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978-0-521-02686-4 - Equal Freedom and Utility: Herbert Spencer's Liberal Utilitarianism

D. Weinstein

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## *Introduction*

When John Rawls' magisterial *A Theory of Justice* rang the death knell of utilitarianism anew by declaring that it utterly failed to take "seriously the distinction between persons," utilitarianism's bad reputation in the eyes of many was reconfirmed. But Rawls leveled his liberal neo-Kantian weaponry at classical, Sidgwickian utilitarianism, leaving untouched improved varieties fortified with liberal principles. Indeed, much utilitarian theorizing in recent years has attempted to rescue utilitarianism by infusing it with robust liberal constraints on what can be done to individuals in the name of maximizing utility. What has been rescued has come to be known as "liberal utilitarianism."

Liberal utilitarianism is a variety of indirect utilitarianism that accents the development of individuality as importantly constitutive of happiness. Liberal utilitarianism is also vigorously juridical, giving pride of place to strong basic rights. This latter feature endows liberal utilitarianism with its solid indirect utilitarian credentials. Unlike direct utilitarians, who hold that the principle of utility serves both as a normative standard for assessing classes of actions and institutions and as a direct source of moral obligation, liberal utilitarians do not burden the principle of utility with this double liability. As indirect utilitarians, they permit the principle of utility to serve as a standard for assessing classes of actions and institutions while denying it service as a source of direct obligation. For them, strong moral rights serve as sources of direct obligation, making their version of indirect utilitarianism *liberal* utilitarianism. Liberal utilitarians hold that general utility is best maximized over the long run when individuals assiduously fulfill their fundamental juridical obligations and thereby indirectly promote the flourishing of individuality. Maximizing happiness consists in fostering individuality which, in turn, requires that we

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channel our actions along broad avenues permitted by stringent moral rights.

The distinction between direct and indirect utilitarianism (including liberal versions of the latter) is sometimes depicted as resting on the distinction between a criterion and a decision procedure. According to James Griffin, “The distinction is one of the most important developments in utility theory of recent decades.”<sup>1</sup> As a criterion of right action, the principle of utility is capable of distinguishing between right and wrong actions. But as an action-guiding, decision procedure, it is woefully clumsy and even perilous. Unfortunately, we are neither impartial enough nor intelligent enough direct maximizers of general utility. Were we always to appeal directly to the principle of utility for action guidance, we would often fail miserably and sometimes with great cruelty. Thus, we need handier, unvarnished decision procedures; procedures that do not themselves prescribe overwhelmingly complex, maximizing calculations. As Griffin says of such a strategy:

The principles that we use in deciding how to act, on the other hand, can take account of human limitations; they might turn out to be much like the principles of common-sense ethics, or a tidied-up version of them, allowing a large measure of partiality and easing demands on our powers of calculation. All that utilitarians need hold out for is that our actions are right if, and only if, they most promote utility overall. (“Distinction,” pp. 179–80)

Liberal utilitarianism, as a version of indirect utilitarianism, recommends strong moral rights as the basic “principles we use in deciding how to act.” For liberal utilitarianism, rights function as key decision procedures.

Injecting utilitarianism with robust decision procedures such as moral rights creates several fundamental dilemmas for utilitarians, not the least of which concerns utilitarianism’s identity. By making their decision procedures so robust, liberal utilitarians risk subsuming the principle of utility as a meaningful criterion of right action. Where decision procedures so overwhelm the principle of utility for all practical purposes, it remains debatable whether liberal utilitarianism has simply metamorphosed into just plain liberalism. The hegemony of decision procedures may be nothing less than a

<sup>1</sup> James Griffin, “The Distinction Between Criterion and Decision Procedure: A Reply to Madison Powers,” *Utilitas*, 6 (1994), 179.

veiled triumph of the right over the good. To borrow from Griffin again, “If utility calculation is squeezed out of a quite large part of moral life, if it is relegated to the extremes and to manageable small-scale matters, if, that is, those are the only situations in which utilities can be calculated to a sufficient degree of reliability, then does enough remain to be called ‘utilitarianism?’” (“Distinction,” p. 181)<sup>2</sup>

