

JEREMY BENTHAM ON EQUAL RIGHTS AND JUSTICE: AN OVERVIEW

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Abstract: For the regularity of human conduct as well as the peaceful coexistence in the society among human subjects, the notions of equal rights and justice are to be properly articulated and adapted. It is from this backdrop that this research embarks on an overview of the late English jurist, Jeremy Bentham's arguments on equal rights and justice. Who is Jeremy Bentham? What arguments has he put forward for the praxis of what would constitute equal rights and justice? Is there any connection between his utilitarian ideals and any of these? These form the background to this research. In this essay, we argue that Jeremy Bentham's utilitarian basis for the comprehension of rights and justice is not only inadequate but also grossly misleading. It is the submission of this essay therefore that a utilitarian basis for the subject matter is not worth the while in terms of practical utility towards the maintenance of peace and harmony among members of the society.

Keywords: Jeremy Bentham, Equal Rights, Justice, Utilitarianism.

Introduction

The existence of the legal framework is tailored towards safeguarding the rights and properties of the people as well as making sure that justice is perceived when matters of trespassing arise. For us to set the pace for the subject matter, let us consider a scenario very briefly.

Factory businesses in Lagos, Nigeria, owing to the absence of incessant electricity, generating plants are usually installed and these are high sources of air and noise pollutions for 10 residents. In a country where there is almost low consciousness concerning health insurance, children of the residents begin to manifest health disorders that are not unconnected with the smoke and noise from the generating plants. Assuming nothing significant is done to improve the situation, each of the residents suffers ₦150,000 per annum, in hospital bills, which culminates into ₦1,500,000 for all the 10 put together. As a result, they start pressing the company to either relocate or find a way of mitigating the effect of the

situation. The conundrum may however be resolved via two routes: (1) Either the company purchases a soundproof generating plant that would cost her ₦1,200,000 or (2) Each of the residents decides to soundproof her walls and apartments via upholstery, (as done in music recording booths), and install air-conditioners to cushion and reduce the effect of the smoke and noise pollutions at an estimated cost of ₦200,000 per block, which translates into ₦2,000,000.

Clearly, the plausible proposal is for the factory to procure a soundproof generating plant since it eliminates the total estimate of hospital bill of ₦1,500,000 thereby saving them ₦300,000 since it is cheaper and environmental friendly this way. However, one may ask: Is it justifiable to compel the factory to make the expensive renovation put at ₦2,000,000 or assume responsibility for the hospital bills put at ₦1,500,000 on behalf of the residents? In other words, would the outcome be laudable if the right to clean air were assigned to the residents or if the right to pollute is given to the factory? If the former holds, the factory has three choices: (1) Pollute and pay ₦1,500,000 in hospital bills; (2) Assume the cost of renovation on behalf of the residents at ₦2,000,000; (3) Purchase a soundproof generating plant at ₦1,200,000. The factory would likely explore (3) since it is cheaper and they could get the present generating plant sold to some rural user or buyer.

On the other hand, if there is a right to pollute, the residents have three choices: (1) Endure the huge annual hospital bills of ₦1,500,000 (2) Renovate their apartments for ₦2,000,000 (3) Since it is cheaper, they may purchase the generating set on behalf of the factory at ₦1,200,000, so as to live peacefully and healthy.

The above situations are similar or even of lesser severity than what people face in their daily activities. From this perspective, we may want to ask ourselves what the role of justice and equal rights can play among social interactions. What exactly are rights? What are the substances of rights? What theories may be traced in this connection? Is justice capable of safeguarding our fundamental human rights? If this is the case, how? These are some of the questions that we shall focus on in this paper as we take our cue from Jeremy Bentham on the subject-matter. To realise this objective, this essay has five parts; the first being this introduction. The second part concerns itself with analysis (this is the theoretical framework of the subject) of the notions and substance of rights and justice before we narrow them to the ideas of Jeremy Bentham's act utilitarianism, which occupies the next section. The fourth section makes a critique of Bentham and the entire utilitarian ideological position, as the fifth divide of this essay concludes the subject-matter.

