

JOHN STUART MILL'S SANCTION UTILITARIANISM: A PHILOSOPHICAL
AND HISTORICAL INTERPRETATION

A Dissertation

by

DAVID EUGENE WRIGHT

Submitted to the Office of Graduate and Professional Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

Chair of Committee,	Linda Radzik
Committee Members,	Clare Palmer
	Scott Austin
	R.J.Q. Adams
Head of Department,	Gary Varner

May 2014

Major Subject: Philosophy

Copyright 2014 David Eugene Wright

ABSTRACT

This dissertation argues for a particular interpretation of John Stuart Mill's utilitarianism, namely that Mill is best read as a sanction utilitarian. In general, scholars commonly interpret Mill as some type of act or rule utilitarian. In making their case for these interpretations, it is also common for scholars to use large portions of Mill's *Utilitarianism* as the chief source of insight into his moral theory. By contrast, I argue that *Utilitarianism* is best read as an ecumenical text where Mill explains and defends the general tenets of utilitarianism rather than setting out his own preferred theory. The exception to this ecumenical approach to the text comes in the fifth chapter on justice which, I argue on textual and historical grounds, outlines the central features of Mill's utilitarianism.

With this understanding of *Utilitarianism* in place, many of the passages commonly cited in favor of the previous interpretations are rendered less plausible, and interpretations emphasizing Mill's other writings are strengthened. Using this methodology, I critique four of the most prominent act or rule utilitarian interpretations of Mill's moral theory. I then provide an interpretation of Mill's theory of moral obligation and utilitarianism. On Mill's account of moral obligation (which purportedly holds for moral theories generally, not just utilitarianism) there is a tight relation between an action being wrong and it being subject to punishment by an agent's conscience. The utilitarian aspect of Mill's theory concerns the role of rules in an agent's conscience. According to Mill's sanction utilitarian view, the actions that are punished

are those actions that violate the moral rules which, if widely internalized across society, would promote general utility. On this account, an action is wrong when an agent violates a justified moral rule and is properly punished, at least by one's conscience. An action is right when conditions are such that if the action were not performed, then the action would be properly punished by at least the agent's conscience. I apply this interpretation to other notable components of Mill's approach such as his account of practical action (the Art of Life) and his theory of liberty.

DEDICATION

This dissertation is dedicated, without hesitation, to Katie Wright.

ACKNOWLEDGEMENTS

I have long looked forward to thanking the many individuals who helped me complete this dissertation. At each stage—theorizing, planning, researching, composing, editing, revising, and defending—there were many who added something and a few who helped with everything.

First, I want to thank my dissertation committee members. I want to thank R.J.Q. Adams for taking me on as a History student. I could not have written this dissertation without the central ideas that I developed while under his guidance. I want to thank Clare Palmer, especially for her thorough and incisive feedback throughout the many stages of this project. In several cases I saw her privilege helping me improve my work ahead of other pressing commitments, and for her continual willingness to push me to be clear and careful in my work I am sincerely grateful. I want to thank Scott Austin for his always sagacious and timely advice, and for his endless string of wry comments that brightened my mornings as I returned to the mines of Mill's *Collected Works*.

I want to thank Michael LeBuffe for spurring me to do better work in the history of philosophy than I thought I could. Both his confidence in my work and his high standards have shaped my aims and hopes for this dissertation.

I want to thank the Texas A&M Department of Philosophy staff for their patience and for helping me complete this project. Jamie Bosley, Tom Ellis, Osmara Garcia, and Katy Massey all came to my aid at key moments. I also want to give special thanks to Gary Varner for his role in making it possible for me to spend a semester working on my

dissertation with my wife at the University of Delaware. I also want to thank the audiences at Texas A&M University and Lehigh University where I presented portions of my work.

I want to thank friends like John Forcey for our many nights of staying up and arguing philosophy for far longer than we had planned on and for pushing me to be a more creative philosopher. In addition, I want to thank Cody Jackson for helping me revise parts of the dissertation and for never turning away an opportunity to discuss moral and political philosophy.

I want to thank my six-year officemate and friend TJ Kasperbauer. No single professor or fellow student has shaped my philosophical thinking as much as he has, and his own drive to do philosophy well has certainly inspired whatever scholarly zealotry one finds in this dissertation.

In addition, I want to thank my parents Gary and Carol Wright. So many days I called them feeling tired and discouraged about my progress only to have them raise my spirits by reminding me that I was not alone. I also want to thank my brothers, Micah and Jon, and Jon's wife Keely, as well my sister Christine and her husband Adam for their support and concern throughout the dissertation. Each of them reached out to me at different points and their encouraging words have not been forgotten. I also want to thank Hope Olson and Wayne Gerber for their support and counsel throughout the process of completing the dissertation.

I cannot possibly give sufficient thanks to my dissertation director Linda Radzik. I am grateful for so many things that she did, but for two things in particular. First, she

took time away from her own projects to meet with me almost every single week from the time I began working seriously on this dissertation. Second, she did not allow me, for one moment, to entertain the idea that I could not or would not do the work that was necessary to complete the dissertation. For me, this was crucial beyond measure and for all of her work I am incredibly thankful.

Finally, I want to thank my wife Katie. She was there for long nights, early mornings, and the days with too much or too little coffee and certainly too many pages to write. Both for what she does, and who she is—for these and many things besides, I owe. Thank you all.

TABLE OF CONTENTS

	Page
ABSTRACT	ii
DEDICATION	iv
ACKNOWLEDGEMENTS	v
TABLE OF CONTENTS	viii
CHAPTER I INTRODUCTION	1
Basic terminology and the varieties of utilitarianism.....	1
Interpretive methodology.....	12
Outline for the dissertation.....	14
CHAPTER II RULE UTILITARIAN INTERPRETATIONS OF MILL.....	19
Urmson’s rule utilitarian interpretation.....	21
Fuchs’ rule utilitarian reading.....	29
Mill’s Art of Life.....	40
Fuchs’ reply to Sumner and West.....	43
Conclusion.....	56
CHAPTER III ACT UTILITARIAN INTERPRETATIONS OF MILL.....	57
Crisp’s interpretive methodology.....	59
The greatest happiness principle and the levels of morality.....	62
The demandingness of morality.....	75
The Art of Life and supererogation.....	80
Sanctions and utility maximization.....	86
Introduction to Berger.....	93
Berger’s interpretative methodology.....	94
Analysis of the strategy conception of rules.....	97
Textual justifications for the strategy conception of rules.....	104
Objection to Berger.....	115

CHAPTER IV MILL'S ECUMENICAL <i>UTILITARIANISM</i> AND HIS CURIOUS FINAL CHAPTER	121
Introduction and chapter outline....	121
The Orthodox reading	123
The Ecumenical reading: Mill's audience and his attitude toward the text	126
The Ecumenical reading: Mill's intellectual context	134
Mill's final chapter	138
Implications of the Ecumenical reading and the final chapter	145
Conclusion.....	148
 CHAPTER V DEFENSE OF THE SANCTION THEORY OF MORAL WRONG	150
Sanction Theory of Moral Wrong.....	154
The first formulation	158
The second formulation.....	164
The third formulation	180
Compulsion, rules, and prospective guidance.....	189
Summary of the Sanction Theory of Moral Wrong	201
 CHAPTER VI MILL'S SANCTION UTILITARIANISM	209
Mill's commitment to utilitarianism and his approach to punishment.....	211
Rule violations.....	213
Conscience: moral codes across and within societies	216
Conscience: moral wrong and the counterfactual right.....	219
The distinctness of sanction utilitarianism	223
Art of Life and utility maximization	226
Self-regarding action and sanction utilitarianism.....	235
Objections to sanction utilitarianism.....	246
 CHAPTER VII CONCLUSION	260
Overview of the defense of the sanction utilitarian interpretation	260
Concluding remarks	270
 BIBLIOGRAPHY	271

CHAPTER I

INTRODUCTION

This dissertation will argue that John Stuart Mill (hereafter Mill) is best interpreted as a sanction utilitarian. To support this claim, I will provide arguments that are both philosophical and historical in nature. The philosophical arguments concern the specification of various types of utilitarianism, the ways in which they are conceptually distinct, and how Mill's utilitarianism in his normative ethics is related to his philosophical views on other matters such as his metaethics and political theory. The historical arguments concern Mill's biography and his apparent intentions in publishing work relevant to his views in moral and political theory.

In this introductory chapter, I have three objectives. First, I will introduce some of the essential terminology relevant to understanding philosophical disputes about Mill's position. Second, I will explain two contrasting positions concerning Mill's intentions in publishing *Utilitarianism*. Third, I will outline the dissertation as a whole in order to describe how each chapter supports the claim that Mill is best interpreted as a sanction utilitarian.

Basic terminology and the varieties of utilitarianism

As is common in philosophy, there is little agreement on how to define even the most basic philosophical concepts that will be used in this dissertation. This lack of agreement extends to the term 'moral agent', a term that I refer to throughout this work.

Sarah Buss describes agents as those who can act, deliberate about acting, and initiate actions in light of their deliberations.¹ In the sense that I will be using the term, a moral agent is someone who can be an agent, in Buss's sense, with respect to moral concerns (e.g. concerns about harming other agents, fair distributions of resources, etc.). In some areas of philosophy, such as animal ethics and bioethics, there is a considerable amount of debate about precisely what kind of cognitive or affective faculties are necessary and sufficient for a being to be a moral agent and whether beings like animals can be moral agents.² I do not wish to take a stance on such issues here. When I refer to moral agents in this work, I will be referring to human moral agents, though this should not be understood as precluding the possibility of non-human moral agents.

In the course of the dissertation, I frequently refer to moral agents, but, to be clear, this dissertation is not aimed at coming to understand moral agency in a novel or unusual way. The same cannot be said of the term 'utilitarianism'. Indeed, the dissertation will be focused around explaining and giving reasons to believe that Mill articulated a rather uncommon form of utilitarianism. However, as with the term moral agent, there is little agreement on what utilitarianism means precisely. Julia Driver writes that "utilitarianism is generally held to be the view that the morally right action is

¹ Sarah Buss, "Personal Autonomy," in *The Stanford Encyclopedia of Philosophy*, 1997-, article published 2013, <http://plato.stanford.edu/entries/personal-autonomy/>.

² For a recent discussion that traces the history of such questions see Mark Rowlands, *Can Animals Be Moral?* (New York: Oxford University Press, 2012). For an argument that both animals and humans can be moral but that agency is species relative such that animals have different kinds of agency than humans see Marc Bekoff and Jessica Pierce, *Wild Justice: The Moral Lives of Animals* (Chicago: University of Chicago Press, 2009).

the action that produces the most good.”³ While this definition does capture how utilitarianism is sometimes defined by philosophers, it presumes that right action requires maximization. But some types of utilitarianism identify morally right actions with doing some acceptable or satisfactory amount of good (as in satisficing types of utilitarianism).⁴ Alternatively, some types strive to create dispositions or motives that generally promote, but not necessarily maximize, happiness (as in motive utilitarianism), or focus on avoiding actions that cause pain and suffering (as in negative utilitarianism). In providing an alternative definition that speaks to these concerns, William Shaw claims that, “Two fundamental ideas underlie utilitarianism: first, that results of our actions are the key to moral evaluation, and second, that one should assess or compare those results in terms of the happiness they cause (or, more broadly, in terms of their impact on people’s well-being).”⁵

Aside from providing a larger conceptual space that can account for non-maximizing conceptions of utilitarianism, Shaw’s dual emphasis captures the way in which many philosophers think about utilitarianism, as a type of consequentialism that is

³ Julia Driver, “The History of Utilitarianism,” in *The Stanford Encyclopedia of Philosophy*, Stanford University, 1997-, article published Summer 2009, <http://plato.stanford.edu/archives/sum2009/entries/utilitarianism-history/>.

⁴ Admittedly, it is more common for philosophers to discuss satisficing consequentialism than satisficing utilitarianism. However, there is no reason, as such, that someone could not be a satisficing utilitarian rather than a consequentialist—it simply depends upon the theory of good in operation in the theory. For a qualified endorsement of a satisficing view see Thomas Hurka, “Two Kinds of Satisficing,” *Philosophical Studies* 59 (1990): 107-111. For a criticism of this type of view see Ben Bradley, “Against Satisficing Consequentialism,” *Utilitas* 18 (2006): 97-108.

⁵ William Shaw, *Contemporary Ethics: Taking Account of Utilitarianism* (Malden, MA: Blackwell, 1999), 2. In using and unpacking Shaw’s definition as a way to explore utilitarianism I am following Dale Miller, *J.S. Mill: Moral, Social, and Political Thought* (Malden, MA: Polity, 2010), 71-73.

concerned with assessing consequences in light of *a particular* conception of the good.⁶ Put generally, a moral theory is consequentialist if it judges the rightness or wrongness of actions solely on their consequences.⁷ As Shaw's second tenet suggests, consequentialist theories can be formulated so as to promote various types of goodness, and utilitarianism is simply a type of consequentialism that is tied to happiness, however that term is understood.⁸

While many philosophers regard it as a truism that utilitarianism is merely one of the many possible types of consequentialism, Daniel Jacobson has questioned the legitimacy of classifying matters in this way since consequentialism has historically recognized certain theoretical commitments that Mill's view does not share.⁹ While I am sympathetic to Jacobson's arguments on this point, it is not central to my present concerns and thus I will provisionally allow, following general consensus, that all types of utilitarianism count as types of consequentialism.¹⁰

⁶ Consequentialists might, by various means, identify several kinds of goods to try to bring about.

⁷ This way of putting the matter follows Walter Sinnott-Armstrong "Consequentialism," in *The Stanford Encyclopedia of Philosophy*, Stanford University, 1997-, article published Fall 2011, <http://plato.stanford.edu/entries/consequentialism/>.

⁸ As Sinnott-Armstrong notes, consequentialism as stated is sufficiently broad that one could, in theory, stipulate the good as something like 'the number of cows in Texas' and judge actions based on whether their consequences promote that good.

⁹ Daniel Jacobson, "Utilitarianism without Consequentialism: The Case of John Stuart Mill," *Philosophical Review* 117 (2008): 159-191.

¹⁰ One of Jacobson's key arguments is that, historically, consequentialism requires *deontic* impartiality. Deontic impartiality adopts an impartial stance concerning the rules that govern all moral agents and says that, when considering consequences like happiness, everyone's happiness counts in the same way when evaluating right and wrong action. In other words, consequentialism has a conception of agent neutrality built into it such that it is strictly speaking irrelevant, as a point of moral evaluation, who undertakes any given action. All that matters is the consequences for moral agents, regardless of who caused the consequences or how they are distributed across moral agents. Jacobson argues that Mill is not committed to this kind of impartiality in his moral theory. This is because, on Mill's view, some actions are not subject to moral evaluation, regardless of the consequences of the action in question (namely, those that Mill classifies independently as self-regarding). Instead of being committed to deontic impartiality,

That said, even if utilitarianism is a kind of consequentialism concerned about a particular conception of the good (i.e. utility), there are still several different varieties of utilitarianism to be further specified. While philosophers have articulated a wide range of types of utilitarianism (e.g. preference utilitarianism, motive utilitarianism, negative utilitarianism), interpreters of Mill's normative ethical theory have focused especially on the question of whether his theory is best classified as a type of act or rule utilitarianism. Sanction utilitarianism, which was first outlined as an interpretation of Mill's view by David Lyons, has received considerably less scholarly attention until recently.¹¹ In this study, the focus will be on clarifying the debate among these three types of utilitarian interpretations. Since the purpose of this chapter is merely to introduce the basic terms of the debate and because there will be considerable attention to the nuances of each view in later chapters, I will merely sketch the commitments of each view here and return to them later to fill in the important details.

One definition of act utilitarianism says that an act is right insofar as its consequences for the general happiness are at least as good as any alternative available to the agent. In a clarifying remark on this distinction, David Brink writes that, "This conception of act utilitarianism is both *maximizing*, because it identifies the right action with the best available action, and *scalar*, because it recognizes that rightness can come

Jacobson claims that Mill is committed to *axiological* impartiality, which says that everyone's happiness is equally *valuable*. Therefore, so the argument goes, given that Mill is committed to axiological and not deontic impartiality, and given that deontic impartiality is a necessary condition of consequentialism as it has been historically defined, it follows that Mill is not a consequentialist. For a discussion of these two principles see Jacobson, "Utilitarianism without Consequentialism," 168-169.

¹¹ See David Lyons, *Rights, Welfare, and Mill's Moral Theory* (New York: Oxford University Press, 1994). For recent publications supportive, explicitly or implicitly, of the sanction utilitarian view see Jacobson, "Utilitarianism without Consequentialism," and Miller, *J.S. Mill*.

in degrees, depending on the action's proximity to the best."¹² Brink also recognizes that this means that doing less than one's very best is, to some extent, morally wrong.¹³ This last point is brought out by Roger Crisp, who notes that, "If an action produces happiness, it is—to that extent—right, and if it produces unhappiness it is to that extent wrong."¹⁴ Thus, on this understanding, an act utilitarian is committed to saying that there is always some course of action that is the most morally worthy (i.e. the one that will best promote utility), and any action that promotes less utility than that one is, to some degree, morally wrong.

This claim about how act utilitarians identify actions as morally wrong has two important implications. First, according to act-utilitarianism, strictly speaking, there is no domain of intentional human action that is outside the scope of moral evaluation. That is to say, any action where one is, say, choosing between mutually exclusive options X and Y, where X and Y have different degrees of utility that are promoted by the agent's choice, then that action falls within the sphere of moral consideration. Furthermore, it seems that, *ceteris paribus*, if X promotes more utility in comparison to Y, performing Y rather than X is morally wrong. It might not be *as* morally wrong as other actions, but it is morally wrong nonetheless. This is true whether X and Y concern decisions such as whether one should order light roast or dark roast coffee or whether one is deciding whether to leave one's family to become a painter in Tahiti. Of course, it

¹² David Brink, "Mill's Moral and Political Philosophy," in *The Stanford Encyclopedia of Philosophy*, Stanford University, 1997-. Article published Fall 2008. <http://plato.stanford.edu/archives/fall2008/entries/mill-moral-political/>.

¹³ Ibid.

¹⁴ Roger Crisp, ed., *J.S. Mill: Utilitarianism*, Oxford Philosophical Texts (Oxford, UK: Oxford University Press, 1998), 115.

is important to clarify that, demanding as this theory is, the act utilitarian is sensitive to the fact that agents are cognitively limited in their respective abilities to calculate the utility of the consequences of actions. To avoid this and other related difficulties, one might adopt what has been called a sophisticated or two-level act utilitarian view.¹⁵ On this view, agents accept certain norms or principles as “rules of thumb” to help guide behavior in line with act utilitarianism. These rules of thumb would be imperatives like “tell the truth” or “don’t steal,” which, if followed in most situations, are likely to maximize utility. When acting on one level, agents follow the rules of thumb, and, when acting another level, agents would act so as to maximize utility per the demands of act utilitarianism. If the rules of thumb come into conflict, if the case is especially unusual, or if it is clear that greater utility would result from *not* following the rules of thumb, then one should undertake the action that promotes the greatest utility.

In contrast with act utilitarianism, which evaluates actions by direct reference to utility, rule utilitarianism is concerned with maximizing utility indirectly through the use of rules. On this theory, an action is right or wrong depending on whether or not it is in accord with the moral rules that are the best ones from the utilitarian standpoint. Dale Miller explains that rule utilitarianism is committed to two tenets:

1. Whether an action is right or wrong depends upon whether the ‘authoritative’ set of moral rules would permit or forbid actions of that general kind; and

¹⁵ This kind of utilitarianism is perhaps best elaborated in R.M. Hare, *Moral Thinking: Its Method, Level, and Point* (Oxford, UK: Clarendon Press, 1981). Peter Railton outlines a similar view that he calls sophisticated act-consequentialism. See Peter Railton “Alienation, Consequentialism, and the Demands of Morality,” *Philosophy and Public Affairs* 13 (1984): 134–171.

2. The authoritative set of moral rules is the one whose general acceptance value would yield more total net happiness than the acceptance of any other set.¹⁶

This kind of rule utilitarianism is sometimes called ideal code utilitarianism, as its rules represent the ideal set of rules for maximizing utility.¹⁷ Different societies might endorse different ideal codes if the demands of utility are such that the alternative codes would lead to greater utility if they were accepted by moral agents. That said, while the above formulation allows for moral rules to be different across different societies, the rules have a notably more robust character on this theory than they do on the two-level act utilitarian view, where the rules can and should be overridden in cases where utility will clearly be maximized. Miller makes this point clearly when he writes that, “Crucially, the rule utilitarian’s authoritative moral rules are ‘true’ moral rules in a sense in which the act utilitarian’s [rules of thumb] are not: that an action violates the authoritative rules is a necessary and sufficient condition for its being wrong.”¹⁸

Whereas both act and rule utilitarianism have been discussed at length in the larger literature on utilitarianism and consequentialism as tenable moral theories in their own right, sanction utilitarianism appears to have been, for the most part, contained to the realm of Mill scholarship.¹⁹ As was noted earlier, the view was first explicated by

¹⁶ Miller, *J.S. Mill*, 76. *Nota bene*: I will be adopting the practice throughout this dissertation of assigning block quotations to passages that are more than fifty words in length or that are especially important to the discussion at hand.

¹⁷ There are other kinds of rule utilitarianism like generalizing rule utilitarianism, but since the focus here is only on these three main contenders I will limit myself to only one type.

¹⁸ *Ibid.*

¹⁹ Elements of Mill’s theory of conscience and sanctions, however, have been incorporated into other non-utilitarian moral theories. See Stephen Darwall, “Moral Obligation and Accountability,” in *The*

David Lyons who outlined the essentials of the view in 1976.²⁰ My aim, both in this chapter and in the dissertation as a whole, is *not* to put forward the view as a compelling or ultimately plausible moral theory—though I do take the view that the theory is *more* plausible than other types of utilitarianism. Instead, in this chapter, I will state and explain the view’s theoretical commitments and how the theory might work in practice.

On the sanction utilitarian view that will be defended in this dissertation, an act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience (and possibly be subject to other punishments such as social or legal penalties), which is regulated, in part, by a code of rules that promote utility, for performance of the act. To see what this definition amounts to, it is helpful to compare it to act and rule utilitarianism. Sanction utilitarianism is similar to rule utilitarianism in that it resists the idea that the morality of every action should be, in principle, directly subject to the demands of utility (as is the case in act utilitarianism). It differs, however, from both act and rule utilitarianism in that these theories have no strict limits on which types of action might be subject to the demands of morality. Sanction utilitarianism, by contrast, limits the domain of morality only to those occasions where it would be appropriate to bring certain types of sanction against an agent. Specifically, sanction utilitarianism is concerned about specifying the relationship between morality and the internal sanction of conscience. On the sanction utilitarian view, if an agent does not appropriately feel the internal sanction of conscience for performing an act, then that

Second-Person Standpoint: Morality, Respect and Accountability (Cambridge, Mass.: Harvard University Press, 2009), 91-110.

²⁰ David Lyons, “Mill’s Theory of Morality,” *Nous* 10 (1976): 101-120.

action is not morally wrong.²¹ Lyons, who holds that Mill's internal sanction of conscience can be referred to as guilt, writes that, "To call an act wrong is to imply that guilt feelings, and perhaps other sanctions, would be warranted against it."²² This means, however, that agents must internalize the rules that promote utility in order for them to function in the agent's consciences. It would be difficult for an agent to be reliably sanctioned by her conscience for disobeying utilitarian-based rules that she has never heard or thought of. As such, sanction utilitarians, like rule utilitarians, emphasize the importance of educating individuals in a way that allows the moral rules to be internalized so as to regulate consciences.

To give a simple illustration of the theory in action, while one should clearly feel the internal sanction of conscience for committing murder, other sanctions like legal penalties (which are external sanctions) will be appropriate as well since such punishments serve as an example to others and work to prevent future crimes. In the case of a teen lying to his reasonably inquiring parents about how late he stayed out on a Saturday night, sanction utilitarianism would standardly dictate that the teen should feel the internal sanction of conscience and be properly subject to the external sanction of, say, verbal punishment from his parents. He is probably safe from the external sanction of legal punishment since this type of punishment would probably have, on balance, more negative than positive future consequences for the agent.

²¹ In the later chapter on Mill's theory of moral obligation I will go into some detail about what it means to "appropriately feel" the internal sanction of conscience.

²² Ibid., 109. While Lyons, and later interpreters following him, refers the internal sanction of conscience 'guilt', there is scant textual evidence to suggest that Mill used this term to describe the sanction of conscience.

What has been said so far, though, only speaks to the nature of the sanctioning aspect of the view. One might reasonably wonder what makes the view utilitarian. The utilitarian aspect specifies and justifies the rules that are in operation in the consciences of sanction utilitarian agents. In other words, it is the demands of utility that properly lead agents to internalize what rules they use in their daily lives, and those rules would presumably be different with a different set of values in place than those generated by a commitment to utilitarianism.

In many ways, sanction utilitarianism bears a close relation to rule utilitarianism. Sanction utilitarians appeal to many of the same rules as ideal code rule utilitarians when identifying the moral norms that agents should internalize. Unlike rule utilitarians, however, they do not leave it up to a matter of utility whether an agent should be punished for an action that violates a moral rule. Rule utilitarians justify each rule in a moral scheme by considering how it will affect utility outcomes—including those rules governing punishment. If an action is wrong, it should be punished if only if there is a rule which justifies the punishment in light of its effects on utility. Sanction utilitarians, by contrast, recognize a non-contingent relationship between an action's status as morally wrong and its status as an action that should be punished at least by their conscience. To put the issue rather starkly, sanction utilitarians do not even consider the question, "Does it make sense, from the standpoint of utility, for agents to be punished for breaking a moral rule?" Instead, they claim that if an action is morally wrong, the agent should be punished, at least by their conscience, regardless of the effects that such punishment might have for utility.

Now that the view has been contrasted with rule utilitarianism, one might ask whether sanction utilitarianism can rightly be called a utilitarian theory at all.²³ In my view, it can still be justifiably be called a version of utilitarianism in the sense that, to recall Shaw's definition at the beginning of the chapter, the results of actions and promotion of the happiness of moral agents are the key concerns in the theory. These concerns, however, must fit within the theory of moral obligation and Mill's understanding of human moral psychology. On my reading, Mill expressly attempts to sketch a theory of moral psychology and moral obligation that is compatible with non-utilitarian moral theories. Conceptually speaking, once the basics of that theory of moral psychology and moral obligation are in place, the principle of utility is installed as a guiding value that informs the rules that agents use when operating in the moral domain.

Interpretive methodology

While philosophers have generally been in disagreement about whether to interpret Mill as an act, rule, or sanction utilitarian, they have been in greater agreement on the importance of *Utilitarianism* for interpreting Mill's considered view in normative theory. Because of this wide agreement among philosophers, I will call this position "the Orthodox view."²⁴ In his scholarly guidebook to Mill's famous 1861 document, Crisp

²³ One might also ask whether this is an especially compelling and plausible theory of utilitarianism. While I am inclined to say that Mill's sanction utilitarianism is more plausible than some of the interpretations of his work, I will not be arguing for the ultimate plausibility of Mill's view in the dissertation.

²⁴ In a review of a guidebook to *Utilitarianism* that explored many of the relevant questions surrounding Mill's moral theory, all of the book's contributors ignored a crucial point that looms large over much of Mill scholarship, namely "whether *Utilitarianism* elaborates Mill's own moral theory, or if it

writes that, “in so far as Mill was an evangelist, *Utilitarianism* . . . can be seen as his Bible . . . it was clearly intended to be the summation, and defense, of his thoughts on the doctrine which provided the foundation for his views.”²⁵ Crisp also argues that the document shows an important break with previous utilitarians like Jeremy Bentham and James Mill. In Crisp’s view, one can read the trajectory of Mill’s philosophical life as a leading up to that document: a document that Mill himself supposedly held in high regard. This final development is expected, Crisp argues, when one begins to track Mill’s move away from Bentham’s views, beginning with Mill’s 1833 and 1838 essays criticizing Bentham’s moral philosophy. *Utilitarianism* is, as one biographer puts it, where Mill “put all of his own cards on the table” and finally dissociated himself from the previous iterations of utilitarianism.²⁶

What I call the Ecumenical viewpoint takes a sharply different view of the document and its relation to Mill’s intellectual life. This view was first outlined by Daniel Jacobson and articulated in an article expressly critical of the Orthodox reading.²⁷ The Ecumenical position argues that, for the most part, *Utilitarianism* is not Mill giving his own view on matters related to utilitarianism. Rather, *Utilitarianism* is a document for popular consumption (and one that Mill did not hold in especially high regard), which Mill hoped would cast the utilitarian position in a more favorable popular light.

had a different and considerably more modest aim.” Daniel Jacobson, “Review of Henry R. West, ed., *The Blackwell Guide to Mill’s Utilitarianism*,” in *Notre Dame Philosophical Review*, published July, 2007, <http://ndpr.nd.edu/news/25072-the-blackwell-guide-to-mill-s-utilitarianism/>.

²⁵ Roger Crisp, *Guidebook to Mill on Utilitarianism* (London: Routledge, 1997), 7-8.

²⁶ Richard Reeves, *John Stuart Mill: Victorian Firebrand* (London: Atlantic, 2007), 324-325.

²⁷ Daniel Jacobson, “J.S. Mill and the Diversity of Utilitarianism,” *Philosophers Imprint* 3 (2003): 1-18.

This is why, for instance, so much of the book is focused on responding to standard objections to the view and clarifying common confusions about what utilitarians are committed to. In his initial article, Jacobson argued that Mill held to a very unorthodox version of utilitarianism in his other writings on moral theory and in his correspondence, but that this view does not come out distinctly in the pages of *Utilitarianism*. This is not surprising, however, if, as the Ecumenical position supposes, Mill is writing a general defense of the utilitarian approach to morality, rather than a partisan defense of his own views. The exception to this understanding, though, concerns how one should interpret the final chapter on justice (chapter five) where Mill does seem to be marking out several distinct points of his own view. If correct, this novel reading of the text is a tremendously significant finding. So much of Mill scholarship depends on a thorough reading and comparison of passages from *Utilitarianism*. By revising how one should interpret this key document, the Ecumenical reading opens the way for seriously revised readings of Mill's moral and political theory.

Outline for the dissertation

At this point, since the basic terms and points of debate concerning the historical and philosophical nature of this study have been established, it is appropriate to outline the remaining chapters of the dissertation.

In chapter two, I examine interpretations from J.O. Urmson and Alan Fuchs, both of whom favor rule utilitarian readings of Mill. Urmson's interpretation is especially noteworthy, as it served as an important correction of earlier uncharitable readings of

Mill. His view arguably initiated many of key debates in contemporary Mill scholarship even if the specifics of his interpretation are not widely affirmed today. In the second part of the chapter, I provide a discussion of key features in debates about the nature of utilitarian rules. This provides a richer context for the third section, in which I critically examine Fuchs' recent rule utilitarian interpretation of Mill. Unlike Urmson, Fuchs takes a broader reading of Mill's work, drawing on his writing on Whewell, Comte, and the *System of Logic*. In many respects, Fuchs' interpretation resembles some of the notable features of the sanction utilitarian view, but ultimately, I will argue, he makes key interpretive missteps (especially in his views of how Mill handles conflicting moral rules), which serve to undermine his interpretation.

In chapter three, I examine the act utilitarian interpretations of Roger Crisp and Fred Berger. Crisp, who favors a multi-level view interpretation similar to Hare's, provides the interpretation that is perhaps most striking in its differences from the sanction utilitarian interpretation defended here—both in its methodology (e.g. his prioritization of *Utilitarianism* as it compares to Mill's other writings) and its conclusions. In particular, I take issue with his reading of chapter five of *Utilitarianism*, and the especially wide scope of actions he sees as punishable under Mill's theory of moral obligation. Berger's view is arguably the more sophisticated and compelling act utilitarian interpretation, with several notable features that, in my view, have been insufficiently appreciated in the professional literature on Mill's moral theory. In particular, Berger's reading of what he calls Mill's "strategic" conception of moral rules

is a well-developed idea, even if it provides a questionable understanding of Mill's theory of rights.

In chapter four, I provide an argument for the Ecumenical interpretation of *Utilitarianism*. Aside from arguing for the superiority of the Ecumenical reading as compared to the Orthodox reading, I discuss methodological questions concerning how *Utilitarianism*, as a text, will be employed in the remainder of the dissertation. More plainly, my interpretive methodology is to put the fifth chapter of *Utilitarianism* at the center, draw heavily on Mill's other writings on moral theory to reveal resonances with the passages in the fifth chapter of *Utilitarianism*. In some cases I employ passages from the first four chapters of *Utilitarianism* but only when doing so brings out a point to which Mill's contemporary utilitarians, in general, could ascribe. This last point is justifiable, it seems to me, since it fits with the Ecumenical approach to the text as a whole. If one reads *Utilitarianism's* first four chapters as a common, rather than partisan, defense of utilitarianism, then there seems to be good reason to trust his statements that principally concern utilitarian theory more generally.

This chapter is arguably the most important chapter of the dissertation. By examining many of the fine details of Mill's historical context and correspondence so as to make the Ecumenical reading more compelling, I make the case for reading Mill as a sanction utilitarian considerably more plausible. As I point out at the end of chapter four, passages that previously supported the alternative readings are now nullified whereas the passages that support the sanction utilitarian view are prioritized in importance. To date, no Mill scholar has employed this new reading of *Utilitarianism* in interpreting Mill's

broader moral theory. This dissertation is partly an exercise in seeing just how different Mill's theory looks when one adopts this radically revisionary reading of this famous text in Mill's moral theory.

In chapter five, I outline my textual argument for Mill's theory of moral wrongdoing and his concept of moral obligation. This is a crucial chapter of the dissertation because it develops my argument that Mill's theory of moral obligation provides the basic framework out of which his utilitarian theory can be formed. By basic framework I mean the conception of moral obligation Mill believes that all moral theories must have, regardless of whether such theories recognize a commitment to utilitarianism. I argue that Mill's theory of moral obligation, while compatible with the sanction utilitarianism that he seems to hold, does not itself presuppose or require a commitment to utilitarianism or consequentialism.

On my interpretation, Mill's theory of moral wrongdoing holds an action is wrong precisely when it would be appropriate for an agent to feel the internal sanction of conscience for performance of the act. Other punishments, like social or legal penalties, may also be applied but these penalties have no special conceptual connection with moral wrongdoing. As Mill explains in chapter five of *Utilitarianism* and elsewhere, this theory of wrongdoing, at least on his iteration of it, includes expressed commitments to the possibility of supererogatory action, a conception of moral obligation that is expressly at odds with a commitment to maximizing the moral good, and a claim that moral obligation is fundamentally rule-oriented. For various reasons, Mill's theory of moral wrongdoing, when combined with the commitments just mentioned, reveals itself

to be at odds with both the act and rule utilitarian interpretations. Throughout the chapter, I remind the reader of ways in which this is so, though my argument for the nature of Mill's own utilitarianism appears in the final chapter.

In chapter six, I argue for reading Mill as a sanction utilitarian. As noted above, much of this argument depends upon the conclusions reached in the previous chapter on Mill's theory of moral wrongdoing. This will involve setting out the argument for how several different components of Mill's moral theory work together. Most notably, it will include a discussion of Mill's approach to the Art of Life, self-regarding action, and his theory of moral rules. I will then turn to some notable objections to the sanction utilitarian interpretation of Mill's view. In particular, I will examine a handful of objections from Berger and Brink. Some of the objections will concern more textually oriented challenges while others will challenge the conceptual coherence of the interpretation I have offered here.

In the seventh chapter, which will be especially brief, I provide an overview of chief lessons that emerge from the dissertation. The objective here is not to summarize the dissertation as a whole but to state as clearly as possible what the dissertation claims to have accomplished in arguing for a particular interpretation of Mill's moral theory. If the interpretation I argue for in this dissertation is correct, Mill may not be quite the utilitarian that he is usually thought to be, but he is surely just as interesting and, perhaps, more philosophically astute than is sometimes supposed.

CHAPTER II

RULE UTILITARIAN INTERPRETATIONS OF MILL

The next two chapters serve as a critical review of the major debates surrounding the interpretations of Mill's utilitarianism. In general, these chapters aim to clarify, explain, and, to some extent, evaluate some of the primary ways in which Mill has been interpreted. Though the next two chapters will consider a variety of perspectives on Mill's utilitarianism, they do not aim at exhaustiveness. Instead, the focus is on prominence and relevance. That is to say, rather than surveying any and all interpretations of Mill's utilitarianism that have been offered since Mill began promulgating his views in the mid-nineteenth century, I will aim at selecting and explicating those issues and positions that are useful for identifying the most plausible and useful interpretations that can stand either in unity or helpful contrast to my favored interpretation.

With regard to my reading of Mill as a sanction utilitarian, the reader should be able to see alternative conceptions of how Mill thinks utility should be promoted or maximized, how Mill understands moral rules, and, the importance and relevance of *Utilitarianism* to Mill's larger intellectual biography. Put more succinctly, and too crudely, this chapter surveys scholarly attitudes to Mill's moral theory and, to a lesser extent, his intellectual biography as it relates to his utilitarianism. For each of the positions I discuss, the goal is not to discuss the position in great depth or to a degree such that my favored position is clearly the correct one—though I will flag puzzles,

shortcomings, and difficulties for interpreter's view as they arise. I will include some discussion of how the various positions respond to alternative views, but the argument for the Sanction Theory of Moral Wrong and sanction utilitarian interpretations will not come until the fifth and sixth chapters respectively. In a sense, my objective is to reveal the difficulty and complexity of Mill interpretation in the next two chapters so as to provide a context for what I argue for in chapters five and six.

As was noted in the previous chapter, understandings of Mill's normative theory have clustered around three primary positions: act, rule, and sanction utilitarianism. These are far from the only interpretations of Mill's moral theory, but they are, in the view of most scholars, the primary candidates for the most plausible interpretations.²⁸ The plan here is to critically evaluate these interpretations by examining, in case of the act and rule utilitarian interpretations, two of each interpretation's foremost proponents. In some cases, this will involve a discussion of several works by each author. In other cases, a single influential piece that stands as an important interpretation in its own right. The respective representatives for the positions will be Urmson and Fuchs (rule utilitarianism) and Berger and Crisp (act utilitarianism). Lyons, Miller, and Jacobson, the prominent sanction utilitarian interpreters, will be discussed throughout the dissertation, and chapters five and six build on their work, as I argue for the sanction utilitarian view.

²⁸For a very recent discussion of the general views adopted in the scholarship see David Brink, *Mill's Progressive Principles* (Oxford, UK: Clarendon, 2013).

Urmson's rule utilitarian interpretation

Many Mill scholars trace the origin of contemporary debate surrounding the interpretation of Mill's ethics to J.O. Urmson's article more than sixty years ago.²⁹ Despite being critical of Urmson's interpretation, Berger writes that, "it would not be unfair to say that much of the current attention to the more general controversy stems from an article published in 1953 by Urmson, arguing for a kind of rule utilitarian interpretation of Mill."³⁰ Similar assessments of the article's importance can be found in statements from David Copp, John Gray, and Jacobson.³¹ Urmson's article is noted for its defense of the rule utilitarian reading, but also for its influential call for interpreters to take more care in their readings and criticisms of Mill.

In his opening paragraph, Urmson suggests that Mill's critics seem to rush ahead in their criticism without bothering to reading the whole of *Utilitarianism*, let alone the other works that inform his arguments: "Instead of Mill's own doctrines a travesty is discussed, so that the most common criticisms of him are simply irrelevant."³² Although Urmson makes no serious attempt in this short essay to argue for the decisive plausibility of Mill's views, "it will be maintained that, if interpreted with, say, half the sympathy automatically accorded to Plato, Leibniz, and Kant, an essentially consistent thesis can

²⁹ J.O. Urmson, "The Interpretation of the Moral Philosophy of J.S. Mill," *Philosophical Quarterly* 3 (1953): 33-39.

³⁰ Fred Berger, *Happiness, Justice, and Freedom: The Moral and Political Philosophy of John Stuart Mill* (Berkeley: California University Press, 1984), 65.

³¹ David Copp, "The Iterated-Utilitarianism of J.S. Mill," supplementary *Canadian Journal of Philosophy* 5 (1979): 75-98; John Gray, *Mill on Liberty: A Defence* (London: Routledge & Kegan Paul, 1983), 32; Jacobson, "Diversity of Utilitarianism," 1-2.

³² Urmson, "The Interpretation of the Moral Philosophy of J.S. Mill," 33. Urmson's judgment here seems to have been justified as almost all contemporary discussions of Mill's normative go back to Urmson's essay, but rarely before, except in special cases like G.E. Moore's critique of Mill's "Proof" for the principle of utility.

be discovered which is very superior to that usually attributed to Mill and immune to the common run of criticisms.”³³ William Stafford has remarked that Urmson was a part of a larger movement in the middle of the twentieth century that kicked off a “hermeneutic” trend in Mill scholarship.³⁴ Whereas many previous readers of Mill’s moral theory had interpreted him with considerable derision, Urmson inspired scholars like John Rees, John Robson, and Alan Ryan to take an alternative approach to works like *On Liberty* and *Utilitarianism*, whereby, “instead of reading his texts destructively, awarding ticks and crosses as if marking an exam paper, Mill is read sympathetically, in an attempt to fully understand his arguments and intentions.”³⁵

To situate his own interpretation, Urmson discusses what he calls the received view of Mill’s utilitarianism. “On this interpretation Mill is looking for a test of right or wrong as the ultimate test by which one can justify the ascription of rightness or wrongness to courses of action, rightness and wrongness being taken to be words which we understand.”³⁶ Not only is that test the ultimate end, it is the *immediate* end. In other words, individuals should justify each of their actions with respect to the promotion of utility. Some rules of thumb might be permitted when one is in a hurry, but no other

³³ Ibid.

³⁴ This sometimes gets referred to as “Revisionism” in Mill interpretation. For deeper discussion of that term and its origins see Gray, *On Liberty: A Defence*, 10. Gray provides a fairly comprehensive list of contributors on 131n17. For a more recent discussion of the revisionist literature and its influence on Mill scholarship see D.G. Brown “Mill’s Moral Theory: Ongoing Revisionism,” *Philosophy, Politics, and Economics* 9 (2010): 5-45.

³⁵ William Stafford, *John Stuart Mill* (New York: St. Martins, 1998), 16-17. See also J.C. Rees, “A Re-Reading of Mill’s *On Liberty*,” in *J.S. Mill On Liberty in Focus*, John Gray and G.W. Smith, eds. (London: Routledge, 1991), 169-190; John Robson, *The Improvement of Mankind : The Social and Political Thought of J.S. Mill* (London: Routledge and Kegan Paul, 1968); Alan Ryan, *The Philosophy of John Stuart Mill* (London: Macmillan, 1970).

³⁶ Urmson, “The Interpretation of the Moral Philosophy of J.S. Mill,” 34.

considerations other than utility are permitted in justifying both immediate and ultimate ends of actions. Urmson recognizes that, if this is Mill's view, it is open to two serious objections. First, it fails to take seriously the view that promising to undertake an action commits one to a moral duty to undertake that action, even apart from the consequences that follow from breaking or keeping the promise. Second, it seems to place every action in the moral domain such that trivial differences in utility resulting from an action can amount to a moral wrong. On this understanding of Mill's ethics, "a man who, *ceteris paribus*, chooses the inferior of two musical comedies for an evening's entertainment has done a moral wrong, and this is preposterous."³⁷

Urmson claims that if Mill's utilitarianism really were subject to these objections his moral philosophy would hardly be worth looking into. Yet, Mill does not hold this sort of view. As a replacement for the received view, Urmson offers the following interpretation that affirms these four points:

- A. A particular action is justified as being right by showing that it is in accord with some moral rule. It is shown to be wrong by showing that it transgresses some moral rule.
- B. A moral rule is shown to be correct by showing that the recognition of that rule promotes the ultimate end.
- C. Moral rules can be justified only in regard to matters in which the general welfare is more than negligibly neglected.

³⁷ Ibid., 35.

D. Where no moral rule is applicable the question of rightness or wrongness of particular acts does not arise, though the worth of the actions can be estimated in other ways.³⁸

Without going into great detail about the passages Urmson provides in support points A-D, I will give a general characterization of his two main points, especially as they relate to issues that have been discussed by other Mill scholars.³⁹ His first concern is to cite passages from the second chapter of *Utilitarianism* where Mill treats rules not as easily discarded rules of thumb but rather as providing “an essential part of moral reasoning.”⁴⁰ Though Urmson does not use the term himself, this emphasis on the importance of rules in grounding moral rightness and wrongness is responsible for the claim that Urmson is among the first to read Mill as a rule-utilitarian.⁴¹ Urmson defends his reading by calling attention to Mill’s discussion of what he calls secondary principles or secondary rules. In *Utilitarianism* Mill notes that secondary principles cannot be formulated without admitting of exceptions but:

³⁸ Ibid.

³⁹ Most of Urmson’s article is aimed at providing support for A, B, and D, while C receives scant treatment (though many of his qualifications throughout the article suggest that he is aware of this). He writes that support for C comes more out of Mill’s *On Liberty*, than *Utilitarianism*; especially in Mill’s discussions of self and other regarding actions. See Urmson, “The Interpretation of the Moral Philosophy of J.S. Mill,” 38-39.

⁴⁰ Ibid., 36. Urmson does admit that Mill sometimes speaks of moral rules as “corollaries” from the supreme principle of utility and that this has led some to read moral rules as easily discarded principles. In an attempt to downplay the importance of Mill’s usage of the term “corollary”, he says that, “Mill obviously cannot wish it be taken literally; in fact it is hard to state the relation of moral rules to a justifying principle with exactitude and Mill, in a popular article in *Fraser*, did not try very hard to do so.” Ibid., 38. As a supporter of the Ecumenical interpretation of *Utilitarianism*, I cannot help but note this early appeal to *Utilitarianism*’s status as a “popular article in *Fraser*” when he is attempting to downplay passages that sit uneasily with his reading.

⁴¹ See Miller, *J.S. Mill*, 220n16, and Alan Fuchs, “Mill’s Theory of a Morally Correct Action,” in *The Blackwell Guide to Mill’s Utilitarianism*, ed. Henry West (Malden, MA: Blackwell, 2006), 140.

we must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. *There is no case of moral obligation in which some secondary principle is not involved*; and if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognised.⁴²

Urmson claims that this quote alone provides significant support for A [“A particular action is justified as being right by showing that it is in accord with some moral rule. It is shown to be wrong by showing that it transgresses some moral rule”] and D [“Where no moral rule is applicable the question of rightness or wrongness of particular acts does not arise, though the worth of the actions can be estimated in other ways”]. In further support of A and D, Urmson discusses the fourteenth paragraph in chapter five where Mill seems to link punishment by sanctions to moral obligation, and notes that there are actions we wish people would undertake, but yet would not convert those actions into moral obligations.⁴³ After quoting the passage, Urmson says, “How supporters of the received view have squared it with this passage I do not know; they do not mention it . . . Mill makes it quite clear that in his view right and wrong are derived from moral rules . . .”⁴⁴

⁴² Mill, *U*, 2.25. Emphasis added. In general, references to the *Collected Works* will be cited in the following way: Mill, an abbreviated title of the cited work, ‘*CW*’, the relevant volume number, and the page number (e.g., Mill, “Bentham,” *CW*, 10, 75). Following the convention in Mill scholarship, the exceptions to this will be references to *Utilitarianism* and *On Liberty*, which will be identified by *U* and *OL*, respectively, along with numbers indicating chapter and paragraph (e.g., Mill, *U*, 1.2). *Utilitarianism* can be found in volume 10 and *On Liberty* in volume 18 of the *Collected Works*.

⁴³ Mill, *U*, 5.14. I will hold off quoting the whole passage here as it is lengthy and will receive plenty of scrutiny later in this study.

⁴⁴ Urmson, “The Interpretation of the Moral Philosophy of J.S. Mill,” 35.

Gray, however, has challenged Urmson's reading, in part, by questioning Urmson's identification of a tight conceptual connection between secondary principles and moral rules.⁴⁵ Gray argues that Mill only speaks of moral rules as they pertain to justice, which, as some passages in chapter five suggest, is merely a sub-department of morality rather than morality as such (which seems implied by A). As Mill puts it:

Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation.⁴⁶

Gray argues that this passage concerning justice and the earlier cited passage on sanctions in chapter five together, lead one to think that that moral rightness and wrongness refer to punishability rather than the institution of a moral rule. Gray allows that rules are more important to Mill than the received view had previously understood them, but not exactly in the way that Urmson suggests. In other words, according to Gray, Urmson has gone some way in shifting the debate about Mill's theory of moral rules, but he has not yet provided conclusive evidence for A and D. On my judgment, however, Gray is correct to worry that Urmson has not proved his case from a textual point of view.⁴⁷

⁴⁵ Gray, "On Liberty: A Defence," 32-33.

⁴⁶ Mill, *U*, 5.31.

⁴⁷ Again, Urmson's article is exceedingly brief so this should not be especially surprising.

The second important point in Urmson's article concerns his reading of the famous first formulation of the Greatest Happiness Principle: "The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."⁴⁸ As Urmson sees it, "This seems to be the well-known sentence which is at the bottom of the received interpretation."⁴⁹ Yet, Urmson thinks, a closer reading of Mill's claim does *not* support the received view and should instead be read as supporting his proposition B ["A moral rule is shown to be correct by showing that the recognition of that rule promotes the ultimate end"]:

But note that strictly one can say that a certain action tends to produce a certain result only if one is speaking of type- rather than token actions. Drinking alcohol may tend to promote exhilaration, but my drinking this particular glass either does or does not produce it. It seems, then, that Mill can well be interpreted here as regarding moral rules as forbidding or enjoining types of action, in fact as making the point that the right moral rules are the ones which promote the ultimate end (my proposition B). . . . And this, or something like it, is the interpretation which consistency requires.⁵⁰

Thus, on Urmson's view, to speak of tendencies is to commit to speaking about *types*, not tokens, of actions, and types of action can readily understood and categorized as falling under various rules.

⁴⁸ Mill, *U*, 2.2.

⁴⁹ Urmson, "The Interpretation of the Moral Philosophy of J.S. Mill," 37.

⁵⁰ *Ibid.*

This line of argument from Urmson is challenged by Berger, who argues that Urmson's understanding of 'tend to' is too narrow, and that it can make sense to speak of particular actions, rather than types of action, having tendencies.⁵¹ In other words, it is not *necessary* that talk of tendency be tied to classes of actions rather than particular actions. Berger does admit that one can use 'tend to' in order to refer to types or classes of actions, and that Mill sometimes uses the phrase this way. Yet, Berger suggests, even if Urmson's example of alcohol's tendency to produce exhilaration tells us something about how English users use and understand the phrase 'tend to', Urmson has not shown that when we speak of the tendency of particular actions tending to produce pleasure or pain we are speaking nonsense. To make a rather pedestrian point, particular actions can have many consequences—some of which are pleasure producing and some of which are pain producing. This is true even when one is speaking of the pleasure and pain experienced by the same person undertaking the action in question. If, on balance, an action produces more pleasure than pain, then it seems sensible to speak of that action tending to produce pleasure. Furthermore, if there *any* good consequences that follow from a particular act then it seems sensible to speak of that act having *some* tendency toward the good. Ultimately, Berger thinks that this more expansive way of speaking about tendencies more closely follows Mill's use of the term throughout this corpus of writings. He also gives a helpful and, in my view persuasive, argument that Mill inherits this usage from earlier utilitarians like Bentham and John Austin.⁵²

⁵¹ Berger, *Happiness, Justice, and Freedom*, 67-69.

⁵² See *Ibid.*, 73-82.

In part because of Gray's and Berger's criticisms on these two points, few Mill scholars take Urmson to have given a completely satisfying textual argument for his view. As was noted above, this does not necessarily detract from the article's importance since it appears to be at the locus of a revived methodology in interpreting Mill's moral theory. As Urmson himself noted, he was really attempting little more than a "skeleton plan" of Mill's account of moral reasoning. In my view, Urmson's skeleton plan is ultimately on the right track (as will be evident in chapter five and six) even if he did not supply all of the necessary textual and philosophical justifications for the view.⁵³

Fuchs' rule utilitarian reading

Despite the fact that Urmson's paper appeared in 1953, it has shown continuous relevance to the debate on Mill's moral theory. In 2006, Fuchs contributed an essay to a guidebook to Mill's *Utilitarianism*, which has provided a new rule utilitarian interpretation of Mill that has garnered considerable scholarly attention.⁵⁴ Fuchs' primary contribution to the debate is three-fold. First, he reviews and explains central passages motivating the rule utilitarian reading. I will also argue, however, that he includes some misleading quotations that speak against his interpretation. His second

⁵³ Ibid, 39.

