's categorical imperative admits of no exceptions. It requires that a person ask whether a proposed action is consistent with universal standards of conduct. Would a person be willing to live in a world where *everyone* behaved in the manner contemplated? Would a person be willing to live in a world where everyone used violent means to get his or her way or in a world where everyone lied, cheated, or engaged in bribery? If one person may break a promise, then the rule would permit everyone to do so—there can be no exceptions. And if breaking promises was justified for everyone, there could be no trust, social order would disintegrate, and society would not function. If a person is not willing to permit others the right to a particular type of behavior, he or she may not make an exception for himself or herself.

Application of the categorical imperative is premised on Kant's second formulation:

One ought to treat others as having intrinsic value in themselves, and not merely as a means to achieve an end.

Kant believed people to be equal in their freedom and basic rights as rational human beings.

12. In *Plato's Republic*, Socrates imagined that one of the ways to achieve this universal "love," or care for the other, would be to abolish the traditional notion of parents—mothers and fathers would not know the identity of their own biological children, presumably encouraging a love of *all* children.

13. See Kant's *Critique of Practical Reason* (1788); *The Metaphysics of Morals* (1785); and, more recently, *Foundations of the Metaphysics of Morals* (2d ed.). (1989). (L. W. Black, Trans.). Upper Saddle River, NJ: Pearson Education.

As Kant expressed it, the duty to regard other human beings with respect, as ends and not merely as means, is unconditional. With the term *not merely* as means, Kant admitted the pragmatic inevitability that, to some extent, people would be treated by others as means and people might agree or consent to be used as means to another end in different situations and capacities. Nonetheless, given basic equal freedom, dignity, and rationality under the deontological model, each person has the right to decide to what extent they are willing to be so treated and in exchange for what.

Kant was interested less in the results produced by ethical behavior—what the right action would produce—than in the means used to achieve it. Kant believed that the *means* of moral reasoning and not its *ends* was what mattered. The capacity to reason morally made people human. It distinguished them from animals. For Kant, the unique qualities that gave people their potential for morality were rationality, their ability to give reasons for what they did, the freedom to act against instinct, and the ability to engage in actions based on reasons they gave. Doing what they were *inclined* to do was not a sign of a moral act. If you do “good” out of natural impulse or inclination, you may deserve praise, but you do not deserve esteem. It is only when you act against natural inclination and impulse to do the right thing that moral reasoning has been exercised.¹⁴

Kant lived and wrote at the time of the American and the French Revolutions; and his ideas are, in large measure, in accord with the ideas of those uprisings. The Declaration of Independence holds “these truths to be self-evident... that all men are created equal... they are endowed by their Creator with certain alienable rights... among these are

life, liberty, and the pursuit of happiness.” The leaders of the French Revolution similarly proclaimed human beings to have natural rights to “liberty, property, security, and resistance to oppression.”¹⁵ *Liberty* is defined as “the power to do anything that does not injure others.”¹⁶ The rights-based theory of ethics, represented by Kant and the leaders of the American and French Revolutions, holds that individuals have rights to free consent, privacy, freedom of conscience, freedom of speech, and due process.

“Contractarian” deontology seeks to apply the basic deontological principles to determine the best or most just arrangement of society by defining the terms of the human “social contract.” Where Kant envisioned each person to determine ethical behavior by moral reasoning, contractarians imagine a time before organized society—a “state of nature”—where people are born equal in their basic freedom and rationality but without the means to individually secure those rights for themselves. Accordingly, they knowingly and voluntarily agree to bind together under agreed rules to preserve their security and property.¹⁷ Under the basic precepts of deontological thought, each person—a rational entity deserving of rights—enters into the social contract entitled to the greatest freedom and equality coextensive with that of another. Rights exist to the extent that they do not unreasonably infringe on another’s basic rights. The social contract that creates government and civil society exists to preserve this: “Governments derive their just power from the consent of the governed.”¹⁸

The Lockean view of the social contract is a limited one: the role of the rules (those imposed by the State and by commonly understood moral principles of society) is to go only as far

14. “But assume that the mind of that friend to mankind was clouded by a sorrow of his own which extinguished all sympathy with the lot of others, and though he still had the power to benefit others in distress, their need left him untouched because he was preoccupied with his own. Now suppose him to tear himself, unsolicited by inclination, out of his dead insensibility and to do this action only from duty and without any inclination—then for the first time his action has genuine moral worth.” *Kant: foundations of the metaphysics of morals* (2d ed.). (1989). (L. W. Beck, Trans.). Upper Saddle River, NJ: Pearson Education.

