

# Mill on Rights and General Utility

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## Abstract

Utilitarianism, formulated in a clear manner by Jeremy Bentham, has been confronted with numerous criticisms, especially those concerning its disregard for individual rights. In his work *Utilitarianism*, John Stuart Mill attempted to place the idea of rights within the framework of his own version of utilitarianism. However, critics have continued to claim that the theory cannot consider the rights of separate individuals because its aim is to promote the aggregate of the interests of all parties in a society. In this paper I would like to show that there is a possibility of accommodating rights in Mill's utilitarianism. To achieve this goal, I will first have a careful look at the ideas of justice, rights, and utility in *Utilitarianism*, and clarify their mutual relations. Secondly, I will discuss Hart's criticism, and argue that Mill indeed failed to justify individual rights by "general utility," insofar as he understood it as the aggregate of the interests or happiness of all. Thirdly and finally, I will explore the foundation of rights by taking up the views of Bentham, Mill and Raz. In particular, I will link Raz's idea of the common good with Mill's notion of "general utility," and argue that "general utility," properly understood as the common interest shared by all members of a society, is, in Mill's considered opinion, the real foundation of rights.

*Key Words:* J.S. Mill, Utilitarianism, General utility, Individual rights, Interest

## Introduction

Since utilitarianism was clearly formulated by Jeremy Bentham in the 18<sup>th</sup> century, there have been a number of criticisms against it. Notable among them is the kind of critique which is based on our concern for individual rights. Such a critique has made it obvious that there is a conflict between utilitarianism and a theory of rights. This is the conflict which still receives a great deal of attention from those who are working in the field of moral and political philosophy. I would like to focus on the nature of the conflict by taking a close look at the utilitarianism of John Stuart Mill.

Mill tried to provide a sophisticated version of Bentham's utilitarianism, and he discussed the idea of rights in his work *Utilitarianism*. The fifth chapter of *Utilitarianism* is where Mill examines the concept of justice, and at times he appears to claim that individuals have particular basic rights, which

are to be protected by the rules of justice. This, together with his defense of individual liberty in *On Liberty*, renders it plausible to attribute a foundational role to his concept of rights. On the other hand, however, Mill explicitly claims that the principle of utility is the first principle, which implies that it regulates all secondary principles including those about rights. Moreover, it has been objected by critics that since utilitarianism in general is designed to promote the total amount of happiness in a given society, it cannot take seriously each individual's happiness. They have often pointed out that the principle of utility is in conflict with the theory which respects the rights of every individual member of a society. So there is a question which remains unsolved: What is the place of rights in Mill's utilitarianism, and how are the individual rights linked to the principle of utility which he takes to be the first principle?

The aim of this paper is to address this question, and clarify how the idea of individual rights figures in Mill's version of utilitarianism, and consider their relationship to the principle of utility. To achieve this goal, I will first examine Mill's account of justice, rights, and utility which is presented in the fifth chapter of *Utilitarianism*. Secondly, I will try to see if there is a possibility of accommodating individual rights within the framework of Mill's utilitarianism. In undertaking this task, I will first look at H. L. A. Hart's critique of Mill's utilitarianism. In *Utilitarianism* Mill insists that the introduction of individual rights is justified ultimately by the principle of utility, or their contribution to general utility in a society at large. But Hart points out that "general utility" cannot serve as the foundation of the rights of every individual since, and insofar as, it is understood merely from the viewpoint of the aggregate of all interests. I take Hart's criticism to be a valid one, and argue that to be able to justify individual rights by the notion of general utility, Mill would have to accept a non-aggregative, distributive interpretation of it. Then I will move on to explore the foundation of rights. I will begin by taking up Bentham's view of rights, and address the question of whether rights can ever be justified by the particular interests of any individual right-holder, as opposed to the aggregate of individual interests. My answer to this question is in the negative. Finally, I will return to Mill, and argue that he can accommodate individual rights within his utilitarianism if he understands "general utility" as a common interest or a socially shared interest. I will obtain a clue from Raz's view of rights and the common good, and show that Mill's notion of "general utility," which Hart interprets in the aggregative sense, can actually be interpreted in a distributive fashion. Thus I will defend the claim that individual rights are derived from "general utility" understood in the sense of the common good or a socially shared interest, rather than the interests of particular individuals or the aggregate of all individual interests.

