

Bentham, Utilitarianism, and Distribution

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Paul Kelly has performed a service to Bentham scholarship by effectively challenging established understandings of Bentham's moral and political philosophy.¹ Drawing on Bentham's unpublished civil law manuscripts, Kelly persuasively argues that Bentham did not conceive of his utilitarianism as demanding that we maximize pleasure and minimize pain in our individual actions. Bentham believed that human well-being is best served when institutions secure basic interests and enable each person to embrace his own goals and pursue them. 'Bentham . . . employed a utilitarian theory of justice which provided [a coercive legal] framework within which individuals could pursue their own conceptions of well-being' (p. 43). Kelly presents his interpretation in terms of two strategic principles that Bentham intended to guide institutional reform, principles he regarded as based most directly upon his utilitarianism.

As its title suggests, Kelly's book has more than historical ambitions. He defends Bentham's philosophy against those who attack utilitarian theory generally. He argues not only that Bentham's version of utilitarianism amounts to a theory of distributive justice but also that, far from hostile to contemporary liberal values, utilitarianism is thus shown to be capable of providing a reasonable account of liberty, equality, and a welfare floor for all.

This aspect of Kelly's argument is less successful than his defence of Bentham, and in ways that limit the historical argument. His interpretation is sketchy in crucial respects. He never formulates Bentham's version of the utilitarian principle or the two chief principles that are supposed to be derived from it, and the resulting vagueness is not dispelled by Kelly's lengthy discussion of these topics. For closely related reasons, Bentham's derivation of secondary principles from his principle of utility remains unclear. This vagueness precludes a full and fair appraisal of his claims on behalf of utilitarianism and, to some degree, of his interpretation.

¹ P. J. Kelly, *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law*, Oxford, 1990. I will refer to pages in this volume between parentheses in the text of this review.

Bentham is usually understood to have embraced a version of act-utilitarianism (AU), like the following: One is morally required always to act so as to promote human well-being as much as possible.²

Critics hold that such a theory is mistaken because, for example, it cannot accommodate reasonable, reflective moral judgements under the heading of justice, judgements we have more reason to endorse than AU. Critics say that AU fails to acknowledge the moral significance of debts and promises, moral deserts and credits; that, for the sake of maximizing aggregate well-being, it approves of placing hardships on some, already disadvantaged, so as to enable others, well situated, to fare even better; that it lacks adequate commitment to equality, liberty, and human dignity.

Kelly does not claim that Bentham's utilitarianism takes rights, liberty, or other such values as seriously as it does human well-being. No utilitarian theory could do that: well-being is the basic value; any other is derivative. Kelly claims, however, that Bentham's fully elaborated theory provides a reasonable foundation for liberal values.

To summarize, Kelly's Bentham reasons as follows. Without subsistence, action is impossible. Without security, people cannot work effectively towards goals, or even begin to adopt projects. We can hardly function as human beings without a considerable measure of secured expectations, which makes planning and the pursuit of goals worthwhile. In this and more substantive ways, human well-being depends overwhelmingly on social institutions providing favourable conditions for human enterprise in the broadest sense. For well-being to be maximized, people must first and foremost have subsistence and security. These all-important conditions are created and maintained principally by enforced social rules. The resulting framework of legal rights and obligations makes normal human functioning possible and abundance achievable. Moreover, to maximize well-being, the framework must secure a realm of equal freedom and personal inviolability to all. For these reasons, Bentham placed great value on liberty, liberal neutrality, and individual autonomy. He was committed to equality not only because of the familiar argument that property equalization promotes aggregate well-being but also because he believed that social stability and the minimal security that is necessary for planning and the pursuit of goals require a substantial foundation of equal rights.

