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Jeremy Bentham

Emmanuelle de Champs

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. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while. The principle of utility recognises 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.

But enough of metaphor and declamation: it is not by such means that moral science is to be improved.

The principle of utility is the foundation of the present work: it will be proper therefore at the outset to give an explicit and determinate account of what is meant by it. By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness. I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government.¹

In the opening lines of *An Introduction to the Principles of Morals and Legislation*, written in 1780 and published in London nine years later, Jeremy Bentham (1748–1832) stated the fundamental principles of a new philosophical system based on a simple and incontrovertible principle, that of ‘utility’. These principles were the cornerstones of the legal, political and ethical philosophy he later called ‘utilitarianism’.

The principle of utility is asserted at the outset in the form of a scientific rule: human beings are ruled by ‘two sovereign masters – *pain* and *pleasure*’. In other words, all behaviour is guided by attempts to avoid pain to oneself, on the one hand, and to increase one’s pleasure, on the other. By equating pleasure with ‘happiness’ and, in turn, with ‘interest’ and ‘utility’, Bentham drew on a multifaceted tradition in Enlightenment Europe. At the beginning of the eighteenth century, Bernard Mandeville’s provocative *Fable of the Bees* (1714) unveiled the self-interested motives at work behind so-called ‘virtuous’ behaviour and showed that, paradoxically, ‘public virtue’ could follow from ‘private vices’. Though his ideas were discussed at the time, few were prepared to go as far as Claude-Adrien Helvétius, who refused to equate self-interest with vice. Instead, he argued, interest should be recognized as the only source of virtue (*On Mind*, 1758). In this extract, Bentham follows in the footsteps of the Frenchman when he claims that not only do the quest for pleasure and the avoidance of pain exclusively explain our actions, but that they also legitimate them. For Bentham, an action is ethically good when it increases the quantum of pleasure and wrong when it diminishes it. In other words, utility is the sole ‘standard of right and wrong’, a normative principle (stating what *ought to be*) as well as a descriptive one (stating what *is*). Logically and ethically, such a proposition is fraught with difficulties: Are we being advised to do what we are already doing?

Leaving these difficulties unresolved in this paragraph, Bentham added that the principle of utility must serve as a guide not only for ‘every action of a private individual’ but also for ‘every measure of government’. Again, despite its apparent simplicity, this statement is open to objections: we can all think of actions that promote our individual interest at the expense of someone else’s and of society as a whole. This difficulty is compounded by Bentham’s definition of ‘public interest’ in the pages immediately following this extract. ‘The interest of the community’, he claimed, is ‘the sum of the interests of the several members who compose it’ (*Introduction*, 12). Does the extreme pleasure of the master make up for the misery of the slave? On a larger scale, is it legitimate to sacrifice the happiness of one person to the well-being of a greater number? Believing,

as Bentham did, that the happiness of the community can be calculated by aggregating individual happiness seems to open the door to all sorts of abuse. Moreover, there seems to be an internal contradiction between this aggregative view of collective interest and the statement that 'the fabric of felicity' must be 'reared by the hands of reason and of law': What can the role of the legislator or of the philosopher be if private interests add up naturally to make up the public interest?

Bentham's rhetorical confidence, his cursory dismissal of alternative approaches that 'deal in sounds instead of sense', should not blind us to the provocative aspects of these opening lines, nor should they obscure the philosophical difficulties that underlie the presentation of the principle of utility as the key to philosophical, ethical and political questions. Bentham's extensive writings can be read as attempts to explore the fields opened by these questions. What is a utilitarian political system? What issues does this raise for the Liberal tradition?

Having identified interest as the root of all human actions, Bentham set out to explore the psychological implications of this statement. In *An Introduction to the Principles of Morals and Legislation*, he took into account the varying sensibilities of different people to pleasures and pains and listed the four sources from which such sensations can flow: the operation of the physical laws of nature, the laws of political society, the actions and opinions of other people or the infinite pleasures and pains meted out by God. Bentham acknowledged the social dimension of pleasure and pain, examining, for instance, the pleasure created by benevolence or good repute or the pain caused by a fine or a prison sentence. Confronted with the variety of pleasures and sensibilities, Bentham insisted that each individual was the best judge of his or her own interest and that no kind of pleasure was in itself more valuable than another (*Introduction*, ch. III–V). Though he does not demonstrate it, he believed that individuals always weigh prospective pleasures and pains, consciously or not, accurately or not, before taking action: 'Passion calculates, more or less, in every man' (*Introduction*, ch. XIV). Utilitarianism, as a philosophy, thus rests on explicit psychological foundations. But whereas we can assume that everyone is guided by self-interest, we cannot claim to penetrate their motives or their intentions. It follows that, from the point of view of civil and political society, the morality or the legality of an act should be assessed only from its consequences on all individuals affected by it, not according to the alleged intentions of its author (*Introduction*, ch. VII–X).

