

Mill's Moral Standard

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abstract:

A book chapter (about 7,000 words, plus references) on the interpretation of Mill's criterion of right and wrong, with particular attention to act utilitarianism, rule utilitarianism, and sanction utilitarianism. Along the way, major topics include Mill's thoughts on liberalism, supererogation, the connection between wrongness and punishment, and breaking rules when doing so will produce more happiness than complying with them will.

1. Introduction

Whether John Stuart Mill was an act utilitarian, or whether he was a rule utilitarian – or whether he was some other kind of utilitarian, such as a sanction utilitarian – are aspects of the more general question of what Mill's *moral standard* was. This is obviously one of the most important questions to ask about Mill's thought; as early as 1833 Mill himself acknowledged finding the correct moral standard as "the fundamental question of practical morals" (*Blakey's History of Moral Science*, X: 26). The question of Mill's moral standard is also one of the most extensively discussed questions in the vast body of scholarship devoted to the interpretation, analysis, and assessment of Mill's voluminous writings. Indeed, because this question has been so extensively discussed, I cannot aspire, in this chapter, to anything approaching exhaustiveness. Rather, in this chapter, I provide an overview of the debate surrounding this central question. In particular, I describe moral standards that are importantly attributed to Mill and I review the passages in

his writings (and other interpretive considerations) that are most seriously regarded as bearing on those attributions.

Before proceeding, one point of methodological controversy should be noted. Interpretations of Mill's writings are often charged with anachronism, in the sense that they involve the attribution to Mill of moral standards that do not seem to have been explicitly formulated in the writings of Mill, his contemporaries, or his predecessors. Such concerns are asserted or suggested by, for example, J.D. Mabbott (1956: 116), J.J.C. Smart (1956: 349), Wendy Donner (1998: 279–80, 290; 2009: 34), Daniel Jacobson (2003: 1; 2008: 163–4, 177), David Weinstein (2011: 45, 60, 62–3), and Christopher Macleod (2013: 217–20). In sympathy with such concerns it should be acknowledged that some of the moral standards importantly attributed to Mill were first formulated carefully not in works by Mill or in works of Mill interpretation, but in subsequent evaluative discussions of the substantive merits of various forms of utilitarianism proposed as plausible moral theories in their own right. In particular, since the 1950s, various forms of act and rule utilitarianism have been articulated and defended with increasing specificity and sophistication, and interpreters of Mill's writings have drawn freely on those innovations.

On the other hand, Mill's era – and even earlier ones – were not entirely devoid of such ideas. As Dale Miller notes,

George Berkeley was able to see the difference between act and rule utilitarianism well enough to make it clear that he favoured the latter, and he was writing over a century before Mill. (2010a: 96)

In fact, Mill was sufficiently acquainted with Berkeley's view to criticize it pointedly, as mentioned later. The anachronism debate is murky because the line between strict interpretation and charitable reconstruction is blurry. Ultimately, the charge of anachronism is one to be lodged against, and answered by, individual proposed interpretations, rather than addressed from a more global perspective.

2. Intention, Aggregation, and Other Issues: A Brief Overview

Most of this chapter is concerned with whether Mill's moral standard evaluates acts simply in terms of their effects or whether it evaluates acts in terms

of their compliance with certain rules, and whether such evaluation somehow depends on the idea of punishment. This section, however, provides a brief overview of some additional interpretive questions.

One such question concerns Mill's original and enigmatic conception of happiness. This is, rightly, the subject of an entire chapter in this volume, that of Ben Saunders. Another additional question is whether Mill holds that an act is simply either right or wrong, or whether he holds that rightness and wrongness are matters of degree. This is discussed elsewhere by, for example, Alastair Norcross (2006: 223), Daniel Jacobson (2008: 170n27), David Brink (2013: 81), and Joseph Shay (2013: 15). Two further questions, reviewed here briefly, pertain to the intentions with which people act and the interplay of aggregative and distributive considerations in Mill's commitment to the promotion of happiness.

2.1. *Intended, not Actual, Consequences*

Mill's father, James Mill, imagined a case in which a doctor gives his patient a drug that, contrary to expectations, turns out to be fatal (*Notes on the Analysis*, XXXI: 253). This case illustrates the truism that acts expected to have good consequences can turn out badly, and *vice versa*. Like his father, Mill uses this case to discuss the question of which consequences determine the rightness or wrongness of an act: the consequences that actually ensue, the consequences that the agent intends to bring about, the consequences that an agent with reasonable beliefs would expect, or some other real or imagined consequences.