Others have impugned liberal utilitarianism on related grounds for trying to impose liberal constraints on the pursuit of utility. In particular, several philosophers have deemed infeasible moral rights and the principle of utility irreconcilable. For instance, David Lyons has vigorously argued that strong rights and utility are incommensurable because stringent rights corrupt utilitarianism by introducing a second, alien criterion of good with its own separate “moral force.”<sup>3</sup> Alan Ryan and John Charvet have similarly criticized Mill’s liberal utilitarianism. Despite his enthusiasm for Mill, Ryan nonetheless shares Lyons’ reservations about Mill’s utilitarianism, reproaching Mill for suppressing the logical “conflict” between the requirements of justice and the requirements of utility.<sup>4</sup> Charvet likewise complains that, despite Mill’s Herculean efforts, justice and utility cannot be integrated without one of them being devalued.<sup>5</sup> And John Gray, formerly one of liberal utilitarianism’s champions, has switched sides, repudiating liberal utilitarianism as unworkable.<sup>6</sup>

Notwithstanding the logical cogency of liberalizing utilitarianism by investing it with strong rights, liberal utilitarianism commands a rich, variegated genealogy. Even Jeremy Bentham is arguably a liberal utilitarian if we follow P. J. Kelly. According to Kelly, in *Utilitarianism and Distributive Justice*, Bentham’s utilitarianism was multi-layered, combining direct and indirect utilitarian strategies. Kelly says that the “overall object” of his study “is to argue that Bentham did not intend to supply a direct utilitarian theory of moral obligation, but rather that he employed a utilitarian theory of justice

<sup>2</sup> Griffin continues, “If the limitations of human knowledge pose a serious problem for utilitarianism (as I myself think they do), it is not to be solved by invoking a form of the distinction between criterion and decision procedure that allows the criterion to rise serenely clear of the life of accommodations and compromises that limited people like us must lead” (“Distinction,” pp. 181–2).

<sup>3</sup> David Lyons, “Utility and Rights” in John W. Chapman and J. Roland Pennock (eds.), *Ethics, Economics and the Law* (New York University Press, 1982), Nomos 24.

<sup>4</sup> Alan Ryan, *The Philosophy of John Stuart Mill* (London: Macmillan Press, 1987), p. 228.

<sup>5</sup> John Charvet, *A Critique of Freedom and Equality* (Cambridge University Press, 1981), p. 95.

<sup>6</sup> John Gray, “Mill’s and Other Liberalisms” in John Gray (ed.), *Liberalisms: Essays in Political Philosophy* (London: Routledge, 1989), pp. 218–24.

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which provided the framework within which individuals could pursue their own conceptions of well-being.”<sup>7</sup> Nor, in Kelly’s view and contrary to H. L. A. Hart, did Bentham advocate a straightforward indirect theory of obligation in which the principle of utility merely functions as a criterion for determining juridical rules which are the real sources of moral obligation. Bentham’s “system of obligations provides a framework within which individual agents can act on direct utilitarian reasons, without their actions undermining the conditions of social interaction on which the most important sources of utility depend.” Hence, Bentham “combines aspects of a direct and indirect utilitarian theory” that is sensitive to the basic conditions of utility-generating stability while also providing individuals with ample scope to pursue utility directly (p. 69). Thus Gertrude Himmelfarb’s shopworn complaint, that Benthamite utilitarianism reveals that “the principle of the greatest happiness of the greatest number was as inimical to the idea of liberty as to the idea of rights,” may be unwarranted.<sup>8</sup>

Liberal utilitarianism, then, may have a deeper ancestry than is usually believed. In any case, J. S. Mill was indisputably nothing less than a liberal utilitarian. How else can we account for the way his moral theory continues to resonate so powerfully in current debates about liberalism versus utilitarianism and in recent efforts to forge some kind of tenuous amalgam from them? How else can we explain James Fitzjames Stephen’s criticisms of Mill that so closely mirror more recent criticisms of liberal utilitarianism by Lyons, Ryan, Charvet and Gray? As Stephen once observed of Millian utilitarianism:

Why should [anyone] prefer obedience to a rule to a specific calculation in a specific case, when, after all, the only reason for obeying the rule is the advantage to be got by it, which by the hypothesis is not an advantage, but a loss in the particular case? A given road may be the direct way from one place to another, but that fact is no reason for following the road when you are offered a short cut. It may be a good general rule not to seek for more than 5 per cent in investments, but if it so happens that you can invest at 10 per cent with perfect safety, would not a man who refused to do so be a fool?<sup>9</sup>

<sup>7</sup> P. J. Kelly, *Utilitarianism and Distributive Justice* (Oxford University Press, 1990), p. 43.

