

## Chapter 11: Utilitarianism: Commerce as an Indicator of the Good Society

### I. Setting the Stage for the Nineteenth Century

In 1815, many features of the medieval order remained in Europe despite significant shifts in ethics, science, economic theory, and political philosophy during the previous century. Government in Europe and elsewhere continued to be largely determined by birthright, as kings inherited their thrones and nobles their positions in the noble chambers of parliament. The commoner chambers were largely populated by men from wealthy families (or their employees), most of whom won office in uncontested elections. When elections were contested, only a handful of voters normally voted, generally a small percentage of the wealthiest male population in the communities of interest. Senior church officials often held seats in parliament as a right of office. Most other high government officials and military leaders were nobles or from noble families.<sup>1</sup>

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<sup>1</sup>This is not to say that nothing with respect to politics had changed in the West. For example, France's revolutionary period began in 1789, was replaced with Napoleon's dictatorship in 1804, and by a constitutional monarchy in 1815. Napoleon's military success directly or indirectly ended the republican governments of the Netherlands and Venice, and treaties negotiated after Napoleon was dispatched (at the Vienna Congress) led to significant territorial reforms in the Holy Roman Empire and in Scandinavia. The United States had been founded in North America. The ideas of both the French and U. S. revolutions tended to energize both liberals and conservatives in Europe. Slavery had been

Most countries and duchies still had monopoly churches, supported by state taxes and tithes. These were mainly Lutheran in northern Europe and Catholic in the south. The Netherlands and England were exceptions to this general rule, although both had state-supported churches and restrictions on Catholic churches and their members.<sup>2</sup> For most persons, religion was as central to life as ever, although miracles were considered a bit less plentiful than in previous periods and natural laws more in evidence. Most persons outside cities remained farmers or employees of farmers, who directly produced most their own necessities of life.

Urban commercial centers were growing, but major cities were still relatively small, and the commercial society involved only a small fraction of the population as a whole. London had grown from a half million to a million persons during the eighteenth century but would include more than 6 million in 1900. Paris had a relatively stable population of about a half million persons during the eighteenth century but grew to nearly 3 million during the nineteenth century. New York City was a

eliminated in much of Europe and many feudal practices eliminated or curtailed. However, examined with a broad brush, it is fair to say that the monarchical template for European governance was alive and well in Europe in 1815.

<sup>2</sup>The United States of America is another exception. There was no national church although a few of the states continued to support a particular church. Other states had long had rules for religious tolerance. A Catholic national church and aristocratic rule were re-established in France after Napoleon's defeat in the early nineteenth century.

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small town in 1700, with a population of about 5,000, reaching 60,000 in 1800, and would reach nearly 3.5 million in 1900.

Adam Smith noted that guilds remained strong in British cities in the late eighteenth century and that their members often retained monopoly privileges in production and sales. Imports and exports were often controlled by royal monopolies based in capital cities and major port cities. Most economic production was accomplished in the old-fashioned way by artisans working out of their homes or in small shops nearby.

Smith noted that that this was beginning to change in the late eighteenth century as small factories in England and Scotland began taking greater advantage of in-house specialization and factory production. The cloth industry in particular was expanding rapidly taking advantage of new wind- and water-powered looms. Nonetheless, highly specialized production was still the exception rather than the rule. Machines had become larger and more sophisticated, as had ocean-going sailing ships, but machines were still mainly constructed of wood and driven by muscle, wind, or water.

Significant innovations and institutional reforms were under way. Steam engines had been developed for pumping water out of mines, which were further developed in the early nineteenth century for use in transportation. The old medieval strip farms were being “rationalized” into more or less rectangular fields, enclosed with fences of various kinds

during the second half of the eighteenth century through various enclosure movements. This, together with marketable private titles, made land a more liquid form of wealth than it had been in previous centuries. It also literally changed the landscape in Western Europe to the patchwork of fields taken for granted today outside cities. Openness to public debates on policy and scientific issues had increased, although political censorship increased in many places during the years after the French Revolution. Sumptuary laws had largely disappeared.<sup>3</sup>

The secularization of science continued, with more and more phenomena explained as consequences of natural laws, which were still generally considered to be evidence of divine power and intent. The search for general principles of ethics, good government, and human behavior continued as new efforts were made to create theoretical frameworks for the study of humanity and society.

Significant progress had been made in the social sciences during the eighteenth century, as with the work of Montesquieu and Smith on law, politics, ethics, and economics, but more could be done.

The nineteenth century was a transformational century throughout what came to be called “the West.” Together, shifts in normative theories, technological advances, and institutional reforms led to the emergence of a more encompassing commercial life and commercial networks during the nineteenth century.

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<sup>3</sup>Sumptuary laws governed clothing, food, and housing. Restrictions were often class based, as particular colors or type of cloth might be forbidden for one class or sex and mandated for others. Among the most famous in England were

the sumptuary laws of Queen Elizabeth in 1574, which for example restricted silk and the color purple to the royal family and a subset of nobles.

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Several new paradigms for ethics had emerged in the eighteenth century. Among the most important were the ones grounded in the “impartial spectator” by Smith and the “categorical imperative” by Kant. Both provided systematic ways of thinking about ethical propositions and public policies that were beyond the scope of moral maxims and heuristics, and substantially independent of religious texts. They suggested that all ethical questions could be evaluated with a single procedure, although different ones. Is an action or policy likely to gain the praise of an impartial spectator or not? Is a rule of conduct such that a universal version of the rule would work well if implemented as law? These theories did not conflict with religious ideas, but did not require them. The impartial spectator might be thought of as a divine entity; universal laws might be ones implied by theological works. Yet, each methodology allowed moral choices to be identified without reference to divine texts or specific religions.

Shifts in norms favoring commerce were evident in the examples used in many of these social science and ethical works. Material comforts were increasingly taken as an obvious feature of a good life rather than a distraction or temptation to be avoided. Lists of virtues included industry, honesty, and frugality—none of which appear on Aristotle’s lists. Success in commerce via ethical means was evidence of divine approval and societies that were wealthy were better or at least more attractive ones than those lacking significant commercial development.

### Utilitarianism

At about the same time that Kant was writing, there was another proposal for a single principle that could be used to determine whether an action is ethical or not. Proponents of what came to be called the “utility principle,” in effect, returned to Aristotle’s analysis. Their ultimate end, like his, was happiness or utility. In contrast to Aristotle, but in common with Smith and Kant, utilitarians focused most of their attention on the effects that actions had on others living in their communities, rather than on an individual’s character development or salvation. Utilitarians ask whether the persons living in a community are likely to be happier after a particular action or policy is undertaken than before it. If the members of a community are on balance happier afterwards, the action is a good or virtuous one. If not, it is a bad or immoral one.

In contrast to Aristotle, Smith, Kant, and most theologians, utilitarians were almost indifferent to the effect that an action had on character development, except insofar as such effects might increase an individual’s own lifetime happiness. It is the consequences of an action, ethical disposition, or public policy on others that matter—in particular their effects on the happiness of all persons in the community, society, or world. For utilitarians, essentially every choice thus had ethical implications. Private ethics and character development were not irrelevant, but of much less interest and import. They were means to an end, rather than the ultimate end.

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Reconnecting ethics with Aristotle's ultimate end and focusing on society-wide effects produced another very influential paradigm for ethics, which had clear implications regarding the extent to which commerce contributed to a good life and good society. Their manner of thinking also made economic activity more central to a good society and produced major advances in economic theory. Most of the great English and American economists of the nineteenth century were utilitarians.

This chapter focuses entirely on utilitarian ideas, which arguably were more important in the Anglo-Saxon domains than in other parts of the West, but which nonetheless influenced all the rest. In some cases, this was through direct effects on the manner in which individual actions were evaluated. In other cases, it was through effects that utilitarians had on our understanding of markets and public policies.

#### II. Jeremy Bentham (1748–1832) The Utility Principle as the Foundation for Private and Social Ethics

Jeremy Bentham was born in London and educated at Queens College of Oxford. Bentham, like Montesquieu, was trained in law and subsequently inherited a sufficient fortune to leave that profession at an early age and devote himself to intellectual activities and policy reform.

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<sup>4</sup>A short biography of Bentham appears in the *Annual Biography and Obituary 1833*, London: Longman, Rees, Orme, Brown, Green, and Longman. John Stuart Mill brought the term utilitarian into common usage according to his autobiography. In a somewhat bizarre bequest, Bentham's body was dissected after death, mummified, and reconstructed with a wax head, which sits upright in a glass case in University College London.

Bentham was the central figure in the group that produced the new moral theory that came to be called utilitarianism, after his utility principle, although he preferred the term “felicitarianism.”<sup>4</sup>

According to Bentham's utility principle, proper action and good conduct increase the sum of utility in the community of interest (pleasure net of pain). Improper action, conduct, and policies reduce the sum of happiness in a community and thereby make the community worse off. Bentham argued that this “utility principle” could and should be applied to evaluate all actions by all persons and all government policies. Bentham's utility principle, thus, provides universal moral guidance for both personal and government conduct, whereas Smith's and Kant's theories applied only to individual conduct. Bentham argued that right and wrong actions, good and bad conduct, and good and bad public policy could all be assessed by their consequences on the happiness or utility of those affected, including oneself.

#### An Ethics for Life in Society

Bentham begins his justification for the utility principle with the observation that pleasure and pain (broadly understood) is the root source of all human conduct.<sup>5</sup>

<sup>5</sup>Most of the excerpts come from a digitized collection of Bentham's writings assembled by Minerva Classics, *The Collected Works of Jeremy Bentham* (2013), which are taken from the 1843 Bowring collection. Other excerpts are from a digitized version of his *Manual of Political Economy* (2011) available from Amazon. KL again denotes Kindle locations. The entire Bowring collection is available at the Liberty Fund website in various digitized formats. Individual works are cited to aid readers familiar with Bentham's writings or who use other collections or

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**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 shall do. On the one hand, the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. **They govern us in all we do, in all we say, in all we think: every effort** we can make to throw off our subjection, will serve but to demonstrate and confirm it. (*An Introduction to the Principles of Morals and Legislation*, KL: 3474–78)

Bentham then shifts to the term utility, which had been adopted by many others at about the same time, as a term that summarizes the net pleasure gained by a course of action.

**By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness** (all this in the present case comes to the same thing), or (what comes again to the same thing) **to prevent the happening of mischief, pain, evil, or unhappiness** to the party whose interest is considered. (*An Introduction to the Principles of Morals and Legislation*, KL 3526–28)

He and other utilitarians emphasized that communities are composed of individuals, and therefore a community's interest or welfare is simply the sum of the individual happiness of its members.

**The community is a fictitious body, composed of the individual persons who are considered as constituting as it were its members.** The **interest of the community** then is, what?— **the sum of the interests of the several members**

**who compose it.** (*An Introduction to the Principles of Morals and Legislation*, KL: 3535–38)

This characterization of communities implies that communities have no interests other than those of the individual members. It also implies that every individual counts, not simply the king, members of government, or a privileged subgroup. A community has no interests that are not found in the net gains of the members of the community of interest.

**It is in vain to talk of the interest of the community, without understanding what is the interest of the individual.**

Having developed the core ideas that grounded his normative theory, Bentham next states what he calls the “utility principle” in a clear way.

**A thing is said to promote the interest, or to be for the interest, of an individual, when it tends to add to the sum total of his pleasures:** or, what comes to the same thing, to diminish the sum total of his pains. (*An Introduction to the Principles of Morals and Legislation*, KL: 3545–48)

**An action then may be said to be conformable to the principle of utility, or, for shortness sake, to utility (meaning with respect to the community at large), when the tendency it has to augment the happiness of the community is greater than any it has to diminish it.** (*An Introduction to the Principles of Morals and Legislation*, KL: 3556–57)

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editions. A newer and more complete collection of his works has recently become available from Oxford University Press (2014).

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Note that the word tendency is used, which implies that an action may have more than one possible outcome because of random or unpredictable effects but still tend to promote community utility. (Students of “rational choice” based contemporary social science will recognize that the above claims provide the foundation for most utility-based analysis and methodological individualism.)

Bentham argues that all conventional moral terms such as duty, right and wrong, and good and evil can be characterized with the utility principle.

**Of an action is conformable to the principle of utility, one may always say either that it is one that ought to be done, or at least that it is not one that ought not to be done.**

One may say also, that **it is right** it should be done; at least that it is **not wrong** it should be done: that it is a right action; at least that it is not a wrong action.

**When thus interpreted, the words ought, and right and wrong, and others of that stamp, have a meaning: when otherwise, they have none.** (*An Introduction to the Principles of Morals and Legislation*, KL: 3576–81)

The utility principle implies that ethics and virtue in the sense of rules of good conduct and aims for conduct are no longer principally means of self-improvement, enlightenment, or salvation. Rather ethics and virtue are mainly directed to and judged by their effects on the welfare of one’s entire community. This implies that ethics attempts to advance social ends rather than private ones. In effect, Locke’s civil ethics has become all of ethics, rather than a subset of it.

As true of other principles of morality, the utilitarian principle can be internalized.