Mill's thoughts on this question might seem to be indicated by what is probably the most frequently quoted sentence of his *Utilitarianism* (1861), the sentence declaring that "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness" (*Utilitarianism*, X: 210). This formulation might refer to acts' actual consequences – or might not, depending on the import of Mill's use of the word "tend." Fortunately, there is an unambiguous sentence later in *Utilitarianism*: "The morality of an action depends entirely upon the intention—that is, upon what the agent *wills to do*" (*Utilitarianism*, X: 220n). Equally unambiguous remarks reinforcing this one are found in Mill's 1838 essay on Jeremy Bentham (*Bentham*, X: 112) and his 1869 discussion of his

father's fatal-drug example (*Notes on the Analysis*, XXXI: 253). This topic is discussed in more detail by Roger Crisp (1997: 99–100, 112; 1998: 121–3) and Eric Wiland (2013b: 377).

2.2. Aggregation versus Distribution

Contemporary forms of utilitarianism typically require not just the promotion of happiness, but the maximization of it (Shaw 1999: 10–1), and contemporary utilitarian theorists tend to be explicit on this point. Mill is not. He shows some interest in issues of aggregation in 1824 when he criticizes “those who can feel and cannot reason” by saying “They would rather that a thousand individuals should suffer one degree each, than that one individual should suffer two degrees” and he goes on to use maximizing language in saying that “the only true end of morality” is “the greatest happiness of the greatest number” (*Brodie's History of the British Empire*, VI: 4). But in an 1847 letter, Mill suggests that non-aggregative considerations also matter, by writing that “I look upon inequality as *in itself* always an evil” – though the import of this remark is admittedly complicated by its occurrence in a discussion of class inequality rather than inequality in the distribution of happiness (Letter to Arthur Helps, estimated 1847, XVII: 2002). Then Mill uses maximizing language again in *Utilitarianism* in speaking of promoting happiness “to the greatest extent possible” (*Utilitarianism*, X: 214).

Mill's stance on maximization is debated. Some scholars see him as embracing some form of maximization, whether a standard one (Crisp 1998: 16) or a nonstandard one (Braybrooke 2004: 84–9; Riley 2009: 303–15, 2010: 78–83). Others see Mill as ultimately eschewing maximization (Coope 1998: 52–7; Skorupski 2006: 23–4; Macleod forthcoming). D.G. Brown, for example, holds that Mill is concerned with “common-sense dealing in utilities” (2010: 28) rather than maximization (2010: 29). In a related vein, David Levy and Sandra Peart formulate a hypothetical scenario, comprising three individuals, in which there are two possible states of affairs: one in which the individuals have utilities of 2, 3, and 4, and one in which they have utilities of 1, 2, and 9. Happiness is maximized in the latter state of affairs, but Levy and Peart claim that Mill would recommend the former because it

would be preferred by two of the people involved, while the latter would be preferred by only one (2013: 129).

3. Act Utilitarianism

I mentioned previously that much of this chapter is concerned with the question of whether Mill's moral standard evaluates acts simply in terms of their effects or whether it evaluates acts in terms of their compliance with certain rules. Interpreting Mill's moral standard as a form of act utilitarianism is one way of answering that question.

3.1. What Act Utilitarianism Is

Act utilitarianism is the most traditional and straightforward form of utilitarianism. A typical formulation is relatively simple:

An act is right if and only if it results in at least as much overall happiness as any act the agent could have performed.

This principle implies that in any situation, an agent acts rightly if she maximizes overall happiness, and wrongly if she does not.

This principle also implies that the rightness or wrongness of an act does not depend on whether it complies with a moral rule (other than the act-utilitarian rule of "Maximize happiness"). This feature of act utilitarianism is important for our purposes because it is what most sharply distinguishes act utilitarianism from rule utilitarianism (which is discussed next).

