Practice Consequentialism: A New Twist on an Old Theory

S. Jack Odell
University of Maryland

In this paper I defend a version of consequentialism that is neither of the act nor the rule variety. I argue that most, if not all, acceptable moral rules are formulations of intricate and interrelated practices that serve to promote harmonious co-existence between human beings; that these formulations - moral rules - are shorthand abbreviations of the lengthy formulations which would be required to actually describe the extremely complicated set of prescriptions and prohibitions which comprise our ethical practices; that we are culturally, perhaps even naturally, disposed to justify our actions in consequentialist fashion; that these underlying moral practices or 'folk' ethics provide the foundation for all forms of consequentialism; and finally, that the folk ethical practices practice consequentialism incorporates are empirically verified.

INTRODUCTION

During the latter half of the present century, consequentialism has been subject to an extensive battery of cogent and compelling criticisms. In this essay I argue that all of these criticisms can be answered by focusing upon its spirit, by which I mean its foundations, rather than upon the various formulations of it in the works of its defenders. I argue that philosophers like Bentham, Mill and other utilitarians gave philosophical voice to a centuries old consequentialistic ethical code or 'folk ethics' which permeates our distinctly human form of life. Sometimes this ethic was dominant. Sometimes it was dominated by or subsumed under various religious creeds and political movements with their own agendas.

Typically, philosophers distinguish between act and rule consequentialism, and either reject both or defend one against the other. The folk-based consequentialism I will defend is neither one nor the other, though it is closer in spirit to the rule variety. Instead, it features practices rather than either specific actions or rules. Unlike act consequentialism of the sort exemplified by act utilitarianism, folk ethics is not...

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1 I am not claiming that the folk ethic is innately derived. Folk ethics is not for this reason to be confused with or tied to the kind of folk psychology defended by Fodor and his followers. I claim only that we are naturally disposed in this direction in so far as we are capable of learning from experience, and are disposed to train our children to behave in ways that have benefited or profited us. Whether or not the folk ethic is innate in the Fodor sense is a stew I shall leave unstirred.

2 Judaism incorporated and sanctified it, and enforced it by the threat of God's anger. Christianity circumvented and diminished the importance of this ethic by replacing the folk ethic's agenda of harmonious co-existence among humans on this earth with its own otherworldly goals. Political movements with Machiavellian orientations pay lip service to this ethic, but act in egoistic and non-altruistic fashion to promote their own agendas.

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subject to the objection that moral obligation is subjectively determined – that what is right is a function of the agent's assessment of what will be the likely consequences of his action. Unlike rule consequentialism of the sort exemplified by rule utilitarianism, it is not subject to the criticism that it interprets moral rules too strictly and fails to adequately deal with what must be recognized as valid exceptions to them. Nor does it interpret them too permissively so as to accommodate valid exceptions and become, by doing so, simply a disguised form of act consequentialism.

In order to give folk ethics a philosophical identity which distinguishes it from act and rule consequentialism, I will refer to it as practice consequentialism (PC), and I will maintain: that most, if not all, acceptable moral rules are explicit formulations of intricate and interrelated practices that serve to promote harmonious co-existence between human beings; that we are culturally, perhaps even naturally, disposed to justify our actions in consequentialist fashion; that these underlying moral practices or 'folk' ethics provide the foundation for all forms of consequentialism; and finally, that the folk ethical practices PC incorporates are empirically verified.

I. THE EMERGENCE AND EVOLUTION OF FOLK ETHICS

We would have little use for a moral or ethical code if we did not fear others, dread pain and discomfort, or have the needs we have for food, drink, sex, etc. Nor would we need one if we were compulsively altruistic, or if our environment were altogether friendly and fruitfully productive of all the necessities of life, the sort of environment Schopenhauer described as 'a Utopia where everything grows of its own accord and turkeys fly around ready-roasted, where lovers find one another without any delay and keep one another without any difficulty'. 3 We are what we are, however, and we do not inhabit a Garden of Eden.

The world is a place of tornadoes, earthquakes, floods, droughts, and diseases. It also contains countless adversities of human origin – treachery, deceit, theft, torture, and murder. When the calamities of nature are combined with our proclivity to promote self-interests and our mammalian appetites, certain ways of behaving (which involve both doing and refraining from doing, for example, truth-telling and not lying) must prevail for us to avoid living lives that are not only 'solitary, poor, nasty, brutish, and short', to borrow a shopworn but age-

less tenet from Hobbes, but also fearful, painful, dreadful, ignorant, and hopeless. We cannot prevent natural calamities, and although it is virtually impossible that we will ever completely eliminate the transgressions we perpetrate against one another, we are capable of diminishing their number and impact. As we evolved cognitively we came to understand all of this, and to appreciate the need for all of us to behave in prescribed ways — ways which tend to promote harmonious co-existence between humans and thereby reduce the amount of pain and suffering we have to endure. We discovered that an important connection obtains between how we regulate our actions and the quality of our lives — that certain ways of behaving (practices) promote harmonious co-existence between humans and thereby reduce the amount of pain and suffering we have to endure. Actions that tend to facilitate the satisfaction of our needs are repeated, and thereby practices are established. When society becomes cognizant of the fact that certain practices give rise to widespread contentment, or at least that these practices tend to diminish ‘fear and trembling’, these practices are given verbal expression in abbreviated form as moral rules, and eventually as society develops legislative and judicial institutions, they are enacted as laws. Our cognitive and emotional capacities combined with our distinctly human needs create, sustain, and explain our distinctly human ‘form of life’ — a form of life which includes our ethical practices, their formulation as rules, and the laws they generate.