A man may be said to be a partisan of the principle of utility, **when** the [internal] approbation or disapprobation he annexes to any action, or to any measure, **is determined, by and proportioned to the tendency which he conceives it to have to augment or to diminish the happiness of the community:** or in other words, to its conformity or unconformity to the laws or dictates of utility. (*An Introduction to the Principles of Morals and Legislation*, KL: 3571–74)

Bentham also suggests that individual actions rarely affect their entire community; thus, in most cases, individuals should simply maximize their own happiness.

[In contrast] **there is no case in which a private man ought not to direct his own conduct to the production of his own happiness, and of that of his fellow-creatures.** (*An Introduction to the Principles of Morals and Legislation*, KL: 12047)

Prejudice apart, the game of push-pin is of equal value with the arts and sciences of music and poetry. **If the game of push-pin furnishes more pleasure, it is more valuable than either.** (*The Rationale of Rewards*, p. 206.)

The pursuit of happiness is necessarily a virtuous activity, regardless of how one goes about it, as long as one’s actions increase aggregate utility.

This “self-centered” rule of thumb does not apply to government officials, because their actions tend to affect so many others. The policy choices of legislators have broad impacts on their communities and so should be based on a careful analysis of the consequences of their actions.

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... the **happiness of the individuals, of whom a community is composed**, that is, their pleasures and their security, **is the end and the sole end which the legislator ought to have in view: the sole standard**, in conformity to which each individual ought, as far as depends upon the legislator, to be made to fashion his behavior. (*An Introduction to the Principles of Morals and Legislation*, KL: 4188–90)

Nonetheless, there are limits to the proper sphere of law and legislation.

**But there are cases in which the legislator ought not** (in a direct way at least, and **by means of punishment** applied immediately to particular individual acts) attempt to direct the conduct of the several other members of the community.

Every act which promises to be beneficial upon the whole to the community (himself included), each individual ought to perform himself, but **it is not every such act that the legislator ought to compel him to perform.**

**Every act which promises to be pernicious upon the whole to the community (himself included), each individual ought to abstain from of himself, but it is not every such act that the legislator ought to compel him to abstain from.** (*An Introduction to the Principles of Morals and Legislation*, KL: 12048–53)

In these comments, Bentham is beginning to analyze where “the line” between private and community interests should be placed according to the utility principle, as opposed to a natural rights or contractarian perspective. For the most part individuals should simply attempt to advance their own interests, while legislators should attempt to increase the total happiness of their communities. However, not every utility-increas-

ing rule of conduct should be made a formal law and backed by the sanctions of a judicial system. There are at least four cases in which the cost of doing so tends to be greater than the benefits realized.

**Where, then, is the line to be drawn? ... Now the cases in which punishment**, meaning the punishment of the political sanction, **ought not to be inflicted...are of four sorts:** 1. Where punishment would be groundless. 2. Where it would be inefficacious. 3. Where it would be unprofitable. 4. Where it would be needless. (*An Introduction to the Principles of Morals and Legislation*, KL: 12047–62)

Some punishments do not increase community utility, others will not change behavior, or do so at a cost greater than the benefits obtained. In other cases, private incentives alone are sufficient to increase aggregate utility, so no formal laws and government sanctions are necessary. All laws should increase aggregate utility, and this requires taking into account both the benefits and cost of the rules themselves and their manner of enforcement, which vary with the internalized norms of the persons subject to the law, as demonstrated in Part II of this book.

### Utilitarian Ethics and Commerce

In contrast to most of the philosophers reviewed to this point, economics is an interest of Bentham’s, and he provides one of the first clear descriptions of the mutual gains to trade in his *Manual of Political Economy* (1800). Bentham notes that essentially every trade increases the happiness of every party to the exchange. Although the money value of

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what is exchanged is the same (as long before noted by Aristotle), each gains utility from the exchange, which increases total utility.<sup>6</sup>

**Some advantage results from every exchange, provided it be made intentionally and without fraud: otherwise such exchange would not be made;** there would be no reason for making it.

Under this point of view, the two contracting parties receive an equal benefit [in money terms, but]: **each one of them surrenders what suits him less, that he may acquire what suits him more.** In each transaction of this kind there are **two masses of new enjoyments.**

**But though all trade be advantageous, a particular branch may be more advantageous to one of the parties than to the other.** (*A Manual of Political Economy*, KL: 2142–47)

Even though all the parties directly involved benefit from trade, the benefits are not necessarily equally distributed. Nonetheless, Bentham regards all activities that increase aggregate utility to be virtuous ones; thus, trade is inherently good, virtuous, and ethical—all of which have essentially the same meaning in Bentham's schema.<sup>7</sup>

The same logic implies that trade between nations should be free and open.

In commerce, ignorant nations have treated each other as rivals, who could only rise upon the ruins of one another. **The work of Adam Smith is a treatise upon universal benevolence, because it has shown that commerce is equally advantageous for all nations**— each one profiting in a different manner, according to its natural means; **that nations are associates and not rivals in the grand social enterprise.** (*Principles of Penal Law*, KL 25832–35)

Similar logic applies to other areas of markets and life in which net happiness is produced. He argued, for example, that usury (the charging of high interest rates) should not be a crime.

**Usury**, which, if it must be an offense, is an offense committed with consent, that is, with the consent of the party supposed to be injured. [It] **cannot merit a place in the catalogue of offenses, unless the consent were either unfairly obtained or unfreely.** In the first case, it coincides with defraudment; in the other, with extortion. (*Introduction to the Principles of Political Economy*, KL 10611–13)

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<sup>6</sup>Smith (1776) in contrast does not provide a rational motivation for exchange. “This division of labor, from which so many advantages are derived, is not originally the effect of any human wisdom, which foresees and intends that general opulence to which it gives occasion. It is the necessary, though very slow and gradual, consequence of a certain **propensity in human nature**, which has in view no such extensive utility; the **propensity to truck, barter, and exchange one thing for another**” (*Wealth of Nations: Full and Fine Text of 1776 Edition*, p. 7).

<sup>7</sup>Bentham adds two caveats to this. First that there should be no fraud and second that businessmen be of sound mind. “In recommending freedom of trade, I suppose the minds of merchants in their sound, that is, their ordinary state. But there have been times when they have acted as though they were delirious: such were the periods of the Mississippi scheme in France, and the South Sea scheme in England” (*A Manual of Political Economy*, KL 2172–74). Periods of what Alan Greenspan termed irrational exuberance are also exceptions to his broad support for free trade.

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In this utility-based analysis of markets for loans, Bentham is challenging both Aristotle's assessment of the virtue of careers in finance and Adam Smith's narrower critique of usury.<sup>8</sup>

Bentham suggests that the virtues and honors of the middle ranks of society are most naturally consistent with the principle of utility and so the middle ranks tend to be the most virtuous segment of society. This is at least in part because they are engaged in commerce where reputation matters.

**The middle ranks of society are the most virtuous: it is among them that in the greatest number of points the principles of honor coincide with the principles of utility. It is in this class also that the inconveniences arising from the forfeiture of esteem are most sensibly felt, and that the evil consequences arising from the loss of reputation produce the most serious ill consequences.** (*Principles of Penal Law*, KL: 19665–68)

The conduct of the middle class is virtuous, however, not necessarily because they have internalized the principle of utility, but because their pursuit of esteem and wealth are well-aligned with the utility principle. They

tend to be so because of the nature of their economic circumstances—which at the time in London tended to be small businesses of various kinds.<sup>9</sup>

Bentham is an important historical figure because of the direct and indirect impact his arguments had on normative theory. His line of reasoning was refined, extended, and defended by successive generations of utilitarians, many of whose efforts affected public policies. It subsequently became the most common normative framework used by twentieth-century economists.<sup>10</sup> Bentham did not have the last word on ethics or decisions about public policy, but he set in motion a long series of research efforts on utilitarianism that continues today in contemporary philosophy, welfare economics, and policy analysis.

Bentham's utility principle and Smith's classical economics were not simply retaught; instead, their ideas and arguments provided points of departure for newer, more general and more finely grained arguments, theories, and conclusions. The remainder of this chapter focuses on three very influential utilitarians of the nineteenth and early twentieth centuries: John Stuart Mill, Herbert Spencer, and Alfred Pigou.

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<sup>8</sup>Smith is not against the payment of interest but against high interest rates. He repeatedly comments on the "evil of usury." For example, he notes, "In some countries the interest of money has been prohibited by law. But as something can everywhere be made by the use of money, something ought everywhere to be paid for the use of it. This regulation, instead of preventing, has been found from experience to increase the evil of usury. The debtor being obliged to pay, not only for the use of the money, but for the risk which his creditor runs by accepting a compensation for that use, he is obliged, if one may say so, to insure his creditor from the penalties of usury" (*The Wealth of Nations*, p. 247).

<sup>9</sup> England was sometimes referred by French critiques as "a nation of shopkeepers," a remark attributed Napoleon and also to Bertrand Barère de Vieuzac in the late eighteenth century. This notion, of course, would only apply to the minority living in urban centers at the time.

<sup>10</sup>This is partly because so many notable and textbook-writing nineteenth-century economists, such as Bentham and Mill, were utilitarians, but also because the utility approach to thinking about human decision making proved so clear, tractable, and generalizable.

### III. John Stuart Mill (1806–1873): Rules of Conduct as Implications of the Utility Principle

John Stuart Mill (1806–1873) is often regarded to be Bentham’s successor. His father, James Mill, was a philosopher, early economist, and writer in his own right; and was closely associated with Bentham’s reform and publication efforts. Thus, John Stuart Mill grew up in a utilitarian household, met many prominent liberals and utilitarians, and was encouraged by his father to become an intellectual through a rigorous education at home.<sup>11</sup> With such an upbringing, it is not surprising that John Stuart Mill became a utilitarian and wrote broadly on policy issues of his day. Mill began wrote papers for political magazines and helped edit books as a teenager. Relative to young adults in the twenty-first century, he had a head start of 10–15 years on his career as a philosopher and policy analyst. He earned his living, however, as a clerk in the London office of the East India Company, rather than as a writer, lobbyist, or academic. He worked for the East India Company from the age of 17, rising from clerk to the rank of chief examiner toward the end of his tenure, as his father had before him.<sup>12</sup> Although Mill earned some income from his writing, it was his “day job” that provided the resources and time for most of his writing. The British government took over the East India Company in

1858, at which point Mill retired on a modest pension at the age of 52 and continued to write, which is the period in which most of the material cited below was written.

Mill wrote on a wide variety of topics, including epistemology, ethics, economics, and political philosophy. As was also the case for most of the other prolific author’s reviewed in this book, only a subset of his broad writing is relevant for the purposes of this book. Two books finished in the period after his retirement—*On Liberty* (1859) and *Utilitarianism* (1863)—are especially relevant and another book published a decade earlier, *Principles of Political Economy* (1848). The latter was widely used in university courses in economics until superseded by Alfred Marshall’s textbook (1890) at the turn of the century. The other two books continue to be read in contemporary political theory and philosophy courses.

By the time these books were written, the utilitarian approach to private life and public policy had been known for more than half a century. Nonetheless, efforts to understand its implications more fully and to defend it from criticism continued, as they do today.

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<sup>11</sup>His father, James Mill (1773–1823), had met Jeremy Bentham in 1808 and took up the utilitarian cause along with the liberal one that he had already joined. At some points, he was supported by Bentham during his early “writing phase.” His father’s intellectual and political circles thus brought John Stuart Mill in contact with many other famous liberals of the early nineteenth century, including David Ricardo, Jean-Baptiste Say, and of course, Jeremy Bentham.

<sup>12</sup>Mill recounts a period of depression or burnout at about the age of 20, at which time he nonetheless continued to worked full time for the East India Company; participated in a major debate society, and continued to write for the *Westminster Review*, which was struggling financially during this period of his blues. He evidently kept his blues to himself, and it was not clear anyone but Mill noticed it. See chapters 4 and 5 of his autobiography.

#### Mill on the Utility Principle, Virtue, and Duty

Mill's *Utilitarianism* is partly a synthesis of earlier utilitarian arguments and partly a response to critiques of utilitarianism. In that book and many other writings, Mill argues that general rules of conduct and policy can be deduced from the utility principle.<sup>13</sup>

**The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness.**

**By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure.** To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure; and to what extent this is left an open question. (*Utilitarianism*, KL: 46372–76)

Against the charge of hedonism, Mill argued that utilitarians have always favored virtue and virtuous pleasures over vices. In this, Mill adopts a variation of Aristotle's argument that virtue is an important

source of lifetime happiness. The happiness associated with virtue is more permanent and less costly than the "lower" pleasures. Investments in virtue are therefore likely to increase both individual and aggregate utility.<sup>14</sup>

[Utilitarians] **not only place virtue at the very head of the things which are good as means to the ultimate end**, but they also **recognize as a psychological fact the possibility of its being to the individual a good in itself**, without looking to any end beyond it.

