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JUSTICE AND UTILITY
A NOTE ON J.S. MILL'S ESSAY *UTILITARIANISM*

In section V of his essay *Utilitarianism* J.S. Mill discusses the relations between the principle of utility and justice, with the object of showing that, far from being incompatible with the principle of utility, justice «is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation than any others» (p. 59)¹ He, nevertheless, never makes it quite clear what exactly the utilities in question consist in. I shall argue that the rules of justice, as Mill conceives of the matter in this essay, promote and secure certain utilities, both social and individual, which are of paramount and vital importance insofar as they are the prerequisites for the possibility of pursuing and, thus, securing the individual's happiness - and the general happiness to the extent that it consists of the sum of the happiness of individuals. These vital utilities constitute the social framework within which only, all members of a society are secured the chance (possibly an equal chance) of pursuing and promoting their own interest and happiness. These utilities are, thus, the means for securing the happiness of the greatest possible number of individuals.

Justice, as Mill conceives of it, is a system of rules and maxims defining certain courses of action which one may be rightfully compelled to pursue (or to abstain from pursuing, in case the rules in question prohibit the defined course of action) in order to safeguard the rights of some particular individual or group of individuals. The rules in question are not necessarily legally codified ones, backed by the apparatus of courts of law and legal sanctions; many of them are

1. Page references are to J. S. Mill, *Utilitarianism. On Liberty and Considerations on Representative Government*, ed. H.B. Acton (J. M. Dent & Sons, London, 1910, n.i. 1972).

simply socially accepted rules of conduct backed by social sanctions of various sorts. (cf. pp. 40-1). Indeed, Mill expressly holds that it would be «inexpedient» to enforce all rules of justice by the force of law (pp. 44-5). Neither are the rules of justice necessarily the rules operative in a given society at a given time. For the rules in force may be unjust ones - in which case they ought to be changed by legal or illegal means (cf. pp. 40-1). Whether a rule is just - and can, thus, be rightfully enforced - or unjust is to be decided by considerations of utility, that is, by considering whether its observance promotes the general happiness, either immediately or mediately. However, since according to Mill (cf. pp. 45-6) not all rules are assessible in the just/unjust dimension, but only those that protect individual rights, a qualification is in order here: namely, that a rule is just if and only if its observance safeguards individual rights and, *in virtue of so doing*, promotes the general happiness.

Mill's views on individual rights are correlative to his views on the justice and the injustice of rules. Having a right, according to Mill, is having «a valid claim on society to protect [one]... in the possession of it, either by the force of law, or by that of education and opinion» (p. 50). In other words, an individual has a right X just in case society ought to guarantee him the possibility of exercising this right, that is, of acting accordingly - rather than the possibility of so doing being left to chance or to the individual's own exertions. And whether society ought or ought not to guarantee him the possibility of engaging in some course of action is to be settled by considerations of utility. The rights of a person, then, being correlative to the obligations of justice, are similarly grounded in considerations of utility.

In the course of his discussion of the relations between the principle of utility and justice, Mill enumerates a miscellaneous collection of utilites promoted and secured by the rules of justice. Although Mill does not explicitly say so, there is sufficient evidence to indicate that he has three sorts or kinds of utility in mind, corresponding to the three general characterisations he gives of these utilities: he characterises them as freedom from various kinds of positive harm (cf. p. 50), peace and the creation of feelings of sympathy (cf. p. 56), and security (cf. p. 50). As we shall see, it is evident from his discussion of the subject that these are not alternative characterisations of the same utilities, but characterisations of different sorts of utilities which accrue in different ways from the observance

the rules of justice. The first sort consists of individual utilities deriving from the specific rights which society ought to protect through its rules of justice and their attendant sanctions. The second sort consists of the social utilities which result from the fact that society guarantees these specific rights. Finally, the third sort of utility is a social utility resulting from the fact that society guarantees the exercise of some system of individual rights - no matter what their content.