15. *Declaration of the Rights of Man and Citizen* (1789).

16. *Id.*

17. Thomas Hobbes, a seventeenth-century English philosopher, described life in the state of nature as “nasty, brutish, and short.” *Leviathan* (1650). Little wonder then the impetus for man to enter into the social contract.

18. *Declaration of Independence*. (1776).

The Lockheed Bribery Case (continued)

\$700,000 in India. Tyco is alleged to have bribed Venezuelan officials for its contract to build a \$200 million water-treatment facility in that country.^g Ironically, in 2004, Lockheed was forced to scrap a proposed merger with defense contractor Titan because of a pending FCPA bribery investigation of Titan by the government. Also in 2004, Lucent fired its two top executives in China and two other executives in the wake of an FCPA bribery scandal.^h

Pastin and others argue that the question of compliance with the FCPA comes down to a cost-benefit analysis by the companies involved. Millions, often billions, of revenues are at stake. In the case of Kazakhstan, U.S. oil companies have billions of dollars invested in the former Soviet republic. Oil reserves in Kazakhstan are estimated at between 9 billion and 25 billion barrels. The financial stakes are enormous for contracts in many of those countries. The payment of a few (or even several) million dollars for a payoff of billions heavily tips the cost-benefit balance sheet. Factor in the likelihood of detection (pretty low) and the cost of fines and penalties if you are caught and successfully prosecuted (comparatively light), and the calculus favors noncompliance.ⁱ

Moreover, many rationalize bribery as a victimless crime—perhaps statutorily prohibited but not inherently evil. And, indeed, bribing foreign executives may not rise to the level of abusing human rights or poisoning the environment as examples of invidious corporate behavior; but prohibiting them is, nonetheless, an essential ethical rule needed to keep the free market free. Whether intrinsically bad or not, bribery is unfair; it rigs the system artificially; it countermands transparency; it abets corruption; it is a form of cheating.^j

g. Drutman, L., & Cray, C. (2002, December). Top ten financial scams of the 2002 crime wave. *Multinational Monitor*.

h. Brown K., & Lee, G. L. (2004, April 7). Lucent fired top China executives. *Wall Street Journal*.

i. Incongruously, the "war on terror" may also hinder enforcement of the FCPA. In the case against the Americans for bribing the Kazakhstan government, the American attorney representing the President of Kazakhstan has requested that the Bush Administration intercede to dismiss the case so as not to scandalize a Kazakstani government that is providing U.S. flyover space to Afghanistan.

j. "If activities that are permitted in other countries violate the morality of the marketplace—for example, undermine contracts or involve freeloading on the rules of the market—they, nonetheless, are morally prohibited to multinationals that operate there. Such multinationals are obligated to follow the moral norms of the market. Contrary behavior is inconsistent and ultimately self-defeating." Bowie, N. (1988). *The moral obligations of multinational corporations*. In *Ethical theory and business* (5th ed.). (1997). Beauchamp, T. and Bowie, N. (Eds.). Upper Saddle River, NJ: Prentice Hall.

as necessary to preserve the basic rights of each person. This restrained approach is reflected in the language of the U.S. Bill of Rights, which imposes no affirmative duties on the State toward its members, but, instead, consists entirely of a series of negative injunctions—"No person shall deprive another...; "No state shall deprive an individual..."—all setting limits on what the State or members of society may do to impinge on the basic rights of others. Ultimate-

ly, however, those restrictions on *means* have a teleological end of securing the rights of all.

Criticisms of the Deontological Theory of Ethics (or "You Kant always get what you want.")

Many twentieth-century thinkers rejected Kantian morality and returned to the early notion that people are driven by impulses beyond their control and, thus, are incapable of freedom and

19. Others such as Karl Marx rejected the whole concept of the state of nature as a false and self-serving fiction and explained the emergence of the social structure, instead, in terms of historical materialism and class struggle.