Research article

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Abstract

Contemporary arguments for drug policy reform, in support of legalising or decriminalising drugs, commonly implicitly (or explicitly) invoke the ideas of well-known thinkers and philosophers, including Aristotle, Kant and J.S. Mill. Mill's famous liberal doctrine and 'harm principle', developed in his best-known work *On Liberty*, has been particularly influential and widely cited for its relevance. Jeremy Bentham, in comparison, has been largely overlooked for his contribution to developing Mill's thinking about the need for state protection of individual rights. In fact, as we shall argue, Bentham went further than his student in articulating a utilitarian perspective allowing for 'self-regarding' offences to go unpunished by the state. As 'pleasures of the table', consuming alcohol and other drugs could be classified as self-regarding conduct deserving of protection, and hence punishing the consumption of these substances would be unnecessary, ineffective and avoidable. For Bentham, 'waging war' on relatively harmless pleasures is a source of disutility. Anticipating the failed legacy of the war on drugs, in his view, such interference would ultimately be proven to be groundless, costly and do more harm than good. Bentham's early recognition of the need to foreground arguments for maximising pleasure while reducing pain and suffering is a firm foundation for extending the more limited public-health approach to drug reform. His anticipation of contemporary discourse, espousing harm reduction and respect for legal rights, holds up just as well as Mill's important contribution. Moreover, Bentham's view improves on Mill's by properly acknowledging the need for recognising pleasure as a benefit of drug use that requires protection by and from the state.

Keywords: Jeremy Bentham; drug use; utilitarianism; harm reduction; drug policy reform

Introduction

Throughout much of his life, Jeremy Bentham focused on his principle of utility as the potential cure for a variety of social ills afflicting the society that he lived in. His view was that some such ills are caused by people and that others are more properly attributed to poorly conceived laws and the bad practices of government. Bentham devoted a great deal of attention in his early career to advocating for penal and civil law reform, while his mature writings often veered towards more radical suggestions for reform of democratic institutions and enshrining constitutional protections in law.[1] Scholars are divided in their assessments of his legacy. Bentham the authoritarian is known for his pursuit of optimised punishment, the use of surveillance and state-sanctioned methods of coercion.[2] He is also known, however, as a pioneering libertarian who worked tirelessly to craft a utilitarian agenda for protecting negative liberties against government interference.[3]

More complete accounts of Bentham's lifelong contribution to philosophy suggest that he identified as neither an authoritarian nor a libertarian. Establishing robust security protections, in his view, was the only way to guarantee the development of meaningful and enforceable legal rights for all citizens. Such protections were not only for safeguarding lives and property from harm done by others, but also for protection against harm resulting from bad laws and misrule by government.[4] Ensuring safety and security protections, for Bentham, was an essential element enabling avoidance of unnecessary measures of coercion and punishment, allowing him to focus more productively on the everyday experience of people seeking happiness.[5]

Facilitating the pursuit of negative liberties was Bentham's primary method of reducing pain and increasing pleasure by avoiding needless interference in the form of harmful laws, law enforcement and criminal punishment.[6] The citizenry, society and government are encouraged to tolerate and learn to manage a wide variety of behaviours that do as little harm as possible to others. In so doing, a dual benefit is realised by the reduction of suffering caused by punishment and by increasing allowable pleasures. Accordingly, the purpose of this article is to demonstrate that Bentham's work on liberty, in advance of J.S. Mill's, established a more developed utilitarian foundation on which to argue for drug policy reform.

One concern that has been raised is that utilitarian arguments for the 'common good' are easily misappropriated as a means to justify more

restrictive public policies, including the enforcement of morality through law.[7] Seeking to uphold the aggregate good without sufficient concern for rights to use drugs, some critics argue, opens the door for the rights of users to be trumped by another discourse which emphasises danger and related social harms.[8] Here we offer a corrective that has, until now, been neglected by articulating Bentham's far more nuanced point of view. On the contrary, he understood utilitarianism as a foundation for reform of law and policy development respecting individual rights and freedom to use drugs.

Bentham's methodology, aggregating pain and pleasure, is influenced by his commitment to achieving distributive justice by increasing happiness and securing equal liberties.[9] Seeking to prevent harm through the use of non-coercive alternative measures made Bentham significantly, by centuries, ahead of his time in articulating arguments for drug policy reform. Before Mill's better-known work *On Liberty*, Bentham envisioned negative liberties, with legal rights protected to pursue such pleasures without government interference.

Indeed, Bentham went further than Mill in his prescient anticipation of removing punishment for drug-related crimes and calling for the adoption of a public-health approach.[10] He advocated for the official tolerance of all manner of relatively harmless 'eccentric' behaviours that are commonly prohibited, which might include the use of drugs. Bentham's outlook is reflected in contemporary discourse on the need for harm reduction and respect for human rights. By designating self-regarding offences as permissible actions afforded by negative liberties, Bentham's views on punishment strongly influenced Mill's harm principle.[11] Thus, it is remarkable that his work is so completely neglected in comparison to Millian perspectives in scholarly drug policy discussions and debates.

Bentham's Self-Regarding Offences and Punishment

To use today's parlance, self-regarding offences are often called 'victimless crimes'. One of Bentham's primary objectives underlying his reform of penal law, notes Shanafelt, was the reduction of the enforcement of laws against crimes without victims.[12] Bentham, like Mill, insisted on the need to protect self-regarding conduct against restrictions and intrusion being brought by 'legal or legislative invasion'.[13] He busied himself, accordingly, for more than half a century, in devising a social and political

agenda rooted in a legal framework based on the principle of utility. This permitted harmless pleasures, which he himself might not approve of, while observing that such diversions are quite common. For Bentham, self-regarding acts of this nature cannot and should not be prevented through the use of punishment.[14]

Happiness, he argued, is comprised of two 'species' or 'parcels', one of which is positive (pleasure) and the other negative (the absence of pain).[15] Punishment too often inflicts unnecessary pain and suffering, and it is largely ineffective. Bentham wrote that 'appetites' of the 'eccentric shape' are just harmless pleasures that ought not to be criminalised. The denial of such pleasures, and needless sufferings from punishment, arise from ascetic values with their bases in religion. Adherence to such values is not utilitarian.[16] Criminal sanctions make no sense when the offence is self-regarding. Yet, as Bentham noted, against these 'seats of pleasure', stimulating mind and body, 'an unceasing war is made and kept up'.[17]

He viewed all justifications given for banning the use of drugs as groundless.[18] Consuming drugs is just one of the many possible self-regarding offences that are needlessly prohibited or enforced by the moral or legal sanctions.[19] The acts included in this category vary widely, from extremes like suicide and self-mutilation to intemperate behaviour such as gluttony, intoxication from the use of drugs or alcohol, to excessive sexual appetite.[20] Bentham observed that such offences caused neither primary nor secondary mischief, meaning harm to other persons, nor societal alarm. But such actions may still cause derivative mischief to 'assignable individuals', such as family members, with interpersonal connections to the offender.[21] Permitted grounds for intervention to address derivative mischief might thereby be extended due to pro-social bonds of sympathy.