Justice and Equal Rights: An Analysis

In this section, our conceptual analysis and nature would commence with justice before proceeding to that of equal rights. The term 'justice' is as old as any attempt to form human society. In other words, what we are saying is that justice is a technical term that people who want to devise a plan for equity in society have never failed to deal with. B.S Cayne reveals that justice is the "behaviour to oneself or to another which is strictly in accord with currently accepted ethical law or as decreed by legal authority."¹ Justice as has been shown by B.S Cayne has to do with what is in agreement with laid down principles or rules of regulation guiding the daily activities of a society. However, if this is the case, why are people always prone to be against the side of the law? Is it because the law is too harsh on them?

These are questions that whoever wants to examine the idea of justice must never joke with. Anthony Kenny in his 2003 work maintains that, "It is also the act of being just and/or fair."² This does not, however, make matters simple as the questions of what is just and what is fair have occupied the minds of the political philosophers up till the present day. Technological breakthroughs that include the advancement in scientific research is one of the many developments that affect the social interaction among the individuals thus making what philosophers in the present age consider while they were theorizing become obsolete.

Contemporaneously, the American 20th century political philosopher John Rawls admits, "justice is the first virtue of social institutions, as truth is of systems of thoughts."³ This shows the inevitable importance of justice in any social interaction. Daston Lorraine puts it thus:

Justice can be thought of as distinct from and more fundamental than benevolence, charity, mercy, generosity, or compassion. Justice has traditionally been associated with concepts of fate, reincarnation or Divine Providence, i.e. with a life in accordance with the cosmic plan. The association of justice with fairness has thus been historically and culturally rare and is perhaps chiefly a modern innovation [in western societies].⁴

There are various theories of justice. Some of these are: distributive theories of justice; retributive theories of justice; divine theory of justice,

1 B.S. Cayne, *The New Webster's Dictionary of the English Language*, (New York: Lexicon Publishing Ltd., 1992), 532.

2 A. Kenny, *An Illustrated Brief History of Western Philosophy*, (New York: Blackwell Pub. Ltd., 2006), 267.

3 J. Rawls, *A Theory of Justice*, (Oxford: Oxford University Press, 1999), 3.

4 D. Lorraine, "Life, Chance and Life Chances." *Daedalus*, 2008, 7.

etc. Although, there are many other theories, we shall limit our discussion to these ones that we have highlighted as they capture what we are concerned with in this paper.

The Divine theory of justice stems from the belief in a Supreme Being who caused the world to exist and orders the continuous order of things. This Supreme Being is thought to have also made laws that would guide the operations of the humans that he had created. The Divine Theory of justice is closely knitted with the Divine Command Theory of morality. Emmett Barcalow puts it simply that:

According to the Divine Command theory of morality, an action is wrong if and only if it is forbidden by God and an action is right if and only if it is either permitted or required by God. Therefore, whatever God forbids is immoral, whatever God permits is morally acceptable, and whatever God requires is morally obligatory.⁵

The above, when brought into the parameters of justice tells us almost the same. What is just is what is approved by God. Overall, Divine theory of justice receives its origin and foundation in the existence and belief in a God. However, not everybody believes in God just as not everybody believes in the same God or the same revealed 'Book'.

Distributive theory of justice is one of the oldest theories on any discourse in justice. Distributive justice theorists generally do not answer questions of *who has the right* to enforce a particular favoured distribution. On the other hand, property rights theorists argue that there is no "favoured distribution." Rather, distribution should be based simply on whatever distribution results from non-coerced interactions or transactions (that is, transactions not based upon force or fraud).

Under distributive theory of justice, we can discuss other stuffs like egalitarianism, fairness and the likes. Egalitarianism is the theory of justice under distributivism that holds that justice can be said to have occurred in a society if and only if there is equality. In another attempt, John Rawls basing his theory on the social contract tradition argues that distributive justice can arise as a form of fairness. John Rawls came out with the conclusion that:

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all. Social and economic inequalities are to be arranged so that they are both to the greatest benefit of the least advantaged, consistent with the just savings principle, and

5 E. Barcalow. *Moral Philosophy: Theories and Issues*, (California: Wadsworth Publishing Company), 24.

attached to offices and positions open to all under conditions of fair equality of opportunity.⁶

We shall now examine the idea of equal rights, paying attention to human rights as well.

