Quick'n Dirty Ethical Analysis Howto
Earl Barr

This howto outlines how to analyze the morality of an action under each of the schools of ethical thought that we have studied in this course. Regarding English usage, William Strunk Jr. said

> It is an old observation that the best writers sometimes disregard the rules of rhetoric. When they do so, however, the reader will usually find in the sentence some compensating merit, attained at the cost of the violation. Unless he is certain of doing as well, he will probably do best to follow the rules. After he has learned, by their guidance, to write plain English adequate for everyday uses, let him look, for the secrets of style, to the study of the masters of literature [6].

This observation is also true of ethical analysis. You will not find John Stuart Mill making utilitarian analyses in the form presented here. What you will find is a clear, concise, if slightly schematised presentation of each school's approach to ethical analyzes which, once you have mastered them, you are free to discard.

> My propositions are elucidatory in this way: he who understands me finally recognizes them as senseless, when he has climbed out through them, on them, over them. (He must so to speak throw away the ladder, after he has climbed up on it.)
>
> He must surmount these propositions; then he sees the world rightly.
>
> Ludwig Wittgenstien, Tractatus Logico-Philosophicus [7].

1   Rights

Definition 1.1. A *right* is a justified claim or the moral property of humans.

Definition 1.2. A *negative right* imposes a constraint on the actions of others.

Definition 1.3. A *positive right* imposes a duty to act upon others.

For some action X under consideration,

1. Identify the right or rights that are relevant to X.

2. Where it's not obvious, make clear whether the rights you're using are positive or negative.

3. Argue that your rights are in fact rights. There are two ways: argue that your right is a natural right or that it is derived from the social contract:

   (a) Natural

   It's extremely hard to argue that a right is a natural right. Prominent philosophers struggle with this problem, and often end up simply assuming a right to be natural. In this class, you should only assert a right is a natural right if you can cite a prominent philosopher who agrees.

   (b) Social contract

   Rights derived from a social contract can be teased out of the common denominator of rights asserted and claimed by peoples and cultures throughout history. The Kairys reading quotes the US Supreme Court making this sort of argument for the right to freedom of speech [4, p144].

The right to privacy is an example of a difficult right to assert, since it has not been asserted or even mentioned much throughout history. Indeed, one could argue that people in many societies had little or no privacy historically. You could, of course, argue that privacy is a right to the extent to which it is linked to the right to freedom.

One way to argue that a right is based in the social contract is to appeal to attempts to codify an existing social contract, such as The Constitution of the United States, The Universal Declaration of Human Right of the United Nations, The Charter of Fundamental Rights of the European Union, etc.

The trouble with these documents is that they're relatively recent and assert some rights that have not been historically asserted. This calls into question whether these rights are really fundamental and begs the question: why now and not before?

4. Use your rights to analyze X.

X is immoral if your analysis shows that it violates one or more rights.

1.1   Example

Is the Great Firewall of China (GFC) moral? The implicit action is whether the government of China should filter and control Internet traffic using the GFC.

Two relevant rights are freedom of speech and the right to public safety, which is an easy derivation from the negative right to life.

The GFC appears to balance these two rights against each other. However, their opposition is only apparent: there is no reason to suppose that freedom of speech will undermine public safety. In fact, freedom may reduce social tensions and decrease the probability of endangering public safety. Thus, the GFC is immoral because it violates humanity's right to free speech. *Note this argument is meant to be illustrative, not decisive.*

2   Consequentialism

"Rearing the fabric of felicity can be a bloody business," Onora O'Neill [5, p342].

In this class, we are concerned with that form of consequentialism known as hedonistic utilitarianism, whose principle is

"Act so as to maximize happiness."

For some action X under consideration,

1. Identify the stakeholders;

2. Analyze the happiness that each would gain or lose under X; and

3. Make an argument, in light of #2, about the aggregate happiness that will ensue under X.

X is moral if you have shown that executing it maximizes happiness.

Note that "happiness" is central to hedonistic utilitarianism, so it *must* appear in your analysis, or you must clearly state that you are using another form of consequentialism and define its utility principle, especially what that principle seeks to maximize.

Act utilitarianism always reasons directly from the utility principle, while rule utilitarianism precomputes moral principles, called rules, from the utility principle that are used as heuristics for fast action. The "never rest" and "need to act quickly" objections to utilitarianism motivate rule utilitarianism.

In your paper, I want act analysis, as I've outlined it above. In your presentation, you may save time by using rule, but only if you've justified the each rule you use with act analysis in your paper.

A common error I've seen when student attempt utilitarian analysis is to replace happiness with profit or some other economic consideration. It's best to just avoid this altogether, but, if you feel you must, construct a careful argument that connects the economic consideration with happiness.