The only justification for inflicting criminal punishment, stated Bentham, is for kinds of mischief, 'which, if real, will place them in the class of public ones: chiefly in those divisions of it which are composed of offences against the population, and offences against the public wealth'.[22] Actions harmful only to the individual, causing no detriment to others, should not be punishable offences.[23] Bentham wrote that 'the good of the community cannot require, that any act should be made an offence, which is not liable, in some way or other to be detrimental to the community. For in this case of such an act, all punishment is groundless'.[24] Punishment is justified only for acts involving actual harm to an assignable individual, not those perceived as harmful to an 'imaginary compound body' such as the community or state.[25] Drug use that brings real pleasure with no

detriment to others has benefits outweighing whatever complaints of unassignable harm might arise in the community.

Bentham did not condone the coercion or control of individuals 'for their own good' for self-regarding acts. Such acts were deemed 'unmeet for punishment'[26] – meaning needless, groundless, inefficacious and unprofitable.[27] He viewed punishment as groundless for consensual acts.[28] More generally, punishment was deemed inefficacious when it could not prevent someone from offending because of incapacitation due to 'infancy, insanity, and intoxication', for example.[29] Furthermore, anticipating arguments more commonplace today about the social costs of waging a harmful war on drugs, punishment is unprofitable when it is too costly because it inflicts more harms than the offence itself.[30]

Bentham's view was that any detrimental outcomes for society can be addressed without inflicting punishment. He wrote that punishment is needless when such actions might be stopped or prevented 'as effectually at a cheaper rate, by instruction for instance, as well as by terror; by informing the understanding, as well as by exercising an immediate influence on the will'.[31] Bentham kept an open mind to all sorts of ideas for reducing the harms of self-regarding conduct, without resorting to the use of actual punishment. However, inflicting the idea of being punished and invoking terror seems fair game.

Whereas he did not believe in 'hellfire',[32] Bentham was not opposed to uttering threats of eternal damnation to those who might be swayed by religious exhortation. Nor was he opposed to terrorising alcoholics with the idea that their diseased liver would stop working, causing death. Inflicting terrors of the biblical or medical variety can be instructive about the potential outcomes of some self-destructive habits. Alternatives to punishment like these have the advantage of being more affordable whatever form they take. Bentham sought to limit punishment to those inflicting harm on others, which in such cases ought to be applied judiciously and efficiently. Much of this narrative is lost in critiques that have been levelled against utilitarian justifications for punishment. Philosophers and criminologists alike mischaracterise Bentham as the punisher, the inventor of prisons and, more recently, the mastermind behind modern surveillance societies.

Foucault helped to popularise this view, of course, when he took Bentham's vision of the perfect prison to be his perfect metaphor for surveilling peoples in a way 'that makes it possible to qualify, to classify, and to punish'.[33] His writing on 'panopticism' made Bentham's legacy (unfairly) about institutionalised coercion that (re)distributes the power

to punish.[34] Such a caricature neglects Bentham's (equally prescient) writings that anticipate decriminalisation, and the need for well thought-out alternatives to punishment, especially for self-regarding acts like substance use.

Bentham's Views on Punishment for Intoxication

Bentham regarded intoxication as a source of pleasure, among other motivations for human behaviour. In *A Table of the Springs of Action*, he notes the pleasures of drinking alcohol, from its pleasing of the palate to the exhilaration caused by changes in perception and in the central nervous system.[35] Among the other pleasures of intoxicating liquors that are mentioned are the goodwill brought by such occasions and shared sympathies among those who partake of them together.[36] Bentham argued that punishing the use of drugs such as alcohol is pointless, because punishment does not work against people deprived of their reason, 'by the transient influence of a visible cause; such as the use of wine, or opium, or other drugs, that act in this manner on the nervous system'.[37]

Bentham had a liberal attitude towards what he called 'the pleasures of the bed' and 'the pleasures of the table',[38] which included eating and drinking, and can be extended to the consumption of drugs. He wrote that pleasures of the table included smell and taste, as well as 'that universally diffused sense which as yet seems to be without a name – that affection of the nervous system in general which is the seat of pleasure in the case of intoxication'.[39] Intoxication, for Bentham, 'included every sensation of the pleasurable kind capable of being produced in the system by the application of any other substances in the liquid or gaseous state to the stomach, or even to the organ of smell in the interior of the nose, as well as fermented liquors'.[40]

Bentham's views on alcohol, and his own personal drinking habits, are elucidated further in his correspondence and memoirs. As a youngster of thirteen, he wrote that the moderate use of wine 'enlivens the soul', but he went on to caution that 'the excess of it surely [is] nothing that's good, nothing that's pleasant'. Later in life, although he was said to have never acted intemperately, Bentham was known to drink 'half a glass of Madeira daily',[41] a moderate habit that might be seen to have evolved into something more of medicinal necessity than anything else.[42]

The prospect of overindulgence, for Bentham, did not justify inflicting punishment, but rather appealing to 'the dictates of self-regarding prudence'.[43] Should any mischief come to others, 'by injury for example to person or property', he advocates deferring to 'the dictates of benevolence'.[44] Mischief can be reduced, he argued, by using the 'sympathetic sanction' to prevent future pain by advising drunkards of the harm caused by their habits.[45] Bentham wrote that drunkenness may lead to ill-health, public shame and legal punishment due to 'the scandal of exposure, or from some injuries done to individuals'.[46] The solution for him lay in reason and logic, and people's private ethics of prudence to prevent self-harm, and their probity to prevent harm to others. Bentham had great faith in human beings' capacities to do good and to self-govern, 'whether under [their] own guidance or under the guidance of the religious sanction'.[47]

Thus, a humanistic spirit was at the heart of his reluctance to punish those who cause no harm to others.[48] But using drugs to alter consciousness versus the use of drugs as poisons, for Bentham, was a wholly different matter. It was his view that '[t]he restraints which it has been thought necessary to put upon the sale of drugs capable of being employed as poisons […] is the same with prohibition of the sale of murderous weapons'.[49] Thus one might wonder whether Bentham would have restricted use of stronger, more addictive and dangerous intoxicants that people use for pleasure – because they might be used as weapons.