And [they] hold that **the mind is not in a right state, not in a state conformable to Utility, not in the state most conducive to the general happiness, unless it does love virtue** in this manner- as a thing desirable in itself. (*Utilitarianism*, KL: 46917–22)

Mill, in contrast to Bentham but in a manner similar to Aristotle, emphasizes the relative merits of pleasures that are uniquely human, such as intellectual pleasures and those associated with virtue.<sup>15</sup>

**It is better to be a human being dissatisfied than a pig satisfied;** better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are a different opinion, it is because

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<sup>13</sup>Excerpts are from a digitized collection of Mills books assembled by Minerva Classics (2016). This collection is an excellent resource for readers who want to explore Mill's writings. Bolding and an occasional bracket are again added by this author and some reformatting and very modest modernization of punctuation has been undertaken. KL again refers to Kindle Locations. The individual works from the collection are cited at the end of the excerpts to make it clear which book or paper is associated with the quote.

<sup>14</sup>Mill's autobiography includes some personal suggestions about how to pursue happiness. After his period of blues in his early 20s, he suggests that rather than pursuing happiness per se, one should pursue something else of value and that

happiness will follow. "I never, indeed, wavered in the conviction that happiness is the test of all rules of conduct, and the end of life. But I now thought that this end was only to be attained by not making it the direct end. Those only are happy (I thought) who have their minds fixed on some object other than their own happiness; on the happiness of others, on the improvement of mankind, even on some art or pursuit, followed not as a means, but as itself an ideal end" (*Autobiography*, KL: 50766–69).

<sup>15</sup>Spencer mentions in his autobiography that Carlyle (1850, pp. 515–17) had mocked utilitarianism as "pig philosophy," which may account for Mill's use of pigs in his defense of it.

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they only know their own side of the question. **The other party to the comparison knows both sides.** (*Utilitarianism*, KL: 46429–31)

Consistent with Bentham's remarks made a half century earlier, Mill argues that utilitarian logic does not usually require all persons to think globally about the effects of their actions, because most actions do not have effects beyond one's families and friends.

**The great majority of good actions are intended not for the benefit of the world, but for that of individuals,** of which the good of the world is made up; and **the thoughts of the most virtuous man need not on these occasions travel beyond the particular persons concerned,** except so far as is necessary to assure himself that in benefiting them he is not violating the rights, that is, the legitimate and authorized expectations, of any one else.

**The multiplication of happiness is according to the utilitarian ethics the object of virtue.** The occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale, in other words to be a public benefactor, are but exceptional, and **on these occasions alone** is he called on to consider public utility. **In every other case, private utility, the interest or happiness of some few persons, is all he has to attend to.** (*Utilitarianism*, KL: 46593–99)

Most individual actions have only effects on a person's own happiness and that of his or her friends and family, and so only these effects need be subjected to the utilitarian calculus.

### Rules of Conduct and Duties that Enhance Life in a Community

Mill attempts to determine maxims or rules of conduct that generally increase aggregate utility. For this reason, he is sometimes regarded to be a "rule utilitarian." With respect to life in society, he argues that some rules of conduct are more important than others, because they have larger long-term impacts on aggregate happiness. The rules that make civil society possible are especially important, as previously argued by Hobbes, Locke, and Smith who of course relied upon different ethical theories.

**The moral rules which forbid mankind to hurt one another** (in which we must never forget to include wrongful interference with each other's freedom) **are more vital to human well-being than any maxims,** however important, which only point out the best mode of managing some department of human affairs. **They have also the peculiarity, that they are the main element in determining the whole of the social feelings of mankind.**

It is **their observance which alone preserves peace** among human beings: if obedience to them were not the rule, and disobedience the exception, everyone would see in everyone else an enemy, against whom he must be perpetually guarding himself. (*Utilitarianism*, KL: 47364–68)

Because life in society advances the utility principle and some rules make life in society possible, individuals have duties to follow those rules.<sup>16</sup>

good purpose is answered by inventing a contract in order to deduce social obligations from it, **everyone who receives the protection of society owes a return for the benefit, and the**

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<sup>16</sup> These civic duties are more clearly stated in *On Liberty*. "Though society is not founded on a contract, and though no

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Among the rules that “forbid mankind to hurt one another” are rules that forbid the breaking of promises. (Note that the harms that Mill has in mind are subjective ones, rather than objective losses or physical damages.)

**The important rank** among human evils and wrongs of the disappointment of expectation is shown in the fact that it constitutes the principal criminality of two such highly immoral acts **as a breach of friendship and a breach of promise. Few hurts which human beings can sustain are greater and none wound more than when that on which they habitually and with full assurance relied fails them in the hour of need. [A]nd few wrongs are greater than this mere withholding of good. [N]one excite more resentment, either in the person suffering, or in a sympathizing spectator.** (*Utilitarianism*, KL: 47387–91)

With respect to markets, Mill notes that the conflict among producers induced by markets—competition—accounts for many of the

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**fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest.**

This conduct consists, **first**, in **not injuring** the interests of one another; or rather **certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights**; and **secondly**, in each person’s **bearing his share** (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation. **As soon as any part of a person’s conduct affects prejudicially the interests of others, society has jurisdiction over it**, and the question

benefits of markets. Competition tends to increase social utility by increasing the efficiency of production and thereby increasing the quantity and types of products that produce or contribute to human happiness.

**It is the interest of the community, that of the two methods, producers should adopt that which produces the best article at the lowest price.** This being also the interest of the producers, unless protected against competition and shielded from the penalties of indolence. **[T]he process most advantageous** to the community is that which, **if not interfered with by government**, they ultimately find it to their advantage to adopt. (*Principles of Political Economy*, KL: 37158–61)

Mill’s discussion implies that market competition is not only compatible with the utility principle, but it is among the prime engines of progress. Progress for utilitarians has a clear meaning. It is characterized by long run increases in a community’s aggregate utility. What is left unstated is whether a life devoted to commerce also tends to be good. Mill’s logic implies that such careers are generally good insofar as they advance both

whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion.

**But there is no room for entertaining any such question when a person’s conduct affects the interests of no persons besides himself**, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). **In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences.**” (*On Liberty*, KL: 41040–52)

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self-interest and benefit one's trading partners. However, he does not directly address this issue, most likely because it had disappeared as a source of controversy by the mid-nineteenth century. Moreover, utilitarian reasoning implies that one should pursue any career that added to one's happiness as long as it did not require harming others.

The obligation to respect the rights of others and to pay a fair share of the cost of the state can be regarded as the core of Mill's civic ethics. Such rules tend to broadly reduce the pain and increase the benefits of life in communities. It is because of such arguments that Mill is sometimes regarded to be a "rule utilitarian;" which is to say, a utilitarian who believes that there are general rules of conduct that can be deduced from the utility principle.<sup>17</sup>

#### On the Proper and Limited Role of a Government

Doctrinaire liberals in the mid-nineteenth century such as Bastiat and Spencer argued for free trade and a minimal state that focused entirely on the protection of individual rights and security, what some term a "night watchman state." This perspective was mainstream in the mid-to late nineteenth century, but it was not uncontroversial. The main issue was the proper scope of public policy and the extent to which it should

be active in the sense of producing new rules and regulations. Mill's *On Liberty* attempts to clarify the issues, generalize Bentham's analysis, and in some cases to critique points made in Spencer's writing.

Mill argues that governments have somewhat broader responsibilities than argued by doctrinaire liberals, although more limited ones than accorded most twenty-first century Western governments. Mill again uses the utility principle to support what might be called the do no harm principle.

**The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. (*On Liberty*, KL: 39858–63)**

In all cases in which an individual's actions harm others, the community may legitimately intervene, but in no others. A community should not intervene when an activity concerns only the individual or individuals involved.

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<sup>17</sup>Mill uses the term duty in a manner that is surprisingly similar to Kant, as an obligation, which if failed, should be punished in some way: "It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfill it. Duty is a thing which may be exacted from a person, as one

exacts a debt" (*Utilitarianism*, KL: 47153–55). In this, he may be challenging an earlier argument developed by Spencer in *Social Statics* that individuals have the right to ignore the state.

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**I regard utility as the ultimate appeal on all ethical questions**, but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being.

**Those interests, I contend, authorize the subjection of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people.** If anyone does an act hurtful to others, there is a prima facie case for punishing him, by law, or, where legal penalties are not safely applicable, by general disapprobation. (*On Liberty*, KL 39883–89)

Most instances of social interaction have effects on others, by definition, and so the community may intervene in a broader array of choice settings than the doctrinaire liberals were arguing at this time, but a government's domain of legitimate authority is still bounded.<sup>18</sup>

Moreover, Mill argues that there are many cases in which community interventions should not take place. Some laws produce more harm than good, even in cases where there might appear to be a social advantage. The cost and effects of regulation have to be fully taken into account. For example, with respect to commerce, Mill argues:

Independently of all considerations of constitutional liberty, **the best interests of the human race imperatively require that all economical experiments, voluntarily undertaken, should have the fullest license, and that force and fraud should be the only means of attempting to benefit themselves, which are interdicted** to the less fortunate classes of the community. (*Principles of Political Economy*, KL: 38890–92)

This is the so-called **doctrine of Free Trade**, which rests on **grounds different from, though equally solid with, the principle of individual liberty** asserted in this Essay. Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, qua restraint, is an evil. **[T]he restraints in question affect only that part of conduct which society is competent to restrain, and are wrong solely because they do not really produce the results which it is desired to produce by them.** (*On Liberty*, KL: 41409–13)

Trade is an example of an area of life in which persons may harm another, as of example a rival may attract all of another merchant's customers, and so is a legitimate area of legislation according to Mill's reasoning. However, most economic regulations have consequences that are more harmful than beneficial. Although such laws and regulations cannot be rejected on the basis of the liberty principle, most can be rejected by the utility principle.

**Laissez faire, in short, should be the general practice: every departure from it, unless required by some great good, is a certain evil.** (*Principles of Political Economy*, KL: 39115–19)

Although Mill was regarded as a radical or left liberal during his lifetime, he favored essentially unrestricted commerce. He did so for rea-

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<sup>18</sup>In his autobiography, Mill claims to have become a socialist in his 30s, evidently because he was sympathetic with some of the ideas of leading French socialists. The pieces focused on in this chapter were written well after that during his 50s and 60s and express very few if any socialist views. Rather, his political

writings were consistently "left liberal" for his time, as with his support for free trade, emancipation, universal male and female suffrage, proportional representation, public education, and education-weighted voting.

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sons that differed somewhat from Smith, Bentham, and Bastiat. He favored open markets partly because the results of exchange usually increase aggregate utility and partly because, in practice, the regulation of trade tends to reduce rather than increase aggregate utility.<sup>19</sup>

#### Virtue, Prosperity, and Progress

Mill uses the term virtue repeatedly in his writings, and generally uses it in a manner differs from (although in some respects similar to) Aristotle's usage when arguing from a utilitarian perspective, and uses it as he perceives others use it, when trying to persuade non-utilitarians of the merits of the utilitarian approach or to refute attacks on that perspective. From Mill's perspective, virtue is a higher value that contributes to utility.

Virtue, according to the utilitarian doctrine, is not naturally and originally part of the end, but it is capable of becoming so; and in those who love it disinterestedly it has become so, and is desired and cherished, **not as a means to happiness, but as a part of their happiness.** (*Utilitarianism*, p. 57).

Mill regards virtuous conduct—as opposed to the pursuit of virtue—to be desirable because of positive effects that it tends to have on others. For

example, Mill argues that a subset of virtues tends to increase prosperity, which tends to increase aggregate utility. Communities should therefore attempt to promote those virtues.

**What, for example, are the qualities in the citizens individually which conduce most to keep up the amount of good conduct, of good management, of success and prosperity, which already exist in society? Everybody will agree that those qualities are industry, integrity, justice, and prudence. But are not these, of all qualities, the most conducive to improvement? and is not any growth of these virtues in the community in itself the greatest of improvements?**

**If so, whatever qualities in the government are promotive of industry, integrity, justice, and prudence, conduce alike to permanence and to progression; only there is needed more of those qualities to make the society decidedly progressive than merely to keep it permanent.** (*Representative Government*, KL: 42095–100)

These ethical dispositions (integrity, justice, and prudence) tend to increase a community's ability to undertake cooperative enterprises, which increases the productivity of many human endeavors.

**Works of all sorts, impracticable to the savage or the half-civilized, are daily accomplished by civilized nations, not**

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<sup>19</sup>During the late nineteenth century, Mill's views gradually became mainstream in Europe, as he and other left liberals gradually won the policy debates of their day. As a doctrinaire liberal, Spencer opposed many of those policies, which he regarded to be paternalistic and unnecessarily coercive. Spencer's work was more widely read than Mill's at the time that they were written and thus provides a more useful window into mainstream liberal views during the second

half of the nineteenth century, especially among the upper middle-classes of the West. Spencer's philosophical work broke new ground by connecting ethics with human nature, and both biological and social evolution. Nonetheless, it was Mill's line of reasoning that was taken up by Pigou and which dominated twentieth century policy debates among utilitarians and most economists.