Equal rights here mean something that can be demanded and insisted upon without embarrassment or shame. This right is to be seen in two senses: legal rights and moral rights. Rights in the legal sense denotes a benefits validly conferred by law, while in the moral sense, rights are assertions of notions of wrongness and rightness without any backing of the legal and judicial system.⁷

The claims of equal rights incorporate such ideals as liberties, power, expectations and advantages, which the individual seeks to enjoy from the society by virtue of being human. It must be added that these rights are conceived as inherent or intrinsic in individuals as rational free willing creatures, not conferred by some positive laws nor abrogated by positive laws.⁸ They are not claims based on parochial interests. Rather, they are inherent with a universal application. They are universal because all races and tribes, sexes, status of individuals enjoy them and they apply to all persons without discrimination.

In other words, equal rights are derived from the fact of universal humanity, which man enjoys and shares with his fellow men, and as such, such rights should be granted and guaranteed to everyone. These rights are fundamental; in that they are basic and are attached to his being born or created without necessarily contributing anything to the society into which he is created. These fundamental rights are innate to man's creation and are as such, imprescriptibly and inalienable. Human rights, when recognized, respected and protected, enable man to fully develop and use all human qualities such as intelligence, talents and conscience to satisfy both spiritual and mundane needs.⁹ In fact, equal rights protect the dignity of every man.

6 Op Cit, Rawls, 226.

7 O.A. Balogun, A.K. Fayemi, "The Relevance of Ifa to Jurisprudence", *The International Conference on Philosophy and the Law in Africa*, 11th -14th June, 2008.

8 A.O. Obaseki, "The Judiciary and Human Rights", in Y. Osinbajo & A.U. Kalu (eds.), *Perspectives on Human Rights*, (Lagos: Federal Ministry of Justice, 1992), 19.

9 A.K. Fayemi, "Rethinking Personalism and Human Rights in 21st Century Africa", A paper presented at the International Colloquium on Euro-African Personalism, 26-28 September, 2007, IDEE-Quidah, Benin Republic, 3.

Before we proceed to Jeremy Bentham on the subject matter, let us briskly consider two popular perspectives to the subject of rights. According to Alon Harrel there are two perspectives to rights: choice and interest.¹⁰

The choice theory of rights regards rights as protecting the exercise of choice.¹¹ Right-holders are agents who are given control over another person's duty and can thus be analogized to a "small-scale sovereign."¹² Rights, under this view, can be identified as protected choices – protection which is conducive to the autonomy and self-realization of right holders.¹³

The interest theory of rights holds that the point of rights is to protect and promote (some of) the right-holders' interests. The dominating picture here contrasts with the choice theory in that it characterizes rights as protected choices and consequently emphasizes the status of right-holders as the passive beneficiaries of protective and supportive duties imposed on others.¹⁴ Facilitating individual choice can be classified as an interest, and that interest can be protected by rights; but it does not have the privileged status that it has within the choice theory of rights. Moreover, in contrast to the choice theory, the interest theory protects choices only because, and to the extent, that they promote the right holders' interests. Consequently, the interest theory is broader in the scope of concerns it protects and can acknowledge the existence of inalienable rights; it can also ascribe rights to entities, which are not agents, as long as these entities have interests, that is, as long as they can be made better or worse off. With the terms in the discourse properly situated, let us now proceed to examine the utilitarian ideals of Jeremy Bentham in this connection.

Jeremy Bentham's Utilitarian Underpinning of Right and Justice

What makes an attitude, action or world-view right from Jeremy Bentham as utilitarian? What is the scholar's position on the subject of justice from his utilitarian angle? We focus on in this section these questions. He famously held that humans were ruled by two sovereign masters

¹⁰ A. Harrel, "Theories of Right", in M.P. Golding, W.A. Edmundson (eds.), *The Blackwell Guide to the Philosophy of Law and Legal Theory*, (Malden: Blackwell Publishing, 2005), 196.

¹¹ H.L.A. Hart, "Legal Rights", in H. L. A. Hart (ed.), *Essays on Bentham: Jurisprudence and Political Theory*, (Oxford: Clarendon Press, 1982), 184.

¹² Ibid, 183.

¹³ Op Cit. Harrel, 199.

¹⁴ C. Sumner, *The Moral Foundations of Rights*, (Oxford: Clarendon Press, 1987), 47.

