

## UTILITARIANISM AND NATURAL RIGHTS

ΟΜΙΛΙΑ ΤΟΥ ΚΑΘΗΓΗΤΟΥ Κ. Η. L. A. HART

ΑΝΤΙΠΡΟΕΔΡΟΥ ΤΗΣ ΒΡΕΤΑΝΝΙΚΗΣ ΑΚΑΔΗΜΙΑΣ

Κύριε Πρόεδρε, μέλη τῆς Ἀκαδημίας, κυρίες καὶ κύριοι,

Τὸ παρελθὸν ἔτος ὁ καθηγητὴς κύριος Ζέπος ἔδωσε μία διάλεξη στὸ Λονδίνο σὲ τέλεια Ἀγγλικά. Δυστυχῶς δὲν ἔχω τὴν ἰκανότητα νὰ σᾶς μιλήσω στὰ Ἑλληνικά παρὰ τὸ ὅτι ἀφιέρωσα ἕνα μεγάλο μέρος τῆς νεότητός μου στὴ μελέτη τῶν Ἀρχαίων Ἑλλήνων συγγραφέων.

Θέλω ὅμως, μ' αὐτὰ τὰ λίγα λόγια, νὰ ἐκφράσω πόσο μὲ τιμᾶ ἡ πρόσκλησή σας, καθὼς ἐπίσης καὶ τὴν εὐχαρίστηση ποὺ αισθάνομαι ἐπιστρέφοντας στὴν Ἑλλάδα, ἡ ἱστορία καὶ τὸ πνεῦμα τῆς ὁποίας εἶχαν τόση μεγάλη ἐπίδραση στὴ ζωὴ μου.

## I

*Just over 200 years ago when Britain's American colonies finally broke away and declared their independence, two major political philosophies confronted each other across the Atlantic. The American Declaration of Independence of 1776 invoked, in some famous brief sentences, the doctrine that all men are created equal and possessed of the natural inalienable rights of man, rights to life, liberty and the pursuit of happiness, and that it was to secure these rights that governments, deriving their just powers from the consent of the governed, were instituted among men. But only three months before the Declaration of Independence was signed, Jeremy Bentham had announced to the world in his first book *A Fragment on Government* his famous formulation of the principles of Utilitarianism according to which both government and the limits of government were to be justified, by appeal to very different principles: not by reference to the rights of individuals and certainly not by reference to an allegedly natural species of right, but by reference to «the greatest happiness of the greatest number»<sup>1</sup>.*

*Later in the same year Bentham 1776 inserted into an *Answer to the Declaration*, published by a close friend<sup>2</sup> and collaborator, a brief critical*

1. *A Fragment on Government in Works of Jeremy Bentham: I.* 221, 227 (ed. Bowring 1843) hereinafter cited as *Bentham's Works*.

2. John Lind, *An Answer to the Declaration of the American Congress*, 1776. 120-22. For the identification of Bentham's contribution see Hart: *Bentham and the United States of America XIX. The Journal of Law and Economics* (1976) p. 555 n. 37.

attack on the whole conception of natural and unalienable rights. In this work the doctrine of Natural Rights is rudely dismissed in part as self-contradictory nonsense and partly as an intelligible but dangerous doctrine quite incompatible, if taken seriously, with the exercise of any powers of government whatsoever. As Benetham in this Answer to the Declaration asked «If the right of the pursuit of happiness is a right unalienable, why are thieves restrained from pursuing it by theft, murderers by murder, and rebels by rebellion?»<sup>1</sup> These charges Bentham later repealed in a much expanded form in his essay on *Anarchical Fallacies*<sup>2</sup> which he wrote in response to the French Declaration of the Rights of Man of 1791. Though in this later attack the criticism is much more detailed and sophisticated, the main charges are the same: the doctrine of natural rights is in part nonsense and in part dangerously anarchical, undermining good and bad government alike: it was, said Bentham, so much «bawling on paper»<sup>3</sup> not only «nonsense» but «nonsense on stilts»<sup>4</sup>. Government among men exists not because men have rights prior to Government which Government is to preserve, but because without Government and law men have no rights and can have none. The test of good government is not Natural Right, but the general happiness of the governed.