## 1. Mill's Account of Justice, Rights, and Utility

I now examine Mill's account of justice, rights, and utility which is found in the fifth chapter of *Utilitarianism*, with a view to clarifying the place of rights in relation to justice on the one hand, and utility on the other.

### 1.1 Justice and Rights

First, Mill clarifies the ordinary notions of justice and injustice. He lists the actions or manners which people label as unjust, such as the deprivation of what belongs to a person by law, the failure of obtaining what he deserves, breaking a promise, and dealing with persons unfairly. Secondly, he traces the origin of the word "justice" by studying its etymological roots, and finds that the word "points to an origin connected either with positive law, or with that which was in most cases the primitive form of law" (5.12)<sup>1</sup>. Then he points out that the idea of sanction comes into whatever is regarded as wrong. "We do not call anything wrong," he says, "unless we mean to imply that a person ought to be punished in some way or other for doing it" (5.14). Mill thinks that this sanction theory is what distinguishes morality in general from simple expediency, not justice from the whole domain of morality. He continues his examination and moves on to a discussion of types of obligation, and states that there are two types, viz., perfect and imperfect obligation:

[Duties of imperfect obligation] being those in which, though the act is obligatory, the particular occasions of performing it are left to our choice.... In the more precise language of philosophic jurists, duties of perfect obligation are those duties in virtue of which a correlative *right* resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be found that this distinction exactly coincides with that which exists between justice and the other obligations of morality. (5.15)

While the perfect obligation is something in virtue of which a person or persons hold a correlative right, the imperfect one is the obligation to which no right corresponds. He illustrates charity or beneficence as the duty of imperfect obligation, which is considered as a species of moral obligation, though neither of them is expected to be directed toward a definite person, or at any fixed time. Thus it seems likely that Mill is aware that in our general understanding of moral obligation, we do not lump all moral actions together, but distinguish between strictly obligatory actions and charitable or benevolent ones.

## 1.2 Rights, the Obligation of Society, the Interest of Security, and Secondary Principles

When Mill examines the notion of those rights protected by the rules of justice, or that of the duties of perfect obligation, the connection between utility and rights becomes clear. In Mill's words, a person's right means the following:

When we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by a force of law, or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say he has a right. (5.24)

For Mill, when a person has a sufficient claim "to have something guaranteed to him by society," it belongs to the person as a right. "To have a right," says Mill, "is to have something which society ought to defend me in the possession of" (5.25). Someone may still ask why society ought to protect the thing possessed by that person. Mill replies: "If the objector goes on to ask why it ought, I can give him no other reason than general utility" (Ibid.).

Besides giving an account of rights in terms of the obligation of society, and ultimately, of general utility, Mill presents another view that to protect a right is to protect a certain type of interest. Given this, he claims that the protection of that particular interest by society is the essential step which we need to take to achieve the utilitarian end. An important question arises from this: what sort of interest is to be protected when a person is said to have a right? Mill's response is found in the following passage:

The interest involved is that of security, to every one's feelings the most vital of all interests. Nearly all other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without. (Ibid.)

Mill attaches enormous significance to the interest of security. It is "the most vital of all interests," as he says above. It is also the essential part of the happiness of everyone who lives in a society. So this interest of security is formulated as the "right" belonging to everyone. Mill repeatedly stresses the importance of the absence of mutual harm, of no one being harmed by others. He claims that "in inculcating on each other the duty of positive beneficence they have an unmistakable interest, but far

less in degree: a person may possibly not need the benefits of others; but he always needs that they should not do him hurt” (5.33). He may appear to present a version of a rights-based theory here, but he does not actually treat the right of security as the ultimate basis of justification. In Mill’s view, the rules of justice protect each person’s interest of security as a right, and those rules cannot be justified on their own. Nor can the interest of the security of each person be justified on its own, individual basis. The rules of justice and the interest of security, Mill holds, must be justified by reference to the principle of utility.