— 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...”¹⁵ In his own words, Bentham harps:

Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand, the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. . . . The *principle of utility* recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law. Systems which attempt to question it, deal in sounds instead of sense, in caprice instead of reason, in darkness instead of light.¹⁶

Pain and pleasure are central features for Jeremy Bentham, and this is imported into his notion of equal rights and justice. If this is the case, can justice and equal rights be guaranteed? We deflect this question for the moment as we continue to delve deeper into his notion of utilitarianism vis-à-vis equal rights and justice.

The determining factor is thus the outcome of our actions: do they make us happy or sad? Through the application of a ‘felicific calculus’, he argued, we can test the ‘happiness factor’ of any action or rule. Utilitarianism thus looks to the consequences of actions; it is therefore described as a form of ‘consequentialism’ which must be distinguished from deontological systems of ethics which hold that the rightness or wrongness of an action is logically independent of its consequences – “Let justice be done though the heavens fall!”¹⁷ is one of its uplifting slogans.

It is important to note that the utilitarian thinkers distinguish between ‘act utilitarianism’ (the rightness or wrongness of an action is to be judged by the consequences, good or bad, of the action itself), and ‘rule utilitarianism’ (the rightness or wrongness of an action is to be judged by the goodness or badness of the consequences of a rule that everyone should perform the action in like circumstances).

Generally, discussions of utilitarianism concern themselves with ‘act utilitarianism’, though legal theorists often appeal to ‘ideal rule utilitarianism’ which provides that the rightness or wrongness of an action is to be judged by the goodness or badness of a rule which, *if observed*,

15 J. Bentham, *An Introduction to The Principles of Morals and Legislation*, (New York: Macmillan, 1948), 1.

16 Ibid, 1.

17 R. Wacks, *A Very Short Introduction to the Philosophy of Law*, (Oxford: Oxford University Press, 2006), 64.

would have better consequences than any other rule governing the same action. This form of rule utilitarianism has clear advantages in circumstances where a judge is called upon to decide whether the plaintiff should be awarded damages against the defendant. He must obviously disregard the result of his judgment on the particular defendant.

This then clearly implies that when matters of equal rights and justice are underway, Jeremy Bentham would recommend we acknowledge the consequences of the praxis of judgment rather than allowing the free wand of justice to be wielded without such considerations. Does this not mean that Jeremy Bentham's utilitarian position is a recipe for disaster when it comes to equal rights and justice? We embark on an overview of his ideas in the section that follows.

Jeremy Bentham's Utilitarian Basis for Rights and Justice: An Overview

There is no doubt that the utilitarian praxis employed by Jeremy Bentham on the subjects of equal rights and justice is not only erroneous but also misleading. It has the propensity of making justice what it ought to be as it has been reduced to the principle of pain and pleasure.

Utilitarianism has the considerable attraction of replacing moral intuition with the congenially down-to-earth idea of human happiness as a measure of justice. However, the theory has long encountered resistance from those who argue that it fails to recognize the 'separateness of persons'. They claim that utilitarianism, at least in its pure form, regards human beings as means rather than ends in themselves. Separate individuals, it is contended, are important to the utilitarian thinkers only as far as they are 'the channels or locations where what is of value is to be found'. Utilitarianism can seem trivially true. Who can object to the dictum that we ought to maximise welfare? Who can argue that we should sometimes act in a way that does not maximise welfare? However, the theory is far from self-evidently true. It can also be stated as a version of the doctrine that the end justifies the means. This is no trivial truth.¹⁸

Opponents of utilitarianism claim that, though the approach treats individual persons equally, it does so only by effectively regarding them as having no worth: their value is not as persons, but as 'experiencers' of pleasure or happiness. Thirdly, critics query why we should regard as a valuable moral goal the mere increase in the sum of pleasure or happiness abstracted from all questions of the *distribution* of happiness, welfare, and so on.¹⁹

18 T. Tannsjo. *Understanding Ethics*, (Edinburgh: Edinburgh University Press Ltd., 2002), 19.

19 Op Cit. Wacks, 64.

A fourth kind of attack alleges that the analogy used by the utilitarian thinkers, of a rational single individual prudently sacrificing present happiness for later satisfaction, is false for it treats my pleasure as replaceable by the greater pleasure of others. Some have attacked the assumption at the very heart of utilitarianism: why should we seek to satisfy people's desires? Certain desires – e.g. cruelty to animals – are unworthy of satisfaction. Moreover, are our needs and desires not, in any event, subject to manipulation by advertising? If so, can we detach our 'real' preferences from our 'conditioned' ones?²⁰

