

ON LELAND YEAGER'S UTILITARIANISM: A COMMENT

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Leland Yeager's (1985) essay, "Rights, Contract, and Utility in Policy Espousal," contains convincing criticisms of natural rights doctrines as well as of contractarianism. Nevertheless, I have some reservations concerning Yeager's own "utilitarianism." From a meta-ethical point of view these reservations and my own preference for James Buchanan's meta-ethical starting point—though not his contractarianism—should become quite clear. I will argue that, though accepting most of his critical points, we should not follow Yeager on the slippery slope of what I will call cognitivism and universalism. Contrary to the usual line of argument it is not for specific limitations of economic theory but rather for systematic reasons of ethical theory itself that we should stick to noncognitivism, subjectivism, and relativism.

Economics and Ethics

Ethics is as much a theoretical subject as is economics. The term "ethical theory" seems to be perfectly legitimate, though I do not share the view of most ethical theoreticians that the ultimate foundation of ethics rests on "knowledge" about right and wrong. Instead I subscribe to "subjectivism," stating that in the last resort all normative judgments are "hypothetical" in the specific sense of being valid only in relation to ends, values, or aims. It can be known whether these aims, ends, or values exist in individuals but not whether rightly or wrongly so—at least if we concentrate on ultimate aims, values, or ends. Ethical theory ultimately cannot be moored to knowledge of right and wrong, only to factual preferences for certain states of affairs.

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The latter view may be dubbed “noncognitivism” in opposition to the former view, which for convenience may be called “cognitivism.” Using these terms in this manner seems quite natural and more appropriate than the systematically misleading, though more conventional, usage of the terms. (“Cognitivism” and “noncognitivism” typically are used to express a thesis about “ethical language” and its claim to truth.) A theory of ethics is possible even if, as I would claim, noncognitivism (in my usage of the term) holds true. Clearly, if some noncognitivist ethical theory is to claim truth for its results, this claim cannot refer to the “rightness or wrongness” of ultimate aims, ends, or values as such. The results basically must be restricted to means-ends relationships or hypothetical directives of prudent behavior. There is no clearance for nonhypothetical statements of rightness or wrongness that are meant to hold independently of the aims, ends, or values of individuals (not mentioning again their “passions,” “interests,” “desires,” and so on).

According to the noncognitivist view, a theory of ethics cannot aim at the “categorical” justification of norms, directives, or imperatives. It cannot claim any validity for results independently of “hypothetically” presupposed ends, aims, or values of the *addressees* of the justification. Therefore all *justifications* of norms are *relative* or “*ad hominem*” in this specific sense. The derivation of “an ought” within ethics therefore presupposes an “is” in that aims, ends, or values ultimately must be “given” (see Hazlitt 1964, ch. 3). In this respect noncognitivist ethics and economics do not differ. The ethical skeptic therefore should look at economics as the twin—or even the Siamese twin—of his own theory, and conversely for the economist.

To begin with the economic side, it may be stated that the world view of economists seems to be biased by a kind of professional skepticism toward any claims of knowing right from wrong in practical matters. From their own subject economists are used to being restricted to modes of argument that may be formulated in terms of hypothetical imperatives. To give categorical recommendations about what should be done regardless of the ends, values, or aims of the addressees of the recommendations is rejected as violating the rules of correct scientific reasoning. As far as they are part of the realm of their own study, economists are taking values as being something entirely subjective. Therefore, they usually accept that they have no scientific warrant to go further than recommending efficient strategies as means for reaching given ends contingently shared by some subjects. The ends, values, or aims must be given as a matter of fact, and, therefore, theoretical results about means-ends relationships

only apply under the provision that somebody in fact shares the presupposed ends, values, or aims.

Of course, there are economists who outside of economics do not subscribe to subjectivism or ethical skepticism. But even these theoreticians usually would concede that judgments about ultimate ends, values, or aims are much more precarious than those about "instrumental or derived values." One can therefore roughly divide economists into two classes: (1) those who stipulate that ultimate values are simply matters of taste or, less radical, that they are in the last resort subjective and all justifications are relative; and (2) economists who, though not accepting that ultimate value judgments are subjective, nevertheless would not regard them as a proper subject of economics and therefore delegate problems of ultimate values to ethics. Those economists who insist on nonrelative or nonhypothetical justifications of normative judgments *within* economics itself seem to be few. All seem to agree that economics as a science should be "value free" in the sense of being free of cognitivist claims of the knowability or cognitive justifiability of ultimate values.

