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HERBERT SPENCER'S
THEORY OF SOCIAL JUSTICE

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POLITICAL THEORY & MODERN GOVERNMENTS
(PART I, POLITICAL THEORY)

FORCES IN MODERN POLITICS

DEDICATED

TO

The Hon'ble Mr. Justice

BISHESHWAR NATH SRIVASTAVA, O.B.E.

THE CHIEF COURT OF OUDH

Who has won an abiding place in the hearts of all who know him by his probity, fairness of judgment, integrity of character, and genial temperament, and who embodies in himself the author's ideal of justice set forth in this work.

FOREWORD

When Mr. Asirvatham was studying at the University of Edinburgh for the Degree of Doctor of Philosophy I acted as his official supervisor, and now that he is about to publish the thesis on "Herbert Spencer's Theory of Social Justice" for which he obtained the Degree he has asked me to write a prefatory note for the book. The thesis requires no external recommendation; it gives sufficient evidence in itself of the painstaking and thorough work which Mr. Asirvatham gave to its preparation. As I know from the talks I had with him at the time, he made himself thoroughly familiar, not only with the relevant writings of Spencer himself, but also with all the available discussions and criticisms bearing upon the subject. In the thesis Spencer's views, as stated both in the earlier *Social Statics* and in the later writings, are traced and analysed, and the criticisms given, both of the general principles and of their more important applications, supply the reader with the materials for forming his own judgment on the questions raised. The thesis gives the fullest treatment of its subject which I know of, and cannot fail to be of great use to any student of Spencer's doctrines.

University of Edinburgh. H. BARKER.

Author's Preface.

Our purpose in this treatise is to expound and criticise Spencer's theory of social justice. We do not use his theory as a peg on which to hang all, or nearly all, that has been said and written on the vital problem of social justice. Neither do we use it as an excuse for propounding a totally different and independent view of social justice.

This does not exclude, however, a careful examination and appreciation of Spencer's theory in the light of other theories; nor does it prevent us from indicating clearly the direction in which our personal convictions lie. We examine Spencer to discover what help he can give us in finding a satisfactory solution of the problems arising out of our complex social relationships, and to find how far he succeeds in justifying the many claims that he makes for himself as against other ethical writers.

In Part I which is expository, we aim at stating concisely, and largely in Spencer's own words, his views on the subject; and we incidentally direct attention to some of the features which seem to characterise much of his social and ethical writings, such as internal inconsistencies, ambiguities, and tendency to argue in a circle. In the nature of the case, a considerable part of our treatise must appear to be negative

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PART I

Exposition.

SECTION I.

Spencer's Theory of Social Justice: How it is Derived and What it Means.

CHAPTER I

ITS RELATION TO ABSOLUTE ETHICS AND INTUITION.

Both in *Social Statics* and in *Principles of Ethics*, the two chief writings of Spencer, which deal with the question of justice, Spencer claims that he is able to provide us with a single, abstract law of justice by means of which many of the most important practical problems which arise in the relationship of man to man in the social state can be solved, and that this law is the law of equal freedom. The road which Spencer travels in arriving at this law is a long and circuitous one, and it is our purpose in this chapter to trace some of the important steps taken by Spencer along this road.

Turning our attention first to *Social Statics*, the first important work of Spencer, written as early as 1850, when the author was but thirty years of age, we find that the central conception of justice presented here is, in its

essential features, identical with the conception stated in his later ethical and political writings, though the way of approach to it is largely different.[1] The primary object of *Social Statics* is, as the title of the book itself suggests, to discover an absolute and unchangeable code of morality, corresponding to the constant and universal laws of the physical world,[2] a science of ethics, in other words, which will apply to man in his perfect state, *i.e.*, in a state of "social equilibrium," and which will act as a guide to present humanity in its struggle towards this state.

To say that this ideal code of morality has no relation to man as he is, because it is designed for man in his perfection, and is based on that type of man, Spencer says, is to forget that man, like nature in general, obeys the law of *unlimited* variation—a mark of the unbounded optimism of Spencer's earlier years—and that he is ever adapting himself to circumstances. "Strange indeed would it be, if, in the midst of the universal mutation, man alone were inconsistent, unchangeable. But it is not so. He also obeys the law of *indefinite* variation. His circumstances are ever altering; and he is ever adapting himself to them."[3]

Conceding to Spencer for the sake of argument the possibility of ascertaining a set

1. See Spencer: Justice (Part IV, Principles of Ethics) p. vi.

2. Compare Social Statics, p. 50. 3. p. 33.

of absolute and imperative ethical laws applicable to man in a state of "social equilibrium," we shall next proceed to examine how Spencer arrives at these laws. Almost the first step which Spencer takes in this process is to enquire into the nature of the individual to see what his "desires"[1] and powers are, in accordance with which alone, he believes a true scientific morality can be ascertained. His discussion of the doctrine of the Moral Sense opens with the statement: "There is no way of coming at a true theory of society, but by inquiring into the nature of its *component individuals*.[2] To understand humanity in its combinations, it is necessary to analyse that humanity in its elementary form—for the explanation of the compound, to refer back to the simple."[3] In the next paragraph, realising perhaps that objection may be raised to this rather bold assertion, he gives the following explanation: "The characteristics exhibited by beings in an associated state cannot arise from the accident of combination, but must be the consequences of certain inherent properties of the beings themselves. True, the gathering together may call out these characteristics; it may make manifest what was before dormant; it may afford the opportunity for undeveloped peculiarities to appear; but it evidently does not create them. No phenomenon can be presented by a corporate body, but what there is a

1. p. 17. 2. Italics ours. 3. p. 16.

*pre-existing capacity** in its individual members for producing."[1] Later in the discussion we meet with the statement that "the first principle of a code for the right ruling of humanity in its state of *multitude*,* is to be found in humanity in its state of *unitude**—that the moral forces upon which social equilibrium depends, are resident in the social atom—man; and that if we would understand the nature of those forces, and the laws of that equilibrium, we must look for them in the human constitution."[2]

These three quotations occurring almost one after another in the short space of less than three pages, not only strike an extreme individualistic note, but seem to show clearly the importance attached by Spencer to a study of the powers and faculties of the individual for a right understanding of society and its laws. But it is striking that all these passages are omitted in the revised edition of 1892. This omission, however, does not mean that Spencer had abandoned his faith in the importance of the Moral Sense to ethics. All that we can say with certainty, on the evidence of the Note attached to the discussion on page 23 of the revised edition, is that Spencer now finds himself forced to limit the working of the Moral Sense to "races which have been long subject to certain kinds of discipline." Taking into account only the points common to the two editions, we find

*Italics ours. 1. p. 17. 2. p. 18.

that Spencer holds the belief that man has a moral instinct, just as surely as he has physical instincts, and that the moral instinct, by whatever name he may call it—a 'sentiment',[1] an 'innate perception'[2] an 'intuition,' a 'faculty,'[3] a 'governing instinct,'[4] a 'tendency,' etc.—has feeling for its foundation. It is an impulse, and from it arise a 'perception' of what is right and wrong and a 'conviction' of what is good and bad. "Applied to the elucidation of the case in hand (justice), these facts explain how from an *impulse* to behave in the way we call equitable, there will arise a *perception* that such behaviour is proper—a *conviction* that it is good."[5] In the early part at least of *Social Statics*, Spencer does not make very clear whether he considers the Moral Sense to be perfect from the very beginning of man's history. It seems to be regarded as a fixed quantity in the case of civilised communities which have been under social discipline for some length of time. In his later writings (the *Data* and the *Inductions* particularly) he definitely states that our present moral intuitions have evolved gradually in the course of man's history.

Though Spencer thus places the Moral Sense at the root of morality, he does not regard it as an infallible guide. He argues that just as "appetite does not invariably guide men aright in the choice of food," so

1. p. 17. 2. p. 23. 3. p. 27.
4. p. 29. 5. p. 26.

our moral instinct also may, if not applied properly, lead us astray, and that therefore it needs to be aided and supplemented by reason. Speaking of the writers of the Shaftesbury school, Spencer says: "They were right in believing that there exists some governing instinct generating in us an approval of certain actions we call *good*, and a repugnance to certain others we call *bad*. But they were not right in assuming such instinct to be capable of intuitively solving every ethical problem submitted to it. To suppose this, was to suppose that moral sense could supply the place of logic."[1] Though the last sentence in the quotation is missing in the revised edition,[2] both editions have the following statement, which clearly brings out the relation posited by Spencer between the Moral Sense and reason: "...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."[3]

But reason itself, according to Spencer, unsupported by original impulses, can do very little. "The intellect, uninfluenced by desire, would show both miser and spendthrift that their habits were unwise; whereas, the intellect, influenced by desire, makes each

1. 1850 ed., p. 29. 2. 1892 ed. 3. p. 30.

think the other a fool, but does not enable him to see his own foolishness."[1]

A second qualification which Spencer adds in reference to the importance of the Moral Sense is that "there is a perpetual conflict amongst the feelings" resulting in "a proportionate incongruity in the beliefs." "So that it is only where a desire is very predominant, or where no adverse desire exists, that this connection between the instincts and the opinions they dictate, becomes distinctly visible".[2] And as to what makes a desire predominant or enables it to operate without contending with an adverse desire, we seem to find a clue in its survival value, testified to by the feeling of pleasure. In Spencer's own words: "Answering to each of the actions which it is requisite for us to perform, we find in ourselves some prompter called a desire; and the 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." The impulse of justice, then, it would appear, must be very strong, because justice, according to Spencer, has a great survival value, and having such value, it must be accompanied by a large degree of pleasure. Thus Spencer believes that it is highly probable "that upright conduct in each, being

1. p. 25. 2. p. 26.

necessary to the happiness of all, there exists in us an *impulse* towards such conduct; or, in other words, that *we possess a 'Moral Sense' the duty of which is to dictate rectitude in our transactions with each other*;[1] which receives gratification from honest and fair dealing; and which gives birth to the sentiment of justice." But later[2] Spencer acknowledges that the sentiment of justice is still weak among many people because of the fact that they have not yet completely passed beyond their ancient predatory state in which an impulse opposite to that of justice was required for survival.

Thus through his enquiry into human nature from a psychological standpoint, Spencer concludes that there is in man a moral feeling or impulse, answering to his sentiment of justice and that the strength of this feeling or impulse is in proportion to its importance for survival and that gratification or the feeling of pleasure is a rough measure of that strength. From this it is easy and natural for Spencer to pass on to the view that Happiness is the ultimate end of human action.

A first reading of the opening discussion on the Doctrine of Expediency in the original edition of *Social Statics* gives one the impression that Spencer wholly rejects the Utilitarian philosophy and that his *Summum Bonum* lies elsewhere. But this impression

1. Italics ours.
2. See Social Statics, p. 63.

is soon corrected when we turn to the alternative title of the book which reads "The Conditions Essential to Human Happiness Specified, and the First of them Developed", or when we proceed to read the chapters following the opening discussion, where Spencer makes it plain that his quarrel with the Utilitarians is with regard to *method* and not with regard to *end*.

In our exposition of Spencer's theory of social justice, it is not necessary to go into the details of his controversy with the empirical Utilitarians, though we shall be obliged to do so in Part II of the treatise dealing with criticism. Limiting ourselves for the present to Spencer's own view of happiness, we may state it in a series of related propositions. (1) Greatest happiness (or pleasure) is the *ultimate* end of human action. (2) Being the ultimate end, it is not to be sought directly. What is to be sought directly is the fulfilment of those conditions derived from "the laws of life and the conditions of existence",[1] which *necessarily* lead to happiness. (3) The most important of these conditions is justice, which means absence of hindrance to the free gratification of human faculties, within the limits necessitated by the social state. (4) All unhappiness or evil (and eventually, injustice) is resolvable into a question of non-adaptation of constitution to conditions, or of faculties to functions.

1. Data, p. 57.

With the Moral Sense supplemented by reason as his starting-point, and "greatest happiness" achievable through the law of adaptation as the *ultimate* end of human action, Spencer traces three closely-related and, in some ways, hardly distinguishable routes, which, he claims, all lead him to his absolute formula of justice that "*every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man*"[1] These several routes are (1) reasoning "our way from those *fixed* conditions under which only...greatest happiness can be realised"; (2) drawing "our inferences from man's constitution, considering him as a congeries of faculties"; and (3) listening "to the monitions of a certain mental agency, which seems to have the function of guiding us in this matter" of "right social relationships."[2] Let us take up these three methods one by one and expound them in detail.

(*1*) *Deductions from those fixed conditions under which alone greatest happiness can be realised.* Spencer assumes that "greatest happiness" is the ultimate end of man. Among the *fixed conditions* under which this end is to be realised, Spencer recognises that the first place should be given to the social state in which man finds himself to-day. To quote his own words: "At the head of them (*i.e*, the essential conditions of happiness) stands this unalterable fact—the social state.

1. p. 103. 2. p. 103.

In the pre-ordained course of things, men have multiplied until they are constrained to live more or less in presence of each other. That, as being needful for the support of the greatest sum of *life*, such a condition is preliminary to the production of the greatest sum of *happiness*, seems highly probable. Be that as it may, however, we find this state established; are henceforth to continue in it; and must therefore set it down as one of those necessities which our rules for the achievement of the greatest happiness must recognise and conform to."[1] And it is out of this "unchanging necessity", this "appointed circumstance"—the social state—that Spencer deduces the four conditions essential to human happiness, *viz.*, Justice, Negative Beneficence, Positive Beneficence, and due pursuit of the individual's "own private happiness."[2]

Since these four conditions or principles are of utmost importance to a right understanding of Spencer's theory of morality in general, and of social justice, in particular, it is necessary to enquire into the exact meaning that Spencer assigns to these principles and the relationship that he posits between them.

First in order and in importance comes the principle of justice. It is the only principle which is "almost always possible of exact ascertainment."[3] Its source is found in

1. p. 67. 2. pp. 68-69. 3. p. 82.

Spencer's peculiar conception of "the sphere of activity of each individual" in the social state. Quoting Spencer's words: "In this social state the sphere of activity of each individual being limited by the spheres of activity of other individuals, it follows that the men who are to realise this greatest sum of happiness, must be men of whom each can obtain complete happiness within his own sphere of activity, without diminishing the spheres of activity required for the acquisition of happiness by others."[1] It is here, then, that Spencer finds "the first of those fixed conditions to the obtainment of greatest happiness, necessitated by the social state" and "it is the fulfilment of this condition which we express by the word justice."[2]

The other three principles deduced from the social state are closely related to justice. Negative beneficence, the first among them in order, is a supplementary principle "of kindred nature." According to it, "to compass greatest happiness, the human constitution must be such as that each man may perfectly fulfil his own nature, not only without diminishing other men's spheres of activity, but without giving unhappiness to other men in any *direct* or *indirect* way."[3] But seeing perhaps that this principle, if carried out fully and literally, might contradict the primary principle of justice, which demands only non-interference with other persons' spheres of activity, Spencer qualifies

1. p. 68. 2. Ibid. 3. p. 68.

it when he says that when the "normal" faculties of one person come into conflict with the "abnormal" faculties of another, the "abnormal" faculties must be sacrificed, whatever the resulting unhappiness may be, for, such sacrifice will in the long run, have a beneficial value.[1]

All that the principle of justice and the principle of negative beneficence are able to give us is the greatest amount of "*isolated* happiness"[2] imaginable. But positive beneficence goes a step further and requires that "to the primary requisite that each shall be able to get complete happiness without diminishing the happiness of the rest, we must now add the secondary one that each shall be capable of receiving happiness from the happiness of the rest."[3] It means, in other words, that each must be capable of "sympathetically participating in the pleasurable emotions of all others," adding thereby to the sum total of happiness.

The fourth and last principle which, unlike the others, concerns the individual directly, lays down the rule "that, whilst duly regardful of the preceding limitations, each individual shall perform all those acts required to fill up the measure of his own private happiness."[4]

Spencer considers these four principles of such supreme importance that he says that "Everything must be good or bad, right or wrong, in virtue of its accordance or discor-

1. Cp. p. 80. 2. p. 69. 3. p. 69. 4. p. 69.

dance with them."[1] He realises that, in our present transitional state, fulfilment of these laws may not produce complete pleasure, but that to him does not mean that we should give up these laws and look for new ones. On the other hand, we must learn to derive pleasure from conformity to them, till eventually that pleasure becomes spontaneous. "The social state is a necessity. The conditions of greatest happiness under that state are *fixed*. Our characters are the only things not fixed. They, then, must be moulded into fitness for the conditions. And all moral teaching and discipline must have for its object to hasten this process."[2] Later in the book, however, we are given to believe that the outer conditions also change, and not merely our characters. Thus, "In virtue of an essential principle of life, this non-adaptation of an organism to its conditions is ever being rectified; and modification of *one* or *both*, continues *until the adaptation is complete.*"[3]

(z) *Drawing "our inferences from man's constitution, considering him as a congeries of faculties."* Here, again, happiness is the end of human action. But the way to attain that end is not, as before, directly through conformity to certain abstract logical deductions; it is primarily through obeying the laws of the human constitution, although the result according to both methods is the same; they both lead to the same formula of justice. To

1. Ibid. 2. p. 70. 3. pp. 59-60. (Italics ours)

put briefly the argument of this method in Spencer's own words: "A desire is the need for some species of sensation. A sensation is producible only by the exercise of a faculty. Hence no desire can be satisfied except through the exercise of a faculty. But happiness consists in the satisfaction of *all** the desires; that is, happiness consists in the due exercise of all the faculties."[1]

If happiness is the end of human action, and the exercise of faculties is the means to it, it is plain that "it is man's *duty** to exercise his faculties."[2] "But the fulfilment of this duty necessarily presupposes freedom of action. Man cannot exercise his faculties without certain scope.... He must be free to do everything which is directly or indirectly requisite for the due satisfaction of every mental and bodily want... that is, he has a *right** to it."[3]

"This, however, is not the right of one but all. All are endowed with faculties.... All therefore must be free to do those things in which the exercise of them consists. That is, all must have rights to liberty of action." "And hence there necessarily arises a limitation. For if men have like claims to that freedom which is needful for the exercise of their faculties, then must the freedom of each be bounded by the *similar** freedom of all."[4] The general proposition at which Spencer

*Italics ours.
1. p. 76.
2. Ibid.
3. p. 77.
4. Ibid.

arrives as a result of this reasoning is "that every man may claim the fullest liberty to exercise his faculties compatible with the possession of *like** liberty by every other man."[1] This, he later calls, *the law of equal freedom.*

Spencer is conscious of the fact that there is at least one other way of formulating into a general proposition the liberty of action that is requisite for the exercise of faculties. "It may be thought better," he says, "to limit the right of each to exercise his faculties, by the proviso that he shall not *hurt* any one else—shall not inflict *pain* on any one else."[2] But he rejects at once this way of stating the fact, his chief objection to it being that it will "stop the proper exercise of faculties in some persons, for the purpose of allowing the improper exercise of faculties in the rest."[3] In the interest of greatest happiness, therefore, Spencer says that, when in the exercise of faculties, the "normal" feculties of A come into conflict with the "abnormal" faculties of B, the "abnormal" faculties should be sacrificed, though it may result in pain to B. As to what is "normal" and what is "abnormal," Spencer's theory, no less than other theories, is unable to give us a safe guide.

While thus rejecting the alternative formula, Spencer is not blind to the imperfections found in his own formula. The first serious

*Italics ours. 1. p. 78. 2. Ibid. 3. p. 79.

imperfection is found in the fact that "Various ways exist in which the faculties may be exercised to the aggrieving of other persons, without the law of equal freedom being overstepped." Thus "A man may behave unamiably, may use harsh language, or annoy by disgusting habits; and whoso thus offends the *normal* feelings of his fellows, manifestly diminishes happiness."[1] Spencer's reply in defence of his formula is that it is the lesser of two evils. The alternative formula, in cutting off improper actions, cuts off some proper ones too; while his own formula, in allowing full freedom for proper actions, does not exclude certain improper ones. But the defect inherent in the latter case, Spencer is confident, can be rectified by the principle of negative beneficence, while the former apparently has no such remedy. In mankind as ultimately evolved, of course, the faculties of each will be such (by constant selection) that the full exercise of them will offend no one.

The second objection which Spencer thinks may be raised against his general proposition is that "if the individual is free to do all that he wills, provided he does not trespass upon certain specified claims of others, then he is free to do things that are injurious to himself —is free to get drunk, or to commit suicide."[2] In reply to this Spencer frankly confesses that, while his law forbids a certain class of

1. p. 80. 2. p. 81.

actions as immoral, it does not recognise all kinds of immorality, and that it should, therefore, be supplemented by further laws. But he holds that these further laws are of "quite inferior authority" because they are not possible of such exact ascertainment as his own law, and cannot as such be scientifically developed in the present state of human progress. Therefore, he thinks that they "can be unfolded only into superior forms of expediency."[1] If, he contends, we forbid drunkenness because it is injurious to the individual, it may lead us on to forbid such things as work, intellectual activity, forethought, etc., which are irksome at the beginning, but which are "needful for the production of the greatest happiness."[2] The two general reasons that Spencer gives for this are: (1) "we frequently cannot say whether the bad results" of an act "will exceed the good ones;" and (2) even if we can, "we cannot with certainty distinguish suffering that is *detrimental*, from suffering that is *beneficial*."[3] The same two reasons, Spencer believes, hold good with regard to the earlier objection to his law that it admits of injuries to others

Spencer's conclusion of the whole matter is that the limitations necessitated by the two chief imperfections inherent in his formula of justice are "limitations which the ideal man will strictly observe," but which "cannot be reduced to concrete forms until the ideal

1. p. 82 2. p. 83. 3Ibid.

man exists."[1] To try to formulate them into laws now would mean the undoing of the primary law itself. Therefore, the only course open to us is to let the tares grow along with the wheat, confident in the hope that the tares will become less and less as a result of man's increasing adaptation (passive) to the social state and will eventually disappear altogether. "Thus, the existing confusion of necessary and conventional feelings, necessary and conventional circumstances, and feelings and circumstances that are partly necessary and partly conventional will eventually work itself clear."[2]

As matters stand, "There is clearly no alternative but to declare man's freedom to exercise his faculties;...there is clearly no alternative but to declare the several limitations of that freedom needful for the achievement of greatest happiness. And there is clearly no alternative but to develop the first and chief of these limitations separately; seeing that a development of the others is at present impossible. Against the consequence of neglecting these secondary limitations, we must therefore guard ourselves as well as we can; supplying the place of scientific deductions by such inferences as observation and experience enable us to make."[3] ..."Freedom being the pre-requisite to normal life in the individual, equal freedom becomes the pre-requisite to normal life in

1. p. 84. 2. p. 87. 3. p. 88.

society. And if this *law of equal freedom* is the *primary* law of right relationship between man and man, then no desire to get fulfilled a *secondary* law can warrant us in breaking it."[1]

(3) *Listening "to the monitions of a certain mental agency."* This method is, according to Spencer's presentation of it, a direct manifestation of the Moral Sense in man, though the other two methods also are intimately related to it. Spencer simply observes that there is in man himself an impulse to claim the exercise of faculties and an impulse to respect the limits of such exercise.[2] In other words, man exhibits an instinct of personal rights and an instinct of sympathy (later in origin)[3] and it is out of an inter-action of these two instincts that the all-important law of equal freedom emerges. Though at the outset these two instincts seem to point in two different directions, there is really no essential conflict between them; for the instinct of sympathy is, to Spencer, simply the obverse side of the instinct of personal rights; "the sentiment of justice," he says, "is nothing but a sympathetic affection of the instinct of personal rights—a sort of reflex function of it".[4] "...Other things equal," Spencer claims, "those who have the strongest sense of their own rights (*i.e.*, those who are keen to see justice done to them), will have the strongest sense of the rights of

1 pp. 88-9. 2 cp. p. 90. 3 p. 96.
4 p. 97.

their neighbours,"[1] and conversely "those who have not a strong sense of what is just to themselves, are likewise deficient in a sense of what is just to their fellow-men."[2]

In order that the reader may not draw the legitimate conclusion from Spencer's premises that the instinct of personal rights and the instinct of sympathy vary directly with one another, he adds the qualification that "there is no *necessary* connection between a sense of what is due to self, and a sense of what is due to others." "Sympathy and instinct of rights do not always co-exist in equal strength any more than other faculties do. Either of them may be present in normal amount, whilst the other is almost wanting."[3] If this be so, the intuition of justice which, in this connection, is regarded as the outcome of the instinct of personal rights and the instinct of sympathy, cannot be an absolute guide. Spencer adds, however, that "in the *average* of cases, we may safely conclude that a man's sense of justice to himself, and his sense of justice to his neighbours, bear a constant ratio to each other."[4]

There is one further fact which needs to be mentioned here in passing. In answering the objection as to what necessity there is "for a special impulse to make a man do that which all his impulses conjointly tend to make him do," Spencer says that "we do not

1. p. 98. 2. p. 99. 3. p. 100.
4. p. 101.

find on inquiry that each faculty has a special foresight—takes thought for its gratification to come: we find, on the contrary, that to provide for the future gratification of the faculties at large, is the office of faculties appointed solely for that purpose."[1] According to this inquiry, then, faculties seem to be of two types, those which simply express certain desires of man and those which keep these faculties in their proper places. This classification is bound to have its bearing on the second method which Spencer traces—that of acquiring greatest happiness through the due exercise of faculties ("Will to Power," Sublimation, etc.), and also on his biological theory called the Use and Disuse theory.

Spencer's conclusion of the whole matter, in the work that we are expounding, is that by whatever route we travel we are alike led to this 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.*"[2] Further qualifications of the liberty of action asserted in the law may be necessary, but in the just regulation of a community "no further qualifications of it can be recognised."[3] Such further qualifications must ever remain for *private* and *individual* application. We must therefore adopt this law of equal freedom in its entirety, as the law on which a correct system of equity is to be based."[4]

1. p. 95. 2. p. 103. 3. p. Ibid. 4. Ibid.

We have so far confined our attention to Spencer's *Social Statics*. We shall now pass on to the *Principles of Ethics* and sketch briefly the further development that the theory of Absolute Ethics, and the doctrine of the Moral Sense there undergo in their relation to social justice. Concerning ourselves first with the theory of Absolute Ethics, we find that when we turn to the *Data of Ethics*, written nearly thirty years after the publication of Darwin's *Origin of Species*, Spencer traces "conduct" from its very humble origin as found among the animals of the lowest type to the moral conduct of man and defines it in such general terms as "the adjustment of acts to ends."[1] But before we know what has happened, Spencer, at least temporarily, gives up the biological idea of the grim struggle for existence and represents social evolution as necessarily leading up to a perfect state, where man is "completely adapted" to the conditions of society. This perfect state, upon examination, turns out to be nothing less than the pre-Evolutional idea of "the perfect man in the perfect society."

It is true that, in the *Principles of Ethics*, Spencer does not sneer at Relative Ethics, as he does in *Social Statics*, but he still holds to the belief that "ideal conduct" can only exist in an "ideal social state" and that, as such, a study of Absolute Ethics must

1. Data, p. 5.

precede a study of Relative Ethics. To put the matter in his own words: "It is manifest that we must consider the ideal man as existing in the ideal social state. On the evolution-hypothesis, the two pre-suppose one another; and only when they co-exist can there exist that ideal conduct which Absolute Ethics has to formulate, and which Relative Ethics has to take as the standard by which to estimate divergencies from right, or degrees of wrong."[1]

The picture which Spencer draws of the ideal social state is worthy of our consideration. One important feature of such a state, he tells us confidently, is that the voluntary actions of all the members comprising that society will cause pure pleasure, or "pleasure unalloyed with pain anywhere"[2] to every one concerned.

A second important feature of the perfect state, which also has a close bearing upon Spencer's theory of social justice, is that in it there will be no compulsion or authority of any kind. Even the feeling of moral obligation or duty, what we may call self-coercion, will disappear, because Spencer contends, it belongs only to the transitional state where men are imperfectly adapted to their environment. The ideal man will spontaneously, if not mechanically, do what is right and will

1. Data of Ethics, p. 280.

2. Data, p. 261.

consider the present-day political, religious and social controls as out-of-date. The application of this to Spencer's theory of social justice is that, in the final state, the law of equal freedom, which is the quintessence of that theory, will cease to be a law in the lawyer's sense of the word, or even in the sense understood by moralists. Justice will come to be done instinctively.

The perfect state will be not only a state of pure pleasure and one where there will be no coercion of any kind, but will also be, Spencer tells us, a state of extreme diversity or heterogeneity. Men will be as different from one another as possible, and the present-day inequality between them will be carried to the fullest possible limit. And yet such difference and inequality will not cause any pain to any one because men will be in such complete harmony with the society around them that their faculties and capacities (exercise of which is, according to Spencer, absolutely essential for human happiness) will not fail to receive the scope necessary for their fullest and freest expression. The respective spheres of action of individuals will, of course, be unequal because of their native differences and limitations. But there will be no checks placed from outside upon a person's activity and, in turn, upon his happiness. Or, as Spencer expresses it, there will be "a complete equilibration between men's desires and the conduct necessitated by social

conditions." Each one in such an ideal state will be free to do whatever he actually does.

In an ideal state of the kind described by Spencer, one would think that there would be no need of any ethical principles to regulate the social conduct of perfectly-evolved men, and, even if there were a need, it would only be a nominal one. But Spencer apparently does not think so.[1]

As to what exactly the principle of ideal justice means, Spencer says that its chief rules are (1) Injure no one in person, estate, or reputation, and (2) Observe contracts.[2] It also means, from the biological and economic points of view, an exact proportioning of returns to labours, for, without such proportioning, Spencer believes, there can be no voluntary co operation, which is, according to him, essential for social existence, and no fulfilment of the primary law of life which demands that superiority must profit by the results of superiority, and inferiority suffer by the results of inferiority.

The other ethical principles of ideal social life are, according to Spencer, Negative Beneficence and Positive Beneficence. But the former of these principles, Spencer tells us, "has but a nominal existence" "under ideal circumstances," the reason being that "In the conduct of the ideal man among ideal men, that self-regulation which has for its motive to avoid giving pain, practically

1. Data, p. 285. 2. Data, ch. 8.

disappears. No one having feelings which prompt acts that disagreeably affect others, there can exist no code of restraints referring to this division of conduct."[1] As regards the principle of Positive Beneficence, according to which, men, " besides helping to complete one another's lives by specified reciprocities of aid, ... otherwise help to complete one another's lives"[2] by spontaneous efforts, we have to observe that the field for the exercise of this principle will become narrower and narrower. But flood, fire and wreck, accidents, diseases and misfortunes in general, Spencer tells us, will be with us to the end, and will give us now and then a chance for a heroic act.

We now pass on to expound the attitude of Spencer to the doctrine of the Moral Sense in the *Principles of Ethics*. In our exposition of " Social Statics " we noticed that, for the determination of the laws of right living in the ideal social state, Spencer, to a large extent, depended upon moral intuitions supplemented by reason. But in the *Data* moral intuitions do not seem to play such a part. Their place, to a considerable extent, is taken by the scientific and evolutionary method as revealed in and by such sciences as biology, psychology, and sociology. Moral intuitions are by no means discarded, but are given a minor place. The theory that Spencer holds with regard to them is somewhat

1. Data, p. 286

2. Data, p. 149.

clearer in the *Data* than in *Social Statics*. In neither of these works does he regard intuitions as something fixed and unalterable which have to be obeyed without question. But in the *Data* he defines them more closely when he says that they "are the slowly organised results of experience received by the race while living in the presence of the conditions to achievement of the highest life."[1]

Passing over to the *Inductions of Ethics*, published in 1892, we find that Spencer endeavours to prove that the intuitional theory of his time, which traced morality to an "originally implanted conscience," is faulty, and, in his endeavour, he makes a confession which goes to show how far away he has moved from his early belief in the Moral Sense possessed by man. Thus, he says, "Though, as shown in my first work, *Social Statics*, once espoused the doctrine of the intuitive moralists (at the outset in full, and in later chapters with some implied qualifications), yet it has gradually become clear to me that the qualifications required practically obliterate the doctrine as enunciated by them. It has become clear to me that .... it is impossible to hold that men have in common an innate perception of right and wrong."[2] But, while thus rejecting the Moral Sense doctrine in its original form, Spencer still thinks that "it adumbrates a truth and a

1. p. 172. 2. Vol. II. pp. 470—1.

much higher truth," the truth being that "the sentiments and ideas current in each society become adjusted to the kinds of activity predominating in it."[1]

The chief difference, then, between *Social Statics* and the *Principles of Ethics* in their relation to the doctrine of the Moral Sense, is that while in the earlier writing Spencer simply assumes the Moral Sense to be an ultimate, in the later writing he attempts to give an evolutionary basis to it, and, in so doing, believes that he is able successfully to mediate between Empiricism and Intuitionism, but really seems to decide in favour of Empiricism itself.

As regards the relation of the principle of justice to the doctrine of the Moral Sense, it will be remembered that in *Social Statics*[2] Spencer gives to justice a special intuitive character and places it almost on a plane by itself, regarding the companion principles of prudence, negative beneficence, and positive beneficence as lacking the definite, intuitive character of justice and, therefore, only of secondary importance. Although this position is not definitely stated in the *Principles of Ethics*, it seems to be tacitly assumed by Spencer all through, as is seen in the abstract and theoretical treatment of justice and the empirical treatment of prudence and beneficence. In the treatise on "Justice", he goes to the extent of saying that "under one aspect

1. p. 471. 2. pp. 90-1.

it (the principle of natural equity, *i.e.* the freedom of each limited only by the freedom of all) is an immediate dictum of the human consciousness after it has been subject to the discipline of prolonged social life."1 Further, in the chapters on the "Sentiment of Justice" and the "Ideal of Justice" of the same treatise, Spencer seems definitely to come back to the particular way in which he derived the principle of justice from the Moral Sense doctrine as seen in the third method that we sketched in our exposition of *Social Statics.* Instead of speaking of an instinct of personal right or an impulse to claim the exercise of faculties, as in *Social Statics,* Spencer now speaks of an "egoistic sentiment of justice", and, in the place of an instinct of sympathy or an impulse to respect the limits of the exercise of faculties, he now has an "altruistic sentiment of justice"; the only material difference being that the gulf between the instinct of personal rights and the instinct of sympathy, which was left unbridged in *Social Statics,* is bridged by a pro-altruistic sentiment of justice. This pro-altruistic sentiment, Spencer says, temporarily supplies the place of the altruistic sentiment, and "restrains the actions prompted by pure egoism"2 and he further adds that by means of its component parts, the dread of retaliation, the dread of social dislike, the dread of legal punishment, and

1. p. 60. 2. Justice, p. 29.

the dread of divine vengeance, the pro-altruistic sentiment of justice helps society to hold together and makes possible the development of sympathy through gregariousness, which gives rise to the genuine altruistic sentiment of justice.

"But the altruistic sentiment of justice", Spencer observes, "is slow in assuming a high form", the reasons being (1) that its primary component, sympathy, does not become highly developed until a late phase of progress (*i. e.*, until at least "the egoistic sentiment of justice" has arisen), (2) that it is relatively complex, because "it is not concerned only with concrete pleasures and pains but is concerned mainly with certain of the circumstances under which these are obtainable or preventible"[1], and (3) that it implies a stretch of imagination (wider than that required for pity and generosity), not possible for low intelligences. But once the altruistic sentiment of justice establishes itself, it would appear, according to Spencer, that it co-operates with the egoistic sentiment of justice to produce the general sentiment of justice. Strictly speaking, however, it would appear that the sentiment of justice, as in the latter part of *Social Statics* (third method) is derived only from the instinct of personal rights or the egoistic sentiment of justice. Justice is, as before, a sort of "reflex function" of the "instinct of personal rights".

1 p. 32.

The sentiment of justice arrived at in the above way, Spencer seems to be conscious, is insufficient to regulate social relations, and hence he urges the need for a "definite and objective idea" of justice. But as to how this idea is to be ascertained, Spencer's answer is: "The idea emerges and becomes definite in the course of the experiences that action may be carried up to a certain limit without causing resentment from others, but if carried beyond that limit produces resentment. Such experiences accumulate; and gradually, along with repugnance to the acts which bring reactive pains, there arises a conception of a limit to each kind of activity up to which there is freedom to act."[1] And in determinintg this limit up to which a person has freedom to act, Spencer proposes to find a middle way between artificial inequality, which he believes is the primordial ideal suggested and the artificial equality view (according to Spencer's interpretation) held by Bentham and his followers. In other words, Spencer seeks to unite the elements of truth contained in the two antagonistic views, *i. e.*, *inequality* as regards merit and reward, "since men differ in their powers"[2] and *equality* as regards mutual limitations to men's actions, since "Experience shows that these bounds are on the average the same for all."[3] The formula which expresses this compromise is, as one

1 Justice, p. 36. 2 Justice, p. 37.
3 Ibid.

would expect it to be, Spencer's favourite law of equal freedom: "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man".[1]

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1 Justice, p. 46.

CHAPTER II.

RELATION TO THE PRINCIPLES OF BIOLOGY.

It is often assumed both by the friends and foes of Spencer's theory of morality that it is in some peculiar way related to the doctrine of biological evolution and that, in order to prove or disprove its validity, it is first of all necessary to prove or disprove the validity of its supposed evolutionary basis. An excellent opportunity for examining this assumption, it seems to us, is afforded by the theory of social justice, as enunciated by Spencer. In undertaking this examination, it is gratifying to note that our task is comparatively lightened by the fact that in *Social Statics*, written eight years before the publication of Darwin's *Origin of Specics*, we have what appears to be on the whole a pre-evolutional statement of Spencer's theory of justice, and if, in comparing and contrasting this earlier statement with the later statement found in *Justice* (1892), we find some fundamental difference, we can safely assume that such difference is largely ascribable to the "biological origin for ethics" which has "been definitely set forth" in *Justice*.

