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UTILITARIANISM AND DISTRIBUTIVE JUSTICE

A Dissertation

by

THOMAS E. GILBERT

Submitted to the Graduate School of the
University of Massachusetts in partial
fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

June 1973

Philosophy



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Utilitarianism and Distributive Justice

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John Stuart Mill's utilitarian theory has been subject to criticism by philosophers, partly because of its alleged inability to account for intuitively compelling principles of justice. It is argued that Mill has been seriously misinterpreted and that a careful analysis of (primarily) On Liberty and Utilitarianism results in an interpretation of his theory which avoids these objections. A utilitarian theory is developed which is based on this interpretation and which, it is argued, Mill could have accepted.

After an account of familiar objections to utilitarianism concerning distributive justice, it is demonstrated that Mill's argument in Utilitarianism for a "qualitative pleasure distinction" is plagued with difficulty and that, even if successful, appeal to qualitative distinctions among pleasures for determining the morality of actions would result in additional problems for utilitarian theory concerning distributive justice. These additional problems are avoided by demonstrating that Mill did not regard his

argument for a qualitative pleasure distinction as an argument for a necessary consideration--in addition to quantity --for determining the morality of actions; rather, that he is more plausibly interpreted as having considered qualitative pleasure distinctions only in a prudential context--for appeal to in determining the prudential rightness and wrongness of actions. Consequently, contrary to what has often been supposed, Mill's argument for a qualitative pleasure distinction cannot be regarded as a major departure from a utilitarian theory like Bentham's.

Next, it is demonstrated that Mill, as an empiricist, made a distinction between what is called "metaphysical" and "non-metaphysical" rightness; recognition of this distinction, along with additional considerations, makes it obvious that Mill's utilitarian theory is committed to a theory of intrinsic value which holds that "happiness" has intrinsic value, where the substantive content of happiness is to be regarded as unknown. Consequently, Mill (unlike Bentham) does not regard 'pleasure' as equivalent to 'happiness,' and so subscribes to a eudaemonistic, not a hedonistic, utilitarian theory. A principle of utility is developed which corresponds to each kind of rightness; it is then argued that justice can plausibly be associated only with the principle based on non-metaphysical rightness; that the theory should be rejected or accepted only by considering justice in accordance

with this principle; and that Mill's theory has erroneously been rejected because only the other principle of utility--based on metaphysical rightness--has been considered.

To explicate this new (non-metaphysical) principle of utility, it is argued that Mill regarded 'unjust actions' as 'violations of rights' and associated our moral obligation to be just with the two necessary conditions for happiness--the right to life and the right to liberty.

With the principle of utility fully explained, it is shown how the utilitarian theory which has been developed can account for intuitively acceptable principles of distributive justice. A non-utilitarian theory of social justice propounded by William K. Frankena is shown to be derivable from the utilitarian theory which has been developed, and attention is focused on the objections and "Canons of Distributive Justice" in Nicholas Rescher's Distributive Justice. Finally, it is argued that David Lyons' concept of "fair procedures" (from his Forms and Limits of Utilitarianism) is--contrary to his claim--a principle of distributive justice that can be derived from our utilitarian theory, and employed to resolve additional problems concerned with distributive justice.

A brief addendum explains how the theory can function as either an act- or a rule-utilitarian theory.

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C H A P T E R I
DISTRIBUTIVE JUSTICE AS A PROBLEM FOR UTILITARIANISM

Section I

Some Traditional Problems and Their Cause

Historically, most critics of utilitarianism have alleged that one of its major defects is an inability to account for intuitively acceptable principles of justice. Among the various kinds of justice, the principles of distributive justice have been central to this claim. As it will be maintained that the source of any difficulty regarding distributive justice is inherent in "classical" formulations of the principle of utility, it is desirable to begin by explaining what is meant by categorizing a formulation of the principle of utility in this way.

A principle of utility is "classical" if it is formulated as either a hedonistic or an ideal principle. Thus, the formulation of the principle is such that the utility of an action is determined by its production of some intrinsic good(s), where the latter is something substantive which always serves as the criterion for determining whether an action is right, wrong, or obligatory. As a hedonistic principle, only pleasure (happiness) is regarded as intrinsically good; as an ideal principle, there is more than one intrinsic good (perhaps including pleasure). In the former, then, pleasure is always appealed to for determining the

utility of any action; in the latter, whatever intrinsic goods are appealed to are determined by the particular ideal theory employed and are the same for each case of determining the utility of any action.

A "classical" formulation of the principle of utility may be an act- or rule-utilitarian principle. Thus, for example, as an act-utilitarian principle of obligation, it might be formulated as follows: "An action ought to be done if and only if (among all alternative actions which the agent is capable of choosing) it maximizes the total amount of intrinsic good of those persons affected by the action, counting each person as one and no person as more than one (i.e., insofar as it maximizes 'the greatest good of the greatest number')." And as a rule-utilitarian principle: "An action ought to be done if and only if prescribed by a utilitarian rule, a rule being a utilitarian rule if and only if acting in accordance with it in all those situations in which it applies tends to maximize the overall good of those to whom it applies, counting each person as one and no person as more than one (again, 'the greatest good of the greatest number')." Discounting difficulties which, for instance, might be thought to stem from a consideration of the distinction between an act being a prima facie or an absolute obligation, in addition to neglecting numerous variations of both formulations of the principle, this somewhat general characterization will suffice.

It is because utilitarians have maintained that justice is encompassed by principles of obligation similar to these which has caused much of the criticism of the theory.¹ Thus, distributive justice has been held to be a problem for both act- and rule-utilitarianism. Brandt, for example, says of act-utilitarianism, "The act-utilitarian thesis is in conflict with the fact that we have certain obligations connected with social and economic justice....On this question, however, the act-utilitarian must say that any distribution is equally satisfactory, as long as the total

¹See John Stuart Mill, "Utilitarianism," The Collected Works of John Stuart Mill, Vol. X, Essays On Ethics, Religion and Society, Ed. J. M. Robson (Toronto: University of Toronto Press, 1969), Chapter V, pp. 240-259. Also, Richard B. Brandt, Ethical Theory (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), pp. 395-6. For example, it is clear that Mill thought that, because of their long-term effects, just actions must be regarded as obligatory. In distinguishing "justice" from "the other obligations of morality," he speaks of the former as those "duties of perfect obligations...in virtue of which a correlative right resides in some person or persons" (p. 247, "Utilitarianism"). Rights, of course, are justified in terms of their utility--see, for example, p. 10 of On Liberty (ed. Alburey Castell, New York: Appleton-Century-Crofts, 1947) and p. 250 of "Utilitarianism"--and so we would have something like this: "Something is established by utilitarian theory as a right if, and only if, establishing it as a right is more productive of the general happiness than not doing so." Consequently, Mill might say, roughly, that "an action is just if, and only if, it is in accordance with the rights of those affected by the action." The relationship between rights and justice is actually more complicated than this. It is the purpose of Chapter II in what follows to formulate a principle of utility which can account for justice, of Chapter III to explicate a part of Mill's theory of rights, and of Chapter IV to demonstrate how his utilitarian theory can account for distributive justice.

amount of joy is undiminished."² And with regard to rule-utilitarianism, he states, "The point of primary difficulty for the rule-utilitarian appears to be the implications of his theory for the distribution of welfare. The rule-utilitarian, we recall, approves of any rule for distributing welfare so long as it does not bring about less welfare than some alternative rule."³

Stating the problem somewhat more concisely, John Hospers asserts:

...a possible conflict arises between the utilitarian ideal--even that of rule-utilitarianism--and the requirements of justice. For the acts in act-utilitarianism and the rules in rule-utilitarianism have one end in mind: the production of the largest possible amount (quantity) of intrinsic good. But does not justice require something additional that is not taken into account thus far at all, namely an equal distribution of that intrinsic good?⁴

Hospers later turns to the question as to whether there are occasions on which equality is not enough to guarantee justice, and goes on to consider what he regards as "the most important strand in the concept of justice," the question of justice and deserts (rewards and punishments). He emphasizes that there are times when a distribution is to be regarded as

²Brandt, p. 389.

³Brandt, p. 403.

⁴John Hospers, Human Conduct: An Introduction to the Problems of Ethics (New York: Harcourt, Brace and World, Inc., 1961), pp. 424-25.

unjust, not because there are unequal allotments but because they are not given in accordance with what is deserved.⁵

Hospers' reference to deserts calls attention to an important point--viz., that distributive justice conceived as narrowly egalitarian is insufficient--that legitimate claims must be accounted for by any theory of distributive justice which purports to be satisfactory. Thus, the claim made by many defendants of the principle of utility (including Mill) that it does provide for the distribution of good insofar as it is always to be understood as formulated in terms of "the greatest good for the greatest number" is thought to be inadequate as a defense, even if successful; for the only principle of distributive justice that could be accounted for by such a qualification would be egalitarian. As it turns out, however, even on this latter point it has been asserted that the principle is ambiguous.

Thus, in regard to "the greatest number" part of the phrase, Bentham's insistence that each person was to count for one and only for one might be thought to insure utilitarian theory as egalitarian. But, although it seems clear that we are to consider everyone's happiness in determining the total quantity of intrinsic good for a given action, it is not at all apparent what we are to do when faced with a choice between two actions, one of which will result in a

⁵Hospers, p. 429.

greater total quantity of happiness via an unequal distribution and another which, though it will result in an equal distribution, will produce a lesser quantity of total happiness. As it is claimed that neither Bentham nor Mill provided explicit directions as to which action we are to choose in such a situation, it seems reasonable to conclude that their qualification, "for the greatest number," was merely meant to insure that every person affected by the prospective action be included in calculations of the final quantity of happiness.⁶

Rescher attempts to elucidate the problem by insisting that "the principle of utility is a two-factor criterion."

Suppose that some three particular persons, Messrs. A, B, and C, can be given the utility shares (a), (b), and (c) respectively, in accordance with either Scheme I or Scheme II:

<u>Share</u>	<u>Scheme I</u>	<u>Scheme II</u>
(a)	3 units	2 units
(b)	3	2
(c)	3	6

Which scheme represents the superior mode of distribution? Scheme II yields "the greatest good": it distributes ten units as compared with nine of its rival. Scheme I yields a greater advantage in goods for "the greatest number": two persons gain by its adoption and only one loses. The example brings out the fact that the principle of utility is a two-factor criterion ("greater good," "greater number"), and that these two factors can in given cases work against one another. There is thus nothing in the principle of utility to help us in making--let alone in dictating

⁶Hospers, pp. 425-26.

a particular outcome of--a choice between Scheme I and Scheme II. The principle unqualified is patently incomplete as an effective means for deciding between alternative distributions of a good.⁷

Although Rescher's general point is merely that the principle of utility is unable to choose between alternative distributions in at least some cases, if we assume (as I think Rescher does)⁸ that only one of the schemes in the example is just, this point--if justified--must be regarded as a serious criticism of the theory.

At this point, then, the underlying problem is that there may be conflicts between the principle of utility formulated (as it traditionally has been) in terms of some particular conception of happiness as the only intrinsically good end and those principles of distribution which we regard as intuitively acceptable. As evidenced above,⁹ this conflict apparently arises in spite of any claims that Bentham and Mill meant to insure that the principle provided for distribution in at least the egalitarian sense;

⁷Nicholas Rescher, Distributive Justice (New York: The Bobbs-Merrill Company, Inc., 1966), p. 25.

⁸I presume that Rescher's preference is Scheme I, though he is not explicit about it. However, even if we assume that both distribution schemes in the example are equally just, given the supposed difficulty Rescher is concerned to point out here, it would not be difficult to imagine just and unjust distribution schemes which the principle of utility would be unable to distinguish.

⁹pp. 5, 6, & 7.

and although it has been suggested that something like Brandt's theory of "universalistic impersonal pluralism"¹⁰ might guarantee this aspect of justice for utilitarian theory by counting "equality of welfare" as an intrinsic good, this proposal (and others like it) must be rejected as unsatisfactory, for reasons to be advanced below. Further, if along with Hospers it is admitted that there are other acceptable principles of distributive justice which attempt to take into account legitimate claims (based on merit, need, productivity, etc.), it seems even more obvious (though it won't be argued for here) that classical formulations of the principle of utility cannot be made to square with them in all those instances in which it seems intuitively evident that it should. It has not, then, been unfairly alleged that the principle of utility, as classically formulated, is compatible with any distribution so long as the quantity of intrinsic good which results is at a maximum. It is time to consider the cause of this conflict and eventually to consider a way of avoiding it.¹¹

¹⁰Brandt, pp. 355, 356, 395-6, 500.

¹¹There are, of course, many other significant objections raised against utilitarianism which are based on claims of conflict with principles of distributive justice, e.g., the objections found in numerous articles by John Rawls and his book A Theory of Justice (The Belknap Press of Harvard University Press, 1971). However, the purpose of this section required that we consider only a few in order to point out that utilitarian theory is subject to these difficulties because they are inherent in classical formulations of the principle of utility. In point of fact, these few can be

As previously noted, the general cause of the conflict is evident; it must be admitted that so long as the principle of utility is formulated in terms of "absolute intrinsic value," in the manner in which it traditionally has been, the conflict between it and the principle(s) of distributive justice is unavoidable and inevitable. Therefore, so long as it is agreed that incompatibility with intuitively acceptable principles provides sufficient reason for rejecting an ethical theory (there are, of course, many other conflicts between utilitarian theory and other intuitively acceptable notions which are not concerned with distributive justice), it appears that the rejection of utilitarianism is necessitated for the reasons advanced above.¹²

regarded as sufficient grounds for rejection of classical formulations of the theory. Other objections (e.g., Rawls'), as well as some of the above, will be dealt with in more detail in a subsequent chapter.

¹²It is to be noted that reference to "intuitively acceptable principles" here and elsewhere is not to be construed as evidence of a commitment to a particular epistemological theory as to how we come to know or regard certain ethical propositions as true. On the contrary, it is merely used as a convenient expression for the purpose of recognizing that there are some ethical propositions--among them principles of distributive justice--with which many philosophers have maintained that any acceptable moral theory should not be incompatible. As the latter claims are merely assumed to be reasonable requirements of acceptable moral theories, for the purpose of eventually demonstrating the acceptability of a version of utilitarianism in this regard, any epistemological issues are to be regarded as superfluous to the major concern of the dissertation.

Section II

The Qualitative Pleasure Distinction--
Source of a New Problem

There are, in addition, other problems which have plagued classical formulations of the theory which bear directly or indirectly on the problem of distributive justice. One of the historically more important and most discussed merits consideration--the problem of qualitative differences among pleasures. With respect to this problem it will be demonstrated in Sub-section II-A that a qualitative ranking of pleasures is an unlikely possibility. In Sub-section II-B the much more significant point will be established that, contrary to what seems generally to have been supposed by philosophers, even if a qualitative hierarchy were possible, its use would not only not represent an improvement of the theory but would, instead, result in additional theoretical difficulties regarding distributive justice.

Sub-section II-A: Mill's problematic argument for the qualitative pleasure distinction. Bentham regarded all pleasures as qualitatively indistinct. Thus, in saying,

By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness (all this in the present case comes to the same thing) or (what again comes to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness to the party whose interest is considered,¹³

¹³Jeremy Bentham, "An Introduction to the Principles of Morals and Legislation," Collected Works of Jeremy Bentham, ed. J. H. Burns and H. L. A. Hart (London: University of London, The Athlone Press, 1970), p. 12.

he had in mind a concept of utility that was susceptible to quantitative determination by way of his "hedonistic calculus."

In addition to all the familiar objections raised concerning the practical (perhaps theoretical) difficulties involved in attempting to subject pleasures and pains to quantitative measurement, it was this severe limitation on the concept of utility which resulted in one of the presumably more damaging criticisms to be leveled against utilitarianism. It was the assertion that utilitarianism was a "pig philosophy" (and all this involves) which prompted Mill to respond early in the second chapter of "Utilitarianism" with the assurance that "qualitative differences" must also be considered in any consideration of utilities:

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 others. It would be absurd that, while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone.¹⁴

Though it seems apparent that a merely quantitative approach to pleasures and pains is insufficient, the insistence that qualitative distinctions are to be accommodated as well is also riddled with seemingly unresolvable difficulties. On the one hand, there is the problem of the method for deciding which pleasures are of the highest quality. If

¹⁴Mill, "Utilitarianism," p. 211.

solved, it would be possible to list pleasures in a descending order of quality, such that those higher on the list are qualitatively superior to those which are lower. Such a ranking can be referred to as a "qualitative hierarchy" of pleasures.

Mill's proposal for setting up such a "hierarchy" is set forth in "Utilitarianism:"

Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are completely acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity as to render it, in comparison, of small account.¹⁵

Based on this passage and the context in which it appears in "Utilitarianism," Mill's reasoning can be made explicit by the following deductive argument:¹⁶

¹⁵Mill, "Utilitarianism," p. 211.

¹⁶What follows in the discussion of this passage is only what I regard as a plausible account of how Mill would have argued had he intended to establish a qualitative hierarchy of pleasures, and an account of the serious difficulties encountered in doing so. As I later argue, in Section I of the next chapter, to suppose that setting up such a hierarchy is what Mill had in mind is to accept a false interpretation of his work. My position in this regard was discussed with and corroborated by Professor Ann Brentlinger, a member of the philosophy department of the University of Massachusetts at Amherst.

- (1) If all or almost all competent judges give a decided preference to a pleasure, then it is more desirable (i.e., of greater intrinsic worth) than one to which they do not give a decided preference.
- (2) Given any range of kinds of pleasures, all or most all competent judges will agree upon a qualitative hierarchy in which, generally, intellectual pleasures are decidedly preferred to sensual pleasures.
- (3) Therefore, on the basis of (1) and (2), the general category of intellectual pleasures is intrinsically better than that of sensual pleasures.

If we interpret the passage in this way, both premisses are objectionable. It is plausible to interpret Mill as intending that the consequent of premise (1) is to be read, "then it is certain that it is more desirable..." If so, then, if Mill did not regard competent judges as infallible authorities (there is good reason to believe this, as seen below)¹⁷ it is clearly possible on at least some occasions for the antecedent of (1) to be true and the consequent false. In this case, the argument, although valid, is unsound. To state this somewhat differently, premise (1) is not known to be true on the general ground that it constitutes an appeal to authority. Although this would not be a justifiable

¹⁷The reference is to what follows in the rest of this paragraph, and to the discussion of infallibility in this work, pp. 17, and 93-96.

objection if Mill held that every competent judge was an infallible authority, it seems clear that he did not subscribe to the position since he conceded that it may be the case that only "most" of those who qualify as competent judges may be in agreement, in which case some competent judges are mistaken.¹⁸

However, even if (1) is true,¹⁹ premise (2) is regarded by Mill either as a necessary analytic truth or as empirically true. If held as a necessary truth, the argument is circular; if held as empirically true, there is no good reason for asserting that (2) is known to be true and the argument, although valid, is unsound.

¹⁸This implies that Mill was not subscribing to an "ideal observer" theory, in which part of what it means to be an "ideal observer" is to have infallible knowledge. It might also be noted--though it won't be argued--that Mill may have allowed premise (1) to be replaced by a definition. Thus, where X and Y are variables which range over pleasures and the predicate is the relational predicate, "has more intrinsic worth than," 'X has more intrinsic worth than Y' =df 'X is preferred to Y by a majority of competent judges.' Again, it can be objected that an appeal to authority (in the above sense) is unacceptable as a method for defining predicates of this kind. One might also regard this as a paradigm instance of what G. E. Moore would have called a "naturalistic fallacy," bearing in mind that this has been subjected to a great deal of criticism, and should not be appealed to without further argument. It is only to be noted that, if Moore's point is defensible, this constitutes an additional reason for rejecting the definition.

¹⁹Premise (1) has a greater chance of being true if its consequent is weakened to read, "then it is probable that it is more desirable." As an empiricist who held that general empirical propositions cannot be completely confirmed, it is perhaps more fair to attribute this reading to Mill.

It seems most reasonable to interpret Mill as intending (2) as empirically true. If so, he may have meant by 'competent judge' something like (definition D_1) 'anyone having experienced both sensual and intellectual pleasures who is equally capable of appreciating and enjoying both.' Yet, there is some reason to believe that he must have intended (2) to be regarded as analytically true, in which case by 'competent judge,' he was operating with something like (definition D_2) 'anyone having experienced both sensual and intellectual pleasures who is equally capable of appreciating and enjoying both, and who gives decided preference to the latter.'

Evidence that (2) is to be regarded as analytically true is found in "Utilitarianism." For example, anyone who has experienced both sensual and intellectual pleasures, but who chooses sensual over intellectual pleasures, can always be accounted for by Mill as no longer being capable of appreciating and enjoying both, because of having lost the "capacity for the nobler feelings."