⁵⁴ For accounts mentioning the importance of Fuchs' contribution see Jacobson, "Review of West"; Miller, "Mill, Rule Utilitarianism, and the Incoherence Objection," in *John Stuart Mill and the Art of Life*, eds. Ben Eggleston, Dale Miller, and David Weinstein (New York: Oxford University Press, 2011), 98; Miller, *J.S. Mill*, 222n56; Rex Martin, "Mill's Rule Utilitarianism in Context," in *John Stuart Mill and the Art of Life*, 40n 9; Ben Eggleston "Rules and their Reasons: Mill on Morality and Instrumental Rationality," in *John Stuart Mill and the Art of Life*, 91n21; Leonard Kahn, "The Objection from Justice and the Conceptual/Substantive Distinction," in *Mill on Justice*, ed. by Leonard Kahn (New York: Palgrave Macmillan, 2012), 200.

valuable contribution to the literature is a helpful rejoinder to L.W. Sumner and Henry West, who see Mill adopting *both* act and rule utilitarianism in cases of apparently conflicting valid moral rules. Fuchs does well in responding to these points overall, but here too I will argue that he does not respond quite as strongly as he might have. Third, Fuchs uses a much wider reading of Mill's texts than Urmson to argue for his rule utilitarian interpretation, and as, such, provides a better comparison for the sanction utilitarian view I will consider in chapters five and six.

As with Urmson, I will not discuss all of Fuchs' major points. For instance, in the course of defending his own rule utilitarian reading of Mill, Fuchs surveys many of the texts commonly cited by those favoring the act utilitarian interpretation. I will, for the time being, pass over this discussion since the next chapter discusses the act utilitarian interpretation in detail. Similarly, Fuchs discusses several points related to Mill's doctrine of sanctions and supererogation; but these points receive significant attention later in chapter five so I will introduce them here only as necessary. Finally, Fuchs does not engage in extensive debate concerning the many understandings of rule utilitarianism.

The discussion of Fuchs will proceed by first examining the main passages that are Fuchs sees as motivating the rule utilitarian reading as it contrasts with the act utilitarian reading. While I find much that is satisfactory in Fuchs' treatment of Mill, I will raise some objections to Fuchs' interpretation, especially in his use of passages from Mill's *System of Logic*. I will also briefly introduce Mill's theory of the Art of Life and his doctrine of supererogation, both of which create difficulties for the act utilitarian

view. In the next section, I will examine Fuchs' response to objections that Mill adopts both act and rule utilitarianism in his conception of moral rules.

Fuchs opens his discussion of Mill's rule utilitarianism by reminding the reader that while it is important to remember that rule utilitarianism is a consequentialist theory, it does not evaluate actions with direct reference to the good. Instead, rule utilitarians evaluate actions on the basis of conformity to moral rules. Of course, these rules themselves should promote utility—perhaps by maximizing it, but not necessarily. As a means of exploring how this might go, Fuchs considers utilitarian generalization, which represents one possible, though ultimately unlikely, reading of Mill's rule utilitarianism.⁵⁵ On the utilitarian generalization view, every moral action is evaluated with reference to the utility resulting from the general or universal performance of actions of that type. Thus, while utility might be maximized when, say, a particular agent free-loads and successfully avoids paying her income taxes with minimal loss of goods or services to her or other agents, the utilitarian generalization theory condemns this action on the basis that if everyone were to undertake that general type of action then general utility would be dramatically lowered. As an example of why one might think that this is Mill's view Fuchs cites the following passages for support:

in the case of . . . things which people things which people forbear to do, from moral considerations, *though the consequences in the particular case might be beneficial*—it would be unworthy of an intelligent agent not to be consciously

⁵⁵ Fuchs does not mention any contemporary defenders of this reading, which is why it has not been discussed till now, and he seems to employ it here, as we shall see, more as a means of introducing his more refined view than for the purposes of debate between live options.

aware that the action is of a class which, if practised generally, would be generally injurious, and that this is the ground of the obligation to abstain from it.⁵⁶

Following this quotation Fuchs writes, with perhaps too much confidence, that this passage alone “gives an explicitly and unequivocal rejection of act-utilitarianism as the correct formulation of Mill’s theory.”⁵⁷ The apparent rationale for this rather bold statement is that Mill seems to be claiming that even in cases where a particular action is judged to have, on balance, positive consequences from the standpoint of utility, one must consider what would likely happen if the action were to be practiced generally in order to determine its moral status. It is not enough, in other words, to identify an action’s moral status by identifying whether the action will have, on balance, positive consequences. Mill appears to be claiming that to identify the rightness or wrongness of an action one must classify an action as being of a particular type. This, of course, is unnecessary from an act utilitarian standpoint since all that the agent need to consider, strictly speaking, are the likely causal ramifications resulting from this particular action.

Mill’s employment of language consistent with the utilitarian generalization interpretation is not confined to *Utilitarianism*. In the following passage from *The*

⁵⁶ Mill, *U*, 2.19. Emphasis added.

⁵⁷ Fuchs, “Mill’s Theory of Morally Correct Action,” 144. I say, “with perhaps too much confidence,” since defenders of the act utilitarianism have their own troubling passages from Mill for the rule utilitarian to explain, as well as ways of accommodating Mill’s discussion of these types of passages into their interpretation (as will be evident in the next chapter examining the act utilitarian passages). As an example, one could consider the passage apparently favoring the act utilitarian interpretation mentioned in D.G. Brown, “Mill’s Act-Utilitarianism,” *Philosophical Quarterly* 24 (1974): 67-68.

System of Logic Mill seems to affirm that an action's moral rightness is not directly measured against how it results in pain or pleasure:

There are many virtuous actions, and even virtuous modes of action . . . by which happiness in the particular instance is sacrificed, more pain being produced than pleasure. But conduct of which this can be truly asserted, admits of justification only because it can be shown that on the whole more happiness will exist in the world, if feelings are cultivated which will make people, in certain cases, regardless of happiness.⁵⁸

Fuchs also points to a case where Mill responds to a question regarding whether or not the utilitarian should readily tell a lie if greater utility seems to result from that action. In Fuchs' view, Mill's answer to this query seems more friendly to the utilitarian generalization interpretation than the act utilitarian view as he writes that, "The duty of truth as a positive duty is also to be considered on the ground of whether more good or harm would follow to mankind in general if it were generally disregarded and *not merely whether good or harm would follow in a particular case.*"⁵⁹ Again, Mill is saying that it is important to consider separation of the good or harm resulting from the type of action and the good or harm resulting from the action itself.

Fuchs clearly makes some notable points in these passages, though the rhetorical strength of his argument is ultimately undermined because of the misleading nature of his quotation. Fuchs uses the ellipses to omit one of Mill's critical qualifications on the

⁵⁸ Mill, *System of Logic*, CW, 8, 952.

⁵⁹ Mill to Henry Brandreth, 9 February 1867, CW, 16, 1234. Emphasis added.

sentence from the *System of Logic*. Compare Fuchs' quote to the unabridged opening sentence from the text itself: "There are many virtuous actions, and even virtuous modes of action (though the cases are, I think, less frequent than is often supposed) by which happiness in the particular instance is sacrificed, more pain being produced than pleasure."⁶⁰ Fuchs leaves out the parenthetical remark regarding how often this kind of case is thought to occur, which seems inappropriate as it obscures a non-trivial qualification.⁶¹ Fuchs' rendering lets the reader suppose that these cases might be rather common occurrences. After all, Mill does say in the beginning of the sentence that there are "many" such virtuous actions where happiness is sacrificed. Fuchs might reply that it does not matter just how often this occurs since the maximizing act utilitarian should not allow for any such cases. I would agree on this point (that the passage is especially troubling for the act utilitarian interpretation if this is allowed at all), though Fuchs' omission is still important since the passage speaks to the degree to which Mill separates the promotion of utility from an action's moral worthiness. However, this is a relevant piece of evidence in the question of whether Mill has a maximizing conception of utilitarianism at all, so his selective quotation here proves misleading to the reader trying to decide such questions.

This interpretive difficulty notwithstanding, Fuchs finds these passages initially suggestive of the utilitarian generalization interpretation but ultimately opts for what he

⁶⁰ Mill, *System of Logic*, CW, 8, 952.

⁶¹ For Fuchs' quote see Fuchs, "Mill's Theory of Morally Correct Action," 145.

calls an ideal moral code interpretation.⁶² On this view, an action is right when it accords with a moral code that has been internalized across the members of society. The ideal moral code interpretation differs from the utilitarian generalization interpretation in that, in the latter, an individual, acting on her own, determines the rules that best accord with utility. On the ideal code view, the code's rules are inculcated in agents through various types of social mechanisms like parental upbringing and general enculturation. It is thus less dependent on an individual working to apply the principle of utility in light of a proper classification of an action's type.⁶³

Fuchs cites several considerations in favor of the ideal code view, though the primary reason seems to be that the utilitarian generalization account seems to permit the agent to consider a rule's effect on utility in comparative isolation from other moral rules. That is to say, rather than following a single procedure as is the case in the utilitarian generalization scheme, Mill seems to allow for a hierarchy of rules and general procedure for rule adjudication that is more complex than the utilitarian generalization view seems to allow. On the ideal moral code account, moral rules are evaluated as part of a general code, which is:

a set of rules that together *would* maximize utility if it was adopted and followed by the overwhelming majority of the members of society. Morally correct

⁶² For his explicit endorsement of this view see Fuchs, "Mill's Theory of Morally Correct Action," 145. Here, he notes that he follows interpretation of Richard Brandt. See Richard Brandt, "Some Merits of One Form of Rule Utilitarianism," *University of Colorado Studies* 3 (1967): 39-65.

⁶³ For Fuchs' iteration of the differences between the two views, see Fuchs, "Mill's Theory of Morally Correct Action," 145-146.

actions, in this view, are those required by the rules of such a code, while wrong or permissible actions would similarly be defined in terms of its rules.⁶⁴

It is worth noting here that Fuchs adopts a maximizing conception of moral rules, which is a point I will challenge later in the chapter.

In support of his reading, Fuchs argues that Mill did not regard moral rules as mere rules of thumb. Rules of thumb, by their nature, are merely provisional and should be disregarded when, as the act utilitarian would have it, the potential gains in utility are sufficient to warrant it. Mill, though, seems to regard some moral rules, such as those ensuring our expectations of liberty and security, as having a claim which, “assumes that character of absoluteness, that apparent infinity, and incommensurability with all other considerations . . .”⁶⁵ Given that this “character of absoluteness” seems squarely opposed to rules of thumb that can be casually cast aside, Fuchs concludes that Mill must have some other conception of rules at work in the text of *Utilitarianism*.

Fuchs is correct to stress the importance Mill places on agent’s sense of security, and its inflexible character. Fuchs points out that this concern appears in works outside of *Utilitarianism*. The concern about security appears also in Mill’s replies to William

⁶⁴ Ibid, 145. Emphasis in the original.

⁶⁵ Mill, *U*, 5.25. Below I am only going to discuss the passages Fuchs cites regarding Mill’s concept of security as Fuchs only mentions the liberty discussion in passing and simply cites chapter III of *OL* as support of this point. See Fuchs, “Mill’s Theory of Morally Correct Action,” 147. While Fuchs might be correct in saying that there is a legitimate comparison between security and liberty, he would clearly need to argue further for this point to carry much weight with interlocutors who did not share his views.

Whewell, a prominent critic of the utilitarian doctrine.⁶⁶ Mill notes in his arguments against Whewell that even if it were supposed that the “traceable consequences” would favor the summary murder of some especially odious individual, the utilitarian would advise against such a course of action.⁶⁷ If society allowed for a case-by-case moral allowance of killing to promote utility and if it, “were thought allowable for any one to put to death at pleasure any human being whom he believes that the world would well be rid of, nobody’s life would be safe.”⁶⁸ The implication here, of course, is that if none feel safe, then utility, in the long run, will be negatively affected. This passage in Whewell, then, coheres with Mill’s claim in *Utilitarianism*, that we depend on security for an enjoyment of any but the most transitory pleasures, “since nothing but the gratification of the instant could be of any worth to us, if we could be deprived of everything the next instant by whoever was momentarily stronger than ourselves.”⁶⁹ For this reason, Mill says that protecting our sense of security is protecting “the very groundwork of our existence.”⁷⁰

The key, then, to the ultimate promotion of utility for Mill comes in encouraging members of a society to adopt readily understood, generally internalized and consistently enforced moral rules. Fuchs illustrates this point by quote from the *System of Logic* where Mill writes that when it comes to legal rights and “the rule of veracity,” even

⁶⁶ For a work examining the two figure’s contested intellectual relationship (which extended to logic, metaphysics, science, religion, and normative theory) see Laura Snyder, *Reforming Philosophy: A Victorian Debate on Science and Society* (Chicago: University of Chicago Press, 2006).

⁶⁷ Mill, “Whewell on Moral Philosophy,” *CW*, 10, 181.

⁶⁸ *Ibid.*, 182.

⁶⁹ Mill, *U*, 5.25.

⁷⁰ *Ibid.*

when utility would be increased by deviation from the rules in a particular case, it is “necessary for general security . . . that the rules should be inflexibly observed.”⁷¹ This talk of the inflexible observance of rules hardly seems compatible with speaking of them as rules of thumb, thus strengthening the rule utilitarian interpretation of Mill’s view.

Once again, however, this last example from Mill’s *System of Logic* is the result of selective and potentially misleading quotation. As before, Fuchs obscures parts of Mill’s quote so as to change the full meaning of the Mill’s sentence. Mill presents his comment about the “inflexible observation of moral rules” as a *disjunction* rather than as a straightforwardly definitive statement about the inflexible character of the rules.⁷²

Mill’s full quote says that, “It is necessary for general security, *either* that the rules should be inflexibly observed, *or* that the license of deviating from them, if such be ever permitted, should be confined to definite classes of cases, and of a very peculiar and extreme nature.”⁷³ Though this difference (between the full quote and Fuchs’ abbreviation) can probably be accommodated on rule utilitarian grounds, it is worth noting, especially when considering the question of how Mill thought of the nature of exceptions to moral rules. It is more troubling (and Fuchs does not call attention to this fact in his citation) that this passage comes from an Appendix H in the *System of Logic*. Appendix H includes those passages that were dropped in later editions of the text (beginning with the third edition in 1851). This would mean that Mill had dropped this

⁷¹ Mill, *A System of Logic*, CW, 8, 1154-1155.

⁷² For Fuchs’ quote see Fuchs, “Mill’s Theory of Morally Correct Action,” 146.

⁷³ Mill, *System of Logic*, CW, 8, 1154-1155. Emphasis added.

passage by the time that most scholars believe he began composing *Utilitarianism*.⁷⁴

These textual issues do not mean the passage is irrelevant to Fuchs' case, but it does seem to weaken his intended point concerning the continuity of Mill's thoughts on rules across various texts.

In his discussion regarding the superiority of the ideal code interpretation over the utilitarian generalization reading of Mill, Fuchs noted that Mill had a complex understanding of the hierarchy of various rules. Specifying the nature of this hierarchy and its contours is an essential part of understanding Mill's commitment to his rather unusual form of utilitarianism. Part of the specification of this complex hierarchy concerns specifying the scope of the moral domain. Fuchs interprets Mill as a maximizing rule utilitarian, though one who sees the moral domain as but one of the areas of human action that can be evaluated from the perspective of utility. To be clear, morality, which is governed by the principle of utility, is surely important to Mill, but he, "also recognizes other important aspects of our practical lives, such as the cultivation of personal character traits and the implementation of public policies, that, while not strictly matters of moral obligation, would nonetheless play vital roles in any comprehensive attempt to realize the greatest good."⁷⁵ Fuchs' mention here of the cultivation of character traits and the implementation of public policies refers to Mill's idea that action can be evaluated with respect to its proper categorization into the aesthetic, prudential, and moral dimension. Mill calls this theory the Art of Life.

⁷⁴ On this point concerning the publication history see the bracketed editor's note on *Ibid.*, 1554.

⁷⁵ Fuchs, "Mill's Theory of Morally Correct Action," 150.

Mill's Art of Life

While Fuchs discusses the Art of Life, I will review it here in a way that more closely follows Miller, who provides an especially helpful presentation of the doctrine.⁷⁶ I will examine the Art of Life here in some detail as it will provide a foundation for future discussions of the doctrine throughout the dissertation. In Mill's view, all arts have some axiological first principle that stipulates the end at which the art is aimed.⁷⁷ This stands in contrast to his view of the sciences, which are fundamentally descriptive in nature. Art, as Mill sees it, is prescriptive in that once a first principle is in place various rules can be provided to promote the specified end. Though there might be various kinds of arts in this sense (ship building, drawing, architecture, etc.) that have different stipulated ends, Mill believes there is an overarching "master" art that he calls the Art of Life. The Art of Life governs which activities should be pursued at various times. Perhaps unsurprisingly, the principle governing the Art of Life is the principle of utility: "The general principle to which all rules of practice ought to conform, and the test by which they should be tried, is conduciveness to the happiness of mankind, or rather, of all sentient beings: in other words, that the promotion of happiness is the ultimate principle of teleology."⁷⁸ As D.G. Brown has argued, while Mill sometimes casts this principle in action-guiding language, Mill seems to understand the principle of utility as a strictly axiological principle that specifies that happiness is the only thing

⁷⁶ See Miller, *J.S. Mill*, 79-83 and Miller, "Mill, Rule Utilitarianism, and Incoherence Objection," 102-103.

⁷⁷ Mill draws this distinction between art and science in Mill, "On the Definition of Political Economy; and the Method of Investigation Proper to It," *CW*, 4, 309-339.

⁷⁸ Mill, *System of Logic*, *CW*, 8, 951.

desirable as an end.⁷⁹ In other words, it is not necessarily the case that all actions should be directly evaluated with respect to their effect on utility. Instead, in giving the principle as he does, Mill is explaining that any rule's value within a given department in the Art of Life's subsidiary structure of rules is going to have value in light of the principle of utility. It is in this sense that the principle of utility is axiological rather than action guiding as such. Put differently, the principle of utility stipulates *what* has value (viz., whatever contributes to utility), but it does not stipulate precisely *how* or *to what extent* agents should realize or pursue those values.

Mill explicates the Art of Life somewhat differently in his *System of Logic* and "Bentham," but in both instances the Art of Life has three distinct evaluative departments, all of which serve the principle of utility in different domains of life.⁸⁰ In the department of aesthetics one evaluates characters, in morality conformity to moral rules, and in prudence matters of personal and public policy. Fuchs seems to be correct when he observes that a judgment in one department's assessment can but need not coincide with another's. A person judged to have a beautiful character might correctly follow a moral rule, but so also might a person with an ugly character.⁸¹ For instance, one type of person might obey a moral rule out of a love for humanity, while another might grudgingly follow the rule simply because she suspects that she cannot avoid

⁷⁹ D. G. Brown, "What is Mill's Principle of Utility?," *Canadian Journal of Philosophy*, 3 (1973), 1-12. There is some controversy here, however, which will be returned to when I discuss Mill's Art of Life in chapter six.

⁸⁰ In the earlier formulation Mill distinguishes the three departments according to morality, aesthetics, and "loveableness." Mill, "Bentham," *CW*, 10, 112. Most scholars seem to prefer the formulation from the *System of Logic* as representing Mill's more mature view since his formulation there survived the test of Mill's revision of the text many times through the years.

⁸¹ Fuchs, "Mill's Theory of Morally Correct Action," 151.

external punishments for breaking the rule. As such, while both might be performing a morally right action (i.e. following the moral rules), and thus be positively evaluated from the perspective of morality, they can also be evaluated differently from an aesthetic point of view.

Regardless of how exactly the system fits together (Mill leaves several open questions concerning the intricacies of the doctrine unexplained), the most important point here is that morality comprises only *one* of these three departments. Mill highlights this point in his criticism of Bentham. Mill claims that Bentham commits a mistake in his evaluation of all of the domains of life from the standpoint of morality:

This error, or rather one-sidedness, belongs to him not as a utilitarian, but as a moralist by profession, and in common with almost all professed moralists, whether religious or philosophical: *it is that of treating the moral view of actions and characters, which is unquestionably the first and most important mode of looking at them, as if it were the sole one*: whereas it is only one of three, by all of which our sentiments toward the human being may be, ought to be, and without entirely crushing our own nature cannot but be, materially influenced.⁸²

Though Fuchs does not cite this passage, it would help his rule utilitarian reading of Mill since it affirms the claim that Mill's moral theory contains a hierarchy of rules as well the claim that not every area of life fits within the domain of morality (as is the case for the act utilitarian reading).

⁸² Mill, "Bentham," *CW*, 10, 112. Emphasis added.

Fuchs' reply to Sumner and West

With this understanding of Mill's Art of Life in place, one can better understand some of the difficult challenges concerning the rule utilitarian reading that Fuchs considers next. As was noted above, in some cases an affirmative judgment in one department of evaluation (does the agent seem to have a good character?) is consistent with an affirmative judgment in another department (did she follow the correct moral rule?). But what is to be done if the rules governing, say, the department of prudence conflict with the department of morality? Fuchs highlights the problem by pointing to the fact that Lyons' interpretation initially favored privileging the moral domain over the prudential in cases of apparent conflict, while later suggesting just the reverse.⁸³ Sumner raises a similar difficulty by suggesting that, in cases when disaster is likely to follow upon following a valid moral rule, Mill allows for agents to appeal directly to utility in order to decide what to do.⁸⁴

West argues that this difficulty concerning conflicting domains in the Art of Life is part of a larger issue in Mill interpretation. West claims that act utilitarian justifications are a part of both adjudicating cases of conflict in the Art of Life and within the doctrine of moral obligation itself. In particular, there are three cases where these act utilitarian appeals are appropriate: cases between two or more conflicting moral

⁸³ Lyons, "Mill's Theory of Morality," esp. 119; David Lyons, "Utility and Rights," in *Ethics, Economics, and the Law*, eds., J.R. Pennock and J.W. Chapman (New York: New York University, 1982), 107-138. Since Lyons seems inclined more to the sanction utilitarian view and Fuchs does not directly comment on his arguments other than this one point, I will not be including him any further in this discussion.

⁸⁴ L.W. Sumner, "The Good and the Right," supplementary *Canadian Journal of Philosophy* 5 (1979): 112-114.

rules, cases where simple exceptions to rules seem required for reasons of expediency, and cases where one faces a completely novel situation in which there is no applicable moral rule.⁸⁵ Since West's worries provide a notable challenge to the rule utilitarian view, I will note the considerations in favor of each of these cases as well as Fuchs' responses. As in the previous section, I will raise some difficulties with Fuchs' arguments and the ultimate soundness of his interpretation.

West's first case concerns conflicts between valid moral rules. Mill seems well aware of potential conflicts between moral rules.⁸⁶ He writes that, "There exists no moral system under which there do not arise unequivocal cases of conflicting obligation."⁸⁷ Furthermore, Mill seems to say that utility is to be directly appealed to in just such cases: "If utility is the ultimate source of moral obligations, utility may be invoked to decide between them when their demands are incompatible."⁸⁸ Yet, Fuchs argues that Mill does not take the view that these cases of conflicting moral rules should be resolved in an act utilitarian way. "I understand [Mill], rather, as treating such potential conflicts as requiring limitations on the scope or range of applicability of each of the abutting rules, so that there really is no ultimate conflict between them."⁸⁹

In order to illustrate what he does think Mill intends, Fuchs mentions a case from late in chapter two of *Utilitarianism*. In considering whether one should withhold bad news from a dangerously ill person, Mill seems to allow that that the rules regarding

⁸⁵ Henry West, *An Introduction to Mill's Utilitarian Ethics* (Cambridge, UK: Cambridge University Press, 2004), 97.

⁸⁶ See West, *An Introduction to Mill's Utilitarian Ethics*, 87-88.

⁸⁷ Mill, *U*, 2.25.

⁸⁸ Ibid.

⁸⁹ Fuchs, "Mill's Theory of Morally Correct Action," 152.

truth telling might be in conflict with rules protecting innocent lives.⁹⁰ However, Mill does not suppose, as we would expect on the act utilitarian analysis, that one weighs the consequences of each alternative course of action and then acts on the one that maximizes utility. Instead, Mill suggests that the simple rule prohibiting lying as such does not apply when an innocent life is in question, and another rule stands in its stead. The relevant rule would be more like, “Don’t lie, except to save innocent lives,” as opposed to the more simple “Don’t lie.” In this way, the exceptions are built into the rule itself for reasons of utility. Mill notes, though, that such exceptions must be carefully limited so as to not lessen the emphasis that moral agents rightly place on truth telling:

But in order that the exception may not extend itself beyond the need, and may have the least possible effect in weakening reliance of veracity, it ought to be recognized and, *if possible its limits defined*; and if the principle of utility is good for anything, it must be good for weighing these conflicting utilities against one another and *marking out the region* within which one or the other preponderates.⁹¹

This passage is important since it explains Mill’s appeal to general utility in the earlier paragraph discussing conflicting rules.⁹² Considerations of utility can be used in order to set up what exceptions should be built into the rule itself so as to delineate where rules might apply and where they might not (i.e. where one rule should “preponderate” and one should not).

⁹⁰ See Mill, *U*, 2.23.

⁹¹ *Ibid.*, 2.23. Emphasis added.

⁹² i.e. in *Ibid.*, 2.25.

Fuchs also notes that Mill's discussion of how to handle apparently conflicting rules is discussed not only in chapter two of *Utilitarianism* but also in his analysis of justice in chapter five and his essay on Whewell. In the latter essay Mill gives a similar treatment to how to handle decisions regarding whether or not to break the rule against lying in light of other conflicting concerns:

The essential is, that the exception should be itself a general rule; so that, being of definite extent, and not leaving the expediencies to the partial judgment of the agent in the individual case, it may not shake the stability of the wider rule in the cases to which the reason of the exception does not extend.⁹³

This passage is important in two ways. First, it stresses that Mill is willing to allow some degree of complexity into his rules for exceptions. The rules are probably less complex than would be the case in the utilitarian generalization scheme discussed earlier. Second, Mill seems concerned to limit the role of individual discretion in application of the rule, so that others may come to depend on regular compliance. This fits with Mill's concern about cultivating a sense of security across society.⁹⁴

In chapter five of *Utilitarianism*, Mill provides a comparable analysis of building the exceptions into the general rule when there appear to be conflicting rules concerning justice and the saving of human lives. "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

⁹³ Mill, "Whewell on Moral Philosophy," *CW*, 10, 183.

⁹⁴ *Ibid.* Recall that Mill refers to security as, "The very groundwork of our existence." Mill, *U*, 5.25.

officiate the only qualified medical practitioner.”⁹⁵ That Mill would allow these exceptions seems surprising given how unbending he seems to regard the dictates of justice. After all, shortly before this passage Mill has written that, “Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life.”⁹⁶ Perhaps for this reason, Mill immediately explains these exceptions by saying:

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 injustice.⁹⁷

Fuchs suggests that this passage illustrates Mill’s penchant for using rule utilitarian methods to delineate the applicability of potentially conflicting moral rules. “In this case, the justified extent of the right to private property is limited somewhat by the utility of curtailing that right with a built-in exception for all situations in which innocent life is at stake.”⁹⁸ This supports the rule utilitarian reading, since Mill seems more concerned with

⁹⁵ Mill, *U*, 5.37.

⁹⁶ *Ibid.*, 5.32.

⁹⁷ *Ibid.*

⁹⁸ Fuchs, “Mill’s Theory of Morally Correct Actions,” 153.

accommodating the proper exceptions in the rules themselves than with simply directing agents to weigh the utility of potential options in a more direct way.

In light of all these passages, it seems, then, that one need not conclude that conflicting rules necessitate a direct appeal to the principle of utility in deciding what to do in particular actions. In general, the rule utilitarian solution is to appeal to greater complexity in the rules to handle such cases, since allowing for direct appeals to utility would undermine everyone's confidence, since no one can be sure that the rules will be followed. If everyone is made aware of the exceptions, as Mill seems to propose, then confidence in the rules can remain sufficiently high to promote the feeling of security that is so important for Mill.

West's second class of cases where direct utility calculations are permitted in Mill's moral theory do not involve conflicts of rules so much as the connection between those rules and their justification in terms of utility. Specifically, this second class of cases involves situations where one violates a rule and does a direct utility calculation regarding possible alternative courses of action because one sees that violating the rule would result in maximized utility.⁹⁹ West admits that *Utilitarianism* does not contain any instances of Mill giving examples of this kind, but seems to think that he would have or should have because of other features of his view. An example of what kind of case West has in mind concerns the case of charity. Specifically, he is concerned with strategic international giving (which has, let us suppose, greater efficiency in terms of happiness increased per dollar given) versus giving to local causes. When obeying the

⁹⁹ See West, *An Introduction to Mill's Utilitarian Ethics*, 88-89.

moral obligation to give to charity, an individual has some discretion in carrying out this obligation. “If one gives from one’s resources to those of one’s own country or neighborhood, when it will relieve minor distress, rather than giving to those of another country or class where it would relieve great distress, that would seem to be an instance deserving of the reproaches of enlightened utilitarian public opinion or at least one’s conscience.”¹⁰⁰ Since utility would be so much more greatly impacted by more strategic international giving, West concludes that Mill should allow for direct appeals to utility to give an individual guidance in how to follow her moral duty to beneficence.

Fuchs’ response to West suggests that the latter has projected too much of his own (or even our own) values onto Mill. “But while *we* might agree with West’s moral assessment of the example, Mill I believe would not have.”¹⁰¹ In chapter five of *Utilitarianism*, Mill specifically includes ordinary acts of beneficence and charity as imperfect duties, which do not, on Fuchs’ or my view, require utility maximization.¹⁰² He seems, in fact, to sketch a theory of moral obligation that requires much less of agents than the maximally best. Moreover, insisting that one has a general duty to maximize rather than follow a moral rule seems to elide Mill’s distinction between obligatory conduct and supererogatory action.

Before turning to Mill’s theory of supererogation, however, it is worth pausing to consider the nature of Fuchs’ interpretation concerning Mill’s account of rules. On the

¹⁰⁰ Ibid, 88.

¹⁰¹ Fuchs, “Mill’s Theory of Morally Correct Action,” 153.

¹⁰² Mill regards these as imperfect duties that, “are left to our choice as in the case of charity or beneficence, which we are indeed bound to practice but not towards any particular person, nor at any prescribed time.” Mill, *U*, 5.15.

ideal code interpretation that Fuchs argues for, agents construct rules that, if widely internalized, would maximize utility. One complication with that account is that, at times, Mill seems to have a less lofty conception of what utilitarians should aim for. To see just how low the bar is set, so to speak, consider Mill's claim that, "As a rule of conduct, to be enforced by moral sanctions, we think no more should be attempted than to prevent people from doing harm to others, or omitting to do such good as they have undertaken."¹⁰³ This hardly reads like someone constructing rules that aim to maximize utility. Mill presumably is aiming to *promote*, rather than maximize utility through the use of moral rules. Thus, while Fuchs seems correct in correcting West's reading of Mill's imperfect duties, there is a question as to whether Fuchs' own reading of Mill's theory of moral rules is itself too demanding given the passage just quoted.

Putting this worry about Fuchs' conception of rule utilitarianism aside, it is worth briefly mentioning Mill's account of supererogatory action, a topic that will be featured in later chapters.¹⁰⁴ I will mention just two passages here to make the relevant point.¹⁰⁵ In chapter five of *Utilitarianism*, Mill admits that there are actions (perhaps of just the sort that West is imagining) that are laudable but not morally binding—that is there are actions:

which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not

¹⁰³ Mill, "Auguste Comte and Positivism," *CW*, 10, 339.

¹⁰⁴ For a more involved discussion of these passages see Jacobson, "Diversity of Utilitarianism," 10-11.

¹⁰⁵ I passed over Fuchs' discussion in the article as it was rather brief and not terrifically substantiated. See Fuchs, "Mill's Theory of Morally Correct Action," 147-148.

bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment.¹⁰⁶

It is thus possible for the utilitarian to *admire* someone who strategically gives away their money so as to maximize utility, but that does not mean that such actions are matters of moral obligation since Mill plainly seems to see such actions as above the demands of duty.

To put this discussion back in the context of West's concerns, Mill may well recognize a moral obligation to be charitable, though it is not obvious that that obligation requires that we have an obligation to *maximize* utility with our charity. The second passage concerning supererogation can be found in Mill's essay on Comte where he remarks that moral obligations create a moral standard that agents should follow, "But above this standard there is an unlimited range of moral worth, up to the most exalted heroism, which should be fostered by every positive encouragement, though not converted into an obligation."¹⁰⁷ With this analysis in place, we can see that West's analysis will not do. On his reading of Mill, humans seem obliged to override a moral rule in cases where utility would clearly be maximized. However, in light of the discussion of imperfect duties and supererogatory action this seems mistaken as it overlooks Mill's point that there might be courses of action that are admirable but not obligatory and obligatory but not ideal. Though we can commend the generous and

¹⁰⁶ Mill, *U*, 5.14.

¹⁰⁷ Mill, "Comte," *CW*, 10, 339.

utility maximizing donor, we can recognize that he is not morally bound to behave as he does.

Fuchs, then, resists West's claim that a moral rule can be suppressed so as to maximize utility. He does allow, though, that there can be exceptions to rules in cases where following the rules would lead to disasters. This leads me to consider a point raised by Sumner in his discussion of rules and disasters in Mill's thought. Sumner has argued that Mill recognizes a general duty to avoid disasters. As he interprets Mill, when this duty conflicts with other moral rules the agent should make a direct appeal to the principle of utility in her moral deliberations.¹⁰⁸ In citing justification for his claim, Sumner appeals a passage in *Utilitarianism* where Mill mentions cases where it would be permissible to, as he says, "overrule the general maxims of justice."¹⁰⁹ However, while it is true that Mill seems to be allowing for exceptions in these kinds of dire cases where disasters might ensue, it does not follow that one must make a direct appeal to utility in deciding to suspend the rule. Fuchs argues that most disastrous consequences (e.g. the death of an innocent person or the loss of liberty to a whole democratic nation) that could arise from following some moral rule are likely violations of some dictate of justice, "since they would constitute wrongful harms from which their victims would have rights to be free."¹¹⁰ If this is so, then this case is essentially no different than the first class of cases that West mentioned. There, as here, the rule in question should be

¹⁰⁸ Sumner, "The Good and the Right," esp. 128-129.

¹⁰⁹ Mill, *U*, 5.37. This is the same page, in the *Collected Works* where Mill mentions the case of stealing and kidnapping to save a life.

¹¹⁰ Fuchs, "Mill's Theory of Morally Correct Action," 154.

amended so as to allow one to avert the disaster. In such instances as this there is no need for a direct appeal to utility as the act utilitarian would have it. Still, one can imagine an interlocutor inquiring what is to be done when following a rule would lead to disaster and there are no known relevant, countervailing rules to appeal to. Should the agent appeal to act utilitarian considerations, then, on Mill's view? Fuchs says no:

The question a Millian rule utilitarian would ask is: Would the rule with a general built-in exception for averting disaster bring about greater utility than that same rule without such an exception? If so, then that exception becomes a part of the correct moral precept, and therefore invoking it would not really constitute a violation of the optimific, revised rule at all.¹¹¹

West's third and final class of cases concerns those instances where there seem to be no applicable rules in the ideal code to handle a morally relevant situation. In these cases agents should make a direct appeal to utility just as act utilitarians would. Fuchs admits that this is an important issue as there are likely to be situations where no extant moral rules speak conclusively to the matter at hand. Mill seems in concert with this opinion as he notes that we might use ad hoc calculations of the sort that seem initially like the kind act utilitarians favor. That said, Mill goes on to say that we cannot act like judges who simply apply the law in a rigidly mechanical fashion. Instead, he says that agents are more like legislators or administrators. As Fuchs quotes Mill on this point, legislators and administrators go back and forth between according their conduct to a

¹¹¹ Ibid.

given rule and allowing their conduct to be “formed on the merits of the particular case.”¹¹²

One might be inclined to read this last bit of phrasing as an endorsement of act utilitarian thinking. However, Fuchs makes the point that “legislators and administrators usually do not make rulings limited to individual isolated cases; they more typically enact general laws, rules, and regulations governing broad classes of activity.”¹¹³ Indeed, shortly after instructing deliberators confronting a new situation to which a rule does not apply to make their decisions “on the merits of particular cases,” Mill directs agents to use decidedly rule utilitarian methods in acting as legislators and administrators. They should identify the proper end of action (in this case the principle of utility) and then use:

Science to inquire what are the kinds of actions by which this end, this happiness or this perfection of character, is capable of being realized. When Science has framed propositions, which are the completed expression of the whole of the conditions necessary to the desired end, these are handed over to Art, which has nothing further to do but to transform them into corresponding *rules of conduct*.¹¹⁴

In deliberating in this way, then, agents are engaged in writing part of the ideal code when confronting new situations. This seems evident in Mill insisting that new rules of conduct (as he puts it) are issued at the conclusion of the deliberation. Part of this

¹¹² Mill, *System of Logic*, CW, 8, 1154.

¹¹³ Fuchs, “Mill’s Theory of Morally Correct Action,” 154.

¹¹⁴ Mill, *System of Logic*, CW, 8, 1155.

deliberation as ideal rule utilitarian agents, of course, involves considering whether utility would be able to justify the difficulties in deciding if it should be made into a legal rule as well as problems related to getting agents to internalize the moral rule in their consciences, enforcing it among other agents, and so on. While this process has its complications, all of these considerations are decidedly part of the rule utilitarian scheme of morality and involve no direct appeal to the principle of utility as the act utilitarian would suppose.¹¹⁵

There is much to be said for this response as a way of responding to the worry that agents must make direct appeals to utility. Once again, however, Fuchs' quotation comes as a fruit from a possibly poisoned tree. This passage is taken from Appendix H, which was dropped by Mill in later editions of that book. As such, one cannot be sure how to read it as a reflection of Mill's thoughts on moral philosophy from the period of the 1850s to when he died in 1873.¹¹⁶ Given that this is the period when Mill seems to have formulated the central moral and political theories that scholars of his moral theory are typically interested in, the fact that Mill elected to drop this language in the text does not help Fuchs' case against the act utilitarian reading. Thus, while this passage does do helpful work in describing how Mill might handle such cases in a rule utilitarian way, it seems less than wholly satisfactory as a representation of Mill's mature thought in moral philosophy. Later, in the next chapter, I will return to the question of Mill discusses

¹¹⁵ This is apart, of course, from the passage in Bentham that Berger cites for his position.

¹¹⁶ Recall that Appendix H was dropped in the 1851 edition, which was before Mill had begun to write *Utilitarianism*. For the editor's note on the editions see Mill, *System of Logic*, CW, 8, 1154.

these types of cases, though for the time being it is less than obvious how the ideal code utilitarian can respond to West's third kind of case.

Conclusion

As we have seen, then, Fuchs' account does a great deal to improve upon Urnson's initial rule utilitarian interpretation from over sixty years ago. Fuchs' reading provides persuasive evidence to favor the ideal code version of rule utilitarianism over the utilitarian generalization theory as a reading of Mill, though it is less clear that he provides a definitive account of Mill's moral theory. I provided some reason to believe that Mill may not have a maximizing conception of moral rules, while also pointing to some oversights and omissions in Fuchs' choice of sources. That said, as the next chapter will make clear, by way of providing a point of contrast, that these rule utilitarian interpretations bear fairly close resemblance to the sanction utilitarian interpretation that I will eventually be arguing for, even if a rule utilitarian approach have been found wanting, as an interpretation of Mill, in some respects.

CHAPTER III

ACT UTILITARIAN INTERPRETATIONS OF MILL

As in the previous chapter discussing the rule utilitarian reading, this chapter will critically examine two prominent defenders of the act utilitarian interpretation of Mill. This chapter will be notably different than the previous one in that there were no difficulties in attaching the rule utilitarian label to Urmson and Fuchs. Matters are more complicated in the case of act utilitarianism. Crisp fully accepts the act utilitarian label for his reading of Mill, while Berger does not, and several of Berger's arguments suggest that Mill is far from holding the type of position outlined by Crisp.¹¹⁷ Nonetheless, Berger's views, in some respects, also sit uneasily with the rule and sanction utilitarian readings. In a sense, his reading of Mill is a *sui generis* reading, and I want to be candid in my acknowledgement that his pairing with Crisp in this section is somewhat contrived. So, *caveat emptor*. Even Crisp does not recognize Berger as sharing the act utilitarian interpretation and classifies Berger's interpretation of Mill as "non-utilitarian," though Crisp does not explain why he classifies Berger in this way.¹¹⁸

Philosophical categorizations are, of course, rarely comprehensive. That said, there are two broad reasons to pair Crisp and Berger in this section. First, the two authors share a reading of Mill that emphasizes the point that Mill is quite comfortable,

¹¹⁷ For Berger's rejection of the standard label of act utilitarianism see Berger, *Happiness, Justice, and Freedom*, 65.

¹¹⁸ See Crisp, *Mill on Utilitarianism*, 133. Berger says that he reads Mill as a utilitarian, though in a rather broad sense. Berger, *Happiness, Justice, and Freedom*, 5.

in certain specified circumstances, with direct appeals to utility to determine the rightness of a particular action for the sake of utility. Rule utilitarians, of whatever variety, only make reference to utility in considering how to comply with, amend, or create a new rule in cases of conflicting rules, potential disasters, or situations where rules are not readily applicable. Thus, the fact that Crisp and Berger read Mill as allowing for direct appeals to utility is at odds with a crucial component of the rule utilitarian position. That said, both have benefited from the insights of the scholarship that came after Urmson, and each allow that moral rules play a significant role in Mill's moral theory. All moral rules, on their respective views, are, strictly speaking, provisional, but they do provide an absolutely essential component to complying with utilitarianism in a direct way.

The second reason to discuss these two interpreters together is that Crisp and Berger both give a prominent place to Mill's statement of the Greatest Happiness Principle in chapter two of *Utilitarianism*. They both find Urmson's initial rule utilitarian reading of that chapter problematic and disagree with the emphasis that some have placed on Mill's apparent linking of moral wrong to punishment in chapter five of *Utilitarianism*. In general, it would not be misleading to say that both read Mill as a proponent of a much more *demanding* moral scheme than is given under the sanction utilitarian view, though the precise nature of this will only become evident as we explore their respective readings in more detail.

I will begin with Crisp's account, which can establish the sharp contrast with the rule utilitarian reading before moving on to Berger's less easily categorized

interpretation. My reading of Crisp will be significantly longer and more involved than my discussion of Berger. This is, in part, because Berger provides less of a foil to the sanction utilitarian position than Crisp.

Crisp's interpretive methodology

To begin, it is worth saying a few words about the broader outlines of Crisp's text and his methodology for interpreting Mill. In this chapter I will be focusing on his book *Mill on Utilitarianism*, especially Crisp's fifth chapter on Mill's account of a morally right action.¹¹⁹ *Mill on Utilitarianism* provides a discussion of both biographical and philosophical issues relevant to Mill. He includes chapters discussing Mill's life and intellectual trajectory away from his earlier Benthamite roots as well as chapters devoted to all the major issues in *Utilitarianism*, such as debates over his theory of value, his "proof" of the principle of utility, his account of justice, and so on. He also has particular chapters analyzing *On Liberty* and *The Subjection of Women* in light of the act utilitarian interpretation articulated throughout the text (but put most forcefully in the fifth chapter). Once Crisp has his reading of Mill's utilitarianism in place, in other words, he interprets all of Mill's later writings in light of Mill's apparent act utilitarianism.

In Crisp's view, works like *On Liberty* and *The Subjection of Women* serve as interesting examples of Mill's theory in application; it is in *Utilitarianism* that one finds,

¹¹⁹ For some notable texts citing Crisp's work see, Wendy Donner and Richard Fumerton, *Mill*, (New York: Wiley-Blackwell, 2009); Brink, *Mill's Progressive Principles*; Driver, "The History of Utilitarianism,"; Jacobson, "The Diversity of Utilitarianism," Fuchs, "Mill's Theory of Morally Correct Action,"; Miller, *J.S Mill*.

“the summation and defence, of [Mill’s] thoughts on the doctrine which provided the foundation for his views in other areas.”¹²⁰ Crisp argues that in these other texts, Mill is discussing secondary, rather than primary, principles. In works on secondary principles, Mill is trying to convince readers to change their attitudes on issues like paternalistic state policies and the unfair treatment of women. While the attitudes Mill defends in those writings might be consistent with the principle of utility he ultimately avows, to Crisp, Mill is writing more as an activist pushing a cause than as a careful philosopher articulating his deductions. In those writings, “What was important—what the greatest happiness principle itself required—was to get people straight on these secondary principles. In his writing on these contentious issues, Mill is of course attempting to state what he believes; but he is also using the skills of a rhetorician to persuade.”¹²¹

Utilitarianism is the work that provides the defense of the doctrine on which these works depend, and the scholar can, in Crisp’s view anyway, take Mill at his word in *Utilitarianism* in a way that one cannot in these other texts.

As will be evident in the upcoming discussion, Crisp’s commitment to *Utilitarianism* as a keystone text for elucidating Mill’s first principles colors the rest of his interpretation. To give just one example, consider his reading of the following passage from *On Liberty*: “It is proper to state that I forego any advantage which would be derived to my argument from the idea of abstract right, as a thing independent of

¹²⁰ Crisp, *Mill on Utilitarianism*, 8.

¹²¹ *Ibid.*, 15.

utility. I regard utility as the ultimate appeal on all ethical questions.”¹²² When Mill affirms his commitment to utility here, Crisp takes this to mean that Mill’s arguments about liberty “cannot ground any kind of liberalism which is inconsistent with his act utilitarianism.”¹²³ In other words, any subsequent aspects of that book that *seem* to be in conflict with Mill’s act utilitarianism should be read as Mill writing as a rhetorician rather than as philosopher spelling out his views.

Of course, this is not the only way to read Mill’s affirmation of his commitment to utility in this passage. One might think that Mill’s discussion of liberty in this famous work can and should inform the reader as to what *kind* of utilitarianism Mill ultimately defends. Further, merely saying that utility is the ultimate appeal does not mean that Mill supposes that it is clear what this means and how it will fit into his overall argument. In his mention of Mill’s affirmation here, Crisp cuts off the end of this sentence, where Mill adds, “. . . but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being.”¹²⁴ It is notable that Mill immediately goes on to explain the way in which those interests and their promotion will be informed by the limits society must have in compelling individuals to promote the general good—thus further supporting the idea that Mill intends to *explain* his application of the doctrine of utility in the work in question.¹²⁵ In my view, this is because Mill knows that, given the

¹²² Mill, *OL*, 1.11.

¹²³ Crisp, *Mill on Utilitarianism*, 175.

¹²⁴ Mill, *OL*, 1.11.

¹²⁵ I bring up this discussion to highlight the point that Crisp is adopting a very specific methodological point of view that is at odds with alternative approaches. For instance, Jacobson puts Mill’s bold commitment to liberty (“Over himself, over his own body and mind the individual is

complexity of utility, saying that utility is the “ultimate appeal” is not saying anything that is especially definite.

It is also helpful to remember that though the two works were written during roughly the same period (as will be discussed next chapter), Mill could not depend on the readers of *On Liberty* to understand his supposed commitment to act utilitarianism as it is purportedly given in *Utilitarianism* since the former was published two years ahead of the latter. Crisp is correct in saying that utility is Mill’s ultimate appeal on all ethical questions, but the precise nature of that appeal, as should be evident by now, is less than obvious.

The greatest happiness principle and the levels of morality

Throughout his chapter on right action, Crisp generally practices what he preaches regarding his privileging of *Utilitarianism* as the key text for interpreting Mill’s moral philosophy. His method in this chapter is to give an argument for a particular reading of the greatest happiness principle and then to contextualize that reading within a set of distinctions and potential objections that have occupied both Mill scholars and utilitarians more generally. Following the discussion of the greatest happiness principle, I will introduce four of his distinctions concerning utilitarian conceptions of rightness, evaluating outcomes, and decision procedures. Getting clear on these will be helpful for understanding Crisp’s reading of moral rules, the demandingness of moral theory, the

sovereign,” *OL* 1.9), and anti-paternalistic social policies as they are given in *On Liberty* at the forefront of his interpretation of Mill’s theory of morality.

Art of Life and supererogatory actions, and Crisp's account of sanctions (which will be components of his argument that I focus on in later sections of this chapter).

Crisp strongly identifies his reading of Mill's ethics with Mill's famous gloss on utilitarianism in chapter two of *Utilitarianism*, where Mill writes that, "The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."¹²⁶ In a rather daring way (to my eyes) Crisp claims that, "This passage is the clearest statement in *Utilitarianism* of Mill's moral theory."¹²⁷ While I will not go into the details here, Jacobson could hardly disagree more with Crisp on this point, and he has challenged Crisp's reading of the greatest happiness principle by arguing that the principle is formulated so as to be purposefully *vague*.¹²⁸ It is also worth pointing out that Mill gives a different and apparently incompatible version of the principle later in chapter two.¹²⁹

Crisp's claim for the importance and clarity of the greatest happiness principle appears to be based on the specific context in which Mill states the claim. Mill's exposition of the principle falls within the chapter titled "On What Utilitarianism Is," which comes after Mill has mentioned (at 1.5) that he aims to give an account of utilitarianism and a proof of it, in the text. Crisp also notes that the phrase 'right' must mean 'morally right' since Mill is speaking of a "creed" that is concerned with the

¹²⁶ Mill, *U*, 2.2.

¹²⁷ Crisp, *Mill on Utilitarianism*, 95.

¹²⁸ The "purposefully" here is in reference to Jacobson's reading of *Utilitarianism* as an ecumenical document. See Jacobson, "Diversity of Utilitarianism," esp. 7-12.

¹²⁹ Mill, *U*, 2.10. Berger demonstrates an awareness of this alternative definition and tempers his analysis accordingly. Berger, *Happiness, Justice, and Freedom*, 106.

principles of morals. In Crisp's view, the reading of the principle is that "actions are right insofar as they increase happiness and wrong insofar as they decrease it, by increasing unhappiness."¹³⁰ Right actions, then, come in degrees, but, "*The* right action can be understood as, or stipulated to be, the *morally* best action."¹³¹ The right action will be the one that maximizes happiness, though some actions, by increasing unhappiness, can be better or worse in degrees. This last point is brought out by Mill's immediate qualification that, "by happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure."¹³² If Mill had not added this qualification, one might think that promoting happiness, regardless of how much pain was intermixed with it, could serve as the dominant concern in evaluating the rightness of actions. With addendum about absences and privations of pain and pleasure, Mill makes it clear that rightness is about achieving the optimum *balance* of pain and pleasure. Summing up his exposition of the principle, then, Crisp writes that, "The right (morally best) action will be that which produces the greatest of pleasure over pain, or, if this is not possible, the least balance of pain over pleasure."¹³³

With his reading of the greatest happiness principle in place, we can now turn to the distinctions that motivate Crisp's interpretation. The first distinction concerns how one evaluates *outcomes* from a utilitarian point of view. The distinction can be plainly

¹³⁰ Crisp, *Mill on Utilitarianism*, 96.

¹³¹ *Ibid.*, 96. Even Berger, a qualified supporter of the act utilitarian reading, admits that though many have said that the passage suggests an act utilitarian reading of Mill's moral theory, "there is sufficient imprecision in Mill's formulation of the criterion of right and wrong to question this attribution." Berger, *Happiness, Justice, and Freedom*, 105.

¹³² Mill, *U*, 2.2.

