

Jurisprudential Study of the Practice of Child Labour and Sociological Utilitarianism

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“In determining the morality of child labour based on the grounds of Utilitarian ethics, there is nothing wrong with child labour since this ethics states that, in all situations, one should act in a way that generates the greatest benefit for the greatest number of people. Everyone’s interests are considered equal. Thus, if utterly poor families are only able to survive when the children work, it is unethical to prevent them from doing so. By permitting child labour, we are promoting the greatest good for the greatest number of people. The family remains intact as a result of the income received, while consumers obtain inexpensive goods from their retailers. While it is true that utilitarianism promotes the common interest of the greatest majority, the common good must be made apparent in its concrete term, which is not, as defined by Fr. Gorospe (1974), the sum total of the social, political and economic goods in society and the dynamic common good of persons, the total human development of each and every person. Child Labour, being a malignant social cancer, is a prime example of how we have failed to promote the common good. Children scavenging for trash are a painful symbol of the reality of inequitable growth in the country. Child Labour may produce a sense of happiness for the family of the children involved; however, the amount of joy generated from letting the children work is very small, instead, considerable suffering prevents the children from obtaining education and from experiencing the simple joys of childhood.”

Introduction

The Nature of Utilitarianism

Utilitarianism is a conscious effort to provide an answer to a legitimate question “*What ought a man to do?*” The answer is that he ought to act so as to produce the best consequences possible.

Basic Concepts

In the notion of consequence, the Utilitarian includes all of the good and bad produced by the act, whether arising after the act has been performed or during its performance. If the difference in the consequences of

alternative acts is not great, some Utilitarians do not regard the choice between them as a moral issue. According to Mill, acts should be classified as morally right or wrong only if the consequences are of such significance that a person would wish to see the agent compelled, not merely persuaded and exhorted, to act in the preferred manner. In assessing the consequences of actions, Utilitarianism relies upon some theory of intrinsic value: something is held to be good in itself, apart from further consequences, and all other values are believed to derive their worth from their relation to this intrinsic good as a means to an end. Utilitarians also assume that it is possible to compare the intrinsic values produced by two alternative actions and to estimate which would have better consequences. Utility means that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness, (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual.

The interest of the community is one of the most general expressions that can occur in the phraseology of morals: no wonder that the meaning of it is often lost. When it has a meaning, it is this. The community is a fictitious *body*, composed of the individual persons who are considered as constituting as it were its *members*. *The interest of the community then is, what is it?* - The sum of the interests of the several members who compose it. An action then may be said to be conformable to then principle of utility, or, for shortness sake, to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it. Any measure of government (which is but a particular kind of action, performed by a particular person or persons) may be said to be conformable to or dictated by the principle of utility, when in like manner the tendency which it has to augment the happiness of the community is greater than any which it has to diminish it.

Child Labour

The term “child labour”¹ is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to the work that:

- *is mentally, physically, socially or morally dangerous and harmful to children; and*
- *interferes with their schooling by:*
- *depriving them of the opportunity to attend school;*
- *obliging them to leave school prematurely; or*

¹ <http://ilo.org/ipecc/facts/lang-en/index.htm>.

- *requiring them to attempt to combine school attendance with excessively long and heavy work.*

The global estimates for the year 2000 are: Of an estimated 211 million children aged 5-14 engaged in some form of economic activity, 186 million children are engaged in child labour to be abolished (including in its worst forms). Of an estimated 141 million children aged 15-17 engaged in economic activity, 59 million children are engaged in child labour. Needless to state that without the recognition of the right to education, realization of the right to development of every human being and nation is not possible. **Article 26 of the Universal Declaration of the Human Rights (1948)** inter alia states that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights.

Child Labour and Morality

The framework used to analyze the moral arguments concerning child labor include the **Principle of Utility** and the **Principle of Human Dignity and Infinite Worth**. The Utility Principle takes interest of everyone into account and proposes that people should engage in a cost-benefit analysis to determine the effects of an action on all the people involved to produce the greatest amount of good and the least amount of pain. The **Principle of Human Dignity and Infinite Worth** sets up a moral standard for everyone in which humans are treated as an end in themselves and not as means to attain any self-interest. This does not allow for the commodification in which a worker is treated as a commodity valued because of the quality and the quantity of work he produces. According to *the Principle of Human Dignity and Infinite Worth*, the worth of a human cannot be sacrificed for the sake of money, convenience or other's welfare.

