

# Utilitarianism is Not a Moral Theory

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## Abstract

Utilitarianism in order to count as a moral theory would within the theory itself have to identify the moral and distinguish it from the amoral. It fails to do this without calling upon theoretical ethical considerations that are outside the ethical theory available to utilitarianism and such considerations are unexplained by utilitarianism. Utilitarianism fails to circumscribe the moral domain by not identifying what is essential for something to be a moral matter as opposed to an amoral matter. Therefore, utilitarianism taken in itself is not a moral theory.

## 1.

Utilitarianism is not a moral theory considered only in itself, for it fails to identify those matters that are moral as opposed to amoral. By ‘amoral’ (‘non-moral’) is meant all those events, objects and matters that are morally void, outside the domain of morality, and which thereby should accrue no moral consideration or attention at all. They should be considered as things that merely happen or do not happen. Within the domain of morality events, objects, and matters, are either moral or immoral, outside it they are amoral. If it appears not to be the case that utilitarianism fails to identify the moral as opposed to the amoral, this is because utilitarianism draws surreptitiously upon theory identifying the moral which is outside what utilitarian theory consists in. It is not a matter of what utilitarians in fact say about the domain of morality, it is a matter of whether they are entitled by their own theory alone to be able to say what they do. It is not indubitably self-evident what is and is not a moral matter, it is rather the result of theoretical moral reflection.<sup>1</sup> By ‘utilitarianism’ here is meant the core of utilitarian theory,

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<sup>1</sup> A good marginal or debatable example concerns sexual relationships. For many this was once a matter of central moral concern - issues such as sex outside marriage - now for a lot of people the matter is not a moral issue at all - at most, certain psychological factors might have to be considered with regard to issues of the timing of first sexual encounters, whether the person one is planning to have sex with is such that one will not be unhappy as a result, and the like.

that of consequential harm, and that in some manner the putative moral value and disvalue of actions (or inactions) should be determined by certain sorts of results of actions. As this is the core of utilitarianism in any form no refinement in distinguishing, say, act from rule utilitarianism will make any difference to the argument here, for however utilitarianism is construed it will be argued that it may miss out what is essential for something to be a matter of moral concern at all. Utilitarianism may treat matters that are not moral as if they are, thus missing the necessary conditions for the moral, and may treat moral matters as if they are not, thus missing the sufficient condition for the moral. This will be shown in more theoretical detail and by example later.

It might be thought that at best the argument here would show what a complete moral theory should be. It might indeed be denied that a moral theory is required to be able to identify its moral objects (or subject matter), if one may put it like that, by using only its internal theoretical resources. But in that case one may ask what does do the job of identifying moral objects and concerns proper. It seems perfectly reasonable that one might expect something presented as a moral theory, and indeed as a complete moral theory, to do so, and as part of whatever the theory consists in to know what it is talking about – know what is and is not a matter for it. No-one supposes that if you want an explanation of what happened and what to do if one's fridge breaks down that one would look to moral theory. The problem becomes greater for any putative moral theory if in order to identify what is essential to moral objects, that is to identify what is and is not one, it draws upon moral theoretical resources that are beyond those accounted for by its theoretical resources, or worse are in conflict or anathema to them. This however is the case with utilitarianism. Utilitarianism was partly set forth as a scientific and far better moral theory than its main rival, deontology, which for the sake of simplicity we shall call Kantian Moral Theory, which utilitarianism stanchly rejects as being fundamentally mistaken, indeed intellectually repugnant.<sup>2</sup> Utilitarianism is certainly presented as a complete self-sufficient theory about moral matters and as an alternative to deontology that we never need to go near again in order to determine best our moral

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Whether sexual matters are a moral issue is something that requires grounding within a moral theory before moral judgements themselves follow upon this. On the other hand it is perfectly clear that some things do fall within moral concern – torturing babies, for example – and some matters clearly fall outside moral concern – what happens, for example, to the star HD 43197.

