

**JEREMY BENTHAM'S UTILITARIAN ETHICS AND
HUMAN RIGHTS: A PHILOSOPHICAL ANALYSIS OF
THE MORALITY OF THE RIGHTS OF COMMERCIAL
SEX WORKERS**

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Abstract

The Utilitarian principles and their implication in determining the morals and values in our society cannot be undermined. So many philosophers have projected the utilitarian theory as that which enjoys the happiness of the greater number; thereby avoiding that which leads to pain. Hence, pleasure is the determining factor to which many will subscribe to as the moral compass to better their lots. This is indeed the lots of commercial sex workers as they increase them by day as they consider their business as part of forms the basis of their fundamental human right as drawn from the utilitarian ethical theory. This paper explores the Utilitarian principle of Jeremy Bentham in relation to the moral foundations of human right. The paper argues that the Utilitarian theory does not constitute the moral and ethical foundation of human right. In so doing, the paper argues further that the influences of the Utilitarian principle on commercial sex workers as a viable means of economic value is subject to philosophical analysis. Hence, in X-raying the morality of the rights of commercial sex workers, the paper considers the morality of their activities as questionable despite its contribution to the underground economy. The paper's research method is expository through the instrument of qualitative research as the basis for the analysis of the issues.

Keywords: Utilitarianism, Commercial Sex workers, Human Rights, Ethics & Morality

Introduction

The foundation on which human right principles are built and formed is the ethical concept of oughtness¹. What constitutes human right is not determined by popularity context; the moral good for human beings demands that we use our positive freedom to realize the values necessary for us to become and develop into persons we can be². There is no concept that is usually misunderstood, misdirected, misrepresented, misjudged, misapplied, mistaken and misconstrued like the concept of human right; most especially when its foundation is built on meta-ethical theories that are popular and almost generally acceptable. One of those almost generally acceptable meta-theories is the principle of Utilitarianism. The principle(s) of Utilitarianism can easily justify and almost accept actions that are not moral (immoral) and reduce(s) one's duty to self and to others in the society. One of these societal abuses and misunderstandings of human right that projects freedom of association is the right of commercial sex workers to associate freely. This means that they should be free to exercise their freedom on the basis of the fundamental human rights principle as stipulated in the Universal Declaration of Human Right. Freedom of association is one of the most basic rights enjoyed by humans. The concept freedom of association in labor relations means that workers can form, join, or belong to a trade union and engage in collective bargaining. It also implies that the workers are entitled to go on strike whenever necessary.

This interpretation of the freedom of association as contained in the Universal Declaration of Human Right has also been extended to Commercial Sex Workers. Hence, it is against this background that this research paper interrogates the morality of commercial sex workers. In so doing, the following research questions are raised, but not limited to the following: What constitutes work as an activity? To what extent have commercial sex workers contributed to the underground economy? Do the fundamental human rights of persons accept what is wrong as right? Does the term work have any value in relation to commercial sex workers? Should commercial sex work be built on the foundations of Utilitarianism? What is the moral worth of the act of Prostitution? This paper shall attempt to answer these questions as it implores the expository and analytical framework of research method so as to understand the basis on which Jeremy Bentham theory of Utilitarianism has influenced the misinterpretation of human right as it has contributed to advancing the activities of the commercial sex workers.

¹Gonsalves M. *Fagothey's Right and Reason: Ethics in Theory and Practice* 9th Edition (Toronto: Merrill Publishing Company, 1985) P. 230

²Gonsalves M. P, 230

Conceptual Clarifications

Utilitarianism

Utilitarianism is “a moral theory according to which an action is right if and only if it conforms to the principle of utility”³. Utilitarianism seeks “to replace reliance on God, tradition, common sense or intuitions with reasoning about facts and their consequences”⁴. Utilitarianism is “one of the most powerful and persuasive approaches to normative ethics in the history of philosophy. It is generally held to be the view that the morally right action is the action that produces the most good. One thing to note is that the theory is a form of consequentialism”⁵. The right action is understood entirely in terms of the consequences produced. For the utilitarian, “one ought to maximize the overall good, that is, consider the good of others as well as one's own good”⁶.