Act utilitarianism is one of the leading candidates for Mill's moral standard, having been suggested by many scholars including Maurice Mandelbaum (1968: 212–21), Brian Cupples (1972: 137), Roger Crisp (1997: 96–7, 102–5; 1998: 14–8), William Shaw (1999: 165), David Braybrooke (2004: 81–4), L.W. Sumner (2006: 192–5), and David Brink (2013: 84–5, 110–2). Some scholars who interpret Mill as endorsing act utilitarianism interpret him as endorsing a specific kind of act utilitarianism often called *indirect* utilitarianism. This view affirms the act-utilitarian principle as the correct moral standard, but also acknowledges that the best way for people to promote happiness is to believe in, and act according to,

various rules and principles that supplement and may even conflict with the act-utilitarian principle. For example, it is usually better, in terms of maximizing happiness, if people can enjoy a certain zone of freedom of action (and inaction) than if they have to constantly strive to act in happiness-maximizing ways. An excellent overview of indirect utilitarianism, including the attribution of it to Mill, is provided by Eric Wiland (2013a: 269). Indirect-utilitarian interpretations of Mill are advocated by Roger Crisp (1997: 105–26; 1998: 18–21), L.W. Sumner (2006: 194–5), and David Brink (2013: 82–4, 89–98), but this approach is emphatically critiqued by Daniel Jacobson (2003: 16–7; 2008: 160–3, 175–7).

3.2. The Greatest Happiness Principle

There are many remarks in which Mill (1) says that the rightness or wrongness of acts is determined by their effects on happiness and (2) says nothing at all about rules as having any bearing on the matter. Such remarks can be found in his 1852 review of two works on ethics by William Whewell (*Whewell on Moral Philosophy*, X: 172), an 1854 diary entry (Diary Entry, Mar 23, 1854, XXVII: 663), and an 1867 letter to a young Henry Sidgwick – though in this letter Mill agrees with Sidgwick that “a fixed moral principle, or set of principles” on the topic about which Sidgwick had contacted him “would be very desirable” (Letter to Henry Sidgwick, Nov 26, 1867, XXXII: 185). But the most well-known such remark is the sentence, quoted in part previously, that is probably the most well-known sentence in *Utilitarianism*:

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. (*Utilitarianism*, X: 210)

Because this obviously important sentence contains no reference to rules, it is natural to read it as suggesting a form of act utilitarianism (Crisp 1997: 96–7, 1998: 115).

Despite the obvious importance of this sentence, there is reason to be cautious about putting a lot of weight on its exact wording. It occurs early in the

chapter of *Utilitarianism* in which Mill explains “what utilitarianism is” (as said in the title of the chapter), and at this stage of the essay, Mill might be providing a simple summary of the general idea of utilitarianism rather than a careful and thorough formulation of what he regards as the most defensible particular form of utilitarianism. This interpretive issue is a fraught and recurring topic of discussion (Brown 1973: 2–3, 2010: 10–3; Coope 1998: 65; Jacobson 2003: 8–12, 2008: 170n27, 177; West 2007: 40–2; D. Miller 2010a: 93–4).

3.3. *Breaking Rules to Produce More Happiness*

Not only does Mill make no mention of rules in many statements about the determinants of rightness and wrongness; he also argues, in many passages that do concern rules, that they ought to be broken when unusual circumstances arise and cause it to be the case that breaking rules would have better consequences than following them. This point is discussed at length in the 1837 review of Henry Taylor’s book *The Statesman* that Mill co-authored with George Grote. There, Grote and Mill write the following:

To admit the balance of consequences as a test of right and wrong, necessarily implies the possibility of exceptions to any derivative rule of morality which may be decided from that test. (*Taylor’s Statesman*, XIX: 638)

They add that if a person “wilfully overlooks” the peculiarities of the circumstances in which he acts and thereby causes unnecessary harm, “he cannot discharge himself from moral responsibility by pleading that he had the general rule in his favour” (*Taylor’s Statesman*, XIX: 640).

In *Utilitarianism*, Mill anticipates the objection that if people were to apply his moral theory in actual decision-making, they would feel too free to make exceptions to moral rules. In reply to this objection, Mill does not attempt to show that utilitarianism prescribes its own set of binding rules; instead, he maintains the propriety of breaking rules, depending on the circumstances:

It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require no

exceptions; and that hardly any kind of action can safely be laid down as either always obligatory or always condemnable. There is no ethical creed which does not temper the rigidity of its laws, by giving a certain latitude, under the moral responsibility of the agent, for accommodation to peculiarities of circumstances. (*Utilitarianism*, X: 225)

Utilitarianism also contains passages in which Mill considers moral rules that pertain to specific topics such as lying and injustice, and there too Mill affirms the necessity of occasionally breaking such rules. For example, lying is permissible when needed to protect someone “from great and unmerited evil” (*Utilitarianism*, X: 223) and “particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice” (*Utilitarianism*, X: 259). Mill elaborates on this latter remark in a letter he wrote in 1867 (Letter to E.W. Young, Nov 10, 1867, XVI: 1327–8).