To see this clearly, we should look at Mill’s view of the role of “secondary principles.” He holds that like any other moral theory, utilitarianism should adopt “secondary principles” in order to achieve its final aim. The final aim of utilitarianism is the greatest happiness of the greatest number, but in Mill’s view, we normally decide what actions we ought to take, by referring to a secondary principle available to us rather than the principle of utility. It is only when secondary principles mutually conflict that we need to refer to the principle of utility in order to decide which secondary principle we should adopt. Here are Mill’s own words:

If utility is the ultimate source of moral obligations, utility may be invoked to decide between them [i.e., unequivocal cases of conflicting obligations] when their demands are incompatible. ... We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. (2.25)

This passage clearly shows that when secondary principles mutually conflict, it is necessary to consider the principle of utility to settle that conflict. As Roger Crisp indicates<sup>2)</sup>, the duties of perfect and imperfect obligation are placed in the domain of secondary principles. Since one’s rights correspond to another’s duties of perfect obligation, the idea of rights is also seen by Mill as belonging to the domain of secondary principles. It follows from this that even if a rule of justice, i.e., a secondary principle, firmly protects each person’s rights, those rights can be overridden by other rights, i.e. those rights which are conferred by another secondary principle. The rights can be overridden if the latter secondary principle has greater utility than the former.

## **2. General Utility and Individual Rights: Mill’s Ambiguity and Hart’s Criticism**

We have seen how Mill introduces the idea of rights into his account of justice, and how he links justice and rights to utility. He claims that the interest of security, protected in the name of a right, is the essential part of human well-being, or what he calls “the most vital of all interests” (5.25). And as

we have seen, Mill holds that the ultimate reason why such interests or rights ought to be protected stems from the principle of utility itself, which aims at the maximization of the interests or happiness of all. However, opponents of utilitarianism have argued that Mill leaves the process of this justification obscure, and claimed that the principle of utility cannot be accepted as the foundation of individual rights. So defenders of utilitarianism come to be put in a position to choose between two alternatives: either giving up some individuals' rights for the sake of an increase of the society's overall happiness, or giving up utilitarianism in order to protect individual rights independently of the principle of utility.

We may want to extricate ourselves from this dilemma, but we will soon face an ambiguity. On the one hand, Mill clearly maintains that rights are based ultimately on the principle of utility. In discussing the idea of rights, Mill never separates rights from utility. Here is a well-known passage from *On Liberty*:

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. 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<sup>3)</sup>.

Mill suggests here that individual rights, such as the right to freedom of expression, are to be justified by reference to "utility," though it should be understood "in the largest sense." On the other hand, this utility is "grounded on the permanent interests of man," so it is not at all clear whether Mill really wants to derive those rights from the kind of utility which is perfectly independent of any individual interest or right. He may eventually be bound to derive them from the kind of utility which is based on some sort of prior rights. There is an ambiguity here.

We need to resolve it by giving further consideration on how Mill might derive individual rights and reconcile them with the principle of utility. It is important to note that there is an unbridgeable gap between the principle of utility and individual rights, as long as the principle is taken to be the one which considers happiness *only* from the viewpoint of the aggregative amount of happiness. In this section, I want to reconsider Mill's strategy of deriving individual rights from the principle of utility by examining Hart's criticism.

Despite Mill's effort to show that justice and rights are ultimately justified by the principle of utility, there have been numerous criticisms raised by scholars to show that general utility and rights are not reconcilable. Here I want to look into the particular criticism made by H.L.A. Hart. Hart claims that even though Mill has it in mind that the vital interest of security, formulated as a right, should be

respected by society for every individual, he does not succeed in proving that the idea of general utility is able to justify any individual rights. Hart says:

Mill therefore recognizes an equal distribution as vital where these fundamental rights are concerned: *all* are to have them respected. Yet he nowhere demonstrates or even attempts to demonstrate the doctrine that general utility, as Bentham conceived it, is the basis of such individual rights, since he does not show that general utility treated as an aggregate would be maximized by an equal distribution to all individuals in society of these fundamental rights<sup>4</sup>).

Mill considers the vital interest of security to be protected as a right, but he nowhere grounds or tries to ground individual rights on what he calls “general utility.” For, as Hart says, “general utility” (as Bentham conceived) means an aggregate of the happiness of all who live in a society, yet Mill does not show that the aggregate would be maximized by an equal distribution to all individuals of basic rights to security. Hart continues to say that “the difficulty for Mill arises from the possibility that a society might protect the vast majority of its members by rules which made exceptions for a small oppressed minority<sup>5</sup>.” This is the typical criticism found in the secondary literature that discusses the relation between utility and rights. Critics claim that since the final aim of utilitarianism is to reach the largest amount of happiness in society as a whole, it justifies sacrificing some of individual happiness to maximize the total amount of happiness. To drive home the point, they often use an instance of slavery: if having one-tenth of all members in a society as slaves is most likely to promote the greatest happiness in the entire society, it follows that utilitarianism must support it.