¹³³ Crisp, *Mill on Utilitarianism*, 96.

seen in light of the following thought experiment. Suppose a patient is facing a serious medical condition, and two courses of treatment are available to the doctor who must make a decision for the patient. Treatment A will leave the patient with a high level of welfare (stipulated at 50 units), and Treatment B will leave the patient with a significantly lower level of welfare (stipulated at 25 units). Treatment A has a 1% chance of success, and if it fails the patient dies. Treatment B has 99% chance of success and minimal consequences if it fails. Suppose the doctor elects to undertake Treatment A and is successful. If one is an *actualist* about utilitarian outcomes then one evaluates the rightness or wrongness of an action in light of what in fact happens as it regards the balance of pleasure and pain. From an actualist point of view, the doctor's action was the right one. Alternatively, one could be a *probabilist* about outcomes. On this view, one must consider what the agent understands of the probabilities of the resulting pleasure and pain balance resulting from the action in question. In this case, from the probabilist point of view, the doctor did the *wrong* action since the probabilities for the good outcome were so low and the likely negative consequences were so high.

This distinction maps onto Mill in a less than straightforward way. Crisp says that this is because “the difference between actualism and probabilism appears not to have greatly concerned Mill.”¹³⁴ I am discussing it here as it serves as an example of how Crisp tries to map later developments of utilitarian and consequentialist theory onto Mill's thought. On the one hand, Crisp reads Mill as an actualist about outcomes based on the latter's endorsement of the greatest happiness principle passage. Crisp writes that

¹³⁴ Ibid., 100.

Mill's view is an actualist one because, "it takes into account only what would actually happen. The right action in any circumstance is the one which will actually turn out to produce the greatest possible balance of pleasure over pain."¹³⁵ Yet, soon after saying that this is Mill's view, Crisp admits that the evidence for Mill's opinion on the matter is inconclusive. At times, as in the passage giving the greatest happiness principle, Mill sounds like an actualist but elsewhere he says that an action depends on the intention or foreseeable consequences of an action.¹³⁶ Crisp's solution to this difficulty is one that he will employ throughout this discussion: he suggests that Mill considers the question of moral rightness on two different levels.

To explain his reading of Mill's conception of rightness as residing on two levels, he suggests a second distinction arising out of Sidgwick, concerning the *subjective* and *objective* conceptions of utilitarian rightness.¹³⁷ Subjective conceptions of rightness evaluate actions with respect to expected utility, whereas objective conceptions of rightness evaluate actions with regard to the action's resulting utility. The doctor might have done the objectively right action from the standpoint of utility (i.e. the action brings about greater utility than other possible choices), though from the subjective point of view, the doctor did the wrong action since he lacked the proper justification from his limited point of view. Using this distinction, Crisp states that one can say that Mill accepts probabilism on the subjective level but actualism on the objective level. Of

¹³⁵ Ibid., 99.

¹³⁶ For example see "Bentham," *CW*, 10, 112. Mill's concept of expected consequences will get a more detailed treatment in the discussion of Berger.

¹³⁷ See Henry Sidgwick *The Methods of Ethics*, 7th ed. (Indianapolis: Hackett Publishing, 1981), 207-208.

course, Crisp saying that Mill adopts this point of view does not commit Mill to claiming that agents should adopt either the subjective or objective stance in our moral deliberation or praising and blaming of other agents. For example, just because one has, objectively, done something morally wrong, it might be contrary to the demands of utility to actually blame that person. Subjectivism and objectivism are only concerned with evaluating right action, but not necessarily with determining how to *think* about promoting the right action—which is where Crisp turns his attention next.

Crisp draws a third distinction between *direct* and *indirect* understandings of utilitarianism insofar as they concern the criterion of right action. Crisp states that the direct act utilitarian criterion for right action is that, “an action is right if and only if it maximizes welfare. Its rightness consists in its having the property of being welfare-maximizing.”¹³⁸ This is a direct type of utilitarianism, which applies the maximizing principle directly to acts, which stands in contrast to an indirect rule utilitarian theory where rightness depends on conformity to rules, “which maximize happiness were most or all people to accept them.”¹³⁹ More specifically, he contrasts a multi-level act utilitarian reading with the rule utilitarian reading as it is given by Urmson. Since he raises familiar objections to Urmson’s interpretation like those discussed in the previous chapter, I will not spend time rehearsing the problems here.

Crisp’s fourth and final distinction is his most important one. This distinction contrasts alternative decision procedures for act utilitarian agents. He notes that his

¹³⁸ Crisp, *Mill on Utilitarianism*, 127.

¹³⁹ *Ibid.*, 102. Crisp does not contrast his theory with other types of indirect utilitarianism that do not require that agent’s maximize utility.

reading of Mill as an act utilitarian commits him only to a certain view about what rightness consists in but not the ways in which agents should *deliberate* about how to actually achieve right action. Crisp identifies three types of act utilitarian decision procedures: single level, self-effacing, and multi-level. The single level act utilitarian decision procedure is dominated by constant appeals to utility with the aim of maximizing welfare. This procedure “requires that one be entirely impartial between people (or rather, their utilities), and that one be educated to the point where the theory can be rationally applied.”¹⁴⁰ Given the difficulties of a constant calculation of utility, Crisp, joining many others, doubts whether single level act utilitarianism is even psychologically possible. That is to say, even if an agent did all that she could to follow a single level act utilitarianism, the demands of strict impartiality and careful calculation would probably be overwhelming to the extent that she would not *be able*, mentally or emotionally, to maintain her initial commitment.

Aside from the empirical question of whether it is possible, there is also a philosophical difficulty with the view. That is to say, aside from the psychological question, there is a question as to whether a conceptual analysis of the theory itself will show that it is best pursued on something besides a single-level. As Mill himself noted in responding to standard objections to utilitarianism, constant calculation for the sake of utility might itself not best promote utility. In response to the objection that one does not have time to calculate all of the effects for actions, Mill says that this objection is misplaced:

¹⁴⁰ Ibid., 106.

This is exactly as if any one were to say that it is impossible to guide our conduct by Christianity, because there is not time, on every occasion on which anything has to be done, to read through the Old and New Testaments. There has been ample time, namely, the whole duration of the human species. During all that time mankind have been learning by experience, the tendencies of action; on which experience all that prudence, as well as the morality of life, is dependent.¹⁴¹

The use of experience, then, allows humans to derive various rules that have been found to promote utility, thus obviating the need for constant calculation. Single level act utilitarianism, then, fails at both the psychological and philosophical level.

In the above passage, Mill points to the need to use past experiences to provide guidelines for how utility might be promoted. These guidelines comprise what Crisp calls the rules of customary morality. Crisp writes that it is crude and possibly misleading to call these ‘rules of thumb’, and, later in the chapter, he claims that it is a mistake to regard them as “merely” rules of thumb.¹⁴² The rules of customary morality, on the act utilitarian scheme, do have an important role to play in Mill’s theory, but it does not commit him to what has been called a *self-effacing* act utilitarianism.¹⁴³ On this view, for purely act utilitarian reasons, one never appeals to act utilitarian justifications for right action. Crisp says that Mill’s view is neither single-level nor self-effacing, but

¹⁴¹ Mill, *U*, 2.24.

¹⁴² Crisp, *Mill on Utilitarianism*, 109; *Ibid.*, 124.

¹⁴³ For more on this view see Derek Parfit, *Reasons and Persons* (Oxford, UK: Clarendon Press, 1984), 40-43.

multi-level. As he describes it, “Mill’s multi-level view is a messy compromise between a single-level view and a self-effacing view.”¹⁴⁴

On Mill’s messy multi-level view, the rules of customary morality are most commonly used on the first level of moral deliberation. These customary rules do not necessarily have act utilitarian justifications. Crisp gives the example of two conflicting non-act utilitarian principles of customary morality in the familiar case of promising to meet a friend for coffee and then being suddenly called away, just before leaving to meet your friend, to help a co-worker in urgent need. To decide between our commitments in this kind of case, one can employ act-utilitarian reasoning. To be clear, Crisp reads Mill as believing that customary morality itself allows for direct appeals to utility at least in some cases. In this way, customary morality, for Mill, operates on two levels: one non-utilitarian and one utilitarian.

To justify this reading of Mill’s theory of customary morality, Crisp appeals to several passages from the second and third chapters of *Utilitarianism*. To begin with, he quotes Mill’s closing words in the second chapter:

We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. There is no case of moral obligation in which some secondary principle is not involved; and if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognised.¹⁴⁵

¹⁴⁴ Crisp, *Mill on Utilitarianism*, 124.

¹⁴⁵ Mill, *U*, 2.25.

While Urmson quoted this very passage in support of his reading by emphasizing Mill's commitment to the express connection between moral obligation and secondary principles (i.e. moral rules), Crisp interprets the passage as stressing Mill's directive that, "one should not consult the principle of utility except when two utilitarian principles conflict."¹⁴⁶

In response to the question of why Mill ties moral obligation to secondary principles rather than the primary principle of utility, Crisp appeals to the opening paragraph of the third chapter of *Utilitarianism*, where Mill admits that the principle of utility does not feel binding on humans currently, but, with proper education, we may come to feel as much in the future. Crisp notes, quite correctly, that Mill saw utilitarian morality as a progressive enterprise that was sure to evolve in its demands on agents. As Mill says in chapter two (echoing sentiments expressed in many places): "That the received code of ethics is by no means a divine right; and that mankind have still much to learn as to the effects of actions on the general happiness, I admit, or rather, earnestly maintain."¹⁴⁷ Crisp supposes, though, more controversially, that Mill envisions a future customary morality that ties moral obligation to the principle of utility more directly. In support of this supposition, he points to a passage where Mill says that with proper education humans:

¹⁴⁶ Crisp, *Mill on Utilitarianism*, 110. Interestingly, Crisp qualifies this analysis with a footnote, saying that Mill seems to be "something of an exaggeration on Mill's part" in this passage, since he held the view that customary morality, in its ideal form, would allow for unadulterated appeals to utility.

¹⁴⁷ Mill, *U*, 2.24.

. . . may be unable to conceive the possibility of happiness to himself, consistently with conduct opposed to the general good, but also that a direct impulse to promote the general good may be in every individual *one* of the habitual motives of action, and the sentiments connected therewith may fill a large and prominent place in every human being's sentient existence.¹⁴⁸

At this point, it will be helpful to recapitulate Crisp's understanding of Mill's multi-level view and then add his final complication to it. Customary morality operates on two levels: one non-utilitarian and the other utilitarian. To use Crisp's example, one operates on the first level when one says, "That action was courageous" and takes that statement, on its own terms, to mean that what one did was the morally correct action. When non-utilitarian rules conflict, one can move from the first level of customary morality to the second level and appeal directly to utility. Crisp admits that, for Mill, human feelings of moral obligation are only tied to moral rules and not to the direct promotion of utility itself. Still, while Crisp does not say so directly, he seems to think that this will change in time with a proper utilitarian education. In *Utilitarianism*, Mill demonstrates a commitment to the progressive nature of morality, and, as Crisp reads him, Mill supposes that, with the correct educational apparatus, moral agents will come to tie feelings of moral obligation to the principle of utility apart from those cases of conflicting obligation. Yet—and here is the new complication—Mill also operates on a third level, the level of philosophy, which is distinct from the two levels of customary morality. This is the level at which Mill is operating when he is discussing the greatest

¹⁴⁸ Ibid., 2.18. Emphasis in original. For quotation see Crisp, *Mill on Utilitarianism*, 111.

happiness principle. Though he does not spell this out as much as he might, it seems as if Crisp understands this level is a kind of meta-level wherein one might speak about how the levels are to function and what their aim is (in this case, to maximize utility). It is not entirely clear what other propositions, besides the greatest happiness principle are on this level. Three other possibilities are when Mill describes the nature of the Art of Life, how supererogatory duties fit into utility maximization, and the different ways in which duty might be thought of on different levels. Crisp makes it clear, though, when Mill is speaking about moral matters, he might be speaking about any of the three levels, and it is sometimes difficult to tell what level he is referring to in giving different pronouncements.

As Crisp admits, Mill's commitment to these three levels of moral discourse makes interpreting his moral philosophy quite difficult. For instance, when Mill says in a letter that inequality is bad *in itself* (a claim, which, at face value, is inconsistent with utilitarianism), "it is not clear whether he is operating at the level of philosophical theory, or that of customary morality."¹⁴⁹ Nonetheless, though Mill sometimes strongly identifies his doctrine with the dictates of customary morality, Crisp reads him as committed to the act utilitarian ideal. Engaging in these three levels of moral discourse might make Mill appear inconsistent at times, "But when he was engaged in doing serious moral philosophy that is, in making claims about what *really* makes actions right

¹⁴⁹ Crisp, *Mill on Utilitarianism*, 111n9. For the letter in question see Mill to Arthur Helps, date unknown, *CW*, 17, 2002.

or wrong, he would have denied that actions are wrong *just because* they are actions in contravention of customary morality.”¹⁵⁰

Putting aside for a moment the methodological issue of how one knows when Mill is doing “serious moral philosophy,” it is unclear what Crisp takes this last claim to establish or affirm. Neither the rule nor sanction utilitarian interpreters would claim that Mill takes contravention of customary morality (as Crisp has defined it) to be *sufficient* for wrongness, since Crisp has built it into the view that customary morality includes obligations for an agent to practice “the act utilitarian principle of impartial benevolence.”¹⁵¹ As was mentioned in Fuchs’ analysis of benevolence, rule utilitarians can allow that one can do less than the best thing possible and still do a morally right action. This is still true even on a more standard understanding of “conventional morality.” Insofar as rule and sanction utilitarian interpreters insist on Mill’s belief that some spheres of action are beyond the bounds of moral reproach because they are purely self-regarding, there can be many actions that go against customary morality that are nonetheless deemed allowable by Mill.¹⁵² People might engage in offensive or unpleasant actions that go against the rules of morality as some people (as a matter of opinion) understand it, but, insofar as they do not result in the violation of a distinct right of another agent, Mill allows that such actions are not in the moral sphere at all.¹⁵³ As a result, it is unclear what Crisp thinks he is accomplishing with his statement. Neither

¹⁵⁰ Crisp, *Mill on Utilitarianism*, 111-112. Emphasis in original.

¹⁵¹ *Ibid.*, 110.

¹⁵² See Mill, *OL*, 4.10.

¹⁵³ I discuss this aspect of Mill’s view in my discussion of self-regarding action in *On Liberty* in chapter six.

rule nor sanction utilitarianism would understand conventional morality, as Crisp suggests, to comprise the whole of morality such that contravention of it necessarily constitutes a moral wrong.

The demandingness of morality

Now that Crisp has sketched his multi-level act utilitarian view in general, he can begin to examine its application to particular issues. Below, I will outline Crisp's analysis of Mill's evaluation of the demandingness of morality, the Art of Life and supererogation, and his analysis of punishment. Getting clear on Crisp's take on these issues is important since his readings provide some of the sharpest contrasts to the sanction utilitarian perspective. Berger, as we will see, differs from the sanction utilitarian perspective as well, though not quite as stridently as Crisp.

As Crisp rightly reminds the reader, Mill confronts the issue of morality's demandingness in paragraph nineteen of chapter two in *Utilitarianism*. Mill makes two notable claims in that paragraph that are germane to the concern about demandingness. In contrast to those critics who think utilitarianism too easy for its advocacy of the life concerned with pleasure, others say that its commitment to strict impartiality and consuming concern for the welfare of others is far too difficult to be a plausible theory of morality. Such a morality seems to seriously curtail the degree to which one is entitled to pursue one's personal projects and relationships. On the utilitarian view, these things are apparently only allowed insofar as they contribute, on balance, to the maximization of utility. While an agent's enjoyments of these activities counts (i.e. it gets added to the

balance of pleasures and pains), it counts no more or less than anyone else's pleasure. In the eyes of many commentators, then and now, this kind of domination and crowding out of one's personal projects and commitments is unacceptable.¹⁵⁴

Perhaps sensitive to this type of concern, Mill provides a passage in chapter two of *Utilitarianism* that seems to lessen the "extremism" of the demands of utilitarian morality.¹⁵⁵ To respond, Mill draws a now familiar distinction between the criterion of moral rightness and the deliberation of everyday agents trying to follow the criterion of rightness. One might make this type of objection to utilitarianism:

But this is to mistake the very meaning of a standard of morals, and to confound the rule of action with the motive of it. It is the business of ethics to tell us what are our duties, or by what test we may know them; but no system of ethics requires that the sole motive of all we do shall be a feeling of duty; on the contrary, ninety-nine hundredths of all our actions are done from other motives, and rightly so done, if the rule of duty does not condemn them.¹⁵⁶

As Crisp reads this passage, Mill is affirming the legitimacy of customary morality insofar as it guides us not to be so directly concerned with direct promotion of utility. Utility provides the grounding for customary morality, and Mill understands that utility will be maximized in the long run if customary morality is not made overly onerous.

¹⁵⁴ For two classic analyses of this worry see Susan Wolf, "Moral Saints," *Journal of Philosophy* 79 (1982): 419-439; Bernard Williams, "A Critique of Utilitarianism," in J.J.C Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge, UK: Cambridge University Press, 1973), 77-150.

¹⁵⁵ I am borrowing the extremism language here from Shelly Kagan, who defends the extremist position primarily by attempting to show the difficulties that accompany endorsing the idea of there being a limit on what morality demands of moral agents. See Shelly Kagan, *The Limits of Morality* (New York: Oxford University Press, 1989).

¹⁵⁶ Mill, *U*, 2.19.

Nonetheless, Crisp writes that in Mill's view, "Utilitarianism—pure impartiality—should play a greater role in customary morality than it now does."¹⁵⁷

Of course, given his act utilitarian reading of Mill, it is hardly surprising that Crisp would see Mill as wanting to make morality more demanding. Crisp does not neglect, however, to add that Mill continues in the same paragraph to soften the blow of utilitarianism's demands still further by stating that:

The multiplication of happiness is, according to the utilitarian ethics, the object of virtue: the occasions on which any person (except one in a thousand) has it in his power to do this on an extended scale . . . are but exceptional; and on these occasions alone is he called on to consider public utility.¹⁵⁸

Troubling though this aspect of the passage is for Mill's apparent careless phrasing regarding when one can directly appeal to utility, Crisp makes, in my view, an especially worrying interpretive move to try to save his interpretation at this point. As he sees it, Mill is exaggerating about just how often one can promote utility in a significant way. "Utilitarianism is almost certainly much more demanding than Mill allows. It is tempting to think, in fact, that Mill is deliberately being disingenuous here."¹⁵⁹ He suggests that Mill is probably concerned with not putting people off by thinking that utilitarianism is overly demanding before they have given it a fair try. Crisp floats the idea that Mill seems to adopt a more honest assessment of utilitarianism's demandingness in the

¹⁵⁷ Crisp, *Mill on Utilitarianism*, 114. Abbreviation of quote as given in Crisp, *Mill on Utilitarianism*, 115.

¹⁵⁸ Mill, *U*, 2.19.

¹⁵⁹ *Ibid.*

closing paragraphs of his third chapter on the sanctions of morality. Whatever the plausibility of this last suggestion, one cannot help but remark that this seems strange behavior indeed for a text that is supposed to provide a clear statement of the foundation of Mill's views on morality. After all, by Crisp's own admission, it was in Mill's *other* texts like *On Liberty* and *The Subjection of Women*, where Mill is, "using the skills of a rhetorician to persuade."¹⁶⁰

Aside from these two passages from paragraph nineteen of chapter two, Crisp's analysis of the demandingness of morality also includes a mention of Mill's famous letter to John Venn. This letter is among of the most commonly cited passages for those favoring the act utilitarian reading, and it is one of the more compelling passages on their side.¹⁶¹ In that letter Mill says:

I agree with you that the right way of testing actions by their consequences, is to test them by the natural consequences of the particular action, and not by those which would follow if everyone did the same. But, for the most part, the consideration of what would happen if every one did the same is the only means we have of discovering the tendency of the act in a particular case.¹⁶²

When Brown first brought this passage to the attention of Mill scholars, he said that the letter provided "unequivocal evidence" of Mill's act utilitarianism and could hopefully "close the whole controversy" over the nature of Mill's utilitarianism.¹⁶³ Crisp does not

¹⁶⁰ Ibid., 15.

¹⁶¹ For a response to the act utilitarian reading of this passage see Miller, *J.S. Mill*, 93-94.

¹⁶² Mill to John Venn, 14 April 1872, *CW*, 17, 1881.

¹⁶³ Brown "Mill's Act Utilitarianism," 47-48.

go that far, but does note that this passage does nicely explain why it is that in so many places Mill insists on affirming the importance of customary morality; thereby lessening the stress on individuals looking to maximize utility. In confronting difficult moral duties we might be inclined in some cases to make an exception of ourselves, and Mill's point in the above letter is that it is often best to imagine what would happen if everyone did the same in similar cases. "There may be exceptional cases, however, in which following the customary morality turns out not to maximize happiness, and in these cases Mill, as an actualist, must accept that customary morality should not have been followed."¹⁶⁴ That is to say, in some instances, like those mentioned above regarding cases of conflicting secondary principles or opportunities to be a great public benefactor, that one can test the demands of utility by looking at the act itself.

As a whole, then, Crisp sees Mill as holding to the idea that utilitarianism is a demanding moral doctrine, even though he is not always straightforward about just how often this is so. Mill views customary morality as being a suitable guide much of the time in our moral lives, since utility is what justifies conventional morality to begin with. On this topic, however, Crisp is keen to point to the concern that one must not confuse what makes an action right or wrong (i.e. utility maximization) and the process of deliberation itself. As Crisp reads him, Mill often comments as if the dictates of customary morality are far from perfect models of utilitarian deliberation, though Mill hopes that this will become less so over time.

¹⁶⁴ Crisp, *Mill on Utilitarianism*, 117.

The Art of Life and supererogation

In the next section of his argument, Crisp turns his attention to the Art of Life, a topic that fits rather awkwardly onto a straightforward understanding of act utilitarianism. His analysis of this topic leads him into Mill's theory of supererogation and moral duty more generally. The reason these topics are *prima facie* difficulties for the act utilitarian view can be expressed in a fairly straightforward way. If actions are morally wrong when they fail to maximize utility, then any time, no matter what one is doing, one is in danger of committing a moral wrong. To put it rather dramatically: there are no separate spheres of life apart from morality and no escape from its dictates since its commands seep into every human activity. As Crisp will suggest, for Mill, the escape, insofar as there is one, comes in how humans *talk* about their lives. As one has probably come to expect at this point, Crisp's general interpretation on these points is to say that though Mill sometimes talks as if morality is not the sole domain of life, when he is being his most careful, he holds that all actions are evaluable under the principle of utility, which, as Crisp reads it, is the central principle of morality itself. In other words, one need not always discourse in terms of the principle of utility in order to be bound by the principle of utility.

Crisp is straightforward in his acknowledgement that Mill discusses the Art of Life in both his *System of Logic* and at least some of that doctrine's implications in *Utilitarianism*. As was discussed in chapter two, in the *System of Logic*, Mill explains

that there are three departments of life: morality, prudence, and aesthetics.¹⁶⁵ Crisp does acknowledge that, in *Utilitarianism*, there are a few places where the author implies that morality is only one sphere of action. He seems to do this, for example, in the chapter concerning his famous “proof” for the principle of utility when he writes that, “Happiness has made out its title as *one* of the ends of conduct, and consequently one of the criteria of morality.”¹⁶⁶ That said, Crisp insists that Mill is still committed to the idea that we are to aim at utility maximization even if there are ways of talking about various areas of life do not make this immediately apparent. As he sees it, “The various departments are merely ways of referring to different discourses, which can only roughly be distinguished from one another by the concepts they involve.”¹⁶⁷ For instance, one might talk about a friend’s loyalty as something praiseworthy and indicative of a fine or beautiful character (and thereby under the category of “aesthetics”). However, if one is being careful and true to one’s utilitarian principles, then one must admit that loyalty is only valuable for its promotion of utility.¹⁶⁸ The fact that loyalty is justified only to the extent that it accords with utility maximization does not entail that one always qualify one’s language by avowing that this is so.¹⁶⁹

The justification for Crisp’s analysis of different discourses depends on his analysis of the principle of utility. Crisp believes that the Art of Life does not threaten

¹⁶⁵ Mill, *System of Logic*, CW, 8, 949-950.

¹⁶⁶ Mill, *U*, 3.9. Emphasis in original.

¹⁶⁷ Crisp, *Mill on Utilitarianism*, 123.

¹⁶⁸ *Ibid.*

¹⁶⁹ Crisp gives a longer and more complicated analysis of our shifting discourse, but since the changing Art of Life discourses largely amounts to a parallel between the familiar shift between moral levels of thinking, I will condense his discussion here. See *Ibid.*, 120-124.

Mill's act utilitarianism because the principle of utility governs all human actions and dictates its ends under a maximizing utilitarian framework. As was discussed earlier, in the *System of Logic*, when Mill outlines the Art of Life in its clearest form, Mill makes it clear that the principle of utility provides that, "The general principle to which all rules of practice ought to conform, and the test by which they should be tried, is conduciveness to the happiness of mankind, or rather, of all sentient beings: in other words, that the promotion of happiness is the ultimate principle of teleology."¹⁷⁰ While it has been discussed above how Mill conceives of arts and sciences as they relate to the principle of utility, what is distinctive about Crisp's interpretation is that he sees the principle of utility as, "the principle that happiness should be maximized."¹⁷¹ Since this is a contentious claim, I will look briefly at Crisp's argument for it and raise some objections. As noted above, many Mill scholars follow Brown's claim that the principle of utility is an axiological claim (i.e. a claim about what is valuable) rather than a claim about what is to guide or justify actions. At this point, however, I will merely point to some reasons to doubt Crisp's claim about Mill's commitment to utility maximization based on his commitment to the principle of utility.

¹⁷⁰ Mill, *System of Logic, CW*, 8, 951. Crisp rightly reminds the reader that in the 1865 edition of this text, Mill advised readers to examine his *Utilitarianism*, for a discussion and vindication of this principle—presumably referring to the famous fourth chapter where he gives his "proof" of the principle of utility (chapter four is titled, "Of What Sort of Proof is the Principle of Utility is Susceptible"). Even in that chapter, though, Mill does not make entirely clear what the principle of utility really is as Mill describes it in different ways in different places (e.g. Mill gives a different definition than the one in chapter four at Mill, *U*, 5.36n.). I have a more extended discussion of Mill's principle of utility in chapter six, though I will return to it also in the next chapter.

¹⁷¹ Crisp, *Mill on Utilitarianism*, 122.

After making the claim about the principle of utility meaning that happiness should be maximized, Crisp acknowledges in a footnote that while Mill does not use the term “maximization” in his principle of utility he does speak of “conduciveness” to happiness, which Crisp seems to imply amounts to the same thing.¹⁷² However, this seems to be a conceptual mistake. Something can be conducive to production of phenomena without being *maximally* productive of phenomena. Different types of materials, for example, can be conducive to the transfer of electricity, but some types of metals are *better* conductors of electricity and presumably there is some material that is *maximally* conducive of electricity.

Crisp may suspect here that this justification will not be enough to conceptually tie the principle of utility to a thesis about the maximization and thus goes on to provide a second argument. Crisp writes that, after stating the principle of utility, Mill goes on to talk about how this principle allows the utilitarian to encourage various dispositions of character that might “on the whole” promote human happiness even if in some cases this will involve situations where an agent experiences more pain than pleasure in a particular instance.¹⁷³ Crisp concludes from this that, “the reference to quantity of happiness strongly suggests that his principle here is that happiness should be maximized.”¹⁷⁴ This point seems too hasty as well, however, as it begs the question

¹⁷² *Ibid.*, n12.

¹⁷³ Mill’s discussion on this point is difficult to follow, which is perhaps why Crisp does not go into it in more detail. For Mill’s discussion see Mill, *System of Logic*, *CW*, 8, 952. I will have more discussion of this passage in chapter four.

¹⁷⁴ Crisp, *Mill on Utilitarianism*, 122n12.

against those who read Mill as a satisficing utilitarian.¹⁷⁵ Suppose a satisficing utilitarian is facing a situation where she can make one of three choices, A, B, and C, where these choices reflect positive welfare outcomes for all agents from an impartial perspective. To keep things simple let us suppose that the agent is justifiably equally certain of the welfare outcomes that will result from A, B, and C where A will result in +10 units of welfare, B will result in +8, and C will result in -2 units of welfare. The right action for the maximizing act utilitarian would plainly be action A, and to choose B or C would be, to different degrees, morally wrong. The satisficing utilitarian, however, can say that suboptimal choices like B can be a morally right action, even if it is not the best choice from the standpoint of quantitative utility. Choosing action A might be morally right or it might instead be (depending on the specific type of satisficing utilitarianism) supererogatory. Choosing C would be wrong on the satisficing view since it does not, on the whole, promote utility. In light of both of these arguments, it seems that Crisp is lacking a solid rationale in equating the principle of utility as it is given in the *System of Logic* with the dictate that one maximize utility.¹⁷⁶ Neither Mill's identification in the principle of utility of an action's conduciveness to happiness, nor his qualifying comments concerning the quantitative nature of happiness compel him to accept a maximizing understanding of utilitarianism.

¹⁷⁵ For an explicit avowal of a satisficing utilitarian reading of Mill see Jacobson, "Utilitarianism without Consequentialism," 170.

¹⁷⁶ The end of Crisp's footnote also makes the point that in his discussion of his criterion of right action Mill refers to the "*Greatest Happiness Principle*," and this thereby implies his commitment to maximization. Crisp, *Mill on Utilitarianism*, 122n12. Emphasis added.

Crisp's analysis of Mill's Art of Life holds that, while we might not always talk about every action being in the sphere of morality, every action is ultimately justified by its relation to the moral demands of maximizing utilitarianism. This leads him to tackle the issue of how to account for those passages where Mill seems to speak of supererogatory actions. These are presumed to be a problem since, if Mill is a maximizing act utilitarian, then, supererogation is impossible (since one is always morally obligated to do the best action).

Crisp's solution is to apply his familiar method of saying that Mill is simply using different discourses to meet different rhetorical needs. Mill's practice of referring to some actions in ways that sound as if they are supererogatory is itself merely the ploy of the maximizing utilitarian who wants to secure general, if imperfect, compliance, since perfect obedience to the utilitarian cause is unlikely as it is thought too demanding. As Crisp reads him, Mill recognizes a two-fold conception of duty when he is operating on the third level of philosophical act utilitarianism.¹⁷⁷ First, when Mill is speaking *about* customary morality and what it should enjoin, Mill says that, "x is a duty if making it a duty would maximize utility."¹⁷⁸ Second, when Mill is thinking about how one operates *within* morality itself he can ask himself, "What *really is* the fundamental moral duty? Here Mill's answer is: to maximize overall happiness."¹⁷⁹ Once again, then,

¹⁷⁷ Crisp does not say that it is on the third level, but since the first talks about customary morality itself, it seems to belong on neither the first nor second level. The second statement seems to be a statement of philosophical act utilitarianism itself.

¹⁷⁸ Crisp, *Mill on Utilitarianism*, 125. As justification for his gloss here, Crisp cites Mill to Henry Brandreth 9 February 1867, *CW*, 15, 1234.

¹⁷⁹ *Ibid.*

apparent textual tensions in Mill's texts are explained by appealing to Mill's penchant for employing different discourses in secret service to his act utilitarianism.

Since I will develop my own reading of Mill's theory of supererogation at a later point, I will raise two points of concern with this argument. First, Crisp's analysis here gives no explicit readings of the passages where Mill seems to acknowledge the existence of supererogatory action, including those passages from *Utilitarianism*, which is where Mill is supposed to be speaking of first principles.¹⁸⁰ While Mill's discussions of supererogation often involve discussion of general utility and clarify comments on moral duties in light of his commitment to utility, this fact does not entail a maximizing act utilitarian reading of those passages. Further argumentation is required to show that Mill means that something is a duty when it will maximize utility to convert it to a duty; especially since Mill never puts the matter in this way directly.¹⁸¹ Second, Crisp's reading of Mill's second sense of duty rests on his reading of the principle of utility as a maximizing principle of morality, which, as was discussed above, is underdetermined by the arguments he gives.

Sanctions and utility maximization

Crisp now turns his attention to Mill's theory of sanctions and his account of justice. My discussion of his account will be abbreviated but focused. The aim here is to

¹⁸⁰ See Mill, *U*, 5.14.

¹⁸¹ For some of the relevant passages see Mill, "Comte," *CW*, 10, 337; Mill, "Comte," *CW*, 10, 339; Mill to George Grote 10 January 1862, *CW*, 15, 762; Mill to E.W. Young, 10 November 1867, *CW*, 16, 1327-1328.

note those places where Crisp adopts a reading of those sections of chapter five that are essential to the heart of the sanction utilitarian position. In particular, the focus is on what Crisp makes of the interrelation between justice, punishment, and Mill's criterion of morality.

Crisp focuses his interpretation of these topics as they are discussed in the fifth chapter of *Utilitarianism*. Unsurprisingly, one of Mill's primary concerns in that chapter is to explain how justice can be made consistent with utilitarianism. As he explains in the opening lines of the chapter, one of the longstanding difficulties for those who recognize utility as a standard of right and wrong is the compatibility between utility and justice.¹⁸² Mill hopes that he can overcome this obstacle by detailing the various facets of justice and showing how the powerful sentiments that humans attach to it are in fact compatible with a commitment to utility. To that end, he begins his discussion by charting the different spheres in which the term of justice is commonly employed (legal, moral, desert, contracts, impartiality, equality) and the etymology of the term itself.¹⁸³ In the section on etymology, Mill notes that the term 'justice' has a foundational relation with the idea of conformity to the law, and human sensibilities concerning what ought to be the case.¹⁸⁴ Mill goes on to say that this account, while helpful, does not distinguish moral obligation from obligation more generally. To clear this up he adds the following claim:

¹⁸² See Mill, *U*, 5.1.

¹⁸³ *Ibid.*, 5.3-5.12.

¹⁸⁴ *Ibid.*, 5.13.

For the truth is, that the idea of penal sanction, which is the essence of law, enters not only into the conception of injustice, but into that of any kind of wrong. We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency.¹⁸⁵

Crisp notes that several interpreters have used this passage to argue that Mill does not hold to the act utilitarian criterion of rightness.¹⁸⁶ To give two examples of the interpreters he is concerned with, Crisp glosses Ryan's reading of this passage by saying that, "An act *a* is wrong if and only if a coercive social rule against doing acts of kind *a* would be justified by increasing overall welfare."¹⁸⁷ Alternatively, Crisp claims that Gray's reading of the passage holds that, "An act *a* is wrong if and only if punishing it would have the best consequences."¹⁸⁸

The mistake that all of these interpreters share, Crisp thinks, is that the fourteenth paragraph of chapter five is thought explicate Mill's criterion for morality. They also make a mistake, as he sees it, in interpreting the principle of utility as a theory of the good rather than a theory of the right. If the principle of utility is a theory of goodness

¹⁸⁵ *Ibid.*, 5.14.

¹⁸⁶ Along with the two mentioned below, Crisp mentions accounts from D.P Dyer and Copp. See D.P. Dyer, "Mill's Utilitarianism," in Mill, *CW*, 10, cv; David Copp, "The Iterated-Utilitarianism of J.S. Mill," 84.

¹⁸⁷ Crisp, *Mill on Utilitarianism*, 127. Crisp cites Lyons, "Mill's Theory of Morality," 109 as the source for this criterion.

¹⁸⁸ Again, this is Crisp's gloss on Gray's interpretation. *Ibid.*, 128. Crisp cites Gray, *Mill on Liberty*, 84 as the source for this criterion.

(i.e. a theory about what is, in fact, good rather than how to promote it), then Mill can possibly hold to a non-act utilitarian criterion of rightness. However, both of these claims must be mistaken from Crisp's point of view. To begin with, Mill has already provided a criterion of the rightness of actions in his discussion of the greatest happiness principle, which is, as purportedly, "the clearest statement in *Utilitarianism* of Mill's moral theory."¹⁸⁹ This implies that however they read the principle of utility, Mill's account of rightness is already in place, thus committing him to a direct maximizing view. In light of this, reading Mill as offering an alternative account of right action in the passage above, which couches rightness in terms of punishment rather than welfare maximization, "would commit Mill to an internal contradiction."¹⁹⁰

To avoid the supposition that Mill embraces a contradiction, Crisp takes the line that Mill is talking in this passage merely about what Mill thinks that wrong *means*, not altering his criterion of moral rightness. Crisp says that when Mill writes, "We do not call anything wrong, unless we mean to imply that . . ." it is best to drop the "to imply" and read it as about what is meant when using the term wrong. Crisp notes that this reading is justified because, in general, these paragraphs are supposed to be where Mill is "analysing the 'notions' of right and wrong."¹⁹¹ In other words, Mill is *not* propounding some type of justified punishability as his criterion of rightness or wrongness. Instead, Mill is saying that when one acts wrongly that *means* that one ought to be punished for it. That punishment may, depending on the circumstances involved,

¹⁸⁹ Crisp, *Mill on Utilitarianism*, 95.

¹⁹⁰ *Ibid.*, 128.

¹⁹¹ *Ibid.*

be meted out through law, opinion, or one's conscience, but it should be punished one way or another every time one commits a moral wrong.

Crisp's idea is that Mill still holds that failure to maximize utility is wrong but he also holds that one should be *punished* for that failure. Crisp notes that Mill remarks in an earlier part of the chapter that punishment by the law might fail to maximize happiness and suspects that the same is also true with regard to public opinion.¹⁹² Punishment, then, might just be carried out by the wrongdoer's conscience. One can imagine a case, though, where an action fails to maximize utility but the actor does not feel guilty. Mill does not have to retract his claim that such an action is still wrong in such a case, "For it is consistent with his act utilitarian version of the principle of utility to claim that such conduct ought to be punished by conscience."¹⁹³ The principle of utility is still the standard by which one evaluates actions, but it does not govern consciences directly in the sense of always directing them to act in light of its dictates. Conscience, unlike blame from others and the law, is not subject to conscious control. Nonetheless, insofar as one can, the principle of utility would have it that one appropriately feels guilty each and every time one does less than the morally optimal act.

On Crisp's reading of Mill's doctrine, then, even if it is not appropriate, for reasons of utility, to punish a person by the penalties of law or public opinion, that person still *should* feel guilty in any and all cases where she is failing to maximize

¹⁹² Crisp refers to Mill, *U*, 5.13. Crisp imagines that Mill would say the same for public opinion because we can imagine someone who fails to maximize happiness, gets publicly criticized for it to his annoyance, and this annoyance leads to further bad behavior, which then decreases utility.

¹⁹³ Crisp, *Mill on Utilitarianism*, 129.

utility. Crisp clarifies his reading of the passage more formally and succinctly when he writes that “According to Mill, when I say ‘*a* is wrong’ I *mean* ‘*a* is such that its performance ought to be punished by law, opinion, or conscience.’”¹⁹⁴ This means that punishment will always be appropriate when one fails to maximize utility for that it is what acting wrongly means. In fact, he puts the point quite strongly when he says that, “there is no imaginable case of an agent’s failing to maximize happiness to which Mill would be forced to retract any attribution of wrongness.”¹⁹⁵

To sum up, Crisp takes the view that Mill supplements, rather than replaces, his account of wrong action by claiming that every wrong action must be punished. This is evident, Crisp believes, by the fact that Mill is exploring the meaning of right and wrong, just as he has been exploring the meaning of the sentiment of justice. Those, like Lyons or Gray, who interpret the chapter five paragraph on punishment in such a way as to suppose that Mill is offering an alternative conception of right and wrong, mistakenly suppose that the principle of utility is merely an account of the good rather than an account of right action. Mill’s account of right action, Crisp thinks, is plainly given by the greatest happiness principle, so to avoid reading Mill as contradicting himself, Crisp must suppose that this is merely an addendum to that prior claim. While Crisp has tried to soften some of the difficulties that arise from adopting the claims in 5.14,

¹⁹⁴ Ibid., 131.

¹⁹⁵ Ibid., 129.

“Nevertheless it cannot in the end be denied that Mill’s position is not helped by the addition of . . . the analysis of ascriptions of wrongness that he gives.”¹⁹⁶

At this point it may be helpful to give an overview of my discussion of Crisp and my evaluation of his arguments before moving on to Berger. I began by discussing Crisp’s interpretative methodology and how Crisp reads *Utilitarianism* as Mill’s elucidations of the first principles of his moral theory. I also noted the centrality of the greatest happiness principle to his account and explained four distinctions that Crisp introduces to argue for his reading of how Mill treats specific issues in moral theory. The most important of these distinctions concerned Crisp’s reading of Mill as a multi-level utilitarian. I then raised some worries concerning Crisp’s understanding of customary morality and precisely how the different levels are supposed to work. In the next section, discussing the demandingness of morality, I questioned Crisp’s claim that Mill was exaggerating in his claims about just how demanding morality is. If *Utilitarianism* is supposed to be the keystone text for interpreting Mill’s views, it seems awkward for Crisp to say that Mill should not be taken at his word in this passage. In the next section discussing the Art of Life, I objected to Crisp’s claim that the Art of Life required one to maximize utility. He seemed to unjustifiably rule out the possibility that Mill understands the Art of Life in a way that is compatible with a satisficing utilitarian reading. In the last section discussing Mill’s theory of sanctions, I noted that Crisp commits himself to the claim that every instance of failing to maximize utility is a case

¹⁹⁶ Ibid., 131.

where an agent should be punished. Crisp admits that the passage fits awkwardly with Mill's view as he has explained it thus far.

Introduction to Berger

As I noted in my introduction to this chapter, Berger's interpretation is not, strictly speaking, an act utilitarian one. In truth, his interpretation does not sit perfectly with any of the standard categorizations, and Berger is candid about that. At the opening of his chapter on the greatest happiness principle and moral rules (which will be the focus of my discussion here), Berger gestures to the wide literature concerning whether Mill is best read as an act or rule utilitarian before making his stance clear: "I do not wish to enter this controversy. Mill's theory was neither an act- nor a rule utilitarian theory as those terms are strictly defined."¹⁹⁷ Berger's interpretation differs notably from Urmson's, Fuchs', and Crisp's. He differs most from the rule utilitarians in his account of moral rules (he thinks that Mill allows for agents to, in some cases, to appeal directly to the principle of utility) and from Crisp in his account of self-regarding action and supererogation (he thinks that Mill does exclude some domains of life from the demands of morality). At the more general level, his interpretation of Mill's theory incorporates the following four elements, not all of which will be discussed here: a theory of moral rules consistent with act utilitarian theory, a theory of moral wrongness that is essentially tied to punishment, an account of supererogatory acts where such acts are praiseworthy

¹⁹⁷Berger, *Happiness, Justice, and Freedom*, 65. As noted earlier, Berger joins the larger chorus of Mill scholars in tracing the origin of the serious debate on the act vs. utilitarian question to Urmson's paper.

when done but not punishable when not done, and an account of certain actions, namely self-regarding ones, that do not properly fall into the sphere of moral right and wrong. In light of his commitment to these views, it seems that he is correct to say that his view is consistent neither with the act nor rule utilitarian view.

Berger's interpretative methodology

Berger's unconventional conclusions on Mill's moral theory seem to arise from his interpretive methodology. Of the figures discussed so far, Berger's methodology is the closest to the one employed in this dissertation, though his is much wider in its scope and application. His account is distinctive in the following three ways. First, Berger acknowledges that *Utilitarianism* does not serve as a definitive guide to Mill's moral theory.¹⁹⁸ While some scholars hold that this text itself suffices for an expression of Mill's moral theory, Berger denies that Mill holds to a single, coherently worked out moral theory, all things considered. Toward the end of his chapter on Mill's account of morality, he says that he "heartily agrees" with the bold pronouncement from Sumner that there is no definitive moral doctrine in Mill and that scholars are wasting their time searching for such an entity.¹⁹⁹ Second, Berger builds his interpretation from an especially wide base of Mill's writings. Not only does he quote liberally from standardly consulted works and Mill's correspondence, but he also draws from lesser-known writings including Mill's many book reviews, newspaper articles, public speeches, and

¹⁹⁸ See for example, Berger, *Happiness, Justice, and Freedom*, 30; 119-120.

¹⁹⁹ Berger, 119-120; for the relevant quote see Sumner "The Good and the Right," 110.

commentary on his father's *Analysis of the Phenomena of the Human Mind*. Each of these sources, of course, requires somewhat different treatment than Mill's more formal published works, and Berger shows sensitivity to this fact. Thirdly, Berger goes some length to situate Mill's views in light of his immediate utilitarian predecessors like Bentham, James Mill, and Austin. For reasons of economy, this aspect of his work will not be as evident in the treatment below as some of these other features, but his considerable efforts to properly contextualize Mill's ideas and their originality (or lack thereof) is impressive and should be acknowledged. In chapters five and six of this dissertation, I aim for a similar level of thoroughness and care in my interpretation of Mill's ideas.

The most important methodological difference between Berger's approach and mine is that, though he is somewhat wary about using *Utilitarianism* as a guide to Mill's views on moral theory, in my view, he does not take this consideration sufficiently seriously and does not properly privilege chapter five as the most important entry point into understanding Mill's theory of morality. This difference in methodology has notable consequences for our diverging interpretations. Berger sees Mill as *adding* what he calls the punishability criterion (in *U*, 5.14) to his earlier given proportionality criterion of moral rightness (i.e. the greatest happiness principle in *U*, 2.2) in a way that makes Mill's final view ambiguous. According to Berger, Mill "gave no indication as to how the proportionality and punishability criteria are to be reconciled. This part of the theory

was never sufficiently clarified or developed.”²⁰⁰ Berger is correct to note Mill does not sufficiently clarify his view on these points. However, if Mill had ecumenical aims for the second chapter of *Utilitarianism*, this would not be surprising. Mill would not have thought that he needed to explain how to reconcile these two parts of his moral theory since one of the criteria was not properly a part of his theory. I join Jacobson in affirming that, in Mill’s statement of the proportionality criterion, he is not giving his own criterion of morality, but rather an ambiguously phrased creed that could be affirmed by many utilitarians.²⁰¹ However, as I will argue in the next chapter, the punishability criterion can be treated differently and taken as a proper statement of Mill’s views on the matter.

Putting aside our different viewpoints on these issues, Berger’s position is clearly a nuanced one that has implications and applications extending beyond what will be discussed here, and my treatment of Berger’s arguments will be focused primarily on his strategy account of rules. While Berger’s analysis of Mill’s moral and political views is as thorough and wide-ranging as one will find in the scholarly literature, it is his strategy conception of rules that seems to be his most distinctive contribution to the literature and is arguably the most commonly cited aspect of his comprehensive interpretation.²⁰² It is

²⁰⁰ Berger, *Happiness, Justice, and Freedom*, 66.

²⁰¹ Jacobson, “Diversity of Utilitarianism,” 7-12.

²⁰² For a few notable works citing Berger’s views see, Wendy Donner, “Mill’s Utilitarianism,” in *The Cambridge Companion to John Stuart Mill*, ed. John Skorupski (New York: Cambridge University Press, 1998), 272; Brink, “Deliberative Utilitarianism,” *Philosophy and Public Affairs* 21 (1991), 68n4; Miller, *J.S. Mill*, 217; Jacobson, “Utilitarianism without Consequentialism,” 161n5; Crisp, *Mill on Utilitarianism*, 133.

also the most directly act utilitarian aspect of his book, which provides a proper foil to my account and justifies my pairing of his work with Crisp's.

Analysis of the strategy conception of rules

At the center of Berger's strategy conception of moral rules is his distinction between the meaning of a term and the test or criterion for that term's application. Berger argues that, while this distinction can be found (usually without full explication) often enough in Mill's account of morality, it was explicitly employed by Austin and James Mill.²⁰³ One can see the relevance of the distinction in light of a few helpful analogies. One can *test* if there is oxygen present by lighting a match and seeing if it will burn. While this procedure can be used to help identify whether oxygen is present, the test's result (i.e. the match burning or not) does not provide one with the *meaning* of oxygen. Alternatively, to be a good typist means that the typist is someone who types accurately and with speed. Still, one can test whether or not one is a good typist by setting some benchmark standards and seeing if the typist performs up to the standard. The relevance of this distinction in utilitarian theory can be grasped when one considers the claim about what it is meant when talking about the tendency of an action to promote happiness. As Berger explains it, "what it *means* to say that the tendency of an act is good is that its effects are predominantly good, that is, that it produces more happiness than unhappiness." However, for various reasons, it is often difficult to determine the consequences of actions and whether they, in fact, promote happiness. To cite just one

²⁰³ For his textual argument for this claim see Berger, *Happiness, Justice, and Freedom*, 73-82.

difficulty, actions do not occur in isolation from one another, and sorting out the many causes and rippling effects of even a single action, let alone all of one's actions, is famously difficult. This can include, of course, actions related to one's character. It has long been thought that many actions are the result of an agent's habits or character traits. When one adds to this acknowledgement the fact that a single action can lead to distant effects through the alteration of the respective characters of other agents, the difficulties involved in discerning the tendencies of actions seems near impossible. In the face of these challenges:

What is wanted for practical situations is a guide (or guides) to conduct that have some degree of reliability that have some degree of reliability in predicting all of these consequences, and which can be applied with sufficient convenience that it is fit to serve as a practical test of our actions.²⁰⁴

Berger is stressing here that these tests are essential elements to the theory as it is practiced in daily living. However, it is a mistake to confuse the test by which conduct is determined to be consistent with a principle and the meaning of the principle itself. For Berger's account, this is important as it clarifies what he takes to be the rule utilitarian interpreter's error: when Mill stresses the high status of moral rules in his theory of morality he is pointing to the importance of testing actions with respect to promoting utility, without altering his account of the meaning of promoting utility. The extensive use of moral rules remains a strictly epistemological device in service of a larger commitment to an act utilitarian account of utilitarian maximization.

²⁰⁴ Ibid., 70.

Now that the nature of the distinction is clear, Berger can elaborate on how this high view of moral rules can function within a generally act utilitarian framework. As has already been noted in this chapter, but which Berger is sure to include here, rules serve as ready guides to conduct that avoid problems of immediate calculation. Moreover, one's adherence to a rule (as an example to others) can alter the likelihood of others conforming to a rule in the future. Similarly, behavior conforming to a rule might inculcate a habit that makes future compliance easier, thus further promoting utility. If one gets into a situation in which no rule seems applicable, it is often helpful to ask oneself what the utility outcome would be if the act in question were made into a rule. In this way, one has some reasonable test concerning whether or not utility is being promoted or maximized. Supposing that one does think that it would be beneficial for utility for the act to be made into a general rule, one can ask the further question of whether the rule is just minimally consistent with utility or whether it would be an ideal rule (i.e. maximally productive in terms of utility).

The answer to these questions, however, should always be done in light of the progressive spirit of utilitarianism. Calculating the effects of an action by considering what would happen if a rule were generally followed in similar situations is going to be an imperfect science. Given the inevitable imprecision of calculation coupled with the fact that no generally recognized system of moral rules will perfectly promote utility, it is important that utilitarians remain open to reforming moral rules. In deciding on what reform is best, however, the appeal will be the principle of utility as it relates to the act

in question. Contrary to the rule utilitarian interpretation favored by Fuchs, other moral rules will not suffice to settle questions of reform.

In this way moral rules are deeply important to the utilitarian theory, but only a matter of testing the theory. Moral rules promoting utility do not constitute the meaning of Mill's utilitarianism. The meaning of Mill's utilitarianism refers to an act's tendency to promote utility. This aspect of his theory is in larger part why Berger is being included here as contributing to the act utilitarian interpretation of Mill.

To avoid possible confusions regarding this distinction of test and meaning, Berger adds three important explanatory points before turning to the textual argument for his position.²⁰⁵ The first point is that in many domains of life one can best attain one goal by effectively aiming another. It is common in bowling, for instance, for bowlers to aim their tosses at the arrows a few feet in front of them rather than at the pins themselves. In many cases, by aiming at the arrows one thereby more successfully knocks down the pins. Success in bowling, after all, is not determined by seeing who most directly aims at the pins but rather by who uses their aim, whatever it is, to successfully knock down the pins. In the case of morality, following moral rules might well best promote utility, even if conformity to the moral rules is not the proper goal of morality. Following the moral rules does not ensure that one will have done the right thing since the question of moral rightness is about promotion of utility in specific actions rather than in adherence to rules. Even so, if one uses the moral rules in a reasonable way that nonetheless fails to promote utility, and is therefore wrong, this can

²⁰⁵ See Berger, *Happiness, Justice, and Freedom*, 71-73.

serve as a reason to not *blame* the agent. On the view Berger puts forward, “A person does what is right only what the person has done has predominantly useful consequences.”²⁰⁶ Unlike Crisp who reads Mill as being committed to the claim that all wrong actions are worthy of at least some punishment, Berger allows that some actions might be wrong but not subject to punishments like moral blame.

