

JOHN STUART MILL VS. JOHN RAWLS: UMA COMPARAÇÃO

John Stuart Mill vs. John Rawls: a comparison

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Resumo: Este artigo argumenta que *Uma Teoria da Justiça* de Rawls contribuiu para a propagação de dois equívocos com relação ao *Utilitarismo* de Mill, que trataremos de desconstruir. Segundo Mill, justiça e utilidade não estão dissociadas uma da outra, e seria incorreto afirmar que, em prol da maximização da utilidade, o utilitarismo milliano nos afasta da justiça. Visto que resultam do debate democrático, os princípios de justiça de Mill são mutáveis. Diferente de *Uma Teoria da Justiça*, no *Utilitarismo*, os princípios de justiça não estão estabelecidos de uma vez por todas, e é nesse sentido que a justiça milliana é mais democrática que a rawlsiana.

Palavras-chave: John Rawls; John Stuart Mill; justiça; utilitarismo.

Abstract: This paper argues that Rawls's *A Theory of Justice* has contributed to perpetuate two misunderstandings about Mill's *Utilitarianism*, both of which we shall attempt to deconstruct. For Mill, justice and utility are not dissociated from one another, and it is incorrect to affirm that Millian utilitarianism would depart from justice in order to maximize social utility. Because they are the outcome of democratic discussion, Mill's principles of justice are mutable. Unlike *A Theory of Justice*, the principles of justice are not established once and for all in *Utilitarianism*, and that is why Millian justice is more democratic than Rawlsian justice.

Keywords: John Rawls; John Stuart Mill; justice; utilitarianism.

1. Introduction

Published in 1971, *A Theory of Justice* sought to formulate “a theory of justice that represents an alternative to utilitarian thought generally”². In order to make his theory seem better, Rawls decided to attack utilitarianism and picked out John Stuart Mill as one of his targets. Yet the way Rawls has construed Mill's thinking on justice is incomplete and encourages misunderstandings. In what follows, my aim will be to offer a careful reading of *Utilitarianism* and clarify two misunderstandings surrounding it that *A Theory of Justice* has contributed to perpetuate. First, I shall reconstruct Rawls's

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² RAWLS, 1999, p.20.

critique³. Then, I shall turn to the last chapter of *Utilitarianism* and analyze its idea of justice vis-à-vis Rawlsian justice. In the end, after having clarified *Utilitarianism*, I shall argue that Millian justice is more democratic than Rawlsian justice.

2. Rawls's critique

In the first chapter of *A Theory of Justice*, Rawls tries to rebut Mill's *Utilitarianism* by claiming that, in certain circumstances, this theory departs from some precepts of justice in order to maximize the general sum of advantages:

The striking feature of the utilitarian view of justice is that it does not matter [...] how this sum of satisfactions is distributed among individuals [...]. The correct distribution in either case is that which yields the maximum fulfillment. Society must allocate its means of satisfaction whatever these are, rights and duties, opportunities and privileges, and various forms of wealth, so as to achieve this maximum if it can. But in itself no distribution of satisfaction is better than another [...]. It is true that certain common sense precepts of justice [...] seem to contradict this contention. But from a utilitarian standpoint the explanation of these precepts [of justice] and of their seemingly stringent character is that they are those precepts which experience shows should be strictly respected and departed from only under exceptional circumstances if the sum of advantages is to be maximized⁴.

To support the interpretation above, Rawls quotes the last two paragraphs of *Utilitarianism*. So what he is implying is that, in the last two paragraphs of *Utilitarianism*, Mill writes that sometimes we have to depart from (the precepts of) justice if our aim is to maximize the sum of advantages. In other words, Mill sacrifices (the precepts of) justice for the sake of maximizing utility⁵. That is the critique Rawls saves for Mill. The other one, concerning the distribution of goods, he ascribes to Sidgwick, and that is why we are not going to deal with it.