On the contrary, acknowledging that drugs can be misused, he recognised a clear distinction between drugs that we use for pleasure and those that are employed intentionally to kill. In *Principles of Penal Law*, for example, he observed that 'the best instruments are those which do the most evil when they are misused […] The most efficacious ingredients in medicine are convertible into poisons'.[50] Put another way, the benefits of drug consumption must be weighed against its dangers. Some drugs used in medicine can be used as poisons, but that is not reason enough to prohibit the use of drugs.

Bentham also recognised that employing alternative sanctions to curb the use of drugs for pleasure must necessarily reflect the distinctive ideologies of different cultures and societies. Contrasting western democratic and Islamic nations, for example, he contended that, 'in the northern climates, drunkenness makes men stupid: in the southern, mad: in the one, it is folly: in the other wickedness. To speak at random, in the one situation, penalties should be slight; in the other they should be severe'.[51] Penalties for intoxication might take the form of the moral

sanction such as public shame, or of the religious sanction such as damning one to hell. But, as a form of pleasure, the freedom to get drunk must be legally protected and managed without resorting to criminal punishment.

Concern for public safety did not trump one's right to pleasure for Bentham any more than it did for Mill. Moreover, we shall argue, Bentham's stance was less conservative and more emancipating, in some respects, than Mill's was, as suggested by his different views on happiness and pleasure. Accordingly, we turn now to the task of reconciling the relevant contentions of these thinkers on the matter of the right to use drugs and allowable restrictions. Not only was he influential in developing Mill's arguments, but Bentham went further than his student in advancing a progressive humanitarian agenda for regulating use of drugs.

Bentham with and versus Mill

In *On Liberty*, Mill wrote: 'The right inherent in society, to ward off crimes against itself by antecedent precautions, suggests the obvious limitations to the maxim, that purely self-regarding misconduct cannot properly be meddled with in the way of prevention or punishment.'[52] Self-regarding acts injurious to the actor only 'ought not be legally interdicted'[53] unless the circumstances of the act constitute an offence against others, such as their being performed in a public place. For example, someone 'making himself drunk, in a person whom drunkenness excites harm to others, is a crime against others'.[54]

Bentham was less inclined to resort to criminal sanctions for drunken behaviour.[55] Like Mill, he was concerned about the potential for abuse by the police and government of their justifications for preventing crime.[56] But his thinking differs in important ways as well. Long points out that Bentham's justification for the use of coercion is the same employed by Mill in *On Liberty*; namely, 'self-protection by the community'.[57] Bentham's analysis, however, is more detailed, more nuanced and 'less confused and confusing than Mill's'.[58] Much of what he thought about the limits of authority and liberty is echoed in Mill's treatise *On Liberty*. Less well understood is that Bentham did much of the legwork in developing what came to be known as the Millian harm principle.[59] A significant part of his life's work was devoted to persuading legislators that one's bodily autonomy to pursue pleasure and avoid pain should be legally protected as an individual right.

Mill shared Bentham's view that punishment is meant to deter, reform and morally educate both the offender and those who bear witness.[60] Hanafy observes that it was Bentham who established that interference is justifiable only to prevent injuries to other people.[61] Whereas Bentham's term was 'mischief', as opposed to 'harm', Crimmins notes that Mill himself believed that Bentham had come close to perfecting a theory of punishment.[62] Whereas both were seeking to avoid the use of punishment, Mill's work was lacking 'the penetration of Bentham's critique of established institutions and exhibiting little of the senior utilitarian's subtlety in linking theory to practice'.[63]

Earlier critique by Long supports the view that Mill's interpretation is 'overly simple' and thereby less applicable in some respects than Bentham's.[64] Long also noted that Mill's style of argument and writing attracted a much larger readership than Bentham's less eloquent, but more detailed analyses.[65] Mill was therefore a better promoter and better-known utilitarian. Bentham himself acknowledged his own inadequacies as a writer and described his style of writing as often tedious and unconvincing.[66] Thus, in sum, it is established that Mill may have been the better writer, but that his writing also has rhetorical shortcomings. Some of the limitations of a Millian perspective, when compared to Bentham's, are particularly apparent in our consideration of their different views on pleasure.

Nussbaum notes that Mill's understanding of pleasure and happiness suffered from his unsuccessful integration of Bentham's views with those of Aristotle.[67] Mill's ideas lack clarity, being 'more or less coherent',[68] but ultimately failing to establish the importance of the ideas that he appropriates from each.[69] Notwithstanding Mill's deep admiration for his teacher, he regarded him as somewhat of an eccentric, isolated from the world, having a childlike personality, seemingly underestimating the depth of Bentham's insight.[70] Indeed, his childlike nature may have been his greatest asset. Bentham's approach to life, argues Nussbaum, gave incisive insight into how powerful pain and pleasure are for children, and for the child in all of us.[71] Aristotle's understanding of happiness lacks warmth, as does Mill's, and unlike Bentham's – who like a child enjoyed small pleasures and played with mice in his study, enabling him to see things that Aristotle might have missed.[72]

Bentham's muse among ancient philosophers was Epicurus, the only one 'who [had] the merit of having known the true source of morality'.[73] Indeed, Epicureanism, more than any other doctrine, explains

where Bentham differed from the version presented by Mill. Mill's view of pleasure and happiness largely conforms to Aristotle's view of virtue being an intrinsic value, while Bentham's understanding conforms to that of Epicurus, who saw virtue as having value only with regard to mediating pains and pleasures.[74] However, Bentham's hedonism, more so than that of Epicurus, puts a greater emphasis on maximising pleasures, as opposed to merely eliminating pains.[75]

In Bentham's time, acceptable pleasures for adults were hierarchically ranked by social class. So-called higher pleasures were those of upper-class society, where poetry and other fine arts flourished. Lower forms of pleasure were lower class pastimes, such as simple popular games like pushpin or push penny, often played on the street and in working-class pubs. The pleasure found in playing pushpin, for Bentham, was in no way inferior to poetry. On the contrary, he argued, they are equally pleasurable pastimes. Indeed, the former, he suggested, may have greater value, recognising that '[e]verybody can play pushpin: poetry and music are relished only by a few'.[76] Bentham blamed religion for establishing false standards as to what constitutes good taste. He considered its role in upholding prejudicial and harmful class distinctions as being one of the primary sins of the Church.[77]

By contrast, Mill, like Aristotle, supported a hierarchical view of higher pleasures outranking lower 'pig' pleasures. He famously stated: '[i]t is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, is of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides.'[78] Of further note to his adopting an elitist view of pleasure, in addition to admiring ancient Greek philosophy, Mill was an admirer of German idealism.