Human Right

The concept 'Right' has two main meanings as reflected in the following sentence: “It is right (morally good, worthwhile, important, valuable) for us to demand our rights (things owed to us either as valuable in themselves or as means to achieve a further value)”⁷. The two meanings stem from the same root idea, the ethical concept of *oughtness*⁸. Right originally means something that is straight, not crooked, in opposition to wrong, which is bad or twisted from the straight⁹. Right is associated with a rule and norm¹⁰ and squares with the norm of morality and thus is morally good¹¹. Right is also used to explain a just law, just deed, just debt, just claim, that which is owed; and, it is correlative with duty¹². As such, it is a 'Human Right' within the context of Natural Law tradition as prescribed within a certain philosophy¹³ and holds that certain things ought never to be done to people and certain other things should be done¹⁴. Therefore, for the purpose of this research paper, Human Rights are rights that are human to our nature and help us to live dignified lives so as to flourish and live happily.

Commercial Sex Workers

Commercial Sex Work also known as Prostitution is an age long profession. It is Nevertheless, for the purpose of this work the researchers will attempt to define it as

³Mautner, T., *Dictionary of Philosophy*, 636.

⁴Furrow, D., *Ethics: Key Concepts in Philosophy*, 45.

⁵Study Mode, *Explain Bentham's Utilitarianism*. <https://www.studymode.com/essays/Explain-Benthams-Utilitarianism-46206795.html>

⁶Study Mode, *Explain Bentham's Utilitarianism*. <https://www.studymode.com/essays/Explain-Benthams-Utilitarianism-46206795.html>

⁷Gonsalves M. P. 230

⁸Ibid, 230

⁹Ibid, 230

¹⁰Ibid, 230

¹¹Ibid, 230

¹²Ibid, 230

¹³Njoku F.O.C *Introduction to Social and Political Philosophy* (Enugu: University of Nigeria Press, 2019) P. 597

¹⁴Perry M. *The Idea of Human Rights* (New York: Oxford University Press, 1998) P. 6

“the engagement in sexual activity in exchange for money, goods, or other negotiated items”¹⁵. The key fact is that someone is engaging in sexual activity for some kind of imbursement.

The Foundation of Human Rights

Human rights are also known as inalienable rights¹⁶. The term *inalienable right simply stands for natural rights*¹⁷. This therefore implies that human rights are not just positive laws; but, they are laws that are ontological to our very being. It is not given to us by an International Organization; but given by the virtue of our human nature as human beings. Hence, to argue against the existence of the Natural Law is to say that human right laws do not need to exist. According to Milton Gonsalves, “natural Rights since they are granted by God through the natural law, cannot be taken away by human authority and are in this sense inalienable”¹⁸. He went further to say:

There is a natural moral law that imposes obligations on all human beings to achieve the purpose for which they exist as human persons and, to conform their conduct to the norm of morality as the only means to achieve this purpose. But human beings cannot have such obligations unless they have the right to fulfill them and a consequent right to prevent others from interfering with the fulfillment of these obligations. All rights that I have suppose in others the obligation not to interfere with my exercise of my rights, that is, the obligation to respect my outer freedom (freedom from) as well as my inner freedom (freedom for). The right I have to fulfill the obligations imposed by the natural moral law presupposes both my freedom from external force and my inner freedom for fulfilling the purpose for which I exist. Therefore, there are rights that stem from the natural law, and they by definition are natural rights¹⁹.

In the thoughts of F.O.C Njoku,

Human rights are conceptualized within the natural law tradition; and they are said to be universal. They are universal in the sense that all human beings possess human rights by the mere fact of human existence. In this sense, human rights constitute the minimum conditions for a dignified life as opposed to inhuman conditions²⁰.

