

## LIBERTY AND EQUALITY IN HEDONISTIC UTILITARIANISM

### 1. What is Utilitarianism?

How *should* societies be organized? Democracy or oligarchy; unlimited majority rule or constitutional restraints on the majority; private property or common resources; religious liberty or an established church?

Suppose you are asked to answer these questions: what basic standards or principles should you use to guide your answers? You might consult the political traditions of your society, or a religious text, or your own internal, intuitive sense of right and wrong.

The utilitarian tradition of moral and political thought—whose great exponents were Jeremy Bentham and John Stuart Mill, Adam Smith and David Hume—provides an alternative to such appeals to tradition, text, and inner oracle. The correct standard, utilitarians say, is the principle of utility—or, as Bentham sometimes called it, the "greatest happiness principle." This principle provides the *sole ultimate standard of right and wrong conduct*.

Here is a relatively crisp statement of the principle:

*Principle of Utility: In any circumstances, that action ought to be done (is right) and that institution ought to obtain (is right) which, of all the alternatives available, produces the greatest net balance of happiness over unhappiness, when we sum happiness and unhappiness over all sentient beings, from now into the future.*

Suppose that you want to decide whether slavery ought to be permitted in your society (Bentham himself was a lifelong opponent of slavery.). Some might say that it is wrong simply because of the oppressive burden it imposes on slaves:

because it violates their natural right to liberty, or because it violates their basic human dignity by treating them as objects rather than subjects, or because—as Frederick Douglas put it—the “cruel and blighting death which gathers over [the slave’s] soul.” The utilitarian agrees that slaves are burdened, though he puts the burden in terms of pain (rather than rights, dignity, or blight). But the utilitarian emphasizes that we need to consider benefits as well as costs. More particularly, to apply the principle of utility, you would first need to know the benefits in pleasures and costs in pains that would result from slavery for everyone affected by it; then you need to consider the same for the alternatives to slavery; and finally you aggregate: you add up the quantities of pleasure and subtract the pains caused by slavery; you do the same for the other alternative; and you select the system with the greatest net balance of pleasure over pain.<sup>1</sup>

The crucial feature of utilitarian political morality is that it calls for the maximization of *aggregate happiness*—summed over all—and not any particular distribution of happiness, or for a maximization of happiness subject to the constraint that everyone be above a certain minimum level. It follows from this emphasis on *aggregation* that utilitarianism requires that we trade off the burdens on some people (say, slaves) and benefits to other people (say, masters). Put otherwise, the moral importance of an individual’s life is exhausted by the level of happiness in that life, and thus the contribution to the sum. If the benefits to masters are large enough, then they outweigh the burdens on slaves, no matter how severe those burdens are for those who labor under them, and no matter how many suffer the burdens.

## 2. Three Reasons for Endorsing Utilitarianism

Why the principle of utility? Three reasons are especially important to the utilitarian's case for the principle. I will refer to them as considerations of *analytical tractability*, *moral equality*, and *consequentialism*.

The principle of utility reduces highly contested and vague issues of right and wrong to problems that can be addressed through public methods of observation and calculation, rather than by appeals to equally vague and contested intuitive ideas.<sup>2</sup> And because of these gains in analytical tractability, we may be able to secure greater public agreement about what is at stake in a political dispute and how to resolve it.<sup>3</sup>

The principle of utility represents one way to treat people as moral equals. It assigns the happiness of each affected party equal weight in determining what ought to be done. To be sure, utilitarianism does not require that people be equally happy, but it does require that no one's happiness counts for more than anyone else's: each person's happiness gets equal weight.<sup>4</sup>

Most fundamentally, the principle of utility represents a refinement of the intuitive idea that conduct and policy are right just in case they have the best overall consequences or best results: Bentham said that "thinking men look to consequences." Utilitarianism develops this *consequentialist* idea by identifying the goodness of an act's consequences with the amount of happiness produced by the act.<sup>5</sup> So if institutions or conduct are right just in case they have the best consequences, and if one state of affairs or set of consequences is better than

another just in case it contains more overall happiness, then what is right is what produces the greatest happiness.