On the other hand, it may seem quite natural that those who, except for their professional attitudes as economists, are *not* ethical subjectivists or skeptics should regard at least some ultimate value propositions to be scientific findings of ethics. It seems to be quite incoherent for such economists, then, to require that "ultimate" value judgments be left out of economics as irrational or unscientific. At least there could be a kind of "science of values" according to their own view. Why, one may ask then, should economics not take over results of another theoretical discipline like ethics, which is a close scientific neighbor anyway? Even if ethical theory still may lack maturity there seems to be no reason for the cognitivist (in my sense of the term) to exclude a priori its results from economics. It would rather seem appropriate to treat ethics roughly in the way as some fields of sociology, which have not reached the stage of a mature science either.

Thus, economists who outside of their field subscribe to cognitivism would expect too little from ethics—judged against their own meta-theoretical premise—should they reject the possibility of "importing" some fundamental noninstrumental value judgments into their own discipline. From this point of view, natural rights theorists as well as their critic Yeager do the right thing. There is disagreement among them. But, from their point of view it is a disagreement on matters that may be rationally discussed in broadly the same way as other subjects of scientific interest. (In this respect, see Yeager's reference to "fallibilism" [1985, pp. 263–64, 268–69].)

Again, many of those economists who stick to the value-skepticism or subjectivism characteristic of economics seem to expect too much from ethics. They seem to think that their own meta-ethical outlook implies some material values. This becomes clear if, as may be frequently observed, it is claimed that libertarianism, a certain kind of contractarianism, antipaternalism, and the like are logical consequences of noncognitivism. Indeed, it has to be conceded that from skepticism about the knowability of what is ultimately right or wrong there might stem some psychological tendency toward political libertarianism, contractarianism, and antipaternalism. But these political preferences—these value judgments—follow neither as logical nor as analytical inferences from descriptive meta-ethical premises as that of noncognitivism or, for that matter, subjectivism and relativism. Furthermore, it is not true that only the skeptic could be a consistent liberal in the proper sense of that term. Those opposing skepticism may claim that liberalism is simply correct or that it may be *known* that one should be tolerant and respect the rights of others.

Thus, it is in no way a logical or analytical truth that those claiming to know what is right or wrong must tend to impose it on others. Further, if it is true that people more strongly support what they claim to know than what they regard as mere subjective preferences, then it also should be expected that a cognitive claim to the rightness of libertarianism and tolerance will provide additional force to these values.

Taking into account what has been said so far, it seems clear that those adhering to liberal forms of political organization will have to argue for them on their own normative terms. A kind of genuinely ethical argument seems unavoidable. I fully agree with Yeager here. Nevertheless, being a meta-ethical noncognitivist, I also view much of traditional ethics with more skeptical eyes than does he.

Most of ethical theory does not start from a skeptical meta-ethical position. Contrary to that, those ethical theorists as Thomas Hobbes, David Hume or, more recently, John Mackie, who are skeptics of a kind, argue from individual aims that “are there” as a matter of fact. Discussing fundamental institutions of social organization, they proceed from aims or ends toward hypothetical imperatives of prudent behavior in much the same way as economists do in their field. An economist with an interest in basic political values should therefore tend to look for methods of discussing fundamental value problems of society within economics itself, or at least within a meta-ethical framework consistent with the main thrust of economic theory.

Many economists have tried to do that all along. Perhaps the most striking example in the present context would be legal philosopher

H. L. A. Hart's (1961, ch. 9) defense of what he calls "the minimum content of natural law." Starting from certain elementary empirical facts of human nature, Hart argues that no society could survive without some basic legal institutions, such as rudimentary forms of property rights. He explicitly acknowledges that his argument would not hold true for a club of self-murderers. The addressees of his argument as a matter of fact must want to survive. And once survival is presupposed as the basic driving force, Hart relies on this feature of human nature to justify the proposed institutions, rules or norms. That is, *given* the self-interest of individuals to survive, Hart shows that the proposed institutions, rules or norms are instrumental relative to that "given aim" of individuals. Yeager (1985, p. 277) clearly would classify such a justification as "utilitarian." But in doing so he blurs essential distinctions between a cognitivist and a noncognitivist approach and in turn conceals his own tacit "intuitionism."

