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## THE UTILITARIAN JUSTIFICATION OF THE STATE

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A state claims the right to control a defined territory and the people who live there. It does not gently guide the conduct of those people; it lays down rules of conduct and imposes penalties for violating those rules. These coercively enforced social controls deprive individuals of their liberty (with threats and prisons), their resources (with fines), even their lives (with capital punishment).

Punishments and coercive threats against liberty, resources, and life — all essential features of the state — adversely affect our welfare. For this reason, they present a special problem for a utilitarian justification of the state. Utilitarianism is the view that our actions and institutions are justified when (and only when) they produce the greatest sum of welfare for all who are affected: what matters fundamentally for the utilitarian are consequences for welfare, not that rights are protected or that individuals get what they deserve. So when social arrangements undermine any person's welfare, they require justification. To a utilitarian, dedicated to the promotion of welfare, punishment, even for terrible wrongdoing, can be justified only if it promotes welfare indirectly — by preventing worse harms. As the great utilitarian Jeremy Bentham said: "All punishment being in itself evil, upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil."<sup>1</sup> To succeed, then, a utilitarian justification of the state must show that its coercive social controls advance welfare, despite their inevitable costs.

Utilitarian reasoning assumes that we can attribute welfare benefits and welfare costs to individual acts and social systems. It assumes in particular that we can calculate (or at least reasonably estimate) such benefits and costs for each person who is affected, that we can compare the welfare levels of different people, and that we can add together the net benefits or costs for each person in order to determine the overall or general utility of the social arrangements. A utilitarian appraisal of slavery, for example, requires that we determine the benefits and costs that would result from slavery for everyone affected by it, including slaves, masters, and others; that we then consider the same for the alternatives to slavery; and that finally we add up the

1. *The Principles of Morals and Legislation* (Macmillan, 1948), p. 170. Bentham (1748–1832) was a British philosopher and legal theorist. He is widely regarded as the founder of utilitarianism. [Lyons's note.]

benefits and subtract the costs caused by slavery and its alternatives. The right system is the one with the greatest net balance of benefits over costs.

A utilitarian justification of states, then, must show first that states are better than no social organization at all, that their coercive controls always secure welfare benefits that exceed the welfare costs of creating, maintaining, and applying instruments of control, such as police, courts, and prisons. Then second, it must show that states advance welfare more than non-coercive forms of social organization.

To assess the utilitarian case, we'll first review why coercive social controls are thought to be needed. Then we'll consider three challenges to a utilitarian justification of states: that their coercive power can be used to implement policies that undermine rather than advance the general welfare; that there may be feasible alternatives to states' coercive rule; and that utilitarian evaluations neglect some crucial moral issues.

## The Perceived Need for Coercive Social Controls

The general need for social control — coercive or otherwise — is thought to arise because each of us has wants and needs that may be frustrated by other persons as well as by our own imprudent decisions. We need nourishment and food reserves because there are times when food would not otherwise be available. We need the protection that is provided by shelter and clothing and access to resources such as tools and raw materials. Because we need such material possessions, it is important to make them secure. The problem is that in looking out for ourselves and those we care about, we may disregard the interests of others, to their detriment. If we want food, for example, we may try to take some from the food reserves of other persons. Such unsociable conduct can be self-defeating, for it may provoke retaliation by those whose welfare we have threatened; moreover, it generates mistrust, discourages reliance on others, and hinders mutually beneficial cooperation.

If each of us has to protect ourselves from encroachments by others, we will be obliged to expend some of our limited resources in unproductive ways. We are better off, then, when social controls — norms, rules, traditions — effectively discourage unsociable behavior and secure our persons, possessions, and freedom, and the possibility of useful collaboration with others. Thus social controls can serve our most basic interests and promote our welfare to a very significant degree.

Many theorists believe that coercion is needed to enforce social controls, because non-coercive efforts to persuade us to comply with norms, rules, traditions, and appeals to a sense of moral decency will not suffice. The threat of punishment is needed to convince us to respect others' persons and property, and to keep the promises we have made to them. (And when threats fail, punishments must be carried out, otherwise the threats are not credible.) Coercion may also be used to discourage *free-riding* — when a person breaks the rules in order to get extra benefits for him- or herself, while taking advantage of others' compliance with the rules (for example, a person uses water, beyond his or her allotted share, during a water shortage, thus exploiting the self-restraint of others,

who take only their share). When free-riding becomes widespread, it undermines the useful coordination, and everyone suffers. And coercion may be used paternalistically, to dissuade us from practices that undermine our own welfare.