It may be further objected, that many who begin with youthful enthusiasm for everything noble, as they advance in years sink into indolence and selfishness. But I do not believe that those who undergo this very common change, voluntarily choose the lower description of pleasures in preference to the higher. I believe that before they devote themselves exclusively to the one, they have already become incapable of the other. Capacity for the nobler feelings is in most natures a very tender

plant, easily killed, not only by hostile influences, but by mere want of sustenance....²⁰

There is evidence, then, to suggest that Mill has developed a theory such that no evidence will be allowed to count against it. Such a theory is held as a necessary truth; if so, Mill is presupposing what he is trying to prove and so has no need for an appeal to majority decision. Consideration of another passage from "Utilitarianism" renders the point more convincing. Here, regarding the general qualitative distinction between sensual and intellectual pleasures, he clearly seems to be explaining away any dissidents (among those satisfying D_1) as men who are not "equally acquainted with" or not "equally capable of appreciating and enjoying" both.

Now it is an unquestionable fact that those who are equally acquainted with, and equally capable of appreciating and enjoying, both, do give a most marked preference to the manner of existence which employs their higher faculties...no intelligent human being would consent to be a fool, no instructed person would be an ignoramus, no person of feeling and conscience would be selfish and base, even though they should be persuaded that the fool, the dunce, or the rascal is better satisfied with his lot than they are with theirs.²¹

This passage clearly indicates that, for Mill, any competent judge must satisfy the two conditions, "equally acquainted with" and "equally capable of appreciating and

²⁰Mill, "Utilitarianism," pp. 212-13.

²¹Mill, "Utilitarianism," p. 211.

enjoying" both intellectual and sensual pleasures. In addition, "it is an unquestionable fact" that those who satisfy both these conditions "do give a most marked preference to the manner of existence which employs their higher faculties" (i.e., to intellectual pleasures) and so satisfy a third condition. The "unquestionable fact" that those who satisfy the first two conditions also satisfy the third looks suspiciously like the assertion of a necessary relation. This, in addition to his readiness to explain away (as an incompetent judge) anyone who apparently satisfies the first two conditions but not the third (as noted previously), lends much support to the hypothesis that Mill was operating with definition D_2 and so considered premise (2) as analytically true.

In any event, the acceptance of D_2 would represent a question-begging procedure and must be rejected. Instead, premise (2) can only plausibly be regarded as an empirical proposition. In this case, however, it is not known to be true, so the argument is unsound. Without substantial empirical data, Mill's position is mere conjecture. Without this kind of evidence, it is not at all obvious that those who have experienced both sensual and intellectual pleasures (competent judges by D_1) would, in fact, generally prefer the latter; i.e., it is not at all obvious, contrary to Mill's claim, that premise (2) would not turn out to be empirically false. There is, in addition, a further difficulty.

It is always possible that, for some reason, the judgment of competent judges (D_1) may become impaired. To engage the imagination for a moment, it is always possible (for example) for a mad scientist or planetary aliens to affect unsuspecting minds through drugs or the sinister employment of psychic laws. In possible cases such as these, that which is by hypothesis presently preferred by all or most competent judges may change from the general category of intellectual pleasures to the general category of sensual pleasures. Consequently, if (2) is to be read "all or most competent judges will always agree...", it is not known to be true and the argument is unsound. It is most plausible to suppose that this is the reading Mill had in mind. If (2) is read "all or most competent judges presently agree...", then the argument is uninteresting (even if (2) is true), given that which Mill was trying to prove, and that he was attempting to construct a qualitative hierarchy of pleasures. Assuming the truth of premise (1),²² we would have to conclude that the intrinsic worth of pleasures may change from time to time; that is, we would have to allow that any presumed present superiority of intellectual over sensual pleasures may change at some time in the future.

However, it appears that the most damaging blow to

²²In fact, given the previous supposition that Mill's competent judges are not infallible, it is possible that they are presently deluded; this, then, constitutes an additional reason for rejecting premise (1).

Mill's argument results from the fact that he appeals to a majority decision among competent judges as an acceptable means for setting up his qualitative hierarchy:

On a question which is the best worth having of two pleasures, or which of two modes of existence is the most grateful to the feelings, apart from its moral attributes and from its consequences, the judgment of those who are qualified by knowledge of both, or, if they differ, that of the majority among them, must be admitted as final.²³

This means that what Mill really seems to have in mind is not premise (2), which refers to all or most competent judges, but a much weaker premise, which we can refer to as (2') and which can now be substituted for (2) in the argument above:

(2') Given any range of kinds of pleasures, the majority of competent judges will agree upon a qualitative hierarchy in which, generally, intellectual pleasures are decidedly preferred to sensual pleasures.²⁴

This latter decision procedure, which Mill himself resorted to (after realizing the unlikelihood of unanimity or near unanimity of preference, no doubt) is unacceptable for one compelling reason--it is too weak to support the conclusion that "the general category of intellectual pleasures is intrinsically better than that of sensual pleasures."

²³Mill, "Utilitarianism," p. 213.

²⁴Premise (1) should also be replaced by premise (1'), which reads "If the majority of competent judges...."

Appeal to majority decision means that one is obliged to accept decisions made by one or very few more than half of the competent judges consulted. In cases like this, in which the majority is small, this represents inductive evidence too weak for confirming final judgments about the intrinsic worth of pleasures. For example, it is theoretically possible that the majority of competent judges could be sensualists in a 51% to 49% vote on a borderline case regarding a sensual and a non-sensual pleasure. This does not seem at all to be a sufficient reason why anyone should consider the one as better than the other.²⁵ Mill would probably not abide by such a decision with regard to particular pleasures either. However, if one rejects the evidence as too weak for supporting judgments about the quality of particular pleasures, there appears to be no additional reason for accepting evidence like this as sufficient for confirming a more general conclusion with respect to the quality of the general categories of intellectual and sensual pleasures.

It now appears that the conclusion that "the general category of intellectual pleasures is intrinsically better than that of sensual pleasures" should not be accepted on the basis of (2'). Of course, as indicated in the example in the previous paragraph, the same conclusion is applicable

²⁵The rejection of premise (1') follows for the same reason. In addition, previous arguments for rejecting premise (1) are also applicable to (1').

to any decisions made by a majority of competent judges with respect to particular pleasures in either of the general categories of intellectual or sensual pleasures.

It has previously been argued that an appeal to authority is unacceptable as a method for making judgments about the intrinsic worth of pleasures. However, even if it were acceptable, without unanimous or near unanimous agreement concerning the position of pleasures on a qualitative hierarchy, it would seem to be much more reasonable either to suspend judgment or to devise some other method for deciding. And if Mill would not have accepted decisions made by small majorities, it should be noted that to suspend judgment would be to maintain that those pleasures being considered are to be regarded as qualitatively indistinct. Consequently, agreeing to a suspension of judgment in those cases in which there is not unanimous or near unanimous agreement could possibly result in the conclusion that even a general qualitative difference between intellectual and sensual pleasures cannot be established, thereby rendering impossible the attempt to establish a qualitative hierarchy of even general dimensions.

If, as has been argued, subscribing to Mill's position--appeal to majority decision--is unacceptable; if, that is, mere majority decisions should be regarded as insubstantial grounds for accepting conclusions regarding differences in intrinsic value; and if other methods for establishing

these differences are unknown, we are left with the conclusion that the problem of setting up a qualitative hierarchy appears to be insurmountable.

Before concluding this subsection, one more problem in this area warrants some attention. It is not clear whether Mill wanted to set up a qualitative hierarchy for particular pleasures or whether he merely meant to distinguish between the general categories of intellectual and sensual pleasures.²⁶ However, if he did intend to assign a qualitative ranking to particular pleasures and if the notion of competent judges is defined by D_1 rather than D_2 , Mill's insistence that we consult competent judges could result in something like the following possible situation. With respect to a certain pleasure, 25% of the competent judges agree that it should occupy a certain place high in the qualitative hierarchy, 25% agree on a lower ranking somewhere above the middle, 25% agree on the middle and 25% on a place somewhere below the middle. Suspension

²⁶I think, however, there is reason to suppose that Mill was interested in ranking particular pleasures and not just distinguishing between the general categories of intellectual and sensual pleasures. For example, he clearly seems to be referring to particular pleasures when he says, "On a question which is the best worth having of two pleasures...the judgment of those who are qualified by knowledge of both, or, if they differ, that of the majority among them must be admitted as final." Also in the same paragraph, when arguing that the same method must be used for quantitative determinations, he speaks of particular pleasures and pains. "What means are there of determining which is the acutest of two pains, or the intensest of two pleasurable sensations, except the general suffrage of those who are familiar with both?" (Utilitarianism," p. 213).

of judgment in this case would not result in any decision as to where the pleasure should be placed, and the serious problem that results in a situation like this is one of conflicting qualitative hierarchies.²⁷ This is most undesirable, for we are left with an intolerable situation in which the only recourse (enabling us to decide among alternative hierarchies) would seem to be an appeal to the principle of utility. Here, however, we are left with the problem with which we began--viz., how to decide which kinds of pleasures are intrinsically better than others, so that we have a principle that can be appealed to for determining the morality of actions. Clearly, if one were to argue that one ranking is to be preferred to another on the basis of what the various pleasures in the list lead to (e.g., to argue that the qualitatively superior pleasures are those associated with what is better, such as the intellect or beneficent feelings toward one's fellow man), this would be to suggest abandonment of utilitarianism in its hedonistic (monistic) form and to urge, instead, the adoption of a variety of idealism. Before turning to a brief consideration of the latter, however, we must note the theoretical

²⁷This problem would arise every time there was not a majority agreement as to where a particular pleasure should be ranked. However, it would also arise when only a small majority was in agreement; if (as has been argued) appeal to mere majority decision is unacceptable as a method for establishing qualitative pleasure distinctions. Consequently, as noted above, even the attempt to establish a general qualitative distinction between intellectual and sensual pleasures could result in conflicting qualitative hierarchies if 50% or only a small majority preferred one to the other.

problems incurred if a qualitative hierarchy were plausible and something appealed to when determining the morality of actions.²⁸

Sub-section II-B: theoretical objections to the qualitative pleasure distinction from the standpoint of distributive justice. Although it has been shown that the proposal to establish a qualitative hierarchy of pleasures is, for the most part, untenable, if it were successfully established,

²⁸Before completely abandoning this topic, however, it is worth mentioning the somewhat enigmatic objection made by G. E. Moore (Principia Ethica /Cambridge: The University Press, 1968/, p. 78) "that Mill's admissions as to quality of pleasure are either inconsistent with his hedonism, or else afford no other ground for it than would be given by mere quantity of pleasure." But rather than consider this in any detail--or a similar charge of inconsistency by Henry Sidgwick (Outlines of the History of Ethics /Boston: Beacon Press, 1960/, p. 247)--it is only necessary to note in passing that if this objection were spelled out and carefully examined, it might constitute another problem for the move from "quantity" to "quality" and one which, even if found to be unwarranted, would still leave us with the problems noted above. It is, however, worth noting a recent and interesting article by Ernest Sosa ("Mill's Utilitarianism," Mill's Utilitarianism: Text and Criticism, ed. James M. Smith and Ernest Sosa /Belmont, Calif.: Wadsworth Publishing Co., Inc., 1969/, pp. 154-172) in which he claims to have successfully defended Mill against this objection. He claims that Mill never really left off talking about quantity when he turned to a consideration of supposed qualitative differences between pleasures but merely meant by the latter distinction that differences of degree (degrees of quantity) become real differences in kind. "...the passage under scrutiny is quite in harmony with the interpretation of qualitative pleasure differences as basically differences in degree" (Sosa, p. 162). This is an interesting and quite possibly a plausible argument, but it seems apparent that, granting Sosa's interpretation, we are once again left with the problem of attempting to determine how to decide when "differences in degree" are to be taken as constituting "qualitative pleasure differences."

the most serious problem would be the theoretical difficulties which would result from appealing to it as part of the process of determining the morality of actions.²⁹ As a result, Mill's alleged insistence on an appeal to a qualitative dimension of pleasures, in addition to quantity, cannot be regarded as constituting a desirable amendment to a theory like Bentham's or as a necessary condition for its acceptability.

Theoretical difficulties become apparent when we consider something like the following possibility: One is faced with a choice between Acts A and B, both of which (let us suppose) would result in the same quantity of pleasure produced, but where the consequence of choosing A will be that 100 people will have some kind of intellectual pleasure whereas the consequence of effecting B will be that a different group of 100 people will have the same amount of sensual pleasure. Consulting a qualitative hierarchy which differentiates, at least generally, between intellectual and sensual pleasures and which ranks the former as intrinsically superior to the latter, one would be compelled by an act-utilitarian theory to choose A.³⁰

²⁹The "morality of actions" referred to is the morality of other-regarding, non-prudential actions.

³⁰The theory employed here is an act-utilitarian theory of the kind that can be attributed to Mill. I am purposely avoiding becoming involved at this point with the claim made by J. O. Urmson ("The Interpretation of the Moral Philosophy of J. S. Mill," Philosophical Quarterly, 3, [1953], pp. 33-39) that Mill was, in actuality, a rule-utilitarian. As implied in Section I of this chapter, I am confident that

The outcome could be the same if the group affected by A consisted of only a few while the total number of those in the other group was a good deal higher, so long as the quantity of total pleasure produced by either action remained the same.³¹ The example can be changed somewhat if we remember that Mill can perhaps plausibly be interpreted as saying that qualitative considerations may sometimes override quantitative considerations;³² consequently, that consulting a qualitative hierarchy may sometimes require that one choose that act among the alternatives which produces the least (or not the greatest) amount of pleasure. Thus, in the same example, if B produced 1000 units of pleasure and A produced only 900, it might still turn out to be the case that A should be chosen (especially so, we

the same problems regarding distributive justice arise for classical rule-utilitarian formulations as well.

³¹The outcome could be the same, that is, if it's possible that on some occasions the superior quality of a pleasure produced by an action can override an action affecting a larger number of people which produces the same quantity of overall pleasure but pleasure of an inferior quality. Adhering rigidly to a qualitative hierarchy when the quantity of overall pleasure produced is the same, in this case would seem to have the undesirable result that the number of those affected by alternative actions is not a significant consideration. This, however, is a major difficulty which I do not wish to consider further at this time. It is only important to note that it does seem to pose a serious difficulty for appeal to a qualitative hierarchy under these conditions.

³²Mill, "Utilitarianism," pp. 210, 211, 213, and (in particular) 214.

might imagine, if the kind of sensual pleasure B produced could be categorized as one of a sadistic nature). In any of these cases, the result of consulting the qualitative hierarchy is that the act which produces the intellectual pleasure is the one that must be chosen.

It is not at all difficult to realize that the requirement that one consult a qualitative hierarchy sometimes necessitates decisions (like those above) which involve a serious kind of injustice to those whose pleasure preferences are rejected. This is particularly evident if we remember that the qualitative hierarchy was developed after consulting, as competent judges, those "who are equally acquainted with and equally capable of appreciating and enjoying both" sensual and intellectual pleasures. Because it is a safe assumption that there are few capable of qualifying, the final decision as to what kinds of pleasures are to be given decided preference in the hierarchy is up to only a few, with the result that the desires of the great majority of people are passed over in deference to the preferences of a minority. Even those who qualify as competent judges but are not part of the majority decision with regard to a particular pleasure must have their preferences rejected in situations similar to those described above.

In the example in which A and B produce the same quantity of pleasure or in which B produces only slightly more pleasure than A, A is selected as the right action on the

ground that A's consequences would have been the preference of competent judges. The pleasure preferences of those who would have experienced pleasure if B had been chosen were neglected in establishing the qualitative hierarchy that was appealed to in this situation and are consequently neglected in this instance of its application. As will become more apparent in that which follows, this constitutes a serious kind of injustice.

It should be noted that it is not being claimed that qualitative considerations always override quantitative considerations. Thus, in the above example, if A will produce 900 units of pleasure, but B will produce 5,000, it seems obvious that, ceteris paribus, B should be the action chosen, even though it produces the qualitatively inferior pleasure. It is only important to note that there are situations (like those constructed above) in which A is chosen only because it ranks qualitatively higher than B, and that these possibilities are sufficient to demonstrate the problem.

In order to appreciate the problem involved in these examples, it must be noted that Mill correctly acknowledged that some people, for one reason or another, are not capable of enjoying or appreciating the higher kinds of (intellectual) pleasures:

Capacity for the nobler feelings is in most natures a very tender plant, easily killed, not only by hostile influences, but by mere want of sustenance; and in the majority of young persons it speedily dies away if the occupations to which their

position in life has devoted them, are not favorable to keeping that higher capacity in exercise. Men lose their intellectual tastes, because they have not time or opportunity for indulging them; and they addict themselves to inferior pleasures, not because they deliberately prefer them, but because they are either the only ones to which they have access, or the only ones which they are any longer capable of enjoying.³³

If one also recognizes something that Mill did not acknowledge explicitly--that there are many who have little or no capacity for the higher kinds of pleasures, and so cannot be categorized as having had their capacity for them stifled --it is evident that there are very many for whom it could not be right to force on them something which they are incapable of using in any way for their own benefit and which may, in fact, make them miserable.³⁴

³³Mill, "Utilitarianism," p. 213.

³⁴Although there is nothing in "Utilitarianism" to suggest explicit adherence by Mill to the position that there are innate differences in capacity for pleasures and that there are many who have little or no capacity for the higher kinds of pleasures, there is a passage in Mill's On Liberty (p. 68) which constitutes sufficient evidence for confuting anyone's contention that he did not accept it: "If it were only that people have diversities of taste, that is reason enough for not attempting to shape them all after one modelThe same things which are helps to one person towards the cultivation of his higher nature, are hindrances to another. The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their best order, while to another it is a distracting burthen, which suspends or crushes all internal life. Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow to the mental, moral, and aesthetic stature of which their nature is capable."

Yet this is what we must do, on occasion, if we are required as moral agents to consult a qualitative hierarchy for determining the rightness or wrongness of other-regarding actions. One might imagine, for example, acquiring control of television broadcasting and contemplating a choice between a kind of programming which appealed to the so-called higher faculties and another which left it pretty much as it is, although either choice would produce the same overall quantity of pleasure. As a utilitarian, who had a qualitative as well as quantitative dimension of pleasures to consider, one would be required to choose that which would produce the qualitatively superior pleasures, to the great dismay of those who (through no fault of their own, perhaps) would now find television viewing completely beyond their capacity for enjoyment. That those who have little or no potential for enjoying the higher pleasures should be passed over, in preference to those who do, constitutes an obvious kind of distributive injustice;³⁵ and, insofar as any ethical theory sanctions such actions, it is objectionable.³⁶

³⁵Not only is it not egalitarian, but it takes no recognition of merit, desert and other non-egalitarian principles of distributive justice. The example can be made even more problematic if we suppose that the group which has its pleasure preferences neglected is much larger than the other.

³⁶The term 'pleasure preference' has been frequently employed in this subsection and will be subsequently. At this point it is desirable to explain what is meant by it. By 'pleasure preference' is meant 'a desire for a pleasure which is such that no substitute would result in any satisfaction or abatement of that desire or is such that any substitute would result in a greater degree of dissatisfaction

Without arguing the point further, it appears evident that the kinds of injustices which are perpetrated through considering quantities of pleasures only, are multiplied when the requirement is added that a qualitative hierarchy be appealed to also, that adding this results in an even greater affront to our moral sense regarding distributive justice. Thus, a principle of utility which demands appeal to a qualitative hierarchy is an ethical principle which has built into it even greater distributive injustices than one like Bentham's which requires quantitative consideration of pleasures only. For, on occasions of choice like the above, those who (for whatever reason) do not desire and/or are not capable of enjoying the intrinsically superior (intellectual) pleasures are passed over in decisions regarding pleasure distributions or their sources.