Although all the practices that constitute folk ethics contribute to the perpetuation of harmonious co-existence between humans, certain ones are more crucial than others. Unless humans refrain from killing, deceiving, stealing from, enslaving, or otherwise harming one another, we cannot begin to live together in harmony. Yet even these practices are commonly ignored. Deception and theft occur every day, everywhere. We have harmed and killed, and continue presently to harm and kill, one another in massive numbers: Verdun, Hiroshima, Auschwitz, Wounded Knee, the Spanish Inquisition, the St Bartholomew’s Day slaughter of the French Protestants by the French

4 Existentialists like Sartre claim that nothing is objectively right or wrong. Our choices alone determine what is right, and so we cannot choose wrongly. According to Sartre: “To choose to be this or that is to affirm at the same time the value of what we choose, because we can never choose evil. We always choose the good, and nothing can be good for us without being good for all.” *Existentialism and Human Emotions*, tr. by Bernard Frechtman, New York, 1957, p. 17. PC can agree with Sartre that we are living in a universe neither governed by a theistic God nor by a priori truths of reason, but it disagrees with his contention regarding our freedom to choose our morality. PC maintains that we are not free to choose our own ethics; rather we are free to discover them by inductive means by determining which practices have the best result.
Catholics, slavery until 1865 in the United States, and ethnic cleansing in recent years both in Africa and in Bosnia. The fact that we know what must be done to ensure harmony among ourselves by no means translates into our always acting individually or collectively in ways appropriate for the attainment of this harmony; the advantaged often conspire to take advantage of the disadvantaged. The desire for harmonious co-existence can itself be used as a tool for oppression. One segment of society gets another segment of the same society to 'go along' in order to avoid conflict and social upheaval, and thus makes 'suckers' of those whose desire for harmonious co-existence blinds them to what is happening to them. This kind of manipulation of one group by another is, however, by its very nature inconsistent with the goal of harmonious co-existence. It creates social 'time-bombs' that eventually detonate and shatter whatever harmony such compromise can ensure. The suckers eventually discover that they have been suckered, and this can have disastrous consequences. Unconditional cooperation is not a 'long term' rational policy for those seeking harmonious co-existence. Cognitive awareness that unconditional cooperation is not a rational policy is often in opposition to our emotional desire to do whatever is necessary to be able to live in harmonious co-existence. Our cognitive and emotional capacities are often in opposition to one another – a fact that I shall revisit in the last section of this essay.

II. PRACTICE CONSEQUENTIALISM

Practice consequentialism, my formulation of the folk ethic, recognizes and promotes a code of conduct based upon certain kinds of behaviour having stood the test of time. PC incorporates and emphasizes the empirical generalization that if most of us, most of the time, behave in certain prescribed ways, more of us will be better off than we would have been if most of us had acted in opposition to them, or acted individually. Mill, about whom scholars disagree as to whether he is a rule consequentialist or a multi-level act consequentialist, comes the closest of any historical figure to advocating practice consequentialism. He claims, regarding moral abstinence, that 'though the consequences in the particular case might be beneficial — it would be unworthy of an intelligent agent not to be consciously aware that the action is of a class which, if practised generally, would be generally

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5 In this paper, I provide only a condensed version of PC. I am working on a book that will include an extended version of PC, entitled On Consequentialist Ethics, to be published by Wadsworth early in 2002. I have also made limited use of some of the ideas underlying PC in my critique of Bertrand Russell's ethics in my book on his philosophy: S. Jack Odell, On Russell, Belmont, California, 2000.
injurious, and that this is the grounds of the obligation to abstain from it.\textsuperscript{6} Ethics is in this sense objective. The behaviour it prescribes is behaviour which – even if it does not maximize the good – is revealed by mankind's history to at least have had much better consequences for humanity than have accrued when our behaviour infringes its precepts. The reigns of Nero, Caligula, Hitler, and Stalin vividly illustrate what happens when the folk ethic is transgressed.

Of primary importance for the establishment and defence of PC is the recognition that moral rules are simply formulated summaries – shorthand abbreviations – of the lengthy formulations which would be required to actually describe the extremely complicated set of prescriptions and prohibitions which comprise our ethical practices.\textsuperscript{7} The harmonious co-existence of human beings does not require that we should never kill other humans. Instead, such co-existence demands only that we refrain from killing or harming other humans under most conditions, while it permits, even condones, the killing of other humans under certain specifiable conditions, for example, in defence of one's life, loved ones, home, or country. These facts are incorporated in the rules which society mandates.

Our rule against killing other humans is inadequately expressed by the biblical abbreviation ‘Thou shalt not kill’. Instead it should be abbreviated along the lines of ‘Do not kill another human being unless x, y, or z obtains’. The latter formulation does a much better job than does the Old Testament one of indicating just how complex the set of prohibitions and approbations associated with the taking of human life actually is. It does so even for societies like ours, which are to a large extent founded upon the Judaeo-Christian tradition. The practices upheld by religion, particularly Christianity, are sometimes at variance with the practices that comprise PC, and this creates dilemmas for the religious practitioner and conflicts between the zealous and the non-zealous, the religious and the non-religious, the worldly and the other-worldly, the realistic and the idealistic, conflicts which can only be resolved by the separation of state from church.

