Adjudication

Ben Eggleston

citation for published version:
Ben Eggleston, "Adjudication," in *The Bloomsbury Encyclopedia of Utilitarianism*, edited by James E. Crimmins (Bloomsbury Publishing, 2013), pp. 6–8.

abstract:
A short (about 1,000 words) overview of adjudication, describing the standard view (judges should just apply the law, when possible) and two goal-oriented views: wealth maximization and the maximization of well-being – i.e., utilitarian adjudication.

Adjudication is the activity of authoritative dispute resolution. The most visible and well-theorized form of adjudication, and the focus of this entry, is the activity of judicial decision-making in a case that comes before a court of law. In this context, adjudication usually involves ascertaining the facts of the case, identifying the relevant statutes, precedents, and other legal materials, and anticipating the consequences of various possible decisions. In routine cases, the correct decision is effectively determined by the judge's (or jury's) finding of fact, and no serious inquiry into the law or possible decisions' likely consequences is needed. But in some cases—the ones that have prompted the most extensive philosophical discussion—agreement on the facts is nonetheless accompanied by disagreement about the correct decision. The norms that judges should follow in such cases are a contested matter in philosophy of law.

On the standard view of adjudication, judges should normally simply apply existing law to the cases before them and not be influenced by whatever senses of justice they may hold or favour. On this view, a judge's own sense of justice and other policy judgements may rightly bear on some common-law cases (those that remain unresolved even after the application of established principles of common law and other available legal materials), but normally judges should function as "finders" rather than "makers" of law. So on this view, most of the intellectual work

of adjudication (assuming agreement on the facts) is confined to the activity of ascertaining existing law, and the main intellectual problem of adjudication is, thus, the problem of legal interpretation: the problem of discerning the content of existing law given available legal materials, which may include diverse and mutually contrary administrative regulations, legislative enactments, constitutional provisions, prior judicial decisions, and established principles of common law. This well-known problem, in turn, is addressed by competing theories of legal interpretation, including theories privileging the plain meaning of texts, theories privileging the author's or ratifier's intentions, and theories privileging the most justified general moral principles that are embodied in the legal history of the political community in question.

Because the standard view of adjudication can be complemented with virtually any theory of interpretation (including ones requiring sophisticated historical scholarship and nuanced moral judgement), not every proponent of the standard view of adjudication is thereby committed to a simplistic view of that activity. But the standard view does tend to restrict the thorniest problems of adjudication to the activity of ascertaining existing law and thereby maintains the thesis that judges should normally simply be reliable conduits or agents of existing law. Defenders of this view maintain that it embodies fidelity to the law, prevents judges from imposing their own values in place of the law, ensures fairness by requiring that similar cases be decided similarly, and enables persons who are subject to the law to predict its application and enforcement.

The main alternatives to the standard view are goal- or outcome-oriented ones. The most prominent such view is the thesis, associated with the law and economics movement, that judges should decide cases in accordance with the goal of social wealth maximization. The classical example of this approach is Learned Hand's formula concerning negligence, which holds that an injuring party should be deemed negligent only if the cost of pre- venting the accident would have been less than the cost of the accident itself multiplied by the probability of its occurrence (Hand, p. 173). On the wealth-maximization view, judges should not necessarily apply existing law unswervingly; rather, they should render decisions that maximize the overall wealth of the society. The content of existing law is important, but only

as information that judges must take into account (primarily in order to appreciate the prior expectations of persons subject to the law) in order to estimate the consequences of the decisions open to them.

Another goal-oriented view of adjudication can be derived from the utilitarian principle that a person should always act in whatever way maximizes overall well-being. Applied to the activity of adjudication, this principle holds that judges should decide each case in whatever way maximizes overall well-being. This view, which might be called "utilitarian adjudication," is structurally similar to the wealth-maximization view, but regards well- being instead of wealth as the appropriate maximand. Thus, like the wealth-maximization view, it regards judges as participants in a large goal-driven enterprise and directs them to promote the goal in question even when doing so requires deviating from what the law commands. Utilitarian adjudication also follows the wealth-maximization view in typically requiring judges to attend to the content of the law not as a direct determinant of correct adjudication, but as a datum that informs their thinking about the likely consequences of the decisions open to them.

Ironically, the most influential figures in the history of utilitarian thought—Bentham, Mill, and Sidgwick—all expressly affirm the standard view's claim that judges should subordinate their own opinions about desirable outcomes to the commands of existing law (Bentham, vol. 9, p. 533; Mill, *CW*, vol. 8, p. 944; Sidgwick, p. 203). In the case of Bentham, it has been argued that he also affirms a judge's prerogative to set aside the law when necessary to avoid inexpedient outcomes (Postema, pp. 405, 439), but this interpretation has been persuasively disputed (Dinwiddy 1989a, p. 69; 1989b, pp. 284–8). It is a testament to the influence of the standard view that it is embraced even by the leading expositors of outcome-oriented thinking about moral decision-making.

Although proponents of utilitarianism have not traditionally advocated its use in adjudication, and although utilitarianism remains controversial as a comprehensive ethical theory, utilitarian adjudication's narrower scope makes it less vulnerable to several of the leading objections to the general theory. For example, claims that utilitarianism is excessively demanding, along with the

complaint that utilitarianism requires agents to disregard their personal projects, commitments, and personal relationships, have far less relevance in the context of judicial decision-making. As a result, some who do not accept utilitarianism as a comprehensive ethical theory might still accept a utilitarian approach to adjudication.

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