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by any greatness of faculties in the actual agents, but **through the fact that each is able to rely with certainty on the others for the portion of the work which they respectively undertake.**

**The peculiar characteristic, in short, of civilized beings is the capacity of cooperation,** and this like other faculties **tends to improve by practice,** and becomes capable of assuming a constantly wider sphere of action.

**Accordingly, there is no more certain incident of the progressive change taking place in society, than the continual growth of the principle and practice of cooperation.**

*(Principles of Political Economy, KL 34678–84)*

To utilitarians, progress is simply an upward trend in aggregate and average utility. Mill suggests such progress is most likely when the dispositions that support cooperative enterprises are commonplace. These include industry, integrity, justice, and prudence—virtues very similar to those praised by Smith and La Cour, two of which were not on Aristotle’s list.

The addition of “industry” to lists of virtues is significant for this paper in that it is clear that such behavior was widely regarded to be praiseworthy for at least two centuries and remained so at the beginning of the great acceleration of commerce taking place in the nineteenth century. Mill adds “integrity” to the list, which suggests that honesty is increasingly considered a virtue. Note that both virtues allow team production to be more effective, and as a consequence more such enterprises are undertaken for reasons developed in Part I of this book. In the lan-

guage of contemporary economics, an increase in cooperative dispositions reduces monitoring costs and causes team production to become more productive and so more broadly used.

By including a role for internalized ethical rules in his explanation for progress, Mill is lending his support to the main hypothesis of this book. Progress, he argues, is partly caused by changes in norms.

#### IV. Herbert Spencer (1820–1903): The Evolution of Ethical Theories and Society

Mill was educated by his father with the intent of producing an intellectual with an interest in utilitarianism and public affairs. His father brought him into Bentham’s utilitarian circle and secured a job for him in a major corporation. Herbert Spencer’s education and career were far more haphazard. Spencer was born into a middle-class family of teachers who held a much more relaxed theory of education than Mill’s father did. At the age when Mill was learning Greek and Latin, Spencer was off exploring the forests, streams, and sand pits near his home. Rather than taking rigorous lessons from his father, Spencer was encouraged to figure things out for himself and given substantial opportunities to do so, although he was also home schooled by both his father and uncle.

In his late teens and twenties, having shown some talent at geometry and algebra, Spencer pursued various careers in engineering, although none worked out. In contrast, Mill took a single job at age 17, where he worked for most of his adult life. Toward the end of his 20s,

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Spencer obtained a job at *The Economist* magazine, at which point he began to think seriously about becoming a writer, a career path for which he had little training and had not previously shown very much promise.<sup>20</sup>

Spencer subsequently wrote for the book-buying and magazine-reading public. Spencer sold enough of his books and articles worldwide to make a living off them. Writing and thinking was his “day job” for most of his adult life.<sup>21</sup> Consequently, he was more widely read than Mill in the mid to late nineteenth century, although somewhat less so in the twentieth century. Although they were both liberals, Spencer was a doctrinaire liberal and Mill a left or radical liberal. They freely criticized each other’s philosophical work and policy arguments and occasionally corresponded with one another. Their writing was not a true dialogue, but often included short passages that indicated that the other’s arguments were being challenged. Both *On Liberty* (1859) and *Utilitarianism* (1863) were partly responses to Spencer’s *Social Statics* (1851).<sup>22</sup>

Spencer regarded himself to be a utilitarian, although he argued that other utilitarians had made a variety of logical errors. In his first

book, *Social Statics* (1851), Spencer argues that utilitarians are correct with respect to the best grounding principle for ethics but neglected many ambiguities in that approach. He also argued that happiness cannot be analyzed without acknowledging an individual’s and community’s state of evolution. Both individuals and communities tend to change through time.<sup>23</sup>

Neither, if we compare the wishes of the gluttonous school-boy with those of the earth-scoring transcendentalist into whom he may afterwards grow, do we find any constancy in the individual.

So we may say, **not only that every epoch and every people has its peculiar conceptions of happiness, but that no two men have like conceptions; and further, that in each man the conception is not the same at any two periods of life.** (*Social Statics*, KL: 39568)]

If individuals change through time in significant ways, obviously, it will be difficult if not impossible to determine the specific practices and rules of conduct that will maximize long term aggregate happiness.

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<sup>20</sup>Spencer’s autobiography (Spencer, 2014) provides a detailed account of his early life, reconstructed for the most part from letters to and from his father and uncle, and between his father and uncle. His father and uncle were both successful teachers of the children of relatively wealthy families, a few of which would live in their households at a time. Spencer and Mill knew each other, meeting at academic gatherings and occasionally for supper.

<sup>21</sup>Spencer’s writing career was reasonably successful, but it should be acknowledged that it was ultimately made possible by well-timed modest inheritances from his uncles and father.

<sup>22</sup>Spencer’s broader readership implies that he had a larger direct impact on mid-nineteenth century politics and philosophy than Mill’s did, although Mill’s

work was also very influential, especially among academia. Mill’s perspective, however, was more influential than Spencer’s in the long run. This was partly because politics moved in Mill’s direction rather than Spencer’s during the late nineteenth and twentieth centuries, and partly because of Mill’s more careful mode of thought and expression. Spencer, nonetheless made significant contributions to both utilitarianism and social science.

<sup>23</sup>Excerpts are from the digitized collection of Spencer’s writings assembled by Amazon (Spencer, 2011). Individual works are cited, bolding is added by this author, and some modernization of punctuation is undertaken to improve readability. KL refers to Kindle locations in the collected works.

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Spencer attempted to place utilitarian reasoning on firmer ground by taking better account of human nature and the potential for individual and social evolution. His new evolutionary approach to society and utilitarian ethics were major innovations in both ethics and social theory. Previous work (and most subsequent work) assumes that human nature is static and that the goals of life were more or less permanent features of human nature. Spencer regarded human nature—at least as far as aspirations and interests are concerned—to be evolutionary phenomena and so change through time. Ignoring this aspect of humanity, he argued, leads to significant errors in utilitarian analysis and recommendations for public policies.

Interest in Spencer's evolutionary approach to society, ethics, the human mind, and biology greatly increased after Darwin published his famous book on biological evolution in 1859.

#### **Instinct, Intuition, and Reason in the Development of Ethics**

Although Spencer had respect for man's rational ability, he argues that instincts, rather than reason, often determine our choices, and that the mechanisms of pleasure and pain have evolved to promote our survival interests and those of the communities in which we live.

Quite different [from reason], however, is the method of nature. Answering to each of the actions which it is requisite for us to perform, **we find in ourselves some prompter called a desire. [T]he more essential the action, the more powerful is the impulse to its performance**, and the more intense the gratification derived therefrom. **Thus, the longings**

**for food, for sleep, for warmth, are irresistible**; and quite independent of foreseen advantages. ...

**May we not then reasonably expect to find a like instrumentality** employed in impelling us to that line of conduct, in the due observance of which consists **what we call morality?** (*Social Statics*, KL: 39817–33)

Spencer goes on to suggest that our natural moral intuition is nonetheless imperfect, just as our “geometric sense” is.

**[T]he perception of the primary laws of quantity bears the same relationship to mathematics, that this instinct of right bears to a moral system**; and that as it is the office of the geometric sense to originate a geometric axiom, from which reason may deduce a scientific geometry, **so it is the office of the moral sense to originate a moral axiom, from which reason may develop a systematic morality.** (*Social Statics*, KL: 40072–75)

Spencer argues that utilitarian philosophy ultimately rests on a well-evolved moral sense. Nonetheless, Spencer is not an intuitionist. He argues that one's understanding of morality is improved by education, reason, and observation, as true of other areas of life. Morality, like geometry, can be reduced to principles that allow us to better understand and use it.

#### **On the Evolutionary Basis of Happiness and Ethics**

Spencer's theory of happiness and right and wrong are grounded in an evolutionary theory of man and society.

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**Survival of the fittest insures that the faculties of every species of creature tend to adapt themselves to its mode of life.** It must be so with man. From the earliest times groups of **men whose feelings and conceptions were congruous with the conditions they lived under**, must, other things equal, have spread and **replaced those** whose feelings and conceptions were incongruous with their conditions. (*Principles of Ethics*, KL: 17267–69)

To promote survival, rules with respect to three types of conduct are relevant: those with respect to (1) one's self, (2) one's children, and (3) fellow members of the same species. Insofar as internalized rules of conduct can be improved for any or all of these, there will be evolutionary pressures that support such revisions.<sup>24</sup>

Although rules for all three types of conduct may be perfected, Spencer argues that the conduct that is judged in moral terms tends to be concerned with effects on persons outside the family and so in the terminology of this book can be regarded as civil ethics. Society praises only a subset of moral actions, because taking care of oneself and one's children is largely compatible with self-interest, and is arguably “hard wired” by evolutionary pressures.

**These ethical judgments we pass on self-regarding acts are ordinarily little emphasized; partly because the promptings of the self-regarding desires, generally strong enough, do not need moral enforcement, and partly because the promptings of the other-regarding desires, less strong, and**

often overridden, do need moral enforcement. (*Principles of Ethics*, KL: 12535–37)

Spencer also suggests that evolutionary pressures on moral behavior tend to be strongest (and best) during times of peace.

Recognizing men as the beings whose conduct is most evolved, let us ask **under what conditions their conduct, in all three aspects of its evolution, reaches its limit.** ...

[T]he limit of evolution can be reached by conduct only in permanently peaceful societies. That **perfect adjustment of acts to ends in maintaining individual life and rearing new individuals, which is effected by each without hindering others** from effecting like perfect adjustments, is, in its very definition, shown to constitute a kind of conduct that can be approached only **as war decreases and dies out.** (*Principles of Ethics*, KL: 12445–61)

In the limit, Spencer argues that the coevolution of man and society produces rules of conduct that promote self-development, assure the next generation, and a flourishing society in which prospects for survival are maximized—along with pleasure, because pleasure is aligned with survival. Utilitarianism, in this Spencerian conception, has both biological and evolutionary foundations and objectives.

Spencer argues that all viable ethical theories favor life over death and pleasure over pain and so advance utilitarian aims. To do otherwise would be to adopt rules of conduct that are suicidal and so the persons

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<sup>24</sup> “Survival of the fittest” is Spencer’s phrase rather than Darwin’s, although it was coined well after the *On the Origin of the Species* was published (1859 vs. 1879).

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and communities following them are not likely to survive in the long run. He makes this point repeatedly in his writings, arguing from somewhat different perspectives according to the audience that he is attempting to reach, the critics that he is attempting to refute, and the main subject being addressed. He argues that it is survivorship that accounts for the broad overlap in ethical theories of communities at similar levels of social evolution.<sup>25</sup>

#### The Heterogeneity of Mankind and the Equal Liberty Principle

Although general survival interests and therefore moral instincts are shared among men and women, individuals vary enough that achieving happiness is a bit different in every case, because they have different capacities and potentialities.

#### **The gratification of a faculty is produced by its exercise.**

To be agreeable that exercise must be proportionate to the power of the faculty; if it is insufficient discontent arises, and its excess produces weariness. **Hence, to have complete felicity is to have all the faculties exerted in the ratio of their several developments;** and an ideal arrangement of circumstances calculated to secure this constitutes the standard of “greatest happiness;” **but the minds of no two individuals contain the same combination of elements.** (*Social Statics*, KL 39574–58)

Given this, there is no single precise guide for life that will work for everyone at a given time or in all times and places.

One might, however, identify a few general rules or maxims that are likely to advance happiness (or survivorship) in all communities, regardless of their membership’s particular concept of happiness and state of evolution. Spencer argues that the principle of “equal liberty” is one such rule.

**Thus are we brought by several routes to the same conclusion.** Whether we reason our way from those fixed conditions under which only the Divine Idea—greatest happiness, can be realized—whether we draw our inferences from man’s constitution, considering him as a congeries of faculties—or whether we listen to the monitions of a certain mental agency, which seems to have the function of guiding us in this matter, **we are alike taught as the law of right social relationships, that—Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man.** Though further qualifications of the liberty of action thus asserted may be necessary, yet we have seen (p. 89) that **in the just regulation of a community no further qualifications of it can be recognized.** (*Social Statics*, (KL: 41393–99)

Spencer goes on to argue that the equal liberty principle has a number of implications about the proper bounds of law and governance in a community. Among these are:

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<sup>25</sup>Spencer is well aware that he was doing so, which gave rise to one of his most enduring quotes: “Hence an amount of repetition which to some will probably appear tedious. I do not, however, much regret this almost unavoidable result;

for only by varied iteration can alien conceptions be forced on reluctant minds” (June 1879, Preface to Part I of the *Principles of Ethics*, KL 12213–16).

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These are such self-evident corollaries from our first principle as scarcely to need a separate statement. **If every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man, it is manifest that he has a claim to his life: for without it he can do nothing that he has willed; and to his personal liberty: for the withdrawal of it partially, if not wholly, restrains him from the fulfilment of his will.** It is just as clear, too, that **each man is forbidden to deprive his fellow of life or liberty: inasmuch as he cannot do this without breaking the law,** which, in asserting his freedom, declares that he shall not infringe “the equal freedom of any other.” **For he who is killed or enslaved is obviously no longer equally free with his killer or enslaver.** (*Social Statics*, KL: 41550–56)

Moreover, inequalities based on gender, per se, are not allowed.