Berger’s two final points concern the seriousness with which one should regard moral rules. Specifically, he says that moral rules are neither mere summaries of past experience nor mere rules of thumb. To say that moral rules are mere summaries of past experience is just to say that they are shorthand statements of descriptive facts about prior events. In contrast, the moral rules on the strategy conception stand as normative standards of conduct. Of course, the normativity in question has force only in light of the ultimate commitment to the principle of utility, but the rules stand as principles of conduct with normative force nonetheless. In those rare cases when the principle of utility speaks against rule obedience, then the rules should be disregarded.

Just as moral rules are not mere summaries of past experience, neither are they mere rules of thumb. Berger denies that his interpretation regards moral rules as rules of thumb, “if that is meant to imply that the rules are subject to constant scrutiny and assessment, and may be readily foregone if the agent judges them not useful in the particular case.”²⁰⁷ The strategy conception of rules recognizes that there will be many cases in which one will abandon one’s personal judgment on a matter and follow the

²⁰⁶ Ibid., 71.

²⁰⁷ Ibid., 72.

relevant moral rule. Berger admits that, in some cases, this might lead one to do the wrong thing from the standpoint of utility. Nonetheless, the risk of bias, incomplete knowledge, and mistaken miscalculations may well render strict rule obedience the most prudent choice. Echoing familiar points raised in Crisp's interpretation, Berger notes that it is consistent for the act utilitarian to affirm that one should be inflexible in following moral rules (i.e. be self-effacing).²⁰⁸ For instance, one might judge that stability of behavior might be especially important for setting examples for others or so to preserve firmness of character in oneself and avoid temptations to violate a rule.²⁰⁹ Depending on the circumstances, it makes sense for agents to regard the rules as more or less flexible without giving up on the act utilitarian criterion of morality. After all, when circumstances align in the just the right way and "one can be fairly certain of good consequences, or where the rules adopted conflict, the act utilitarian must then sanction, resorting to the Principle of Utility itself, judging the act chiefly by its consequences."²¹⁰

It might be helpful at this point to summarize Berger's strategy conception of rules by understanding them dialectically.²¹¹ On one end of the dialectical pole is the stress on the importance of moral rules and on the other are the ways in which those

²⁰⁸ According to J.J.C. Smart, G.E. Moore might be read as a self-effacing act utilitarian. Smart writes that "Indeed, Moore argued on act-utilitarian grounds that one should never in concrete cases think as an act-utilitarian." J.J.C. Smart, "An Outline of a System of Utilitarian Ethics," in Smart and Williams *Utilitarianism: For and Against*, 43-44; cf. G.E. Moore, *Principia Ethica* (Cambridge, UK: Cambridge University Press, 1903), 162.

²⁰⁹ As Samuel Johnson once replied to a friend who offered him a little wine, "I can't have a *little*, child, therefore I never touch it. Abstinence is as easy to me as moderation is difficult." William Roberts, ed., *Memoirs of the Life and Correspondence of Mrs. Hannah More*, vol. 1 (New York: Harper & Brothers, 1834), 1: 146.

²¹⁰ Berger, *Happiness, Justice, and Freedom*, 73.

²¹¹ I am using the term dialectic in the sense of two opposed ways of approaching an issue that, when compared and examined together, reveal aspects of an issue that are not obviously present when one side is examined on its own terms.

rules might be altered, reformed, or displaced for the sake of their ultimate justification (i.e. the promotion of utility). If the rules are not regarded as important and generally followed, then the ultimate goal behind them is thwarted. Then again, if the rules are given too much importance, they lose the grounding on which they attained their prominence in the theory. One can see this dialectic in the distinction between the meaning and test of the utilitarianism theory. Thinking in terms of rules might serve as the best test of whether utility is being promoted, but that does not thereby make them contribute to the meaning of utilitarianism. Still, while they do not contribute to the meaning of utilitarianism on this theory, they retain an essential role in the practice of being an act utilitarian as they will be the means by which one makes most of her moral decisions. That said, the rules will be in need of reform and qualification, and such reforms will take place under the jurisdiction of the principle of utility, rather than some other moral rule. Despite the fact that they can be reformed and replaced, Berger stresses that the rules should not be regarded as mere summaries of past experience or rules of thumb. The moral rules should serve as forceful normative demands rather than as factual generalizations about prior experiences. Similarly, they should not be subject to constant re-evaluation. Instead, the moral rules should be regularly obeyed both for the sake of utility itself (i.e. the rule would not be a valid rule if it did not generally promote utility) and the character of the agent and others watching the agent. The rules should be followed rigorously except when one is quite sure of successfully promoting utility by forsaking a moral rule or come across circumstances in which moral rules seem to be in tension with one another.

Textual justifications for the strategy conception of rules

Up to this point I have outlined Berger's account of the strategy approach to moral rules, but I have not yet examined the textual justification for this reading. In this textual argument, I will draw what I take to be some of the strongest passages that support the strategy conception of rules from texts that are unequivocally legitimate textual resources.²¹² I will examine four passages that Berger cites from Mill's *Autobiography*, his essays on "Bentham" and "Whewell," and, finally, *Utilitarianism*. As I read him, Berger, in contrast with Crisp, seems more concerned about working through the implication of passages justifying the strategy conception of moral rules as they are found in works other than *Utilitarianism*. Berger seems more concerned with showing that Mill does not say anything, or at least not much, that contradicts the strategy conception of moral rules in *Utilitarianism*, though it is better elucidated in other passages.²¹³

One of Berger's initial tasks in supporting the strategy reading is establishing Mill's penchant for using indirect goals as a common means of reaching some higher goal. In particular, Mill seems to have had this view about the nature of happiness.

²¹² I include this qualification about "unequivocal textual resources" as means of gesturing toward works like Appendix H, which was discussed in chapter two, and sources like Mill, "Taylor's Statesmen," *CW*, 19, 617-647. This article, which admittedly contains some passages that strongly favor an act-utilitarian reading of Mill, is open to question as a reflection of his mature views given that the essays were published fairly early in Mill's career as a moral theorist (as a reminder *On Liberty* and *Utilitarianism* were written in the mid-1850s) and because it was published with Mill's fellow utilitarian George Grote. In Mill's personal bibliography, he notes that he wrote "part" of the article, but it is not clear *which* part Mill contributed. See *Ibid.* 617.

²¹³ I say "not much," since, as mentioned earlier, Berger admits that Mill does not do much to explain how the punishability criterion is supposed to cohere with the proportionality criterion of morality. Since these respective criteria are essential to the meaning of Mill's utilitarianism, they plainly play a role in the strategy conception of moral rules.

Mill's attitude on this point comes out clearly in those places in which he is separating his views from those of Bentham and his father. As Mill understood them, both of these figures had seriously incomplete understandings of human nature and the optimum means by which humans attain happiness—whether that be happiness for oneself or for others. This attitude is revealed in a justly famous passage from his *Autobiography*. In the passage, Mill has just recently emerged from his mental crisis wherein he realized that the pursuit of utilitarian social reforms would not provide his life with the meaning and purpose of which he had been continually assured.²¹⁴ Following his recovery he comes to see that the nature of his mentors' mistake and adopts a different approach:

I never, indeed, wavered in the conviction that happiness is the test of all rules of conduct, and the end of life. But I now thought that this end was only to be attained by not making it the direct end. Those only are happy (I thought) who have their minds fixed on some object other than their own happiness; on the happiness of others, on the improvement of mankind, even on some art or pursuit, followed not as a means, but as itself an ideal end. Aiming thus at something else, they find happiness by the way. The enjoyments of life (such was now my theory) are sufficient to make it a pleasant thing, when they are taken *en passant*, without being made a principal object. Once make them so, and they are

²¹⁴ Describing this process in another famous passage, Mill says that he came to this realization by asking himself the following question: “‘Suppose that all your objects in life were realized, that all the changes in institutions and opinions which you are looking forward to, could be completely effected at this very instant; would this be a great joy and happiness to you?’ and an irrepressible self-consciousness distinctly answered ‘No!’ At this my heart sank within me: the whole foundation on which my life was constructed fell down. All my happiness was to have been found in the continual pursuit of this end. The end had ceased to charm, and how could there ever again be excitement in the means? I had nothing left to live for.” Mill, *Autobiography*, *CW*, 1, 139.

immediately felt to be insufficient. They will not bear a scrutinizing examination. Ask yourself whether you are happy, and you cease to be so. The only chance is to treat, not happiness, but some end external to it, as the purpose of life. Let your self-consciousness, your scrutiny, your self-interrogation, exhaust themselves on that; and if otherwise fortunately circumstanced you will inhale happiness with the air you breathe, without dwelling on it or thinking about it, without either forestalling it in imagination, or putting it to flight by fatal questioning. This theory now became the basis of my philosophy of life. And I still hold to it as the best theory for all those who have but a moderate degree of sensibility and of capacity for enjoyment, that is, for the great majority of mankind.²¹⁵

The principal importance of this passage is Mill's claim that directly aiming at happiness is not, in fact, the best way to achieve it. Moreover, inquiring as to how successful one has been in achieving the goal ("Am I happy?") frustrates the achievement of that very goal. The only thing to be done is to aim at some other goal suitably related to the ultimate one and work to achieve that. Mill is clearly talking here about the pursuit of personal happiness rather than general aggregate happiness, but Berger employs the passage as a means of establishing a broader pattern in Mill's thought that extends to the domain of morality. Just as Mill allowed for indirect pursuits of personal happiness, so also does he allow for indirect pursuits of morality through a strategy conception of rules.

²¹⁵ Ibid., 145-147.

This attitude toward indirect pursuit of goals appears not only in Mill's autobiographical reflections but also in his early critical writings on Bentham, which comprise the second major text relevant to the strategy conception of rules. In one passage, Mill notes that he agrees with Bentham in affirming the principle of utility as the ultimate standard of conduct, but he does not share Bentham's view that:

All right thinking on the details of morals depends on its express assertions. We think utility, or happiness, much too complex and indefinite an end to be sought except through the medium of various secondary ends, concerning which there may be, and often is, agreement among persons who differ in their ultimate standard; and about which there does in fact prevail a much greater unanimity among thinking persons, than might be supposed from their diametrical divergence on the great questions of moral metaphysics. As mankind are much more nearly of one nature, than of one opinion about their own nature, they are more easily brought to agree in their intermediate principles, *vera illa et media axiomata*, as Bacon says, than in their first principles: and the attempt to make the bearings of actions upon the ultimate end more evident than they can be made by referring them to the intermediate ends, and to estimate their value by a direct reference to human happiness, generally terminates in attaching most importance, not to those effects which are really the greatest, but to those which can most easily be pointed to and individually identified. Those who adopt utility as a standard can seldom apply it truly except through the secondary principles; those who reject it, generally do no more than erect those secondary principles into

first principles. It is when two or more of the secondary principles conflict, that a direct appeal to some first principle becomes necessary; and then commences the practical importance of the utilitarian controversy; which is, in other respects, a question of arrangement and logical subordination rather than of practice; important principally in a purely scientific point of view, for the sake of the systematic unity and coherency of ethical philosophy.²¹⁶

Berger notes that some have taken this passage to show Mill's allegiance to some kind of rule consequentialism. He thinks that this is a mistake for a few reasons. To begin with, in the passage Mill seems to suggest that it is our judgment in applying the principle of utility that is often mistaken. As Berger sees it, Mill is not stating that applying the principle of utility directly is an error, as such, but rather that it is often done poorly given the prejudices and limitations and of human judgment. Mid-way through the quoted passage, Mill says that attempts to evaluate the goodness of an action by means of direct consideration of human happiness pick out "not to those effects which are *really* the greatest, but to those which can most easily be pointed to and individually identified."²¹⁷ Berger says that "the right result would seem to be what the Principle of Utility would tell us to do, applied directly, but *correctly*. It is because use of secondary principles will yield *that* result that their adoption is urged."²¹⁸ Here, then, one can see the strategy conception in play insofar as it stresses the use of secondary rules because of the epistemological limitations of moral agents.

²¹⁶ Mill, "Bentham," *CW*, 10, 110-111.

²¹⁷ *Ibid.*, 111. Emphasis added.

²¹⁸ Berger, *Happiness, Justice, and Freedom*, 84. Emphasis in original.

Berger brings out two further points regarding this passage and its relation to the strategy conception of rules. To begin with, in the passage Mill seems to be distinguishing the test of morality from a theoretical point of view and from a practical point of view in just the way that the strategy conception advocates. Humans are not to use rules because they reveal the meaning of the principle of utility. Instead, they should use rules because of human frailties and uncertainties in applying the principle of utility directly to moral situations.

The second point Berger makes concerns common interpretations of this passage. Some commentators have taken the above quoted passage on Bentham to say that Mill is claiming that it is *only* when rules conflict that one consults the principle of utility. Berger cites two reasons to believe that this is a bad reading. First, Mill says that direct applications of the principle of utility are *seldom* correct, which seems to leave open the possibility that it is *sometimes* done properly. Second, Mill notes that when the two principles conflict, it is *necessary* that one make a direct appeal to the first principle. The fact that it is necessary to appeal to the principle in this case does not show that it is the only time in which it can be appealed to; only that it must be appealed to in *at least* this type of circumstance. Taken together, these points suggests that Mill should be read as being in favor of the idea that one can appeal directly to the principle of utility and as outlining at least one, but by no means the only, type of situation in which one might do so. This dual emphasis on both the possibility and danger of direct appeals to utility sit nicely within the dialectic of the strategy conception of rules.

In a third passage that Berger uses to discuss the strategy conception of rules, he examines Mill's critical essay on William Whewell. In his writings on utilitarianism, Whewell raised the objection that since humans cannot be thought to reliably calculate the effects of their actions, it will sometimes be difficult or even impossible to tell if one has done the right thing. This seems clear when one looks at a case of lying. How can the utilitarian, Whewell asks, reliably determine if an agent has done the right thing by telling a lie? In his reply, Mill admits that it is indeed difficult to examine the effects of a single instance of lying, so:

We must look at them multiplied and in large masses. The portion of the tendencies of an action which belong to it not individually, but as a violation of a general rule, are as certain and calculable as any consequences; only they must be examined not in the individual case, but in classes of cases.²¹⁹

In other words, when considering whether or not one should tell a lie, one should consider the question almost in the way described by the utilitarian generalization position mentioned in chapter two. On that view, actions were evaluated according to whether generalizing the rule used in the situation would maximize utility. This is what Mill seems to be getting at in talking about considering the action as a member of a class of cases.

But this passage makes Mill sound more like a rule utilitarian than an act utilitarian. Berger, though, is more interested in what Mill says next. In his essay, Mill notes that Whewell expected this kind of reply from the utilitarian and responded in turn

²¹⁹ Mill, "Whewell," *CW*, 10, 181.

by saying that the liar could claim that she did not wish for his case to be drawn into the general class of cases. This response will not do, however, and Mill's response, Berger says, reveals some important ideas about his theory of moral rules:

But it does not depend on him whether or not it shall be drawn into consequence. If one person may break through the rule on his own judgment, the same liberty cannot be refused to others; and since no one could rely on the rule's being observed, the rule would cease to exist. If a hundred infringements would produce all the mischief implied in the abrogation of the rule, a hundredth part of that mischief must be debited to each one of the infringements, though we may not be able to trace it home individually. And this hundredth part will generally far outweigh any good expected to arise individual act. We say generally, not universally; for the admission of exceptions to rules is a necessity equally felt in all systems of morality . . . That the moralities arising from the special circumstances of the action may be so important as to overrule those arising from the class of acts to which it belongs, perhaps to take it out of the category of virtues into that of crimes, or *vice versa*, is a liability common to all ethical systems.²²⁰

From this passage Berger draws two significant points relevant to the discussion here.²²¹ First, Berger notes that this case is clearly not an instance where an agent has to use her own judgment in applying the principle of utility because there are no rules

²²⁰ Ibid., 182.

²²¹ Berger, *Happiness, Justice, and Freedom*, 93.

present.²²² As such, when Mill says that a person must use her own judgment to determine that, “the moralities arising from the special circumstances of the action may be so important as to overrule those arising from the classes to which it belongs,” it is presumed that she is making this judgment in a way that maximizes utility in accordance with the strategy conception of rules. Second, and this point is implied by the first, Mill does seem to be allowing that, in certain circumstances, agents may suspend a standing rule. This seems a threat, then, to the rule utilitarian idea that a rule is *always* in play when making a moral decision.

At this point, however, I want to raise an objection to Berger’s textual argument. He is correct in saying that Mill allows for an exception to be made to the relevant rule. And if this was all Mill had said on the issue it would indeed look rather bad for a rule utilitarian reading. However, Berger’s analysis of this passage is misleading in light of a point that Mill makes in the very next paragraph about how to think of exceptions to rules:

At all events, the existence of exceptions to moral rules is no stumbling-block peculiar to the principle of utility. *The essential is, that the exception should be itself a general rule*; so that, being of definite extent, and not leaving the expediencies to the partial judgment of the agent, it may not shake the stability of the wider rule in cases to which the reason of the exception does not extend.²²³

²²² Recall that this was a concern discussed in the section of Fuch’s reply to West who said that, in such cases where there were no relevant rules, individuals would be justified in making direct appeals to the principle of utility.

²²³ Mill, “Whewell,” 183.

In this way, Mill seems to be seeking a way to make exceptions to rules, even, matters of rules. It is not enough when evaluating whether an agent has done the right action, for the agent to make a judgment that a particular case warrants the suspension of a rule with no further thought as to whether a new rule, concerning the extension of exceptions, should be put in place.

In the fourth and final passage I want to examine concerning the strategy conception of rules, Berger confronts a challenge raised by Urmson's rule utilitarian reading of Mill. In the very last lines of chapter two of *Utilitarianism*, Mill remarks that:

We must remember that only in these cases of conflict between secondary principles is it requisite that first principles should be appealed to. There is no case of moral obligation in which some secondary principle is not involved; and if only one, there can seldom be any real doubt which one it is, in the mind of any person by whom the principle itself is recognised.²²⁴

Urmson used this quote to argue that moral rules are not rules of thumb for Mill, “but an essential part of moral reasoning.”²²⁵ Berger grants that this is so—indeed the strategy conception of rules says the same thing—but also holds that the quote does not necessarily provide support for a rule utilitarian reading of Mill. This is for two reasons. First, Mill says that direct appeals to first principles (i.e. the principle of utility), “is requisite only in cases of *conflict* of rules; it does not say that such an appeal is

²²⁴ Mill, *U*, 2.25.

²²⁵ Urmson, “The Interpretation of the Moral Philosophy of J.S. Mill,” 36.

inappropriate in other cases.”²²⁶ This is important for Berger in that he takes himself to have shown, in the passage from the essay on Bentham, that direct appeals to utility are permissible on Mill’s utilitarian scheme.

The second reason this passage does not necessarily support the rule utilitarian reading is that Urmson’s point looks past the practical reasons that Mill might have said that secondary principles (i.e. moral rules) are always involved in matters of moral obligation. Rules may always be involved in matters of moral obligation because, as fallible agents, it will be convenient to have rules to refer to in cases of moral concern. However, it is a stronger claim to say that an act is *justified* because it conforms to a moral rule. Indeed, if Mill would have made such a claim, it would seem to be in tension with a passage in the same paragraph, which emphasized the importance of allowing for exceptions to rules.²²⁷

Later, in the fifth chapter of this dissertation concerning Mill’s theory of moral obligation, I will argue that Mill recognizes a stronger connection between rules and moral obligation. I will argue that Mill understands the very *meaning* of a morally wrong action to involve the violation of a rule. If this is right, then it would challenge, to some extent, the strategy conception of rules that Berger has argued for here.

At this point it will be helpful to summarize the conclusions suggested by these four passages I have discussed. First, the passage from the *Autobiography* suggests that Mill was explicitly aware of the idea of pursuing a single end (personal happiness) by

²²⁶ Berger, *Happiness, Justice, and Freedom*, 103.

²²⁷ Mill, *U*, 2.25.

way of aiming at other ends. This is important since it provides the basic model under which the strategy conception of rules operates. Second, in the passage from the essay on Bentham, Mill seems to allow for direct appeals to the principle of utility in order to decide moral questions and even suggests that this might be done correctly. This is important since rule utilitarian interpretations have stressed that what makes actions right is conformity to a justified moral rule—rather than their conformity to a first principle like the principle of utility. The third passage, from Mill's essay on Whewell, concerns the nature of exceptions to moral rules. Berger argued that Mill allows that there can be cases where there can be exceptions to moral rules. I pointed out, however, that Berger's argument on this point was misleading in that Mill goes on to say that the exceptions themselves should be made into rules. The fourth passage challenged Urmson's reading of a passage from *Utilitarianism* where Mill says that every case of moral obligation is a case where a secondary principle (or moral rule) is involved. Berger noted that even if this was so it did not necessarily support the rule utilitarian reading since a rule might be involved for reasons having to do with practicality more than ultimate philosophical justifications.

Objection to Berger

In what follows I want to raise an objection to Berger's account of the strategy conception of rules. The objection concerns the strategy conception of rules and its relation to rights. The objection comes from Brink in his argument for what he calls Mill's deliberative utilitarianism. Brink's conception of deliberative utilitarianism

involves interpreting Mill such that the latter is committed to “a conception of happiness whose dominant component consists in the exercise of one’s rational capacities.”²²⁸ The precise details of what this entails is not important for my purposes. What is important, however, is Brink’s worry about how Mill’s utilitarianism seems to allow special protection of rights and liberties that are in tension with the strategy conception of moral rules. Berger plainly allows for exceptions to moral rules in cases where utility could be promoted and agents are justifiably confident that they are not mistaken in predicting the consequences of actions or acting in a self-serving way. In this way, moral rules only have legitimacy given their practical necessity and human being’s cognitive and affective limitations. Brink worries that this conception of moral rules means that the rights that are protected by these rules “are not counterfactually stable.”²²⁹ That is to say, they can be overridden in cases where agents can reliably and efficiently suspend those rights. This is unacceptable to Brink:

And it seems that genuine moral and political rights should be counterfactually stable. Where an agent’s claim to something is protected by a moral rule or right, it would be wrong to deprive her of that thing, even if we are perfect and costless calculators of utility and departure from the rules here had no bad spillover effects on our behavior elsewhere.²³⁰

²²⁸ Brink, “Deliberative Utilitarianism,” 68.

²²⁹ *Ibid.*, 93.

²³⁰ *Ibid.*, 94.

As a textual justification for thinking that Mill would agree with this statement Brink cites a passage from chapter five of *Utilitarianism* concerning the relationship between utility, justice, and rights:

Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation.²³¹

The fact that Mill seems to insist in this passage on the paramount importance of the rules of justice (which are a type of moral rule), suggest that something like counterfactual stability is more important to him than the strategy conception of rights would imply.²³²

Brink leaves off at this point in his objection to Berger's view, but I want to add some further passages to strengthen the objection. Though Brink does not cite the passage in this context, certain passages of *On Liberty* seem to speak of rights in rather absolutist terms. For instance, in the opening chapter Mill says, "The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of *right*, absolute. Over

²³¹ Mill, *U*, 5.32.

²³² One can imagine, though, Berger replying that this passage only commits Mill to saying that the obligation is *more* absolute than other obligations rather than *completely* absolute. This would leave open the possibility of suspending those rights in certain cases. Mill even arguably allows for such cases as mentioned in *Ibid.*, 5.37.

himself, over his own body and mind, the individual is sovereign.”²³³ The fact that Mill identifies an individual’s *absolute* sovereignty as a matter of right seems in tension with the idea that the rights could be suspended for the sake of the promotion of utility. Similarly, later in the chapter after he has further discussed the rights that individuals have to the liberties that he has been describing, Mill says that, “No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do exist *absolute and unqualified*.”²³⁴ The fact that Mill gives this sort of unqualified protection of these rights and liberties, while still explicitly operating under the auspices of utility as a guarantor of rights, does seem to sit uneasily with the strategy conception of rights that Berger has argued for here.²³⁵

It is also worth recalling Mill’s emphasis on security and the stability of the rules of justice in chapter five of *Utilitarianism*. There, Mill remarks that security is set apart from other societal benefits:

. . . but security no human being can possibly do without; on it we depend for all our immunity from evil, and for the whole value of all and every good, beyond the passing moment; since nothing but the gratification of the instant could be of any worth to us, if we could be deprived of everything the next instant by whoever was momentarily stronger than ourselves. Now this most indispensable

²³³ Mill, *OL*, 1.9. Emphasis added.

²³⁴ *Ibid.*, 1.13. Emphasis added.

²³⁵ Recall that Mill says that utility is the ground for all rights in *Ibid.*, 1.11.

of all necessities, after physical nutriment, cannot be had, unless the machinery for providing it is kept unintermittedly in active play.²³⁶

Mill's reference here to the "machinery" for preserving rights, which must be running constantly, seems to be in line with Brink's claim that moral rights need to be counterfactually stable on Mill's account. Indeed, Mill says, at the opening of the same paragraph of chapter five, "To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of."²³⁷ To have a right, Mill seems to be saying, is to be justified in expecting that it will be protected by society. On Berger's view, not only may your right be overridden without society coming to your protection, but doing so would be the morally correct action from the utilitarian standpoint. Brink seems to regard this as unacceptable as a reading of Mill's theory of rights. For instance, Mill would presumably say that agent should be able to depend on her property rights being counterfactually stable, and not suspended even in those cases when utility will be maximized, in at least one case, by suspending them. In light of the passages that I have suggested could supplement this objection, I take it that Brink's objection does raise a plausible worry for Berger's account.

In my view, Berger's view is an improvement, overall, on Crisp's act utilitarian reading.²³⁸ However, his view also has some problematic passages to account for. That said, the strongest challenges to Berger's reading will come in the upcoming chapters.

²³⁶ Mill, *U*, 5.25.

²³⁷ *Ibid.*

²³⁸ To be clear, though, Berger's reading came *before* Crisp's in time (Berger's book was published in 1984 and Crisp's in 1997).

This includes the next chapter, which examines, among other matters, the legitimacy of treating the greatest happiness principle, as it is given in *Utilitarianism*, as an important statement of Mill's own moral theory.

CHAPTER IV

MILL'S ECUMENICAL *UTILITARIANISM* AND HIS CURIOUS FINAL CHAPTER

This chapter is essential to the dissertation in that it provides the rationale for the interpretive methodology that I later employ to argue that Mill should be read as a sanction utilitarian. In this chapter, I will reiterate some of the main components of Crisp's understanding of how to interpret *Utilitarianism* as he is my primary foil. While this was discussed to some extent in the previous chapter, I will revisit it here to bring out the relevant contrasts with my favored interpretive approach. There will also be some discussion of the implications for reading Mill as I suggest, and these too follow some of the points mentioned in the previous chapter.

Introduction and chapter outline

It is a philosopher's commonplace to regard *Utilitarianism* as the most important work for interpreting Mill's distinctive moral theory.²³⁹ I will argue that this view is mistaken and that *Utilitarianism*, as a whole, should play a relatively minor role in interpreting Mill's moral theory. I maintain, instead, that much of *Utilitarianism* should be understood as an ecumenical text, wherein Mill is attempting to articulate and defend a common creed that could command the assent of many utilitarians, rather than to

²³⁹ This view is attested to by many writers on Mill including John Skorupski, among the most eminent Mill scholars, who writes that *Utilitarianism* "is a kind of extended memo to his contemporaries, setting out for them Mill's personal understanding of utilitarianism." John Skorupski, "Utilitarianism in Mill's Philosophy," in *The Blackwell Guide to Mill's Utilitarianism*, 46.

elaborate upon his own version of utilitarianism. Furthermore, I argue that Mill seems to have held *Utilitarianism* as a whole in low regard.²⁴⁰ If this interpretation is correct, then the locus of debate concerning Mill's moral theory should move away from some of the famous passages of *Utilitarianism* and toward other texts that, I will argue, provide better insight into what Mill really thought. This reading—I'll call it the Ecumenical Reading—holds for the first four chapters, but not for chapter five. That final chapter, which explains the relation between utility and justice, should be read rather differently. So, my claim is that interpretations of Mill's moral theory that emphasize his comments on moral obligation and punishment in chapter five are on stronger ground given the reading I argue for in this chapter.²⁴¹

The first section of this chapter describes what I call the Orthodox reading, the interpretation that privileges *Utilitarianism* in determining Mill's moral theory, and contrasts it with my Ecumenical reading. The second section will explain the reasons for rejecting two key components of the Orthodox reading: namely, that the Orthodox reading rests on false beliefs both about Mill's intended audience and about Mill's opinion of the importance of the text. The third section will provide evidence for thinking that Mill intended to write an ecumenical defense of utilitarianism. The fourth

²⁴⁰ Many works on of historical scholarship give *Utilitarianism* a high place in interpreting Mill's moral theory. To give two examples, Henry West, in his book reviewing Mill's moral theory as a whole, remarks that *Utilitarianism* "is the primary subject of this book." Henry West, *An Introduction to Mill's Utilitarian Ethics*, 19. Similarly, Terence Irwin, in his discussion of Mill in his three volume history of ethics, writes that, "The most influential and most widely read defense of utilitarianism is Mill's short book *Utilitarianism* . . ." Terence Irwin, *The Development of Ethics: A Historical and Critical Study*, vol. 3, *From Kant to Rawls* (New York: Oxford University Press, 2009), 3: 365.

²⁴¹ For three interpretations that place special emphasis on these passages see Lyons, "Mill's Theory of Morality"; John, *Mill On Liberty*, 9-41; Dale Miller *J.S. Mill*, esp. 79-110.

section will explain why the fifth chapter should be read differently than the other parts of the text. I will close by articulating the potential implications for interpreting Mill's text as I suggest.²⁴²

The Orthodox reading

The Orthodox reading, in this context, is defined by the privileged place it gives *Utilitarianism* in interpreting Mill's moral thought. Put roughly, this means that if Mill makes a claim in *Utilitarianism* that seems in tension with a claim in other writings, one should give priority to the passage in *Utilitarianism*. The Orthodox reading is perhaps most strikingly defended by Roger Crisp. In Crisp's view, works like *On Liberty* and *The Subjection of Women* serve as interesting examples of Mill's theory in *application*, but it is in *Utilitarianism* that one finds Mill's most candid and straightforward discussion of utilitarian *theory*.²⁴³ Earlier and later works can be understood in light of *Utilitarianism*, but the latter is to be given priority in comparison to Mill's other texts on moral philosophy. Crisp explains just how much authority he wants to accord to *Utilitarianism* when he says, "in so far as Mill was an evangelist, *Utilitarianism*, first published as a series of three essays, can be seen as his bible. . . . it was clearly intended

²⁴² In framing the issues as I have I am building on the work done by Daniel Jacobson who has articulated several features of the Ecumenical reading in print. See Daniel Jacobson, "J.S. Mill and the Diversity of Utilitarianism," 1-18; Daniel Jacobson, "Utilitarianism without Consequentialism," esp. 177-178; and Daniel Jacobson "Review of Henry West." While several of the points I will raise against the Orthodox reading follow Jacobson's historical points and his exposition of particular passages of *Utilitarianism*, I focus more on the historical and biographical factors that speak in favor of the Ecumenical reading and less on textual exposition of the document itself.

²⁴³ Crisp, *Mill on Utilitarianism*, 7-9.

to be the summation, and defense, of his thoughts on the doctrine which provided the foundation for his views.”²⁴⁴

Crisp adopts this standpoint as an interpretive principle in light of Mill’s tendency to write as a social reformer *cum* rhetorician rather than as a philosopher. In some cases, especially when Mill is writing on topics that are dear to him, Mill “may be attempting to express himself in the way most likely to persuade us, rather than to reveal his own views most clearly.”²⁴⁵ This is what Mill is up to, Crisp suggests, in *On Liberty* and *The Subjection of Women*.²⁴⁶ In those writings, so the reasoning goes, Mill is thinking it is better to do what is necessary to convince readers to accept his policy proposals than to inquire into the ultimate theoretical foundations for accepting utilitarianism. This is not to say that Mill is intending to deceive, *per se*, but merely that he has a less than forthcoming attitude about his motivations.²⁴⁷ Crisp tries to capture the nuances of this by suggesting that, “In his writing on these contentious issues, Mill is of course attempting to state what he believes; but he is also using the skills of a rhetorician to persuade.”²⁴⁸ Crisp is not alone in underscoring the importance of reading Mill as a rhetorician. Though he adopts an alternative interpretive strategy for Mill’s texts, John

²⁴⁴ Ibid., 7-8.

²⁴⁵ Ibid., 14.

²⁴⁶ Ibid., 14. For how Crisp explicitly applies his understanding of *On Liberty* and *The Subjection of Women* in light of the priority that he accords to *Utilitarianism* see Crisp, *Mill on Utilitarianism*, 173-216.

²⁴⁷ Crisp does admit that even in *Utilitarianism* Mill dissembles, to some extent, about the nature of utilitarianism. At one point in reply to the objection that utilitarianism is too demanding (see *U.* 2.19), Mill suggests that the circumstances in which one will need to consciously aim at increasing general utility are relatively rare. Crisp writes that, “Utilitarianism is almost certainly much more demanding than Mill allows. It is tempting to think, in fact, that Mill is deliberately being disingenuous here. . . . Better to persuade a reader to become a feeble utilitarian than put them off entirely by stressing the demandingness of utilitarian morality.” Crisp, *Mill on Utilitarianism*, 115.

²⁴⁸ Ibid., 15.

Rawls, like Crisp, stresses the importance of reading Mill as an intellectual public figure urging social reform. Recalling Mill's rhetorical aims can help the reader adopt a more charitable attitude toward his writing's defects such as, "their often loose and ambiguous terminology, and their almost incessant lofty style and sermonizing tone untroubled by self-doubt, even when the most intricate questions are being discussed. Those who disliked him said that he sought to convince, and, when that failed, to convict."²⁴⁹

According to Crisp, Mill has quite different aims for *Utilitarianism*. In contrast to his writings on broader social issues, when writing *Utilitarianism* Mill's rhetorical skills are merely in the background of the work, so to speak, and he is operating primarily in the mode of careful philosopher espousing the first principles of his brand of utilitarianism. In his other writings on moral and political topics, Mill's conclusions derive their justification, implicitly or explicitly, from the foundation established in *Utilitarianism*. Thus, Crisp takes a decisive stance in the debate over how Mill's liberal and utilitarian commitments might be reconciled. Some philosophers have suggested that Mill's political writings reveal a deep disparity between these two essential aspects to his thought.²⁵⁰ Whether Mill's liberalism and utilitarianism are consistent with each other, and whether Mill held to one set of commitments more strongly than the other, are preeminent questions in Mill scholarship.²⁵¹ Crisp is not in doubt on this question. In his

²⁴⁹ John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, Mass.: Harvard University Press, 2007), 253.

²⁵⁰ See Robert Paul Wolff, *The Poverty of Liberalism* (Boston: The Beacon Press, 1968); C.L. Ten, *Mill on Liberty* (Oxford, UK: Clarendon Press, 1980).

²⁵¹ This problem was listed by David Brink as being one of the two ways that "Mill's moral theory is usually thought to be seriously inconsistent . . ." Brink, "Deliberative Utilitarianism," 67. Jacobson

attempt to confront this worry, he quotes Mill as giving clear affirmation of his commitment to utilitarianism within the text of *On Liberty*: “It is proper to state that I forego any advantage which would be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions.”²⁵² Crisp takes this to mean that Mill’s elucidation of the concept of liberty “cannot ground any kind of liberalism which is inconsistent with his act utilitarianism.”²⁵³ While there are some potential worries with interpreting Mill’s comments this way, Crisp is at least clear on the question of how to understand Mill’s utilitarian and liberal commitments.

The Ecumenical reading: Mill’s audience and his attitude toward the text

In contrast to the Orthodox reading, the Ecumenical reading of *Utilitarianism* interprets the book as a work where, for the most part, Mill is aiming to discuss utilitarianism more generally as opposed to his peculiar understanding of it. Moreover, while the text has assumed a prominent place in many readings of Mill, the Ecumenical position points to several reasons to think that, while Mill initially seems to have hoped for a broad audience for his work, he eventually came to hold *Utilitarianism* in fairly low regard.

refers to this as, “the central problem of Mill interpretation.” Jacobson, “Utilitarianism without Consequentialism,” 175.

²⁵² Mill, *OL*, 1.11.

²⁵³ Crisp, *Mill on Utilitarianism*, 175.

One can begin to see why this is the case by considering Mill's choice of publishing venue. As is well known, *Utilitarianism* was published in successive editions of *Fraser's Magazine for Town and Country*, in October, November, and December of 1861.²⁵⁴ Crisp writes that *Fraser's* was a "general intellectual journal," and that, "*Utilitarianism*, unlike *On Liberty* or the *Subjection of Women*, was not written for widespread public consumption."²⁵⁵ This opinion is belied by the evidence. To the extent that circulation numbers are reliable, circulation records of *Fraser's* put it toward the top of comparable intellectual publications of the time. Records from the 1860s suggest that *Fraser's* was competitive with the conservative monthly *Blackwood's Magazine*, and typically outsold the *Edinburgh Review* and *Westminster Review*.²⁵⁶ At the risk of anachronism, one might helpfully compare *Fraser's* to a modern publication like *Atlantic Monthly*, a magazine engaged with political and cultural issues of central public concern but written in a non-academic style. Taken together, it seems clear that by publishing in that venue Mill was hardly avoiding "widespread public consumption."

More telling is what Mill published in *Fraser's* aside from the articles that were later republished as *Utilitarianism*. The Orthodox reading of *Utilitarianism* might lead one to expect that Mill's other *Fraser's* essays were also matters of technical philosophy, wherein Mill is attempting to get clear on first principles in other parts of his

²⁵⁴ For further details about the circumstances of the publication see John Robson, "Textual Introduction," in Mill, *CW*, 10, cxv-cxxxix.

²⁵⁵ Crisp, *Mill on Utilitarianism*, 7; 14.

²⁵⁶ For more detailed publication data and comparisons see John S. North, ed. *The Waterloo Directory of English Newspapers and Periodicals 1800-1900* (Waterloo, Ont. : North Waterloo Academic Press, 2003), s.vv. "Edinburgh Monthly Magazine," "Edinburgh Review," "Fraser's Magazine for Town and Country," "Westminster Review."

philosophical system. Yet, this is not the case. Instead, one finds Mill firmly engaged in matters of large public concern. Mill's other publications in *Fraser's* included a response to Thomas Carlyle's argument for white supremacy, a discussion of recent voting reform proposals, an analysis of the difficulties of a non-interventionist foreign policy, and an opinion piece on the American Civil War.²⁵⁷ As usual, Mill approached these articles with critical insight and verve, but his eyes seem fixed on practical matters at hand, rather than in the philosophical heavens above.

To appreciate the kinds of audience and purposes Mill had in mind, it is helpful to recall Stefan Collini's work on the Victorian "Public Moralists."²⁵⁸ Public Moralists included figures like Matthew Arnold, James Fitzjames Stephen, John Morley, and Henry Fawcett, who shared a common communicative objective more than a shared ideological perspective. Rather than writing in an attempt to convince each other in high-minded monographs, they articulated their respective viewpoints in periodicals aimed at those parts of the middle class who took ideas seriously. As Collini describes it, in writing for publications like *Fraser's*, Mill and his fellow Public Moralists were reminding, "their more self-interested contemporaries of the strenuous commitments entailed by the moral values embedded in the public discourse of their society."²⁵⁹ Collini's analysis is buttressed by what Mill said to his peers about *Utilitarianism* in his correspondence. While this goes some way toward illuminating Mill's apparent authorial

²⁵⁷ For the publications that appeared in *Fraser's* see Mill, "The Negro Question," *CW*, 21, 85-95; Mill, "Recent Writers on Reform," *CW*, 19, 341-370; Mill, "A Few Works on Non-Intervention," *CW*, 21, 109-124; Mill, "The Contest in America," *CW*, 21, 125-142.

²⁵⁸ Stefan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850-1930* (Oxford, UK: Clarendon Press, 1991).

²⁵⁹ *Ibid.*, 58.

intentions, one can also turn to more direct evidence of his desire to reach a broad audience with *Utilitarianism*. To one of his regular correspondents (and later biographer) Alexander Bain, Mill writes:

I do not think of publishing my *Utilitarianism* till next winter at the earliest, though it is now finished, subject to any correction or enlargement which may suggest itself in the interval. It will be but a small book, about a fifth less than the *Liberty*, if I make no addition to it. *But small books are so much more read than large ones that it is an advantage when one's matter will go into a small space.*²⁶⁰

Again, it would seem odd for Mill to speak in this way if he did want the work to be read by a popular audience. Indeed, in the same letter, Mill advises Bain himself to publish one of his recent essays in *Fraser's* instead of waiting to publish it as a book, since doing so will ensure that it is, "much more widely read . . ."²⁶¹

If it seems evident that Mill was aiming at fairly broad readership for his essays, it is less clear that he took himself to be articulating the first principles of his moral philosophy. In January 1862, almost immediately after the work's publication, Mill writes to his fellow utilitarian and regular correspondent George Grote expressing some doubts regarding the ultimate significance of what he had done. Mill remarks that though he is glad Grote enjoyed the essays, he is unsure about the ultimate efficacy: "*The most that writing of that sort can be expected to do, is to place the doctrine in a better light,*

²⁶⁰ Mill to Alexander Bain, 14 November 1859, *CW*, 15, 645. Emphasis added.

²⁶¹ *Ibid.*

*and prevent the other side having everything their own way, and triumphing in their moral and metaphysical superiority as they have done for the last half century. . . .*²⁶²

These limited hopes hardly sound like someone who has clarified the essential elements of his theory upon which all of his other practical writing depends (as Crisp argues). It does, however, read like someone who has just written a work that is aiming to improve the public opinion of utilitarianism more generally.

The possibility that the text has achieved its canonical status for reasons apart from its reflection of Mill's definitive views on moral philosophy has been recognized for some time. In his 1882 biography of Mill, Bain wrote of *Utilitarianism* that, "This short work has many volumes to answer for. The amount of attention it has received is due, in my opinion, partly to its merits, and partly to its defects. As a powerful advocacy of Utility, it threw the Intuitionists on the defensive; while by a number of unguarded utterances, it gave them important strategic positions which they could not fail to occupy."²⁶³ More recently, Alan Ryan takes a similarly ambivalent view of the text when he comments that *Utilitarianism* has, "become a classic more through the efforts of its opponents than those of its friends."²⁶⁴ The work has, no doubt, attracted its share of enemies and has been carefully examined in philosophy seminars and monographs since its publication. The fact that *Utilitarianism* has been so widely studied and critiqued, however, does not imply that it should be regarded as Mill's definitive work on moral

²⁶² Mill to George Grote, 10 January 1862, *CW*, 15, 763. Emphasis added.

²⁶³ Alexander Bain, *John Stuart Mill: A Criticism with Reflections*. (London: Longman's, 1882), 112.

²⁶⁴ Alan Ryan, introduction to *Utilitarianism and Other Essays* by J.S. Mill and Jeremy Bentham (New York: Penguin, 1987), 12.

theory. As Bain says above, Mill has a few “unguarded utterances,” in *Utilitarianism*, but this is just what one might expect given Mill’s intended audience. Reflecting on this suggests alternative reasons for the text’s popularity: its pedagogical and literary qualities. Mill’s brevity, memorable phrasings, and vivid examples attract readers and teachers to the text, but few are usually satisfied with the arguments as they stand. John Skorupski notes as much when he remarks these features are what, “makes *Utilitarianism* intensely tantalizing: there is a lucidity and basic rightness of approach which always brings one back to it, but the very things it gets right seem to cry out for more painstaking explanation and careful defence.”²⁶⁵

Even if Crisp were correct in his claim that *Utilitarianism* was originally intended to be a careful philosophical treatise aimed at a limited scholarly audience, a claim that seems dubious given the above considerations, it appears the utilitarian evangelist Mill did not glow with pride once his so-called “bible” was completed. In 1866 Mill was given an opportunity by his publisher, William Longman, to supply a list of works for Longman to submit to the Durham Cooperative Institute so that they might be distributed at no cost. While *On Liberty*, *Essay on Representative Government*, and the *Principles of Political Economy* were among the titles chosen, *Utilitarianism* was conspicuously absent.²⁶⁶ Mill did not even seek to make sure that *Utilitarianism* was issued in an especially cheap volume, as he did for his much more technical *Logic*.²⁶⁷

²⁶⁵ John Skorupski, *John Stuart Mill* (London: Routledge, 1989), 283.

²⁶⁶ Mill to William Longman, 18 February 1866, *CW*, 32, 163. This letter includes list of to be published titles except the *Logic*.

²⁶⁷ Mill to William Longman, 22 December 1867, *CW*, 26, 1336.

This type of behavior is not an aberration when compared with Mill's public statements regarding *Utilitarianism*. In his *Autobiography*, a work that Mill extensively revised at the end of his life to give a proper view of his intellectual development, Mill did not seem to regard the work as being especially important.²⁶⁸ He mentions the text only once, in passing, and accords it only five lines in a work that extends over two-hundred pages.²⁶⁹ This is despite the fact that he dedicates the final chapter to discussion of other important works like his *On Liberty* and the *Logic*, two works that Mill says that are more likely than any others to be continually read.²⁷⁰

Apart from Mill's comments in the *Autobiography*, many of Mill's decisions related to the revision of the work speak to his apparently lukewarm opinion on the document. As was his custom, some objections to Mill's essays were included in the text when it was published in book form. For instance, in a footnote to chapter two Mill discusses one reader's objection that an action must have a proper motive in order to be judged a moral one.²⁷¹ Similarly, later editions of the text include a note explaining that Herbert Spencer does not wish to be identified as an opponent of utilitarianism as Mill implies that he is in chapter five.²⁷² These alterations notwithstanding, Mill ultimately proved less than diligent in responding to important objections to his theory and in revising the work in light of those objections—a practice that stands in sharp contrast to

²⁶⁸ For a helpful recent historical overview of Mill's *Autobiography* and its role in his posthumous perception see David Stack, "The Death of John Stuart Mill," *The Historical Journal* 54 (2011): 167-190.

²⁶⁹ Mill, *Autobiography*, *CW*, 1, 266.

²⁷⁰ *Ibid.*, 259.

²⁷¹ See Mill, *U*, 2.19n.

²⁷² See *Ibid.*, 5.36n.

his behavior toward works like the *Principles of Political Economy* (seven editions) and his *Logic* (eight editions). While Mill often revised these works in light of rather subtle changes of opinion, he failed to alter some of the text of *Utilitarianism* even when doing so, in at least one documented case, would have saved Mill from the criticism of generations of philosophers.²⁷³

In 1868 Theodore Gomperz, who was preparing a German translation of the text, wrote to Mill explaining that he had noticed a potential fallacy in Mill's famous "proof" for the principle of utility concerning Mill's analogy between "the visible," "the audible," and "the desirable."²⁷⁴ Mill responded by noting that he had not had time to go back and alter the passage to avoid the problem, but that perhaps he should do so. Indeed, rather than taking the time to alter the passage himself (as would seem appropriate if this is the foundational work of his moral theory) Mill invites Gomperz to resolve the issue for him: "I beg that in the translation you will kindly reserve that passage to yourself, & will remove the stumbling block, by expressing the real argument in such terms as you think will express it best."²⁷⁵ Contrary to what one would expect if Mill deeply cared about the work, Mill never went back to revise the passage. This is in spite of the fact that he remained active in his correspondence and in revising other texts for new editions. If *Utilitarianism* was Mill's definitive statement of his moral theory,

²⁷³ For a helpful review of the contemporary criticism of the essays that comprise *Utilitarianism* see J.B. Schneewind, *Sidgwick's Ethics and Victorian Moral Philosophy* (Oxford, UK: Clarendon Press, 1978), 184-188. In general, the objections clustered around Mill's conception of higher and lower pleasures, his "proof" for the principle of utility, and his conception of moral rules.

²⁷⁴ Mill, *U*, 4.3. This, of course, is the fallacy noted by G. E. Moore. See Moore, *Principia Ethica*, 118.

²⁷⁵ Mill to Theodor Gomperz, 23 April 1868, *CW*, 16, 1391.

this neglect seems odd indeed.

The Ecumenical reading: Mill's intellectual context

At this point I have given reasons to suppose that Mill aimed *Utilitarianism* at a popular audience and that he eventually came to hold the work in comparatively low regard. I have said little, however, concerning what Mill seems to have intended to accomplish in the work. I suggest that *Utilitarianism* is Mill's attempt to provide an iteration of utilitarianism that could be accepted by many utilitarians, and a response to standard objections commonly leveled against the theory. To support this suggestion, I will provide reasons to think both that Mill saw a need for a work of this sort, and that recognized that he was in a position to undertake it in an effective way.

To appreciate why Mill might accept the task of writing an ecumenical defense of utilitarianism, one must recall his intellectual status at the time at which he wrote the essays that became the book. Following his famous "mental crisis" in his early twenties, Mill undertook significant intellectual projects that established his reputation as a serious thinker.²⁷⁶ These included his editorship of the periodical the *London and Westminster Review*, and the publication of his *System of Logic* (1843) and the *Principles of Political Economy* (1848). The first of these was important for expanding Mill's intellect and connections in the larger circles of Victorian intellectuals, while the latter two were

²⁷⁶ For Mill's discussion concerning this event see *Autobiography*, *CW*, 1, 139. Mill describes the crisis as arising from the inadequacies of his especially rigorous education and his dissatisfaction with the Philosophical Radicalism that he had identified with up to that point in his life. For a discussion of the crisis in the larger context of Mill's intellectual life see Nicholas Capaldi, *John Stuart Mill: A Biography* (Cambridge, UK: Cambridge University Press, 2004), esp. 55-85.

important in establishing Mill as a pre-eminent mind *within* those circles. Arthur Balfour, the Conservative Prime Minister who had once studied with the utilitarian Henry Sidgwick, wrote that Mill's authority in the universities as a result of his *Logic* was, "comparable to that wielded forty years earlier by Hegel in Germany and in the Middle Ages by Aristotle."²⁷⁷ At his death in 1873, Mill was at work on the eighth edition, which, despite its length and difficulty, was still selling well. Mill's *Principles* was similarly successful and, according to his biographer Richard Reeves, "established Mill as the highest-profile economist of the Victorian era."²⁷⁸ The book was read widely in the universities and sold well: a People's Edition of the book went through multiple editions and sold more than ten-thousand copies.²⁷⁹ In 1905, legal scholar A.V. Dicey gave a speech in which he said that, "At Oxford we swallowed Mill, rather undigested: he was our chief intellectual food until 1860."²⁸⁰ While this might exaggerate the state of affairs somewhat, it is undeniable that Mill's work on logic and political economy established him as one of the outstanding intellects of his time, even before the publication of some of the works that are commonly read today like *On Liberty*, *Utilitarianism*, and *The Subjection of Women*.

Despite his standing as an intellectual in the universities, Mill was well aware that the utilitarian doctrine itself was not as equally well received. In an 1847 letter to his former tutor and fellow utilitarian John Austin, Mill wrote that Austin should compose a

²⁷⁷ Arthur Balfour, *Theism and Humanism* (New York: Hodder and Stoughton, 1915), 141-142.

²⁷⁸ Reeves, *John Stuart Mill: Victorian Firebrand*, 207.

²⁷⁹ For publication details see John Robson, "Textual introduction," in Mill, *CW*, 2, cxvi.

²⁸⁰ Quoted in Richard Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (Chapel Hill, NC: University of North Carolina Press, 1980), 12.

defense of utilitarianism: “This last may wait long for any one with the intellect & the courage to do it as it should be done. And until it is done we cannot expect much improvement in the common standard of moral judgments & sentiments.”²⁸¹ Mill’s urgings were unsuccessful, however, and Austin never took up the work. Over ten years later Mill wrote to Gomperz saying that he was thinking of taking up the task himself since, “There are not many defences extant of the ethics of utility, and I have sometimes thought of reprinting this and other papers I have written on the same as well as on other subjects.”²⁸² Mill’s language here is interesting as he does not say that what is needed is for him to outline *his own* understanding of utilitarianism, but rather the ethics of utility *as such*. Mill’s casual tone regarding these essays is interesting as well. In Crisp’s view, *Utilitarianism* is elucidating the first principles of Mill’s moral philosophy that provide the theoretical grounding for his other normative projects. By 1858, most of the prose that would become *Utilitarianism* would have already been written, and yet, in this letter to Gomperz, he seems less than fully decided as to whether he will even publish it.

