

Herbert Spencer (1820–1903) is typically, though quite wrongly, considered a coarse social Darwinist. For Bowler, it is no less mistaken to view Spencer as owing everything to Lamarck as it is to see him as owing very little to Lamarck.[8] Bowler's assessment is supported by Spencer's claims in two late essays from 1886 and 1893 entitled "The Factors of Organic Evolution" and "The Inadequacy of 'Natural Selection.'"[9] The earlier essay alleges that evolution by natural selection declines in significance compared to use–inheritance as human mental and moral capacities develop. The latter gradually replaces the former as the mechanism of evolutionary change. Actions producing pleasure or pain tend to cause mental associations between types of actions and pleasures or pains. Sentiments of approval and disapproval also complement these associations. We tend naturally to approve pleasure–producing actions and disapprove pain–producing ones. Because of use–inheritance, these feelings of approval and disapproval intensify into deep–seated moral instincts of approval and disapproval, which gradually become refined moral intuitions. To what extent Spencer's sociology was functionalist has also been disputed. According to James G. Kennedy, Spencer created functionalism.[10] It would seem that regarding Spencer as a functionalist is another way of viewing him as, in contemporary normative terminology, a consequentialist. That is, social evolution favors social institutions and normative practices that promote human solidarity, happiness and flourishing. Spencer's reputation in sociology has faded. Social theorists remember him though most probably remember little about him though this may be changing somewhat. Moral philosophers, for their part, have mostly forgotten him even though 19th–century classical utilitarians like Mill and Henry Sidgwick, Idealists like T. H. Green and J. S. Mackenzie, and new liberals like D. G. Ritchie discussed him at considerable length though mostly critically. And 20th–century ideal utilitarians like Moore and Hastings Rashdall and Oxford intuitionists like W. D. Ross also felt compelled to engage him. Spencer was very much part of their intellectual context. He oriented their thinking not insignificantly. We cannot properly interpret them unless we take Spencer more seriously than we do.

### 3. Spencer's "Liberal" Utilitarianism

Spencer was a sociologist in part. As Lyons argues with great effect, by imposing liberal juridical constraints on the pursuit of general utility, Mill introduces as a second normative criterion with independent "moral force" compromising his utilitarianism. He risks embracing value pluralism if not abandoning utilitarianism altogether. And if Mill's liberal version of utilitarianism is just value pluralism in disguise, then he still faces the further dilemma of how to arbitrate conflicts between utility and rights. If utility trumps rights only when enough of it is at stake, we must still ask how much enough is enough? And any systematic answer we might give simply injects another normative criterion into the problematic logic of our liberal utilitarian stew since we have now introduced a third higher criterion that legislates conflicts between the moral force of the principle of utility and the moral force of rights.[21] If these dilemmas hold for Mill's utilitarianism, then the implications are both better and worse for Spencer. Though for Mill, utility always trumps rights when enough of the former is in jeopardy, with Spencer, fundamental rights always trump utility no matter how much of the latter is imperiled. Hence, Spencer does not need to introduce surreptitiously supplemental criteria for adjudicating conflicts between utility and rights because rights are indefeasible, never giving way to the demands of utility or disutility no matter how immediate and no matter how promising or how catastrophic. In short, for Spencer, basic moral rights always carry the greater, practical (if not formal)