Equity knows no difference of sex. In its vocabulary, **the word man must be understood in a generic, and not in a specific sense.** The law of equal freedom manifestly applies to the whole race—female as well as male. (*Social Statics*. (KL 42341–46)

It bears noting that *Social Statics* was written before slavery was finally overturned throughout the West and well before woman’s suffrage had become a great issue in the West, although slavery and the slave trade had both been reduced during the previous half century or so.

Spencer goes on to note that many inequalities are consistent with the equal liberty principle. Individuals, for example, may have different capacities, talents, inclinations to industry, good fortune, or aspirations.

If, therefore, out of many starting with like fields of activity, **one obtains, by his greater strength, greater ingenuity, or greater application, more gratifications** and sources of gratification than the rest, and **does this without in any way trenching upon the equal freedom of the rest,** the moral law assigns him an exclusive right to all those extra gratifications and sources of gratification; **nor can the rest take them from him without claiming for themselves greater liberty of action than he claims,** and thereby violating that law. (*Social Statics*, KL: 41940–44)

### Equal Liberty and Commercial Rights

With respect to commerce, Spencer uses the logic of equal liberty to argue in favor of property and against governmental constraints on exchange, usury, and industry.

[T]he **right of exchange may be asserted as a direct deduction from the law of equal freedom.**

[T]he **right of exchange may be asserted as a direct deduction from the law of equal freedom.** For of the two who voluntarily make an exchange, neither assumes greater liberty of action than the other, and fellow men are uninterfered with—remain possessed of just as much liberty of action as before. Though completion of the exchange may shut out sundry of them from advantageous transactions, yet as their abilities to enter into such transactions depended wholly on the assent of another man, they cannot be included in their normal spheres of action. (*Principles of Ethics*, KL: 24197–201)

Of course with **the right of free exchange** goes **the right of free contract:** a postponement, now understood, now specified, in the completion of an exchange, serving to turn the one into the other. (*Principles of Ethics*, KL: 24223–24)

By the **right to free industry** is here meant **the right of each man to carry on his occupation, whatever it may be, after whatever manner he prefers or thinks best, so long as he**

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**does not trespass against his neighbors: taking the benefits or the evils of his way, as the case may be. Self-evident as this right now seems, it seemed by no means self-evident to people in past times.** (*Principles of Ethics*, KL: 24275–77)

According to Spencer, commerce is an area of life in which fundamental rights exist. It is not simply a means of earning a living, but a sphere of legitimate activity that is implied by and in accord with the equal liberty principle. With caveats, against slavery and trade that undermine national defense, trade is a good for individuals, families, and society. Spencer argues that there is a right to participate in commerce—which implies that individuals should be free to choose what ever occupation that they wish—again with very minor exceptions (no professional robbers, enslavers, or murders).

Spencer also notes that the field of economics as it developed during the nineteenth century reached conclusions about free trade that were broadly similar to those reached through his equal-liberty-based analysis.

[Economics] teaches that **meddlings with commerce by prohibitions and bounties are detrimental**; and the law of equal freedom excludes them as wrong.

That speculators should be allowed to operate on the food markets as they see well is an inference drawn by political economy; and by the fundamental principle of equity they are justified in doing this.

Penalties upon usury are proved by political economists to be injurious; and by the law of equal freedom they are negated as involving infringements of rights. ([1896] *Principles of Ethics* [KL 24595–98].)

Spencer also argues that altruism in its positive and negative forms becomes more common as one shifts from a militaristic to an industrial society, which is to say, from a coercive to a cooperative society.

But **as civilization advances and status passes into contract**, there comes daily experience of the relation between advantages enjoyed and labor given: the industrial system maintaining, through supply and demand, a due adjustment of the one to the other.

And **this growth of voluntary cooperation—this exchange of services under agreement, has been necessarily accompanied by decrease of aggressions one upon another, and increase of sympathy: leading to exchange of services beyond agreement.** That is to say, the more distinct assertions of individual claims and more rigorous apportioning of personal enjoyments to efforts expended, **has gone hand in hand with growth of that negative altruism shown in equitable conduct and that positive altruism shown in gratuitous aid.** (*Principles of Ethics*, KL: 15878–83)

Commerce thus supports both forms of altruistic behavior and other conduct deemed praiseworthy by contemporary philosophers. In this, Spencer is in agreement with Bastiat, although in Spencer's case, harmony results because ethics and society coevolve.<sup>26</sup>

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<sup>26</sup> By negative altruism, Spencer means actions that are not undertaken because they would harm another. By positive altruism, Spencer means actions that are taken—at least partly—because they provide benefits for another.

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The coevolution of man, ethics, and society also implies that in the limit, as man and internalized codes of conduct reach perfection, coercion (and government) becomes unnecessary.

**It is a mistake to assume that government must necessarily last forever.** The institution marks a certain stage of civilization—is natural to a particular phase of human development. It is not essential but incidental. As amongst the Bushmen we find a state antecedent to government; so may there be one in which it shall have become extinct. Already has it lost something of its importance. ...

**Government, however, is an institution originating in man's imperfection;** an institution confessedly begotten by necessity out of evil; one which might be dispensed with were the world peopled with the unselfish, the conscientious, the philanthropic; one, in short, inconsistent with this same "highest conceivable perfection." (*Social Statics*, 39713–63)<sup>27</sup>

#### Spencer and "Doctrinaire Liberalism"

Spencer was one of the most widely read and influential writers of nonfiction in the second half of the nineteenth century. He wrote on a broad range of subjects including psychology, sociology, constitutional theory, and biology. In his mind, all these subjects were linked by the common thread of biological and social evolution. His policy views were

well known to sophisticated persons in Europe in the late nineteenth century and early twentieth centuries, and they attracted a broad range of critical responses from Mill to Nietzsche.

Many of his ideas carried forward after his death in 1903. Although less cited in the twentieth and twenty-first century than Mill, his work in sociology, ethics, and evolutionary psychology continue to attract attention. That his work was influential in the United States is, for example, suggested by the Holmes dissent to the majority decision of the Supreme Court in the famous 1905 *Lochner* case. The majority opinion implicitly adopts Spencer's reasoning with respect to freedom to contract, arguing that:

The **general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment**, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

The minority dissent by Oliver Wendall Holmes critiques the majority's reasoning by suggesting that it is grounded in Spencer's arguments with respect to freedom of contract, rather than legal precedent.

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<sup>27</sup>This idea is part of Spencer's critique of mainstream utilitarianism of the Bentham and Mill variety: "A system of moral philosophy professes to be a code of correct rules for the control of human beings—fitted for the regulation of the best, as well as the worst members of the race—applicable, if true, to the guidance of humanity in its highest conceivable perfection. Government, however,

is an institution originating in man's imperfection; an institution confessedly begotten by necessity out of evil; one which might be dispensed with were the world peopled with the unselfish, the conscientious, the philanthropic; one, in short, inconsistent with this same "highest conceivable perfection." How, then, can that be a true system of morality which adopts government as one of its premises?" (*Social Statics*, KL: 39759-63).

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The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for **some well-known writers**, is interfered with by school laws, by the post office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. **The 14th Amendment does not enact Mr. Herbert Spencer's *Social Statics*.**

Although the final Lockner decision was narrower than these excerpts suggest, it is clear that Spencer's positions were both mainstream and taken seriously in the United States at the turn of the century.<sup>28</sup>

With respect to ethics, Spencer provided a new evolution-based interpretation of utilitarianism, which he argued supported a wide range of conventional virtues including justice, generosity, humanity, veracity, obedience, industry, temperance, chastity, marriage, and parenthood. With respect to commerce, Spencer, like other nineteenth-century utilitarians, regards voluntary exchange to be a process that increases aggregate happiness. He acknowledges that by praising wealth itself, regardless

of how it is acquired, some undermining of morals does occur.<sup>29</sup> However, Spencer is generally more concerned about government restraints on trade than on any corrupting influence that it may have on individuals.

Spencer's grounding of pleasure and pain in the survivorship pressures of evolution was essentially unique at the time of his writing (and remains largely so among contemporary philosophers). Evolutionary pressures, he argued, produced mechanisms for pleasure and pain, and a common moral sense. These account for both the overlapping lists of virtues developed by philosophers and for similarities in the maxims adopted by societies at similar stages of development.

The broad appeal of his writing suggests that many of his arguments were grounded on commonplace moral intuitions during the second half of the nineteenth century: that industry was virtuous, that commerce was a powerful system through which aggregate utility was being increased, that individuals should be free to pursue any career that advantaged themselves as long as it did not undermine the equal liberties of others. This his conclusions are in accord with many other writers in this

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<sup>28</sup>Rehnquist (2001: 113–14) provides a short summary of “antiprogressive” Supreme Court decisions.

<sup>29</sup>This is most evident in his essay on “The Morals of Trade,” (1859). In that piece, Spencer argues that much of the unethical behavior observed in markets (fraud) arises because people in England admire wealth without regard to how it has been obtained, rather than only wealth that has been obtained through industry, honesty, and frugality. He argues that morals are somewhat higher in his own time than in former times, and that further improvements are underway, partly because of the internalization of utilitarian ideas. “And happily the signs

of this more moral public opinion are showing themselves. It is becoming a tacitly received doctrine that the rich should not, as in bygone times, spend their lives in personal gratification; but should devote them to the general welfare. Year by year is the improvement of the people occupying a larger share of the attention of the upper classes. Year by year are they voluntarily devoting more energy to furthering the material and mental progress of the masses. And those among them who do not join in the discharge of these high functions, are beginning to be looked upon with more or less contempt by their own order. This latest and most hopeful fact in human history—this new and better chivalry—promises to evolve a higher standard of honor, and so to ameliorate many evils: among others those which we have detailed” (KL: 76319–24).

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period suggest that these norms were commonplace among his middle class and upper middle-class readers, many of which were active participants in commerce.

#### V. Utilitarian Support for Democracy and Commerce in the Nineteenth Century

There were several shared conclusions among Bentham, Mill, and Spencer that are of particular interest for the purposes of this volume. These generally provided new support for both commerce and democratic. Each provided ethical defenses of careers in commerce and commercial systems that were broader than the religious ones proposed by Baxter and Barclay, and the secular ones of Montesquieu and Smith. All three agreed that commerce was an activity that generally makes people better off. Given that all individuals attempt to maximize their utility and that relationships in markets are voluntary, it must be the case the commercial activities increase the welfare of those directly involved in every purchase, job, investment, and commercial network. Thus, commerce is good--it tends to increase aggregate utility. Commercial systems, as complex networks of voluntary exchanges, thus tend to increase aggregate happiness and are moral or virtuous systems.

Commerce from the utilitarian perspective is not an ethically neutral activity as it was in Smith's and Kant's accounts, but a morally relevant activity because it increases aggregate utility, understood as the sum of the net happiness of all members in a community. To be gainfully and honestly employed in markets was essentially a civic duty, as it had been

in Baxter's religion-based theory, an important method of increasing social utility.

In addition to providing new support for commerce, nineteenth century utilitarians provided new support for both democratic governance and constitutional constraints with respect to economic policy and with respect to equal protection of the law. Utilitarian support for constitutional governance is discussed at some length in Congleton (2011) and so less space has been devoted to it in this volume. However, Mill and Spencer both supported women's suffrage more than a half century before it became commonplace in the West and each was interested in voting rules and constitutional reforms that tended to increase the electoral foundations of public policy.

With respect to policies that affected markets, Bentham, Mill, and Spencer were generally more concerned with governmental barriers to exchange and favoritism, than about the commercial society that was emerging about them. Policy makers should take complete account of the effects of their policies on all members of society. With respect to markets, they agreed that public policies should shift toward laissez-faire policies. Society would generally be improved by removing restraints on domestic and international trade (and not imposing new ones), although only Spencer advocated fully laissez-faire policies.

All three agreed that most individuals are and should be, largely motivated by self-interest. Self-interest was not a problem for society, given appropriate civil laws, because the results of social intercourse under such laws tends to increase utility both for individuals and for society

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at large. Thus, people should be substantially be left alone to make their own decisions. Moreover, markets tend to support the virtues of industry, frugality, integrity, and to some extent altruism.

There were caveats to their support for commerce and liberty, the most serious of which were developed by Mill with respect to the significance of what would later be called externalities—costs borne by third parties not directly involved in the exchanges that produced them. However, even Mill regarded such concerns to be relatively unimportant, concluding that most persons should be free to engage in the activities that added to their and their family’s wealth and happiness. Only those who aim to harm others should routinely subject to coercion. Voluntary cooperative relationships were the main engine of progress.