In the original edition of *Social Statics*, Spencer sets forth and stoutly defends the general evolutionary idea (not particularly Darwin's idea) of "adaptation of constitution to conditions." Interpreting the idea of adaptation to environment in a physical and mechanical way, Spencer confines himself to facts which involve adaptation of a passive character, when he comes to construct his theory of justice upon survival. Already in *Social Statics,* where "a biological origin for ethics" is "only indicated," Spencer sees the beneficence of the struggle for existence. Thus, he says: "Pervading all nature we may see at work a *stern discipline*,* which is a little cruel that it may be very kind That state of universal warfare maintained throughout the lower creation, to the great perplexity of many worthy people, is at bottom the most merciful provision which the circumstances admit of"[1]; and, applying the principle contained herein to the case of human beings, he says: "the well-being of existing humanity, and the unfolding of it into .... ultimate perfection, are both secured by that same beneficent, though severe discipline, to which the animate creation at large is subject: a discipline which is pitiless in the working out of good: a felicity-pursuing law which never swerves for the avoidance of partial and temporary suffering. The poverty of the incapable, the distresses that come upon the

*Italics ours.

1 p. 322.

imprudent, the starvation of the idle, and those shoulderings aside of the weak by the strong, which leave so many 'in shallows and in miseries,' are the decrees of a large, far-seeing benevolence."[1]

It is extremely significant that the same two ideas—"adaptation of constitution to conditions" and the "stern discipline" of nature—found in a work in which, according to Spencer himself, the biological origin for ethics is only indicated, are elaborated and illustrated at great length in the later and more mature writings which profess to be definitely based upon the principles of biology. The only new factor of importance found in them is the factor of race-preservation or what Spencer prefers to call "social self-preservation." It is true that this new factor somewhat modifies and qualifies Spencer's simple faith in the beneficence of the stern discipline of nature, but there are no signs to the last to show that such faith is totally abandoned. Spencer to the end seems to believe that the weak, the feeble, and the inefficient members of society, in going under, deserve to go under, and that the State or society in its corporate capacity should do nothing to alleviate their suffering. To private charity and discriminate individual philanthropy, however, he has no objection.

The application of the ideas of adaptation to environment and the sternness of nature

2 pp. 322-23.

to the question of social justice would seem to be that each man should adapt himself to life conditions as best he may, and that, in order to do so, he should have all the freedom of the jungle. But to the latter part of the inference Spencer demurs in the early chapters of *Justice* (Part IV of the Principles of Ethics), to an exposition of which we now pass. Spencer here definitely claims that, in the evolution of conduct, "something which may be regarded as animal ethics is implied"[1] and that human justice is "a further development of sub-human justice."[2]

Directing his attention first to animal life in general and examining the laws of life and the conditions of existence to which every species must conform to secure its preservation and prosperity, which are the proper objects of its aim in life, Spencer says that "there inevitably emerge one most general conclusion and from it three less general conclusions."[3]

Let us state these conclusions briefly. "The most general conclusion," says Spencer, "is that in order of *obligation*, the preservation of the species takes precedence of the preservation of the individual."[4] It is to be noted that Spencer does not discuss the question whether the term "obligation" can be applied to the lower animals in any legitimate sense. In the chapter on the "Sociological View" in the *Data of Ethics* (Ch.

1 p. 1. 2 p. 17. 3 p. 6. 4 p. 6.

VIII) Spencer is at great pains to show that the principle underlying his "most general conclusion" plays a large part in the early stages of human life when wars prevail. The reason that he urges for the subordination of the ultimate end, individual preservation, to the immediate end, race-preservation—if and when the two come into conflict—is that such subordination prevents the disappearance of the species, implying disappearance of individuals, which will involve absolute failure in achieving the end.

Among the "less general conclusions" which follow from the most general conclusion," the one which is of great importance and which is the central feature of human justice, even in its ideal form, is "that among adults there must be conformity to the *law* that benefits received shall be directly proportionate to merits possessed: merits being measured by power of self-sustentation" or by fitness to the conditions of existence. The two reasons which Spencer gives for considering this law of great importance are (1) that to act on an opposite principle, like proportioning of benefits to inefficiency, would mean the disappearance of the species in a few generations and (2) that the principle of the survival of the fittest which underlies this 'law' is the instrument that Nature has at hand for the gradual evolving of life into higher forms.[1]

1 cp. Justice, p. 5.

The second "less general conclusion" or principle which Spencer deduces is "that during early life, before self-sustentation has become possible, and also while it can be but partial,...benefits received must be inversely proportionate to merits possessed."[1] To act otherwise, we are told, must mean disappearance of the species by extinction of its young. Whatever the importance of this principle may be, it is noticeable that it does not enter into the formulation of Spencer's theory of human justice, the simple reason being that justice, as Spencer conceives it, concerns itself only with the relation between adult human beings in the social state The principle enunciated here Spencer assigns to its proper sphere, which, he says, is the sphere of family ethics. Leaving aside for a moment the question of its proper sphere, the principle itself needs to be noted in order to enable us to see what light it can throw on the elucidation and criticism of the rights of children, which Spencer discusses in ch. XXI of *Justice.*

A third "less general conclusion" or principle to which Spencer draws attention, and which is but a particular expression of the "most general conclusion" stated above, is that "if the constitution of the species and its conditions of existence are such that sacrifices, partial or complete, of some of its individuals, so subserve the welfare of the species that its numbers are better maintained

1 Justice, p. 7.

than they would otherwise be, then there results a justification for such sacrifices."[1] This principle, Spencer believes, is not as important as the former two, and he adds that what importance it has, is relative to the presence of rival species in the case of lower animals, and of antagonistic societies in the case of man. Because of its conditional importance Spencer gives it no place in his formulation of ideal justice for man. But this is not to deny its rightful place during transitional stages.

We have so far seen that among the laws which are said to govern animal life in general, the law which definitely enters into Spencer's formulation of human justice, is that of proportioning benefits to merits possessed, merit being measured by fitness for the conditions of existence. For the origin of the other important law which enters human justice and which modifies the absolute freedom necessitated by the former law, Spencer turns to gregarious creatures and there finds that a law which governs their life absolutely is that "Each individual, receiving the benefits and the injuries due to its own nature and consequent conduct, has to carry on that conduct subject to the restriction that it shall not in any large measure impede the conduct by which each other individual achieves benefits or brings on itself injuries."[2] The great importance

1 Justice, p. 7 2 p. 12.

of this law, Spencer urges, is due to the fact that violation of it would lead to the undoing of gregariousness and co-operation which, he claims, have come into being because of their greater utilitarian advantage[1] and eventually to the dissolution of the group itself through the law of the survival of the fittest. "Those varieties only can survive as gregarious varieties in which there is an inherited tendency to maintain the limits."[2]

Making his own application to man of the above laws which are said to govern the life of animals, in general, and that of gregarious creatures, in particular, Spencer says: "Of man, as of all inferior creatures, the law by conformity to which the species is preserved, is that among adults the individuals best adapted to the conditions of their existence shall prosper most, and that individuals least adapted to the conditions of their existence shall prosper least—a law which, if uninterfered with, entails survival of the fittest, and spread of the most adapted varieties."[3] The ethical interpretation of this biological law, Spencer adds, is "that each individual ought to receive the benefits and the evils of his own nature and consequent conduct: neither being prevented from having whatever good his actions normally bring to him, nor allowed to shoulder off on to other persons whatever ill is brought to him by his actions."[4] This, it would

1 cp. p 12. 2 Justice, pp. 12-3.
3 Justice, p. 17. 4 Ibid.

appear to Spencer, is the law of "pure Justice."[1]

An important modification of the principle of justice, Spencer says, is introduced in the case of man by the characteristic of fighting his own kind. "Having spread wherever there is food, groups of men have come to be everywhere in one another's way; and the mutual enmities hence resulting, have made the sacrifices entailed by wars between groups, far greater than the sacrifices made in defence of groups against inferior animals."[2] But such obligation for self-subordination in the interests of the group as results from this peculiar characteristic of the human species, is limited to defensive war, offensive war becoming unjustifiable as man reaches a stage at which ethical considerations come to be entertained.[3]

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1 Justice, p. 18. 2 Justice, p. 22.

3 Compare Justice, p. 23.

CHAPTER III.

Its Meaning.

In this chapter we propose to expound briefly the particular meaning that Spencer assigns to his doctrine of social justice and the relationship that he posits between that doctrine and his general ethical theory. Directing our attention first to the latter part of our task, we must say that, in turning from *Social Statics* to the *Principles of Ethics*, we find that the ultimate end of human action is not so simply stated. Spencer still regards himself as a utilitarian (in his own sense of the term, of course) but, into his discussion of the supreme end, he introduces elements which, at first sight, seem to come into conflict with the strictly utilitarian standard of "greatest happiness." Sidgwick, in his *Ethics of Green, Spencer, and Martineau*, accuses Spencer of regarding now *the quantity of life* (including duration as well as quantity of change in a given time) and now *the quantity of pleasure* as the ultimate end, without attempting to reconcile the two. It would be out of place at this point to examine minutely this charge against Spencer. It is sufficient to remark

that the disparity between *life* and *pleasure* as end is not so great as Sidgwick seems to imagine, though it must be noted that Spencer, when he comes to deal with justice, the most essential condition of life, according to him, is in danger of regarding it as a practical ultimate, as seen in his neglecting to take into consideration (and sometimes even disregarding) its immediate effect upon pleasure. Whatever the discrepancy between life and pleasure (or, for our purposes, between justice and pleasure) may be, Spencer believes that, in the final state, they will exactly coincide with one another so that life-sustaining acts (or 'just' acts) will be synonymous with pleasure-giving acts—acts giving pleasure both immediate and remote. Thus he says: "When we have got rid of the tendency to think that certain modes of activity are necessarily pleasurable because they give us pleasure, and that other modes which do not please us are necessarily unpleasing, we shall see that the remoulding of human nature into fitness for the requirements of social life must eventually make all needful activities pleasurable, while it makes displeasurable all activities at variance with these requirements."[1] To the same effect he writes earlier in the work: "Thus there is no escape from the admission that in calling good the conduct which subserves life, and bad the conduct which hinders or destroys it, and in so implying that life is

1 Data, p. 183.

a blessing and not a curse, we are inevitably asserting that conduct is good or bad according as its total effects are pleasurable or painful."[1]

But the question of supreme importance from the Utilitarian point of view for which we seek an answer from Spencer, is, what ought to be our moral procedure in the unideal society (*i.e.*, the actual society or the only society that we know), where, according to Spencer himself, the standard of life and the standard of pleasure do not always point in the same direction? He does not seem to attempt a definite answer to this question, but it is implied in all his ethical and social writings that there are times when perservation of life should have priority over claims of pleasure, thus illustrating Aristotle's truism that to live well we must live somehow. In such cases, it seems that Spencer would regard life to be the direct end and pleasure the indirect end; for does he not say himself that it is "quite consistent to assert that happiness is the ultimate aim of action, and at the same time to deny that it can be reached by making it the immediate aim?" If pleasure, then, is the indirect end, which at times has to be sacrificed on behalf of life, which is the direct end, it would appear that the only justification for such sacrifice is the certainty of obedience to life-sustaining actions leading to the greatest happiness that is possible to

1 Data, p. 28.

attain. And Spencer, as already indicated, has no doubt with regard to this inference. The chief reason which he has for his optimistic belief in the final coincidence of life and pleasure would seem to be the alleged biological fact that Nature stamps with pleasure acts which help self-preservation or race-preservation or both, and with pain acts which have the opposite effect. Thus, referring back to the *Principles of Psychology*, Section 124, Spencer says in his *Data* that "it was shown that necessarily, throughout the animate world at large, 'pains are the correlatives of actions injurious to the organism, while pleasures are the correlatives of actions conducive to its welfare;' since 'it is an inevitable deduction from the hypothesis of Evolution, that races of sentient creatures could have come into existence under no other conditions".[1]

We have so far seen that "general happiness" is to Spencer the ultimate end of human action and that this general happiness is not to be sought directly, but by conformity to certain life-conserving conditions.[2] If any one doubts Spencer's allegiance to Utilitarianism, we have his own strong statement: "So that no school can avoid taking for the ultimate aim a desirable state of feeling called by whatever name—gratification, enjoyment, happiness. Pleasure somewhere, at some

1 Data, p. 79.

2 Cp. Data, p. 26.

time, to some being or beings, is an inexpugnable element of the conception. It is as much a necessary form of moral intuition as space is a necessary form of intellectual intuition."[1] It is to be noted that Spencer here considers "a desirable state of feeling," "gratification," "enjoyment," and "happiness," as being all inter-changeable with "pleasure," understood in the Utilitarian sense.

Assuming with Spencer for the time being that the Utilitarian end of general happiness can be attained only through obedience to life-conserving conditions, a question which arises at this point is, whose life or preservation are we to seek? Is it that of the individual or that of the race? In the early part of the *Data*, Spencer is of opinion that individual preservation and race-preservation are mutually dependent upon one another. Thus he says that among superior creatures and among human beings "conduct which furthers race-maintenance evolves hand-in-hand with the conduct which furthers self-maintenance"; and that "speaking generally, neither can evolve without evolution of the other; and the highest evolution of the two must be reached simultaneously."

Although Spencer thus believes in the simultaneous evolution of individual preservation and race-preservation, he recognises that, in our present imperfect society, they do not always go together.[2] He attributes this failure

1 p. 46 2 Data, p. 284.

to conditions of war. When wars cease, he confidently believes, there will be no need for sacrificing individual preservation to race-preservation. "Complete living" of each will go hand-in-hand with the "complete living" of all. But till then individual preservation, it would seem, is to be regarded as the ultimate end, and social or race-preservation as the proximate end.[1]

Of the conditions which conserve life—individual and social—, the most important one is, according to Spencer, justice as interpreted by him. Thus he says in the *Data of Ethics*, "Not general happiness becomes the ethical standard by which legislative action is to be guided, but universal justice."[2] The way in which Spencer relates justice to general happiness may be stated thus: The greatest *equal* happiness attainable through *individual* action is the ultimate end of morality. (In the case of J. S. Mill, it will be remembered that the end is the greatest *total* happiness attainable through *social* action). But the greatest individual happiness can be attained only through the exercise of faculties; and in the social state of man, which is a fixed condition of existence, the exercise of faculties means (1) that each individual (and he alone) should receive the results of the exercise of his faculties and (2) that he should have as much freedom as is compatible with

1 cp. pp. 133-4.

2 p. 224

the freedom of others for exercising their faculties.

While Spencer believes that justice is the chief means to life and, in turn, to happiness, he admits that it is impossible to achieve the greatest possible happiness without the co-operation of beneficence and prudence. But these principles, he adds, are only of secondary importance, and are, unlike justice, incapable of reduction to scientific terms. Passing over the principle of prudence which does not much concern us here, Spencer says that the field for the cultivation of positive benefience becomes narrower and narrower as we approach the ideal state and that negative beneficence has only a "nominal existence" in that state. An important distinction which he makes between justice and beneficence, and which needs to be noted here, is that justice is, according to him, "needful for *social equilibrium*, and therefore of *public concern*," whereas beneficence is "not needful for social equilibrium, and therefore *only* of *private concern*"[1].

We now pass on to state briefly the exact meaning that Spencer puts into his doctrine of social justice. This meaning, it seems to us, can be approached (1) from the legal point of view and (2) from the biological point of view. From the legal side, as is well known, Spencer's contention both in *Social Statics* and in *Justice* is that the best way of realising

1 Principles of Ethics, Vol. II., p. 270.

justice, and indirectly of "greatest happiness," is through his law of equal freedom. This law, Spencer believes, is capable of "exact ascertainment," and it is on the basis of it that he claims to build his theory of State-duties and State-limits. The reason for emphasising equal freedom, or what meets Spencer's meaning best, *maximum* equal freedom, is that such freedom is, according to him, absolutely necessary for harmonious co-operation, which in turn is essential for social existence and for the exercise of the individual faculties—the fixed conditions for the attainment of the greatest possible happiness.[1] As to what exactly Spencer means by freedom we find a clue in his inborn aversion to authority in general and to State-authority in particular. What a study of Spencer's view concerning the relation between the individual and society reveals is that freedom as conceived by him means, in the main, the least possible interference from the side of organised society. It is also worthy of note that Spencer's freedom for the most part is concerned with freedom from physical coercion and not so much with freedom from mental and moral coercion.

The most striking thing about Spencer's formulation of the law of equal freedom (in *Justice*) is that no sooner is it formulated than does he proceed to qualify it profoundly by saying "the truth to be expressed is that each in carrying on the actions which constitute

1 cp. Data, p. 223.

his life for the time being, and conduce to the subsequent maintenance of his life shall not be impeded further than by the carrying on of those kindred actions which maintain the lives of others. It does not countenance a *superfluous interference* with another's life, committed on the ground that an equal interference may balance it. Such a rendering of the formula is one which implies greater deductions from the lives of each and all than the associated state necessarily entails; and this is obviously a perversion of its meaning."[1]

What the qualification is meant to do is to prevent justification of aggression and counter-aggression. It is, therefore, with this qualification that we must understand Spencer's formula of justice when he comes to apply it later to the different rights of man. Another qualification which must also be kept in mind is that the formula is meant to be applied only to the ethics of the State, and not to the ethics of the family.[2] A still further qualification which also is of great importance is that the deductions of the formula are subject to conditions necessary for "social self-preservation."

From the biological side, as already indicated, Spencer believes that social justice means that each person ought to receive the benefits and evils of his own nature and consequent conduct; that, in other words, there ought to be an exact proportion

1 Justice, p. 46. 2 cp. Justice, p. 42.

between benefits received and services rendered.[1] And as to how this proportioning of benefits to efforts is to be effected, Spencer's belief is that it can best be done by interdicting all "aggressions and counter-aggressions"[2] and by enforcing contracts freely entered into, except the contract of slavery.[3]

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1 cp pp. 188-9.
2 Justice, p. 64.
3 Data, p. 146.

SECTION II.

Application of Spencer's Formula of Justice to the Practical Questions of Social Life: Theory of Rights.

We turn our attention now to the second main division of *Justice* (chs. VIII-XXI) and concern ourselves with the applications that Spencer makes of his formula of justice to the practical questions of life in society. What Spencer does in this section is to deduce what are called the rights of man from his formula of justice (*i.e.*, the law of equal freedom) and to trace their historical development in such a way as to show that as civilisation progresses and as man approaches the ideal social state, these rights tend to coincide with ordinary ethical conceptions and legal enactments. The list of rights, dealt with in this section, Spencer claims, are the only rights that man has [1] and that all of them are deducible from his formula, which he contends, is an ultimate ethical principle. Thus he says: "rights, truly so called, are corollaries from the law of equal freedom, and

1 Justice, p. 176.

what are falsely called rights are not deducible from it."[1] These rights, he further says, exist independent of "social arrangements,"[2] inasmuch as they are "the several particular freedoms"[3] composing the law of equal freedom which is directly derived from the biological and sociological laws of life.

We may roughly group the various rights discussed by Spencer both in *Social Statics* and in *Justice*, under (1) the rights of life, liberty, and personal security; (2) the right of property—corporeal and incorporeal; (3) the right of contract; and (4) the right of status (or family rights.)

In connection with the first group of rights—the rights of life, liberty, and personal security,—we must say a word about the rights of freedom of belief, worship, speech, and publication, which Spencer considers separately towards the end of his treatise on *Justice*, which can very well be brought under the first group. These rights, it is noticeable, Spencer strings together in the form of a sorites and attempts to show that "in addition to each of them being a direct deduction from the law of equal freedom, they imply one another in such a way that to prove that a person has the right to freedom of belief means that he also has a right to freedom of worship, speech and publication". Thus, Spencer argues, freedom of belief means nothing if it does not mean freedom to profess belief; and freedom to

1 p 63. 2 p. 176. 3 p. 62.

profess belief means almost nothing if it does not mean, in the realm of religious belief, freedom to manifest belief in acts of worship, and in the realm of both religious and non-religious beliefs, freedom of speech and publication. Although these rights, in Spencer's treatment, seem to be absolute at first sight, they are considerably limited when he qualifies the law of equal freedom by saying that it "does not countenance aggression and counter-aggression." Thus freedom of worship extends only to acts which "do not inflict *nuisances* on neighbouring people."[1] Similarly, "freedom of speech, spoken, written, or printed, does not include freedom to use speech for the utterance of *calumny* or the propagation of it; nor does it include freedom to use speech for prompting the commission of injuries to others."[2] As regards utterances which pass "the limits of what is thought decency, or are calculated to encourage sexual immorality,"[3] Spencer believes that, though there might be a necessity to check them in the interest of social preservation, they "must be tolerated in consideration of the possible benefits."[4] Thus, while giving the individual a very wide range of freedom (freedom of a theoretical and abstract kind) in the exercise of his rights to free belief, worship, speech, and publication, in practice he limits it considerably by enforcing many

1 Justice, p. 137.
2 Justice, p. 142.
3 Justice, p. 143.
4 Justice, p. 144.

qualifications drawn from the law of equal freedom.

Passing on to the group of rights which may be brought under the right of property, it is evident that by this right Spencer means the right of *private* property. This right, he says, is "originally dependent on the right to the use of the Earth" and adds that though the connection between the two rights to-day is "remote and entangled" it "still continues."[1]

The right of contract (or what is called in *Justice* "the right of free contract"), Spencer regards as being most essential for the exact proportioning of benefits to efforts. Discussing it in close connection with the right of free exchange, he says, "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."[2] Examples of the kinds of contracts into which men voluntarily enter without aggressing on others, Spencer says, are "contracts for the uses of houses and lands; contracts for the completion of specified works, and contracts for the loan of capital." These contracts he considers to be ethically warranted, because they are voluntary and do not infringe on the liberty of others to enter into similar contracts. The contract of slavery between A and B, however, which may well

1 Justice, p. 95. 2 p. 129.

meet the tests of being voluntary and not interfering with the equal freedom of C, D, etc., to enter into similar contracts, Spencer regards as both morally and legally unjustifiable. The reasons which he gives for this interdict are (1) that slavery violates the biological law of justice that there should be an exact proportion between efforts and the products of efforts, if life is to continue and (2) that it violates the implication of contracts that "the contracting parties shall severally give what are approximately equivalents."[1] The terms of slavery, he says, are "incommensurable."[2]

The first question with which Spencer concerns himself, in discussing the rights of women, is whether these rights should be restrained on some principle of "rights proportionate to faculties;" and he rightly answers it by saying that to do so would be to "add an artificial hardship to a natural hardship."[3] On the basis of this argument and on the basis of the arguments that to proportion liberties to abilities would be impracticable, and, even if practicable, unnecessary, since freedom is not such a mechanical thing that what one has the other loses, Spencer concludes that the freedom of men and women should be treated as equal, "irrespective of their endowments."[4] So far, of course, the law of equal freedom offers us no difficulty. But when Spencer

1 p. 130. 2 p. 131.
3 p. 158. 4 p. 159.

comes to consider the rights of married women in particular and the political rights of married and unmarried women in general, we fail to see the applicability of his First Principle. In all the following cases, which deal with questions arising out of marital relations, it is evident that Spencer bases his conclusions not on the law of equal freedom but on some such law as the law of fair exchange: (1) As regards the right of property, he says that "it may be reasonably held that where the husband is exclusively responsible for maintenance of the family, property which would otherwise belong to the wife may *equitably* be assigned to him—the use, at least, if not the possession."[1] (2) With regard to a fair division of family duties, Spencer remarks: "The discharge of domestic and maternal duties by the wife may ordinarily be held a fair equivalent for the earning of an income by the husband."[2] (3) In respect of authority over one another's actions and over the household, he observes that "since..... man is more judicially-minded than woman, the balance of authority should incline to the side of the husband; especially as he usually provides the means which make possible the fulfilment of the will of either or the wills of both."[3]

With regard to the relation of women to men in the State Spencer contends that the assumption that the political rights of women are the same as those of men, is faulty The reason

1 p 160. 2 p. 161. 3 p 161.

which he gives for this contention is that citizenship includes not only the giving of votes, but also undertaking serious responsibilities like fighting for the country; and adds that since women do not "furnish contingents to the army and navy such as men furnish" they cannot have the same political rights as men until there is reached a state of permanent peace. In local governments and administrations, however, Spencer says that women may have equal rights with men, since the above reason does not apply there.

The rights of children, it is clear, must, on any social theory whatever, receive a separate treatment from the rights of adults. Spencer himself admits this position when he draws a division between the ethics of the State and the ethics of the family. Assuming preservation of the race to be a good end, Spencer argues that it can be achieved only by means of self-sustentation and sustentation of offspring and adds that the ethical significance of the latter condition is that children have rightful claims "to those materials and aids needful for life and growth which, by implication, it is the duty of the parents to supply."[1] But to be merely supplied with food, clothing, and shelter is not enough. Children "have also to receive from them (parents) such aid and opportunities as, by enabling them to exercise their faculties, shall produce in them fitness for adult life."[2] While parents have thus to fulfil

1 Justice, p. 167. 2 Justice, p. 168.

the obligation of meeting the rightful claims of children mentioned here and have further to fit them for adult activity, they are not to sacrifice themselves unduly in so doing. For "undue sacrifices are eventually to the disadvantage of the offspring, and, by implication, to the disadvantage of the species" and further "since the well-being and happiness of the parents is itself an end which forms part of the general end, there is a further ethical reason why the self-subordination of the parents must be kept within moderate limits."[1]

In return for sustentation and other aids which children receive from parents, they should give them "whatever equivalent is possible in the form of obedience and the rendering of small services."[2] But as children do not always remain children, but constantly approach adulthood, the transition from the ethics of the family to the ethics of the State "must ever continue to be *full of perplexities.*"[3]

We can expect only that the compromise to be made in every case, while not forgetting the welfare of the race, shall balance fairly between the claims of the two who are immediately concerned: not sacrificing unduly either the one or the other."[4]

Not only does Spencer claim that all the rights of man "truly so called," are derivable from the absolute law of equal freedom, but that they one and all coincide with ordinary

1 Justice, p. 169. 2 p. 170.
3 170. 4 p. 170.

ethical conceptions and legal enactments. Where there is no actual correspondence, Spencer would probably say that ordinary law and morality ought to be changed in accordance with his deductions.

The last important claim which Spencer makes in favour of his law of equal freedom, is that the deductions of that law (especially the deductions with regard to the rights of property and contract) coincide with the deductions of political economy. Stating the claim in Spencer's own words:

"This (political economy) 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 negatived as involving infringements of rights. The reasonings of political economists show that machinery is beneficial to the people at large, instead of hurtful to them; and in unison with their conclusions the law of equal freedom forbids attempts to restrict its use. While one of the settled conclusions of political economy is that wages and prices cannot be artificially regulated with advantage, it is also an obvious inference from the law

of equal freedom that regulation of them is not morally permissible. On other questions, such as the hurtfulness of tamperings with banking, the futility of endeavours to benefit one occupation at the expense of others, political economy reaches conclusions which ethics independently deduces.

"What do these various instances unite in showing? Briefly, that not only *harmony* of co-operation in the social state, but also *efficiency* of co-operation, is best achieved by conformity to the law of equal freedom."[1]

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1 Justice, p. 155.

PART II

Criticism.

SECTION I.

Derivation and Meaning of Spencer's Theory of Social Justice.

PART II

CRITICISM.

In our exposition of the derivation and meaning of Spencer's theory of social justice in Section I of Part I, we noted the following points:

(1) That in order to know what justice is in our ordinary human relations, we must first inquire into what justice is in the ideal social state, *i.e.*, justice as it applies to the perfect man in a perfect society, or, to use the terminology of the *Data of Ethics,* to "the completely-adapted man in the completely-evolved society;"[1]

(2) That this ideal justice is capable of scientific formulation and of affording us practical guidance in

1. p.275.

the maintenance of just relations in the present state;

(3) That while it is only partly arrived at through the empirical method of orthodox Utilitarianism, it is fully arrived at through certain abstract deductions made largely (*a*) from the doctrine of the Moral Sense (primarily in *Social Statics*) and (*b*) from "the laws of life and the conditions of existence"[1] in the *Principles of Ethics*, *i.e.*, from "the affiliation of Ethics on the doctrine of Evolution";[2] and

(4) That in the form stated by Spencer, meaning maximum equal freedom and minimum State interference, it is the essential condition to the attainment of the Utilitarian end of "greatest happiness," other principles like Prudence, Negative Beneficence and Positive Beneficence being only of a supplementary character and incapable of such "exact ascertainment."

We shall now take up these points and criticise them; and, in so doing, attempt to show in particular:

(1) That, in order to know what justice is for us here and now, it is not

1 Data, p. 57. 2 Justice—Preface.

very necessary (and, even if necessary, not possible) to formulate a theory of justice that will be applicable to the conduct of the perfect man in a perfect society;

(2) That even if it were possible to formulate an "ideal" theory of justice through the ignoring of the facts of experience and the actual conditions of every-day life, as in the case of Spencer, the conditions which such formulation represents would be so far removed from the real conditions of life that the theory would be of little or no practical value to us; and that, even if it did have any value, such value could not be ascertained without the aid of the empirical method which the theory seeks to supplant;

(3) That, as a matter of fact, Spencer's formula of justice, the law of equal freedom, is inherently inapplicable to his "ideal" state and that its applicability to the "un-ideal" state is far from being clear or precise;

(4) That, in arriving at it, Spencer is far more dependent on the empirical method than he admits to be the case, though he is never a thorough-going empiricist, and he is far

less dependent on the doctrine of the Moral Sense and the theory of Evolution than appears at first sight;

(5) That justice, as he understands it, is not the best means to the attainment of "greatest happiness" or to the acquirement of the greatest "net" freedom or the fruits of freedom;

(6) That it fails to give us justice, according to any recognised theory of morality; and

(7) That, being built on a different basis from beneficence, its twin-principle, it not infrequently comes into conflict with it.

CHAPTER I.

An Enquiry into the Practical Value of Spencer's Theory of "Absolute" or "Ideal" Justice.

In this chapter we shall deal with the several points mentioned under the first three heads of our criticism outlined above.

The conception of certain absolute principles of morality, comparable to the universal and unchanging laws of the physical word, is so vital a part of Spencer's whole ethical theory that we may well begin our criticism of his theory of social justice with a discussion of absolute justice. We fully agree with Spencer in thinking that, in order to be able to maintain just relations between the members of society, it is important to have before us an ideal of justice; for it is clear that not to have an ideal towards which our movements may be directed, is to be tossed to and fro with every passing wind and to have no standard by which to measure progress. But we totally disagree with Spencer in the manner of arriving at this ideal. As is well known, Spencer's belief is that the only ideal that we

as moral beings can have, is the ideal of the perfect man in a perfect society. In *Social Statics*, he definitely says that "a philosophical moralist" can take no account of any ethical "problem in which a *crooked* man forms one of the elements" and that he deals only with the relationship in which a *straight* man "stands to other straight men."[1] But when we pass from this extreme position of *Social Statics* to the *Data*, we are at once struck by Spencer's opening discussion of organic evolution, his tracing of the growth of morality from its humble beginnings, and his insistence that the more evolved in conduct should be interpreted by the less evolved; and when, on the basis of these, we are about to conclude that Spencer had probably given up his peculiar view of absolute Ethics, we again meet with it though in a slightly changed form. Instead of speaking of the perfect man in a perfect society, he now speaks of the "completely-adapted man in the completely-evolved society,"[1] which means practically the same thing as the original view, though expressed in different language. Justice still remains the most important principle of morality for the ideal man and is considered to be capable "of the greatest definiteness."[3]

The chief objection that we have to Spencer's way to reaching a standard of ideal justice is that, morality being essentially a

1 ch. I. 2 p. 275. 3 Data, p. 285.

product of social life, our end must be stated in terms of human experience. Any ideal which abstracts man from the actual conditions of life under which he lives, and places him in a Utopia of which we can say nothing with certainty, can give us no guidance in our present social relations. It is true, as R. Adamson remarks, that "we can think only in and by the formation of ideals"; but, as the same writer says, "on the practical side, perhaps more directly than elsewhere, we become aware of the weakness and uselessness of ideals that are not filled from the concrete wealth of actual life."[1] If in reply to all this it is contended that Spencer's formula of absolute justice, *viz.*, the law of equal freedom, is stated in terms of human experience, as seen in the elaborate practical applications that he makes of it both in *Social Statics* and in *Justice*, our answer is that the formula is primarily based upon relative Ethics, as conceived by Spencer, and is secondarily transferred to the absolute state. To this point we shall return later in the chapter.

If our contention that a cocial ideal must keep in close and constant touch with the actual facts of life, is true, then it is evident that we can speak of such an ideal only in relation to a better state of affairs than what we have now, and not in relation to what is "abstractedly best" (Spencer's Essay on

1 Development of Modern Philosophy, vol. 2, p. 124.

Prison Ethics). As T. H. Green remarks, we only know the *better*. Of the best we have only a dim idea. Our ideal thus becomes a progressive ideal, attained through induction. It proceeds from below upwards, and not from above downwards.[1] It keeps on receding all the time and never remains as a fixed standard. Spencer's ideal, on the contrary, seems to be something fixed for all time. Thus in his Essay on "Prison Ethics," Spencer writes, "We must have some fixed standard, some invariable measure, some constant clue." "Otherwise," he adds, "we shall inevitably be misled by the suggestions of immediate policy, and wander away from the right rather than advance towards it"—a conclusion which does not necessarily follow, if we have an ideal of the kind that we have described. What right Spencer as an evolutional thinker has got to a fixed end, we shall consider later.[2]

While adopting a fixed code of morality (with absolute justice as its central principle) as the goal of all moral and social progress, Spencer does not minimise the fact that there is a wide gulf separating his ideal from the actual state of society that we know to-day. But this gulf, he confidently hopes, in the original edition of *Social Statics*, will be successfully bridged by man's capacity for unlimited adaptation. If Spencer had adhered

1 cp. Adamson, Ibid, p. 116.

2 ch. 3.

to this optimistic view right through, his theory of absolute Ethics, in general, and of absolute justice, in particular, would have a semblance of reality. But he does not do so. In his later writings, which express his maturer views, Spencer tacitly gives up his belief in absolute perfection reached through continuous adaptation, although he still believes in our reaching the closest possible approximation to the perfect state. Thus in the revised and abridged edition of *Social Statics* (1892), he adds "The rate of progress towards any adapted form must diminish with the approach to complete adaptation, since the force producing it must diminish; so that, other causes apart, perfect adaptation can be reached only in infinite time"[1] —which amounts to saying that it can never be reached under ordinary human conditions. Even more explicit is the statement in his *Essay on Absolute Political Ethics*, where he says, "Should I be able to complete Part IV of the *Principles of Ethics*, treating of justice .... I hope to deal adequately with the relations between the ethics of the progressive condition and the ethics of that condition which is the goal of progress—*a goal ever to be recognised, though it cannot be actually reached.*" The question which we ask ourselves at this point is this—if the ideal is something which cannot be realised even by the "perfect" man, on what basis can it act

1 p. 31.

as a standard for conduct here and now? And the answer which we are obliged to give is that there is no such basis whatever, that it is really illogical to apply to the "crooked" man—the only man that we have with us—the laws of the "straight" society, which the "straight" man himself is able to fulfil only approximately. If, in reply to this criticism, it be said that even to have an ideal which can be approximately realised is a great help, our answer is that, while admitting the truth of such a reply, we are bound to say that Spencer, who seeks to provide Ethics with a 'scientific' basis and free it from empirical uncertainties, cannot consistently put forth the present plea. To allow Spencer to maintain such a plea would be to eliminate the unique difference that there ought to be between the term ideal as understood by him and the term as understood by other moralists. Approximation implies empiricism of some sort. Further, if the "perfect" man can only *approximately* fulfil the law of a "perfect" society, neither the man nor the society of which he is a member can be perfect. Consequently the hypothetically "perfect" laws must be out of relation to them; they must be merely imaginary. Hence our plea for filling our ideal "from the concrete wealth of actual life." Hence also it is that we require our ideal to help us to answer the question, what ought we to do here and now, without answering the hypothetical question, what

would a "perfect" man do in a "perfect" society?

The general conclusion, then, to which we are driven as a result of the above considerations is that, in order to know what justice is for us in our present social relations, it is not necessary, and perhaps even futile, to inquire into what justice is for "the completely-adapted man in the completely evolved society." We are satisfied that our ideal should help us to attain a better state of affairs than what we have now, and not a state which is "abstractedly best." We are also content that our conception of ideal justice should keep on improving with the progress of society. But by saying this we do not mean to suggest that we do not subscribe to the permanency of the intuition found among civilised societies that "justice be done, though the sky should fall." Our contention is that, while justice as a theoretical principle of morality must ever remain with us, our practical understanding of it is bound to vary according to time and place, and that the conduct which is the result of such practical understanding is not what Spencer would call conduct which is "least wrong" or "relatively right", but that it is the perfectly right conduct for the particular time and place.

But ideal justice, as interpreted by us, Spencer would say, is not scientific, because it fails to provide us with an absolute law from which our actual code of justice could

be deduced. In reply to it, however, we may say that it is extremely doubtful whether we could deduce anything at all from an absolute law, which would be of practical guidance. R. Adamson, to whom we have made reference already, says, "I have not the smallest doubt that we cannot (from the absolute law) deduce the actual code of morality anywhere or at any time accepted."[1] Unlike Spencer, we hold fast to the idea that" the social conditions of a given time are just, and perfectly good, so far as they represent the best possible approximation to the ideal,"[2] because we believe that in the case of a problem like social justice particularly, which is essentially a pratical problem, we cannot have a perfect solution which will suit all times and places, but that we can only have the nearest possible approximation to our ideal.

In reply to the main argument of our criticism that our practical ideal of social justice should be progressive, and as such can be defined only in tentative terms, and cannot be fixed for all time, a supporter of Spencer's theory is sure to say, as Prof. Sorley suggests, that all that a progressive ideal means is that it is an ideal which is incompletely apprehended, and that an ideal

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1 Adamson, Ib., p. 135.