<sup>2</sup> Closely related to this, Jeremy Bentham famously described rights as 'nonsense upon stilts'. Jeremy Bentham, 'French Declaration of the Rights of Man and the Citizen in Anarchical Fallacies' (1796).

decisions.<sup>3</sup> But not only does utilitarianism lack the internal theoretical resources to distinguish the moral from the amoral, by tragic irony it would only be able to do so by drawing upon deontology and bolting that on to make such a distinction. This shows that in itself utilitarianism is not a moral theory, it cannot if one looked at it alone be identified as one, for as it stands it can find no grounds for not treating some things as moral when they are not, and for not treating some cases as moral when they are. Utilitarianism is parasitic on the theoretical considerations of other moral theories, in particular deontology, that define the moral domain. This creates not only an incompleteness, but inconsistency, if utilitarian theory tries to respond by plugging the theoretical hole that would enable it to identify itself as a moral theory by way of a moral theory that it rejects, has no place for, and indeed can make no sense of.

It may be argued that deontology is the only moral theory that can account for its own identity as a moral theory. It would take a considerable amount of work to fully justify this claim, so only an interim outline can be attempted here. This is given in order to support the claim that utilitarianism is not a moral theory by blocking the objection that no moral theory can or need identify itself as a moral theory from its own internal resources alone, by way of showing that deontology can do just that. The key to the means by which deontology achieves this is to answer the question of what makes values, and in particular moral values, possible at all. In Kantian fashion the solution is that there must be creatures that are capable of valuing. No valuers, no values. For there to be values there has to be normativity in the world, that is a world where things do not just happen or not happen, but where it makes sense to say mistakes can be made or things done correctly, and where one may talk of should (ought) or should not (ought not) and not just of what in fact is or is not in fact the case. For this to be possible there has to be a sense in which there is a creature – this seems to be human beings, or, more openly, persons – in the world who can choose and guide its thoughts and actions by following rules or principles, and not just being in accord with them. This suggests that the creature has to have autonomous free will. Whether free will is possible is beyond the scope of this essay, but the existence of values appears to demand it. The upshot of this is that the

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<sup>3</sup> Most notably by J. S. Mill of course. Mill famously suggested that the ‘harm principle’ was all you needed to think about when considering moral matters. J. S. Mill, *On Liberty* (London: Penguin, 1974), Chapter 1, p.68. In the *Fragment* Bentham states of the ‘fundamental axiom’ that ‘it is the greatest happiness of the greatest number that is the measure of right and wrong’, and ‘the obligation to minister to general happiness, was an obligation paramount to and inclusive of every other’. *A Comment on the Commentaries and A Fragment on Government*, J. H. Burns and H. L. A. Hart (eds.). (1977, 393, 440n)

domain of the moral has at its locus persons and their ability to will their own lives. As this is the source of all values, anything that counts as a moral theory must acknowledge that ability as the ultimate value that must be respected in all moral decisions, and without which, whatever the result, the treatment or action does not count as moral. Persons, in having the ability to freely will their own lives, provide the necessary and sufficient condition, the if and only if, for an attitude or act to be moral as opposed to amoral. This circumscribes the domain of the moral, and anything not within the amoral. Kantian deontology shows what makes values, including moral values, possible at all, and what is essential to all that is to be counted as moral. This essence is that one can never treat as having no value what makes ethical values possible at all, the autonomous will that creates the normativity that moral values require. In this way, deontology, unlike utilitarianism, identifies what is essential to any action being regarded as a moral one, as opposed to an amoral one.

## 2.

There are then two related claims:

(1) Without the use of theoretical apparatus outside itself there would be nothing about utilitarianism to identify it as a moral theory directed definitively at all and only moral occurrences.

(2) Theoretical accounts justifying moral judgements made by utilitarianism may fail to identify what is essential to something being a matter of moral concern.

Take any theory  $T$  putatively concerning all and only objects of sort  $x$ . If  $T$  picks out things that are  $x$  only and not not- $x$  then  $T$  must include within  $T$  some way of distinguishing  $x$  and not- $x$ . If some things that according to  $T$  are identified as  $x$  when they are not- $x$ , and some things that are not- $x$  are identified as  $x$ , then  $T$  does not possess what is required to distinguish  $x$  and not- $x$  and so fails to be distinctively a theory about  $x$ . To be a  $T/x$  theory as opposed to a  $T/\text{not-}x$  theory, a theory would have to identify the essence of  $x$  or include the defining features of  $x$ . We may now substitute for  $T$  utilitarianism and for  $x$  the moral domain or proper object of moral concern.

