

Phil 2, January 27, 2011

Review:

According to

Utilitarianism: the morally right thing to do is whatever would produce the greatest sum of pleasure less pain.

Utilitarianism is made up of three parts: *Hedonism*, *Aggregation*, and *Consequentialism*. Last time we raised some challenges to:

Hedonism: the only thing that is good for us as an end is pleasure and the absence of pain. We explored the possibility that other things are good for us as an end.

In response to these challenges, a utilitarian might revise this theory. He might replace Hedonism with:

Eudaimonism: Several things are good for us ends, including some pleasures, the absence of pain, achievement, relationships, self-determination... and not all pleasures are good for us as ends (such as pleasure at the suffering of other people...).

But this revision carries some cost. What is good for us would no longer be easily quantifiable. And there might be controversies about what is good for us.

Challenges to Aggregation: Can things be good without being good *for* anyone?

According to:

Aggregation: an outcome is better if the sum of what is good for each of us less what is bad for each of us is greater.

Aggregation says:

- only what is good *for us* matters.
- only the *sum total* of what is good for us matters, not how it is distributed.

Is what is good *for us* the only thing that is *good*, or worth bringing about? What about scientific and cultural achievements, the natural environment? Do these things matter even if they do not make anyone's life better? Should we try to preserve these things even if no one will be able to experience them?

Challenges to Aggregation: Does justice—people getting what they deserve—matter?

Is it good as an end

that *justice* is done

= that people get what they *deserve*

= that good people are rewarded and bad people are punished?

In other words: Is it good *period* that what is good *for us* is *distributed* in a certain way: namely, according to desert?

Not according to Aggregation. According to Aggregation, what matters is only the *sum total* of what is good for people, not how it is *distributed* among people.

Bentham's utilitarian theory of punishment

- We cannot justify Punishment by appealing to the idea that it is good if the good are rewarded and the bad suffer.
- Punishment itself is bad. The person punished feels pain, and his pain counts.
- Punishment is justified only if it *prevents* acts that would produce *even more* pain.
- Punishment might prevent such acts by *detering* people from performing them.

Attractions of the utilitarian theory of punishment:

(1) Humane. Punishment at best a necessary evil.

(2) Explains accepted exceptions and qualifications. According to utilitarianism, we should not punish when punishment is:

- (i) *Groundless*: where the act to be punished does not produce pain or foreclose pleasure.
- (ii) *Inefficacious*: where the punishment will not prevent the act.
- (iii) *Unprofitable*: where the punishment has worse effects than the acts it aims to prevent.
- (iv) *Needless*: where the punishment has worse effects than some other means of preventing the same acts.

A “desert theorist” will give different explanations of why many of the same actions are not “meet” for punishment. E.g., the insane should not be punished, because they do not deserve to be punished, because they are not responsible for what they do, because they do not act freely and intentionally.

(3) Avoids “metaphysical” worries: Are we ever really responsible for what we do? And if not, can we ever deserve anything? If the only possible purpose of our institutions of punishment is to ensure that people get what they deserve, and if the people never deserve anything, then our institutions of punishment are pointless. By contrast, if the purpose of our institutions of punishment is not to give people what they deserve, but instead to deter people from bad actions in the future, then our institutions of punishment are not undermined if it turns out that no one deserves anything.

A problem with the utilitarian theory of punishment:

Nevertheless, Bentham's account of justice has a darker side. Smart's example of framing an innocent man. Framing, scapegoating, “making an example of,” vicarious punishment (e.g., punishing the criminal's loved ones), etc, might lead to greater pleasure and less pain. If desert does not matter, why not do this? How is this any different from punishing a guilty person to deter others?

How might we change utilitarianism to avoid this result?

- Revise Aggregation so that the justice of an outcome can make it better.
- Should a utilitarian accept this revision? Why should we care whether the *outcome* is *just*, if it doesn't make *people's lives better*?

If we reject the idea that *scapegoating*, making an example of, etc. can justify punishment, should we also reject the idea that *deterrence* can justify punishment? How are they different?

Review Questions:

1. Why, according to Bentham, should we not punish acts to which the affected parties consent?
2. Why, according to Bentham, should we not punish people for *ex post facto* laws (i.e., retroactive, criminalizing behavior that took place before the law was established)? How does his answer differ from the sort of answer that a desert theorist might give?
3. Why, according to Bentham, is punishing a criminal just like diverting the meteor to hit the lone fisherman?
4. Imagine the worst possible crime. Now imagine that the authorities have the criminal in custody. Suppose that they could effectively fool the public into believing that he had been punished, by broadcasting a phony punishment on TV. Alternatively, they could actually punish him. Would Bentham have any objection to the phony punishment? Would Bentham have any objection to the actual punishment?