

What the Utilitarian Cannot Think

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Accepted: 1 April 2015 / Published online: 29 April 2015
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Abstract I argue that utilitarianism cannot accommodate a basic sort of moral judgment that many people want to make. I raise a real-life example of shockingly bad behavior and ask what can the utilitarian say about it. I concede that the utilitarian can say that this behavior caused pain to the victim; that pain is bad; that the agent's behavior was impermissible; even that the agent's treatment of the victim was vicious. However, there is still one thing the utilitarian *cannot* say, namely that the agent *wronged the victim*, that they violated *her*. According to utilitarianism, moral offenses are offenses against global utility, right reason or the totality of sentient beings, but never against individual victims, yet this aspect of the action – that it is an offense against a particular person – is highlighted when we say that *this* action wronged *that* woman.

Keywords Utilitarianism · Wrongness · Violation · Adams · Quinn · Wolterstorff

I shall argue that utilitarianism cannot accommodate a basic sort of moral judgment that many of us want to make, and that this inability counts against that theory.

Let us begin with an example. In December 1988, a bomb on board Pan Am Flight 103, from London to New York, caused the Boeing 747 to explode over Lockerbie, Scotland, killing some 270 persons. It is hard to look such an atrocity in the face, so let us focus not on the murder of so many innocents, but on the news media's response to the event. Journalists and camera crews were dispatched to JFK International Airport in New York to cover the response of those awaiting the plane's arrival, and some of these crews were at JFK before many of the friends and relatives waiting for passengers on the flight had even heard about the crash. Unfortunately, as one commentator recounts:

One couple had only just arrived at the airport after most of the reporters, photographers, and television cameras had camped down near to the First Class Lounge which had been sectioned off. The woman approached a Pan Am official standing near the journalists and cameramen and asked why there was all this fuss. She was told that Flight 103 had

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gone down – her daughter’s flight. She then collapsed into a hysterical fit, screaming and howling for her baby, crawling on the floor, her skirt up, in what can only be described as the most painful exhibition of grief and rage for the death of her daughter.

The cameras immediately zoomed in on her for the duration of the fit: people were fighting to get shots of her howling on the floor....The footage went out almost immediately on CNN (Kieran 1997: 14–15).

1 What We Want to Say About This

What are we to say about this treatment of a bereaved mother? It is not on a par with the murder of the innocent, certainly, but most of us want to say it is still a shocking and inexcusable way to treat a human being. What is it, however, that the camera crews did that was so wrong? They did not kill, rape, coerce, constrain or physically harm the woman. They did not deceive, defraud, steal from or threaten her; nor did they cause the heart-rending scene that they beamed to the whole world. The bombers (or the Pan Am official) did that. As a first attempt, we may say that the camera crews behaved insensitively in exposing her during a terrible crisis, but that scarcely does justice to the situation. Some may also want to say that they intruded upon the woman’s privacy, but others will argue this is not obvious, as the bombing was an international event and the airport was a public place. Yet even those who agree that it was an intrusion on her privacy will think that this does not go far enough. Even when exactly the right words escape us we want to say that, in treating the woman in this way, the camera crews *wronged* her, or even *violated* her.

2 What the Utilitarian Cannot Say

Now, what can the utilitarian say about this? He can say, of course, that this behavior caused pain to this woman, her family and friends – if not at that moment, at least later. He can also say that this pain will be acute, complex and long lasting. He can say that the public and long-lasting record of this incident may add to the misery caused for this woman by the murder of her child. He can say all of that and add to it the claim that this pain and misery is bad. He can perhaps say that the camera crew’s treatment of the woman (hereafter ‘Mrs. V’) was vicious in a technical sense, in that it manifested bad character traits (traits opposed to his list of virtuous traits, the general inculcation of which would maximize utility).¹ He can even say that the television crew’s behavior was impermissible, assuming that their filming and broadcasting of the scene brings about a lesser balance of global utility, over the long run, than some alternative action open to them (which, for the sake of argument, I am willing to grant).² These are things that many of us may want to say, and the utilitarian can say all of them.

¹ For a discussion of utilitarian treatments of the virtues, see Crisp (1992).

² It may be objected, of course, that the utilitarian is not bound to assume this. As Saul Smilansky has pointed out, a bullet-biting utilitarian who is indifferent about preserving or rationalizing our pre-theoretical moral convictions is free to argue, e.g., that the horror of terrorism *must* be graphically depicted if we are going to be sufficiently aroused to combat it, which we *must* do for reasons of global utility, and so on. That is correct, but the utilitarian is also free *not* to argue thus, and we need not saddle them from the start with this studied indifference to pre-theoretical moral convictions and feelings.