The crucial difference between these two doctrines, thus opposed in 1776, is that Utilitarianism is a *maximising* and collective principle requiring governments to maximise the total net sum or balance of the happiness of all its subjects, whereas Natural Right is a *distributive* and individualising principle according priority to specific basic interests of each individual subject.

Bentham knew that he had special talents for setting ideas to work in changing the world as well as understanding it. So he dedicated his energies throughout his long life to the detailed elaboration and application of the «greatest happiness» principle» (as he preferred to call the principle of Utilitarianism) secure in the conviction that he was endowed with a unique capacity for this task and able to perform it more powerfully, more clearly and with more patience and convincing detail than any previous thinker who had based criticism of government and society on Utilitarian principles.

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1. See Lind *op. cit.* 121 and *Correspondence of Jeremy Bentham* (Sprigge ed. 1968) Vol. I, p. 343 in *Collected Works of Jeremy Bentham* (Univ. of London 1968).

2. *Bentham Works II.* 491.

3. *id.* 494.

4. *Bentham Works II.* 501.

It was, I think, in part due to Bentham's extraordinary powers of exposition and his passion for working out in many detailed schemes of reform the practical consequences of Utilitarianism, that although his doctrines were at first ignored and later much criticised eventually they came to dominate English social thought for a long time. For much of the nineteenth century 'Utilitarianism' became in England almost synonymous with progressive political and social thought. As Elie Halévy said, it seemed as if all reformers during the nineteenth century were forced to speak the language of Utilitarianism<sup>1</sup>. By contrast the doctrine of Natural Rights (which had at the time of the American Revolution many English supporters) seemed to disappear from practical policies and controversy, as if vanquished by Bentham's onslaughts. Few advocates of constitutional or legal reforms in XIX<sup>th</sup> century England or even America invoked this conception. Of course Utilitarianism - or as it was often called «Benthamism» - had many critics in XIX<sup>th</sup> century England and during Bentham's lifetime much of his work, famous abroad, was ignored at home. But the critics' own positive political or social philosophies, so far as they had any, were not framed in terms of the doctrine of the Rights of Man. Even in America when, after independence, the thirteen revolting colonies began to fashion constitutions first for themselves and then for the Union finally formed in 1789, their efforts were inspired by principles which fell far short of those announced in the Declaration of Independence of 1776. Slavery was accepted both by the constitutions of most individual states and of the Union without any serious attempt to show how this could be reconciled with a theory that all men were created equal and equally endowed with a natural unalienable right to liberty. Even among the free, white, male population in America the advance after independence to a full democratic franchise was very slow.

Read in the light of these facts the famous opening words of the American Constitution of 1789 which state that it is «to establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare and secure the blessings of liberty» seems to express a theory that the main aim of Government was not the maintenance of universal individual rights but the maximisation of general welfare and the interests of the new nation as a whole, even if that involved, as it did in the case of slaves, the sacrifice for some of individual liberty and happiness.

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1. Halévy, *The Growth of Philosophical Radicalism* (London 1952) 153 - 154.

So Bentham's successive attacks on the doctrine of natural rights had a long enduring success throughout the XIXth century. Let me consider here a little more closely the detail of that attack as it appears in the essay on *Anarchical Fallacies* which is the most elaborate expression of his view. This work written in 1795 but not published till after Bentham's death is a curious work. It is prolix and pedantic but also written with great vehemence and passion. Bentham condemned «the rights of anarchy» as he called *Natural Rights* as compatible only with «the order of chaos»;<sup>1</sup> their advocates were he said «subverters of government»<sup>2</sup> and «assassins of security»<sup>3</sup> who discussed serious political issues in a foolish terminology out of which Bentham says «may start a thousand daggers»<sup>4</sup>. Indeed he thought the doctrine so apt to inflame unthinking passions that its repression by the criminal law might be justified.