Finally, I mentioned earlier that Mill criticized Berkeley’s rule-utilitarian view. In an 1871 essay, Mill writes that Berkeley “was misled by an exaggerated application of that cardinal doctrine of morality, the importance of general rules” (*Berkeley’s Life and Writings*, XI: 468). Similar remarks about rules, on a variety of specific topics, can be found in Mill’s 1835 review of Adam Sedgwick’s *Discourse on the Studies of the University of Cambridge* (*Sedgwick’s Discourse*, X: 72), his 1837 review of Thomas Carlyle’s history of the French Revolution (*Carlyle’s French Revolution*, XX: 161), his 1843 treatise *A System of Logic* (*Logic*, VIII: 945–6), his 1852 review of Whewell (*Whewell on Moral Philosophy*, X: 182), his 1869 essay *The Subjection of Women* (*Subjection*, XXI: 307), and his 1869 review of William Thomas Thornton’s book *On Labour* (*Thornton on Labour and Its Claims*, V: 659). This strand in Mill’s thought is emphasized in several interpretive analyses (Mabbott 1956: 116; Cupples 1972: 132; Gaus 1980: 276).

3.4. Considering a Class of Acts in Order to Ascertain an Act’s Consequences

Sympathy with act utilitarianism is also suggested by Mill’s advocacy of a particular method for ascertaining an act’s consequences. In an 1872 letter to the logician John Venn, Mill writes the following:

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 every one 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 the particular case. (Letter to John Venn, Apr 14, 1872, XVII: 1881)

Mill seems to have in mind that in many cases, an act's consequences can best be ascertained by imaginatively scaling up to the performance of many acts similar to the one in question, envisioning the consequences, and scaling those consequences back down to the act in question. Mill's thought here is not that if one person acts in a certain way, then others will do likewise (though the example-setting effects of an act can be important), but that some consequences of acts are so remote and diffuse that they are hard to detect and measure when considering acts one at a time. For instance, the harms of tax evasion – an example from Venn that Mill takes up immediately following the passage quoted previously – have these characteristics. It is typically hard to identify a discrete harm caused by a particular instance of tax evasion, but it is easy to see the harm caused by many instances of tax evasion and then to regard each instance as causing a roughly equal share of that harm.

By advocating this method for ascertaining an act's consequences, Mill invites the thought that those consequences – those of the particular act – are what determine its rightness or wrongness. Moreover, it is telling that when Mill considers the familiar question "What if everyone did that?" he does not accord it any moral weight; he just regards it as a fact-finding technique. The facts thus found – facts about the individual act's consequences – are what determine the act's rightness or wrongness. Thus, this passage is naturally read as reflecting act-utilitarian thinking, as is a similar passage in Mill's 1852 review of Whewell (*Whewell on Moral Philosophy*, X: 180–2). D.G. Brown (1974: 68) is generally credited with bringing the letter to Venn to the attention of Mill scholars, though there is some dissent from this interpretation of this material (Eggleston and Miller 2008) as well as reconsideration from Brown himself (2010: 37n4).

3.5. Further Lines of Argument

Act-utilitarian interpretations of Mill are supported by several further considerations that, for reasons of space, I can only summarize here.

Previously, we saw that there is reason to believe that Mill objects to following a rule when more happiness would result from breaking it. There is also reason to believe that Mill objects to following a rule when the purpose of the rule itself would be better served by breaking it – a consideration that is conceptually distinct from the promotion of happiness, though presumably the two will often overlap. This is acutely relevant to the question of whether Mill should be interpreted as an act utilitarian or as a rule utilitarian (discussed later) because it suggests that Mill anticipated, with startling precision, a concern about rule utilitarianism that would be vividly expressed a century later in Smart's claim that rule utilitarianism involves "a form of superstitious rule-worship" (1956: 349). I discuss this aspect of Mill's thought more fully elsewhere (Eggleston 2011: 82–5).