### 3. Utilitarianism, Rights, and Fairness

The idea that the goodness of consequences is *one* important consideration in evaluating conduct and institutions is a familiar and not very controversial idea. And the idea that consequences are better if they involve greater happiness is also plausible. Indeed, if we think that benevolence is part of morality, then we think that there is something to be said for arrangements that promote greater happiness. But is this the whole story?

We commonly suppose that other considerations must be taken into account as well. Thus, it is a commonplace in our own political culture that individuals have *rights* that ought not to be abridged even in the name of producing good results, or promoting the general welfare. We do not think it is legitimate to punish the innocent or to deprive people of their religious liberty simply because such deprivations increase the sum of social happiness by contributing so much to the happiness of others. Moreover, we ask whether policies or institutions are in some way unfairly burdensome to some individuals: we look to how benefits and burdens are distributed across people, and resist the purely aggregative idea that a larger benefit to one always outweighs a smaller burden on another, or that a large sum of small benefits distributed across a big group always outweighs a smaller sum of big burdens concentrated on a very small group.

Utilitarians, however, assert that the principle of utility is the sole axiom of political morality. No matter what the kind or magnitude of the burden a policy or institution imposes on some individuals, utilitarians must endorse it if the benefits it confers on others are greater than those burdens. Aggregation is what matters, not distribution.

What then does the utilitarian say about rights and fairness? The answer is complex and important. To illustrate, consider the issue of basic rights: how does the utilitarian respond to the idea that slavery is wrong because it violates a basic human right to bodily integrity. The classical utilitarians—in particular, Bentham and Mill—were strong liberals: proponents of a fair legal system with protections for the innocent, rights to religious liberty, and freedom of speech and press. They did not deny the importance of rights, but argued that rights are not independent considerations in political argument, operating alongside of and potentially competing with the general happiness. Rather, people ought to have these protections *if and only if* providing them contributes to overall happiness. Should religious liberty be protected? Or to take a contemporary example: Should people have a right to terminate their own lives when future prospects are dim, and call in the aid of doctors to help? Yes, if these protections maximize overall happiness. Otherwise no. About bodily integrity and religious liberty, the utilitarians thought “yes.” They thought that, as a general matter, the burdens imposed by infringements of bodily integrity were greater than the benefits to masters resulting from those infringements; and that the burdens on religious

dissenters were greater than the benefits of religious uniformity. And that's why people should have those rights.

Common views about rights turn out, then, to mix truth and illusion: the truth is that rights are important; the illusion is that their importance is fundamental.<sup>6</sup> Instead, they are important *because* they increase overall happiness.

#### **4. Bentham's Interpretation of the Principle of Utility**

So far I have been discussing utilitarianism in general, and have referred several times to derivations of various conclusions about rights, for example, from the principle of utility. But to apply the principle of utility, we need to understand what happiness is, and what sorts of things produce it. Thus consider Bentham's account of utility.

First, then, "utility" is "the tendency to produce good consequences." So the principle of utility expresses the consequentialist idea that conduct is right just in case it has better consequences than the alternatives.

But what makes some consequences better than others? Bentham's proposal—a hedonist theory of value—is that pleasure (which he identifies with happiness) is the only intrinsically good thing: the only thing good in and of itself, and not good because of its consequences.<sup>7</sup> Knowledge and beauty, for example, are not good in themselves, but only for their effects. So conduct has utility only if it tends to produce pleasure<sup>8</sup>; and utility is maximized when the world is so arranged as to be maximally productive of pleasure.

But what is pleasure? Bentham tells us that pleasures are "interesting perceptions,"<sup>9</sup> by which he means mental states that we take an interest in or find it desirable to have.

And what produces such states? Bentham's answer is (basically) an egoistic variant of psychological hedonism. "Psychological hedonism" is the view that people act, as a matter of fact, to produce the greatest pleasure for themselves; the egoistic variant claims that what brings a person pleasure is principally a matter of the state of that agent—that pleasures and pain are principally "self-regarding." Bentham agrees that we sometimes derive pleasure from the pleasures of others—he calls these the pleasures of benevolence.<sup>10</sup> Sometimes we derive pleasures from their pain—he calls these the pleasures of malevolence.<sup>11</sup> But he asserts that self-regarding pleasures are the "most powerful, most constant, and most extensive."<sup>12</sup>

Finally, the differences between pleasures that are relevant to fixing their value are differences of quantity of pleasure, where the quantity of pleasure is determined by its two natural dimensions—the intensity of the pleasure, and its duration (the amount of time it lasts).<sup>13</sup> Better pleasures are interesting perceptions that last longer, or are more intense. Thus we can quantitize pleasures, and compare them across people.