To understand Bentham's extravagances it must be remembered that this work was written when the Jacobin Terror was at its heights and this had turned Bentham, as many others, from an initial support of the French revolution into a scared opponent. Indeed in Bentham's case it had done something more important. Bentham in 1776 was no democrat and for at least ten years afterwards he held that there was no need for reform in England where vast numbers had no vote. In 1790 however<sup>5</sup> he sketched out a Utilitarian case for democracy and full manhood suffrage. But fear of anarchy and horror of the excesses of the Terror caused Bentham to put aside consideration of democratic reforms and to devote his time to writing strongly conservative pamphlets arguing that in England there was no need for constitutional reform or any move towards democracy. It was not till 1809<sup>6</sup> that Bentham recovered his nerve from the shock of the Terror. Then convinced that there was a case for democracy based not on the illusory *Rights of Man* but on the sure foundation of Utilitarianism, he became a fervent advocate of radical democratic reforms of the British Consitution.

Bentham was converted to democracy because he had learnt to take a deeply pessimistic view of all governments, the 'ruling - few' as he called them. He viewed

1. *Bentham Works* II. 522.

2. *id.* 523.

3. *id.* 523.

4. *id.* 497.

5. For an account of this unpublished work entitled *On the Efficient Cause and Measure of Constitutional Liberty* see Hart, *op. cit.* n. 2 *supra.* 558-9.

6. See *Plan of Parliamentary Reform* *Bentham Works* III. 468.

*governments as gangs of potential criminals, tempted like robbers to pursue their own interests at the expense of those over whom they had power, «the subject many»<sup>1</sup>. But democracy by placing the power of appointment and dismissal of Governments in the hands of the majority was he thought the best device for securing that governments worked for the general interest by making it their interests to do so, just as the threat of punishment for ordinary crime effected an artificial harmony of interests of the individual and society by securing that potential criminals conformed, however reluctantly, to the requirements of the general welfare. These plain indeed blunt considerations were what Bentham offered as a sane and sober man's guide to democracy, instead of the half intelligible and wild assertion of Natural Right.*

*Bentham attacked the notion of Natural Rights in two main ways. First he claimed that the idea of a right not created by positive law was a contradiction in terms like 'cold heat' 'or resplendent darkness'<sup>2</sup>: rights are all fruits of positive law and the assertions that there were rights antecedent to and independent of human law was only saved from immediate exposure as manifest absurdity because men had been misled into talking of a natural law as the source of a natural right. But both these were nonentities as is shown by the fact that if there is a dispute as to whether a man has or has not some legal right and what its scope is, this is an issue about an objective ascertainable fact which can be rationally resolved by reference to the terms of the relevant positive law, or failing that, by reference to a Court of law. No such rational resolution or objective decision procedure is available to settle the question whether a man has a natural non-legal right, say to freedom of speech or assembly. There is no similar agreed test to establish the existence or non-existence of a natural right, no settled law by which it can be known. So Bentham said «Lay out of the question the idea of a positive law and all you get by the use of the word «right» is a sound to dispute about»<sup>3</sup>. There are no rights anterior to law and no rights contrary to law so though it may express a speaker's feelings, wishes or prejudices the doctrine of natural rights cannot serve as Utilitarianism can, as an objective limit on what laws may properly do or require. Men speak of their natural rights when they wish to get their way without having to argue for it<sup>4</sup>.*

1. Bentham's Works III. 492.

2. Bentham Supply Without Burthen in Jeremy Bentham's Economic Writings I. 283, 335 (Stark ed. 1952).

3. Bentham's Works VIII. 557.

4. *op. cit.* n. 5 *supra* 335.