The utilitarian accepts that such coercion imposes welfare costs, but may reason that the costs are justified by the greater welfare benefits they purchase, including security, freedom from fear, increased liberty, the ability to plan with others and to rely on others' commitments, and the benefits that other projects can generate.

Thomas Hobbes suggested that we might reasonably settle for the bare minimum that coercive controls can secure. He argued that in the absence of centralized coercive social controls, human life is "solitary, poor, nasty, brutish, and short." Hobbes held, in effect, that life under a state, *however oppressive the state might be*, is preferable to life without its coercive controls. Although Hobbes did not reason from utilitarian premises, he thus suggested a utilitarian justification of the state. But utilitarians have been less pessimistic than Hobbes, and have held that coercively enforced policies can advance the general welfare beyond the bare minimum of life and security of goods. States can levy taxes to promote projects, ranging from public utilities to museums, that ease and enrich our lives.

How should the rules be enforced? Specifically, who should impose coercion? A single person cannot enforce social rules, for each of us is physically vulnerable and no one is powerful enough to impose his or her will on others. To administer coercive social controls, some members of a community must work together. Experience shows that enforcement can be achieved by a minority of the members — even a small minority.

But the possibility of enforcement by a small minority leads to the first difficulty for a utilitarian justification of the state.

## Misuse of States' Coercive Power

Once coercive controls are established, they may be used to serve the aims and perceived interests of an influential minority at others' expense. Their use can enhance the general welfare or destroy it, for coercively enforced public policies need not be humane or beneficent.

This concern is supported by our collective experience. Many states have enforced oppressive class structures, including serfdom, peonage, and slavery, which are extremely unlikely to promote the general welfare.

Consider the United States. From its formal beginning in 1789 until 1865, it incorporated the brutally oppressive system of chattel slavery, which served the interests of some members of the community at a terrible price for others. Not long after slavery was abolished, it was replaced by the brutally oppressive system known as Jim Crow, which was maintained until the 1960s. Those systems of racial subordination, which together lasted nearly two centuries, depended on coercive social controls. If alternative social arrangements that would have better promoted the general welfare were feasible — as critics of slavery and Jim Crow maintained — then the U.S. federal state was not justifiable in utilitarian terms.

Moreover, states do not confine their activities within their political borders. State systems of coercive control have often been used to conscript members of their own communities in order to wage aggressive war, acquire territory, and create colonial empires. These facts are especially important from a utilitarian perspective, which demands that we give full consideration to the interests of *all* who are affected — that we may not discount the interests of any persons, wherever they may live, whatever their complexion, convictions, or culture.

To appreciate this point, it is essential not to confuse the utilitarian's general welfare criterion with the notion that a government should promote the interests of *its own* community. Such a "national interest" criterion means that a government may properly ignore the welfare of outsiders (except when the interests of the communities happen to converge). By contrast, utilitarianism requires that we treat *everyone, everywhere*, as full-fledged members of the *moral* community.

Some utilitarians may argue that this emphasis on universalism overlooks "indirect" utilitarian reasoning. Such reasoning is employed when we evaluate the conduct of an individual who helps administer coercive social controls not by the welfare benefits and costs of that conduct taken by itself. Instead, we judge the conduct by the system's rules, and then evaluate the rules in terms of the welfare effects of the system as a whole. For example, we say that a judge does the right thing when the judge acts impartially in a trial; and then we evaluate requirements of impartial judging in terms of the overall welfare benefits of a legal system that includes impartial judges. By analogous reasoning, it may be held that the people of the world are better off if each government dedicates itself to promoting the welfare of its own subjects (or at least gives greater weight to their interests than to the interests of others) than if it tries to give equal consideration to the interests of all.