Applying this to utilitarianism. There are things that are a matter of moral concern that should not be according to utilitarianism and there are matters identified by utilitarianism as matters of moral concern that should not be considered moral matters. This shows logically that by failing respectively

both as a necessary and a sufficient condition in its concerns, utilitarianism fails to identify what is and what is not a moral matter and as such it fails to identify what is essential for something to be a moral matter.

The two claims (1) and (2) are related, whence utilitarianism fails to be identifiable as a moral theory by its own lights only.

### 3.

In order for the argument to work and demonstrate (1) and (2), two things will have to be shown and this may be done by way of example.

(a) That there is a matter that should be considered a moral one according to utilitarianism - whether utilitarians in fact treat it like that or not - that is clearly not one, but for which within utilitarian theory there are no grounds for exclusion from moral concern. If the matter is *de facto* excluded, it is on grounds other than utilitarian ones, albeit the grounds are not articulated or admitted to.

(b) It will then have to be shown that there are cases conceivable that clearly are of moral concern, whatever moral judgment one comes to with respect to the rights or wrongs of the matter, which utilitarianism should ignore as being a moral matter, again whether in fact it does or not, but may well not ignore because of other grounds that turn out to make no theoretical sense within utilitarian precepts.

Here are the example cases.

The first case (a). Imagine a river. This river is frequently prone to flooding. On a certain occasion the river floods, causing many deaths in a village close to its banks. Is this a moral matter? Clearly not. It is an amoral happening within nature of no normative moral import at all. We are concerned with this event in itself; we may by fiat exclude all distracting thoughts about how people might have contributed to the disaster - not building flood defences, not warning people, and the like - for then we would be considering a different case with different causes. If the river example does not satisfy and appears too complicated, then just consider someone being struck by lightning and killed while casually going on a walk.

Harm has clearly been done. And it has been done by the river. But it would be absurd to think of this as a *moral* matter. It is unfortunate, even tragic, but most would clearly see that there are no moral concerns here. And yet, what are the grounds according to utilitarianism as to why it should be excluded as a moral matter? Is it not supposed to be only harmful consequences that matter as a utilitarian principle? But these fail to identify moral matters as such. What might be proffered is that such events are not moral matters because no *moral actors* were involved. But this leaves the

question of how moral actors are to be identified. It is hard to see how they may be so identified on utilitarian principles alone. It cannot be that moral actors are those creatures or objects in the world where the consequence of what they do is a moral matter, as that would clearly be circular. Utilitarianism in itself has no grounds for identifying the domain of normative moral concern. Here is clearly a case where utilitarianism has no grounds not to think of the action of the river as a moral matter, but it clearly is not, therefore utilitarian considerations are not a sufficient condition for picking out what objects in the world are moral ones.

The second case (b). This concerns what most would regard as a clear instance of rape. Yet, according to utilitarian principles alone it should not be a matter of moral concern at all. This shows that utilitarian consequences are not a necessary condition for something being a matter of moral concern, as in this case there are postulated to be none. The imagined situation is not too farfetched, certainly less so than many thought experiments designed to illustrate philosophical points and test out intuitions.<sup>4</sup> A woman is walking home one night on a remote path; as she does so a man releases a gas that causes her immediately, before she knows what is happening, and without discomfort, to faint. She lands gently on the ground without hurting herself at all. The man then proceeds to have penetrative sex with her. He makes off afterwards leaving the woman just as he found her. There is no ejaculate in the woman because the man either does not or cannot produce semen. No internal harm let alone pregnancy follows. When the woman wakes, she has no memory of what has occurred, and there is no evidence from her attire that would indicate that she has been raped. She is in fact rather prone to spontaneous and random fainting and quickly assumes it to have been one of those instances. No-one observes the incident or has any other reason to think it has taken place. The man suffers no pangs of conscience. He carries on his life just as before and does nothing that he would not have done if the act had not taken place.

This is clearly a case of rape. The sexual act took place if not against her will, then without her consent, and indeed had she known what was happening hypothetically she would not have consented. This example is constructed so no harm is done. Indeed, no consequences follow from the incident whatsoever. Yet it is clearly a moral matter. Indeed, one might suppose quite easily that wrong has been done and the man should be punished. But there are no consequential utilitarian grounds for this at all. It is as though it never happened as far as the utilitarian harm principle is

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<sup>4</sup> Consider all the brain swapping and mind transmigration often trotted out in the discussions of identity and the self.

concerned.<sup>5</sup> This indicates that because we regard what happened as nevertheless a case of rape, and thus obviously a moral matter, and that regardless of how we morally judge it, utilitarian considerations are not necessary for it to be considered a moral matter. There must be some other reason it is a moral matter, one that cannot be derived from utilitarian moral theory. There is nothing within utilitarian moral theory to identify what happened as 'a rape' insofar as that expression implies it is something for moral consideration. It is not just a matter that utilitarianism in this case fails to home in on what matters morally; it fails to have grounds for homing in at all on what essentially matters morally in cases of rape.