The way Rawls criticizes Mill echoes some previous criticisms on utilitarian thought. Since its beginning, utilitarianism has been associated with the motto “the greatest happiness for the greatest number”⁶. Such thinking, the critics argued, may depart us from justice. Once our goal is to guarantee the greatest happiness for the greatest number, nothing precludes us from sacrificing the individual rights of, say, a minority group who makes the majority unhappy. Under exceptional circumstances, it

³ My criticism of Rawls shall concentrate solely on *A Theory of Justice* and does not apply to later works. The antidemocratic strand of Rawlsian justice highlighted in my conclusion, for instance, is greatly diminished in RAWLS, 1993.

⁴ RAWLS, 1999, p.23.

⁵ Following Rawls, I shall employ “advantage(s)” and “utility” synonymously.

⁶ BENTHAM, 1988, p.134.

was claimed, utilitarianism might depart from (the precepts of) justice for the sake of greater happiness, or to use Rawls's expression, for the sake of greater advantages.

Before seeing whether that criticism applies to Mill, it is worth reminding that Mill himself never used Bentham's expression "the greatest happiness for the greatest number". Although both Bentham and Mill were utilitarians, it is well known that the latter introduced major changes in the utilitarian tradition. Like Bentham, Mill also identified utility with happiness. Yet what he called happiness hardly resembles what Bentham meant by the same name. Whereas Benthamite happiness is purely hedonistic, Millian happiness is eudaimonistic⁷.

Despite their differences, we call Bentham and Mill utilitarians because both writers contended that society should promote utility, that is, happiness. But does that mean Mill's utilitarianism will depart from justice? It all depends on how justice is defined. If justice is seen as something external to utility, then the answer will be yes. For if justice and utility are values dissociated from one another, they can clash. When they do clash, we will have to face a tough choice, and decide which value we shall sacrifice and which value we shall promote. In short, justice and utility can be at odds with one another only if they are disconnected. So when Rawls reproaches Mill for departing from (the precepts of) justice in favor of utility, the underlying assumption is that utility and justice are dissociated in *Utilitarianism*. But are they really?

3. Justice and utility in *Utilitarianism*

In the penultimate paragraph of *Utilitarianism*, Mill writes:

[J]ustice is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others; though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case. By this useful accommodation of language, the character of indefeasibility attributed to justice is kept up, and we are saved from the necessity of maintaining that there can be laudable injustice⁸.

⁷ See NUSSBAUM, 2005.

⁸ MILL, 1863, p.200.

From this paragraph, Rawls suggested that, under exceptional circumstances, Mill believed the precepts of justice should be departed from “if the sum of advantages is to be maximized”⁹. That is not what Mill explains above. Rather, what he explains is that, in particular cases, some former precepts of justice cease to be so. Stealing, for instance, is usually unjust. However, as Mill points out, there may be particular cases in which not stealing ceases to be a principle of justice. For Mill, if we steal bread to save a life, we are not departing from justice. Mill states clearly that, in such a case, it would be incorrect to say that justice had to give way to some other moral principle (like the principle of utility). Stealing bread was not a departure from justice because, in this desperate situation, not stealing was not a precept of justice in the first place.

What Rawls failed to notice is that, in *Utilitarianism*, the principles of justice are not immutable¹⁰. Those principles are not ironclad for Mill; indeed we just read that what is a principle of justice in one situation might not be so in a different case. Rawls does not mention that when he decries *Utilitarianism*, and although Mill is cited time and again in *A Theory of Justice*, it is not clear whether Rawls has grasped one of the most essential features of Millian justice, *viz.* its mutability. What is clear in *A Theory of Justice* is that the principles of justice should not be mutable. When presenting the main idea of his theory, Rawls underscores that “a group of persons must decide *once and for all* what is to count among them as just and unjust”¹¹. For him, choosing the principles of justice is an irrevocable decision. Once they are chosen, whoever disrespects them is *pro tanto* sacrificing justice. Rawls’s principles of justice remain the same *ad infinitum*. Accordingly, his work is to be read as an attempt to pave the way “for a kind of moral geometry with all the rigor which this name connotes”¹². Like geometry, justice must not be contingent, and its principles ought not to vary according to the circumstances.

From Rawls’s perspective, the principles of justice are always the same, and thus to disobey them by reason of some other principle is to sacrifice justice itself. That is what Mill supposedly does in the concluding paragraphs of *Utilitarianism*, when he explicates that sometimes we must flout the common precepts of justice if our goal is to maximize social utility. However, it would be incorrect to infer from this passage that

⁹ RAWLS, 1999, p.23.

