



Theory of Bentham:

Utilitarian principle

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Abstract: The word "jurisprudence" is derived from a Latin word "Jurisprudencia" which in its wide a sense means "knowledge of law" or skill in law. The Latin word "juris" means law and "prudencia" mean skills or knowledge. Thus jurisprudence signifies knowledge of law and its application. In this sense it covers the whole body of legal principles in the world. There are three primary divisions of jurisprudence in the technical sense. This divide is founded on a set of presumptions about "law" that distinguishes each school's jurists from those of other schools. Due to the perceived needs of the period, the scope of jurisprudence significantly expanded during the 19th century. In the current understanding of the word, positivism is thought to have been founded by Jeremy Bentham. It has been argued, quite properly, that Austin owes a lot to Bentham and that many of his claims are simply "paraphrases of Bentham's theory." The classic works of Bentham show that, contrary to popular belief, he, not John Austin, should be regarded as the founder of analytical positivism.

KEYWORDS - Positivism, Analytical Positivism, Jurisprudence, Knowledge of Law, Jeremy Bentham, John Austin

INTRODUCTION

A new era in the development of English legal philosophy was ushered in by Jeremy Bentham. He is regarded as the creator of positivism in its contemporary sense. It has been argued, quite accurately, that Austin owes a lot to Bentham, and that many of his ideas are simply paraphrases of Bentham's theory.

Bentham was the affluent attorney's son from London. He possessed the rarest kind of genius. He was a gifted individual with the mental aptitude and logician's acumen of a judge. In his work "Law and Public opinion in the 19th century," Dicey sketches Bentham's thoughts on individuality, law, and legal reforms, which have positively impacted the development of English law.

When Bentham was still a young man at the end of the 18th century, English law had evolved virtually randomly as a result of the traditions or schools of thought that were in vogue at the time. The laws that were in place at the time were not passed with clear guiding principles in mind. Like in the majority of modern European nations, England's legal system developed as a result of necessity and circumstance. For this reason, it is frequently asserted that rather than being created, English law had matured.

Jeremy Bentham defined law "as an assemblage of signs declarative of a volition conceived or adopted by the Sovereign in a State, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power; such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question".

Bentham was a leading figure in the utilitarian movement, which held that actions should be judged based on their ability to promote the greatest happiness for the greatest number of people. He applied this principle to a wide range of social and political issues, advocating for reforms such as prison reform, legal codification, and the abolition of the death penalty.

Bentham prefers to divide jurisprudence into 'expositorial' and 'censorial' jurisprudence. Expositorial or analytical jurisprudence is considered with law it is without any regard to its moral or immoral character. Censorial jurisprudence, on the other hand, is concerned with 'science of legislation' that is, what the law ought to be.

The function of 'expositorial' jurisprudence to ascertain what *law is* while that of censorial jurisprudence is to ascertain what the *law ought to be*.

BENTHAM'S UTILITARIANISM

Bentham as an individualist believed that the function of law is to emancipate individual from bondage and restrained upon his freedom. He supported the economic principle of '*laissez – faire*' which meant minimum interference of the state in the economic activity of individualism. According to this theory right aim of legislation is the caring out of principal of utility.

Bentham's utilitarianism theory is a moral theory that judges actions and laws by their ability to promote the greatest happiness for the greatest number of people. The core principle of utilitarianism is the principle of utility, which holds that actions should be evaluated based on their ability to maximize overall well-being or happiness.

Bentham argued that the goal of all human action is to pursue pleasure and avoid pain, and that this pursuit of pleasure and avoidance of pain is the basis for all moral decision-making. He developed a system of measurement called the "hedonistic calculus," which attempts to quantify the amount of pleasure or pain generated by a particular action or law.

According to Bentham, the hedonistic calculus takes into account seven factors when evaluating the morality of an action or law: intensity, duration, certainty, propinquity or remoteness, fecundity, purity, and extent. These factors are meant to provide a systematic and objective way of evaluating the morality of actions and laws.

Bentham desired to ensure happiness of the community by attaining four major goals namely

1. Subsistence
2. Abundance
3. Equality and
4. Security for the citizens.

As a result, the purpose of legislation must be to achieve these goals, namely to ensure subsistence, abundance, favor equality, and maintain security. Security was the most important to him of these four objectives of legal control since it was connected to protection of reputation, wealth, and social standing. He emphasized that although it is a crucial aspect of security, individual liberty must occasionally make way for considerations of overall security. His view is that the primary goal of legal control should not be liberty, but rather security and equality.

