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# Justice: The Most Sacred and Binding Part of Morality

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## ABSTRACT

*The paper is an introduction to moral and political philosophy. This paper explores the classical and contemporary theories of justice and applies these theories to contemporary legal and political controversies. The paper talks about various topics inclusive of affirmative actions, income distribution, same-sex marriage, human rights and property rights. These topics include arguments for and against equality and dilemmas of morality in public and private life. This paper includes different approaches and comparative analysis from utilitarian to libertarian. The paper covers the differentiation between two moral reasonings one being consequentialist and the other being categorical, and how does this affect an individual's decision making during a moral dilemma. This paper discusses the tools to persuade people and also states the way to sort out our moral convictions. This paper also states about Thorndike's analysis that whether any want or amount of satisfaction which exists; exists in some amount and therefore measurable and the author has tried to answer several questions like whether we have certain fundamental rights? What is the work of consent? Where do the rights come from if not from some idea of the more significant welfare or utility or happiness? What is the moral work of consent? This paper explores whether Thorndike study supported Bentham's idea of utilitarianism and how justice is the most sacred and binding part of morality.*

## I. INTRODUCTION

Humans often tend to get into moral dilemmas, and why do these moral dilemmas arise? Moral dilemmas from conflicting moral principles. Is it fair or reasonable to put an individual's life in danger to save the lives of a bunch of people? What is the right thing to do in this particular situation is the question? We as human when confronted with these kinds of situation in which saving the number of lives is depended upon killing an innocent; facing a moral quandary is common. Thinking of moral reasoning as a tool to persuade other people, but moral reasoning is also a way to sort out our moral convictions, of figuring what we believe and why? The uncertainty of the event that how it is going to unfold is a determinant other moral dilemma.

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Moral reasoning can be either consequentialist or categorical, the former locates morality in the consequences of an act, and the latter locates morality in particular absolute moral requirements in specific certain duties and rights regardless of consequences. The most prominent example of consequential moral reasonings is Utilitarianism, a doctrine invented by Jeremy Bentham, the 18<sup>th</sup> century English philosopher. The prominent philosopher of categorical moral reasoning is the 18<sup>th</sup> century German Emmanuel Kant.

Bentham's idea is elementary one with a lot of morally intuitive appeal, i.e., the right thing to do and the just thing to do which maximizes utility. Utility means the balance of pleasure over pain, happiness over suffering and through this, we reach the principle of maximum utility.

There are several objections to Utilitarianism, as it fails to respect the individual or minority rights. It is not possible to aggregate human value into monetary terms. Is it possible to that all goods, all values, all human concerns be aggregated into a single uniform measure? Isn't there a difference between higher and lower pleasures.

As per both the jurists, we can bifurcate the moral reasoning into two different types; one is 'consequentialist' which locates morality in the consequences of an act, and the other is 'categorical' which locates morality in specific absolute moral requirements in certain categorical duties and rights regardless of consequences.

Thorndike, a psychologist of 1930s, concluded from his studies that any want or amount of satisfaction which exists; exists in some amount and therefore measurable.

Does Thorndike support Bentham's idea? John Stuart Mill said,

*"The sole evidence it is possible to produce that anything is desirable is that people do desire it. Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, then that is a more desirable pleasure. It is better to be a human being satisfied than a pig satisfied. Better to be Socrates dissatisfied than a fool satisfied and if the fool or the pig is of a different opinion, it is because they only know their side of the question."*<sup>2</sup>

The dispute is of the justice being pretensions of any theory which sets up an imaginary standard of justice not grounded on utility; the thing which is accounted is the justice that is grounded in utility to be the central part and incomparably the most sacred and binding part of all morality.

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<sup>2</sup>John Stuart Mill, Utilitarianism, MARXIST.ORG (May 29, 2020, 09:32 AM), <https://www.marxists.org/reference/archive/mill-john-stuart/1863/utility/ch04.htm>

## II. MORAL SIDE OF MURDER

A famous nineteenth-century case '*Queen v. Dudley and Stephens*'<sup>3</sup> involving a shipwrecked crew of four. After nineteen days lost at sea, the captain decided to kill the weakest amongst them, the young cabin boy, so that the rest can feed on his blood and flesh to survive. This case puts a question upon the moral validity of Utilitarianism and its doctrine that the right thing to do is whatever produces "*the greatest good for the greatest number.*"<sup>4</sup> This raises the question of whether we have certain fundamental rights? Where do those rights come from if not from some idea of the more significant welfare or utility or happiness? Does a fair procedure justify any result? For instance, if there would have been a lottery before instead of killing the cabin boy directly, would that have been justified? What is the moral work of consent? Why does such a moral difference when given consent to kill? So, according to the principle of utility, we should always do such things which will produce the greatest amount of happiness and will prevent the greatest amount of unhappiness but what should be done if the only way to produce the happiness is to harm or kill innocent people?