To appreciate just how complex these practices are, and just how much is ignored by our standard formulations of them, consider the fact that although we do train our children to avoid interpreting rules literally, we do not allow them as learners the leeway we accord to ourselves and other adults. The reason for this is that we do not expect


\textsuperscript{7} Rawls's distinction between practice rules and summary rules is relevant here, although his terminology might be misleading. The rules of the folk morality are in his terminology summary rules, but what they summarize are social practices and not games. They are not practice rules even though they summarize practices. See John Rawls, ‘Two Concepts of Rules’, \textit{Philosophical Review}, lxiv (1955).
them to master the full complexities of these prohibitions until they have matured enough to fully understand all their ramifications. Training takes time. It involves stages, some of which cannot be attained until others have been mastered.

The good or virtuous person is one who can be depended upon to do the right thing, and a virtuous temperament or character has to be developed. Children have to be taught that some things are, except under specifiable circumstances, wrong. They have to be trained to conduct themselves in specific ways in specific circumstances, and this is how character is formed, and character provides the engine that drives ethical behaviour, behaviour that is, according to PC, justified by consequentialist means. Although these observations would suggest that I am in agreement with ethicists like Frankena and Robert Holmes, who emphasize the compatibility of an ethics of virtue with an ethics of conduct, there is at least one important difference between their view and mine. They argue that although virtue ethics is instrumental in the production of right conduct, conduct ethics is logically prior or presupposed by virtue ethics. The defender of folk ethics or PC need not consider the priority of conduct ethics over virtue ethics to be a matter of logical or conceptual necessity. Instead, she or he can maintain that this priority is simply factual. Specific practices actually perpetuate harmonious co-existence between humans, and an understanding of this fact leads us to encourage and reward those traits of character that promote conduct in accordance with these practices.

Folk morality, or PC, the ethical theory I have based upon it, is not a fixed or static morality. There may well be additional rules or different sets of rules which would, in themselves or in conjunction with our currently employed set, serve to promote the general good more efficiently than it is presently promoted, but all newly contrived rules have to be regarded like hypotheses in science. We are, as we are in science, free to hypothesize. We are free to formulate any rule or set of rules we like – an unimpeachable vocation for the ethicist or philosopher. But this freedom is not to be equated with, or misconstrued to be, a freedom to follow or adopt any set we choose. Certain hypothesized practices or rules may appear quite effective in theory, but the real test of their effectiveness is how well they actually do. Unless a practice, rule, or set of practices or rules, contributes to or helps bring about harmonious co-existence between humans, it is to be rejected or discarded.

I am knowingly extending the meaning of the term 'hypothesis' by referring to an untried rule or principle as an hypothesis. I am not

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9 Robert Holmes, Basic Moral Philosophy, Belmont, California, 1993, pp. 79 f.
claiming, as does Bertrand Russell, that 'the study of ethics is not something outside science and co-ordinate with it: it is merely one among sciences'. Folk ethics is not a science in the strict sense of the word 'science'. When a scientist expresses an hypothesis, he attempts to account for or explain some as yet unsuccessfully explicated series of events. But this is only the initial step in the scientific process. A crucial ingredient in this process is the design and implementation of an experiment or test of the hypothesis. The process responsible for the evolution of practice consequentialism or folk ethics differs greatly from the scientific process. The scientific enterprise involves conscious cognitive effort on the part of its practitioners. The process involved in the development of the folk ethic is not inherently, as it is in the development of science, a conscious process. It is closer to biological evolution – the difference being that while the evolution of folk ethics can be traced in terms of centuries, the evolution of the species required aeons. Ethics involves the evolution of practices. A practice is, nonetheless, tested by its empirical consequences, and in this way ethics resembles science. Practices do not, for the most part, originate as hypotheses. They simply come about as a result of our efforts to survive and live together harmoniously, but their survival is measured in terms of their effectiveness. An example that I like to use to illustrate this point is the practice of building and maintaining roads:

Clearly this practice can be justified by its consequences even though it did not originate in strict scientific fashion. Historically, human trails came to be, the way deer trails come to be, as a means of getting as efficiently as possible to a source of basic need satisfaction, for example, palatable drinking water. In time, as humans became more and more cognitively efficient, they came to recognize the advantage of such trails, and hence to construct even better trails, and to maintain them, and this eventually led to the complex and highly efficient highway systems of today.

We possess an instinctive awareness that certain ways of behaving are necessary for our survival, but we have to learn what are the most effective means for doing so. We had to learn that well-developed and maintained roadways provide distinct advantages over those that are not well-planned or maintained. This learning process involves experimentation in so far as it involves trial and error. What is retained is what has been confirmed by experience to be most effective.

I am not claiming that folk ethics are optimal, at least not in any absolute or inflexible sense of the word 'optimal'. There are countless possible, but uninstantiated, unconfirmed and unrealized sets of

11 Odell, On Russell, p. 77.
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ethical practices, which might, if adhered to, have better consequences for most of us than does the set we now follow and which I have characterized as folk ethics. There may even be a set which if followed would lead to ‘the best of all possible worlds’. I will not issue an a priori ruling against this possibility. I will simply allow for the possibility, hypothesize that such a set would have to include certain crucial or pivotal practices (specifically, not murdering, harming, lying to, stealing from one another, and not treating each other unfairly) and proceed to defend adherence to a specific, but open-ended, set of moral practices, namely folk ethics or PC, as the only set inductively confirmed to promote harmonious co-existence between humans.