¹⁵This definition was adopted in google search for the purpose of this work <https://www.google.com/search> Retrieved Online 14th June, 2022

¹⁶Gonsalves M, P. 234

¹⁷Ibid, P.234

¹⁸Ibid, P. 234

¹⁹Ibid, P. 238

²⁰Njoku, F.O.C P. 598

Human right implies doing what is right at all times and in any given situation. Human rights suggest duty for the sake of duty²¹ in the realization of a morally established sense of responsibility. Human rights are designed for the moral ordering of society.

In our actions we must, with moral necessity, realize moral values, for everything we do expresses the unique personality each of us is. The use each of us makes of his or her individual positive freedom is the actual exertion and further development of the inmost self each of us is. As a personal self, I ought to act in ways consonant with the moral development of that self, and others ought to act toward me in ways consonant with both me and themselves as morally developing persons. Hence, we have rights as opposed to wrong; and right as correlative to duty²².

Therefore, human rights ought to be interpreted within the confines of morality; or else such rights can be considered null and void. The rights and their accompanying duties of the human social order are not reducible to material cooperation and physical enrichment. The rights and duties of the natural/human order are shared values that enhance human embodiment in the world²³.

A Brief History of Jeremy Bentham

Jeremy Bentham (1748-1832) was “an English utilitarian philosopher and social reformer. Bentham's campaign for social and political reforms in all areas, most notably the criminal law, had its theoretical basis in his utilitarianism.”²⁴ He developed the first systematic account of utilitarianism. Jeremy Bentham is a classical utilitarian who identified good with pleasure. He held that we ought to maximize the good, that is, “bring about the greatest amount of good for the greatest number”²⁵. The core insight motivating the theory is that morally appropriate behaviour will not harm others, but will instead increase happiness or utility. His “fundamental motivation behind the development of classical utilitarianism was the desire to see useless, corrupt laws and social practices changed. basically the practice of providing sex for money. In most cases, women are at the receiving end to be known as commercial sex workers; but, those (men) who patronize them are often exonerated from the term.

²¹Kant I. *Critique of Practical Reason in Critique of Practical Reason and Order Works on the Theory of Ethics* translated by T.K. Abbot (London: Longmans, 1898), Book 2, Chapter 23, par .12, 302

²²Gonsalves M. P. 230

²³Njoku. F.O.C P. 610

²⁴Mautner, T., *Dictionary of Philosophy*, 72.

²⁵Kanu, A.I., Greek and Utilitarianism Ethics: Lecture notes, 16.

For Bentham, what made the laws bad was their lack of utility, their tendency to lead to unhappiness and misery without any compensating happiness”²⁶. If a law or an action does not do any good, then it is not any good. Jeremy Bentham, “jurist and political reformer, is the philosopher whose name is most closely associated with the foundational era of the modern utilitarian tradition. Bentham made utilitarian philosophy a critical tool of moral and legal philosophy and political and social improvement. In 1776, he first announced himself to the world as a proponent of utility as the guiding principle of conduct and law in *A Fragment on Government: In an Introduction to the Principles of Morals and Legislations*, as a preliminary to developing a theory of penal law that detailed the basic elements of classical utilitarian theory. The penal code was to be the first in a collection of codes that would constitute the utilitarian “pannomion”²⁷, a complete body of law based on the utility principles, the development of which was to engage Bentham in a lifetime's work and was to include civil, procedural, and constitutional law”.

Pleasure and Pain

Jeremy Bentham offered the famous declaration that underscores the primacy of pains and pleasures in utilitarian theory: “nature has placed mankind under the governance of two sovereign masters, pleasure and pain. It is for them alone to point out what we ought to do, as well as to determine what we shall do”²⁸.

On the one hand the standard of right and wrong, and on the other hand, the chain of causes and effects, are fastened to their throne. Every effort we can make to throw off our subjection will serve but to demonstrate and confirm it. In other words, a man may pretend to abjure their empire, but in reality he will remain subject to it all the while. The principle of utility recognizes this subjection and assumes it for the foundation of that system, the object of which is rear the fabric of felicity by the hands of reason and of the law.²⁹ By the principle of utility it 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, in other words, to promote or to oppose that happiness”³⁰.