## III. LIBERTARIAN APPROACH

The fundamental individual right is the right to liberty, precisely because we are separate individual beings, is the concept behind '*libertarianism*'. The libertarian view of government is having a no paternalist legislation, i.e. passing laws that protect people from themselves, like seat belt laws, for instance.

Libertarians also believe that it may be a good thing if people wear a helmet, but that should be up to them and the state, the government has no business coercing them to make them do so. Even there should be no moral legislations according to the libertarian because as many laws try to promote the virtue of citizens or try to give expressions to the moral values of the society as a whole. Libertarians say that is also a violation of the right to liberty.

One of the classic examples of the libertarian approach is the legislation offered in the name of promoting traditionally, have been laws that prevent sexual intimacy between lesbians and gays in many states

Libertarians also believe that the state should not redistribute the income from rich to poor. There have been various objections on this thinking of the libertarians as the poor needs the money more, a lot more than who are wealthier. It is not slavery to tax as taxation by consent of the governed is not coerced, and the successful owe the debt to society. Wealth depends

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<sup>3</sup> Queen v Dudley and Stephens, 14 QBD, 273 DC (1884)

<sup>4</sup> Michael J. Sandel, Justice, HARVARD UNIVERSITY (May 29, 2020, 09:32 AM), <http://files.meetup.com/417674/Justice%20Videos.pdf>

partly on luck, so it is not deserved.

Robert Nozick, one of the renowned jurists and a supporter of libertarianism, argued about why income distribution is not just? The arguments were based upon '*Justice in the acquisition*,' i.e., initial holdings and '*Justice in Transfer*', i.e., free market.

Nozick argued that taxation is taking earnings, in other words, it meant taking the fruits of an individual's labour but if the state has the right to take an individual's earnings or the fruits of his labour, is not that morally the same as according to the state, the right to claim a portion of an individual's labour.

So, as per Nozick, taking an individual's earning is forced labour, and forced labour is slavery because if an individual does not have the right; the sole right to his labour then that is really to say that the government or the political community is a part-owner in individual, and what does it mean for the state of being a part-owner in any individual?

If we think about it, the individual is a slave that he does not own himself, so what this line of reasoning brings us to is the fundamental principle that underlies the libertarian case for rights, as there is a violation of the principle of self-possession.

#### IV. STATE OF NATURE

*"After accepting the Galilean-Cartesian claim that life is a matter which is in motion, and by inventing the notion of the state of nature, Thomas Hobbes believed that he had the method of making 'science of man' as exact as the natural sciences."*<sup>5</sup>

One can be observed and analyzed in the state of nature with a similar certitude as stars. According to Hobbes, consent is a prominent, familiar idea in moral and political philosophy. Hobbes believed that the individual is a violent and aggressive being that he needs a leviathan- an unlimited government- to curb his nature. Hobbes contradicted the principal premises of the new sciences and the nascent liberal thought, i.e., the state is to protect nothing else but human life. The individuals have no other rights except for 'right to life.' Fifty years younger, another Englishman John Locke attempted to lay a foundation about the limited government, the rule of law, rationality and goodness of a man as well as for his unalienable rights. According to Locke, the legitimate government is a government founded on consent and who nowadays would disagree with him. Locke borrowed the idea from Hobbes about the state of nature, and like Hobbes, only Locke begins his arguments by making presuppositions upon which the whole theory rests.

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<sup>5</sup> Krzysztof Łazarski, John Locke's State of Nature and the Origins of Rights of Man, THE RESEARCH GATE (May 29, 2020, 05:36 AM), [https://www.researchgate.net/publication/329370669\\_John\\_Locke's\\_State\\_of\\_Nature\\_and\\_the\\_Origins\\_of\\_Rights\\_of\\_man](https://www.researchgate.net/publication/329370669_John_Locke's_State_of_Nature_and_the_Origins_of_Rights_of_man)

Locke, in his first argument, introduced the state of nature as an abstract idea as there are no historical conditions of the distant past. Then he states that the fundamental conditions that are ruling in the state of nature are liberty and equality, both being self-evident. He also stresses that the concern over self-preservation does not lead individuals to inevitable and incessant wars, but to the of recognition of likeness to their nature.<sup>6</sup> As the individuals see that they belong to the same kind, and they accept that all individuals are entitled “*same advantages of nature*”. This, in turn, imposes the “*obligation to mutual love*” as well as to justice and charity. Locke was a great philosopher of consent, and as per his consent is a prominent, familiar idea in moral and political philosophy. There are some puzzles some strange features of Locke’s account of consent as the basis of legitimate government. One way of testing Locke’s idea of consent and also probing some of its perplexities is to ask just what a legitimate government founded, and consent can do? What is its power, according to Locke.