To conclude this discussion, if the views Mill expressed in "Utilitarianism" on the qualitative differences

than that of merely having the unfulfilled desire.' The first disjunct of the definition could be satisfied under at least two conditions: (a) The individual having the pleasure preference does not have and could not acquire the capacity for the enjoyment of substitute pleasures, or (b) is of such a state of mind that, even though he ordinarily has the capacity for enjoyment of substitute pleasures, he does not in this case. The second disjunct could be satisfied if either (a) or (b) above is satisfied and the individual's state of mind is also such that any substitute would serve to engender a greater state of dissatisfaction than that resulting from the unfulfilled desire. (The latter would occur, for example, if the individual becomes piqued at having his desire overlooked in favor of someone else's for no justifiable reason he is able to discern.)

among pleasures were intended to encourage the development of a qualitative hierarchy which was to be consulted when determining the morality of actions, and so taken as representing an amendment to Bentham's principle of utility, it is now obvious that it would be an amendment which would only make the principle more theoretically objectionable from the standpoint of distributive justice. So that even if Mill's previously considered argument concerning a qualitative hierarchy is sound, there are good theoretical reasons for not acting on its conclusion, that "the general category of intellectual pleasures is intrinsically better than that of sensual pleasures."³⁷

Section III

Ideal Utilitarian Theories --Implausible Alternatives

Mention was previously made that an ideal or pluralistic form of utilitarianism, which allows that there are more intrinsic goods than pleasure to consider in calculating the effects of actions, might fare somewhat better with respect to these difficulties than the monistic type just considered. There is, for example, something like Brandt's suggestion that the utilitarian would be all right "if only...he could count just one or two impersonal states

³⁷There is much evidence--some already noted--which shows that Mill was not advocating an amendment to Bentham's theory. This will be discussed later.

of affairs as having intrinsic worth--say, for one thing, an equal distribution of welfare."³⁸ Referred to above as "universalistic impersonal pluralism," and later developed by Brandt into what he calls "extended-rule-utilitarianism," this represents one approach for resolving the conflict between the principle of utility and at least the egalitarian aspect of distributive justice. However, there are several reasons for disregarding this kind of approach as an acceptable possibility. A brief enumeration will suffice:

(1) Presumably, one who advocates an ideal form of utilitarianism has in mind a limit to the kinds of things that are to be regarded as intrinsically good, and so must have available some criteria for deciding what should be so classified and what not. However, once the door is opened in the manner suggested by Brandt, one is faced with precisely this problem--deciding upon criteria to employ in deciding what is to qualify as an intrinsic good. Brandt himself is aware of the difficulty. Thus, he says, "Some philosophers will probably think that we must 'extend' extended rule-utilitarianism much more if it is to be plausible. They will say that otherwise we would be committed to many more exceptions to the rule of keeping promises and so forth, than are in fact justified--and this is possible."³⁹

³⁸Brandt, p. 404.

³⁹Brandt, p. 405.

The problem, then, is that if something like "equal distribution of welfare" can qualify as an intrinsic good, why not "promise-keeping" as well; and, if these, why not ...; and eventually it becomes difficult to imagine what sorts of restrictions might be devised in order to insure the elimination of many things which could only very hesitatingly be regarded as intrinsically good (if at all). There is, therefore, the danger (contrary to the wishes of the ideal-utilitarian) of ending up, so to speak, with a quite bloated world of intrinsic goods.

However, if intrinsic goods other than pleasure are limited to only equal distribution of welfare (as seems to have been Brandt's intention), then although this avoids the problem utilitarian theory has with reference to the requirement distributive justice poses for egalitarianism, we seem to be left with the more difficult problems unresolved--squaring the principle of utility with those principles which require distribution with reference to legitimate claims or merit.

(2) If both quantitative and qualitative differences are to be considered with regard to pleasure, the problems already noted are immeasurably increased if we are required to apply these distinctions to other intrinsic goods as well. This would be especially true of something like knowledge and promise-keeping (if, indeed, one can speak sensibly about qualitative differences among acts of promise-keeping),

though perhaps not much less so for Brandt's suggestion, equal distribution of welfare. In brief, all of the problems already noted above, with pleasure as the only intrinsic good, remain; in addition, we would now have innumerable others.

(3) It is possible to imagine situations in which conflicts might arise among intrinsic goods. For example, one might be forced to choose between two actions, one which will produce 100 units of intrinsic good A but none of B and another which will result in the opposite. If, then, the actions are not both right (i.e., one of the two acts is a duty), it is apparent that, in order to determine which should be chosen, something like an intrinsic good hierarchy would have to be appealed to. As it appears inevitable that determination of the latter would be at least as problematic as that already noted with respect to Mill's desire to formulate a "qualitative hierarchy" of pleasures, this constitutes a further reason for searching for a better solution than that offered by the ideal utilitarian approach.

(4) Finally, as will later be argued, it is not at all apparent that utilitarianism must entail a theory of intrinsic value at all--at least, not the kind which, during most of the history of the theory, has been thought to be essential. It is this discovery which will eventually provide the key to solving the problems distributive justice has been thought to pose for utilitarianism.

Having completed a brief review of the problems that utilitarianism is supposedly susceptible to with respect to distributive justice (as well as some others), the general approach for resolution of these difficulties in the next chapter will be to demonstrate that classical formulations of the principle of utility have been the result of some serious misconceptions. A convenient historical vehicle for discussing and correcting these misconceptions is found in the work of John Stuart Mill. With reference particularly to "Utilitarianism" and On Liberty, it will be pointed out that he has been seriously misinterpreted with regard to many aspects of the utilitarian theory that has been attributed to him; in addition, it will become evident that the corrected theory provides the theoretical framework for a new formulation of the principle of utility which results in no serious inconsistencies with intuitively acceptable principles of justice.

C H A P T E R I I
MISCONCEPTIONS OF MILL'S UTILITARIAN THEORY

Section I

The Quantitative and Qualitative Hierarchy Misconception

Bentham's follower, John Stuart Mill, was so concerned that certain kinds of pleasure should come out as better than others that he supplemented Bentham's list of criteria with another one, that of quality.¹

John Stuart Mill, partly in reaction, sought to introduce quality as well as quantity into the evaluation of pleasures; but, if one does this, it is hard to see how the utilitarian standard is to be stated and Mill never did make this clear.²

It is true that Mill's ethical theory is superior to Bentham's, though not in the way that has often been supposed to count as its greatest advantage; i.e., not because Mill was urging the establishment and use of a qualitative hierarchy as a necessary condition for determining the morality of actions. Consequently, those who have subscribed to something like the above positions, and have meant thereby to interpret Mill as intending that the qualitative dimension of pleasures was something to be considered in addition (supplemental) to the quantitative dimension, must be

¹Hospers, p. 58.

²William K. Frankena, Ethics (New York: Prentice-Hall, Inc., 1963), pp. 29-30.

judged as having failed to give Mill's work an accurate and careful reading.

As can be determined by a brief consideration of "Utilitarianism" and On Liberty, Mill's theory is not susceptible to either the practical difficulties or the theoretical objections previously noted as arising with respect to such a hierarchy, for his discussion of qualitative pleasure differences in Chapter II of "Utilitarianism" has been seriously misinterpreted in this regard.

It is really rather astonishing that this problematic position has seriously been attributed to Mill, for there seems to be sufficient evidence in "Utilitarianism" alone to cause a substantial degree of doubt, if not to dispel it completely. One is compelled to sympathize with Urmson's observations:

...the theories of some great philosophers of the past are studied with the most patient and accurate scholarship, while those of others are so burlesqued and travestied by critics and commentators that it is hard to believe that their works are ever seriously read with a sympathetic interest, or even that they are read at all. Amongst those who suffer most in this way John Stuart Mill is an outstanding example.³

In brief, the assumption that the discussion of a qualitative dimension of pleasures in Chapter II of "Utilitarianism" was intended by Mill as a desirable emendation to Bentham's principle of utility represents a serious misconception

³Urmson, p. 33.

of Mill's theory, and, as already pointed out, gives rise to additional problems. In the attempt to clarify Mill's position in this regard, it will be the purpose of this section to demonstrate three points in the subsequent subsections I-A, I-B, and I-C, respectively:

(A) There is evidence to support the hypothesis that Mill regarded the hierarchies that would result from quantitative and qualitative considerations as extensionally equivalent. In point of fact, there is evidence sufficient to conclude that he meant to show, from the standpoint of qualitative considerations, that Bentham's principle is not susceptible to objection. Thus, Mill intended his discussion of quality as an explanation and not as an amendment to Bentham's principle of utility, with the consequence that Mill's theory is not burdened with the additional theoretical objections resulting from the requirement to consult a qualitative hierarchy.

(B) If a quantitative hierarchy is extensionally equivalent to a qualitative hierarchy, those theoretical difficulties which necessitate the rejection of an appeal to the latter for determining the morality of actions must also necessitate the rejection of an appeal to the former. Moreover, even if a quantitative hierarchy of pleasures is assumed (or would turn out) to be not extensionally equivalent to a qualitative hierarchy, there remain theoretical difficulties which provide sufficient grounds for also

rejecting an appeal to it.

(C) There is some evidence in "Utilitarianism" and overwhelming evidence in On Liberty to support the conclusion that a significant difference between Bentham's theory and Mill's is that whereas Benthamites thought it necessary to consult something like a quantitative hierarchy, Mill did not regard an appeal to either a qualitative or a quantitative hierarchy as a necessary or sufficient condition for determining the morality of actions. As a consequence, Mill's utilitarian theory can eventually be shown to avoid all of the theoretical difficulties each hierarchy is subject to. Moreover, it is evident that his discussion of qualitative pleasure differences, in Chapter II of "Utilitarianism," was not intended to refer to moral rightness at all, but rather to prudential rightness.

Sub-section I-A: The extensional equivalence of quantitative and qualitative hierarchies. There is good evidence in "Utilitarianism" and overwhelming evidence in On Liberty to support the hypothesis that it was not a part of Mill's intentions that a qualitative hierarchy of pleasures was to be consulted as something in addition to quantitative considerations when determining the morality of actions. Rather, from the passage in which he begins the substance of his discussion of quality, it is apparent that what he is maintaining is that reference to either quantitative or qualitative considerations will result in identical listings; i.e., in

contemporary terminology, a quantitative or a qualitative hierarchy of pleasures will turn out to be extensionally equivalent. If so, one contemplating the morality of actions can choose between judging the consequences of alternatives from the standpoint of the overall quantity of pleasures produced or from the standpoint of their quality; in either case, the results will be the same (i.e., the same action will be chosen as right and, where there is a choice between a "higher" and a "lower" pleasure, if appeal to quality results in the former's being our duty, so will an appeal to quantity.)

As Mill says, in the passage referred to,

It must be admitted...that utilitarian writers in general have placed the superiority of mental over bodily pleasures chiefly in the greater permanency, safety, uncostliness, etc., of the former--that is, in their circumstantial advantages rather than in 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 recognize the fact, that some kinds of pleasure are more desirable and more valuable than others. It would be absurd that, while in estimating all other things quality is considered as well as quantity, the estimation of pleasure should be supposed to depend on quantity alone.⁴

Suffice it to say that the most plausible interpretation of this passage results in only one conclusion. With reference to quantitative criteria only, "Utilitarians have

⁴Mill, "Utilitarianism," p. 211.

fully proved their case" concerning "the superiority of mental over bodily pleasures" but that they might also have arrived at the same conclusions had they "taken the other and, as it may be called, higher ground" (since "it is quite compatible with the principle of utility...") must be taken as rather good evidence for dispensing with the interpretation which has too long been attributed to Mill. Consequently, the last sentence of the passage, although seeming to suggest that quality of pleasures must be considered in addition to their quantity, is most plausibly interpreted in the context of that which precedes it as meaning that either approach could be used to arrive at the same result; i.e., whether the resulting hierarchies are regarded as indicating only a general distinction between intellectual and sensual pleasures or more specific rankings between particular pleasures, both quantitative and qualitative hierarchies would turn out to be identical.

This interpretation of the passage might be objected to on the grounds that the reference in the early part of the passage to "permanency, safety, uncostliness, etc." is not to be interpreted as a reference to quantitative aspects of pleasures; that it is far from obvious that Mill meant these to be simply quantitative considerations.⁵ To

⁵Presumably, if this is so, the objection regards this as constituting evidence that the passage is not to be interpreted as asserting that utilitarians can prove their case equally well with quantitative considerations alone.

this objection there are two replies. First, it is clear that Mill is contrasting the use of these criteria with other criteria and, if what he is contrasting them with are not qualitative criteria, it is difficult to imagine what the contrast might plausibly be; in this case, then, the references to "permanency...etc." must be quantitative. Moreover, 'permanency,' 'safety' and 'uncostliness' are clearly analogous to three of the "circumstances" Bentham thought it necessary to consider in calculating quantities of pleasures; viz., 'duration,' 'fecundity,' and 'purity,' respectively.⁶ It seems likely that Mill had these quantitative criteria of Bentham's in mind when employing the terms "permanency ...etc."

There is good reason, then, to believe that Mill cannot justly be accused of having complicated utilitarian theory by insisting on the problematic addition of a supplementary qualitative hierarchy; for once again it seems clear that his only intention here was to argue that the employment of either a quantitative or a qualitative hierarchy for judging the consequences of actions will result in identical decisions regarding the morality of actions. Thus, it is much more plausible to suppose that he was merely trying to demonstrate that what has been referred to

⁶For definitions of these terms see Bentham, "An introduction to the Principles of Morals and Legislation," Collected Works of Jeremy Bentham, pp. 38-39.

by some as "long-term hedonism" is going to turn out to be superior to "short-term hedonism" from either a quantitative or a qualitative standpoint; i.e., that something like Bentham's principle of utility does not at all commit one to maintaining (what its critics have erroneously supposed) that so-called "lower pleasures" must be given preference to "higher pleasures," but that, in fact, the opposite is the case.

If this new interpretation is the correct one, we now have an adequate response in hand for something like the following critical summary:

To say that the "higher" pleasures, in addition to being more long-lived, more certain, more pure, were also "higher" by a qualitative principle seemed to Benthamites like so much excess baggage--a way of unnecessarily complicating and obscuring the original hedonistic position. For if the first barrel of criteria (Bentham's) already hit the mark by showing certain sources of pleasure to be preferable to others, why the need to employ the second barrel, Mill's qualitative principle?⁷

We can interpret Mill's response at this point as being that there is no "need to employ the second barrel" if the first has already been used because appealing to either one is a sufficient condition for determining the morality of actions. The difference between Bentham and Mill highlighted in the above is based on the erroneous supposition that both were regarded by Mill as necessary but neither as sufficient by itself to arrive at correct moral judgments about actions.

⁷Hospers, p. 59.

Sub-section I-B: Theoretical objections to a quantitative hierarchy. At the beginning of this discussion it was pointed out that the use of a qualitative hierarchy, once established, would result in some serious violations of our intuitions regarding distributive justice; and so it was thought desirable to rid ourselves, if possible, of the supposed necessity to use it. In having presumably done so, however, it is evident at this point that we are in precisely the same position of theoretical difficulty with which we began. For now, according to the present position, we have a choice between appealing to one or the other of extensionally equivalent quantitative and qualitative hierarchies, both of which (by hypothesis) rank "intellectual pleasures" as superior to "sensual pleasures." Consequently, from the standpoint of quantitative considerations also, if "intellectual pleasures" are ranked as superior to "sensual pleasures," independently of any additional considerations as to (for example) the preferences of those who will be subjected to them (and there is no known qualification concerning the latter in Bentham's theory), exactly the same theoretical difficulties will present themselves.

That the same situation obtains can be readily observed if one imagines a quantitative hierarchy of kinds of pleasures which is arranged so that pleasures are listed in a descending order of desirability, such that those higher

on the list are judged quantitatively superior to those which are lower and in which the arrangement of pleasures exactly duplicates that of the aforementioned qualitative hierarchy; as in the latter, intellectual pleasures, as a general category, are higher on the list than sensual pleasures. In accordance with the alleged requirement to consult such a hierarchy in all instances in which one is attempting to decide the morality of actions, this quantitative hierarchy is directly appealed to and serves as the only basis upon which such decisions are made.

To take an obvious example, if one has a choice between two other-regarding actions, A and B, each of which will affect the same person or group of people and such that A will produce, say, three intellectual pleasures but no sensual pleasures; whereas B will produce three sensual but no intellectual pleasures; A must be chosen as the right action if one appeals to the quantitative hierarchy. That the decision to choose A would give rise to an injustice becomes evident if one supposes that the pleasure preferences of those affected are directed toward the sensual pleasures.⁸ The problem arises because, once again, we are

⁸It is important to realize that if there is to be a consideration of the pleasure preferences of those affected by actions undergoing moral scrutiny, we are no longer restricted to qualitative or quantitative hierarchies established by competent judges; rather, we are dealing with a different kind of utilitarian theory from any that has been considered up to this point and one which does, in fact, come close to what I shall later argue is the one that Mill was

placed in the position of being required by the theory to ignore pleasure preferences; once again, then, situations can arise which constitute an affront to our moral intuitions with regard to justice. In addition, given what is meant by pleasure preferences, another absurd result from consulting a quantitative hierarchy in this case is that we do not even maximize the quantity of pleasure produced.

It is apparent that an appeal to an established quantitative hierarchy of pleasures is, for the same reasons, as absurd as an appeal to a qualitative hierarchy. In fact, if the purpose of such a hierarchy is to maximize the quantity of pleasure, it is even more absurd. Moreover, in addition to the difficulty evidenced in the example, the quantitative hierarchy is subject to the same problems (previously noted) regarding an appeal to competent judges; for Mill required that one consult competent judges here as well:

And there needs be the less hesitation to accept this judgment respecting the quality of pleasures, since there is no other tribunal to be referred to even on the question of quantity. What means are there of determining which is the acutest of two pains, or the intensest of two pleasurable

committed to. However, it is also worth noting that in order to calculate using a hedonic calculus, as Bentham supposed we should, it seems necessary that there be a quantitative hierarchy of the kind described to appeal to. As is now obvious, such a requirement must lead to the conclusion that Bentham's theory is unacceptable; but, without such a hierarchy to appeal to, it seems reasonable to conclude that a hedonic calculus is, from a practical standpoint, useless.

sensations, except the general suffrage of those who are familiar with both?⁹

In summary, if the qualitative hierarchy Mill had in mind was intended to be extensionally equivalent to the quantitative hierarchy which he thought the application of Bentham's theory would have resulted in (as has been shown, there is good reason to suppose this to be the case), we are left, substantially, with Bentham's theory. However, the latter is unacceptable for it is susceptible to all the original objections concerning distributive justice in addition to the others we have demonstrated that the theory would also incur.¹⁰ Since these original objections can be raised against Bentham's theory independently of any hierarchy of pleasures (quantitative or qualitative) they constitute sufficient reason for its rejection. If in addition, however, a quantitative hierarchy is set up and appealed to, Bentham's theory becomes subject to the additional

⁹Mill, "Utilitarianism," p. 213. The account of these difficulties regarding competent judges is found on pp. 12-24.

¹⁰See, for example, Rescher's objection, p. 6. It should be noted that even if Benthamites did not intend that a quantitative hierarchy be set up and appealed to, as we have supposed to have been what they had in mind, but that the moral worth of actions was to be calculated differently, any quantitative calculation of consequences still would supposedly be susceptible to the kinds of objections regarding distributive justice which Rescher and others have raised. Thus, we are still left with the original theoretical objections to the theory which, also, can only be resolved by the kind of utilitarian theory which--as will soon be argued--Mill had in mind.

theoretical objections noted above; and this would be the result whether or not it were extensionally equivalent to a qualitative hierarchy; in either case, it is obvious that the same kind of injustices could result.

Only by turning to a consideration of the difference between Mill's theory and Bentham's can these objectionable features be resolved. Once made clear, it is this difference which results in the theoretical framework which will enable utilitarianism to account for principles of justice.

Sub-section I-C: Mill's position with respect to hierarchies. Simply stated, the basic difference between Mill and Bentham is this: whereas Bentham may have thought that it was necessary to consult a quantitative hierarchy,¹¹ Mill did not think that an appeal to either a qualitative or a quantitative hierarchy was a sufficient or even a necessary condition for determining the morality of actions. In point of fact, the sections of "Utilitarianism" previously discussed were intended by Mill, not with reference to moral rightness at all but rather to prudential rightness. They had to do only with recommendations as to how we should live that part of our lives which significantly affects only ourselves (self-regarding actions) and had nothing to do with that part of our conduct which does

¹¹Whether Bentham actually did require this is not certain and has not been argued for. However, the practical efficacy of his hedonic calculus seems to require that he should have even if he didn't (as pointed out in the footnote on pp. 46-47).

significantly affect others (other-regarding actions).¹² Though there is some evidence for this interpretation in "Utilitarianism," the primary source is On Liberty.

The examination of On Liberty, to which we will now turn, will be used to demonstrate two points: (1) Regressing a bit, it will be pointed out that there is conclusive evidence in On Liberty for the hypothesis, already considered, that Mill could not have intended, in determining the morality of actions, that one construct and appeal to a qualitative hierarchy which was not extensionally equivalent to a quantitative hierarchy of pleasures. (2) The hypothesis will be confirmed regarding the difference between Bentham and Mill, that, assuming the extensional equivalence of a qualitative and quantitative hierarchy, Mill could not have intended that an appeal to either was a necessary and/or sufficient condition for determining the morality of actions.¹³

¹²That is, it had nothing to do with other-regarding actions other than to point out and emphasize that the self-regarding sphere of actions is in no way to be dealt with as if it were part of the other; i.e., we are not to impose our will on others regarding how they should conduct themselves prudentially.

¹³This is, of course, contrary to what was stated previously, that given the extensional equivalence of a qualitative and quantitative hierarchy, an appeal to either would be a sufficient condition for determining the morality of actions (p.43). It is not contradictory, however, since in the past instance we were operating with the presupposition that appeal to some kind of a pleasure hierarchy was being urged by Mill, whereas it is the purpose of the present discussion to dispose of this as a faulty presupposition to attribute to him.