Hart also takes into account Mill’s view that the interests of security protected by basic rights are what constitutes a distinct core of the happiness of all human beings, and that those interests hold a priority over other interests. On this view, the maximization of the distinct core of the happiness of all always serves to protect those interests of security. However, Hart makes the following critical comment on this:

But though the priority thus accorded to the utility of the basic rights is perfectly intelligible, Mill leaves obscure the sense in which ‘general utility’ can be said to be their foundation. For if the ‘maximization’ of this distinct segment of utility consists only in respecting the basic rights in the case of every individual, then respecting the rights of any one individual necessarily increases general utility because it *is* such an increase and the only thing that could count as an increase<sup>6</sup>).

The point of Hart’s criticism is that though Mill evokes the view that “general utility” is the

foundation of the basic rights of security, he makes its sense obscure and vacuous when he suggests that the protection of the basic rights “increases” general utility. General utility is bound to increase if it is understood as something constituted by the protection of the basic rights of all.

So far, Hart’s criticism is valid and decisive. To protect individual rights, Mill has to give up the idea of general utility as an aggregate of the happiness of all persons concerned. Also, if Mill continues to accept the priority thesis about the vital interests of security, as I think he should, then he must give up using the vacuous idea of general utility. However, there still remains a question of whether Mill’s notion of “general good” can be properly understood as Hart suggests, i.e., in the aggregative way Bentham understood the principle of utility<sup>7</sup>). It is true that Mill is not entirely clear about what he means when he speaks of “general utility.” But as I will try to show later, there is some textual evidence which supports the view that Mill understood it in the distributive sense of a common interest. It is sufficient for our purposes here to note that we cannot accommodate the rights of every individual within Mill’s utilitarianism so long as we understand “general utility” in the aggregate sense of the interests of all.

### **3. The Foundation of Rights: Bentham, Raz, and Mill**

I have considered Hart’s incisive criticism, and argued for the abandonment of the particular notion of general utility, one taken in the sense of the aggregate of the happiness of all. Such an abandonment is required for the protection of the basic individual rights of all. But we should also see that there is good reason why Mill wanted to bring in the notions relating to society, such as the obligation of society and general utility, in trying to make sense of individual rights. As I will explain later, he brought in those social considerations, and provided what is important for our understanding of the foundation of rights. But to consider the foundation of rights, or the justificatory reason for them, I will begin by taking a look at the views of other philosophers as well as Mill, and argue towards the conclusion that the real point of Mill’s talk about “general utility” in his discussion of rights is to show that their foundation lies neither in the aggregate of interests nor in mere individual interests, but in the maintenance and promotion of the common interests shared by those people who live in one society.

Let me begin by asking what it means to have a right. There have been a number of attempts made by scholars to identify the concept of rights, and there are probably as many definitions of them as those attempts. However, they all seem to share in common the central idea that rights respect individuals. What theorists of rights emphasize is that rights are created to respect the claims of individuals, in contrast to those of a collection of people called a “society” or “community.” Individuals



and the community to which they belong are often put in opposition. Joseph Raz gives the following definition of having a right when he examines rights-based theories.

‘x has a right’ means that, other things being equal, an aspect of x’s well-being (his interest) is a sufficient reason for holding some other person (s) to be under a duty<sup>8)</sup>.

This view of rights is familiar to us. When we say, “X has a right,” the right has a vital relation to her interest or well-being<sup>9)</sup>. When someone’s personal interest needs to be protected, we are likely to use the idea of rights. If rights are the device by which we can protect individual interests, they cannot be founded, as we have seen in the previous section, on the mere aggregate of individual interests. But if rights cannot be derived from the principle of aggregate utility, would it be possible for us to affirm the opposite view that they are derivable from any of the separate individual interests? The answer seems “no.” But to see that this is the correct answer, I would like to discuss at some length why we cannot derive rights from the mere interests of any particular individual.