Bentham's second criticism is that the use of the notion of natural non-legal rights in political controversy and in the criticism of established laws and social institutions must either be impossible to reconcile with the exercise of any powers of government and so dangerously anarchical or it will be totally empty or nugatory<sup>1</sup>. It will be the former if the natural rights which men claim are absolute in form allowing no exceptions or compromise with other values. Men who have strong feelings against some established law will, by using the objective sounding language of unalienable rights, be able to present such feelings as something more : as claims of something superior to established law rendering established law «void» and setting limits to what laws can do or require. Alternatively if natural rights are not represented as absolute in form but allow for general exceptions (as the French Declaration did), if, for example, the alleged natural right of freedom is put forward as something never to be abridged except when the law allows this, they are «nugatory», empty guides both to legislators and their subjects. It had been thus nugatory in some of the new American states where express declarations of a natural right to liberty in their constitution were held not to affect the slave owner's rights to property in his slaves. So concludes Bentham, natural rights are either impossible to reconcile with ordered government since the exercise of governmental powers always involves some limitation of freedom or property, or they are nugatory empty and useless.

Bentham's lengthy critique of natural rights scattered over his various works comprises many other objections besides the two I have mentioned, but these two took a firm root in English political theory. In particular the thesis that there are only legal rights, that the idea of rights anterior to or contrary to law is absurd became for a time part of conventional wisdom and accepted almost as a truism by many English social thinkers. So much so that even the poet and critic Matthew Arnold, who was only marginally concerned with political philosophy or constitutional theory, and was certainly in general unsympathetic to Utilitarianism, when arguing in 1878 that many unsatisfactory features in the social life of mid-Victorian England were due to its great economic and social inequality, felt it incumbent upon him to disclaim any belief in any moral or non-legal right to equality or to anything else. Using language exactly conforming to Bentham's ideas he said, «So far as I can sound human conscience I cannot (as I have often said) perceive that man is really conscious of any abstract natural rights at all. . . it cannot be too often repeated : peasants and workmen have no natural rights, not one. Only we ought instantly to add

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1. Bentham's Works II. 493, 502.

*that kings and nobles have none either. If it is a sound English doctrine that all rights are created by law...certainly that orthodox doctrine is mind»<sup>1</sup>.*

## II

*The first serious challenge to the «sound English doctrine» as Matthew Arnold called it, that there are no rights except those created by law and hence no moral and above all no natural rights, came paradoxically from Bentham's most famous disciple John Stuart Mill, who always proclaimed himself a Utilitarian, though in many ways it seems to us now that he preserved only the letter while changing the spirit of the original Utilitarian doctrine in many important ways.*

*Mill claimed, as a good Utilitarian, to abjure the use of what he termed «abstract natural right»<sup>2</sup> but he reached the conclusion that unless the idea of a moral non - legal right is admitted no account of justice as a distinct segment of morality could be given. This is so he thought because justice consists principally in respect for fundamental moral rights which all men have whether or not any particular society recognises such rights in its law or social practice. Mill claimed that there could be no conflict between justice so defined as respect for fundamental rights and utilitarian political morality<sup>3</sup>. In this I think he was mistaken for in the last resort there is an unbridgeable gap between pure Utilitarianism, for which the maximisation of the total aggregate general welfare or happiness is the ultimate criterion of value, and a philosophy of basic human rights which insists on the priority of principles protecting, in the case of each man, certain aspects of individual welfare and so gives to a principle of distribution priority over the maximising aggregative principle of Utilitarianism.*

*Nonetheless Mill's arguments deserve serious consideration. They are a most illuminating precursor of XXth century thought on these matters. He hoped to show that in spite of common opinion to the contrary, justice and the respect for individual rights which justice requires does not conflict with Utility but are part of it. This indeed follows from his definition of what it is to have a moral right. «To have a right» Mill says is to have something which society ought to defend one in the possession of...» and «if an objector goes on to ask why it ought to do so, I can*

1. *Matthew Arnold Equality (1878) in Selected Essays (O.U.P. ed. 1964) 181 - 2.*