2 E. Barker, Political Thought in England from Spencer to To-day, p. 95.

which is completely apprehended, like Spencer's, can at once give us "a clear and definite view of the final end of conduct."[1] This reply would be fatal to our argument if it could be shown that the ideal state which Spencer posits, together with its principle of absolute justice, reveals a complete apprehension of the facts of human life. We shall therefore now turn to a consideration of the picture which Spencer draws of the final state and of the principles governing it.

For the sake of argument we may reverse our former position and say that, in order to know what justice is for us here and now, it is of the utmost practical advantage to know what justice is for the ideal man in the ideal state. But the question with which we are faced at once is, is there any possible way by which the finite intellect of man, which, according to Spencer himself, must be an evolving intellect, can conceive of a perfect state (which is also static) with such clearness and definiteness as to portray it in terms intelligible to us? We are not bound to answer this question ourselves; we are concerned only with Spencer's answer to it. His answer is, as already seen, in the affirmative.

Although Spencer claims that Relative Ethics ought to be preceded by Absolute Ethics and that the code of morality applicable to the absolute state can be ascertained by us scientifically, he himself does not profess

1 W. R. Sorley, Ethics of Naturalism, p. 201.

to give us anything more than a rough outline of the ideal state or of the ethical principles governing it. The important features of the ideal state are, he says, entire absence of militancy, of the organisation of society according to status, and of compulsory co-operation; their complete supersession by industrialism, by organisation of society according to contract, and by voluntary co-operation respectively; entire disappearance of the sense of obligation (including self-coercion)[1]; and production of pure pleasure, *i.e.*, "pleasure unalloyed with pain anywhere"[2] by the voluntary actions of all the members of society. It can easily be shown that every one of these features of the ideal state is of a highly disputable character and that they are all arbitrarily chosen by Spencer. But the important question is, how does Spencer arrive at them? Spencer's claim is that he arrives at them by means of non-empirical, non-historical methods—partly intuitional and partly deductive. Deferring an examination of this claim, we may say that it seems to us to be true beyond doubt that Spencer mistakes his sweeping generalisations drawn from a few facts for conclusions derived from intuitional or deductive methods. If the general conditions prevailing in the ideal state of Spencer are thus open to the charge of being one-sided and arbitrary, our presumption is

1 Cp. Data, section, 46.

2 Data, p. 261.

that the principles of justice, negative beneficence, and positive beneficence (as treated by Spencer), which are supposed to describe the harmonious co-operation of ideal men in such a state, are also open to the same charge. As Sidgwick points out, it seems "quite impossible to forecast the natures and relations of the persons composing such a community (*i.e.*, Spencer's ideal or perfect community) with sufficient clearness and certainty to enable us to define even in outline their moral code."[1] And even if for the sake of argument we grant to Spencer that his ideal state as well as his ideal justice show a complete comprehension of the facts of life and are thoroughly logical and scientific, our practical difficulties are in no way lessened. For, as Sidgwick argues, "a society in which—to take one point only—there is no such thing as punishment, is necessarily a society with its essential structure so unlike our own, that it would be idle to attempt any close imitation of its rules of behaviour."[2] If in reply to this argument, that the perfect state is so far removed from us as to be of no practical value to us, it is said that it is to our best interest to "conform approximately" to some at least of the rules of that state, we have three considerations to urge: (1) To discover what the ideal rules are which we must obey here and now, as well as the extent to which

1 Methods of Ethics, p. 468.
2 Methods etc., p. 468.

they can be obeyed by us, we need the services of the empirical method which Spencer's 'scientific' Ethics seeks to supplant. (2) It is plausible to argue, as Sidgwick does, "even supposing that this ideal society (described by Spencer) is ultimately to be realised, it must at any rate be separated from us by a considerable interval of evolution; hence it is not unlikely that the best way of progressing towards it will be some other than the apparently directest way, and that we shall reach it more easily if we begin by moving away from it."[1] (3) It is possible that the new rule, say the law of absolute justice, "though it would be more felicific than the old one, if it could get itself equally established, may be not so likely to be adopted, or if adopted, not so likely to be obeyed, by the mass of the community in which it is proposed to innovate."[2] In answer to this last argument, Spencer, of course, would say that human nature ought to be forced to fit itself to the conditions of existence. But to say that is to over-estimate the changeability of human nature.

Whatever force the above three considerations may have as a criticism of absolute Ethics, it must be conceded to Spencer that they do not have the same force when applied to his principle of absolute justice. With truth it may be contended that Spencer's rules of

1 Methods etc., p. 468.
2 Methods etc., p. 479.

ideal justice like (1) "Injure no one in person, estate, or reputation" and (2) "observe contracts," are quite practical; and it may even be argued, as Spencer does argue at great length, that the law of equal freedom itself, the quintessence of absolute justice, is capable of immediate application. Under these circumstances, therefore (and holding at the same time as we do that Spencer's absolute Ethics is in its very nature unreal and cannot be expected to do full justice to the facts of experience and the actual conditions of human life), we find ourselves compelled to suspect the 'absoluteness' of Spencer's theory of absolute justice. We shall therefore now turn our attention to an examination of the applicability of the formula of absolute justice to the 'ideal' state.

As already seen, both in *Social Statics* and in *The Principles of Ethics*, Spencer holds the same view of absolute justice, though there is a slight difference in its expression. The formula of absolute justice, as stated in *The Principles of Ethics*, is "every man is free to do that which he wills, provided he infringes not the equal freedom of any other man;" and the short name by which Spencer calls this formula is the law of equal freedom. Our purpose here is to discover what validity there is in the special claim which Spencer makes on behalf of his law that it is the only important law which will reign supreme in the Golden Age that he posits. In order to

do this, let us first briefly recapitulate what Spencer says about the ideal state and the ideal man. The ultimate or ideal state, he says, is a completely evolved state which allows no "scope for further mental culture and moral progress" (*First Principles*, section 175). Man in this state is "perfect" or "completely-adapted," though, as indicated above, Spencer at times has his own doubts about it. Yet he thinks that the voluntary actions of the ideal man produce pure pleasure, *i.e.*, "pleasure unalloyed with pain anywhere."[1] The faculties, by the exercise of which alone man can derive happiness, become so perfectly adjusted in the ideal state that there is no longer any question of a faculty not getting its opportunity for exercise or of its giving pain to any one concerned in its being exercised. The sense of obligation, including self-coercion, disappears entirely and man's "moral conduct" becomes synonymous with his "natural conduct."[2] No one is prompted to molest his neighbours; nor does he have any feelings which prompt acts which would disagreeably affect others. Man, in short, becomes spontaneously, if not mechanically, moral.

If this picture which Spencer draws of the ideal social state and the ideal man be true, our natural inference is that, in the ideal social state, the law of equal freedom can at best have only a nominal existence. In such

1 Data, p. 266. 2 Data, p. 131.

a state, to speak of 'law' or 'equality' or 'freedom,' in the sense in which we use those terms to-day, will be to use "pretty archaisms." (1) There will be no law in our sense of the word because there will be no one prompted to break the law. Instead of command, which is the essential feature of the law of to-day, there will be counsel or advice. Legislation will sink into the background because it implies an imperfect adaptation of man to circumstances. All that 'laws' will seek to do will be to *formulate*—not regulate—man's natural conduct. If they ever bid perfect men do things which they are not inclined to do, they will be pernicious. In such a state, as F. W. Maitland remarks, man can be said to obey the law of equal freedom only "in the sense in which matter is sometimes said to obey the law of gravity"[1] There will be no legal or social pressure. (2) Not only will there be no law in the perfect state, but there will be no artificial equality either. The chief reason for maintaining some form of equity or equality (Spencer seems to regard these two terms as equivalents) in the present transitional state, according to Spencer, is that, man being not yet fully 'evolved,' it is inexpedient to allow him an unlimited sphere of action. But in the ideal state where man is completely evolved (*i. e.*, a state in which man reaches the

1 Mind, VIII O. S., p. 359.

maximum of heterogeneity possible) and where every one of his faculties is fully exercised without giving pain to any one concerned, there will be no limit placed on his activity. Consequently, men will have unlimited "spheres of action," and whatever equality there may be to-day, brought about by legal and social restrictions on their actions, will disappear and heterogeneity will be carried to the fullest extent possible. Only inequality in this ideal state (resulting from people's free actions) will not be resented by anyone, because the sphere of action of each "will be limited only by his own spontaneous wishes and his physical constitution."[1] (3) The conception of freedom too will lose its meaning in the ideal state, for what meaning can freedom have when no one is ever tempted to interfere with the desires of his neighbours? As Maitland observes: "There can be no 'freedom of speech' where no one is ever tempted to say anything that will give pain to his neighbours. There can be no 'freedom of contract' where no on edreams of entering into any agreements save those which the whole society will admit to be advantageous to it and to every member of it."[2] The inference that we draw from all this, then, is that Spencer's formula of absolute justice, *viz.*, the law of equal freedom, has little or no application to his 'ideal' state. It can only

1 Maitland, Mind, VIII O. S., p. 368.

2 Mind, p. 366.

have a nominal existence there. If in reply to this criticism, it be said that the right interpretation of the matter is that the law of equal freedom in the 'ideal' state is fulfilled naturally and spontaneously, we ask the question whether the same may not be said of any other principle of social justice at all. What objection is there to saying, for instance, that in the ideal state there will be a natural and spontaneous fulfilment of the law that everybody ought to get exactly the kind of work for which he is best fitted and a remuneration that will keep him in maximum efficiency as a worker? If none, what reason is there for assuming the superiority of the law of equal freedom over such or any other law for that matter?

A supporter of Spencer's theory is likely to say that we have no right to draw from Spencer's premises as rigid and literal an inference as we have drawn, especially in view of the fact that Spencer himself, in his later writings, more than once warns the reader that while the ideal of Absolute Ethics must ever serve as the goal of moral progress, the goal itself can never be acctually reached. Even if we accept this argument to be valid, we are justified in asking Spencer, who proposes to establish morality on a 'scientific' basis and seeks to give us a set of universal and unchanging ethical laws, derived from the absolute state, what right he has to posit a less remote ideal than the ideal of Absolute

Ethics as our practical goal. With Maitland we may say that just as the geometrician is not to be put off with slightly crooked lines because they are the straightest that can be made, the moralist cannot accept as straight a man who is on "extraordinary occasions" (*Data*) prompted to break the moral law. When Spencer speaks of the 'straight' or 'the completely-adapted' man, we must insist that we get that kind of man. Not to do so will be to obliterate the unique difference between himself and moralists who do not seek to give to Ethics the 'scientific' basis which Spencer believed he was able to secure. It may be that the final or ultimate state which mankind will ever be able to reach will be less remote than the ideal state of Spencer, but it certainly cannot be taken as the ideal in our sense of the term.

Even after accepting the above argument of ours, a supporter of Spencer's theory might be inclined to say, as we have argued before, that, in a practical matter like social justice, it is impossible to have a perfect solution, and that, therefore, a theory of justice which will help us to reach a state which is as nearly ideal as possible (what Maitland calls the penultimate state), may be regarded as our practical ideal. For the sake of argument we may accept this position. But in trying to see what applicability the law of equal freedom has to the penultimate state, we find that it has little or none. There is no valid

reason why there should be to the very end a wide divergence between the desires and aims of the individual and those of his neighbours; and yet this divergence, it is clear, underlies the law of equal freedom. There is no reason to believe that man in the penultimate state will still be so very selfish as to demand benefits in proportion to results, as this is brought about by the "fulfilment of voluntary agreements," and will not be satisfied with the free scope for the exercise of his faculties and a reward sufficient to maintain him in maximum efficiency. Even the general condition of affairs which Spencer pictures as prevailing in this penultimate state, where man is still subject to accidents, diseases, and misfortunes in general, is not in the least near the perfect state, which allows "no scope for further mental culture and moral progress" (First Principles, Sect. 175).

We, therefore, conclude that Spencer's theory of social justice has, in point of fact, little or no application either to the ideal or to the pre-ideal state, and that consequently it stands or falls solely by its applicability to a society such as our own, *i.e.*, by its ability to establish its claim to be "the best means of hastening the advent of the happy time when men will be fully evolved and "true self-love and social shall be the same."[1] We also conclude that Spencer's representation

1 Maitland: Mind, VIII O. S., pp. 366-7.

of the principle of justice as well as of the principles of negative beneficence and positive beneficence "suggests the belief that they are not so much guides which the ideal gives to the real as suggestions for the construction of a Utopia gathered from the requirements of present social life."[1]

We now go on to examine the applicability of Spencer's theory of justice to the present "un-ideal" state, but do not propose to do it at great length as we shall have to return to it in Sect. II, where we are to consider the practical applications that Spencer himself makes of his formula. We shall content ourselves merely with observing that the meaning of Spencer's formula of social justice is so far from being clear or precise that it requires considerable explanation and qualification on the part of Spencer before its application to our present-day social relations can be rendered plain. Our reason for insisting on this observation is that it would seem that Spencer who claims to be able to solve all the problems of social justice deductively by reference to a single abstract formula of justice is bound to give us a formula, whose meaning, so to speak, can be read and assented to by him who runs. In our exposition of *Social Statics*[2] we noticed that Spencer himself pointed out the serious imperfections inherent in the law of equal freedom: (1) "Various

1 Sorley, Ethics of Naturalism, pp. 254-5.

2 Ch. I, Sec. I, Part I.

ways exist in which the faculties may be exercised to the aggrieving of other persons, without the law of equal freedom being over-stepped:"[1] (2) "...if the individual is free to do all that he wills, provided he does not trespass upon certain specified claims of others, then he is free to do things that are injurious to himself."[2] Of the arguments adduced by Spencer in support of his formula in spite of these imperfections the chief one is that the imperfections will entirely disappear in the ideal state. But in view of our conclusion that the law of equal freedom itself will only have a nominal existence in the ideal state, we cannot accept Spencer's argument. Another argument advanced by Spencer is that other theories of justice also are open to similar, if not greater, imperfections. But in reply to this we may say that other theories do not attempt to solve all the problems of social justice by appeal to a single, abstract formula as Spencer's does. Even if they do, it is possible to prove that some of them at least, like the alternative formula discussed by Spencer in *Social Statics*—that each has a right to exercise his faculties so long as he does not inflict pain on any one else—are superior to Spencer's formula in the hastening of the Utilitarian end of "greatest happiness." Thus, applying the alternative formula to the case of freedom of speech, it is quite possible to

1 Social Statics, p. 80. 2 Ibid, p. 81.

maintain that perfect adaptation and, in turn, "greatest happiness" may "most readily be produced rather by a rigorous suppression of all speech which possibly can give pain than by granting a wide liberty to those who have unfavourable opinion of their neighbours."[1]

In our exposition of the early part of Justice, we noticed that the most striking thing about the absolute formula of justice is that no sooner is it enunciated than Spencer proceeds to qualify it profoundly by saying that his formula from one point of view applies (1) only in the realm of cases which are conducive to the maintenance of life; that, in other words, it does not countenance aggression and counter-aggression; and that from another point of view it applies (2) only to the ethics of the State and not to the ethics of the family. The vagueness and ambiguity introduced into the application of the formula by the first qualification are too patent to need any comment. With regard to the second qualification, it is sufficient to remark that the line of division is arbitrarily chosen by Spencer and that it is really unfair to exclude the relations of domestic life from a general discussion of justice. For, as Sidgwick argues, "the Common Sense of mankind certainly recognises that relations established by law or custom within the family, may be either just or unjust; and that even keeping

1 Maitland, p. 367.

within legal limits a parent may be just or unjust in the treatment of children."[1]

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1 Ethics of Green, Spencer, and Martineau, pp. 255-6.

CHAPTER II

Examination of the Derivation of Spencer's Theory of Social Justice from (1) Intuition or the Doctrine of the Moral Sense.

Here we propose to deal with the points mentioned under the fourth head of our outline[1] *viz.*, that Spencer is far more dependent on the empirical method in arriving at his formula of Justice than he admits to be the case. What he regards to be scientific deductions are as we shall now see really broad generalisations based upon an incomplete apprehension of facts. In support of this contention, we shall single out only two of Spencer's many optimistic inferences: (1) That because wars between communities have been hitherto a cause of the sacrifice of individuals to the community, therefore, when wars cease, all need for such sacrifice will cease—an inference which entirely overlooks the fact of industrial and other forms of antagonisms within societies. (2) "That humanity may be moulded into an ideal form by the continual discipline of peaceful co-operation"[2]—a dogma which flies in the face

1 pp. 69-70. 2 Principles of Ethics, vol. I, p. 473.

of all experience and does scant justice to the inner aspect of morality, since self-coercion or the sense of obligation, judging from our ordinary moral consciousness, is bound to continue so long as man is man—and man can never become mechanically moral. The usual method which Spencer adopts in these cases, of leading the reader from one step to the next in the realm of the known (and even there waiving all inconvenient facts) and then suddenly taking a wide leap into the unknown, is so familiar to us that it is hardly worth our while to consider the question of his empiricism as such. We may, therefore, turn our attention promptly to an examination of the two chief ways that Spencer travels in arriving at his formula of justice: (i) the way of the Moral Sense and (ii) the way of Evolution.

(i) *Derivation from the Doctrine of the Moral Sense or Intuition.* In our exposition of *Social Statics* we noticed that Spencer used this doctrine extensively; and, in particular, we saw that with the Moral Sense supplemented by reason as his starting-point and "greatest happiness" achievable through the law of adaptation as the ultimate end of human action, he traced three closely-related and, in some ways, hardly distinguishable routes in arriving at his theory of justice, which he claimed to be the chief means to the attainment of "greatest happiness." Our purpose here is to examine what support the doctrine

of the Moral Sense (or Intuitionism), as understood by its avowed adherents, really gives to the particular formula of justice advocated. It is not to inquire into the validity or invalidity of Intuitionism as such. If Spencer had used this pre-evolutional, intuitional mode of reasoning only in *Social Statics*, we could easily dismiss consideration of it by saying that it would not be fair to judge any writer by his earlier views, especially when he had taken the trouble to recast them in his later writings. But the fact is that in spite of the open embracing of the evolutionary method in his *Principles of Ethics*, Spencer still adheres to the intuitional theory, though he fundamentally changes it before using it. The change, however, it must be noted, affects primarily Spencer's view of the *origin* of the Moral Sense, and not very much the *application* that he makes of it.

We admit that when we turn from *Social Statics* to the *Inductions of Ethics*, one of the first things that strikes us is what appears to be an unqualified rejection of Intuitionism.

But as we have already said (pp. 18 ff. above) the doctrine of the Moral Sense, in some form or other, is sustained to the very end of Spencer's ethical thinking and the difference between the earlier and the later forms of the doctrine pertains primarily to the origin of particular moral intuitions. We shall now proceed to show how from that doctrine, Spencer derives the same formula of

justice both in *Social Statics* and the *Principles of Ethics*. In doing so, it will be convenient to state beforehand the points which we seek to establish. They are (1) that the particular form of justice arrived at by Spencer is not really deducible from Intuitionism and (2) that, conversely, the 'Intuitionism' which Spencer uses in arriving at his form of justice is more or less a caricature of true Intuitionism. Since these two points are very closely related to one another and are, in fact, reducible to one, we shall treat them together.

At the very outset it must be confessed that it is extremely difficult to define Intuitionism in Ethics. Some critics regard it as a direct and immediate manifestation of Reason and contrast it with Reasoning or argument and judgment; while others look upon it as an instinct or impulse or feeling. From our exposition of *Social Statics*, it seems clear that, in his introductory discussion on the doctrine of the Moral Sense, Spencer definitely places himself under the latter group. The terms which he uses to describe the Moral Sense are a 'sentiment,' an 'intuition,' a 'faculty,' a 'governing instinct,' a 'tendency,' and a 'feeling,' though at one place he uses the expression 'an innate perception. Without pretending to judge between the two types of Intuitionism that we have mentioned, we may point out the difficulty that exists for Spencer's type of Intuitionism. If the *Moral Sense* in its operation is an instinct,

like other instincts, implying an impulsive tendency, rather than a "faculty of abstract moral intuitions" (Albee: *History of English Utilitarianism*), it is difficult to see how it can have the authoritative and universal character that Intuitionism claims. Under conditions of civilisation, it is generally admitted that all our instincts cannot have a free play, even from the point of view of biological survival, and that they must be organised and controlled by some other master motive. It is true that Spencer admits that *Moral Sense* is to be aided and supplemented by reason. But judging from the wide gap[1] that he leaves between the *Moral Sense* and reason, we are tempted to ask, why posit a *Moral Sense* at all? Cannot the "empirical-reflective" method of Sidgwick be a sufficient guide to us in our social relations? If in reply to the latter question, it is said that principles arrived at in the way mentioned, will lack the necessary emotional fervour which could alone come from an instinct or impulse, we have Spencer's own answer that whatever is necessary and useful for survival and, in turn, to happiness, will eventually come to have the appropriate emotional tone attached to it.

1 Spencer seems unable to give a satisfactory answer to the objection raised by himself against his view of the Moral Sense, "how from an *impulse* to behave in the way we call equitable, there will arise a *perception* that such behaviour is proper—a *conviction* that it is good." (Social Statics, original ed., p. 26.)

Supposing for the sake of argument we grant to Spencer that his view of the nature of Intuitionism is on sound lines, the difficulties that he has to face on a purely intuitional basis are very many. As a Utilitarian, Spencer accepts the "greatest happiness" principle as the ultimate end of human action; and this principle, on the intuitional theory, must be the one clear intuition of the *Moral Sense.* But it is a well-known fact that, in spite of the attempt of Sidgwick and others to reconcile Hedonism with Intuitionism, Intuitionists on the whole are not agreed in regarding "greatest happiness" as a moral intuition. To may of them, the disproof of psychological Hedonism is sufficient evidence of the intrinsic irreconcilability of the "greatest happiness" principle and Intuitionism. To say in reply to this that eventually Utility and Intuitionism will exactly coincide with one another, is not enough. How about the present moral consciousness of those to whom pleasure is not a value in itself? In the words of A. W. Benn: "To declare pleasure a necessary form of moral intuition must be pronounced a piece of unwarrantable dogmatism."[1]

Even if we grant to Spencer for the time being that Happiness may be regarded as a "necessary form of moral intuition," the important question how we shall relate Justice to Happiness, remains to be answered. Spencer's answer, of course, which is implicit in all his

1 Mind, Vol. V, O. S.

ethical writings is that Justice is the chief means to the attainment of Happiness, and this in spite of his repeated assertion in *Social Statics* that Justice is the one clear intuition of the *Moral Sense*. But to this answer Intuitionists in general do not agree. To them Justice is a value in itself and is to be sought for its own sake. "Utility is not their standard, pleasure is not their motive." (A. W. Benn). They may be ready to grant that happiness or pleasure is one of the by-products of Justice. But to say this is not to establish the relation of means and end between Justice and Happiness. How far removed Spencer's position is from the intuitional demand that "justice be done, though the sky should fall" is seen is his belief that in the predatory state antecedent to the social state (if it is proper at all to speak of such stages in *Social Ethics*), an impulse opposite to that of Justice was required for survival, and hence was relatively right for that state. A corollary of this position which suggests itself to us is that if Justice is thus of relative value, dependent on its conduciveness to survival and, in turn, to Happiness, its value will cease if and when it is no longer an aid to survival and to happiness. But "Intuitionists," says Benn, "will continue to maintain that the consciousness of moral obligation has nothing to do with what experience tells about the general consequences of actions....They hold that rightness and wrongness are intrinsic qualities of

actions, which on being perceived become motives to perform or to abstain from them."[1] Once more, to the Intuitionists, the assertion "This is right" is the same as saying "I ought to do it." But the sense of obligation in Spencer's 'scientific' *Ethics*, as already seen, belongs to the intermediate stages of morality and will entirely disappear in the final state. Perfect morality to him is spontaneous or instinctive morality. But to this view, Intuitionists in general are sure to demur.

Let us for the sake of advancing argument concede to Spencer that Intuitionism has no objection—theoretical or practical—to regarding Justice as a means to Happiness, and ask ourselves what definition it can give us of Justice. Turning to Mill's Utilitarianism, we find the statement that "The philosophic supporters of intuitionism are now agreed that the intuitive perception is of principles of morality and not of the details"[2] That this judgment of Mill's is by no means an exaggeration can be shown by reference to other prominent writers.[3] Spencer's theory of Justice, on the contrary, which is closely connected with the conception of the perfect man in the perfect society, professes to give a formula of justice applicable to all times and places. In Justice (Part IV),

1 Mind, vol. V, O. S, pp. 504-5. 2 p. 28.

3 See Rashdall—Theory of Good and Evil, vol. I. Sidgwick—Methods of Ethics, Bk. III, Ch. XIII, Section 3.

Spencer definitely claims that his formula of justice is "an immediate dictum of the human consciousness after it has been subject to the discipline of a prolonged social life,"[1] though he adds that it is "relatively vague" and requires "methodic criticism." Even if we waive the advantage to be derived from this passage on account of the qualifications introduced, there are ample proofs to show the peculiar place assigned to justice by Spencer. Justice, to him, as already seen in *Social Statics*,[2] is the one clear intuition of the Moral Sense, which is perfectly free from ambiguity. It is capable of "the greatest definiteness" or of "exact ascertainment." It is different from other ethical principles—Prudence and Beneficence—in degree as well as in kind, for they lack its definite intuitive character and are incapable of specific definition until the advent of the perfect man. A clearer proof of the intuitive character of justice (including that of the formula) is found in a statement in *Justice* where Spencer sums up the two deductive arguments in support of the law of equal freedom: "By inference from the laws of life as carried on under social conditions, and by inference from the dicta of that moral consciousness generated by the continuous discipline of social life, *we are led directly to recognise the law of equal freedom as the supreme moral law.*"[3].

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1 p. 60. 2 pp. 90-1. 3 Justice. p. 155.

If the above argument against Spencer to the effect that our moral intuitions can at best give us only an abstract principle of justice that will be incapable of reduction to a formula of immediate application, is true, we may agree with writers like Sidgwick who content themselves with defining Justice in very broad terms and think that the only certain element in it is that we ought to treat similar cases similarly, or negatively, that "different individuals are not to be treated differently, except on grounds of universal application."[1] In other words, we may say that the principle of justice from an intuitional standpoint, is irreducible to anything beyond the law of equity or impartiality, and that this law might be written under the principles of justice "as an explanatory commentary"[2] But it is notorious that Spencer's mechanical and absolute formula of justice, the law of equal freedom, is in violent conflict with this explanatory commentary. It pays little or no attention to the importance of individualising persons and of finding out what is just for each of them as members of a common society. In other words, it ignores the importance of what Rashdall calls equality of consideration; it groups people together irrespective of their conditions or their moral and social needs.

1 Sidgwick: Methods of Ethics, p. 494.

2 J. S. Mill: Utilitarianism, p. 58.

The points of criticism that we have advanced so far against Spencer's theory of the Moral Sense in its relation to the principle of justice have been of a general character. We shall now turn to an examination of the detailed ways in which Spencer arrives at his formula of justice from his intuitional premises. This means that we should direct attention to the "three routes" that we expounded in Part I, Sect. 1, Ch. I. It is true that Spencer does not use these methods extensively in his later writings, but, since they are assumed all through, it is necessary to examine them, however cursorily, in our criticism. These methods, it will be remembered, are: (1) reasoning "our way from those fixed conditions under which alone .... greatest happiness can be realised;" (2) drawing "our inferences from man's constitution, considering him as a congeries of faculties;" (3) listening "to the monitions of a certain mental agency, which seems to have the function of guiding us aright in the matter of right social relationships."[1] It is needless to say that the first of these methods gives in a nutshell the plan of those parts of *Principles Of Ethics* which deal with Prudence, Justice, and Beneficence (Parts III-VI), written about forty years after the completion of *Social Statics*; the second links itself to the chapter on the Biological View in the *Data* (Ch. VI); and the third has intimate relations

1 Social Statics p. 103.

with the chapters on the Sentiment of Justice and the Idea of Justice in Part IV, chs. IV and V.

It is in our exposition of the first method more than of the other two, that we saw the wide gap that there exists between Intuitionism and Spencer's supposed deductions from it. We agree with Spencer in regarding the social state as a fixed condition of existence, but we disagree with him in the interpretation that he puts on it. It seems to us more reasonable to think that a moral consciousness would give us an intuition as to the true place of the individual in society than that it would provide us with a conception of society as composed of an aggregate of individuals, each individual having his own particular "sphere of activity." It is not likely that Spencer meant to refer his view of the social state to his doctrine of the Moral Sense. But, in any case, it is a notorious fact that, in spite of his elaborate use of the idea of a social organism and his tendency to take metaphors too literally, Spencer fails to reconcile the apparent antithesis that there is between self and "other-than-self." Even in *The Principles of Ethics*, where Spencer definitely admits the biological principle of race-preservation and realises that no complete separation can be effected between individual ethics and social ethics, he adheres to the pre-evolutional, intuitional classification and treatment of morals. The mechanical conception of each individual having his own 'sphere of activity' which underlies Spencer's

principle of justice, is retained to the very end. Not a word is said about justice in the field of non-competitive goods like moral goods, where the notion of a mechanical sphere of activity and the ideal of proportioning returns to labours will be plainly inapplicable. What, for instance, ought to be the social returns to a person who helps to strengthen the bonds of society by incessantly preaching and practising such social virtues as trustworthiness, mutual good will, a sense of group solidarity, etc? Can the good that he does be measured by any market value?

Leaving aside for the moment Spencer's conception of the social state, let us turn to his derivation of the principles of morality governing it. What we find here is that Spencer believes that justice alone is a clear intuition of the Moral Sense and that other principles like Prudence and Beneficence lack this intuitive character.[1] But in doing so, Spencer runs counter to the opinion of moralists who call themselves Intuitionists and to whom Beneficence (and possibly Prudence), just as much as Justice, is an intuition of the Moral Sense. Thus Butler, says Prof. Sorley, contends "for an original principle of benevolence towards others in human nature, as well as self-love or care for one's own interests and happiness."[2] Spencer does not give any reason for excluding Beneficence from the purview

1 Cp Social Statics, Part II, Ch. V, Section 2.

2 Ethics of Naturalism, p. 84.

of the Moral Sense. It is more than likely that this arbitrary exclusion is one chief reason for the conflict that there is between Justice and Beneficence in his treatment of them. For if he had treated them both as axioms of the Moral Sense there could be no real contradiction between them—however much they might differ from one another—because of the truth that first principles are incapable of contradicting each other. In the words of Calderwood: "Benevolence and Justice, as they describe quite distinct forms of action, cannot contradict each other."[1] Speaking of the intuitive principle of Justice alone, we may say that Spencer's law of equal freedom fails to meet every one of the requirements of an axiom proposed by Sidgwick, that it should be (*a*) stated in clear and precise terms; (*b*) really self-evident; (*c*) not conflicting with any other truth; and (*d*) supported by an adequate 'consensus of experts.'[2]

The second method, as we have seen earlier, arrives at the law of equal freedom through an argument based upon the exercise of faculties. As this argument has a natural affinity to the biological view of the *Principles of Ethics*, and the early part of *Justice* in particular, we may postpone a full consideration of it till we come to the next chapter which deals with the doctrine of Evolution. But, in the meantime, looking at it from the

1 Handbook of Moral Philosophy, p. 61.

2 Methods of Ethics, Bk. III, Ch. XI, Section 2

intuitional point of view, we may say that there is no special reason why the Moral Sense should lay down that the law of equal freedom, as interpreted by Spencer, is the best way of the members of a society achieving their "greatest happiness" through the exercise of faculties. It seems more reasonable to think that the Moral Sense, if it dictates "greatest happiness" as an end at all, will lend greater support to the alternative formula which Spencer rejects, *viz.*, limiting "the right of each to exercise his faculties, by the *proviso* that he shall not hurt anyone else,"[1] than to his own. Thus Plato in his *Republic* says: "If a man says that justice consists in repaying a debt, meaning that a just man ought to do good to his friends and injure his enemies, he is not really wise; for he says what is not true, if, as has been clearly shown, the injury of another can be in no case just." [2] In support of his formulation of justice, Spencer, of course, says that it is the surest way of securing the "normal" faculties of man and of abolishing his "abnormal," faculties. But as the sequal will show, the difficult terms "normal" and "abnormal," in Spencer's usage, turn out to be pretty nearly tautologies. A faculty which manages to survive comes to be regarded as normal and a faculty which fails to do so, as abnormal. If this inference of ours be correct and if, as Spencer says, the

1 Social Statics, p. 78.

2 Bk. I, p. 375 Jowett's translation.

purpose of justice is to hasten the time when "true self-love and social (shall) be the same," the alternative formula of justice which forbids the infliction of injuries on others may be regarded as a surer and quicker way of reaching the desired end than Spencer's law of equal freedom. Furthermore, a formula of justice which takes no account of a person voluntarily hurting the "*normal* feelings of his fellows" in exercising his legitimate rights and which makes no provision against the infliction of injury upon oneself, cannot be an intuition of the Moral Sense, and cannot be just. But yet Spencer contents himself by saying that "further qualifications of the liberty of action thus asserted may be necessary, yet... in the just regulation of a community, no further qualifications of it can be recognised."[1]

We now go on to the third method, and there find that Spencer definitely comes back to his doctrine of the *Moral Sense*, but *Moral Sense* of an impoverished kind. The old conception of the *Moral Sense* as an ultimate, which was presented in the second chapter of the Introduction, is tacitly given up and the conception that we now get of it is of a special faculty by virtue of which a person "tends both to assert his own rights and to recognise the rights of others".[2] And it is to this latter

1 Social Statics, p. 103.

2 E Albee: A History of English Utilitarianism, p. 284.

conception that Spencer really adheres to the end of his ethical and political writings. In the final analysis, Spencer practically reduces the *Moral Sense* to an "*instinct*" of personal rights, the "*instinct*" of sympathy being much later in origin and somewhat of a fictitious character to the end. Thus in *Social Statics* we saw that Spencer reiterated the assertion that, in order to understand the social aggregate, we must first understand the units of which it is an aggregate, and that the one sure element of these units is their "instinct of personal rights." Taking this individualistic point of view, it is not surprising that, in spite of his assumption of a *Moral Sense*, Spencer finds it difficult to account for the sentiment of justice without enlisting the co-operation of sympathy, sympathy itself being viewed as the obverse side of the instinct of personal rights and a late acquisition of the race. Thus, observes Spencer: "the sentiment of justice is nothing but a sympathetic affection of the instinct of personal rights—a sort of reflex function of it."[1]

Apart from the defects of assigning to sympathy a much later origin than what is really the case in the history of man's moral growth and of regarding it as merely the obverse side of the egoistic instinct of personal rights, Spencer, in his *Social Statics* at least, gives no adequate reason why or how man has come to be sympathetic. All that he

1 Social Statics, p. 97.

seems able to say there is that "since men are bound to feel more or less *like* each other, in similar circumstances, they must end by feeling for each other."[1] But how this transition is effected, as Dr. Albee points out, is left almost a mystery. In *Justice*, however, an attempt at an answer is made in the conception of the pro-altruistic sentiment of justice. There we are told that man starts with an egoistic sentiment of justice (a phrase corresponding to the instinct of personal rights), and that social sentiments which come into existence through his dread of social dislike, dread of legal punishment, dread of Divine vengeance, and dread of retaliation in the social state, give rise to sympathy and that this sympathy, in turn, produces the genuine altruistic sentiment of justice. Whether or not this account may be true psychologically, what we are concerned with is that neither in *Social Statics* nor in *Justice* is there any convincing reason given why we ought unconditionally to obey the voice of sympathy or that of justice. What we are given to infer is that as far as the individual is concerned, he has a ready-made *instinct* of sympathy (or altruistic sentiment of justice) and so if he is sympathetic, that is the only natural and spontaneous course for him to follow. This might very well be the ideal to aim at; but it is clearly not Intuitionism.

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1 Albee, p. 335.

Intuitionism receives an even more severe blow in Spencer's transition from the Sentiment of Justice to the Idea of Justice. The general sentiment of justice, to use the phraseology of the *Principles of Psychology*, has been defined as "the condition of equilibrium which the egoistic sentiment and the altruistic sentiment co-operate to produce." But the important question is, at what point in the apparent struggle between these two seemingly opposing tendencies, is the equilibrium to be found? Or, how is the *idea of justice* to be ascertained? The surprising answer given by Spencer is that experience shows us that there are certain limits beyond which our fellow-men will not tolerate interference and that liberty to act within these limits constitutes the idea of justice.[1] If this were true, we might well agree with Dr. Albee when he says that "there would inevitably be a different idea of justice for every race, if not for every minor social group, for the degree of human long-suffering is plainly a variable."[2] Once more, fear of man, which seems here to be placed at the basis of the idea of justice is not in accord with Intuitionism, for no Intuitionism of any description believes that its dictates are directly or indirectly due to fear of any kind.

Before we take leave of Spencer's handling of Intuitionism in its relation to the principle of justice, we must say a word about the

1 Justice, ch. V, sect. 21. 2 p. 339.

transmissibility of moral feelings on which he continually harps in the *Principles of Ethics.* Deferring consideration of the biological aspect of the subject to the next chapter, we may say that even if we are prepared to admit that our "moral faculties have resulted from inherited modifications caused by accumulated experiences,"[1] we are not freed from the difficulty of explaining how these faculties, which are interpreted "as caused by experiences of utility," [2] can be a sure guide for the future. They are certainly a good index of the past and, at best, may be a good guide for the immediate present. But so long as man (who, according to Spencer himself,) is still far from the perfect state and has to undergo continuous adaptation before reaching it, it is difficult to see how his present moral faculties, which are consequences of past utility, can serve future utility as well. Illustrating this difficulty from the principle of justice, we may say that even if we agree with Spencer, for the time being, that his law of equal freedom is "an immediate dictum of the human consciousness after it has been subject to the discipline of prolonged social life," there is no guarantee that it will continue to be an *immediate dictum* for all time to come.

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1 Data, p. 55. 2 Psychology, p. 620.