Mill gives a suggestion to what ultimately led him to publish the essays in a letter to his French correspondent Charles DuPont-White. Mill writes that he and Dupont-White seem to be in large agreement in their understanding of utilitarianism, but that Mill must correct his correspondent on one important point of fact:

Like many French, you appear to be of the opinion that the idea of Utility is in England the dominant philosophy. It is nothing of the sort. I understand that one

²⁸¹ Mill to Charles Austin, 13 April 1847, *CW*, 13, 712.

²⁸² Mill to Theodore Gomperz, 30 August 1858, *CW*, 15, 570.

might see in that doctrine a certain analogy with the spirit of the English nation. But in fact it is, and it has almost always been, very unpopular there. Most English writers do not only deny it, they insult it: and the school of Bentham has always been regarded (I say it with regret) as an insignificant minority.²⁸³

This further establishes the idea that Mill saw the image of the utilitarian doctrine as what was in need of repair, rather than the doctrine itself. This is just what an ecumenical defense might accomplish. It is also worth highlighting Mill's use of the term "regret" concerning the minority status of "Bentham's school." If *Utilitarianism* is supposed to stand as Mill's definitive statement of his own views apart from Bentham's, as Crisp supposes, this kind of language appears very strange indeed, especially as it comes in October 1861 (i.e. just as the essays were to be published in *Fraser's*).

The consideration that there was a need to improve the standing of the utilitarian position may have been one factor leading to the publication of the essays, but so also might have been Mill's own recognition of his growing influence on public opinion. In a letter to Bain in 1859 Mill remarks on a favorable review of his *Dissertations and Discussions* in the *National Review* from Henry Martineau. Mill says, "I really had no idea of being so influential a person as my critics tell me I am. But being thought to have influence is the surest way of obtaining it really."²⁸⁴ In the very next paragraph, Mill mentions that he has taken up the task of revising some previously written essays and

²⁸³ Mill to Charles DuPont-White, 10 October 1861, *CW*, 15, 745. Translation as quoted in J.B. Schneewind, *Sidgwick's Ethics and Victorian Moral Philosophy*, 174.

²⁸⁴ Mill to Alexander Bain 15 October 1859, *CW*, 15, 640.

some additional matter into “a little treatise on Utilitarianism.”²⁸⁵

Mill’s final chapter

The points above are intended to support the claim that Mill was both in a good position to offer a general defense of utilitarianism, and that he recognized the need to do so. A crucial exception to the thesis that Mill uses *Utilitarianism* to argue for a general defense of the doctrine concerns the fifth and final chapter. In that chapter Mill considers the question whether utility is compatible with justice. It is the longest chapter of the book and, as many critics have noticed, this chapter sits somewhat awkwardly with the other essays. Even Crisp admits that Mill does little to integrate its contents with the other essays.²⁸⁶ In what follows, I will argue that this chapter has a distinct origin and apparently different purpose than the other chapters. As such, it may be interpreted differently than the other chapters.

In much of the text of *Utilitarianism*, Mill sidesteps matters of controversy within the doctrine of utilitarianism itself. He largely shuns heterodox utilitarian statements, and seeks to respond to various criticisms that have been commonly leveled against the theory. Throughout the text Mill discusses the theory in light of its intellectual forebears like Epicurus and Bentham and avoids matters of sectarian dispute. As Jacobson has noted, “when Mill does put forward an original claim [in *Utilitarianism*], it is in response to some general objection to the theory; and when he

²⁸⁵ Ibid.

²⁸⁶ Crisp, *Mill on Utilitarianism*, 13.

advances an original argument, it is usually in support of a generally held thesis.”²⁸⁷ For instance, though he seems to offer a novel argument in chapter four “Of What Sort of Proof is the Principle of Utility Susceptible?” Mill provides a defense of a tenet that all of his contemporary utilitarians would accept: the principle of utility.²⁸⁸ When Mill does depart from standard utilitarian thinking, he usually notes explicitly that he is doing so—as in the case of his “higher pleasures” discussion in chapter two. Here, Mill explains that, contrary to the claims of their opponents, utilitarians have long recognized the importance of mental, as opposed to sensual, pleasures. Yet, he says, they have done so by relying on arguments concerning the circumstantial benefits of relying on these pleasures rather than on their intrinsic nature:

And on all these points utilitarians have fully proved their case; but they might have taken the other, and, as it may be called, higher ground, with entire consistency. It is quite compatible with the principle of utility to recognise the fact, that some kinds of pleasure are more desirable and more valuable than

²⁸⁷ Jacobson, “The Diversity of Utilitarianism,” 4.

²⁸⁸ Mill apparently references his “proof” in later editions of the *System of Logic*. See Mill, *System of Logic*, CW, 8, 951. I mention this point since one might think that Mill’s mention here would imply some special connection with the text that would speak against the Ecumenical reading. However, the fact that the principle was one that utilitarians generally would likely affirm makes Mill’s mention of it here consistent with the Ecumenical thesis. For a discussion of Mill’s understanding of the principle of utility see, Brown “What is Mill’s Principle of Utility?” Brown’s interpretation is important since one might wonder if Mill’s discussion of the principle of utility is itself a matter of disagreement. On Brown’s view, the principle of utility is a principle about what is valuable (a point which would generate general agreement among utilitarians) rather than about what one should do (which would be more sectarian). While I find Brown’s argument generally compelling, there is considerable disagreement on the question. As Dale Miller has correctly noted, “It may come as a surprise that there could be any uncertainty over [Mill’s] use of the phrase, yet he never offers us a sentence of the form ‘The principle of utility is the principle that ____.’” Miller, *J.S. Mill*, 36-37.

others.²⁸⁹

Some writers have disputed the extent to which Mill is departing from Bentham in these words, but the relevant point here is that when Mill steps outside of utilitarian orthodoxy he flags that he is doing so.²⁹⁰ Throughout the text, Mill either avoids the controversial topics that he addresses elsewhere in his work (e.g. the treatment of women) or discusses those topics in ways that could appeal to different types of utilitarianism (e.g. the nature of moral rules).

This practice changes, however, in the fifth chapter on justice. Here, Mill mentions several points that suggest he is giving his own views concerning controversial doctrines in utilitarian philosophy, including his views on supererogation and the Art of Life.²⁹¹ Concerning supererogation, he writes:

There are other things . . . which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment.²⁹²

²⁸⁹ Mill, *U*, 2.4.

²⁹⁰ For an argument suggesting that Bentham, contrary to standard opinion, is not the target of these remarks see Frederick Rosen, *Classical Utilitarianism from Hume to Mill* (New York: Routledge, 2003), 166-184.

²⁹¹ For the best short treatment on this topic see Alan Ryan, "John Stuart Mill's Art of Living," in *J.S. Mill On Liberty in Focus*, eds. John Gray and G.W. Smith (New York: Routledge, 1991), 162-168. A recent edited collection of essays related to understanding this important topic can be found in Eggleston, Miller, Weinstein, eds., *John Stuart Mill and the Art of Life*.

²⁹² Mill, *U*, 5.14. For other instances of Mill discussing supererogation see his comment that "There is a standard of altruism to which all should be required to come up, and a degree beyond it which is not obligatory, but meritorious." Mill, "Comte," *CW*, 10, 337. In a letter to George Grote he writes that he agrees with the author's point of "recognising the merit, though not the duty, of making still greater

This is not a point that Mill raises only to abandon later in the text or in other writings. It is reiterated when he responds to a reader's worry about a similar point in chapter five of *Utilitarianism*. There Mill refers to cases where one might undertake "admirable acts of virtue," which might inspire others to similarly noble acts but are not necessarily cases of duty or obligation.²⁹³ Mill's stance here stands in contrast to some utilitarians who took the view that one had a moral obligation to do everything one could for the sake of utility.

Mill's doctrine of the Art of Life concerns his claim that morality is not the sole standpoint from which one can evaluate human action. Mill alludes to his doctrine of the Art of Life in chapter five of *Utilitarianism* when he speaks about the domain of morality being something apart from "the remaining provinces of Expediency and Worthiness," which are to be considered as separate spheres from the domain of morality.²⁹⁴ Though he expresses his view somewhat differently in different works, Mill divides the world into three standpoints one uses in evaluating actions: "Morality, Prudence or Policy, and Aesthetics; the Right, The Expedient, and the Beautiful or Noble, in human conduct or works."²⁹⁵ Roughly, this schema suggests that actions might be evaluated in light of the standards of morality, the standards of prudence, or aesthetically. To be clear, the significance of the Art of Life discussion in this context

sacrifices of our own less good to the greater good of others, than the general conditions of happiness render it expedient to prescribe." Mill to George Grote 10 January 1862, *CW*, 15, 762.

²⁹³ Mill to E.W. Young, 10 November 1867, *CW*, 16, 1327-1328.

²⁹⁴ Mill, *U*, 5.15.

²⁹⁵ Mill, *System of Logic*, *CW*, 8, 949. Mill also mentions the Art of Life, "Bentham," *CW*, 10, 112-113.

lies not in the details of the account as such but in the fact that Mill brings it up at all when he has otherwise avoided topics that are controversial within the utilitarian camp.

Apart from these considerations, there are several other reasons, drawn from the historical evidence, to treat Mill's fifth chapter apart from the other chapters. Some of the most important evidence concerns the fact that the fifth chapter seems to have been written as a separate essay and attached to the other four essays at a later date. This is not an especially contested point in the literature, even by Crisp, who comments on how Mill's writing there stands apart from the other essays. Evidence from Mill's correspondence and journals suggest that he began work on the essays that would later become the first four chapters of *Utilitarianism* in 1854.²⁹⁶ The key piece of evidence for chapter five's separate composition comes from Mill's step-daughter Helen Taylor. Following the death of her mother, Harriet Mill, Taylor assumed the role of Mill's caretaker and close companion, and became his literary executor at his death. In her introductory note to *Three Essays on Religion*, Taylor provided some important context for the work:

The two first of these three Essays were written between the years 1850 and 1858, during the period which intervened between the publication of the *Principles of Political Economy*, and that of the work on Liberty; during which interval three other Essays—on Justice, on Utility, and on Liberty—were also composed. Of the five Essays written at that time, three have already been given

²⁹⁶ For some relevant correspondence and diary entries related to plans for the essays and similar passages to what later appear in *Utilitarianism* see Mill to Harriet Mill, 10 February 1854, *CW*, 14, 152 ; Mill, 23 March 1854, *CW*, 27, 663; Mill to Harriet Mill, 31 December 1854, *CW*, 14, 272.

to the public by the Author. That on Liberty was expanded into the now well-known work bearing the same title. Those on Justice and Utility were afterwards incorporated, with some alterations and additions, into one, and published under the name of *Utilitarianism*.²⁹⁷

For the purposes of this study, what is especially important is Taylor's emphasis that the essay on justice, which is the fifth chapter of *Utilitarianism*, is a separate document from the other essays on utility. In that light, then, it is worth noting that Taylor's comments in the quote above correlate with some other evidence concerning Mill's composition of an essay on justice evident in his correspondence with Harriet Mill. In June 1854, while traveling, Mill said that, "I do not find the essay on Justice goes on well. I wrote a good long piece of it at Quimper, but it is too metaphysical, & not what is most wanted but I must finish it now in that vein & then strike into another."²⁹⁸ Similar language is repeated in Mill's brief discussion of *Utilitarianism* in his *Autobiography* where he writes that shortly after Harriet's death:

. . . I took from their repository a portion of the unpublished papers which I had written during the last years of our married life, and shaped them, with some additional matter, into the little work entitled "Utilitarianism"; which was first published, in three parts, in successive numbers of Fraser's Magazine and afterward reprinted in a volume.²⁹⁹

²⁹⁷ Helen Taylor, "Introductory Notice," in Mill, *CW*, 10, 371.

²⁹⁸ Mill to Harriet Mill, 30 June, 1854, *CW*, 14, 222.

²⁹⁹ Mill, *Autobiography*, *CW*, 1, 265-266.

Given the context already introduced, it seems likely that the “additional matter” is the essay on justice. In fact, this phrasing concerning the “additional matter” is precisely Mill’s choice of terms when he wrote to Bain in 1859 about adding some material to his previously written essays on utilitarianism.³⁰⁰

The claim that Mill might have worked on the essay later than the other four is further supported by Mill’s comment in chapter five directing readers to consult a recent work by Bain on the topic of the close conceptual relationship between morality and punishment. At the end of one of Mill’s paragraphs on these points Mill provides a footnote (which was given in the initial essay in *Fraser’s*) saying that one can, “See this point enforced and illustrated by Professor Bain in an admirable chapter (entitled ‘The Ethical Emotions, or the Moral Sense’), of the second of the two treatises composing his elaborate and profound work on the Mind.”³⁰¹ In December 1859, Mill had written a lengthy review of these texts for the *Edinburgh Review* and provided a strong advocacy for the book, which provides good reason to think that its contents might have influenced his account of morality as it is given in the fifth chapter of *Utilitarianism*.³⁰²

To summarize, then: I have suggested that chapter five might be read differently than the rest of the book, given that it was composed separately, and possibly several years later, than the other four essays. There is also evidence that Mill was influenced in

³⁰⁰ Mill to Alexander Bain 15 October 1859, *CW*, 15, 639-641.

³⁰¹ Mill, *U*, 5.14n.

³⁰² Mill, “Bain’s Psychology,” *CW*, 11, 339-373. Mill’s rather over-the-top praise for the book, proclaimed that, “. . . a new aspirant to philosophical eminence, Mr. Alexander Bain, has stepped beyond all his predecessors, and has produced an exposition of the mind, of the school of Locke and Hartley, equally remarkable in what it has successfully done, and in what it has wisely refrained from—an exposition which deserves to take rank as the foremost of its class, and as marking the most advanced point which the *à posteriori* psychology has reached.” *Ibid.*, 342.

this chapter by Bain's writings, which might help explain the chapter's discontinuity from the rest of the text. I have also argued that in the fifth chapter, Mill includes several controversial doctrines that are in concert with his other writings but stand apart from his practice in the other essays. Overall, this provides at least some evidence for thinking that Mill is expressing his own views in the fifth chapter of *Utilitarianism* in a way that is different from his practice and objectives in the rest of the chapters.

Implications of the Ecumenical reading and the final chapter

If this hypothesis for how to read chapter five apart from the other chapters holds, it could have a notable effect on determining how one interprets Mill's moral theory. Here I will briefly look at one possible implication of this reading as it relates to larger interpretations of Mill's criteria for a moral action. In the second chapter of *Utilitarianism*, Mill famously provides his 'proportionality criterion' of morality which says that, "The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness."³⁰³ According to Crisp, "This passage is the clearest statement in *Utilitarianism* of Mill's moral theory" and is an essential component of Mill's articulation of act utilitarianism.³⁰⁴ As Wendy Donner has written, even if one does not read Mill as an act utilitarian all things considered, this is at least one passage that is commonly thought to provide important

³⁰³ Mill, *U*, 2.2.

³⁰⁴ Crisp, *Mill on Utilitarianism*, 95.

support for that reading as it seems to provide Mill's criterion for judging the morality of an action.³⁰⁵ Yet there is another place where Mill seems to give an alternative criterion for judging the morality of an action. In chapter five Mill states that:

. . . I think there is no doubt that this distinction lies at the bottom of the notions of right and wrong; that we call any conduct wrong, or employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it; and we say that it would be right to do so and so, or merely that it would be desirable or laudable, according as we would wish to see the person whom it concerns, compelled, or only persuaded and exhorted, to act in that manner.³⁰⁶

As noted in the previous chapter, this passage is standardly referred to as Mill's 'punishability criterion' of morality since it seems to establish some essential tie between an action's wrongness and punishment for that action. Just as act utilitarian interpreters rely heavily on the proportionality criterion, so do those favoring other interpretations, like rule utilitarianism or sanction utilitarianism, put heavy emphasis on the punishability criterion.³⁰⁷ These scholars standardly use this passage to argue that Mill identifies wrongness with an action that violates a moral rule and is thus subject to sanctioning, whether that punishment comes in the form of guilt, social criticism, or legal punishment.

³⁰⁵ Donner, *Mill*, 50-51. Similar statements can be found in Miller, *J.S. Mill*, 80-82.

³⁰⁶ Mill, *U*, 5.14.

³⁰⁷ For examples of rule utilitarian interpretations using this passage see Fuchs. "Mill's Theory of a Morally Correct Action," 139-159; and Miller, *J.S. Mill*, esp. 71-111. Sanction utilitarian interpretations include David Lyons, "Mill's Theory of Morality"; and Jacobson, "Utilitarianism without Consequentialism."

Those who favor the act utilitarian interpretation and those who do not, then, have competing understandings of Mill's account of what makes an action a moral one. As Berger has written, this is a problem since Mill "gave no indication as to how the proportionality and punishability criteria are to be reconciled. This part of the theory was never sufficiently clarified or developed."³⁰⁸ Berger is correct to note that Mill does not sufficiently clarify his view on these points. As one might recall from the previous chapter, Crisp recognizes the difficulty of reconciling these two criteria, but he argues that Mill provides the solution by presenting the proportionality criterion first.³⁰⁹ This allows Mill to avoid "an internal contradiction."³¹⁰ Alternatively, and more plausibly in my view, one might say that Mill's statement of the proportionality criterion is vague and ecumenical in its own right, and that Mill specifies his own view of morality in the fifth chapter in providing the punishability criterion.³¹¹ However, if Mill had ecumenical aims for the second chapter of *Utilitarianism*, where the proportionality criterion appeared, it is not surprising that he failed to reconcile these two criteria. Mill would not have thought that he needed to explain how to reconcile these two parts of his moral theory since one of the criteria was not properly a part of *his* theory. If Mill is giving his own account of *Utilitarianism* in chapter five, where the punishability criterion appears,

³⁰⁸ Fred Berger, *Happiness, Justice, and Freedom*, 66. Berger reiterates this point at *Ibid.*, 104-105.

³⁰⁹ He also argues that Mill is simply articulating a meta-ethical statement in the Chapter 5 passage rather than a moral principle, but this move is itself motivated by the idea that Mill has already stipulated a criterion for evaluating moral action.

³¹⁰ Crisp, *Mill on Utilitarianism*, 129.

³¹¹ For this reading of the proportionality criterion, see Jacobson, "Diversity of Utilitarianism," esp. 7-12.

then this provides reason to favor the punishability criterion over the proportionality criterion in determining Mill's theory of morality. If this reading is correct, the act utilitarian interpretation loses one of its most commonly cited passages typically given in its defense, while the rule and sanction interpretations are bolstered by Mill's statements in chapter five.

Conclusion

To conclude, I have argued that the Orthodox reading of Mill's *Utilitarianism* is mistaken on two distinct points. First, there are good reasons to think that it is mistaken in claiming that Mill was not writing for a popular audience and that the work represents Mill's definitive articulation of his moral theory. Contrary to the Orthodox view, I argued for the Ecumenical reading, which says that Mill used the text to defend a common creed that could command general utilitarian assent throughout the first four essays. Second, I argued that the fifth chapter of *Utilitarianism* can be read differently than the other chapters and, furthermore that such a reading promises to significantly change how we interpret Mill's moral theory. While there is much in the text of *Utilitarianism* itself to support this position (e.g. Mill's avoidance of sectarian utilitarian topics, his special concern to respond to familiar criticisms against the doctrine), my primary aim has been to show that the evidence external to the text provided above has further illuminated the meaning of one of Mill's most famous works. As Quentin Skinner has famously argued, "A study that focuses exclusively on what a writer *said* about some given doctrine will not only be inadequate, but may be in some cases be

positively misleading as a guide to what the writer in question may have intended or meant.”³¹² I take it that Mill’s *Utilitarianism* is precisely one these cases, and I hope that this chapter has proved adequate in providing sufficient reason to see that this is so.

³¹² Quentin Skinner, “Meaning and Understanding in the History of Ideas” in *Visions of Politics*, vol. 1, *Regarding Method* (New York: Cambridge University Press, 2002), 1:79.

CHAPTER V

DEFENSE OF THE SANCTION THEORY OF MORAL WRONG

In this chapter my aim is to provide an interpretation of what I call Mill's Sanction Theory of Moral Wrong. As I will discuss shortly, this is a central element in describing his theory of moral obligation and his theory of moral obligation more generally. After providing an interpretation of Mill's Sanction Theory of Moral Wrong in this chapter, the next chapter will elaborate on Mill's sanction utilitarian theory. The interpretation offered in both chapters obviously builds upon the work I have discussed thus far, especially the previous chapter, wherein I examined the historical challenges in interpreting Mill's moral theory, focusing on *Utilitarianism*. As was evident there, the historical questions surrounding Mill's writings on moral theory are simultaneously difficult and unavoidable for anyone attempting to offer a particular interpretation. While it is standard procedure to put chapter two of *Utilitarianism* at the center of one's interpretation, in the last chapter I argued for the Ecumenical reading, which holds that there are good reasons to doubt the wisdom of this practice. Instead, this chapter will proceed with the interpretive hypothesis that Mill gives the most important elements of his moral theory in chapter five of *Utilitarianism*. This is especially the case in the fourteenth paragraph of that chapter where Mill describes the relationship between identifying an action as wrong and saying that it should be punished.

To say that Mill is best interpreted in this way, though, is not to say that it is the only way that he can be plausibly interpreted. In the second and third chapters of this

dissertation, I examined both rule and act utilitarian interpretations of Mill's moral theory. Each side claimed some passages as crucial evidence for their view, while admitting that other passages stand as apparent confounders. My interpretation has its own share of crucial passages and apparent confounders, though the obvious aim is to make the most out of the former and to be able to discount the importance of the latter. Moreover, my hope is that the historical evidence discussed in the last chapter will go some way toward discounting some of these difficult passages.

In fact, my arguments about *how* to discount the confounders and emphasize certain crucial passages are what I take to be distinctive about this dissertation. To date, no one has gone through the evidence for reading Mill as a sanction utilitarian with the Ecumenical historical position in mind as a decisive method of adjudicating questions about the priority of Mill's texts. Jacobson has gone some way toward developing the Ecumenical reading while also reinvigorating a version of the sanction utilitarian reading, and Miller has waded through many of the difficulties that accompany interpreting Mill as a rule or sanction utilitarian. My aim is to outline a new reading of Mill's moral theory that, among other things, combines the insights of both of these approaches that build upon the interpretation offered by Lyons almost thirty years ago. As such, the next two chapters where I outline and argue for the view should serve both as an exposition of the sanction utilitarian theory and, to a lesser extent, a review of the most trenchant points highlighted by these scholars. In contrast to chapters two and three which focused on the nature of moral rules, this discussion will be more wide ranging and will not hew closely to any particular interpreter's view. The hope is that by

incorporating the work done on components of the theory into a more straightforward defense of the sanction view, I can best identify precisely where Mill spells out the nature of his moral theory and where we might need to speculate on how his view is supposed to work.

In an attempt to specify just what Mill explains and what he does not, I will spend this chapter arguing for what I call Mill's Sanction Theory of Moral Wrong. In presenting the theory, I will contextualize the paragraph where Mill lays out his theory, state the theory's thesis, explicate the passages that motivate the theory's thesis by reviewing Mill's three formulations of the Sanction Theory of Moral Wrong, contextualize these formulations by showing their connections to Mill's broader body of writings, and explain Mill's theory of compulsion, rules, and prospective guidance. After these elements are in place, I will review the contours of the theory and explain how the constituent parts support the initially stated thesis. It is only after providing this schematic of the theory and the central passages that motivate each component that I will later, in the next chapter, attempt to examine the full nature of Mill's utilitarianism.

Before turning to my interpretation proper, however, I want to explicitly state the claims that I will be arguing for in my exposition of Mill's theory of moral obligation. These claims may seem rather startling in light of the Mill scholarship discussed in chapters two and three, so I will request the reader's patience for the moment as I lay out my claims in a rather bald manner. Some claims are more controversial than others, but, in an attempt to foreshadow where the discussion is heading, I want to clearly specify the aims of my exegesis.

On my interpretation, Mill's comments in the fourteenth paragraph of chapter five of *Utilitarianism* are best read as a metaethical discussion concerning the nature of moral obligation. In that passage Mill sketches a theory of moral obligation that is compatible with both non-utilitarian and utilitarian theories of morality. That said, while Mill's own theory is still a utilitarian one in that he generally evaluates actions by their consequences and identifies the principle of utility as the ultimate source of value, his theory of moral obligation ultimately precludes a commitment to certain types of utilitarianism—namely types of maximizing act and rule utilitarianism. Both the chapter five passage and Mill's other writings suggest that he wants to allow for the possibility of positively and negatively evaluating actions in a way that is beyond the purview of morality (which is impossible for maximizing versions of act utilitarianism). He also demonstrates a clear commitment to punishing morally wrong actions *regardless* of how that punishment alters utility (which is incompatible with rule utilitarianism).

Aside from arguing for the ways in which Mill's theory is distinct from types of act and rule utilitarianism, I will also argue that Mill's understanding of moral right and wrong is bound up with his theory of rules and his theory of the moral conscience. On Mill's view, an agent commits a morally wrong action when she violates a moral rule and is punished by the internal sanction of the conscience. An action is morally right when an agent can be rightfully be compelled to undertake it. I will argue that, by compel, Mill means that the agent should be punished, in some way, if she does not undertake the action in question. On this reading, then, sanctions, or punishments, play an essential role in both Mill's theory of wrong and his theory of right.

Sanction Theory of Moral Wrong

It is regularly acknowledged in Mill scholarship that Mill's moral theory "conceptually links" morality to punishment. The challenge, however, is to specify the precise nature of this conceptual link and to explain how it is consistent with Mill's utilitarian and liberal commitments. The primary motivation for seeing this close connection between Mill's theory of punishment and his theory of moral obligation is the result of a careful reading of the fourteenth paragraph of the fifth chapter in *Utilitarianism*.

The context for the passage is that Mill has just concluded his discussion of the etymological origins of "justice" and its close relation to the concept of legal punishment. Mill writes that that one can identify injustices while admitting that an action should not, for prudential reasons, be punished by the force of law. The prudential constraint comes from concerns about investing a magistrate with the power to enforce the dictates of justice in "even the remotest details" of life.³¹³ Nonetheless, Mill supposes, it is evident that legal constraint is closely allied with the concept of justice. As Mill's next paragraph contains so many points that are essential to the discussion in this chapter, I will quote it here in full:

The above is, I think, a true account, as far as it goes, of the origin and progressive growth of the idea of justice. But we must observe, that it contains, as yet, nothing to distinguish that obligation from moral obligation in general.

For the truth is, that the idea of penal sanction, which is the essence of law, enters

³¹³ Mill, *U*, 5.13.

not only into the conception of injustice, but into that of any kind of wrong. We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency. It is a part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfil it. Duty is a thing which may be *exacted* from a person, as one exacts a debt. Unless we think that it might be exacted from him, we do not call it his duty. Reasons of prudence, or the interest of other people, may militate against actually exacting it; but the person himself, it is clearly understood, would not be entitled to complain. There are other things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment. How we come by these ideas of deserving and not deserving punishment, will appear, perhaps, in the sequel; but I think there is no doubt that this distinction lies at the bottom of the notions of right and wrong; that we call any conduct wrong, or employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it; and we say that it would be right to do so and so, or merely that it would be desirable or laudable,

according as we would wish to see the person whom it concerns, compelled, or only persuaded and exhorted, to act in that manner.³¹⁴

There are two immediately striking elements to this passage.³¹⁵ The first, and most obvious, is that Mill, three times, associates moral obligation and the concept of ‘ought’ with punishment. In what follows, I will discuss and contextualize each of these three instances to make Mill’s point stand out. Many writers on Mill’s moral theory mention this key paragraph in their exposition of Mill’s views. However, I will try to show that a close reading of the paragraph, when combined with a wider reading of Mill’s moral theory across several texts, can shed new light on his theory of moral obligation and the nature of his utilitarianism.

The second striking element is that, though the paragraph is explicitly about the nature of moral obligation, there is a complete absence of utilitarian language. Mill seems to be giving an account of moral obligation that makes no special appeal to utility. As will be discussed shortly, Mill is presenting his reader with a general sketch of a sanction understanding of moral obligation that does not itself assume utilitarianism.³¹⁶ Indeed, it appears that one could accept the central features of a sanction theory of

³¹⁴ Ibid., 5.14. As was noted in the previous chapter, Mill’s footnote to the passage says, “See this point enforced and illustrated by Professor Bain, in an admirable chapter (entitled ‘The Ethical Emotions, or the Moral Sense’), of the second of the two treatises composing his elaborate and profound work on the Mind.” Ibid., n.

³¹⁵ Though I am immediately highlighting just two, David Brink, in his recent volume on Mill’s normative theory, claims that, “Mill makes or implies” thirteen distinct claims in this one passage! Brink, *Mill’s Progressive Principles*, 100.

³¹⁶ This was noted by Lyons in his early influential reading of this passage, and is even acknowledged by Brink who is hostile to the sanction utilitarian position. See, Lyons, “Mill’s Theory of Morality,” 105; Brink, *Mill’s Progressive Principles*, 100-101.

wrong without being a utilitarian.³¹⁷ To grasp the specifically utilitarian aspect of his moral theory, one must situate this passage in light of Mill's other theoretical commitments as they appear in this fifth chapter and elsewhere in his writings. Though I will mention certain utilitarian aspects of Mill's theory here, I will focus more on these questions in the next chapter.

First, however, it is necessary to give an analysis of Mill's theory of moral wrong. In this analysis I will give the sanction view's distinctive definition of a moral wrong, identify and explicate the passages motivating the formulation, and then elaborate on some of the finer points of the theory that are involved in the definition. My objective will be to understand the passage in light of the three central formulations of Mill's account of a Sanction Theory of Moral Wrong. My exposition will be, to a degree, guided by the work of other sanction utilitarian interpreters, though the labels I attach to the formulations and the sequence by which I introduce the relevant concepts are my own. In examining some of the implications of the two formulations I will connect these two formulations to the rest of the passage in a way that helps make sense of the sanction account of moral wrong. Only after this is clear will I examine, more specifically, Mill's moral theory in all of its relevant aspects.

As I interpret this passage, Mill is setting forth the following definition for an action to be morally wrong:

³¹⁷ One modern example of a deontological theory that adopts a similar model is Darwall, "Moral Obligation and Accountability," 91-110.

Sanction Theory of Moral Wrong: An act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience, and possibly be subject to other punishments (e.g. social or legal penalties), for performance of the act.

As stated, the Sanction Theory of Moral Wrong sounds rather empty, and it will only become less so when one looks more carefully at how to best understand the meaning of the term ‘appropriate’ and what it means to apply sanctions in the way that Mill advises.

The first formulation

The first component of the Sanction Theory of Moral Wrong occurs when Mill provides his first formulation of the idea that there is an important connection between moral wrongness and punishment.³¹⁸

The Implication Formulation: We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience.³¹⁹

This formulation raises two especially important points. The first point concerns Mill’s mention of the logical connection between punishment and moral wrong. The second concerns Mill’s analysis of the nature of punishment involved in moral wrongdoing. In

³¹⁸ As will be discussed later, Mill had been developing these ideas on the relation between moral wrong and punishment in his correspondence and they reoccur in later writings like his *Examination of the Philosophy of William Hamilton*. The discussion in *Utilitarianism* is the clearest discussion, however, and my account the Sanction Theory of Moral Wrong will be especially focused on what Mill says there.

³¹⁹ Mill, *U*, 5.14.

both cases, Mill has a more subtle point to make than is perhaps immediately appreciated, and it is thus worth taking care to notice how he explains his view.

Regarding the first of these points, consider Mill's claim that there is some type of inferential relationship between the use of moral condemnation and punishment. Mill seems to be saying that the very concept of moral wrongdoing has within it the idea that some kind of punishment is appropriate. One might think that this is a rather trivial point. After all, it is a common enough thought that it would be justified to mete out at least *some* kind of punishment for moral wrongdoing. To see why Mill's statement is not a trivial point, consider how such a statement might be in tension with, say, a maximizing rule utilitarian theory with a basic hedonistic conception of the good. Suppose an agent breaks a justified moral rule and aggregate utility is thereby decreased.³²⁰ The action is morally wrong, but since the theory is, by definition, supposed to maximize aggregate utility, the theory would, by rule, prescribe punishment for the moral wrong *only* when doing so is in accordance with the promotion of utility. This is because punishment involves disutility, and must therefore be justified by appeal to utility. In other words, whether punishment is appropriate for wrongdoing is something that the rule utilitarian does not assume at the outset but must justify depending on how utility is affected.³²¹ This means that the appropriateness of punishment is a contingent feature of morality for the simple rule utilitarian theory—it

³²⁰ I add the second part of the conjunction to avoid strange cases where justified rules are broken and, by way of resultant luck, aggregate utility is raised or stays the same.

³²¹ As Lyons explains on this point, "it is a utilitarian platitude that sanctions involve disutility; even the 'internal sanction' of conscience is assumed to be unpleasant." Lyons, "Mill's Theory of Morality," 106.

recommends punishment in those cases where utility would be maximized by there being a relevant rule in place to handle such cases. Mill's theory does not leave the question open to whether there should be a rule—he seems to say, preemptively, that agents should be punished by their conscience, regardless of whether there is a rule justifying the punishment from the standpoint of utility. Thus, Mill's statement in the Implication Formulation is not a trivial point—it is not even compatible with a simple rule utilitarian account of moral wrong.

This idea that there is an implication relation between moral wrongdoing and punishment is picked up by Mill again in his later work (possibly the sequel mentioned in the fourteenth paragraph of chapter five) *An Examination of the Philosophy of Sir William Hamilton*. In a chapter devoted to discussing controversies about free will and moral responsibility, Mill includes a rich discussion on the psychology of how humans hold each other responsible as moral agents. Mill states that his own account of moral wrong does account for the fact people generally expect to be punished for undertaking a wrong action, though he is quick to say that this fact does not necessarily *justify* this account (he comments on that matter elsewhere).³²² In describing the psychological foundation for how punishment and wrongdoing are related he writes that:

³²² Mill makes it clear in the text that the feeling that punishment should accompany a moral wrong is not itself moral until it becomes allied with a general principle like a concern for the general welfare. As he put it in a separate passage the one quoted below, “This natural feeling, whether instinctive or acquired, though in itself it has nothing moral in it, yet when moralized by being allied with, and limited by, regard for the general welfare, becomes, in my view of the matter, our moral sentiment of justice.” Mill, *Examination*, *CW*, 9, 460n. As will become evident shortly this follows precisely the account given in chapter five of *Utilitarianism*. See Mill, *U*, 5.21-23.

From our earliest childhood, the idea of doing wrong (that is, of doing what is forbidden, or what is injurious to others) and the idea of punishment are presented to our mind together, and the intense character of the impressions causes the association between them to attain the highest degree of closeness and intimacy. Is it strange, or unlike the usual processes of the human mind, that in these circumstances we should retain the feeling, and forget the reason on which it is grounded? But why do I speak of forgetting? In most cases the reason has never, in our early education, been presented to the mind. The only ideas presented have been those of wrong and punishment, and an inseparable association has been created between these directly, without the help of any intervening idea. This is quite enough to make the spontaneous feelings of mankind regard punishment and a wrongdoer as naturally fitted to each other—as a conjunction appropriate in itself, independently of any consequences.³²³

This passage, which was written after the publication of chapter five of *Utilitarianism* and is in part a response to unfriendly readings of Mill's views, goes some way to explaining why Mill does not tie his account of moral wrong to utilitarianism.³²⁴

Namely, Mill sees the account surrounding the connection between the two concepts as extending beyond the moral psychology of those who formally accept utilitarianism and

³²³ Mill, *Examination*, *CW*, 9, 463-464.

³²⁴ Mill mentions that his account here is in part a response to Patrick Procter Alexander. In a footnote specifically addressing Alexander's misreading of Mill's account of justice he says, with some sarcasm, "The chapter in which I have discussed this question is quite familiar to Mr. Alexander; who shows himself extremely well acquainted with all parts of it, except those which tell against his own side." *Ibid.*, 460n. For a larger view on Mill's motives for writing the *Examination* and its relation to both *On Liberty* and *Utilitarianism* (both of which he revised for publication while writing the *Examination*), see John Robson, "Textual Introduction," in Mill, *Examination*, *CW*, 9, lxix-cii.

to human beings more generally. In this passage quoted above, among human beings generally, punishment and moral wrong are presented as attaining, “the highest degree of closeness and intimacy,” forming a direct and “inseparable association,” that does not require any “intervening idea,” and which leads people to see the two as “naturally fitted to one another.” It is striking that he says that the two concepts are regarded as appropriately fitting *apart* from any consequences. In other words, even if someone is not a consequentialist (in the general sense of that term), that person already operates with the account of moral wrongdoing that is being defended here. When possible, Mill makes it a practice in his works to sharply distinguish his moral theory from those that suppose that an action can be wrong in itself or that wrong actions can be determined by some faculty of moral sense. With regard to the connection between moral wrongdoing and punishment, however, “It matters not, for this purpose, whether the right and wrong of actions depends on the consequences they tend to produce, or on an inherent quality of the actions themselves. It is indifferent whether we are utilitarians or anti-utilitarians; whether our ethics rest on intuition or on experience.”³²⁵ It seems, then, that Mill is not in doubt as to whether his readers will need to suppose a belief in utilitarianism in order to understand his connection between wrongdoing and punishment. This, then, goes some way in explaining why he does not invoke utilitarianism in the fourteenth paragraph of chapter five.

³²⁵ Mill, *Examination*, *CW*, 9, 454. Cf. Mill’s discussion of intuitive vs. inductive systems of morals in Mill, *U*, 1.3.

The second notable point of the Implication Formulation concerns Mill's claim about the types of punishment that are implied when an action is identified as morally wrong. Properly recognizing an action as wrong might legitimate external sanctions, like those of legal punishment (e.g. jail time) or merely social punishment (e.g. moral criticism from peers). Mill also supposes that wrong actions contain the implication that internal sanctions (e.g. the feelings of conscience) follow from wrong action. To be clear, in the Implication Formulation, Mill is not merely saying that agents expect that sanctions will follow from their action (though they presumably will in light of their psychological histories), but he is making a bolder statement that the very idea of saying that an agent's action is morally wrong implies that it would be justified for sanctions of some kind to be applied to the agent as a result of undertaking the action.³²⁶

Careful attention to the Implication Formulation also allows one to notice that Mill does not suppose that these punishments come in a single, undifferentiated package. Instead, he has a kind of cascading terrace of punishment possibilities, not all of which might be appropriate for a moral wrong. Mill's formulation suggests that if legal or social punishments are not deemed appropriate, because of "prudence or the interest of

³²⁶ Recall that the Implication Formulation says that, "We do not call anything wrong, unless we mean to imply that a person *ought* to be punished in some way or other for doing it." Emphasis added. Mill also expounds on how punishment *ought* to be carried out for moral wrongs in the third formulation to be discussed later in the chapter. Lest one think that Mill simply runs together the ideas of psychological expectance and the acknowledgement that punishment is appropriate, Mill shows elsewhere that he is well aware of the relevant distinction. He explains that "the feeling of liability to punishment is of two kinds. It may mean, expectation that if we act in a certain manner, punishment will actually be inflicted upon us, by our fellow creatures or by a Supreme Power. Or it may only mean, knowing that we shall deserve that infliction." Mill, *Examination*, *CW*, 9, 454.

other people,” then, at least, the internal sanction of conscience is appropriate.³²⁷ As such, Mill takes there to be a special relationship between moral wrong and the internal sanction of conscience.³²⁸ In determining what other punishments might be called for, beyond internal sanctions, one could appeal to prudence, utility, or some other principle. These punishments would only be added on, so to speak, as deemed fitting by the principle in question. In contrast, the internal sanctions are deemed to be fitting at the outset of the moral wrong, conceptually speaking. It is for this reason that the Sanction Theory of Moral Wrong picks out the internal sanction of conscience as having particular relevance for determining moral wrongdoing. Again, the passage does not assume that Mill is operating under a utilitarian framework governed by the principle of utility, and alternative moral schemes could appropriate Mill’s understanding of the relationship between moral wrong and punishment without sharing his commitment to the principle of utility.

The second formulation

The fourteenth paragraph contains a second formulation of the idea that there is a conceptual connection between an action being wrong and it being worthy of punishment. I call this formulation the Proper Object Formulation.

³²⁷ Mill, *U*, 5.14.

³²⁸ Mill refers to internal sanctions as “the essence of Conscience” and conscience, Mill suggests, serves as the “Ultimate sanction of the principle of utility.” *Ibid.*, 3.4. Though he identifies the importance of the internal sanction for utilitarianism, Mill also stresses that the pangs of conscience are just as important to other moral theories besides utilitarianism—though they might differ, ultimately, on the appropriateness of various external sanctions. See *Ibid.*, 3.4. For a more general discussion on Mill’s theory of sanctions see Dale Miller, “Mill’s Theory of Sanctions,” in *The Blackwell Guide to Mill’s Utilitarianism*, 159-173.

The Proper Object Formulation: There are other things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment.³²⁹

There are two immediately important points concerning this passage. The first is that Mill is explicitly *limiting* the scope of moral obligation to those things that one can be properly punished for failing to do rather than those actions for which agents are admired or liked for doing. It is not enough, to qualify as a matter of moral obligation, that one can be despised by agents for not doing something. Nor is it enough to say that one would wish something to be done or that we would admire someone for doing that thing. Agents become proper objects of punishment, Mill is suggesting, when they trespass on a moral obligation rather than when they do less than their absolute best—a standard that, as we have seen in previous chapters, stands in contrast to the maximizing act utilitarian point of view.

The second point concerns Mill's discussion of who can be a "proper object" of punishment. This point is important both for establishing a further link between wrongness and punishment and for including a normative element into his conception of what qualifies an agent for punishment. By saying that some people are *properly* the objects of punishment it is implied that there is some standard that has been violated such that the agents can be justifiably punished. As was discussed in the Implication

³²⁹ Mill, *U*, 5.14.

Formulation, just because an agent is, in fact, punished for undertaking an action it does not follow that it is right to punish that person. By invoking the language of “proper objects” Mill is apparently appealing to the existence of some normative standard. As is the case in Mill’s two other formulations, Mill’s examination here of the link between moral wrongdoing and punishment is echoed and clarified in his other writings, and I will be appealing to such texts in outlining the Proper Object Formulation.

The first significant point about the Proper Object Formulation is that Mill has a limited sense of moral obligation. This is plain from the language of the formulation, which says that there are actions that can be admired, liked, or despised by other agents, but which are, nonetheless, not matters of moral obligation. This suggests that there is a conceptual space of positive and negative evaluation of actions that is distinct from the space containing acts of moral obligation and, *ipso facto*, distinct from those cases that involve moral blame and punishment.

This might seem like a trivial claim since it is common enough to think that morality has a limited role in human lives such that agents are not obligated to do *all* that it would be good to do. Morality might be an important part of life, perhaps even the most important, without being the sole foundational principle for organizing how to live one’s life.³³⁰ Yet, this idea of being guided by a sole foundational principle is just what maximizing utilitarians seem to affirm. On a single-level subjective maximizing act utilitarian view, one is morally obligated to undertake the action that is likely to produce

³³⁰ Some of concerns about making morality the central concern of one’s life are captured in Wolf “Moral Saints.”

the greatest amount of aggregate happiness. This type of utilitarianism does not put any restrictions, as such, on which types of action are evaluable from the standpoint of utility. Since the standard of utility can be applied to any action where utility can be affected, its domain in life of human agents is theoretically limitless. It would make little sense, to employ the language in the Proper Object Formulation, for this kind of utilitarian to say that she wished an agent would have undertaken one action over another or that she despised another agent's action and not thereby imply that the other agent's action was morally wrong. This is because, for this type of utilitarian, all evaluation is, strictly speaking, a matter of judging what increases or decreases probable alterations to aggregate utility.³³¹ It would be strange, from a strictly maximizing act utilitarian point of view, for an agent to say, "I really despise (or admire) your action even though it has absolutely no relevance to utility outcomes." In light of this, Mill's identification of a region whereby positive and negative evaluations do not necessarily involve moral evaluations is a significant point.

It is important to remember that, in giving the Proper Object Formulation, Mill is only sketching his Sanction Theory of Moral Wrong and not his version of utilitarianism. The Proper Object Formulation suggests that actions can be positively or negatively evaluated without being matters of moral obligation. Yet, it does not say, for example, where one should draw the line between actions that are despised but not morally wrong and actions that are morally wrong. In other writings, like *On Liberty* and

³³¹ I admit that more sophisticated forms of utilitarianism, like multi-level utilitarianism, might be able to accommodate this kind of language, but the fact that it is not compatible with some forms of simple utilitarianism shows that Mill is not making a trivial point.

other passages in chapter five of *Utilitarianism*, Mill does draw the line in various places, but he does not do so here since he is merely giving a general framework for moral obligation more generally.

Since Mill does not say much in this passage about where this line might be drawn, I will consider three passages from Mill's essays on Auguste Comte where Mill discusses the proper use of moral sanctions. Mill wrote two essays on Comte, which appeared sequentially in the *Westminster and Foreign Quarterly Review* in 1864 and 1865 after finishing his work on Hamilton.³³² Mill had a long association with Comte's work, but undertook these essays in light of Comte's expanding influence on European intellectual culture. Mill writes that Comte, "had taken his place in the estimation both of friends and opponents, as one of the conspicuous figures in the thought of the age."³³³ Given Mill's longstanding familiarity with Comte's work and, as Mill saw it, his desire to distinguish his own views from Comte's, Mill saw himself as especially well situated to "undertake the task of sifting what is good from what is bad in M. Comte's speculations . . ."³³⁴

The first passage comes towards the beginning of the second essay on Comte.

Mill refers to Comte as "a morally intoxicated man" in that "every question with him is

³³² See John Robson, "Textual Introduction," in Mill, *CW*, 10, cxxxii-cxxxiii.

³³³ Mill, *Autobiography*, *CW*, 1, 271.

³³⁴ *Ibid.* Mill references Comte in chapter three of *Utilitarianism*, where he directs readers to consult Comte's *System of Positive Polity* if they want to see a writer who is concerned with establishing an ethical system that does not depend on a deity but which directs agents to live in a vigorously unselfish way. That said, Mill warns his readers that he, "entertains the strongest objections to the system of politics and morals set forth in that treatise." Mill, *U*, 3.10. Mill also references Comte's work, in a less than complimentary way, in *On Liberty*, where he writes that, "M. Comte, in particular, whose social system, as unfolded in his *Système Politique Positive*, aims at establishing (though by moral more than by legal appliances) a despotism of society over the individual, surpassing anything contemplated in the political ideal of the most rigid disciplinarian among the ancient philosophers." Mill, *OL*, 1.14.

one of morality, and no motive but that of morality is permitted.”³³⁵ Continuing this line of thought, Mill explains that no one could reasonably claim that Comte’s moral theory is undemanding or lax in what it requires from agents adhering to the theory:

On the contrary, it prodigiously exaggerates them. It makes the same ethical mistake as the theory of Calvinism, that every act in life should be done for the glory of God, and that whatever is not a duty is a sin. It does not perceive that between the region of duty and that of sin there is an intermediate space, the region of positive worthiness. It is not good that persons should be bound, by other people’s opinion, to do everything that they would deserve praise for doing. There is a standard of altruism to which all should be required to come up, and a degree beyond it which is not obligatory, but meritorious. It is incumbent on every one to restrain the pursuit of his personal objects within the limits consistent with the essential interests of others. What those limits are, it is the province of ethical science to determine; and to keep all individuals and aggregations of individuals within them, is the proper office of punishment and of moral blame.³³⁶

While this passage contains a number of interesting elements, I will point to just two for sake of economy and relevance. The first is that Mill identifies the conceptual space between duty and positively evaluable action. In the Proper Object Formulation, Mill suggests that there can be actions that are positively evaluated (e.g. liked or admired)

³³⁵ Mill, “Comte,” *CW*, 10, 336.

³³⁶ *Ibid.*, 337.

and negatively evaluated (e.g. despised) but not qualify as an act subject to moral obligation.³³⁷ In this passage from Comte, Mill is again saying that moral theories need to allow for this conceptual space: “between the region of duty and that of sin there is an intermediate space, the region of positive worthiness.”³³⁸ Just as Calvinism makes the error of thinking that whatever is not a duty is a sin, so does a moral theory make an error if it supposes that every action is one of moral obligation.

The second point in this passage concerns the limits of moral obligation and the role of punishment and moral blame in enforcing those obligations. Proper use of moral blame and punishment, Mill says, should be limited to *protecting* certain essential human interests. This is striking since one might have supposed, if one favored a maximizing act utilitarian interpretation of Mill’s theory of moral obligation, that Mill would say that moral obligation (and therefore moral blame and punishment) should be tied to whatever would *maximize* the greatest amount of good.³³⁹ Mill seems, however, both here and in the Proper Object Formulation, to have a considerably more *limited* idea of which actions should be punished through the use of moral blame and punishment.

³³⁷ One important aspect of this quote (and Mill’s description of Comte) that I am not going into here is his discussion of the proper *motives* for action. Mill seems concerned that Comte, just as the Calvinist, believes that one must always act with a specifically moral motive in undertaking any action. While it is interesting that Mill rejects that view, because the Proper Object Formulation does not speak specifically about motives I will not be going into that here. Ultimately, Mill, like Bentham, does not care about the *motive* of an action at all, but does think that an agent’s *intention* is centrally important in determining the morality of an action. The fact that he is not alone in this view is evident when he says that, “There is no point which utilitarian thinkers (and Bentham pre-eminently) have taken more pains to illustrate than this.” Mill, *U*, 2.19n. For a helpful discussion of Mill’s distinction between Mill’s concept of motives and intentions see Michael Ridge, “Mill’s Intentions and Motives,” *Utilitas* 14 (2002): 54-70.

³³⁸ Mill, “Comte,” *CW*, 10, 336.

³³⁹ It is worth recalling, after all, that, according to Crisp, for Mill, “there is no imaginable case of an agent’s failing to maximize happiness to which Mill would be forced to retract any attribution of wrongness.” Crisp, *Mill on Utilitarianism*, 129.

Mill builds on this limited conception of moral obligation in the second passage from Comte, which focuses on limiting the force that positive encouragements to benefit the general good can have. The passage occurs immediately after the previous quote, where Mill says that it is the proper role of the “ethical sciences” to determine which moral obligations protect the essential interest of other people:

If in addition to fulfilling this obligation, persons make the good of others a direct object of disinterested exertions, postponing or sacrificing to it even innocent personal indulgences, they deserve gratitude and honour, and are fit objects of moral praise. So long as they are in no way compelled to this conduct by any external pressure, there cannot be too much of it; but a necessary condition is its spontaneity; since the notion of a happiness for all, procured by the self-sacrifice of each, if the abnegation is really felt to be a sacrifice, is a contradiction. Such spontaneity by no means excludes sympathetic encouragement; but the encouragement should take the form of making self-devotion pleasant, not that of making everything else painful. The object should be to stimulate services to humanity by their natural rewards; not to render the pursuit of our own good in any other manner impossible, by visiting it with the reproaches of other and of our own conscience.³⁴⁰

In this passage, Mill makes two significant points with respect to doing more than the minimally specified requirements of one’s obligation to protect the essential interests of society. The first is that when an agent makes the interests of others her direct concern

³⁴⁰ Mill, “Comte,” *CW*, 10, 337-338.

(i.e. does more than she is obligated to do), she is a worthy object of admiration and praise. However, and this is the really significant point, it is “necessary” that it be “spontaneously” undertaken without a feeling of sacrifice that is generated from “external pressure.” In short, if external forces, like the expectations of other agents, make you feel as if are making a significant sacrifice in acting for the benefit of others, something has gone wrong. The objective, Mill seems to think, is to make the good of others something we want to pursue because it makes the agent *herself* pleased (i.e. enjoy the “natural rewards”), not because she feels pressured into it.