This method was in line with that of contemporary European reformers in the field of penal law. Like the Milanese Cesare Beccaria (*On Crimes and Punishments*

[1764]), Bentham used arguments drawn from utility to argue in favour of clearly expressed rules of law punishing crimes according to their tendency to detract from the greatest happiness of the greatest number. In *An Introduction to the Principles of Morals and Legislation* and *Of the Limits of the Penal Branch of Jurisprudence* (written 1781–2 but only published in the twentieth century) he laid the foundations for a utilitarian analysis of legal systems: laws should issue from a recognized sovereign, be stated in clear everyday language and be accompanied by punishment proportional to the harm caused, not to the alleged intentions of the criminal, legal tradition or the supposed will of God. Only when the legal consequences of their actions are predictable can people use the law as a guide to shape their private behaviour. The English common law system, in which judges derive rules from precedent cases and use an array of technical words and phrases, was thus directly opposed to utility. Beyond penal law, Bentham also called for the codification of civil and constitutional law according to utilitarian standards. Though the idea of codification did not gain much ground in Britain, his ideas were widely influential in the gradual reform of English law that took place in the nineteenth century. Though they remained unpublished until the 1970s, his arguments in favour of decriminalizing homosexual acts are a persuasive illustration of the principle that the law should not punish actions that exclusively cause harm – if indeed any harm is caused – to those who commit them.

In *A Fragment on Government*, published in 1776, Bentham conducted a simultaneous attack on two pillars of the British Establishment: English common law and the British Constitution. He used the principle of utility to expose the fictions, the incoherence and the contradictions of the legal political doctrine presented by William Blackstone in *Commentaries on the Laws of England* (1765–9). He argued that the happiness of the people, and not conformity to a mythical contract, is the only test of good government, and that present obedience is based solely on present interest (in which past habit plays a part), and not on a fictitious original contract, an analysis for which he drew on David Hume's *Treatise of Human Nature* (1739–40). Bentham also criticized Blackstone's argument that the British Constitution combined the qualities of the three classical forms of government (monarchy, aristocracy and democracy) and harmoniously organized executive, legislative and judiciary functions. Though Bentham's main object in this work was to criticize and not to construct a new theory of government, he did however hint at the desirable features of 'a free government' conformable to utility: the source of authority should be

clearly stated, power should be established on a secure basis ensuring obedience and people should partake of the power of government by ‘frequent and easy *changes* of condition between governors and governed’. Crucially, the press should be free to ensure the accountability of rulers.² Bentham then actively sought to secure freedom for individuals: freedom from arbitrary power and oppression, freedom to actively participate in government, freedom of the press and of public discussion. These tenets, to which he adhered throughout his life, win him a place in the Liberal tradition.

By calling for open institutions ruling according to, and in favour of, the happiness of the greatest number in 1776, Bentham contributed to the transatlantic debate opened by the Declaration of Independence. However, though he was critical of British institutions, he also explicitly rejected calls for independence. Indeed, the greatest happiness of the greatest number requires stability, and citizens should obey as long as ‘the probable mischiefs of obedience are less than the probable mischiefs of resistance’.³

A Fragment on Government is not a call to armed insurrection. This early pamphlet exemplifies the specific place occupied by Bentham’s political thought: unlike many of his contemporaries, he refused to vindicate the British political system inherited from the Glorious Revolution of 1689, while also refusing to support the American colonists who wished to break with it. Indeed, for him, both sides shared a belief in limited government (the ideas of an original contract and of the separation of powers) that was incompatible with the strongly centralized power, which Bentham considered necessary to utilitarian government, and with the idea that the state had some responsibility in engineering individual happiness. For these reasons, critics have pointed out the illiberal aspects of his system.

The foundations of Bentham’s political thought outlined in *A Fragment on Government* help us understand how it evolved in the following decades, in an age of political and institutional experimentation in Europe and in America. Never abandoning his campaign to reform English law at home, Bentham saw more opportunities for political reform abroad. Under the patronage of Lord Lansdowne, former British prime minister and an active supporter of the French Revolution in its early stages, Bentham submitted ideas and pamphlets, in French, across the Channel. Plans for the reform of the judiciary found their way to France alongside those of a circular prison, the Panopticon, in which offenders would be placed under constant surveillance from a central tower, the management of the prison being in turn watched by the general public

(see *Panopticon Letters*, 1788). Privately, Bentham also drafted a manuscript, 'Plan for a Constitutional Code for France', in which he explained under what conditions a democratic system of election could ensure the best representation of interests. But, like the British, the French system rested on fictitious theories and principles opposed to the greatest happiness of the greatest number. Among those theories, and in line with his earlier rejection of the fiction of an original contract, Bentham singled out the doctrine of the universal and imprescriptible rights of man. This position followed logically from his theory of law: a law was valid only if it issued from a recognized sovereign and was backed by effective sanctions. Like the American Declaration of Independence (*Introduction*, 310n), the French Declaration of the Rights of Man and of the Citizen failed to meet this test: it proclaimed universal rights without providing the state with the means to implement them. Moreover, by making those rights imprescriptible, the Declaration of Rights tied the hands of future legislators and precluded later adjustments for the greatest happiness of the greatest number. According to Bentham, such declarations could only foster unhappiness and drive citizens to violence when the state proved unable to defend their rights.