CHAPTER III

(2) Derivation from the Principles of Biology.

We now proceed to consider the claim made by Spencer that his theory of social justice is directly deduced from the theory of evolution. In doing this, it is first of all necessary to be clear in our own minds as to what we exactly mean by evolution, for evolution, as is well-known, is a very complex affair, and it is failure to note this primary fact that accounts for Spencer's one-sided conclusion that the law of equal freedom is a direct deduction from the theory of evolution. By evolution to-day we do not simply mean development in general, but development of the particular kind made familiar to us by Darwin, *viz.*, development through the natural selection "of those varieties of living beings which happen to the best fitted for survival in the struggle for existence."[1] Spencer clearly adopts this Darwinian view of evolution in his later ethical writings, but it remains to be

1 Sorley: Ethics of Naturalism, p. 141.

seen to what extent his alleged deductions from it are valid.

Before we proceed to a detailed examination of the first few chapters of *Justice*, where Spencer states what seems to be a clear and concise view of the biological basis of justice and which we have expounded in Part I, we may note three general considerations which seem to throw some doubt on the causal relation posited by Spencer between the theory of evolution and his particular formula of justice. The first of these is an inference which seems to force itself upon us in passing from *Social Statics to Justice* In both of these writings Spencer is greatly concerned with an exact definition of the notion of justice and in both of them, in spite of the use of such diverse methods as the intuitional and the evolutionary respectively, he curiously arrives at an identical definition of it, except for a slight verbal change. This fact, in itself, does not prove anything in particular. If it proves anything at all, it proves according to Spencer, the supreme importance of his formula of justice by establishing more than one way of reaching it. But when we take this fact in conjunction with the conclusion which we sought to establish in our preceding discussion on Spencer's treatment of Intuitionism that Spencer seems to use the intuitional method more or less as a convenient garb for presenting an independent theory of justice, we are led to suspect whether

the evolutionary method also may not be used in the same way by Spencer.

This suspicion of ours receives additional support when we come to the second consideration, that in *Social Statics* which was published some forty years before the publication of *Justice* and in which, according to Spencer himself, the "biological origin for ethics" which is "definitely set forth" in *Justice*, is "only indicated," the essential features of the "evolutionary principle" which enter into his formulation of justice, are already found in a fairly well-developed form. Thus already in *Social Statics*, Spencer "recognises the 'stern discipline of nature' which eliminates the unfit and secures the maintenance of a constitution completely adapted to surrounding conditions, and it is in the name of such discipline that he attacks the system of Poor Relief."[1] In the name of the same discipline he also attacks State-colonisation, State education, State care of public health, and State regulation of industry. It is not necessary for our purpose to examine at length how Spencer came by this evolutionary idea of the survival of the fittest years before the announcement of Darwin's epoch-making theory of natural selection. But a study of the early writings of Spencer in comparison with his later writings, makes it seem more than probable that Spencer started with a universal physical

1 Ernest Barker, Political Thought in England from Spencer to To-day, p. 92.

evolution, with its central ideas of perfect equilibrium, "individuation," adaptation to environment, and possibly survival of the fittest in some vague form, and that, later, when he discovered that the same central ideas could be illustrated by biological evolution, he included it under his single, all-embracing, physical evolution. Whether this view of ours, which is corroborated by E. Barker, be correct or not, a suspicion which grows upon us in following the development of Spencer's ethical and political thinking, as recorded in his essay on the *Filiation of Ideas* and in his *Autobiography*, is that Spencer, early in his life, had formed certain definite conceptions on matters of social justice, which were fully expressive of his extreme individualism, of his utter lack of respect for authority, and of his inborn aversion to traditional ideas and sentiments, and that later, when he came to give articulate reasons for his beliefs and to construct a system out of them, he unconsciously chose such methods as would illustrate and amplify the conceptions that he had previously formed—whether the methods were evolutionary (physical and biological), intuitional, or supernatural. It is only in the light of such an interpretation as this that we can understand what seems to be Spencer's uncertainty in determining for himself what precise part the theory of biological evolution had played in his ethics and how early that part had been played. Thus, in his Preface

to *Justice*, as we have already said, Spencer says that the "biological origin for ethics" is only indicated in *Social Statics;* and yet in his *Filiation of Ideas*, where he traces the evolution of his own mind, Spencer asserts that "throughout the whole argument (of *Social Statics*) there is tacitly assumed the process of Evolution, in so far as human nature is concerned. There is a perpetual assumption of the moral modifiability of man, and the progressive adaptation of his character to the social state. It is alleged that this moral evolution depends on the development of sympathy, which is held to be the root of both justice and beneficence.... *There is also a passing recognition of the Survival of the Fittest.*"[1] It is possible to account for the inconsistency contained in the latter quotation by saying that it is a case of reading backward on the part of Spencer, but what seems more than probable is that, having arrived at the essential features of his theory of justice without the aid of biological evolution and having later accidentally found in this biological evolution a re-inforcement of his original views, Spencer failed to keep the two separate from one another and had indeed come to imagine that the relation of cause and effect had existed between them from the very beginning. A further proof of Spencer's uncertainty as to the part played by evolution in his ethics can perhaps be detected in the

1 D. Duncan: The Life and Letters of Herbert Spencer, p. 540.

confession that he makes in his Preface to Negative Beneficence and Positive Beneficence (Parts VI and VII of the *Principles of Ethics*), where he says: "The Doctrine of Evolution has not furnished guidance to the extent I had hoped. Most of the corollaries, drawn empirically, are such as right feelings, enlightened by cultivated intelligence, have already sufficed to establish."

A third consideration to which attention must be directed, which also throws considerable doubt on the close connection posited by Spencer between the doctrine of evolution and his theory of justice, is the way that Spencer relates his evolutionary conception of justice to the non-evolutionary theory of an absolute state. If it be true, as Spencer says it is, that, in order to know what justice is for us here and now, we must first discover what justice is for the ideal man in the ideal state, that, in other words, the meaning of justice in the transitional state is inexplicable without knowing the meaning of justice in the ultimate state, it is extremely doubtful whether the same theory of justice can be legitimately derived from the doctrine of evolution. Expanding the matter somewhat at length, we may say that there appears to be a self-evident contradiction in a theory of justice which claims to be derived from evolution, but which at the same time starts with a doctrine of the absolute state, which uses such non-evolutionary methods as the arbitrary

fixing of a point in the circle of evolution and dissolution as end and the interpreting of the earlier in evolution by the later and such non-evolutionary ideas as "a definite and therefore stationary goal" (E. Barker), a perfect and final adaptation, and a complete equilibrium or static repose. In spite of this argument, however, we find that, in point of fact, Spencer in his *Justice*, manages to deduce his theory of justice from the doctrine of evolution. But this, it seems to us, he does by temporarily setting aside the conception of the absolute state with its non-evolutionary basis and by confining himself to a contemplation of the modes of survival.

The three general considerations which we have stated so far, in a somewhat dogmatic form, can, at best, only predispose us in favour of suspecting the causal relation posited by Spencer between the doctrine of evolution and his theory of justice. They do not definitely disprove it. We must, therefore, now turn to an examination of the theory of evolution in detail to see whether it may not after all be possible to establish an essential relation between evolution and Spencer's ideal of justice. In doing this, of course, it is necessary to keep the bilogical facts adduced by Spencer, and expounded by us in Part I, as the basis of our discussion. The particular points which we seek to establish are: (1) that Spencer is able to deduce his theory of justice from the doctrine of evolution only by a skilful selection

of biological facts; (2) that if the facts of biology, which Spencer omits or pays little attention to, are taken full account of, a totally different theory (or even theories) of justice can be established; and (3) that, even using Spencer's own biological premises and methods, opposite ideals of justice can be worked out with equal elaborateness and equal ingenuity. These three points are not very different from one another; and consequently, they are often likely to run into each other. They all illustrate the same general truth that the facts of survival are so numerous, and their interpretations so varied, that almost any ethical theory of social justice can derive its support from some of these facts and their interpretations. The only important reason for listing under three different heads the same general truth, is to emphasise the weakness of Spencer's evolutionary proof by coming to it from slightly different angles of attack.

We shall now take up the first two points of our criticism and treat them together. From our exposition of the first few chapters of *Justice*, it will be remembered that Spencer's conception of justice is that it is merely "a further development of sub-human justice."[1] This position *prima facie* strikes us

1 It is open to us to refuse to accept this position of Spencer's on the ground that "the differences between ourselves and our nearer or remoter relatives are just as real and significant as the fact of the common

as rather strange because justice is the very last thing that we expect to find among animals. In the words of Calderwood:[1] "It would seem that the very success of the Darwinian theory depends upon absence of any approach to justice in animal life. The masterfulness of force is the thing most conspicuous as we mark the conduct of animals. Food is the reward of fight; what is to happen to the one who is beaten is matter of no concern for the one who has secured a good repast. On any definition of justice that can be offered, it would seem clear that any regard to it is impossible under conditions of animal life."

In our exposition we noted also that Spencer's theory of justice concerns itself only with the relationships of adult life, and that, in the final analysis, it is practically reducible to the principle of "non-interference with the free activities of others"—interference being justifiable only in the enforcement of contracts voluntarily made, because such interference,

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ance-try" (Evolution in the Light of modern Knowledge, Ch. XII by Prof. A. E Taylor, p 455) and that, therefore, there is no logical necessity for human justice to be merely "a further development of sub-human justice" But, in reply to this, Spencer would probably say that, from his point of view, if the human species is to survive and prosper, the rules governing such survival and prosperity cannot in principle be different from the rules of survival and prosperity governing the lives of lower animals.

1 Philosophical Review, Vol. I, p. 243.

when necessary, is, according to Spencer, absolutely essential for the proportioning of benefits to efforts, by means of which alone, he believes, the existence and prosperity of society and, in turn, of the individual, can be secured. Our purpose now is to see to what extent this particular conception of justice is legitimately derived from the doctrine of evolution.

Let us for a moment agree with Spencer that the principle of human justice has its close counterpart in "animal ethics" and "sub-human justice" and that its dictates are to be applied only to the relationships of adult life. But the question of supreme inportance for which we seek an answer is, how can we formulate a theory of justice which will have its application both to human beings and animals in general? Spencer's answer is that he is able to find a solution to a universal theory of Justice in the biological fact of survival, *i. e.*, in the fact of the preservation and development of the individual and the group to which he belongs. But Spencer overlooks the fact, that, stated in this form, his solution is subject to certain serious defects. First of all, it brings him into conflict with his own theory of absolute ethics, for, justice which depends for its interpretation on such a relative conception as preservation or development, cannot be absolute. Yet Spencer contends that his formula of justice is the same in the relative as well as in the absolute state.

Secondly, even if for the sake of simplification, we cut asunder the connection between justice and absolute ethics and concern ourselves only with justice in the relative state, we are confronted with the truth that survival is a complex matter, and that it has been attained through various ways. Thus, as Josiah Royce observes: "Even human evolution exemplifies for us all sorts of ethical products; and many of them survive even unto this day, and will long survive .... The Chinese and the Prussians, the Czar and the American political boss, the wise and the mighty, the pure in heart and wreckers of railroads, are all alike survivals, are adapted to some sort of environment, are the products of ages of evolution. Approve on ideal grounds of any of these types, as against its opponent, and nothing is easier than to show how, in the course of evolution, the stars in their courses and the tendencies of the ages have wrought and fought to bring to pass just this product."[1] If the doctrine of survival, then, is thus a very plastic doctrine, we have good reason to suppose that Spencer, who professes to found his theory of justice on that doctrine, can do so only by skilfully selecting such facts of survival as would fit his case. Thus if Spencer, for instance, were not an individualist before he was an evolutionist, he could have taken such biological facts as the

1 International Journal of Ethics, II, p. 121.

survival of parasites or survival and progress of the group through self-sacrifice and sociality or "evolution by degeneration" (Prof. Taylor), and developed out of them totally different theories of justice.

In the third place, if justice, as Spencer understands it, is in the last resort practically the same as the survival of the fittest, in that it consists largely in letting individuals take the natural consequences of their actions, we have a right to ask Spencer whether his theory of justice should not call for a "free field for the operation of natural laws?" (E. Barker). This question is extremely important in the case of Spencer, because, in his doctrine of evolution, the truth indicated by such facts as sexual selection among higher animals, *active* adaptation of man to environment and of environment to man, *viz.*, the truth of what has been called *intelligent* or *purposive* selection, plays little or no part.[1] Yet when he comes to treat of justice, Spencer seems to be of the opinion that, instead of letting natural selection do its own work of selecting those who happen to be constitutionally best fitted in each generation for life struggle, the State (or purposive selection) should be summoned to do part of its work, to the extent of enforcing the fulfilment of contracts of exchange

1 If the civilised man, as Prof. A. E. Taylor observes, finds that his environment and his felt wants are at variance, he "sets to work not to change himself but to transform the environment" (Evolution in the Light of Modern Knowledge, p. 449).

voluntarily made and of providing protection against external and internal enemies. But, in summoning the "interference" of the State, Spencer seems to forget that his natural selection ceases to be "natural" and, what is more, that the differences between his view and that of his opponent, the extreme State Socialist, ceases to be one of principle, and turns out to be one of detail. As Rashdall observes: "There is no difference in principle (though, of course, there may be wide difference in their empirical justification) between the protection of life and property, together with the restricted voluntary 'beneficence' for which Spencer contends, and the interferences advocated on utilitarian grounds by the most advanced champions of Socialism.[1] A question which goes to the very root of Spencer's doctrine of social justice, in particular, and of his ethics, in general, is this—if the operation of natural selection may be set saide by man's reflective intelligence and forethought, at what point in its process is this supersession to come to a stop? In other words, if Spencer's theory of social justice has no objection to the State or society providing such artificial conditions as the enforcement of contracts and protection against external and internal enemies, within which natural selection may operate, why should it object to a complete supersession of natural selection by rational selection,

1 The Theory of Good and Evil, Vol. II, p. 389.

except it be on empirical considerations? Adapting the argument of T. Huxley to the context, why should justice object to human endeavour being directed "not so much to the survival of the fittest, as to the fitting of as many as possible to survival"[1]

We have used the idea of natural selection so far in the sense in which Spencer himself seems to use it, *viz.*, freedom from human intervention. But it is sometimes said that this meaning of Spencer's is not valid even on a purely evolutionary basis; for, it is argued that man's intelligence has come into being in the course of evolution and has survived because of its great utility value and that, therefore, to exercise one's intelligence in the ordering of society, on the well-being of which depends the well being of the individual, is more *natural* than to leave the progress of society to the mercy of accidental variations and chance adaptations. If this interpretation of the evolutionary method be correct, if, in other words, man's instinct is no more *natural* than his reason and it is *natural* for human beings to be *artificial*, Spencer's theory of justice loses a considerable part of its supposed evolutionary foundation. *Justice* is no longer capable of such precise expression as "superiority must be allowed to bring to its possessor all the naturally-resulting benefits, and inferiority the naturally-

1 Quoted in Sorley's Recent Tendencies in Ethics, p. 46.

resulting evils,"[1] for what in the realm of human intelligence is the meaning of such expressions as "naturally-resulting benefits" and "naturally-resulting evils," it is difficult to say. The struggle is no longer between individuals as such. But it is between a lower set of ideals, sentiments, and views of life, and a higher set, as they are interpreted by reason. Justice may still demand the withholding of exceptional advantages from the weak and inefficient members of society, but such withholding will be not for the sake of letting blind natural selection have a full sway among human beings, but in the name of a higher good.

With the point of view in the above paragraph as his starting point, Prof. S. Alexander who, like Spencer, believes in the evolutionary interpretation of ethics, develops a line of argument which in totally opposed to Spencer's theory of justice. It is instructive to state this argument,[2] however briefly, not because we agree with it, but because of the lesson it teaches in showing how varied the interpretation of natural selection may be.

Natural selection, as popularly understood means "a cruel and heartless doctrine" which seems to "reduce life to a succession of internecine conflicts;"[3] but this interpretation of

1 Quoted from a letter to W. H. Mallock, written by Spencer in 1898, included in Duncan's Life, p. 408.

2. International Journal of Ethics, vol. II, pp. 409 439.

3 p. 410.

the doctrine, Alexander argues, is not valid in the realm of human intelligence, where the progress of society is brought about not through accidental variations and elimination of the unfit, but through the conscious effort of reformers of societies who use persuasion and education in helping people to reach higher levels. Natural selection in human affairs does not consist in the destruction of individuals as such, but in the adoption by society of those social ideals which are "really suited to the needs which are felt."[1] One ideal is accepted and another rejected on the basis of their conduciveness to social welfare. The weak and useless members of society are not eliminated, but are helped to become strong and useful. A war is waged, not against their bodies, but against their ideals and sentiments which make them what they are, for natural selection in human affairs, as said before, "does not suffer any mode of life to prevail or persist but one which is compatible with social welfare." Natural selection as such is neither optimistic nor pessimistic, though it is on the side of constant amelioration. It "makes neither for a competitive nor co-operative or collective structure." In the early history of human civilisation, when constant warfare was the order of the day, "the presence of a large body of weak though otherwise useful persons" was "a source of weakness to the whole,"[2]

1 p. 417. 2 p. 429.

and hence such people were got out of the way. And in the last century, with the movement of disintegration, "the system of competition of individual left free to fight with individual"[1] came into being, not because of its intrinsic superiority, but because "the State in its wisdom discovered that its work was best done by leaving individuals free to get for themselves as much as they could, irrespective of their fellow-citizens."[2] It was not a free and unrestrained competition. Neither was it the kind of Individualism advocated by Spencer, according to which, "the lazy, the improvident, the maimed, deserve their fate, and in going under they leave society stronger"—a doctrine which at no time has "been enforced consistently."[3] It was a *legitimised* competition. But now when such competition is found to be incompatible with social welfare, a new ideal, *viz.*, collectivism, tenderness for the unfortunate, is coming into existence. This ideal will soon establish itself and displace competition, because "it possesses certain characters by which *it appeals more to the minds of men* than other plans of life,"[4] and is adapted to the conditions of existence. According to this ideal, the weak will be helped to become strong, and "each person shall do honestly the work for which he is best fitted." If he refuses, morality will use "the instrument of

1 p. 429. 2 p. 430.
3 p. 427. 4 p. 418.

punishment in order to reform him or if he is incurable, to render him incapable of mischief, like a lunatic or an idiot."[1] Justice will no longer mean the subjecting of each individual, irrespective of his circumstances, "to the effects of his own nature and consequent conduct" (Spencer). It will no longer indiscriminately group together the wreckers of society, the persistently lazy, and the incurable mental defectives with the poor and unfortunate who are such through no assignable fault of their own.

It is not necessary for us to go any further with this argument of Prof. Alexander's. We have said enough to show that it is possible to deduce from the doctrine of natural selection a theory of justice totally different from Spencer's. Although we may not agree with Prof. Alexander in the very wide interpretation that he puts on natural selection and would prefer to use the phrase "rational" or "purposive" selection in many of the places where he uses "natural" selection, we have to recognise the fact that to speak of natural selection in the sense of an unlimited and unrestrained competition, in the case of man, is meaningless. Even our commercial competition, we have seen, is a "legitimised" competition. Moreover, it would appear that with the appearance of reflective man on the stage of evolution, natural selection by necessity gives birth to purposive selection

1 p. 429.

and soon wipes itself out in favour of its progeny.[1] A general conclusion, then, to which these considerations lead us, is that Spencer's individualism has no exclusive right to be called an evolutionary doctrine. If anything, its right is less clear than that of some of the opposing ideals that we have considered.

Going back to Spencer's use of the idea of survival, we may note a fourth and last point of criticism. We have hitherto seen that, in Spencer's judgment, the ultimate justification of justice is to be found in its survival value. But Spencer says the same thing about beneficence when he observes in Part V, Ch. VIII of his *Principles of Ethics* that the ultimate justification of negative (and the same applies to positive) beneficence is to be found in its conduciveness to maintenance of the species or to increase of happiness.[2] A question

1 It may even be said that human sympathies and human sentiments which set themselves strongly against letting the poor and the unfortunate, irrespective of their special conditions, go to the wall ought really to be the basis of human justice. For, as Prof. A. E. Taylor remarks: "we have no guarantee that any new product of a development will not exhibit *some* characters of which the antecedents exhibited no sign, and these new characters may be just those which are in every way the most important characters of the product." Later development does not mean a mere "re-shuffling of pre-existent materials."

2 Principles of Ethics, Vol II, pp. 328-332.

which arises at this point is this—if Spencer thus believes that both justice and beneficence are necessary for the persistence of life and that, further, the State acting in the name of the union of individuals, should render conditions making for survival possible, whether it is not illogical for him to say that justice is "needful for social equilibrium and therefore of public concern" and that beneficence is "not needful for social equilibrium and therefore only of private concern." The only conclusion that seems to be warranted by Spencer's premises is that if it is right for the State to control natural selection—as Spencer thinks it is in the treatment of justice —the basis of control should be neither justice nor beneficence as such, but a fundamental axiom like social preservation or the success of the community of which the two principles are corollaries. Instead of making the limit of State-action coincide with the limit of justice, Spencer should combine justice and beneficence into one fundamental principle, and call upon the State to carry out this principle, using expediency as a guide. He should say that whatever the State can do on a conventional basis without excessive trouble and expense, is its proper duty; and that the rest should be left to private effort. If Spencer objects to this interpretation of survival, we must insist that the only alternative left to him is an uncontrolled natural selection, which has no room either for justice or for

beneficence. For, as Bosanquet aptly observes, when "life has at first been taken as self-preservation in the narrow sense," the attempts to add on other determinations of justice, beneficence and what not, apart from a reconstruction of the idea of self, only heap contradiction upon contradiction."[1] Spencer, it would seem, has no right to distinguish a "strict" or "pure" justice from beneficence in the way that he does.

Postponing a fuller discussion of Spencer's treatment of the relation between justice and beneficence to a later place in the present Section, we may briefly note some of the biological facts which we have not yet considered, but which come under the first two points of our criticism mentioned above.[2] Among these facts, the first place must certainly be given to the gregarious or social nature of man. Spencer at first considers this fact to be of such supreme importance for survival that he indeed derives from it two of the three laws which govern human life, *viz.*, the law which necessitates each individual limiting his freedom of action to the extent necessary for others to carry on activities similar to his and the law which justifies "sacrifices entailed by wars between groups." But yet in his argument, as a whole, as Sidgwick observes, "the effects of gregariousness, in the highly developed form in which it appears

1 Mind, N. S., XII, pp. 389-90.

2 pp. 120-21.

in the human race, are too lightly treated."[1] Even in dealing with purely animal evolution, Rashdall remarks that "Spencer has overlooked the importance of habits of co-operation or sociality in promoting the survival and progress of race or group."[2] Facts like active sympathy which goes out to meet the needs of others and universal benevolence and certain instincts of animals which lead them to self-sacrifice in cases other than the defence of the group or protection of the young (the only cases admitted by Spencer), receive scant justice from Spencer. He too "hastily assumes that the necessity for subordinating the welfare of the individual to that of the species arises solely from war."[3] He fails to realise that it is possible to interpret the gregarious nature of man (in the absolute, if not in the relative state) in such a way as to render his view of justice that each should bear the evils of his own nature impracticable or unmeaning.

This failure to take full note of the gregariousness of man is probably largely responsible for Spencer's inability to get at the true meaning of the idea of a social organism, in spite of his extensive use of the term in several of his writings. The chief ideas that we have in mind when we speak of an organism are that "it is (1) a living structure composed

1 Mind, N. S., vol. I, p. 111.

2 vol. II, p. 388.

3 Mind, N. S., vol. I, p. 111.

of parts different in kind ; (2) that those parts, by reason of their difference, are complementary to one another and mutually dependent ; (3) that the health of the whole consequently depends on the healthy discharge by each part of its own proper function."[1] But none of these ideas seem to enter fully into Spencer's theory of society or of justice, and, when they do enter, they do not seem to become an intrinsic part of his argument. To the end Spencer manages to look upon society as an aggregate of individuals, and the conception that it is "a union of minds to achieve a common purpose,"[2] remains foreign to him. Justice, to the last, consists largely in letting each individual take the natural consequences of his actions and in recognising the rights that belong to him by nature ; whereas the organic conception of society seems to us to demand a view of justice which would regard all the individuals of society—the weak and the strong, the high and the low—as "members one of another," each filling the place for which he is best fitted in the common life of the group, and each receiving in return that which is necessary to keep him in maximum efficiency as a member of society. Spencer does not seem to see that in the realm of politics, one who uses metaphors as literally as he himself does, can deduce from the analogy of an organism (with its central idea

1 E. Barker, op cit., p. 107.

2 E. Barker, p. 106.

of a nervous structure), a theory of Socialism with greater ease and greater logical consistency than he is able to deduce his extreme individualism, with its accompanying theory of natural rights.

From a consideration of the above two facts—gregariousness and society as an organism— to which Spencer does not give their due importance, and from which it is easy to derive theories of justice totally different from his, we now pass on to note two points on which Spencer places undue emphasis and see to what extent the force of his theory of justice depends upon his exaggerated emphasis The first of these is what is ordinarily called the transmissibility of acquired characters or what Spencer chooses to call, the "inheritance of functionally-wrought modification." We are not much concerned with the biological details of this controversial question, although we are convinced that the scientific position, in the words of Prof. J. A. Thomson, "should remain one of active scepticism—leading on to experiment."[1] What we are concernedwith is to point out the ways in which it adds weight to Spencer's theory of justice. In the first place, justice, to Spencer, as already seen consists largely in letting each individual get benefits exactly proportioned to his deserts, as deserts are measured by his power of self-sustenta-

1 'Herbert Spencer,' English Men of Science Series, p. 179.

tion; and the reason for letting this painful struggle for existence continue under conditions of civilisation is that, in course of time, it will eliminate the weak and the inefficient members of society and leave only those whose structures are best fitted for the conditions of existence. It is needless to say that this optimistic conclusion is arrived at only by careful omission of such biological facts as atavistic degeneration and spontaneous variation and by a naive assumption that our acquired characters—not only physical, but also mental and moral, all of which are necessary for survival in the case of man—are transmitted from generation to generation.

If the doctrine of transmissibility were proved to be not a fact, it seems fair to think that Spencer's theory of justice which rests part of its case upon it, would lose some of its justification. The son of a superior father has a right to inherit his father's property only if he is also superior. If he is not superior, or not as superior as the superior son of an inferior father who has no property to leave, his inheritance makes him start life with an unjust advantage and, consequently, there is a glaring violation of the law of equal freedom. If the superiority of the son of a superior father and the inferiority of the son of an inferior father cannot be guaranteed, justice should base itself not on natural selection, but on purposive selection which aims at fitting as many as possible in each generation

to survive. In the second place, Spencer, as a Utilitarian, is able to justify the pain that is now produced by the practice of justice (Spencer's justice) on the ground that such pain will progressively disappear with the gradual disappearance of the sense of obligation and with moral principles becoming more and more instinctive. But if the transmissibility of acquired characters is not true in the moral sphere and if justice to the end fails to produce "pleasure unalloyed with pain anywhere" (because of the presence of self-coercion and the giving of pain to others), we shall be justified in asking Spencer to find other ways of realising "*greatest* happiness" than through justice as he defines it. Spencer himself seems to have seen the supreme importance of transmissibility for his theory of evolution when he went to the length of saying: "Either there has been inheritance of acquired characters or there has been no evolution."[1]

A second controversial question which enters into Spencer's theory of justice is the question relating to the equality of man. In our exposition of the early part of *Justice*, we noticed that Spencer, in formulating a theory of justice, sought to combine the principle of inequality with the principle of equality: *inequality* as regards merit and reward, "since men differ in their powers" and *equality* as regards mutual limitations to men's actions,

1 Quoted by J. A. Thomson, p. 205.

since "experience shows that these bounds are on the average the same for all."[1] But we are now bound to say that Spencer here seems to overlook the fact that if men "differ in their powers" and if their rights are to be "ethical"—and to this Spencer really has no objection, inasmuch as he believes in one's rights being restrained by the presence of one's fellows—their limitations cannot and ought not to be the same. We may well agree with Spencer that the physical freedom required by the millionaire and the sweated worker for motion and locomotion, for access to unpolluted air, and for other such things, should be the same. But we cannot agree that their freedom in economic matters also should be alike, because their respective bargaining or coercive powers are nowhere near being equal. "Experience shows us," remarks Dr E. Barker, "no small number—labourers on the verge of subsistence, overworked women, denizens of London yards—who can only enjoy Spencer's law of equal freedom when the State by every manner of 'interference' has removed the obstacles from their path."[2] It seems to us that Spencer, in formulating an exact theory of justice, ought to have taken full account of this fact of experience, especially when he criticises Utilitarians for their inability to estimate, in their calculation of pleasure, "differences of age, of growth, of constitutional need,

1 Justice, p. 37. 2 p. 126.

differences of activity and consequent expenditure, differences of desires and tastes."[1] A conclusion to which we are inevitably led, in studying the application that Spencer makes of his law of equal freedom, is that his principle of justice "is fruitful only on the supposition of the equality of the members of a society."[2] This seems to be the conclusion of Prof. J. S. Mackenzie too when he remarks in his *Outlines of Social Philosophy* that "Spencer appears to have over-emphasised the connection between equity and equality."

Before we pass on to the third and last point of our criticism on p. 121, we must give an example of certain relevant facts of biology and sociology which Spencer entirely ignores in arriving at a definition of justice. We have already directed attention, in one form or other, to the fact that Spencer fails to take note of the general truth that conditions which held good in the wild state, do not necessarily hold good under conditions of civilisation because of the "startlingly new" (Prof. Taylor) stage of development arrived at by the reflective intelligence of man. It is generally agreed to-day by psychologists and others that even our instincts are not always a safe guide for action, since some of them at least were adapted to a totally different set of conditions. The example to which we wish

1 Data of Ethics, p. 223.

2 Mind O. S., Vol. V, article by Means.

to direct attention is found in man's characteristic of saving and investing whatever "benefits" he does not require for immediate "self-sustentation," an exact parallel for which we find nowhere in the animal kingdom. If Spencer had not overlooked this unique feature of man's nature, it seems fair to think that he would not have naively assumed that human justice was merely a further development of animal and sub-human justice. If human beings were like birds, for instance, each of which appropriates only that portion of the earth's produce which is necessary for the immediate use of itself and of its offspring, it stands to reason that there would be a great deal more left, at least of the raw material of the earth, for the sustentation of those members of society "less fit" for survival than is the case under conditions of civilisation. Population, indeed, would not have increased so fast and the economic gulf now separating the "fit" from the less "fit" would not have been so great. What happens to-day under our competitive system is that "the strong do more service towards the increase of wealth than is desirable for themselves or the state, and shut out the feeble from doing what they otherwise could."[1] Hence "our problem is no other than that of finding a distribution of work which would allow the weak to render a service proportioned to their

1 International Journal of Ethics, Vol. II, article by Prof. S. Alexander, p. 428.

ability, in the same ratio as the service required of the strong."[1] If in reply to this criticism, it be said that the strong by doing more than what is strictly necessary for their immediate sustentation, make it possible for many who are "less fit" for life conditions to survive, we may answer that, in the first place, such action retards our realisation of Spencer's ideal of justice. Secondly, if it can be shown that the superior benefits of the "more fit" are largely due to the lack of organisation and ignorance on the part of the "less fit," what objection is there for the "less fit" (when they can) to rise up in wrath against the "more fit," confiscate their wealth, and make it the common property of all? Will they not, in so doing, help to create (or restore) a state of affairs which will be closer to "nature" than the system which they destroy? Whatever the answer may be, it seems to us that there can be little doubt that the analogy between animal justice and human justice is useless when we consider man's unique characteristic of saving and investing whatever benefits he does not require for the immediate "self-sustentation" of himself or of his offspring."

The third and last point of our criticism, it will be remembered, is that, even using Spencer's own biological premises and methods, it is easy to work out ideals of justice totally opposed to his. We have already given our

1 Ibid.

reason for believing that an ideal of justice which seeks to imitate the modes of survival found in nature (using the word 'nature' in its limited sense, *i.e.*, excluding man's activity from it), must call for "a free field for the operation of natural laws," must, in other words, call for adoption by society of a principle of justice based upon a rigid *laissez faire* theory, and not on the theory of "Specialised Administration" advocated by Spencer. We shall, therefore, not say anything more about it.

The point that we go on to consider next is in relation to the importance of the preservation of the racial or national group for justice. In our exposition of the first few chapters of *Justice*, we saw that, barring the law concerning the care of the young, Spencer laid down three laws governing the life and prosperity of man, which were merely further developments of the laws which govern the life and prosperity of the higher gregarious creatures which defend themselves in groups against enemies. The first law is the individualistic law that "each individual ought to receive the benefits and evils of his own nature and consequent conduct."[1] The second law pertains to the mutual restraint of one another's freedom to the extent necessary for the carrying on of life-sustaining actions by all. The third law is a modification of the first two "required for purposes of self-defence, when the community is attacked by foreign

1 Justice, p. 17.

aggressors."[1] Overlooking the objection that these three are not the only laws of survival, we find that when Spencer comes to give a precise definition of justice, he develops it only from the first two laws, justifying himself on the ground that defensive war being only relatively just, the "formula of justice may be developed for the social conditions of a community at peace with its neighbours."[2] But this arbitrary procedure of Spencer's, which is a direct result of his firm belief in Absolute Ethics, renders his theory of justice incapable of application to all the facts of actual human life. If the preservation of the race is, as Spencer says, of supreme importance and should precede the preservation of the individual, an "exact" formula of justice which excludes such preservation must be defective. Spencer easily gets out of the difficulty by saying that the preservation of the race is simply a question of self-defence against foreign aggressors, and that as wars will probably soon cease, a scientific formula of justice need not take account of a temporary condition. Agreeing with Spencer for the time being that wars will probably soon cease, we ask ourselves whether it is true to fact to say that race-preservation merely denotes protection in war against external enemies. Do

1 International Journal of Ethics, vol. II, article by J. Royce, p. 119.

2 Ibid.

not modern politicians and statesmen undertake the promotion of colonisation and the formulation and administration of immigration laws, give State bounties to industries adversely affected by foreign competition, and advocate offering of inducement to the upper layer of society to perpetuate itself—all in the name of national defence and race-preservation? If it is right, as we think it is, to interpret race-preservation in the wide sense indicated, it seems fair to say that a theory of justice which bases itself upon survival, should consider the law of race-preservation to be at least as permanent a feature of justice as the first two laws to which alone Spencer gives full attention in formulating his biological theory of justice.

Reference has already been made to Spencer's inability to appreciate the true meaning of the idea of a social organism in spite of his elaborate use of the term in his ethical and sociological writings. If the analogy of an organism is to be fruitful at all in our social relations, it should suggest for end the health or well-being of the group as a whole and not the pleasures of an aggregate of individuals. In the realm of the distribution of economic goods, it should suggest as standard the maximum efficiency of each individual member of society rather than the mechanical meting out of benefits according to individual deserts, irrespective of circumstances. For, as Sidgwick says, we do not on

reflection think it just that a person should suffer for what is not due to wilful wrong-doing. By a sleight-of-hand the analogy of an organism may even be used to lend support to the communistic formula: "From every one according to his ability, and to every one according to his need;" and by taking literally the analogy of the societary form of bees that Spencer gives in Section 9 of *Justice*, we may arrive at an ideal of justice that will deliberately put out of existence all the parasites of society, and leave the world safe for workers. In the field of politics, the organic conception of society seems to be somewhat more compatible with an extreme form of centralised administration than with a rigid individualism of Spencer's type.

[1]We shall cite just one more example to show how easy it is to arrive at an ideal of justice totally opposed to Spencer's, using his own biological premises and methods. This time we turn to the first law of survival mentioned in the last paragraph. This law, says Spencer, applies not only to man but to animals in general; and, in its wide application, it reads that "among adults there must be conformity to the law that benefits received shall be directly proportionate to merits possessed:

1 The argument of the following two paragraphs is a brief summary of a "Book Review" by J. Royce in the International Journal of Ethics, vol. II, pp. 117-123.

merits being measured by power of self-sustentation."[1] But what is the exact meaning of this law? In the words of J. Royce, does it mean merely "that precisely those adult animals *ought* to survive and keep well which are physically so constituted that they *do* survive and keep well? If so, the proposition becomes very nearly a tautology and our 'ought' turns out to be but a mere stamp of private approval placed upon the *is* of nature." But if the proposition is to mean more than this and be of practical significance to us, we must consider the type of sub-human justice illustrated by the case of a domesticated breed of animals, as to which Spencer's argument is curiously silent. Those who breed and maintain domestic animals deal out benefits to them "which are in a fashion 'directly proportionate to merits possessed.'" "Only, among the traits presented by the individual animal's nature, the breeder chooses what ones *shall be* accounted for his purposes as true 'merits.'" If he is a breeder of horses, "it may be *either* swiftness *or* draught-power that he regards as constituting the desirable 'power of self-sustentation.' Selecting accordingly, and breeding true to the selected traits, he violates no condition of the 'survival of the species.' On the contrary, he may greatly aid such survival. In so far he is 'just' to that species as such; for he keeps it in life and improves its chances of survival

1 Justice, p. 6.

in its domesticated environment." But in all this, is he quite loyal to Spencer's further maxim, "that the individual shall experience all the consequences good and evil of its own nature and consequent conduct?" The answer is both yes and no. If by "consequences" we mean freedom from interference from the breeder or anyone else, the breeder's selection is an injustice to dogs and horses in their wild state. But if, on the other hand, "the breeder's interference, aiding as it does, the survival of the domesticated, but much modified horses and dogs is 'just' to them, in the 'sub-human' sense of the word justice,—just to them because it *does* make the species survive and improve, despite its own interference with the individuals—*then* Spencer's maxim may still be regarded as fulfilled in this case. The individual of the domesticated stock does, namely, 'experience all the consequences good and evil of its own nature and consequent conduct.' Only now it is the breeder's choice that determines what *shall* be good and evil in nature and so in consequences."