But notice: there is something that the utilitarian *cannot* say, namely that the camera crews wronged Mrs. V, that they violated her; indeed, that they wronged her *in* violating her. He can say that the camera crews caused her pain *and* that they did something wrong *and* that the thing that caused her pain was also the thing that was wrong. But he cannot say that *they* wronged *her*.³ According to utilitarianism, moral offenses are offenses against global utility or right reason, or possibly against the totality of sentient beings, but never against individual victims, yet it is precisely this aspect of the action – that it is an offense against a particular person – that is highlighted when we say that *this* action wronged *that* woman.⁴ In case the difference is not yet clear, consider the commonsensical point that, when we have wronged an individual, we think that an apology is owed *to that* individual. (Indeed, we think that an apology is owed to that individual even when, on balance, wronging them was the lesser of two evils.⁵) But in cases where we simply fail to maximize utility, to whom should we apologize?⁶ In the present case, the clear-eyed utilitarian must think it odd that we should apologize to the bereaved mother, since our failure to maximize utility is nothing uniquely to do with *her*. On the utilitarian view, even if the action *is* wrong, that fact has as much to do with its effect on *other* people's utility as with its effect on Mrs. V's. To suppose otherwise is to make the same mistake as the dim-witted student who complains to one particular teacher (out of many), 'It's because of *your* class that I've got a "D" average!'

3 Why They Cannot Say It

Initially, the utilitarian might respond that he can indeed give a perfectly good sense to talk of wrongdoing, that there is a straightforward sense in which utilitarians can say that Mrs. V was wronged.⁷ Since it has been agreed on all sides that Action₁, the act of filming and

³ I am not the first person to have noticed this, it seems. Some time after first writing this paper, I became aware of Michael Thompson's rich and interesting paper, 'What is it to Wrong Someone? A Puzzle about Justice' in Smith et al. (2004). Thompson's aims in his essay are different from mine, but he sees clearly the distinctive 'bipolar' character of wrongdoing. He sees equally clearly that some ethical systems have trouble accounting for this, though his focus in that essay is primarily metaethical, while mine is primarily normative. Still later, I became aware of Stephen Darwall's work on this topic, some of which draws explicitly on Thompson. See Darwall (2013). Soran Reader also points to this issue in her discussion of indiscriminate killing in warfare: 'So, we need *moral* answers to the question, "Why was *she* harmed?" My point is that, in bombing cases, no *moral* answer to that question is available. The utilitarian answer at best provides us with an explanation of her death – she died because she was in the wrong place at the wrong time. It does not, and *cannot*, tell us how and why it *right* to harm *her*.' (Reader 2000: 176)

⁴ It is not clear, on utilitarianism, against whom we offend, when we do offend. I think utilitarians should be more worried about this than they are. To be even-handed, however, I note that similar problems arise for Kantians as well: the first formulation of the categorical imperative, makes it sound as if what is wrong with immoral behavior is that it embodies maxims that undermine or conflict with the agent's own nature as a rational agent. So even if Kantianism correctly identifies all and only bad maxims as bad, and even if actions that wrong or violate persons always embody bad maxims, this version of it does not locate the offense in the right place. Thompson criticizes Kantians along similar lines at Thompson 2004: 339.

⁵ W.D. Ross makes this point in Ross (1930: 28).

⁶ Darwall notes: 'An apology is, by definition, addressed to someone who receives it and who has the authority to accept it or not. If a victim comes upon an unaddressed admission of guilt and expression of sincere regret in her victimizer's diary, she has not discovered an apology. Apologies are a way of holding oneself personally answerable to an obligee whose authority to hold one thus answerable is thereby reciprocally recognized. It is a second-personal acknowledgement of having violated a bipolar obligation to the obligee and of the obligee's special authority to hold one answerable for it' (Darwall 2013: 31).

⁷ Scott Woodcock, among others, pursued this response, and sketched a number of these arguments in private conversation.

broadcasting Mrs. V's collapse, did not maximize utility, it follows that there was some other action, Action₂, that was open to the camera crew *and* would have maximized utility. Presumably, however, the camera crew chose A₁ because they thought it would maximize utility for them or their employers. Hence, in choosing A₁ over A₂, the camera crews did not treat Mrs. V's pains & pleasures as if they were, unit for unit, equal in importance to the pains and pleasures of others. That is, they violated the 'Each one to count for one, nobody to count for more than one' rule that is essential to utilitarianism. In so doing, they wronged Mrs. V.

This response does not work, however, because, from the fact that the camera crew wrongly chose A₁ over A₂, it does not follow that they undervalued Mrs. V's pains or pleasures in particular. In a case such as this, there are many ways to arrive at the wrong conclusion. (Again, think of the dim-witted student.) In the absence of a specific reason to think that it was Mrs. V's utility that the camera crew uniquely under-valued, the utilitarian's point applies equally well to everyone affected by the action. If preferring a lesser aggregate utility to a greater aggregate utility counts as violation, then everyone who is 'part of' that aggregate utility, i.e., everyone affected by A₁, was wronged the same as Mrs. V.

Of course, the utilitarian can observe (correctly) that some of the people affected by A₁ may have been 'winners', in that they benefitted by A₁ – and it would be odd to think of *them* as having been wronged by A₁.⁸ But even if we focus on the 'losers', the people who were caused pain by A₁ (or who were worse off under A₁ than they would have been under A₂), it would still follow that all of these people were wronged in the same sense that Mrs. V allegedly was – which is false.