T. Tannsjo insists that utilitarianism is a threat to close relations and friendships. The objection that utilitarianism cannot be applied, was met by those who wanted to defend utilitarianism with the invocation of a distinction between, on the one hand, the utilitarian criterion of rightness and, on the other, a utilitarian method of decision-making.²¹ According to the former, an action is right if and only if it maximises the sum total of welfare in the universe. The latter invites us to account for the alternatives facing us, so that we can try to maximise expected rather than actual welfare. But what if we always use this method of decision-making (to the extent that it is possible for us to do so)? Does not this mean that we become rather odious creatures, callously calculating the outcome of our actions? Does not this mean that we become incapable of having close relations as well as friends? Does not this mean that the utilitarian method of decision-making has turned out to be counter-productive?

Another problem is that the utilitarian theory is too demanding of us. Utilitarianism is obviously a very demanding theory. We have failed to live up to the demands of the theory if, at some time, we have not maximised the sum total of welfare in the universe. As soon as there is some individual suffering some hardship that we could alleviate, we ought to do so – provided we cannot do even more good by performing an alternative action. In that case, we ought to perform this action instead. We may have given up all our affluence to relieve suffering among people living in the poor parts of the world, only to learn that we should have robbed a bank as well and sent this money to OXFAM. This may seem absurd, but note that this conclusion has been accepted as basically sound by many utilitarian thinkers. A vivid defence of a position like the one sketched here (but without explicit reference to utilitarianism) has been presented recently by the American philosopher Peter Unger. So, perhaps, this conclusion is not so absurd, after all.²²

²⁰ Ibid, 64.

²¹ Op Cit. Tannsjo, 30.

²² Ibid, 30.

Conclusion

The notions of equal rights and justice have been examined from the angles of Jeremy Bentham's philosophy, which is primarily utilitarian. It is clearly the case that his principle does not hold water as it has reduced the whole gamut of rights and justice to the tussle between the proximity of pain and pleasure. It is therefore the submission of this essay that Bentham's thoughts on justice and rights cannot pass muster if one is really seeking justice for peaceful coexistence among human subjects in a community.

Bibliography

- Balogun, O.A., Fayemi, A.K. (2008), "The Relevance of Ifa to Jurisprudence", *The International Conference on Philosophy and the Law in Africa*, 11th -14th June, 2008.
- Barcalow, E. (2000), *Moral Philosophy: Theories and Issues*, California: Wadsworth Publishing Company
- Bentham, J. (1948), *An Introduction to The Principles of Morals and Legislation*, New York: Macmillan.
- Cayne, B.S. (ed). (1992), *The New Webster's Dictionary of the English Language*, New York: Lexicon Publishing Ltd
- Fayemi, K. A. (2007), "Rethinking Personalism and Human Rights in 21st Century Africa", A Paper Presented at the International Colloquium on Euro-African Personalism, 26-28 September, 2007, IDEE-Quidah, Benin Republic.
- Harrel, A. (2005), "Theories of Right" in M.P. Golding, W.A. Edmundson (eds.), *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Malden: Blackwell Publishing.
- Hart, H. L. A. (1982), "Legal Rights", in H. L. A. Hart (ed.), *Essays on Bentham: Jurisprudence and Political Theory*, Oxford: Clarendon Press, 162–93.
- Kenny, A. (2006), *An Illustrated Brief History of Western Philosophy*, New York: Blackwell Publishing Ltd.
- Lorraine, D. (2008), "Life, Chance and Life Chances", *Daedalus* 19.
- Obaseki, A.O. (1992), "The Judiciary and Human Rights", in Y. Osinbajo & A.U. Kalu (eds.), *Perspectives on Human Rights*, Lagos: Federal Ministry of Justice.
- Rawls, J. (1999), *A Theory of Justice*, Oxford: Oxford University Press.
- Sumner, L. W. (1987), *The Moral Foundations of Rights*, Oxford: Clarendon Press.
- Tannsjo, T. (2002), *Understanding Ethics*, Edinburgh: Edinburgh University Press Ltd.
- Wacks, R. (2006), *A Very Short Introduction to the Philosophy of Law*, Oxford: Oxford University Press.