<sup>8</sup> For Himmelfarb’s criticism, see her “The Haunted House of Jeremy Bentham” in R. Herr and H. T. Parker (eds.), *Ideas in History* (Durham, N.C.: Duke University Press, 1965), p. 235.

<sup>9</sup> James Fitzjames Stephen, “Note on Utilitarianism,” *Liberty, Equality and Fraternity* [1873] (University of Chicago Press, 1991), p. 277.

Modern proponents of liberal utilitarianism have taken it to higher levels of sophistication hoping to meet criticisms like Stephen's. In *Liberal Utilitarianism*, Jonathan Riley attempts to combine the virtues of both liberalism and utilitarianism while avoiding their respective flaws. In the eyes of many, according to Riley, liberalism is thought of as having extensive ethical appeal at the cost of sacrificing coherence insofar as the core values celebrated by liberals are tragically incommensurable. Ironically, liberalism's lack of coherence stems from its very appeal. Utilitarianism, on the other hand, is frequently castigated precisely because of its notorious coherence that allegedly subverts individual integrity in the name of systematically maximizing utility. Riley, by contrast, strives to liberalize utilitarianism and to systematize liberalism by defending a form of utilitarianism that possesses *both* liberal ethical appeal and formal coherence.

Riley's defense of liberal utilitarianism combines axiomatic social choice theory and a "new interpretation of Mill's liberal version of utilitarianism."<sup>10</sup> Riley argues that by sufficiently restricting the domain of our conception of utility, we can fortify utilitarianism's liberal credentials without undermining its systematic coherence. Moreover, in Mill, according to Riley, we have a promising basis of how to proceed. For Riley, Mill's conception of good is "utility in the largest sense," of which security (justice) and individuality are the foremost components or kinds of utility. Mill ranks these kinds of utility lexically, so that our interest in security outranks our interest in individuality. That is, "utility in the largest sense" results when all individuals cultivate their individualities subject to respecting one another's rights to security with the right to liberty, as embodied in Mill's liberty principle, being pivotal. The lexical priority of security over individuality restricts the domain of preferences, thereby insuring liberal ethical appeal. And overall coherence is preserved because utility defined this way, as the harmonious realization of security and individuality, remains the ultimate standard of value by which right action is systematized.

Riley's liberal utilitarian rendering of Mill shares much with John Gray's largely favorable assessment of Mill in *Mill on Liberty: A Defence*, an assessment that Gray has since disavowed. There are,

<sup>10</sup> Jonathan Riley, *Liberal Utilitarianism: Social Choice Theory and J. S. Mill's Philosophy* (Cambridge University Press, 1988), p. 329.

nevertheless, subtle differences between Riley's and Gray's Mill and, by implication, subtle differences in their respective approaches to the larger enterprise of liberal utilitarianism. For Riley, Mill was a "disposition" utilitarian because of the importance that Mill placed on moral self-development as a feature of individuality. As an evolving disposition, moral self-development fosters happiness by fostering habitual respect for rights, making moral individuality the wellspring of security. Though lexically more important, security depends upon correct moral dispositions. Gray, by contrast, lays greater stress on moral rights themselves, on the *external* conditions of utility maximization. Consequently, his Mill is less of an *internal* dispositional utilitarian than Riley's.

A measure of irony characterizes Riley's interpretation and defense of Millian liberal utilitarianism compared to Gray's. Whereas Riley accentuates the dispositional features of moral individuality of Mill's liberal utilitarianism, he nonetheless holds that security is a lexically more important kind of utility. Gray, on the other hand, lays less stress on dispositional attributes and more on moral rights and yet regards individuality as ultimately more significant.<sup>11</sup>

Another compelling defense of liberal utilitarianism is Wayne Sumner's *The Moral Foundations of Rights*. Like Riley and Gray, Sumner maintains that an indirect utilitarian strategy that places powerful juridical constraints on the pursuit of general utility is the best strategy for maximizing general utility. But unlike them, he does not invoke Mill so extensively in championing the cause of liberal utilitarianism. And unlike them, he concedes that liberal utilitarianism can accommodate not just stringent, though ultimately defeasible, rights but indefeasible rights as well.<sup>12</sup>

Liberal utilitarianism, then, possesses a venerable genealogy. But Mill, and arguably Bentham, did not usher in liberal utilitarianism alone. Herbert Spencer, as much as Mill, gave liberal utilitarianism its formative personality.