It was pointed out previously that if one is required to consult a qualitative hierarchy which is not extensionally equivalent to the results of quantitative calculations,¹⁴ something like the following could occur: Given two actions, A and B, each affecting different groups of people, if the group affected by A prefers intellectual pleasures and the group affected by B prefers sensual pleasures; and if we suppose that A and B do, in fact, produce the same quantity of intellectual and sensual pleasures, respectively, consulting the qualitative hierarchy would require that one choose action A. Similarly, if one is dealing with just one person or group of people and has a choice between two actions, A and B, each of which produces the same quantity of pleasure, but A will result in the production of a pleasure higher on the qualitative hierarchy than B, A is the action that must be chosen, even though the person or all the members of the

¹⁴The reference here is to the examples on pp. 25-27, where no mention is made of a quantitative hierarchy. For present purposes, however, since the references in (1) and (2) of the previous paragraph are to a quantitative hierarchy (because we have recently supposed that the results of quantitative calculations could be a quantitative hierarchy), we can unproblematically replace "the results of quantitative calculations" with "a quantitative hierarchy." For the present example, this means that the pleasures produced by A and B have the same ranking on the quantitative hierarchy, though a different ranking on the qualitative hierarchy (since, by hypothesis, the two hierarchies are not extensionally equivalent). Also note that in (1) and (2) above, "a quantitative hierarchy" can be read "the results of quantitative calculations" in order to encompass those previous examples (Sub-section II-B, pp. 24-32) in which no mention was made of a quantitative hierarchy.

group affected prefer B.¹⁵

It is important to note that in both cases the pleasure preferences of others are imposed, for in both cases the qualitative hierarchy (the preference schema of competent judges) is used to decide which kind of pleasure is to be produced. In the first case, they are imposed by discriminating against one group's preferences in favor of another's; in the second case, by ignoring those of everyone affected. However, where satisfaction of the pleasure preferences would be self-regarding,¹⁶ the decisions exemplified in these examples could not have been sanctioned by Mill. That this is the case can readily be demonstrated by a brief reference to the position defended in On Liberty.

¹⁵This last example does not conform to the notion of pleasure preferences previously defined, in that strict adherence to it would preclude an individual or all the members of one group from having pleasure preferences which could be satisfied equally well (quantitatively) by a substitute. However, the example is included because it will shortly be used to argue that it could also be unjust in a situation like this to consult a qualitative hierarchy; i.e., when the alternative actions being considered each produce the same quantity of pleasure.

¹⁶By 'self-regarding' is meant merely what Mill had in mind when he used the term: viz., whatever actions men choose which are such that they directly affect only the agent or, if they affect others, do so with their free, voluntary, and undeceived consent. Such actions should be able to be performed "without hindrance, either physical or moral, from their fellow men, so long as it is at their own risk and peril" (On Liberty, p. 55). All other actions are other-regarding.

Before doing so, however, it is necessary to elaborate on the examples in an attempt to explain specifically why they are theoretically objectionable from the standpoint of Mill's utilitarian theory; i.e., to show why Mill would have rejected consulting a qualitative hierarchy in situations like these.

That the examples are theoretically objectionable in light of Mill's utilitarian theory can be brought out as follows: As choices for a moral agent, both A and B are clearly other-regarding actions. But the resulting actions of those affected by his choosing either A or B will by hypothesis turn out to be self-regarding actions--that is, should A be chosen, the actions by those affected to obtain and enjoy the intellectual pleasures produced by effecting A (the actions chosen to satisfy their pleasure preferences) would be self-regarding actions; similarly, should B be chosen, the actions by those affected to obtain and enjoy the sensual pleasures produced by effecting B would also be self-regarding actions. The moral agent must choose either A or B because choosing neither--an act of omission--is not a viable option for him as a utilitarian, since not to act would result in no one's pleasure preferences being satisfied, with the result that happiness would not be maximized.

In the first example, the injustice arises in the following manner: Although A and B are other-regarding actions for the agent, his choosing either A or B will affect an area of self-regarding actions for those who will be affected

by his choice. According to Mill (as will be demonstrated shortly), one should not interfere with self-regarding actions since, from the standpoint of moral rightness and wrongness--as opposed to prudential rightness and wrongness --one self-regarding action is as good as another and, if possible, should not be interfered with. However, the moral agent's appeal to a qualitative hierarchy and his choosing and effecting A is an action which will unjustifiably interfere with the pleasure preferences of those who would prefer the effects produced by B. This is objectionable, for if both A and B are identical choices quantitatively, and the actions of those affected to obtain whatever results from the agent's choosing either A or B will be self-regarding, it is apparent--given Mill's position--that A and B are equally right actions. Therefore, one would be acting unjustly if, in such a situation, he did not act impartially but regarded the action which will produce the intellectual pleasures as his duty after appealing to a qualitative hierarchy of pleasures.

The problem is somewhat different, though no less problematic, in the second example. A and B are again actions which would, by hypothesis, result in only self-regarding actions by those affected by the agent's choice and would result in the same quantity of pleasure produced; only in this case the same person or group of persons is affected by the agent's choosing either A or B. Assuming that B is preferred

by those affected but that A is executed by the agent after appealing to a qualitative hierarchy, on the assumption that whenever possible, self-regarding actions are not to be interfered with, the execution of A is a morally wrong action.¹⁷

It remains now to explicate Mill's position and to show that he would have rejected an appeal to a qualitative hierarchy for determining the morality of actions, on the ground that doing so would often interfere unjustly with self-regarding actions.

It is absolutely clear, in the first chapter of On Liberty, that the satisfaction of self-regarding pleasure preferences should not be interfered with; thus one, with the power and opportunity to do so, could never be justified in (and in fact could be held morally blameworthy for) making decisions like those exemplified in the situations described above. Though the requirement that one appeal to a qualitative hierarchy when the alternatives for the agent are other-regarding actions would require, at times, that such decisions be made, the supposition that Mill insisted that we consult such a hierarchy in determining the morality of actions is seriously inconsistent with the principle

¹⁷That the execution of A is unjust, as well as morally wrong, is not so clear. However, as it will later be demonstrated that Mill regarded the satisfaction of self-regarding pleasure preferences as rights justified by the principle of utility and that violations of rights were regarded by him as unjust, the execution of A is also an unjust action according to Mill.

stated in the first part of On Liberty and which it is the purpose of the rest of that essay to defend:

The object of this essay is to assert one very simple principle...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. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him, must be calculated to produce evil to someone else. The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, this independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.¹⁸

A few pages further on, in speaking about what comprises the "appropriate region of human liberty," Mill says:

Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong.

And later, on the same page, he adds, "Each is the proper

¹⁸Mill, On Liberty, pp. 9-10.

guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest."¹⁹

Numerous similar statements can be found throughout the essay (particularly in the third chapter), but these are sufficient to establish the conclusion that Mill could not have sanctioned decisions like those in the above examples; on moral grounds, he could not have regarded it as at all objectionable that some would prefer sensual to intellectual pleasures, so long as obtaining them would involve only self-regarding actions (or non-harmful other-regarding actions). As in the examples illustrated above, this means that one in the position of making decisions concerning public policy (e.g., a legislator) could be held blameworthy for making decisions affecting the self-regarding sphere of those affected by appealing to a qualitative hierarchy.

All of this further substantiates the conclusion, previously stated, that Mill could not have been urging the establishment and use of a qualitative hierarchy in the way that has previously been supposed, as something that must be appealed to for determining the moral rightness or wrongness of actions; for to do so could often result in wrongly interfering in the area of self-regarding actions, something clearly rejected by Mill in On Liberty. If this

¹⁹Mill, On Liberty, pp. 12-13.

interpretation is correct, he was not arguing for the establishment and use of such a hierarchy which he viewed as an amendment to Bentham's theory. Rather, it seems clear that his purpose was merely one of explication, to point out that preferring the so-called higher pleasures was compatible with a theory like Bentham's and, like sensual pleasures, could not be objected to as long as the actions which satisfied them could be categorized as self-regarding or other-regarding but non-harmful.

Although Mill would allow that one can justifiably level prudential objections against self-regarding actions meant to satisfy particular pleasure preferences, the only justifiable moral objections one can raise concerning anyone's pleasure preferences must be on the grounds that the actions engaged in to satisfy them are other-regarding and harmful. In other words, the only kind of legitimate objection, according to Mill, must be based on the source of pleasures (be they sensual or intellectual). The satisfaction of sadistic desires by causing pain to others, the punishing of an innocent man to appease the public (the old scapegoat problem) and certain instances of voluntary and involuntary euthanasia (standard examples employed by critics as objectionable kinds of action sometimes judged right by utilitarian theory) are all examples of objectionable sources and, consequently, of objectionable pleasure preferences.

It is to be noted, however, that cases of harming people for the sole purpose of satisfying pleasure preferences (as in situations like these) are really to be categorized as instances of injustice.²⁰ But since it is the purpose of another chapter to demonstrate why utilitarian theory does not allow this and how it is able to avoid objections stemming from considerations of justice, it need only be realized that this constitutes the only moral objection to particular pleasure preferences and that it comprises a wholly different area of consideration. To complete this section, it only remains to explain briefly why the position found in On Liberty also commits Mill to the rejection of an appeal to a quantitative hierarchy.

If the qualitative hierarchy Mill had in mind is (as he seems to have thought) extensionally equivalent to the kind of quantitative hierarchy Benthamites claim to have been urging, it can readily be demonstrated that Mill would hold that an appeal to the latter must be rejected for the same reasons which we saw necessitated the rejection of an appeal to a qualitative hierarchy to which a quantitative hierarchy is not extensionally equivalent; i.e., consulting a quantitative hierarchy which ranks intellectual pleasures as quantitatively superior to sensual pleasures will also result in decisions which would unjustifiably infringe in

²⁰That these exemplify instances of injustice seems clear; should there be any doubt, however, this is explained in a subsequent chapter.

the area of self-regarding actions. A single example will suffice.

Consider the following: A governor of a state has a decision to make regarding money which has been given by the federal government for the state's use with "no strings attached." For various reasons, the choices for the use of the money turn out to be two: using the money to create a symphony orchestra in a culturally deprived area of the state, or using it to establish the first radio station in the same area which would be broadcasting mostly rock and other popular music. The governor's choices are other-regarding; an act of omission is not an alternative open to him as a utilitarian in this case; the people whose pleasure preferences will be affected are different for each alternative, though the numbers affected are the same for each; the actions of those who utilize whatever results from either of the governor's choices will be self-regarding, and their pleasure preferences are such that the radio station would produce slightly more pleasure than the symphony orchestra. If the governor does not know that the radio station would produce more pleasure than the symphony orchestra and believes that consulting the quantitative hierarchy (which is extensionally equivalent to the qualitative hierarchy previously referred to) is what he ought to do in order to arrive at a decision, he is bound to choose to appropriate the money for the orchestra. Yet it is obvious

that, according to Mill, he would be using his power and opportunity to interfere unjustifiably with self-regarding actions. For if, as noted previously, when the quantity of pleasure produced by either action would be the same, it would be unjust to choose as one's obligation that which would result in intellectual self-regarding actions rather than sensual self-regarding actions for those affected (since both present an equal claim), it would obviously be unjust in a similar situation to choose the intellectual over the sensual when the quantity of pleasure resulting from the former would be less than that resulting from choosing the latter. In addition, of course, the fact that the quantity of pleasure would not be maximized in this case constitutes a further utilitarian objection against this decision, assuming that maximizing the amount of pleasure is required of a utilitarian. Because of the latter, consulting an extensionally equivalent quantitative hierarchy in a situation such as this is--and can be--even more objectionable than consulting a qualitative hierarchy in the examples previously considered.²¹

²¹Professor Robert Ackermann of the philosophy department of the University of Massachusetts at Amherst has suggested, regarding this example, that the governor, by interfering with self-regarding actions, must commit an injustice no matter how he chooses to spend the money. Moreover, this seems to him to support the more general claim that there are unsolvable ethical problems for utilitarianism; specifically, that Mill's utilitarian account ("as only a 'consumer account,' in that it suggests that we can be privately

happy for the most part") is inadequate, since it can't resolve the really significant problems which arise, for example, when one's desire to do X can only be accomplished by doing something having consequences which prevent someone else from doing what must be done to satisfy a desire for something else, Y.

With respect to the example, my reply is that, because the actions of those affected by either of the governor's choices, to obtain and enjoy what is produced by whatever is chosen, will be self-regarding, Mill would have had to regard each choice as equally right; consequently, an injustice does not arise no matter what the governor chooses (in fact, at least one of the choices is right because he must, by hypothesis, choose something to maximize utility in this case), but only if he chooses the one as an obligation, after consulting a quantitative hierarchy of pleasures. As has been mentioned (pp. 2-3) and is made clear in the next chapter, injustices can only arise, according to Mill, when rights are violated. In a case like this, then, to regard the one action as an obligation, when it is no more an obligation than the alternative, is to violate the rights which the others have equally to the distributable items. Consequently, if (as has been supposed) these two actions are the only alternatives, what the governor should employ is a "fair-procedure" (see pp. 243-61 especially pp. 243-61) which, in this case, would probably involve a random-selection procedure (such as coin-flipping) and so, by acknowledging the equal rights of all involved, would provide everyone affected by the governor's choices with an equal opportunity for acquiring the distributed items.

If, on the other hand, what is being claimed is that an injustice arises merely because one group does not receive what it desires, whereas the other one does--even though every attempt was made to acknowledge the equal rights involved in making the choice--then this is a consequence the theory cannot avoid. However, I think the conclusion that an injustice occurs, no matter what is chosen, is unreasonable. To the contrary, I claim that the random-selection procedure (which is defensible on utilitarian grounds) is a means of avoiding injustices in situations like these and; furthermore, that it is defensible on intuitive grounds, since it is closely in accord with what intuition prescribes that we should do in such situations. Neither intuition nor a desire to maximize the general happiness could sanction doing nothing in this instance and choosing by appealing to a fair procedure seems to be the only plausible alternative.

As a result of having procedures like these available, I think the general claim above is false as well. Although

At this point, it is most important to realize, in addition, that an injustice would also result if whatever hierarchy was appealed to ranked, for some reason, sensual over intellectual pleasures. Consequently, according to Mill, one's duty in the area of self-regarding actions cannot be decided by an appeal to any kind of hierarchy without the possibility of resulting injustice. Moreover, it is now apparent that, from the standpoint of quantitative considerations, no appeal to any kind of pleasure hierarchy can be relied upon to determine which action will produce the greatest quantity of pleasure, because no kinds of pleasures are consistently--on all occasions--quantitatively superior to others.

It now follows trivially that, if appealing to any kind of pleasure hierarchy is objectionable, appeal to a quantitative hierarchy which is not extensionally equivalent to a qualitative hierarchy is also theoretically objectionable, and this takes care of the last alternative regarding appeal to quantitative and qualitative considerations; i.e., an appeal to quantity, the results of which are not extensionally equivalent to the results of an appeal to quality.

classical interpretations of Mill's theory may have had this difficulty, the theory attributed to him here provides explicit directions as to what should be done whenever individual interests conflict, and justifies these procedures by arguing that employing them results in maximization of the general happiness (again, refer to the section on "fair procedures, pp. 243-61; also refer to the corollary to the principle of obligation on p. 174).

Specifically why Mill rejects an appeal to the latter for determining the morality of actions will be explained more fully in Section III.

That Mill could not have been advocating appeal to either a quantitative or a qualitative hierarchy in determining the morality of actions is also evidenced in a passage in "Utilitarianism" just prior to his discussion of qualitative pleasure differences. In a discussion of some of the more basic misunderstandings of the theory, he says:

Having caught up the word utilitarian, while knowing nothing whatever about it but its sound, they habitually express by it the rejection, or the neglect, of pleasure in some one of its forms; of beauty, of ornament, or of amusement. Nor is the term thus ignorantly misapplied solely in disparagement, but occasionally in compliment; as though it implied superiority to frivolity and the mere pleasures of the moment. And this perverted use is the only one in which the word is popularly known....²²

Had Mill thought that one was obligated to choose the higher pleasures on those occasions in which certeris paribus, it was possible to do so (as we have seen, this would have to be the case if either or both quantitative and qualitative hierarchies were appealed to), it would be true to say that the theory "implied superiority to frivolity and the mere pleasures of the moment." The fact

²²Mill, "Utilitarianism," p. 209.

that he took this statement to represent a misinterpretation of the theory can be taken as evidence that Mill's thinking regarding kinds of pleasures and the application of the principle of utility was much more liberal than--far different from--what has previously been supposed. The correct account of his position in this regard will be developed in the third and last section of this chapter.

In conclusion, if we have shown that Mill's discussion in "Utilitarianism" of qualitative differences among pleasures could not have been intended as describing a necessary or sufficient condition for determining the morality of actions and that he must also have rejected a quantitative hierarchy (equivalent or non-equivalent) of the kind we have supposed that the Benthamites had in mind, the only plausible interpretation of those passages in his essay, in which he speaks of qualitative pleasure differences, is that he intended them to refer to prudential rightness--as recommendations in the area of self-regarding actions. We might then say, as does Mill, in a passage previously referred to, "These are good reasons for remonstrating with him, or entreating him, but not for compelling him, or visiting with any evil in case he do otherwise."²³

²³Mill, On Liberty, p. 9.

Before considering in more detail the utilitarian theory Mill had in mind, it is necessary to turn our attention to another aspect of utilitarianism in general, which has served as a source of much confusion concerning its account of justice and thus its plausibility as an acceptable ethical theory.

Section II

The Metaphysics of Right Action for Utilitarianism and the Problem of Justice

It is generally agreed that utilitarianism is a proposal about which acts are right or wrong. Unfortunately, it is also widely held--although this is a matter of dispute--that these terms are used in several senses. Hence, in order to state the utilitarian thesis clearly, we must identify which sense of these words (if there is more than one) we have in mind.²⁴

There is a convenient and rather precise distinction that can be made within utilitarian theory between judgments about actions and judgments about agents. In this section, it will be argued that it is basically a confusion of what might be called right action in a metaphysical sense, according to utilitarianism, and what the agent is justified by the theory to do without reprehension which has often resulted in the unwarranted conclusion that the principle of utility offends our moral intuitions with respect

²⁴Richard B. Brandt, "Toward a Credible Form of Utilitarianism," in Morality and the Language of Conduct, ed. Hector-Neri Castaneda and George Nakhnikian (Detroit: Wayne State University Press, 1965), p. 110.

to justice. Once this distinction is clearly understood, it will be demonstrated that questions of justice can be dealt with in a category distinct from questions of metaphysical rightness, with the result that the offense to moral intuition can be shown to have rested on a confusion of the two. Correspondingly, it will be the purpose of Sub-section II-A to develop the position of a utilitarian theory of right action, similar to Mill's, with respect to the problem of the "right to life;" and Sub-section II-B will demonstrate how, in this case, the distinction between the theory's position on acts and agents can be employed to avoid a rejection of the theory based on the claim that it is not compatible with accepted principles of justice.

Sub-section II-A: The right to life and a utilitarian conception of objective rightness. The distinction is often made in utilitarian theory between the objective and the subjective rightness of actions; i.e., between an action's being right, in fact, and an agent's judgment as to its rightness. This allows for differentiation between moral judgments about actions and moral judgments about agents.²⁵ As a consequence, it is often possible to regard agents as blameless for having chosen to perform what is, in fact, an

²⁵For example, textual support for this distinction between the evaluation of acts and agents is found as a part of Mill's theory in "Utilitarianism," pp. 219-221.

objectively wrong action, so long as prior to doing so they have done everything that can reasonably be required to determine its objective rightness. Conversely, it is also possible to hold them morally blameworthy to some extent because they did not do everything that can reasonably be required to determine objective rightness, even though choosing to perform an action which, in fact, is objectively right.

Concerning this distinction, Brandt says:

It is this sense of these terms--the sense in which duty (etc.) depends on what the facts really are and not on what the agent thinks about them--which I am terming the "objective sense." I shall construe utilitarianism as a proposal about which acts are right or wrong in this objective sense.²⁶

However, if one carefully considers this notion of objectively right action for utilitarianism, one is struck by what results in what would be claimed are some glaring incompatibilities with moral intuition; such that, from the standpoint of objective rightness, utilitarianism appears to be unacceptable. That which follows is an attempt to demonstrate this by developing a utilitarian position²⁷ with respect to a principle held by many to be self-evident--the

²⁶Brandt, "Toward a Credible Form of Utilitarianism," p. 113.