Yeager's Tacit Intuitionism

Yeager attacks the advocates of a natural rights doctrine for either following intuitions without offering any argument or becoming tacitly utilitarian if arguing at all. As far as he refers to his own very broad conception of utilitarianism, he certainly is right. But what kind of argument can he offer for his usage of the term "utilitarianism" and his own utilitarian point of view?

Yeager does not distinguish between a universalistic and a particularistic approach to the evaluation of norms, rules, institutions, and behavior. Admittedly, some theoreticians, notably the leading utilitarian J. J. C. Smart (1967), would call any consequentialist ethical theory a (broadly) utilitarian one. And so does Yeager. Nevertheless, utilitarianism in the narrow and (I think) "proper" sense of the term is universalistic in two respects. First, it refers to the consequences for *all* human or even sentient beings concerned. Second, such a utilitarian justification does not allude to the specific interests of any particular addressee or group of addressees of the justification.

To make both variants of universalism more clear, consider norms for drug regulation in the United States (see Gieringer 1985). Should the Federal Drug Administration (FDA) have the legal power to prevent new drugs from coming on the market or should it be confined to enforcing certain norms of informing the consumer about risks? As a universalist in the first sense, the utilitarian would consider potential harms and advantages from having access to a drug and potential harms and advantages from not having access to it for all American consumers. In principle the utilitarian also should take

into account the welfare interests of employees of the drug industry, of the FDA, of consumers and producers indirectly influenced in other nations like India and, possibly, the interests of such other sentient beings as animals, which are used or abused for testing drugs. *All* interests concerned are taken into account.

As a universalist in the second, justificatory sense, the utilitarian should address any competent impartial spectator (for the degree of competence required, see Rawls 1951). The justification is meant to hold true independently of contingent aims and desires of the addressee of the justification. It is not only justified relative to the specific aims of an addressee; it raises a universal claim to the rational consent of all individuals independent of their specific point of view. At least if they would take an impartial point of view, they would be obliged to accept certain justifications as valid. Therefore the claim to validity is intersubjective and universal in the sense of not being attached to a specific point of view and status quo of individuals.

Someone can be a universalist in the first sense without being a universalist in the second sense. He regards the institutions, rules or norms as instrumental to some more fundamental aims, or he has the contingent aim to consider all interests of all other individuals or even of all sentient beings. Such a person still can subscribe to particularism in the second, justificatory sense, acknowledging that somebody who would not share the appropriate ends, values, or aims would have no good reason to follow universalistic precepts in the first sense. One also might be a universalist in the second sense and—although this may seem highly improbable—accept that not all individuals are to be taken into account, or at least not equally.

In identifying consequentialism and utilitarianism, Yeager leaves open the problem of universalism in the first sense of that term. Nevertheless, he evidently seems to take for granted universalism in the second sense. But why should we regard particularism in the justificatory sense or, for that matter, noncognitivism to be mistaken? First, if this claim is meant to be intuitively self-evident, I must admit that I do not have access to this intuition. Second, if it is argued that moral claims as moral claims are universal by definition (universal in the second sense, but according to this position presumably in the first sense too), then it still may be regarded as an open question why we rationally should be committed to obey only such universally justified precepts (see Singer 1973).

As far as the epistemological status of claims of knowledge in practical matters is concerned, we would have strong reasons to stick to particularistic or noncognitivist approaches to the justification of normative precepts. Social reality seems to exhibit a much greater

diversity of “values” than we can find, for instance, with the perception of such “secondary qualities” as colors. Even if on the level of ultimate values this impression or argument from (cultural) “relativity” should be deceptive, values as an intersubjectively accessible property of reality still would be quite peculiar phenomena (see Harman 1977, chaps. 1–2; Mackie 1977, chaps. 1–2).