In the later years of his life, Bentham's attention turned towards constitutional reform at home and abroad. The *Constitutional Code*, which was begun in 1822 and published in part in 1830 with the subtitle 'For the use of any nation professing liberal opinions', laid out the institutions of a representative democracy geared towards the maximization of happiness. 'One man, one vote' annual elections would ensure that each citizen would be given a chance to select the candidate closest to his own interest (Bentham privately justified opening the vote to women, though he refrained from it in his public proposals), and forums such as political assemblies and a free press would serve as debating grounds in which interests could be weighed and debated publicly. The assembly of the people's elected representatives would be the strongest organ of government, controlling the executive and the judiciary. In order to ensure that, once in power, representatives and functionaries did not favour their own interests over those of the community, Bentham devised a strict system of transparency and accountability. Through popular education schemes and unfettered debates, the political education of the people would prepare them to stand for office to ensure that power changed hands regularly. Bentham's constitutional architecture was thus devised in order to organize and channel the expression of personal interests and translate them into effective policy and legislation, the people keeping a watchful eye on their representatives throughout. If political institutions were

set up as a mechanism for the aggregation of interests, they also acted on the way individual interests were expressed and transformed their contents. This, Bentham believed, provided true security against a possible tyranny of the majority.

After the Congress of Vienna in 1815, Bentham offered direct support to liberal groups in Spain, Portugal and Greece campaigning for constitutional reform and the establishment of a free press. He also supported independence movements in South America and voiced arguments against colonial rule. In Britain in the 1820s, his commitment to democratic politics aligned him with radical campaigners. In economics, he remained committed to safeguarding individual property and opposed all but the most gradual redistributive schemes (*Radicalism Not Dangerous* [1819]). A close friend of David Ricardo and James Mill, he also contributed to the spread of classical political economy. In these respects, utilitarianism was part and parcel of the liberalism that developed in Europe in the early nineteenth century and was picked up on by early Liberal movements in Spain and Latin America.

But utilitarianism also posed a challenge to early liberalism. Indeed, as we have seen, Bentham strongly opposed doctrines such as the separation of powers and the rights of man, two mainstays of nineteenth-century political liberalism. Benjamin Constant, who had read Bentham's writings in French translation, was openly critical of a theory that placed self-interest at the centre of political and moral action. For him, without the safeguards of virtue and rights, the rule of interests would lead to oppression and violence. Tocqueville's position was more ambiguous: while he acknowledged the force of the doctrine of self-interest and its relevance to democratic societies, he also pointed out the dangers of unfettered individualism and of withdrawal from public life as the result of citizens focusing on their private happiness.

In the twentieth century, influential liberal thinkers also tended to be critical of utilitarianism. Friedrich Hayek believed that Bentham's system relied too much on the state to affect the junction of interests (*Individualism and Economic Order*, 1948), while John Rawls expressed strong doubts about the liberal credentials of a philosophical tradition that refused to recognize the intrinsic value of human life and the plurality of persons (*A Theory of Justice*, 1971). Though twentieth-century liberals did not recognize Bentham as one of their own, critics did not hesitate to see utilitarianism as representative of the dangers and contradictions of liberalism. From a Marxist perspective, C. B. Macpherson pointed out the fallacies of the kind of methodological individualism adopted

by Bentham (*The Political Theory of Possessive Individualism: Hobbes to Locke*, 1962). Postmodern critics such as Michel Foucault believed Bentham's Panopticon prison was emblematic of the covert guidance of individual conduct in contemporary societies, despite their stated commitment to individual freedom and liberal values (*Discipline and Punish*, 1979). Today, these debates continue to shape perceptions of classical utilitarianism in general, and of Bentham's thought in particular.

Bentham's liberalism amounts to more than the preference for a society encouraging the pursuit of private interests with the protection of the state. Indeed, for him, the state is an active force shaping individual interests while also being shaped by them. Without attempting to assess the conformity of his ideas to a predefined 'liberal' ideal, reading Bentham helps us understand how, at a key historical moment in the formation of Western liberalism, utilitarianism shaped debate on its foundational values and brought to light the choices, and perhaps the contradictions, on which it rests.

James Madison

Michael P. Zuckert

We may define a republic to be ... a government which derives all its powers directly or indirectly from the great body of the people; and it is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government, that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it. ... It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified. (Federalist #39)

Among the difficulties encountered by the convention, a very important one must have lain, in combining the requisite stability and energy in government, with the inviolable attention due to liberty and to the republican form. ... On comparing, however, these valuable ingredients with the vital principles of liberty, we must perceive at once, the difficulty of mingling them together in their due proportions. (Federalist #37)¹

James Madison (1751–1836), often described as the ‘father of the American Constitution’, made important contributions to the development of liberalism as a political orientation. Most significantly, he pondered deeply the problem of how to reconcile what we would call liberal politics, that is, politics aiming to secure rights and liberty, with republican or (as we would now call it) democratic government. Madison’s chief contributions to the analysis and solution of this problem occurred in *The Federalist*, a series of newspaper essays later collected into a book aimed at explaining and defending the constitution he helped draft during the summer of 1787. After a disappointing decade or so under the previous constitution, called the Articles of Confederation, some of