²⁷One might also refer to this consideration of objective rightness as the theory's "metaphysical position" with regard to right and wrong actions; thus saying, for example, that an act is right, in a metaphysical sense, according to utilitarian theory if and only if.... Henceforth, this way of speaking will be freely employed.

principle of the sanctity of life.²⁸

Those who subscribe to a sanctity of life theory usually mean by it that life has intrinsic value; that it is among other things something worth preserving for its own sake; consequently, that death has intrinsic disvalue and is worth avoiding for its own sake. However, the usual utilitarian position is depicted by Mill's assertion in the fourth chapter of "Utilitarianism:" "The utilitarian doctrine is, that happiness is desirable, and the only thing desirable, as an end; all other things being only desirable

²⁸Much of what follows, up to p.79 was taken or adapted from material worked out jointly by myself and a colleague, George Bowles, as part of an unpublished paper, "Utilitarianism and the Right to Life," completed in March, 1972. The relevant pages referred to in that paper are 1-6 and 13-15. As stated in a footnote on the first page of that paper, "The utilitarianism set down and applied is of our own devising. We owe obvious debts to J. S. Mill and G. E. Moore." Consequently, although the utilitarian theory referred to in the next few pages is similar in most respects to Mill's (numerous references to Mill are noted in the text and footnotes), there are some important differences. For example, the principles on p.71 may not have been wholly acceptable to Mill. Also the concept of 'self-regarding action' does not make use of Mill's distinction in On Liberty between the 'direct' and 'indirect' effects of actions (e.g., see the footnote on p. 52); thus, for example, whereas Mill would have argued that some actions which are means to the happiness or unhappiness of others are self-regarding when they do not directly affect them, this was thought to be a problematic distinction and so was not employed. It should be noted that the divergences from Mill are not really significant with respect to the general point being made in this sub-section, in that the point being made with this theory can unproblematically be made with one more closely approximating Mill's, as well. In fact, it is appropriate not to refer specifically to Mill's theory in this section, since it seems safe to say that the general problem dealt with is characteristic of most--if not all--utilitarian theories.

as means to that end."²⁹ Consequently, since it is possible to have life and not be happy, life is not identical with happiness and cannot be regarded by utilitarianism as desirable as an end. The theory does regard life as desirable, however, but only as a necessary condition for a state of temporal happiness; i.e., life is valued as a means, since one cannot be temporally happy without it.

From the same passage it follows, mutatis mutandis, that unhappiness is undesirable and the only thing undesirable as an end, all other things being undesirable as means to that end. Again, since it is possible to have life and yet be unhappy, death is not identical with unhappiness and so cannot be undesirable for its own sake. However, because death is the absence of life, and since life is desirable as a means to happiness, death is undesirable as a means to happiness.

It is clear, then, that this version of utilitarianism cannot support a sanctity of life theory which holds that life is desirable and death undesirable for its own sake. Both are desirable and undesirable, respectively, but contingent upon their respective relation to happiness and unhappiness. The consequences of this position, some of which appear as affronts to intuition, can be made clear by considering three questions with reference to the theory:

²⁹Mill, "Utilitarianism," p. 234.

Under what conditions ought an agent be free to deprive a victim of life? Under what conditions is it right for him to kill? Under what conditions is it obligatory for him to kill?

The general principles which this version of utilitarianism supplies to answer these questions are as follows:³⁰

P₁ An act of killing ought to be a free act in just these two cases:

- (a) Self-regarding acts of killing: If the killing affects only the agent, then the agent ought to be free to kill the victim if and only if he kills the victim intentionally.³¹ (In order for an agent to be free to perform a self-regarding act of killing, it is not necessary for that act to be prudentially right.)
- (b) Other-regarding acts of killing: If the killing affects sentient beings other than or in

³⁰It has been stated that this theory is similar to Mill's. Although there is evidence to support the contention that Mill was a rule-utilitarian (see footnote 30, pp. 25-26 of this paper, regarding Urmson, "The Interpretation of the Moral Philosophy of J. S. Mill"), the principles that follow with respect to killing are developed as act-utilitarian principles. If one interprets Mill as an act-utilitarian, it seems unproblematic to assert (though it won't be argued) that he would, for the most part, have subscribed to them.

³¹A being is affected by an act if and only if he is made happier or unhappier by that act than he would have been otherwise.

addition to the agent, then the agent ought to be free to kill the victim if and only if either to do so is morally right or the victim freely consents to the killing.

- P₂ An act of killing is right, if and only if:
- (a) it is an intentional act; and
 - (b) there is no alternative act which the agent could perform which is a means to less unhappiness or greater happiness to whoever is affected by that or by any alternative act which the agent could perform. (It is possible that one or more alternative acts are right.)

- P₃ An act of killing is obligatory, if and only if:
- (a) it is a right act; and
 - (b) there is no alternative act which the agent could perform which is a means to equal unhappiness or equal happiness to whoever is affected by the act or by any alternative act which the agent could perform.

In the interest of clarity, it is necessary to add some explanatory comments concerning these principles.

First, it is desirable to provide a brief explanation of some of the terms used in the principles. By a 'free act' is meant one with which there is no interference. Rightness and wrongness are to be understood as prudential concepts

when they apply to self-regarding actions, but as moral concepts when they apply to other-regarding actions.

It is neither desirable nor necessary to become involved here with the intricacies of intentionality; it is included without sufficient explanation as what seems a necessary condition to be imposed by all three principles, so as to insure that actions cannot be categorized as prudential or moral unless executed by an agent having some intention(s) with respect to them. If not, of course, it is not possible to avoid admitting that animals and even events of nature can qualify as causing right actions, that they should be free to perform them, etc.

Second, apart from the condition of intentionality, it is important to realize that these principles (as they are concerned strictly with objective rightness) are formulated with reference to acts, not agents. They set forth the conditions under which acts ought to be free, under which acts are right and under which acts are obligatory. They do not specify any conditions under which agents can be said to deserve praise or blame. Consequently, these principles justify claims about the freedom, rightness, or obligatoriness of acts by reference to the consequences of those acts, and not by reference to any specific intentions the agent has when he performs them. This means, then, that what the agent believes or does not believe, desires or does not desire, has nothing whatever to do with the freedom, rightness,

or obligatoriness of his act. Hence, it is possible both for an agent to perform an act without making every reasonable effort, before acting, to justify his belief that his act will actually be one which ought to be free; and yet for that act in fact to be one which ought to be free, or to be right, or obligatory. And likewise, it is possible both for an agent to perform an act with the unfulfilled desire that his act will be one which ought not to be free; and yet for that act in fact to be one which ought to be free, or right, or obligatory.

Third, although a particular act might be a means both to happiness and to mental attitudes of approbation or a particular act might be a means both to unhappiness and to mental attitudes of disapprobation, attitudes of approbation or disapprobation are excluded from counting as aspects of happiness or unhappiness respectively. This is a restriction Mill would have accepted and is supported by the arguments employed by him, principally in On Liberty.³²

Fourth, in the spirit of Mill, who framed the principle of utility with reference "to the whole sentient creation,"³³ included in the category of those sentient forms

³²See Chapter III, lines 327-330, and Chapter IV, lines 384-394; 454-462; 617-634; and 743-750.

³³The passage referred to is in "Utilitarianism," p. 214: "This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, 'the rules and precepts for human conduct,' by the observance of which

of life which might be significantly affected by our actions are animals and perhaps plants. If there is some plausible sense in which they may experience pain and pleasure (which does not seem doubtful for animals) and so be made happy or unhappy by at least some of our actions, they ought to be considered as included in the class of "whoever is affected" by those acts.

In this regard it might also be noted that if one of the sentient beings affected by our actions is a god or gods (as some claim good reasons for supposing) who is made happy or unhappy by our actions, then this possibility must also be included in our metaphysical account of the morality of actions. For even though it is unknown whether there are such beings or, if there are, what their nature is, the possibility requires that such effects of our actions must be included in the notion of right action, etc., in the metaphysical (objective) sense in which we are considering them. And if there are other sentient creatures, though not known by us to exist, who are significantly affected by our actions, we must include these as well.

It is necessary to consider only homicide with reference to these principles. If an act of homicide is self-

an existence such as has been described might be, to the greatest extent possible, secured to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation."

regarding,³⁴ then it ought to be free if and only if it satisfies P_{1-a} above; it is right if and only if it satisfies P_2 ; and it is obligatory if and only if it satisfies P_3 . Therefore, as long as the act of homicide is a self-regarding act, and as long as it is an intentional act, it is wrong to interfere with it; under these conditions, people ought to be free to kill other people. A self-regarding act of homicide which satisfies the further condition that no alternative act which the agent could perform is a means to less unhappiness or more happiness to the agent is a prudentially right act; not only ought the agent to be free to kill someone under these conditions, it is prudentially right for him to do so. Finally, a prudentially right act of homicide which is such that there is no alternative act which the agent could perform which is a means to equal unhappiness or equal happiness for the agent is prudentially obligatory; in this case, it is prudentially obligatory to kill the other person and one acts prudentially wrongly if he does not commit homicide.

³⁴It should be noted that an act of homicide is self-regarding if and only if it is a means to happiness or unhappiness only for the agent. It fails to be a means to happiness or unhappiness for the victim if and only if the victim, were he to live, would experience either no happiness and no unhappiness, or on the whole, an even balance of happiness and unhappiness. As this would rarely be the case with reference to the victim and as it would also be rare that the death of a victim would not be a means to happiness or unhappiness for some third person besides the agent and the victim, an act of homicide would very seldom be self-regarding.

On the other hand, if an act of homicide is other-regarding, then it ought to be free if and only if it satisfies P_{1-b} ; it is right if and only if it satisfies P_2 ; and it is obligatory if and only if it satisfies P_3 ; therefore, as long as an act of homicide is other-regarding and intentional and such that no alternative act which the agent could perform is a means to less unhappiness or more happiness to whoever is affected by the act or by any alternative act which the agent could perform, it is morally right; not only ought the agent to be free to kill someone else under these conditions (by P_{1-b}), but it would also be morally right for him to do so.

Finally, if the act of homicide is other-regarding and morally right and such that no alternative act which the agent could perform is a means to equal unhappiness or equal happiness to whoever is affected by that act or any alternative act which the agent could perform, it is a morally obligatory act; not only ought the agent to be free to kill the other person, and not only is it morally right for him to do so, but moreover, it is morally obligatory for him to kill his victim: he acts morally wrongly if he does not commit homicide.

Consider, for example, a variation of the familiar scapegoat objection to utilitarianism. The oppressed citizens of a political state conspire to assassinate their tyrannical ruler but fail in the attempted assassination. Unable to

discover who among the citizens was responsible for trying to kill him, the tyrant demands that the citizens surrender five of their number to be executed for the assassination attempt. If the citizens refuse, he assures them that they will all be even more heavily taxed, their liberties will be even further curtailed, and they will be subjected to other abuses at the whim of the tyrant. These hardships will continue for a long time unless the citizens comply, in which case they will suffer no retribution. It is impossible to depose the young and healthy ruler, and he has now taken thorough and effective precaution against assassination.

From a metaphysical perspective, the situation is such that, among all the available alternatives, there is none, other than surrendering five innocent people as scapegoats, which will produce less unhappiness or more happiness for those affected; more importantly, it is also true that surrendering the scapegoats will produce only a very slightly lesser amount of unhappiness or only a very slightly greater amount of happiness than accepting the alternative of everyone's having to live with the imposed hardships of the ruler with no one's being sacrificed. Furthermore, even though surrendering the victims is only very slightly better than not doing so, no alternative action is a means to equal unhappiness or equal happiness to those affected. Consequently, surrendering the scapegoats under those circumstances not only ought to be free, but also is morally right and even morally

obligatory.

Sub-section II-B: The distinction between metaphysical and non-metaphysical rightness. Other examples could be considered but, insofar as a theory's sanctioning scapegoats under conditions like the above is taken to constitute a serious kind of objection, the preceding example is sufficient to show that, as concerns the issue of homicide from this perspective, the utilitarian theory being considered is not compatible with intuition. That an act of homicide can be regarded as (prudentially or morally) free, right, or obligatory whenever the above-described conditions obtain seems clearly to constitute a sufficient condition for rejecting any theory from which inferences like this follow, on the ground that they are not at all in accordance with the intuitions of any morally sane person. However, if one recalls that all of the above was developed with reference to acts, not agents, there is an important distinction between this metaphysical account of actions which the theory is committed to and what can be inferred from the theory concerning agents. The result is that there is a seeming but no actual inconsistency in allowing that, according to the same theory, an action can be right in a metaphysical (objective) sense but wrong in a non-metaphysical (subjective) sense (and vice-versa). For what the agent is justified by the theory in doing--without reprehension--often turns out to be far different from what seems to be implied

by the metaphysical considerations.³⁵

The point is that there are two separate and distinct senses of justification in operation here. On the one hand, one can speak of an action which is justified as right from a metaphysical standpoint; in this case, it would have been much more accurate to phrase the questions we previously considered somewhat as follows: Under what conditions is it metaphysically right or metaphysically obligatory for him to kill? (It was with this sense of justification in mind that these questions have been answered.) On the other hand, one can speak of the same action from a non-metaphysical (subjective or agent's) standpoint and so judge the action as right or wrong, etc., from a significantly different set of considerations; in this case, the questions should be phrased somewhat as follows: Under what conditions is it subjectively right or subjectively obligatory for the agent to kill?³⁶ These two senses of justification have, to my knowledge, never been adequately distinguished and it is the failure to do so which has primarily been responsible

³⁵This means, in the example above, that although surrendering the scapegoats would be right on the basis of metaphysical considerations, the agent would not necessarily be able, according to the theory, to justify the action as right and thereby to commit himself to its performance. That this is so will be made apparent below.

³⁶As will become evident shortly, what is not meant by 'subjectively' here is 'what the agent thinks is right, obligatory, etc.' There is another sense of 'subjectively' which bears a much closer logical relation to the metaphysical.

for the charges that utilitarianism cannot account for many of our moral intuitions.

It is important to realize, then, that intuitive incompatibility with the theory at this stage can now be interpreted, in this new light, as the result of considering its metaphysical commitment to what constitutes a right or obligatory action. This is true with the material above with regard to the utilitarian position on killing; this result can also be applied to an objection like the following, taken from Frankena's Ethics, in which he is recounting objections to act-utilitarianism made by Joseph Butler and Sir David Ross:

The other Butler-Ross argument is that in a certain situation there might be two courses of action, A and B, which are such that when their total scores in terms of a balance of good over evil for the universe as a whole are calculated, the results are as follows: A is conducive to a slightly larger balance of good over evil than B. But it might also be that A involves breaking a promise, telling a lie, or being unjust. Here the act-utilitarian must say that A is right and B wrong. But again, Butler and Ross contend, B is or at least may be right and A is or at least may be wrong; this conclusion would be insisted upon by our ordinary moral consciousness. Hence, act-utilitarianism must be rejected.³⁷

Independently of a consideration of the success or failure of various other attempts which have been made to show that utilitarianism can counter this kind of objection, it is certain that the distinction made above can be

³⁷Frankena, p. 32.

successfully employed to do so.³⁸ That is, although in the metaphysical sense of justification--calculating "thier total scores in terms of a balance of good and evil for the universe as a whole"--the rejection of act-utilitarianism has seemed to Ross and Butler to follow of necessity, I propose to demonstrate that, once we consider the non-metaphysical standpoint of the theory, it does not.

The success of this approach for resolving the difficulties of utilitarianism with respect to moral intuition rests on the assumption that the ultimate acceptability of an ethical theory does not depend, in the final analysis, on what it implies metaphysically but, rather, on what its implications are from a subjective (agent's) non-metaphysical standpoint; i.e., what it allows the agent to do without reprehension. In other words, if a theory being employed does not sanction an agent's doing something which clashes with intuition, then, regardless of its metaphysical implications with respect to the rightness of actions, there is no reason why, from considerations of compatibility with intuition, that theory should not be judged acceptable. First, as is demonstrated further on,³⁹ it is theoretically

³⁸By other attempts I have in mind, for example, J.J.C Smart's "Extreme and Restricted Utilitarianism," The Philosophical Quarterly, VI (1956), pp. 344-354, and John Rawls' well-known article "Two Concepts of Rules," The Philosophical Review, LXIV (1955), pp. 3-32.

³⁹Sub-section III-D, pp. 126-132.

impossible for a finite moral agent to know what the theory entails metaphysically about the rightness or wrongness of particular actions. Consequently, although it has been demonstrated that utilitarianism may not be compatible with intuition from a metaphysical perspective,⁴⁰ this objection to the theory must be judged as uninteresting. For if it is theoretically impossible for a moral agent to know whether particular actions are metaphysically right or wrong, it is only from a non-metaphysical perspective that it becomes significant to judge the rightness and wrongness of particular actions,⁴¹ and, consequently, only from this perspective that it becomes significant to consider accepting or rejecting the theory because of the compatibility or incompatibility with intuition of particular actions sanctioned by the theory. Secondly, as a result of this, we must conclude that the only purpose served by the notion of metaphysical rightness

⁴⁰This was demonstrated in Section II, pp. 66-79, which considered utilitarianism and its implications regarding the right to life.

⁴¹Regarding particular actions (those actions which an agent may be considering as possible alternatives on some occasion of moral choice), if he doesn't know which particular actions are sanctioned by a theory as metaphysically right, how can they be compared with intuition? In other words, a moral agent is in no position to judge particular actions as compatible or incompatible with intuition from a metaphysical perspective. Of course he can speculate about possibilities but this would be a superfluous endeavor, given what he has to do; for it has nothing directly to do with making real moral decisions when they have to be made. It should also be noted that it will later be made evident that it is not theoretically impossible for an agent to know what is right from a non-metaphysical perspective.

is to point out possible discrepancies between what a finite moral agent may judge to be right and what is right in fact (i.e., metaphysically or objectively right), according to the theory's principles. And this conclusion must be regarded as trivial with respect to the process of accepting or rejecting utilitarian theories.⁴²

In conclusion, regardless of the objections to a theory's metaphysical commitments, what we must be concerned about, as philosophers concerned with devising or discovering an acceptable ethical theory, is whether the application of any theory undergoing philosophical scrutiny will possibly sanction, from a non-metaphysical perspective, at least one action for a moral agent in a possible situation which is clearly incompatible with what would be sanctioned by preanalytic moral intuition. Although, as metaphysicians, we might justifiably condemn a theory such as Mill's version of utilitarianism on the basis of its possible metaphysical implications, as philosophers who are interested in justifying a moral theory that is theoretically unobjectionable from a non-metaphysical perspective

⁴²The fact that it is possible that we may make mistakes in calculating consequences--assuming that it is a mistake not to accord with metaphysical implications--is neither a sufficient nor a necessary condition for rejecting an ethical theory. We might recall, for example, that Mill rejected the contention that his theory was objectionable because the world was too complicated to calculate consequences accurately, by replying that this was a defect with the world, not with his theory ("Utilitarianism," pp. 225-6).

--the level at which the theory is applicable to moral agents--this version of utilitarianism can be shown to be acceptable.

As will be demonstrated in the next and final section of this chapter, the metaphysical commitments of the theory are only of speculative interest, whereas the non-metaphysical commitments are crucial so far as acceptance or rejection as an agent-oriented theory is concerned. In brief, it will be demonstrated that the rejection of the theory as a metaphysical theory about actions does not entail the rejection of a theory as a non-metaphysical theory, and it is the latter which should constitute our major concern in our search for an ethical theory which satisfies the requirements of moral intuition.

The main point of this section can be summarized with reference to a final quotation from Brandt's article:

The question whether there is an objective sense, or a subjective sense, or perhaps both such senses, is a difficult one. Although I think it plausible to suppose there is an 'objective' sense, I do feel doubt about the matter. I propose, nevertheless, to discuss utilitarianism as a theory about right and wrong in this sense.

Because it is both necessary and possible to differentiate both the objective and subjective senses within the theory and to turn to the latter in an attempt to demonstrate the accordance of utilitarianism with intuition, I propose, in the final section of this chapter, to discuss Mill's version

⁴³Brandt, p. 114.

of utilitarianism in the subjective sense and to demonstrate further reasons why we must do so. Accordingly, "The question whether there is an objective sense or a subjective sense or perhaps both such senses" is not a difficult one. The theory can consistently be (and is) committed to both.

Section III

The Metaphysical and Non-Metaphysical Distinction in Mill's Theory

In this section it will be argued that Mill made this metaphysical-subjective distinction, that several of the positions he is committed to necessitate its acceptance. Accordingly, after Sub-section III-A summarizes Jan Narveson's view of utilitarianism as a theory of intrinsic value, Sub-section III-B will turn to evidence in "Utilitarianism" and On Liberty in an attempt to demonstrate that Mill was committed to a similar theory of intrinsic value. Through an analysis of the first half of Mill's proof in the fourth chapter of "Utilitarianism," Sub-section III-C will complete the picture of Mill's theory of intrinsic value by explicating his conception of the general happiness and revealing the part it plays in the second half of the proof. Sub-section III-D will discuss the effect of Mill's theory of intrinsic value on the calculation of consequences, concluding that it is theoretically impossible for a finite moral agent to know whether actions are meta-

physically right or wrong. These results necessitate, in Sub-section III-E, that we distinguish between two kinds of rightness (metaphysical and non-metaphysical) and formulate a principle of utility corresponding to each. At this point, the metaphysical and non-metaphysical distinction in Mill's theory is established and the last Subsection (III-F) is meant to show that the problems of justice can only arise with the principle of utility formulated with respect to non-metaphysical rightness, thus eliminating one of the commonly alleged sources of incompatibility between the principle of utility and principles of justice. Eventually, in Chapter IV, it will be demonstrated that, once we consider this formulation of the principle of utility, utilitarian theory is not at all incompatible with our intuitions regarding distributive justice.