2. *On Liberty in Collected Works of John Stuart Mill (Toronto ed.) XVIII 224.*

3. *Utilitarianism Chap. V in Collected Works X 240.*

give no other reason than general utility»<sup>1</sup>. Mill in his attempted reconciliation of Justice with Utility argued that justice and respect for fundamental rights represents a particular kind or branch of general utility, which men recognise as having a superior binding force to ordinary claims of utility. He says that in the case of individual rights that the interests of the individual which are at stake constitute «an extraordinarily important and impressive kind of utility» which he describes in a number of striking phrases : «something no human being can possibly do without»; «the very groundwork of our existence»; «the essentials of human wellbeing»<sup>2</sup>. He explains that among the interests included in this special kind of Utility of fundamental rights are the individual's security from harm inflicted by others on the one hand, and from wrongful interference with his freedom to pursue his own good. These he says are «utilities vastly more important and vastly more absolute and imperative»<sup>3</sup> than any others and are to be sharply distinguished from the mere idea of promoting human pleasure, happiness or convenience. The difference in degree of the intensity of feeling which gather round these essential individual utilities constitutes, says Mill, «a real difference in kind»<sup>4</sup>. Mill's conception of this special kind of Utility consisting in certain specific protections of individual freedom and basic interests, and his consequent characterisation of the particular moral rights in the recognition of which justice consists, corresponds very closely to some elements stressed in formulations of Natural of Human Rights from the French Declaration of the Rights of Man of the eighteenth century to the U.N. Declaration of Human Rights of our own day. For claims to such rights are centrally claims to what is necessary not merely to secure increases in totals of pleasure or happiness, but to what men endowed with distinctively human capacities of thought, rational choice and action need if they are to be able to pursue their own individual ends as progressive beings; that is they need first a wide area of freedom from interference as well as freedom from the most palpable forms of physical harm. Jefferson, it will be remembered, distinguished between rights to happiness and the right to pursue happiness, and freedom of thought and choice has always been the organising centre of assertions of human rights.

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1. *id.* 250.

2. *id.* 255.

3. *id.* 259.

4. *id.* 251.

*It is most important that Mill conceived that these fundamental rights described by him as a special kind of Utility should be respected by society in the case of each individual. «The principles at stake», he says, «protect every individual from being harmed by others»<sup>1</sup> and he adds that «it is by a person's observance of these principles that his fitness to exist as one of a fellowship of human beings is tested and decided.»<sup>2</sup> Mill therefore recognises an equal distribution as vital where these fundamental rights are concerned: all are to have them respected. Yet he nowhere demonstrates or even attempts to demonstrate the doctrine that general utility, as Bentham conceived it, is the basis of such individual rights since he does not show that general utility treated as an aggregate would be maximised by an equal distribution to all individuals in society of these fundamental rights. There is therefore nothing to counter the sceptic who would argue that if general utility had any meaning it must be logically possible that the total net balance of ease, pleasure and happiness of a society over pain or unhappiness might be greater, not where those fundamental rights were equally distributed to all members alike, but where a minority, say a small slave population, or even a few individuals, were denied these essentials of human wellbeing in order that the vast majority should receive increments in the means of pleasure or happiness, each small in themselves but large in the aggregate. The difficulty for Mill arises from the possibility that a society might protect the vast majority of its members by rules which made exceptions for a small oppressed minority. Utilitarian principles might be satisfied by this but a doctrine of Natural Rights could not be.*

### III

*Bentham's Utilitarianism met, as I have said, with much criticism even during the XIXth century at the time of its greatest influence on the thought of political and social reformers. But none of those criticisms were accompanied by any revival of the doctrine of natural right. The most serious philosophical criticisms concerned the theoretical and practical difficulties facing a Utilitarian «calculus» or reckoning of totals of net happiness pleasure or welfare. This required the pain and pleasures of different persons to be compared added and subtracted in order to determine what course of conduct would produce the greatest net balance of happiness over all. The most widespread criticisms of Bentham's Utilitarianism were made by some of the*

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1. *id.* 256.