Second, support for act-utilitarian interpretations can be found not only in some of Mill's remarks about when rules should be broken (as discussed previously), but also in some of his remarks about when they should be followed. At times, Mill argues in favor of following a particular rule on the grounds that when all of the likely consequences are taken into account – long-term as well as short-term – following the rule would actually promote happiness more than breaking the rule would. In other words, Mill defends the act of following the rule ultimately in terms of the act's promotion of happiness, just as an act utilitarian would. Mill offers such defenses in *Utilitarianism* (*Utilitarianism*, X: 223) and his comments on his father's *Analysis of the Phenomena of the Human Mind* (*Notes on the Analysis*, XXXI: 253). This aspect of Mill's thought is noted by Mabbott (1956: 118) and Gerald Gaus (1980: 273).

Third, Mill refers to rules with a rich variety of different words and phrases, and many of them suggest the advisability of disregarding a rule when it is incorrect or ineffective. For example, he calls rules "corollaries" and "direction-posts" (*Utilitarianism*, X: 224) and analogizes them to the information that sailors find in nautical almanacs (*Utilitarianism*, X: 225; also see *Sedgwick's Discourse*, X: 66).

Obviously a supposed corollary of a principle should be ignored when it is found to conflict with that principle, a direction-post should be disregarded when it fails to point the way to one's destination, and erroneous astronomical or tidal data should be corrected. This interpretation of Mill's terminology is anticipated and rejected by J.O. Urmson (1953: 37–8) but is advanced nonetheless by Mabbott (1956: 117) and Smart (1956: 349–50).

4. Rule Utilitarianism

4.1. What Rule Utilitarianism Is

Rule utilitarianism is the primary rival of act utilitarianism within contemporary utilitarian thought, and is also the primary rival of act utilitarianism in the interpretation of Mill's moral thought. Rule utilitarianism follows act utilitarianism in regarding the maximization of happiness as the basis of morality, but specifies a more complicated connection between the maximization of happiness and the rightness of acts. Whereas act utilitarianism judges each act simply in terms of its effects on happiness, rule utilitarianism judges each act in terms of its compliance with a system of rules that is, in turn, selected on the basis of its effects on happiness.

There are different forms of rule utilitarianism. Probably the most prominent is the following:

An act is right if and only if it is allowed by the system of rules whose general acceptance would maximize happiness.

Because of its focus on the system of rules that meets a certain normative ideal (regardless of whether it is actually accepted), this view can be called *ideal-code* rule utilitarianism. Views of this kind have been attributed to Mill by J.O. Urmson (1953: 35), Richard Brandt (1967: 57–8), and Alan Fuchs (2006: 144–50).

This form of rule utilitarianism focuses on ideal rules, without regard to the rules actually in effect in a person's society. Some theorists reject this and advocate a form of rule utilitarianism that (1) does not require people to always rise to the level of complying with ideal rules and (2) allows that people can act rightly as long

as they comply with the rules actually in effect in their societies, if those rules are good enough from a utilitarian point of view. Making these two adjustments to ideal-code rule utilitarianism can lead to a view something like the following:

An act is right if and only if it is allowed by happiness-promoting rules that are in effect in the agent's society.

This view, which can be called *actual-code rule utilitarianism*, implies that the rightness or wrongness of an act depends on actual rules rather than ideal rules, but not all actual rules have moral force – only those that promote happiness do. Views resembling this one have been attributed to Mill in several recent works (Eggleston and Miller 2007: 42; Donner 2009: 54; R. Miller 2009: 6–8, 22; Martin 2011: 31), but some skepticism has also been expressed (Norcross 2007: 2–3).

For our purposes, we can abstract away from the differences between these two forms of rule utilitarianism and note two claims that follow from rule utilitarianism in general, but are incompatible with act utilitarianism. First, the rightness or wrongness of an act is determined not by its effects on happiness, but by its conformity to some system of rules. Second, not all happiness-maximizing acts are obligatory and some are not even permissible. These two claims are suggested by several important strands in Mill's thought that we shall review shortly. First, however, we should note the place of rules in one of Mill's most direct statements of his conception of morality.

4.2. *Morality Defined in Terms of Rules*

Mill declares that rules are integral to morality. Consider, in particular, the passage in *Utilitarianism* in which Mill explains how happiness is “the ultimate end” and adds that this is not only “the end of human action” but “necessarily also the standard of morality.” He then says that this standard “may accordingly be defined” as “the rules and precepts for human conduct” the observance of which will promote the end just identified (*Utilitarianism*, X: 214). This reference to “rules and precepts” in explaining how morality may be “defined” might be Mill's most direct statement of a principle resembling that of rule utilitarianism.