Unlike Bentham, who resisted integrating abstract thinkers' views concerning human nature,[79] Mill was wedded to an ideal notion of mankind as comprised of progressive human beings.[80] As observed by Long, Mill's 'spiritual view of the human essence, whatever its merits, was not based on Benthamite premises. Mill was grafting idealist conceptions onto a utilitarian system'.[81] This is a critical distinction worth highlighting for its relevance to the primary arguments presented in this article. Bentham's philosophy instead is rooted solely in the principle of utility, committed to the greatest happiness and to finding practical ways to avoid pain. Mill's departure from Bentham in distinguishing between lower and higher pleasures, like Plato's judge in *Republic*, is elitist in

suggesting that experiencing all kinds of pleasure qualifies him as being the final arbiter of all.

Nussbaum notes that Mill's account is limiting because he is too concerned with dignity, which 'acts as a gatekeeper, preventing the choice of a life devoted to mere sensation'.[82] Bentham's more inclusive view allows for more engagement in all types of pleasure. People are their own best judges, self-regarding prudence being a sufficient method to prevent them from succumbing to a life of mere sensation.[83] Unlike Mill, his chief concern was giving citizens the liberty to evaluate their pleasures, making people their own judges. The role of the law, for Bentham, is not to evaluate personal pleasures, nor to judge a person's vices. The purpose of the law is to protect our custodianship of our own bodies, so that people have the freedom to engage in harmless pleasures.[84]

Since more happiness can be gained by letting people have more pleasure, Bentham argued for 'clearing out all the laws that needlessly restrict individual pleasure'.[85] Furthermore, warning of the dangers of government interference and of repression due to moral and religious sanctions, he wrote that by 'denying the masses custodianship of their own bodies, the "sinister interest" of the powerful is made clear'.[86] Such powers must 'never outweigh a man's own pre-eminence in knowledge of himself and inclination toward the satisfaction of his desires'.[87] Mill's elitist view of pleasure, held by Plato and Aristotle, denying equal status to the pleasures of the herd, was also shared by Nietzsche.[88] Against such aristocratic notions reifying class distinctions, Bentham stood largely alone.

The Aggregation Objection and a Benthamite Response

One of the primary objections to utilitarianism is its putative reduction of human behaviour to mere aggregations and mathematical calculations. In drug policy discussions, for example, we have noted that cold calculations can create bad outcomes that might be used to justify increased punishment for drug use.[89] This concern, however, is not warranted in light of Bentham's strenuous objection against punishing drug users because inflicting punishment removes a legal right.[90] He acknowledged that aggregating pain and pleasures would prove difficult for individuals to calculate and manage on their own. Instead, he put the onus on the state to establish the necessary formal rules, laws and rights for all persons and legislators to follow.

Another criticism of utilitarianism, as a foundation for advancing harm reduction as an objective, evidence-based public-health approach, is that its calculations fail to articulate the pleasures and benefits of drug use – because the focus of discussion is primarily on harm.[91] Put otherwise, the neglect of benefits of altering one's consciousness makes 'the language of clinicians and lawmakers hegemonic, denying all but the destructive consequences of drug taking'.[92] Elsewhere, Bentham is mischaracterised as having sought to quantify cost-benefit analysis in a calculation that 'sets up the maximization of aggregate happiness as the criterion of rightness of actions but does not include any intrinsic case for equality or fairness in the distribution of happiness'.[93]

Other critics have observed that Bentham undervalued the rights of individuals. Long's view is that the aggregation of individual interests based on 'the Principle of the Greatest Happiness of the greatest number was as inimical to the idea of liberty as to the idea of rights'.[94] Charles Mills similarly criticises Bentham's doctrine as 'a non-individual respecting, welfare-aggregating utilitarianism',[95] echoing Rawls and Kant before him in advancing the suggestion that 'utilitarianism does not take seriously the distinctions between persons'.[96] Because utilitarianism undervalues people's agency, protecting social welfare of the majority might be used to justify infringing on individual rights.[97]

Utilitarian thinking is thus criticised as something that 'could generate a right action or social policy, that clearly seems wrong'.[98] In comparison, Kant's emphasis on human rights, insisting individuals must never be used as mere means to an end, arguably provides law reformers with a 'firmer and more trustworthy normative foundation'[99] than Bentham's calculating utilitarian approach. A proper Benthamite response requires a fuller understanding that his primary concerns went well beyond mere aggregation. Securing individual liberties requires the interests of all people to count equally on aggregate.[100] His concern was for creating rules to ensure that happiness would be equally distributed. Since neither citizens nor lawmakers should be making calculations, Bentham wanted rules to distribute pains and pleasures, enabling equal rights and freedoms for all to enjoy.[101]

As ordinarily portrayed in introductory textbooks on criminology and deviance, for example, the conventional wisdom is that J.S. Mill is the true champion of individual sovereignty over mind and body, and protections against government intrusions on our liberty. As compared to Bentham, Mill is viewed as 'more pragmatic in his recognition that the principles of law cannot be so easily reduced to mathematical

equations that determine the utility of actions'.[102] But Bentham, again, had emphasised that the 'maximization of happiness, in the aggregate […] should be linked wherever possible to equality in its distribution'.[103] Indeed, and in particular, his insistence on equating lower and higher pleasures made him an egalitarian.[104]

Seeking to maximise the social utility of freedom meant optimising the 'arithmetic mean of all individual utility levels in society'.[105] As such, these calculations resulted in rough-and-ready approximations by which to establish rules precluding ineffective punishments. Policing self-regarding conduct such as drug use, in this schema, represents a wasted effort, enforcing needless laws and punishing offenders. Mill and Bentham were like-minded in the way that both placed the onus on the government to justify taking any prohibitive action.[106] But Bentham went much further to establish rules ensuring that rights are distributed equally, as well as in providing reasoned guidance to educators, moralists and legislative bodies.[107]

His calculations for deciding between options, points out Crimmins, are actually 'more impressionistic than mathematical'.[108] As other authors have observed, Bentham knew as well as Mill that attempting to apply mathematical precision to laws and morals was 'bound to be artificial'.[109] His reasoning was far more philosophical than mathematical, as reflected, for example, in his Greatest Happiness Principle.[110] To summarise succinctly, Bentham's principle of utility, by which all laws must be justified, emphasised distributive justice, ensuring equal rights and liberties.

The goal of maximising happiness for all members of society cannot be used to regulate individual moral conduct, but it does suggest some guidelines for informing legislators.[111] Bentham did not think that people could be made into rational calculators. But calculations can be helpful for predicting the outcomes of individual or state actions, and there are rules resulting from utilitarian considerations that govern a variety of social circumstances. Bentham's felicific calculus, a product of his early work, was designed to guide policymakers towards increasing pleasure and the well-being of the masses, as opposed to placating the elite or other special interest groups.[112] He was just as principled as he was efficient in providing guidance, for both the governed and the governors, for achieving the greatest happiness for all.

