

Trois exemples de philosophies utilitaristes classiques où la conception des règles comme résumés des décisions passées (*summary view*) l'emporte : John Austin (1790-1859) ; John Stuart Mill (1806-1873) et George Edward Moore (1873-1958).

N.B. Rawls fait référence à ces trois auteurs dans la longue note 22 qui fait suite à sa définition de la conception des règles comme résumés (cette note est aussi présentée par Rawls comme un appendice à la section 3 dans son ensemble). « This appendix [...] provides a few references to statements by leading utilitarians of the summary conception. In general it appears that when they discussed the logical features of rules the summary conception prevailed and that **it was typical of the way they talked about moral rules.** » (*Collected Papers, op.cit*, p.43, je souligne.)

1. John Austin

Dans sa seconde leçon le juriste John Austin affirme que les actions humaines sont nécessairement guidées par des règles, règles qui sont elles-mêmes gouvernées par le principe d'utilité : « Our rules would be fashioned on utility ; our conduct on our rules. » (p.116) Ainsi Austin semble entrevoir la distinction entre justification utilitaire d'une pratique et justification par la règle d'une action qui tombe sous cette pratique ; ce qui lui permet de répondre à l'objection classique faite à l'utilitarisme selon laquelle il serait impossible d'appliquer le principe d'utilité directement à toutes nos actions. Néanmoins, la suite de la leçon indique qu'Austin conçoit toute naissance des règles comme une naissance empirique par généralisation, ce qui l'éloigne de la conception pratique des règles.

If our experience and observation of particulars were not *generalized*, our experience and observation of particulars would seldom avail us in practice. The inferences suggested to our minds by repeated experience and observation are, therefore, drawn into *principles*, or compressed into *maxims*. These we carry about us ready for use, and apply to individual cases promptly without revering to the process by which they were obtained ; or without recalling, and arraying before our minds, the numerous and intricate considerations of which they are handy abridgements. True theory is a compendium of particular truths. Speaking then, generally, human conduct is inevitably guided by rules, or by principles or maxims.

Lectures on Jurisprudence or The Philosophy of Positive Law, (1879, posthume), vol.1., p.117-118. **N.B.** : ce volume est intégralement disponible en ligne sur le site de la BNF consacré à la numérisation (« Gallica »).

2. John Stuart Mill

Selon Rawls Mill a anticipé la distinction entre point de vue interne et point de vue externe sur la règle lorsqu'il fait la différence entre la position du juge (point de vue interne) et la position du législateur (point de vue externe). On peut se reporter à la section 1 de « Two Concepts of Rules » où Rawls utilise lui aussi ces deux rôles ou fonctions (« offices ») du juge et du législateur lorsqu'il est question de la justification du châtement.

In all branches of practical business, there are cases in which individuals are bound to conform their practice to pre-established rules, while there are others in which it is part of their task to find or construct the rule by which they are to govern their conduct. The first, for example, is the case of a judge, under a written code. The judge is not called upon to determine what course would be intrinsically the most advisable in the particular case in hand, but only within what rule of law it falls ; what the legislator has ordained to be done in the kind of case, and must therefore be presumed to have intended in the individual case. The method must here be wholly and exclusively one of ratiocination, or syllogism; and the process is obviously, what in our analysis of syllogism we showed that all ratiocination is, namely the interpretation of a formula. In order that our illustration of the opposite case may be taken from the same class of subjects as the former, we will suppose, in contrast with the situation of the judge, the position of the legislator. As the judge has laws for his guidance, so the legislator has rules, and maxims of policy ; but it would be a manifest error to suppose that the legislator is bound by these maxims in the same manner as the judge is bound by the laws, and that all he has to do is to argue down from them to the particular case, as the judge does from the laws. The legislator is bound to take into consideration the reasons or grounds of the maxim; the judge has nothing to do with those of the law. To the judge, the rule, once positively ascertained, is final ; but the legislator, or other practitioner, who goes by rules rather by their reasons, like the old-fashioned German tacticians who were vanquished by Napoleon, or the physician who preferred that his patients should die by rule rather than recover contrary to it, is rightly judged to be a mere pedant, and the slave of his formula.

A System of Logic Ratiocinative and Inductive, (1843), Book VI, Chapter XII "Of the Logic of Practice, or Art. Including Morality and Policy", §2.

Pourtant la conception des règles comme résumés des décisions passées prévaut chez Mill comme chez Austin lorsqu'il s'agit de rendre compte de la genèse des règles morales. Rawls cite alors un autre texte de Mill plus tardif consacré uniquement à la défense de l'utilitarisme comme théorie morale et politique.

Again, defenders of utility often find themselves called upon to reply to such objections as this – that there is not time, previous to action, for calculating or weighing the effects of any line of conducts on the general happiness. This is exactly as if any one were to say that it is impossible to guide our conduct by Christianity, because there is not time, on

every occasion on which anything has to be done, to read through the Old and New Testaments. The answer to the objection is, that there has been ample time, namely the whole past duration of the human species. During all that time mankind have been learning from experience the tendencies of actions ; on which experience all the prudence, as well as all the morality of life, is dependent. [...] The corollaries from the principle of utility, like the precepts of every practical art, admit an indefinite improvement, and, in a progressive state of human mind, their improvement is perpetually going on. But to consider the rules of morality as improvable, is one thing ; to pass over the intermediate generalizations entirely, and endeavour to test each individual action directly by the first principle is another. It is a strange notion that the acknowledgement of a first principle is inconsistent with the admission of secondary ones. To inform a traveler respecting the place of his ultimate destination, is not to forbid the use of landmarks and direction-posts on the way.

Utilitarianism, (1863), Chapter II "What Utilitarianism Is", §24.

3. George Edward Moore

Selon Rawls pour Moore les règles morales ne servent qu'à indiquer, parmi les différentes actions possibles qui ont le plus de chance de se présenter à l'agent, celle qui tend généralement à produire la plus grande somme de bien dans un futur proche. Il n'existe donc pas à proprement parler de « devoir » ou d' « obligation morale ».

Ethics, therefore, is quite unable to give us a list of duties : but there still remains a humbler task which may be possible for Practical Ethics. Although we cannot hope to discover which, in a given situation, is the best of all possible alternative actions, there may be some possibility of shewing which among the alternatives, *likely to occur to any one*, will produce the greatest sum of good. This second task is probably all that Ethics can ever have accomplished : and it is certainly all that it has ever collected materials for proving ; since no one has ever attempted to exhaust the possible alternative actions in any particular case. Ethical philosophers have in fact confined their attention to a very limited class of actions, which have been selected because they are those which most commonly occur to mankind as possible alternatives. With regard to these they may possibly have shewn that one alternative is better, i.e., produces a greater total of value, than others. But it seems desirable to insist, that though they have represented this result as a determination of duties, it can never really have been so. For them duty is certainly so used that, if we are subsequently persuaded that any possible action would have produced more good than the one we adopted, we admit that we failed to do our duty. It will, however, be a useful task if Ethics can determine which among alternatives likely to occurs will produce the greatest total of value. For, though this alternative cannot be proved to be the best possible, yet it may be better than any course of action which we should otherwise adopt.

Principia Ethica, (1903), Chapter V "Ethics in Relation to Conduct", §91