## **5. Utilitarianism and Liberty**

Thus far, I have been focusing on the foundations of political morality. But the classical utilitarians—Bentham and Mill—were political reformers, concerned to

develop an analytically tractable form of moral argument in part because they wanted to establish a public basis for political reform. A utilitarian society, they thought, would not only be a more rational society, but one that would involve greater freedom and greater equality than previous systems. Why so?

Let's start with the case for individual liberty. Earlier I noted that it is common in our political culture to think that certain aspects of our lives lie beyond the reach of legitimate state regulation. The classical utilitarians were strong proponents of this liberal outlook. How do they derive liberal conclusions from utilitarian premises?

To illustrate, I will concentrate on the utilitarian opposition to "the legal enforcement of morality." By "the legal enforcement of morality" I mean the criminalization of conduct *simply* on the ground that that conduct violates morality as such—more specifically, is at odds with the majority's moral sensibility—even if the conduct is not harmful to other people than the agent herself.<sup>14</sup> The permissibility of enforcing morality is a topic of long-standing controversy, and the standard examples that have provided the focus for debate about the legal enforcement of morality include: prostitution, sodomy, fornication, public nudity, polygamy, suicide, and homosexuality.

Defenders of the legal enforcement of morality think that if community moral sentiment condemns sodomy, then the community has a good reason for punishing it. That reason may be outweighed, but it is a good reason notwithstanding. Proponents of enforcement might defend this view on three grounds: first, punishing deviations from community morality may be required to



preserve the morality of the community intact, and thereby preserve the community from breakdown;<sup>15</sup> second, democracy assigns each of us an equal role in deciding on our common moral environment, and therefore permits regulations that reflect the majority's view about that environment; and third, good communities are ones in which the members lead good lives, and enforcing morality helps to improve those lives and thus the quality of the community, which it is our collective responsibility to improve.

Opponents, in contrast, say that even if, for example, sodomy is morally wrong, that does not provide a reason for punishing it. They deny that immorality as such—apart from effects on others—justifies punishment.

Liberals have traditionally opposed enforcement, and have typically given three reasons for that opposition. A first line of argument is skeptical: since we cannot know which way to live is really best, we should not force people to live according to the community's moral lights. A second view is pragmatic: moral tolerance—a right to act in ways that the community judges wrong—is recommended as a strategy for keeping social peace. According to a third argument, autonomy—self-regulation in moral matters—is so fundamental to a good life that a person's own life cannot be improved through forced compliance with a moral code, even if that code is correct.<sup>16</sup>

Bentham, too, rejects the enforcement of morality.<sup>17</sup> But his reasons are different from any of the three I just canvassed. He argues that the enforcement of social morality decreases aggregate social welfare.

The crux of his argument is that "all punishment is mischief: all punishment in itself is evil."<sup>18</sup> That's because punishment produces pain for people who restrain their conduct to avoid it, for the person who is punished, and for his/her loved ones.<sup>19</sup> Moreover, punishment is costly: it is expensive to arrest people, staff the courts, build prisons. To justify the punishment, then, we must show a compensating benefit: a reduction in pain or increase in pleasure sufficient to outweigh the costs. Bentham's argument, then, is that when conduct is not harmful to others but is judged immoral by the community, the costs of punishment are not balanced by serious gain: there is no injury to others to prevent. In such cases, the punishment is "unprofitable," the costs of the punishment outweigh the benefits that flow from stopping the conduct.<sup>20</sup>

Suppose for example that a community morally condemns violations of its sexual code. By punishing violations of the code, the community does not generate significant utility gains, because others are not harmed (caused pain) by conduct that violates the code. But detecting and punishing deviations is costly. The costs/benefit analysis dictates that we leave the issue to private ethics, which may condemn conduct, but without criminal sanction.