That might be true, but it needs to be shown, not merely asserted; it needs empirical support. In any case, even if governments are justified in giving extra weight to the interests of citizens, a utilitarian theorist who seeks to justify the state must count the interests of all concerned equally, and not confine attention to those within a particular state.

While utilitarianism requires that everyone's interests be given full consideration, however, it is *not* committed, as a matter of principle, to political, economic, or social equality. As we have noted, utilitarianism can condone social "trade-offs," in which burdens are imposed on some persons for the sake of other persons' greater benefits — provided the arrangements maximize utility.

What seems to follow is that utilitarianism condemns, on its own terms, many states and many kinds of states. But states vary greatly, and the social systems they support change over time in relevant ways. A democratic South Africa is much more likely to promote the general welfare than South Africa under *apartheid*. Some states enforce rigid class structures (slavery, serfdom, caste) while others embrace freedom and social mobility, and a given state's policies can vary greatly over time (slavery and serfdom can be abolished; social and economic opportunities can become more widely distributed). Some states control their societies' resources and productive capabilities, while others promote private ownership and private arrangements, and a particular state can change such policies substantially over time. Some states

control markets tightly, some try to maintain competition, while others condone concentrations of wealth and power, and these practices likewise change within given states from one era to another. As laws, policies, and circumstances vary and change, so do states' impact on welfare. Given the changes to which public policies are susceptible, a particular state's utilitarian merits are likely to vary over time.

The utilitarian defense of a particular regime thus requires a detailed empirical argument. Other theories, which justify the state in terms of universal consent, or the protection of individual rights, or preserving peace, or satisfying democratic principles, are much easier to apply. Utilitarianism requires much more complex support, including the consideration of alternatives.

## Feasible Alternatives

A utilitarian justification of states needs to compare the welfare benefits (and costs) of states with the welfare benefits (and costs) of feasible alternatives. Consider actual states first (we'll consider states in general later). Given the enormous suffering and loss of life caused by Germany's role in World War II and the Holocaust, it seems reasonable to suppose that the Nazi state compares unfavorably with feasible alternatives. This assumes, of course, that the development and maintenance of the Nazi state was not inevitable but resulted from human actions to which there were alternatives.

The feasibility of alternatives to a given state might vary over its lifetime, as ideas and attitudes towards government and specific institutions change. Consider the United States once again. In the late eighteenth century, anti-slavery sentiment was growing not only in the North but also in the Upper South, including Virginia. This is why Lower South states, such as South Carolina, sought constitutional protections for slavery. Given the new republic's resources, compensated emancipation might have been a politically feasible project, and it is arguable that the United States could have been founded without supporting slavery. If so, a United States without slavery from the start was a feasible alternative to the slavery-friendly republic that was actually founded. When slave-based enterprises came to dominate the U.S. economy in the nineteenth century, however, it became vastly more difficult to reduce the federal government's support for slavery. A slave-free republic might still have been feasible, but it would have been much more difficult to achieve. By the end of the Civil War, however, history shows that a slave-free alternative became feasible, though perhaps only at great cost.<sup>2</sup>

2. Recall that utilitarian theory requires us to consider the costs as well as the benefits of realizing alternatives. But what counts as a feasible alternative is not entirely clear. One might assume, somewhat vaguely, that a feasible alternative must be a type of state that is imaginable by some members of the given society, and that it must be sustainable under the general circumstances. It is unclear how to make this more precise, as well as what other conditions should be understood to limit the class of feasible alternatives. [Lyons's note.]

The problem of feasible alternatives applies not only to individual states but to states in general. There may be genuine alternatives to states as such if non-coercive social controls can be effective. Are they a real possibility, or only a figment of the utopian imagination?

Many theorists believe that social systems cannot persist without coercively enforced social controls, and thus that non-coercive social arrangements are not feasible alternatives. But it is difficult to judge, for we have had little experience of societies without coercive social controls, and it is not clear that their rarity reflects their impracticality. From early on, we have been encouraged to regard states with their coercive social controls as natural and necessary. Is this a reasonable assumption? Are non-coercive systems not feasible?

We should be careful here. As coercive social controls are needed by those who wish to impose and maintain exploitative social systems and who possess the resources to influence prevailing attitudes, skepticism is appropriate. Consider some other assumptions that people have long been encouraged to make, such as the need for war, for colonizing other peoples, for enslaving others, and for taking their land. Given our historical experience, we cannot accept such views uncritically. We know better.