The utilitarian may reply that some of those others *were* wronged, too, but insist that Mrs. V was the 'biggest loser' in this situation, in that, for her, more than for any other person, A₁ added to *her* pain in a way that A₂ would not have, so Mrs. V was wronged in a worse way than other 'losers'.⁹ This is implausible, however, because of a striking feature of this example: the bereaved mother's individual utility has already taken such a tremendous hit that it seems silly to suggest that the actions of the camera crew have made it noticeably worse. And yet our judgment that they wronged her persists.¹⁰

But even if Mrs. V were, in this case, the biggest loser, it would not be an adequate reply, because it still treats the wronging of Mrs. V as a wholly extrinsic feature of A₁, when, intuitively, it should be an intrinsic feature of that act (or act-type). In case this is not obvious, consider the following variation: suppose that Mrs. V dies of a heart attack on the spot (because of the shock of hearing the terrible news). Being filmed and broadcast has not caused her any pain up until that point – being distraught, she does not even notice it – and she is not able to suffer any pain after it. But we still want to say that A₁ wrongs her, even if *ex hypothesi* she is not the biggest loser from that action.

Another way of putting the point is this: the only sense that the utilitarian can give to the notion that A₁ wrongs or violates Mrs. V involves the combination of two factors: first, that A₁ is impermissible (because it fails to maximize utility), and second, that Mrs. V is the biggest loser, given A₁. But both of these factors appear to be contingent or extrinsic features of A₁. Even if in *this* possible world A₁ fails to maximize utility *and* Mrs. V is the biggest loser given

⁸ I.e., they were better off under A₁ than they would have been under A₂.

⁹ This is not quite correct, as it stands. Neither the utilitarian nor I needs to hold that Mrs. V *alone* was wronged by the action, so we need not hold that she was the *biggest* loser, given A₁ – just that she lost out badly enough under A₁ to have been wronged. For simplicity's sake, however, I shall talk about her being the biggest loser.

¹⁰ This is why I focus on the actions of the camera crew and not of the bombers. I am indebted to Saul Smilansky for helpful discussion on this point.

A_1 , things could easily have turned out otherwise. But even in relatively similar possible worlds in which A_1 *does* maximize utility or in which A_1 maximizes utility but Mrs. V is *not* the biggest loser, Mrs. V has *still* been wronged or violated. Indeed, even in worlds in which A_1 is in fact permissible, Mrs. V has still been violated – or so I argue.

4 What My Objection Isn't

To be clear, my point is not the classic 'laxity' objection against utilitarianism, that its standards are too lax, that it sometimes permits us to do impermissible things.¹¹ I have already granted, in the case of Mrs. V, that the utilitarian *also* judges the camera crew's action impermissible. Nor is my point the closely related 'absolutism' objection that certain types of action are absolutely wrong and must never be done, but that utilitarianism cannot account this, because it does not rule out any type of action in advance of calculating the effect of particular act tokens on global utility.¹² This is an important objection to utilitarianism, but it is not *my* objection here. Partly, this is because, again, I am granting for the sake of argument that (contingently) this particular action does not maximize utility, and therefore, is not permissible according to utilitarianism. Also – and this is a rather different point – it is because a critic who says that Mrs. V was wronged need not hold that such actions are never to be done. Such a critic may hold, for example, a mixed deontological theory of obligation like W.D. Ross's, according to which the camera crew's action was *prima facie* wrong (because it wronged Mrs. V) but that, in those circumstances, the *prima facie* duty not to harm Mrs. V was outweighed by some other *prima facie* duty, such as beneficence.¹³ Or they may even hold a kind of 'negative consequentialism about wronging' whose goal is to minimize the number of 'wrongings' over the long run.¹⁴ They may allow that Mrs. V *was* wronged, but insist that, by wronging her, we avoid more wrongings or worse wrongings overall – perhaps because 'The horrors of terrorism must be graphically depicted if we are going to be aroused sufficiently to combat it, for the sake of global welfare!').¹⁵

¹¹ A classic expression of which comes from Alan Donagan: 'Act-utilitarianism has generally been put down as incredible on the ground that in certain circumstances it enjoins as duties what virtually everybody considers to be criminal. To employ a hackneyed example: it might well be the case that more good and less evil would result from your painlessly and undetectedly murdering your malicious, old and unhappy grandfather than from your forbearing to do so: he would be freed from his wretched existence; his children would be rejoiced by their inheritances and would no longer suffer from his mischief; and you might anticipate the reward promised to those who do good in secret. Nobody seriously doubts that a position with such a consequence is monstrous' (Donagan 1974: 166).

¹² The classic expression of this is from Elizabeth Anscombe: 'But if someone really thinks, in advance, that it is open to question whether such an action as procuring the judicial execution of the innocent should be quite excluded from consideration – I do not want to argue with him; he shows a corrupt mind' (Anscombe 1958: 16–7).