¹⁰ Following Mill, I shall not distinguish “principle(s) of justice” from “precept(s) of justice” when writing about *Utilitarianism*.

¹¹ RAWLS, 1999, p.11, emphasis added.

¹² RAWLS, 1999, p.105.

Millian utilitarianism departs from (the precepts of) justice, for to maximize social utility is precisely to protect justice. As the last sentence of *Utilitarianism* remarks, “Justice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class”¹³. Justice, in short, *is* social utility.

Social utility is that which leads to a happy and flourishing society¹⁴. Needless to say, a flourishing society is impossible without justice. A flourishing society requires “social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge”¹⁵. In short, a just society demands social utility, for justice is social utility. Mill emphasizes that “this great moral duty [of striving for social and distributive justice]” is “a direct emanation from the first principle of morals [...]. It is involved in the very meaning of Utility, or the Greatest Happiness Principle”¹⁶. To depict utility and justice as being in an either/or relationship is to misread Mill, for he makes plain that the latter is involved in the very idea of the former. Though Rawls stops short of actually doing that, the way he describes Mill’s so-called departure from (the precepts of) justice lends credit to such a reading. Indeed, there are two misunderstandings that Rawls’s critique helped to perpetuate: (i) utility and (the precepts of) justice are sometimes dissociated; (ii) when they do dissociate, Millian utilitarianism would sacrifice the latter to maximize the former. Both misunderstandings, as I have remarked before, are deeply connected with one another, for justice and utility can contradict each other only if they are seen as dissociated entities. Had Rawls offered a full appreciation of one of the most crucial characteristics of Millian justice – namely, its mutability –, both misunderstandings would never have arisen.

According to Mill, maxims of justice are “by no means applied or held applicable universally”¹⁷. The maxims and precepts of justice should not be chosen once and for all because what is just in one case may not be so in a different situation. We are

¹³ MILL, 1863, p.201.

¹⁴ A happy or flourishing society is a society where all human beings are allowed to flourish, i.e. to develop themselves. Albeit they are synonymous, I shall henceforth use “flourishing” instead of “happy”, for the latter term might evoke a pure hedonistic reading of Mill that is incorrect. “Flourishing” is indeed a better word to describe Mill’s philosophy because it conveys the link between his utilitarianism and self-development more easily than “happy” (see NUSSBAUM, 2005).

¹⁵ MILL, 1863, p.198.

¹⁶ MILL, 1863, p.198.

¹⁷ MILL, 1863, p.200.

fallible beings, and what may seem just for our generation might not be so for posterity¹⁸. It is unfair to decide for future generations which principles of justice they should abide by.

Abiding by the standard principles of justice can lead to injustice in particular cases. Here we see how far Millian justice is from Rawls's "moral geometry"¹⁹. If the principles of justice are followed, Rawls believed, the outcome is necessarily going to be just – just like the sum of the inner angles of a triangle is necessarily 180 degrees. That is surely not the case for Mill. For him, justice requires courage enough to defy previous principles of justice that are no longer just. Millian justice urges us to constantly examine traditional principles of justice. Critical thinking plays a pivotal role in this process, insofar as it is capable of revealing which prevailing precepts of justice are unjust. Since it is very hard to think critically without engaging in public debate, the ability to think critically is inevitably bound up with debate²⁰.

The last chapter of *Utilitarianism* alludes to several controversial issues in nineteenth-century Britain. Should taxation be proportional to income? Is it just to tax less the least well-off? Does justice allow an employer to give superior remuneration to the more efficient laborer? Mill refuses to answer those questions and does not offer a list of principles of justice. Neither justice nor social utility are defined once and for all in *Utilitarianism*. Instead of imposing a set of absolute principles never to be contested, Mill wants us to figure out for ourselves which principles are most conducive to justice in our society. In a society like ours, imbued with a particular history, riven with certain problems, which principles are most likely to bring about justice? That is the question *Utilitarianism* invites us to discuss.

Therefore, it would be inadequate to establish the principles of justice unilaterally²¹. The question of justice can only be answered by a plural "we", and it would be pretentious for any single author to dictate the principles of justice on his or her own. Justice and social utility are wrought in public debate²². Only by engaging in

¹⁸ See MILL, 1859.