The application of all this to man lies precisely in the fact that civilised man at least is a domesticated animal. "No man ever civilised himself; the thing has been done by endless interference. One man has domesticated another man, and, on the whole, every man his neighbour." And if, as Spencer says, human justice is merely "a further development of sub-human justice", may not the

Socialist, the lover of State-interference say that "what the breeders do for horses and dogs, we should be glad to do, if we could, for man, *viz.*, to breed the race from the best stocks, and for the purposes of the wisest and cleverest breeders." This ideal may not be immediately realisable, but we shall put up with what Spencer sometimes calls "an empirical compromise." The important point, however, is that "it is strictly 'biological' to interfere, if you do so after the fashion that has achieved such brilliant results with the other domestic breeds: That is, you ought forcibly to train, and, as far as may be to select." "To do so wisely is to help the domesticated race to survive. To do so unwisely is a little unfortunate, of course; but wisdom is learned only by trial; and they doubtless did not find out how to breed dogs for a long time."

Such, stated very summarily, and largely in Royce's own words, "is a suggestion of what one could do with the doctrine of evolution, and with the nature of 'sub-human justice,' in case one were not Spencer, nor yet an individualist, but *were* misled, like Spencer, into supposing that a survey of the physical accidents of survival can of itself ever justify a coherent ideal." "The biological origin of justice," as interpreted by Spencer, "furnishes a mere soil wherein any and every possible ideal of justice besides his own...individualism could take root and grow rankly"—State

Socialism, Communism, Alexander's Collectivism (stated above), and an ideal based on a strict *laissez faire* theory. The only way of escape from such diverse interpretations of the biological origin of justice, it would appear, is to recognise the fact that biological evolution is essentially a historical doctrine, which is helpful as a guide but treacherous as a master. Analogy does not mean identity. As Prof. Taylor observes: "Philosophy, no doubt, needs to make use of the conception of evolution (here biological), but a philosophy *based* on the conception must necessarily end in illusion." [1]

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1 Evolution in the Light of Modern Knowledge, p. 448.

CHAPTER IV

"Justice" and "Greatest Happiness."

In our exposition of the *Data of Ethics* we saw that Spencer considered himself a Utilitarian and said that the only difference between him and his opponents, the orthodox Utilitarians, was that, while orthodox or empirical Utilitarianism took "welfare for its immediate object of pursuit," his own form of Utilitarianism, the evolutionary or "scientific" Utilitarianism, took "for its immediate object of pursuit conformity to certain principles which, in the nature of things, causally determine welfare."[1] In this way Spencer shifts the emphasis from pleasure as a rough guide to human action to obedience to certain abstract and unbending principles under which alone greatest happiness is to be realised. Granting to Spencer for the sake of argument that the empirical Utilitarians do not make use of the "scientific" or deductive method and trying to discover the principles of welfare or happiness which Spencer is able to deduce by using his "scientific" method, we find that the only principle arrived at by

1 Data, p. 162.

him which is not too vague or general to be useless, is the principle of Equity or Justice. Thus he says: "harmonious co-operation by which alone ... greatest happiness can be attained, is ... made possible only by respect for one another's claims: there must be neither those direct aggressions which we class as crimes against person and property, nor must there be those indirect aggressions caused by breaches of contracts. So that maintenance of equitable relations between men, is the condition to attainment of greatest happiness in all societies; however much the greatest happiness attainable in each may differ in nature, or amount, or both."[1] While Spencer thus gives a very high place to justice as a condition of "greatest happiness," he at the same time admits that "greatest happiness" is unattainable without the aid of negative beneficence, positive beneficence, and enlightened egoism. But these latter factors, he believes, are not as important as justice; the field of positive beneficence becomes narrower and narrower as we approach the ideal state, and the restrictions imposed by negative beneficence and prudence "are of quite inferior authority to the original law (justice)."

In spite of his definite assertion that justice is only a means to happiness, Spencer, when he comes to deal with justice in Part IV of the *Principles*, is in danger of regarding it as a practical ultimate.

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1 Data, p. 170.

Overlooking for the time being what seems to be Spencer's lack of faithfulness in adhering to happiness as the ultimate end of human action, we may grant that the general point of view adopted by him is that justice is the chief means to "greatest happiness;" and, in examining this point of view, it is necessary that we should place as much emphasis on the word "*greatest*" as on "*happiness.*" For, merely to show that justice, in conjunction with beneficence and prudence, produces happiness or pleasure is not enough. It must be shown that it produces the greatest possible happiness, which is the true Utilitarian end.

What a study of the course of evolution seems to reveal is that, at best, there has been only *a general tendency* for life-preserving actions to coincide with pleasure-giving actions. Spencer himself rather vaguely says: "those races of beings only can have survived in which, *on the average*, agreeable or desired feelings went along with activities conducive to the maintenance of life, while disagreeable and habitually-avoided feelings went along with activities directly or indirectly destructive of life."[1]

The influence of natural selection, for instance, has not prevented actions hurtful to life from being sometimes accompanied by pleasant sensations—certain kinds of poisons for instance. Nor has it prevented acts

1 Data, p. 79, quoted from the Principles of Psychology, Section 124.

necessary for the continuance of life like birth, child-bearing, etc., or those conducive to welfare like sports, which Spencer condemns, from being accompanied by painful sensations. If, therefore, the coincidence between life and pleasure is not true wholly and without exception, if, in other words, "life and pleasure do not advance proportionately, nor even always concomitantly,"[1] there is no *a priori* reason for believing that justice, which is regarded by Spencer to be the most essential condition of life in society, will (in conjunction with beneficence and prudence) necessarily produce the greatest pleasure that is possible.[2] There are reasons, on the contrary, for supposing that Spencer's theory of justice (in conjunction with beneficence and prudence) will probably not produce the greatest possible happiness.

(i) In the first place, it will be remembered from our exposition that an argument which Spencer thought might be raised against his theory of justice by his adversaries, and to which he did not seek to give a satisfactory reply, was that "various ways exist in which the faculties may be exercised to the aggrieving of other persons without the law of equal freedom being overstepped.

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1 Sorley, Ethics of Naturalism, p. 307.

2 Even Spencer, in his *Data of Ethics*, acknowledges "a deep and involved"—though not a permanent—"derangement of the natural connections between pleasures and beneficial actions, and between pains and detrimental actions."

A man may behave unamiably, may use harsh language, or annoy by disgusting habits; and whoso thus offends the normal feelings of his fellows, manifestly diminishes happiness."[1] It is quite evident that the same argument applies to Spencer's theory of justice in its later form too, as expounded in Part IV of the *Principles*, for there also the law of equal freedom is the central feature of justice. An obvious criticism which suggests itself to us is that so long as the greatest possible happiness attainable through individual action, is the end of human striving,—and this seems to be Spencer's interpretation of "greatest happiness,"—there is no reason why a person should curtail his liberty "to aggrieve other persons," if such action brings him a surplus of pleasure over pain. "The Evolution-theory," Prof. J. Seth aptly observes, "is unable to explain that superiority of the social to the egoistic instincts, upon which it so strongly insists. As mere instincts, they are at once opposed to one another, and on the same level. Accordingly Evolution fails, as the old Utilitarianism failed, to bring home the social End to the individual."[2] This explains why Spencer's Utilitarian and Evolutional theory is unable to give us a clue as to when to enforce justice and when to temper it by negative beneficence.

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1 p. 80, 1850 edi.

2 Mind, XIV, O. S., p. 45.

But Spencer, we may be sure, would not agree to the above criticism, his reason being that for every person to take all the advantages which justice gives him, without tempering it by means of negative beneficence, would be to hinder "harmonious co-operation by which alone .... greatest happiness can be attained." Overlooking the doubtfulness of the assertion that harmonious co-operation alone (of the kind advocated by Spencer) can produce "greatest happiness," it seems fair to argue that harmonious co-operation depends on many complex factors, which can be ascertained only by using the empirical-reflective method of orthodox Utilitarianism. To say that it depends largely on a recognition and maintenance of the state of things as they are—for that is what Spencer's theory amounts to, when he makes justice consist in refraining from direct aggression on the rights of person and property, as understood to-day, and from indirect aggression caused by breaches of contracts—is altogether arbitrary. It even seems plausible to argue that so long as Spencer does not concern himself much with the greatest *immediate* pleasures of individuals, an alternative theory of justice—such as one which destroys the possibility of all actions that result in the aggrieving of other persons and which aims at giving positive benefits to the members of society, making adequate provision at the same time for the successful energising of their faculties will in the long

run be productive of greater pleasure than Spencer's theory of justice supplemented by his principles of beneficence and prudence.

(ii) Secondly, we have already seen that it is Spencer's belief that the defects consequent on his law of equal freedom can be remedied by applying the principle of negative beneficence. But, as already indicated above, there is no valid reason on the Utilitarian theory for an individual to refrain from taking full advantage of all his legitimate "rights" (in Spencer's sense of the word) or to sacrifice his interests to the interests of others, unless he has reason to think that such refraining or sacrifice will bring him a surplus of pleasure over pain.

From the point of view of pleasure, it is evident that society is not an organism, but a loose collection of individuals, whose interests sometimes harmonise with one another, but often do not. Spencer tries to extricate himself from this difficulty by saying that, in the ideal state, there will be a perfect coincidence between the happiness of the individual and the interests of society. But it is patent that such a solution cannot give us any help as to what our procedure should be here and now. Further, so long as interest is interpreted purely in terms of pleasure, we can be almost certain that there never can be a complete identity of interests. ... With special reference to beneficence (positive and negative), the importance of which for the attainment

of "greatest happiness" Spencer sees, it must be said that, if we accept Spencer's definition of pleasure and pain, the necessity for practising beneficence in many cases disappears. Pleasure, says Spencer, is "a feeling which we seek to bring into consciousness and retain there" and pain "a feeling which we seek to get out of consciousness and to keep out."[1] On the basis of this definition of pleasure and pain, it is clear that if sympathy with another's pain be painful, "we must necessarily seek to expel it from consciousness, as soon as it appears; and there are generally quicker ways of effecting that expulsion than the relief of the suffering which occasions it."[2] The only way of escape for Spencer is to say that sympathy with the pain of another is always pleasant, but, as Rashdall observes, "Spencer shows no disposition to adopt such a mode of bridging over the gulf between Altruism and Egoism."[3]

(iii) Once more, from what we have said in connection with the last two points, it is clear that if "greatest happiness" is to have any intelligible meaning at all, it must mean the greatest *present* pleasures—except in cases where the future pleasure "is more certain or of greater amount or degree"[4]—of a collection

1 Data, p. 79, Quoted from the Principles of Psychology, Sect. 124.

2 Rashdall, The Theory of Good and Evil, Vol. II, p. 380.

3 Ibid.

4 Sorley, op. cit., p. 80.

of separate individuals. But Spencer's theory of justice seems to do violence to this interpretation of the Utilitarian end. His chief contention with the empirical Utilitarians, we have seen, is that pleasure is not to be sought directly. Thus, in his celebrated letter to J. S. Mill, he says that "it is the business of Moral Science to deduce from the laws of life and the conditions of existence, what kinds of actions necessarily tend to produce happiness, and what kinds to produce unhappiness" and that, when it has done this, "its deductions are to be recognised as laws of conduct; and are to be conformed to *irrespective of a direct estimation of happiness or misery.*"[1] The same apparent lack of faithfulness to the greatest present pleasure as end is found in a more pronounced way in *Justice*, pp. 57 and 58, where Spencer tries to establish the principle of justice as an *a priori* dictate of reason.

There seems to be little doubt that justice, as interpreted by Spencer, is not calculated to produce a maximum of present pleasure. Spencer's justice, the essential condition of life, chiefly concerns itself with the adapting of man to the conditions of social existence, for which he has not become completely fit yet. But adaptation or adjustment involves present pain, or at least absence of pleasure, except in so far as it affords room for the successful energising of faculties; and it is conceivable that a whole life time may be

1 Quoted in Data, p. 57.

spent in adjustment without much gain to individual pleasure. And so long as adaptation is continuous and "perfect adaptation can be reached only in infinite time,"[1] generation after generation may pass away without realising the greatest pleasure that is possible for it to attain Moreover, if the present generation is called upon on Spencer's theory to make the happiness of some future generation in the far-off distance more certain of realisation and greater in quantity or intensity by adapting itself to life conditions, and, in so doing, possibly sacrifice part of its own present pleasures, not pleasure itself but some other principle turns out to be the ultimate end of conduct.

If, in reply to this, Spencer should say that, though adaptation to life conditions may involve some pain, the future pleasure of each individual, in his own life time will "be more certain or of greater amount or degree" or that his total pleasure will be greater than what will be the case if he does not adapt himself, we have the answer that Spencer does scant justice to the subjective and complex nature of pleasure. Further, it is a matter of common experience that "a kind of object or action which is pleasurable at one time may become painful at another time, and that what is now painful may cease to be so and may become pleasant."[2] In the last

1 Social Statics, 1892 Edi, p. 31.

2 Sorley, op. cit., p. 223.

analysis, therefore, the individual himself must be the judge of what constitutes his present happiness. As to what will be his future happiness, the individual may not be the best judge. But that does not necessarily mean that he should unreservedly accept Spencer's deductive Hedonism. It seems more reasonable to think that empirical Hedonism, according to which, "we have in each case to compare all the pleasures and pains that can be foreseen as probable results of the different alternatives of conduct presented to us, and to adopt the alternative which seems likely to lead to the greatest happiness on the whole,"[1] supplemented by a scientific knowledge of the physiological and psychological causes of pleasure and pain, will be a better guide as to what "greatest happiness" is—present and future—than Spencer's deductive Hedonism, which cannot become the best guide to happiness until it can be shown that life and happiness exactly coincide with one another and that an increase or decrease in one is marked by a proportionate increase or decrease in the other. Merely to say that Evolution on the whole has been on the side of pleasure—a statement probably true, though with some reservations—is not enough. If the present generation is more susceptible to pleasure than its predecessors, so is it to pain.[2] Both Prof. Sorley and L. F. Ward agree that new

1 Sidgwick, Methods of Ethics, p. 458.

2 Cp. Sorley, Ethics of Naturalism, p. 224.

sources of pleasure as well as pain are opened up to a refined sensibility. "It is...notorious," says Sidgwick, "that civilised men take pleasure in various forms of unhealthy conduct and find conformity to the rules of health irksome; and it is also important to note that they may be, and actually are, susceptible of keen pleasure from acts and processes that have no material tendency to preserve life."[1]

The general conclusion, then, to which the above considerations seem to force us is that Spencer's theory of justice, stated in biological terms, probably is not the best guide to the greatest happiness that is possible to attain—whether present or future. To say that "pleasure will eventually accompany every mode of action demanded by social condition" is unduly optimistic. It takes no account of a fact like pleasure becoming indifferent, if not painful, through monotony or habit. Neither does it give enough attention to sensual appetites, which bulk large in the popular conception of pleasure or to what are called "æsthetic pleasures," which have little or no relation to the promotion of life in the biological sense. In the light of all this, therefore, it seems right to conclude with Sidgwick that there is at least at present "no scientific short-cut to the ascertainment of the right means to the individual's happiness,"[2] although we may

1 Methods of Ethics, p. 131.

2 Methods of Ethics, p. 195.

agree that Spencer's justice gives us *a vague and general rule of happiness*, "the relative value of which we can only estimate by careful observation and comparison of individual experience."[1] It is probably reasonings like the above which have led Prof. Sorley to say that Spencer was only nominally a Utilitarian.[2]

There may be some like W. H. Hudson (author of the Philosophy of Herbert Spencer) who would accuse us of having interpreted Spencer's Utilitarianism in a narrow way and would require us to use it to mean the wider conception of social well-being. In that case, the question will be whether justice, as meaning the law of equal freedom, is the best means to the attainment of social well-being. This question can be best discussed later when we come to deal with the meaning of distributive and economic justice. ... We have throughout our argument assumed the possibility of a summation of pleasures, since a criticism of it is not called for in discussing Spencer's Utilitarian method.

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1 Ibid.

2 Cp. Ethics of Naturalism, p. 198.

CHAPTER V

Justice and Freedom.

If Spencer's theory of justice, which is conveniently expressed in the law of equal freedom, does not immediately (and perhaps remotely, too) produce the greatest happiness that is possible to attain, it may still be maintained, that it is absolutely necessary for the realisation by each individual of the greatest possible freedom, which is, according to Spencer, essential for the full exercise of his faculties and for his harmonious co-operation with others, upon which alone depends the greatest possible happiness of the future. In examining Spencer's claim that maximum freedom is possible for each individual on the theory of least interference, it is necessary to bear in mind constantly (1) the vast difference that there is between freedom in the narrow, mechanical sense of the word, freedom of the market place, in other words, and true or actual freedom, or what we may call in the present context, "total net freedom" of society, and (2) the fact that freedom in the practical sense in which we are using it, in studying a subject like social justice, is not a good in itself, but that its value depends solely upon

the social results it produces. The first of these points, it seems to us, is one to which Spencer does not give much attention. He tends to regard freedom for the most part in terms of absence of physical coercion (from the State or individual), and takes little or no account of the possible tyranny of unofficial public opinion,[1] of moral coercion, of mental annoyance, and of industrial and economic slavery—all of which are sure to reduce the greatest happiness that is possible for one to attain,—and of the abuse of freedom by a few which often renders the theoretical freedom of others practically useless. As regards the second point, we must say that, while Spencer merges freedom and other minor ends in the grand end of individual and race-preservation, and, in turn, of general happiness, there are indications that, at times, he virtually stops with freedom, taking little trouble to discover what effect it has on "greatest happiness"—whether we interpret "greatest happiness" to mean the greatest present happiness of the individual or the maximum well-being of society.

Postponing a full discussion of the present topic, from the practical point of view, to

1 In fairness to Spencer, it must be said that he is aware of "a coercive public opinion" (Principles of Ethics, vol. II, p 388) in dealing with Poor relief. But he does not consider it a tyranny in that case. He upholds it.

Section II, which will concern itself with a detailed examination of the practical applications that Spencer makes of his law of equal freedom, we shall content ourselves with a brief consideration of the theoretical difficulties to which Spencer's law of equal freedom is subject; and, in doing this, we propose merely to develop the lines of criticism indicated in the opening paragraph. The conception of freedom, we must say at the very outset, is extremely difficult to comprehend, because of its complexity and many-sidedness. It has its political, social, moral, philosophical, and religious aspects, although in studying the question of social justice it would be irrelevant to go into all these aspects. We are here concerned only with the relation of the individual to society, of the one to the many. But it is precisely there that we find that Spencer's treatment of freedom is defective. The unsuccessful effort which his great contemporary, J. S. Mill, had made in trying to draw a clear line of demarcation between what concerns self and what concerns others, ought to have shown Spencer that the right solution to the problem of social freedom lay not in regarding society as a loose collection of isolated individuals, each surrounded by a "territory inviolable," but in looking upon it as an organism which so unites into a whole the individuals comprising it that the good of each is bound up with the good of all. But yet, in point of

fact, Spencer, to the end of his life, firmly believed in the theory of natural rights and thought that an individual could attain his maximum freedom only when there was the least possible interference from the side of organised society, *viz.*, the State, or from that of his fellow-men. It is this faithful adhesion to natural rights which is at the bottom of Spencer's passionate advocacy of "Specialised (or limited) Administration" and of each individual giving to every one else freedom to do whatever he himself does. But what if the theory of natural rights were found to be false, not only historically but also philosophically? Man's rights would cease to be natural and absolute; and his freedom would become conditioned by his ability to make a right use of it, *i.e.*, utilise it in finding his good in the good of the community. More *freedom* than this he would not ask for, and, even if he did, it would not be given him.

To prove the inherent weakness of Spencer's theory of freedom, it is not really necessary to go into the question of natural rights. It can easily be shown that the law of equal freedom, paradoxical though it may seem, is contrary to the attainment of maximum net freedom either by the individual or by society at large. If it is to have any practical meaning at all, it must call for an extreme form of State Socialism. In the words of Sidgwick: "if it to be said that the richer man, as such, enjoys more freedom than the

poorer, the fundamental aim of Individualism —to secure by law equal freedom to all—seems to transform itself into the fundamental aim of extreme Socialism, to secure equal *wealth* to all."[1]

(i) Equality of freedom, in the first place, fails to cover a large group of cases where persons bring ruin upon themselves through the abuse of their freedom or through their inability to utilise it properly, due to defects of temperament and character. It involves, in other words, "the negative principle that no one should be coerced for his own good alone."[2] Spencer's answer to this objection would be, as can be gathered from his essay on *Education*, that we must let the discipline of natural consequences have its free sway.[3] But, in a previous chapter, dealing with the evolutionary "basis" of Spencer's theory, we have given enough reasons why this answer cannot be accepted as final. What should we say if the abuse or misuse of freedom by individuals led to the weakening of society or to laying it open to the attacks of outsiders (not only attacks in the form of war—which alone Spencer considers—but indirect attacks through immigration on a large scale, commercial rivalry, etc.,)—events which have to

1 Elements of Politics, p. 48.

2 Methods, p. 275.

3 Spencer himself passes beyond *natural* consequences to a consideration of *social* consequences in the essay referred to.

be prevented on Spencer's biological theory of society? Or again, what will happen to justice and beneficence which according to Spencer, are based upon sympathy, if we constantly sear our sympathies by mercilessly letting each individual take the natural consequences of his actions? If in reply to this latter question, Spencer says, as in fact he does, that positive beneficence should enable us to save a man from himself if and when he ruins himself (say through gambling or opium-smoking) and that his (Spencer's) objection is really to State-interference in such a matter, it seems pertinent to remark that as between advice, persuasion, and public opinion on the one hand and State regulation on the other, the difference is not one of principle, but one of method and degree. Both involve "interference" with the law of equal freedom so long as we think with Spencer that "the complete and universal establishment" of the right to equal freedom "would be the complete realisation of Justice."[1] We may well agree that "interference" of the kind typified by advice, persuasion, and public opinion is, in many cases, preferable to State control, but such agreement will not be on the basis of the kind of distinction made by Spencer between justice and beneficence or between collective and individual action, but on grounds like social expediency and the importance of developing one's moral character

1 Sidgwick, Methods of Ethics, p. 274.

without invoking the fear of the State. The truth enunciated long ago by Rousseau that a person may be "forced to be free" and which was later stumbled upon by J. S. Mill (but not fully utilised) in his classical example of a man being warned by another when he tries to cross an unsafe bridge, remains foreign to Spencer's way of thinking. If in reply to all this Spencer should say that his law of equal freedom is meant to be applied only to persons who "are sufficiently intelligent to provide for themselves better than others would provide for them,"[1] and not to children, idiots, insane persons, mental defectives, and other such persons, we may reply with Sidgwick that the principle of freedom in that event "would present itself not as absolute, but merely a subordinate application of the wider principle of aiming at the general happiness or well-being of mankind."[2]

(ii) A second criticism which closely follows upon the first is that a theory of justice which reduces itself to a literal obedience to the law of equal freedom commits the serious mistake of indiscriminately grouping together all the members of society, without making any effort to study the special conditions of life under which they live or their special requirements and needs. And if social welfare is the end which justice and other moral principles must serve, it is clear that the only equality

1 Sidgwick, op. cit., p. 275.

2 Ibid.

that we can rightly claim is "*equality of consideration.*" It is not the equality of wealth or political power or any other kind of external equality whatever. It is not even equality of opportunity, which "would bear too hardly on the weak."[1]

If we are agreed, then, that equality of consideration is the true guiding principle of social justice and that "every individual is more or less unlike every other and therefore to some extent wants a different kind of life to satisfy him" (Rashdall), it is fair to conclude that justice will suggest not a mechanical kind of equality of freedom, but some degree of inequality of freedom. Maximum equal freedom will become the ideal law of justice only when men are equal, *i.e.*, only when equal amounts of freedom produce equal amounts of well-being. Under present conditions, it seems to us that maximum equal freedom cannot produce the greatest happiness or the highest good that a person is capable or realising.

(iii) Further, if every person has the right to do whatever he likes, provided he does not infringe the like freedom of others, we must assume with Sidgwick "that the right to Freedom includes the right to limit one's freedom by contract."[2] But whether such contracts and such combinations will

1 Rashdall—The Theory of Good and Evil, Vol I, p. XVIII.

2 Methods, p. 276.

always produce greatest happiness or maximum freedom to the indivlduals concerned and to the community at large, it is difficult to say beforehand without an empirical knowledge of all relevant facts. Spencer's answer to this question, however, is in the affirmative, except in the case of slavery, where, he says, the parties to the contract do not give what are fair equivalents and that, therefore, society ought not to enforce such a contract. But, in making this exception, Spencer does not seem to be aware that he is undermining his own theory in two fundamental respects: (1) Social justice no longer aims at giving individuals equal shares of a mechanical and abstract kind of freedom, but, using freedom as a chief means, it aims at producing the greatest possible good of the community, of which the good of the individual is an intrinsic part. (2) If the State may set aside the contract of slavery on the ground that the parties to the contract do not give one another fair equivalents, there seems no valid reason on Spencer's premises why it should not interfere further for the production of greater equality. The function of the State, instead of being a mere police one, becomes one of "hindrance of hindrances to good life."[1] Instead of State "interference," we now speak of State control and State regulation.

1 Bosanquet, Philosophical Theory of the State, Ch. VIII.

The law of equal freedom, thus, in relation to contracts at least, turns out to be incapable of giving maximum freedom without the aid of the State. But such aid from Spencer's point of view must be strictly regarded as interference, and not as regulation. For, it seems to us that both the enforcement of such voluntary contracts as do not violate the freedom of others and the setting aside of the contract of slavery required by Spencer, are not intrinsic parts of the law of equal freedom.

(iv) Once more, as pointed out above, Spencer seems to use freedom as between man and man in the sense of freedom from physical coercion or constraint alone. But such freedom does not really give us maximum net freedom. As Sidgwick says: "If we interpret it (freedom) strictly, as meaning Freedem of Action alone, the principle seems to allow any amount of mutual annoyance except constraint. But obviously no one would be satisfied with such Freedom as this. If, however, we include in the idea absence of pain and annoyance inflicted by others, it becomes at once evident that we cannot prohibit all such annoyances without restraining freedom of action to a degree that would be intolerable; since there is scarcely any gratification of a man's natural impulses which may not cause some annoyance to others. Hence in distinguishing the mutual annoyances that ought to be allowed from

those that must be prohibited we seem forced to balance the evils of constraint against pain and loss of a different kind: while if we admit the Utilitarian creed so far, it is difficult to maintain that annoyance to individuals is never to be permitted in order to attain any positive good result, but only to prevent more serious annoyance."[1]

(v) Lastly, the weakness of Spencer's law of equal freedom is seen most clearly when we stop to consider what little actual freedom a person has to the material means of life and happiness in any civilised society. If by freedom we simply mean, as Spencer seems to do, "that one man's actions are to be as little as possible restrained by others, it is obviously more fully realised without appropriation"[2] than with appropriation. If Spencer objects to this interpretation of freedom and says that freedom includes "facility and security in the gratification of desires," "and that this cannot be realised without appropriation," we may reply with Sidgwick "that in a society where nearly all material things are already appropriated, this kind of Freedom is not and cannot be equally distributed. A man born into such a society, without inheritance, is not only far less free than those who possess property, but he is less free than if there had been no appropriation."[3] If in criticising

1 Methods, pp. 275-6.

2 Methods, p. 277.

3 Methods, pp. 277-8.

this reply, Spencer is inclined to say that so long as a person possesses freedom of contract, he can exchange his services for the means of satisfying his wants; "and that this exchange must necessarily give him more than he could have got if he had been placed in the world by himself" and there was no appropriation, we may say that, while this may be quite true as a general rule, it is obviously not so in all cases. For, as Sidgwick remarks, "men are sometimes unable to sell their services at all, and often can only obtain in exchange for them an insufficient subsistence."[1] And even if we grant Spencer's argument to be true without qualification, "it does not prove that society, by appropriation, has not interfered with the natural freedom of its poorer members. But only that it compensates them for such interference, and that the compensation is adequate: and it must be evident that if compensation in the form of material commodities can be justly given for an encroachment on Freedom, the realisation of Freedom cannot be the ultimate end of distributive justice."[2]

The application of all this to Spencer is that he cannot consistently advocate attainment of maximum *equal* freedom as the be-all and end-all of social justice (of course as a means to happiness) and at the same time hold as rigidly as he does to the institution of private property

1 Methods, p. 278.

2 Methods, p. 278.

(limited ownership in the case of land) and capital. He cannot serve God and Mammon. If he would save at all costs private property, as we know it to-day, it seems that he must reject maximum freedom from coercion (either from the side of the State or from that of his fellow-men) as illogical and unattainable.

Although the above five points of criticism lead us to the inevitable conclusion that Spencer's law of equal freedom does not produce maximum net freedom and is not conducive to the fruits of freedom, such as the greatest happiness of the individual or maximum well-being of society or the fullest and freest development of the moral person, we cannot afford to neglect the truth that freedom must be an essential part of social justice, in that the well-being of individuals is largely self-earned.

Our objection is only to regarding social justice as identical with the law of equal freedom and to attempting to solve all the difficult problems which arise in our social relations by reference to any exact or universal formula of justice, however attractive and full of seeming hope the method may be. Social justice, it seems to us, is far too wide in scope to be confined to the law of equal freedom, and can only be ascertained by applying practical reason and good will to every particular case as it arises. We must at the same time be willing to grant that to the extent to which Spencer's advocacy of equal

freedom makes for a healthy and manly individualism, to that extent it deserves our commendation. Especially in this day of socialistic dreaming, when a low value tends to be placed upon individual initiative and enterprise—qualities which are absolutely necessary for the realisation of one's end, in whatever way that end may be conceived—Spencer's enthusiasm for freedom—though of a defective and one-sided character—may be productive of great good. But yet it would be sheer folly to lose sight of the fact that so long as we believe that "the individual for whose sake the State exists is the moral individual or the person," his true freedom "implies a large measure of State control or interference (regulation)."[1] Thus, it turns out that, paradoxical though it may seem, freedom requires "interference," and the law of equal freedom requires most interference. On a previous page (page 129) we saw that it was biologically sound to interfere with the laws of evolution, and now we find that it is right to "interfere" for the sake of freedom itself. Spencer's treatment of freedom, while more than emphasising the value of independence and the evil of dependence, overlooks the importance of inter-dependence —a factor of which the world to-day is becoming increasingly conscious.

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1 J. Seth, Ethical Principles, p. 306.

CHAPTER VI

Spencer's "Justice" and Justice according to other Writers.

In this chapter we shall attempt to show how far short of ideal justice the law of equal freedom falls, especially in its practical application to distributive justice, which is often considered to form a major part of social justice, if not to be identical with social justice itself. In undertaking this task, it is not our purpose to collect all the theories of justice which have been advocated by the different schools of ethical and political thought and to compare and contrast them with Spencer's theory of justice. We merely propose to select some of the outstanding theories of the day like the *laissez faire*, the Utilitarian individualist, and the idealistic theories, and to examine what light they throw upon Spencer's view. We omit the socialistic and communistic theories on the whole because of the wide divergence between them and Spencer's theory.

Confining our attention first to the problem of justice in the distribution of economic goods, which bulks large in the common notion of distributive justice, we find that

Spencer's answer is for the most part in terms of the traditional *laissez faire* theory, though he builds it on a biological and Utilitarian foundation. Thus he says that the chief law by which life has evolved in the case of human beings and which alone constitutes "pure justice" is "that each individual ought to receive the benefits (and the evils) of his own nature and consequent conduct."[1] As to what exactly this primary law of life and happiness means in the field of economics, we have Spencer's answer that "there must be adjustment of *amounts* to *deserts*."[2] But the question which offers us most perplexity is, how are we to determine what a person deserves? Are deserts to be in proportion to the moral effort a person puts forth or to his real need or to the hardness and unpleasantness of his task? Spencer returns a negative to all these alternatives. Deserts, he seems to say, consist of all that a person can earn in a society where the law of equal freedom prevails to the utmost; *i.e.*, in a society where there is no direct aggression on the person or property of any one and no indirect aggression especially in the form of breaches of contracts,[3] where, in other words, the power of the State is strictly limited to the fulfilling of its police function of protecting life, liberty, and property. To the self-evident

1 Justice, p. 17.

2 Data, p. 222.

3 cp. Data, p. 165.

truth that a loose expression like "indirect aggression." is capable of a very wide legitimate interpretation and to the fact that the law of equal freedom, in order to be practicable at all, would require an extreme form of State Socialism probably annulling the need for private property, we have already directed attention. Consequently, we may pass over them for the time being and, concerning ourselves only with the spirit in which Spencer would want us to understand the law of equal freedom—justification of a form of *laissez faire*—,we may ask ourselves whether a theory of least possible interference or "Specialised Administration" will be able to give us maximum possible justice.

The chief difficulty in applying the law of equal freedom to the distribution of economic goods is the familiar fact that the law of property in most modern states has evolved and reached a high degree of complexity without the aid of, and often in opposition to, the law of equal freedom, and therefore to apply this law to present-day conditions in discovering what a just reward should be, seems to be quite illogical. No conceivable theory of justice, for instance, can claim that all the present-day holdings in land were originally appropriated by people who left "enough and as good for others," (Locke) ; and if we thus find that the law of equal freedom breaks down at the very start, in its application to property in

land, the primary commodity out of which all the other forms of wealth have been directly or indirectly derived, it seems fair to say that Spencer's formula can have a plausible application to-day only to a society which starts with no accumulated private capital in any shape or manner. If Spencer objects to this conclusion on account of the impracticability of starting society anew, in order that it may from the very beginning obey the law of equal freedom (if such obedience is possible at all), and says that we must put up with the unideal state of society in which we live, working persistently, however, through "empirical compromises" for a steadily-increasing realisation of equal freedom, it seems right to argue that it is highly unjust to apply the law of equal freedom, in all its rigidity, to a society which up till now has been, to a greater or less degree, founded upon unequal freedom. The philosophy of common sense demands that those who have profited by such unequal freedom should, to some extent at least, compensate those whose chances of survival and prosperity have been considerably diminished on account of the small degree of freedom allowed to them or their ancestors in the past. Spencer himself, in his later treatment of land (*Justice*, Appendix B), seems to see the rightness of reparation for past injustice, when he claims that the money spent on the relief of the poor during the past three

centuries is more than enough to compensate for whatever land may have been taken away from the poor of the past. But in thus virtually supporting private property in land, Spencer does not seem to see that his argument is a two-edged weapon, which, while apparently supporting a limited ownership of land, may at the same time be used to support such things as graduated income-tax and super-tax on large estates and other fortunes that are not earned through personal effort; for very few people will agree that violation of the law of equal freedom in the past was confined merely to the appropriation of land and that, even in the matter of land, the poor-relief which has been spread over three centuries is a just compensation to the present landless, especially when we consider the enormous unearned increment of value, due to increase of population. In short, property in the past, it will be generally admitted, has not had too respectable an ancestry. A lover of State-interference, it seems to us, can easily prove, on Spencer's own premises, that free education, public libraries and public parks, State supervision of sanitation, and State-aided colonisation, to all of which Spencer is deadly opposed, are all compensations for past injustice, *i.e.*, for past violation of equal freedom, as well as for the institution of private property, which, as we have said before, is not a necessary corollary from the law of equal freedom.

It is evident that such reasoning as regards reparation for past injustice underlies the writings of present-day *laissez faire* economists who endeavour to correct and limit the inherent shortcomings of their theory by the abstract principle of equality of opportunity. They realise that under modern conditions where there is a great deal of artificial inequality, largely due to the accident of birth, status, and such like for which the individual himself is not responsible, and where the possession of capital does not necessarily mean the possession of qualities necessary for social welfare (or the lack of capital, the lack of such qualities), to let each individual take the natural consequences of his actions, as Spencer wants them to do (without a modification of the principle), would be unjust. Therefore, they propose to start individuals equally as far as possible and then leave them to make the most use of their opportunity. Some of the measures which they advocate in particular in bringing about this equality of opportunity, and for the realisation of which they do not hesitate to call for the aid of the State, are universal education, graduated inheritance tax, and minimum wage law. In all this, much of modern legislation seems to be on their side, because it is concerned with the removal of artificial differences and the equalising of opportunities, and, in so doing, with the providing of an open road to talent.

It cannot by any means be pretended that the idea of equal opportunity is the last word in social justice. It can be easily shown that a literal realisation of it is impracticable, and that, even where practicable, it would not always give us ideal justice. "To furnish equal opportunities," for instance, as Rashdall says, "to the dunce and the genius" would be "far removed from the ideal of just distribution."[1] But the point to note is that a disproof of the principle of equality of opportunity, as a true canon of ideal justice, is not necessary for our purpose.

It will be generally conceded that the principle of equal opportunity as a negative principle, in spite of its limitations, is of great practical value in removing many artificial differences. There can be little doubt that, other things being equal, a much greater measure of equality of opportunity than what we have to-day, is socially desirable, and that it will bring us nearer to the goal of ideal justice than the mechanical and unpractical law of equal freedom.

Spencer's idea of justice, then, which, in spite of his protest (cp. his Essay on Specialised Administration and Study of Sociology pp. 351-3), may be regarded as a species of the *laissez faire* type of theory, lets fall precisely those elements of that theory—reparation for past injustice and equality of opportunity—where it is relatively strong. It

1 Vol. I, pp. 230-1.

falls short of other theories too which, like itself, calculate just reward in terms of the economic productivity of individuals under conditions of ordinary competition. If justice demands that there should be a close correlation between work—mental or bodily—and material rewards, those who advocate such a theory of distribution are bound ruthlessly to criticise inherited wealth, unearned increment, holding of stocks, etc. But Spencer, it is clear, does not indulge in such criticism. To him, to interfere with a person's inheritance or unearned increment is to violate the law of equal freedom. Still another respect in which his theory of justice compares unfavourably with the theories of other Utilitarian individualists is that even the most extreme of these individualists seems to realise that justice would be incomplete if it did not give some attention at least to the welfare of generations yet to be; and it is in the name of concern for future generations that they do not oppose the State undertaking such things as the preservation of forests, encouragement of scientific discoveries, etc. But Spencer is opposed to State-action in all these spheres. One further matter where Spencer's theory is less just than the theory of enlightened individualists, and to which reference has been made already in a different connection, is that the law of equal freedom does not scruple "to let a man suffer for failures not due to wilful wrong-doing or neglect" (Sidgwick).