Sub-section III-A: Utilitarianism as a theory of intrinsic value according to Narveson. Jan Narveson, in his book Morality and Utility, proposes and attempts to support an interesting hypothesis about the commitment of utilitarianism to a theory of intrinsic value. In several places he asserts that utilitarianism is not a theory of intrinsic value in the way that philosophers have generally supposed. For example, early in the second chapter he says:

...it does not provide an answer to the following questions: (1) What is the (general) criterion of value? (2) How ought I (anyone) to live? (3) What is intrinsically good? When I say that it "does not" provide an answer to these questions,

however, perhaps I should say that we should not think of it that way.⁴⁴

And later in the same chapter, while criticizing Sidgwick's contention that utilitarianism requires that we produce as many people as possible (to "produce the greatest amount of happiness on the whole"), he concludes, "This is a fundamental error, involving as it does the supposition that utilitarianism is a theory of intrinsic value, coupled with the moral position that the moral value of an act is proportional to its production of intrinsic value."⁴⁵

For Narveson, it is desirable to reject utilitarianism as a theory of "absolute intrinsic value:"

If we say that the moral value of an act is proportional to the absolute intrinsic value of its consequences, then there is no logical connection between the principle and a concern with other persons as such. Whereas...a concern for other persons as such is precisely the hub of utilitarianism.⁴⁶

In other words, it is his contention that commitment of the theory to a specific substantive theory of intrinsic value results in unacceptable inconsistency with what is sanctioned by preanalytic intuition. Among the examples he provides for both hedonistic and ideal varieties of utilitarianism, the following is an example of the latter:

⁴⁴ Jan Narveson, Morality and Utility (Baltimore: The Johns Hopkins Press, 1967), p. 30.

⁴⁵ Narveson, p. 47.

⁴⁶ Narveson, p. 67.

Hitler could have been an "Ideal"utilitarian and probably was. He probably believed that the quantity of absolute intrinsic value brought into being by killing millions of Jews, and wresting millions of people from the activities they enjoyed in order that they might go out and die on the field of battle, was greater than if everyone had been permitted to live as he pleased. Ex hypothesi, this would be a dispute about intrinsic value. How is it to be resolved? This will simply raise all of the old questions over again, which shows that ideal utilitarianism is unsatisfactory as a moral theory.⁴⁷

The denial that utilitarianism is a theory of absolute intrinsic value does not, however, commit one to the position that "value" is "subjective." Narveson is careful to point out that the view he is advocating implies no "theory of value" at all. As a utilitarian, one can consistently subscribe to either the view that intrinsic values are "objective" or the view that they are "subjective." Although it is difficult to determine what may be meant by "objective," Narveson takes it to mean "at least that if two people are of different opinions about the intrinsic value of something, then at least one of them is wrong;" if one takes the subjective view, the position adopted is that "such quarrels are made of thin air." Utilitarians may consistently admit either if they are so inclined. What the utilitarian must deny, however, is that "statements about intrinsic value per se may be admitted among the premisses of moral arguments."⁴⁸

⁴⁷Narveson, p. 69.

⁴⁸Narveson, pp. 69-70.

However, it is not the case that utilitarianism is committed to no theory of intrinsic value whatever. As a teleological ethical theory, it has to be. So what Narveson really means when he asserts that utilitarianism is not a theory of absolute intrinsic value is that it is not a theory of intrinsic value of the kind that has generally been attributed to it. Having rejected the latter, Narveson's proposal in this regard is that "We need to complicate the picture of evaluation for moral purposes, by introducing a category which might be labeled 'intrinsic moral value,' or perhaps 'intrinsic value for moral purposes' or 'intrinsic value from the moral point of view.'" In short, what he means is that

...the generating idea of utilitarianism is a concern for the values that individuals adhere to... an act's utility, then, is its productiveness of what those affected by it believe to be intrinsically good. Utilitarianism will be the principle that moral value (i.e., that by reference to which we appraise acts morally), is utility in that sense.⁴⁹

Sub-section III-B: Mill's theory of intrinsic value--
what happiness is: an open question. Rather than proceed with further explication and discussion of Narveson's theory

⁴⁹Narveson, p. 66. In the same paragraph in which he discusses the new category of intrinsic good on p. 78, Narveson adds something which is helpful by way of explanation. "...the fact that other people enjoy something is a good reason for helping them to procure it, or at least for letting them do it unimpeded, regardless of what one thinks of their taste. The generalization of this would be to say prima facie, that if someone regards doing X as an intrinsically (non-morally) good thing, then it is a good thing (morally) to assist him in doing X (regardless of the 'real' intrinsic value of doing X)."

at this point, I wish to do so indirectly by considering in some detail something which Narveson mentions but does not argue for. He observes, at one point, that his own view of utilitarianism might be "in accord with Mill's intentions." In what follows, therefore, the contention that Mill was committed to a similar view of intrinsic value will be argued for on the basis of the evidence that can be found in "Utilitarianism" and On Liberty to support the following hypotheses: (1) Mill is committed to the position that what happiness is, in fact, is an open question. Contrary to a hedonist (such as Bentham), who regards 'happiness' as identical with 'pleasure and the absence of pain,' Mill is quite obviously a kind of "liberal eudaemonist." --And this, despite his own alleged agreement with Bentham. (2) Even if what happiness is, in fact, were not an open question, Mill is committed to the position that it is to be treated as if it were. If either interpretation of Mill's position can be supported, it will become clear that he could not have held the position that the morality of actions is to be determined with reference to a theory of intrinsic value of the kind that has been attributed to him and most other utilitarian writers. It will also substantiate the preceding discussing in Section I regarding the theoretical differences between Bentham and Mill and eventually will result (at the end of this section) in a new formulation of the principle of utility.

Before getting into the substance of these issues,

however, something must be made clear at the outset. Some critics have contended that Mill's defense of freedom in On Liberty is incompatible with his utilitarian theory which supposedly commits him to the view that ultimately pleasure is the only good. Thus, for example, Henry D. Aiken has asserted:

Briefly, I consider the case for liberty, either on strict utilitarian or idealist-utilitarian grounds, very shaky indeed. At one point or another, both of these points of view betray the cause of liberty; in the case of the idealists, the betrayal was more or less explicit; in the case of the utilitarians, it remained for the most part implicit, and, as in the case of Mill, recognition of the fact was forestalled only by muddle-headedness and inconsistency.⁵⁰

Aiken's position is typical of all those who operate on the presupposition that Mill's utilitarian theory is based on a theory of intrinsic value sufficiently similar to Bentham's so that either he could not have been evincing adherence to the theory in his defense of liberty or, if he was, he shouldn't have, since appeal to it does not support his views on liberty. Rather than accept the hypothesis that On Liberty is inconsistent with the author's utilitarian theory for this reason, the method adopted in what follows will be to proceed on the much more plausible view--much more consistent with the supposition that Mill,

⁵⁰ Henry David Aiken, Reason and Conduct: New Bearings in Moral Philosophy (New York: Alfred A. Knopf, 1962), p. 298. Aiken goes on to offer some very weak arguments for the much more implausible view, which Mill denied, that liberty is to be looked upon as a kind of natural right.

as a careful thinker, was at least somewhat consistent in his thinking--that the position defended in On Liberty is to be interpreted as evidence that Mill's utilitarian theory has been seriously misinterpreted in this regard. That the converse of the usual interpretation has never seriously been argued in the history of moral philosophy must be judged as somewhat incredible.

In the second chapter of On Liberty, Mill argues against the suppression of opinion on two grounds. First, if the opinion which is suppressed is true, those who suppress it are "deprived of the opportunity of exchanging truth for error." Second, even if the suppressed opinion is false, those who suppress it lose "what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error." In other words, "we can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would be an evil still."⁵¹ He then proceeds to defend each hypothesis in turn.

The means most often employed for supporting the first is to emphasize the fallibility of man. Among the many places in which he makes this assertion, the following is its most cogent expression:

...the opinion which it is attempted to suppress by authority may possibly be true. Those who desire

⁵¹Mill, On Liberty, p. 16.

to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion because they are sure it is false, is to assume that their certainty is the same thing as absolute certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common.⁵²

Insofar as all claims of absolute truth rest on an assumption of infallibility, and insofar as the latter is severely disparaged by Mill as an unwarranted assumption, it is reasonable to suppose that Mill must have thought of his own beliefs about happiness as in the fallible category. His claim in "Utilitarianism" that "happiness is pleasure, and the absence of pain,"⁵³ his subsequent claim that indulging in the higher pleasures is conducive to a happier life than indulgence in the lower pleasures, and his assertion that an appeal to competent judges would be the best way of determining which pleasures were preferable could not have consistently been regarded by him to be what his readers should accept as the final word on the matter. Rather, in light of his position just noted in On Liberty, and the additional evidence presented below, a more plausible interpretation of his discussion in "Utilitarianism" of what happiness is, is that he was,

⁵²Mill, On Liberty, p. 17. Other places in the essay in which the fallibility of man is emphasized are pp. 21 and 56.

⁵³Mill, "Utilitarianism," p. 210.

on the one hand, generally expressing his own beliefs and preferences and, on the other, specifically suggesting that the best means available to an empiricist like himself for determining which pleasures are best would be to confer with those who have experienced a wide range of pleasures and take note of their preferences.

For example, although what competent judges prefer is some evidence (indeed, perhaps the only evidence available to a finite being) for making the decision as to what the content of happiness is, it cannot be taken to entail co-extensiveness with what happiness is, in fact. Because not all competent judges can be consulted or, even if they could, might prefer on one occasion something quite different from what they preferred on another, any previous judgment as to what happiness is might have to change on the basis of the available evidence. For this reason, and the fact that continued agreement could only be construed as empirical evidence in support of a particular hypothesis, even though Mill may have believed it to be a necessary truth that "'happiness' is 'pleasure and the absence of pain'" and that this was the general preference of competent judges, he would have had to concede that he and they might be mistaken. Mill could not consistently have supposed there to be a necessary connection between the preferences of competent judges and what happiness is, in fact. Since competent judges (and Mill) are not infallible, it is certainly possible that

their judgments with respect to the content of happiness can be and/or are mistaken. And this must also extend to the general judgment that 'happiness' is co-extensive with 'pleasure and the absence of pain.'

Mill's beliefs about happiness can only appear as the conclusion of an inductive argument or of a deductive argument in which the premisses can only be regarded as contingently true.⁵⁴ From the argument of man's fallibility, then, it follows that Mill must have held that what happiness is, in fact, is an open question. It is not even necessarily, as Mill at one point stated it was, 'pleasure and the absence of pain.' --And this, even though he may have believed or been quite certain that he knew what happiness was.⁵⁵

⁵⁴For a discussion of this see the material on Mill's proof, pp.97-100 and especially Sub-section III-C, pp. 111-26.

⁵⁵From the fallibility thesis it follows that the claim(s) by any fallible being(s) to know what happiness is must be suspect, that any judgment about the content of happiness (e.g., that it is 'pleasure and the absence of pain') must not be unquestionably accepted as true. And this is precisely what it means to speak about happiness as an open question, i.e., to regard happiness as an open question is, quite literally, to be open to the possibility that happiness is, in fact, correctly identified with something other than 'pleasure and the absence of pain,' or any other proposed equivalency, even though we may strongly believe and have good reason for believing that it is "such and such." In brief, no proposed definition is to be regarded as having finally settled the question as to what happiness really is. Moreover, it should be noted that even if 'pleasure and the absence of pain' were to be accepted as an adequate definition, this would be philosophically uninteresting and, consequently, not very helpful. As will be demonstrated shortly (pp.100 and 102), even though Mill stated that this is what he

Apart from any problems in the proof itself, brief consideration of the second half of Mill's proof of the principle of utility in "Utilitarianism" will provide additional evidence for the hypothesis that Mill regarded the actual content of happiness as an open question; that he was not committed to a specific theory of intrinsic value of the kind that has generally been attributed to him; that he was, rather, committed to a theory of intrinsic value of the kind discussed above with reference to Narveson.

After having supposedly proven in the first half of the proof that both individual and the general happiness are intrinsically desirable, Mill proceeds in the second half to prove that happiness is the only thing which is intrinsically desirable. Here, he is attempting to answer those critics who claim that there must be "other ends of human action besides happiness" because it is an empirical fact that people do seem to desire other things than happiness in and for themselves. At this point, happiness "has not...proved itself to be the sole criterion. To do that, it would seem, by the same rule, necessary to show, not only that people desire happiness, but that they never desire anything else."⁵⁶

meant by 'happiness' in actuality he must have intended this to be interpreted quite differently than has usually been supposed. In fact, it will be noted that this difference represents one of his major points of departure with Bentham. Acceptance of this as an adequate definition is seriously problematic for additional reasons noted on pp. 107-11.

⁵⁶Mill, "Utilitarianism," p. 234.

Mill replies to his critics by contending that whatever is desired as an end--though it might, at one time, have been desired as a means only--is really a part of happiness:

The ingredients of happiness are very various, and each of them is desirable in itself, and not merely when considered as swelling an aggregate. The principle of utility does not mean that any given pleasure, as music, for instance, or any given exemption from pain, as for example health, are to be looked upon as means to a collective something termed happiness, and to be desired on that account. They are desired and desirable in and for themselves; besides being means, they are a part of the end. Virtue, according to the utilitarian doctrine, is not naturally and originally part of the end, but it is capable of becoming so; and in those who love it disinterestedly it has become so, and is desired and cherished, not as a means to happiness, but as a part of their happiness.⁵⁷

The second half of the proof can be made explicit by means of the following argument:

- (1) Happiness is desirable as an end.
- (2) Whatever is desired as an end is a part of happiness.
- (3) If whatever is desired as an end is a part of happiness, then happiness is the only thing desirable as an end.

Therefore, happiness is the only thing desirable as an end.

The first premise is the conclusion of the first half of the proof (which will be examined later) except that the

⁵⁷Mill, "Utilitarianism," p. 235.

happiness he's concerned with at this point is interpreted, for the purpose of the discussion, as individual rather than general happiness. Premise (2) is obviously regarded by Mill as true; this is evident from the passage above and from the fact that he also considers things like health, money, fame, and power as parts of happiness for those who pursue them as ends; for if the latter can be parts of happiness, it seems unlikely that other things desired as ends can be excluded; or, at least, it is not at all obvious how one would go about doing so. Acceptance of (2) is also evidenced in the following, in which it seems clear that he is referring to any object of desire whatever. "What was once desired as an instrument for the attainment of happiness, has come to be desired for its own sake. In being desired for its own sake it is, however, desired as part of happiness."⁵⁸ That (3) is accepted by Mill as true is substantiated in the last statement in "Utilitarianism" regarding this part of the proof:

...if human nature is so constituted as to desire nothing which is not either a part of happiness or a means of happiness, we can have no other proof, and we require no other, that these are the only things desirable. If so, happiness is the sole end of human action, and the promotion of it the test by which to judge of all human conduct; from whence it necessarily follows that it must be the criterion of morality, since a part is included in the whole.⁵⁹

⁵⁸Mill, "Utilitarianism," p. 236.

⁵⁹Mill, "Utilitarianism," p. 237.

That Mill regarded the actual content of happiness as an open question and that he was committed to a theory of intrinsic value of the kind referred to above with reference to Narveson now appears to follow readily.⁶⁰

As noted, people desire many things as ends in themselves; consequently, virtue, health, money, power and fame are all mentioned by Mill as parts of happiness. These can only plausibly be construed as examples, however, as it is obvious that many other things are pursued as ends in themselves (e.g., cars, entertainment, love affairs, etc.). Whatever it is that people desire as an end, "...from being a means to happiness, it has come to be itself a principle ingredient of the individual's conception of happiness." And as Mill goes on to conclude, this "may be said of the majority of the great objects of human life."⁶¹

Because Mill says that what is a part of happiness (what is desired as an end) may differ from individual to individual and because he believes that whatever is desired as an end is a part of individual happiness (premise (2) above), it is safe to conclude that Mill is, in reality, a

⁶⁰It might be thought plausible to attribute to Mill the view that 'happiness' is 'pleasure and the absence of pain,' and that the particular content or states of happiness include money, fame, etc. However, although the above account of the second half of the proof is compatible with--and may support--this contention there are serious problems with accepting 'pleasure and the absence of pain' even as what might be called an adequate general definiens. As is also suggested in the footnote on p. 97, see pp.107-11.

⁶¹Mill, "Utilitarianism," p. 236.

kind of "liberal eudaemonist." For we can conclude, with Narveson (though he was not specifically referring to Mill), that:

... 'pleasure and the absence of pain,' after all the qualifications, interpolations and interpretations are in, means 'whatever it is that people seek for its own sake, when they are rational;' which is equivalent, in turn, to 'that by reference to which people appraise courses of action' ('naturally,' i.e., apart from moral considerations); which is, in turn, tautologically, what they regard as intrinsically good.⁶²

Mill is not unfairly interpreted, then, as meaning by 'pleasure and the absence of pain,' 'whatever it is that people regard as intrinsically good.' In fact, it seems the best interpretation of his intentions. And because there is a great deal of diversification in what is regarded by individuals as intrinsically good, it seems to follow that there is nothing specific Mill had in mind when he used the word 'happiness.' What he personally desired is what he thought competent judges would have preferred, but this could only have been thought by him to be a "part of happiness." Whatever else is desired by others as ends comprises the other parts. Consequently, the interpretation which commits Mill to a specific theory of intrinsic value (such as 'pleasure or the absence of pain,' which Bentham was clearly committed to), is untenable. All that can be said is that happiness (whatever is desired for its own sake) has intrinsic value. What happiness is, in fact--

⁶²Narveson, p. 66.

what its actual content is--is an open question for Mill. The only evidence available to finite moral agents is what it is that people actually desire as ends in themselves, but this kind of evidence can never justify the inference that what is desired by someone or some group is, in fact, happiness. It is this theory of intrinsic value which will result, at the end of this section, in a new formulation of the principle of utility.⁶³

We can now return to On Liberty for evidence that, whether or not what happiness is is an open question, Mill thought that it should be regarded by any moral agent as if it were.

In the first paragraph of the third chapter of On Liberty, Mill asserts:

The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost.⁶⁴

This brings us to the second argument against the

⁶³It should be noted that these considerations of the second part of the proof strongly support the previous contention that Mill's talk of competent judges, etc., was only a prudential recommendation; i.e., was not to be taken as the last word from an infallible being with a grasp of ultimate truth.

⁶⁴Mill, On Liberty, pp. 55-56.

suppression of opinion, which we now realize is also used against those who hold the corresponding position regarding actions, that men should not be "free to act upon their opinions--to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril."⁶⁵ We have just considered the reasons for not suppressing opinions that are not known to be false. The reasons for not suppressing those which are known to be false are succinctly presented by Mill in a summary at the end of the second chapter as the last two of four grounds for "...the necessity to the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion."

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its vital effect on the character and conduct: the dogma becoming mere formal profession, inefficacious for good, but cumbering the ground and preventing the growth of any real and heartfelt conviction, from reason or personal experience.⁶⁶

⁶⁵Mill, On Liberty, p. 55.

⁶⁶Mill, On Liberty, p. 52. It might be noted that although Chapter II of On Liberty is concerned with opinions in general (among which, those about the content of happiness are only one variety), Chapter III is devoted almost entirely to the question of acting on only one kind of

This argument applies to the problem of happiness, generally, as follows: Even if we know at present or might in the future know with certainty what happiness is, in fact, and so would know that other opinions are false, stifling these differing opinions would be wrong. Consequently, even if we know what happiness is, Mill is advocating that, as moral agents, we must nevertheless treat the issue of the real content of happiness as though it were an open question. According to the passage just referred to, failure to do so is to dispense with the possibility that beliefs regarding happiness will be rationally chosen, defended and pursued with conviction.

It can be concluded, therefore, that on either the supposition that our opinion as to what happiness is may be false or on the supposition that we know it to be true, it is highly unlikely that Mill was committed to a theory of intrinsic value for utilitarianism any more specific than the one which says generally that "happiness" has intrinsic value.

opinion, viz., those as to the content of the happy life. Here the position being argued is that people ought to be able to act on their own opinions as to what happiness consists in, so long as their doing so is not injurious to others. This is worth mentioning insofar as it serves as further indication of the concern Mill had that each individual be allowed to live in accordance with his own conception of happiness, and consequently, supports my previous conclusion that Mill was not insisting upon appeal to quantitative and/or qualitative hierarchies of pleasures for determining the morality of actions--that consulting such hierarchies in determining the morality of actions would sometimes require choosing contrary to the pleasure preferences of others and would thereby result in injustices.

But then, as has previously been noted, we are to interpret this for individual happiness as equivalent to "whatever it is that people regard as intrinsically good." In any case, as moral agents, we are directed to proceed on the assumption.