III. ACT VERSUS RULE CONSEQUENTIALISM

Both defenders and opponents of utilitarianism have been aligned in their rejection of rule utilitarianism, a fact exemplified as far back as 1973 in a joint endeavour by J. J. C. Smart and Bernard Williams. 12 In this work, Smart defended act utilitarianism, and Williams attacked it, but both rejected rule utilitarianism. 13 Both argued that only act utilitarianism consistently judges an action’s morality on the basis of its consequences. They agreed that rule utilitarianism justifies rules and not actions in terms of their consequences, and is thereby inconsistent. They judged rule utilitarianism to be guilty of misplaced affection – rule worship. According to Smart:

Briefly they boil down to the accusation of rule worship: the rule-utilitarian presumably advocates his principle because he is ultimately concerned with human happiness; why then should he advocate abiding by a rule when he knows that it will not in the present case be most beneficial to abide by it? The reply that in most cases it is most beneficial to abide by the rule seems irrelevant. And so is the reply that it would be better that everybody should abide by the rule than that nobody should. This is to suppose that the only alternative to ‘everybody does A’ is ‘no one does A’. But clearly we have the possibility ‘some people do A and some don’t’. Hence to refuse to break a generally beneficial rule in those cases in which it is not most beneficial to obey it seems irrational and to be a case of rule worship. 14

Any philosopher who promotes act utilitarianism has to concede, however, that its classic formulation ‘always act to maximize the good in the world’ is indefensible for two reasons. First, the actual consequences of any given action are never available for examination at

14 Smart and Williams, p. 10.
the time of the action, since they have not yet happened, and so they cannot be a factor in an ethical decision. Secondly, it cannot make any sense to say that the choice one made in a given situation is objectively a better choice than other available options. Since none of the other options was chosen, they had no consequences, and hence there is nothing to compare with the consequences of our actual choice. The maxim has to be reformulated in a subjective format, as it is in ‘act so as to maximize the expectable good in the world’. The act utilitarian has to be satisfied with intended or predicted consequences, and not actual ones.

Subjective act utilitarianism is not, however, exempt from the Kantian-inspired objection that even though a single agent's doing A can add to the good in the world, the results would be disastrous if most agents did A. Suppose, for example, that Jane Doe knows that not paying her taxes would give her the means to pursue a personal goal, which would provide her and her family great satisfaction, much greater, say, than would accrue even if she eventually had to pay a stiff penalty. Under these circumstances, subjective act utilitarianism would obligate Jane to refrain from paying her taxes, but imagine what would happen if most taxpayers acted in the same way.

Could this situation be rectified were we to acknowledge that what act utilitarianism actually says is that we should always act to bring about the best results, and so we must sometimes follow rules? This acknowledgment or inclusive formulation of act utilitarianism will not resolve the issue. The disastrous consequences that would accrue if most or even many of us actually refused to pay our taxes will not be a relevant consideration in the individual’s assessment of her specific action because, although an individual agent can never be certain what others are going to do, it is safe for her to assume that no matter what she does, they will do as they have done in the past and pay their taxes. She can for this reason assume that all the benefits that accrue from most people paying their taxes will accrue no matter what she does, and that she is obligated by act utilitarianism to take a ‘free ride’ and not pay her taxes, since her not paying her taxes will only increase the amount of good in the world.

At this point in the argument the rule utilitarian will probably claim that those inclusive act utilitarians who advocate applying the utilitarian maxim anew to each and every situation – choosing sometimes to follow a rule, choosing at other times not to follow one – assume that they can gain whatever advantages accrue from rule-following behaviour, but that this is only an illusion. The advantages that are amassed by rule-following behaviour cannot, the rule utilitarian will allege, exist unless the majority engages in the relevant practices, and this can best be accomplished if we train our young to follow rules,
since those individuals who have been so trained are the only agents we can count upon to do the right thing in most contexts. The defender of the rule approach will argue that cases like the Jane Doe tax-paying case reveal the fatal flaw inherent in subjective act utilitarianism, which is to ignore what would transpire if the majority of the taxpayers acted as Jane would be obliged to act. So recognizing the need for rules is certainly not, as Smart would have it, tantamount to rule worship. Society cannot exist without conglomerate participation of the sort formulated by rules. Smart is wrong to assume that the only option in addition to ‘none do A’ and ‘everyone does A’ is ‘some do it’ and ‘some do not do it’. More germane is the option ‘most do it’.16

This objection to act utilitarianism is not, however, insurmountable. As I have pointed out elsewhere, we can overcome this objection if we make use of Parfit’s distinction between an individualistic and a collective interpretation of inclusive act utilitarianism16—‘a collective interpretation of inclusive act utilitarianism would interpret the utilitarian maxim to require always acting in those ways, and sometimes this would amount to following rules, which would, if we acted collectively or as a group, maximize the good in the world’.17 This interpretation would force Jane Doe to pay her taxes. Rule utilitarianism does not therefore appear to have any advantage over the act variety. Worst yet, the act utilitarian can also argue that rule utilitarianism cannot realistically deal with valid exceptions to moral rules without becoming, by doing so, simply a disguised form of act utilitarianism.18