Stakeholders are sets of people, and as such they can be industries or institutions. When you analyze their happiness be careful to do so in terms of the people they represent. Another common error is to forget this point and argue about the happiness of a corporation or a government as if they were independent entities capable of happiness.

Cut off your search for stakeholders! There's a point at which a person is so tangentially impacted by some action that their importance is drowned out in the utilitarian analysis by the stakeholders already identified. Blindly listing all the stakeholders you brainstorm up, only to cross them off during your analysis of their negligible contribution to aggregate happiness is a waste of time.

In other words, don't write a utilitarian analysis that is reminiscent of the Simpsons' Pygmoelion episode. For those who are unfamiliar with this episode, Moe participates in a duff bartender content, which has three rounds:

> The first round is trick pouring.
> The second round is a duff quiz.
> The third round is worth 98% of the score, making the first two rounds a complete waste of time.

This is not to say that society cannot be a stakeholder. Indeed, society is both an important and frequently occuring stakeholder in many utilitarian analyses. For example, society is often an important stakeholder in utilitarian analyses of laws and public policy. What you should avoid is including society as a stakeholder in your utilitarian analyses as a matter of course simply because society is the transitive closure of any set of stakeholders you identify.

2.1 Example

"Should cigarette smoking be outlawed in restaurants?"

The stakeholders are patrons (smokers and nonsmokers), restaurants workers and owners, those people involved in the cigarette industry, and the health industry. First we trim the stakeholders by cutting out the cigarette and health industries, since their contribution to aggregate happiness under this proposition is neglible. Restaurant owners are few in number and, to the extent to which their health (which has overwhelming impact on happiness) is affected by second hand smoke, tend to have relatively greater control over their exposure to this smoke, so their contribution is neglible also. Smokers will merely be inconvenienced, so their contribution is negible. The health of nonsmokers is impacted: although they could choose to simply eat at home, various social pressures may make this choice difficult. For instance, eating at restaurants is integral part of dating and is sometime required by work. Restaurant workers tend to have both the longest exposure to second hand smoke and the least control over that exposure. Their health, upon which happiness depends, is at stake. Thus, their happiness concerns rival, and perhaps exceed, those of nonsmoking patrons, despite the fact that there are far fewer of them. Since the proposition would improve the health, and thus the capacity for happiness, of both major stakeholders, this proposition is moral and should be acted upon.

3   Deontology (aka Moral Duty)

"The fundamental idea behind the Categorical Imperiative is that the actions of a plurality of rational beings can be mutually consistent. A minimal condition for their mutual consistency is that each, in acting autonomously, not preclude others' autonomous action. This requirement can be spelled out, as in the formula of the end in itself, by insisting that each avoid action that other could not freely join in (hence avoid violence, deception, and coercion) and that each seek to foster and secure others' capacities for autonomous action." [5, p342-3]

Definition 3.1. The *maxim* of an act, policy, or activity is the underlying principle of the act, policy, or activity, by which other, more superficial aspects of the action are guided.

Kant is the most prominent deontologist: this section elaborates on his theory.

Kant formulated two forms of his Categorical Imperative (CI).

Note that Kant appeared to think that the two formulations were equivalent, but almost no other thinker after him agrees.

You may use either form in your project, at any point in your analysis, as seems most natural to you. For example, if a maxim clearly fails the justice test, use the 2nd form of the categorical imperiative; if it clearly does not universalize, use the 1st.

The intellectual effort of advancing a deontological analysis mainly falls in finding relevant maxims that capture the moral essence of an action, not in the machinery of testing that maxim against the categorical imperiative.

3.1   The First Form

"Act only according to that maxim by which you can at the same time will that it would become a universal law."

Kant elaborates this with "As though the maxim of your action were by your will to become a universal law of nature" analogous to the laws of physics.

A nice paraphrase is "Act only according to those maxims that can be universalized."

3.1.1   Analysis

For some action X under consideration,

1. Derive the maxim that underlies the action X;

2. Generalize the maxim to GM; and

3. Show that GM can be consistently willed and therefore a universal law.

We cannot consistently will

1. the impossible, including opposed actions at the same time;

2. the opposite of something, like the avoidance of pain, that all people must will; and

3. something that, while it may have appeared possible, turns out to have been impossible for contingent reasons[1].

Kant calls a maxim that creates a state of affairs in which the maxim itself becomes meaningless "self-defeating". Kant's example of such a maxim is of borrowing money secured with a lying promise to repay, which Kant asserts would, if it became a universal law, render promises meaningless and thus the maxim as well. Such self-defeating maxims are an instance of attempting to will the impossible.

If a GM can be consistently willed, it is *universalizable* and, by the catgorical imperiative, morally sound.

