David Hoffman (1784–1854)

James E Crimmins

Available at: https://works.bepress.com/james_e_crimmins/69/
HOBBES

Distinctions and the Variations and Contradictions of Ethical Codes (Boston, 1844).


Further Reading

Emerson, Donald F., Richard Hildreth (Baltimore, 1946).

John E. Crimmings

Harvard University

The University of Western Ontario

See also BENTHAM, JEREMY; DEMOUR, ETIENNE; OSULLIVAN, JOHN L.; PAIN; PLEASURE.

HOBBES, THOMAS (1588-1679)

Thomas Hobbes was born on 5 April 1588 in the village of Westport near Malmesbury in southwest England. From age 4 to 8, Hobbes attended church schools in Westport and Malmesbury. Thereafter he moved on to a private school in Westport and completed the standard English grammar school curriculum, emphasizing studies in Greek and Latin grammar, poetry, history, and rhetoric. As a fourteen-year-old, financially supported by his uncle Francis who was a wealthy lawyer, he went up to Magdalen College, Oxford. Graduating in 1608, he became private tutor to William Cavendish (1590-1628), later the second Earl of Devonshire. The Cavendish family was so continuous to support Hobbes for over 70 years, providing access to libraries, opportunities to travel, and chances for interaction with important philosophers like René Descartes, mathematicians, and scientists such as Maria Mercuria, and powerful political figures including the future King Charles II of England. For a time Hobbes was secretary to the renowned philosopher and scientist Francis Bacon. In 1619, he befriended John Galileo. After an extraordinarily long and eventful life of philosophical, scientific, theological and political engagement, he died at Hardwick Hall, one of the Cavendish family's residences, on 4 December 1679, in his 91st year.

All of Hobbes's major philosophical works had some bearing, direct or indirect, on urgent and bitterly contested contemporary political issues such as sovereignty and allegiance. In several of them, he argued against the extremism and irrationality of the actions and ideas that had driven England into civil war between 1640 and 1660. His determination to construct and defend a "morally and civil science" should be seen against this background. His writings combined a scientific method of analysis inspired by mathematicians and mechanists with powerful ethical strategies in an attempt to construct an unassailable political argument for allegiance to the British monarchy. Hobbes's philosophical works of the 1640s map the progress of this project. The Elements of Law (1660) attempted to erect a course between metaphysical and antinomic theories of prerogative power, only to influence the ire of both groups.

His trilogy on the Elements of Philosophy: Of Corporations (Of the Body), De Homine (Of Man), and De Cive (Of the Citizen), was written in the 1640s, but only appeared in 1651. The book is elaborated when Hobbes's masterpiece of political philosophy, Leviathan, appeared in 1651.

When scholars characterize Hobbes broadly as a utilitarian, it is usually by reference to arguments presented in the first part of Leviathan, "Of Men," or its second part, "Of Commonwealth." Hobbes's account of reasons, will, and action in Leviathan is consequentialist. Reasoning is defined as calculating the consequences of the actions we are about to deliberate. (Hobbes, p. 111). Action follows from "deliberation," a sequential weighting of the components of the imagined chain of good and evil consequences stemming from the action in progress. Willing is the result of this weighing—a "fixed" posture of set desirousness or aversion (p. 127). "Felicity" is success in obtaining desired consequences. "Power" is the capacity to do so (p. 150). Political and moral life is an unending struggle for power.

Jeremy Bentham, father of English utilitarianism and creator of the term "utilitarianism," gave a comparable account of human action in An Introduction to the Principles of Morals and Legislation (1789). He called his theory of action a "logic of the will," and showed systematically how the sovereignity of pleasure and pain makes it possible—and essential—to calculate the consequences of prospective actions and draw moral rules and legal principles from this calculus. Hobbes and Bentham both saw reasoning as a calculation of interest, and interest as the basis of moral and political action. But Hobbes based his moral philosophy on natural laws and his political science on a pure agreement or social contract. Bentham considered such ideas vacuous, at best. Most important, Hobbes's consequentialism does not, by itself, constitute a form of utilitarianism. For Hobbes, the desires of different agents are incomparable; they cannot be arranged or averaged. Thus, there is "no common rule of Good and Evil" in society (129). "Good," "evil," and "felicity" differ from place to place and agent to agent, and can be no such thing as a principle of value. Although Hobbes and Bentham both

HOBBES, LEONARD TRELAUNY (1864-1920) See NEW LIBERALISM.

HOBBON, JOHN A. (1858-1940) See NEW LIBERALISM.

