Abstract

In the recent technology dispute between FBI and Apple Inc. over the investigation of Syed Farook in the mass killing that happened at San Bernardino, California where US Government seeks to order requiring Apple Inc. (‘‘Apple’’) to bypass the pass-code security on an apple device, is required and important to be granted by the US District Court and this essay stands as an critique to the order dated 29\textsuperscript{th} March 2016, passed by the learned magistrate of the US District Court as viewing the dispute from a jurisprudential point of view which states that Right are important but life of a person in more important. If doing so, helps to provide safety for the general public in the long run then the Court should order the Company to make the software. Further, the essay proves the jurisprudential approaches given by philosophers like Jeremy Bentham and John Stuart Mill that Rights are important and they should be protected because in the longer run society will be happy. As they advocated that rights are important just because of collective happiness which is gained by it.

Introduction and Background

A magistrate judge, JAMES ORENSTEIN, of United States District Court, Eastern District of New York passed an order in the most talked about debate of Technology Industry in 2016: Apple Inc. vs FBI recently on 29\textsuperscript{th} Febraury 2016 in which the US Government requested an order requiring Apple Inc. (‘‘Apple’’) to bypass the pass-code security on an apple device.

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Talking about the short background of the dispute, the chain of events started back in December 2015, when Syed Farook, who with his wife killed 14 people at the inland Regional Center in San Bernardino, California, before being killed by Law enforcement agencies. FBI found Syed Farook’s Iphone at the crime scene and after seizing it, initiated the proceedings of accessing the contents and data of the phone in order to find other information relating to the incident. But the FBI in its fumble to unlock the iPhone quickly, accidently reset the password of the phone, which made it stop sending data over the cloud.

As a result of this, the contents of the phone got locked and even FBI was not able to unlock it because of the Apple’s strong encryption. This made FBI to seek an order in which US Government aspires to force Apple Inc. to create a new customized IOS firmware that would remove the pass-code lockout on a seized iPhone as part of the ongoing San Bernardino investigation.

The message by Apple to its Customers involves the jurisprudential issue that whether the court should order Apple to create a unique version of iOS that would bypass security protection on the iPhone Lock screen. This essay aims to examine whether the Court should order Apple to create a unique version of iOS that would bypass security protections on the iPhone Lock screen which would also add a completely new capability so that passcode tries could be entered electronically. And examine whether Utilitarian theory or libertarian theory applies in the case in hand from jurisprudential point of view.

If the State can take away rights for the purpose of public benefit or individual liberty comes first, has always been a matter under controversy among different jurisprudential philosopher.

In jurisprudence there are two schools of thoughts basically Utilitarianism, which is a moral theory that says that the right thing to do is whatever will lead to the most utility and the other is Libertarianism, which is a political philosophy that says that the state should interfere as little as possible. Utilitarianism broadly states that a moral action is one that maximizes happiness for the greatest number of people. Libertarianism generally understood is a right-wing political theory
that broadly believes in a sort of Lockean minimal state where government doesn’t intervene in economic and civil life very much.

In the present essay, the author’s tilt is towards supporting the Utilitarian’s theory which is moral in its approach and according to which the Court should order Apple to build software that would bypass security protections on the iPhone Lock screen in the present San Bernardino Investigation.

Right are important but life of a person in more important. If doing so helps to provide safety for the general public in the long run then the Court should order the Company to make the software.

Below the authors will be stating some of the Utilitarian concepts and criticisms by the libertarians and in the conclusion the authors will state as in why the Utilitarian theory should apply in the present scenario.

The Concept of Utilitarianism

Utilitarianism began as a movement that dealt with ethics in the late 18th century associated with the English philosopher Jeremy Bentham. Principle of Utilitarianism involves calculus of happiness, where actions are deemed to be good if they tend to produce happiness in the form of pleasure and evil if they tend to promote pain. The philosophy is said to derive its idea for the concept of hedonism.

Bentham and later John Stuart Mill and others regards not only the end product of happiness, or utility, in actions, but also considers the motives of actions and the extent to which happiness can be created not only for the individual, but also for the members of society as a whole.

Bentham and Mill, who were the initial philosophers of the concept of utilitarianism, forwarded a belief in the inherent nature of value, a concept that allowed for the calculation of utility. From this initial view, the Utilitarian’s created a chain of standard moral behavior as in how an individual ought to act. Utilitarian principle of Bentham which is also called the “Greater Happiness Principle,” holds the idea that individual should strive to maximize happiness for the greater number of people. Bentham later on modified his concept over time; critics acknowledge that the essence of his theory remains intact throughout his work.
An Introduction to the Principles of Morals and Legislation (1789) was the book in which he talked about the principle of utility. This book contains Bentham’s view that individuals should act for the benefit of the society as a whole, and see to it that legislation makes such laws that act for the benefit of the society as a whole and one who refuses to contribute to the overall happiness should be given penalty. He further stated that records of the sources of pleasure and pain should be there and also talked about creating a scale upon which the relative effects of individual acts in producing happiness or misery could be examined.