J.S. Mill's response to accusations that utilitarians sacrifice principles in exchange for expediency echoes Bentham's understanding: that is what the rules are for. Mill observed that 'only saints could be

act utilitarians, able to continually calculate the consequences of their actions'.[113] Though arguably more eloquent than Bentham, he expressed the same preference for having rules created to protect a sphere of individual freedoms against government interference with self-regarding acts. The bedrock of utilitarianism for both thinkers was that 'the interests of each and all must count, and count equally, in the aggregate of utilities'.[114]

Although their emphasis was squarely on securing the distribution of rights under law, it was Bentham's earlier view on liberty that law's 'principle object is to give security to rights'.[115] Mill's famous caution that democracies must guard against enabling a 'tyranny of the majority' was raised by Bentham too. He worried that the greatest number aspect of maximising happiness might erroneously communicate 'that the happiness of the majority was all that mattered'.[116] Injustices occurring from this loophole in his doctrine might make it 'possible for a minority to be oppressed by a majority'.[117]

However, Bentham advocated that such oppression be prevented by the use of rules securing and equally distributing individual rights and freedoms. Although he is often labelled as an act utilitarian, Bentham's focus on safeguarding negative liberties far exceeds the aim of simple aggregation. He did not view individuals as mere means to achieving utilitarian ends.[118] His depth of focus on security against misrule by governments, while securing the rights of individuals and their property, was critical to establishing that 'a utilitarian theory of punishment, as part of its premise, would be constrained from using persons as mere means'.[119]

Mischaracterising Bentham as someone content to sacrifice the rights of individuals for the 'common good' does not do proper justice to his work.[120] In the final section of this article, we return to the matter of acknowledging his further and much neglected potential contribution to drug policy discussions and related larger social policy debates.

Contemporary Relevance to Drug Policy Reformers

Shannon Dea observes that whereas harm has been a central subject in philosophy, harm reduction has not generated the same level of interest.[121] Considering its relevance to social policy discussions, she argues that philosophers should be more engaged in harm reduction. Related scholarly discussions tend to be found in other disciplines. Dea

further notes that philosophical writing about harm is 'often highly idealized and detached from empirical facts'.[122] Too much detachment from messy facts and real-world harms requires more shifting from the abstract to what she calls the 'empirical and consequentialist realm of harm reduction'.[123] Real-world harms, she points out, call for real-world amelioration.[124]

Dea's perspective echoes Bentham's understanding of the need for more pragmatic and empirical approaches to addressing real-world harms. Thus, unsurprisingly, she shares his views eschewing punishment for drug use and advocates pursuing alternative remedies.[125] This stance is miles apart from Mercer's argument for virtue ethics as a philosophical foundation by which to establish a public-health approach to substance use.[126] Unlike the elitist attitudes of Mill and Aristotle, Bentham's philosophy democratises pleasures such as drug use. Mercer's Aristotelian critique of utilitarianism relies on the assertion of a 'liberal dilemma', which he says prevents us intervening to stop harm.[127] This criticism downplays or overlooks the fact that Mill and Bentham both explicitly allow for some form of intervention to prevent self-harm.

Bentham, in particular, sought to strike a balance between ensuring freedom to pursue all kinds of pleasures and the effective means for necessary intervention. Throughout his prolific works concerted effort is devoted to meaningfully reducing social harm by demarcating between real and illusory, or imaginary, mischiefs.[128] Securing individual liberty, for Bentham, was best achieved through the minimum use of coercive state power, to be used only 'to deter certain actions which were deemed criminal by their effects on individual security and could be prevented by no other means'.[129] This did not preclude the use of state power to prevent harm caused by non-criminal activities through paternalistic means. Like Mill, he advocated for the state's role in the provision of social assistance for the needy, for their own good and for the public good.

Bentham wrote of his concern about the neglect of homeless people living on the streets and of the need for greater benevolence. He supported public charities being entrusted to provide the homeless with food and shelter that they would otherwise go without.[130] When choosing between leaving people to suffer or doing something about it, Bentham weighed in favour of paternalistic action. Although he was suspicious of traditional morality, with its appeals to virtue or paternalistic values, he refused to rule out either if the instruction could be justified on utilitarian grounds. The role of a good judge, for example, was described as 'the father of a family acting on a larger scale'.[131]

Indeed, it was his view that the state itself ought to function like a family, serving a paternalistic role. Bentham wrote: 'laws dictated by a spirit of gentleness, humanize a nation, and the spirit of the government will be found in its families.'[132] Benevolent paternalism is thus justified in cases concerning the prevention of self-harm. Paternalistic interventions are largely limited, however, by the legal rights of individuals that protect a wide variety of self-regarding behaviours from state interference. In the vast majority of cases, Bentham argued, it must be left to people to decide how to behave. Personal freedom exercised by prudent individuals, who are at liberty to pursue their own pleasures, grants them the autonomy to take drugs and get high. The right to do so trumps concerns of public order and security.

Bentham clearly recognised the obligation of the state to address drug use-related harms. Mild paternalism is justifiable in such cases, even to users themselves. But he draws a line between addressing harm and any form of state interference on behalf of a majority that might be morally offended by a self-regarding act. Bentham's understanding of utilitarianism does not justify the legislation of morality through law. He stated: 'Hence the first law with which a great code ought to begin, should be a general law of liberty – a law which should restrain delegated powers, and limit their exercise to certain particular occasions, for certain specific causes.'[133]

Indeed, for Bentham, even suicide, the most extreme self-harm, is justifiable if it can deliver someone 'from all pains'.[134] He was more liberal than Mill in emphasising the protection of liberties from state interference being justified in order to protect us from ourselves. That task is entrusted to self-restraint, or prudence, fostered through proper education. Such education through instruction and example is considered the best 'indirect mode of preventing offences', supporting the reduction of drug use-related harm.[135] Bentham's emphasis on ending needless government interference with self-regarding conduct was counterbalanced by his other focus on expanding the administrative state by implementing an array of public-health and educational initiatives.

Beyond a right to minimal intrusion in our lives, Bentham wanted to increase well-being by respecting negative liberties, as well as guaranteeing an array of positive protections from government authorities to which people are entitled. All citizens, for example, ought to have a basic right and expectation of being provided an education, health care and protection against poverty. Bentham may have recognised that the services provided by the Church or charities also serve as conduits

for moral regulation, which is both considerably effective and intrusive. Therefore, he insisted that the provision of such services should be an obligation of the state. As Peardon noted: '[t]he duties of the ministers in charge of Preventive Service, Indigent Relief, Education and Health suggest how far Bentham reached ahead of his time towards the social service state of today.'[136]

Thus, in sum, Bentham's writing on the subject of intoxicants went further than his student J.S. Mill in advocating for investment in non-punitive approaches to drug problems. He has been an overlooked historical figure in the formation of the movement that Dea envisions in a philosophy devoted to addressing real-world harms. More to the present point, Bentham anticipated the emerging dual objective of drug policy reformers to establish a right to use drugs and to foster harm reduction. Indeed, for Bentham, the development of discourse in this area is merely an extension of his thinking on the matter of how human beings might experience less pain and greater pleasure.