*Equal Freedom and Utility: Herbert Spencer's Liberal Utilitarianism* assesses Spencer's pivotal contribution to the emergence of what *we*

<sup>11</sup> See especially chapter 4 in John Gray, *Mill on Liberty: A Defence* (London: Routledge and Kegan Paul, 1983).

<sup>12</sup> For Sumner's defense of stringent consequentialist rights, see especially chapter 6, "Consequentialist Rights," in Wayne Sumner, *The Moral Foundations of Rights* (Oxford University Press, 1987).

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now call liberal utilitarianism as well as the success of his version of it.<sup>13</sup> My study analyzes Spencer's unprecedented and problematic endeavor to take moral rights seriously as stringent decision procedures while simultaneously insisting that their consequentialist instrumentality not disappear from view. For Spencer, moral rights are not metaphysical absolutes even if a single stringent set of them proves contingently superior in maximizing happiness. Though moral rights mimic natural rights in their stringency, though they are shadows of natural rights, their ultimate justification nevertheless lies in the practice of utility.

Like Mill, Spencer endeavored to make utilitarianism more ethically attractive by constraining the pursuit of utility with potent moral rights. And yet, insofar as moral rights were *indefeasible* for Spencer, particularly in his earlier works such as *Social Statics*, his liberal utilitarian amalgam was more daring and unstable than Mill's. Though stringent, Millian rights are ultimately *defeasible* and consequently Mill's version of liberal utilitarianism is less rigorously liberal and therefore less logically precarious.

Since Spencer's liberal utilitarianism resembles Mill's so closely, we ought to regard Spencer's version of it as seriously as we regard Mill's. If much of *our* current philosophical interest in Mill stems from his contribution to the issue of the logical compatibility between strong moral rights and utility, then we should find Spencer's contribution to this issue even more intriguing. If Mill's liberal utilitarianism is heroic, then Spencer's is all the more so. After a preliminary chapter on Spencer's evolutionary theory and a second chapter devoted to examining his principle of equal freedom, in the next three chapters I explore the relationship between moral rights and the principle of utility. The chapters on equal freedom and moral rights constitute the core of my study of Spencer.

Spencer, then, was a liberal utilitarian. Such a characterization of him implies, of course, that he embraced a hedonic theory of good. G. E. Moore's accusations notwithstanding, Spencer never defined good in a callous and chilling way. He certainly never defined good as survival of the fittest and therefore did not commit the naturalistic

<sup>13</sup> Spencer never used the expression "liberal utilitarianism" when referring to his own moral and political theory. Mill didn't either, to the best of my knowledge. The fact that neither Mill nor Spencer explicitly identified themselves as liberal utilitarians naturally opens liberal utilitarian interpretations of them to the charge of being rational reconstructions.



fallacy in the manner attributed to him by Moore.<sup>14</sup> For Spencer, good was happiness if it was anything. And, generally speaking, maximizing good entailed operationalizing good universalistically. However, Spencer sometimes inconsistently advocated operationalizing good egoistically. This inconsistency only muddied the contours of his liberal utilitarian visage, making him easier prey to mistaken identity and self-serving appropriation such as Moore's.

Spencer's moral reasoning regarding good, then, was neither as logically inadequate as Moore's caricature suggests nor entirely successful either, given that Spencer sometimes wavered in his commitment to universalistic hedonism. For Spencer, maximizing happiness generally meant maximizing happiness universally and distributively for *all* members of society, even though egoistic lapses occasionally vitiated his theory of good.