¹⁹ RAWLS, 1999, p.105.

²⁰ See MILL, 1859, chapter II.

²¹ *Pace* RAWLS, 1999, p.10-15.

²² "The usefulness [i.e., utility] of an opinion is itself matter of opinion: as disputable, as open to discussion, and requiring discussion as much, as the opinion itself" (MILL, 1859: 27). In order to find out whether a certain practice or opinion is conducive to (social) utility, public discussion is required. Justice and social utility are, in sum, established through public discussion.

public discussion and social intercourse can we decide properly which principles are most likely to bring about justice in our particular time and place. *A fortiori*, public debate is indispensable to discover who “we” are and what justice is for “us”. For Mill, justice is established in a dialogue in which every human being is entitled to have a voice.

4. Conclusion

This essay has argued that the way Mill is portrayed in *A Theory of Justice* lends support to two misunderstandings about his utilitarianism: (i) social utility and (the precepts of) justice might be disconnected in some instances; (ii) when they do disconnect, Mill would depart from the latter to maximize the former. Both ideas make no sense because, as has been shown, for Mill justice *is* social utility. According to him, social utility pertains to a flourishing society, and the latter cannot do without justice, especially distributive justice. Hence, “all institutions” should be designed so as to bring “distributive justice” into existence, whereupon all means by which people can develop themselves become available²³.

The relation between institutions and distributive justice is also a major topic in Rawls’s work. In his preface, Rawls states explicitly that one of the main goals of *A Theory of Justice* is to understand how “democratic institutions” can carry out distributive society²⁴. In addition, Rawls wants to work out a theory of justice that fits our democratic intuitions, something that utilitarianism putatively had not done²⁵. For that purpose, Rawls establishes a list of two principles that democratic societies are to accept “once and for all”²⁶. How democratic is that?

Once we compare Rawlsian justice with its Millian counterpart, the former reveals to be not as democratic as it claimed to be. As was explained, justice for Mill is a matter of public conversation. It is only when “the people” come together that “the people” realize which principles of justice are best for them in their particular setting. In contrast to *A Theory of Justice*, Mill’s principles of justice are to be applied dialogically, in democratic processes of public deliberation. The best government, Mill contends, is the one that allows “the widest participation in the details of judicial and administrative

²³ MILL, 1863, p.198.

²⁴ RAWLS, 1999, p.xii.

²⁵ RAWLS, 1999, p.xi-xii.

²⁶ RAWLS, 1999, p.11, emphasis added.

business; as by jury trial, admission to municipal offices, and above all by the utmost publicity and liberty of discussion”²⁷. Mill would doubtless repudiate any attempt to vest in a single author the authority to interpret the principles of justice. Because every judgment and interpretation is fallible, only the full, free participation of all the implicated parties can suffice to establish the principles of justice²⁸. By the same token, no principle of justice is ever decided once and for all; each decision is provisional and remains open to later contestations. Justice belongs to a plural “we” and to set its principles and limits once and for all would be utterly antidemocratic. Ironically, that is what Rawls has done with his two principles of justice.

Pace Rawls, Mill does not believe that the principles of justice should be immutable. His idea of justice is radically democratic and does not strive for a kind of moral geometry. Unlike geometrical principles, the principles of Millian justice are the outcome of democratic debate²⁹. They are not crystallized and hence are able to accommodate the popular demands of a pluralistic, ever changing society. People are not expected simply to conform to them; rather, people are free to discuss them and it is their duty to challenge and transform any prevailing principle that is no longer just. Millian justice is, in sum, more democratic than Rawlsian justice.

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²⁷ MILL, 1861, p. 286.

²⁸ For a fuller discussion of Millian fallibilism, see DALAQUA, 2013.

²⁹ None of these considerations deny the objectivity of Millian justice. That justice is the outcome of democratic debate does not rule out its being objective. On the contrary, it is perfectly possible to characterize objectivity as being precisely the result of public deliberation. See MILL (1859), especially the second chapter, where public debate, along with the collection of plural perspectives it affords, are presented as the *sine qua non* of objectivity.

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