Commonsense demands that the cases of the sick, the disabled for life, and the unfortunate should be considered separately from those of able-bodied adults; and that, even among the able-bodied adults, the cases of those who are willing to work, but are unable to find employment or are thrown out of work, owing to general social conditions over which they have no control, should receive a separate treatment from that of the persistently lazy and indolent. But Spencer, as we have had occasion to remark before, groups all people together, irrespective of their special circumstances, and contents himself with the canon that there "must be an adjustment of amounts to deserts"[1] In *Social Statics* he goes to the extent of saying that "Inconvenience, suffering, and death are the penalties attached by nature to ignorance as well as to incompetence —are also the means of remedying them;"[2] and the same idea receives its scientific formulation in the biological law of survival recorded in *Justice*. It does not seem to have occurred to Spencer that, in order that his law of equal freedom, which aims at universal application, may have an intelligible meaning at all, it must be limited by a law which aims at treating persons in similar circumstances similarly. Spencer does not appear to see that to allot "special privileges and burdens to

1 Data, p. 222.

2 p. 378.

special classes of the community,"[1] is not necessarily unjust.

We have so far seen that Spencer's theory of justice, in what it omits, fails to give us as much justice as theories to which it is most closely related—the *laissez faire* and Utilitarian individualism. We shall now proceed to show that, even from a *positive* point of view, it falls short of justice as enunciated by Utilitarian individualists. Many of these theorists realise that economic value is essentially relative and not absolute and that, if competition be excluded, there is no way of fixing values or of comparing services.[2] They further realise that there are many kinds of valuable services for which there is no market value in our existing competitive society They also grant the force of the truth that a person may be as industrious to-day as he was yesterday, and yet his wages may be less than half, simply because of an unforeseen decrease in the demand for his services.[3] In the light of these facts, therefore, they hesitate to assume naively with Spencer that whatever a person is able to get in a free and open market is in accordance with the law of ideal justice. Nevertheless, they believe that, under our present conditions, it is right for a person

1 Sidgwick, Methods, pp. 266-7.

2 Cp. Rashdall, op. cit. vol. I, p. 244.

3 Cp. Sidgwick, Principles of Political Economy, p. 504.

to expect a reward in proportion to his economic productivity; but such belief is not in the name of ideal justice; it is in the name of economic welfare or social expediency. Such at least seems to be the point of view adopted by a writer like Dalton (author of *Inequality of Incomes*) who, on the basis of Prof. Cannan's distinction between considerations of *economy* and considerations of *equity*, concludes that justice is something that cannot be definitely ascertained and that, therefore, we must confine our attention merely to questions of economic welfare. Many persons will be inclined to agree with Utilitarian individualists when they claim that there is no other practical way of rewarding a man than that of giving him his market price and that, under any other system of distribution, there would be "increased idleness, decreased saving, lessened efficiency of capital, pressure of population, checked growth of culture,"[1] etc. But the same persons will refuse to believe with Spencer that a mechanical proportioning of benefits to efforts (work), unrelieved by any qualifying condition, is the highest from of justice that we can have, either in the present state or in the ideal state of ideal men posited by him. Furthermore, if just reward, as Spencer imagines, can be accurately measured by a person's earning capacity, as that is determined by the law of

1 Sidgwick, Political Economy, p. xxii.

demand and supply operating in individualistic societies to-day, his theory seems to reduce itself to the curious position that justice consists in the mere maintenance of the *status quo*—a position which even extreme individualists will find it difficult to accept without qualification. That this inference of ours is not unfair to Spencer can be shown from the fact that, in his evolutionary treatment of the laws of life and the conditions of existence, the presumption of his argument is in favour of existing moral rules which have managed to survive in the passive struggle for existence.

A second important point where Spencer's theory of a just reward, from the positive point of view, seems to be deficient, is in connection with the question of contracts. We have already touched upon this question in its relation to freedom. But now looking at it from the point of view of distribution, we must say with Means who, like Spencer, appears to hold general happiness as end, that it "cannot be admitted that justice consists in the fulfilment of contracts."[1] For, as the same writer says: "Very few persons in the lowest ranks of labour, perhaps, regard their wages as an equivalent for their pains. It is all they can get and they take it, but to say that justice is confined to giving them it, is to say that existing social arrangements are perfectly just, which Mr. Spencer does not maintain. If

1 Mind O. S. V. p. 397.

he is talking of justice in the ideal state, he still has to suppose every person in making a contract to be able to decide what will be an equivalent for his sacrifice and to do this without comparison of pleasure."[1] Even if we grant to Spencer for the sake of argument that the fulfilment of contracts is the best means of every person getting what he ought to get, we are faced with a difficult question for which there is no answer from the side of the law of equal freedom. Are the contracting individuals to contract with one another in the capacity of separate individuals or as members of "coercive" groups? The reason for asking this question is that it is quite conceivable that a class of labourers will be able to sell their services at a much higher price as an aggregate than as individual labourers, and that conversely, an employer acting in unison with other employers of the same kind will get cheaper labour than if he should act alone. In short, it is clear that factors like monopoly and combination introduce into contract an element that is insoluble by the law of equal freedom. Any one of the four possible wages that a labourer may get according to the presence of one or more of the four conditions mentioned above, will be ideally just on the basis of the law of equal freedom, so long as there is no physical coercion or intimidation. If Spencer accepts this conclusion, we seem justified in doubting,

1 Ibid.

if not in denying, the exact or "scientific" nature of his absolute and universal formula of justice, which seems unable to provide a precise canon of distribution, in the light of which our future action may be directed. Whatever a person can get through profiteering, artificial monopoly, obstruction, etc., within the law of equal freedom, turns out to be his just raward. But common sense certainly sets itself against "justice" of that kind. Even Spencer's own laws of life laid down in the early part of *Justice* do not support such justice. Adapting an argument used by Spencer in his chapter on Sub-Human Justice (Ch. II) to the present context, we may say that the profiteer, the monopolist, and the obstructionist so habitually break the relation between the conduct and moral consequence of their victims that in very few individuals are those relations long maintained (Section 6). The sustentation of these enemies of society frequently means the destruction of "the best individuals as readily as the worst," so much so that human justice becomes "extremely imperfect alike in general and in detail."[1] Therefore, we cannot dogmatically assert that those who go under in the economic struggle necessarily deserve to go under.

Turning to individualistic thinkers other than Spencer, what we find is that while most of them consider the enforcement of contracts to be fundamentally important, they do not

1. Compare Justice Chapter II, Section 6.

agree with Spencer in thinking that equitable relations between members of society, resulting in a just proportion between effort (labour) and benefit, would be best maintained, if contracts were freely entered into and fulfillment of them was uniformly enforced. They insist on the value of contract-enforcement only within limits. Sidgwick who has devoted considerable space and attention to the question of contracts in several of his writings[1] gives us an indication as to what these limits are; and it is instructive to state them briefly to see to what extent Spencer could consistently accept them on the basis of his law of equal freedom. In the first place, Sidgwick says: "It is generally *expedient* to enforce contracts, if deliberately made between persons possessing at the time mature reason, and without illegal coercion or intimidation, or wilful or negligent misrepresentation of material facts; and if the effects that they were designed to produce involve no violation of law or cognisable injury to the community."[2] It seems fair to suppose that for the words "It is generally expedient," Spencer would substitute "the State ought to;" that he would altogether omit the condition regarding "wilful or negligent misrepresention," leaving each individual to take the necessary precaution against such

1 Elements of Politics, Ch. VI, Principles of Political Economy, Bk. III, Ch. VI, and Methods, Bk. III, Ch. V.

2 Politics, p. XIV.

contingency; and that he would reject the condition of "cognisable injury to the community," except in the case of slavery.[1] On his theory of equal freedom, moreover, selecting examples from outside the realm of distribution, contracts which involve sexual immorality and oppressive usury would probably have to be enforced. A second serious limitation which Sidgwick places on the enforcement of contracts, and of which Spencer's law of equal freedom seems unable to take account, is that "it may become, through change of conditions, impossible or on the whole inexpedient to fufiil a contract to render future services."[2] A further limitation considered by Sidgwick which is outside the scope of the law of equal freedom, is the "limited liability" of a body of persons who, in their capacity of "an artificial person" form one of the contracting parties. In all these ways, then, Spencer's theory of justice which unduly simplifies present-day economic conditions by assuming that everybody will get what he ought to get when the State rigidly enforces all contracts freely made, falls short of justice as determined by the Utilitarian individualist theories in general.

An observation which does not seem to have occurred to Spencer is that the *laissez*

1 "Contracts ... must be strictly adhered to and legally enforced; save in cases where a man contracts himself away." (Principles Ethics, Vol. II, p. 287.)

2 Ibid.

faire doctrine (including the law of equal freedom) is at best only "a rough induction from our ordinary experience of human life."[1] Consequently, he does not see that *laissez faire* or the law of equal freedom is, in its very nature, incapable of giving us precise guidance in the apportionment of material goods.

We have up till now concerned ourselves with a criticism of Spencer's theory of economic distribution from the point of view of theories closely akin to it—the *laissez faire* and Utilitarian individualist theories. We shall now approach the larger question of distributive justice, in particular, and of social justice, in general, from the standpoint of idealistic theories, *i e*, theories which do not regard mere happiness as the supreme end of conduct. From the point of view of these theories Spencer's principle of distribution, resting as it does on the economic law of demand and supply, is open to the following defects: (*a*) that people do not always find the work for which they are best fitted; (*b*) that their demands are not always for things that they really need—sometimes they are even for things that are positively hurtful; and (*c*) that sometimes things of the greatest value are very little in demand.[2] This criticism, we admit, will have little or no weight with Spencer, to whom

1 Sidgwick, Politics.

2 Compare J. S. Mackenzie, Outlines of Social Philosophy, Ch. V.

justice consists in letting each individual sink or swim for himself. But if the conclusion reached by us earlier is valid—that, even on Spencer's own biological and Utilitarian premises, the organic view of society is the only true view, the above-mentioned defects cannot be passed over lightly. On that view, justice would aim not at the mere apportioning of benefits to services, if such mechanical apportionment is possible as all, but at giving each individual a share in the common good of the community. While it may find it socially and economically expedient, under the complex conditions of modern life, to preserve our present economic system to a large degree (at least as far as the middle ranges of income are concerned), and regard poverty as punishment to some extent, it would at the same time correct and limit the inherent weakness of the economic system by paying due attention to differences of need on the one side and differences of capacity on the other. If a member of society is unable to earn for himself his minimum share of social good, it would endeavour to make it possible for him to earn it through such means as minimum wage laws, good methods of technical instruction, efficient labour exchanges, and State control of the supply of some of the more important needs.[1] It would treat each person as an

1 Compare Mackenzie's Outlines of Social Philosophy, Ch. V.

end in himself and not as a mere means to an end. In other words, it would regard each person's good as of equal intrinsic value with the like good of everyone else and would consider superior capacity as constituting a claim to superior consideration,[1] though not always of a material character. Instead of trying to effect some kind of compromise between competing individuals, it would look upon these individuals as members of a common group, and endeavour to promote right relationships between them. It would elevate the question of distribution of external good from the plane of economics to the plane of personality. It would secure to a considerable extent "that no unnecessary obstacles are placed in the way of each one discovering for himself what is the position for which he is best fitted, and eventually gaining that position."[2] It would also do something at least to remove such extreme poverty as would prevent a person from securing the necessary materials and instruments for the proper discharge of his functions, and such extreme wealth as might tempt him to waste them.[3] Instead of mechanically ascertaining the just reward of each person by means of a universal and objective

1 Compare Rashdall's The Theory of Good and Evil, Vol. I, pp. 233-41.

2 Mackenzie, ch. V.

3 Compare Mackenzie's Outlines of Social Philosophy, ch. V.

formula of social justice, it would aim at strengthening in the community as a whole, the disposition to ascertain and carry out what is just for each individual.[1] In addition to emphasising justice in the realm of competitive good, it would emphasise the cultivation of non-competitive goods like goods of the body (*e.g.*, physical health) and goods of the soul (*e.g*, moral goodness, culture, knowledge, etc.). Instead of forcibly fitting itself into a preconceived notion as to the proper function of the State, it would regard the State as an instrument for the realisation of the good life of the community. Justice would become the master and the State its servant, and as servant, the State might be required to do much or do little, depending upon the intellectual and moral level reached by the community and the urgency or otherwise of the acts to be performed. Merely to call an act individualistic would not be enough to uphold it. Neither to call acts paternal or socialistic would be enough to condemn them. The good life of the community, which, to a large degree, is self-earned, would be the deciding factor, and the question regarding the limit of State-action would present itself as a matter of detail.

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1 In the words of H. Rashdall : "An abstract 'distribution' cannot be a good, but a disposition and a wil to distribute justly may be."

Thus the law of equal freedom appears to fall short of the *laissez faire*, the Utilitarian individualist, and the idealistic theories of social justice.

CHAPTER VII

Justice and Beneficence.

Our efforts hitherto have been directed towards the expounding and criticising of Spencer's principle of justice (expressed concisely in his law of equal freedom), looking at it more or less as an independent principle of morality. But it is in its relation to its twin-principle of beneficence that we see in a most striking way its inadequacy and its inconsistency with itself. It is, therefore, now necessary to turn to a brief examination of the differentiation made by Spencer between justice and beneficence. Earlier we noticed that justice to Spencer is the primary law of morality and that it consists in letting each individual take the natural consequences of his actions, that, in other words, it consists in letting the superior have the advantage of his superiority, and the inferior the disadvantage of his inferiority. But this law, Spencer confesses, in the *Data* as well as in *Negative Beneficence* (Sections 54 and 387), is not enough. Its sternness should be mitigated by the principle of beneficence. Thus, he says in Part V, "*the highest form of life*, individual and social, is not achievable, under a reign of justice only, but that there must be joined

with it a reign of beneficence."[1] At the same time, however, he adds that "justice and beneficence are to be discriminated," as justice is of public concern and beneficence only of private concern. For, he says: "Beneficence exercised by society in its corporate capacity, must consist in taking away from some persons parts of the products of their activities, to give to other persons, whose activities have not brought them a sufficiency. If it does this by force it interferes with the normal relation between conduct and consequence, alike in those from whom property is taken and in those to whom property is given. Justice, as defined in the foregoing pages, is infringed upon. The principle of harmonious social co-operation is disregarded; and the disregard and infringement, if carried far, must bring disasters."[2]

Deferring to a later place in the present chapter consideration of the obvious contradiction that there is between justice and beneficence in this quotation, we should remark that the argument does not apply to Negative Beneficence. The beneficent restraints, for instance, imposed by Spencer on Free Competition and Free Contract (Chs. II and III of Part V), do "not necessarily involve the taking of A's products to give to B; but only limitation of A's activities in B's interest."[3]

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1 p. 269.

2 Principles of Ethics, Vol. II, p. 271.

3 Ibid.

Using the time-worn distinction between what is of public and what of private concern, Spencer makes a further distinction when he maintains that justice is "needful for *social equilibrium*, and therefore of public concern," while beneficence is "not needful for *social equilibrium*, and therefore only of private concern."[1] It is our purpose now to see whether Spencer is able consistently to adhere to this distinction in his treatise on beneficence and if not, whether such inability is not due to the narrow and inadequate way in which he conceives justice. Turning our attention first to the important chapter on Restraints on Free Competition (Ch. II), we find Spencer say that "In strict equity (or justice) the more capable are justified in taking *full* advantage of their greater capabilities;"[2] and that trade unions are "unprincipled" when they prevent an artisan from outstripping his fellow-artisans by his superiority in the ordinary competitive process. And yet he adds that in the case of employers, free competition may go too far; an employer, for instance, may ruin his competitors by unscrupulous underselling; thus inflicting "intense evils" which "might not unfitly be called commercial murder;" he employs "the forms of competition...to destroy competition" and achieve "a practical monopoly."[3] But the principle of negative beneficence, Spencer goes on to say, enjoins

1 Vol. II, p 270. 2 p. 277.
3 p 282.

"Anyone who, by command of great capital or superior business capacity, is enabled to beat others who carry on the same business... to restrain his business activities, when his own wants and those of his belongings have been abundantly fulfilled "[1] "This conclusion, however," as Sidgwick rightly remarks, "would seem to go beyond what the premises justify, as what seems injurious is not the extension of business through cheapness, so far as cheapness is *bona fide* obtained by economies; but the adoption of underselling at unremunerative prices in order to injure competitors and establish a monopoly."[2] As the same writer says: "both in the case of trades-unions establishing monopoly through combination, and employers establishing monopoly by aggressive combination, industrial freedom, advocated as leading to the advantages of free competition, in facts leads to the opposite result. Why is so important a result, if as bad as Mr. Spencer holds, not to be prohibited by law? Why is it not a disturbance of *social equilibrium*, and a breach of Justice? "[3]

Passing on to the chapter on Restraints on Free Contract (ch. III), we find several illustrations more startling than the one mentioned above, of the narrowness and inadequacy of Spencer's principle of justice. In discussing

1 p. 282.

2 Ethics of Green, etc., p. 306.

3 Ibid.

the case of a landlord who, in strict justice, may raise the rent of a tenant who has taken a stony or boggy tract of land on a short lease and reclaimed it by persistent labour, Spencer claims that the sentiment of negative beneficence will restrain the landlord "from taking advantage of his tenant's position" and that he will feel "that in this case what is here distinguished as negative beneficence does but enjoin a regard for *natural justice*, as distinguished from *legal justice*."[1] In making this new distinction between natural justice and legal justice, which incidentally serves the purpose of covering up the inherent weakness of his principle of justice, it seems to us that Spencer lays himself open to certain serious objections. In the first place, there is no reason to suppose that natural justice would enjoin the above restriction, supposing the terms of the contract to be understood by the tenant. Secondly, if we grant Spencer's view as to what natural justice enjoins, "why should it not also be legal justice—since in ch. VIII of Part IV we seemed to be told that *Legal Justice* derives its warrant from *Natural Justice*. If Justice is in some cases not to be enforced by law, how are we to distinguish the cases in which it ought to be so enforced.?"[2] Lastly, if strict or legal justice allows the landlord to take full advantage of his tenant's weakness, what is to become of

1 vol II, p. 288.

2 Sidgwick, p. 308.

Spencer's law of equitable distribution—the exact "proportioning of benefits received to services rendered."[1]

Another striking illustration in the present chapter of the narrow and inadequate way in which Spencer conceives justice, is found in cases such as those of the Skye crofters, in which, Spencer says, "the making of contracts though *nominally* free is not *actully* free"—cases in which there being no competition among landlords, a local landlord has "an unchecked power of making his own terms" and the people "having little or no choice of other occupations and being too poor to emigrate, are compelled to accept the terms or starve."[2] In such cases, therefore, Spencer says, "it remains for the promptings of negative beneficence to supplement those of equity which are rendered inoperative. The landlord is called on to refrain from actions which the restraints of technically-formulated justice fail to prevent." But obviously this fundamentally important limitation of the notion of Freedom should have been introduced, if at all, in the previous discussion of the Right of Free Contract in Part IV of the *Principles*.[3] It is an essential part of justice and is "needful for social equilibrium." "Surely the 'Freedom' of the Law of Equal Freedom ought to be real and actual: if a contract is not in reality free when one of the parties is in

1 Data, p. 146. 2 vol. II, p. 288.

3 ch. XV, p. 129.

extreme need, surely the whole previous deduction (in Part IV) needs remodelling."[1] For, it will be remembered that, in Part IV, Spencer regards the Right of Property, Free Exchange, and Free Contract as necessary corrollaries from the Law of Equal Freedom; and as therefore embodying not merely 'legal' or technical Justice but Justice pure and simple".[2]

A further illustration of the criticism that we are urging against Spencer's theory of justice, we find in the present chapter, in the case of

"A contractor who has undertaken an extensive work on terms which, to all appearance, will leave him only a fair remuneration, making due allowance for ordinary contingencies—say a heavy railway cutting, or a tunnel a mile or two long. No one suspected when the contract was made, that in the hill to be tunnelled there existed a vast intrusion of trap. But now where the contractor expected to meet with earth to be excavated he finds rock to be blasted. What shall be done? Unless he is a man of large capital, strict enforcement of the contract will ruin him; and even if wealthy he will do the work at a great loss instead of at a profit. It may be said that even justice, considered not *as legally formulated* but *as reasonably interpreted*, implies that there should

1 Sidgwick, p. 308.

2 Ibid.

be a mitigation of the terms; since the *intention* of the contract was to make an *exchange of benefits*; and still more is mitigation of the terms required by negative beneficence—by abstention from that course which the law would allow. But clearly it is only where a disastrous contingency is of a kind greatly exceeding reasonable anticipation, that negative beneficence may properly come into play." [1]

Most people will probably say that in the present case both "natural justice" and "legal justice" should hold the contractor responsible for his mistake on the ground that he is supposed to have expert knowledge of his work, even before the contract was made. Taking, however, a similar case, like that of a building which in the process of construction is destroyed by "an act of God," say through lightning, the same people would probably say that neither "natural justice" nor "legal justice" (in the ideal form) ought to hold the contractor (in the ideal state) completely responsible. Spencer, on the other hand, would probably say that justice "legally formulated" should throw the whole burden upon the contractor, while justice "reasonably interpreted" should ease that burden.

Even on Spencer's own ground of "social equilibrium," which may be paraphrased as "public advantage" or "conditions necessary for the smooth working of society" and which

1 Principles of Ethics, vol. II, pp. 289-90.

is the test used by Spencer as to whether a thing should come under the province of justice or not, it will be generally admitted that whether or not a contract like the one under discussion (building struck by lightning in the course of construction) should be literally enforced should not be left to the generous impulse of interested parties, but should be brought under the control of the State. Further, if the contracting parties are to take into consideration "the intention of the contract" as "an exchange of benfits," does not the State, as a disinterested body and as the enforcer of contracts, have even a greater right (and even duty) to do the same? Finally, are we to infer from Spencer's statement that no contracts ought to be enforced that turn out to be highly disadvantageous to one of the contracting parties?[1] If such is the inference, it will be interesting to know what effect it will have upon modern business, much of which rests upon speculation and readiness to take risks. Shall we be working toward a state of affairs similar to a Christian Socialism? Perhaps an answer to this question is not urgent for our present purpose. In any case, a question of this kind serves to emphasise the fact that the

1 Negative beneficence, says Spencer, forbids "unduly pressing against another an advantage which circumstances give" (vol. II, p. 296); further, "negative beneficence...forbids making a contract unduly advantageous to self" p. 297.

implications of some of the qualifications of justice introduced by Spencer in his treatment of negative beneficence are destructive of his theory of justice itself.

Taking justice, then, to mean "social equilibrium," we have seen that in all the cases quoted above, what Spencer calls "Negative Beneficence" should really be called "Justice." Consequently to the extent to which the law of equal freedom is unable to accommodate these cases, it needs to be supplanted by some wider principle. Expressions like "natural justice," justice "reasonably interpreted," and "intention of a contract" as "an exchange of benefits," eat up the very roots of the law of equal freedom.

We now pass on to Part VI of the *Principles* (*Positive Beneficence*), and see how it comports with justice. The most important chapter in this part from our point of view is the chapter on the Relief of the Poor (Ch. VII). Using Spencer's definition of beneficence that "exercised by a society in its corporate capacity," it consists "in taking away from some persons parts of the products of their activities, to give to other persons," we may say that poor-relief by the State is a clear case of beneficence, and that, therefore, on Spencer's view, it ought not to be undertaken by the State. But, if, on the other hand, it can be shown that relief of the poor is "needful for social equilibrium," it automatically becomes a part of justice and,

therefore, a part of state-duty. In the words of Prof. S. Alexander: "It is a strange conception of social equilibrium which leaves out of account some of the forces concerned, and what forces can be stronger than the sentiments of those who rebel against being left to the full operation of their inferiority?"[1] No doubt, as Spencer says, State-relief of the poor, if carried too far, will bring disasters, but it will be agreed that when carefully limited, it may do more good than harm.

If the relief of the poor by State-aid, then, as "needful for social equilibrium" be legitimately regarded as a part of Spencer's justice, it seems to have a far-reaching consequence on the hard and fast distinction made by him between justice and beneficence. Justice and beneficence, hereafter, it would seem, cannot be regarded as mutually exclusive of one another. Beneficence should really be looked upon as higher justice, and the State should become the custodian of it. Spencer's own admission that "the highest form of life" (which we paraphrase as "the greatest possible quantity of life and happiness") cannot be reached without beneficence, seems to support us in this view. For, if justice and beneficence have the same basis, *viz.*, increase of life and happiness, why should it be wrong for the state to prescribe beneficence for the public good, considering that it prescribes justice for the public good?"

1 Mind, N. S.; III, p. 128.

We, therefore, come back with fresh proof to a conclusion that we reached on an earlier page that, on Spencer's own premises, the question to ask ourselves in deciding whether or not a certain measure should be undertaken by the State is not whether it comes under justice or beneficence, but whether it makes for public good. We grant that there may be cases where, even after ascertaining that a thing will be for public advantage, it will not be undertaken by the State owing to the excessive trouble and expense involved or to the difficulty of finding a definite and conventional basis on which law can act. But the point that we seek to emphasise is that neither in Spencer's type of social philosophy nor in any other type is there logical ground for the limitation of State-action to justice, narrowly conceived. Dr. E. Albee rightly observes that "while many practical statesmen have a healthy dread of a too paternal government, it is safe to say that no practical statesman ever did, or ever will, try to keep justice and beneficence, in whatever sense understood, separate in the way that Mr. Spencer would seem to require. It would, *e.g.*, take but a famine or a pestilence to show how unworkable such an abstract theory would be."[1]

If further proofs be required of our conclusion that, on Spencer's own premises, public advantage is the decisive factor with

1 A History of English Utilitarianism, p. 349.

regard to the collective action of the State, we may for a moment hark back to Spencer's theory of Absolute Ethics and then turn to his treatment of public opinion. Justice, we have already seen, aims at giving each man the exact equivalent of what he has done. But a harsh operation of this law upon the sick, the feeble, and the old, Spencer allows, may be mitigated by a considerable amount of voluntary beneficence. For this mitigation, however, as far as we can see, there is no warrant in the code of Absolute Ethics. And yet Spencer allows it on the ground that, "when duly restricted to cases of unavoidable misfortunes, the immediate pleasure resulting from beneficence outweighs the indirect good, which would result from following the teaching of absolute Ethics and allowing the unrestricted struggle for existence to exterminate those whose extinction by natural law would prove them (under the conditions) unfit to live."[1] But it is obvious that the same reasoning may be used to justify "any amount of interference with the evolutionary struggle, and with the laws which Absolute Ethics derive from it, in all cases where the gain to Society, on the whole, may seem to outweigh any which may be expected to result from the unrestricted struggle."[2]

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1 Rashdall, Vol. II, p. 390; cp. Spencer's Principles, Vol. II, p. 394.

2 Rashdall, Vol. II, p. 390.

Turning to the question of public opinion, we find that, in replying to those of his critics who say that "if there is no compulsory raising of funds to relieve distress, and everything is left to the promptings of sympathy, people who have little or no sympathy, forming a large part of the community, will contribute nothing; and will leave undue burdens to be borne by the more sympathetic."[1] Spencer says "that in the absence of a coercive law there often exists *a coercive public opinion*."[2] Here apparently we have a case where Spencer realises the need of a certain act for public good so much so that he is willing to cast aside his wonted enthusiasm for freedom from interference, which elsewhere he regarded as the one essential condition to life and happiness. But, in so doing, Spencer seems to forget that there is no difference in principle between the enforcement of justice by the State and the enforcement of beneficence by public approbation and disapprobation.

We have so far endeavoured to show that the basis of Spencer's theory is narrow and inadequate and that, on his own premises, the limit of State-action should be the limit of public advantage. Neither the whole of justice, *e.g.*, gratitude to parents, nor the whole of beneficence can conveniently come under State control. We now pass on to a criticism which we have hinted at earlier and which,

1 Principles, Vol. II, pp. 387-8.
2 p. 388.

we believe, seriously undermines Spencer's justice—the inner conflict that there is between justice and beneficence in his Ethics. It is generally agreed that, however much justice and beneficence may differ from one another, and whatever distinctions we may draw between them for the sake of convenience, they are incapable of contradicting each other in theory, or even in practice. A writer like Henry George, who has many points of contact with Spencer, says that "That which is above justice must be based on justice, and include justice, and be reached through justice."[1] Prof. J. Seth, a writer of a different type, argues that justice and benevolence are respectively the negative and positive aspects of social virtue and that benevolence is justice made perfect.

We shall not hold Spencer responsible for the practical difficulties which he has in reconciling the duties dictated by justice and those dictated by beneficence. Such difficulties are bound to be difficulties for almost any system of Ethics, though in Spencer's Ethics they are greater in number and more serious in degree. But we have a right to hold him responsible for virtually abandoning the biological principle of "survival of the fittest" while passing from justice to beneficence. If it is wrong for the State to render positive help to the weak and inefficient members of society, so it is for the individual; the

[1] Social Problems, p. 114.

character of the agency makes no difference. Nature's laws, whether broken by the collective action of the State or by individual action, will have the same serious consequence. To temper with the Spencerian law of justice by means of beneficence is to tamper with it[1] and, to that extent, to render, "the laws of life and the conditions of existence" futile. Our conclusion, then, is that, to the extent to which beneficence counter-acts and contradicts the primary law of justice, it has no logical place in Spencer's Ethics, for Spencer himself claims that "the primary law of a harmonious social co-operation (justice) may not be broken for the fulfillment of the secondary law (beneficence)."[2]

If Spencer tries to extricate himself from this difficulty by saying that, inasmuch as justice is incapable of complete realisation in the relative state in which we live to-day, we ought not to insist on too rigid an application of it, but ought really to find room for beneficence, it would appear that he must give up his claims to having discovered a "scientific" or "exact" basis for Utilitarianism and a final solution of the vexing question of the proper sphere of government, and must fall back upon the empirical-reflective method of ordinary Utilitarians, using social good or public advantage as his guide. It may even

1 We have Spencer's own words that "What is not just is in the long run not beneficent" (vol. II, p. 381).

2 Principles of Ethics, Vol. II, p. 271.

be contended that, so long as Spencer admits that his justice cannot be fully realised in our present state of affairs, and so long as limited beneficence, as we have shown above, is "needful for social equilibrium" (*i. e.*, for maximum life and happiness possible), beneficence on the whole should precede justice in the activity of the State. This contention is supported by a former conclusion of ours that Spencer's theory of justice is fruitful only on the supposition of the equality of the members of a society. Therefore, till we reach that equality, why should not the State lend all its energies to giving its members as many positive benefits as possible, and equalising their opportunities, with a view to hastening the absolute state when justice and equality shall reign unchecked? Will this not be in strict accordance with Spencer's theory? Whether it will or not, there can be little doubt that, in many of the cases discussed by Spencer in Parts V and VI, "to secure the individual by a right is both a manlier and more satisfactory arrangement than to leave him dependent on the good feeling which prompts others to render him services which he cannot accept without a sense of inferiority."[1] It is strange that a writer who is so passionately fond of freedom as Spencer is, should, in the case of the poor and the unfortunate members of society, be so unmindful of their true freedom, their self-respect,

1 S. Alexander, Mind, N. S. Vol. III p. 130

and their manhood, as to recommend them to the mercies of the rich, the fortunate, and other such who often, owing to circumstances, occupy positions of advantage.

SECTION II.

Practical Application of Spencer's Theory of Justice.

CHAPTER I

THE THEORY AND ITS QUALIFICATIONS.

We propose in this concluding section to attempt a systematic examination of Spencer's application of his formula of justice to the practical questions of social life, with a view to seeing to what extent Spencer is able to make good his claims :—

(1) That the particular legal rights of man that ought to be established in any actual society are all ascertained by simple deduction from his absolute formula of justice, *viz.*, the law of equal freedom.

(2) That "they one and all coincide with ordinary ethical conceptions."[1]

(3) That "they one and all correspond with legal enactments,"[2] and

(4) That what is found to be ideally just (according to Spencer), also turns out to be economically expedient.

1 Justice, p. 63. 2 Justice, p. 63.

In undertaking this task, it is necessary to bear in mind constantly an important fact that Spencer seems entirely to overlook, that even if it is possible for him to establish his claims, especially the first one, that is not necessarily to prove the superiority of his law of equal freedom to other theories of justice which, though not rigorously deducing all the rights of man from an absolute or ultimate ethical principle, as Spencer's does, make an adequate provision for them. A detailed study of *Social Statics* and *Justice* reveals the fact that many of the rights discussed by Spencer in these writings are of such supreme importance for social existence that no theory of justice can fail to account for them. Such a study seems also to show us that rights, instead of being simply deduced from the law of equal freedom, are really forced out of it.

A further important fact which also needs to be borne in mind, and which Spencer forgets, is that to establish a parallelism between his deductions and our ordinary ethical conceptions and legal enactments is not necessarily to establish a causal or any other kind of intimate relation between them. The correspondence may after all be accidental; and ordinary law and morality may, through the long history of mankind, have independently arrived at many of Spencer's so-called deductions without a conscious or unconscious attempt at realising maximum equal freedom.

Before we proceed to criticise closely Spencer's deductions from his fundamental formula of justice, it is necessary to state two important qualifications which he introduces into his formula and which seriously weaken, if not destroy, its absoluteness, and render its meaning rather vague and indefinite. The reason for insisting on the necessity of the absoluteness of the formula and the clearness and precision of its meaning is that not to do so would be to obliterate the unique difference that there ought to be between Spencer, who is on 'the high *priori* road,' seeking to solve many of the most important practical problems of society by simple reference to a mechanical and abstract formula of justice, and writers who, not being so ambitious as that, regard social justice as a problem for which there is no perfect or complete solution, but which can only be stated as a question of approximation. We must, it seems to us, insist that Spencer should, in a practical way, show that "the limit put to each man's freedom by the like freedom of every other man, is a limit almost always possible of *exact ascertainment*."[1] The first group of qualifications which Spencer stated in various ways in *Justice*, is that his formula is not meant to support "aggression and counter-aggression,"[2] that it does not "countenance a superfluous interference with another's life, committed on the ground that

1 Social Statics, p. 82.

2 p. 64.

an equal interference may balance it,"[1] and that it is to be applied only to actions conducive to the "maintenance of life."[2] Spencer seems to be hardly aware that the form of words employed here is such as to render the law of equal freedom almost impracticable. It is true that in the case of rights pertaining to personal security and liberty, expressions like "superfluous interference" and "actions conducive to maintenance of life" can be used without giving much room for confusion. But what meaning do they have in reference to proprietary rights, where men's interests are not always harmonious and where sometimes one's gain mean's another's loss? Do they not really lay Spencer open to the charge of arguing in a circle? Besides, on his own showing, ought not the field of negative beneficence, either in whole or in part, to be strictly brought within the field of justice? For what is the real difference between negative beneficence, which forbids giving pain to others by utilising all the advantages that strict justice accords, and justice which forbids "superfluous interference" with the lives of others and refuses to countenance aggression and counter-aggression?

A second qualification to which Spencer directs attention at the end of almost every one of the chapters in *Justice* dealing with rights, is that in our present state, in which absolute ethics cannot be fully operative, the

1 p. 46. 2 p. 46.

law of equal freedom is subject to a further law, *viz*, the law of social self-preservation. The important question here is, what are we to understand by the significant phrase "social self-preservation?" The general tone of Spencer's answer seems to be that by "social self-preservation" we are to mean "national defence and social order," or, put in other words, "defensive war and punitive justice." In his theory of the State, it will be noticed that Spencer is not weary of reiterating that government exists externally for war and internally for the enforcement of contracts. But this narrow interpretation of "social self-preservation," it will be generally admitted, is due to Spencer's ingrained prejudice against government and authority in general, and not due to any careful and reasoned-out argument. If "social self-preservation" is to be a guiding principle of State action, Spencer gives no valid reason why the State should never undertake positive regulation, but should specialise exclusively on negative regulation. "Social self-preservation," rightly interpreted, will mean different things at different times and in different places, varying according to the urgency of the things to be done and the temper and the social development of the governed. Spencer himself clearly passes beyond his own narrow interpretation of the phrase "social self-preservation," when he comes to deal with the important question of land in

Justice. Individual ownership subject to State-suzerainty as advocated by him, it will be readily seen, is neither in the interest of defensive war nor in that of punitive justice (or enforcement of contracts). It is first and last in the interest of social and economic utility.

An important truth which seems to emerge from the above qualifications introduced by Spencer, is that they so profoundly alter the character of his absolute formula that, strictly speaking, some general principle like public advantage (or social expediency) or the highest good of the community, which can easily bring under its wings the qualifications considered by Spencer, should be regarded as the fundamental principle, with freedom as a secondary and subordinate principle. That we are not wrong in this inference can be shown from the fact that, more than once in *Justice*, Spencer draws a distinction between ideal justice and expediency, and evades the necessity of rigidly applying his law of equal freedom, by saying that under present conditions "nothing beyond a quite empirical compromise seems possible."[1] If Spencer is anxious that we should take into consideration "the intention of the formula" as the fixing of bounds "which may not be exceeded on either side,"[2] he must at the same time be willing to grant that this

1 Justice, p. 124.

2 pp. 46-47.

intention can only be realised through the principle of the well-being of the community. It seems fair to remark that, on Spencer's own premises, the State should be regarded as an institution for the promotion of a common good. We may even go further and say that once we adopt social good as the ultimate guiding principle of public action, it makes no real difference whether we regard the law of equal freedom or the law of equal restrictions as the secondary and subordinate principle. On this view, it would seem that the fine difference that Spencer draws between his own positive treatment of freedom and Kant's negative treatment of it (Appendix A in *Justice*) is more apparent than real.

