

## ***Lecture Seven: Utility and Rights***

This is a hotly contested area of moral and political philosophy. The young man who says, rightly, that he'd make better use of my money than I would, still *has no right* to it; conversely, I *have a right* to determine what happens to the money, because it is *my* money, my *property*. The connection between rights and justice is that – on Mill's view and most other writers' – it is *unjust* to violate rights. (Supposing the rights-claims to be well-founded.) Conversely, if you have a claim based on justice, you *have a right* to have the claim met. There are many distinctions drawn today and not drawn by Mill – the idea of *human rights* is new, and distinctions such as that between a *general* right and a *special* right are equally novel. In Mill's context, it is i) the critique of natural rights theories and natural law theories and ii) (once again) the attack on intuitionist theories of *rightness* that matter to Mill.

### **The utilitarian analysis of rights.**

The idea that there is a utilitarian theory of rights is at odds with the variety of ideas to be found among utilitarian writers. Mill did not hold the same view as Bentham and Austin. The two sorts of apparatus that utilitarians can use rest either on the idea that for *a* to have a right just is the same state of affairs as *everyone other than a* having a duty to do/forbear in regard to *a* and duty being explained in terms of someone coercing everyone else or on the idea that having a right is just being the beneficiary of a particular sort of rule that is ultimately justified by utility. So, in the first view, my bike is mine because everyone is told to refrain from taking it or using it without my permission, and in the second is because there is a rule conferring the power to use it on me, and that rule has a particular kind of utilitarian justification. (E.g., it has to do with security.)

### **Mill versus Bentham**

Bentham held that all genuine rights are positive legal rights, and that where no such right existed there were no rights. A legal right was defined in term of an agent benefitting from a sovereign commanding others to act/not in ways that benefitted the right-holder. Bentham was not careful to distinguish between *meaning* and *criteria* so tended to say that talk of rights in the absence of law was 'meaningless,' but it is rather that you cannot *decide whether* someone has a right.

## **Natural rights, moral rights, and ‘nonsense going on stilts.’**

This gets us to the crux. For Bentham, there can be no ‘natural rights,’ because there is no unequivocal sovereign governing nature. By the same token, ‘moral rights’ make no sense, because there is no enforcement process; what there can be, and what perhaps is enough, is the moral claim that there should be recognised rights. But Bentham had another great objection to natural rights; this was to what he called the anarchic fallacy – the idea that we had inalienable rights in the US declaration of independence sense. He thought – as the name suggested – that this made the whole idea of government impossible.

## **How far can Mill get in analysing rights on a utilitarian basis?**

Mill’s view is this: ‘rights’ denote a particular part of the moral landscape; this is where talk of assignable interests and identifiable individuals begins to do some work. What is true is that rights are in some sense individuated: *my* property is not part of a common pot, even if my happiness is part of the total happiness of our society. Why might we want to pick out a special sort of interest and give it particular protection: *security* is a good thought; *inviolability* is what Rawls says. The question, however, is not whether the intuition is a good one but whether it is consistent with utilitarianism. Take it in two steps: can utility deal with *most* rights? On the face of it, yes, because having rules that protect us in all sorts of ways is a good utilitarian device. Property is eminently amenable to utilitarian analysis; rules allocating things of value and creating ways of altering the rules are obviously useful. Can it deal with *all* rights? On the face of it, there will be trouble when we get to bedrock, because the greatest happiness principle is all about maximising something and the idea of rights as defences of individuals is all about distributing protection, not maximising anything. But, the crucial thing is that *having* rules that prevent maximisation on particular occasions may well be the best route to maximisation.

## **Which rights are more resistant than which others?**

The standard case is always the conviction of the innocent; more gruesomely, the forced cannibalisation of a healthy person to provide transplants for others provides a clear example of the sacrifice of the innocent for the benefit of the majority. The issue is then whether a theory based on utility can show why we are so hostile to these instances. The idea that *having a rule* is the right policy doesn’t cope with the wish to *make an exception*. Nor does it cope with the stress on *non-sacrifice*. (Cannibalism

and the cabin boy suggests the issues.) Nor with the difference between voluntary self-sacrifice and unacceptable forced sacrifice.

### **Kant once more.**

The obvious thought is Kantian: respect for each individual rules out most of what we find obnoxious. But it is not obvious that it does everything we want: if I am sacrificed, others will survive, if not they suffer – but why *them* and not *me*? Conversely, it may be that what we can't rule out is something we shouldn't.

### **And Mill's view of ethics**

Notice, however, that given Mill's view of what morality *is*, there is a very deep argument for a non-sacrifice rule: we all need an incentive to join in social life and accept the constraints of morality; and that takes us back to Mill's proof; and forward to what 'narrow' morality leaves out.