Utilitarianism has continued to be influential, with the work of Bentham and Mill proving to be of the greatest importance and interest. In the upcoming pages, the authors will be stating what Bentham’s and Mill’s theory are and what are the critiques to the Utilitarianism theory and conclusion as in why the theories given by the Utilitarian thinkers proves to be more important and applicable, relating the San Bernardino case to a jurisprudential approach.

**Greater Happiness Principle by Jeremy Bentham:**

He was an English philosopher, jurist, and social reformer. He is regarded as the founder of modern utilitarianism. His was the greater happiness principle. He believed that 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 should do.

According to principle of utility, we try to increase pleasure and avoid pain and there is nothing wrong in that. Ex – My activity is morally profound then yours [this is not the case in Bentham’s theory]. In the end what matters is the collective pleasure of the subjects.

**The Attractions of this Theory of Utilitarianism by Bentham –**

1. Everybody is counted in the calculation of happiness.
2. Everybody’s pleasure/happiness is taken as equally important.
3. Reasons of pleasure/happiness are not relevant in the calculus.
4. All the reasons for pleasure/happiness are equal.
5. Nobody’s pleasure are taken as nobler or worthier or higher.
Bentham’s theory focuses on public interest. That is, if a state believes that something is jeopardizing collective happiness of the society then it has to be stopped. His theory has an equalitarian chat, it treats every subject equally. The pleasure one gets by drinking tea and the pleasure one gets from drinking a bottle of beer will be the same according to Bentham’s theory of utilitarianism.

**John Stuart Mill’s version of Utilitarianism**

The pleasure of a beast is different from that of a human being. Humans other than any other animal pleasure have a pleasure of the intellect, of the feelings and imagination, and moral sentiments much higher in values then animals pleasure for appetites. Mill states that humans enjoy Intellectual pleasure. Some pleasures are more desirable and valuable than others.

According to Mill, Utilitarianism could only attain its end by the general cultivation of nobleness of character, even if each individual were only benefited by the nobleness of others, and his own, so far as happiness is concerned, mere a sheer deduction from the benefit. Not every pleasure is equal to every other pleasure.


Mill further identifies freedom; he states freedom of inward domain of consciousness including freedom of expression and publishing opinions, freedom of tastes and pursuits so long we do not have others even though they should think over conduct foolish, perverse or wrong, further freedom to write for any purpose not involving harm to others.

He says that if the society can and does execute its own mandates and if it issues many mandates instead of right, it practices a social tyranny. Government cannot impose the will of others on some people without any justification or reason and that reason should be strong. Intellectual pleasure is important then personal pleasure. Personal pleasure may be showed by majority of the people and it gives personal happiness and this can only be imposed on others if it is good for them in the long run and collective happiness can be derived. It is not permissible if personal happiness is required because people will be threatened in longer run and they would lose faith.
Rights are important and they should be protected because in the longer run society will be happy. Rights are important just because of collective happiness which is gained by it.

**Critique of the Theory**

The Theory of Utilitarianism having as many followers also have people and philosophers who reject the above theory for reasons such as –

- Rawls and Nozick both claims that utilitarianism doesn’t not respect the fact that persons are separate. Libertarians say that since utilitarianism focuses exclusively on maximizing total utility and this is how they fail to take into consideration the rights of individuals and the way in which utility is distributed among different persons. We are aware of the injustice that utilitarianism sanctions such as slavery of few etc., so long as it benefits the whole.

- Utilitarianism says that utility, or happiness, is intrinsically valuable. But what does it mean, how does utility means pleasure and what is happiness in broader sense. The more we start to think carefully about how many different things utility might mean the less obvious it seems that any one of those things could really be the only thing that has intrinsic value.

- Utilitarianism counsels us to be absolutely impartial in the way we measure the utility effects of our actions. Your own happiness counts for no more and no less than the happiness of any other person. But again, why should we believe this? Don’t we owe something more to our own selves than we do to a complete stranger?

**Conclusion**

The jurisprudential question in the present matter is that whether the court should order Apple to build an alternate iOS for Apple iPhones as a backdoor. Author’s claim with respect to this issue is that yes the court should order Apple to build a backdoor for iPhones. As Mill states that rights are important but not as important as the life of a person.

So if the Government for a nobler cause as has been in this case of terrorist attack in San Bernardino, the State can take away certain rights so as to insure future protection of lives of individuals. FBI finding the phone and not able to investigate the phone due to security issue
should not happen in future. Since life is more important than liberty and rights of individuals, without which a individual cannot profess his rights. Thus author’s take the side of utilitarian’s and support the state, that Apple should build an IOS as a backdoor so as to avoid future incidents that threaten the life’s of individuals.

**References**