Conclusion

Support for more progressive drug policy reform commonly invokes such classic works as Mill's *On Liberty* to establish a foundation for respecting users' rights. Neglected by comparison is Bentham's contribution in offering a less concise, yet much more comprehensive, argument for tolerating drug use as a form of self-regarding action that is relatively harmless and ought not to be punished. He identified intoxication as a 'pleasure of the table' that must be recognised and governed as a matter to be trusted to private probity and prudence, not the imposition of the ethics of the state.

In Bentham's view, the individual is sovereign in judging the costs and benefits of substance use. Reducing harm to individuals and society requires alternatives to punishment. The kind of punitive approach to substance use that is exemplified by the global war on drugs today was viewed by Bentham as entirely groundless, ineffective and costly. His utilitarian arguments for limiting the scope of government interference by protecting negative liberties is clearly echoed in Mill's writing, but he went further by equating certain 'mischiefs' to higher order pleasures. Lower pleasures such as drug use have certain benefits and are thus equally deserving of respect and state protection as that extended to the pursuit of the fine arts.

Mill's emphasis on harm in his harm principle makes it vulnerable to arguments that justify intrusion by the state in ways that Bentham's view does not. Bentham's greater emphasis on the benefits of pleasure creates a more compelling set of principles on which to buttress the protection of individual rights while addressing harms of drugs misuse. Mill's great ability to be concise and his stronger writing skills left him less tarnished than his teacher by unwarranted accusations about utilitarianism's mathematical obsessions. Objections to Bentham's aggregations, however, have been largely overstated, while neglecting his concern for securing legal rights that ensure the means of equal distribution for attaining the greatest happiness.

Rather than obsessing over cold and rigid calculations, Bentham's primary focus was establishing legal rights and liberties within liberal democracies. The need for aggregating pains and pleasures in his calculus for maximising happiness had a further stipulation that it be equally divided. He was evidently an egalitarian thinker, suggesting that each person's pleasure had an equivalent right to be preserved.[137] Singer notes that Bentham saw 'the capacity for suffering [and enjoyment or happiness] as the vital characteristic that gives a being the right to equal consideration'.[138] For Bentham, maximising happiness – all things, and people, being equal – was a moral principle that ought to be enshrined in law.

While Bentham's rights may not be natural or inalienable, these can be legally established and secured by law for the good of the governed – such recognition and protection being essential to good governance.[139] Partaking in the pleasures of the consumption of intoxicants, without fear of criminal sanctions, is entirely consistent with his principle of utility, and must be free to thrive in as many forms as possible.[140] Good governance, for Bentham, also calls for more creative methods of reducing harm from drug use, by appealing to prudence, education or moral persuasion. His prescient recognition of the need for harm reduction that recognises need for pleasure and protecting rights of users speaks to Bentham's understated genius. Further recognition of his previously unknown potential contribution to drug policy discussions is accordingly long overdue.

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Notes

1   Bentham wrote that the principal object of all laws, and constitutional law in particular, is to give security to rights. Jeremy Bentham, *Constitutional Code* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, ix, pp. 10, 11).

2   Foucault wrote of Bentham's disciplinary society based on a generalised surveillance, 'A whole disciplinary generalization – the Benthamite physics of power'. Michel Foucault, *Discipline and Punish*, New York, 1975, p. 209.

3   Peardon's comparison of Bentham with his 'libertarian predecessors' suggests that he viewed government as a lesser evil, and that he was a strong believer in utility, not liberty, as the overarching 'supreme value'. Thomas P. Peardon, 'Bentham's Ideal Republic', in *Jeremy Bentham: Ten Critical Essays*, ed. Bhikhu Parekh, New York, 2011, p. 127.

4   Security against misrule and security against adversaries from the community was the primary objective of constitutional law. Bentham, *Constitutional Code*, p. 9.

5   Bentham begins his *An Introduction to the Principles of Morals and Legislation* (hereafter *IPML*) with the following statement: 'Nature has placed mankind under the governance of two sovereign masters, pain and pleasure'. This not only describes what people do. It contains a normative claim, in which pain and pleasure act as a guide for what humans *should* do.' Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, i, p. 1).

6   Crisp's account of Bentham on human nature describes him as rooted in a form of psychological egoism in which the ultimate motivation for all voluntary action is the self-interest to 'promote the balance of the agent's pleasure over pain'. Crisp, *Sacrifice Regained: Morality and Self-interest in British Moral Philosophy from Hobbes to Bentham*, New York, 2019, p. 5.

7   Andrew D. Hathaway, 'From harm reduction to human rights: bringing liberalism back into drug reform debates', *Drug and Alcohol Review* (2002), p. 399.

8   Andrew D. Hathaway, 'Charter Rights of Canadian Drug Users: A Constitutional Assessment of the Clay Trial and Ruling', *Canadian Journal of Law and Society* 16 (2001), no. 1, p. 30.

9   Bentham, *Constitutional Code*, p. 14.

10   Today it has been well established that trying to prevent drug use through the use of punishment and coercive policing is entirely ineffective while creating added harm. Erik van Ree, for example, notes that waging war on drugs does nothing to address the harms of substance use, but rather contributes to them by violating human dignity and exacerbating health and social problems. See Erik van Ree, 'Drugs as a Human Right', *International Journal of Drug Policy* 10 (1999), p. 89. Forcing treatment under threat of punishment further ignores the fact it does not work, meaning that people with addictions are best left to decide what works for them. See, for example, Neil Hunt and Alex Stevens, 'Whose Harm? Harm Reduction and the shift to Coercion in UK Drug Policy', *Social Policy and Society* 3 (2004), no. 4, p. 337.

11   Douglas G. Long, *Bentham on Liberty*, Toronto, 1977, p. 106.

12   Carrie Shanafelt, *Uncommon Sense: Jeremy Bentham, Queer Aesthetics, and the Politics of Taste*, Charlottesville, VA, 2022, p. 56.

13   Long, *Bentham on Liberty*, p. 81.

14   Bentham wrote that punishment for self-regarding acts that produced no mischief to others and could not produce any effect on the offender was groundless. *IPML*, p. 84. Also see, James E. Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', in *The Philosophy of Punishment and the History of Political Thought*, Peter Koritansky, ed., Columbia, 2011, p. 146.

15   Bentham considered pleasure one thing and the absence of pain as another; however, both were viewed as the two species or parcels of happiness. Jeremy Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, London, 2013, p. 14.