Utilitarianism was, of course, not created whole cloth by Jeremy Bentham, nor did they invent defenses of market systems. Aristotle had argued that happiness is the ultimate end and that politics should be judged on their ability to support and sustain happiness for their citizens.<sup>30</sup> The Christian “golden rule” implied that one’s actions should take account of effects on others. The idea of the “public weal” had long been included in legal documents and mentioned as a basis for choosing public

policies. Many influential writers had previously defended careers in commerce and commercial systems. Utilitarians simply sharpened, systematized, and generalized these older ideas.

Happiness returned to the center stage after a long absence. Nineteenth century utilitarians, unlike Aristotle, did not stress that character development is necessary to maximize individual happiness, although they were generally supportive of the idea. Their focus was on aggregate net happiness (pleasures net of pains), rather than on individual happiness or self-development.

## VI. Neoclassical and Welfare Economics as Twentieth Extensions of Utilitarian Reasoning

Although the essential logic of utilitarian analysis was worked out in the nineteenth century, significant developments and extensions of it occurred in the twentieth century. These were partly associated with the new more complete models of trade and price determination worked out by a group of utilitarians referred to as neoclassical economists in the late nineteenth century. These “economists” developed models of decision making and market prices based on ideas previously worked out by utilitarians. These were used to characterize supply and demand, market

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<sup>30</sup>There are also parallels with other Greek philosophers as well, especially the Epicureans. Epicurus (341–270 BCE) was a Greek philosopher in the generation after Aristotle, who also argued that happiness was the ultimate end of life. He proposed an atom-based and sense-based human universe, well in advance

of his peers. Relatively little of his writing survives, however. The term Epicurean is often applied to those interested in a sophisticated materialistic lifestyles, although Epicurus stressed a simple pleasurable lifestyle free from pain. See the Stanford Encyclopedia of Philosophy for a short overview. (<http://plato.stanford.edu/entries/epicurus>).

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prices, gains from trade, and the distribution of income. These mathematical and geometric characterizations of markets helped to clarify and sharpen ideas that had formerly been presented for the most part in intuitive terms.

A related breakthrough was the so-called marginalist revolution. It had solved the so-called diamond-water paradox—that diamonds sell at a higher price than water does, although water is necessary for life. The solution was that the extra utility generated by an extra unit of a good (marginal utility) varies with the quantity of the good that one already has. Since water was plentiful in the West, the last unit of water tended to produce relatively little extra utility, whereas diamonds being extraordinarily scarce, the last diamond tended to produce relatively large increases in utility (at least for those who admire them). Water was cheaper than diamonds because the marginal utility of the last drop of water was lower than that of the last diamond purchased. Price reflect marginal conditions rather than total or average conditions.

Diminishing marginal utility also had implications for the distribution of income that tended to lesson support for free markets to some extent—at least among left liberals and social democrats. However, utilitarians (including most Western economists) remained broadly supportive of commerce. Indeed, as the benefits of extended market networks became better understood, overall support tended to increase. By the middle of the twentieth century, the extent of markets (gross national product) was routinely used to compare the quality of life across communities, regions, nation states, and continents.

Of course, not all economists nor all voters were utilitarians. In the post-war period contractarian arguments reemerged as an alternative to utilitarian ones. (An appendix reviews the mid-twentieth century re-emergence of contractarianism for readers interested in subsequent critiques of utilitarian analysis.) Moreover, anti-market ideas and ideologies gained much strength during the twentieth century—although for the most part they remained “fringe” perspectives in the West.

This chapter concludes with a short overview of a left-liberal or moderate social democrat’s utilitarian perspective on markets—a perspective that had a profound influence on economic thinking in the twentieth century and on public policies insofar as politicians and voter were influenced by such ideas. It is a perspective that differs in many respects from that of the doctrinaire liberals of the nineteenth century, but which remains broadly supportive of commerce and commercial development.

#### **Alfred C. Pigou (1877-1959): The Monetization of Utility**

Alfred Pigou was raised in a upper middle class family in England and educated at Harrow School and Cambridge University. His academic training was in moral philosophy, history, and economics, which he learned from Alfred Marshall. He became professor of political economy in 1908, a position that he held until 1943. His most important work is his book, *The Economics of Welfare* (1920). It develops a new utilitarian-based economic tool bag for policy analysis that would later be referred

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to as welfare economics. Pigou combines utilitarian reasoning and neo-classical economics in a manner that provided new operational methods for appraising the relative merits of the outcomes of various types of markets and public policies.

Late nineteenth century utilitarians had gradually recognized the difficulty of being “full-time” utilitarians and began attempting to derive rules of conduct that could serve as a practical guideline for day to day decisionmaking among individuals and governments. Mill’s “harm” principle and Spencer’s “equal liberty principle” are just two of the many efforts to contrive such rules. Pigou attempts to make the utility idea quantifiable rather than to develop rules of conduct. Moreover, as an economist, he is more concerned with public policy issues than individual decision-making or moral conduct.

Pigou was more critical of commercial activity than Bentham, Mill, or Spencer, but nonetheless, begins by arguing that gross national product (the social dividend) can be used as a first approximation or estimate of aggregate utility. He also provided utilitarian rationales for government interventions in markets to address externality and monopoly problems, analogous to those suggested by Mill, but with clearer more persuasive analytical tools. The latter were challenges to the doctrinaire liberals of the Spencer variety in the early twentieth century, who argued that such interventions violated the equal liberty principle and its associated freedom of contract. Pigou argued that such interventions could make a commercial society more attractive than it would have been without them.

Before considering some of Pigou’s critiques on markets, first let us consider his argument in support of using the extent of commerce as an index of the aggregate welfare or utility of a society.

**The one obvious instrument of measurement available in social life is money.** Hence, the range of our inquiry becomes restricted to that part of social welfare that can be brought directly or indirectly into relation with the measuring-rod of money. This part of welfare may be called economic welfare.

**It is not, indeed, possible to separate it in any rigid way from other parts, for the part which can be brought into relation with a money measure will be different according as we mean by can, “can easily” or “can with mild straining” or “can with violent straining.”** (*The Economics of Welfare*, KL: 295-300).

The preceding discussion makes it plain that any rigid inference from effects on economic welfare to effects on total welfare is out of the question. In some fields the divergence between the two effects will be insignificant, but in others it will be very wide.

**Nevertheless, I submit that, in the absence of special knowledge, there is room for a judgment of probability. When we have ascertained the effect of any cause on economic welfare, we may, unless, of course, there is specific evidence to the contrary, regard this effect as probably equivalent in direction, though not in magnitude, to the effect on total welfare;** (*The Economics of Welfare*, KL: 438-443).

GENERALLY speaking, economic causes act upon the economic welfare of any country, not directly, but through the making and using of that objective counterpart of economic welfare which economists call the national dividend or national income. **Just as economic welfare is that part of total welfare which can be brought directly or indirectly**

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**into relation with a money measure, so the national dividend [GNP] is that part of the objective income of the community, including, of course, income derived from abroad, which can be measured in money.** (*The Economics of Welfare*, KL: 601-604.)

Pigou argues that the extent of commerce itself is correlated with aggregate utility, although it is not a perfect measure of aggregate utility. The greater the extent of the commercial society, the greater is aggregate utility, other things being equal.

This monetization of utility provided a new measurable utilitarian basis of support and critique of careers in commerce, commerce, and the role of commerce in society. This money-based index of aggregate utility also had a implications for public policy. Other things being equal, governments should strive to maximize the extent of commerce—however, other things were not always equal for reasons that Pigou explores in his book. In other words, Pigou argued that commerce is a good system, but it may not be the best system possible. To this end, Pigou argued that governments should do more than simply enforce civil law.

Having made a general argument in support of commerce, Pigou shifts his attention to various aspects of commerce that do not tend to maximize aggregate utility. He next argues that the wealth and income that are generated by commerce tend to increase aggregate utility but not

to maximize it. The logic of diminishing marginal utility implies that redistribution from the rich to the poor can increase aggregate utility, whenever it can be done without reducing GNP.<sup>31</sup>

**Nevertheless, it is evident that any transference of income from a relatively rich man to a relatively poor man of similar temperament, since it enables more intense wants, to be satisfied at the expense of less intense wants, must increase the aggregate sum of satisfaction.**

The old "law of diminishing utility" thus leads securely to the proposition: **Any cause which increases the absolute share of real income in the hands of the poor, provided that it does not lead to a contraction in the size of the national dividend from any point of view, will, in general, increase economic welfare.** (*The Economics of Welfare*, KL: 1561-1565).

It is evident that, provided the dividend accruing to the poor is not diminished, **increases in the size of the aggregate national dividend, if they occur in isolation without anything else whatever happening, must involve increases in economic welfare.** (*The Economics of Welfare*, KL: 1468-1470).

Some of Pigou's arguments regarding the possibilities for increasing aggregate utility beyond that associated with market outcomes might be classified as socialist. For example, he argues that the government run some industries as well or better than private entities, as with electricity and telephone companies. However, his argument nearly always aims to

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<sup>31</sup> The modern term gross national product (GNP) are used rather than Pigou's social dividend, because they are more familiar to readers and has essentially the same meaning. The notion of a social dividend had been introduced by Alfred Marshall. Pigou subsequently played a role in the development of the macro-

economic measure that came to be known as GNP. The use of GNP as a proxy for aggregate utility is not perfect, as noted by Pigou. See Chipman and Moore (1976) for a short critique of GNP as a proxy for aggregate utility.

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maximize the size of the economy, and in this sense takes for granted that commerce is generally both useful and virtuous.

Although policy-orientated utilitarians often neglect the importance of internalized ethical dispositions, Pigou does not entirely do so, noting that what he refers to as the social virtues are imperatives for life in a community. As a utilitarian, he naturally emphasizes those that are most important for utilitarian outcomes: honesty and taking account of how one's behavior affects the entire community.

**As a member of a society with interests in common with others, the individual consciously and unconsciously develops the social virtues.**

**Honesty becomes imperative**, and is enforced by the whole group on the individual, **loyalty to the whole group is made an essential** for the better development of individual powers. **To cheat the society is to injure a neighbor.** (*The Economics of Welfare*, KL: 376-379).

When GDP is accepted as a measure of the goodness or attractiveness of a good society, the main policy issues are ones associated with increasing the scope of the commercial society. Nonetheless, Pigou's approach implies that some adjustments at the margin are called for. The extent of aggregate utility can be increased by promoting social virtue, internalizing externalities, and modest redistribution.

As a consequence of Pigou's analysis and extensions of it, utilitarian support for government interventions goes well beyond that advocated by nineteenth century utilitarians and doctrinaire liberals. Late nineteenth liberals would have argued that maintaining law and order, a bit of

infrastructure investment, support for basic education, and perhaps a bit of social insurance are within the scope of a good government's responsibilities. Pigou and others that accept his frame of analysis suggest that a variety of externality problems should be tackled—such as ones involving air and water pollution, as well as redistributive programs that go beyond a bit of social insurance and support for public education.

Pigou's analysis shifted the debate from gains-from-trade-based arguments to cost-benefit analysis. Does a policy increase aggregate benefits (measured in dollars or some other currency) more than it generates in costs. If so, such policies will increase the national dividend (GNP) and are very likely to increase aggregate utility.

A variety of issues are associated with Pigou's analysis of how public policies could improve the commercial society. What are the externalities that should be internalized? How much redistribution can be undertaken without undermining the social dividend? To what extent can government be expected to pursue utilitarian ends? These were taken up later in the twentieth century. The appendix to this chapter reviews contractarian arguments on these issues and some critiques of twentieth century utilitarian analysis.

## VII. Conclusions from Part III: A Slowly Rising Tide of Moral Support for Commerce

Part III has reviewed ethical theories with several ends in mind. First, the survey demonstrates that ethics and economics are not entirely independent subjects. Philosophers who made the largest contributions

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to ethics routinely used choices in markets to illustrate the relevance of their theories. A subset of those philosophers also made significant contributions to economic theory in the period before the great division of the social sciences emerged in the late nineteenth and early twentieth centuries. Adam Smith and Alfred Marshall, for example, both held academic positions in moral philosophy.

Second, the survey demonstrates that ethical theory is a field of study that is at least partly empirical in nature. Philosophical innovations and refinements are partly responses to theories developed by previous generations of philosophers, but also to the moral maxims and moral tensions in the societies in which they lived and grew to maturity. As a consequence, the philosophical theories reviewed are all ultimately grounded in each scholar's observations about actions and codes of conduct within their own societies. Subjecting both past work and contemporary moral maxims to careful analysis allows mistakes and inconsistencies to be identified and more general explanatory principles to be worked out. Through such innovations ethical theories change and such changes may have effects on the ethical beliefs of persons within their communities.

Third, both the empirical grounding of ethical theories and the illustrations used to "prove" the merits of new theories provide useful information about mainstream ideas concerning virtue and vice in the societies in which philosophers lived. Their illustrating examples—which often include economic settings—reveal areas of morality that are regarded as obvious to their readers. The illustrations thus reveal much about the

conclusions of commonplace ethical theories at the time that a scholar's books were published. These in turn shed light on beliefs about the nature of a good life and good society held by persons likely to read their books.