### 3.1 Bentham on Mere Individual Interests and a Common Standard

The significance of interest or well-being looms large in Bentham’s utilitarianism, and I now want to examine his critique of natural rights. The purpose of the following discussion, however, is not to address the question of whether his critique is a fair assessment of natural rights theories. Perhaps, it is not a fair or good one<sup>10)</sup>. Nor is it my intention to endorse his view that there are no such things as natural rights. I rather think that natural or moral rights can perform their function in protecting our interest (as well as our freedom and dignity). What I intend to do below is simply to draw attention to what I take to be Bentham’s two valid points about rights. First, the existence of a right presupposes that there is a common or objective standard by which we can judge the claims of particular individuals. And secondly, rights cannot be justified by reference to the interests of any particular individual. In my view, these two points are shared by Mill. Since Bentham forcefully establishes them, it is convenient to discuss his view here.

As is well known, Bentham holds that all rights are derived from positive laws. There are two main aspects of his critique of the idea of natural rights. First, Bentham thinks that those rights which are not based on laws introduce what Hart calls “criterionlessness<sup>11)</sup>.” And secondly, he claims that natural rights can override positive laws and lead a society to a state of anarchy.

As to the first point, Bentham says that if people demand what they regard as their natural rights, such rights allow them to arbitrarily justify any of the personal preferences and desires that they may happen to have. Here are his own words:

If natural rights came not from law, from any sort of law—whence did it come? I will tell you- It is the spawn of despotism, begot upon incapacity.... When a man is bent upon having things his own way and give [s] no reason for it, he says: I have a right to have them so. When a man has a political caprice to gratify, and is determined to gratify it, if possible, at any price, when he feels an ardent desire to see it gratified but can give no reason why it should be gratified, ... he sets up a cry of rights<sup>12)</sup>.

For Bentham, natural rights are, in reality, no more than a disguised “caprice” or “ardent desire,” so there cannot be a common or objective criterion for judging what the term “natural rights” exactly means.

When he comes to discuss the second aspect, Bentham claims that once natural rights have been taken to be prior to any legal constraints or the powers of government, they come to have absolute power, and the legal system ceases its influence over a society. Hart’s comments are relevant here:

Bentham’s second criticism is that the use of the notion of natural non-legal rights in political controversy and in criticism of established laws and social institutions must either be impossible to reconcile with the exercise of any powers of government, and so dangerously anarchical, or it will be totally empty or nugatory. It will be the former if the natural rights which men claim are absolute in form allowing no exceptions or compromise with other values<sup>13)</sup>.

Bentham is committed to the view that there are no such things as rights, prior to a government or the laws it establishes, while he also believes that rights cannot function in a society without its institutions.

So far I have discussed Bentham’s two concerns about natural rights. I believe that his critique clearly shows that there are difficulties with trying to base individual rights on the mere interests of individuals. What Bentham’s account shows is that if we try to establish rights merely on individual interests, we can turn them into nothing more than people’s arbitrary desires; and that setting such rights as something absolute exceeds the powers of government and social institutions which are supposed to protect them. For Bentham, positive laws provide a common, objective standard for judging what sorts of rights people have in their pursuit of happiness. We do not need to endorse Bentham’s view that there are no rights prior to positive laws, since there are various uses of the concept of a right. It is legitimate to speak of (natural, human, or moral) rights in the circumstances where no positive law has conferred those rights yet. But we may still affirm with Bentham that a

judgment about the justification of rights requires the existence of a pre-existing common standard.

### 3.2 Mill and Raz on Rights and Common Interests

Let us now turn to Mill's account of rights, and see if he appeals to any common standard in discussing rights. Unlike Bentham, Mill acknowledges in *Utilitarianism* that there are such things as moral rights. The term "moral right" appears in the fifth chapter, in the context where Mill introduces the distinction between perfect and imperfect obligation.

... duties of perfect obligation are those duties in virtue of which a correlative right resides in some person or persons.... Justice implies something which is not only right to do, and wrong to do, but which some individual person can claim from us as his moral right. (5.15)

Mill here links justice to a person's moral right. Justice is a kind of common standard which implies what some individual person "can claim from us" as "his moral right." We have already seen Mill's argument that the interest protected by justice as a right, that of security, is so important that no one can survive, or no society can be sustained, without it. But since his main aim in the chapter is to show that justice can be explained by the principle of utility, Mill goes on to add: "To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility" (5.25).