Under the first sort of utilities Mill groups the individual utilities deriving from the rules of justice designed to protect an individual from being harmed by others, either directly or indirectly, that is, «by being hindered in his freedom of pursuing his own good» (p. 56). Such, for example, are the rules prohibiting acts of wrongful aggression, the wrongful exercise of power over someone and wrongfully withholding from someone something which is his due (cf. p. 56). These rules prohibit the infliction of «a positive hurt, either in the form of direct suffering, or of the privation of some good which he had reasonable ground, either of a physical or of a social kind, for counting upon» (p. 56). The utilities secured by the enforcement of such rules are universally desired since «a person may possibly not need the benefit of others, but he always needs that they should not do him hurt» (p. 56). Mill seems to hold that most of the rules of justice fall under this heading. Many of the maxims and rules of justice he mentions certainly do so. However, it is not always clear whether the rules he discusses are ones he approves of or whether they are merely candidate rules of justice in virtue either of having been proposed by someone or of being rules actually in force. That is, it is not always clear whether he holds that these rules promote the general happiness and are, thus, rules of justice, or whether he holds that they do not and are, thus, unjust rules. Since many of the rules towards which he adopts a non-committal attitude are rules requiring the redistribution or more equitable distribution of wealth and income², it is not clear whether he holds that justice, i.e., social utility, requires that society also guarantee the (re-)distribution of positive benefits or whether it is enough that it protect the individual from positive harm³. His advocacy of the principle of equality is of

2. Cf. Mill's remarks on wages (pp. 53-4), taxation (pp. 54-5) and the Communists' views on the equal distribution of the produce of a community's labour (43).

3. It should be noted that I am here only referring to arguments and positions expressed in *Utilitarianism* and am, thus, disregarding Mill's views in *The Prin-*

no help in the matter, for his comments are of a highly general and abstract nature («...society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely» (p. 58)) and are, thus, consistent with both views. His remarks, however, on the historical progress he discerns towards a society of greater equality (cf. p. 59), testify to the latter, that is, to the view that it is only incumbent on society to protect the individual from positive harm: the progressive lifting of the distinctions between slaves and freemen, nobles and serfs, patricians and plebeians, which he mentions, is more a matter of conferring the right to protection from positive harm on a greater number of individuals than it is a matter of altering the contents of the rights recognised by the relevant societies. And, indeed, this is in keeping with the line he adopts as regards the remaining two kinds of utility secured by the rules of justice.

The second sort of utilities recognised by Mill in this essay as accruing from the rules of justice are peace and the creation of social or sympathetic feelings. These are social utilities resulting from the fact that society guarantees an individual's various rights to freedom from direct or indirect harm by others⁴. That Mill does not intend peace and the creation of social feelings as an alternative characterisation of the first sort of utilities discussed above, is evinced by the fact that he presents an argument showing that peace and the generation of social feelings are results of the enforcement of the individual rights to freedom from harm, as well as preconditions - as were also the first sort of utilities - for the pursuit of individual happiness. «...they [the rules which forbid mankind to hurt one another] are the main element in determining the whole of the social feelings of mankind. It is their observance alone which preserves peace among human beings: if obedience to them were not the rule, and disobedience the exception, every one would see in every one else an enemy, against whom he must be perpetually guarding himself». (p. 56) In other words, Mill is arguing that a consequence of the fact that society guarantees the various rights to freedom from harm by others

ciples of Political Economy, where he distinguishes between the laws of production and the laws of distribution and most certainly calls for a more just redistribution of wealth.

