

Utility and rights

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MacIntyre's argument

Rights are not real.

- 1 The rights discourse did not emerge until about 1400.
- 2 It was a reaction to a particular political process—the emergence of individualism and development of bureaucratic institutions.
- 3 There has never been any positive proof of their existence.
- 4 Therefore, rights are fictions like unicorns.

The existence of theoretical entities cannot be given a direct proof. We justify their existence through exploring their **indispensable theoretical role**.

- 1 If p , then rights exist.
- 2 But p .
- 3 Therefore, rights exist.

So, what is p ?

- Rights of the individuals are invoked to limit the authority of government institutions.
- Governments use utilitarian arguments to substantiate and defend their positions.
- (That is, government policies might not be utilitarian, but their justification is.)

Utilitarianism defined

Act so as to satisfy the maximal number of **preferences** of the maximal number of individuals.

- Rights are checks on the utilitarian calculations conducted by institutions.
- Whenever such a calculation conflicts with a human right of a particular individual, that right, like a **trump** in a card game, defeats the calculation.
- Utilitarian calculations may sacrifice the welfare of one individual for the welfare of a number of individuals. In some cases it is illegitimate. But utilitarianism, locked inside its calculus, has no means to declare it illegitimate.

Example

A convicted sex offender prevented from settling in a particular neighbourhood.

Dworkin's indispensability argument

- 1 If there are no rights, then utilitarian calculations go unchecked.
- 2 But utilitarian calculations cannot go unchecked.
- 3 Therefore, rights exist.

There must be a further reason why utilitarian calculations should be halted at some point.

According to my reading, Dworkin aims to show how the restriction of utilitarian calculations is necessitated by utilitarianism itself.

- Utilitarianism assumes equality. The welfare of one individual is not intrinsically more valuable than the welfare of another individual.
- The preferences of different individuals, plugged into the computation, do not depend on who those individuals are.

Personal and external preferences

- Personal preferences relate to the way **your** life is going, your goals are met etc.
- External preferences relate to how the lives of others is going, how **their** goals are met etc.
- It is not always possible to separate the two classes of preferences.

Example

Jones and Smith vying for the same parking space. Two cases: a) Jones wants the space for his own enjoyment, and b) Jones wants that space to prevent Smith from having it.

Linking equality and external preferences

Dworkin's claim

By counting the external preferences along with personal ones the utilitarian does not allocate the equal share of 'concern and respect', and thus violates his own principle of equality.

Main Premiss

Every man must be able to decide how to lead his life and which goods are essential to his welfare. Others should not interfere with his life led according to those values.

Three strategies of resistance to the Main Premiss

- 1 The agent is intrinsically unworthy of gaining happiness: disregard his right to his own welfare (example: racism).
- 2 Doubt the judgement of the agent: a person might not have the best idea of what his welfare consists in and how it should be achieved (example: children).
- 3 Despise the agent's values and his way of life (example: homosexuality).

The first strategy is not acceptable to utilitarianism. The second is acceptable to both utilitarianism and the rights theory. It is the third strategy which is contentious: acceptable to utilitarianism and unacceptable to the rights theory.

- 1 If utilitarianism is adopted, then the principle of equality is adopted.
- 2 If the principle of equality is adopted, then the Main Premiss is adopted.
- 3 Suppose there are no rights.
- 4 If there are no rights, then utilitarian calculations go unchecked.
- 5 Utilitarian calculations go unchecked just in case personal and external preferences carry the same weight.
- 6 If personal and external preferences carry the same weight, then the Main Premiss is violated.
- 7 If the Main Premiss is violated, then utilitarianism is rejected (by *modus tollens*).
- 8 Therefore, utilitarianism is rejected (by the repeated application of *modus ponens*).

Claim #6

If personal and external preferences carry the same weight, then the Main Premiss is violated.

The purpose of this claim is in mediating between the structure of utilitarian preferences and the principle of equality. But is it achieved? Let us consider the case of homosexual relationships.

Response A

We have strong aversion to homosexuality. It is disgusting. It violates important ethical and social norms, perhaps including divine commands. And it can potentially cause harm to human fellowship. At least they could harm us, our children, and the possible children of the homosexuals themselves.

This response centres on the heterosexual perceptions of homosexuality, offering only speculations on the direct influence of homosexuality on the well-being of the heterosexual community.

Response B

Homosexuality is mostly a mistake. It can be caused by social conditions or by biological conditions. Perhaps homosexuals are not even fully responsible for choosing their way of life. However, their choice harms *them*. It would be better for *them* to abstain from their sexual practices and to form heterosexual relationships. There are some homosexuals, a minority, who are aware of the conflict between their inclinations and their genuine welfare. Those in the majority are mistaken about true conception of well-being, about the true purpose of the family, and perhaps also about the content of divine commands.

This response questions the judgement of the agents who engage in their homosexual activities. These activities, according to Response B, harm their well-being. A moral thing to do would be to guide them to the correct conception of well-being, the one which will exclude homosexuality.

So: in many cases the crusading moralists will question precisely the assumption that the agents involved (say, homosexuals) have formed the correct notion of good life. The dividing issues are:

- Could a normal adult be justly coerced into living his life in contradiction to his values and according to someone else's values?
- Is it possible to set up an objective standard by which one could judge the well-being of X regardless of the opinions X may hold about his own well-being?

The roots of utility and rights

- The conflict between rights and utility follows from the basic role of rights.
- We can construct our political theory by beginning with ourselves as particular, unique individuals.
- We can also begin with the community, its goals and values.
- It would be an improbable coincidence if the two beginnings will fit and lead us to the same place.
- Hence there is no rational way to reconcile between the two.
- Moreover, since the utilitarians are in the position of power, we should be surprised that the rights are not abused even more.