¹³ Peter Geach criticized Ross's theory for precisely this reason: 'This speciously strict doctrine leads in fact to quite laxist consequences.... Sir David Ross explicitly tells us that on occasion the right act may be the judicial punishment of an innocent man 'that the whole nation perish not'; for in this case the *prima facie* duty of consulting the general interest has proved more obligatory than the perfectly distinct *prima facie* duty of respecting the rights of those who have respected the rights of others. (We must charitably hope that for him the words of Caiaphas that he quotes just had the vaguely hallowed associations of a Bible text, and that he did not remember whose judicial murder was being counseled)' (Geach 1956: 41).

¹⁴ Analogous to the utilitarianism about rights described in Nozick (1974: 28, ff).

¹⁵ The wording here was suggested by Saul Smilansky.

My point is also not the familiar objection that utilitarianism does not allow for rights. Some philosophers might try to prosecute the Mrs. V case in those terms, and I have no wish to stop them, but that is not my objection here. For one thing, it is not easy to say which of Mrs. V's rights is relevant. The first candidate that comes to mind, perhaps, is the right to privacy, but it is not clear what that right entails, nor, for reasons already mentioned, that the camera crews infringed it. (The Lockerbie bombing was an international event, the airport was a public place, the camera crews had a right to be there, they did not interfere with Mrs. V's clothing or person, she did not express any objection to what they were doing, and so on. They simply turned their cameras on, and broadcast what they were seeing.) It would be challenging, I think, to spell out any general right that is plausible, not ad hoc, and applicable to Mrs. V, and that was violated by the actions of the camera crews.¹⁶

More importantly, even if we think that the camera crews *did* violate her right to privacy, we may doubt that this accounts for everything we think and feel about this case.¹⁷ Was violating Mrs. V's right to privacy the only, or the main, bad thing they did? I want to go further. I claim that Mrs. V *herself* was violated, and that this is distinct from, and more basic than, the claim that *her rights* were violated. It is more basic in the sense that the former explains the latter, and not the other way round.¹⁸ But if that is so, then the wronging objection is more basic than the rights objection.¹⁹

My point is that utilitarianism cannot make this judgment at all. In the 'conceptual space' of utilitarianism, there is no room for it. To put it another way, we may say, using Michael Thompson's terms, that the camera crews' wronging of Mrs. V by broadcasting her collapse has an irreducible 'bipolar' character, which, he argues, can be captured only in an essentially two-place relational judgment of the form $\Phi(\xi, \zeta)$.²⁰ The judgment is bipolar, because it relates the agent and the victim as the two poles of a morally charged situation: x wronged y by doing A, and in so doing, created the moral analog of an electric current between them, a current that does not necessarily run between x and anyone else. Utilitarianism, on the other hand, is a 'monadic' theory; the basic form of its judgments is not 'x wronged y by doing A', but 'x did wrong in doing A'. That is, the agent is related in wrongdoing, not to another person, but to the moral law (or better, 'unlawfulness'). The utilitarian can pile up as many such monadic moral judgments as he likes, but these will never become a bipolar judgment.

¹⁶ I am assuming that, for rights to do useful philosophical work here, they have to be both general and precise. It is no good saying that the right the camera crews violated was 'the right not to have that particular sort of thing done to you.'

¹⁷ For different reservations about the centrality of rights here, see also Denyer (1997: 41–2).

¹⁸ Michael Thompson sees Elizabeth Anscombe as making a similar point: '...Anscombe, thinking of propositions like "You can't take that, it's for N" or "You can't do that, it's for N to do", writes: "We have here a very special use of the name of a person, or a very special way of relating something to a person, *which explains (not is explained by) the general term "right".*"' (Anscombe 1981: 142), quoted in (Thompson 2004: 337, my emphasis).

¹⁹ It is not essential to my argument here, but we might even suppose that rights (or rights claims) are simply codifications of, or generalizations from, such claims about actions that wrong or individuals. One advantage of such an idea is that it would allow us to accommodate the suspicion, felt by many, that rights are in some sense constructs, without having to deny them altogether.

²⁰ See Thompson (2004: 344). Thompson notes that he borrows the terminology of 'bipolarity' from Weinrib (1996). David Sussman comes close to this point when, in his discussion of torture, he notes: 'The utilitarian focuses on the actual harms involved in torture, and in so doing, clearly captures an essential element of what is morally objectionable about such practices. However, utilitarianism will have trouble explaining the moral significance of the social and intentional structure of the "drama" that torture enacts.' Later, he adds, 'There seems to be something about the distinctive structure of the relationship of torturer to victim that is intrinsically objectionable and that goes beyond the badness of its usual effects' (Sussman 2005: 13).

We cannot avoid this problem merely by, e.g., shifting to a more sophisticated version of utilitarianism. Qualitative utilitarianism can, of course, admit of higher and lower pleasures and pains, and assign special significance to the higher ones, available only to creatures with higher faculties. This is beside the point, however, because we are not searching for additional negative consequences of the camera crew's action, so as to tip the balance against its permissibility. The balance has already been tipped that way. And anyway, since Mrs. V is oblivious to the behavior of the camera crew, their behavior is not adding to her pains, higher or lower, just then, but it is precisely *then* that she is being wronged.