15 Unlike Smart, Williams objects to both act and rule utilitarianism on the ground that neither form can be reconciled with the concept of integrity. See Smart and Williams, pp. 97–116. Elsewhere, he elaborated and further defended this form of objection by distinguishing between integrity and moral self-indulgence. See Bernard Williams, ‘Utilitarianism and Self-indulgence’, Cambridge, 1982, pp. 50 f. It is not clear to me just what Williams means by ‘integrity’, but if by ‘integrity’ one means strict adherence to a code of conduct most fanatics, even Nazis, have integrity in this sense. This sort of integrity is morally neutral. Moral integrity can, however, be understood as devotion to a code unified around and grounded upon communal practices that are expected on empirical grounds to provide harmonious co-existence among humans. If it is understood in this way, the question of whether or not a person’s integrity or devotion to principles (virtues) enters into the assessment of his conduct as moral or ethical depends upon whether or not his principles can be justified. And the question as to which principles are justifiable is the question that PC answers empirically. For a detailed discussion of this issue, see Samuel Scheffler, The Rejection of Consequentialism, Oxford, rev. edn., 1984, pp. 41–70.

16 Derek Parfit, Reasons and Persons, Oxford, 1984. I am, it should be noted, looking at this issue from what might be construed as its ‘upside’ or self-aggrandizing implications. Parfit is concerned with its self-defeating implications.

17 Odell, On Russell, p. 76.

The foundational principle of rule utilitarianism is that we should adopt that set of rules that will have the best results in the long run, and then steadfastly adhere to them. But the problem with this literal, 'come hell or high water', brand of rule utilitarianism is that there are valid exceptions to the literal interpretation of moral rules: lying to save a life or to spare someone's feelings, killing to save many lives, etc. To avoid the charge that rule utilitarianism is unrealistic, the rule utilitarian is forced to modify the foundational principle. It becomes: adopt that set of rules which will have the best results in the long run and adhere to them unless there are good utilitarian reasons for taking exception to them. This situationalist brand of rule utilitarianism treats moral rules as prima facie rules, which means that they prescribe what we should do unless there are extenuating circumstances to the contrary.19

This opens the door for the critic to argue that if the rules are interpreted to be prima facie rules, then the agent will always have to evaluate the particular circumstances surrounding his intended action to determine whether or not the ceteris paribus clause will or will not be violated. This is tantamount to asking whether or not these circumstances require our taking exception to the rule, the implication of which is that the agent does not really follow a rule, but decides whether or not to follow a rule. So it would seem that the situationist and realistic form of rule utilitarianism cannot be distinguished from inclusive act utilitarianism.20 PC is not, however, either a literal or a situationist brand of rule consequentialism, and it is neither unrealistic nor reducible to act consequentialism.

IV. THE ADVANTAGES OF PRACTICE CONSEQUENTIALISM OVER RULE CONSEQUENTIALISM

PC denies that moral rules are to be taken literally. It also denies that they are prima facie rules. Instead, it claims that moral rules are simply abbreviations or summaries of complex practices — practices that do prescribe how we ought to act in those very circumstances that the prima facie interpretation misconceives as exceptions. The reason we believe that there are legitimate exceptions to moral rules is

19 See R. M. Hare, Moral Thinking, Oxford, 1981. Hare's two-level approach to moral thinking is a refined version of this type of view.
because we take what are only abbreviations to be categorical imperatives. If one interprets ‘Do not lie’ to mean ‘Never lie’, exceptions come tumbling out of every nook and cranny in the philosopher’s cupboard. But one is not saddled with any exceptions if one’s theory recognizes, as does PC, that those cases which are ordinarily taken to be exceptions, cases like lying to save a life or even to avoid hurting someone’s feelings, killing a mad bomber to keep him from detonating a bomb which will wipe out half the city, or a parent’s stealing of a loaf of bread in order to feed her or his starving children, are already covered by the practices which our abbreviations designate. The practice surrounding truth-telling recognizes that it is not only morally permissible to knowingly assert a falsehood in order to save the life of an innocent person; it is sometimes morally obligatory to do so. Our practice concerning when it is wrong to lie to another human being is extremely complicated, but it does incorporate the idea that, for the most part, lying to other humans is wrong. The same kinds of considerations apply to the prohibitions against killing, harming, and stealing from others. In this way, PC dissolves rather than solves the issue regarding whether or not rule consequentialism can realistically deal with valid exceptions to moral rules without becoming, by doing so, simply a disguised form of act consequentialism.

In order to head off misunderstanding, it is important to understand that although PC maintains that moral rules, understood as abbreviated formulations of ethical practices, do not really have exceptions, it does not deny that philosophers, with their arsenal of Gedanken-experiments, are capable of breaching the ramparts of the folk morality. But what their ‘what if so and so were to occur’ examples establish are not that there are exceptions to moral rules, but rather that ethical practices, like the practices associated with empirical terms, are subject to the Waismannian, ultimately Wittgensteinian point, that they are open-textured. Empirical terms have evolved to cope with a world that embodies empirical regularities. We are not, nor could we be, equipped to deal with every conceivable exigency. Sometimes the unexpected does happen, and when it does, we have to modify our practices accordingly. Our ethical practices and the rules they spawn are not subject to exceptions; they are subject to modifications.