For the purposes of this paper other principles such as the **Priority Principle** are not used in the framework because they tend to focus the benefits on one economic agent at the cost of the other and this paper aims to provide a welfare enhancing outcome in conclusion.

Arguments in Favor of Child Labor Utility and welfare

The **Principle of Utility** states that in all situations one should act in a way that generates the greatest benefit for the greatest number of people. When looked at from this perspective, child labor is morally right because it helps the child support his or her impoverished family when the parents are not able to work or are unemployed because of illiteracy. According to the **United Nations**, poverty is the most compelling reason which drives child labor. Thus, if extremely poor families are only able to survive on their children's work, it is immoral to prevent them from doing so. Moreover, large-scale corporations and multinationals employ child laborers because it reduces their labor cost which means that consumers throughout the world can obtain inexpensive goods from their retailers. Child labor boosts the **economy** of the location where the child is working which means that utility is being **maximized**.

Therefore when the greatest good for the greatest number of people is being achieved, child labor is moral. This aspect of child labor devalues the life of humans and disrupts human rights and dignity thus it violates **Kant's principle of human dignity and infinite worth**. Child labor can be moral under this framework as long as the employer respects each *child's individual health, safety, freedom, childhood, economic and educational rights*.

Arguments Against Child Exploitation

The agency of the child cannot be expected to make mature enough decisions for themselves and this leaves them vulnerable to **exploitation** at the hands of those who employ them. This can be seen by the fact that children are usually employed at lower wages for the same jobs as adult workers would be. The employers exploit the **weak agency** of the children to negotiate for them a lower wage. This is in direct contrast to the **principle of human dignity** and to some extent the **principle of utility** as well because the children are exploited at an expense that is only shared by them and not by their employer. Furthermore, the issue of unpaid leaves is also in direct violation of these principles. Child laborers do not get to have **unpaid leaves**. This coupled with the fact that the working conditions are poor and children tend to be more vulnerable to diseases leaves the children no option but to try and come on days that they are sick on as well otherwise they do not get paid. This poses a **threat of contamination** to other young workers as well in the case of diseases like chicken pox. Moreover, child labor is not usually done on a **contractual basis**.

This means that the employer has the ability to bend the rules in their favor as required using their influence and exploiting the weak agency of the child. In determining the morality of child Labor based on the grounds of Utilitarian ethics, there is nothing wrong with child Labor since this ethics states that, in all situations, one should act in a way that generates the greatest benefit for the greatest number of people. Everyone's interests are considered equal. Thus, if utterly poor families are only able to survive when the children work, it is unethical to prevent them from doing so. By permitting child Labor, we are promoting the greatest good for the greatest number of people. The family remains intact as a result of the income received, while consumers obtain inexpensive goods from their retailers.

Utilitarianism

Jeremy Bentham

Jeremy Bentham developed his ethical system around the idea of pleasure. He built it on ancient hedonism which pursued physical pleasure and avoided physical pain. According to Bentham, the most moral acts are those which **maximize pleasure and minimize pain**. This has sometimes been called the "**utilitarian calculus**." An act would be moral if it brings the greatest amount of pleasure and the least amount of pain.

Bentham believed that pain and pleasure not only explain our actions but also help us define what is good

and moral. He believed that this foundation could provide a basis for social, legal, and moral reform in society.

Key to his ethical system is the principle of utility. *That is, what is the greatest good for the greatest number?*

Bentham wrote: "By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness."²

Nature has placed mankind under the governance of two sovereign masters, **pain and pleasure**. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. In words a man may pretend to abjure their empire: but in reality he will remain subject to it all the while.

John Mills

Mill defines utilitarianism as a theory based on the principle that "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness." Mill defines happiness as pleasure and the absence of pain. He argues that pleasure can differ in quality and quantity, and that pleasures that are rooted in one's higher faculties should be weighted more heavily than baser pleasures. Furthermore, Mill argues that people's achievement of **goals and ends**, such as **virtuous living**, should be counted as part of their happiness.