4.3. Liberalism

For the study of Mill's moral theory, *Utilitarianism* is of unmatched utility. But the single work for which Mill is probably most renowned is *On Liberty* (1859). In that essay, Mill argues for a form of liberalism that seems incompatible with act utilitarianism but at home within, and possibly entailed by, rule utilitarianism.

Probably the most frequently quoted part of *On Liberty* is the emphatic paragraph in which Mill declares 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" (*Liberty*, XVIII: 223). Many parts of this claim bear close study, but for our purposes its most salient feature is its implication that not all happiness-maximizing acts are permissible: a happiness-maximizing act is impermissible if it would limit someone's liberty and could not be justified under the rubric of preventing harm to others.

Later in *On Liberty*, Mill reveals his opinion of the moral significance of various personal faults. Mill's language is characteristically delicate, but he basically sets up a hypothetical example involving a reckless, profligate, sex-obsessed drunk (*Liberty*, XVIII: 278). Of this person's many flaws, Mill writes the following:

the self-regarding faults previously mentioned ... are not properly immoralities ... and ... do not constitute wickedness. They may be proofs of any amount of folly, or want of personal dignity and self-respect: but they are only a subject of moral reprobation when they involve a breach of duty to others. (*Liberty*, XVIII: 279)

In this passage, Mill limits the scope of "moral reprobation." He similarly limits the scope of "moral disapprobation" – possibly the same idea – in a later passage (*Liberty*, XVIII: 281). These remarks imply that not all happiness-maximizing acts are obligatory: even if an act would maximize happiness, an agent may forgo it if doing so would not constitute a breach of duty to others. Of course, this last phrase makes everything turn on Mill's conception of our duties to one another, and if our duties to one another included the incessant maximization of happiness, then this liberal zone of freedom from moral censure would be perfectly consistent with act utilitarianism (as well as attenuated to the point of triviality, obviously). On the

contrary, however, Mill posits a circumscribed realm of our duties to one another by claiming that people do not even have a general right not to be harmed (*Liberty*, XVIII: 293), not to mention a general right that everyone else always maximize happiness. Mill revisits this question in *Utilitarianism* (*Utilitarianism*, X: 250).

We have seen that within the framework of Mill's liberalism, not all happiness-maximizing acts are obligatory and some are not even permissible. Thus, Mill's liberalism militates against interpreting him as an act utilitarian. But it arguably meshes nicely with rule utilitarianism, since its key elements – the presumption against interfering with anyone's liberty of action and everyone's personal zone of freedom from moral censure – would arguably be part of a happiness-maximizing system of rules. Indeed, Mill himself assures us that

I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions. (*Liberty*, XVIII: 224)

Liberals acknowledging “utility as the ultimate appeal” are likely to welcome the option of turning from act utilitarianism to rule utilitarianism, suggesting the latter as a more plausible reading of Mill's moral theory.

The compatibility of Mill's liberalism and his utilitarianism is a persisting question in Mill scholarship. This issue is treated seriously by Isaiah Berlin (2002: 236–7), Alan Ryan (1965: 621), D.G. Brown (1972: 150–3), C.L. Ten (1980: 9), Fred Berger (1984: 123–34), L.W. Sumner (2006: 187–92), Daniel Jacobson (2008: 175), and Wendy Donner (2009: 44) – though Fred Rosen dissents, arguing that Mill was unconcerned about “reconciling liberty and utility in the two essays on these topics” (2013: 134).

4.4. Supererogation

Mill's defense of liberalism is not the only important strand in his thought that denies the act-utilitarian claim that maximizing happiness is always obligatory. Another is his embrace of the idea that although morality may make many onerous demands on us, in many situations there remains the possibility, if the agent so

chooses, of “going above and beyond the call of duty” – of acting in a way that is morally commendable, but not morally required. For example, we might say this of someone who volunteers at a nursing home for twenty hours per week instead of spending that time on leisure activities. Common-sense morality leaves room for such “supererogatory” acts, but act utilitarian does not, since it implies that whenever an agent is not producing as much happiness as possible, she is acting wrongly. Act utilitarianism’s denial of the possibility of supererogatory acts is the source of one of the main objections to it – the objection that it is excessively demanding – and, interpretively, this issue can also be regarded as a litmus test for whether a certain view is compatible with act utilitarianism.