4. By a 'social utility' I mean a utility which, because it is not an aggregate or sum of individual utilities, cannot be apportioned amongst the individual members of a society, but can only be enjoyed by each of them as a whole.

i.e., that it punishes their violation and nurtures their observance by education, is that most people, by and large, comply with the relevant rules: that is, they, by and large, abstain from inflicting harm on others. This has two results. On the one hand, people live in «peace» with each other and, on the other hand, and as a result of so doing, they do not view each other as enemies, that is, as having conflicting and irreconcilable interests, in consequence of which their sympathetic feelings are aroused and strengthened. This, in turn, leads to a greater and stricter observance of the relevant rules of justice, which, in turn, leads to greater peace, the further strengthening of social feelings, and so on. And such a state of affairs, according to Mill (cf. p. 56), can only be of benefit to the persons concerned, for in such a situation, they both do not need, and do not feel that they need, to direct their efforts towards defending themselves from harm and inflicting harm on others. They are, thus, free and feel free to pursue their own interests and happiness directly. In other words, such a state of affairs is a precondition for the exercise of each individual's right to promote and pursue his own happiness.

The third sort of utility implicitly countenanced by Mill results from the fact that society guarantees some system of individual rights - irrespective of their content. The utility in question is that of security, «to every one's feelings the most vital of all interests» (p. 50). Mill introduces security in answer to the question why society ought to protect individual rights (cf. p. 50). His answer is: for reasons of general utility. And he here presents security as the sole utility secured by the protection of individual rights. Seeing, however, that, as we argued above, Mill also recognises two further sorts of utility, security cannot be the sole such utility he countenances. It must either be identical with one of the other two kinds of utility or it must constitute a third sort of utility which Mill recognises along with the other two. Mill is not quite clear on the subject. His remarks seem to support both the view that security is identical with freedom from positive harm, i.e., it is security from positive harm, as well as the view that it is a third sort of utility resulting from the fact that society guarantees some system of rights or other. The difficulties in interpreting Mill on this point begin with an ambiguity in the question, referred to above, to which Mill presents security as an answer. He writes: «To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector go on to ask why, it ought? I can give no other reason than

general utility. ...The interest involved is that of security...» (p. 50). The ambiguity is the following: It is not clear whether Mill is asking why society ought to defend individual rights - no matter what their content - rather than not defend them, or whether he is asking, given that society ought to defend individual rights, why it ought to defend rights with such and such a content, rather than rights with a different content. The preceding discussion seems to favour the second interpretation, since it is analytic for Mill that society ought to defend individual rights - rights being that which society ought to defend (cf. p. 50). His subsequent remarks, however, seem to favour the first interpretation. Thus, Mill writes of security in very general terms, that is, he does not specify the pertinent areas of security, so that security is a utility consonant with the possession of any rights whatsoever - irrespective of their contents. Second, he emphasises the importance of our future safety and its protection from anyone stronger than us. These points are, similarly, points that pertain to the safeguarding of any rights, no matter what their content.

The conclusion that security is identical with freedom from positive harm, i.e., that the security involved is security from harm, is only justified if Mill's question is construed in the second way. For only on such a construction does the content of rights (freedom from various sorts of positive harm) come into the matter. If, however, it is construed in the first way, then security can neither be the content of some right nor the aggregate of the contents of various rights. For the contents of the rights defended by society do not come into the matter at all. And security becomes a utility accruing from the fact that society defends some system of individual rights - no matter what this is. The security involved is the following: By protecting us in our rights - no matter what their content - society ensures the safety of our future for us in certain areas or respects (the areas and respects depending, of course, on the contents of the rights defended), that is, it ensures that, in these respects, the future will not be prey to the interests of anyone stronger than ourselves and will, thus, continue on the pattern of the present. And this means, in turn, that our future in these respects, is predictable and will live up (or down) to our expectations. Predictability is a factor by which Mill, like Hobbes, sets great store, as is evinced by his strong disapproval of breach of friendship and promise as disappointing expectation (cf. p. 57)⁵.

5. It should be noticed, however, that in this passage too, Mill is ambiguous: he argues that breach of friendship and promise are human evils both on the

When Mill, then, writes about security he seems to have the first interpretation in mind⁶. The evidence, however, in this essay is conclusive neither with respect to what Mill intends by the above question nor with respect to the utility security stands for. Nevertheless, I think we are justified in holding that, in this essay, Mill does recognise a third sort of utility along with the other two mentioned above, namely security as predictability, since there is sufficient evidence for both the above interpretations and Mill may be justifiably held to have intended both.