moral force. Liberalism always supersedes utilitarianism in practice no matter how insistently Spencer feigns loyalty to the latter. Naturally, one can salvage this kind of utilitarianism's authenticity by implausibly contending that indefeasible moral rights always (meaning literally without exception) work out for the utilitarian best over both the short and long-terms. As Wayne Sumner correctly suggests, "absolute rights are not an impossible output for a consequentialist methodology" (Sumner, 1987: 211). Whereas Mill equated fundamental justice with his liberty principle, Spencer equated justice with equal liberty, which holds that the "liberty of each, limited by the like liberty of all, is the rule in conformity with which society must be organized" (Spencer, 1970: 79). Moreover, for Spencer as for Mill, liberty was sacrosanct, insuring that his utilitarianism was equally a bona fide form of liberalism. For both, respect for liberty also just happened to work out for the utilitarian best all things considered. Indefeasible liberty, properly formulated, and utility were therefore fully compossible. Now in Spencer's case, especially by *The Principles of Ethics* (1879–93), this compossibility rested on a complex evolutionary moral psychology combining associationism, Lamarckian use–inheritance, intuitionism and utility. Pleasure–producing activity has tended to generate biologically inheritable associations between certain types of actions, pleasurable feelings and feelings of approval. Gradually, utilitarianism becomes intuitive.[11] And wherever utilitarian intuitions thrive, societies tend to be more vibrant as well as stable. Social evolution favors cultures that internalize utilitarian maxims intuitively. Conduct "restrained within the required limits [stipulated by the principle of equal freedom], calling out no antagonistic passions, favors harmonious cooperation, profits the group, and, by implications, profits the average of individuals." Or more parsimoniously: "Evolution is definable as a change from an incoherent homogeneity to a coherent heterogeneity, accompanying the dissipation of motion and integration of matter." (Spencer, 1915: 291). For Spencer, then, all organic as well as inorganic phenomena were evolving, becoming evermore integrated and heterogeneous. As Spencer was to emphasize years later, this holds human social evolution no less: Now, we propose in the first place to show, that this law of organic progress is the law of all progress. Whether it be in the development of the Earth, in the development of Life upon its surface, in the development of Society, of Government, of Manufactures, of Commerce, of Language, Literature, Science, Art, this same evolution of the simple into the complex, through successive differentiations, holds throughout. From the earliest traceable cosmical changes down to the latest results of civilization, we shall find that transformation of the homogeneous into the heterogeneous, is that in which progress essentially consists. (Spencer, vol. I, 1901: 10)[2] In sum, societies were not only becoming increasingly complex, heterogeneous and cohesive. They were becoming additionally interdependent and their components, including their human members, more and more specialized and individuated.

2. *The Principles of Sociology* *The Principles of Sociology* has often been considered seminal in the development of modern sociology both for its method and for much of its content. Replete with endless examples from the distant past, recent past and present, it speculatively describes and explains the entire arch of human social evolution.[3] Part V, "Political Institutions," is especially relevant for understanding Spencer's ethics.

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1. First Principles

Spencer's output was vast, covering several other disciplines besides philosophy and making it difficult to make sense of his philosophizing separate from his non-philosophical writing. And there is so much Spencer to make sense of, namely many thousand printed pages.[1] Besides ethics and political philosophy, Spencer wrote at length about psychology, biology and, especially, about sociology. Certain themes, not unexpectedly, run through much of this material. Coming to terms with Spencer and measuring his legacy requires expertise in all of these fields, which no one today has. Notwithstanding this caveat, it seems fair to say that next to ethics and political philosophy, Spencer's lasting impact has been most pronounced in sociology. In many revealing respects, the latter grounds and orients the former. Hence, it seems best to discuss his sociology first before turning to his moral and political theory. But taking up his sociological theory, in turn, requires addressing, however briefly, the elemental axioms undergirding his entire "Synthetic Philosophy," which consisted of *The Principles of Biology* (1864–7), *The Principles of Psychology* (1855 and 1870–2), *The Principles of Sociology* (1876–96), and *The Principles of Ethics* (1879–93). Moreover, notwithstanding this maneuver's practical plausibility, it would nevertheless seem to cause utilitarianism to retire a "residual position" that is indeed hardly "worth calling utilitarianism" (Williams in Smart and Williams, 1973: 135). Whether Spencer actually envisioned his utilitarianism this way is unclear. In any case, insofar as he also held that social evolution was tending towards human moral perfectibility, he could afford to worry less and less about whether rights-based utilitarianism was a plausible philosophical enterprise. Increasing moral perfectibility makes secondary decision procedures like basic moral rights unnecessary as a utility-promoting strategy. Why bother with promoting general utility indirectly once we have learned to promote it directly with certainty of success? Why bother with substitute sources of stand-in obligation when, thanks to having become moral saints, act utilitarianism will fortunately always do? But moral perfectibility's unlikelihood is no less plausible than the likelihood of fanatical respect for basic moral rights always working out for the utilitarian best.[22] In any case, just as the latter strategy causes utilitarianism to retire completely for practical purposes, so the former strategy amounts to liberalism entirely retiring in turn. Hence, Mill's version of "liberal" utilitarianism must be deemed more compelling and promising for those of us who remain stubbornly drawn to this problematical philosophical enterprise. Universal suffrage, especially when extended to women, encouraged "over-legislation," allowing government to take up responsibilities which were none of its business. Spencer, then, was more than willing to modify political rights in keeping with his changing assessment of how well they secured basic moral rights on whose sanctity promoting happiness depended. The more he became convinced that certain political rights were accordingly counterproductive, the more readily he forsook them and the less democratic, if not patently libertarian, he became. Likewise, Spencer's declining enthusiasm for land nationalization (which Hillel Steiner has recently found so inspiring), coupled with growing doubts that it followed as a corollary from the principle of equal freedom, testify to his waning radicalism.[20] According to Spencer in *Social Statics*, denying every citizen the right to use of the earth equally was a "crime inferior only in wickedness to the crime of taking away their lives or personal liberties" (Spencer: 1970, 182.) Private land ownership was incompatible with equal freedom because it denied most citizens equal access to the earth's surface on which faculty exercise and happiness ultimately depended. In the preface to the sixth edition of *The*