HOFFMAN, DAVID (1784-1834) David Hoffman was born on 24 December 1784 in Baltimore, Maryland. He was...
HOLMES

educated at St. John's College and became a prominent member of the Maryland bar. Hoffman was instrumental in the founding of the University of Maryland in 1812, and he became the first professor of law in 1816. He introduced his own program of law education at Maryland in 1822, based on the widely acclaimed A Course of Legal Study (1817), which he later expanded to a two-volume edition in 1836. Judge Joseph Story thought it "by far the most perfect system for the study of the law which has ever been offered to the public" (North American Review, Nov. 1817, p. 76). A review of the 1836 edition commented that the book "has received the strongest commendation from many of the most eminent jurists in the country" (Princeton Review, Nov. 4, 1837, p. 509). Hoffman's text included extracts from, and commentaries on, a broad cross section of legal writers from the past, as well as contemporary authors on both sides of the Atlantic, and statutes and court cases. He was the first legal scholar to introduce Bentham's ideas into the academic study of the law in the United States (King, p. 139), recommending that students should study the first seven chapters of Bentham's Introduction to the Principles of Morals and Legislation (1789). Under the title des passions et des remèdes (2 vols., 1811), Hoffman's text quickly became a standard vehicle for teaching law in American universities, and was read by both John Marshall and Richard Hildreth and continued to hold its place of eminence in legal study well into the second half of the century. It was Hoffman who first suggested to Neal, that he translate parts of Dumaunet's earlier and more famous l'Instruction of Bentham's moral and legal philosophy, Traité de législation (3 vols., 1802), Neal, who set out to read every book the professor recommended in A Course of Legal Study, described Hoffman as one among his (Bentham's) "most enthusiastic admirers" (Neal, pp. 113, 167, 300).

BIBLIOGRAPHY


—A Syllabus of a Course of Lectures on Law (Baltimore, 1821).

—An Address to Students of Law in the United States (Baltimore, 1834).

—Legal Outlines: Being the Substance of a Course of Lectures now Delivering in the University of Maryland, vol. 1 (Baltimore, 1829).


Neal, John, Wandering Recollections of a Somewhat Busy Life (Boston, 1869).

Further Reading


James E. Conlin
Huron University College
The University of Western Ontario

See also HILDRETH, RICHARD; NEAL, JOHN.

HOLMES, OLIVER WENDELL

(1841-1935)

Oliver Wendell Holmes Jr. was born on 1 March 1841 in Boston to Amelia Jackson Holmes and Oliver Wendell Holmes Sr., a noted poet, essayist, and journalist. He grew up among the literati of Cambridge and attended Harvard College. Holmes was a noted legal scholar, a Justice of the Supreme Judicial Court of Massachusetts (1882-1902), and a Justice of the Supreme Court of the United States (1902-32). He is commonly regarded as one of the founders of pragmatism, while his credentials as a utilitarian are disputed.

When the Civil War began in April 1861, Holmes abandoned the final 2 months of his college studies and enlisted in the Massachusetts Militia. He was wounded 3 times in combat and, at the conclusion of his 4-year tour, declined reinstatement (Holmes, 1946, p. 143). Holmes's war experience is generally believed to have transformed his outlook. After the War, he viewed law as a regime imposed by force by whatever group triumphed in the struggle for existence. Following his military service, Hol- mes attended the Harvard Law School. He treated law in Boston and in 1867 began writing case books, book digests, and essays for the American Law Review. Holmes was part of an informal group, later called the Metaphysical Club, that began meeting in 1872 to discuss philosophy. Other participants included William James, Charles Sanders Peirce, Nicholas St. John Green, and Chauncey Wright. Although no record of the group's discussions exists, its meetings might have been a crucible of pragmatism. Holmes himself, however, was initially sceptical of pragmatism, calling it "an amusing humbug" (Holmes, 1961, v. 1, p. 259).

In 1880, Holmes delivered a series of lectures at the Lowell Institute, published the following year as The Common Law. Some eloquent passages at the beginning and the end of the book's opening chapter describe how law adapts to "the felt necessities of the time." They include Holmes's most famous sentence: "The life of the law has not been logic; it has been experience" (Holmes, 1991, p. 1). Some writers have seen this language as revolutionary. Similar language appeared, however, in the works of Rudolph von Jhering that Holmes read while preparing his lectures. Moreover, the evolutionary and adaptive character of law had been a point of pride for Americans from the beginning. For example, John Dickinson's words to the Constitutional Convention in 1787 appear almost to paraphrase Holmes: "Experience must be our only guide; Reason may mislead us" (Perrand, p. 287).

In 1882, Holmes joined the Harvard Law School faculty, but he soon accepted appointment as a Justice of the Supreme Judicial Court of Massachusetts, serving for 20 years. His most notable opinions were two dissents in which he declared his approval of collective bargaining by workers (Veblen v. Gomillion, 1896; Plante v. Woods, 1900).

In 1897, while a Justice of the Massachusetts court, Holmes published an essay in the Harvard Law Review titled The Path of the Law. Its positivist conception of law was strongly influenced by John Austin, though Holmes departed from Austin in several respects (Cromwell and Spencer, vol. 1, pp. 104-105, 33-35). Four closely related ideas conveyed Holmes's vision: first, his definition of law as "[h]e propositions of what the courts will do in fact"; second, his claim that "if you want to know the law ... you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict"; third, his proposal to banish "every word of moral significance" from law; and fourth, his "alternative" theory of contract, which stipulates "[h]e duty to keep a contract ... means a prediction that you must pay damages if you do not keep it,—and nothing else" (Holmes, 1895, vol. 5, p. 391).

In 1902, President Theodore Roosevelt appointed Holmes to the Supreme Court. Although Holmes was sixty-one at the time of his appointment, he remained a justice for twenty-nine years. Holmes's tenure is remembered primarily for his dissent from majority decisions invalidating social welfare legislation and from majority decisions rejecting the First Amendment claims of