This is not an implausible picture of the way Bentham's utilitarianism was intended to work out in practice. But the reasoning just summarized involves a number of crucial assumptions about large-

² I follow Kelly's reference to well-being rather than pleasure and pain. If Bentham embraced AU, it would probably refer to probable consequences—a complication we can ignore.

scale facts, such as the amount of security and stability that is required for effective planning and the pursuit of goals. Kelly does not suggest that Bentham provides any evidence or argument for them, and he offers no support for them himself. In so far as we have reason to question the assumptions, we must be dissatisfied with Kelly's reply to the critics of utilitarianism.

Kelly's Bentham argues, for example, that a foundation of equal enforced rights is required to ensure subsistence for everyone in order to prevent social upheavals that diminish aggregate well-being by undermining security. But experience suggests that coercive institutions are not often destabilized merely by the impoverishment of large numbers or by systematic discrimination, when the victims are politically powerless. The welfare floor that Bentham believes is required to prevent social upheavals might fall below a morally acceptable level, and social stability does not seem to require equal basic rights, so Kelly's interpretation of Bentham does not offer much protection for utilitarianism against charges of distributive injustice.

Kelly's Bentham does take cognizance of some related facts. Because he places so high a premium on security and stability, he cautions strongly against redistributive reforms that would undermine expectations based on existing property distributions. This qualifies his commitment to equalization and tempers his account of liberal values.

Kelly's reconstruction features some elements that are missing from my summary of the argument that he attributes to Bentham. Bentham believed that law-making should principally be guided by two broad secondary principles, grounded most directly upon his utilitarianism. These are the 'security-providing' and the 'disappointment-preventing' principles.

The nature of the security-providing principle is unclear. Kelly refers to it as if it were a distinct principle, resulting from a direct application of Bentham's basic principle of utility. According to Kelly, it is supposed to determine that certain values (security, subsistence, equality and abundance) are overwhelmingly important to human well-being, and for that reason must be assured by legal rights; and it is supposed to determine how the rights are to be distributed (cf., e.g., pp. 8, 67, 74 and 139). But, as Kelly never formulates either this principle or Bentham's principle of utility, it is unclear how the one is supposed to be derived from the other or how the security-providing principle is supposed to perform its assigned functions. Is it possible that, when Bentham refers to 'the security-providing principle', he is in fact referring, not to a distinct principle in the sense I have assumed, but only to the claim that certain values must be provided by legal institutions because they are overwhelmingly important to the promotion of human well-being?

Now, any coercive social system is bound to provide some measure of security to at least some members of the society, but some systems provide more security than others, some generate more liberty or abundance, and they may provide such conditions quite unequally. Kelly sometimes suggests that the security-providing principle has the added function of calling for redistribution so as to achieve an optimal framework for the circumstances (cf., e.g., pp. 181 and 185). But I am not sure about this; perhaps the principle of utility itself does that job.

The disappointment-preventing principle has a clearer, if somewhat puzzling, function. Once any such system is firmly established, well-grounded expectations are generated, with the consequence that security would be undermined by deliberate revision. The disappointment-preventing principle insists that those who shape institutions take such costs into account. Thus it checks against reforms whose costs and risks would exceed their prospective benefits. The suggestion seems to be that, on the one hand, the security-providing principle generates ideal institutional design and, on the other hand, the disappointment-preventing principle applies that ideal theory to, or connects it with, existing circumstances.

Kelly claims that the disappointment-preventing principle fills a gap in utilitarian theory (cf., e.g., p. 183). But, as the principle seems merely to insist that we take prospective costs as well as prospective benefits into account, the suggestion that this fills a theoretical gap implies that a utilitarian theory *might* consider benefits while ignoring costs, which seems implausible.