16   Bentham advocates allowing a variety of pleasures he called the 'eccentric shape'. Tolerating certain 'vices' in utilitarianism was opposed to the imposition of ascetic values found in religion. Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, pp. 35, 37.

17   Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, p. 19.

18   Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, pp. 19, 30.

19   Long, *Bentham on Liberty*, p. 107.

20   Long, *Bentham on Liberty*, p. 107.

21   Primary mischief refers to actual harm to individuals, such as victims of assault, robbery or murder. Such mischiefs, wrote Bentham, are 'confined to any person who is a sufferer in the first instance'. Secondary mischief refers to feelings of alarm and sense of danger in the community and wider society resulting from violent or random crimes. Bentham, *IPML*, p. 69.

22   Long, *Bentham on Liberty*, p. 107.

23   Bentham, *IPML*, p. 97.

24   Here Bentham wrote: 'the whole assemblage of any number of individuals' made up the 'imaginary compound body' of either a community or state. Any detrimental act to members should be considered detrimental to the state. Bentham, *IPML*, p. 97.

25   Bentham, *IPML*, p. 97.

26   Long, *Bentham on Liberty*, p. 106.

27   Bentham, *Principles of Penal Law* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, i, p. 397).

28   Bentham stated: 'Where there has never been any mischief, as in the case of consent: such consent, provided it be free and fairly given, being the best proof that can be obtained, that at least no immediate mischief upon the whole has been done to the party that gives it.' This, of course, assumes that consent is freely given, which may not account for situations of 'compromised consent' or the 'adaptive preferences' of socially marginalised and oppressed persons. Bentham, *Principles of Penal Law*, p. 397.

29   Whereas punishment might still be justified in cases involving death or injury to others, being incapacitated due to drunkenness or madness is both a mitigating circumstance and an aggravating factor. Examples of the latter are observed when, for example, a death or injury is caused by wilful negligence inflicted by a drunk, or a psychotic off their medication, driving a motor vehicle. Bentham, *Principles of Penal Law*, p. 397.

30   Bentham, *Principles of Penal Law*, p. 397.

31   Bentham, *Principles of Penal Law*, p. 397.

32   Heydt wrote 'Bentham is Paley minus a belief in hellfire'. Colin Heydt, 'Utilitarianism before Bentham', in *The Cambridge Companion to Utilitarianism*, Ben Eggleston and Dale E. Miller, eds, Cambridge, 2014, p. 29.

33   Foucault, *Discipline and Punish*, p. 184.

34 Foucault, *Discipline and Punish*, pp. 81, 222.

35 Bentham, *A Table of the Springs of Action* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, i, p. 210).

36 Bentham, *A Table of the Springs of Action*, p. 210.

37 Bentham, *IPML*, p. 84.

38 Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, p. 44.

39 Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, p. 55.

40 Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, p. 55.

41 Bowring wrote 'In the latter part of his life the sense of taste was nearly destroyed. He drank half a glass of Madeira wine daily. I believe he passed through life without a single act of intemperance.' Jeremy Bentham, *Memoirs and Correspondence Action* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, xi, p. 79).

42 In a letter to Talleyrand, who was soon to pay him a visit, Bentham wrote: 'As to wine I have nothing better than some tolerable St. George: so if this drug is a point to you (I only use it for medicine) […] you will do well to follow what a wicked wit called the example of Pitt the Second and come to dine with your friend – a bottle of Port in each pocket. – Wholly yours.' Bentham, *Memoirs and Correspondences*, xi, p. 75.

43 Bentham writes on how to limit mischief to both one's self and to others involving 'pleasures of the table when enjoyed in excess'. Bentham, *Not Paul, but Jesus. Vol. III Doctrine*, p. 55.

44 Bentham, *Not Paul, but Jesus, Vol. III. Doctrine*, p. 55.

45 Bentham, *Logical Arrangements* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, iv, p. 292).

46 Bentham, *Logical Arrangements*, p. 292.

47 Bentham, *Logical Arrangements*, p. 292.

48 Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', pp. 141, 146.

49 Bentham, *Principles of The Civil Code* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, i, p. 332).

50 Bentham, *Principles of Penal Law*, p. 556.

51 Bentham, *Essay on the Influences of Time and Place in Matters of Legislation Code* (*The Works of Jeremy Bentham*, ed. J.

52 John Stuart Mill, *On Liberty*, New York, 2006, p. 110.

53 Mill, *On Liberty*, pp. 110, 111.

54 Mill, *On Liberty*, p. 110.

55 Bentham, *Essay on the Influences of Time and Place in Matters of Legislation*, p. 175.

56 Mill, *On Liberty*, p. 108.

57 Long, *Bentham on Liberty*, p. 106.

58 Long, *Bentham on Liberty*, p. 106.

59 Long, *Bentham on Liberty*, pp. 115, 116.

60 Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', p. 151.

61 H. Hanafy, 'Bentham: Punishment and the Utilitarian Use of Persons as Means', *Journal of Bentham Studies* 19 (2021), no. 1, p. 9.

62 Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', p. 151.

63 James E. Crimmins, 'Bentham and utilitarianism in the early nineteenth century', in *The Cambridge Companion to Utilitarianism*, eds, Ben Eggleston and Dale E. Miller, Cambridge, 2014, p. 53.

64 Long, *Bentham on Liberty*, p. 116.

65 Long, *Bentham on Liberty*, p. 116.

66 Shanafelt, *Uncommon Sense*, p. 130.

67 Martha C. Nussbaum, 'Mill Between Aristotle and Bentham', *Daedalus* (Spring 2004), p. 61.

68 Nussbaum, 'Mill Between Aristotle and Bentham', p. 62.

69 Nussbaum, 'Mill Between Aristotle and Bentham', p. 62.

70 J.R. Dinwiddy, *Bentham*, New York, 1989, p. 19.

71 Nussbaum, 'Mill Between Aristotle and Bentham', p. 68.

72 Nussbaum, 'Mill Between Aristotle and Bentham', p. 68.

73 Bentham, *IPML*, p. 12

74 See also Steven Sverdlik, *Bentham's* An Introduction to the Principles of Morals and Legislation*: A Guide*, New York, 2023, p. 200.

75 S. Jacques, 'Bentham, Not Epicurus: The Relevance of Pleasure to Studies of Drug Involved Pain', *CrimRxiv* (2020), p. 20.

76 Bentham, *The Rationale of Reward* (*The Works of Jeremy Bentham*, ed. J. Bowring, 11 vols, Edinburgh, 1843, ii, p. 253).