At the same time, others can encourage you to do this, but only in such a way as to preserve the spontaneity of the action. This leads to the second point concerning this passage: it is appropriate to praise other agents for their good action, as long as an agent’s own good can be pursued without feeling the reproaches of the agent’s own conscience or blame from another agent. This point is significant because it further ties Mill’s understanding of what we are obligated to do with the sanctions of our own conscience and the possibility of blame from other agents. At the same time, it also reminds his readers of the sensitivity one must employ in using various means to incite other agents to work for the betterment of the general good: it is good, and worthy of admiration, to do such acts; but failing to do them, and instead pursuing ends that are purely self-interested, should not be punished by our consciences or by the social sanctioning of other agents.

To better understand *why* Mill has this idea that agents should not sanction themselves (via their conscience) or others (via criticism) for pursuing purely self-

interested acts, it will help to look at a third passage from his discussion of Comte's moral theory as it contrasts with his own. Here, Mill explicitly says that he does not support the idea that purely personal enjoyments, which do not necessarily contribute to the happiness of all, should be subject to moral criticism. Instead he proposes the following:

As a rule of conduct, to be enforced by moral sanctions, we think no more should be attempted than to prevent people from doing harm to others, or omitting to do such good as they have undertaken. Demanding no more than this, society, in any tolerable circumstances, obtains much more; for the natural activity of human nature, shut out from all noxious directions, will expand itself in useful ones. . . . But above this standard there is an unlimited range of moral worth, up to the most exalted heroism, which should be fostered by every positive encouragement, though not converted into an obligation.³⁴¹

In this passage, Mill, again, makes two relevant points. The first goes some way as to explaining why he limits moral sanctioning as he does and the second further strengthens the idea that Mill adopts something less than a maximalist understanding of moral obligation.

As in the Proper Object Formulation, Mill is saying that agents may perform better actions than merely avoiding harming other people and meeting one's obligation, but it is important that agents not to be in any way *obligated* to perform all the good that they might do. When Mill says that he thinks that "[n]o more should be attempted" than

³⁴¹ Mill, "Comte," *CW*, 10, 339.

having limits on harmful behavior or requiring people to meet their standing obligations, presumably he means that a given scheme of moral obligation *could* require agents to do better actions than those on his chosen theory, but that he is rejecting just such an option. As Mill explains in the passage, by limiting the practice of social sanctioning as he suggests, “society obtains much more” from its citizens. In other words, Mill seems to think that there will be more good produced, presumably in the long run, by not punishing (even by the agent’s own conscience) actions that are purely self-interested.³⁴²

Just as in the first passage, Mill seems to adopt something less than a maximalist understanding of the circumstances in which one should be employing moral sanctions. That is to say, he does not say that moral sanctions should be applied whenever someone does less than the maximal amount of good. Just as in the previous passage where Mill stressed the importance of protecting certain “essential interests,” in this passage he picks out, for those domains where moral sanctions are appropriate, protection against harm and the importance of actually carrying out whatever agents have already committed to doing.³⁴³ Furthermore, here Mill gestures again toward the existence of

³⁴² While some of Mill’s peers considered their society to have risen to great heights in their development of Western culture and the norms that should govern it, Mill viewed this progress as just the *very beginning* of the advancement that was to come. In a diary entry in 1854 (in which one finds some of the nascent ideas and phrasings of *Utilitarianism*) Mill writes “The misfortune of having been born and being doomed to live in almost the infancy of human improvement, moral, intellectual, and even physical, can only be made less by the communion with those who are already what all well-organised human beings will one day be, and by the consciousness of oneself doing something, not altogether without value, towards helping on the slow but quickening progress towards that ultimate consummation.” Mill, Diary Entry 14 April 1854, *CW*, 27, 668.

³⁴³ He makes a similar point just a page earlier than the last quote from Comte where he writes that, “The proper office of those sanctions is to enforce upon every one, the conduct necessary to give all other persons their fair chance: conduct which chiefly consists in not doing them harm, and not impeding them in anything which without harming others does good to themselves. To this must of course be added,

distinct conceptual spaces for how different actions might be evaluated. In one space are actions that one is morally obligated to do and in the other are actions of great or unlimited worth, but which are not considered matters of moral obligation. To sum up: these three passages from Mill's essay on Comte support the Proper Object Formulation's emphasis on there being a limit on which types actions are proper cases of moral obligation. For his Sanction Theory of Moral Wrong, this is important since it specifies a limited use of moral sanctions. The Proper Object Formulation does not specify where one should draw the line, precisely, between actions that are positively or negatively evaluated without being judged to be morally wrong: Mill merely suggests that there *is* such a line.

In those passages giving his own view, rather than adopting a maximalist understanding whereby one is morally obligated to do all that one might do, Mill supposes that there is a conceptual space where actions can be judged to be good and worthwhile without being considered morally obligatory. Similarly, actions can be less than maximally good (and perhaps despised), without being morally wrong. In the first quote from Comte, Mill mentions the importance of avoiding the mistake of Comte and the Calvinists who want to make every action that is not a matter of duty a moral wrong. In the second quote, he cautions against squelching humankind's spontaneity by converting positive encouragement to altruistic acts into feelings of obligation. In the third quote, Mill says that the standard of moral obligation does not rise to the level of

that when we either expressly or tacitly undertake to do more, we are bound to keep our promise." Mill, "Comte," *CW*, 10, 338.

requiring all of the good that one might do. In all three passages, as in the Proper Object Formulation itself, Mill is suggesting that cases where moral obligation are involved need not include every case where an action can be positively or negatively evaluated. This goes some way, then, toward explaining where Mill draws the line between actions that are merely positively or negatively evaluated (e.g. admired or despised) and those that are matters of moral obligation.

With these ideas in mind, it is now possible to consider the second important point concerning the Proper Object Formulation. By saying that certain actions qualify agents as “proper” objects of punishment Mill is appealing to some normative standard that sets the qualification. That is to say, some standard specifies who is a proper object of punishment and who is not. Rather than specifying what qualifies someone as a proper object of punishment (since this will be covered in greater depth in discussion of the third formulation), the relevant point here is that Mill is recognizing a certain normative standard at all for punishment. Mill does not take it that punishment itself to be self-certifying. By saying that is not self-certifying I mean that the fact that something is punished does not thereby indicate that wrongdoing occurred.

In fact, Mill seems eager to emphasize the importance of appealing to a normative standard in explaining issues like the workings of conscience in his reply to Whewell’s critique of utilitarianism.³⁴⁴ There, one finds Mill expressly concerned that his opponents suppose that their conceptions of morality are more dignified, if that is the

³⁴⁴ Recall that this reply was published in 1852, just two years before Mill seems to have begun work on the essays that became *Utilitarianism*.

right word, than those employed by utilitarians. According to Mill, Whewell, in support of the moral intuitionist position, “appropriates to his own side of the question all the expressions, such as conscience, duty, rectitude, with which the reverential feelings of mankind towards moral ideas are associated, and cries out, *I am for these noble things, you are for pleasure, or utility.*”³⁴⁵ Mill cannot accept this characterization of his and similar positions. As he sees it, both the intuitive and utilitarian approaches to morality are entitled to these basic concepts. Speaking as a utilitarian, Mill says:

We are as much for conscience, duty, rectitude, as Dr. Whewell. The terms, and all the feelings connected with them, are as much a part of the ethics of utility as of that of intuition. The point in dispute is, what acts are *the proper objects* of those feelings; whether we ought to take the feelings as we find them, as accident or design has made them, or whether the tendency of actions to promote happiness affords a test to which the feelings of morality should conform.³⁴⁶

By making reference in this passage to the “proper objects” of certain feelings, Mill shows that, just as in the second formulation itself, he is by no means claiming that just because something *is* punished that it *should* be punished. In the original chapter five passage, Mill does not explain, as he does in this passage from the essay on Whewell, that, for him, the standard that will be appealed to will be the standard of utility. This is just what one would expect, however, from the fact that in one passage Mill is giving a

³⁴⁵ Mill, “Whewell,” *CW*, 10, 172.

³⁴⁶ *Ibid.* Emphasis added.

metaethical point whereas in the other he is making a direct defense of the utilitarian morality.

This passage in Whewell, and its concern for creating a normative standard for the use in identifying actions that are worthy of punishment, is not an obscure comment in Mill's larger *oeuvre*. Mill thinks that it is important to take stock of current practices, like those concerning punishment, but those facts, on their own, by no means necessitate a particular form of action. For instance, while the concepts of wrongdoing and punishment are tightly related in Mill's mind (for reasons that were evident in the passages from the *Examination of Sir William Hamilton*), Mill is not necessarily claiming that agents, in fact, punish all and only what they *should* punish. That is to say, punishments, including internal sanctions, are not self-certifying. One can learn something important from what society punishes, while still holding that it can go wrong in many ways. Mill does not develop this point in the fifth chapter of *Utilitarianism* as he might have, but it is a regular item for discussion in his other writings. People sometimes punish (by way of social criticism) others for things that are not, in fact, really worthy of punishment. As he says in his essay on Whewell, "I am not bound to abstain from an action because another person dislikes it, however he may dignify his dislike with the name of disapprobation."³⁴⁷ Also, people will sometimes feel the reproaches of the conscience even when it is not appropriate for them to do so. Mill was aware that people can and do feel internal sanctions even when they have no share in any

³⁴⁷ Mill, "Whewell," *CW*, 10, 195. As Mill makes clear in *On Liberty*, it is one of his great annoyances that certain segments of society have turned their mere "likings and dislikings" into moral rules, which are used to compel adherence from other citizens. See, for example, *OL*, 1.9.

kind of moral wrongdoing.³⁴⁸ Alternatively, Mill was well aware that many men do not feel internally sanctioned for their unjust treatment of women, even though they should. Such persons might think that the unequal treatment and domination of women is not unjust because it is natural. As Mill says in *The Subjection of Women*, “No less an intellect, and one which contributed no less to the progress of human thought, than Aristotle, held this opinion without doubt or misgiving.”³⁴⁹ Mill argues in that text, however, that the current social relations, including practices of punishment, show that such treatment, “is wrong in itself, and now one of the chief hindrances to human improvement: and that it ought to be replaced by a principle of perfect equality admitting no power or privilege on the one side, nor disability on the other.”³⁵⁰ As Mill stresses throughout the *Subjection of Women*, and in many places in his writings, there is something important to be learned by what a society punishes, but the fact that a society punishes, or fails to punish, a given action does not suffice to indicate that the punishment has been carried out appropriately.

³⁴⁸ In a passage in the *Examination*, Mill notes that internal sanctions can remain as a result of prior associations even when the point behind the sanction’s existence is extinguished. For example, a “dislike to spending money, which grows up while money can ill be spared, may be an absorbing passion after the possessor has grown so rich that the expenditure would not really cause him the most trifling inconvenience.” Mill, *Examination*, *CW*, 9, 455.

³⁴⁹ Mill, *Subjection of Women*, *CW*, 21, 269.

³⁵⁰ *Ibid.*, 261.

The third formulation

Apart from what I called the Implication Formation and Proper Object Formulations, which go some way to expressing the Sanction Theory of Moral Wrong, Mill also provides a third statement, which I will call the Foundational Formulation:

Foundational Formulation: [B]ut I think there is no doubt that this distinction lies at the bottom of the notions of right and wrong; that we call any conduct wrong, or employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it; and we say that it would be right to do so and so, or merely that it would be desirable or laudable, according as we would wish to see the person whom it concerns, compelled, or only persuaded and exhorted, to act in that manner.³⁵¹

This formulation, when compared with the first two formulations, has three notable points that I will explore here. The first concerns the Foundational Formulation's reassertion of the connection between moral wrong and punishment. The second concerns Mill's emphasis on the special nature of moral criticism. The third point concerns his statement that morally right and wrong action is action that can be compelled.

As in the previous section, to help identify what Mill seems to be getting at in these points, I will bring in some reference to his other writings. Again, however, it is worth stressing that, at this stage, the account still does not presuppose utilitarianism. While the precise nature of his utilitarian commitments seems difficult to sort out, Mill

³⁵¹ Mill, *U*, 5.14.

expressly identifies himself as a utilitarian even during earlier periods of his life (e.g. the 1830s) when he was especially frustrated with the movement.³⁵² That said, my objective here is to clarify how Mill understands the terminology he is employing in the different formulations rather than how the substantive content of that terminology is underwritten, so to speak, by the standards of utility.

With this understanding in place, I will now turn to the first aspect of the Foundational Formulation, which concerns Mill's third iteration of the close conceptual relation between moral wrong and punishment. The Implication Formulation said that an action's being morally wrong implied that it ought to be punished, and in the Foundational Formulation Mill is saying that punishment "lies at the bottom" (i.e. is foundational) for the concepts of moral right and wrong. The Proper Object Formulation identifies cases of moral obligation with those cases where agents can be blamed or otherwise punished. Mill does not use either the implication or proper object language again in this passage, but I read his statement here as a reaffirmation of the tight, and non-contingent, relationship between the two concepts. The importance of this reaffirmation emerges when one recalls Mill's status as a rhetorician. Mill made a practice of restating principles fundamental to his system in different ways to bring out

³⁵² As Mill writes to Thomas Carlyle, "I am still, & am likely to remain, a utilitarian; though not one of "the people called utilitarians"; indeed, having scarcely one of my secondary premises in common with them; nor a utilitarian at all, unless in quite another sense from what perhaps any one except myself understands by the word." Mill to Carlyle 12 January 1834, *CW*, 12, 207. For a discussion of the influence of conservative intellectuals on Mill at this period (especially by Carlyle and Samuel Taylor Coleridge), see Reeves, *John Stuart Mill: Victorian Firebrand*, 80-128. For later instances of Mill's expressed commitment to utilitarianism see *OL*, I.11, *U*, 5.25. For a discussion of the ways in which Mill is not clearly a utilitarian in any standard sense of the term see Christopher Miles Coope, "Was Mill a Utilitarian?," *Utilitas* 10 (1998): 33-67.

various philosophical subtleties in his doctrines.³⁵³ In my view, the fact that he provides another restatement of the connection between moral wrongdoing and punishment makes it less likely that the Implication Formulation and Proper Object Formulation were mere accidental phrasings of which too much has been made by Mill scholars.³⁵⁴

The second notable point in the Foundational Formulation concerns the special nature of moral criticism. This point comes in when Mill writes that it is necessary to separate cases of moral criticism from those cases where we “employ, instead, some other term of dislike or disparagement, according as we think that the person ought, or ought not, to be punished for it.”³⁵⁵ Mill’s claim that moral criticism needs to be used apart from other types of criticism may seem to be a rather uncontroversial thesis. And it is, in a sense, but the important point here is that he situates his point within in a more general framework that requires some explanation. Mill classifies morality as a distinct part of the more general category of expediency, which is Mill’s more general term for the realm in which humans evaluate any kind of action.³⁵⁶ Later, when looking at his substantive moral view, I will explore this concept in greater detail, since it is related to

³⁵³ Perhaps the most notable example of Mill’s tendency for restatement and clarification is in his *OL* 1.9 when he explains the liberty principle in consecutive and not obviously semantically identical iterations.

³⁵⁴ This reading also seems to be helped by Mill’s further remarks in the *Examination* discussed above and by evidence from Mill’s correspondence that will be discussed below.

³⁵⁵ Mill, *U*, 5.14.

³⁵⁶ This is not to deny that Mill sometimes uses expediency in a strictly utilitarian sense. As Lyons notes, though, here, given the context of the rest of the passage, Mill does not seem to be assuming utilitarianism in giving his account of moral wrong as the use of the term expediency, “would still come naturally to Mill, because of his teleological orientation. Mill assumes that conduct must be evaluated by reference to ends, and that utilitarianism is to be distinguished from other theories by its endorsement of a certain end—happiness. When Mill distinguishes between expediency and its proper part, morality, he is not invoking utilitarian values but is rather seeking to sort out the relevant concepts. The distinction is drawn by referring to sanctions, which implies no commitment to utilitarianism.” Lyons, “Mill’s Theory of Morality, 104.

Mill's theory of the Art of the Life. For the time being, however, it is enough to say that Mill is taking note of the point that there are at least two distinct realms, expediency and morality, that involve different uses of critical language.

In order to get a better view of what Mill is saying at this point it is helpful to look beyond the text of *Utilitarianism*. In chapter four of *On Liberty*, Mill states that agents, "are only a subject of moral reprobation when they involve a breach of duty to others . . ." ³⁵⁷ This is important since, as he emphasizes in that chapter, there are distinct kinds of punishment due to someone who has committed an offence against others as contrasted with cases where only the agent is principally affected. ³⁵⁸ Indeed, "It makes a vast difference both in our feelings and in our conduct towards him whether he displeases us in things in which we think we have a right to control him, or in things which we know that we have not." ³⁵⁹ If a person merely displeases us, we should not aim to "make his life uncomfortable." ³⁶⁰ When an agent ruins her life through mismanagement, for instance, she "may be to us an object of pity, perhaps of dislike, but not of anger or resentment . . ." ³⁶¹ These latter feelings, Mill thinks, have a proper domain and must be employed so as to not extend the bounds of their proper jurisdiction. To mismanage one's life is inexpedient in Mill's sense of the term, but it is not

³⁵⁷ Mill, *OL*, 4.6.

³⁵⁸ I am stating this much contested and discussed distinction between self and other regarding action somewhat roughly here, though I will return to this distinction in the next chapter as it will be important for spelling out Mill's definitive view on the appropriate circumstances for moral blame.

³⁵⁹ Mill, *OL*, 4.7.

³⁶⁰ *Ibid.*

³⁶¹ *Ibid.*

necessarily immoral and other agents must save their moral criticism for cases involving legitimate moral wrongdoing.

The third notable point concerns Mill's idea of understanding the appropriate circumstances in which agents can compel certain behavior of the part of other agents. In the Foundational Formulation Mill says that when agents speak of moral obligation, "we say that it would be right to do so and so, or merely that it would be desirable or laudable, according as we would wish to see the person whom it concerns, *compelled, or only persuaded and exhorted*, to act in that manner."³⁶² Just as the Foundational Formulation clarifies the kind of punishment that is appropriate for actions that are misdeeds in some way (e.g. wrong from the standpoint of morality vs. from the standpoint of general expediency), so also does it point to an important difference between trying to *compel* other agents to undertake an action and attempting to *persuade* them to undertake an action.

Mill does not say much in this passage about what he means by compulsion and how it is related to morality, though he does provide a few comments regarding justice and compulsion in chapter five of *Utilitarianism*. In the paragraph preceding the Foundational Formulation, Mill writes that, "When we think a person is bound in justice to do a thing, it is an ordinary form of language to say, that he ought to be compelled to do it. We should be gratified to see the obligation enforced by anyone that has the power."³⁶³ In his explanation of what he has in mind by enforcement, Mill mentions

³⁶² Mill, *U*, 5.14. Emphasis added.

³⁶³ *Ibid.*, 5.13.

legal penalties and, in cases where those may be inexpedient to actually carry out the punishment, members of society are entitled to, “make amends for it by bringing a strong expression of our own and the public disapprobation to bear upon the offender.”³⁶⁴ This account is consistent with the treatment of punishment for moral wrongs as it was described in the Implication Formulation, since it describes the appropriateness of the application of the penalties in relation to the expediency of their application. When Mill says that we would be *gratified* to see the offender compelled, “by anyone who has the power,” it must also be recalled that because (in his view) citizens rightfully distrust giving government officials the power to punish every incident of injustice, “We forego that gratification on account of incidental inconveniences.”³⁶⁵

One might think that Mill’s comments about justice are distinct from his claims about moral obligation more generally. One might think that, since justice concerns those interests that are especially important, they should be treated differently with respect to how they should be punished. On one possible reading, violating the rules of justice qualifies an agent for punishment, but the same does not necessarily hold true for non-justice related moral obligations. On this understanding, Mill sees punishment as tied to infringements of the dictates of justice but not to infringements of morality more generally.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

On my interpretation, this reading is a mistake. In chapter five of *Utilitarianism*, Mill elaborates on how the concepts of justice and morality more generally share an important relation to the concept of punishment. Just before providing the Implication Formulation Mill says that, “the idea of penal sanction, which is the essence of law, enters not only into the conception of injustice, but into any kind of wrong.”³⁶⁶ The distinction between justice and morality more generally, then, will not be found in whether punishments are implied in the one and not the other. The precise nature of the punishments might differ depending on various circumstances, but the fact that one establishes oneself as a candidate for moral punishment can arise from *either* violations of the standards of moral obligation or the standards of justice. Mill clarifies the conceptual difference between moral obligation generally and justice by saying that they correspond to the familiar distinction between imperfect and perfect duties.³⁶⁷ To properly see how Mill understands these distinctions, it will be necessary to discuss Mill’s theory of moral rights and their importance to perfect and imperfect duties, though this will have to wait until the next chapter. At this point, it will suffice to say that Mill sees compulsion as related to the threat of punishment for both injustice and immorality more generally.

Before moving on to discuss further Mill’s concept of compulsion as it relates to his other writings, it is necessary to make one further point concerning justice and compulsion. Mill says that in those cases where one is bound by justice to do an action,

³⁶⁶ Ibid., 5.14.

³⁶⁷ Discussion of both Mill’s theory of general rights and his distinction between perfect and imperfect duties can be found in Ibid., 5.15.

then one can be compelled to do that action. In the next section, I will give reasons to suppose that Mill understands compulsion in a distinctly rule-like way. By “rule-like way,” I mean that Mill’s understanding of (moral) compulsion is such that when agents are compelled to undertake an action it should be understood that this will involve an agent being expected to conform to a rule or set of rules. However, this interpretation of Mill’s theory of compulsion is a richer concept than what can be built out of what Mill provides for the reader in *Utilitarianism*. What I want to demonstrate here is that while it is a more difficult question as to whether Mill understands moral obligation, generally speaking, in a rule-like way, there should be considerably less doubt that he understands justice to be a matter of rules.

Mill makes the connection between justice and rules clear in later sections of chapter five of *Utilitarianism*. After the above mentioned discussion on the distinction between perfect and imperfect duties, Mill goes on to describe the sentiment associated with justice, especially the sentiment that leads us to lash out at those who have harmed us or those close to us, and how that sentiment can come to take on a moral flavor, as it were. People have the tendency to resent, Mill says, anything disagreeable that happens to them, regardless of whether the person has done anything truly worthy of that resentment. The sentiment, in its initial non-moral form, becomes moralized only when it “acts in the directions conformable to the general good.”³⁶⁸ Resentment needs to be

³⁶⁸ Ibid., 5.21. The fact that Mill sees resentment as a having a moralized and non-moralized form comes out in this passage and in the closing paragraph of the chapter where he refers to the “natural feeling of resentment,” which can be “moralized by being made coextensive with the demands of the social good. . .” Ibid., 5.38.

defending something that is worth protecting in some sense that extends beyond the individual in question. One might take the view that resentment essentially appeals to some principle or rule.³⁶⁹ While this is debatable, Mill brings out a more explicit connection between the sentiment involved in justice and punishment when confronting a worry about his analysis of the moralization of the sentiment. Mill says that the person who has a true moral feeling of resentment might not explicitly acknowledge that he is concerned about society in general but, that person “certainly does feel that he is asserting *a rule* which is for the benefit of others as well as for his own.”³⁷⁰ When Mill sums up his analysis of the nature of justice he says that, “the idea of justice supposes two things; a rule of conduct, and a sentiment which sanctions the rule.”³⁷¹ The sentiment that leads individuals to lash out at others is specifically identified as, “a desire that punishment may be suffered by those who infringe the rule.”³⁷² It seems right, then, to conclude that Mill explicitly sees the nature of justice as essentially bound up with rules.

Thus far, then, it seems clear that justice essentially involves rules and that justice is something that can be used to compel action on the part of others. It is also clear, based on what is said in the Foundational Formulation, that moral obligations more generally involve the compulsion of other agents. The remaining question is

³⁶⁹ In the deontological tradition, this point is made by Thomas Nagel in *The Possibility of Altruism* (Princeton, NJ.: Princeton University Press, 1979).

³⁷⁰ Mill, *U*, 5.22. Emphasis added.

³⁷¹ *Ibid.*, 5.23.

³⁷² *Ibid.*

whether those obligations—the obligations of morality more generally—essentially involve rules.

Compulsion, rules, and prospective guidance

In this section I want to provide a larger context for how to understand Mill's theory of moral compulsion and its relations to rules. I acknowledge at the outset that Mill does not make explicit reference to rules in the Implication, Proper Object, or Foundational Formulations.³⁷³ That said, I will argue here that a more general examination of Mill's account of compulsion and the nature of the internal sanction of conscience, reveals a deep connection between an action being morally wrong and the action violating a rule. To be clear, the rules in question establish the conditions for punishment but not the nature (social or legal) or extent (mild or severe) of the punishment itself. This is, of course, aside from the agent getting punished by way of internal sanction as is explained in the Implication Formulation. The external sanctions are to be carried out according to the standards of prudence or the interest of others, but the ways in which the punishments are given out do not need to essentially follow in a rule-like pattern. As has been said above, Mill does not go into detail in chapter five about how punishment should be decided. What is clear is that the rules are the standards by which agents become proper candidates for punishment. As I will argue here, Mill's

³⁷³ Indeed, Berger, in responding to Lyons and others who have used the passage to support rule utilitarian readings says, "Some commentators have thought it to be obvious that the passage requires a rule-consequence interpretation. However, the passage makes no reference to moral rules; its point is simply that the idea of punishment is involved in the ideas of right and wrong." Berger, *Happiness, Justice, and Freedom*, 107.

understanding of compulsion also makes reference to rules in that they are the standards that agents can use to prospectively guide behavior. When agents deviate from the rules, other agents are thereby authorized to use social and legal penalties in order to coerce the deviant agents into compliance.

As we have seen, Mill goes some way toward describing what he means by compulsion in the text of chapter five. A broader view of Mill's writings, however, shows that he has a richer concept of compulsion at work in his larger moral theory. To get a better appreciation of his understanding of compulsion it is necessary to examine some of his remarks beyond this text and to consider the concept of compulsion more generally. Someone can be compelled to leave the room, say, by being literally picked up and carried out of the room. In that case, the force directly behind the compulsion is an external (to the agent being carried) and physical one. For the most part, this is not the type of compulsion Mill is interested in when discussing moral compulsion. In fact, Mill sees physical compulsion in direct contrast to moral compulsion. In his *Principles of Political Economy*, in a discussion about government regulation of labor unions, Mill says that if a government is going to allow unions it must ensure that participation among the workers is genuinely voluntary:

No severity, necessary to the purpose, is too great to be employed against attempts to compel workmen to join a union, or take part in a strike by threats or violence. *Mere moral compulsion*, by the expression of opinion, the law ought

not to interfere with; it belongs to more enlightened opinion to restrain it, by rectifying the moral sentiments of the people.³⁷⁴

In other words, unions may appeal to social but not physical forces to compel action. Still, Mill hopes that the “more enlightened” populations of society might reduce the efficacy of the psychological force behind the union leaders’ appeals by shifting the nature of moral sentiments of the workers that the unions are trying to compel.

This quote concerning labor unions is interesting in light of the Foundational Formulation in that, in the latter, Mill directly contrasts persuasion and exhortation with compulsion. In the passage from the *Principles of Political Economy*, Mill says that expression of opinion can be used as a means of moral compulsion. Since persuasion and exhortation often include expressions of opinion as well, there needs to be some clarification on when expression of an opinion properly counts as compulsion. Here it is helpful to turn to the first chapter of *On Liberty*, and Mill’s discussion of the tyranny of the majority. Mill explains that individuals in society need protection from the threats of majority opinion in order to maintain their individual liberty. Protection from the threat of legal penalties is not enough since there is also a need for protection:

against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as *rules of conduct* on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in

³⁷⁴ Mill, *Principles of Political Economy*, CW, 3, 933. Emphasis added.

harmony with its ways, and *compel* all characters to fashion themselves upon the model of its own.³⁷⁵

What is important here, and this point can be found throughout *On Liberty*, is Mill's connection between the imposition of rules of conduct and compulsion.³⁷⁶ In passage just quoted, Mill is saying that society often goes too far in ascribing the codes of conduct in domains in which it is not appropriate for it to do so. In other words, rules of conduct that can guide behavior have the power of compulsion, though in this case the rules have been extended improperly.³⁷⁷

Mill makes a similar point later in the chapter when he says that, "The likings and dislikings of society, or some powerful portion of it, are thus the main thing which has practically determined the rules laid down for general observance, under the penalties of law and opinion."³⁷⁸ What Mill seems to be getting at here is that the penalties of law and opinion—the means by which society punishes moral wrongs—do accord with established *rules* that are generally understood across a given society. Mill apparently regards this as a truth about how societies work and how moral punishment works. The problem, in Mill's view, is that societies have been mistaken as to what areas they have allowed agents to be controlled by these penalties given that societies have

³⁷⁵ Mill, *OL*, 1.5. Emphasis added.

³⁷⁶ See *Ibid.*, 1.5-6; 1.9-11; 4.3.

³⁷⁷ One way to put it might be to say that society is not according itself with a proper understanding of the Art of Life, which establishes the bounds of proper criticism for different types of action. In some cases, actions that are, on Mill's view, merely imprudent are considered immoral by society (e.g. the self-destructing drunk who lacks dependents and creditors), whereas other actions can really be morally wrong even if they are regarded as matters of prudence by society (e.g. whether one should own a slave in Alabama in the 1840s).

³⁷⁸ Mill, *OL*, 1.7.

been governed by standards as arbitrary as the “likings or dislikings” of a portion of that society. They should, he thinks, choose different standards and pointing this out is part of his aim in *On Liberty*.

Mill views it as imperative that society have the proper understanding of how to employ these rules and the sanctions that enforce them. Mill believed that Bentham did a fine job of identifying the misguided principles behind many of England’s penal sanctions, but utilitarians, as Bentham was himself aware, must also pay keen attention to the power of social penalties in constraining behavior.³⁷⁹ In Mill’s view, in fact, the stakes for establishing the areas of conduct in which an agent is subject to social penalties might even be more important than the stakes regarding legal penalties since:

Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.³⁸⁰

Many may read Mill’s closing words here as an exaggeration and perhaps it is. But the fact that Mill spends so much time in the text stressing the importance of individuality and the proper use of social influence leads me to believe that he is quite serious here regarding the power of social opinions in compelling an individual’s actions. For anyone

³⁷⁹ See Mill, “Bentham,” *CW*, 10, 78-79.

³⁸⁰ Mill, *OL*, 1.5.

to attain anything of significant value in life, Mill later says, there must be some balance between allowing individuals to pursue their individual goals and a set of standards set down by society that can protect each person's pursuit of those goals. "Some *rules of conduct*, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be, is the principle question in human affairs."³⁸¹ For the purposes of this discussion, it is not so important that one get clear on what Mill says about the nature of the rules themselves, as this is a very large question. What *is* key here, though, is that, whatever the rules are, they clearly have a strong connection to Mill's conception of what it means to be compelled, if not enslaved, by social forces.

This connection between compulsion and rules of conduct in *On Liberty* suggests a significant difference between simply stating an opinion and stating an opinion in a way that makes proper use of moral coercion—in the latter case there is a widely recognized rule justifying that opinion and in the former case there is not. It would be a mistake, Mill thinks, to compel an agent to undertake an action even if "in the *opinion* of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he does otherwise."³⁸² That someone has an opinion about another agent's conduct and how it can be improved does not suffice to qualify the

³⁸¹ *Ibid.*, 1.6. Emphasis added.

³⁸² *Ibid.*, 1.9. Emphasis added. cf. The Proper Object Formulation: "There are things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation we do not think that they are proper objects of punishment." Mill, *U*, 5.14

opinion holder in compelling the other agent. In order for there to be justified compulsion—that is, to be able to exact the other person’s duty “as one exacts a debt”—there must be some standard of rule of conduct that the agent is able to use to guide her actions.

At this point one might object that too much is being made of Mill’s comments regarding the coercive power of social opinion and that coercive power being especially tied to rules. After all, since this discussion is attempting to get a broader view of Mill’s concept of compulsion and its relation to social punishment, it would be ideal for my purposes if my exposition of Mill’s writings could reveal some deeper connection between rules, moral obligation, and punishment. Thus far, I have provided passages from several texts that suggest that the connection is there, but one might justifiably still be in doubt. As it turns out, Mill spells out his understanding of the relationship between these concepts in a 1859 letter to William George Ward:

Now as to the still more important subject of the meaning of *ought*. . . . I believe that the word has in some respects a different meaning to different people. We must first distinguish between those who have themselves a moral feeling—a feeling of approving & condemning conscience, & those who have not, or in whom what they *may* have is dormant. I believe that those who have no *feeling* of right & wrong cannot possibly *intue*³⁸³ the rightness or wrongness of anything.

³⁸³ The editors to this volume of the *Collected Works* added an explanatory note concerning this term’s usage. ‘Intue’ is “A verb invented by Ward and first used in his book, “as corresponding in every respect with the substantive ‘intuition’ and the adjective ‘intuitive’” See Mill to William George Ward 18 November 1859, *CW*, 15, 649n10.

They may assent to the proposition that a certain rule of conduct is right; but they really mean nothing except that such is the conduct which other people expect & require at their hands . . . This you will probably agree with, & I will therefore pass to the case of those who have a true moral feeling, that is, a feeling of pain in the fact of violating a certain rule, quite independently of any expected consequences to themselves. It appears to me that to them the word *ought* means, that if they act otherwise, they shall be punished by this internal, & perfectly disinterested feeling.³⁸⁴

This letter is a crucial piece of evidence for my interpretation and others who favor the sanction utilitarian reading of Mill. In giving his initial sketch of Mill's sanction-based conception of moral wrong, Lyons did not cite this passage, though, as Miller rightly says, the view "is far more plausible in light of it."³⁸⁵ To show how this is so I will examine four points that, taken together, go some way toward explaining how Mill understands moral obligation.³⁸⁶

The first point is that while Mill makes it clear that he is discussing the concept of *ought*, the fact that he goes on to connect ought to what it means to have a true *moral* feeling suggests that his statements can be appropriately applied to the moral ought and thereby the concept of moral obligation. The second point is that Mill specifically separates agents who have a true moral feeling from those who do not based on what they mean when they assent to a rule of conduct being right. It is not enough, on Mill's

³⁸⁴ Ibid, 649.

³⁸⁵ Miller, *J.S. Mill*, 87.

³⁸⁶ My discussion on these points is partly indebted to Ibid., 86-88.

view, to have a true moral feeling to be able to discern what conduct others expect of you and what might happen to you if you disobey a given rule of conduct. To know the rule and the likely consequences for breaking it (i.e. “what will be required at their [i.e. other people’s] hands”) do not suffice—one must have the proper sentiment to go along with it. Just as in the case of justice, there seems to be a rule and a proper sentiment to accompany that rule. In other words, Mill’s comments here reveal a kind of symmetry between the account of justice and moral obligation more generally: both must be rule based and both depend on a sentiment which, as Mill puts it, “sanctions the rule.”³⁸⁷

The third key point of the passage concerns what it means to have a true moral feeling or, as Mill suggests at the beginning of the paragraph, what it means to understand the moral ought: “those who have a true moral feeling, that is, a feeling of pain *in the fact of violating a certain rule*, quite independently of any expected consequences to themselves.” Aside from the fact that this passage further establishes the relationship between a moral obligation and rules, this passage is crucial for furthering the connection between moral obligation and the internal sanction that Mill mentions in the Implication Formulation. Moral obligation, it seems, is essentially tied up in obeying certain rules and feeling an internal sanction when one violates that rule. In the Implication Formulation, Mill suggested that external sanctions, like opinion or legal penalties, *might* be appropriate for the violation of a moral obligation, but Mill seemed to imply that *at least* internal sanctions, like the reproaches of one’s conscience, are appropriate. After clarifying this point in this letter to Ward, Mill then goes on (in the

³⁸⁷ Mill, *U*, 5.23.

last line of the passage quoted above) to make one further connection between moral obligation and the internal sanction of conscience by saying that ought means that if one does not obey its dictates that one will be punished by way of a disinterested internal sanction.³⁸⁸

To sum up these points, then, Mill supposes that those with a true understanding of the moral ought are those who mean something particular when they say that a rule of conduct is right. One does not understand the meaning of what is morally right or wrong if one merely knows what will likely happen if one violates a rule of conduct. To have a true moral feeling—that is, to truly understand what the moral ought means—one must also be punished by way of internal sanctions when one violates a rule. In explaining the matter in this way, Mill thereby clarifies and strengthens two central points of his Sanction Theory of Moral Wrong: wrongness is essentially a matter of violating rules and violating rules results, at least, in being internally sanctioned by one's conscience if not also being externally sanctioned by others.

The fourth and final point concerning this passage concerns the historical context of the letter itself. Lest one think that Mill's comments should be read completely separately from his comments in chapter five, one should take note that Mill is writing

³⁸⁸ Mill is not done emphasizing the point of connection between morality and punishment as, later in the same letter, he goes on to say that, "the feelings of morality properly so called seem to me to be grounded, & their main constituent to be the idea of punishment." Mill to William George Ward 18 November 1859, *CW*, 15, 650. Note that D.G. Brown had questioned the emphasis on the importance of sanctions. In fact, he goes so far as to say that, "Interpretations which make the internal sanction, that of conscience, the heart of his conception of morality, even part of his analysis of moral wrongness, and relegate legal punishment to the status of a pragmatic application or addendum in his moral theory will be interpretations which reconstruct, revise, or try to supersede Mill's view." Brown, "Ongoing Revisionism," 19. Later Brown admits that the Ward letter is "difficult to square" with his preferred interpretation, see *Ibid.*, 42n70.

the letter in 1859, which is after he has finished writing, and publishing, *On Liberty* and, presumably, been revising the final chapter of utilitarianism (based on evidence presented in the previous chapter). In fact, at the very end of the letter, Mill makes the following addendum to his discussion:

This is the nearest approach I am able to make to a theory of our moral feelings. I have written it out, much more fully, in a little manuscript treatise which I propose to publish when I have kept it by me for the length of time I think desirable & given it such further improvement as I am capable of.³⁸⁹

The editors of Mill's *Collected Works* rightly identify Mill's reference here to *Utilitarianism*, as Mill had just recently mentioned in another letter to his regular correspondent Alexander Bain that he had been recently working on essays that he was thinking of publishing in *Utilitarianism*.³⁹⁰ In light of these historical circumstances, it seems appropriate to tie this discussion to Mill's analysis of justice and moral obligation as it is presented in chapter five.

To be clear, then, the Ward letter explains the meaning of the term "appropriate" in the Sanction Theory of Moral Wrong, which says that an action is wrong when it is appropriately punished by the internal sanction of conscience. By appropriate, it is meant that the action violates a justified moral rule that, in fact, leads the agent to experience the internal sanction of conscience. Note that in the Ward letter, just as in the three

³⁸⁹ Mill to William George Ward 18 November 1859, *CW*, 15, 650.

³⁹⁰ For the editor's reference see, Mill to William George Ward 18 November 1859, *CW*, 15, 650n12. For Mill's explicit mention of the papers he plans to publish as *Utilitarianism*, see Mill to Alexander Bain, 15 October 1859, *CW*, 15, 640.

formulations, Mill nowhere appeals to the standard of utility to explain his theory of conscience or his understanding of moral wrongdoing. In the view that I am providing here, the standard of utility only comes into play when asking from what source moral rules receive their justification. The principle of utility, in other words, does not determine or regulate the *nature* of the conscience and it does not itself determine when an action is punished. If an agent violates a rule that the conscience has internalized, it should be punished—regardless of how this affects utility. Utility only has a role in justifying particular rules, which are then installed, as it were, in the conscience. If one had a different theory of value, then presumably different rules could thereby be justified.

With this understanding of the Sanction Theory of Moral Wrong in place, let me return to the connection between compulsion and moral rules, which will allow a clearer picture of Mill's more general moral theory. Mill sees social rules of conduct as compulsory or coercive in the sense that the rules should inform and guide an agent's behavior *prospectively*. The only way to avoid punishment and meet the standard of moral obligation (i.e. do the morally right action), is for an agent to adjust her plan of action and thereby preclude any internal or external sanctions that could have been (i.e. if she had acted differently and violated the rule) applied to her behavior. An agent, then, who is guided by these rules under the threat of punishment for violation can be thought

of as acting according to what Bentham calls coercive social rules.³⁹¹ That is to say, they are rules that prohibit or forbid various actions and are enforced through societal sanctions like legal, civil, or social penalties.³⁹²

In the next chapter I will say more about the nature of this internalization, but at this point it would be best to see how this theory is supposed to work now that the chief elements are in place. In the case where an agent commits a moral wrong—that is, the agent violates a coercive moral rule—she should feel internal sanctions and she is opening herself up to punishment in the sense that, were it to be applied externally, she, “would not be entitled to complain.”³⁹³ That said, the precise nature of the punishment is determined according some other standard, which Mill says can include considerations of prudence or the interests of other people. To commit a wrongful act, in other words, is to make oneself a candidate for moral punishment—though the extent to which one is punished is not decided by the standard of morality itself.

Summary of the Sanction Theory of Moral Wrong

At this point we can bring the account as a whole together to see how it can support the Sanction Theory of Moral Wrong that was provided earlier. At the beginning of the chapter I said that I would argue for the following claims: that Mill’s metaethical

³⁹¹ This connection was pointed out in Lyons “Mill’s Theory of Morality,” 108. For his more extended discussion of Bentham’s account of these see David Lyons, *In the Interest of the Governed* (Oxford, UK: Clarendon Press, 1973), chapters 5-6.

³⁹² As Lyons rightly notes in his article, Mill was critical of Bentham on many points of social philosophy. However, Mill regarded Bentham’s work on the nature of punishments to be, “nearly complete.” Mill, “Remarks on Bentham’s Philosophy,” *CW*, 10, 11.

³⁹³ Mill, *U*, 5.14.

comments on the nature of moral obligation do not presuppose utilitarianism, that Mill's theory of moral obligation precludes a commitment to certain forms of maximizing act and rule utilitarianism, that Mill recognizes the possibility of agents positively and negatively evaluating actions in a way that is distinct from morality, that wrong actions are identified with actions that should be punished by the conscience, and that his theory of moral obligation is bound up in his conception of rules and the nature of conscience such that right actions are those that should be compelled, and that Mill's theory of moral obligation was essentially rule oriented.

At this point I have supplied all of the requisite textual evidence in support of my claim that Mill holds to the Sanction Theory of Moral Wrong, so I will try to reinforce what I have written by reviewing the evidence presented thus far. I opened by claiming that Mill's Sanction Theory of Moral Wrong says that an act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience, and possibly be subject to other punishments (e.g. social or legal penalties), for performance of the act. I said that one can grasp Mill's reasons for holding this view, by examining his three formulations connecting wrongdoing and punishment. Regarding the first formulation, the Implication Formulation, I said that it was significant that Mill establishes an inferential relationship between calling an action wrong and punishment being rightly applicable to that action. Saying that an action is wrong implies that punishment, of some kind, would be justified. While one might think that this is a trivial point, I gave reasons for thinking that it is not since Mill's formulation seems to distinguish the view from other moral theories like a simple version of rule

utilitarianism. It distinguishes itself by establishing a non-contingent relationship between moral wrong and punishment. This close conceptual connection is further emphasized when one considers Mill's comments in the *Examination*, and Mill's account of the moral psychology of punishment. There Mill makes it clear that though the two concepts are, strictly speaking, separable, they appear in our mind without, as he puts it, "the help of any intervening idea."³⁹⁴ I also noted that the Implication Formulation introduces the idea of a cascading approach to punishment, whereby different punishments are meted out according to some standard. Internal sanctions are appropriate for every instance of wrongdoing, and other punishments like public disapprobation and legal penalties can be added on as is deemed justifiable according to the standards of prudence or the interests of others.

Regarding the second formulation, the Proper Object Formulation, I said there were two significant points. The first is that Mill acknowledges the fact that agents can positively or negatively evaluate (e.g. admire or despise) actions in a non-moralized way. This seems incompatible with single-level maximizing conceptions of act utilitarianism where all evaluations are subject to the demands of morality. Mill does not go into detail, in *Utilitarianism*, about how this might work, but he explains where he might draw the line between moral evaluation and other kinds of evaluation in his essays on Comte. By examining three different passages in Mill's writings on Comte, I explained the ways in which Mill, when discussing his own version of utilitarianism, adopts a less than maximizing form of utilitarianism. In the first passage, Mill explains

³⁹⁴ Mill, *Examination*, CW, 9, 463.

that, rather than requiring agents to do all that they can, he advises that they work to protect certain essential interests and meet their standing commitments. In the second passage, I also presented evidence that Mill was cautious even with using moral praise since such actions can leave agents with feelings of obligation—a situation he clearly wants to avoid. In the third passage Mill makes it clear that agents should not be obligated to all the good that they *might* do. Agents doing less than their absolute best is not morally wrong, a fact that sits awkwardly with maximizing act utilitarian interpretations.

The Proper Object formulation also invokes a normative standard regarding what should be punished. I showed how this idea—that merely because something, *in fact*, gets punished does not show that it *should* be punished, is a point that Mill makes in several different his works. Mill’s employs the “proper object” language itself in his response to Whewell’s mischaracterization of utilitarianism, and Mill clearly separates his vision of what people *should* feel and how they *do* feel in the *Subjection of Women*. As such, the Proper Object Formulation underscores again the close relationship between punishment and morality.

Mill’s third formulation, the Foundational Formulation, brought up three key points. The first was that Mill reiterates his contention that morality is fundamentally linked with punishment. He does not use the language of inference, but says that punishment “lies the bottom of” moral right and wrong. Mill’s reiteration of the connection between morality and punishment is important for interpretive reasons since

it makes it more difficult to read previous invocations of the singular statements or all-too-casual remarks about how humans talk about morally wrong actions.

The second point concerning the Foundational Formulation builds on the first. For Mill, the language of moral criticism is importantly distinct from other types of social criticism, and he uses this passage to draw attention to this fact. This follows his practice in other works like *On Liberty* where Mill explains the different circumstances in which various types of criticism are appropriate. On Mill's view, moral criticism is appropriate only if an agent's action principally concerns other agents. In a case where an action concerns only the agent herself, even if the action is especially self-destructive, as long as it principally concerns only the agent in question, it can be labeled as foolish but not as morally wrong. The Sanction Theory of Moral Wrong, however, does not necessarily employ *this* understanding of how to separate the two types of criticism (i.e. the division between purely self-regarding and other-regarding action). This particular understanding only arises because of Mill's specific understanding of utilitarianism. The important thing, for Sanction Theory of Moral Wrong, is that moral criticism can be distinct from other kinds of criticism. Where one draws the line between the different types of criticism will depend on the type of theory justifying the moral rules and the sanctions themselves.

The third point concerns Mill's distinction between compelling someone to undertake an action, for moral reasons, and merely exhorting or persuading that person to undertake an action. In *Utilitarianism*, Mill explains that when a person is bound by justice to undertake an action it is proper to say that that he is compelled to do that

action. If the person does not act in accordance with justice, then, Mill thinks, we should be pleased to see the wrongdoer punished by anyone who has the power—though the concerns of expediency will limit how much power should be turned over to the authorities who would punish. This connection between punishment for infringing on the rules of justice and morality more generally, and compulsion goes some way toward explaining Mill’s understanding of justice, some key elements remain unclear.

After making this point connecting justice to compulsion, I showed how justice is essentially rule oriented and is tied to a specific sentiment. Mill makes this point clear in chapter five of *Utilitarianism*, and it is a relatively uncontested point in the literature. More contested is that compulsion is tied to moral rules apart from justice. To try to make that connection, I examined passages from Mill’s *Principles of Political Economy* and *On Liberty* where Mill discusses the nature of moral compulsion. I reviewed several passages where Mill suggests that agents can be guided prospectively by publically recognized rules of conduct, which establish codes of moral right and wrong. Furthermore, I noted that it is not enough for someone to have an *opinion* that an action is morally right in order for it to be a compulsory rule—it must be widely dispersed and internalized across members of a society.

At this point in the argument I admitted that, my evidence from *On Liberty* notwithstanding, one might still be unconvinced that Mill’s theory of moral obligation is fundamentally rule-oriented in the way that I have suggested. To make the point stronger, I examined an 1859 letter from George Ward, which makes a number of points crucial to my case. In the letter Mill makes it clear that he is talking about those people

who recognize a moral 'ought' are those who have a certain kind of moral feeling. The moral feeling in question is a feeling of pain in light of having violated a moral rule. This is what is meant in the Sanction Theory of Moral Wrong when it speaks about actions being "appropriately" punished—actions are appropriately punished when they violate a moral rule and are punished by the internal sanction of their conscience. Other punishments, like legal or social penalties might be added on later, but they are not at the heart of the theory in the way that rules and the internal sanction of conscience are.

When read in this way, the Ward letter Mill makes the explicit connection between moral obligation, rules, and the internal sanction of conscience that I have argued is at the center of his view. Mill further clarifies his point, which echoes the claims made in the Foundational Formulation, that actions that are right are those for which they can be expected to be punished for not doing (i.e. the agents can be compelled). This makes the connection between moral compulsion, wrongdoing, and rules that I had been seeking to establish throughout the latter parts of the chapter.

At this point, one should have a solid grasp on the nature of Mill's theory of moral obligation. That said, I have said only a little about the nature of Mill's utilitarianism. It is clear that, whatever it is, it will be essentially rule based and be a non-maximizing form of utilitarianism. It must allow for evaluations that are distinct from the moral commitments of utilitarianism, and must not be especially demanding to its adherents. This already sets Mill's view apart from many of the varieties of utilitarianism discussed in earlier chapters, and it is in the next chapter that I will discuss

in greater detail how to better understand Mill's commitment to utilitarianism in light of his theory of moral obligation more generally.

CHAPTER VI

MILL'S SANCTION UTILITARIANISM

This chapter will argue for an interpretation of Mill's sanction utilitarianism. The chapter will have four major sections. The first section will discuss the definition of sanction utilitarianism and explain its implications in various domains of Mill's moral theory. This will include four clarifications about the definition. These include discussions of how punishments are to be carried out, what it means to violate a rule, what it means for codes to be internalized by agents in a way that allows them to discern right and wrong, and how sanction utilitarianism stands apart from other types of utilitarianism. The second and third sections will focus on how sanction utilitarianism applies to some of the contested aspects of Mill's utilitarianism that have been discussed in previous chapters. The second section focuses on Mill's Art of Life and his approach to utility maximization. The third section examines Mill's theory of liberty and his approach to self-regarding action. In discussing these areas I will address some notable objections to the sanction utilitarianism reading of Mill and will provide some replies to those objections. The fourth and final section of the chapter will include two notable objections to my interpretation of sanction utilitarianism and replies to those objections.

At several points in the previous chapter outlining Mill's Sanction Theory of Moral Wrong, I stressed that Mill's arguments did not presuppose a commitment to utilitarianism. Indeed, the conclusion of the discussion does not even present a strictly utilitarian account of moral wrong. In the fourteenth paragraph of chapter five, Mill

seems to be sketching a view of the nature of moral wrongdoing based on his understanding of moral psychology. One need not be a utilitarian or even, to pick a more general categorization, a consequentialist of some kind to accept what Mill says in that paragraph. When the paragraph is read holistically and in light of Mill's other related commitments, Mill articulates the following claim about moral theories:

Sanction Theory of Moral Wrong: An act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience, and possibly be subject to other punishments (e.g. social or legal penalties), for performance of the act.

One might reasonably wonder what changes follow once one adds Mill's utilitarian commitments to his Sanction Theory of Moral Wrong. Specifying how to classify one kind of action as morally wrong and another as admittedly regrettable but not wrong requires an appeal to some external standard. As Mill says about utilitarianism in his essay on Whewell, "The contest between the morality which appeals to an external standard, and that which grounds itself on internal conviction, is the contest of progressive morality against stationary—of reason and argument against mere opinion and habit."³⁹⁵ For Mill, the standard in question is the principle of utility. In *On Liberty* he writes, that, "I regard utility as the ultimate appeal on all ethical questions . . ."³⁹⁶ Similarly, in chapter five of *Utilitarianism*, when Mill confronts the objection of why certain rights should be protected, he says, "I can give him no other reason than the

³⁹⁵ Mill, "Whewell," *CW*, 10, 179.