Until quite recently the idea of keeping someone alive who was clearly brain dead was impossible, and so such cases were not covered by our practice concerning when it is and is not permissible or obligatory to take a human life. The emergence of such cases, due to advances in medicine, provided the stimulus for debate as regards how to adjust the relevant practice, and this has led us to adjust them in favour of a policy that permits passive euthanasia.
As yet we do not permit active euthanasia of either the voluntary or the involuntary kind. Folk morality originated in a time when the life expectancy for humans was very much shorter than it is today. In fact, throughout most of human history, living to be over fifty-five was the exception rather than the rule. For this reason, folk morality does not have a ready answer for the kind of case which is all too common in today’s nursing homes. Many patients in these homes are living lives well below their minimal standards for continued existence. This may be the case because the individual is, due to the ageing process, either incontinent, disabled, terminally bedridden, or simply experiencing intense and unrelenting psychological duress at the prospect of continuing to live as he or she is presently living, and is, for various reasons, unable to kill him- or herself.

Although advocating a progressive approach regarding active euthanasia for those who are forced to live well below their minimal standards for continued existence is more disturbing than doing so for cases involving insufferable and incurable pain, our underlying folk morality appears to be consistent with adopting a progressive approach for both kinds of case, and even for cases of involuntary active euthanasia.

In a recent movie version of James Fenimore Cooper’s classic novel The Last of the Mohicans, after the Huron Chief decrees that the novel’s heroine must die at the stake, both the novel’s hero, Hawkeye, and her suitor, a British army officer, plead with the Chief to substitute one of them for the lady in question. By refusing to translate Hawkeye’s request to the Huron Chief, the British officer condemns himself to the flames. But as Hawkeye manages the escape of the heroine, he stops at a considerable distance from the burning of the British officer, far enough away so as not to endanger the heroine, and uses his matchless marksmanship to shoot and kill the British officer to end the insufferable pain he is so obviously enduring. This kind of dramatic enactment illustrates the underlying folk ethical perspective on what is essentially involuntary active euthanasia. Hawkeye did not know how the British officer felt about euthanasia, yet we approve of what he did.

There is, however, a crucial difference between the circumstances of The Last of the Mohicans kind of case and those cases involving a physician in a contemporary hospital who is asked to engage in active

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21 These standards are relative. What one person would deem to be well below his acceptable standards for continued existence might not be so regarded by a different person.

22 This scene does not occur in Cooper’s 1826 novel but essentially the same point is made when Hawkeye, out of pity, shoots an enemy warrior to prevent his painful death. See James Fenimore Cooper, The Last of the Mohicans, Albany, New York, 1983, p. 75.
euthanasia to end the suffering and misery of a terminally ill patient. The circumstances surrounding Hawkeye's mercy-killing demanded immediate action, action that was, however, predicated upon the assumption that the British officer, like most humans, would under the circumstances prefer that Hawkeye shoot him. Morphine and other such substances are available for the physician to use to deaden the patient's pain and suffering. Hawkeye has no such options. It is difficult to decide what would be the best policy to enact for contemporary physicians.

Although PC does not have a definitive position on this issue, it does leave the door open for the enactment of a policy favouring active euthanasia in such cases. Since we do not, and have not as a matter of public policy, practised active euthanasia for terminally ill patients, the empirical consequences of such a policy can only be hypothesized. Experience can only reveal what has happened, not what would happen if our practices are modified. The need for change manifests itself in what has and is happening, but we must wait and see how things turn out in the future in order to justify our having changed a policy. At the time we modify a policy, we can only speculate as regards its beneficial consequences. But after the policy has been in place for an extended period of time, what has happened and what is happening testify to whether or not the change in policy has been beneficial – whether or not it has promoted harmonious co-existence. Most of us would prefer death to being in incurable pain, and those family members who survive us will, most probably, because of this preference, take solace from a policy which permits their loved ones to die rather than suffer. It is also reasonable to hypothesize that if this policy were enacted with effective safeguards, there would be no widespread abuses of it, and that future generations might look back on the past and wonder why we waited so long to do so. Whether or not these hypotheses will be confirmed is something only the future can reveal. But if we never acted on the basis of predictable consequences, we would never act at all.

23 This is not to say that active euthanasia for such persons is something to be taken lightly, or that there would not have to be strenuous safeguards to see that nothing further could be done to enhance the quality of life for these individuals. Nor does it mean that any physicians would have to participate in such a practice. Ways could be devised for the patient to utilize computers that would be programmed to administer lethal amounts of morphine when the patient is, by her or his own assessment, living well below her or his minimal standards. The most important consideration is that a policy permitting active euthanasia for those persons who desire it because they are living far below their minimal standards for continued existence could well have desirable consequences, consequences that would probably not be overshadowed either by surviving relatives having serious qualms or by our having to confront commonplace abuses of the policy.
The advantage of PC over various other alternatives is that it does not pre-judge the outcome of such a policy. It allows us to discover both the means for providing individuals with the freedom to decide for themselves when they will die, and what needs to be done to protect ourselves from abuses of such a policy. PC postpones judgement of moral status for active euthanasia until we have had time to determine the actual consequences of its employment. If it diminishes our ability to live together harmoniously with less fear, suffering, and pain than would exist in the absence of such a policy, we will be forced to reform or repeal it.