2. *id.* 256.

great literary figures of the time. These were often based on a gross misunderstanding of Bentham's thought. Whereas Bentham explicitly identified the Utility which was to be maximised with pleasure and happiness arising from any source - from the intellect, from friendship, from honours, as well as the senses - some of his critics identified it with mere sensuous pleasure. Other critics like Hazlitt<sup>1</sup>, Carlyle<sup>2</sup>, and Dickens<sup>3</sup> even contrasted Utility with enjoyment of life or happiness as if it meant solely the production of material goods at the cost of grinding labour. «The Utilitarian spirit,» said Dickens was an iron-binding of the mind to grim realities<sup>4</sup>.

Many refinements, some very sophisticated, designed to met these and other criticisms, were made of Bentham's original doctrine by later Utilitarians in the XIXth century. The most important amendment made to avoid the difficulties of the Utilitarian calculus was to restate the doctrine not in terms of pleasure or of happiness, but in terms of the satisfaction of desires or what the welfare economists would call «revealed preferences». The ultimate criterion for governments to follow would then become maximum satisfaction and minimum frustration of such wants or preferences, and in this reformulation some of the difficulties of measurement and interpersonal comparison were avoided with the aid of ideas drawn from economists, notably Pareto.

But all these were matters of comparative detail leaving untouched the central idea of Utilitarianism both as a standard of personal morality and as a critique of government that all that matters morally is the maximisation of a single collective or aggregate or total value whether it is called pleasure, happiness or want satisfaction.

The first fundamental criticism of this central maximising principle is again to be found implicit though not explicit in John Stuart Mill's work. It is implicit in his account of justice already mentioned, but even more importantly in his influential reflections on Liberty, in the essay of that name. Bentham, it will be recalled, in making his own slow transition from a Tory supporter of the unreformed British Constitution to radical democrat, thought that Utilitarianism provided entirely adequate reasons for preferring democracy with manhood suffrage to any other form of government, because only a government dependent on popular election could have sufficient in-

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1. *The Spirit of the Age* in *Collected Works of William Hazlitt* (1902 ed.) IV 189.

2. *Sartor Resartus* in *Collected Works of Thomas Carlyle* (1887 ed.) I 116, 213 - 14, 226 - 8.

3. *Charles Dickens Hard Times* (1867).

4. *Charles Dickens Household Words* (issue of March 30, 1850).

centive to work for the general interest rather than the sinister interest of a governing few. So his critique of constitutional or political structures was rather like that of a business efficiency expert on a grand scale examining the structure of a firm, and political theorists of our own day have produced some highly sophisticated versions of this type of quasi-economic approach to political theory. But Mill valued democracy for quite other reasons: not merely as the protection of the majority against exploitation by the few and against the inefficiency of governments, but as affording the opportunity to all to develop their distinctive human capacities for thought, choice and self-direction by partaking in political decisions even in the minimal form of voting at intermittent elections. But Mill also thought that the tyranny of the majority over a minority was as great a danger as the tyranny of a minority government or despotism against which Bentham thought democracy the best protection. So a political morality which like Utilitarianism places political power in the hands of the majority is not enough to secure a good liberal society. It matters very much what the majority do with the power which is put in their hands so there is need for distinct principles of political morality whether or not they are translated into law in the form of a Bill of Rights. «The limitations of the power of government over individuals», said Mill, «loses none of its importance when the holders of power are regularly accountable to the community - that is to the strongest party therein»<sup>1</sup>.

