Theory of utility and the modern legislation: A study of application of Bentham's utilitarian theory
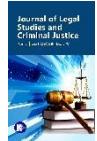
Review article

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Abstract

The Jurisprudential theory of Jeremy Bentham, though have been considered way too old, especially in the socialist countries the Theory of Utility, might have been disregarded as unacceptable on the grounds that only the thoughts about pain and pleasure might not be the sole interest of the country. The country's welfare might not be measured in the quantum of happiness to majority and grief and pain to minorities. However, it cannot be totally waived and be done away with. For how can social welfare legislations be not measured on the quantum of maximum pleasure and minimum pain? The essence of Bentham's theory and his philosophy is retained by the world even in today's modern-day legislation. It is human nature to take a step forward when he can measure the risk and the gain of that direction. Thereby the modern-day man is much more a hedonistic calculus. This research aims at reflecting the various juncture whereby the modern-day legislations, directives, judgments and policies draw their essence from the Theory of Utility.

Introduction

 "Stretching his hand up to reach the stars, too often man forgets the flowers at his feet**"**

-Jeremy Bentham[1]

Man, by nature is an insatiable being. Every aspect in his life is measured in the weighing scales of happiness and sadness, or pain and pleasure. Be it relationships, be it career, be it knowledge, and be it something else. Even a tree is judged on the quality of the fruits it bears. If the fruit is sweet it is valuable if it doesn't then it is not. In the modern context a man's worth is determined by the amount of money he earns. Nowadays even for a knowledgeable person, the society treats that person on the basis of his earnings. If a person with compulsory education can earn more than a PhD scholar, then the scholar is treated less successful, than the other counterpart. The basic concept behind this is that man in this 21st century is still a hedonistic calculus.

Method

This is a short study involving doctrinal research that aims to reflect upon the application of the theory of utility by Jeremy Bentham in the context of modern day legislations, for which mainly doctrinal study was involved through books of S.N. Dhyani, B.N. Mani Tripathi, Patton, Carodozo and various articles reflecting the idea of like nature.

Bentham and Theory of Utility-Then and Now

"Hedonistic Calculus means a calculative method of happiness. Man, always seeks maximum pleasure over minimum pain. The law or the society that gives man most pleasure he seeks to do so and generally tends to avoid the laws or systems that pains him. This hedonism was formulated by the theory of utilitarianism by Jeremy Bentham. Utilitarianism is one of the most powerful and persuasive approaches to normative ethics in the history of philosophy. Though not fully articulated until the 19th century, proto-utilitarian positions can be discerned throughout the history of ethical theory. Though there are many varieties of the view discussed, utilitarianism is generally held to be the view that the morally right action is the action that produces the most good. There are many ways to spell out this general claim. One thing to note is that the theory is a form of consequentialism: the right action is understood entirely in terms of consequences produced. What distinguishes utilitarianism from egoism has to do with the scope of the relevant consequences. On the utilitarian view one ought to maximize the overall good — that is, consider the good of others as well as one's own good.

Utilitarianism is also distinguished by impartiality and agent-neutrality. Everyone's happiness counts the same. When one maximizes the good, it is the good *impartially* considered. My good counts for no more than anyone else are good. Further, the reason I have to promote the overall good is the same reason anyone else has to so promote the good. It is not peculiar to me.[i2]

Jeremy Bentham was an English philosopher and political radical. He is primarily known today for his moral philosophy, especially his principle of utilitarianism, which evaluates actions based upon their consequences. The relevant consequences, in particular, are the overall happiness created for everyone affected by the action. Influenced by many enlightenment thinkers, especially empiricists such Locke and David Hume, Bentham developed an ethical theory grounded in a largely empiricist account of human nature. He famously held a hedonistic account of both motivation and value according to which what is fundamentally valuable and what ultimately motivates us is pleasure and pain. Happiness, according to Bentham, is thus a matter of experiencing pleasure and lack of pain.

Although he never practiced law, Bentham did write a great deal of philosophy of law spending most of his life critiquing the existing law and strongly advocating legal reform. Throughout his work, he critiques various natural accounts of law which claim, for example, that liberty, rights, and so on exist independent of government. In this way, Bentham arguably developed an early form of what is now often called legal positivism. Beyond such critiques, he ultimately maintained that putting his moral theory into consistent practice would yield results in legal theory by providing justification for social, political, and legal institutions. Bentham's influence was minor during his life. But his impact was greater in later years as his ideas were carried on by followers such as John Stuart Mill, John Austin, and other 'consequentialists'.[3] He famously held that humans were ruled by two sovereign masters' pleasure and pain. We seek pleasure and the avoidance of pain, they govern us in all we do, in all we say, in all we think…"

Yet he also promulgated the principle of utility as the standard of right action on the part of governments and individuals. Actions are approved when they are such as to promote happiness, or pleasure, and disapproved of when they have a tendency to cause unhappiness, or pain. Combine this criterion of rightness with a view that we should be actively trying to promote overall happiness, and one has a serious incompatibility with psychological egoism. Thus, his apparent endorsement of Hobbesian psychological egoism created problems in understanding his moral theory