In contrast to emergent cases like these which legitimize modifications of our practices, not all of the ‘what if so and so were to happen’ examples conjured up by philosophers are likewise pertinent. But how are we to distinguish between examples or cases that are legitimate and relevant and those that are neither? This is not an easy question to answer. Perhaps the illegitimate cases are those that seem clearly to transcend known and understood empirical laws. Unfortunately, yesterday’s frogs are today’s princes. The history of science bears testimony to the imprudence of constructing one’s intellectual acropolis upon the precipice provided by the eternal verities of nature.

V. FURTHER CONSIDERATIONS IN DEFENCE OF PRACTICE CONSEQUENTIALISM

The social and cultural history of humanity is an evolutionary process, an important result of which is our collective awareness of the need for us to act in concert, as communities, for the betterment of us all. Moral rules are the external embodiment of this collective awareness. They are necessary both for the education of the young and as guideposts for us all. Children cannot be expected to think in terms of whether or not their actions will have optimal consequences, and few adults have the time or the inclination to sit down and figure out with respect to each of their choices which options would serve best to promote the good. We need to operate with some kind of programme, one that will, we hope, optimize benefits, both for ourselves and for others as well. Let us be guided by what J. L. Austin said regarding our commonplace linguistic practices, namely that they ‘are likely to be more numerous, more sound, since they have stood up to the long test of the survival of the fittest, and more subtle, at least in all ordinary and reasonably practical matters, than any you or I are likely to think up in our arm-chairs of an afternoon – the most favoured alternative method’. In this spirit

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let us ask ourselves why should we think that an individual could outdo what it has taken society centuries to establish. Is it not much more efficient to allow ourselves to be in general guided by principles which formulate time-tested, much adapted, practices?

But, it may be queried, is not what you say here at odds with what you said earlier? Here you claim that rules are of primary importance for the sake of consistency, predictability, stability, and social order, and that without rules it is difficult, if not impossible, to imagine discussion, exemplification, and instruction. Previously you claimed that rules and their legal counterparts are nothing more than verbal formulations of complex practices, and so it would seem to follow that the practices exist independent of their formulations, and hence that the only requirement for the education of the young would be to train them to behave as we do.

My answer to this line of objection is that it ignores the fact that language, which works through generalization, is as integrated a part of the human ‘form of life’ as any other way we behave. It is an integral part of the training process. As certain non-verbal practices develop, we recognize their existence and formulate verbal abbreviations of their content, not only to facilitate educational goals, but also to invoke discussion of these practices and expedite their modification. This process provides educational tools, and initiates a forum in which important revisions can take place. The development of adequate practices takes considerable time. Cognitive awareness of the existence of a practice and analytical discourse about it can greatly decrease the length of time required for this development.

In opposition to Edmund Burke, who claims that although ‘the individual is foolish; the multitude, for the moment, is foolish, when they act without deliberation; but the species is wise, and, when time is given to it, as a species it always acts right’, the mere fact that a form of behaviour has endured over time is no guarantee of its desirability. Instead, what is important, all-important, is whether or not it has promoted harmonious co-existence between humans. Only those rules that abbreviate practices conducive to the well-being of most members of the community are worthy of veneration. Only if we refrain from murdering, raping, assaulting, lying to, stealing from, and treating each other unjustly, to state the more important prohibitions, will we be able to live together in harmony, and be free to pursue our collective and individual goals. We do not always practice what we preach, but if what we preach is sound, it can always be further

evidenced through experience. Time is a factor only in so far as, for moral rules or any rules of conduct, it provides the laboratory in which the experiment takes place.

There is an immense difference between being committed to a set of rigid and inflexible rules, and being committed to a set of pliable and flexible ones. This difference in commitment defines for me the difference between naïve and sophisticated rule consequentialism. The naïve rule consequentialist may well be guilty of rule worship. The sophisticated rule consequentialist is by no means guilty of such misplaced affection. The naïve rule consequentialist misconceives moral rules to be like game rules. In order to play the game of chess, you must stick to the rules, and you most assuredly cannot change them in the middle of the game and still be playing chess. But life is not a game. The stakes are too high. Happy and efficacious living requires flexibility.

The practices we currently follow, and the rules based upon them, are, as far as we can determine, responsible for our survival in communities. Acceptable rules and the empirical laws they invoke result from practices that produce beneficial consequences for humanity in general. These practices continue each day to prove themselves. And it is in this way that they get confirmed. They certainly produce a great deal that is desirable. We do not know, and perhaps can never know, exactly what set of rules is optimal, but this should not deter us from striving to find a more satisfactory set than we now possess. The set we now have is the best set in so far as it is the set that has proven itself to be best, but this claim is consistent with the idea that a better set could be established. All that would be necessary is for the hypothesized set to actually produce better consequences than the set now practised.

A commonly expressed objection to consequentialism in general is that satisfying the majority of the populace while frustrating the minority segment of that same populace can maximize the good, and do so even though the minority group may have to suffer great indignities. Slavery in the United States benefited the ruling majority while causing great unhappiness for the enslaved minority, and although doing away with it would have diminished greatly the unhappiness of the minority, it would have created considerably more unhappiness in the world because of its consequences for the majority. PC can answer this charge.