Before leaving this topic, it is necessary to recall what was stated above with respect to any individual, that "...the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost." This means that, ceteris paribus, individuals should be allowed to adopt their own life-styles (pursue their own means) to obtain whatever they believe constitutes happiness. At one point, in which he is emphasizing individual differences, Mill maintains that the question regarding life-styles must always be answered relative to the individual; consequently, given the various opinions about happiness and the possible life-styles that should be (and are) chosen as means to the same conception of happiness, the question regarding life-styles would receive a (perhaps limitless) number of answers.

The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their best order, while to another it is a distracting burthen, which suspends or crushes all internal life. Such are the differences among human beings in their sources of pleasure, their susceptibility of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable.⁶⁷

⁶⁷Mill, On Liberty, p. 68.

For our purposes, this means that, ceteris paribus, it would be as wrong to suppress life-styles as means of acting on one's beliefs as it would be to suppress beliefs about happiness. And, of course, the same arguments which apply to opinions about happiness would apply also to opinions about life-styles; i.e., if beliefs with respect to happiness should not be suppressed, neither should beliefs with respect to the best means for obtaining happiness (life-styles). Not only is the content of happiness to be regarded as an open question but also the best means to happiness is to be so regarded. And this includes opinions about desired life-styles.⁶⁸

All of this marks a very striking and significant difference between Mill's utilitarian theory and a theory like Bentham's. Because Bentham accepted the position that only pleasure has intrinsic value, his theory is best termed hedonistic. Mill's theory, on the other hand, is better categorized as eudaemonistic, for when it is said that Mill is not committed to a theory of intrinsic value in the usual sense, it can be inferred from this as also meaning that he was not committed to saying that only pleasure has intrinsic value. Good empiricist that he was, Mill held that "the sole evidence it is possible to produce that anything is desirable,

⁶⁸Throughout his third chapter, Mill emphasizes the desirability of a diversity of life-styles within society as good for the individual as well as for society. In particular, see pp. 56-60 and 67.

is that people do actually desire it,"⁶⁹ meaning that the only evidence we have for anything's having intrinsic value is gained by observing whatever it is that people desire as ends in themselves. However, since whatever is desired as an end in itself is thought by Mill to be a part of happiness (as previously demonstrated) and because what is desired for itself is often only remotely--if at all--connected with what is ordinarily meant by pleasure, the only conclusion one can infer from the available evidence is that happiness--whatever people desire for its own sake--has intrinsic value.⁷⁰

If it is thought doubtful that one might desire something as an end with no corresponding thought or expectation of ensuing pleasure, one might consider, for example, the

⁶⁹Mill, "Utilitarianism," p. 234.

⁷⁰Of course, given Mill's position with respect to the question as to what happiness is, to interpret 'happiness' for the purposes of the employment of utilitarian theory as 'whatever people desire for its own sake' must also be regarded as uncertain, though based on the best available evidence (for another example of Mill's attitude with respect to evidence, see the discussion of the first part of the proof, pp. 115-126. In brief, it has been argued that, given the evidence, the interpretation as to what happiness is cannot be made any more specific than this. As will later be discussed, there are certain restrictions which must be placed on those desires for happiness which necessitate harming others in the process of satisfaction, such that we might conveniently distinguish between what might be called "legitimate desires" and "illegitimate desires" (meaning, by the latter, "those which are only satisfied at the expense of harming someone," and, by the former, the negation of this). What is meant by "harm" will also be discussed later. There are perhaps, in addition, qualifications that must later be made concerning what people regard as having moral value.

pursuits of some kinds of religious ascetics, who seem to pursue as ends what would ordinarily be classified as painful experiences. If such things as sleeping on beds of nails and sitting for hours at a time contemplating one's navel are to be included as instances of pursuing pleasure, it must surely be admitted that "pleasure" has become a useless concept; it is no longer capable of being used to distinguish the agreeable from the disagreeable because its extension now seems to be every and any kind of experience whatever. Consequently, it is only by a very gross and ill-conceived extension of the term that desiring, as ends, things like the above can also be said to be instances of desiring pleasure. These are not the activities which one would normally be attributing to someone in describing him as a hedonist. Yet this is what we must do if, even in light of the second part of the "proof," we insist on categorizing Mill as a hedonistic utilitarian.

Mill plainly seems to be arguing in the second half of the proof that people pursue as ends either pleasure or only those things which are so intimately linked with pleasure that though there is no conscious thought of the connection whenever they are desired, there is, through long association, what might be called an unconscious connection. All in all, however, it seems apparent that what his position really commits him to is the admission that some things can be (and are) pursued as ends (even for the first time) with no conscious thought

of association with pleasure; consequently, that the best--perhaps only--evidence we have, as moral agents, regarding the actual content of individual happiness is (with the necessary qualifications) just what we have said it is--whatever people desire for its own sake.⁷¹ And because it is possible to desire other things as ends than pleasure, Mill must be interpreted as a eudaemonist and not a hedonist.

Even if it were plausible to interpret Mill as a hedonist, it is worthwhile noting that the problem of deciding just what pleasure is, is a major difficulty. As Narveson admits, in the first part of a discussion of pleasure, what it is "is no easy question, and I do not intend to answer it in a precise way."⁷² After having considered at some length the insight that others have offered in the attempt to deal with the problem, he concludes with the observation that:

...when writers attempt to define the notions of pleasure and enjoyment, invariably they end up saying, in one way or another, that they consist of pro-attitude or positive evaluation of some experience on its own account. If this is so, then small wonder that 'psychological hedonism' was so popular

⁷¹Though it is somewhat difficult to imagine, I suspect it would be possible for one to desire as ends some of the things Mill mentioned as examples of parts of happiness (e.g., money and health) with no thought of resulting pleasure, even when they are first desired. For more plausible examples, consider the pursuit of knowledge or self-realization, which many might originally desire with no thought of a pleasant result, in the ordinary sense of the term.

⁷²Narveson, p. 63.

at one time, it being the theory that only pleasure is regarded as desirable on its own account.⁷³

In the lengthy debate over intrinsic goods, carried out throughout the history of moral philosophy, many have denied that pleasure is a good at all and many have held that there are, in any case, other good things besides pleasure. For example, Moore's "ideal utilitarian" theory was meant to obliterate the identification of good with pleasure, as Moore regarded "good" as a primitive term which was correctly applied to many other things held to be good in themselves besides pleasure. For at least two reasons, it is clear that this is not the kind of debate that Mill could have been concerned about. First, metaphysical or intuitionist assertions about intrinsic goodness which are not susceptible to empirical confirmation or refutation would have to have been regarded by Mill as meaningless. The available evidence shows that things desired as ends are multifarious; they are, says Mill, to be looked upon as parts of happiness; what connection they have with what is really intrinsically valuable (what has been called "objective" intrinsic value) cannot be known on the basis of the only evidence which finite moral agents have available to them. Second, and more importantly, on the basis of previous discussion of On Liberty and pleasure hierarchies, it is abundantly clear that whatever it is that is regarded by moral agents as having intrinsic worth is not something that Mill thought utilitarians should be concerned about,

⁷³Narveson, p. 65.

either to condemn or to recommend, in anything other than a prudential sense.⁷³ In the essay On Liberty and elsewhere, it is apparent that Mill regards the individual's conception of happiness--as well as his style of living--as up to the individual, and not something that the moral theorist should ever suggest or consider imposing on others.

Suffice it to say that the concept of pleasure is either vacuous or its status as an intrinsic good is sufficiently nebulous so as to be of little or no value in the calculation of consequences and therefore in the determination of the morality of actions. As will be discussed further on, the implication is that calculation of consequences in the manner urged by Bentham's hedonic calculus is, for finite moral agents, theoretically impossible.

Sub-section III-C: Mill's theory of intrinsic value--the general happiness. Thus far, we have only considered what Mill meant by individual happiness. We reached our conclusions partly through analysis of the second half of Mill's proof; we can discern what he meant by the "general happiness" if we examine the first half of the proof. It will be helpful if we first discuss briefly an essay by Everett W. Hall, who attempts to demonstrate that Mill was not attempting a strict proof and, consequently, that objections to the

⁷³With the qualification (see p. 107_n) that the resulting desires are "legitimate;" i.e., that their fulfillment would not be other-regarding and harmful.

proof which are based on the assumption that he was, are easily dispensed with. "Bradley, like Moore, is assuming that our 'great modern logician,' as he derisively characterized Mill, must be presenting in his 'proof' of the principle of utility a strict logical deduction. It is high time that this whole interpretation be fundamentally and decisively challenged."⁷⁴

Hall claims that Mill, as an empiricist, clearly disavows any attempt to give a strict proof of the principle of utility. Because he is an opponent of all forms of intuition and a priorism, and, consequently, cannot appeal to self-evidence or inductive generalization (because the rightness or wrongness of individual acts is not open to direct perception), Mill is not attempting "to prove the principle of utility, but to make it acceptable to reasonable men."⁷⁵

He offers an interpretation of what Mill is doing here which he claims "at least makes sense of Mill's argument as a whole." His procedure is to draw an analogy between an empiricist's approach to the first principle in epistemology and the first principles of ethics. He explains that "in the area of knowledge the empiricist cannot strictly prove his

⁷⁴Everett W. Hall, "The 'Proof' of Utility in Bentham and Mill," in Mill, A Collection of Critical Essays, ed. J. B. Schneewind (Garden City, New York: Doubleday & Co., Inc., Anchor Books, 1968), p. 156.

⁷⁵Hall, p. 159.

first principle." It is not possible for him to use an inductive argument or to deduce from a more ultimate principle that there are no unobserved entities, no visible things never seen, audible occurrences never heard, etc. However, he can, claims Hall,

...set it up as a plausible principle (as a 'meaning criterion,' as a later positivist put it) that any epistemological theory that requires visible or audible entities that are never seen or heard is talking nonsense. The only test anyone can seriously propose that a thing is visible is that it is actually seen. A theory that conflicts with the requirement will just not be accepted by reasonable people.

It is the same in ethical theory:

A theory that sets up as ends desirable in themselves (i.e., good, not simply capable of being desired), states of affairs that nobody ever desires is just academic and unrealistic. "If the end which the utilitarian doctrine proposes to itself were not, in theory and practice, acknowledged to be an end, nothing could ever convince any person that it was so." That is, if no one appealed to the greatest happiness to justify ethical principles, or ever in practice desired the greatest happiness, no considerations capable of getting reasonable people to accept that principle as ethically ultimate could be presented. Let us call this the requirement, directed toward any ethical first principle, of "psychological realism."⁷⁶

Contrary to Hall, it is my contention that the first half of Mill's proof can plausibly be interpreted as containing two separate proofs--a proof that individual happiness is desirable followed by a proof that the general happiness is desirable. For the sake of convenience, they will be referred to in the following as I_a and I_b , respectively.

⁷⁶Hall, pp. 160-161.

It is Hall's contention that, for Mill, neither could be construed as an inductive or deductive proof. On the contrary, I believe the conclusion of I_a is an inductive generalization and the conclusion of I_b (given what Mill means by "general happiness") can be established as the conclusion of a deductive argument.

Something needs to be said at this point about Mill's contention, in the first chapter of "Utilitarianism," that any proof of the principle of utility "cannot be proof in the ordinary and popular meaning of the term," that "questions of ultimate ends are not amenable to direct proof."⁷⁷ Although Hall has taken these statements to mean that Mill was asserting the impossibility of constructing either inductive or deductive arguments and has employed this interpretation to exonerate Mill from accusations that he has made use of logical fallacies in his proof, I find it difficult to believe that inductive and deductive arguments could not have been unproblematically constructed by Mill in support of his ultimate ethical principle. Given our knowledge of his empiricist stance, plus plausible interpretations of the passages in "Utilitarianism" in which he talks about the proof, it seems reasonably certain that the employment of inductive and deductive arguments is not something that Mill would have thought impossible. However, conceding that he might have thought it impossible, there

⁷⁷Mill, "Utilitarianism," p. 207.

seems to be no substantial reason for his adopting this position, since appealing to inductive and deductive proofs (although with conclusions that have less than 100% probability of being true) is something that appears to have been clearly open to him. In this case, what he meant or should have meant in the passages quoted above was merely that empirical propositions (in this case, "individual and/or general happiness is desirable") can never be completely confirmed, an assertion that is much less difficult to accept than the one Hall attributes to him.

In brief, it is my contention that the following analysis of the first part of Mill's proof as a separate inductive and deductive proof is--contrary to Hall's analysis --much more in accordance with his empiricist stance; moreover--as with Hall's analysis--it is not susceptible to the objection that he was employing logical fallacies.

Essentially, there are three reasons why the first half of the proof should be looked upon as consisting of two parts, I_a and I_b . In the first place, Mill made a point of maintaining that "the sole evidence it is possible to produce that anything is desirable is that people actually do desire it." Because both individual and general happiness were thought by Mill to be desirable, it is reasonable to suppose that this passage was meant to apply to both, with the result that the desirability of each kind of happiness is proven as the conclusion of a separate

inductive argument.⁷⁸ Secondly, it is only in this way that it is possible to avoid attributing to Mill the empirically vacuous theory of psychological hedonism, thereby avoiding having to ascribe to him a position which is blatantly inconsistent with his empiricist stance. Finally, if there were not this division, it would be difficult to make much sense of the second half of the proof since (as will soon be shown) it is obvious that the "parts of happiness" referred to are to be thought of as parts of both individual and general happiness. The conclusion, then, is to be interpreted as referring to both individual and general happiness, but in order for it to follow, there needs to be a premise to the effect that both individual and general happiness are desirable (a premise which must be the result of the conjunction of the conclusions from two separate arguments).⁷⁹

It is Hall's contention that, in arguing for the desirability of the general happiness, Mill is assuming the truth of psychological hedonism. This, he thinks, is the only plausible interpretation of that passage in which Mill says that "each person, so far as he believes it to be

⁷⁸However, it will be argued that although the desirability of individual happiness appears as the conclusion of an inductive argument, the desirability of the general happiness appears as the conclusion of a deductive argument. Nevertheless, this is not inconsistent with the assertion that Mill intended two separate proofs in this half.

⁷⁹The second half of the proof was previously discussed in terms of individual happiness only, for the purpose of explicating what Mill meant by individual happiness.

attainable, desires his own happiness." However, it can be much more plausibly contended that Mill, as an avowed empiricist, must have asserted this as a contingent proposition, which he realized could quite possibly be (or become) false. Bearing in mind that, upon analysis, the position of psychological hedonism is found to be held as a necessary truth (in the sense that its adherents allow no evidence to count against it), it would, I think, have been quite inconsistent of him to subscribe to such an empirically vacuous position.⁸⁰ Consequently, the proposition that "everybody desires his own happiness" (equivalent to the passage above) was most likely thought of by Mill as the conclusion of an inductive argument in which the degree of probability of the conclusion's being true is dependent on the strength of the evidence presented in the premisses:

- (1) Individual A desires his own happiness.
- (2) Individual B desires his own happiness.

.
.
.

Therefore, it is probable that everybody desires
his own happiness.

As an empiricist who maintained that "the sole evidence it is possible to produce that anything is good is

⁸⁰ Good evidence that Mill rejected psychological egoism is found in Mill's essay on Bentham in John Stuart Mill on Bentham and Coleridge, ed. F. R. Leavis (New York: Harper Torchbooks, 1962), pp. 66-67.

that people actually do desire it," it is also plausible to interpret Mill as having thought of this same evidence as support for the desirability of individual happiness as the conclusion of an inductive argument. Part I_a of Mill's proof should than be set up as an inductive argument with the same premises as the argument above. Again, the degree of probability of the conclusion's truth is dependent upon the strength of the evidence presented in the premisses:

- (1) Individual A desires his own happiness.
- (2) Individual B desires his own happiness.

.
.
.

Therefore, it is probable that individual happiness is desirable.⁸¹

The conclusion's having been established with a high degree of probability means, of course, that individual happiness is a good worth aiming at, a worthwhile objective that we can recommend to others, etc., from a prudential standpoint. Its connection with morality, though

⁸¹Mill, of course, would have thought the conclusion established with a very high degree of probability, as it was undoubtedly inconceivable for him--as for us--that there could be anyone (or very many) who did not desire to be happy. However, in the true spirit of empiricism, because it is a fact that not everyone who has lived or will live can be questioned on the matter, the conclusion is necessarily something less than 100% probable. It could, of course, turn out sometime in the future that the conclusion would be very weakly supported if many or all of those of some future generation should, for some reason (insanity, perhaps) not desire to be happy.

not immediately apparent at this point, is evidenced by the part it plays as a premise in the proof for the desirability of the general happiness, to which we now turn.

Part I_b, however, immediately poses a problem, for if the only evidence that it is possible to produce that anything is good is that people actually desire it, the empirical evidence in support of the general happiness as a good will turn out to be embarrassingly weak. That is, it seems safe to say that the number of individuals who desire the general happiness is far less than those who desire their own individual happiness. As a consequence, the conclusion of the following inductive argument is going to be less probable--perhaps far less--than the conclusion of the previous argument for the intrinsic goodness of individual happiness:

(1) A desires the general happiness.

(2) B desires the general happiness.

.
.
.

Therefore, it is probable that the general happiness is desirable.

As this is presumably the most important part of the first half of the proof, since the principle of utility is formulated with reference to the general happiness (the greatest happiness of the greatest number) as the end by

which one is to determine the morality of actions, this result must be regarded as most unfortunate.

At this point, however, we must turn to another point Hall makes about Mill's proof:

Mill cannot and does not argue that each seeks the general happiness or that society as a whole somehow has its own motives, over and above those of its members, and that these are directed toward the general happiness. Rather, Mill simply says (anticipating the outcome of step 2 and the acceptance of the pleasure of each individual as a good) that, since the pleasure of each is a good, the sum of these must be a good: "each person's happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons." Or, as he explains in a letter: "I merely meant in this particular sentence to argue that, since A's happiness is a good, B's is a good, etc., the sum of all these goods must be a good."⁸²

If Hall is right here about what he takes Mill to be doing in this part of the proof, then it is obvious that the objections raised by Moore, Bradley, and others simply don't hold. As Hall goes on to say, "This may be incorrect; it may be that goods cannot be added, though surely it is not just obvious that Mill is mistaken in this matter. However that may be, Mill is clearly not trying to prove [as claimed by Moore and Bradley, for example] that 'because everybody desires his own pleasure, therefore everybody desires the pleasure of everybody else.'"⁸³

I should like to add here some support for Mill's pro-

⁸²Hall, pp. 161-162.

⁸³Hall, p. 162.

cedure, assuming that Hall has interpreted it correctly. Although Mill's claiming that the sum of individually good things is also good seems to be an instance of the informal fallacy of composition--inferring that a property characteristic of the parts is also characteristic of the whole--it certainly is not obvious that it is. First of all, not all instances of inferring from the property of a part that the same property characterizes the whole are instances of the fallacy of composition. For example, although it is certainly fallacious to argue that if all the individual parts of an engine are light, the engine itself is light, it unproblematically follows that if each of the apples of a bushel is sweet, the entire bushel of apples is sweet. Secondly, it is not at all apparent that the inference that the sum of individually good things is good is not more like the second unproblematic example than like the first. In other words, if Hall's interpretation is correct, there seems to be no compelling reason(s) for concluding that Mill has employed a logical fallacy; rather, there seems more reason to believe that he wasn't, though it won't be argued for further here.

However, if it is clear that Mill was not trying to prove what Moore and Bradley contended he was, it is also clear that I_b no longer has to be interpreted as an inductive argument similar to I_a . Contrary to Hall's assertion that no strict proof is possible or intended, with

the concept of general happiness defined as it is, it is possible to interpret I_b as a deductive argument. Whether Mill intended this or not, it was clearly open to him if what he meant by general happiness is in accord with Hall's interpretation. Part I_b can now be constructed as follows:

- (1) Individual happiness is desirable.
- (2) On the basis of (1), A's happiness is a good, B's is a good, C's is a good, ...etc.
- (3) If A's happiness is a good, B's is a good, C's is a good, ...etc., then the sum of A's, B's, C's, ...etc. happiness is desirable.
- (4) 'General happiness' =^{df} 'the sum of A's, B's, C's, ...etc. happiness.'

(5) Therefore, the general happiness is desirable.

Premise (1) is the conclusion of I_a ; (2) follows analytically from (1) in that 'desirable' for Mill is a synonym for 'good;' (3) and (4) must have been acceptable to Mill as following from the meaning of the passage "the general happiness is good to the aggregate of all persons," on the assumption that Hall's interpretation is correct. And (3) is acceptable to us if, as suggested above, Mill was not guilty of employing a logical fallacy.

As the conclusion of a deductively valid argument, (5)'s truth is 100% probable on the assumption that all the premisses are true. In terms of soundness, however, because

premise (1) is the conclusion of an inductive argument and so is a contingent proposition, (5)'s truth is not, in fact, 100% probable. This result is in accordance with the position we have previously maintained Mill would have subscribed to--that empirical propositions cannot be completely confirmed.