Now we must consider what Mill exactly means by "general utility" in order to find a way of accommodating individual rights within his utilitarianism. Since Mill acknowledges that each individual has a need to enjoy the crucial interest of security, he cannot mean by "general utility" anything that allows the aggregative utility of all to override each individual's basic interest of security. This is also clear from our discussion of Hart's criticism. So Mill must have intended to claim that, given the standpoint common to all members of a society, every individual must be granted the right to security, or the right to be free from the violence of others. He does not treat a person's moral right as if it had absolute value. For Mill, the individual moral right is not an abstract idea which is independent of the principle of utility, though it may have been treated by some theorists of natural rights as such. If Mill is aware that rights cannot be derived from individual interests alone, nor from the mere aggregative interests of individuals belonging to a society, what does he exactly mean when he says that a person has a moral right to X (or society ought to defend her in the possession of X) for the ultimate reason of its "general utility"?

To determine what he means, let us look into Mill's account of the sentiment of justice, which is also found in the fifth chapter. At the beginning, he states that there are two essential elements in the

feeling of justice; “the desire to punish a person who has done harm, and the knowledge or belief that there is some definite individual or individuals to whom harm has been done” (5.18). Then, Mill claims that though there is nothing moral in the very desire to punish or retaliate the person who does harm, the desire gets moralized when it is subordinated to social sympathies. What happens, in his view, is the following.

... when moralized by the social feeling, it [the natural feeling of retaliation] only acts in the directions comfortable to the general good: just persons resenting a hurt to society, though not otherwise a hurt to themselves, and not resenting a hurt to themselves, however painful, unless it be of the kind which society has a common interest with them in the repression of. (5.21)

Here Mill clearly establishes a link between justice and the common interest of a society. Mill holds that if the sentiment of justice is to function properly as a moral sentiment, the natural desire or feeling of retaliation has to be transformed into a moral one. This is done by socializing the natural feeling, or by making each particular person feel that what is harmful to society is also harmful to herself. Once the transformation has taken place, the moral sentiment of justice begins to act only for the general good. In the passage quoted above, the term “general utility” is used to imply “common interest” of a society. Also, since Mill describes the feeling that affects the natural sentiment of retaliation as *social*, the general good toward which the moralized sentiment is directed is the common interest in the sense of the interest shared by the members of a society, and certainly not the aggregate of the interest of all.

Moreover, we should note that when Mill discusses the interest of security which is to be protected as a right, he says that the rules which protect that interest chiefly determine the whole of the social feelings of mankind:

They [the moral rules which forbid mankind to hurt one another] have also the peculiarity, that they are the main element in determining the whole of the social feelings of mankind.... If obedience to them were not the rule, and disobedience the exception, every one would see in every one else a probable enemy, against whom he must be perpetually guarding himself. (5.33)

As he says above, everyone would be placed in perpetual conflict with everyone else, unless there were the rules which protect the interest of security, and this implies that the interest in question is essential to *every single member* of a society, rather than any particular part of it. So, when he uses general utility as the foundation of individual rights, Mill has in mind the interest shared by all members of that

society. Neither the mere interests of particular individuals nor the aggregate of the interests of all is the foundation of rights. Mill thinks that the treatment of the interest of security as a right is justified because the interest is highly valued for the sustenance and promotion of a social relationship by all members of the society.

To consider the significance of the sense of common interest for individual rights, I would like to draw attention to Raz's account of rights once again, and see what he says about "the common or general good." I believe it nicely captures what Mill appears to accept:

The protection of many of the most cherished civil and political rights in liberal democracies is justified by the fact that they serve the common or general good. Their importance to the common good, rather than their contribution to the well-being of the right-holder, justifies the high regard in which such rights are held and the fact that their defence may involve a considerable cost to the welfare of many people. When people are called upon to make substantial sacrifices in the name of one of the fundamental civil and political rights of an individual, this is not because in some matters the interest of the individual or the respect due to the individual prevails over the interest of the collectivity or of the majority. It is because by protecting the right of that individual one protects the common good and is thus serving the interest of the majority<sup>14</sup>.