Mill argues that utilitarianism coincides with "**natural**" sentiments that originate from humans' social nature. Therefore, if society were to embrace utilitarianism as an ethic, people would naturally internalize these standards as morally binding. Mill argues that happiness is the sole basis of morality, and that people never desire anything but happiness. He supports this claim by showing that all the other objects of people's desire are either means to happiness, or included in the definition of happiness. Mill explains at length that the sentiment of justice is actually based on utility, and that rights exist only because they are necessary for human happiness.

John Stuart Mill agreed generally with Bentham's doctrine but he slightly modified it and included qualitative pleasure along with quantitative one. He also insisted that the utilitarian doctrine of happiness was **altruistic rather than egoistic**, since its ideal was the happiness of all

concerned. Within the utilitarians, one of the chief issues of legal philosophy to which Mill suggested an approach different from that of Bentham was the significance that should be attributed to the concept of justice.

Social Engineering by Roscoe Pound

What is Law?

According to Roscoe Pound "law" has three meanings: **firstly**, it signifies the legal order, i.e., the ordering of human conduct through the systematic application of the force of politically organized society. In this sense it is called a regime of social control. **Secondly**, it means the *sum of the authoritative grounds for judicial and administrative decisions* in such a society. **Thirdly**, it may mean what is called the "judicial process." A **fourth** meaning can be added since the term "law" can be, and often is, used to mean all three of the other meanings just mentioned.³

Which he further summarizes as the following, Law is defined as experience developed by reason and reason tested by experience; it is experience organized and developed by reason, authoritatively promulgated by the **lawmaking organs** of society and backed by the force of that society.⁴

Rights and Interests

In a world in which there are an unlimited number of human demands and desires but where the means of satisfying those demands are limited it is inevitable that conflicts should arise. These conflicts are resolved by giving **legal effect** to one interest which thus becomes a legal right, or simply a "**right**." In law we must reconcile and adjust these conflicting interests or claims so as to secure as much of the totality of them as we can. It is incorrect, Pound tells us, to speak of **rights before interests** have been defined, delimited, and recognized by law. Once this has been done, "rights" are the means by which interests are secured. **Theories of natural right** erred in confusing the interest which the law should secure with the rights by which it is secured. For Pound a **natural right** is nothing other than an interest which we think should be secured, a demand which we think ought to be satisfied.

Social Legislation as a Tool For Social Engineering⁵

When unequal distribution of wealth exists in a society or when social justice is denied to certain sections of the people, laws are enacted to bring about equilibrium. These laws may be designated under "**social legislation**". Social legislation tries to remove inequalities and to benefit the whole community rather than a few individuals. It adjusts supplements and sometime replaces the existing legal system. In other words, in addition to ameliorating the social conditions

² Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, 1789.

³ Pound, A Comparison Of Ideals Of Law, 47 Harv. L. Rev. 1-2 (1933); Ef. Pound, Justice According To The Law 48 (1951); Pound, My Philosophy Of Law, My

Philosophy Of Law, Credos Of Sixteen American Scholars (1941).

⁴ Pound, Social Control Through Law 62 (1944).

⁵ Law as a Tool for Social Engineering in India

of people, it bridges the gulf that exists between the existing laws at the requirements of the society at a given time.

Social legislation, in this sense has a special significance. It is different from ordinary types of legislation in as much as it reflects, the **legislative policy** of establishing social justice on humanistic and egalitarian principles.

The **primary functions** of social legislations are summed up in following words:

- (1) *To provide for the orderly regulation of social relationship.*
- (2) *To provide for the welfare and security of all individuals in the social unit.*⁶

Social legislation, therefore, aims at establishing social equality in society. The needs of society are adjusted and those who are responsible for creating imbalances or inequalities in society are prevented from doing so. It is however, necessary that all social legislation must be accompanied by “**social preparedness**” - by effective propaganda to educate the people about its objects and to convince them of the ultimate utility of a particular legislative measure aimed at promoting the **common good and fostering the common welfare**. It is only then that the law can give direction, form and continuity to social change.

Child Labour and Interest Based Society

Children are integral part of the society and have to be given equal rights and their interests are to be promoted and protected as the other members of the society be it an individual, a group or a legal body. The children being exploited as child labours should have the same societal status as any other person but are deprived from it.