Moral rules are, according to PC, empirically necessary conditions for the promotion of harmonious co-existence among humans. Transgression of the equal rights principle by the majority creates an intolerable kind of existence for those members of society who are disenfranchised by such infraction, and eventually leads to civil
unrest, riots, and revolution. So while satisfying the majority of the populace at the expense of the minority segment of that same populace may in a given period of time tend to maximize the good, it will eventually produce the contrary result – a fact clearly evidenced by the unhappy consequences which the practice of enslaving Afro-Americans from the Colonial Period until the mid-nineteenth century has produced for the United States.

The fact that we are capable of recognizing the need for practices which promote certain ends, and the fact that empirical evidence favours the equal rights principle, do not, unfortunately, guarantee that we always behave accordingly. Ethics or an ethical theory can only provide a system for distinguishing between justifiable and unjustifiable actions. What humans actually do and do not do, even what they do in concert with one another, is often unjustifiable. Inequality for some segments of the community has been the rule rather than the exception. Most societies have ignored the precept that all humans have equal rights, and have perpetuated inequalities of varying kinds and degrees. This precept has all too often only been applied by the advantaged to the advantaged. Kingships, dictatorships, oligarchies, caste and class systems, religious intolerance, and the practice of slavery abound throughout human history. Inequality for some segments of a nation's population is the rule rather than the exception. In spite of the fact that the United States is founded upon the principle that all humans are created equal, it institutionalized infringement of that principle by allowing slavery, and by failing to honour the basic civil rights of American Indians. And although slavery was outlawed in the rebel states in 1863 by Lincoln's Emancipation Proclamation, we persisted as a nation to deny civil rights to Afro-Americans for nearly one hundred years, and our treatment of American Indians continues to appal anyone with even a modicum of moral sensitivity.

I do not fully understand why humanity behaves in such inexcusable fashion, but I suspect that it has something to do with the pack mentality characteristic of many mammals. It causes us to make exceptions of those who, for one reason or another, fall outside, or are perceived to fall outside, the pack. The morality incorporated in PC transcends the pack, but its actual instantiations are pack relevant. In part, the explanation of the pack phenomenon is to be found in the emotions of fear and distrust, emotions that were unquestionably important survival tools. Individuals and groups that are too trusting and incapable of fear would probably not survive in Hobbes' state of nature.

Our cognitive and emotional capacities coalesce when we appreciate how acting in concert can guarantee that each of us will benefit, that so acting will reduce our fear, pain, etc. But intense emotions like fear
and distrust, as well as hatred, envy, lust, and, as I noted previously, even the desire to co-operate, conspire to cloud our cognitive capacity and blind us as regards both the short- and long-term, as well as the individual and collective, consequences of our actions. Our remarkable ability to rationally determine what will best benefit us all is frequently overridden by blind emotional impulse. A course of action dictated by reason is often extremely difficult, sometimes impossible, to implement. Most of us are fully aware of what can happen when our emotions get the best of us. When we observe or hear about an instance of ‘road rage’ that results in tragic consequences, we are apt to respond with Olympian objectivity and self-righteous indictment of those involved. But when we ourselves are behind the wheel and someone cuts us off, nearly causing an accident, we react quite differently. We yell at, threaten, and curse the other driver. Minutes later, we can hardly believe we reacted that way. We can even feel alienated from that part of ourselves that causes us to behave so inexcusably.

But how, it may be asked, can we overcome our inclination to selectively and prejudicially instantiate what we are capable of recognizing as universally applicable practices whenever reason conflicts with raw emotion? What chance does the calm surface of the sea have against hurricane force winds? The power of these destructive emotions cannot be surmounted by Burkean faith in mankind’s wisdom eventually to do the right thing. Instead, the course of action prescribed by PC is the adoption of an experimental or scientific frame of mind. We have to acknowledge our irrational and destructive appetites, the pervasive and insidious nature of our proclivity to selectively enforce universally applicable principles, and our inability to resolve or deal with these unfortunate states of affair by traditional means. Only then are we apt to actively pursue daring and as yet untried means to rectify the situation – means that we can institutionalize once they have been tried and proven effective. Perhaps the resolution of this situation lies in genetics. The identification of those genes that are responsible for our inhumane proclivities may well provide the means to defuse them.

The last point I wish to make is that act consequentialism of the subjective inclusive and collective variety, the variety to which utilitarianism of the situationalistic variety can apparently be reduced, is itself reducible to, or founded upon, folk ethics. To make a realistic appraisal of what would be the consequences of some considered action were most of us to do it, which is what the collective act consequentialist must do if he is to be effective, is a function of the information one has at one’s disposal, which is in turn a consequence of the education and training one has received over one’s lifetime. And, as I pointed out above (p. 91), when I discussed the factual nature of the relationship that obtains between virtue ethics and PC, ‘the good
or virtuous person is one who can be depended upon to do the right thing, and a virtuous temperament or character has to be developed. Children have to be taught that some things are, except under specifiable circumstances, wrong. Character is developed by training, and it ‘provides the engine which drives ethical behaviour’. One comes to know first hand what it is to be a member of society, and what sorts of collective action are necessary for society to survive, and this information is what elicits the response to act in ways that have been confirmed to have desirable consequences.  

Stanley_J_ODELL@umail.umd.edu

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