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[2] Julia Driver, "History of Utilitarianism" (2014), *available at:* https://plato.stanford.edu/entries/utilitarianism-history

since psychological egoism rules out acting to promote the overall well-being when that it is incompatible with one's own. For the psychological egoist, that is not even a possibility. So, given 'ought implies can' it would follow that we are not obligated to act to promote overall well-being when that is incompatible with our own. This generates a serious tension in Bentham's thought, one that was drawn to his attention. He sometimes seemed to think that he could reconcile the two commitments empirically, that is, by noting that when people act to promote the good, they are helping themselves, too. But this claim only serves to muddy the waters, since the standard understanding of psychological egoism and Bentham's own statement of his view identifies motives of action which are self-interested. Yet this seems, again, in conflict with his own specification of the method for making moral decisions which is not to focus on self-interest indeed, the addition of *extent* as a parameter along which to measure pleasure produced distinguishes this approach from ethical egoism. Aware of the difficulty, in later years he seemed to pull back from a full-fledged commitment to psychological egoism, admitting that people do sometimes act benevolently — with the overall good of humanity in mind. When one legislates, however, one is legislating in support of, or against, certain actions. Character — that is, a person's true character — is known, if known at all, only by that person. If one finds the opacity of the will thesis plausible then character, while theoretically very interesting, isn't a practical focus for legislation. Further, as Schneewind notes, there was an increasing sense that focus on character would actually be disruptive, socially, particularly if one's view was that a person who didn't agree with one on a moral issue was defective in terms of his or her character, as opposed to simply making a mistake reflected in action.[4]

Application of Bentham's Theory

Bentham's view was surprising to many at the time at least in part because he viewed the moral quality of an action to be determined instrumentally. It isn't so much that there is a particular kind of action that is intrinsically wrong; actions that are wrong are wrong simply in virtue of their effects, thus, instrumentally wrong. This cut against the view that there are some actions that by their very nature are just wrong, regardless of their effects. Some may be wrong because they are unnatural and, again, Bentham would dismiss this as a legitimate criterion. Some may be wrong because they violate liberty, or autonomy. Again, Bentham would view liberty and autonomy as good — but good instrumentally, not intrinsically. Thus, any action deemed wrong due to a violation of autonomy is derivatively wrong on instrumental grounds as well. This is interesting in moral philosophy — as it is far removed from the Kantian approach to moral evaluation

as well as from natural law approaches. It is also interesting in terms of political philosophy and social policy. On Bentham's view the law is not monolithic and immutable. Since effects of a given policy may change, the moral quality of the policy may change as well. A law that is good at one point in time may be a bad law at some other point in time. Thus, lawmakers have to be sensitive to changing social circumstances. To be fair to Bentham's critics, of course, they are free to agree with him that this is the case in many situations, just not all — and that there is still a subset of laws that reflect the fact that some actions just are intrinsically wrong regardless of consequences. Bentham is in the much more difficult position of arguing that effects are all there are to moral evaluation of action and policy.[5]

Many critics have tried to trace out the difference between the somewhat similar theories of Bentham and Mill. Bentham's Hedonism was too egalitarian. Simple-minded pleasures, sensual pleasures, were just as good, at least intrinsically, than more sophisticated and complex pleasures. The pleasure of drinking a beer in front of the T.V. surely doesn't rate as highly as the pleasure one gets solving a complicated math problem, or reading a poem, or listening to Mozart. Second, Bentham's view that there were no qualitative differences in pleasures also left him open to the complaint that on his view human pleasures were of no more value than animal pleasures and, third, committed him to the corollary that the moral status of animals, tied to their sentience, was the same as that of humans. While harming a puppy and harming a person are both bad, however, most people had the view that harming the person was worse. Mill sought changes to the theory that could accommodate those sorts of intuitions. To this end, Mill's hedonism was influenced by perfectionist intuitions. There are some pleasures that are more fitting than others. Intellectual pleasures are of a higher, better, sort than the ones that are merely sensual, and that we share with animals. To some this seems to mean that Mill really wasn't a hedonistic utilitarian. His view of the good did radically depart from Bentham's view. However, like Bentham, the good still consists in pleasure; it is still a psychological state. There is certainly that similarity. While it is true that Mill is more comfortable with notions like 'rights' this does not mean that he, in actuality, rejected utilitarianism. The rationale for all the rights he recognizes is utilitarian.

Mill's 'proof' of the claim that intellectual pleasures are better *in kind* than others, though, is highly suspect. He doesn't attempt a mere appeal to raw intuition. Instead, he argues that those persons who have experienced both view the higher as better than the lower. Who would rather be a happy oyster, living an enormously long life, than a person living a normal life? Or, to use his most famous example — it is better to be

Socrates 'dissatisfied' than a fool 'satisfied.' In this way Mill was able to solve a problem for utilitarianism.[6]

Critical Analysis

Nowadays, even in the 21st century man is very calculative on every aspect of life.

If an example is taken, of a student when he chooses a particular course of study or a particular university then he tries to extract what benefit he will get. If while attending classes some teacher tells something off the topic, he tries to calculate what and how much time is wasted which is proportional to how much money or labor invested by him. He doesn't think that whatever the teacher is sharing is fruitful to him in the long run of life. He doesn't even bother once to insult the teacher and remind him of his duty. Somewhere the ethics and morality are drained.

Conclusion

Another example of the personal relationships of man, father has turned into a mortal ATM and mother is a free caretaker, while spouse is for conjugal entertainment and children are investments for old age. So, in each and every aspect of life a person is trying to evaluate the pleasure he is going to make or acquire in regard to his present pecuniary pain. If the pecuniary pain is more than the calculated pleasure then he will not move ahead with this. While if the pleasure account surpasses the pain then he will definitely do that. However, in doing so, men are tending to forget the emotional ties which in my opinion are the very roots of the society. If man tends to be over calculative then the society will again be fragmented. Thus, Bentham exists in the modern society may be not by the name of the Utilitarian thought, but very much in the essence of its "ism".

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