On the other hand, undoubtedly noncognitivism is not a self-evident position either. My references to Mackie’s and Harman’s work cannot serve as a substitute for a convincing argument for such a position, which I introduced more or less dogmatically. But Yeager offers no argument to the contrary. Therefore, I still would feel quite safe in joining the second camp of the two groups of economists discussed above and regard the usual noncognitivist intuitions that are widely shared by economists in their professional attitudes as more convincing even *outside* the ordinary economic realm. Yeager implicitly presupposes that ethical argument should proceed along cognitivist lines and should incorporate something like an ethically impartial point of view. This might be an intuitively appealing norm of ethical argument. But, besides this intuition of right and wrong in matters of practical argument, can we offer anything systematically supporting it that would not boil down to a thesis about ethical language or a definitional route of escape? Even if Yeager could eventually offer some arguments in favor of his justificatory universalism and cognitivism, it also should be quite clear that the argument in his paper leaves untouched the meta-ethical noncognitivism of Buchanan—though not the normative ethical conclusion Buchanan draws from the meta-ethical premise.

Objections Against the Noncognitivist Alternative to Yeager’s Utilitarianism

Yeager states that “it is antiintellectual simply to chalk disagreement up to irresolvable emotional differences” (1985, p. 261). He points out the role of logical and factual analyses within the discussion of value problems—and rightly so, as his own essay demonstrates. Nevertheless, it is important to restrict the scope of rational discussion further or at least more explicitly than Yeager has. Even if “bona fide disagreements seldom if ever center on fundamental values, openly avowed” (Yeager, pp. 261–62), the kind of meta-ethics we accept is of some importance because our modes of argument will differ.

The noncognitivist naturally would argue from a broadly Hobbesian point of view. For instance, in discussing basic institutions of

society he would have to refer in the last resort to the given interests (whether altruistic or egoistic) of the addressees of his argument. His defense of a certain institution would have to show that it is instrumental to the pursuit of these interests. The “as if” or “conceptual” agreement of a normal contractarian argument as well as the impartial point of view implied in Yeager’s argument would not be important. The status quo would be the essential part of the justification. Factual, not ethical, preferences (for example, in Harsanyi’s sense) form the basis of the argument.

Buchanan’s (1977) “Hobbesian interpretation of the Rawlsian difference principle” outlines quite well this kind of an argument, which hardly transgresses the limits of economic theorizing. Three objections usually are raised against such a limited ethical theory. First, it is argued that it is necessarily egoistic. This argument, however, is clearly false. All kinds of preferences are admitted as premises of hypothetical justifications. How widely they will be shared as a matter of fact is a different problem—though crucial for the scope of potential addressees of the argument. Second, people accuse those holding such a position of implying ethical nihilism, that is, a meta-ethical noncognitivist could not criticize a Hitler or a Stalin. But if one does not draw normative consequences from noncognitivism, which cannot be validly inferred from it anyway, this criticism is evidently mistaken. Those addressees of an argument who will not share what in their view are abominable primary values can very well—and consistent with the meta-ethical premise of noncognitivism—be informed about how they should prevent others from realizing these values. To them, norms will be justified which guide them in exerting an externality on others sharing other values. Third, it is argued that noncognitivism eventually leads to irrationalism in normative argument. To this the genuine noncognitivist can only answer that this accusation begs the question because it presupposes exactly that form of rational argument about ultimate values that he rejects as impossible.

Still, one might wonder whether there cannot be some place for traditional ethical argument incorporating an impartial point of view even with a noncognitivist meta-ethical framework. Basically there seem to be two ways to accomplish that task. First, we could argue that alluding to an impartial point of view would make ethical argument itself more persuasive and thus more successful. This would lead to the classical sophistic evaluation of arguments according to their persuasive force rather than according to their validity. Second, one might remind us that the modes of thinking about normative institutions form an essential part of the institutions themselves.

Thus, it might possibly be shown that it would be in our long-run interest (this is, instrumental to some ultimate ends, values, or aims that are factually shared) to institutionalize a guiding social ideology requiring that at least in public we should discuss normative proposals from an impartial point of view.

These are interesting, classical problems with no easy solutions. But, by way of a final observation, I would point out that if seen in this light, contractarianism as a "public ideology" might enter the picture again. At least in comparison with Yeager's own universalistic position and regardless of his sound criticisms, contractarianism would not be at a principal or a priori disadvantage. All would depend on empirical analyses about the working of ideologies or modes of interpreting and discussing the normative and institutional world.

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