Hence when Mill came to discuss the liberty of the individual he argued that it was only to be interfered with or restricted (whether by law or social pressure) when the conduct of the individual is harmful to others, whereas a strict maximising Utilitarian would have to allow that the freedom of an individual might always be restricted if this would increase the total aggregate welfare of society. Mill's doctrine of liberty is on this point a striking departure from the maximising principle of Utilitarianism and the effect of it is to secure for each individual an area of freedom for the whole range of his activities which are not harmful to others. Since it offers this protection to the freedom of the individual as such it secures the same area of liberty for all individuals and thus a measure of equality, whereas Utilitarianism is in no way committed to equality as an independent value. Of course Mill's doctrine is not without its famous ambiguities or difficulties, mainly flowing from the opentextured or vague character of the concept of «harm to others», but it is a striking departure from the maximising principle of Utilitarianism.

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1. *On Liberty* op. cit. note 19 supra 219.

However only in our own time has a direct frontal attack been made on the central maximising principle of Utilitarianism. This modern critique has been developed largely in the United States in the last 20 years, most notably in John Rawls' *A Theory of Justice*<sup>1</sup> which is the most important work of political philosophy written in English since John Stuart Mill. Rawls' work is already profoundly influential, though both its critique of Utilitarianism and its positive theory of basic rights is controversial and incomplete. A similar critique of Utilitarianism is now to be found in many other modern writers, American and English<sup>2</sup>.

The thrust of this modern critique consists of three connected points.

(i) The classical maximising Utilitarianism in focussing on the aggregate or total of pleasure or happiness ignores not only distributive principles, but something of greater moral importance from which the need for distributive principles arises: namely the simple and obvious fact that humanity is divided into separate persons. Maximising Utilitarianism ignores this because, in its perspective, separate individuals are of no intrinsic importance but only important as the points at which fragments of the total aggregate of pleasure or happiness are located. Individual persons for it are therefore merely the locations where what is of value is to be found. It is for this reason that as long as the totals are thereby increased one individual's happiness or pleasure, however innocent he may be, may be sacrificed to procure a greater happiness or pleasure located in other persons. Such replacements of one person by another is not only allowed but required by Utilitarianism when unrestrained by distinct distributive principles.

(ii) The modern critique of Utilitarianism asserts that there is nothing self-evidently valuable or authoritative as a moral goal in the mere increase in totals of pleasure or happiness abstracted from all questions of distribution. The collective sum of different persons' pleasures, or the net balance of total happiness of different persons (supposing it makes sense to talk of adding them) is not in itself a pleasure or happiness which anybody experiences. Society is not an individual experiencing the aggregate collected pleasures or pains of its members; no person experiences such an aggregate.

1. John Rawls *A Theory of Justice* (1976).

2. e.g. Robert Nozick *Anarchy State and Utopia* (1974). Bernard Williams *Morality: an Introduction to Ethics* (1972). Smart and Williams: *Utilitarianism, for and against* (1973).

Ronald M. Dworkin *Taking Rights Seriously* (1977).

J. L. Mackie *Ethics: Inventing Right and Wrong* (1977).

(iii) *From this point of view maximising Utilitarianism, if it is not restrained by distinct distributive principles, seems to proceed on a false analogy between the way in which it is rational for a single prudent individual to order his life and the way in which it is rational for a whole community to order its life through government. The analogy is this: it is rational for one man as a single individual to sacrifice a present satisfaction or pleasure for a greater satisfaction later, even if we discount somewhat the value of the later satisfaction because of its uncertainty. Such sacrifices are amongst the most elementary requirements of prudence and are commonly accepted as a virtue, and, of course, any form of saving is an example of this form of rationality. But it is a common feature of life even where saving and money are not in question. For example I decided some time ago to put aside the then present pleasures of idleness to write this lecture so as to have later this greater pleasure of appearing before you here. In this case the later greater pleasure for the sake of which the lesser earlier pleasure of idleness was sacrificed is really enjoyed by me, the same human being who made the earlier sacrifice. By a misleading analogy with an individual's prudence maximising Utilitarianism treats not merely one person's pleasure as replaceable by some greater pleasure of that same person, but it also treats the pleasure or happiness of one individual as similarly replaceable by the greater pleasure of other individuals. So it treats the division between persons as of no more moral significance than the division between times which separates one individual's earlier pleasure from his later pleasure. But the analogy is false because there is no one person who sacrifices the lesser pleasure but enjoys the greater pleasure later, and the separate identity of different persons is accordingly a division quite different from the merely temporal division between different experiences of a single person, and has a moral claim on our attention of a quite different order.*