In short, utilitarianism may theoretically treat matters of consequential harm as moral matters when they are not, and fail to treat matters not involving consequential harm as moral matters when they are.

If utilitarianism picks out the river case as not a case for moral concern and picks out the rape as a matter for moral concern, then it cannot be on the grounds of consequential utilitarian theory alone. It should regard some things as moral when they are not (so utility is not a sufficient condition for something to be a moral matter) and should regard some things as not moral when they are (so utility is not a necessary condition for something to be a moral matter). This, I believe, demonstrates the claims (1) and (2).

#### 4.

It is worthwhile to re-examine briefly what is required as a necessary and sufficient condition to pick out happenings that should be considered moral ones, distinguishing them from the amoral, and apply this to the examples just given, in the way they were derived earlier when discussing deontology. This subject cannot be done justice here. But it suffices for the argument in the paper to show that the reason or reasons that something is a moral matter cannot be derived from utilitarian theory. Utilitarian theory, in itself, has nothing to say about such matters.

The reason that the case of the river is not a matter of moral concern and the case of the rape is a matter of moral concern in both cases relates as has been said to agency and will. Taken together these, along with the capacity to follow, not just accord with, a rule can define the domain of the moral, thus what counts as of normative moral concern.

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<sup>5</sup> Indeed, bizarrely if utilitarianism were to consider the act at all, it could come up with exactly the wrong moral conclusion based on the pleasure the man may have got from the sexual act. All the utilitarianism consequences would if anything appear to be on the positive side. But again, the example is set up so that it is null as far as consequences are concerned which utilitarianism might consider. There are no features of it picked up by utilitarianism to balance at all.

Plainly, the river is not an agent, and certainly not a moral agent for it cannot follow a rule. That this is so is the reason that the river causing harm is not a moral matter. It is an amoral matter. And yet utilitarianism has no good reason to pick out only agents as causing harm as a moral matter if harm is all that matters morally. Utilitarianism just assumes that we will all understand that the relevant harm is that caused by persons.<sup>6</sup> But persons must be defined in some way independently of the moral harm they may or may not cause, as to do otherwise would be circular. The circularity would be thus: harm of moral concern is that caused by persons, and persons are those entities who may cause moral harm. Utilitarianism might well in fact restrict for moral consideration actions that have consequences to those by persons, but it is argued it has no theoretical justification to say why it should do so.

Turning to the rape case, what makes it a matter of moral concern is, it may plausibly be argued, that it involves the transgression of someone's will, albeit hypothetically and so she would not have consented - in any event she is subjected to someone else's will in such a way that it is tantamount to her being treated as a thing. It takes away what makes a person valuable as such, their autonomy, and so disvalues them. According to utilitarianism no harm was done; indeed, the act of rape in this case had no morally relevant consequences at all. Of course, if minor harm had occurred one just might consider it an act of lesser moral gravity, and many would find that highly contentious to put it mildly – and it only further emphasizes the point that utilitarianism misses what is essential in rape being a moral matter at all by missing all that attaches to its moral gravity. It is clearly still a matter of moral concern, which should thus be the object of moral judgement, regardless of what moral judgement we come to. It is clearly not an amoral matter. Regardless of what harm is involved in a rape, utilitarianism completely misses what is essentially wrong about rape - and indeed other acts which manifest a disregard for what others might will. In the case of rape this involves having sex with someone without their explicit or tacit consent. There may be harm involved too, but that could have been present without the sexual act and is external, so to speak, to the act and the immorality of rape itself.

What makes the river not a moral matter and the rape of the woman a moral matter is captured by Respect for Persons version of Kant's Categorical Imperative. This as has been suggested defines the necessary and sufficient conditions for something being a matter of moral concern at all,

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<sup>6</sup> We may be narrow for the sake of argument as to what falls within the class of moral agents, but this is compatible to extending it judiciously to other creatures, and there is certainly no *a priori* way of ruling out aliens being moral agents.