Mill seems firmly committed to thinking of morality in a way that leaves room for supererogation. In his 1865 essay on Auguste Comte, he writes that “There is a standard of altruism to which all should be required to come up, and a degree beyond which is not obligatory, but meritorious” (*Auguste Comte*, X: 337). Additional remarks along similar lines can be found in *Utilitarianism* (*Utilitarianism*, X: 246), an 1862 letter (Letter to George Grote, Jan 10, 1862, XV: 762), an 1867 letter (Letter to Henry S. Brandreth, Feb 9, 1867, XVI: 1234), and his 1869 review of Thornton’s *On Labour* (*Thornton on Labour and Its Claims*, V: 650–1).

Like Mill’s liberalism, his allowance for supererogation is not only inconsistent with act utilitarianism but also quite explicable in terms of rule utilitarianism. This is because the happiness-maximizing system of rules is probably less demanding than act utilitarian is, for two reasons. First, presumably the happiness-maximizing system of rules spreads the burden of maximizing happiness widely, instead of charging each individual with picking up all of the slack left by others. Second, the costs and benefits of any given system of rules are understood by rule utilitarians to include the costs of getting people to accept it, and less-demanding systems of rules have lower acceptance costs. The interpretive significance of the issue of supererogation is further discussed by Gaus (1980: 275) and Donner (2009: 40–4).

4.5. Evaluating Acts Based on Their Classes

Previously, I mentioned that Mill sometimes claims that we should consider the class to which a particular act belongs not because the question “What if everyone did that?” has any moral weight, but because it serves a fact-finding purpose: it helps to reveal the consequences of the act in question. But at other times, Mill suggests that the class to which an act belongs is more directly determinative of its rightness or wrongness.

Support for this idea is sometimes sought in the multiple occurrences of words such as “tend” and “tendency” in Mill’s statements of his moral standard, including the two occurrences of that word in the Greatest Happiness Principle (quoted earlier). It is sometimes thought that tendencies cannot be ascribed to individual acts, but only to kinds of acts. On this view, the Greatest Happiness Principle refers to kinds of acts rather than individual acts, and thereby implicitly expresses a form of rule utilitarianism rather than act utilitarianism (Urmson 1953: 37). But this argument is undercut by the observation that Mill attributed tendencies to individual acts, not just to kinds of acts, as discussed by Cupples (1972: 136–7), John Gray (1983: 29–30), Berger (1984: 68–9, 88–94), Crisp (1997: 103–5), and Brink (2013: 85–8).

We saw previously that act-utilitarian interpretations of Mill are supported by remarks that seem to recommend breaking a rule because of the consequences in the particular case. But rule-utilitarian interpretations are supported by a remark that seems to have the contrary import:

In the case of abstinences indeed – of 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 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.
(*Utilitarianism*, X: 220)

To be sure, some aspects of this passage make its upshot debatable. For example, Mill does not actually say that it would be wrong of the agent, after due

consideration, to go ahead with the act in question – he only says that the agent ought to be aware of certain considerations. And the “obligation” Mill mentions might be a felt *sense* of obligation, rather than a genuine obligation correlated with the act’s truly being wrong in the case at hand. These complications notwithstanding, the fact that this remark is treated as a serious challenge to act-utilitarian interpretations of Mill’s moral theory (Crisp 1997: 115–7, 1998: 124; Brink, 2013: 96–8) attests to the force that it is perceived to have in favor of rule-utilitarian interpretations. The thesis that the rightness or wrongness of an act is determined by the class to which it belongs is also suggested in two letters that Mill wrote later in the 1860s (Letter to George Grote, Jan 10, 1862, XV: 762; Letter to Henry S. Brandreth, Feb 9, 1867, XVI: 1234).

5. Sanction Utilitarianism

The two general forms of utilitarianism discussed so far – act and rule – are prominent contenders in the contest among contemporary ethical theories as well as leading candidates in the field of Mill interpretation. A third general form of utilitarianism attributed to Mill is not often proposed as an independently attractive moral theory, but can be regarded as a distillation and synthesis of some intriguing remarks in Mill’s writings. Accordingly, it is helpful, in considering this form of utilitarianism, to start with those remarks and then review the moral principles they suggest.