In fact, we also know that humans have sometimes lived in well-functioning societies *without* centralized systems of coercive control. Many Native American nations, for example, did not traditionally employ systems of coercive social controls like those with which we are familiar. It is not that they lacked standards of conduct or failed to uphold their standards. On the contrary, social control was maintained by procedures aimed at reconciliation rather than punishment or retribution.

Are those practices relevant to contemporary societies? It is true that many Native American communities were small by contemporary standards; it is also true, however, that some Native American communities encompassed populations with many thousands of members.

We do not yet know how capable humans are to live cooperatively, under non-coercive social control, and under what conditions centralized coercive systems might be required. Until we understand our human capabilities better, we should hesitate to suppose that human society requires coercive social controls or that they are justified by their contribution to human welfare.

## Moral Limits of Utilitarian Justifications

We have so far been considering utilitarianism on its own terms, and exploring the distinctively utilitarian approach to justifying the state. It is time to place the issue in a wider perspective, and ask about whether utilitarianism is a compelling outlook on political morality.

Recall that utilitarianism can tolerate social trade-offs — that it is capable, at least in principle, of condoning social arrangements that impose large burdens on some

for the sake of a greater sum of benefits for others. As we have noted, it is doubtful that utilitarianism does in fact support such exploitative systems as chattel slavery in the United States, because it is doubtful that the welfare benefits to the beneficiaries more than compensate for the welfare costs to those who suffer.<sup>3</sup> One might still wonder, however, whether utilitarianism views the matter properly. For it implies that serfdom, peonage, slavery, and other systems that subordinate some for the sake of others *would be morally justifiable* if the benefits were great enough or the beneficiaries were numerous enough. Suppose for example that a relatively small number of very productive slaves are employed in mines. Then the benefits may be very great and the burdens relatively small. Still, the slavery seems wrong.

One explanation of this moral perception is provided by the idea of human rights—the idea that each of us has some unconditional rights, the existence of which does not depend on social recognition or enforcement.

Consider the role of entrenched rights within political systems in which most public officials are elected by popular vote. Many such systems limit majority rule by recognizing a limited class of rights, belonging to individuals, that are legally enforceable and not easily repealed: for example, rights of expression, association, and conscience. This type of constitutional arrangement reflects the moral conviction that, contrary to what utilitarianism says, certain interests of individuals are not subject to social trade-offs—even if the enforcement of those rights is unwelcome, inconvenient, or costly to the majority.

Freedom of expression is a good example. Its constitutional protection represents the idea that expression may not be restricted even if many people are upset by what is said and the general welfare would be improved by silencing dissenters. The abolition of slavery is an even better example. We do not need to calculate welfare effects to recognize that allowing some people to treat others as fungible property unacceptably violates the dignity and independence of those who are enslaved.

A reasonable understanding of this priority given to a limited set of legal rights is that morality requires us to respect each individual, and that utilitarianism does not adequately capture the kind of respect that is owed to each person. The utilitarian does say that we must take the interests of each into consideration in a calculus of social costs and benefits. But the practice of entrenching rights suggests that morality also requires that certain interests of individuals may not be encroached upon in order to advance the general welfare. We may think of this practice in terms of the dignity of the individual and the respect that each person is due. If so, any acceptable answer to the question of whether a state is justified must consider not only its welfare effects, as utilitarianism insists, but also whether it treats each individual with dignity and respect.

Utilitarian theorists have disagreed about the idea of universal human rights. Utilitarian theory denies the existence of fundamental moral rights that are not subordinate to the calculus of welfare benefits and costs, and most utilitarian theorists have rejected the idea of moral rights. But utilitarianism leaves room for two ways of

3. But the utilitarian must view a system like slavery to be *justified* on the ground that (as might have been the case in ancient Rome) there were no feasible alternatives. [Lyons's note.]

trying to accommodate a limited set of important rights, thus blunting the force of the criticism of utilitarianism for putting all human interests into a social calculus of costs and benefits.