³⁹⁶ Mill, *OL*, 1.11.

principle of utility.”³⁹⁷ In his *Autobiography*, Mill says of John Austin that, “like me, he never ceased to be a utilitarian . . .”³⁹⁸ It is clear, then, that Mill took himself, in some sense, to affirm the claims of utilitarianism. It remains less clear, though, precisely what particular claims of utilitarianism Mill ultimately affirms as true. As has surely been evident from the previous chapters, Mill’s utilitarianism, whatever it is, has a number of peculiar features that make it less than obvious just how he understands the theory and its fundamental components. In order to try to better understand the nature of his view, I will now turn to a discussion of some of the key elements and implications.

Mill’s commitment to utilitarianism and his approach to punishment

On my interpretation, Mill held fast to the idea that happiness, in all of its complexity, was the sole source of ultimate value. Though it is discussed in more detail in the next section (and as I have partly argued earlier in the dissertation), sanction utilitarians typically understand the principle of utility as a principle that says *what* is valuable or good. It is not a principle about *how* to promote that good.³⁹⁹ Most importantly, it is not a principle that requires agents to act in such a way so as to maximize the good. Put differently, it is an axiological principle not an action-guiding principle. As such, the principle of utility is Mill’s theory of what is valuable and what end is ultimately to be pursued. It is only in his moral theory proper that one finds an

³⁹⁷ Mill, *U*, 5.25.

³⁹⁸ Mill, *Autobiography*, *CW*, 1, 185.

³⁹⁹ I argued against reading the idea that Mill believes that utility should be maximized in all of the domains in the Art of Life in my discussion of Crisp’s act utilitarianism reading.

expression of the means by which that end is to be promoted and pursued. In a later section of this chapter on Mill's Art of Life I will say more as a point of justification for this understanding of Mill's principle of utility.

With this in mind, it is now possible to walk through the basic structure of sanction utilitarianism:

Sanction Utilitarianism: An act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience (and possibly be subject to other punishments such as social or legal penalties) for violating a rule in a moral code that, when internalized by an agent, promotes utility.

The first point to clarify about this definition is related to the question of how punishment for wrongdoing is carried out. As with the Sanction Theory of Moral Wrong, sanctions other than those of conscience, such as moralized resentment from other agents or legal penalties, may be applied to an agent in light of her violation of a moral rule (i.e. that which makes her a proper candidate for punishment). After the sanction is applied by the conscience, further punishment is given out according to the demands of prudence, not morality. This means that though some punishments (e.g. verbal moral blame) may have a particularly moralized *flavor* to them (e.g. "Hey! What you did to that person was as an assault on her dignity!"), the domain of morality is concerned only with the question of which agents get punished, not the nature and extent of their punishments.⁴⁰⁰ In other words, it is the proper work of the department (as Mill calls it)

⁴⁰⁰ This story holds, of course, apart from the punishment of conscience, which should accompany any moral wrong.

of morality to determine who is a candidate for punishment and who should receive at least the internal sanction of conscience. A different department, the department of prudence, governs the way in which the external sanctions are applied. The work of the department of prudence is guided by utility (just as the department of morality is), but it is worth clarifying the point that there is a distinction in how morality and prudence operate on Mill's scheme: they work together under the auspices of the principle of utility, but have decidedly different roles.

Rule violations

The second point concerns the question of what it means to violate a rule. Unfortunately, there is no way to answer this question that generalizes across all of the relevant moral rules that would be contained within a single code. For instance, the moral rules concerning imperfect duties like giving money to charity are going to be difficult to specify precisely.⁴⁰¹ Given that Mill's conception of imperfect duties does not require agents to act in a specific time or manner, it may be difficult to know just when one has violated the rule and should feel the internal sanction of guilt for it. If an agent fails to give money to a particular charity on particular day, has she violated the rule? Probably not, but there presumably should be *some point in time* that she should feel guilty about not following the rule concerning charity. Aside from the timing question, there is also the difficulty of specifying rules about just *how much* one should give. Should the amount required be relative to one's income, and, if so, what sort of

⁴⁰¹ Mill distinguishes between perfect and imperfect duties of morality at Mill, *U*, 5.15.

share is appropriate? If an agent deliberately chooses to have children and takes on the accompanying expenses, does that mean that her obligation to give to strangers should be lessened? If an agent is especially generous with her time, should that lessen her obligation compared to someone who has a similar income but only contributes money, and not time, to charitable causes? These are only some of the questions that Mill does not answer concerning the nature of imperfect duties and how to fashion moral rules. Indeed, it is admittedly unsatisfying but nonetheless correct to say that there is little one can say *generally* about what it means to violate many or even most *particular* moral rules. As I will try to show below, there are similar difficulties when trying to specify the rules concerning perfect duties like those concerned with telling lies.

Determining the necessary and sufficient conditions for what it means to violate the rules concerning lying is notoriously difficult, as Mill himself would surely agree.⁴⁰² In fact, in a letter to Henry Brandreth in 1867, Mill expresses a general skepticism about devising a utilitarian scheme that can generalize across all circumstances such that it specifies precisely when one should depart from the “rule of veracity.”⁴⁰³ Circumstances are so varied, Mill seems to think, that it would be wrong to think that utilitarian theorists can devise a perfect scheme that can account for all possible circumstances. In many places in his work, Mill makes it clear that agents must be wary about being self-serving, or even just poor calculators of general utility, when they elect to depart from

⁴⁰²Mill addresses the issue of lying from a general utilitarian standpoint *U*, 2.23. According to Shelly Kagan, there seems to be no universally accepted definition of lying. Shelly Kagan, *Normative Ethics* (Boulder: Westview Press, 1998), 113.

⁴⁰³ Mill to Henry Brandreth, 9 February 1867, *CW*, 16, 1234.

the standard rules of conduct. Mill is quick to add, though, that this holds for virtually any moral theory.⁴⁰⁴ For utilitarian agents to be able to use moral rules in daily life they must have some discretion in applying them and the rules must be kept relatively simple (especially since at least two rules might be in tension in a given case). Still, different moral rules may have exceptions built into them (e.g. “Don’t tell a lie, except when it is seriously impolite not to or in order to save lives”) and agents will need to use caution and discretion in applying a moral rule to a given situation.⁴⁰⁵ Utilitarianism depends upon agents using their best judgment in applying such rules to the relevant circumstances.⁴⁰⁶

Mill is rather hesitant about giving specific directions about what it means to violate a moral rule such that one appropriately feels the internal sanction of conscience.⁴⁰⁷ To better understand Mill’s hesitancy, it may be helpful to look at specific example from Mill’s writings. In his essay on Whewell, Mill confronts the charge, levelled by his antagonist, that the morality of utility allows agents too much discretion in deviating from truth telling when facing delicate social circumstances (e.g. in cases of flattery). Mill responds by asking:

⁴⁰⁴ Recall that this is why Berger reads Mill adopting a strategy conception of moral rules: the risks of self-deception and miscalculation are often great enough that it is usually better to follow the familiar moral rules that are supposed to promote or maximize utility.

⁴⁰⁵ Recall Mill’s statement about handling cases of exceptions to moral rules: “The essential is, that the exception should be itself a general rule; so that, being of definite extent, and not leaving the expediencies to the partial judgment of the agent, it may not shake the stability of the wider rule in cases to which the reason of the exception does not extend.” Mill, “Whewell,” *CW*, 10, 183.

⁴⁰⁶ Utilitarianism, like any theory, depends on its agents having some intellectual competence in actually applying the theory since, “There is no difficulty proving any ethical standard whatever to work ill, if we suppose universal idiocy to be conjoined with it.” Mill, *U*, 2.24.

⁴⁰⁷ Recall that on the sanction utilitarian theory, when a rule is actually violated, it is appropriate for an agent to feel the internal sanction of conscience. If you violate the rule, but do not feel the internal sanction of conscience, then something is amiss.

Does no one of Dr. Whewell's way of thinking, say, or allow to be thought, that he is glad to see a visitor whom he wishes away? Does he never ask acquaintances or relatives to stay when he would prefer them to go, or would invite them when he hopes they will refuse? Does he never show any interest in persons or things he cares nothing for, or send people away believing in his friendly feeling, to whom his real feeling is indifference, or even dislike?⁴⁰⁸

Immediately after making this point, Mill says that he will not go into whether such actions are really morally wrong. He does say, however, that one can engage in flattery only to the extent that one can do so without lying, which, "all persons of sympathizing feeling and quick perception can."⁴⁰⁹ Just what precisely those lacking these abilities are to do is left unsaid. This supports my initial claim that Mill has little *generally* to say about what it means to precisely keep or to violate a rule and seems to depend on agents using their own judgment to fit the principle to the case at hand.

Conscience: moral codes across and within societies

The third point concerns the question of how one should understand the definition's reference to a moral code that is internalized by an agent's conscience and promotes utility. This is an especially complex issue and I will break it into two halves. The first half will concern the fluctuating nature of the moral code that will be

⁴⁰⁸ Mill, "Whewell," *CW*, 10, 182-183.

⁴⁰⁹ *Ibid.*, 182-183.

internalized by agents and regulate their consciences. The second half, which is discussed in the next section, concerns the nature of this internalization process.

On Mill's view, the code of moral rules consistent with the doctrine of utility is a code that will continue to evolve—both *within* particular societies and *across* societies. On Mill's view, central doctrines of his normative moral and political theory, like his doctrine of liberty, do not apply even to adult agents in different societies at a given time. As he says in *On Liberty*, the moral and political doctrines he is expressing in the book do not apply to “backward states of society,” that have not reached (as he sees it) a certain stage of intellectual and cultural development.⁴¹⁰ “Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion.”⁴¹¹ Once society develops to a point where they can be so improved, Mill's utilitarianism would advise agents to internalize a different moral code than it had previous to that development. As Mill saw it, the moral code governing agents in mid-nineteenth century India were decidedly different than those governing his fellow English citizens.⁴¹²

⁴¹⁰ Mill, *OL*, 1.10. According to Jennifer Pitts, in her terrific book on classical liberal and utilitarian attitudes toward imperialism and colonization, Mill's elitist attitude on these issues actually stands at odds with Bentham's views. Pitts argues that Bentham had a fairly sophisticated and critical attitude toward the British treatment of its colonies and the work of the East India Company. She points out that Mill seems to have relied too much on his father's ideas on the need for a strong government to forcefully, if tyrannically, bring certain cultures “up” to the point of civilization. See Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton, NJ: Princeton University Press, 2005), 123-162. For a similarly stinging critique see Uday Singh Mehta, *Liberalism and Empire* (Chicago: Chicago University Press, 1999).

⁴¹¹ Mill, *OL*, 1.10. Mill refers back to this discussion in Mill, *Examination*, *CW*, 9, 459.

⁴¹² For an argument that takes a less critical attitude toward Mill's thoughts on imperialism and claims that Mill's views are grounded in a desire to protect individual rights, promote peaceful solutions to conflict, develop commercialization, and promote the general welfare in countries like India see Mark

Mill also believes that moral codes should continue to adapt within, and not merely across, particular societies. They should adapt their current moral code in accordance with the “external standard” of the principle of utility.⁴¹³ That said, Mill sees much of society’s moral codes as already embodying a great deal of the truth that resides in the principles of utilitarianism, regardless of whether members of the society in question acknowledge as much.⁴¹⁴ Even so, the present state of morality will stand in need of improvement, and it is one of Mill’s chief concerns that the moral code be up for revision under the governance of the principle of utility. Some of Mill’s sharpest words were directed toward those theorists who argued that the current codes of morality embodied the final truth of the matter: “The doctrine that the existing order of things is the natural order, and that, being natural, all innovation upon it is criminal, is as vicious in morals, as it is now at last admitted to be in physics, and in society and government.”⁴¹⁵ As such, moral reformers, people like James Mill, Harriet Mill, Jeremy Bentham, and other utilitarian intellectuals should work to understand the current state of morality, identify what was worth keeping and what should be altered to the degree that

Tunick, “Tolerant Imperialism: John Stuart Mill’s Defense of British India” *Review of Politics* 68 (2006): 586-611.

⁴¹³ For this reason, it is a mistake to speak of Mill as a moral relativist in many of senses and contexts in which that phrase is used. He *is* a moral relativist in the sense that the same code of morality does not govern the consciences of all moral agents at all times and all places. However, he is *not* a moral relativist in the sense that there is an external standard, utility, by which all of the codes of different societies are measured and regulated. In Mill’s view, the truth that the principle of utility should be promoted does not depend on what any person, culture, or deity says or thinks about it, and in that sense he is decidedly not a moral relativist.

⁴¹⁴ In his opening chapter of *Utilitarianism*, Mill writes that utilitarianism “had a large share in forming the moral doctrines even of those who most scornfully reject its authority.” Mill, *U*, 1.4.

⁴¹⁵ Mill, “Whewell,” *CW*, 10, 179.

agents would be able to internalize it, and then seek to publicize the altered code, which could then be internalized by agents in a given society.⁴¹⁶

Conscience: moral wrong and the counterfactual right

The second half of the question about moral codes concerns the nature of moral conscience and how it works in light of the moral code that agents have internalized through their upbringing and broader cultural socialization. In his chapter on the sanctions of utility in *Utilitarianism*, Mill gives a theory of conscience that, he thinks, should hold, “whatever our standard of duty may be.”⁴¹⁷ In that chapter, he refers to the conscience as the “ultimate sanction” of any theory of morality, not merely utilitarianism.⁴¹⁸ The ultimate sanction, supplies “a feeling in our own mind; a pain, more or less intense, attendant on violation of duty.”⁴¹⁹ Similarly, when a person with a “properly cultivated moral nature” considers doing a seriously wrong action, she will, “shrink from it as an impossibility.”⁴²⁰ As such, one’s conscience can serve to guide an agent’s practical actions as they move through their lives. In those cases where an agent’s conscience is properly cultivated, one need only consider an action, consider whether it would violate a rule, and, if so, one should expect to “shrink” away from the

⁴¹⁶ Dale Miller’s exposition on this aspect of Mill’s moral theory is especially clear and helpful. See Miller, *J.S. Mill*, 97-99.

⁴¹⁷ Mill, *U*, 3.4.

⁴¹⁸ *Ibid.*, 3.5. I make these points so as to remain consistent in my interpretive methodology of making use of earlier chapters in *Utilitarianism* only in those cases where Mill is speaking at a general level or when he explicitly marks out his own opinion on some matter (e.g. in the higher pleasures doctrine in chapter two).

⁴¹⁹ Mill, *U*, 3.4.

⁴²⁰ *Ibid.*

action in question. Note that this account sits easily with the account of conscience in Mill's letter to Ward mentioned the previous chapter. In the letter Mill identifies those "who have themselves a moral feeling" precisely with those who possess a "feeling of approving and condemning conscience," which provides "a feeling of pain in the fact of violating a certain rule."⁴²¹

Thus far I have said quite a bit about what it means for an action to be wrong, but much less about what it means for an action to be right. On my interpretation when Mill is speaking about the department of morality, actions that are wrong are appropriately condemned and punished by the conscience because they violate legitimate/justified moral rules, and those that are right are those that would be punished, at least, by the conscience were they not performed. In the previous chapter, I explained that this is what Mill means when he says that right actions are those that can be compelled.⁴²² To put the matter formally, on the view I am ascribing to Mill, an action is morally right when conditions are such that *if the action were not performed*, then the action would be appropriately punished, at least by the agent's conscience. We might call this a counterfactual analysis of morally right actions. It is a counterfactual analysis in light of the fact that what makes the action right is how the action would be morally classified *if it were not performed*.

On this interpretation, Mill has a more limited conception of right action than is sometimes supposed. Right action is not identified with what does or is likely to produce

⁴²¹ Mill to George Ward 28 November 1859, *CW*, 15, 649.

⁴²² Mill refers to the fact that right actions are those that are compelled in the Foundational Formulation.

the maximal amount of good, as is suggested in the first formulation of the greatest happiness principle.⁴²³ Rather, to put it simply, it is merely what one needs to do in order to avoid moral wrongdoing. The fact that punishment is what links both morally right and morally wrong actions should not surprise us, though, since Mill announces this fact in the Foundational Formulation. There Mill explains that distinguishing between cases of deserving and undeserving punishment, “lies at the bottom of the notions of *right and wrong*.”⁴²⁴

To consider what this looks like in action, it is helpful to recall a famous example from *On Liberty*. There, Mill explains that the solitary and self-reliant drunkard commits no moral wrong in overindulging. Mill says that:

No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty. Whenever, in short, there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.⁴²⁵

Mill makes it clear, then, that the drunkard’s action is in the province of liberty and not morality. It is not morally wrong; but it is not morally right either. It is not the case that it is morally right because it would not be wrong for the agent *not* to overindulge. Instead, the action is of a self-regarding nature, which is more properly thought of as

⁴²³ Mill, *U*, 2.2.

⁴²⁴ *Ibid.*, 5.14.

⁴²⁵ Mill, *OL*, 4.10.

permissible. In this case, one might regard the action as *foolish*, from a prudential standpoint, but it is not morally wrong.

This counterfactual conception of right speaks directly to Mill's conception of supererogatory actions. As was discussed in previous chapters, Mill shows a plain commitment to the possibility of actions that go significantly beyond what moral duty requires.⁴²⁶ As such, supererogatory actions fit neither into the categories of right nor wrong action. To see this concept in action in light of the above analysis of right and wrong, suppose that an agent has an imperfect duty to give a certain amount of money to charity. Given that Mill has adopted a less than maximizing understanding of moral obligation, the agent is entitled to give less than *all* that she could in order to increase the general welfare. Suppose however, that, in addition to giving the required amount (whatever that is), the agent chooses to give up her daily morning latte and use the resulting savings to supplement the amount that she gives to an efficient charity that promotes the general good. It would not be wrong, in this instance, for the agent to fail to give up her latte. After all, she is already going to give the sufficient amount to discharge her imperfect duty, so in this case she is doing a supererogatory action by sacrificing a permissible personal luxury for the sake of the general good. Mill seems to have just cases in mind when he writes, in his Comte essay, that "If in addition to fulfilling this obligation, persons make the good of others a direct object of disinterested exertions, postponing or sacrificing to it even innocent personal indulgences, they

⁴²⁶ This is implied by the Proper Object Formulation in Mill, *U*, 5.14, and in Mill, "Comte," *CW*, 10, 336-339.

deserve gratitude and honour, and are fit objects of moral praise.”⁴²⁷ As was evident in the discussion of the Proper Object Formulation, just as punishments can exert a coercive force on agents, so also can moral praise.⁴²⁸ When agents decide to undertake actions for the “natural rewards” of doing so, they perform supererogatory actions rather than morally right actions as such.

In this way, then, Mill recognizes four distinct categories of action: morally right and wrong actions (strictly in the sphere of morality), permissible actions (typically in the prudential sphere), and supererogatory actions (typically in the aesthetic sphere). In this way, the categories of action correspond to different departments Art of Life. However, single actions can be evaluated from different departments simultaneously. An agent who commits an unprovoked violent attack on someone commits a moral wrong while simultaneously doing something that is also probably foolish and unattractive as a matter of character. The categories, then, are conceptually distinct, even if they can, at times, be used in evaluating a single action.

The distinctness of sanction utilitarianism

The fourth and final point of clarification concerns the way in which Mill’s theory is distinct from maximizing act and rule utilitarianism. After all, it is the general thesis of my dissertation that Mill is best read as a sanction utilitarian. Rather than

⁴²⁷ Mill, “Comte,” 337-338.

⁴²⁸ Recall that, later in the quote Mill says, “The object should be to stimulate services to humanity by their natural rewards; not to render the pursuit of our own good in any other manner impossible, by visiting it with the reproaches of other and of our own conscience.” Ibid., 338.

rehearsing the many textual arguments that have already been presented in the previous chapters, I will instead explain the conceptual features of the sanction utilitarian view that are incompatible with these other types of utilitarianism. At different points in the dissertation I have flagged various issues in my exposition of Mill's view that sit uneasily with the act and rule utilitarian interpretations. I will pick the most notable cases of features that contrast with the two views.

In my view, there are two key features of the sanction utilitarian theory that set it apart from the maximizing act utilitarian theory. First, Mill sees moral obligation as rule rather than act oriented. The undeniably close conceptual tie between an action being wrong and it being a violation of a rule is incompatible with both rules of thumb and the strategy conceptions of rules. These views see rules as merely instrumental to securing the right action and avoiding the wrong action; but Mill's view (as expressed in the Ward letter, for example) provides for a stronger connection than this. Second, Mill does not seem recognize a general moral obligation to maximize utility. Maximizing act utilitarianism supposes that every action is ultimately evaluable from a moral standpoint, and Mill denies just that in many places in his writings. *Contra* Crisp, who said that any action that fails to maximize utility should be punished at least by the conscience, Mill expressly says that agents should *not* feel the sanctions of conscience for doing less than the maximal amount of good. Doing the greatest amount of good may be pursued as a matter of supererogation, but it is not a matter of moral obligation as such.

As was evident in chapter two, the sanction utilitarian interpretation I have argued for shares many important features with the rule utilitarian theories. Both insist

on a rather indirect pursuit of utilitarian ends, and both obviously give a privileged place to the role of rules in the moral life. The primary reason why it seems correct to call Mill a sanction utilitarian rather than a rule utilitarian is the role of Mill's theory of conscience in moral obligation. On Mill's view, actions that are wrong should receive punishment *regardless* of how utility is affected. As we have seen, this is not because he does not care about utility as such, but because of how he understands the way moral wrongdoing is conceptually (wrongdoing *implies* punishment) and psychologically connected to punishment (wrongdoing is strongly psychologically *associated* with punishment). On the maximizing rule utilitarian theory (like the one favored by Fuchs), punishment, as a rule, should be inflicted only in those cases where it will promote utility. As such, it should be an open question whether punishment should be meted out for moral wrongdoing. For the maximizing rule utilitarian, there will be rules for action (in general) and rules for punishment, and both sets of rules must serve to maximize utility. If an agent commits a morally wrong act, but the rules for punishment stipulate that punishing an agent who has committed this type of act would not maximize utility, then the agent should not be punished. Mill, though, insists that the "penal sanction" enters not merely into cases of injustice, but, "*any kind of wrong.*"⁴²⁹ Mill's utilitarianism is distinctive not so much for its insistence that rules for punishment are crucial to morality—though this is important—but for its insistence that the internal sanction of conscience is at the heart of both morally wrong and morally right actions.

⁴²⁹ Mill, *U*, 5.14. Emphasis added.

Art of Life and utility maximization

Now that I have clarified some of the key questions surrounding Mill's sanction utilitarianism, I will turn to the first of two sections where I examine particular aspects of Mill's utilitarianism. At several points in the dissertation (including the previous section) I have referred to Mill's doctrine of the Art of Life. I first outlined the essentials of the Art of Life in chapter two in my discussion of Fuchs and have returned to it a number of times since to elaborate on the ways in which Mill separates the domain of morality from other spheres of practical activity. In what follows, I briefly revisit and explain the central elements of the doctrine so as to situate it within Mill's utilitarianism. To show the relevance of this doctrine to sanction utilitarianism, I examine three recent objections from Brink who maintains that sanction utilitarianism is actually incompatible with the Art of Life. Brink argues that the Art of Life, as interpreted by the sanction utilitarian, actually *undermines* the claims of the sanction utilitarian theory. Given the seriousness of this charge, I provide replies to each of these objections on behalf of the sanction utilitarian interpretation I am arguing for in my dissertation.

Mill introduces the Art of Life in the *System of Logic* as a means of marking the familiar distinction between 'is' and 'ought'.⁴³⁰ The sciences serve to elucidate various causal relations and the arts apply knowledge of those relations in service of some chosen end. To use Mill's example, medicine, as an art, has bodily health as its aim, and it makes no sense, he thinks, to call that aim *scientific* in that it is not asserting some

⁴³⁰ For Mill's distinction between 'is' and 'ought' see Mill, *System of Logic*, *CW*, 8, 949. For the discussion of the Art of Life as a whole see *Ibid.*, 947-952.

proposition about the world as a truth. Rather, bodily health serves as an end at which practitioners aim in their use of scientific truths. All arts, in Mill's view, are teleological in nature and depend on some ruling or controlling end at which they themselves aim. Above such practical arts as medicine or architecture, however, are three superior arts that establish whether a particular art's end is "worthy or desirable" in light of the various competing ends.⁴³¹ These superior arts, which Mill also refers to as principles of practical reason, are called the "Art of Life, in its three departments, Morality, Prudence or Policy, and Aesthetics; the Right, the Expedient, and the Beautiful or Noble, in human conduct and works."⁴³² As noted before, Mill does not go into detail about how these various departments are supposed to work together, aside from noting that every other subordinate art must function under their direction.

Mill does make one central addition to his doctrine, however, which concerns the end or principle at which the Art of Life itself aims. While admitting that he has not argued for or really justified the claim, Mill declares his conviction:

that the general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings: in other words, that the promotion of happiness is the ultimate principle of Teleology.⁴³³

⁴³¹ Ibid., 949.

⁴³² Ibid. For the reference comparing the Art of Life to principles of practical reason see Ibid, 949-950.

⁴³³ Ibid., 951.

Many commentators take Mill's statement here about the "ultimate principle of Teleology" to refer to the principle of utility, a doctrine at the very center of any utilitarian theory.⁴³⁴ Despite being at the center, Mill immediately adds to his declaration the claim that happiness should not be the direct aim of all actions, but that this standard is merely intended to "umpire" between the different departments of life, which might suggest different courses of action.⁴³⁵

Mill first added the doctrine of Art of Life to a revised edition of the *System of Logic* in 1851, and it is referred to in the fifth chapter of *Utilitarianism* as well.⁴³⁶ In *Utilitarianism*, the Art of Life is mentioned immediately after the discussion of morality and punishment in the fourteenth paragraph of chapter five. At the opening of the next paragraph Mill explains that the above discussion separated morality, "from the remaining provinces of Expediency and Worthiness . . ."⁴³⁷ The fact that Mill does not really explain in the text of *Utilitarianism* what he means by invoking these two provinces leads Ryan (who first brought the doctrine the attention to Mill scholars) to claim that, "the account of the matter given in *Utilitarianism* presupposes, and indeed only makes complete sense in the light of, the account in the *System of Logic*."⁴³⁸

⁴³⁴ Part of the evidence for this connection is that Mill explicitly links his discussion of the principle to *Utilitarianism* through a footnote he added to an edition that followed the publication of *Utilitarianism*. See Mill, *System of Logic*, *CW*, 8, 951n.

⁴³⁵ For the "umpire" language see *Ibid.*, 951.

⁴³⁶ It also appears in an earlier essay on Bentham where Mill draws the distinction between the three departments somewhat differently. See Mill, "Bentham," *CW*, 10, 112. I join most Mill scholars in taking the later formulations in the *System of Logic* and *Utilitarianism* as the definitive statements of the doctrine. See Ben Eggleston, Dale Miller, and David Weinstein, Introduction to *John Stuart Mill and the Art of Life*, 3-18.

⁴³⁷ Mill, *U*, 5.14.

⁴³⁸ Alan Ryan, *John Stuart Mill* (New York: Random House, 1970), 193.

Aside from explaining this odd passage from *Utilitarianism*, one might ask at this point why the Art of Life is so important to the sanction utilitarian interpretation. The answer is that the Art of Life doctrine shows that Mill does not see morality as dominating the whole of human life. Rather, he understands morality as a single sector of life, which is especially concerned with rules and the sanctions of one's conscience. Two other whole domains of practical action that stand completely apart from morality.

In a recent book, Brink gives three objections concerning the compatibility of the doctrine of the Art of Life with sanction utilitarianism.⁴³⁹ Brink's first objection is that since the Art of Life is governed by the principle of utility, it is governed by a principle that advises the agent to maximize happiness across the different domains. Given that sanction utilitarianism supposes that Mill does not say that happiness should be maximized in the domain of morality, the Art of Life is therefore inconsistent with sanction utilitarianism. In reply, I say that Brink has misunderstood the nature of the Art of Life and the principle of utility. As noted previously, Brown, who found as many as fifteen different understandings of the principle of utility, has argued that Mill understands the principle of utility as an axiological principle that explains what is valuable rather than how agents should act in light of that value.⁴⁴⁰ An especially clear statement of the principle of utility that fits within this definition can be found in chapter five of *Utilitarianism*. In a footnote towards the end of the chapter, Mill corrects Spencer's mistaken understanding that the principle of utility claims that everyone has a

⁴³⁹ Brink specifically targets Jacobson's version of sanction utilitarianism, see Brink, *Mill's Progressive Principles*, 109n27. For Brink's three objections see *Ibid.*, 108-110.

⁴⁴⁰ See Brown, "What is Mill's Principle of Utility?," 2-5.

right to happiness. In reply, Mill writes that, “It may be more correctly described as supposing that equal amounts of happiness are equally desirable, whether felt by the same or by different persons. This, however, is not a presupposition; not a premise needful to support the principle of utility, but the very principle itself . . .”⁴⁴¹ Notice that Mill’s statement here of “the very principle itself” says nothing about the *extent* to which individuals should seek the end of the general happiness. Mill’s statement merely clarifies a point about how happiness should be understood as a value within the utilitarian scheme—namely that every individual person’s happiness counts equally. As such, there is no explicit or implied commitment to utility maximization.

To this Brink might reply that it is not the principle of utility that governs the Art of Life, but the “ultimate principle of Teleology,” as he calls it in the text of the *System of Logic*. While Brown and others may have shown that Mill tends to understand the principle in this way, it might not apply to the Art of Life since Mill uses a different phrasing. Even though it is common to read Mill as regarding the ultimate principle of teleology as an equivalent term from the principle of utility, one can grant Brink the claim that they are different principles for the sake of the argument. However, it will not ultimately support his reading of the Art of Life and his objection to sanction utilitarianism. For an examination of the ultimate principle of teleology in the *System of Logic* shows that it does *not* require one to maximize utility. Recall that Mill states the principle in the following way:

⁴⁴¹ Mill, *U*, 5.36n.

[T]he general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings: in other words, that the promotion of happiness is the ultimate principle of Teleology.⁴⁴²

Mill only commits himself to saying that happiness should be *promoted*, which is not necessarily to say that it should be *maximized*. As I argued in chapter two when discussing Crisp, I read Mill as a satisficing utilitarian who recognizes that less than optimal actions can be regarded as nonetheless morally correct.⁴⁴³ The above passage is consistent with the satisficing interpretation since Mill seems to be saying actions are good when they promote or are conducive to happiness, though he does *not* say that they must do this to the maximal degree. While the “fundamental principle of Teleology” can justifiably be read as telling agents to act so as to produce happiness (and is in this case action guiding), it does not follow from this that one must maximize happiness across the departments of the Art of Life. To get the reading that Brink would like, Mill would have needed to further specify that whatever is conducive to happiness should be promoted as much as possible. Given that Mill does not say this, Brink’s objection fails.⁴⁴⁴

The second objection is that sanction utilitarianism is inconsistent with the limited, rather than universal, role of morality described in the Art of Life. “For sanction

⁴⁴²Mill, *System of Logic*, CW, 8, 951.

⁴⁴³Here I follow Jacobson’s reading of Mill’s utilitarianism. Jacobson, “Utilitarianism without Consequentialism,” 170.

⁴⁴⁴For a reading of Mill’s principle of utility as action guiding but still *not* maximizing see Rem Edwards, “The Principle of Utility and Mill’s Minimizing Utilitarianism,” *The Journal of Value Inquiry* 20 (1986): 125-136.

utilitarianism also has universal scope, implying that any action is morally wrong just in case some kind of sanction, whether external or internal, is appropriate on utilitarian grounds.”⁴⁴⁵ On Brink’s view, this creates a problem for the sanction utilitarian since the principles of utilitarianism counsel agents to punish imprudence. However, if they are punishing imprudence, then it looks like the distinctive nature of the sanction utilitarian view—that it punishes all and only *morally* wrong acts—is mistaken.

But, in reply, I say that Brink has misunderstood the nature of sanction utilitarianism, as least as I have argued for it here.⁴⁴⁶ According the sanction utilitarian view I have argued for, the only relevant sanction for determining an action’s status as morally wrong is the internal sanction of conscience. As the Ward letter made clear, one should feel the internal sanction of conscience precisely when one has violated a moral rule. If one acts in such way as to be imprudent (like the self-reliant drunkard), one’s action can qualify as something that one can be socially punished for externally by other agents, though not *morally* condemned or blamed. However, Mill does not say that acting, say, as the self-reliant drunkard does goes against a moral rule or that he should feel the internal sanction of conscience for such actions. Indeed, Mill seems keen to encourage the sparing use of moral sanctions. Recall Mill’s statement on this point from his essay on Comte where he says that, “As a rule of conduct, to be enforced by moral sanctions, we think no more should be attempted than to prevent people from doing

⁴⁴⁵ Brink, *Mill’s Progressive Principles*, 109.

⁴⁴⁶ I also think Jacobson, who is Brink’s target, could respond to this as well, but I will respond on my own terms.

harm to others, or omitting to do such good as they have undertaken.”⁴⁴⁷ This passage contains just the kind of narrow understanding of moral obligation that is consistent with the sanction utilitarian interpretation, and, as a result, Brink’s objection is again off target.

Brink’s third objection is that the distinct domains of the Art of Life, as they are understood on the sanction utilitarian interpretation, seem at odds with passages from *Utilitarianism* that appear to endorse act utilitarianism. In particular, Brink thinks that Mill’s claim that, “actions are right in proportion as they tend to produce happiness, wrong as they tend to produce the reverse of happiness,” is incompatible with the Art of Life doctrine as the sanction utilitarian interpretation understands it.⁴⁴⁸ In other words, Brink claims that the reading of the Art of Life that I am advocating cannot be correct since it is incompatible with the act utilitarian comments that Mill makes elsewhere. The particular aspect of my interpretation of the Art of Life that is incompatible with the act utilitarian reading is the sharp distinction I recognize between the departments of prudence and morality. On the sanction utilitarian interpretation, both domains recognize happiness as the relevant value to be promoted, but moral rightness is only relevant to one of the departments. If Mill is instead an act utilitarian, there would be no reason to restrict the domain of morality in this way.

My reply to this objection speaks, in part, to the entire thrust of this dissertation. As was evident in my lengthy section on in chapter three on Crisp’s act utilitarian view, I

⁴⁴⁷ Mill, “Comte,” *CW*, 10, 339.

⁴⁴⁸ See Mill, *U*, 2.2.

think that there are many problems with the act utilitarian interpretation, especially in relation to how it interprets Mill's commitment to supererogation, the demandingness of morality, and his conception of punishment. These difficulties accompany the act utilitarian reading even when one if one makes use of all of *Utilitarianism*. However, in chapter four of the dissertation I argued for the Ecumenical reading of *Utilitarianism*, which directly discounts the passage that Brink cites as a posing the most significant problem for the sanction utilitarian view. According to the Ecumenical reading, it is in chapter five of *Utilitarianism*, not chapter two, that Mill gives his definitive statement of his moral theory. Chapter five of this dissertation argued for a particular reading of Mill's text that is plainly incompatible with act utilitarianism. It is, however, perfectly compatible with the reading of Art of the Life that I have discussed above. Therefore, since the evidence taken as a whole suggests that Mill is not an act utilitarian, my reading of Mill's theory of the Art of Life is perfectly compatible with the sanction utilitarian position I have argued for in this dissertation and Brink's third objection fails.

To sum up, in this section I presented Mill's theory of the Art of Life as it appears in his *System of Logic*. I discussed how this doctrine is important in that it explains how Mill understands the relationship between morality, prudence, and aesthetic evaluation on a utilitarian scheme. I also explained how Mill's comments in chapter five of *Utilitarianism* are compatible with the Art of Life as it is presented in the *System of Logic*. Finally, I responded to three objections to the sanction utilitarian reading of Mill's Art of Life. The first reply, in drawing on work discussed previously in the dissertation, reveals that Mill does not seem to recognize a commitment to

maximizing utilitarianism across the categories of prudence and morality. The second reply pointed to a distinct separation in the way that prudential and moral wrongs are punished on the sanction utilitarian interpretation. My final reply emphasizes my criticisms of the act utilitarian reading of Mill and stresses importance of the Ecumenical reading for my overall argument in favor of the sanction utilitarian interpretation. Passages from *Utilitarianism* that are typically thought to disagree with the sanction utilitarian view can be rightfully set aside, and those favoring it, like the fourteenth paragraph of chapter five, can rightly be emphasized. In light these replies, Brink's objections to my reading of the Art of Life should be judged as inadequate to dislodge the sanction utilitarian interpretation.

Self-regarding action and sanction utilitarianism

In explaining the Art of Life, Mill seems to recognize a sharp distinction between the departments of prudence, morality, and aesthetics. On the sanction utilitarian interpretation I support, the realm of morality is especially concerned with matters of moral obligation and is rather limited in scope. In contrast, the departments of aesthetics and prudence seem comparatively spacious. This seems especially so when one recalls that the Art of Life is supposed to stand as Mill's theory of practical action. As such, any evaluative stance on an intentional action that is not a matter of moral obligation must be made from at least one of the other two perspectives. Given that Mill says comparatively little about aesthetics and quite a bit about prudence (or, as he sometimes calls it, general

expediency), this section will be concerned with specifying how one should understand the prudential domain according to the sanction utilitarian interpretation.

This section, while narrowly focused, will be especially reliant on an exposition of Jacobson's reading of *On Liberty*, with particular attention to Mill's theory of self-regarding action.⁴⁴⁹ This is for two reasons. First, I have no substantial disagreement with Jacobson's reading of Mill's stance on these issues, and his work serves to illuminate Mill's position in a way that is especially important for the sanction utilitarian reading. Second, for the most part I wish to stay away from the mountain of contentious issues surrounding how best to interpret Mill's theory of liberty—which, alongside his utilitarianism, is arguably his most famous and thoroughly studied doctrine.⁴⁵⁰

Jacobson's general reading of Mill on these issues is consistent with the sanction utilitarian position and my objective is to review the central passages and key arguments that support this reading. In short, what I will provide here is *a way* to read a few of the central doctrines in *On Liberty* in a manner consistent with the sanction utilitarian position. To argue that this is the only or even the best way to read Mill on these points would be a far larger task than I can hope accomplish here.

The central issue in this discussion is: over what kinds of action society may rightfully exercise forms of social control, such as moral blame? The issue stems from

⁴⁴⁹ I will be primarily relying on Jacobson, "Mill on Liberty," 276-309, and, to a much lesser extent, Jacobson, "Utilitarianism without Consequentialism," 158-191.

⁴⁵⁰ For scholarly overviews of *On Liberty* and its role in Mill's political theory, including accounts at odds with the views I will be discussing shortly see, Gray, *On Liberty: A Defence*; Berger, *Happiness Justice, and Freedom*, esp. 226-278; Jonathan Riley, *Mill on Liberty* (New York: Routledge, 1998). For a recent overview of Mill's political thought that de-emphasizes both *Utilitarianism* and *On Liberty* in favor of other works see Frederick Rosen, *Mill* (Oxford, UK: Oxford University Press, 2013).

difficulties concerning how to interpret Mill's so called harm principle.⁴⁵¹ The portion of the text commonly claimed to be identified as the harm principle can be found in the opening chapter of *On Liberty*:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.⁴⁵²

When one surveys the staggering amount of literature about what Mill seems to be saying in this passage, it is easy to agree with Miller who writes that, "Mill may never be so far wrong as when he describes the liberty principle as 'very simple.'"⁴⁵³

On a standard reading of Mill's harm principle, any action that affects non-consenting others is or even likely to affect non-consenting others in a way that is harmful is both a necessary and sufficient condition for providing a *prima facie* reason

⁴⁵¹ Despite its ubiquitous use in contemporary discussions of *On Liberty*, Mill does not use the term 'Harm Principle' in the text of *On Liberty*. The term's origin seems to be found in Joel Feinberg *Harm to Others* (New York: Oxford University Press, 1984). Mill does refer to the 'Liberty principle', though what precisely he means by this term is a matter of dispute.

⁴⁵² Mill, *OL*, 1.9.

⁴⁵³ Miller, *J.S. Mill*, 114.

for members of society to exact some form of social control over that action.⁴⁵⁴ It is only a *prima facie* reason because members of society may elect *not* to enact such social control since the costs of doing so may be too high, but it will ultimately be a question of a utilitarian cost-benefit analysis.⁴⁵⁵ That said, such calculations do not apply to actions that concern only the individuals undertaking the action in question since:

The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.⁴⁵⁶

Thus, while individuals can act in ways that prove harmful to their interests, they cannot be constrained by society for the sake of their own good. As long as the action does not involve others, the agent undertaking the action should not be constrained by society. To force the agent to behave in a particular way when she is not harming others is paternalistic and unacceptable to Mill.

The difficulty generated by this reading of the harm principle is that it appears to severely weaken Mill's expressed aim in *On Liberty*, which is to carve out a substantial sphere of action for an individual to exercise her liberty and to determine the best way to live her life. On the one hand, Mill claims to recognize a difference between "the part of

⁴⁵⁴ For instance, see Lyons, *Rights, Welfare, and Mill's Moral Theory*, esp. 89-108; D.G. Brown, "Mill on Liberty and Morality," *The Philosophical Review* 81 (1972): 133-158. Note: I will sometimes drop the qualification of 'non-consenting others' when referring to Mill's harm principle, but the reader should take care to insert the qualification in what follows in this section. For Mill's qualification about the relation of consent to harm see *OL*, 1.12.

⁴⁵⁵ Mill makes this point clear in Mill, *OL*, 5.16-19.

⁴⁵⁶ Mill, *OL*, 1.9.

a person's life which concerns only himself, and that which concerns others," but he also admits that, "it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them."⁴⁵⁷ Given that humans are so interpersonally interconnected and given that harms so readily reach beyond the individual immediately involved, Mill's sphere of purely self-regarding action seems to shrink considerably. This is somewhat troubling for the sanction utilitarian since it seems to cast the net of morality rather wide given that so many of one's actions can prove harmful or potentially harmful to others.

However, Jacobson rejects the traditional reading of the harm principle and proposes an alternative understanding of Mill's theory of liberty and self-regarding action. He argues that the harm principle is better interpreted as providing a merely necessary condition for a *prima facie* justification for legal or moral sanctions of an agent's action. Again, I say *prima facie* justification because Mill says that one might deem an action as wrong and still hold that it should not be punished (apart from the conscience) by legal or social sanctions because punishment would lack utility. Jacobson reaches this conclusion, in part, because of Mill's apparent commitment to what Jacobson refers to as the doctrine of liberty, which, broadly speaking, is the principle that specifies the domain in which an individual is recognized as free from moral sanctions. On the standard understanding, the doctrine of liberty is a corollary of the harm principle, in that individual actions that do not directly harm others qualify as actions that should not be subject to moral sanctions. On Jacobson's view, the doctrine

⁴⁵⁷ Ibid., 4.8.

of liberty is not a corollary of the harm principle but *wholly distinct* from it.⁴⁵⁸ The doctrine of liberty is properly read as “the claim that there is a substantial sphere of liberty rights with which society must not interfere.”⁴⁵⁹ This emphasis on rights is important since it makes clear the point that whether the action is harmful is not what is morally relevant. The question is one of rights rather than one of harms. In other words, on Jacobson’s view, if agents have a liberty right to perform an action, then even if other agents are harmed, the action is not subject to interference.⁴⁶⁰ On the presumption that Mill grants some notable liberty rights to individuals, this appears to be a solid strategy for expanding the domain of prudence and self-regarding action.

At this point one can rightly ask what is meant by saying that agents have particular liberty rights. In the twelfth paragraph of the opening chapter of *On Liberty*, Mill expressly identifies the types of behavior he has in mind for domains in which individuals should be free from interference. Mill explains the three domains of liberty that are to be regarded, in their own ways, as absolute and unqualified, as 1) liberty of thought and speech, 2) liberty to frame and carry out one’s life in one’s own way (i.e.

⁴⁵⁸ See Jacobson, “Mill on Liberty,” 287. Jacobson’s argument for this point is subtle and is carried out for much of his paper. Part of the argument, of course, turns on explicating Mill’s claims in the crucial *OL*, 1.9, but, more generally, his argument attempts to demonstrate that reading the harm principle as a biconditional forces interpreters into adopting strange stances on some of Mill’s expressed commitments (like saying that Mill defends absolute freedom of speech because no speech is harmful) or ignoring or discounting passages where Mill seems to admit that harm is not a sufficient cause for social interference when individual rights are involved.

⁴⁵⁹ *Ibid.*, 292. For the textual justification for this claim see *Ibid.*, 292-293. The key textual statement is Mill’s claim that, “The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of *right*, absolute. Over himself, over his own body and mind, the individual is sovereign.” Mill, *OL*, 1.9. Emphasis added.

⁴⁶⁰ For Jacobson’s response to an apparent counterexample to this statement in *OL*, 4.3 see Jacobson, “Mill on Liberty,” 301-302.

pursue self-regarding action proper), and 3) the liberty to unite with other individuals in ways that do not harm others.⁴⁶¹ By saying, “in their own ways,” I mean that each type of liberty enjoys a different type of protection (as Mill explains in the different chapters of the text). Liberty of thought requires different types of protection than the liberty to form social unions, and so on. For instance, Mill says that, “No one pretends that actions should be *as free as* opinions.”⁴⁶² To be sure, the second and third branches, which concern actions, are as equally unqualified and absolute as cases in the first branch, but they allow for different *sorts* of liberties to be expressed: one is entitled to be rather carefree in tossing around pointed political opinions among friends, but considerably less so in tossing around a set of darts.

Now in grouping three branches as I have, I am, admittedly, endorsing Jacobson’s controversial claim that speech is to be grouped with liberty of thought.⁴⁶³ Given my limited objectives at this point, however, I will not examine the textual evidence for this claim. Instead, I want to turn to Jacobson’s gloss on the second branch of liberty, which concerns self-regarding action. According to Jacobson’s reading of Mill, “to say that an action is self-regarding is simply shorthand for claiming it to be

⁴⁶¹ Mill, *OL*, 1.12. For the statement about the liberties being absolute and unqualified see *Ibid*, 1.13.

⁴⁶² *Ibid.*, 3.1. Emphasis added.

⁴⁶³ For the textual argument for this see Jacobson, “Mill on Liberty,” 279-288. Speech is often taken to be a mode of action (and thus in the second self-regarding action category), but Mill explicitly puts it in the first branch saying, “This one branch is the Liberty of Thought: form which it is impossible to separate the cognate liberty of speaking and writing.” Mill, *OL*, 1.16. For those denying speech as a self-regarding action see Jonathan Riley, “Racism, Blasphemy, and Free Speech,” in *Mill’s On Liberty: A Critical Guide*, ed. C.L. Ten (Cambridge, UK: Cambridge University Press, 2008), 62-82; David Lewis “Mill and Milquetoast,” in *Mill on Liberty*, ed. Gerald Dworkin (New York: Routledge, 1988), 1-29.

within the sphere of liberty.”⁴⁶⁴ Mill’s purported justification for classifying some actions as purely self-regarding is that the action in question either does not principally affect others or, in cases where the action causes harm to others, the harm involved is not one for which society should give protection.⁴⁶⁵ In other words, if your action directly concerns only yourself or if your action is one that could have consequences that are not protected as a matter of right, then the action should be regarded as self-regarding. In explaining what he means by this, Mill gives the example of competing for some good and suffering disappointment. This is so even if an agent fails to achieve the good as the result of someone else’s action (even in cases when you do not consent). Mill explicitly mentions this latter kind of case, where agents consent to participate in a competition and face the risk of potentially serious losses when he says:

In other words, *society admits no right, either legal or moral*, in the disappointed competitors, to immunity from this kind of suffering; and feels called on to interfere, only when means of success have been employed which it is contrary to the general interest to permit—namely, fraud or treachery, and force.⁴⁶⁶

To use Mill’s example as an application of this principle explained in this passage, if an agent’s success in securing a job in “overcrowded profession” causes harm to others who do not get the job, the agent should not be judged to have done anything wrong since no

⁴⁶⁴ Ibid., 298.

⁴⁶⁵ Recall Mill’s statement that, “to have a right is to have something which society ought to defend me in the possession of.” Mill, *U*, 5.25.

⁴⁶⁶ Mill, *OL*, 5.3.

one has a *right* to avoid the suffering that arises from failing to succeed in a competitive field.⁴⁶⁷

On this reading of *On Liberty*, actions can have harmful effects on other agents who do not consent to them, but nonetheless be self-regarding.⁴⁶⁸ A paradigm case of this for Mill is freedom of expression. On Jacobson's reading, "The freedom of expression Mill advocates is the freedom to express any factual or normative opinion, where opinions are understood to be individuated by their content."⁴⁶⁹ For Mill, no opinion, no matter how false or potentially pernicious its consequences for non-consenting others, can be ruled out by the nature of its content. The only justification for limiting individual's freedom of expression is when an opinion is expressed in circumstances that constitute a "positive instigation to act."⁴⁷⁰ Mill illustrates this point with a now famous example:

An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard.⁴⁷¹

⁴⁶⁷ To be clear, some of the activities may be regarded as other-regarding but be matters of mutual consent

⁴⁶⁸ Jacobson is not alone in recognizing this point. See J. C. Rees, "A Re-Reading of Mill's *On Liberty*," 172; C.L. Ten "Mill's Defense of Liberty," in *J.S. Mill On Liberty in Focus*, Gray and Smith, eds.; Gray, *Mill on Liberty: A Defence*, esp. 50.

⁴⁶⁹ Jacobson, "Mill on Liberty," 286-287.

⁴⁷⁰ Mill, *OL*, 3.1.

⁴⁷¹ *Ibid.*

Even if the opinion that corn dealers are starvers of the poor is disastrously harmful to the interests of the corn dealers, this does not provide reason to interfere with the action, and it remains in the protected realm of the self-regarding. Mill does not even consider how an opinion's content, as such, might lead to harmful effects when examining whether an action is one with which society should interfere. It is important to underscore this point about harm to non-consenting others being permissible since it is often denied in the literature. Mill notes that society does not punish all wrongful actions, but, on the traditional reading of the harm principle, the fact that there is a harm involved in an action suffices for there to be a *prima facie* reason to regulate the action and constrain an agent's liberty. However, on Jacobson's reading, regardless of how negatively utility is affected by non-instigating speech, society is not justified in limiting an agent's liberty or punishing the action in question.

Mill gives a very specific explanation of how an action moves from a self-regarding action (in the realm of prudence) to a wrong action (in the realm of morality) by saying that:

I fully admit that the mischief which a person does to himself may seriously affect, both through their sympathies and their interests, those nearly connected with him, and in a minor degree, society at large. When, by conduct of this sort, *a person is led to violate a distinct and assignable obligation to any other person*

or persons, the case is taken out of the self-regarding class, and becomes amenable to moral disapprobation in the proper sense of the term.⁴⁷²

In this way, Mill explains that doing an action that harms oneself but indirectly affects others in a way that harms them is not enough to qualify an action as something that society should consider punishing through moral or other penalties. This exactly coincides with Jacobson's reading of the harm principle. On that reading, harm is merely a necessary, and not a sufficient, condition for using moral sanctions as a means of curtailing the action in question. The action must violate some distinct right in order to justifiably move from the prudential realm to the moral one. As Jacobson sees it, then, even if an action is rightfully judged to harm some other non-consenting agent, if it does not violate some distinct and assignable right or obligation, then it is self-regarding (in Mill's sense) and is not morally wrong, but is, at worst, foolish.

To sum up, I began this discussion by noting that I wanted to explore just how wide of a space Mill recognized for liberty and for self-regarding behavior. On the reading I have given here, Mill allows for a fairly wide-berth for what can be understood as being within the realm of the self-regarding. Self-regarding actions are those that either directly concern only the agent herself or, if others are concerned, does not infringe on the rights of others or violate some distinct obligation to them. Just how wide of a space this turns out to be will depend on the nature of the rules in a particular moral code that specify the nature of rights and obligations.

⁴⁷² Mill, *OL*, 4.10. Emphasis added.

Objections to sanction utilitarianism

In this section I will examine two distinct objections to the sanction utilitarian interpretation for which I have argued. The two objections come from Brink and Berger, and are directed at particular versions of sanction utilitarianism, which are similar though not identical to the one defended here. My hope is that discussing these objections both addresses some legitimate concerns about the conceptual coherence and textual justifications I have offered for the view while also serving to explain how the version of sanction utilitarianism I defend here is distinct from previous versions.