In cases of immoral conduct, but with no harm to others, punishment tends to be unprofitable: at most a little benefit, but at very great cost. Punishment being unprofitable to the whole group, the principle of utility forbids criminalization: "these are no fit objects for the legislator to control."<sup>21</sup>

## **6. How Does a Utilitarian Defend Equality?**

Consider next the utilitarian case for equality—specifically, equality in the distribution of economic resources. Typically, when we ask whether a distribution of resources is just, we focus on such questions as: does the distribution properly reward need; or a person's efforts, or contribution, or desert. Or, we ask whether it emerges from the choices people make about what to do with their resources. According to the utilitarian, these questions are not, at bottom, the right ones to ask. We need instead to consider whether the distribution of resources maximizes happiness. Conventional precepts, focused on need, merit, choice, etc., are at best rules of thumb.

But while each person's happiness counts equally, it is at least possible that the way to maximize happiness would be through a grossly unequal distribution of resources. Suppose some group in the community — Nozick calls them “utility monsters” — is especially efficient at transforming resources into pleasure: each additional dollar to them produces an even greater increment of pleasure than the previous dollar did.<sup>22</sup> Suppose everyone else gets diminishing benefits from each additional unit. Then the former group ought to get the lion's share of the resources.

This possibility, Bentham thinks, does not accurately depict what people are like. Instead, he endorses the following psychological claim:

*Declining Marginal Utility: As an individual gets wealthier, the increment to his/her pleasure produced by an increment in his/her wealth gets smaller.*<sup>23</sup>

Given this assumption, we have some basis for the case that the equalization of resources promotes the overall happiness. Given declining

marginal utility, and assuming everything else is equal, the sum of pleasure will increase when we redistribute wealth from richer to poorer—say, through progressive taxation—where the average rate of taxation increases as income increases. Why? Along with declining marginal utility, assume some uniformity in people's ability to transform wealth into pleasure. Now consider taking a dollar from the billionaire Jones and giving it to poor Smith. When poor Smith gets the redistributed dollar his pleasure increases; moreover, that increase will be greater than the decrease in pleasure suffered by the richer Jones from having one fewer dollar: that's the result of declining marginal utility.<sup>24</sup> The gain is bigger than the loss, so we have an overall welfare gain.

Matters are, of course, not so simple; and Bentham's own support for economic equality is, in the end, highly qualified.<sup>25</sup> While equalization may increase overall pleasure, holding everything fixed, everything is not fixed. Suppose, in particular, that the effort people are prepared to put into their work make is responsive to their expectations of reward. Then equalizing income will weaken incentives to work for the wealthy: it will lead them to substitute leisure for work, thus shrinking the pie available for distribution.

Still, there is some *prima facie* case for greater equality of resources as a means to ensure that resources are concentrated where they will do the most good in producing pleasure.

## **7. Assessment of Argument for Moral Liberty**

Bentham's arguments for equality and liberty have some force. The argument against enforcement importantly reminds us of the costs of an apparatus to detect and punish crime. And the claim about declining marginal benefit is not implausible, and suggests a rationale for opposition to great inequality. The utilitarians were defenders of progressive taxation, because they saw it as shifting the burden to those who could more easily bear it.

But neither argument is compelling as it stands, even if we accept the principle of utility as our political axiom. I will explain why with reference to the case against the legal enforcement of morality.

Earlier, I mentioned what Bentham calls the "pleasures of malevolence"—pleasures in the pains of others, perhaps the pains of people whose conduct we disapprove of. We are often inclined to think that such pleasures are simply irrelevant to the justification of policy—that the pleasures experienced by a racist who witnesses the sufferings of the target of his or her racism should not count in the deciding what to do. But that option of simply excluding pleasures is not available to Bentham: pleasures are pleasures, and their value is determined simply by their intensity and duration. Bentham, then, stakes his case for moral liberty on the optimistic assumption that such pleasures are not very common.<sup>26</sup>

But he does not really make a forceful case that these pleasures of malevolence are—when aggregated over the whole population—generally outweighed by the pains of punishment. And if the pleasures of malevolence are greater than he supposes, then the threat extends beyond moral liberty: no one

who is the target of popular distaste will be secure at all. We will have punishment for despised innocents, and hated ethnic minorities.