If we are agreed, then, that on Spencer's own premises, a general principle such as social welfare or the highest good of the community ought to be the ultimate ethical principle of social life, our criticism of his law of equal freedom, strictly speaking, will have to come to an end at this point. But that will probably be hardly fair to Spencer who may, and, in fact, does, claim that the well-being of society, which from his point of view means greatest happiness, is best promoted by maximum equal freedom. Granting to Spencer for the sake of argument the validity of this claim, we are faced with the difficulty of reconciling it with his repeated assertion that the dictates of the law of equal freedom are to be modified and limited by

the need for social self-preservation; and social self-preservation, we have already seen, can, according to no reasonable interpretation of it (including the biological, on which Spencer lays much stress), be confined to defensive war and punitive justice. Thus, in whatever way we may look at the law of equal freedom, our theoretical difficulty of applying it to practical questions seems to be great, and Spencer's argument in support of it seems to run in a vicious circle.

With the general difficulties arising out of Spencer's qualifications of the law of equal freedom made plain, we are now in a position to examine carefully the detailed manner in which Spencer applies the law to the question of man's rights. It is easy to dismiss Spencer's application of the law of equal freedom with the argument that, since no two individuals are exactly alike or equal, there can perforce be no *equal* freedom. But we need not have recourse to this or any such extreme argument. We may put as charitable an interpretation as possible on Spencer's law, and take it to imply equality of a conventional and outward character, and, if in spite of this, we can show that the formula is unmanageable and often inadequate, our criticism will be convincing and free from hostility.

CHAPTER II

The Right to Life and Liberty.

The first group of rights to which Spencer naturally directs attention is the group pertaining to life, liberty, and personal security. Some of the rights here discussed, it seems to us, must be conceded to Spencer. If A kills B, it is physically impossible for B to kill A, and if A puts B under lock and key, A assumes, at least so long as the restraint lasts, more freedom than B. But when we come to consider some of the other rights claimed by Spencer, the deduction does not seem so obvious. What does equal freedom say about the mutual dealing of wounds and blows? In the words of Maitland (only in reference to the question in *Social Statics*), "if A smites B, the latter not unfrequently finds himself perfectly free to repay the blow with interest."[1] But here Maitland does not have before him the qualification relating to "superfluous interference" found in *Justice*. Granting that the giving and receiving of uncalled for blows constitute "aggression and counter-aggression," and therefore are to be excluded, what

1. Mind, O. S. Vol. 8, p. 521.

shall we say about injuries "that there is mutual agreement to allow (*e. g.*, Rugby football) for consent excludes coercion?"[1] Must not the law of equal freedom support such actions? And yet Spencer says that "considered as the statement of a condition by conforming to which the greatest sum of happiness is to be obtained, the law (of equal freedom) *forbids any act which inflicts physical pain* or derangement."[2] (If so, where does negative beneficence come in?) Rightly interpreted, the law ought only to forbid acts that cause surplus of pain over pleasure. But if Spencer accepts this interpretation, will he not, in his calculation of pleasures and pains, to some extent at least, be falling back upon the empirical method of the orthodox Utilitarians that he so heartily despises, and, to that extent, give up his deductive Utilitarianism in the department of justice? Further, as we have had occasion to remark before, freedom, so long as it aims at the exclusion of pain or annoyance as far as possible, refers not only to freedom from physical coercion or confinement, but also to freedom from moral restraint and mental annoyance. What is to be the verdict of the law of equal freedom upon the last two kinds of subtle but none the less sure forms of violation of freedom, it is difficult to say. To take a practical example of moral restraint, it is quite conceivable that in every

1 Sidgwick: Ethics of Green, etc., p. 280.

2 Justice, p. 64.

society there are many individuals who refrain from breaking some of the laws of the State because of the fear of punishment. Are we to imagine that the law of equal freedom would condemn such restraint as a violation of the equal freedom of some individuals, and that it would therefore work toward a state of anarchy or no-government? Even if we do, our difficulty will probably still remain. For there may be others in that new state of affairs who will refrain from doing many things that they would like to do because of the fear of lawlessness. Therefore, whether there is government or there is no government, moral restraint of some kind seems inevitable. In reply to this adverse criticism, however, Spencer might say that we are not taking into consideration the "intention" of his formula and that freedom does not mean freedom to do things that are injurious to the well-being of oneself or of society. In that case, it seems right to argue that the formula that every man is free to do that which he wills, provided he infringes not the equal freedom of any other man (or government), will have to be altered to read that every man is free to do all that which is necessary for his becoming what he is capable of becoming in society, and is recognised to be so free by society. As regards freedom in the mental sphere, we may observe that it would be a delicate matter to apply Spencer's formula in the case of mental annoyance;

because we cannot prevent B from annoying A, without curbing the freedom of action of B.

A peculiar right considered by Spencer under the right to physical integrity is in connection with the communication of disease. Rigidly applying Spencer's fundamental formula of equal freedom to this right, it seems plausible to argue that a father has a right to "fetch home his boy suffering from an epidemic disease"[1] by railway-carriage provided he infringes not the equal freedom of another father who does the same thing. But Spencer objects to this deduction unreservedly and believes that under no conditions should the mischievous action be allowed. If in justification of his position Spencer should say that the action which he condemns is contrary to the "maintenance of life" and of "social self-preservation," the two important qualifications introduced by him into the formula, it seems fair to contend that such a general principle as public safety should be the guiding factor in the present case, and not the law of equal freedom. It indeed seems artificial and pedantic to consider the present case as a violation of the law of equal freedom. In this case, as well as in many other cases to which we shall direct attention as we proceed, we note an essential confusion between the freedom of all to claim for themselves whatever right any one of them claims

1 Justice, p. 69.

for himself, and the resulting freedom to all concerned from the action of any one individual. Moreover, if conduciveness to "maintenance of life" and "social self-preservation"—(understood in the broad sense in which they are used here—not confined to defensive war or punitive justice or enforcement of contract) --are to lay down what things are to be prohibited by law and what not, the limit of State action, we may be sure, will exceed the limit of actions necessary to the strict maintenance of the law of equal freedom. For instance, very few people will agree with Spencer that an unlicensed medical practitioner in a civilised community should be allowed to carry on his profession unhindered so long as he leaves others free to buy or not to buy his remedies.

From the right to physical integrity Spencer passes on to the right to free motion and locomotion. We are quite willing to concede to Spencer that this right is a simple corrollary from the principle of preventing mutual interference as much as possible. But it will be generally admitted that the right of free motion and locomotion is far too inadequate to condemn slavery and serfdom, and yet Spencer regards these iniquities as mere interferences with the said right. If slavery were to be condemned simply because it interfered with a person's right to free motion and locomotion, many other things like traffic rules and immigration and emigration

laws—which are quite essential for civilised existence—would also have to be condemned for the same reason. It may even be contended that all hired labour, under which a man is not the master of himself, is wrong, because it involves curtailment of the right to free motion and locomotion. But Spencer would probably prefer to deal with this case under the law of contract, and therefore we can leave it out till we come to discuss the right of contract.

The group of rights to which Spencer passes next, and which seems to occupy in his mind a middle position between the rights of life and liberty on the one hand and the right of property on the other, is the right to the use of natural media, such as light, air, and land. The last of these media is so closely related to the right of property that we may consider Spencer's treatment of it in connection with proprietary right. As regards a person's right to light and air, we may concede to Spencer that, to a large extent, it is capable of deduction from the law of equal freedom; though at the same time we doubt the possibility of rigidly bringing all its dictates under ordinary law, because "of the indefiniteness and uncertainty of the mischievous results"[1] arising from a violation of the right. Even with regard to the deduction of the right itself, it seems necessary to say that in one of the cases mentioned by Spencer,

1 Justice, p. 69.

the case of those who are adjacent to one another, especially indoors, and who "are compelled to breathe the air that has already been taken in and sent out time after time,"[1] Spencer really throws his principle away when he tries to justify the "interference" by saying that where vitiation of air is mutual, there is no aggression and counter-aggression, because such vitiation might easily hinder the maintenance of the lives of the "mutual vitiators." Even if we grant that vitiation does not hinder the maintenance of life, there is no reason why Spencer should object to a parallel case noted above, *viz.*, Rugby football, where the infliction of injuries is mutual and something agreed upon and where, we may be reasonably sure, there is a balance of pleasure over pain. In all these cases, then, it seems to us that Spencer's deductive Utilitarianism is not of much avail; the empirical method of orthodox Utilitarians serves the purpose admirably. The truth of this criticism is seen clearly in the new right to freedom from disturbing sounds that Spencer seeks to establish. It indeed seems reasonable to suppose that the amount of "bad street music," "of loud noises proceeding from factories," "of church bells rung at early hours," and "of railway whistles at central stations" that constitutes public nuisance, and how much should be brought under law, should be left to empirical Utilitarianism,

2 Justice, p. 83.

rather than be formally deduced from an abstract law (even if that is possible). Yet Spencer believes in the applicability of his formula to all these cases.

CHAPTER III

The Right to Property.

Next to the rights of life and liberty, the most important right of man is his right to property, and it is here that we find the acid test of the value of Spencer's law of equal freedom. The question to be answered is, can the institution of private property, whether in land or in any other commodity that is capable of being owned, be legitimately derived from Spencer's fundamental formula? And if the question can be answered by Spencer in the affirmative, we may willingly grant the value of his law of equal freedom, whatever its shortcomings in reference to other rights may be.

Let us take the case of the surface of the earth and ask ourselves what maximum equal freedom means with regard to it. In his *Social Statics* Spencer says: "Each is free to use the earth for the satisfaction of his wants, provided he allows all others the same liberty. And, conversely, it is manifest that no one may use the earth in such a way as to prevent the rest from similarly using it; seeing that to do this is to assume greater freedom than the rest and consequently to break the law. *Equity, therefore, does not permit property in*

land."[1] But to this sound and coherent argument Spencer does not adhere when he comes back to the question of land in *Justice*. He still holds to the belief that "the aggregate of men forming the community are the supreme owners of the land" but adds that "individual ownership subject to State-suzerainty, should be maintained."[2] This addition however, it will be readily seen, is based not on the law of equal freedom, but on Utilitarian (empirical) and other grounds. Instead of discussing the equal claims of human beings to land, Spencer concerns himself with the best form of governmental regulation which will secure the common interests of all concerned. The question of expropriation by State-decree is not, as Spencer supposes, a question of the "prior right of the community at large" which, he says, "consists of the *sum* of the individual rights of its members,"[3] but a question of the life of the community being better maintained by restricting the particular freedoms of individuals. We may well sympathise with Spencer when he says that "long-standing appropriation, continued culture, as well as sales and purchases, have" so "complicated matters" that "the dictum of absolute ethics.....is apt to be denied altogether."[4] But we cannot gainsay the fact that "if A is

1 Social Statics, Section 1, Chapter IX. (Italics ours.)
2 Appendix B, p. 270.
3 Justice, p. 93.
4 Ibid., p. 85.

allowed exclusive use of a portion of land, the freedom of B, C, D, is necessarily *pro tanto* restricted with regard to it."[1] "It is not enough to say that B, C, D, have equal freedom to appropriate similar land, the point is that appropriation inevitably limits freedom for the sake of utility. And in fact—even if for simplicity we concentrate attention on land hitherto unoccupied, land (say) in a new colony —the equal freedom to appropriate similar land will soon be impaired if appropriation is fully allowed."[2] The fact of the matter, then, is that "the idea of mere equal freedom, mere protection from mutual encroachment is clearly inapplicable"[3] to the case of land. Spencer himself, as said above, instead of addressing himself to the equal claims of human beings to *freedom*, concerns himself with the claims of general utility.[4]

Casting about to see whether there is any possible way by which individual ownership in land, which in *Justice* at least, Spencer seems to think is essential for social existence, can be harmonised with the fundamental law of equal freedom, it seems at first sight that a way out may be found in the idea of communal ownership advocated by Spencer both in *Social Statics* and *Justice*. But on close examination we find that this is not really so.

1 Sidgwick, Ethics of Green, etc., p. 283.

2 Ibid.

3 Ibid., p. 284.

4 Compare Justice, Section 52.

It is necessary to remember that even in *Social Statics*, where Spencer's ideas on the subject of land are more heterodox than elsewhere in his later writings, communal ownership does not mean what we to-day call "the nationalisation of land." Even if Spencer meant to recommend nationalisation, that would have helped him but a little in establishing an equitable system of property. For if land is to be nationalised on the ground that it is the common property of all, inexorable logic will drive us to the conclusion that every thing which has come out of land, directly or indirectly, in fact, nearly all forms of property, will also have to be nationalised. But the meaning which Spencer gives to communal ownership, in *Social Statics* at least, is that the surface of the earth is to be owned by "the public," "the great corporate body—Society," "the community," "mankind at large," and is to be let out upon leases at the best rent. When this is done, "all men" Spencer claims "would be equally landlords; all men would be alike free to become tenants." But is this really so? Overlooking the practical difficulty in the way of "mankind at large" resuming its ownership of the soil, and supposing for the sake of argument that such resumption has taken place already, is it true to facts to say that all men are equally free to become tenants? Obviously not. "All men, it is true," observes Maitland, "are equally free

to bid for a farm, just as all men are even now equally free to bid for whatever lands or goods are in the market. If all that the law of equal liberty requires in the matter of land-tenure is that every man shall be equally free to bid for land that law is perfectly fulfilled in this country (England) at this moment."[1] In reply to this criticism, however, it is open to Spencer to say that our existing titles to land are not valid and that men cannot at present purchase an "equitable" title. But our answer to it is "that this truly unfortunate state of things will not be improved by the resumption. Mr. A will outbid his fellows for a site in the best quarter, for the best farm, the best moor."[2] What will enable him to do so will be his greater wealth (for Spencer does not contemplate the resumption of land by society without fully compensating present landowners), "and his wealth will be then as now ill-gotten. In whatever it may consist, coin or cotton or what not, it will consist of matter subtracted from the common stock of mankind. Sale or bequest can not turn wrong into right, lapse of time will not legalise what was once unlawful, and the long and short of it is that A or his predecessors in title must have robbed mankind and he is to be left in possession of the stolen goods and even suffered to acquire by means thereof a lease of public

1 Ibid., p. 515.

2 Ibid.

land. Our original sin of wrongful appropriation is not thus to be purged away."[1]

The conclusion, then, to which we are led is that the leasing out of land by society to the highest individual bidders after full compensation is made to its present holders, is not consonant with the demands of equal freedom; and a corollary of that is that individual ownership subject to State-suzerainty, recommended in *Justice*, also fails to fulfill the dictates of equal freedom. We certainly cannot agree with Spencer when he imagines that the demands of the law of equal freedom are satisfied by the occasional alienation of land for public purposes after full compensation has been made to existing holders. But yet we may grant to him that in the idea of landowners compensating the landless, introduced by him into his discussion on the Land Question (Appendix B), there is a way of *approximately* reconciling the claims of freedom with private appropriation. But unfortunately Spencer does not make much of this idea, and part of his argument is in direct violation of it. The chief argument in Appendix B is that since the year 1601 the poor have received about £500,000,000 from poor-rates charged on land which, Spencer suggests, would be a high price for "land in its primitive unsubdued state." But this argument is hardly relevant to the "equal claims" of existing human beings.

1 Ibid., p. 516.

"It seems more reasonable to hold that the poor-rates paid in the past are rather a compensation to past poor; and it might fairly be urged that they were inadequate compensation for the injustice done to them."[1] In considering the similar case of abolition of slavery, for instance, it would not be right to take into account "money spent by slave-owners in keeping slaves alive whom they might have killed. If the poor were wronged by being kept out of the land, a pittance doled out under conditions of discredit seems inadequate to balance the past wrong, let alone the present."[2] Further, in making his elaborate calculation of the amounts expended on the poor, Spencer entirely ignores the important factor of unearned increment in the value of land, which is due not to the labour of the landlords but to the increase of population. It is an obvious inference from Spencer's fundamental principle "that the existing rental, so far as not due to labour-*e.g.*, ground rents in towns—should be regarded as due to the poor."[3] But yet Spencer strongly argues against it elsewhere. Thus in section 26, p. 44 of *Justice*, he argues against compensation to the landless when it takes the form of free libraries and in sec. 37, p. 63 of the same treatise, he seems to disapprove of poor-rates themselves.

1 Ethics of Green, etc. pp. 287-288.

2 Ibid, p. 288.

3 Ibid.

Thus we find that Spencer's treatment of land is, neither in *Social Statics* nor in *Justice*, in strict accordance with the demands of equal freedom. And if private ownership of land (or lease) is not deducible from the law of equal freedom, it follows that the right of property in material objects cannot be deduced from it either; for, as Spencer himself says: "Since all material objects capable of being owned, are in one way or other obtained from the Earth, it results that the right of property is originally dependent on the right to the use of the Earth."[1] The connection between "the multitudinous possessions" of modern society and land may be "remote and entangled," but it "still continues."[2] In the light of this argument, therefore, the distinction made by Spencer in his "Political Institutions" between property in land and property in other things, does not seem to be valid. It is not true to say with him that property in land is still "established by force," and that property in other things is all "established by contract."

When he comes to *Justice*, Spencer thinks that there are three ways in which under savage, semi civilised, and civilised conditions, men's several rights of property may be established with due regard to the equal rights of all other men: (1) In the savage condition, there may be a tacit agreement among the occupiers of a tract by which

1 Justice, p. 94. 2 p. 94.

appropriation of wild products achieved by any one is passively assented to by others,—but, as Spencer's instance shows, the assent may not give equal amounts to every one. (2) In the semi-civilised stage, there may be tacit assent (or potential contract) to the ownership of food grown by any one on the occupid area. (3) In the civilised stage, there *might* be an actual contract by which cultivators should give a part of their produce to those who devote themselves to other occupations and who, in so doing, forego the right to their shares of land, though "we have no evidence that such a relation..... has ever arisen."[1] It is surprising that Spencer should have regarded these suggestions as amounting to a justification of the right of private property. For what proof is there for the present landless that the assents that Spencer speaks of were given by their predecessors? Even granting that there was sufficient proof of it, Spencer makes no effort to show that these previous assents could bind the present landless ones.

We have examined at length the difficulty of satisfactorily deducing the right of property in land as well as in movables from the law of equal freedom, and have come to the conclusion that the conception of equal freedom, and the institution of private property cannot, in their very nature, fit together harmoniously. If, as Spencer's argument

[1] Justice, p. 97.

implies, the individual's claim to equal freedom is satisfied by communal ownership of land, there still remains the question as to the extent of the individual's right of property. What a perusal of his treatment of property in *Justice* seems to reveal is that Spencer, like Locke, is convinced that private property there must be if society is to exist, but unlike him, he tries, though unsuccessfully, to reconcile this foregone conclusion with the law of equal freedom, instead of following the right course of rejecting the law completely.

The right of incorporeal property to which Spencer passes next, seems at first sight to be free from the defects attendant on the right of property in material things, but in reality it is not so. We are willing to grant to Spencer that, in writing a book or producing a work of art, a person does not directly interfere with the equal freedom of others to write books or produce works of art in their turn; and we may even concede to him for the sake of argument that a production of mental labour may, in fact, "be regarded as property in a fuller sense than may a product of bodily labour; since that which constitutes its value is exclusively created by the worker."[1] But we certainly cannot agree with him when he extends the right of producing and privately enjoying a mental product to the right of imposing on others of any terms that the producer chooses before giving them the

1 Justice, pp. 108 109.

privilege of using his product or of appropriating it to themselves. All that an artist or a writer can fully claim as his, according to the law of equal freedom, would seem to be full liberty to do his work, so long as he does not interfere with the like liberty of others. Nobody can forcibly take away from the producer the work of art or book which he has produced but when he offers it for sale, it would appear that he should forego his original freedom and submit himself to whatever conditions society may impose on him in its interests, because society creates a good part of the value of the commodity. But obviously the differential treatment of different kinds of property which is implied here, cannot be deduced from the law of equal freedom; it will properly come under the principle of social expediency. Spencer himself seems indirectly to recognise the truth of this criticism when he comes to draw a clear distinction between the case of patents and other incorporeal property on the basis that it is highly probable that "when one man makes a discovery or invents a machine, some other man possessed of similar knowledge and prompted by like imagination, is on the way to the same discovery or invention."[1] Such being the fact, Spencer tells us in *Social Statics*, "there arises a qualification to the right of property in ideas which it seems difficult and even

1 Justice, p. 112.

impossible to specify definitely,"[1] and yet he boldly adds that "such a difficulty does not in the least militate against the right itself," hardly realising that, in so doing, he is really handing over another important department of law to the empirical Utilitarians. Further, if the duration of possession in the case of discoveries and inventions is to be limited, will not the same logic apply in some degree to books and works of art too?

There are two further points where the right of incorporeal property, as developed by Spencer, seems open to criticism. In the first place, in the case of land we found that Spencer tended to say that society was the supreme owner of it and that individual ownership was a qualified ownership But in the case of incorporeal property, on the contrary, the artist and the writer are allowed to claim the *exclusive* benefit of the products of their labour. A question which naturally arises here is whether to the extent that possession in immaterial things implies control of material things (and indirectly of land), the right of incorporeal property must not also be subject to the State-suzerainty to which land is subject? A second point is that the protection of the right to incorporeal property requires interference of a novel kind —the prevention of imitation. But in the other cases considered by Spencer so far (except in the case of land), rights were secured

1 Social Statics, Ch. 14, Section 5

by preventing interferences with "actions conducive to maintenance of life." Now, if as M. Tarde contends, imitation is the fundamental characteristic of social man and the mainspring of social progress, why should Spencer lay down rights such as patents, copyright, etc., which hinder Free Imitation?

A right which Spencer includes under the right of incorporeal property, and of whose deduction from the law of equal freedom he does not seem to be quite certain, is the right to reputation. Thus, in *Social Statics*, after arguing that a good reputation may be regarded as property, Spencer in the end admits that possibly his reasoning may be thought inconclusive. To quote his own words: "The position that character is property may be considered open to dispute; and it must be confessed that the propriety of so classifying it is not provable with logical precision. Should any urge that this admission is fatal to the argument, they have the alternative of regarding slander as a breach, not of that *primary law* which forbids us to trench upon each other's spheres of activity, but of that *secondary law* which forbids us to inflict pain on each other."[1] The same uncertainty, though in a less marked degree, is found in *Justice*, where after partly admitting that "the interdict against injuring another's character" may be considered "as an interdict

1 Social Statics, Ch. 12.

of negative beneficence rather than an interdict of justice," Spencer says "Still ... *it may be argued* that the right to character is a corollary from the law of equal freedom."[1] Now with regard to these two quotations it must be said that if our problem here were one of mere classification, it would not matter much whether we regarded the rule which forbids slander as coming under Justice or under Beneficence, it being largely a matter of taste. But, as Maitland aptly observes, "the question whether slander be forbidden by the First Principle, is surely one of substantial importance, for on our answer to it depends whether or not the community may rightly strive to prevent slander by punishing the slanderer and giving the slandered a claim for reparation. To use coercion when it is not needed for the maintenance of equal liberty is to infringe the sovereign rule."[2] In the quotation from *Social Statics*, it is evident that Spencer prefers to regard libel as coming under the jurisdiction of justice. But if anybody disputes it, he would willingly allow him to consider it a violation of negative beneficence. But in *Justice* Spencer is not quite so frank. To his adversary who says that slander should not be treated as a violation of the law of equal freedom because it does not stand in the way of "the mutual calling of names" Spencer has ready at hand the first qualification of the fundamental formula to which we called

1 Justice, p. 115. 2 Ibid, p. 523.

attention at the outset that the law, "rightly interpreted, does not permit exchange of injuries."[1] Repeating a question which we put elsewhere, what is the real difference between negative beneficence, which "forbids us to inflict pain on each other"[2] and justice which does not permit mutual exchange of injuries (not only "physical retaliation," but also "moral retaliation")? If there is little or none, and if negative beneficence ought strictly to be included under the first qualification of justice, is not Spencer wrong in making the limit of State-action coincide with the limit of justice narrowly conceived? Also, does he not unconsciously fall in line with a criticism which we advanced elsewhere that, on his own premises, the guiding factor of State-duty is not the principle of justice or of beneficence as such, but a combination of both on the basis of public advantage?

Going back to the question of the relation of the right of reputation to the law of equal freedom, it seems to us that we must insist that if Spencer's sovereign rule of social justice is to mean anything at all in the present context, it must, in addition to deducing the right of reputation theoretically, give us a practical indication as to what constitutes the law of libel and slander. Merely to say that the law of equal freedom demands property in character is not enough. We must know what this property is, but

1 p. 116. 2 Social Statics, Ch. 12.

this we are not likely to get from the law of equal freedom. Spencer, however, tells us in *Justice* that true damaging statements are to be allowed and untrue damaging statements to be prohibited, even complaining that in the present-day society "that which may be regarded as fair criticism is sometimes held to be libellous."[1] But is this simple solution really derived from the law of equal freedom? If the law, as Spencer says elsewhere, prohibits the infliction of *any pain*, the question whether a damaging statement is true or not will not alter the situation. In reply to this, it is open to Spencer to say that to allow fair criticism, in spite of the pain it may cause, is the lesser of two evils. But in that case, we need for our ultimate guiding principle a more general principle than the law of equal freedom—a principle such as public safety or social well-being. Even if we grant to Spencer that the solution suggested by him is capable of deduction from the law of equal freedom, the question remains as to whether it will effectively protect the true character of individuals as well as the general good of the community.

Passing over to the right of gift and bequest, which, strangely enough, are omitted from the discussion in *Social Statics*, let us see to what extent they are deducible from Spencer's fundamental formula of justice. Spencer supports the right of gift, to which we first

1 p. 117.

turn our attention, from three different, though closely-related, points of view. In the first place, he says, the right of gift may be viewed as a corollary from the right of property. "Complete ownership," he argues, "implies power to make over the ownership to another," and, on the basis of it, concludes that "if the right of property is admitted, the right of gift is admitted".[1] But the unfortunate thing about this deduction is that Spencer, as seen above, has not been able to show uniformly that ownership is *complete*. In his discussion of landed property in *Justice* he plainly tells us that one's right to private property is limited and that it is virtually subject to the exigencies of society. Even in the matter of incorporeal property, he sees a decided need for the limitation of the period of protection (*e. g*, patent laws). He further believes that for the purpose of defensive war and for "supporting those public administrations by which the right of property, and all other rights are enforced,"[2] property must be trenched upon. Therefore, it seems right to say that there can be an unqualified right to gift only when there is an unqualified right to property. In modern society, for instance, a person is not allowed to do whatever he likes with his property. He has to support his wife and children; and public opinion may even require him, if he is able, to support

1 Justice, p. 118.

2 Justice, p. 102.

others legitimately dependent upon him. In the light of all this, therefore, we may say that the right of gift, like the right of property, is subject to the interests of society. But if our earlier criticism is valid—that the right of private property cannot be strictly deduced from the law of equal freedom—,it follows that the right of gift cannot be viewed as a corollary of the first right.

In the second place, Spencer claims that the right of gift is a corollary from the primary principle of justice itself. With regard to this claim, it is necessary to say that it indeed seems absurd to remark that A has a right to give away his property to B, provided he does not infringe the equal freedom of C to give away his property to D or any one else; for it is obvious that A has the right of gift without this proviso. Spencer himself says that "the joint transaction of giving and receiving, diretly concerns only the donor and the recipient; and leaves all other persons unaffected in so far as their liberties *toact* are concerned."[1] But is this really so? Does not Spencer here seem to regard society as a loose collection of individuals whose actions affect only those immediately concerned and have no direct or remote effect upon society as a whole? If the idea of a social organism that Spencer employs elsewhere is to be taken seriously, it seems wrong to say that the joint transaction

1. Justice, pp. 118-119.

of giving and receiving does not affect any one except the donor and the recipient. We grant that when A makes a gift to B, he does not interfere with the freedom of C to make a gift to D. But it is quite evident that the relations of A and B to society at large are different from what they were before the joint transaction took place. Supposing B is a thriftless and an utterly foolish person and that he withdraws the large gift made to him by A, say in the form of stocks and shares in a flourishing business, and squanders it, will not the freedom of other *to act* be greatly affected? For one thing, many persons may be thrown out of employment. In the case of gift, then, and much more in that of bequest, we find a good illustration of a truth to which we called attention earlier, that throughout Spencer's application of the law of equal freedom to practical questions, we note an essential confusion between the freedom of all to claim for themselves whatever right any one of them claims for himself and the resulting freedom to all concerned from the action of any one individual. If the "intention" or "the essential meaning" of Spencer's formula were to be interpreted to imply the resulting freedom of all concerned, the right of gift would not be a corollary of the law of equal freedom, but of the principle of social well-being

For his third argument in support of the right of gift, Spencer goes back to one of the

primary laws of life in both the human and the sub-human world, according to which, "the preservation of the species depends on the transfer of parts of.... products, in either prepared or crude forms, from parents to off-spring."[1] But this argument which applies only to gifts to children can best be considered under the rights of bequest and inheritance, to which we now pass.

Even if we grant to Spencer that so far as the right of property is valid, the right of gift is valid, it does not mean that a right of bequest, therefore, follows. Spencer's argument that "the right of gift implies the right of bequest; for a bequest is a postponed gift"[2] is valueless, because it assumes that the effect of ownership continues even after death, and contradicts Spencer's own statement that "the proposition that a man can own a thing when he is dead, is absurd."[3] From the point of view of the law of equal freedom, what Spencer has to show is that we interfere with a man's freedom, if we refuse him the right of determining what is to be done with any portion of his property after death. But this he cannot very well do. Even if Spencer should say that A has a right to bequeath provided he does not infringe the freedom of B, C, D, etc., also to bequeath, we have at hand an argument used by us earlier that the

1 Justice, p 118.

2 Justice, p. 118.

3 Justice, p 122.

resulting freedom to all concerned from A's action may be much less than what it might otherwise have been. That this is not a mere possibility but often a certainty, can be shown from the fact that in modern societies there are many cases where owing to change of circumstances, the testator's design, if carried out, may make the bequest worse than useless —let alone foolish and mischievous bequests. Therefore, if we are to have the greatest possible freedom which is, according to Spencer, necessary for the realisation of the Utilitarian end of the greatest possible happiness, the right of a person to free bequest becomes dubious. On the other hand, it must be said that if a person "could own property and transfer it up to the moment of death, without encroaching on the freedom of other members of the community, it is hard to see how this can be interfered with by a transfer that takes place after death."[1] Thus we seem to be caught between the horns of a dilemma: the law of equal freedom seems capable of both justifying and condemning the right of bequest. The only way of extricating ourselves from the difficulty is to admit that the law of equal freedom is too inadequate to explain the right of bequest.

The inadequacy of the law of equal freedom for the deduction of the right of bequest, comes out clearly when Spencer proceeds to qualify his statement that the right of bequest

1 Sidgwick: op. cit., p. 53.

does not include the right of prescription as to the uses of bequeathed property. In the first place, he says that in order "to fulfil parental obligations as far as possible, parents must so specify the uses of bequeathed property as to further their children's welfare during immaturity."[1] We shall not quarrel with Spencer for this qualification, since, according to any system of Ethics, the case of children and other such persons needs to be treated separately, although we may observe in passing that in determining with the immaturity of children ends and when their claim to assert *their own freedom* begins, which from Spencer's point of view is an extremely important question, Spencer finds that his sovereign rule can give him no help, and so falls back upon the "ordinary experiences" of men. If by his expression, Spencer means a conventional age limit set by the State, it would appear that freedom after all is not of such paramount importance as Spencer would have us believe. In the second place, Spencer allows bequest of personalty, though not realty to definite uses; but here, as in many other places, where his sovereign rule does not apply, he says, "an empirical compromise appears needful."[2] The limits imposed on the prescription of bequest of personalty, instead of those prescribed by equal freedom, are those "settled by experience of results."[3] Besides, while

1 Justice, p. 123. 2 Justice, p. 125.
3 Ibid.

we agree with Spencer that the bequest of personalty must be placed in a different category from the bequest of realty, we fail to see how the law of equal freedom can help us in this matter. Thus, when Spencer says "One who holds land subject to that supreme ownership of the community which both ethics and law assert, cannot rightly have such power of willing the application of it as involves permanent alienation from the community,"[1] he forgets that land may permanently be alienated from the community by a series of gifts to individuals. It is true that the land may be taken by the community; but why without compensation?

The entirely empirical character of Spencer's treatment of the bequest of personalty is well brought out in the following extract:—

"In respect of what is classed as personalty, the case is different..... Such property being a portion of that which society has paid the individual for work done, but which he has not consumed, he may reasonably contend that in giving it back to society, he should be allowed to specify the conditions under which the bequest is to be accepted. *In this case, it cannot be said that anything is alienated which belongs to others. Contrariwise, others receive that to which they have no claim: and are benefited, even when they use it for prescribed purposes: refusal of it being the alternative if the purposes are not regarded as beneficial. Still,*

1 Justice, p. 124.

as bequeathed personal property is habitually invested, power to prescribe its uses without any limit may result in its being permanently turned to ends which, good though they were when it was bequeathed, have been rendered otherwise by social changes."[1]

In the italicised sentences we find that Spencer, instead of using the argument that we would expect him to use, that A has a right to the prescription of the use of bequeathed personalty provided that he does not interfere with the freedom of B, C, D, etc., to prescribe the uses of their bequeathed personalty, concerns himself with the resulting freedom and happiness to B, C, D, etc., from A's action. It is obvious that Spencer, no more than others, can both run with the hare and hunt with the hounds.

The right of bequest, then, seems to us not capable of easy deduction from the law of equal freedom. But more than that, it seems to be capable of coming into violent conflict with Spencer's fundamental biological basis of social justice. To state the criticism a little more fully, even if we grant to Spencer for the sake of argument that the right of bequest is deducible from the law of equal freedom, the consequences which follow an assertion of the right may mean unequal freedom for others, and this, in turn, may mean a violation of Spencer's biological ethical principle that each individual ought to receive "the benefits and

1 Justice, p. 125. Italics ours.

evils of his own nature" and consequent conduct. A large bequest to a thoroughly foolish and inefficient person, for instance, will mean reversal, in his case, of the fundamental law of benefits being proportionate to efforts or merits, and retardation of Spencer's absolute state. In his treatment of the right of bequest, Spencer overlooks these important considerations and concerns himself only with the equal freedom of testators. He gives little or no thought to the freedom of beneficiaries and of the public at large, not in respect to their freedom to bequeath, but in respect to their freedom to fulfil the laws of life and the conditions of existence.

The right of free exchange, says Spencer, is a corollary from the rights of property and gift as well as a direct deduction from the law of equal freedom. If by free exchange Spencer means an unqualified right to exchange subject only to the law of equal freedom, it cannot be true, for, on his own theory, we have seen that one's right to property and, in turn, to gift is not absolute; and inasmuch as the limitation imposed is on grounds other than the ground of equal freedom, *e.g.*, public good, expediency, etc., the right of exchange also must be subject to the same kind of limitation. In deducing the right of free exchange from the law of equal freedom, it does not seem accurate to say that "of the two who voluntarily make an exchange, neither assumes greater liberty of

action than the other, and fellowmen are uninterfered with,"[1] for the bargaining power of the two may not be, and often is not, the same; and the difference in their bargaining powers is by no means a sure index of their difference in adaptation to the laws of life. Also, the resulting freedom to their fellowmen from the action of A and B may be profoundly different from what it was before the transaction took place.

In dealing with the right to free industry which is closely related to the right of free exchange, Spencer claims that each man is free "to carry on his occupation, whatever it may be, after whatever manner he prefers or thinks best, so long as he does not trespass against his neighbours."[2] The important thing here is to know what is meant by the significant phrase, "trespass against his neighbours." From one point of view, it is possible to argue that when a big commercial trust or combination goes about crushing its competitors by ruthless underselling, large-scale advertisement (making extravagant claims for its goods), etc., it does not interfere with their equal freedom, because they also are free to combine and to adopt the same unscrupulous tactics. But from another point of view, the action of the trust may be construed as a trespass against its competitors, for the resulting freedom to

1 Justice, pp. 127-128.

2 Justice, p. 133.

them from its action is decidedly less than what it was before it came on the scene. And Spencer himself, as we have seen earlier, occasionally takes into consideration the resulting freedom to all concerned from the action of any one individual, in addition to considering the freedom of all to claim for themselves whatever right any one of them claims for himself. Even if this observation of ours were proved to be wrong, it could easily be shown that in the case under discussion society is not attaining the manimum net freedom that is possible for it to attain, and that, therefore, it does not realise its maximum possible happiness. It would appear then that what we need in the present case for the achievement of maximum possible freedom, and therefore of maximum possible happiness, is State-control and regulation on a basis of social and economic utility.[1]

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1 Compare Green's words on the discussion here: "The freedom to do as they like on the part of one set of men may involve the ultimate disqualification of many others, or of a succeeding generation, for the exercise of rights. This applies most obviously to such kinds of contract or traffic as affect the health and housing of the people and growth of population relatively to the means of subsistence, and the accumulation or distribution of landed property" (Principles of Political Obligation, Section 209).

CHAPTER IV

Some other Rights.