²⁶Driver, Julia, "The History of Utilitarianism", *The Stanford Encyclopedia of Philosophy* (Winter 2014 Edition), Edward N.

Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/>>.

²⁷Pannomion mean a complete utilitarian code of law. <https://en.m.wikipedia.org/wiki/23-03-22>.

²⁸Driver, Julia, "The History of Utilitarianism", *The Stanford Encyclopedia of Philosophy* (Winter 2014 Edition), Edward N.

Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2014/entries/utilitarianism-history/>>.

²⁹Bentham, Jeremy, *The principles of Morals and Legislations*, 65.

³⁰J. H. Burns and H. L. A. Hart (eds.). *An Introduction to the Principles of Morals and Legislation*, 11.
Bentham, Jeremy, *The principles of Morals and Legislations*, 65.

More so, Jeremy Bentham “formulated the principle of utility, which approves of an action in so far as the action has an overall tendency to promote the greatest amount of happiness. Happiness is identified with pleasure and the absence of pain”³¹. Utility is “that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness or to prevent the happening of mischief, pain, evil, or unhappiness”³². We seek pleasure and the avoidance of pain, though both of them “govern us in all we do, in all we say, and in all we think”³³. He also “promulgated the principle of utility as the standard of right action on the part of the governments and individuals”³⁴. Actions are “approved when they promote happiness or pleasure, and disapproved of when they have a tendency to cause unhappiness or pain”³⁵.

Bentham identifies motives of action which are self-interested. But this seems to be in conflict with his own specification of the method for making moral decisions which is not to focus on self-interest. People should act with the overall good of humanity in mind. This is because Bentham was enormously interested in social reform. Indeed, reflection on what was morally problematic about laws and policies influenced his thinking on utility as a standard. Bentham views an action or trait as morally good, right, or virtuous in view of the consequences it generates, and the pleasure or utility it produces, which could be completely independent of what our responses are to the trait. People may not respond to the actions' good qualities, perhaps they do not perceive the good effects. But as long as there are those good effects which are, on balances, better than the effects of any alternative course of action, then the action is the right one. People often have responses to certain actions, of pleasure or disgust. Utility is “promoted when pleasure is promoted and when unhappiness is avoided. Bentham's commitment to hedonism means for him that goodness is an increase in pleasure, and evil or unhappiness is an increase in pain, or decrease in pleasure”³⁶.

Bentham's hedonism is a very straightforward hedonism. He holds that the one intrinsic good is pleasure, and that which is bad is pain. We are to promote pleasure and act to reduce pain. When called upon to make a moral decision one measures an action's value with respect to pleasure and pain according to the following seven dimensions: “Intensity (how strong is the pleasure?), Duration (how long will the pleasure last?), Certainty or uncertainty (how likely or unlikely is it that the pleasure will occur?), Propinquity or Remoteness (how soon will the pleasure occur?), Fecundity (how likely is it that the proposed action will produce more sensations of the same kind, either pleasure or pains?), Purity (will it be followed by sensations of

³¹Mautner, T., *Dictionary of Philosophy*, 72.

³²Bentham, Jeremy, *The principles of Morals and Legislations*, 66.

³³Bentham, J., (PML), *An Introduction to the Principles of Morals and Legislation*. 15.

³⁴www.plato.stanford.edu/entries/utilitarian. 23-03-22.

³⁵Bentham, J., (PML), *An Introduction to the Principles of Morals and Legislation*. 15.

³⁶Kanu, A.I., *Greek and Utilitarianism Ethics: Lecture notes*, 14.

the opposite kind? Will the pain be followed by pleasure or the pleasure by pain?), Extent (How many other people will be affected?)”³⁷. There are two forms of hedonism expressed in the passage: Psychological hedonism, which states that all motives of action are grounded in the apprehension of pain or the desire for pleasures, and Ethical hedonism which holds that pleasure is the only good and actions are right in so far as they tend to produce pleasure or avoid pain.