Perhaps, then, it will often be profitable to severely punish behavior that violates common moral sensibilities. Moreover, as a population increases in malevolence, the protection of liberties for members of the population ought to decline rather than increase. So Bentham's utilitarian defense of moral liberty seems very shaky. And the same considerations apply to his reasons for personal security and bodily integrity: though Bentham was anti-slavery, the restraints imposed on slaves—particularly when the slaves are a despised group—may well be outweighed by the gains to the non-slave population.

The underlying problem might derive from Bentham's claim that political argument must proceed by aggregating the pleasures and pains of people—indifferent to the distribution across people.

Or it might come from the idea that the sole intrinsic good is pleasure and that its value is given by its quantity. I will return to the first criticism later on. The second line of criticism owes to John Stuart Mill. Mill wants to preserve the principle of utility, but looks for a way to evaluate pleasures and pains by something other than their quantity. One pleasure, he says, can "be more valuable than another" on grounds of its "higher quality," not simply its greater quantity.<sup>27</sup> Arguing from this alternative conception of pleasure, happiness, and human well-being, Mill sought to show the true costs of restricting liberty and permitting grave inequality, and thereby to put the utilitarian defense of liberty and equality on more secure foundations.

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<sup>1</sup> See Bentham, *Introduction*, chap. 4, point V,

<sup>2</sup> If we decide moral questions by reference to utility, Bentham says, then they are “put on . . . the issue of fact; and mankind are directed into the only true track of investigation which can afford instruction or hope of rational argument, the track of experiment and observation.” *Anarchical Fallacies*, p. 495.

<sup>3</sup> On this first rationale for utilitarianism, see the excellent discussion in Ross Harrison, *Bentham*, chap. 7.

<sup>4</sup> See Ronald Dworkin and Will Kymlicka.

<sup>5</sup> It rests on the “theory of life. . . that pleasure and freedom from pain are the only things desirable as ends Mill, *Utilitarianism*, chap. 2, ¶2.

<sup>6</sup> For an illuminating discussion of Bentham and Mill on rights, see H.L.A. Hart, “Natural Rights: Bentham and John Stuart Mill,” in *Essays on Bentham*, Chap. 4.

<sup>7</sup> *Introduction*, sec. 1.3.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, sec. 5.1.

<sup>10</sup> *Ibid.*, sec. 5.10.

<sup>11</sup> *Ibid.*, sec. 5.11.

<sup>12</sup> For references, see John Dinwiddy, *Bentham*, p. 24; Elie Halévy, *The Growth of Philosophical Radicalism*, p. 405.

<sup>13</sup> Bentham, *Introduction*, sec. 4.1.

<sup>14</sup> I am abstracting here from the vast area of conduct that, while not harmful to others, offends their sensibilities. See Joel Feinberg, *Offense to Others* [ref].

<sup>15</sup> See Lord Patrick Devlin [ref].

<sup>16</sup> “Where (not the person’s own character) but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness. . . .” John Stuart Mill, *On Liberty*, chap. 3, ¶1. See also Dworkin.

<sup>17</sup> See *Anarchical Fallacies*, p. 522.

<sup>18</sup> Bentham, *Introduction*, 13.1.

<sup>19</sup> *Ibid.*, sec. 13.4.14, on the evils of coercion, apprehension, and sufferance, as well as derivative evils; and see also 17.12.

<sup>20</sup> See *ibid.*, sec 13.4 for the definition of “unprofitable punishment.”

<sup>21</sup> *Ibid.*, p. 316.

<sup>22</sup> Nozick’s “utility monsters.”

<sup>23</sup> In Bentham’s words: “of two individuals with unequal fortunes, he who has the most wealth has the most happiness,” but “the excess in happiness of the richer will not be so great as the excess of his wealth. Quoted in Harrison, p. 158.

<sup>24</sup> *Leading Principles*, Point 31.

<sup>25</sup> See Bentham’s *Civil Code*.

<sup>26</sup> “happily,” he says, “there is no primeval and constant source of antipathy in human nature *Introduction*, 6.27.22.

<sup>27</sup> See *Utilitarianism*, chap. 2, ¶5.