Likewise, rule utilitarianism can allow for a rule against something it calls 'violating persons', as long as that rule is part of the best set of rules, as determined by utilitarian considerations. But from a non-utilitarian perspective, and indeed, from the perspective of many rule utilitarians, this is merely a useful fiction that *mimics* the judgment but does not actually *make* it.²¹ I want a theory that actually makes this judgment.

Nor is the problem avoided by invoking 'person-affecting' utilitarianism. It is one thing to hold that non-existent persons *cannot* be wronged (by, say, not being brought into existence); it is another to hold that *existent* persons *can* be wronged – and yet another to explain satisfactorily how they can be wronged in terms that are acceptable to individualistic, impersonal, aggregative welfarism.²²

We may also explain the utilitarian's inability here in terms of levels of judgments. At a relatively basic level, there are judgments about which actions do or do not maximize utility.²³ At a higher level, there are judgments about which actions are permissible, impermissible and obligatory. I call this a 'higher' level, because, on a utilitarian view, the facts about which actions do or do not maximize utility constitute, or are inferential grounds for, the latter, and not vice versa:

- (w) S's action A_1 is wrong
- (u) S's action A_1 does not maximize utility

The utilitarian of course has no trouble in moving from the lower level to the higher level; the principle of utility exists precisely to license such a move. If this were the whole of morality, then the utilitarian would have no trouble accounting for it. But as some critics have suggested, there is more to morality than this. Rossians, for example, hold that, between the

²¹ Stephen Darwall makes a similar observation: 'Rule consequentialists would likely agree that optimific social rules will include bipolar conventional or rule-defined obligations. The most socially useful practice of promising, for instance, is likely structured by rules that tie promisers to promisees in various ways, giving title to promisees to hold promisers personally accountable for fulfilling promises, to release promisers from their obligations to promisees, and so on. If that is so, rule consequentialists will hold that it would be morally wrong to violate such socially useful bipolar rules, even if doing so would be optimific in the case at hand. All this is familiar ground. However, rule consequentialists do not accept that these rule-defined bipolar obligations are inherently normative or have any inherent moral force in themselves, hence

that they have any basic "bipolar normativity." According to rule consequentialism, conventional bipolar obligations get whatever normativity they have thanks to be their being socially useful and hence something we have a moral obligation period to follow. Rule consequentialism thus denies that genuine moral obligations are themselves bipolar. There are just moral obligations period to comply with bipolar-obligation-defining conventional rules' (Darwall 2013: 25, emphasis mine). In my view, this is why the indirect utilitarian cannot avoid the problem simply by showing that they can believe in rights, as in, e.g., Pettit (1988).

²² See Narveson (1967) and Broome (1990–91: especially 91–3).

²³ This not the most basic level, of course. Judgments about which actions do or do not maximize utility are constituted by or inferred from a combination of judgments, say, that A_1 produces n utiles, and that some other action, A_2 , does or does not produce $n+1$ utiles.

lower level and the higher level, there is another level, which includes judgments about which actions do or do not violate general principles of prima facie duty:

- (w) S's action A_1 is wrong
- (p) S's action A_1 violates a prima facie duty of fidelity
- (u) S's action A_1 does not maximize utility

Judgments at this intermediate level are not inferable from judgments at the lower level, because the facts about prima facie duty are not constituted by facts about utility. That is, level-p is an irreducible, intermediate level that is not accessible from level-u. Even if the utilitarian aims at level-p judgments, they would inevitably overshoot them, and land on level-w (if anywhere).

I suggest that judgments about wrongdoing, like judgments about prima facie duties, occupy some intermediate level.

- (w) S's action A_1 is wrong
- (p) S's action A_1 violates a prima facie duty of fidelity
- (b) S's action A_1 wrongs T
- (u) S's action A_1 does not maximize utility

Perhaps they just are instances or species of normative judgments about prima facie duties, in which case they occupy level-p, but perhaps they are not, in which case they occupy some other intermediate level. In either case, it will again be an irreducible, intermediate level that is not accessible from level-u.

Likewise, judgments about violation, like judgments about prima facie duties, occupy some intermediate level.

- (w) S's action A_1 is wrong
- (p) S's action A_1 violates a prima facie duty of fidelity
- (b) S's action A_1 wrongs T
- (v) S's action A_1 violates T
- (u) S's action A_1 does not maximize utility

If judgments about violations just are a species of normative judgments about prima facie duties, then they occupy level-p, but perhaps they are not, in which case they occupy some other intermediate level. I am no position to argue for it here, but I find it natural to think of judgments about violation as a sort of intermediate level, thick evaluative judgment.²⁴ Again, whatever level they occupy, it will be an irreducible, intermediate level that is not accessible from level-u.