Interests

Jeremy Bentham recognized that “the concept of interest had meaning when redefined in terms of the avoidance of pains and acquisition of pleasures.”³⁸ He believed that an individual is the best judge of his or her own interests. Law and other agencies may be used to construct interests by providing individuals with the motives to pursue courses of action beneficial to the community.”³⁹ It is the individual who then must correctly perceive where her or his interests lie. For Bentham, “to be concerned about my own welfare requires me also to attend to the interests of others”.⁴⁰

The Influence of Jeremy Bentham's Utilitarian Ethics on Commercial Sex Workers

The influence of Jeremy Bentham's Utilitarian Ethics on Commercial Sex workers owes to the fact that commercial sex workers have a huge profitability to themselves and the economy. According to Timothy Dokpesi Adidi and Noel Michael Buki, “Prostitution in most countries is often illegal and for some countries it is legal; and in some cases the government is silent about it. This means that it is neither legal nor illegal; and one fact remains that prostitution contributes to the underground economy”⁴¹. Utilitarian ethics claim to be based on a thought that has a universal appeal, most especially when it is profitable and judging an action from the consequences taken into account with regard their contribution to the welfare of those the action is intended to benefit. Commercial sex workers are beneficiaries of Jeremy Bentham's utilitarian ethics as they earn their living to solve economic problems; since sex gives pleasure and the product of such pleasure brings about monetary value which in turns brings happiness to the greatest number of persons who indulge in it. Commercial sex workers who indulge in such hedonistic acts seem to forget that an act is not necessarily good because it provides happiness or create monetary value for the persons who indulge in it. To suffer pain in trying to attain a good does not necessarily make us unhappy. Happiness is not the product of what we achieve in what we do; but it is a product of the value on what we place as value.

³⁷Lawhead, F.W., *The Voyage of Discovery: A Historical Introduction to Philosophy*, 472.

³⁸William Tait, *The Works of Jeremy Bentham, Published under the Superintendence of his Executor, John Bowring*, 11 vols., 43.

³⁹J. H. Burns and H. L. A. Hart (eds.). *An Introduction to the Principles of Morals and Legislation*, 12.

⁴⁰Lawhead, F.W., *The Voyage of Discovery: A Historical Introduction to Philosophy*, 472.

⁴¹Adidi D.T & Buki M.N *Domestic Violence: A Holistic Approach* (Kaduna: Pitata Digital Press, 2017) P.102

Hence, according to F.O.C Njoku, happiness is a response we have to the attainment of things that we recognize as good independently and in their own right and as such what makes happiness might not be necessarily good for someone.⁴² It is a matter of debate whether 'happiness' and 'good' are always the same thing; or whether all types of happiness are equally good⁴³.

The Purpose and End of Sexual (Conjugal) Intercourse

Revolution in its lexical understanding means change, that is, a movement from what is to something new brought about through conflict or forms or arms.⁴⁴ Although, revolutions might not necessary come in conflicts, it can also be non-violent and comes through ideas and orientations. “Revolution” was a 17th century development in various forms; political, economic, sexual, etc. Hence, for the sake of this paper, revolution is contextualized within the framework of sexual revolution that rises against the traditional understanding of sex and conjugal intercourse. The sexual revolution can be identified with commercial sex workers who now ply their trade and part of the basis for human right guarantee. Sexual revolution as a social movement challenged traditional codes of behavior related to sexuality and interpersonal relationships throughout the United States,⁴⁵ and has fast spread to almost the whole of Africa; hence, the thriving state of Prostitution. Although prostitution is as old as humanity itself, the awakening and acceptability of the practice today is worrisome. This is because the distorted image it portrays against the purpose and end of sexual (conjugal) intercourse is of concern to morality. According to F.O.C Njoku “Human actions are those that proceed freely from a person's will; hence, morality or ethics”⁴⁶ is interested in “providing guidance for the actions of the person, the spiritual subject in whom human nature subsists and to whom, in the final analysis, these actions are attributable”⁴⁷. The purpose and end of procreation through conjugal intercourse is also in this regard guided by moral conduct on the grounds of the Thomistic tradition of natural law. The morality of an act is shaped by three factors, namely: the object, intention and circumstances⁴⁸. The object of an act is the source of moral act; it is what one has chosen to do. It is the choice of action that makes one a good or bad person. To give moral worthiness to an act, one is expected to consider the perspective of the agent⁴⁹. However,