Private Interests:

The *physical, mental health and wellbeing* of the children should be taken care of by the State and violations of it should amount to severe consequences. These safeguards provided by the law should be strictly enforced to promote the wellbeing of them. Since they at a tender age are not aware of their rights, we have a moral and **legal responsibility** to avoid and prevent their exploitation and promote their freedom, in order for them to prosper.

Public Interest:

State is the guardian of all the individuals under it and therefore must seek to the *prevention of the atrocities* that the children face under this vicious loop of child labour and should regulate the laws that undertake the employment and industrialism to seek that the **abolishment of this societal wrong** must be removed from the roots.

Social Interest:

At last the children from a large part of the society, not as an individual but a majority of the population and thus it is important on our part to safeguard their interests and focus on their **socio-economic development** and to make the society a better place in a whole, this might also call for various institutional changes in the system, but what is necessary, needs to be done as it is the call of the hour to take such menial and vicious things to task. **Development of the personality** as a whole at this tender age rather than exploiting them as a work force must be taken into prime consideration rather than just the elimination of the child labour from the system, laws should be framed enacted and enforced so as to make the child blossom in this society, for they are the future, thus calling for a **Sustainable Development** of the Children as well.

Utilitarianism and Child Labour

The **Theory of Utilitarianism** believes that man is social by nature and is always motivated in life chiefly by the desire to *obtain happiness and avoid pain* and that the happiness of each individual involves relations with other individuals which necessitates state regulation of mutual relations of men by legislation. Utilitarian philosophy is thus closely associated with **practical ethics and practical politics**. The **object of legislation** of the state is to promote and secure the greatest happiness of the greatest number. The criterion of right and wrong of good and bad which the state should apply is found in happiness and not in divine revelation, dictates of conscience or in the abstract **principles of reason**⁷, this reason and happiness can be manipulated in ways such as the happiness of a poor family in earning an extra bit of money or by an extended help from their child in running a tea stall, thus avoiding the **pain of the poverty** stricken family. There are instances where the elders of the family aren't responsible enough to bring up the family and the children have to step in their shoes to fulfill the void therefore placing on their shoulders a heavy burden of the stigma of the society.

Thus, the term **pain and pleasure** might not aptly define or justify the activities of the society at every stage and about every aspect there is to be taken into consideration while justifying the ongoing practices and scenarios of the system.

But if we take a broader view of what it actually means, we get to know and understand the intention of what the theory actually portrays, it talks about a system of **socio-economic interest** which develops a law and procedure for functions where the interest and rights of all the sections are to be taken into consideration and not such a family or group. Therefore by this if a family has the right to gain pleasure by the extra income of a child and the same time it provides for the cause of pain to the child. Thus a system should exist which takes into consideration both the aspects of the individual and the people associated so as to develop the society in the right way and not just to point out the lacunae in the theory,

⁶ Hogan and Inni, “American Social Legislations”, Harper and Brothers, New York, at p.4.

⁷ Concept of Justice, Utilitarianism and other Modern Approaches, MK Vyas.

to take the good that exists in it and to work on the void if there is any in the application of the said **philosophy or thought**.

Conclusion

The society is made up of various sects and classes and each of them have an interest and a need of their own which have to be catered to at all times but within the **legal stipulation** of the laws and regulations present in the system. These laws find their roots from various places but at the end of the day are focused on the wellbeing of the society and the individual. The **concept of utilitarianism** focuses on the greater good of the people and the happiness or pleasure derived in the sum total of the activities of the **social circle**, thus the laws also have the similar function to perform, i.e. to prevent the pain of the people and increase the counts of happiness or satisfaction of the society as a whole and not just an individual or group. The child labour is one such evil of the society that can be eradicated only by the conscious effort of all, the people, the children and most importantly the State because it has the power and all the common people look up to it.

The Guidelines and policies by the **United Nations** and the **ILO** have the same focus and are implemented so as to develop the children and lay a strong foundation of the society to build a better future upon. At the end it is also a conscious effort of the people themselves to take charge of things happening around them with a novel approach to avoid and prevent such practices, as they form an important part of the wheel of the enforcement and enactment of any law to provide it the right amount of force. The State at the top of it all should work and promote the greater good of these children as they have the authority and the power to do what is right.

At the end I would like to quote a dialogue from the movie **Batman v Superman**:

“Dawn of Justice”; “This means something, it’s all that people have and it’s all that gives them hope”.