77 Bentham, *Not Paul, but Jesus, Vol. III*, p. 8.

78 John Stuart Mill, *Utilitarianism*, Mineola NY, p. 8.

79 Long, *Bentham on Liberty*, p. 116.

80 Long, *Bentham on Liberty*, p. 116.

81 Long, *Bentham on Liberty*, p. 116.

82 Nussbaum, 'Mill Between Aristotle and Bentham', p. 65.

83 Bentham wrote: 'no man can be so good a judge as the man himself, what it is gives him pleasure or displeasure'.

84 Sverdlik, *Bentham's* An Introduction, p. 200.

85 Shanafelt, *Uncommon Sense*, p. 91.

86 Shanafelt, *Uncommon Sense*, p. 94.

87 Shanafelt, *Uncommon Sense*, p. 45.

88 Long, *Bentham on Liberty*, p. 110.

89 Carrie Shanafelt, 'Jeremy Bentham and the Pleasures of Fiction', *Revue d'études benthamiennes* 20 (2021), p. 1.

90 Hathaway, 'From harm reduction to human rights', p. 399.

91 Bentham, *Principles of Penal Law*, p. 436.

92 Hathaway, 'Charter Rights of Canadian Drug Users', pp. 30, 31.

93 Andrew D. Hathaway and J. Sharpley, 'The Cannabis Experience: An Analysis of "Flow"', in *Cannabis – Philosophy for Everyone: What Were We Just Talking About?*', D. Jacquette, ed., New York, 2010, p. 53.

94 Dinwiddy, *Bentham*, p. 26.

95 Long, *Bentham on Liberty*, p. 7.

96 Charles W. Mills, *Black Rights, White Wrongs*, New York, 2017, p. 29.

97 Mills, *Black Rights, White Wrongs*, p. 94.

98 Mills, *Black Rights, White Wrongs*, p. 94.

99 Mills, *Black Rights, White Wrongs*, p. 94.

100 Mills notes that John Rawls borrowed the idea from Kant that 'utilitarianism does not take seriously the distinction between persons'. The utilitarian perspective, from this standpoint, leads to a risk of rights infringement for the sake of an imagined greater good. Mills, *Black Rights, White Wrongs*, p. 94.

101 Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', p. 138.

102 Bentham, *Constitutional Code*, pp. 9, 11.

103 Andrew D. Hathaway, 'Crimes of Morality', in *Understanding Crime in Canada: An Introduction to Criminology*, 3rd edn, Neil Boyd, ed., Toronto, 2024, p. 378.

104 Dinwiddy, *Bentham*, p. 27.

105 Roger Crisp, 'Sidgwick and utilitarianism in the late nineteenth century', in *The Cambridge Companion to Utilitarianism*, Ben Eggleston and Dale E. Miller, eds, Cambridge, 2014, p. 92.

106 John C. Harsanyi, 'Morality and the theory of rational behaviour', in *Utilitarianism and Beyond*, Amartya Sen and Bernard Williams, eds, New York, 1982, pp. 44, 46.

107 Hathaway, 'Crimes of Morality', p. 379.

108 Crimmins, 'Bentham and utilitarianism in the early nineteenth century', p. 41.

109 Crimmins, 'Bentham and utilitarianism in the early nineteenth century', p. 41.

110 Dinwiddy, *Bentham*, p. 50.

111 Harsanyi, 'Morality and the theory of rational behaviour', p. 44.

112 Dinwiddy, *Bentham*, pp. 25, 29.

113 Shanafelt, *Uncommon Sense*, pp. 38, 46.

114 Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', p. 138.

115 Crimmins, 'The Principles of Penal Law in Beccaria, Bentham and Mill', p. 138.

116 Bentham, *Constitutional Code*, p. 11.

117 Dinwiddy, *Bentham*, p. 25.

118 Dinwiddy, *Bentham*, p. 25.

119 Bentham's theory of punishment is carefully crafted to demonstrate commitment to both liberal democracy and the elimination of pain. Hanafy points out that this is critical for countering accusations of utilitarianism providing a justification for excessive punishment or punishing the innocent. Hanafy, 'Bentham: Punishment and the Utilitarian Use of Persons as Means', p. 1.

120 Hanafy, 'Bentham: Punishment and the Utilitarian Use of Persons as Means', p. 1.

121 Bentham firmly rejected sacrificing some people over others and using persons as mere means for the greatest good. He recognised that the phrase 'the greatest happiness of the greatest number' might be misappropriated to achieve results widely different from those intended that disadvantages the vested interests of certain minority groups. Hanafy, 'Bentham: Punishment and the Utilitarian Use of Persons as Means', p. 3.

122 Shannon Dea, 'Toward A Philosophy of Harm Reduction', *Health Care Analysis* 28, (2020), pp. 303, 304.

123 Dea, 'Toward A Philosophy of Harm Reduction', p. 304.

124 Dea, 'Toward A Philosophy of Harm Reduction', p. 306.

125 Dea, 'Toward A Philosophy of Harm Reduction', pp. 306, 307.

126 Dea cautions against exacerbating attendant harms by attempting to abolish 'primary behaviors'. Dea, 'Toward A Philosophy of Harm Reduction', p. 307.

127 In *Aristotle on Drugs*, Mercer advocates for a virtuous approach to the problems associated with drug use. His embrace of virtue ethics is juxtaposed with Kant's deontological approach to ethics. Mercer argues that Kant's views result in 'prohibitive legislation' and 'abstinence only treatment'. Tony Mercer, 'Aristotle on Drugs', *The New Bioethics* 19 (2013), no. 2, pp. 84, 85.

128 Mercer describes the liberal dilemma as 'the tension between individual freedom and autonomy, on the one hand, and a more paternalistic, collectivist approach to protecting and improving the health of the population, on the other'. Mercer, 'Aristotle on Drugs', p. 85.

129 Hanafy, 'Bentham: Punishment and the Utilitarian Use of Persons as Means', p. 17.

130 Frederick Rosen, 'Liberty, Utility and the Reform of the Criminal Law', in *Classical Utilitarianism from Hume to Mill*, London, 2003, p. 162.

131 Bentham, *Principles of Penal Law*, p. 553.

132 Bentham, *Principles of Penal Law*, p. 558.

133 Bentham, *Principles of Penal Law*, p. 562.

134 Bentham, *Principles of Penal Law*, p. 576.

135 Bentham, *Not Paul, but Jesus, Vol. III*, p. 25.

136 Bentham, *Principles of Penal Law*, p. 570.

137 Peardon, 'Bentham's Ideal Republic', p. 130.

138 R.M. Hare, 'A Utilitarian Approach', in *A Companion to Bioethics*, Helga Kuhse and Peter Singer, eds, West Sussex, 2009, p. 89.

139 Peter Singer, *Animal Liberation*, New York, 1975, p. 7.

140 Stephen G. Engelmann, *Selected Writings: Jeremy Bentham*, London, 2011, p. 10.

141 Shanafelt, *Uncommon Sense*, p. 83.

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