Act-utilitarianism and Rule-utilitarianism

There are two kinds of utilitarianism: Act-utilitarianism
judges moral rightness in terms of the consequences of the individual
act; rule-utilitarianism judges rightness in terms of the consequences
of the rule under which the particular act falls, such rules, namely,
as "it is wrong to steal" and "do not break promises." Both act-and-
rule-utilitarianism will accept such a general principle of Bentham
and Mill: act for the greatest happiness (good) of the greatest num-
ber of people. But the rule-utilitarian believes that the general
good is best attained by following rules such as about stealing and
promising, by never making exceptions. For example, the rule-utili-
tarian will argue that even though the punishment of an individual,
as a solitary act, may do more harm than good, nevertheless, considere
as part of a system a punishment may be useful. For by the toal
number of punishments, even though great harm is done in individual
cases, still thousands of other crimes are prevented; and the greatest
good of the greatest number is advanced by following the rule.

The act-utilitarian argues that the rule of promise-keeking must
be qualified by so many circumstances that the primary consideration
must be the proper understanding of the particular promise and its
circumstandes and not the following of an abstract rule. For example,
one philosopher states the rule of keeping promises as follows:
"A promise, express or tacit, is binding, if a number of conditions
are fulfilled: namely, if the promiser has a clear belief as to the
sense in which it was understood by the promisee, and if the latter is
still in a position to grant release from it but unwilling to do so,
if it was not obtained by force or fraud, if it does not conflict with
definite prior obligations, if we do not believe that it will be
harmful to the promisee, or will inflict a disproportionate sacrifice
on the promiser, and if circumstances have not materially changed sine
it was made." But even this rule will not cover all particular
situations. Consdier the qualification that a promise is not binding
if it was obtained by fraud. We do not agree with each other as to
what consititues fraud; we may find it difficult to made up our own
minds about what shall be called fraud; and we may disagree among
ourselves or be unsure ourselves as to what degree of graud is per-
missible. In short, it is possible for all sorts of situations to
occur where it would be extremely difficult to say whether or not
this exempting condition was satisfied and therefore whether or not
the rule should be followed. The rule is only a tentative guide:
whether or not the rule should be applied depends on how useful it is
in the particular circumstances of the case.

The act-utilitarian will use the "summary concept" of moral
rules as opposed to the "practice concept." The summary concept
means that the rule is a generalization that a class of actions, such
as the keeping of promises, is generally good, generally leads to
the greatest good. The rule guides future decisions. But the rule
is orginally based on the first decisions that rulewke promise-keeping
was good in particular ciraumstances. Consequently, the rule may be
decided against in future cases. The practice concept of rules com-
pares morality to a game. In the game of baseball, one may not break
the rule of three strikes and you're out, because the rule defines the
game. In this approach, there would be rules that define the game
of life which cannot be broken because the purpose of life would be
harmed.

The rules of due-process or just-process in laws courts are best understood as practice-rules, not as summary-rules. Take, for example, the rule against self-incrimination. The fifth amendment states, "No person shall be compelled in any criminal case to be a witness against himself." Many political conservatives have denounced the rule as a shield to 'subversives' who refuse to testify before legislative committess. As the Council of the Star Chamber, Britain's historic high court, declared in 1637, the result of the privilege is that many grave offenses go "undiscovered and unpunished.

How can one defend a rule that may thus protect the disloyal or the guilty? Not by citing the particular case, for the rule in the individual instance may not be justified. The justification is the value of the general practice. To understand this justification we need to know the historical background of the rule.

In 1637, a stubborn and heretical fellow named John Lilburne refused to testify against himself, whereupon the Star Chamber sentenced him to be whipped and pilloried. Although the sentence was carried out, Lilburne appealed to Parliament, and the House of Commons voted that the sentence was "illegal and against the liberty of the subject," and the House of Lords, concurring, ordered that an indemnity of three thousand pounds be paid Lilburne. This famous case established the privilege as a part of English common laws, and in this form it was transplanted to the American colonies.

The historical record shows, then, that the rule against self-incrimination was developed as a safeguard against torture and threat. The right against self-incrimination has been invoked frequently in resisting prosecution for heresy or political offenses, and has served to protect freedom of thought and association. This right also protects innocent persons falsely accused of crimes from being forced to take the witness stand and being made to look foolish by the cross-examination of the prosecuting attorney.

In the absence of the privilege against self-incrimination, very grave evils are possible. In the great Russian purge trials of the 1930's, many confessed to terrorist plans and acts because they were forced to do so by threats, brain-washing, and torture. The privilege against self-incrimination rules out such methods of the totalitarian state.

Since the rule does far more good than harm, its justification is the utility of the general practice and not the utility of the individual application. This rule has emerged gradually from centuries of human experience and decision, and in that sense it is like a summary-rule. However, it is unlike a summary-rule in that it should not be broken even though it would be advantageous to do so in particular cases. Unless the rule is regularly practiced, the people are without protection from those who would coerce testimony from innocent people. The rule is best understood as a practice-rule.