Here Raz clearly claims that the protection of individual rights is justified by the fact that they serve "the common or general good," i.e., the good or interest which may be enjoyed by any member of a given community. Raz describes the term "the common good" that he uses in his discussion as "general interest" as well, and differentiates it from the aggregate interest of individuals. In his words, the term is meant to be "those goods which, in a certain community, serve the interest of people generally in a conflict-free, non-exclusive, and non-excludable way<sup>15</sup>." What justifies a particular right is neither the mere interest of a particular person nor its priority over the interest of the collectivity, but its contribution to the common good.

Raz's point is that the protection of rights should serve socially shared interests or goods, or those goods which contribute to any individual member of the community. This sheds light on the role of general utility which Mill has in mind. For Mill as well as for Raz, rights are justified by their contribution to the common good, or what Mill calls "general utility."

Mill was aware of the danger of having rights derived from the mere individual interest. Indeed, when he claimed that everyone's interest of security should be protected by the rules of justice, he supported it by stating that the protection of that interest as a right contributes to "general utility," or

the common interest of any member of the relevant society. We should also recall Bentham's criticism of natural rights, which stressed the existence of a common standard and the need for a stable society rather than anarchy. Bentham even suggests that if we treat individual rights as possessing the greatest value, we can break down the whole social order and give the greatest arbitrary power to those rights, with the paradoxical result that we are led to be powerless. Mill attempts to avoid the difficulties Bentham raises when he introduces rights and justifies them by "general utility." If the protection of rights does not rest on a socially shared interest, any individual preference may be put forward as a right. But any right or claim of that kind would have little meaning. In order for a basic interest to be protected as a right, there has to be a common understanding that the interest in question is essential not only for a single person, but for all individuals of a given society. It is this common understanding that makes it possible for us to construct the legal system and relevant social institutions for the protection of individual rights. And it is at this level of justification that Mill's "general utility" plays a critical role.

The notion of general utility is commonly understood in relation to the principle of utility, the principle which is designed to promote the greatest happiness of all, i.e., the aggregate of all individual interests. As Hart's criticism shows, this aggregate interpretation is what we must reject if we are to accommodate the rights of every individual within utilitarianism. Since I take his criticism to be valid, I also grant that we should come up with a non-aggregative, distributive interpretation of "general utility." It is now clear that there is such an interpretation, and that Mill accepts it at least in some parts of the text of *Utilitarianism*. We should also note that when Mill refers to the greatest happiness principle, he takes it to imply not only that the principle aims at the greatest amount of happiness, but that the happiness of every single member of society should be included in it. Mill claims that because the principle of utility as such upholds the ideal of equality when it comes to the promotion of the overall happiness, it considers every single person's happiness without treating any of the members unfairly<sup>16</sup>). This also supports the distributive interpretation. Mill introduces the idea of general utility into his discussion of rights in order to make it work as the foundation of individual rights. Mill expects the distributive sense of "general utility" to function as the backbone of individual rights.

## Conclusion

Critics often insist that utilitarianism, which lumps together discrete portions of individual happiness to produce the aggregative happiness of a society, is the very theory that disregards individuals and their rights. However, I have argued in this paper that grounding rights on individual interests alone can lead to a disastrous social consequence, and there is a need to use the idea of

general utility to cope with it. Even when the word “rights” comes together with such adjectives as “fundamental” or “basic,” there has to be an understanding shared by the society that those rights are created for the common interests of its members. The notion of general utility, understood in the sense of the shared interests of the members of that society, is the true foundation upon which individual rights can be established. This is not only a defensible view of rights, but the one which Mill approves of.

At the same time, however, we should note that in reaching this conclusion, we have accepted the validity of the criticism, made by Hart among others, that the aggregate of individual interests alone cannot guarantee the protection of the rights of all individuals. In fact, this has led us to explore the foundation of rights, and we have reached the idea of general utility as the common interests or goods for the whole society.

This still leaves us with a larger question. In one famous formulation of the principle of utility which Mill accepts, we ought to aim at the greatest happiness of the greatest number<sup>17)</sup>. This final aim suggests that we ought to act for the maximization of the aggregate of happiness, as well as for the equal distribution of the core of happiness (which I have made explicit in this paper). So if we wish to retain this general aim, we need to show how we can protect the individual rights of all while also achieving the greatest possible amount of happiness. In short, we need to clarify the relationship between the protection of individual rights (or the equal distribution of the basic core of happiness) and the aggregation of happiness.