3.1.2   Relevant Maxims

Feldman leveled two critiques of Kant's first formulation of his categorical imperiative: scoping such that a generalized maxims is, in effect, no longer general and the problem the first form of the categorical imperiative classifies as immoral some routine actions that intuitively appear to have no moral content.

First, I can identify scoping tricks and will not accept maxims that employ them as valid. Likewise, we will avoid the second problem by only considering maxims with moral import. This will not always be easy to do: in this case, our analysis must expand to consider the question of whether or not a maxim has moral import, before applying the categorical imperiative. In other words, we will resort to the dialectic to find morally relevant maxims.

3.1.3   Example

Suppose I want to release a good worm that removes other worms and patches known holes in the systems it infects.

Generalize to GM: "Whenever anyone wants to remove worms and patch systems, that person should release a good worm that performs these tasks."

Can GM be a universal law? No, GM is "self-defeating" since there can be no such thing as a "good worm", since worms propogate without control and violate the properties rights of others.

What if I reformulate the generalized maxim as GM' as "Whenever anyone wants to remove worms and patch systems, that person should release a worm that performs these tasks."

GM' is not impossible, nor does it require will two opposed actions at the same time. However, if we agree with Locke that property rights are natural, then we can argue that GM' fails the second will test since it requires us to will the opposite — the violation of property rights — that everyone must will.

This preliminary deontological analysis implies that our action fails to universalize. We could continue to explore the morality of good worms by deriving other maxims for the action, but we will simply stop here.

References: Feldman's Kantian Ethics.

3.2   Second Form

"Never treat another human being merely as a means but always as an end."

Note the merely. This is the escape hatch for employers. In other words, it's OK to use someone as means, just not merely or solely as means!

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[1]Feldman's example is willing to be in Boston on Monday and San Fransicso on Tuesday, which because of foul-ups at the airport, turns out to have been impossible.

3.2.1   Analysis

For some action X under consideration,

1. Derive the X's maxim.

2. Justice

   Reject maxims that use others as mere means;

3. Beneficience

   Act on those maxims that treat others as ends in themselves.

Maxims that pass both tests are moral.

We use others as mere means if what we do reflects some maxim to which they could not in principle consent. For example, consider a false promise. The person lied to must be deceived, or the false promise is no longer a false promise. If deceived, there is no way in which that person can truly consent. In general, maxims that depend on deception, violence, or coercion are out.

Problem of power imbalance: maxims that would be just between equals may be coercive when the relative power of the parties is asymmetric. The weaker party to any arrangment must have a genuine option to refuse the fundamental character of proposal [5, p338].

Justice is a perfect duty: we must obey it at all times.

Every cooperative scheme of action (such as employee/employer) uses others as means, but not necessarily as mere means.

Humans are finite rational beings:

1. We have only a partial list of available actions and of those actions we perceive, we have a partial view of their likely consequences.

2. We have limited autonomy: physical barriers as well as mutual and/or asymmetric dependence.

Given these constraints, treating others as ends means that we base our actions on maxims that sustain and extend one other's capacities for autonomous action.

For example, hunger, great poverty, and powerlessness undercut the possiblity of autonomous action, so Kantian must act in accordance with maxims that act to end these evils.

Beneficience is an imperfect duty: we cannot share or even support all of other's maxims all the time.

Reference: Onora O'Neill's "Kant's Formula of the End in Itself and World Hunger"

4   Pojman's Moral Objectivism

Similar to rights.

For some action X under consideration,

1. Identify the relevant moral principles you will use.

2. Argue that your principles are objective moral values by showing how they meet the needs and promote the most significant interests of persons.

3. Use the principles you have identified to analyze X.

   Actions that violate one or more objective moral principles are immoral.

   Example: See the rights example above.

5   Virtue

For some action X under consideration, there are two approaches

1. Be like a person who has faced a similar situation well.

   (a) Find a saint or virtuous person who confronted a similar situation Y.
   (b) Show that X and Y are similar.
   (c) Exhort your audience to follow the saint's example.

   If a virtuous person would not perform X, it is not morally sound.

2. (a) List the vices and virtues related to the action.
   (b) Analyze X in terms of these vices and virtues.
   (c) X is sound if it maximizes the virtue and minimizes the vice of the actor contemplating X.

References

[1] Standford encyclopedia of philosophy.

[2] Fred Feldman. *Ethical Theory Classical and Contemporary Readings*, chapter Kantian Ethics, pages 323–334. 3rd edition, 1998.

[3] Deborah Johnson. *Computer Ethics*. 3rd edition, 2001.

[4] David Kairys. *The Politics of Law: A Progressive Critique*, chapter Freedom of Speech, pages 140–171. 1982.

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[6] William Strunk. *Elements of Style*. Bartleby.com, 1995.

[7] Lugwig Wittgenstein. *Tractatus Logico-Philosophicus*. Routledge and Kegan Paul, London, 1922.