5.1. Mill on Wrongness and Punishment

In the fifth and final chapter of *Utilitarianism*, Mill undertakes an analysis of justice, in order to show that utilitarianism can provide a satisfactory account of it. Partway through the chapter, Mill arrives at the preliminary conclusion that, despite disagreements over the substantive content of justice, it is generally agreed that people can legitimately be punished if they act unjustly. But Mill immediately adds that this point does not explain how the obligation associated with justice differs from

moral obligation in general. 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. (*Utilitarianism*, X: 246)

Mill continues in this vein for just one paragraph before returning to his project of analyzing justice, but this brief digression into the connection between wrongness and punishment has proved to be influential. It is useful to read this paragraph alongside a closely related one found in a letter Mill wrote two years before the publication of *Utilitarianism* (Letter to William George Ward, Nov 28, 1859, XV: 649). Further helpful context is provided by Mill's remarks, in *A System of Logic*, characterizing morality as just one of the three "departments" of "the Art of Life" – along with "Prudence or Policy" and "Æsthetics" (*Logic*, VIII: 949). These remarks suggest that, for Mill, only some questions of value qualify as questions of morality, and it is natural to read Mill's remarks in *Utilitarianism* as suggesting that punishment – more precisely, the appropriateness of punishment – is the distinguishing factor.

5.2. Interpretations

Some scholars see this line of thought as supporting rule-utilitarian interpretations of Mill's moral theory (Urmson 1953: 37, 38; D. Miller 2010a: 85–8, 2010b: 52–7), but most see it as leading in a new direction. To refer to these novel forms of utilitarianism, it is convenient to note Mill's reference to "the penal sanction" and borrow Brink's term "sanction utilitarianism" (2013: 101).

The simplest forms of sanction utilitarianism start with the familiar ideas of moral rightness and maximizing happiness and simply insert the idea of the appropriateness of punishment as a conceptual intermediary between those two ideas. An example of such a view is the following:

An act is right if and only if it would maximize happiness not to punish people for performing it.

This view differs from act utilitarianism in virtue of allowing, in principle, that an act can be right without being happiness-maximizing (but it coincides with act utilitarianism when it is supplemented with the premise that it would maximize happiness not to punish people for performing all and only happiness-maximizing acts). Interpretations similar to this view include those of Mandelbaum (1968: 209–10n7), Jonathan Harrison (1974: 96), David Copp (1979: 84), Gray (1983: 31), Berger (1984: 65), John Skorupski (1989: 321), Brink (1992: 29; 2013: 101–2), and Crisp (1997: 129).

The foregoing view is an act-based form of sanction utilitarianism. Some forms of sanction utilitarianism are rule-based: they make the rightness or wrongness of an act dependent on rules as well as on the appropriateness of punishment. An example is the following:

An act is right if and only if it is allowed by the system of rules that it would maximize happiness to punish people for violating.

This view differs from ideal-code rule utilitarianism in virtue of allowing, in principle, that an act can be right without being allowed by the system of rules whose general acceptance would maximize happiness (but it coincides with ideal-code rule utilitarianism when it is supplemented with the premise that it would maximize happiness to punish people for all and only violations of the system of rules whose general acceptance would maximize happiness). One motivation for attributing a rule-based form of sanction utilitarianism to Mill is that he states in the letter mentioned above that “a true moral feeling [is] a feeling of pain in the fact of violating a certain rule” (Letter to William George Ward, Nov 28, 1859, XV: 649). Scholars proposing interpretations in the neighborhood of this view include David Lyons (1976: 109–11), Jacobson (2008: 163n10, 170n26, and 182–6), Jonathan Riley (2010: 90), and Macleod (forthcoming).

6. Conclusion

If act utilitarianism, rule utilitarianism, and sanction utilitarianism were cities, many scholars (as noted previously) would trace the location of Mill's moral standard to one of them, or at least a suburb of one of them. Some other scholars would agree that Mill's moral standard is somewhere in the region of those cities, while demurring from locating it in any one of them (see, e.g., Dryer 1969: cv; Sumner 1979: 111; Gaus 1980: 278; West 2004: 84–7, 2014: 68–70; Brown 2010: 16–29; Kitcher 2011: 199–205). Finally, a few other scholars would place Mill's moral standard far away, perhaps on an altogether different continent; a helpful overview of these eccentric readings is provided by Riley (2013: 347). It is possible that such wide-ranging disagreement about Mill's moral standard is an unavoidable consequence of the rich diversity of fruitful thoughts about utilitarianism and other areas of morality that can be found in Mill's writings.¹

Note

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