Some utilitarian theorists, such as John Stuart Mill,<sup>4</sup> have embraced the idea of moral rights by arguing that the recognition and enforcement of some rights promotes the general welfare. Given that view, Mill could defend the constitutional entrenchment of a limited set of moral rights. Moral rights aside, other utilitarian theorists claim that some interests of individuals are so crucial to individual welfare in any circumstances we are likely to confront that the calculus of welfare benefits and costs directly justifies the constitutional protection of some individual rights. Like other indirect utilitarian claims, each of these requires complex empirical support. If that support were forthcoming, utilitarianism — as a general moral framework, and as a way to think about whether, in particular, we ought to have a state with its coercive powers — would go a long way toward overcoming a significant objection.

## TEST YOUR UNDERSTANDING

1. What is utilitarianism?
2. Why is there a “perceived need for coercive social controls”?
3. What does Lyons mean by an “oppressive social structure”? What are some of his examples of states that have “enforced oppressive social structures”?
4. Lyons mentions three challenges to a utilitarian justification of states. State the three challenges in your own words.

## NOTES AND QUESTIONS

1. Lyons thinks that we should be more cautious than we are in assuming that human societies require coercive social controls. Do you think there could be a decent human society on a large scale (say, at least as large as Iceland, whose population is now 320,000) without coercive social controls? How would the society deal with people who injure one another? How would it resolve disagreements (for example, disagreements about who owns what)? How would it ensure that the resolutions are followed? How does Lyons’s article speak to these issues?
2. Punishment, Lyons says, is an essential feature of the state. Moreover, punishment adversely affects the welfare of people who are punished. Because of the adverse

4. John Stuart Mill (1806–1873) was born in London, England. He was a utilitarian and a leading public thinker. In chapter 5 of his *Utilitarianism* (1863), Mill discusses the place of rights in utilitarianism. [Lyons’s note.]



impact, utilitarians favor punishment only when it prevents “worse harms” in the future. So part of the utilitarian case for having a state is that punishment is needed to prevent worse harms from occurring. Punishment in itself is a bad thing: it is justified (when it is justified) only by its good consequences.

Utilitarians thus reject a *retributive* theory of punishment. For the retributivist, unlike the utilitarian, the rationale for punishment is not to create a better future: you punish people because they have done something wrong, and punishment is the appropriate or fitting response to wrongdoing. The rationale of punishment is backward looking, not forward looking. Kant, who held a retributive view, said:

Even if a civil society were to be dissolved by with the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout the whole world), the last murderer remaining in prison would first have to be executed so that each has done to him what his deeds deserve, and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in this public violation of justice.<sup>1</sup>

(Many retributivists have opposed capital punishment. The point of quoting the passage from Kant is not to get you thinking about capital punishment, but to illustrate the idea that a crime should not be punished because punishment is fitting, not because it has good effects.)

Suppose you hold a retributive view of punishment: you think that wrongdoing should be punished because punishment is fitting, and not just because of the beneficial effects of punishment (say, because it will deter future crime). How would this shape your ideas about why there should be a state? Is it easier to justify a state if you think that punishment is needed simply because there is wrongdoing, not because of a calculation of the future consequences of punishment?

3. Utilitarianism, Lyons says, requires much more “detailed empirical argument” in evaluating a particular regime than alternative theories that “justify the state in terms of universal consent, or the protection of individual rights, or preserving peace, or satisfying democratic principles.” What kind of empirical argument is needed for the utilitarian evaluation? Consider, for example, the kind of empirical argument you would need to make to show that a democratic system is better for overall human welfare than a more authoritarian regime.

Is Lyons’s contrast between utilitarianism and alternative justifications of the state convincing? Suppose you think that a state like the one that Hobbes describes — an authoritarian state — is justified because it is better equipped than alternatives to keep the peace or to protect individual rights. That is, suppose you think that a very strong state is more likely to keep the peace than a less strong state; or suppose you think that a very strong state is better at protecting individual rights than any alternative kind of state. So you do not offer a utilitarian justification. Can you then rely on a less “detailed empirical argument” for the state than the utilitarian needs to provide?

1. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor, in Immanuel Kant, *Practical Philosophy* (Cambridge University Press, 1996), p. 474.