As per Locke, everyone is an enforcer or what Locke calls the executor of the state of nature. He meant executor in a literal way if someone violates the law, he is an aggressor, he is beyond reason, and one can punish him as one does not need to be too careful or subtle, in the state of nature one can kill him. An individual can undoubtedly kill someone who comes after him and tries to kill him or tries to steal his property, that also counts against the state of nature.

So, in a state of nature, there is no judge, no juries, no police, people are the judge of their cases. They tend to get carried away, and this gives rise to the inconvenience in the state of nature, people overshoot the mark there is aggression, there is punishment, and before one knows it, everybody is insecure in the enjoyment of his unalienable rights to life, liberty, and property.

As Locke has said,

*“One may destroy a man who makes war upon him...for the same reason that he may kill a wolf or a lion, because such men...have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures that will be sure to destroy him, whenever he falls into their power.”<sup>7</sup>*

## V. CONCEPTIONS OF SOCIETY AND THE INDIVIDUAL

John Rawls gave the philosophy of the theory of justice, where he propounded various principles of distributive justice. The theory is based on the distribution requirements of the society and specifies distribution requirements for the fundamental institution of the society.

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<sup>6</sup> Ibid. Not all agree that state of nature was an abstract idea or a myth for Locke, cf. Goldwin

<sup>7</sup> Patrick Daniel, The Second Treatise of Government: An Introduction to John Locke, MEDIUM (May 29, 2020, 05:36 AM), <https://medium.com/@patrickdaniel/the-second-treatise-of-government-an-introduction-to-john-locke-9aa2adef35ee>

How does the '*Theory of justice as fairness*' is justifying such detailed criteria for social institutions, this theory is assumed to be working with compliance of several other theories. The first theory being the *Principle of Liberty*, every individual has a right of the same inalienable right to a satisfying set of the same equal fundamental rights, and these rights are consistent with other individual's corresponding set rights. These set of rights include political rights as well as civil rights inclusive of voting rights, freedom of speech and expression and religion. The second with which the former principle is complied with is the *Principle of social and economic inequalities*. The second principle deals with two conditions for the kind of social and economic differences that can occur over time. Rawls have differentiated between these two principles as *The principle of equal opportunity* and the *Difference principle*.

The principle of equal opportunity deals with the social and economic disparities to be linked with the social positions as they are available and accessible to all who are willing and able to perform. The difference principle states that social and economic inequalities are justifiable only if and insofar they benefit the least advantaged members of the society.

The society following these principles, the principle of liberty has priority. As per these principles, the social institutions as a whole must not promote equal opportunities as a whole or allow any inequality which violates the basic rights and liberties of the others. Economic inequality does not mean that there should be unequal political power, and the educational opportunities and career choices for the next generation should not be affected. These principles can not quickly be taken to justify neither economic liberalization policies nor all social democratic policies.<sup>8</sup> The religious and normative diversity in society also prevents some arguments for proposed principles, such as to promote a particular belief or to foster individual attitudes or specific capabilities. Thus, Rawls argues that these principles are more reasonable than the utilitarian principle of utility maximization.

## VI. CONCLUSION

According to utilitarians, the right thing is always to maximize happiness for the most considerable number of people. In contrast, the libertarians think that the right thing to do is that most often people should be allowed whatever they wish to do. John Locke's theory says that there are some unalienable rights, afforded to every human being by the law of nature. The famous philosopher Immanuel Kant thought that each of these views is mistaken as Kant is against utilitarianism and holds that it is freedom, maximum freedom, not happiness is the goal of morality. Morality, duty, and law have their basis in human reason and not in a law of nature.

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<sup>8</sup> John Rawls, *Theory of Justice as Fairness*, FOLLESDAL (May 29, 2020, 10:21 AM), <http://www.follesdal.net/ms/Follesdal-2014-Rawls-JasF.pdf>

It is the common sense of an individual to fulfil one's duties as morality is the matter of having the correct attitude, or acting for the right reason. It is the motive of an individual which is essential.

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