It goes beyond the scope of this paper to discuss this problem. To accommodate individual rights fully within the framework of the famous formulation requires further discussion. But our discussion of general utility seems to provide a clue. For it is now clear that we should incorporate the priority thesis about basic interests, and transform the principle of utility into that of a hierarchy of interests. The theory which would emerge might look like a theory of rights in stressing the equal protection of the vital interests of security, but it would differ from a simple theory of rights in allowing for an adjustment of different interests and even for the greatest happiness. Whatever shape it may take, I hope to have shown that there is a way in which we can make individual rights consistent with, and dependent on, what Mill calls “general utility.” When individual rights need to be realized, they must be justified by reference to the shared interests of our society, or the shared understanding of what is good or valuable for us. This is what Mill has in mind when he speaks of “general utility” as the foundation of rights<sup>18)</sup>.

#### Notes

- 1) In discussing Mill's *Utilitarianism*, I use J. S. Mill, *Utilitarianism*, edited by Roger Crisp (New York:

Oxford University Press, 1998). References to the work are indicated by chapter and paragraph numbers.

Thus, (5.12) refers to the twelfth paragraph of the fifth chapter.

- 2) Crisp 1997, p. 125.
- 3) Mill 1989. Collini (ed.), p. 16.
- 4) Hart 1983, pp. 189–190.
- 5) Ibid, p. 190.
- 6) Ibid, p. 191.
- 7) Recent revisionist of Bentham, such as P.J.Kelly and Philip Schofield, have discussed the possibility of interpreting his principle of utility from the distributive point. Also, J.H.Burns argues that Bentham dropped “of the greatest number” from the well-known phrase “the greatest happiness of the greatest number” and finally adopted the expression “the greatest happiness principle,” because “the greatest number” can suggest an acceptance of the idea of sacrificing the happiness of a minority. In this paper, though, I consider Bentham’s principle in the standard interpretation, i.e., in the aggregate sense. For revisionist accounts, see Kelly 1990, Schofield 2009, and Burns 2005.
- 8) Raz 1984, p. 183.
- 9) After giving this definition, Raz raises a question about rights-based theories. See his arguments in “Right-based Moralities.”
- 10) In spite of Bentham’s association of natural rights with caprice and anarchy, John Locke, for one, is a natural rights theorist who held that we should have impartial judges (or courts) and positive laws precisely because the state of nature allows for partial judgments and is inherently unstable. Prof. Kiyoshi Shimokawa kindly drew my attention to the “Second Treatise,” sections 124 and 125.
- 11) Hart 1982, p. 82.
- 12) Bentham 1952. Stark (ed.), p. 335.
- 13) Hart 1983, p. 186.
- 14) Raz 1995, pp. 52–53.
- 15) Ibid, p. 52.
- 16) See 5.36.
- 17) Mill explains the utilitarian standard in terms of “the greatest amount of happiness altogether” (2.9), and the term “the greatest happiness principle” is used repeatedly in *Utilitarianism*. See 1.4, 2.10, and 3.11.
- 18) I would like to thank Prof. Kiyoshi Shimokawa for reading earlier versions of this paper, and making a number of valuable comments. I am also grateful to an anonymous referee for offering helpful suggestions.

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## 論文要旨

### ミル功利主義における個人の権利と一般的功利 金 彩瑛

社会全体の幸福の最大化を目指す理論として一般に理解される功利主義は、諸個人の権利を十分に考慮しないという批判にしばしば晒されてきた。ミルは著作『功利主義』において、権利が功利性の原理により導き出されることを示す試みを行っているが、批判者は、功利性の原理が社会全体の利益（幸福）の総和という観点を採用している以上、そこにおいて諸個人の利益、延いては権利を尊重することは出来ないと指摘する。この論文の目的は、個人の権利の土台が一般的功利にあることを示すことにより、その権利を功利主義の中に取り込むことが出来ることを明らかにすることである。そのために、まず権利概念がミルの功利主義においてどのように位置づけられているかを検討し、次にハートやベンサム、ラズの議論の考察を通じて、諸個人の権利が利益の総和でも個人の利益でもなく、社会の全成員によって共有される共通利益としての一般的功利により基礎づけられることを示すことを試みる。

**キーワード** 【J.S. ミル、功利主義、一般的功利、個人の権利、利益】