In conclusion, a further point, which concerns one of the criticisms directed against Mill's proof of the principle of utility, is in order. In *Utilitarianism* Mill writes that «...each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons» (p. 33). Mill has been accused of, thereby, committing the fallacy of composition - of arguing from the premise that each person desires his happiness to the conclusion that all persons (i.e. each and every person) desire the happiness of all persons⁷. However, in view of the above, it is not at all likely - his infelicitous wording notwithstanding - that Mill is actually guilty of having committed this fallacy. First, Mill seems to believe that the rules of justice enjoining one to abstain from harming others are to be enforced by various kinds of sanction; he does, thus, not believe that they are followed from a mere desire for the happiness of all - as should have been the case had he believed that each and every person desires the happiness of all. Second and more important, Mill seems to believe that a secondary result of these rules is the creation of feelings of sympathy towards others and, thus, the desire for their happiness. Consequently, rather than deriving the utilities secured by justice from the premise that every person desires the happiness of all others (as he should have done had he believed that the principle of utility was justified by it), Mill holds that every person's desire for the happiness of all others is a result of the above rules of justice. Feelings of sympathy and the desire for the happiness of others is a result of the existence of rules of justice and it is a utility inso-

grounds that they disappoint expectation, as well as on the grounds that they do not give the friend and promisee what they deserve.

6. On Mill's view on the utility of security cf. also A. Ryan, *J. S. Mill* (Routledge & Kegan Paul, London/Boston, 1974) pp. 121, 123.

7. Cf. eg. A.M. Quinton, *Utilitarian Ethics* (MacMillan, London, 1973) pp. 66-7.

far as it contributes to their enforcement by creating in people the sympathetic feelings which will prevent their desiring to harm others. Such reciprocally sympathetic feelings, thus, contribute mediately to the fulfillment of each person's desire for his own happiness. Consequently, Mill's remark that «...each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons», could be construed as claiming that, since each person desires his own happiness, every person must also desire the happiness of all other persons, for such a desire constitutes a precondition of fulfilling his own selfish desire and, consequently, a precondition of fulfilling the selfish desires of all concerned.

Δικαιοσύνη και Οφέλη

J. S. Mill, *Utilitarianism*: Κριτικό Σημείωμα

Π ε ρ ί λ η ψ η

Στο σημείωμα αυτό επιχειρούμε να αποσαφηνίσουμε ποιά είναι τα οφέλη τα οποία προάγονται και εξασφαλίζονται, κατά τον Mill στο δοκίμιο του *Utilitarianism*, από τους κανόνες της δικαιοσύνης. Το συμπέρασμα στο οποίο καταλήγουμε είναι ότι αυτά είναι τριών ειδών: 1. τα ατομικά οφέλη που απορρέουν από τα συγκεκριμένα δικαιώματα τα οποία προστατεύει η κοινωνία μέσω της δικαιοσύνης, 2. τα κοινωνικά οφέλη που απορρέουν από το ότι η κοινωνία εξασφαλίζει τα παραπάνω συγκεκριμένα δικαιώματα, 3. το κοινωνικό όφελος που απορρέει από το ότι η κοινωνία εξασφαλίζει κάποιο (οποιοδήποτε, ανεξαρτήτως περιεχομένου) σύστημα ατομικών δικαιωμάτων. Βάσει των παραπάνω συμπερασμάτων, επιχειρούμε να επανερμηνεύσουμε ένα, κατά πολλούς σχολιαστές του άκυρο, επιχείρημα που διατυπώνει ο Mill σε αυτό το δοκίμιο - το επιχείρημα ότι, εφόσον ο κάθε άνθρωπος επιθυμεί την ευδαιμονία του, όλοι οι άνθρωποι επιθυμούν την ευδαιμονία όλων - με τον σκοπό να δείξουμε ότι ο Mill δεν υποπίπτει στο λογικό σφάλμα που του καταλογίζουν.

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