Methods of Ethics (1901), Sidgwick writes that as he became increasingly aware of the shortcomings of utilitarian calculation, he became ever more sensitive to the utilitarian efficacy of common sense "on the ground of the general presumption which evolution afforded that moral sentiments and opinions would point to conduct conducive to general happiness..." (Sidgwick, 1907: xxiii). In other words, common sense morality is a generally reliable, right-making decision procedure because social evolution has privileged the emergence of general happiness-generating moral sentiments. And whenever common sense fails us with conflicting or foggy guidance, we have little choice but to engage in order-restoring, utilitarian calculation. The latter works hand-in-glove with the former, forever refining and systematizing it. Now Spencer's "empirical" utilitarianism works much the same way even though Spencer obfuscated these similarities by spuriously distinguishing between "empirical" and supposedly superior, "rational" utilitarianism. In his 1907 *Der Utilitarismus bei Sidgwick und Spencer*, Sinclair concludes "Daher ist er [Spencer], wie wir schon gesagt haben, ein evolutionistischer Hedonist und nicht ein ethischer Evolutionist," which we can translate as "Therefore he (Spencer) is, as we have already seen, an evolutionary hedonist and not an ethical evolutionist" (Sinclair, 1907: 49). So however much we have fallen into the erroneous habit of regarding Spencer as little invested with 19th-century utilitarianism, he was not received that way at all by his immediate contemporaries both in England and in continental Europe.

5. Political Rights Not only was Spencer less than a "social Darwinist" as we have come to understand social Darwinism, but he was also less unambiguously libertarian as some, such as Eric Mack and Tibor Machan, have made him out to be. Not only his underlying utilitarianism but also the distinction, which he never forswears, between "rights properly so-called" and "political" rights, makes it problematic to read him as what we would call a 'libertarian'. More precisely, as embryonic kinship groups grow more numerous, they "come to be everywhere in one another's way," (Spencer, vol. II, 1876-93: 37). The more these primal societies crowd each other, the more externally violent and militant they become. Success in war requires greater solidarity and politically consolidated and enforced cohesion. Unremitting warfare fuses and formalizes political control, eradicating societies that fail to consolidate sufficiently. Clans form into nations and tribal chiefs become kings. As militarily successful societies subdue and absorb their rivals, they tend to stabilize and to "compound" and "recompound," stimulating the division of labor and commerce. Together with his *Principles of Ethics*, "Political Institutions" crowns the synthetic philosophy. They are its whole point.[4] On Spencer's account, social evolution unfolds through four universal stages. These are 1) "primitive" societies characterized by casual political cooperation, 2) "militant" societies characterized by rigid, hierarchical political control, 3) "industrial" societies where centralized political hegemony collapses, giving way to minimally regulated markets and 4) spontaneously, self-regulating, market utopias in which government withers away. Only those societies that fortuitously embrace them flourish.