Fourth, the readings suggest that reservations about commerce declined in the West during the period in which the commercial society emerged. They do so in at least two ways. First, the theories expounded generally become more and more supportive of commerce. Second, the examples used to support the theories proposed tend to use examples that imply greater support for commerce and ethical dispositions that tend to support commerce. The readings also reveal a shift to secular reasoning and a gradually deepening of understandings about the workings of market.

In contrast to the two scholars used to characterize let medieval thinking about markets, Dutch and British theologians in the seventeenth century argued that trade, prosperity, and the accumulation of wealth had divine support. Grotius argued that free trade was a natural God-given right, Baxter, that secular careers could be a calling, La Court that prosperity and republican institutions had divine providence. In the eighteenth century, new more secular arguments emerged that provided support for both commerce and ethical dispositions that tend to support commerce. Franklin suggests that virtue, especially industry and frugality, tended to enhance one's prospect for being wealthy. Smith, although somewhat skeptical of the need for more than a modest level of wealth for a good life, argued that markets were guided by an invisible hand that

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tended to maximize prosperity (a praiseworthy result) when commerce was not interfered with by unnecessary regulations and grants of monopoly. Bastiat argued that there was a divine harmony between ethical and commercial spheres when appropriate civil laws were in place. Bentham pointed out that trade is mutually advantageous to both sides of every non-fraudulent transaction and so tends to increase aggregate utility. Spencer argued that the equal liberty principle implied essentially unfettered exchange was a characteristic of the good society. Pigou argued that the extent of commerce can be used as an index of the quality of life and aggregate utility.

Fifth, with respect to type of government and public policies, increasing support for both election-based governance and policies in support of commerce is also evident. The universality arguments of both Kant and the utilitarians tended to imply universal suffrage as either the only proper foundation for governance or at least one that should be aspired to as education levels and independence increased. Government policies, in turn, should attempt to promote economic progress or at least not impede it, because as the accumulation of wealth was praiseworthy, supported important virtues, or increase aggregate utility, or all three. Infrastructure projects to broaden markets tended to be favored, as was support for public education, which did rapidly increase in the late nineteenth century. Such policies together with increases in trust generated by a work ethic, honesty, and prudence would have encouraged the investments that produced the great acceleration of the late nineteenth century.

Although support for the virtues that tend to make markets work effectively was evident in the writings of all of the philosophers surveyed, including More and Erasmus, the breadth and depth of moral support for commerce, democracy, and progress clearly increased through time. During the seventeenth century, Baxter argued that profits and a secular career were part of one's divine duty. Franklin argued that the virtue and virtuous conduct are important determinants of one's success in commerce. Bastiat argues that ethics and commerce are in complete harmony. Spencer argues that increasing happiness (on average) for everyone in a community requires the equal liberty principle, which implies freedom to follow every career and economic opportunity and that governments should not interfere in markets beyond that required to assure equal liberties. Progress was the natural result of social and market pressures.

During the same period, there was also a shift in the virtues regarded to be most important for living a good life. Prudence, promise keeping, industry, and dutiful rule following are given greater emphasis in later theories than in earlier ones, while bravery, liberality, and honor were given less prominence outside the various national military services. Spencer, for example, notes a shift away from military codes of conduct to the more cooperative ones of commerce, including a work ethic, as industrialization took place.

In modern days, especially among ourselves and the Americans, the industrial part of society has so greatly outgrown the militant part, and has **come to be so much more operative in forming the sentiments and ideas concerning industry**, that these are almost reversed. ... [A]long with the advance of

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industrialism towards social supremacy, there has arisen the almost **universal feeling that some kind of useful occupation is imperative**. Condemnations of the “idle rich” are now-a-days uttered by the rich themselves. (*Principles of Ethics*, KL 6344–48)

Max Weber writing in the early twentieth century suggests that changes in norms both launched and sustained capitalism, by which he means the commercial society that had emerged in the late 19th century.

[I]n general also **an attitude which, at least during working hours, is freed from continual calculations of how the customary wage may be earned with a maximum of comfort and a minimum of exertion. Labor must, on the contrary, be performed as if it were an absolute end in itself, a calling.**

But **such an attitude is by no means a product of nature**. It cannot be evoked by low wages or high ones alone, but can only be the product of a long and arduous **process of education**.

**Today**, capitalism, once in the saddle, **can recruit its laboring force** in all industrial countries with comparative ease. **In the past this was in every case an extremely difficult problem**. (Weber, 1904, *The Protestant Ethic and the Spirit of Capitalism*, KL 312–16)

By the time Spencer had finished his ethics and Weber began thinking about markets and the origins of capitalism, the great acceleration and the emergence of the commercial society were well under way throughout the West and life in the new more broadly commercial societies was widely regarded to be more attractive than lives in former times. This was evident in migration patterns throughout the world, which were nearly

entirely from low average GNP regions and countries to relatively high average GNP regions and countries.

All this is not to say that Bastiat’s or Spencer’s perfectly evolved harmony between private actions and social consequences emerged in 1800, 1900, or in 2000. Nor is it to say that the decrease in the scope of religion typical among scientists and secular philosophers was the norm rather than the exception during the nineteenth or early twentieth centuries. For many, religion and miracles remained important facts of life and one’s moral duties were largely defined by divine texts. Nor is it to say that unfettered exchange or efforts to obtain material comforts were universally supported in the late nineteenth century. Protestants often praised the industry and integrity that produced wealth, but opposed its use for material comforts and the extent to which market activities drew people away from their churches and prayers.

New opponents from the far left and right emerged during the late nineteenth century, although they were relatively unimportant politically until the twentieth century. It bears noting, however, that the new critics of the far left did not long for a return to the medieval society of old with its monopoly religion, small local markets, and aristocracy based on birth. Rather they seemed drawn to the portrait of utopia that Thomas More had portrayed in short book nearly four centuries earlier, in which production took place without incentives, needs were met, and a relatively easy, leisurely life of contemplation was available to all. However, these were minority views in the late nineteenth and early twentieth

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centuries. Communist parties, for example, were never parts of government and rarely obtained more than 10 percent of votes cast in open elections.

The idea that hard work, trade, and profit were virtuous activities had taken hold, as observed by Weber and Spencer.<sup>32</sup> Mainstream critics of commerce in the late nineteenth century and twentieth centuries generally supported the institutions and ethical dispositions that generated industrialization, but criticized the distribution of wealth and the pollution produced by the rapid expansion of commerce and the reduction in liberality associated with it. Most such critiques were not criticisms of markets per se, but of preexisting regulations that could be improved to make commercial societies even more attractive than they had been.

The idea of progress had become increasingly central to Western thought and to common experience. Change was natural, and change for the better was commonplace. New ideas and products were often better than the old. Society was no longer thought of in static terms. Shifts in norms and lifestyles were widely considered to be good, rather than

threats or nuisances to be blocked or ameliorated. Mill, for example, recognized that his age was one of transition. Spencer argued that society had always been in a state of flux and would continue so until internalized rules of conduct (ethics) were perfect for the existing social and natural environment.

The debate among mainstream Western political parties in both 1900 and 2000 was over the extent to which a commercial society could be improved via relatively small changes in civil law and regulation, not whether commerce should be eliminated and a return to pastoral lives mandated, and not that it necessarily produced moral depravity. A productive life had become a good life and a productive commercial society, a good society.

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<sup>32</sup>That radical opposition to commerce was a minority viewpoint in the late nineteenth and early twentieth centuries can be deduced from electoral outcomes in Northern Europe and in the United States. “Left liberals” were relatively numerous and influential than right liberals by the early twentieth century, as evident in policies with respect to public education and safety net programs in the United Kingdom and France. Only a handful of relatively moderate Progressive Party candidates were elected to office in the United States during the late nineteenth and early twentieth centuries.

Left liberals did not oppose the commercial society per se; rather they attempted to open society further by equalizing opportunities. Some of the most

“radical” argued in favor of shifting the bargaining equilibrium typical in the markets of their time to favor owners of labor, as with proposals for 10-hour days and 6-day work weeks. In Europe, social democratic parties were politically successful after universal male suffrage was adopted in the early twentieth century. However, social democratic governments tended to be left liberals rather than socialists. They did not attempt to reform their commercial societies radically. Rather, they modestly rebalanced labor contracts and created small social insurance programs. They did not nationalize all large industries or undertake massive redistributive programs. Their most radical members abandoned the social democratic parties to form new communist parties after World War I, which tended to be supported by relatively small numbers of voters (5%–10%).

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### VIII. Appendix to Chapter 11: The Mid-Twentieth Century Rebirth of the Contractarian Ethics

The early contractarians were among first to suggest that the interests of all citizens should be taken into account when evaluating institutions. Contractarian analysis uses the consent of all members of a community to establish the legitimacy of governments and their associated systems of laws and public policies. Contractarians maintain that the grounding laws and political institutions of a society are delegations of authority from individuals to organizations created to advance their common interests. Individuals give up some of their liberties in exchange for others doing the same thing in order to realize a far better society than they would have without government, as argued by Hobbes, Locke, and Mises.

After WWII, two other major scholars began casting doubt upon the logic and appeal of utilitarian analysis and welfare economics. One was among the best known philosophers of the post-war period, John Rawls; the other won a Nobel Prize in economics, James Buchanan. They criticized both the conclusions reached and the utilitarian method of reaching those conclusions. Both emphasized agreement as the foundations for a good or just society, rather than the maximization of aggregate utility. Both emphasize two-stage modes of analysis, what Buchanan termed the constitutional and post constitutional periods.

The rebirth of contractarianism was arguably a consequence of weaknesses in the dominant utilitarian approach to public policy analysis. Philosophers and economists who were troubled by the measurability of

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utility, tend to be drawn to contractarianism because it retains much of the appeal of utilitarianism (everyone counts and counts equally) without requiring interpersonal comparisons of utility or measurable indices of utility. Contractarian theory does not require interpersonal comparisons or arithmetic calculations using the utility levels of all individuals in the community of interest.<sup>33</sup> Those who favored non-coercive relationships of markets over coercive ones of legislation and law enforcement would also be drawn to the voluntarism of the contractarian approach. Political theorists who are not necessarily advocates of markets were also drawn to it for its clear arguments concerning the ultimate foundations and limits of government authority.<sup>34</sup>

#### John Rawls (1921 - 2002)

John Rawls was raised in an upper class Baltimore family, educated at a boarding school in Connecticut and at Princeton University, where he received a Ph. D. in philosophy in 1950. He taught at Harvard University for most of his career. He is best known for his classic re-grounding of contractarianism, *A Theory of Justice* (1971). In that book he

proposes an alternative to the utilitarian framework, one is similar in spirit to early contractarian theories of government, but different in manner of argument and emphasis. He argued that an philosophical alternative to utilitarianism is necessary because utilitarianism lacks a defense of fundamental human rights or democratic government.

In 1999, Rawls published a revised edition of the *Theory of Justice*, which reflected his responses to more than two decades of critiques and extensions of the original. This is the edition used for the purposes of this chapter. It represents Rawls' final analysis and defense of his arguments. Some of his conclusions were softened in that version, including some with respect to his "maximin principle."

The aim of the **contract approach** is to establish that taken together they impose significant bounds on acceptable principles of justice.

**The ideal outcome would be that these conditions determine a unique set of principles; but I shall be satisfied if the suffice to rank the main traditional conceptions of social justice.** [John Rawls (1999) *A Theory of Justice*. Harvard University Press. Epub edition, page 14.]

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1 <sup>33</sup>Welfare economics generalized Bentham's additive aggregate utility measure to include other functional forms, not all of which involve arithmetic, but all of which involve aggregation and most of which involve interpersonal comparisons of utility. See, for example, Bergson (1938), Graaff (1957), and Sen and Williams (1982). Bentham's additive form, however, remains one of the most commonly used, and continues to ground for cost-benefit analysis and most of normative public economics.

2 <sup>34</sup>The idea that one could add up utilities is methodologically inappropriate, if utility is regarded as simply an analytical convenience, rather than a model of

the human mind or happiness. Moreover, utilitarian analysis often, although not always, leads to conclusions that conflict with moral intuitions and also with ideas at the heart of contractarian political theory. For example utilitarianism can be used to rationalize killing a healthy person for his "body parts" in order to keep a dozen people alive. Such conclusions violated what Spencer and Rawls called the equal liberty principle and also violate the natural law theories of early contractarians.

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Rather than rely on the Hobbesian natural state arguments of seventeenth and eighteenth century contractarians, he calls on readers to imagine another setting, one in which they do not know who they will be in a future society that emerges after basic principles and institutions are chosen. From behind this “veil of ignorance,” readers are asked to assess the relative merits of alternative principles of justice, based on their own evaluation of the lives associated with societies that would emerge from institutions consistent with those principles.

Rawls assumes that individuals choose a principle of justice that advances both their material and moral interests, a representation of human interests similar to that used in part II of the present volume. In the context of the veil of ignorance, moral interests are similar in spirit to Grotius’ characterization of natural law or Spencer’s characterization of a moral sense. Everyone shares an innate capacity for making moral assessments. The similarity of everyone’s moral and material interest produce agreements about principles of justice, which in turn limit the range of possible just institutions.