(1) The Right of Contract

Even if we grant to Spencer for the sake of argument that to the extent to which the rights of property and gift are valid, the right of free exchange is valid, we cannot agree with him when he says that the right of free contract is implied in the right of free exchange, because of a new element introduced into it, *viz*, the element of *futurity*. Besides, if freedom were our ultimate practical end, it would appear that all contracts which do not tend to destroy the freedom of a third party ought to be legally enforced. But, in point of fact, such is not the case. No reasonable State will enforce a contract that is immoral or definitely against public good, of which the good of the contracting parties is an intrinsic part. Ordinary experience shows that if we are to have the maximum net freedom possible, not all contracts freely entered into ought to be equally enforced. Sidgwick says that from a Utilitarian point of view, "what is primarily important is not that A should perform his promise to B, but that B should not be damaged by A's non-performance."[1] Although we cannot wholly agree

1 Ethics of Green, Spencer, etc., p. 54.

with this statement, which reduces the enforcement of all contracts to a matter of expediency, it seems to us that on the utilitarian basis it is more satisfactory than a mechanical and absolute enforcement of all contracts freely made, which, on the face of it, seems incapable of producing the greatest possible happiness. It would seem that a theory of justice which, in speaking of interference with the freedom of contract, considers not only the freedom of those who are interfered with, but also those whose freedom is increased as a result of that interference, has more in its favour than Spencer's law of equal freedom.[1]

Spencer himself qualifies the right to free contract in considering slavery. It is worth our while to look somewhat into this qualification because we have here a good illustration of the inadequacy of the law of equal freedom. In refuting those who claim slavery to be a contract, it seems to us that Spencer really gives up his case, even as J. S. Mill does in dealing with the same subject. The first objection that Spencer raises against slavery is that it suspends "that relation between efforts and the products of efforts which is needful for the continuance of life."[2] But this infringement of the biological basis

1 Compare Green's Principles of Political Obligation, Sect. 209.

2 Justice, p. 130.

of justice is not peculiar to slavery alone. It applies to other cases too. A large gift to a useless son by an able father (to which Spencer has no objection) may be regarded as a case in point. In reply to the second objection that slavery violates the implication of the law of equal freedom that "contracting parties shall severally give what are approximately equivalents,"[1] we must ask with Sidgwick the pertinent question: "if the judgment of contracting parties as to equivalence is to be over-ruled here, why not interfere further to secure equivalence."[2]

(2) Rights of Free Belief, Worship, Speech & Publication.

The group of rights to which Spencer next passes comprises the rights of free belief and worship and the right of free speech and publication. The right of free belief does not, as Spencer thinks it does, mean freedom to profess belief, for the consequence of the former may be confined to the individual alone, while that of the latter necessarily touches others. Nor is it true to say that "the assertion of the right to freedom of belief implies the right to freedom of speech,"[3] and the right to publication; nor that "in respect of their ethical relations, there exists no essential difference between the act of

1 Ibid.

2 Ethics of Green, etc., pp. 294-5.

3 Justice, p. 141.

speaking and the act of symbolising speech by writing, or the act of multiplying copies of that which has been written."[1] Belief, profession of belief, speech, and publication do not all lead to the same social results, and, therefore, it is necessary to consider them separately and not try to link them together, as Spencer does, in the form of a sorites. In deducing the right of free belief, Spencer says: "The profession of a belief by any one, does not of itself interfere with the professions of other beliefs by others."[2] But it is apparent that Spencer here is not considering, as he sometimes does, the resulting freedom to others from the action of any one individual.

On the strength of his treatment of the right to free belief, one would expect Spencer to take an extreme view in respect of the other rights of worship, speech, and publication. But, as a matter of fact, he does not do so. He limits these rights considerably by using the first qualification of his formula which refuses to countenance aggression and counter-aggression. Thus he says that freedom of worship extends only to acts which "do not inflict *nuisances* on neighbouring people,"[3] and that "freedom of speech, spoken, written, or printed, does not include freedom to use speech for the utterance of

1 Justice, pp. 141-2.

2 Justice, p. 136.

3 Justice, p. 137.

calumny or the *propagation of it*; nor does it include freedom to use speech for *prompting the commission of injuries to others*."[1] Let us allow that all these limitations are equally derived from the first qualification. But what we need to know most from one who values individual freedom highly, is the precise meaning of the italicised expressions. Unfortunately the law of equal freedom is incapable of helping us to decide this. If, for instance, the injunction against nuisances is to be carried to the extent of preventing "bad street music" and "the uproar of Salvation Army processions,"[2] as recommended by Spencer, it is clear that the freedom of action of all concerned (in the case of bad street music, freedom to carry on one's occupation in one's own way) will be greatly curtailed. Thus for the conservation of the maximum net freedom of individuals and for the realisation of the well-being of society in connection with the rights under discussion the law of equal freedom fails to be an adequate guiding principle.

(3) Rights of Women and Children.

When we turn to the rights of women and children, we notice that Spencer passes from the subject-matter of rights to the persons to whom rights belong, and yet naively believes in the applicabilty of the law of equal

1 Italics ours.

2 Justice, p. 137.

freedom. So long as Spencer confines himself to the subject-matter of rights we can see how his formula of justice can be made to apply to it. But when he turns to a consideration of the persons to whom rights belong, it becomes difficult to see the applicability of the formula. It would appear that the only way by which the law of equal freedom could be related to the *personnel* is to posit that all human beings—both men and women (leaving out for a moment the case of children which deserves special consideration)—have the same faculties to exercise and, therefore, the same rights, which means, in other words, that whatever conditions the law of equal freedom dictates apply to men and women alike. This is exactly what Spencer does in *Social Statics*. But in his later and more mature writings, he considerably modifies this position, and to the extent to which he does that, he seems to us to deviate from his First Principle. Thus, when in Justice he holds that the rights of women are partly different from the rights of men and yet expects the law of equal freedom to help him in effecting some kind of a fair exchange between the respective rights of men and women, we fail to see the logic of his position. Confining ourselves for the sake of convenience to the case of married women, it would appear that the only possible way by which Spencer's sovereign rule could be brought to bear upon it is to regard the

conjugal relations of men and women as being determined by free contract But Spencer neither accepts nor rejects this inference wholly. Without giving any reason for his belief, he simply assumes that marriage ought to be monogamic and permanent. If pressed for a reason for this restriction, he would probably say that it is in the interests of of children or of "social self-preservation" (interpreted in the wider sense). Granting the validity of this claim, we are bound to say that the law of equal freedom is utterly incapable of deciding what the equitable relations of husbands and wives are to be, beyond the possible justification of the restriction just mentioned. Spencer himself says: "Nothing more than a compromise varying according to the circumstances seems here possible. The discharge of domestic and maternal duties by the wife may ordinarily be held a fair equivalent for the earning of an income by the husband."[1] The principle of justice in this case is certainly not the law of equal freedom, "and this is the more surprising because it is obvious that the relative powers and duties of the married might be settled by free contract."[2] The same criticism applies equally well to another statement of Spencer that "since, speaking generally, man is more judicially-minded than woman, the

1 Justice, p. 164.

2 Sidgwick, Ethics of Green, etc., p. 298.

balanc of authority should incline to the side of the husband."[1]

In connection with the political rights of women, we must say that Spencer has no warrant from his First Principle for the assertion that since women do not "furnish contingents to the army and navy such as men furnish,"[2] they cannot have the same political rights as men until there is reached a state of permanent peace, for such assertion contradicts Spencer's own argument that the only valid meaning of *political* rights is that they are means to the end of protecting *civil* rights. What reason is there for supposing that the civil rights of women do not need protection as much as those of men? Spencer gives none, though he says elsewhere "Generosity aside ...., justice demands that women, if they are not artificially advantaged, must not, at any rate, be artificially disadvantaged."[3]

As regard the rights of children, Spencer, in *Social Statics*, says that a true rule has no exceptions and that the law of equal freedom "applies as much to the young as to the mature."[4] But in his later writings, he abandons this extreme—and what seems on his own premises to be strictly logical—position on the ground that the rights of children should properly come under the ethics of the family and not under the ethics of the State;

1 Justice, p. 161. 2 Justice, p. 166.
3 Justice, p. 160. 4 Ch. xvii, sect. 1.

and yet holds that the law of equal freedom, the supreme law of the ethics of the State, is capable of helping him in determining the rightful claims of children or their parents and their correlative duties to them. We can well sympathise with Spencer when he contends that as children do not always remain children, but "are gradually transformed into adults, there must be a continually changing relation between the two kinds of rights (the rights of children and the rights of adults), and need for a varying compromise," but we cannot see how the law of equal freedom can possibly determine this "varying compromise." What we need really is some law of fair exchange governed by social and utilitarian considerations. Although Spencer does not admit this inference avowedly, it seems to us that he is forced to do so in an indirect way. Witness, for instance, the comparatively feeble hold that he has on his law of equal freedom when he says, "Though here (counter-claim of parents) there can be made no such *measurement* of relative claims as that which the law of equal freedom enables us to make between adults; *yet, if we guide ourselves by that law as well as may be*, it results that for sustentation and other aids received there should be given whatever equivalent is possible in the form of obedience and the rendering of small services"[1]; or, again, the vagueness and inadequacy of

1 Justice, p. 170.

the law in in determining the rightful claims of children to "aids and opportunities." Is it the parent or the State that is to decide what those "aids and opportunities" are to be? From his discussion in section 98 of *Justice*, it would appear that it is not the State. In that case are we to suppose that the rightful claims of children are not legal? But "if the claim of the child is a right, why is it not legal? If it is legal, the State must determine what educatiou the child shall receive. All this wants more explanation."[1]

The general conclusion, then, to which we are led in respect of the rights of children, is that, on the basis of the law of equal freedom, there is no possible middle course between the extreme view held in *Social Statics*, that "the child has claims to freedom ... co-extensive with those of the adult,"[2] and common opinion. "For, if it be asserted that the law of equal freedom applies only to adults; that is if it be asserted that men have rights, but that children have none, we are immediately met by this question—When does the child become a man? At what period does the human being pass out of the condition of having no rights into the condition of having rights? None will have the folly to quote the arbitrary dictum of the statute-book as an answer."[3] But the important thing is

1 Sidgwick, Ethics of Green, etc. p. 298.

2 Ch. XVII, Sect. 1.

3 Ibid.

to know what kind of answer Spencer himself would give. From his discussion in *Justice* and other writings later than *Social Statics* "it seems likely that the word *man* in our supreme rule must be subjected to an interpreting clause which will be no better than a piece of most empirical utilitarianism."[1]

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At length we have examined all the fundamental rights of man discussed by Spencer with a view to seeing to what extent they are deducible from the absolute law of equal freedom, and we have come to the conclusion that no important rights beyond the right to personal freedom and the right to life, are capable of strict deduction from it. The reason for regarding this conclusion, negative though it be, as of considerable importance, is that it effectively disproves the value of Spencer's deductive method in reference to social justice and of his claim that his formula of justice as an absolute or ultimate ethical principle is superior to every other. Spencer's theory of justice, at best, therefore, can be only on a par with the other theories of justice that it criticises. But, as a matter of fact, it is not really so, and this we have indicated at several places in our discussion. The Idealistic and the Empirical Utilitarian theories, though not actually *deducing* the rights of man from a First Principle, well account for them from their own points of view. Neither of them is

1 Maitland, p. 524.

so unmanageable or inadequate as Spencer's theory. Their basis is far wider, and their method, though not so 'scientific' as Spencer's, takes full account of actual facts, which after all is the most important requisite of any theory pertaining to society.

CHAPTER V

Correspondence between Spencer's Deductions and Law, Ethics, and Economics.

With a systematic examination of the first of the four claims made by Spencer well out of the way, we are now in a position briefly to consider the rest. We do not propose to go into them at length because Spencer himself considers them only of secondary importance. The second and third claims, it will be remembered, are that the corollaries of the law of equal freedom "one and all coincide with ordinary ethical conceptions" and that they "one and all correspond with legal enactments."[1] With regard to these claims we have already said that even if the coincidence were exact and accurate, which it is not, it would not prove the superiority claimed for Spencer's theory over other theories of justice. Rights such as those to life, liberty, property, and contract, are so very essential for social existence that no reasonable theory of justice can fail to account for them; they are almost axiomatic.

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1 Justice, p. 63.

Proceeding now to examine the correspondence between Spencer's deductions and ordinary law and morality, we shall endeavour to show (1) to what extent this correspondence is actual, (2) to what extent, where there is no actual coincidence, the trend of ordinary ethical thinking and legal enactments is, and has been, in spite of temporary setbacks, along the lines suggested by Spencer's corollaries, and (3) to what extent, where there is, or has been, no such trend, our ordinary ethical and legal thinking ought to be, and is likely to be, changed in conformity with Spencer's conclusions. Let us first take the all-important right to life. The only limitation of this right recognised by Spencer, is in the interests of defensive war, when victory is reasonably certain. But there are plenty of other cases in any society where an individual is occasionally called upon to risk his life for the sake of others and where our ordinary ethical notions do not lend support to the view that there has been a breach of the right te life. Take, for example, the case of a swimmer trying to save the life of a drowning person and possibly losing his life in the attempt. Would Spencer's Ethics condemn this act of heroism? Perhaps not. Spencer would probably regard it as going beyond justice into the realm of beneficence. In that case, what is to become of the biological principle of the survival of the fittest, on which Spencer's theory of justice is made to rest (assuming that the swimmer

is better fitted for life conditions)? Whatever that may be, there can be no doubt that common sense refuses to consider the act of the heroic person in this case or in the similar case of a doctor who, in a time of serious epidemic, risks his health, if not life itself, an act of beneficence or of supererogation; it rather demands, by means of social approbation and disapprobation, that a person who is strong and able to swim should attempt to save the life of a drowning person. In common parlance, it is his moral duty. A study of history and human nature seems to show that our ordinary moral judgment has been, and probably will always be, on the side of the hero who risks his life in the interest of social well-being. It would appear, therefore, that our ordinary ethical conceptions, instead of tending to fall in line with Spencer's corollaries, require that these corollaries should reckon with them. Further, while our ordinary conceptions regard the case under discussion as coming within the realm of social justice, they do not require that it should be made a legal duty. Here again there seems to be a divergence between Spencer's views and common ethical ideas. We grant that, on Spencer's theory, it is not always clear whether he means to regard our ordinary notions regarding social justice as also legal duties. But such would seem to be the implication, when he says that justice which coincides with ordinary ethical conceptions is of public

concern and therefore ought to come under State control. Common sense, on the other hand, does not grant that whatever is just ought to be legally enforced. Not infrequently it contents itself with such moral weapons as appeal to personal honour, appeal to the desire to win the approbation of one's fellow-men, etc., for the accomplishing of its ends. In considering the rights of children, Spencer says that parents have certain counter-claims on their off-spring in return for the "aids and opportunities" rendered to them. If these counter-claims are just, as Spencer thinks they are, they ought also to be legally enforcible on his theory. But our ordinary ethical conceptions are not ever likely to regard gratitude to parents, for instance, as a legal duty, and it is desirable that they should not do it for obvious reasons. Reverting to the right to life, it would be interesting to know what Spencer's judgment would be on the question of suicide. It would appear that, strictly speaking, the law of equal freedom would justify a right to suicide. But that such a right stands condemned in ordinary law and morality, needs no mention; and it is desirable that it should be so in the interest of public welfare.

An important conclusion to which our discussion with regard to the right to life seems to point, is that from the practical point of view suggested by ordinary moral codes and legal enactments, no less than

from the theoretical point of view suggested by ethical theories, conduciveness to public welfare or the highest good of society is the touchstone of social action. This is by no means to deny the importance of freedom. Both our ordinary ethical thinking and legislation attach much importance to the educative value of freedom, but they refuse to make a fetish of it or to give it the special interpretation given it by Spencer. If it be argued that we have no right to base an important conclusion like the present on a few solitary and rather exceptional cases, we may give other illustrations. Turning to the rights of free motion and locomotion, we are willing to concede to Spencer that law and morality recognise that, under ordinary circumstances, each person ought to have "the right to the use of unshackled limbs and the right to move from place to place without hindrance."[1] But it needs very little experience to show that these rights are greatly qualified by social conditions. If in reply to this, Spencer should say that his corollaries would be perfectly realised only in the final or absolute state, our answer is that history does not seem to point that way. Our rights to the use of unshackled limbs and liberty to move about freely are much more restricted in a civilised society than in the savage state, and yet we do not object to such restrictions because of the greater public

1 Justice, p. 72.

safety which is the consequence. It may be true that "where governmental control does not exist or is very feeble, the tacit claim to unhindered movement is strongly pronounced."[1] But the freedom which results from such a state of affairs is the freedom of the jungle. No modern society can get on without traffic rules, and in some cases, without immigration and emigration laws; and it is not likely that such rules and regulations would be done away with (and even if likely, not desirable that they should), until better methods of securing public safety and welfare are devised. Passing on to the question of land, we have already seen that the only reason for allowing appropriation is that it contributes to social well-being or public welfare; and if to-day ordinary ethical judgment and legislation favour the lease of land more than they do permanent ownership, the reason is that with changed social conditions leasing seems to be productive of greater good to society. In discussing the right of incorporeal property, Spencer says "without overstepping the prescribed limits, the inventor may claim the *exclusive* benefit of his invention; and, if he discloses the secret, may, without aggressing upon any one, dictate the terms for utilisation."[2] But this right, in the form stated, does not seem to be fully observed in modern practice. Society,

1 Justice, p. 73.

2 Justice, p. 109.

it is true, does protect by means of copyrights, patents, etc., the individual's right to the enjoyment of the law of equal freedom. But the reason is to prevent commercial and intellectual dishonesty and to "act as a stimulus to industry and talent."[1] It is in the interest of society at large. Spencer himself modifies his position later in the chapter when he brings out his clear division between monopolies and patents; but this division is in the interest of both inventors and consumers, *i.e.*, in the interest of society at large. If further examples of the wide divergence between Spencer's corollaries and our ordinary ethical conceptions and legal enactments are needed, we may mention poor relief, free education, factory and industrial legislation, and the law of libel. The first three cases clearly go against Spencer's deductions; and Spencer, aware of the fact, seems to say that in the ideal state there will be no need for them and that, even now, there is a trend in that direction But this does not seem to be the verdict of history. We do not pretend to be able to judge what will be the condition of affairs in the ultimate or penultimate state. But so far as we can foresee the future, we may say that much socialistic legislation is bound to go on, and that if the time comes when all such legislation will be regarded as mischievous and out of date, it will be not because of our desire to enthrone the

1 Justice, p. 110.

sovereign rule of freedom but because of its possible harmful effect upon social good, of which moral good is an important part. Illustrating our statements by the concrete case of legislation regarding work in coal-mines, we may say with T. H. Green that "however ready men may be for high wages to work in a dangerous pit, a wrong is held to be done if they are killed in it. If provisions which might have made it safe have been neglected, someone is held responsible. If nothing could make it safe, the working of the pit would not be allowed."[1] This present day practice, of course, goes against Spencer's deductions regarding free industry. But our ordinary ethical judgments and legal enactments seem to agree with Green that in a case like the present social control is necessary; and they seem further to agree that such control should not be carried to a minute degree so as to crush out character and individual development. In the words of Green: " the reason for not more generally applying the power of the state to prevent voluntary noxious employments, is not that there is no wrong in the death of an individual through the incidents of an employment which he has voluntarily undertaken, but that the wrong is more effectually prevented by training and trusting individuals to protect themselves than by the state

1 Principles of Political Obligation, p. 163.

preventing them." As regards the law of libel, we noticed earlier that Spencer's solution consisted in allowing true damaging statements to be made but prohibiting false ones. But this does not seem to be our actual practice; nor is it desirable that it should be otherwise. For, on the one hand, to punish every untrue statement, even when made in good faith, would make all warning and criticism too dangerous; and on the other, it is possible that there may be true statements which, if made, might be clearly harmful.

The conclusion, then, to which we come back is that, according to our ordinary ethical concepiions and legal enactments, public welfare or the highest good of society is the guiding principle of social action. A corollary of this conclusion which is not sufficiently appreciated by Spencer, is that no one of our fundamental rights is universally applicable.[1] History shows us that the

1 Cp. the words of Schurman in Philosophical Review, vol. 1 (1892), p 86: "the 'right of free speech and publication' may at times be properly withheld..... 'The right of free exchange' exists nowhere in the world outside of Great Britain; and certainly American citizens are peculiarly sensitive to their rights. If we believed that 'freedom of worship' imperilled the public welfare, no assertion of individual rights would prevent its abolition (cp. the great Mormon case, v. United States). 'The right to property' is one of the most sacred of rights; yet it may be modified or set aside for the good of the community, as is illustrated by recent land legislation in England."

limitations imposed on our rights are not merely the limitations mentioned by Spencer —the limitations pertaining to "aggression and counter-aggression" and "social self-preservation" narrowly conceived; but limitations in the interest of the good of the community. This is one reason why ordinary ethical thinking sets its face against any system of natural rights and demands that social recognition should be the basis of every rightful claim. Spencer's conception of the State as a joint-stock protection company, which exists for the sake of safeguarding a set of pre-social and deductive rights, certainly runs counter to our ordinary political and legal thinking.

The fourth and last claim made by Spencer on behalf of his formula, is that what is found to be ideally just according to the law of equal freedom also happens to be economically expedient. To state the claim in Spencer's own words: "Political economy reaches conclusions which ethics independently deduces."[1] It is not our purpose here to catalogue the pros and cons of the economic doctrine of *laissez faire;* our aim is merely to indicate generally that *laissez faire* or, in Spencer's phraseology, "Specialised Administration," is not economically most efficient and does not represent real freedom. Taking our stand with Spencer on the individualistic basis, we may say that a lesson which the complex

1 Justice, p. 153.

conditions of modern social and industrial life teach is that a system mainly individualistic requires to be supplemented by what Sidgwick calls "indirectly individualistic," "paternal," and "socialistic" legislation.[1] Ordinary experience shows that it is no longer true to say that men are always "the best guardians of their welfare" and that, therefore, the State ought to allow each individual to follow his own interests (*e g.*, drunkness, gambling, opium smoking, etc). Paternal and indirectly individualistic interferences may thus be rendered necessary in some cases, even from the point of view of economics. And even if we grant that in most cases the "economic man" posited by writers on economics would know his self-interest best, that is not necessarily to argue that to allow each individual to follow his own interest would be most conducive to the common interest. This divergence between the interests of the individual and those of society can be illustrated by the case of certain fisheries where to permit each self-seeking individual to catch fish at whatever season he liked and in whatever way he liked would be contrary to the general interest, and where voluntary association of the majority would not check the abuse.[2] In this and similar cases like protection of mines from wasteful exhaustion and saving of "rare and

1 cp. Sidgwick, Elements of Politics, Chs. IV, IX and X.

2 cp. Sidgwick, Political Economy, p. 410.

useful species of plants from extermination,"[1] we may say that voluntary association (or what Spencer calls voluntary co-operation) not being able to conserve the interests of the community, the control and supervision of the State is rendered needful. Modern society provides us with any number of cases, besides those mentioned already, in support of the truth that compulsory co-operation (to use a phrase of Spencer's) not infrequently is the only way of securing the maximum net freedom of society and the most economic forms of organisation and production. Take, for instance, cases like drainage, water supply, electric lighting, precaution against infectious diseases, inspection of poisonous or unhealthy articles of food like pickles and oysters, protection of land below sea-level against floods, closing of shops on Sundays, etc., where the refusal of a handful of persons to co-operate may result in untold harm to the great majority and in the loss of their true freedom and happiness. There are also many cases like the building and maintenance of bridges, roads, and lighthouses, which cannot conveniently be undertaken by private enterprise. Cases like the preserving of forests for the sake of moderating and equalising rain-fall, carrying out of an emigration policy, fostering of art, science, and culture,—all these, not opening up fruitful fields for private enterprise, but yet being necessary for public welfare,

1 Sidgwick: Elements of Politics, p. 147.

have to be undertaken by the Government. In most, if not all, of these cases, Spencer would probably say that if the individuals by themselves cannot get the goods that they desire, and that are of value to them, they must go without them. But that would probably be to make civilised existence difficult, if not impossible. There are possibly many in our modern society who would, for instance, rather forego a part of their individual "freedom" involved in the State inspection of oyster beds than go without eating oysters, which may be very essential for their "greatest happiness! Even such broadly socialistic measures as poor relief, free education, and free technical and professional training can be justified from the point of view of the economic question of costs; free education, for instance, may be looked upon as a prudent insurance against the likelihood of children becoming mischievous or dangerous to society in after-life. One other class of cases that properly comes under State control and supervision is cases pertaining to the interests of remote generations. Even the "economic man" comprising the ideal society posited by economists cannot be expected to see much beyond the welfare of his own generation.[1]

1 Most of the examples cited in this paragraph are taken from Sidgwick's Elements of Politics, chs. IX and X and his Principles of Political Economy, Bk. III, ch. II.

The conclusion, then, at which we arrive is that even on an individualistic and economic basis, we cannot stop short with the "Specialised Administration" advocated by Spencer, *i.e*, protection against external and internal aggressors narrowly interpreted. But this is not the same as saying that wherever *laissez faire* is deficient we should invoke governmental interference, for the inevitable drawbacks and disadvantages of such interference may at times be worse than those arising from private enterprise. We cannot, like Spencer, once and for all lay down dogmatically that it is economically expedient for the State to undertake certain things and inexpedient to undertake certain other things. The sphere of State action, it seems to us, will vary according to time and place, depending largely upon the social and political traditions of the people, their temper, and character.

SUMMARY OF CONCLUSIONS.

We now gather together the different lines of thought with which we have been concerning ourselves in our criticism.

We opened our discussion of Spencer with an enquiry into the practical value of his theory of the "absolute" or the "ideal" state. We discovered that the "ideal" of a perfect man in a perfect society posited by him is so far removed from the facts of experience and the actual conditions of life that it is impossible for us even to conceive of it; that, even if it is possible for us to conceive of it, there is no practical method of discovering with sufficient clearness and certainty the rules which would govern the social life of human beings in such a state; and that, even if we could discover some of those rules by intuitive and deductive methods, as Spencer claims that he is able to do, their applicability to society here and now could not be ascertained without the aid of the empirical method, which Spencer's "scientific" ethics seeks to supplant.

With this general criticism of Spencer's "absolute" state, we approached the theory of "ideal" social justice, seriously suspecting its "absoluteness," and found that this theory has no applicability either to the ultimate or

to the penultimate state, and that, therefore, it stands or falls entirely by its applicability to a society such as our own. We also saw that Spencer's theory of justice, which he compresses into the law of equal freedom, is primarily based upon the relative state, as conceived by him, and is secondarily transferred by him to the "absolute" state; that, in other words, his theory of justice is not so much a guide which the "ideal" gives to the real, as a suggestion for the construction of a Utopia gathered from the requirements of *present* social life. We were thus able to show that Spencer's theory of social justice is of less permanent value than some other theories.

We further stated, in the same chapter, that, while those who hold that their ideals are progressive may legitimately use the idea of "approximation to an ideal", those like Spencer whose ideal is avowedly static may not do so. We also denied any special value to Spencer's claim that, in the "ideal" state, there would be a natural and spontaneous fulfilment of his particular law of justice, because a similar claim might be made on behalf of any reasonable law of justice whatever.

We then passed on to a discussion of the way in which Spencer deduced his law of equal freedom (1) from the doctrine of the Moral Sense or Intuition and (2) from the Principles of Biology and devoted a chapter to each of

these methods. In the first of these chapters we formed the impression, which was later confirmed by a quotation from the "Inductions," that, in the early part of *Social Statics* (the first two of the three methods sketched in our Exposition, Ch. I), Spencer extracts from the doctrine of the *Moral Sense* more than it is capable of giving and, in the latter part of *Social Statics* (the third method) and in the *Principles of Ethics* in general, he extracts from this doctrine less than it is capable of giving. We also noticed that in attempting to mediate between Intuitionism and Empiricism in his later writings, Spencer is really deciding in favour of Empiricism itself; for he comes to regard moral intuitions as the accumulated experiences of the race which have survived on account of their utility value. His chapter on the Idea of Justice, we had reason to think, is a caricature of true Intuitionism, because no true Intuitionism takes into consideration fear of man, or, for that matter, any consequences at all.

Turning from Spencer to the adherents of the Intuitionist theory, we found that they are not agreed that the Utilitarian view of "greatest happiness" as end is a dictate of our intuitions; neither are they agreed that justice is merely a means to "greatest happiness;" nor that it is capable of being reduced to the "precise expression" of the law of equal freedom. To them, we saw, justice is a value

in itself, and it can not be reduced to anything beyond the law of treating similar persons similarly, or the law of equality of consideration. We also saw that the adherents of Intuitionism do not approve of Spencer's distinction between the empirical treatment of beneficence and the intuitional treatment of justice; to them both principles are self-evident truths incapable of contradicting each other.

Passing over to the derivation of the law of equal freedom from the principles of biology, we began our enquiry with a general statement that Spencer is able to construct a workable theory of justice only by a skilful selection and an individual interpretation of the varied and complex facts of survival on which his theory is based. Particularising, we noticed that Spencer arrives at his abstract and universal law of equal freedom (a) by underrating the importance of such facts as gregariousness in man and the organic nature of society, (b) by over-emphasising the highly questionable doctrine of the transmissibility of acquired characters and the supposed "equality" of man, and (c) by ignoring such important truths as (1) that conditions which hold good in the wild state do not necessarily hold good in the civilised, and (2) that, with the appearance of the reflective intelligence of man and of human sympathies on the stage of evolution, we enter upon a "genuinely

new" phase of development,—"natural selection" giving place to "purposive selection."

We also saw that Spencer often mistakes analogy for identity, that the principles of animal survival, on which he is apparently basing his view of human justice, are true only generally of animal life, and that these principles do not easily lend themselves to the special interpretation which he puts on them. Taking the analogy of domestic animals, with which mankind has closer connection than with sub-human beings in general, we showed how, with some ingenuity, it is possible to work out an elaborate theory of justice totally different from Spencer's.

We further said in the same chapter that, while, in his theory, Spencer tends to ignore the importance of the "startlingly new" stage of development reached by human intelligence, in practice he avails himself of it to the extent of advocating "Specialised (or limited) Administration" to assist the processes of "natural selection." We insisted that when "natural selection" is made the basis of justice, there is no alternative but to accept the freedom of the jungle as our law. Regularisation of the grim struggle for existence, however, as necessitated by the law of equal freedom, shifts the basis of discussion from the plane of "natural selection" to the plane of "purposive selection," and renders null and void the difference in principle between State Socialism and *laissez faire*.

In concluding this chapter we maintained that, while contemplation of the facts of survival may be valuable in suggesting lines for the right ordering of social relationships, it would be disastrous to *base* ethics on evolution.

In Chapter IV we concerned ourselves with the precise meaning of Spencer's doctrine of justice. We first insisted that his law of equal freedom, which he considered to be the most essential condition of life, ought, on the basis of the relation of his "justice" to his Utilitarian position, to produce the greatest happiness (present or future) that is possible for an individual; but we found that this law is unlikely to achieve such a result. Some of our reasons were:—

(1) that, eventhough there is a general tendency for life and pleasure to coincide, there is no probability or even possibility of their ever becoming exactly identical with one another;

(2) that his ideal of justice which is based on the biological conception of "adaptation" implies present pain, or at least absence of pleasure, except perhaps in so far as it affords room for the successful energising of faculties;

(3) that, in the transitional state, in which (according to Spencer) we

live and progress towards the "perfect" state, there must necessarily be frequent sacrifice of individual life and pleasure in the interests of "race-preservation" (and "race-preservation," we said, cannot be legitimately limited to protection against external and internal aggressors);

(4) that Spencer himself confesses that the application of the law of equal freedom is capable of giving pain to the "necessary feelings of others" and, for that reason, it must be corrected and supplemented by negative beneficence;

(5) that, in a society such as our own, the law of equal freedom might be so used as to make it impossible for some to obtain the means necessary for their happiness, not to speak of their "greatest happiness";

(6) that Spencer's justice, which was deductively arrived at, does not sufficiently take account of the subjective and complex nature of pleasure, and that, therefore, empirical Hedonism has an advantage over it.

Moreover, we were unable to allow to Spencer as a Utilitarian the interpretation of "general happiness" as meaning the wider

conception of the maximum well-being of society, since the feeling of pleasure is exactly the point where society is not an organism, but a collection of competing individuals. Even if we allow him such an interpretation, his law of equal freedom, which sets individual against individual, is not the best means to attain that maximum well-being of society.

While we were convinced that the law of equal freedom is not the best means to the realisation of the greatest possible happiness of the individual or society, we were willing to admit that it gives us a vague and general rule of happines, whose value in each case can be ascertained by the empirical method of orthodox Utilitarianism.

Spencer's ideal of justice, we said in Chapter V, failed to be the best means not only to the maximum possible happiness, but also to maximum "net" freedom and to the fruits of freedom. In his passionate advocacy of the principle of least interference, and in his zeal for the realisation of freedom as an ultimate end of distributive justice, we saw that Spencer tends to forget the vast difference that there is between theoretical freedom and practical freedom. We saw in particular:—

(1) that Spencer's ideal of justice sets itself against "interference" in the case of a person who is bringing ruin upon himself (and indirectly upon others), through

his own folly or carelessness of inadequate mental and moral development;

(2) that it indiscriminately groups together all the members of society, without making any effort to study the special conditions of life under which they live or their special requirements and needs;

(3) that it does not make any real provision against people seriously curtailing their own freedom or the freedom of society at large, by means of contracts and combinations;

(4) that it concerns itself only with freedom from physical coercion, and pays little or no attention to freedom from mental annoyance and moral compulsion (*e.g.*, unofficial public opinion);

(5) that it gives no thought to the fact that, in any civilised society, there is very little free access to the material means of life and happiness; and

(6) that if Spencer's ideal were to be strictly enforced, it would probably mean an extreme form of State Socialism, thus defeating his own end.

On the positive side, however, while objecting to Spencer's way of confining social justice to the law of equal freedom, we could not deny the importance of freedom itself as a means to a healthy and manly individualism. Freedom, however, should be used as a minor end, with social well-being as the ultimate or grand end. It should also be borne in mind that "freedom" and "control" or "regulation," are not necessarily antithetical terms.

Passing on to the economic and distributive aspects of Spencer's ideal social justice, we tried to show in Chapter VI how far short it falls of other ideals of social justice. Classifying it as a species of the *laissez faire* type of theory, we said that (1) In failing to provide for anything like an equality of opportunity, which would remove some of the abuses of artificial inequality, and make reparation for past injustice; and (2) in naively assuming that everybody would get what he ought to get, when the State rigidly enforced all contracts voluntarily made, (except the contract of slavery), Spencer renounces precisely those elements of the enlightened type of the *laissez faire* theory, which give it what little strength it has. Spencer's law of equal freedom, if we do not place much stress upon the word "equal," virtually means a mere maintenance of the *status quo*; and no reasonable theory of social justice would support a "justice" of that kind.

Economic and distributive justice must include something more than mere police protection of life, liberty, and property. And since the institution of private property has come into existence without the aid of, and often in opposition to, Spencer's law of equal freedom, it is really illogical to apply that law to present-day conditions without starting society anew.

Some of the other respects in which Spencer's ideal of justice seemed to us to fall short of enlightened individualism, were:

(1) its silence on such vexing questions as inheritance, unearned increment, profiteering, manipulation in stock market, etc;

(2) its brushing aside of the important question of consideration, for future generations, which cannot be left entirely to individuals;

(3) its forgetting the truth that to allot special privileges and burdens to special classes of the community is not necessarily unjust;

(4) its ignoring of the facts that economic value is relative, largely determined by the law of demand and supply, and that many valuable services to the community may have little market value in present-day society;

(5) its indifference to our everyday experience that unforeseen

circumstances and conditions outside the control of any individual or group often help to upset the "exact proportion" between returns and labours; and

(6) its overlooking of the fact that the chief reason why competition is supported by Individualists in general is that it subserves economic welfare, whether or not it is in the interest of ideal justice.

We further saw that Spencer's ideal of justice, on its economic side, is of less value than the Idealistic theories of justice which transfer the question of distribution from the plane of economics to the plane of personality, and regard the good of the individual as an intrinsic part of the social good, and which also believe that each individual ought to do that kind of work for which he is best fitted by nature and training, and to receive in return that reward which will keep him in maximum efficiency as a member of society.

In Chapter VII we tried to show that the inadequacy and internal inconsistency of Spencer's principle of justice are markedly found in its relation to its twin-principle of beneficence. Taking as our guide his distinction between justice and beneficence—that the former is needful for social equilibrium and is, therefore, a matter of public concern, and that the latter is not needful for social equilibrium and, therefore, a matter of only

private concern—, we were able to show by means of his own illustrations that Spencer is unable to work out the distinction practically. The principle which he really requires, on his own premises, for a satisfactory solution of the problem of State-action is social expediency or public advantage. In dealing with his treatment of positive beneficence in particular, we noted that Spencer was really abandoning the principle of the survival of the fittest on which he claimed to build his ideal of justice.

Section II of Part II we devoted to a careful and detailed examination of the many applications made by Spencer to the practical questions of social life. In so doing, we first directed attention to the vagueness and ambiguity introduced into his "exact" formula of social justice by such expressions as "similar freedom," "like liberty," acts "conducive to the maintenance of life," "aggression and counter-aggression," "social self-preservation," "empirical compromises," and by such contrasts as that between "family ethics" and "social ethics" and that between a period of war and a period of permanent peace. We thereafter passed on to show that none of the important rights discussed by Spencer, save the rights of life and personal security, are strictly deducible from the law of equal freedom; that they are not, as Spencer claims, to any great extent coincident with the dictates of ordinary law and morality; that, even if the coincidence were exact at every point, that

would not necessarily prove Spencer's theory of social justice to be of more permanent value than other theories; and that Spencer's deductions with regard to the rights of property and contract do not, as he thinks, correspond to the demands of economic expediency. An important point to which we continually returned is that, in his application to practical issue of the law of equal freedom, there is an essential confusion between the freedom of all to claim for themselves whatever right any of them does claim, and the effect on the freedom of all concerned resulting from the action of any one individual.

In brief, our finding is that, while Spencer's doctrine of social justice is a brilliant, illuminating, and unique exposition of the many phases of the vital problem of justice, it fails conspicuously, both as an abstract theory and as a practical guide, to make good its claim to be the final system of ethics and politics.

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