*These considerations show why Utilitarianism, once regarded as the great inspiration of progressive social thought, also possesses a darker, sinister, side permitting the sacrifice of one individual to secure the greater happiness of others.*

*Accordingly the contemporary modern philosophers of whom I have spoken, and pre - eminently Rawls in his Theory of Justice, have argued that any morally adequate political philosophy must recognise that there must be in any morally tolerable form of social life certain protections for the freedom and basic interests of individuals which constitute an essential framework of individual rights. Though the pursuit of the general welfare is indeed a legitimate and indeed necessary con-*

cern of governments, it is something to be pursued only within certain constraints imposed by recognition of such rights.

The philosophical defence put forward for the recognition of basic human rights now does not wear the same metaphysical or conceptual dress as the earlier doctrines of the XVIIth and XVIIIth century Rights of Man which men were said to have in a state of nature or to be endowed with by their creator. Nonetheless the most complete and articulate version of this modern critique of Utilitarianism has many affinities with the theories of social contract which in the XVIIth and XVIIIth century accompanied the doctrine of natural rights. Thus Rawls has argued in *A Theory of Justice* that though any rational person must know that in order to live even a minimally tolerable life he must live within a political society with an ordered government, no rational person could regard himself as bound to obey the laws of any government if his freedom and basic interests, what Mill called «the groundwork of human existence», were not given protection and treated as having priority over mere increases in aggregate welfare, even if the protection cannot be absolute.

Both the philosophical foundations of this new critique of Utilitarianism and the detailed application of its doctrine of basic rights to contemporary problems, constitutional, social and economic, of society are still highly controversial. It cannot be said that we have had either from the European or from American political theorists who have now become acutely conscious of the defects of an undiluted maximising Utilitarianism, a sufficiently detailed or adequately articulate theory showing the foundation for such rights and how they are related to other values which are pursued through government. Nothing is yet available of this kind comparable in clarity and detailed articulation to Bentham's elaborate exposition and application of Utilitarianism.

Yet it is plain that such a theory of rights is urgently called for. During the last half century man's inhumanity to man has been such that the most basic and elementary freedoms and protections have been denied to innumerable men and women, guilty, if of anything, only of claiming such freedoms and protections for themselves and others. Sometimes these have been denied to them on the specious pretence that they are demanded by the general welfare of a society. So the protection of a doctrine of basic human rights, limiting what a state may do to its citizens, seems to be precisely what the political problems of our own age most urgently requires, or at any rate it requires this more urgently than a call to maximise general utility. And in fact the philosophical developments which I have sketched have been accompanied by a growth recently accelerated of an international human

rights movement. Since 1946 when the signatories of the United Nations Charter affirmed their faith in fundamental human rights and the dignity and worth of the human person, no state can claim that the denial of such rights to its own citizens is solely its own business. I cannot here assess how much or how little the world has gained from the fact that in the 30 years which separate the signing of the United Nations Charter from the recent Helsinki Agreement pressure for the implementation of basic human rights has become increasingly a feature of international relations, conventions, and diplomacy. Nor can I assess here how often cynical lip service to the doctrine has been and still is accompanied by cynical disregard of its principles. There is however no doubt that the conception of basic human rights has deeply affected the style of diplomacy, the morality and the professed political ideology of our time even though thousands of innocent persons, still imprisoned or oppressed, have not yet felt its benefits. The doctrine of human rights has at least temporarily, replaced the doctrine of maximising Utilitarianism as the prime philosophical inspiration of political and social reform. It remains to be seen whether it will have as much success as Utilitarianism once had in changing the practices of Governments for human good.