UTILITY AND MORALITY

Utility is the foundation of Jeremy Bentham's ethical and political philosophy, utilitarianism. The utilitarian principle, according to Bentham, is the maximization of happiness or pleasure and the minimizing of pain or suffering for the greatest number of persons affected by a specific action or policy.

Bentham believed that the utility principle could be used to guide moral decision-making. He argued that moral rules and principles should be based on their ability to promote happiness and reduce suffering. For example, he believed that prohibitions against theft and murder are

justified because they protect individuals' property and physical safety, which are important for promoting happiness.

The realms of public policy and governance are also included in Bentham's utility-based philosophy. He was of the opinion that institutions and laws ought to be created to be as useful to society as possible. This includes advancing equal rights, making sure that resources are distributed fairly, and establishing circumstances that make the majority of people as happy as possible.

It is significant to notice that Bentham's utilitarianism places a strong emphasis on quantifying and combining pleasure and suffering. Despite the fact that Bentham's utility theory had a significant impact, later philosophers and intellectuals created many utilitarian ideologies that incorporated criticisms and additional factors.

However, Bentham also recognized that there may be conflicts between individual and societal happiness. In these cases, he argued that individuals should be willing to sacrifice their individual happiness for the greater good of society.

THE HEDONISTIC CALCULUS

A technique for quantifying pleasure and pain was created by Jeremy Bentham to ascertain the overall utility or happiness generated by a given action. It is a technique employed in Bentham's utilitarian philosophy to weigh the effects of choices and direct moral judgement.

The Hedonistic Calculus takes into account a number of variables that affect how much pleasure or pain an action will cause and how intensely. These elements consist of:

1. Intensity – The power of the pleasure or pain experienced
2. Duration – The length pleasure or pain lasted
3. Certainty – The probability of the pleasure or pain occurring
4. Propinquity – The remoteness of the pleasure or pain in the future
5. Fecundity – The capacity of the pleasure or pain to produce more of the same in future
6. Purity – The absence of any accompanying pain or pleasure of the opposite kind
7. Extent – The number of people affected by the pain or pleasure

The Hedonistic Calculus tries to offer a systematic method of evaluating various activities and estimating the overall utility they produce by taking these elements into account. According to Bentham, the best course of action is the one that affects the most people and produces the highest net pleasure (joy minus pain).

The subjective character of pleasure and pain experiences, the challenges of reliably measuring and comparing various joys and pains, and the difficulty of encapsulating all pertinent aspects within a numerical calculation are some of the criticisms leveled at the Hedonistic Calculus. However, the Hedonistic Calculus continues to make an important contribution to the growth of utilitarian ethics and the moral decision-making process that takes consequences into account.

BENTHAM'S VIEW ON JUSTICE

According to Bentham, justice is a social construct created to maximize enjoyment for as many individuals as possible. He held that the utility principle, which states that deeds should be judged according to their capacity to increase happiness and lessen suffering, should serve as the foundation for justice.

Bentham believed that the purpose of the legal system is to create a just society by promoting the general welfare and happiness of the people. He argued that the legal system should be designed to prevent harm and promote positive outcomes, rather than simply punishing wrongdoers.

Bentham also believed that justice should be impartial and objective, and that the law should apply equally to all individuals regardless of their social status or position. He was critical of the arbitrary exercise of power by those in authority and believed that the legal system should be based on clear, objective rules that are applied consistently.

Bentham's view on justice was closely tied to his utilitarian philosophy, which emphasized the importance of promoting the greatest happiness for the greatest number of people. He believed that justice should be based on objective principles that promote the general welfare and prevent harm, and that the legal system should be designed to achieve these goals in an impartial and consistent manner.

BENTHAM'S VIEW ON **THEORY OF NATURAL LAW**

Bentham, like Thomas Hobbes, disregarded the natural law idea and associated law with utility and sovereignty. He criticized the Natural Law school of thought, calling it "nothing but a phrase," and even went so far as to brand Blackstonian Natural rights a complete "non-sense upon stilts." According to him, pain and pleasure—two sovereign lords who alone determine what a man should do or not do—have subjugated mankind to them by nature. It results in the phrase hedonic calculus, subsequently known as his utility principle.

Bentham was critical of the theory of natural law, which holds that there are inherent, universal principles of justice and morality that are discoverable through reason and intuition. He argued that natural law was based on vague and subjective notions of what is "natural" or "right" and that it lacked a clear and objective basis for determining what actions were just or moral.

Bentham believed that the concept of natural law was often used to justify existing social and political hierarchies and to support the interests of the powerful. He argued that natural law was used to create an illusion of moral legitimacy for actions that were actually motivated by self-interest or a desire for power.