## Utilitarianism is Not a Moral Theory

and thereby circumscribes the domain of morality, within which distinctively normative moral judgements are made. ‘Act so that you treat humanity, whether in your own person or in the person of any other, always as an end and never merely as a means.’<sup>7</sup> If this is not in place in relation to one’s attitude to what is happening<sup>8</sup> – you are not treating others with respect – you are not even starting to be moral whatever may occur, whatever the outcome. What the river does is not a moral matter because it is not a person with a will, but a thing, and the raped woman is a moral matter because she is a person with a will, and not a thing. Deontology, as has been claimed, has precisely the internal complete theoretical resources that utilitarianism lacks, such that by deontology’s own lights it can not only guide moral judgement but also define what should be of moral concern in the first place. Utilitarianism simply helps itself to this without acknowledgement and declares itself a complete moral theory; but without appendages that it itself can make no sense of or account for, utilitarianism would not be identifiable as a moral theory at all.

This does not mean that utilitarianism and its calculus of harm are useless or irrelevant when making all moral judgements. But it does mean that utilitarianism is incomplete and inadequate as a moral theory. It is thus not merely the case that utilitarianism would be usefully combined with considerations that derive from non-utilitarian theories; it now has to be the case that utilitarianism must deal with other moral theories to be considered a moral theory at all. Without such external considerations utilitarianism should not be picked out as a moral theory. The notion of consequential harm and good, the currency of the utilitarian calculus, is seen to be only one part of arriving at good moral judgements, but in the end not the most essential part. Repeatedly utilitarianism misses the essential ethical point; what makes a happening, an object, one of distinctive ethical concern. Utilitarianism misses what really matters ethically speaking, and in missing what is essential standing alone it is not a moral theory.

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<sup>7</sup> *Groundwork of the Metaphysics of Morals*, Chapter II, AA 4:429. I have changed ‘simply’ to ‘merely’ from the Paton translation.

<sup>8</sup> See my paper, John Shand, ‘Kant, Respect, and Hypothetical Acts’, in *Philosophy* Volume 90, Issue 03, July 2015, pp 505–518. This shows how Kant’s Categorical Imperative can be in place in relations between people even when nothing actually occurs that corresponds to it.

5.

What has been said may lead us to a more general line of inquiry. We might ask why we consider utilitarianism a moral theory. One answer might be that we are confusing a moral theory with a decision theory. Moral theories are at least partly decision theories, but not all decision theories are moral theories. Utilitarianism may readily enable us to make a decision when presented with a moral problem or dilemma, but this does not mean that it is providing us with a moral justification for doing one thing over the another. Of course, that thought does not in itself show that utilitarianism is not a moral theory, but it does show that we should not assume that something that can be applied to making decisions in moral situations is thereby a moral theory. For that we need to look at what conditions need to be in place for it to be correct to say we are thinking morally at all; that we have in our thinking entered the domain of moral thinking (and action). Utilitarianism often easily gives us an answer when presented with a moral problem, and that ease is part of its allure, the burden of responsible existential choice lifted off us, indeed it traditionally sports itself as a decision calculus, perhaps even a scientific one. Here we should be alerted that something is amiss, for if moral issues present themselves in any manner, they certainly do so in a manner, as normative, quite different from those encountered in traditional factual science. But often it makes things easy when part of us knows that they should be difficult, and we feel unease about the way the decision readily drops out of utilitarian considerations. We should take notice of that discomfort, for it is trying to tell us something. Perhaps that we have been given a reason to decide one way rather than another, perhaps even been given a justification, without our genuinely thinking morally and the justification having a moral grounding.

It may be argued that deontology not only provides us with grounds for a decision which is moral when presented with moral problems, but that it also says of itself why thinking that way about them is the only approach if we wish to think morally about the problem at all. Often it also vitally maintains the authentic difficulty we have in thinking about some moral situation. Utilitarianism may readily give us an outcome when applied to cases of deciding whether to save a few people or many people. But Kantian deontology arguably holds that if morality is to have any grounding at all, then each person is priceless, as without their autonomous normativity there would be no values at all. In that case choosing one set of people over another by totting up on scales comparatively the value of people does not morally get off the ground, for in thinking like that one is not even beginning to think morally – one is outside the domain of morality.

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