⁴²Njoku F.O.C P.357

⁴³Ibid

⁴⁴Njoku F.O.C P. 105

⁴⁵Allyn D. *Make Love, Not War: The Sexual Revolution* (New York: Little Brown & Company, 2000) P.4

⁴⁶Njoku F.O.C P.616

⁴⁷In the work of Njoku F.O.C referencing Joseph De Finance , *An Ethical Inquiry* (Roma: Editrice Pontifica Universita Gregoriana, 1991) P.37

⁴⁸Aquinas, *Summa Theologica*, I-II, q. 7, a1

⁴⁹Njoku F.O.C P.617

The object of the acting will is in fact a freely chosen kind of behaviour. To the extent it is in conformity with the order of reason, it is the cause of the goodness of the will; it perfects us morally, and disposes us to recognize our ultimate end in the perfect good, primordial love... that object is the proximate end of a deliberate decision which determines the act of willing on the part of the acting person⁵⁰.

This is a development of Aristotle's notion of good: "good is that which all things seek after"⁵¹. He went further to say, "good is to be done and pursued, and evil is to be avoided"⁵². The good of sexual and conjugal love is procreation; as such every act of sexual love ought to be open towards procreation as the good to be achieved. Procreation is the hallmark towards the continuation of the human race through sexual love for which is the purpose and end of conjugal activities. Therefore,

We must investigate the energies, drives, and impulses we find at work in man. At first glance we observe in him the instincts of self-preservation, of feeding; the impulse to secure a livelihood, to make provision for the future; the sexual instinct, the parental instinct; the impulses toward family and social fellowship, the impulses to enlarge experiences; the instinct for beauty; the desire for the respect of others; the impulse to maintain a well-ordered relationship with the Supreme Being; and the instinct for happiness, which involves all other instinctive ends⁵³.

In all these inclinations towards the good, commercial sex workers should question the end of their actions and the purpose of their actions; bearing in mind morality and ethics in providing guidance for the actions of persons.

Commercial sex workers in contemporary discourse is often analysed controversially considering the rate of unemployment and economic depression in the world. Different ethical theories projects the services as morally right and for some others the theories project it as morally wrong. Most times the intentions of commercial sex workers are considered the determining grounds for considering their services as moral. Immanuel Kant believes that people have a 'duty' to act morally and have good intentions and this will lead to ethical outcomes⁵⁴.

⁵⁰John Paul II, *The Splendor of Truth (Veritatis Splendor)* 1993 (Boston: Pauline Books and Media, 1993), number 78. See also Aquinas, *Summa Theologica*, I-II, q.18,a6

⁵¹Aristotle, *Politics*, 1253a2-4

⁵²Ibid

⁵³Messner, *Social Ethics*, 12

⁵⁴ADIDI D. T & BUKIM. N P, 105

The fundamental worry is the philosophical issues of what prostitution makes sex to be. According to Bruno Russell, many have deplored prostitution for reducing the value of sex, seeing it as removing the emotional or unitive elements that should be present during sexual intercourse⁵⁵.

Conclusion

Jeremy Bentham's classical Utilitarian has been profound, not only within moral philosophy, but within political philosophy and social policy. His contribution in the field of utilitarianism has been remarkable. He wants every human being to seek pleasure and avoid pain; and the pleasure sought should give the greatest good to the majority. The point is to promote the greatest pleasure for the greatest number of people in order to act morally. Promoting utility in terms of pleasure is to be approved of and reducing utility is to be disapproved of. This has really promoted the services of commercial sex workers and has made the business viable to the point that morality has been dethroned on the basis of Utility.

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⁵⁵Ibid, 104

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