He argues that a consensus would emerge from behind the veil of ignorance with respect to both principles of justice and the core institutions of society.

**The principles of justice are chosen behind a veil of ignorance.**

Since all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain. ...

This initial situation is fair between individuals as moral persons, that is, as rational beings with their **own ends** and **capable, I shall assume, of a sense of justice.** (*A Theory of Justice*, pp. 8-9).

From behind the veil of ignorance Rawls argues that all persons would agree to two principles, which would be used to evaluate alternative political and economic institutions. The two principles that he suggests are:

**First: each person is to have an equal right to the most extensive scheme of equal basic liberties** compatible with a similar scheme of liberties for others.

**Second:** social and economic inequalities are to be arranged so that they are both (a) **reasonably expected to be to everyone’s advantage**, and (b) attached to positions and office open to all. (*A Theory of Justice*, p. 50).

Note that two of the three (1 and 2b) are equal liberty provisions similar to those supported by Spencer and Mill in the previous century, and Hobbes three centuries earlier. The third (2a) concerns economic inequalities, the area in which Rawls’ conclusions are the most famous outside of philosophy.

Rawls’ list of basic equal liberties include freedom of speech and assembly, liberty of conscience, freedom from arbitrary arrest and seizure and the right to hold personal property, among others. The equal liberty principles takes precedence over other distributional issues (p. 53).

**The basic rights and liberties ... guarantee equally for all citizens the social conditions essential for adequate development and the full and informed exercise of their**

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**two moral powers**, their capacity for a **sense of justice** and their capacity for a **conception of the good**. (*A Theory of Justice*, p. xiv).<sup>35</sup>

Equal liberties enable individuals to develop their moral capacities, in a manner analogous to Aristotelian investments in moral excellence. The equal liberty and distributional principles, in turn, are used to assess the relative merits of a society's grounding institutions, such as markets and democracies.

With respect to political institutions, Rawls reaches conclusions in the spirit of Locke, Mill, Pigou, and contemporary welfare economics. Governments have a role in providing law and order, pure public goods, internalizing externality problems, and addressing problems associated with monopoly.

For the purposes of this book, it also is important to note that Rawls believes that commerce would always play a role in the distribution of goods and services. He notes many attractive properties of markets.

[T]he **ideal market process, as distinct from the ideal political process conducted by rational and impartial legislators, is that the market achieves an [Pareto] efficient** outcome even if everyone pursues his own advantage. (*A Theory of Justice*, p. 314).

[A] **further and more significant advantage of a market system is that, given the requisite background institutions, it is consistent with equal liberties and fair equal-**

**ity of opportunity.** .. There is **no necessity for comprehensive direct planning. Individual households and firms are free to make their decisions independently**, subject to the general conditions of the economy.

Which of these systems and the many intermediate forms most fully answers to the requirements of justice, I think, be determined in advance. There is presumably no general answer to this question since it depends in large part upon the traditions, institutions, and social forces of each country...(*A Theory of Justice*, , pp. 237-240).

Although markets are useful, he argues that markets tend to be used under both property owning and liberal socialist regimes.

He also acknowledges problems with democratic rule and, perhaps surprising, reaches a conclusion similar to that of von Mises regarding the importance of morality in political decisionmaking.

A just constitution **must rely to some extent on citizens and legislators adopting a wider view** and exercising good judgment in applying the **principles of justice**. (*A Theory of Justice*, p. 315).

An internalized theory of justice is a precondition for just or fair public policy. Ethics is more important for the politics of a good society than it is for markets.

With respect to markets as systems for distributing the social dividend, however, he is less clear because of implications of the first part of

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3 <sup>35</sup>This quote from the preface refers to an argument developed at length in Rawls (1982).

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his second principle of justice (2a). Here he argues that inequality would be acceptable only if it increased the welfare of the least advantaged, what many refer to as Rawlsian difference or maximin principle.

Assuming the framework of institutions required by equal liberty and fair equality of opportunity, **the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged** members of society. (*A Theory of Justice*, p. 63).

A commercial society can be completely compatible with the equal liberty principles (1 and 2b). However, whether market outcomes satisfy the difference principle depends on the view of markets that one takes. If one accepts reasoning analysis to that of von Mises, one could argue that markets satisfy that principle as well. Without its grounding institutions--private property and freedom of contract--everyone would be much poorer. Alternatively, if one accepts Pigou's reasoning, governmental policies can improve on the results that tend to emerge under 19th century civil law, by internalizing externalities, solving public goods problems, and engaging in redistribution. Given one or the other theories, Rawls argues that a consensus regarding principles of justice has clear implications for just legal and political institutions and for major public policies. Rawls himself clearly uses a theory of markets similar in spirit to that of Pigou.<sup>36</sup>

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4 <sup>36</sup>In the absence of consensus about both principles of justice and economic theory, there is likely to be far less consensus about standing institutions

### James M. Buchanan (1919-2013)

James Buchanan was raised in an upper middle class family in Murfreesboro Tennessee, where he attended public schools, Middle Tennessee State University, and the University of Chicago, where he received a Ph. D. in economics in 1948. He spent most of his academic life at three Virginia universities, beginning with the University of Virginia in 1956 and ending at George Mason University in 2000. He was trained as an economist in the era before mathematics and statistics became central parts of graduate training, which was partly responsible for his broader philosophical interests.

From the beginning of his academic career, Buchanan was very concerned about philosophical issues in economics, especially the evaluation of public policies and political institutions. He criticized utilitarian and social welfare economics, challenging them on a variety of grounds including the instability and incompleteness of preferences and the non-commensurability of preferences orderings during periods in which they are stable (1954). He also challenged the implicit assumption of welfare economics that governments would follow the advice of utilitarian economists. One cannot simply add utility levels or functions up, nor can one simply assume that policy makers are entirely benevolent.

His contractarian bears a closer resemblance to the classics works of contractarianism than Rawls' theory, in that he work includes analysis

and public policies. In this respect, Rawls' approach shares a conceptual weakness with earlier contractarian theories of the state.

of implication of Hobbesian anarchy for contract-based theories of the state, *Limits to Liberty* (1975). However, for the most part, he takes the contemporary status quo as the point of departure and analyzes whether people might plausibly agree to particular policies and institutional reforms. He uses rational choice models rather than surveys to determine whether there mutual advantages exist for particular reforms of public policies or political institutions. He also stresses that both policy and institutional reforms emerge from bargaining, rather than from the recommendations of welfare economists or other experts.

For the purposes of this chapter, his last book length treatment of issues associated with contractarianism is focused on, *Politics by Principle, Not Interest* (1998).<sup>37</sup>

The opposing **contractarian conception of law and politics** is based squarely in the rejection of any claim that the institutions and the policies that are good for the community are “out there” waiting to be discovered by experts or anyone else.

The rules for living together - the basic law and political structure - are, quite literally, made up or created in some participatory process of discussion, analysis, persuasion, and mutual agreement. In this conception of social order, the constitution, inclusively defined, emerges from agreement among those who must abide by the constraints contained within it.

**The constitutional stage, which involves both law and politics, is understood and described best in terms of**

**an exchange of agreements among participating members of the community. Persons agree to constraints on their own liberties in exchange for comparable constraints being imposed on the liberties of others.**

**The metaphor is that of a social contract.** And agreement itself serves as the criterion for goodness or truth. That rule or political action that is **good for the community of persons is defined by** that option upon which **agreement** is reached rather than some imagined correspondence with an independently discoverable object of community search.

**To the contractarian the question posed is: Could the existing set of rules have emerged from the agreement among all parties who are currently subject to them?**

Or, in individualistic terms, the proper question is: Could I have agreed to the set of rules that the existing political-legal structure represents? [Buchanan and Congleton (*Politics by Principle Not Interest*, p.4-5).]

Note that according to Buchanan exchange occurs within democratic politics as well as in markets. The bargaining involves rules, taxes, and expenditures, gains to trade among legislators and voters, and the bargains struck determine what emerges from politics, just as similar agreements determine what emerges from markets. Rights to bargain and contract are, as in Hobbes, preconditions for a constitutional state.

Buchanan, like Rawls, also relies upon a “veil” to motivate agreement. In his case, the veil is a natural consequence of the uncertainty associate with long-run planning, rather than an imaginary initial position used to identify principles of justice. He argues that the long term nature

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5 <sup>37</sup>Although the book was coauthored with the author of the present volume, the quotes are taken mainly from the chapters that Buchanan wrote and so

are attributed solely to him.

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of constitutional decisions tends to generate uncertainty because our natural ignorance about the future. This induces persons consider a variety of possible outcomes when assessing the consequences of grounding laws and major reforms.

The **veil of ignorance and/or uncertainty offers a means of bridging the apparent gap between furtherance of separately identified interests and agreement** on the rules that conceptually define the “social contract.” Potential contractors must recognize that the basic rules for social order - **the ultimate constitutional structure - are explicitly chosen as permanent or quasi-permanent parameters within which social interaction is to take place** over a whole sequence of periods.

This temporal feature, in itself, shifts discussion away from that which might take place among fully identified bargainers and toward **discussion among participants who are unable to predict either their own positions** or how differing rules will affect whatever positions they come to occupy. (*Politics by Principle Not Interest*, p.4-5).

Buchanan was less willing than Rawls to argue that a particular consensus would emerge. Although he had strong classical liberal normative disposition, he thought it presumptuous to declare his “preferences” to be the truth. Rather, he regarded his opinion about the matter to be simply one of many that would be taken account of during constitutional bargaining.

*Politics by Principle Not Interest* also develops a new pragmatic defense of universality and equality before the law. The basis of its generality argument is quite different than the one developed by Kant, Spencer, or Hobbes. Given a democratic polity, with its possible majoritarian cycles, generality can make everyone simultaneously better off by reducing the frequency and extent of majoritarian cycles.<sup>38</sup>

Buchanan also argues that acceptance of the generality principle in politics has implications about the proper line between politics and markets.

**The economists' normative argument in support of the superior efficiency of resource allocation generated in non-politicized markets is reinforced by the argument concerning the political efficacy of the generality norm.** [The Generality] norm, if operative as a constitutional constraint, ensures that the “all-encompassing interest,” reflected in **the maximal value of produce**, as evaluated by the preferences of participants and subject to the transfer proviso discussed later, will be chosen as preferred by any coalition in a position of collective authority. In effect, **the constitutionalization of generality in treatment indirectly amounts to the constitutionalization of market allocation in settings in which public goods and externalities are not present.** (*Politics by Principle Not Interest*, p.76.)

Buchanan, like Rawls, accepts the conclusions of welfare economics with respect to public goods and externalities, although not their

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6 <sup>38</sup>An extension of that argument implies that democracy is dependent on the rule of law and unlikely to survive without it (Congleton 1997).

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method of reaching those conclusions. Public goods and externalities are areas of life in which citizens might agree to task governments with responsibilities to intervene in markets, because they would expect to benefit from policies that addressed those problems.

However, if there are no externalities or public goods problems, then the commercial society is not to be interfered with, because doing so tends to violate the generality principle. To do so would generate more political instability than desirable and greater economic uncertainty than necessary, conclusions that are not so different from Spencer's criticism of the early regulatory and transfer programs of England.

#### **A Contractarian Illustration: Choosing Institutions from Behind the Veil Based on Distributive Concerns**

To illustrate the differences between Rawls' difference principle, Buchanan veil of uncertainty principle, utilitarianism and egalitarianism, consider the following choice setting. Suppose that there are three types of persons and four types of institutions. Suppose that one can characterize the net effect of an institution on a particular person with a single number, which can be regarded as either personal wealth, happiness, or lifetime utility. In both Rawls' and Buchanan's framework, the numbers would represent an individual's imagined satisfaction or happiness in the three possible types of positions in those societies (a, b, c). In the utilitarian case, the numbers would represent actual utilities realized by the three types of persons.

In either case, the overall effect of each institutions can be represented as a triple, with a single number representing the consequences of the institution on each of the three types of persons (a, b, c).

- A. (5, 5, 5)
- B. (8, 7, 6)
- C. (4, 10, 10)
- D. (5, 2, 20)

As a point of departure, assume that the status quo is the egalitarian one, society A, and that only the three other types of society are possible, B, C, and D. Now imagine a constitutional convention among forward looking rational persons interested in improving their society through major reforms. If each persons knew exactly own their payoff (utility or wealth) in the society that emerges from institutions, each would have a different ranking of the possible reforms.

Individual "a" prefers institution B to all the others, including the status quo, person "b" prefers institution C, and person "c" prefers institution D. They all agree that reform is a good idea, but disagree completely about the best course of reform, because each is affected differently by the reforms that are possible.

However, if they are behind a veil of ignorance or uncertainty, agreement is more likely. For example, Rawls argues that people are very risk averse and would favor the outcome with the largest minimum payoff (here, B). Others would argue that the typical person is risk neutral and might favor the outcome with the highest average (D) or if modestly risk averse and outcome like (C). As long as people have similar degrees

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of risk aversion, agreement is far more likely from behind a veil of ignorance or uncertainty than without such a “veil.”