Instead of relying on natural law, Bentham advocated for a utilitarian approach to morality and politics, which emphasized the promotion of happiness and the prevention of harm. He argued that the utility principle provided a clear and objective basis for determining what actions were just or moral, and that it could be used to create a more rational and effective legal system.

Bentham's rejection of natural law was based on his belief that it lacked a clear and objective basis for determining what actions were just or moral, and that it was often used to justify the interests of the powerful. Instead, he advocated for a utilitarian approach to morality and politics, which emphasized the promotion of happiness and the prevention of harm as the basis for creating a just and moral society.

APPLICATIONS OF JEREMY BENTHAM'S THEORY OF JURISPRUDENCE IN

CRIMINAL LAW

Bentham's theory of jurisprudence has had several applications in criminal law. Below are some of the ways in which his ideas have influenced the development of modern criminal justice systems:

1. **Purpose of punishment:** Bentham believed that the purpose of punishment should be to deter criminal behavior and protect society, rather than to exact revenge or retribution. He argued that punishments should be proportionate to the severity of the crime committed and take into account factors such as the likelihood of recidivism. His ideas have influenced the development of modern penal codes and sentencing guidelines.
2. **Rehabilitation:** Bentham believed that rehabilitation should be an essential component of the criminal justice system. He argued that offenders should be provided with education and training to help them reintegrate into society and avoid future criminal behavior. His ideas have influenced the development of modern correctional systems, which often include educational and vocational programs for offenders.
3. **Prevention:** Bentham believed that prevention was a crucial aspect of criminal justice. He argued that preventative measures, such as increased police presence and crime prevention programs, were necessary to reduce crime rates. His ideas have influenced the development of modern crime prevention strategies, including community policing and situational crime prevention.
4. **Due process:** Bentham believed in the importance of due process in criminal trials. He argued that accused individuals should have the right to a fair trial, the right to legal representation, and the right to be judged by an impartial jury. His ideas have influenced the development of modern legal systems, which provide safeguards for accused individuals to ensure that they receive a fair trial.

TORT LAW

Bentham's theory of jurisprudence has also had several applications in tort law. Below are some of the ways in which his ideas have influenced the development of modern tort law:

1. **Compensation for harm:** Bentham believed that the goal of tort law should be to compensate individuals for harm caused by others, rather than to punish wrongdoers. He argued that compensation should be based on objective criteria, such as the cost of medical treatment and lost wages. His ideas have influenced the development of modern

tort law, which aims to provide fair compensation to individuals who have suffered harm due to the negligence or intentional actions of others.

- 2. Liability and damages:** Bentham's ideas about liability and damages have also influenced the development of modern tort law. He believed that liability should be based on fault, meaning that individuals should be held responsible for harm caused by their own negligence or intentional actions. He also argued that damages should be proportionate to the harm suffered by the plaintiff. These principles continue to shape debates about liability and damages in modern tort law.
- 3. Prevention of harm:** Bentham believed in the importance of preventing harm in the first place. He argued that individuals and organizations should take reasonable steps to prevent harm to others, and that the failure to do so could result in liability for any harm caused. This idea has influenced the development of modern tort law, which recognizes the importance of taking preventative measures to avoid harm to others.

CONTRACT LAW

Bentham's theory of jurisprudence has also had several applications in contract law. Below are some of the ways in which his ideas have influenced the development of modern contract law:

- 1. Freedom of contract:** Bentham believed in the importance of freedom of contract, which refers to the principle that individuals should be free to enter into contracts with one another without interference from the state or other parties. His ideas have influenced the development of modern contract law, which recognizes the importance of respecting the autonomy of contracting parties.
- 2. Enforcement of contracts:** Bentham believed that contracts should be enforced by the state to ensure that parties fulfill their obligations. He argued that this was necessary to provide a stable and predictable legal environment for business transactions. His ideas have influenced the development of modern contract law, which provides legal remedies for parties who breach their contractual obligations.
- 3. Fairness and equity:** Bentham believed that contracts should be fair and equitable, and that parties should be held to their promises. He argued that this was necessary to promote trust and cooperation among individuals and organizations. His ideas have influenced the development of modern contract law, which recognizes the importance of fairness and equity in contractual relationships.

Bentham's ideas have had a significant impact on the development of modern contract law, and his principles continue to shape debates about freedom of contract, enforcement of contracts, and the role of fairness and equity in contractual relationships.

BENTHAM A PROGENITOR OF MODERN ANALYTICAL JURISPRUDENCE

Many people consider Jeremy Bentham to be one of the founders of contemporary analytical jurisprudence. His writings served as the inspiration for the growth of analytical jurisprudence as a unique method for researching and comprehending the law.