5 Wrong, Wronging and Violation

The utilitarian's inability to make this judgment may become clearer if we reflect on some of the concepts that have been central to our discussion so far: wrong, wrongdoing and violation. Wrong actions are just that: wrong actions, and as such are offenses against the moral law. (These are in Thompson's terms monadic, in that a property – wrongness or unlawfulness – is predicated of a subject non-relationally.) But some wrong actions seem also to wrong

²⁴ Guy Fletcher first suggested this interpretation of my views to me.

particular persons, to be offenses especially against *them*. (They are, in Thompson's terms, bipolar, in that it is essential to the moral judgments about them that they relate the agent to some particular person in a particular way). Perhaps not every wrong action is an offense against particular persons, but surely some are, in that they specially touch, affect, or are directed at, individual persons.²⁵ Lying, stealing, murdering, raping, enslaving, defrauding and insulting, for example, are actions of this sort. To commit such an action is always to wrong someone.

As this list illustrates, there are many kinds of acts that wrong persons, and these may be sub-divided in turn: some ways of wronging a person *violate* that person, but others ways do not. For example, rape always violates its victim, but fraud does not, even when it seriously and indisputably *wrongs* them.²⁶ What is the difference between wrongs that violate a person and wrongs that do not? It is not easy to say, because, although the idea of 'violation' is not new, analytic moral philosophers have only recently started to consider it, and there is no single, authoritative account of it.²⁷ Even so, recent work by Nicholas Wolterstorff, Philip Quinn, and especially Robert Adams suggests some promising ways of delineating this idea.

First, and most obviously, according to Adams (1999):

An act that violates a person must *attack the person*. Its foreseeable effects must be so damaging to the person, or so contrary to her (actual or presumed) will, that fully intending them, in the absence of reason to believe them necessary for the prevention of greater harm to her, would constitute hostility toward the person (Adams 1999: 108, my emphasis).

(This explains why murder is a violation of a person, but tax evasion is not, even where the latter is unjust.)²⁸ It is also important to notice that it is a *person* who is attacked in a violation. Even if we wish to hold that the victim's *rights* or the *moral law* have also been violated, this is derivative or secondary. According to Adams, 'We speak of "violations" of the moral law, but it cannot be violated in the same sense as a person can. The moral law is not destroyed or damaged, nor is its "self-hood" threatened by immoral actions' (Adams 1999: 113).

Second, according to Adams (1999: 108), 'A violation is an act that attacks the person *seriously* and *directly*', typically meaning that it destroys or inflicts long-term damage on them.²⁹ (This explains why maiming is a violation, but, a punch on the arm of a healthy adult isn't, even when the latter *is* an attack on them.) Adams adds that, 'Most (but not all) violations of a person will assault *her body*' (Adams 1999: 108). (This explains why torture is a violation

²⁵ Thompson argues that the moral distinction between actions that wrong persons and actions that are 'merely wrong' parallels the legal distinction between civil law and criminal law. See Thompson (2004: 343–5).

²⁶ Or, rather, not all forms of fraud do, though some may. Saul Smilansky has pointed out to me that identity theft is a form of fraud that can indeed violate a person.

²⁷ See: Adams (1999), Adams (1995), Wolterstorff (2001) and Quinn (2007). Quinn also cites Card (2002).

²⁸ See Adams (1999: 106). Adams treats such attacks via his account of non-instrumental badness, which, in his view, consists in deterioration or destruction of good, which 'is much more and much worse than mere absence of good.' (Adams 1999: 103).

²⁹ Timothy Chappell comes close to making this point in his discussion of utilitarianism and other standard ethical theories, when he observes, 'there is one very basic and obvious point about murder that all of these moral theories seem to miss. This is that murder is not just a matter of treating someone badly, unjustly, unfairly or in a way that deprives them of goods (although it is that of course). In murder you do not so much take something away from someone as take away the someone; you deprive him, not of this or that good, but of *himself*, by destroying him. This seems to be the most central wrong involved in murder, and most moral theories remarkably enough, do not even get around to mentioning it' (Chappell 2009: 210).

of a person, but an insulting letter to the editor in a newspaper is not, even when it is scurrilous and hurtful.)

Third, although violations most often target the body, they may also target whatever it is that is constitutive of, or valuable about, persons, including those things that determine the boundaries of the person's self. Just how broadly are we to conceive of this target? Here, we find some disagreement. Philip Quinn draws the boundaries narrowly, restricting violations to attacks on a person's body (especially reproductive and other sexual organs), will (as in torture) or rationality (as in brainwashing).³⁰ Nicholas Wolterstorff draws the boundaries widely, so as to include all of the above, but also the person's inner life (their thoughts and feelings, hopes and fears, dreams and fantasies), their deepest convictions and their fundamental ways of being invested in or attached to the surrounding world.^{31 32} According to Wolterstorff, this explains, e.g., why laws compelling religious observance, especially alien religious observance, typically constitute a violation of the person compelled, when laws compelling simple payment of taxes typically do not.³³ Accordingly, Wolterstorff and Quinn disagree over whether a parent's reading of their teenage child's personal diary is a violation of the child's personhood: Wolterstorff thinks it is (or can be), Quinn does not. But even if they disagree on borderline cases such as this, they agree on the paradigm cases, and that these actions directly attack either what is constitutive of human personhood or what is intrinsically valuable about it.