I will call Brink's objection the "wrong sort of reason" objection.⁴⁷³ This objection speaks more to the conceptual coherence of the view than to the textual evidence that sanction utilitarians have offered to support their view. The thrust of the objection is that sanction utilitarianism gets the standard understanding of the connection between wrongdoing and punishment exactly backwards. This is because the view embraces what Brink calls a response-dependent notion of duty where wrong actions merit a particular response, namely sanctions of some kind. Thus, the wrongness of an act is explained by the *response* that it deserves. As Brink sees it, this is where the view goes wrong as a conceptually coherent moral theory:

[T]his inverts what many would regard as the usual dependency between wrongness and sanction. Many think that sanctions are appropriate for wrong acts because they are wrong. This requires grounding wrongness in some independent account; it is not the suitability for sanction that makes an act

⁴⁷³ Brink, *Mill's Progressive Principles*, 106-107.

wrong. Perhaps one ought to sanction wrong acts, but it doesn't seem that they are wrong because one ought to sanction them.⁴⁷⁴

Before replying to this objection it is necessary to clarify a point about the interpreters to whom the objection is directed. Brink's criticism seems to be targeted at Lyons' and Jacobson's sanction utilitarian interpretations.⁴⁷⁵ Brink does not cite particular passages of Jacobson's work to motivate his objection, but presumably he has passages like the following in mind: "As I see it, Mill holds the quintessentially sentimentalist thesis that an act is wrong whenever guilt over it would be *fitting* from the agent, and resentment fitting from others."⁴⁷⁶ Similarly, Lyons claims that, in the fourteenth paragraph of *Utilitarianism*, chapter five, "Mill seems to be claiming that wrong acts are those for which guilt feelings are appropriate."⁴⁷⁷

These quotations serve to identify some important differences between the views of Lyons, Jacobson, and myself. Readers by now will have recognized that I have refrained from identifying Mill's internal sanction of conscience with guilt, as these other authors have.⁴⁷⁸ I have resisted making this leap as there seems to be little to no textual evidence to justify it. Neither Lyons nor Jacobson have provided evidence from Mill's writings that he understood guilt to be identical with what he calls the internal

⁴⁷⁴ *Ibid.*, 107.

⁴⁷⁵ Lyons shows himself aware of the puzzling aspect of the sanction utilitarian view in David Lyons, "Human Rights and General Welfare," *Philosophy and Public Affairs*, 6 (1977): 113-129. For Brink's mention of Jacobson's defense of the view see, Brink, *Mill's Deliberative Principles*, 109.

⁴⁷⁶ Mill, "Utilitarianism without Consequentialism," 182. Emphasis in original.

⁴⁷⁷ Lyons, "Mill's Theory of Morality," 106.

⁴⁷⁸ Miller also identifies wrongness with guilt in Mill's moral theory see, Miller, *J.S. Mill*, esp. 79-110.

sanction of conscience.⁴⁷⁹ Mill does mention guilt upon occasion in his writings on morality, even in chapter five of *Utilitarianism*, but, to my knowledge, it is always in a juridical sense of an agent being, as a matter of fact, in the wrong somehow. It is not, contrary to what would be the case on their view, a word that connotes an agent's *feeling* about having committing a moral wrong.⁴⁸⁰

Jacobson especially relies on his understanding of guilt as a moral emotion to say that it is the emotion that the agent experiences that specifies which category of action an action falls into in the Art of Life. On Jacobson's interpretation, "the moral sentiments distinguish the moral realm from the prudential and aesthetic."⁴⁸¹ If an agent fittingly feels guilty then an action is wrong, but if she only fittingly feels regret, then the action must have been merely imprudent.⁴⁸² Jacobson connects his notion of "fittingness" to the anthropocentric constraints on moral emotions like guilt and regret. On his interpretation, it is because I cannot feel guilt about harming only myself that a given action may be self-regarding.⁴⁸³ In his example, if I hit my hand with a hammer and cause no lasting damage but undeniably cause myself intense pain, I have acted foolishly but not wrongly.⁴⁸⁴ This is because, as he sees it, the emotion of guilt implies the desire to make reparations—a desire that seems completely out of place in the context of the

⁴⁷⁹ Jacobson does rightly note that Mill enlists resentment as a moralized emotion, but that emotion only concerns an agent's evaluation of someone else's behavior—not the agent's judgment about his or her own morally wrong action. See Mill, *U*, 5.22.

⁴⁸⁰ See *Ibid.*, 5.29; Also Mill, "Bentham," *CW*, 10, 112; Mill, "Comte," *CW*, 10, 347; Mill, "Three Essays on Religion," *CW*, 10, 385; *Ibid.*, 413; Mill, *OL*, 2.9; Mill does mention guilt as a form of punishment in *Ibid.*, 412, though when he does he is discussing views other than his own.

⁴⁸¹ Jacobson, "Utilitarianism without Consequentialism," 185.

⁴⁸² For more on this see *Ibid.*

⁴⁸³ Jacobson cites some his work on how this might work see Daniel Jacobson, "Anthropocentric Constraints on Human Value," *Oxford Studies in Metaethics* 1 (2006): 99-126.

⁴⁸⁴ See Jacobson, "Utilitarianism without Consequentialism," 172.

case of the hammer. The nature of emotion itself, in other words, sets the boundaries for what kind of response is appropriate for an agent to feel and thus what category in the Art of Life the action should be placed in.

My response to Brink both replies to the initial objection and illustrates the way in which my view is similar to Jacobson's. To Brink, I say that the response of the internal sanction of conscience comes only when one has violated a rule that is in accordance with the promotion of utility *and* is punished by the internal sanction of conscience. In other words, both the rule and the sanction of conscience play a role in identifying an action as morally wrong. In a case where an agent has internalized the rules that promote utility and has a properly functioning conscience, there will be a certain response from an agent's conscience in those cases where there are rule violations. As I see it, however, this does not mean that the view is conceptually incoherent. Brink's objection seems to trade on the idea that, conceptually speaking, wrongdoing should come prior to punishment. Wrongdoing should arguably come before punishment because punishment should be done for some reason. However, on the sanction utilitarian view, there *is* a reason that the action is punished, namely that it violates the rules that work in tandem with the agent's conscience. I will say more in a moment about why it is important to think of these two concepts as working in tandem, but first it is important to revisit Mill's understanding of the connection between the ideas of punishment and wrongdoing.

On Mill's view, the internal sanction of conscience should *always* accompany a case of moral wrongdoing as a form of punishment. This is true no matter what the

consequences of this form of punishment are. Recall that for Mill the concepts of moral wrongdoing and punishment are, strictly speaking, conceptually distinct. Wrongdoing implies a certain internal punishment on Mill's view, but that punishment is not equivalent to wrongdoing as such.⁴⁸⁵ Nonetheless, human moral psychology, on Mill's view, recognizes a very close connection between the concepts:

of wrong and punishment, and an inseparable association has been created between these directly, without the help of any intervening idea. This is quite enough to make the spontaneous feelings of mankind regard punishment and a wrongdoer as naturally fitted to each other—as a conjunction appropriate in itself, independently of any consequences.⁴⁸⁶

Mill's last statement here about the connection between punishment and a wrongdoer being appropriate independent of the consequences fits my response to Brink precisely. If things are going as Mill thinks they should, the punishment always works in concert with the reason that the punishment is being applied. While this does admittedly differ from how wrongdoing and punishment are often thought of, my analysis of it here does respond to what I take to be the heart of the objection, which is that responses to wrongdoing must be done for some reason.

Earlier I said that Mill's theory of rules works in tandem with the conscience.

This understanding seems implied by the Ward letter, which suggests that the conscience

⁴⁸⁵ As was discussed in the previous chapter, in some cases agents may, in fact, be punished by their conscience when they fail to do something wrong and they may be fail to be punished when they, in fact, do something wrong.

⁴⁸⁶ Mill, *Examination*, *CW*, 9, 463-464. Note that neither Jacobson nor Lyons cite the *Examination* as justification for their reading.

operates in conjunction with moral rules in that it brings about a feeling of pain when a rule has been violated. This is the aspect of my reading of sanction utilitarianism that is similar to Jacobson: the nature of the conscience and its ability to internalize rules puts limits on what type of actions can properly be regarded as morally wrong. Thus, if an action does not violate a moral rule that the agent should have internalized, then the action will not be punished and is not wrong. In this way I agree with Jacobson on his point that actions that one cannot feel the internal sanction of conscience about cannot be morally wrong.⁴⁸⁷

It may help to explain this understanding of the role of the conscience in the sanction utilitarian view by contrasting it with that of another famous utilitarian thinker: Hare.⁴⁸⁸ On Hare's maximizing view of utilitarianism, it would maximize utility if agents would internalize various rules that are tied to the internal sanction of conscience or, as Hare puts it, feelings of remorse.⁴⁸⁹ By tied to, I mean that when an agent breaks the rule she will feel remorse and if she does not break a rule she will not feel remorse. However, these rules and the remorse that they work with are not linked in a strict way to moral wrongdoing on Hare's view. Even if the rules to be internalized are chosen judiciously (as they should be in order to maximize utility), there can be rare cases in which agents act in a morally wrong way but, in doing so, act in accordance with the

⁴⁸⁷ I admit that Mill does explain the connection between the conscience and its ability to place certain actions in particular domains of the Art of Life. This seems to be one of those areas of the Art of Life doctrine that is unexplained.

⁴⁸⁸ I was reminded of the similarity of Mill's views to Hare by Miller, "Mill, Rule Utilitarianism, and the Incoherence Objection," 109-110.

⁴⁸⁹ For Hare's account of conscience and its relation to his utilitarianism see Hare, *Moral Thinking*, 25-64.

internalized rule and thus do not feel remorse. Conversely, there can be cases where agents violate the internalized rule, feel remorse, but, in fact, do nothing morally wrong. This is because, on Hare's view, morally right and morally wrong actions are to be evaluated only in light of their relation to utility, not whether they should be punished by the conscience. Since Mill, unlike Hare, *does* link the punishment of conscience to moral wrongdoing, Mill can be said to have a similar view of the conscience as Hare (in that it operates in light of internalized rules) but a decidedly different conception of right and wrong.

The second objection I want to consider comes from Berger's criticism of Lyons. Berger's worry speaks more to questions about the textual justification of my view than to worries about the conceptual coherence of my view that Brink questioned. Like Brink's objection, however, I believe that my reply brings out a distinctive aspect of the dissertation.

I noted in chapter three that Berger was concerned that Mill never clarified his views on how one was to reconcile the proportionality criterion and punishability criteria. In his article, Lyons made a notable effort to sketch a view of Mill's utilitarianism that could be compatible with the fourteenth paragraph of chapter five and much of what Mill says elsewhere in his writings on moral philosophy. Berger's objection is that while Lyons has made an interesting case for the connection between wrongdoing and punishment, he has not fully proved his case. Berger rightly says that Lyons does not "argue that Mill's statements *require* his interpretation at all crucial

points.”⁴⁹⁰ Perhaps because of this fact, Lyons’ interpretation spurred on a number of scholars like Gray and Sumner who attempted to reconcile the proportionality criterion in chapter two of *Utilitarianism* with the punishability criterion that Lyons outlines. Berger methodically raises some objections to each of these attempts and explains why they fail.⁴⁹¹ The reasons they fail is not so important for my purposes here. What is important is Berger’s conclusion that his review of Mill scholarship, and the many passages he has examined in trying to determine Mill’s theory of morality, has led him to settle on the view that, “Mill did not sufficiently resolve the conflict between the ‘proportionality’ criterion of right action and the ‘punishability’ criterion.”⁴⁹² Berger insists that Mill altered, but did not ultimately reject the proportionality criterion as a significant tool in his moral thinking. There seems to be evidence, he thinks, on both sides of the question:

It may well be that the punishability criterion came to dominate his thinking.

But the part of *Utilitarianism* in which the punishability criterion was given—the chapter on justice—was written before the part of the book in which the proportionality standard was set out. Moreover, the essay on Hamilton shows *both* criteria at work, though written well after *Utilitarianism*, and a similar duality is displayed in ‘Thornton on Labour,’ also written after *Utilitarianism*.⁴⁹³

If Berger were correct in his historical and textual claims, I admit that this would

⁴⁹⁰ Berger, *Happiness, Justice, and Freedom*, 109. Emphasis in original.

⁴⁹¹ See *Ibid.*, 109-113.

⁴⁹² *Ibid.*, 116.

⁴⁹³ *Ibid.*

pose a problem for my interpretation. If Mill had employed the proportionality criterion as a moral principle in later work outside of *Utilitarianism*, then the Ecumenical interpretation's rejection of the principle (as something Mill is committed to only in the pages of a text that he wrote with ecumenical aims in mind) would presumably be less plausible than it is. However, I will argue that Berger is mistaken in his claims here for two reasons. First, Berger is mistaken about the time at which *Utilitarianism* was written. In chapter four of this dissertation I argued that chapter five of *Utilitarianism* was written or at least *revised and added* later than the other chapters of *Utilitarianism*. Like the other chapters in the text, Mill seems to have begun to write the text of chapter five at least by 1854, but he seems to have delayed before returning to it later.⁴⁹⁴ According to Taylor, the essays that comprise *Utilitarianism* were written sometime between 1850-1858, though certain portions were added later on and its contents revised in 1860.⁴⁹⁵ We know that Mill reviewed Bain's book in 1859, which is cited favorably at the end of the crucial fourteenth paragraph of chapter five.⁴⁹⁶ We also know that in the Ward letter from 1859 we find many of same ideas as appear in the chapter on punishability criterion.⁴⁹⁷ Moreover, as was discussed in chapter five of this dissertation, much of the discussion about wrongdoing and punishment in the *Examination* (published

⁴⁹⁴ Mill to Harriet Mill, 30 June, 1854 *CW*, 14, 222.

⁴⁹⁵ Taylor, "Introductory Notice," in Mill, *CW*, 10, 371. For claim that the essays were revised in 1860 comes from Baine's early biography of see Bain, *John Stuart Mill*, 112.

⁴⁹⁶ Mill, "Bain's Psychology," *CW*, 11, 339-373. See Mill, *U*, 5.14n.

⁴⁹⁷ Mill to William George Ward 18 November 1859, *CW*, 15, 649.

in 1865) seems perfectly in line with and even explanatory of Mill's understanding of the connection between punishment and wrongdoing.⁴⁹⁸

Even if I were mistaken in the *timing* of the composition of the essays, however, the Ecumenical view could still stand as a reason to discount the proportionality criterion. This is because Mill seems to have different authorial aims in the text of chapter five than in the other four chapters. He introduces several key controversial and partisan doctrines in chapter five that are absent elsewhere in the text. In the first four chapters, Mill is primarily either responding to objections or defending commonly held utilitarian doctrines. When he does defend novel ideas, like the higher pleasures doctrine, he deliberately notes that he is doing so. Mill does not seem to be laying out the first principles of his moral philosophy, but rather making the general defense of the ethics of utility, just as he had said he might to Gomperz in 1858.⁴⁹⁹

The second reason I think Berger is mistaken is that he overstates his claims about the proportionality criterion being at work in both the *Examination* and the essay on Thornton. On the page that Berger cites for thinking that the proportionality criterion can be found in the *Examination*, the text that most closely resembles the proportionality criterion would be the following claim:

It matters not, for this purpose, whether the right and wrong of actions depends on the consequences they tend to produce, or on an inherent quality of the actions

⁴⁹⁸ For information on the publication and textual history of the *Examination* see John Robson, "Textual Introduction," in Mill, *CW*, 9, lxix-cii.

⁴⁹⁹ Mill to Theodore Gomperz, 30 August 1858, *CW*, 15, 570.

themselves. It is indifferent whether we are utilitarians or anti-utilitarians; whether our ethics rest on intuition or on experience.⁵⁰⁰

As I read this, Mill is speaking here only as a point of comparison between two general approaches to ethical theories (utilitarianism/consequentialism and intuitionism). Mill is saying if one has a utilitarian perspective one may evaluate rightness or wrongness based on consequences. This is not in tension with the sanction utilitarian perspective since those consequences are, in fact, what matter when devising the moral rules that are internalized in one's conscience. If the rules do not tend to produce good consequences then they are not the correct rules and could lead to wrong actions. Note, however, that the passage does not say, as the proportionality criterion does, that actions are right and wrong *in proportion to* their tendency to produce pleasure and pain. That is a crucial element of the criterion (hence the name), and the fact that Mill does not say that here leads me to conclude that he is just making a broad claim about the nature of utilitarian moral theories, namely that they evaluate right and wrong action with reference to the consequences they tend to produce.

Berger's citation of the passages from the essay on Thornton is more puzzling, since his cited passages gives credence to the punishability criterion but not the proportionality criterion.⁵⁰¹ The page he cites that is presumably supposed to speak in favor of the punishability criterion does lend some support to it. In his essay Mill writes that, "there are many acts, and still a great number of forbearances the perpetual practice

⁵⁰⁰ Mill, *Examination*, CW, 9, 454. For Berger's citations see Berger, *Happiness, Justice, and Freedom*, 316n111.

⁵⁰¹ For Berger's citations see Berger, *Happiness, Justice, Freedom*, 316n112.

of which by all is so necessary to the general well-being, that people must be held to compulsorily, either by law or social pressure. These acts and forbearances constitute duty.”⁵⁰² Mill welcomes agents to do more than this, however, and to undertake actions that go beyond these requirements for the good of their fellow creatures. However, he insists that such actions should “be left free; being merely encouraged by praise and honour. . . .”⁵⁰³ These passages speak to sanction utilitarian claim that actions relevant to moral duty are those that can be compelled and those that are good, but extend beyond what is required to avoid compulsion, are supererogatory and a properly evaluated only from an aesthetic standpoint.

Meanwhile, the passage cited in support of the idea that Mill maintained a commitment to the proportionality criterion is less than unequivocal. On that page, Mill is discussing Thornton’s maxim that whatever is lawfully done by one person should be able to be lawfully done by any number of people. Mill disagrees with Thornton on this point and gives a rather fanciful counterexample to illustrate its disagreement (the example is not relevant to my purposes here). He concludes with an admission that:

The cases are not parallel; but if there be so much as one case of this character, it is discussable, and requires to be discussed, whether any given case is such a one; and we have a fresh proof how little even the most plausible of these absolute maxims of right and wrong are to be depended on, and how unsafe it is

⁵⁰² Mill, “Thornton on Labor and its Claims,” *CW*, 5, 650-651.

⁵⁰³ *Ibid.*, 651.

to lose sight, even for a moment, of the paramount principle—the good of the human race.⁵⁰⁴

This passage does speak in favor of the idea that one must recall the foundational principles motivating the formation of particular maxims and rules of a moral code. However, this is some distance from the specific claims of the proportionality criterion. The claim in this passage seems to be that one should not forget the *point* behind maxims or moral rules, but this is different from saying that actions are right and wrong, directly, in proportion as they tend to produce happiness. The sanction utilitarian reading of this passage would take Mill's claim to be a reference to the idea that moral rules should not be pursued for their own sake, but rather for the sake of the ultimate end that they are seeking to promote. This is consistent with the sanction utilitarian reading of the Art of Life, which similarly stresses that the rules of moral obligation must be constructed with the content of the principle of utility firmly in mind since it is the end of all practical actions. In this way, then, Berger's appeal to this passage as standing in support of the proportionality criterion is not plausible.

To sum up, Berger claims that Mill did not reconcile his proportionality criterion and his punishability criterion. He claims that Mill maintained a commitment to both criteria in his later writings just as he did in *Utilitarianism*. He also claimed that Mill seems to have written the punishability criterion earlier than the proportionality criterion. In reply, I reviewed the evidence that the chapter on justice was written or revised later than Berger claims. Also, by examining the passages that Berger cites as reasons to think

⁵⁰⁴ Ibid., 659.

that Mill supported the proportionality criterion in his later writings, I find evidence for Mill's support of the proportionality criterion lacking. Instead, Mill's use of the proportionality criterion appears to be limited to the pages of chapter two of *Utilitarianism*. Given the nature of the Ecumenical reading, this puts Mill's ultimate commitment to the criterion in jeopardy, while leaving the punishability criterion intact.

CHAPTER VII

CONCLUSION

This chapter will serve as the closing chapter of the dissertation. The main section of this chapter will review the central arguments of the dissertation and try to draw specific lessons from each of the previous chapters. I will conclude with some remarks on just what this dissertation has accomplished.

Overview of the defense of the sanction utilitarian interpretation

In this section I will provide a condensed overview of the arguments that I have given in favor of reading Mill as a sanction utilitarian. In order to be maximally helpful, I will explain what I take to be the essential contributions from each chapter. Like my discussion of act and rule utilitarian readings of Mill, this overview will not aim at comprehensiveness, but rather at prominence and relevance. That is to say, rather than giving a summary of all the chapters, I will pick out those aspects that speak most boldly and relevantly to the plausibility of my interpretation of Mill as a sanction utilitarian.

The most important contribution of the first chapter is its emphasis on clarifying the essential terminology and methodology that is employed in the dissertation. Perhaps the most important terminological point concerns the definition of utilitarianism itself. I maintain that non-maximizing versions of utilitarianism, such as satisficing utilitarianism, to be properly counted as utilitarian views. Following Shaw's definition, I claim that central to utilitarianism is the idea that it is the results of actions that matter

for moral evaluation and that those consequences should be evaluated according to the happiness or the effects on well-being that they produce. These definitions are important since, in later chapters, I argue that Mill's moral theory is a satisficing form of utilitarianism and Mill recognizes the principle of utility as his ultimate source of value. Mill's sanction utilitarianism is a type of utilitarianism, then, since it aims to produce some acceptable level of good consequences while ascribing value to actions only in light of their contribution to happiness.

It is also important, of course, to introduce the idea of the Ecumenical reading of *Utilitarianism* early on in the dissertation. To date, no Mill scholar has thoroughly used the Ecumenical reading as a way of adjudicating disagreements about how to weigh competing passages of texts against one another across Mill's writings on moral philosophy, and this reading has obviously proved helpful to my interpretation at several points in my argument.

There are three important lessons from chapter two of this dissertation. First, the chapter introduces Urmsen's important role in initiating a new set of interpretations of Mill's moral philosophy, even if the textual arguments for his view are not decisive. Urmsen correctly recognizes that Mill's discussion of moral obligation in chapter five is a problem for maximizing act utilitarian readings of Mill's views, and in a sense my interpretation builds upon what he argues for in his brief essay. Second, I show how Fuchs' essay provides a solid review of the problematic texts for act utilitarian readers to explain and properly emphasizes the central role that rules have in Mill's moral theory. He also does a service to those emphasizing a rule-oriented interpretation of Mill's view

by responding to Sumner and West's arguments that Mill's theory sometimes resembles both act and rule utilitarianism. In my view, Fuchs provided good reasons to resist that kind of interpretation. However, third, Fuchs falters in his rule utilitarian interpretation by citing a number of texts from Mill's works that were abandoned at the time he came write his major works of moral philosophy. Thus, while Fuchs provides some good reasons to favor the rule utilitarian reading, his interpretation is incomplete and open to question on methodological grounds.

The third chapter analyzes act utilitarian readings of Mill. First, my discussion of Crisp's multilevel maximizing utilitarian reading illustrates the sharp contrast between that view and the sanction utilitarian reading that I defend. In particular, I show how we differ about which passages provide Mill's criterion for right and wrong, and on whether Mill is a maximizing utilitarian. I show how Crisp bases his interpretation on a particular reading of the greatest happiness principle from chapter two of *Utilitarianism*, which, in Crisp's view, provides the clearest understanding of Mill's views on moral philosophy. While I do not argue with this claim directly by elucidating the ways in which Mill's statement is vague, I do think that its importance should be discounted in light of the Ecumenical reading of *Utilitarianism*. On my argument, Mill gives his criterion of right and wrong in chapter five rather than in chapter two of *Utilitarianism*.

Crisp also argues for interpreting Mill as a maximizing utilitarian, whereas I read him as a satisficing utilitarian. In a passage where Mill seems to claim that agents do not have to maximize utility, Crisp is forced to say that Mill must be dissembling to some extent—even though the passage comes from *Utilitarianism*, where Mill is supposed to

be laying out the first principles of his moral theory. I also argue that Crisp fails to come up with a plausible account of Mill's theory of supererogation, the Art of Life, and approach to punishing moral wrongdoing. On Crisp's reading of chapter five of *Utilitarianism*, Mill holds that agents should punish themselves for any action that fails to maximize utility. As I discuss at several points in chapter five of this dissertation, many of Mill's explicit statements are in tension with this reading.

Chapter three also includes my discussion of Berger's strategy conception of rules provides the second lesson from chapter three. My review of Berger shows that moral rules can play a central role even in a view that ultimately reads Mill as a kind of act utilitarian. The strategy conception of rules argues that Mill's reliance of rules is not a part of the *meaning* of Mill's utilitarianism (as would be the case if Mill were a rule utilitarian), but is instead the result of various epistemological limitations of moral agents. Since humans often make mistakes of various kinds in calculating utility, they need to rely on rules in almost any kind of moral situation. However, when agents can be sure that they are not making a mistake, they can legitimately override the rules even in cases where that means violating moral rights. This reading of moral rights creates a problem, I suggest, following an objection from Brink, since Mill appears to regard moral rights as counterfactually stable. In many places in his writings, Mill seems to accord rights an unqualified level of protection that seems at odds with the strategy conception of rules.

The fourth chapter provides an indispensable component in my larger argument for sanction utilitarianism. This chapter provides two important lessons. First, scholars

should regard Mill's claims in the first four chapters of *Utilitarianism* as statements about what many utilitarians believe rather than what Mill himself believes. This is essential to my case against many scholars like Crisp who draw heavily from the first four chapters of *Utilitarianism* in their interpretation of Mill's moral philosophy. Second, my arguments in this chapter legitimize my emphasis on chapter five of *Utilitarianism*, wherein Mill provides his criterion of right and wrong. Both Crisp and Berger find difficulties reconciling Mill's commitment to both the proportionality criterion from chapter two and the punishability criterion from chapter five of *Utilitarianism*. On my view, the scholarly focus on reconciling these two criteria is misplaced since Mill does not have conflicting criteria of right and wrong.

The fifth chapter of this dissertation provides two lessons. The first concerns Mill's theory of moral obligation and its implications for his moral theory and the second concerns his account of rules and moral compulsion. The first lesson is that Mill's theory of moral obligation, which he articulates in the fourteenth paragraph of chapter five in *Utilitarianism*, has significant implications for his moral theory. In particular, I argue that Mill's view of moral obligation precludes Mill from being a maximizing act or rule utilitarian. Furthermore, his theory of moral obligation is compatible with non-utilitarian moral theories. I argue this point by connecting Mill's three formulations of the connection between wrongdoing and punishment to his larger body of writings in moral theory. When these three formulations are analyzed together, I argue that they support the following definition:

Sanction Theory of Moral Wrong: An act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience, and possibly be subject to other punishments (e.g. social or legal penalties), for performance of the act.

This definition obviously recognizes a very close relationship between an action being wrong and it being subject to punishment by the conscience. By examining Mill's Implication Formulation I show that Mill is gesturing toward both an inferential and psychological connection between wrongdoing and this form of punishment. The inferential relationship is important since it is incompatible with maximizing rule utilitarianism. On the maximizing rule utilitarian view, wrong actions would only be punished when doing so, as a rule, maximizes utility. But Mill thinks that the conscience should punish every wrong action *regardless* of its effect on utility, which thereby makes his view incompatible with a maximizing rule utilitarian view. I also show how, in Mill's *Examination*, he elaborates on both the close psychological relationship between wrongdoing and punishment in a way that coincides with his comments in chapter five of *Utilitarianism*. Mill also makes it clear in the *Examination* that he is sketching a theory of the conscience that is compatible with non-utilitarian moral theories, just as he seems to be doing in his discussion of moral obligation in *Utilitarianism*.

The most important implication of Mill's Proper Object Formulation is that Mill seems to be allowing for actions that are positively and negatively evaluable in a non-moralized sense. That is to say, agents using Mill's Sanction Theory of Wrong can

evaluate actions from a perspective distinct from the realm of morality. This stands in contrast with maximizing act utilitarianism, which claims that all actions, strictly speaking, are included within the moral domain. The Proper Object Formulation seems to allow for actions that are admirable or unlikable, but not morally wrong, which seems in tension with the maximizing act utilitarian perspective. In my discussion of this passage I make it clear that, in the Proper Object Formulation itself, Mill does not say where one should draw the line between morality and actions that are positively or negatively evaluable but not morally right or wrong. However, drawing on key passages from Mill's essay on Comte, I argue that in these passages Mill explicitly allows for agents to do actions that are admirable but not morally obligatory as well as actions that fail to maximize utility but are not morally wrong. These passages are clearly in conflict with the maximizing act utilitarian reading.

The Foundational Formulation, Mill's third formulation of the connection between wrongdoing and punishment, serves to provide the beginnings of an account of moral right to supplement his account of moral wrong. While Mill has been clear up to this point in saying that wrongdoing is connected to punishment, he has said less about what it means to do a morally right action. In the Foundational Formulation, Mill explains that right actions are those that can be compelled. In my analysis of this Formulation, I argued that Mill's theory of compulsion revolved around a particular understanding of the nature of moral rules. This comes out both in the text of *On Liberty* and in the fifth chapter of *Utilitarianism* where Mill explains his theory of justice, which very explicitly involves an appeal to rules in order to justify compulsion.

The discussion of compulsion leads to the second lesson from chapter five, which concerns this connection between compulsion and rules. Mill's discussion of justice makes it very clear that justice necessarily involves rules, but the case is less clear for matters of moral obligation more generally. The key piece of evidence I presented in favor of the idea that moral rules are an essential part of moral obligation is the letter from Mill to Ward in 1859. In the letter, Mill says that the moral ought means that those who violate moral rules shall be punished by the internal sanction of conscience. This letter is crucial for my case, since it ensures a connection between moral obligation and rules and it emphasizes the centrality of the internal sanction of conscience for Mill's theory of morality.

There are three lessons concerning the sixth and final substantive chapter of the dissertation that argues directly for the sanction utilitarian interpretation of Mill. The first is that when one adds a satisficing understanding of utilitarianism to the theory of moral obligation that Mill sketched in the previous chapter, one derives the following understanding of Mill's utilitarianism:

Sanction Utilitarianism: An act is morally wrong if and only if it is appropriate for an agent to feel the internal sanction of conscience (and possibly be subject to other punishments such as social or legal penalties) for violating a rule in a moral code that, when internalized by an agent, promotes utility.

In my discussion and defense of this definition, I answer several questions concerning this definition of sanction utilitarianism. These include questions about what it means for an action to violate a rule, how the conscience operates in unison with a code of moral

rules, and how this definition carves out a type of utilitarianism that is distinct from act and rule utilitarianism.

The second lesson from this chapter is that sanction utilitarianism is compatible with two prominent aspects of Mill's moral and political theory: his Art of Life and his theory of liberty. In my discussion of the Art of Life, I confront various objections from Brink, who claims that a proper understanding of the Art of Life is incompatible with sanction utilitarianism. In my replies, I suggest that Brink seems to have a mistaken conception of both the Art of Life and the commitments of sanction utilitarianism. For instance, I argue that the Art of Life does not commit Mill to maximizing utility across the different departments nor does it commit Mill to saying that prudential errors are to be sanctioned in the same way as moral errors. In my discussion of Mill's theory of liberty, I deploy Jacobson's reading of *On Liberty* to show that the realm of self-regarding action that is free from moral sanctioning is a much larger domain than had been recognized on the previous interpretations of Mill's harm principle and theory of liberty.

The third lesson is that Mill's sanction utilitarianism can respond to objections challenging both its conceptual coherence and its textual foundations. Brink challenged the conceptual coherence of the view by saying that sanction utilitarianism provides the wrong kind of reason for explaining why an action is wrong—namely that it warrants a particular kind of response. On the standard view, it is because actions are wrong that they receive a particular kind of response, not the other way around. In my reply I suggest that the concern that seems to be at the heart of this objection—that responses to

wrongdoing should come about as the result of reasons—can be accommodated on the sanction utilitarian view. This is because, on that view, wrongdoing is identified in virtue of both a justified moral rule being violated and a punishment that accompanies the rule violation. In this way, sanction utilitarianism punishes actions for reasons. However, because of how Mill understands the nature of the conscience, rules, and punishment, the punishment itself retains a very close conceptual relationship with those reasons such that it should always be present in a case of wrongdoing by an agent who has internalized the justified moral rules and has a properly functioning conscience.

I also reply to an objection from Berger who claims that Mill does not sufficiently reconcile his proportionality criterion and punishability criterion for morally right and wrong actions. He finds both criteria at work in Mill's later writings, which provides reasons to believe that, despite their obvious importance to his theory, Mill never figured out how to make the two compatible. In my reply to Berger, I review the evidence for the Ecumenical reading that says that one can properly discard the proportionality criteria as a part of Mill's moral theory. I then review the passages that Berger cites where Mill supposedly uses the proportionality criteria in later writings. Upon examination I find that these passages lack a clear expression of the central ideas in the proportionality criterion. Thus, Berger's contention that Mill is operating with both criteria in his later writings is false.

Concluding remarks

In closing, I want to once more clarify what I take myself to have done in this dissertation. I hold that I have given good reasons to doubt that Mill embraced either act or rule utilitarianism in the form proffered by prominent interpreters. I also hold that the interpretation I offer in favor of Mill's theory of moral obligation and his theory of utilitarianism provide sufficient reason to think that sanction utilitarianism is the moral theory that Mill ultimately endorses. I also take it that my defense of the Ecumenical reading of *Utilitarianism* makes the sanction utilitarianism reading of Mill more plausible than it was previously. Mill may not have answered all of the questions that one might have about this theory, but he has given interpreters enough evidence to justifiably conclude that it is the best reading of his theory, which is what I said I would be arguing for at the outset of this dissertation.

BIBLIOGRAPHY

- Bain, Alexander. *John Stuart Mill: A Criticism with Reflections*. London: Longman's, 1882.
- Balfour, Arthur. *Theism and Humanism*. New York: Hodder and Stoughton, 1915.
- Bekoff, Marc, and Jessica Pierce. *Wild Justice: The Moral Lives of Animals*. Chicago: Chicago University Press, 2009.
- Berger, Fred. *Happiness, Justice, and Freedom: The Moral and Political Philosophy of John Stuart Mill*. Berkeley: University of California Press, 1984.
- Bradley, Ben. "Against Satisficing Consequentialism." *Utilitas* 18 (2006): 97-108.
- Brandt, Richard. "Some Merits of One Form of Rule Utilitarianism." *University of Colorado Studies* 3 (1967): 39-65.
- Brink, David. "Mill's Deliberative Utilitarianism." *Philosophy and Public Affairs* 21 (1992): 67-103.
- . "Mill's Moral and Political Philosophy." In *The Stanford Encyclopedia of Philosophy*. Stanford University, 1997-. Article published Fall 2008. <http://plato.stanford.edu/archives/fall2008/entries/mill-moral-political/>.
- . *Mill's Progressive Principles*. Oxford, UK: Clarendon Press, 2013.
- Brown, D.G. "Mill on Liberty and Morality." *The Philosophical Review* 81 (1972): 133-158.
- . "Mill's Act-Utilitarianism." *Philosophical Quarterly* 24 (1974): 67-68.
- . "Mill's Moral Theory: Ongoing Revisionism." *Philosophy, Politics, and Economics* 9 (2010): 5-45.
- . "What is Mill's Principle of Utility?" *Canadian Journal of Philosophy* 3 (1973): 1-12.
- Buss, Sarah. "Personal Autonomy." In *The Stanford Encyclopedia of Philosophy*, 1997-, Article published 2013. <http://plato.stanford.edu/entries/personal-autonomy/>.

- Capaldi, Nicholas. *John Stuart Mill: A Biography*. Cambridge, UK: Cambridge University Press, 2004.
- Collini, Stefan. *Public Moralists: Political Thought and Intellectual Life in Britain, 1850-1930*. Oxford, UK: Clarendon Press, 1991.
- Coope, Christophere Miles. "Was Mill a Utilitarian?" *Utilitas* 10 (1998): 33-67.
- Copp, David. "The Iterated-Utilitarianism of J.S. Mill." Supplementary *Canadian Journal of Philosophy* 5 (1979): 75-98.
- Cosgrove, Richard. *The Rule of Law: Albert Venn Dicey, Victorian Jurist*. Chapel Hill: University of North Carolina Press, 1980.
- Crisp, Roger, ed. *J.S. Mill: Utilitarianism*. Oxford Philosophical Texts. Oxford, UK: Oxford University Press, 1998.
- . *Guidebook to Mill on Utilitarianism*. London: Routledge, 1997.
- Darwall, Stephen. "Moral Obligation and Accountability." In *The Second-Person Standpoint: Morality, Respect and Accountability*, 91-110. Cambridge, Mass.: Harvard University Press, 2009.
- Donner, Wendy, and Richard Fumerton. *Mill*. New York: Wiley-Blackwell, 2009.
- . "Mill's Utilitarianism." In *The Cambridge Companion to John Stuart Mill*. Edited by John Skorupski, 255-292. New York: Cambridge University Press, 1998.
- Driver, Julia. "The History of Utilitarianism." In *The Stanford Encyclopedia of Philosophy*, Stanford University, 1997-. Article published Summer 2009. <http://plato.stanford.edu/archives/sum2009/entries/utilitarianism-history/>.
- Dyer, D.P. "Mill's Utilitarianism." In *The Collected Works of John Stuart Mill*. Vol. 10, *Essays on Ethics, Religion, and Society*. Edited by John Robson, lxiii-cxiii. Toronto: Toronto University Press, 1985.
- Edwards, Rem. "The Principle of Utility and Mill's Minimizing Utilitarianism." *The Journal of Value Inquiry* 20 (1986): 125-136.
- Eggleston, Ben. "Rules and their Reasons: Mill on Morality and Instrumental Rationality." In *John Stuart Mill and the Art of Life*. Edited by Ben Eggleston,

- Dale Miller, and David Weinstein, 71-93. New York: Oxford University Press, 2010.
- , Dale Miller, and David Weinstein. Introduction to *John Stuart Mill and the Art of Life*. Edited by Ben Eggleston, Dale Miller, and David Weinstein, 3-18. New York: Oxford University Press, 2010.
- Eggleston, Ben, Dale Miller, and David Weinstein, eds. *John Stuart Mill and the Art of Life*. New York: Oxford University Press, 2010.
- Feinberg, Joel. *Harm to Others*. New York: Oxford University Press, 1984.
- Fuchs, Alan. "Mill's Theory of a Morally Correct Action." In *The Blackwell Guide to Mill's Utilitarianism*. Edited by Henry West, 139-158. Malden, MA: Blackwell, 2006.
- Gray, John. *Mill on Liberty: A Defence*. London: Routledge & Kegan Paul, 1983.
- , G.W. Smith, eds. *J.S. Mill On Liberty in Focus*. London: Routledge, 1991.
- Hare, R.M. *Moral Thinking: Its Method, Level, and Point*. Oxford, UK: Clarendon Press, 1981.
- Hurka, Thomas. "Two Kinds of Satisficing." *Philosophical Studies* 59 (1990): 107-111.
- Irwin, Terence. *The Development of Ethics: A Historical and Critical Study*. Vol. 3, *From Kant to Rawls*. New York: Oxford University Press, 2009.
- Jacobson, Daniel. "Anthropocentric Constraints on Human Value." *Oxford Studies in Metaethics* 1 (2006): 99-126.
- . "J.S. Mill and the Diversity of Utilitarianism." *Philosophers Imprint* 3 (2003): 1-18.
- . "Review of Henry R. West, ed., *The Blackwell Guide to Mill's Utilitarianism*." In *Notre Dame Philosophical Review*. Published July, 2007. <http://ndpr.nd.edu/news/25072-the-blackwell-guide-to-mill-s-utilitarianism/>.
- . "Utilitarianism without Consequentialism: The Case of John Stuart Mill." *Philosophical Review* 117 (2008): 159-191.
- Kagan, Shelly. *The Limits of Morality*. New York: Oxford University Press, 1989.
- . *Normative Ethics*. Boulder: Westview Press, 1998.

- Kahn, Leonard. "The Objection from Justice and the Conceptual/Substantive Distinction." In *Mill on Justice*. Edited by Leonard Kahn, 198-220. New York: Palgrave Macmillan, 2012.
- Lewis, David. "Mill and Milquetoast." In *Mill on Liberty*. Edited by Gerald Dworkin, 1-29. New York: Routledge, 1988.
- Lyons, David. "Human Rights and General Welfare." *Philosophy and Public Affairs*, 6 (1977): 113-129.
- . *In the Interest of the Governed*. Oxford, UK: Clarendon Press, 1973.
- . "Mill's Theory of Morality." *Nous* 10 (1976): 101-120.
- . *Rights, Welfare, and Mill's Moral Theory*. New York: Oxford University Press, 1994.
- . "Utility and Rights." In *Ethics, Economics, and the Law*. Edited by J.R. Pennock and J.W. Chapman, 107-138. New York: New York University Press, 1982.
- Martin, Rex. "Mill's Rule Utilitarianism in Context." In *John Stuart Mill and the Art of Life*. Edited by Ben Eggleston, Dale Miller, and David Weinstein, 21-43. New York: Oxford University Press, 2010.
- Mehta, Uday Singh. *Liberalism and Empire*. Chicago: Chicago University Press, 1999.
- Mill, John Stuart. *The Collected Works of John Stuart Mill*. Vol. 1, *Autobiography and Literary Essays*. Edited by John Robson. Toronto: Toronto University Press, 1981.
- . *The Collected Works of John Stuart Mill*. Vol. 2, *The Principles of Political Economy with Some of Their Applications to Social Philosophy*. Edited by John Robson. Toronto: Toronto University Press, 1965.
- . *The Collected Works of John Stuart Mill*. Vol. 3, *Principles of Political Economy with Some of Their Applications to Social Philosophy, Books 3-5 and Appendices*. Edited by John Robson. Toronto: Toronto University Press, 1965.
- . *The Collected Works of John Stuart Mill*. Vol. 4, *Essays on Economics and Society*. Edited by John Robson. Toronto: Toronto University Press, 1967.
- . *The Collected Works of John Stuart Mill*. Vol. 5, *Essays on Economics and Society*. Edited by John Robson. Toronto: Toronto University Press, 1967.

- . *The Collected Works of John Stuart Mill*. Vol. 8, *A System of Logic Ratiocinative and Inductive, Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation*. Edited by John Robson. Toronto University Press, 1974.
- . *The Collected Works of John Stuart Mill*. Vol. 9, *An Examination of William Hamilton's Philosophy and of The Principal Philosophical Questions Discussed in his Writings*. Edited by John Robson. Toronto University Press, 1979.
- . *The Collected Works of John Stuart Mill*. Vol. 10, *Essays on Ethics, Religion, and Society*. Edited by John Robson. Toronto: Toronto University Press, 1985.
- . *The Collected Works of John Stuart Mill*. Vol. 11, *Essays on Philosophy and the Classics*. Edited by John Robson. Toronto: Toronto University Press, 1978.
- . *The Collected Works of John Stuart Mill*. Vol. 12, *The Earlier Letters of John Stuart Mill 1812-1848*. Edited by Francis Mineka. Toronto: Toronto University Press, 1963.
- . *The Collected Works of John Stuart Mill*. Vol. 13, *The Earlier Letters of John Stuart Mill 1812-1848*. Edited by Francis Mineka. Toronto: Toronto University Press, 1963.
- . *The Collected Works of John Stuart Mill*. Vol. 14, *The Later Letters of John Stuart Mill 1849-1873*. Edited by Francis Mineka and Dwight Lindley. Toronto: Toronto University Press, 1972.
- . *The Collected Works of John Stuart Mill*. Vol. 15, *The Later Letters of John Stuart Mill 1849-1873*. Edited by Francis Mineka and Dwight Lindley. Toronto: Toronto University Press, 1972.
- . *The Collected Works of John Stuart Mill*. Vol. 16, *The Later Letters of John Stuart Mill 1849-1873*. Edited by Francis Mineka and Dwight Lindley. Toronto: Toronto University Press, 1972.
- . *The Collected Works of John Stuart Mill*. Vol. 17, *The Later Letters of John Stuart Mill 1849-1873*. Edited by Francis Mineka and Dwight Lindley. Toronto: Toronto University Press, 1972.
- . *The Collected Works of John Stuart Mill*. Vol. 18, *Essays on Politics and Society*. Edited by John Robson. Toronto: Toronto University Press, 1977.

- . *The Collected Works of John Stuart Mill*. Vol. 19, *Essays on Politics and Society*. Edited by John Robson. Toronto: Toronto University Press, 1977.
- . *The Collected Works of John Stuart Mill*. Vol. 21, *Essays on Equality, Law, and Education*. Edited by John Robson. Toronto: Toronto University Press, 1984.
- . *The Collected Works of John Stuart Mill*. Vol. 26, *Journals and Debating Speeches*. Edited by John Robson. Toronto: Toronto University Press, 1988.
- . *The Collected Works of John Stuart Mill*. Vol. 27, *Journals and Debating Speeches*. Edited by John Robson. Toronto: Toronto University Press, 1988.
- . *The Collected Works of John Stuart Mill*. Vol. 32, *Journals and Debating Speeches*. Edited by John Robson. Toronto: Toronto University Press, 1991.
- Miller, Dale. *J.S. Mill: Moral, Social, and Political Thought*. Malden, MA: Polity, 2010.
- . “Mill, Rule Utilitarianism, and the Incoherence Objection.” In *John Stuart Mill and the Art of Life*. Edited by Ben Eggleston, Dale Miller, and David Weinstein, 94-116. New York: Oxford University Press, 2010.
- . “Mill’s Theory of Sanctions.” In *The Blackwell Guide to Mill’s Utilitarianism*. Edited by Henry West, 159-173. Malden, MA: Blackwell, 2006.
- Moore, G.E. *Principia Ethica*. Cambridge, UK: Cambridge University Press, 1903.
- Nagel, Thomas. *The Possibility of Altruism*. Princeton, NJ.: Princeton University Press, 1979.
- North, John S., ed. *The Waterloo Directory of English Newspapers and Periodicals 1800-1900*. 20 vols. Waterloo, Ont.: North Waterloo Academic Press, 2003.
- Parfit, Derek. *Reasons and Persons*. Oxford, UK: Clarendon Press, 1984.
- Pitts, Jennifer. *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France*. Princeton, NJ: Princeton University Press, 2005.
- Railton, Peter. “Alienation, Consequentialism, and the Demands of Morality.” *Philosophy and Public Affairs* 13 (1984): 134–71.
- Rawls, Jon. *Lectures on the History of Political Philosophy*. Cambridge, Mass.: Harvard University Press, 2007.

- Rees, J.C. "A Re-Reading of Mill's *On Liberty*." In *J. S. Mill On Liberty in Focus*. Edited by John Gray and G.W. Smith, 169-189. London: Routledge, 1991.
- Reeves, Richard. *John Stuart Mill: Victorian Firebrand*. London: Atlantic, 2007.
- Ridge, Michael. "Mill's Intentions and Motives." *Utilitas* 14 (2002): 54-70.
- Riley, Jonathan. *Mill on Liberty*. New York: Routledge, 1998
- . "Racism, Blasphemy, and Free Speech." In *Mill's On Liberty: A Critical Guide*. Edited by C.L. Ten, 62-82. Cambridge, UK: Cambridge University Press, 2008.
- Roberts, William, ed. *Memoirs of the Life and Correspondence of Mrs. Hannah More*. Volume 1. New York: Harper & Brothers, 1834.
- Robson, John. *The Improvement of Mankind: The Social and Political Thought of J.S. Mill*. London: Routledge and Kegan Paul, 1968.
- . "Textual Introduction." In *The Collected Works of John Stuart Mill*. Vol. 2, *The Principles of Political Economy with Some of Their Applications to Social Philosophy*. Edited by John Robson, lxv-lxxxviii. Toronto: Toronto University Press, 1965.
- . "Textual Introduction." In *The Collected Works of John Stuart Mill*. Vol. 9, *An Examination of William Hamilton's Philosophy and of The Principal Philosophical Questions Discussed in his Writings*. Edited by John Robson, lxi-cii. Toronto: Toronto University Press, 1979.
- . "Textual Introduction." In *The Collected Works of John Stuart Mill*. Vol. 10, *Essays on Ethics, Religion, and Society*. Edited by John Robson, cxv- cxxxix. Toronto: Toronto University Press, 1985.
- Rosen, Frederick. *Classical Utilitarianism from Hume to Mill*. New York: Routledge, 2003.
- . *Mill*. Oxford, UK: Oxford University Press, 2013.
- Rowlands, Mark. *Can Animals Be Moral?* New York: Oxford University Press, 2012
- Ryan, Alan. Introduction to *Utilitarianism and Other Essays*. By John Stuart Mill and Jeremy Bentham, 7-64. New York: Penguin, 1987.
- . *John Stuart Mill*. New York: Random House, 1970.

- . *The Philosophy of John Stuart Mill*. London: Macmillan, 1970.
- . “John Stuart Mill’s Art of Living.” In *J.S. Mill On Liberty in Focus*. Edited by John Gray and G.W. Smith, 162-168. London: Routledge, 1991.
- Schneewind, J.B. *Sidgwick’s Ethics and Victorian Moral Philosophy*. Oxford, UK: Clarendon Press, 1978.
- Shaw, William. *Contemporary Ethics: Taking Account of Utilitarianism*. Malden, MA: Blackwell, 1999.
- Sidgwick, Henry. *The Methods of Ethics*, 7th ed. Indianapolis: Hackett Publishing, 1981.
- Sinnott-Armstrong, Walter. “Consequentialism.” In *The Stanford Encyclopedia of Philosophy*, Stanford University, 1997-. Article published Fall 2011, <http://plato.stanford.edu/entries/consequentialism/>.
- Skinner, Quentin. “Meaning and Understanding in the History of Ideas.” In *The Vision of Politics*. Vol. 1, *Regarding Method*, 57-89. New York: Cambridge University Press, 2002.
- Skorupski, John. *John Stuart Mill*. London: Routledge, 1989.
- . “Utilitarianism in Mill’s Philosophy.” In *The Blackwell Guide to Mill’s Utilitarianism*. Edited by Henry West, 45-59. Malden, MA: Blackwell, 2006).
- Smart, J.J.C., “An Outline of a System of Utilitarian Ethics.” In J.J.C. Smart and Bernard Williams, *Utilitarianism: For and Against*, 3-74. Cambridge, UK: Cambridge University Press, 1973.
- and Bernard Williams. *Utilitarianism: For and Against*. Cambridge, UK: Cambridge University Press, 1973.
- Snyder, Laura. *Reforming Philosophy: A Victorian Debate on Science and Society*. Chicago: University of Chicago Press, 2006.
- Stack, David. “The Death of John Stuart Mill.” *The Historical Journal* 54 (2011): 167-190.
- Stafford, William. *John Stuart Mill*. New York: St. Martins, 1998.
- Sumner, L.W. “The Good and the Right.” Supplementary *Canadian Journal of Philosophy* 5 (1979): 99-114.

- Taylor, Helen. "Introductory Notice to Three Essays on Religion." In *The Collected Works of John Stuart Mill*. Vol. 10, *Essays on Ethics, Religion, and Society*. Edited by John Robson, 371-372. Toronto: Toronto University Press, 1985.
- Ten, C.L., *Mill on Liberty*. Oxford, UK: Clarendon Press, 1980.
- . "Mill's Defense of Liberty." In *J.S. Mill On Liberty in Focus*. Edited by John Gray and G.W. Smith, 212-238. London: Routledge, 1991.
- Tunick, Mark. "Tolerant Imperialism: John Stuart Mill's Defense of British India." *Review of Politics* 68 (2006): 586-611.
- Urmson, J.O. "The Interpretation of the Moral Philosophy of J.S. Mill." *Philosophical Quarterly* 3 (1953): 33-39.
- West, Henry, ed. *The Blackwell Guide to Mill's Utilitarianism*. Malden, MA: Blackwell, 2006.
- . *An Introduction to Mill's Utilitarian Ethics*. Cambridge, UK: Cambridge University Press, 2004.
- Williams, Bernard. "A Critique of Utilitarianism." In J.J.C Smart and Bernard Williams, *Utilitarianism: For and Against*, 77-150. Cambridge, UK: Cambridge University Press, 1973.
- Wolf, Susan. "Moral Saints." *Journal of Philosophy* 79 (1982): 419-439.
- Wolff, Robert Paul. *The Poverty of Liberalism*. Boston: The Beacon Press, 1968.