The liberal credentials of Spencer's maximizing theory stem from another feature of Spencer's moral reasoning, namely the deductive manner in which moral rights ostensibly followed from the principle of equal freedom. This principle stipulates that: "Every man is free to do that which he will provided he infringes not the equal freedom of any other man."<sup>15</sup> According to Spencer, as we shall see, moral rights were logical derivations of equal freedom. Insofar as the principle of equal freedom was indispensable to maximizing happiness, and insofar as moral rights were "corollaries" of equal freedom, unswerving respect for them was equally indispensable to maximizing happiness. Hence, Spencer proudly characterized his brand of liberal utilitarianism as "rational" utilitarianism. In contrast to merely "empirical" varieties of utilitarianism such as Bentham's, "rational" utilitarianism was supposedly rigorously logical. Its logical rigor inoculated it from being continually modified in the name of brute expediency, unlike "empirical" utilitarianism. Where "empirical" utilitarians were never shy about forever refitting the right for the sake of the good, "rational" utilitarians sanctified the right for the sake of the good. Only "rational" utilitarianism took stringent moral rights as the sole theory of right worthy of reverence before the altar of good. Only "rational" utilitarianism was ethically appealing by building on our deepest and most cherished liberal convictions. Only "rational" utilitarianism, as far

<sup>14</sup> G. E. Moore, *Principia Ethica* (Cambridge University Press, 1984), chapter 2.

<sup>15</sup> Herbert Spencer, *The Principles of Ethics* [1879–93], 2 vols. (Indianapolis: Liberty Classics, 1978), vol. II, p. 62.



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as Spencer was concerned, provided firm methodological foundations on which liberal utilitarianism could be safely built.

But Spencer's "rational" utilitarianism rests on a specious methodology. Contrary to what Spencer holds, moral rights cannot possibly be strict, logical derivations from equal freedom. Hence his hopes of replacing merely "empirical" Benthamite utilitarianism with a more methodologically rigorous "rational" variety founder. In the end, Spencer's liberal utilitarianism proves to be just as irrefutably "empirical," methodologically speaking, as any other version of utilitarianism. So, Spencer's claim that his brand of utilitarianism was not just an improvement over Bentham's, but also methodologically different from Bentham's, is overexaggerated. And if Kelly is correct that Bentham was a liberal utilitarian, then the differences between Bentham and Spencer may be smaller still. Chapter 6 examines Spencer's contention that he was a "rational" utilitarian as well as Moore's caricature of Spencer's moral theory as exemplifying crude ethical naturalism.

Some of the practical applications of Spencer's liberal utilitarianism, such as his support for land nationalization, further reveal the fundamentally empirical nature of his utilitarian reasoning. Land nationalization and related issues are addressed in chapter 7.

Spencer's liberal utilitarianism is hydra-headed not least because it is overlaid with so many complicating theoretical concerns stemming from his biology, psychology and sociology. And there is so much Spencer; "yards of Spencer" as J. B. Schneewind once put it.<sup>16</sup> Making sense of Spencer is an exegetical labyrinth even for the initiated. Hence, there are ample reasons for proceeding cautiously when interpreting Spencer's liberal utilitarianism. And consequently there are added reasons not to be imprudently sanguine about the success of his version of it.

My study of Spencer claims that he was a liberal utilitarian. He began as one and he ended as one. In other words, Spencer's moral and political thought exhibits greater systematic integrity than the received view of his thought acknowledges.<sup>17</sup> My study also examines the myriad problems with his version of liberal utilitarianism, which were often not insignificant.

<sup>16</sup> Schneewind's remark was made in a conversation with me about Spencer.

<sup>17</sup> However, see T. S. Gray, *The Political Philosophy of Herbert Spencer: Individualism and Organicism* (Aldershot: Avebury, 1996), for a recent attempt to reconcile the tension between Spencer's individualism and his organicism.

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Precisely because of these flaws, Spencer's contribution to the larger problematic enterprise of liberal utilitarianism accentuates its pitfalls and intellectual dividends in a revealing way. The challenges of trying to ground the principle of equal freedom and moral rights in the principle of utility are not just considerable but also timely and significant for us. As a consequence, Spencer's unusual version of liberal utilitarianism is engaging and deserving of our critical attention. Neo-Kantians, in particular, dare not ignore him, lest they foolishly think that the final blows to the venerable ghost of Sidgwick and nineteenth-century utilitarianism were dealt in the battle cry of *A Theory of Justice*.

If we need to read our Sidgwick as spadework for reading Rawls, then we need to read our Spencer too.