Fourth, true violations of personhood tend to elicit a distinctive moral-psychological reaction: not just disapproval or even outrage, but a 'metaphysical shudder' that Adams calls 'moral horror': 'a sense of horror toward certain types of deeds, a feeling that certain things would be *horrible* to do. Among the kinds of actions that most obviously evoke such a horror are rape, murder, and maiming, torturing, or brainwashing a human being' (Adams 1999: 104). The presence (or absence) of such feelings does not infallibly indicate whether a violation has occurred, of course, but it is sufficiently reliable, distinctive and strong in certain cases that we regard these cases as paradigms establishing the core of a distinctive moral category.³⁴ Moreover, the phenomenology of this horror reinforces our earlier observation that the primary object of violation is a person – the victim – and not, except secondarily, the victim's rights:

³⁰ For an insightful, though occasionally harrowing, discussion of how interrogatory torture attacks the will of its victim, see Sussman (2005: 30): 'Torture does not merely insult or damage its victim's agency, but rather turns such agency against itself, forcing the victim to experience herself as helpless yet complicit in her own violation. This is not just an assault on or violation of the victim's autonomy, but also a perversion of it, a kind of systematic mockery of the basic moral relations that an individual bears to others and to herself.'

³¹ According to Wolterstorff, '...violation of a person – or to put the same thing in other words, of a human being's personhood – occurs when someone does something to that person's body, that person's inner life, that person's deep moral and religious convictions, that person's deep investment in the world' (Wolterstorff 2001: 245).

³² Sussman seems to side with Wolterstorff on this point. In his discussion of the wrongness of torture, Sussman notes that one of the bad things about it is that 'The most intimate and private parts of a victim's life and body become *publicly available* tools for the torturer to exploit as he will. *The victim is completely exposed*, while the torturer is free to conceal anything he likes' (Sussman 2005: 7, emphasis mine).

³³ It also explains why invasion of, or displacement from one's home, can be (or feel like) a violation and not just, say, an infringement on property rights. Helen Frowe, e.g., suggests that this is why we feel justified in using more force against those who break into our home than against those who merely steal our property: 'Property alone is not usually thought to be of sufficient importance to make serious harm a proportionate means of protection. But we might think that our homes our more than mere property: that *they are 'our part of the world'...*' (Frowe 2011: 12, my emphasis).

³⁴ See Adams's disclaimer of infallibility his (1999: 105).

Moral horror is not a consciousness of a command or requirement laid on us by anyone, nor of a rule of any sort, but a feeling about the actions themselves and their consequences. We feel it would be horrible to do certain things even if there were no authoritative rule or social pressure against them.... Our primary feelings about such deeds as murder and torture are not about violation of a rule or requirement, but about what is done to the victims. (Adams 1999: 105)

This fourth point, in turn, may help us to see a fifth: that attacks on the body, will, rationality or inner life of a person can count as violations of that person even when we regard those attacks as morally justified overall. For example: the killing of an enemy combatant or the execution of a justly convicted murderer would still constitute the violation of a human person, even if these were morally permissible on the grounds of, say, standard just war theory or a retributivist account of capital punishment. As Adams, puts it:

‘Even those who believe, as most people do, that there are at least a few circumstances in which it is right to kill another human being are apt to feel a metaphysical shudder, so to speak, at any prospect of doing it, and rightly so. Not only the death is a bad thing, but being an agent of it is morally horrible, even if morally justified or required’ (Adams 1999: 105).³⁵

George Orwell (1931) vividly captures a number of these ideas in his famous account of a hanging during his days in the military police in Burma. Orwell recounts how, when a manacled convict was being marched at bayonet point to the gallows, the convict – who was apparently resigned to his fate – nevertheless stepped aside at one point, to avoid a puddle on the path. Orwell notes:

It is curious, but till that moment I had never realized what it means to destroy a healthy, conscious man. When I saw the prisoner step aside to avoid the puddle, I saw the mystery, the unspeakable wrongness, of cutting a life short when it is in full tide.³⁶ This man was not dying, he was alive just as we were alive. All the organs of his body were working — bowels digesting food, skin renewing itself, nails growing, tissues forming — all toiling away in solemn foolery. His nails would still be growing when he stood on the drop, when he was falling through the air with a tenth of a second to live. His eyes saw the yellow gravel and the grey walls, and his brain still remembered, foresaw, reasoned — reasoned even about puddles. He and we were a party of men walking together, seeing, hearing, feeling, understanding the same world; and in two minutes, with a sudden snap, one of us would be gone — one mind less, one world less. (Orwell, 1931)³⁷

³⁵ Compare what Sussman says about torture. Having starkly portrayed the grotesquely violative character of torture, he nevertheless says: ‘I do not here contend that torture is categorically wrong, but only that it bears an especially high burden of justification, greater in degree and different in kind from even that of killing’ (Sussman 2005: 4).