Bentham's analytical jurisprudence placed a strong emphasis on the value of looking at the law from a logical and reasonable angle. He thought that the effectiveness and outcomes of legal systems should be taken into consideration while analyzing and rating them. By using the concepts of logic and reason to analyze the law, Bentham aimed to bring a scientific perspective to the study of law.

Bentham's creation of the theory of legal positivism was one of his major contributions to analytical jurisprudence. He claimed that the acknowledgment of laws by the sovereign authority or the state, rather than their moral or natural grounds, determines whether or not they are legitimate. With an emphasis on the observable legal principles and their practical implications, Bentham's positivist theory of law distinguished between legal analysis and moral considerations.

In addition, Bentham's utilitarian approach to law and jurisprudence was based on his idea of the "greatest happiness principle." He thought that rules should be made to minimize suffering for the largest number of individuals and maximize general enjoyment. This utilitarian viewpoint had a significant impact on how people understood legal ideas and judged legal regimes.

Bentham's analytical approach to law provided a foundation for later legal theorists and philosophers to build upon and advance the subject. His theories continue to influence the study of law and legal theory, particularly in the fields of utilitarian ethics, legal positivism, and the logical and scientific analysis of legal systems.

CRITICISM

Numerous arguments against utilitarianism theory put forth by Bentham have been made.

Some critics argue that it is difficult to accurately measure the amount of pleasure or pain generated by an action, and that the calculus is overly simplistic and fails to account for the complexities of moral decision-making. Others argue that utilitarianism can lead to the violation of individual rights and liberties, as the pursuit of overall happiness may come at the expense of individual well-being.

Despite these criticisms, Bentham's utilitarianism theory has had a significant influence on moral and political philosophy. It continues to be studied and debated today, and has been used to argue for a wide range of social and political reforms.

Friedman claims that it is primarily flawed by two issues. First of all, in an effort to combine materialism and idealism, Bentham overestimates the authority of the legislator and undervalues the necessity for individual judgement and flexibility in the implementation of legislation. Second, his theory doesn't strike a proper balance between private interests and group interests.³ Another argument made against Bentham's hedonistic calculus, or utilitarian theory, is that the effectiveness of law cannot be determined just by how much pleasure or misery an individual experiences.

According to Bentham's thesis, the interests of an infinite number of people should be favorable to the interests of the society. In other words, greater equality will result automatically from the freedom of enterprise. But in reality, it just has the opposite effect, leading to inequality.

Bentham once more argued that laws should only be created through legislation, which was intended to protect people's freedoms and give them possibilities for personal growth. However, it was eventually discovered that legislation was being utilized to limit people's economic freedom. It meant that "the apostle of individualism was destined to become the founder of State socialism," as Dicey correctly saw.

Despite the flaws of Bentham's utilitarian philosophy, his legal reforms marked a turning point in the history of English legislation, and legislation is today one of the most common ways to make laws. John Austin, from whom the later took, developed, and refined his theory of analytical positivism, was in reality raised intellectually by Bentham, who served as his intellectual godfather. Bentham committed his entire life to enhancing the standard of living and the rule of law with the goal of enhancing human happiness. Ironically, Bentham's works on law and legislation received much more praise and appreciation in later years, long after he had passed away, than they had during his lifetime.

When discussing Bentham's contribution to legal theory, G.W. Paton said it was shocking how Bentham's moralizing and utilitarian theory of law completely overturned his European

jurisprudence in the final decades of the nineteenth century. Although Bentham was an advocate for changes, his brilliant understanding of human nature and creation of a model law was his greatest contribution to European jurisprudence.

CONCLUSION

Happiness and consequences, the two core tenets of utilitarian philosophy, are difficult. While utilitarianism of his or her intentions provides moral value on something extrinsic to the agent that creates the effects of the behavior in terms of happiness, deontology lays moral value on something inherent to the agent. Although the end still justifies the means to utilitarian, the end rarely does so to deontologists. A moral system of ethics, utilitarianism is only as useful as the one who understands and applies it.

This is merely a technique for dealing with moral dilemmas; in order to achieve balance, it must be applied with full knowledge of both the positive and the negative aspects. Perhaps it is an ethical standard that is admirable but flawed for humans; it is difficult for us to make decisions that will please everyone. Instead, it is in our best interests to act in the interests of the larger good, as there is no use in upsetting the majority unless they are evil and morally abhorrent. This thought is unsettling in some way since it is conceivable that someone's opinion could be in jeopardy if it is no longer in the interests of the majority. Do a utilitarian's judgments no longer take into account my feelings and opinions?