Although Bentham's uses of or references to the security-providing and disappointment-preventing principles have no doubt helped to motivate Kelly's interpretative efforts and helped him to develop the argument that I summarized a few paragraphs above, for the reasons indicated their relation to that argument remains somewhat obscure.³

As I have noted, Kelly never clarifies Bentham's basic principle. The principle is variously characterized using philosophical terminology, and we are told some of the things that it is supposed or not supposed to do. Kelly says, for example, that Bentham's principle is not a 'crude act-utilitarianism' (p. 9). He reasons, in part, that AU cannot be Bentham's principle because Bentham endorsed an indirect utilitarian theory of obligation. Kelly notes that Bentham called for obedience to law (cf., e.g., p. 69), and he suggests that this is because Bentham held that obligations are enforced requirements, that enforced requirements generate security, and that disobedience and change undermine

³ Kelly calls the security-providing principle 'formal', though none of its functions fit that characterization; and he calls the disappointment-preventing principle 'substantive', though it is no more substantive than the other principle (cf., e.g., pp. 8, 74, 94 and 140). Kelly's use of philosophical terminology is generally confusing and unhelpful.

security. Kelly thus suggests that Bentham regarded legal requirements generally as morally binding. But, while these might be considered reasons for compliance with law,⁴ they would not generate a theory of moral obligation. Indeed, one must wonder whether Kelly understands the theory to encompass all enforced requirements or only some subset of them, such as those that are not just somewhat beneficial to some persons but are sufficiently beneficial, all things considered, to be justifiable on utilitarian grounds.

Kelly also makes the apparently related claim that Bentham's utilitarianism is or generates a theory of 'distributive justice'.⁵ The strongest grounds in Bentham that I can think of for the use of this terminology are the ideas that enforced obligations are somewhat beneficial to some individuals and that beneficial obligations correlate with rights. But these would be unusual grounds for claiming that a moral theory generates a theory of distributive justice. For it would seem to count as justice the utilitarian defence of the status quo, no matter how deficient existing arrangements might be, solely because reform would be costly. It would seem to confuse counsels of prudence with requirements of justice.

Kelly provides a simpler objection to an act-utilitarian interpretation of Bentham's basic principle. AU requires that we always act (or always try to act) so as to maximize well-being, and Kelly denies that Bentham's theory requires this. Kelly's Bentham applies his basic principle to the legal framework within which we act, and he requires that it be optimal (or the best we can secure, given the costs of reform), but he wants us to pursue our own good within this framework. Now, some of this could be done by an act-utilitarian. AU can be understood as requiring conduct that shapes law so that it promotes optimific conduct (or alternatively well-being). But AU also requires that each act by each individual agent be optimific, whereas the principle that Kelly attributes to Bentham does not do that.

It is unclear whether Bentham's principle applies directly to legal institutions. Suppose it does. What kind of utilitarian principle could call for the establishment of an institutional framework that maximizes well-being? One possibility is the sort of principle we might dub 'institutional-utilitarianism', which would call specifically for optimal institutions. But such a principle would not square with Kelly's reading of Bentham's utilitarianism, for he says that Bentham's principle directly grounds good reasons for individuals to promote well-being, independently of institutional contexts, and it is unclear how an institutional-utilitarianism could do that.

⁴ They would seem rather weak, defeasible reasons.

⁵ Kelly refers specifically to the security-providing principle and the disappointment-preventing principle as Bentham's two principles of distributive justice (cf., e.g., p. 140).

More importantly, institutional-utilitarianism, like act- and rule-utilitarianism, appears arbitrarily to limit the scope and applicability of utilitarian theory. As Bentham appreciated, we can assign utilities (beneficial and harmful consequences) not only to acts performed by individuals and to legal arrangements generally (as Kelly's Bentham does) but to a much larger variety of items, including, for example, social conventions and individuals' cognitive and character traits. There is no *a priori* reason to suppose that utilitarianism should be conceived of as applying directly to just one such class of items. There is good evidence that Bentham conceived of utilitarianism as having broader scope. An interpretation of Bentham's basic principle must be guided by his applications of it. Kelly appreciates this point, but his discussion fails to draw interpretive inferences from such evidence.

Kelly's book has established an important set of issues for Bentham scholarship as well as for utilitarian theory. It remains for these issues to be explored systematically.