³⁶ Arguably, Orwell misinterprets his own position here. Orwell takes his example to show the absolute wrongness of killing, but I think it is better interpreted as showing that, right or wrong, killing is a violation. Otherwise, we have trouble making sense of the same Orwell, who later went to Spain with the stated intention of killing fascists, and who is supposed to have insisted that ‘We sleep safely at night because rough men stand ready to visit violence on those who would harm us.’ See also Michael Walzer’s treatment of ‘naked soldiers’ in (Walzer 1992: 138–143), which includes Orwell’s equally famous account of his time as a sniper during the Spanish Civil War.

³⁷ I am indebted to Tim Chappell for originally calling this passage to my attention.

Now, this outline of the concept of ‘violation’ is in danger of digressing and becoming over-long, not least because it is not strictly necessary. It is not necessary, because my claims that the camera crews wronged Mrs. V, and that the utilitarian cannot accommodate this judgment, do not stand or fall with my account of violation. We can still agree that Mrs. V was wronged, even if we do not agree that she was wronged by being violated. Even so, I suggest that something like the accounts by Adams, Wolterstorff, and Quinn are helpful here, because we *do* feel that the filming and broadcasting of Mrs. V *was* a violation in their terms. And as such, it is a clear and vivid example of a morally bipolar action: a wronging that is more than just a wrong.

Their account of violation makes sense of, and helps us to articulate, our initially inarticulate reaction to the case of Mrs. V: even when we lack the precise words to express what is wrong with the camera crew’s treatment of her, we may feel a reaction that passes beyond resentment, into something like horror. Their idea of ‘targets’ is useful here, too: the camera crew may not have violated Mrs. V’s will or rationality, but it is not an exaggeration to say that they nevertheless *attacked* her. They attacked her by targeting her with their cameras when she was in a vulnerable position, with skirt hiked up and her body exposed. Why does this last detail matter? It matters because, according to Adams, destruction and lasting damage to the body are not the only form of violation. Some actions are violations, because they constitute attacks on the *self*, which, Adams observes,

‘... is partly defined by social structures, and ... that certain boundaries between distinct selves are a crucial part of those structures. Prohibitions and permissions about touching and viewing other people’s bodies play an important role in defining such boundaries, and sexual restrictions can contribute to this definition. By the same token, a sexual touching or viewing without full adult consent can rightly be seen as attacking something central to selfhood, and thus as a serious and direct assault on the person... (Adams 1999: 108–9).

Arguably, the camera crews also attacked what Wolterstorff would call Mrs. V’s ‘inner life’, by exposing it to the wider world. It is hard to imagine feelings more strongly expressive of a person’s inner life than a parent’s rage and grief for a dead child. Equally, it is hard to imagine a clearer example of ‘turning the inner into the outer’, than to broadcast this rage and grief on international television.

Finally, the account even sheds light on how we could make these judgments and have these reactions, even when we were not sure that Mrs. V’s rights were violated, or even if we thought that the camera crew’s action was, on balance, morally justified.

6 Conclusion

In broadcasting Mrs. V’s collapse, the camera crew violated Mrs. V, and in doing so, they wronged her. This is what many of us want to say, but it is what the utilitarian cannot say. Some utilitarians will insist that they can say these things, but I have argued that they are wrong. Other utilitarians will agree that they cannot say these things, but shrug it off, saying ‘Who cares about such pre-theoretical moral judgments?’ I have nothing to say to them, except that that response, like the inability to make the judgment itself, is an example of what Bernard Williams (1963) describes as utilitarianism’s ‘simple-mindedness’, which, he says, ‘... consists in having too few thoughts and feelings to match the world as it really is.’ (Williams 1963: 149)

I believe that Williams is right. Indeed, my whole argument may be seen as another illustration of the idea that the utilitarian has too few thoughts. If I am right, one of the utilitarian's missing thoughts is that *some actions wrong some people*; another is that *some actions violate some people*; still another is that *some actions wrong some people by violating them*.

Acknowledgments The writing of this essay was supported by the Provost's Office of Westmont College, and CREUM, the Centre de Recherche en Ethique de l'Université de Montréal. A distant ancestor of it was presented to ISUS X at Berkeley and to the Philosophy Colloquium at Westmont College; more recent versions were presented at the Society for Applied Philosophy, Atelier du GRIN at CREUM and the conference on 'Virtue, Medicine and Modern Moral Philosophy' at the University of Notre Dame. I am grateful for this support and to my discussants on those and other occasions for helpful comments and criticisms, especially: Timothy Chappell, Christopher Coope, Andrée-Ann Cormier, Roger Crisp, Guy Fletcher, Ulrike Heuer, Louis-Philippe Hodgson, Brad Hooker, David McNaughton, Antoine Panaioiti, Melinda Roberts, Mauro Rossi, Saul Smilansky, Rob Sparling, Rebecca Stangl, Christine Tappolet and Scott Woodcock.

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