There are several reasons for accepting Hall's interpretation as to what Mill meant by the general happiness, not the least of which are the evidence Hall provides and the fact that it allows one to make sense of Mill's proof. In addition, however, it is supported by what has previously been argued is what Mill meant by individual happiness. Here it was argued that there is no one conception of individual happiness which everyone must strive for; Mill's primary concern was that each individual should be able to live according to his own conception of happiness, with the restriction that his doing so did not harm others unnecessarily.⁸⁴ Given this conception of individual happiness, the most plausible way of characterizing the general happiness seems to be to say--not that it is some kind of abstraction, somehow independent of individual happiness--but

⁸⁴'Unnecessarily' is to be interpreted as 'without moral justification.' It is essential to add this, since it is clear that there are some occasions on which to harm others would be morally justified; e.g., when all the alternatives available to a moral agent involve harming others and not at least one action, if performed, would result in less harm than the others. The necessary conditions for the moral justification of harm are elaborated on in parts of Chapters III and IV of this work; see, for example, Sections I and II of Chapter III.

that, in any given society, the general happiness is equal to the sum of all those living within it who are happy. Consequently, if the general happiness is equivalent to the sum of all those who are individually happy, then, in any given society, the general happiness would be at a maximum if as many individual members as possible were living as they chose, according to their own conception of happiness; i.e., if as many members as possible were individually happy. It would follow that, in any society, the degree of general happiness within it would be, at any one time, directly proportional to the percentage of its populace enjoying individual happiness.

At this point it should be noted that, because some individual conceptions of happiness (what is desired for its own sake) would, if acted upon, seriously infringe upon and hamper the efforts of others in the pursuit of their own conceptions of happiness, it is apparent that the general happiness can be maximized only if some such desires are classified as "illigitimate." In other words, in order to maximize the general happiness, it is necessary to differentiate between two conceptions of happiness: "whatever is legitimately desired for its own sake" and "whatever is illegitimately desired for its own sake," and to do whatever possible to prevent the latter from being acted upon.⁸⁵

⁸⁵Something is legitimately desired for its own sake if

Considering what Mill meant by general happiness, it is now apparent that there is a close logical relationship between it and individual happiness, in that pursuing individual happiness is the same as pursuing a part of the general happiness and pursuing the general happiness is nothing other than pursuing its parts.⁸⁶ We can now return to the second

and only if satisfying or attempting to satisfy the desire would not result in harming someone unnecessarily. Conversely, something is illegitimately desired for its own sake if, and only if, satisfying or attempting to satisfy a desire would result in harming someone unnecessarily. It is necessary here only to note the necessity for making the general distinction; it is the purpose of Chapter III to relate the distinction to specific desires, to define the concept of 'harm' etc. That people should have the general right to satisfy their legitimate desires is argued on p.142. Mill, of course, argued for this distinction at several places in On Liberty. For example: "All that makes existence valuable to anyone, depends on the enforcement of restraints on the actions of other people" (p. 5; see also p. 63). He also recognized the great difficulty involved in making specific decisions in this regard: "What these rules should be is the principle question in human affairs" (p. 5). From now on, the phrase "whatever is legitimately desired for its own sake" will be freely employed when speaking of the content of individual happiness.

⁸⁶This is not to be construed as meaning that one's moral duty is to do his best to see that he is individually happy; insofar as this is a duty at all, it is a prudential one. Rather, as will later be made clear, our moral duty is, roughly, as Mill expressed it in On Liberty, not to harm others; i.e., not to interfere with their pursuits of happiness, unless their doing so is harmful to others and, whenever possible, to prevent others from interfering with anyone's harmless pursuits. Our duty, then, as moral agents, is not to make people individually happy but to allow them the opportunity to become so. In this way, we guarantee the optimum conditions for the growth and development of individual (and, consequently, the general) happiness. Mill thought of individual happiness as an extrinsic as well as an intrinsic good. For example: "In proportion to the development of his individuality, each person becomes more valuable to himself, and is therefore capable of becoming more valuable to others" (p. 63). He goes on, in the next few pages, to elaborate on this.

half of the proof, previously considered only with reference to individual happiness. With the knowledge that both individual and the general happiness were regarded by Mill as having intrinsic worth (there having been a separate proof for each), and that there is an intimate logical relationship between them, it is also apparent that both are to be included in the second half. It is now correctly set up as follows:

- (1) (Individual and the general) happiness is desirable.
- (2) Whatever is desired as an end is a part of (individual and the general) happiness.
- (3) If whatever is desired as an end is a part of (individual and the general) happiness, then (individual and the general) happiness is the only thing desirable as an end.

-
- (4) Therefore, (individual and the general) happiness is the only thing desirable as an end.

Sub-section III-D: effect of Mill's theory of intrinsic value on the calculation of consequences. It has been established that, for Mill, the general happiness for any society is equal to the sum of its members who are happy, that in order to maximize the general happiness the content of individual happiness is to be interpreted as "whatever is legitimately desired for its own sake," and that, consequently,

pleasure is not the only thing that can be judged by the theory to be intrinsically good. It can now be demonstrated that a further consequence of all this, and one which serves to mark another major difference between Mill's theory and one like Bentham's is that it is theoretically impossible for a moral agent to calculate and determine, with any degree of certainty, whether actions are metaphysically (objectively) right or wrong.⁸⁷ One reason for this is the fact that, for finite moral agents, what happiness is, in fact, is an open question. Since a decision on this issue is a necessary condition for being able to determine metaphysical rightness and wrongness, it is theoretically impossible for a finite moral agent to know whether any given action is metaphysically right or wrong.⁸⁸

⁸⁷The claim being made and supported in the next few pages is that it is theoretically impossible (for an explanation of this term, see footnote immediately below) to know which acts are metaphysically right or wrong, etc. The claim is not that we can't know any empirical truths, though it has been asserted that Mill subscribed to the position that general empirical propositions cannot be completely confirmed (see material on first part of the proof, pp. 111-126.) The conditions under which one could justifiably claim metaphysical knowledge of this type are roughly specified in a footnote on p.131. For the distinction between metaphysical and non-metaphysical rightness, etc., see pp. 79-86; also, pp. 132-135.

⁸⁸The term 'theoretically impossible' is not meant in the strict logical sense, according to which it is logically impossible that one could ever accomplish whatever is so regarded. Obviously there is no logical restriction in this sense on one's knowing what happiness is, in fact (or on one's finiteness--non-omniscience--if it is this which is responsible for the lack of such knowledge). But given the absence of this knowledge (and the fact of one's finite--non-omniscient--nature), it is impossible in a very strong

Bentham and other utilitarians have supposed that happiness is identical with pleasure. If this assumption were acceptable, it would seem that the difficulties encountered in calculating the consequences of actions (and so determining their morality) could be categorized as merely practical. Consequently, it would be theoretically possible to overcome these difficulties by, for example, developing the technology for implanting a sensing device in the pleasure center of everyone's brain and observing on a pleasure-meter the effects of innumerable actions. Over a long period of study and observation, it would become possible to predict, with a great deal of accuracy, which actions among those available as alternatives on any occasion of choice, would be productive of the most pleasure for all those affected and, therefore, which action would be morally right. Such a system might be justifiably regarded as a paradigm situation so far as the measurement of pleasure is concerned and would certainly be the ideal for the employment of Bentham's "hedonic calculus."⁸⁹

--perhaps more than merely practical--sense that such a being could employ utilitarian theory for attaining knowledge as to which actions are metaphysically right or wrong. Given that knowing what happiness is, in fact, is a necessary condition for knowledge of metaphysical rightness and wrongness, it is in this sense that the term 'theoretically impossible' is intended.

⁸⁹Given a sufficient degree of sophistication, such a pleasure-measuring device could more or less adequately take into account all of the "circumstances" for measuring quantities of pleasure which Bentham deemed important--"intensity," "duration," "certainty or uncertainty," "propinquity or remoteness," "fecundity" and "purity." At least I see no

However, because it has been observed that, according to Mill, what happiness is, in fact, is an open question or that, in any case, it is to be looked upon by any moral agent as if it were, using such a pleasure-measuring device would be to presuppose that 'happiness' is identical with 'pleasure (and the absence of pain)' and so would have to be regarded as theoretically objectionable. In short, because Mill's theory is not committed to any theory of intrinsic value sufficiently specific that one could conclude that only pleasure or some other particular mental state has intrinsic value, it is theoretically objectionable to proceed as if it were so committed; and if one proceeds as if it weren't (as one should), it is theoretically impossible, in employing it, to know whether actions are metaphysically right or wrong. The only thing which has intrinsic value is happiness and, on the basis of the only available evidence, this is to be interpreted by any finite moral agent as "whatever it is that is legitimately desired." From a metaphysical perspective, then, the content of happiness is an open question and, since it is not known what to calculate with reference to, it is obvious that we cannot, so to speak, even get started with the metaphysical calculation process.⁹⁰

reason why it wouldn't be theoretically possible to do so. For Bentham's description of these terms, see "An Introduction to the Principles of Morals and Legislation," Collected Works of Jeremy Bentham, pp. 38-39.

⁹⁰ However, even if one were able to calculate with reference to pleasure and/or some other intrinsic good(s) (and

This brings us to the old practical difficulty of calculating consequences. Suppose that it were known what happiness is, in fact, and that (operating with a theory other than Mill's) moral agents are not required to proceed as if the question of happiness were open. Even though one could now operate as a utilitarian with a substantive theory of intrinsic value, it would still be (at least⁹¹) practically impossible for finite moral agents to know the extent and/or the nature of all of the effects of their actions. Bearing in mind that a right action, metaphysically speaking, was defined as one which is intentional and such that "there is no alternative act which is a means to less unhappiness or greater happiness, to whoever is made unhappy or happy by the act," and that "whoever is made unhappy or happy by the act" was taken to include "the whole of sentient creation,"⁹²

so employ a classical formulation of the principle of utility) this would presumably result in all of the previously noted objections in the early part of Chapter I with regard to distributive justice, etc. Because, in Mill's theory, the question as to what happiness is, is open; and it is theoretically impossible to calculate in this way, the theory is able to avoid objections like those which are based on the assumption that one is able to use the theory for making this kind of quantitative calculation. The specific demonstration of this is the concern of Chapter IV.

⁹¹'At least' is used because, although it is certain that the difficulty is practical, it is not certain that it is not also theoretical (in the sense defined above), insofar as the knowledge of the effects of actions might require an omniscient being; hence, use of the term 'finite' to qualify 'moral agent' would preclude the possibility of being able to know the extent and/or nature of the consequences of one's actions, etc.

⁹²See p. 74-75, footnote.

it cannot be seriously doubted that we cannot know the extent and/or nature of the effects of our actions and, consequently, cannot know that our moral judgments are in accord with what is really (i.e., objectively or metaphysically) right and wrong, etc. Though we might regard this as only a practical difficulty (in that the theory now allows us to know what has intrinsic value), insofar as knowledge of the nature and/or extent of the consequences of actions is a necessary--though not sufficient--condition for having knowledge of metaphysical rightness or wrongness, absence of this knowledge of consequences can be said to constitute an additional reason why it is theoretically impossible (in the sense defined) to know when and if actions are metaphysically right or wrong.

It is not necessary to maintain that we cannot know the utility of a given act because the consequences of our acts go off into the indefinite future (although this may be true). It is enough to realize that we do not know who

⁹³Although I do not wish to become involved in a discussion of epistemological theories of the necessary conditions for knowledge, I am assuming that it is not sufficient for knowing that P is true (where P is some proposition asserting the metaphysical rightness or wrongness of some action), that one believes that P is true and that P is true, in fact. I am contending that at least two other conditions are required in order to have knowledge that P is true; viz., knowing that two other propositions are true: one with respect to the nature and extent of consequences; the other with respect to what happiness is, in fact. To go on and attempt to specify the conditions under which one would know that the latter are true (and so avoid the circularity of this procedure) would be to delve unnecessarily into a superfluous epistemological diversion.

or what to include as significantly affected by our actions or how they are affected, so we cannot know who or what to include in calculating the consequences. Thus, even though we might know what happiness is, in fact, we still cannot know that our moral judgments are objectively true (at least not at our present level of knowledge about the relation of cause and effect, etc.). Consequently, a rational moral agent will look for the best method available for determining which actions maximize happiness on the basis of the evidence available. It is to this that we now turn.

Sub-section III-E: Objectively Right₁, Objectively Right₂, and the principle of utility corresponding to each.

The present situation can be illustrated by distinguishing between three concepts of rightness. We can speak about an action's being right from three different perspectives:

(1) Objectively Right₁: This is what has been referred to previously as "metaphysical rightness" or "what is right, in fact," and, as has been noted, is not the kind of predicate which finite moral agents can knowingly use to characterize actions. It is only possible to use it abstractly; thus we say that an action is Objectively Right₁ if, and only if, among the alternative actions available on any occasion of choice, it maximizes the general happiness, where the general happiness can be taken as meaning the sum of those who are individually happy. But it is recognized that it cannot be known which action is right in this sense

because sentient beings may be affected by our actions which we're not aware of, or they may be affected in ways we're not aware of; in addition, what individual happiness is, in fact, is something we do not know.⁹⁴

(2) Objectively Right₂: This is the concept of rightness which is based on the evidence that a finite moral agent has regarding the content of individual happiness. As has been demonstrated, Mill's conclusion was that the only evidence we have is "whatever people regard as intrinsically good." Where the concept of the general happiness remains the same, we will say that an action is Objectively Right₂ if, and only if, among the alternative actions available on any occasion of choice, it maximizes the general happiness, where the general happiness is the sum of all those who are individually happy and where the content of individual happiness is taken to be whatever it is that is desired for its own sake. Because in formulating the concept of Objective Rightness₂ one is attempting to determine what is Objectively Right₁, but is restricted to the only evidence available, it is apparent that Objective Rightness₂ is

⁹⁴A comment by Narveson is worth noting with regard to the uselessness of Objective Rightness₁ from the standpoint of the agent: "...if the applicability of a predicate is sufficiently difficult or obscure, that in itself constitutes a reason for not placing very much weight on the outcome. It is surely contrary to the general interest to require people to spend too much time trying to make precise calculations of happiness or unhappiness, so long as methods for doing so are not available." (pp. 40-41).

logically dependent, in an important sense, on Objective Rightness₁. (Why this is so will become more apparent by comparing Objective Rightness₂ with the concept of Subjective Rightness, discussed below.) Of course, it is possible that Objective Rightness₂ is equivalent to Objective Rightness₁ in some or all moral situations, though this point is, for all practical purposes, irrelevant; because a moral agent cannot know what is Objectively Right₁; even if he knows what is Objectively Right₂, it follows that, on any given occasion, he cannot know whether or not they are equivalent.

(3) Subjectively Right: It is desirable to define this predicate so as to make certain that what is meant by it is not confused with Objectively Right₂. This is used to refer to whatever the agent thinks is right, independent of any rational process based on available sources of evidence. He might, for example, decide upon the right action in any moral situation by flipping a coin. Thus, an action is said to be subjectively right if, and only if, the agent performing the action thinks that the action is right. It is possible that an action which is subjectively right is also Objectively Right₁ or Objectively Right₂ (or both, if they were co-extensional predicates for that action) but the agent, in this case, would not know or be concerned that they were.

It may now be clearly stated that when a utilitarian

of the kind we're concerned about makes judgments about the objective rightness of actions he can only be said to do so, as a rational moral agent, from the perspective of Objective Rightness₂. Because this is formulated with respect to the evidence that a finite moral agent has regarding Objective Rightness₁ (i.e., the evidence with respect to happiness--whatever is desired for its own sake), and so bears a logical relationship to the latter, we avoid having to say that his moral judgments are merely subjective. At the same time, we are not to be interpreted as making the untenable assertion that his moral judgments must be (and are) in accordance with Objective Rightness₁, in fact.

It is now obvious that it is perfectly consistent to formulate a principle of utility which specifies the conditions which must be met by an action to fall under Objective Rightness₁ and to formulate another principle of utility which specifies the conditions which must be met by an action to fall under Objective Rightness₂. By formulating both, it is possible to call attention to the fact that there may be a discrepancy between what is really right (Objective₁) and what an agent must judge as right according to the only conception of rightness appropriate for a finite moral agent (Objective Rightness₂). Henceforth, the principles will be referred to as P₁ and P₂, respectively.⁹⁵

⁹⁵Of course, these principles are not to be confused with those in Section II of this chapter.

The principle of utility is usually formulated with the intention that it be interpreted as P_1 . Where X is a variable for actions which are alternatives to each other on an occasion of choice, P_1 can be formulated simply as follows:

X is right IFF X maximizes the general happiness more than any alternative action which the agent could perform.

Correspondingly:

X is obligatory IFF there is no alternative action which the agent could perform which is as right as X.

Again, it is important to realize that for this formulation of the principle, even though the meaning of "general happiness" might be taken to be "the sum of all happy individuals," the meaning of "individual happiness" is undefined, with the result that there is no theory of intrinsic value which can be specified as the one that P_1 is formulated with reference to. However, if the actual content of individual happiness is unknown, and one can't know when individuals are really happy, it follows, as previously noted, that it is theoretically impossible for the agent to know which action, in fact (among available alternatives) will maximize the general happiness, and so be right according to P_1 . From the standpoint of the agent, therefore, P_1 is of no use for the determination of duty and, as noted, can only serve the function of marking a possible discrepancy between what is really (i.e., meta-

physically or objectively) right and what the agent judges to be right in accordance with the much more plausible principle, P_2 .

Examination of Mill's theory has revealed that the only evidence we have for what constitutes individual happiness, in fact, is what is actually desired. Consequently, P_2 is to be formulated with reference to a theory of intrinsic value which holds "happiness" to be the only intrinsic good; which, in turn, is to be regarded by the moral agent as "whatever is desired for its own sake." In other words, P_2 is not to be formulated with reference to a theory of intrinsic value in the usual sense but rather with reference to what Narveson has alternatively called a theory of "intrinsic value from the moral point of view."⁹⁶ The general happiness is "the sum of those who are individually happy" and is determinable with reference to this notion of individual happiness.

At first glance, it seems that P_2 should be formulated in the same way--in the same words--as P_1 , with the difference that "individual happiness" and "the general happiness" are both defined; i.e., as P_1 is formulated precisely in accordance with the definition of "the general happiness" in the account of Objective Rightness₁, P_2 should be formulated precisely in accordance with the definition of "the general happiness" and

⁹⁶See p. 90.

"individual happiness" in the account of Objective Rightness₂; however, to formulate P₂ in the same way as P₁ would be misleading, for it seems to entail an unacceptable conclusion regarding moral obligation. Consequently, before formulating P₂ more precisely, it is essential for its justification and understanding that we turn to consider briefly the problem of moral obligation.

In accordance with the utilitarian theory which has been developed thus far, it might seem that one's duty, at any one moment, is to do whatever possible to provide as many people as possible with the object(s) of their desires, i.e., to do everything possible to make the most people happy. To state this more precisely, if P₂ were formulated in the same way as P₁, it would seem that the only right action at any time for any moral agent is to satisfy as many legitimate desires as he is capable of satisfying.⁹⁷ However, if it is remembered that the principle of utility is intended as an absolute ethical principle, and so is universally binding, it is obvious that in most societies it would not maximize the general happiness (understood in terms of Objective Rightness₂) if everyone acted as if this were an obligation. In fact,

⁹⁷This is more precise because, as previously noted on p.124 given the meaning of "individual happiness" and the "general happiness," in order to maximize the general happiness it is necessary to distinguish between "legitimate" and "illegitimate" desires.

it is not difficult to see that a definite inconsistency with the principle is likely to arise if this is a duty; for if everyone's duty is always to do whatever possible to provide others with the object(s) of their legitimate desires, then it follows that it would be wrong for anyone--whose own conception of individual happiness was something other than making other people happy--to take the time to pursue or enjoy individual happiness. As is the case in any society, there are many whose desires for their own happiness is something other than making other people happy. In those societies, it will follow that everyone's having as his goal the maximization of the general happiness will be inconsistent with everyone's duty being to do whatever possible to provide for the happiness of others. For if the general happiness is regarded as equivalent to the sum of individually happy people, and if there are some who desire to pursue their own legitimate pleasure preferences but are not allowed (are not obligated not) to do so; if it follows that they cannot obtain individual happiness (which surely it must, in most cases), then the general happiness cannot be maximized.

However, although it is true that in most societies the general happiness would not be maximized if it were everyone's obligation to make others happy, it is, of course, theoretically possible for there to be a society in which the general happiness would, in fact, be maximized if this were

the case. Consider, for example, a hypothetical society, A, in which there are some whose only desire for individual happiness is that others be happy and who have the means for providing all of the others in the society with whatever they legitimately desire. In Society A everyone would be happy and the general happiness would be at a maximum if everyone's obligation was to do whatever possible to make others happy.

Even though the general happiness is maximized in this case, the objection to requiring, as an obligation, the satisfaction of others' desires can be made on theoretical grounds. First of all, if it is maintained that our duty is the maximization of the general happiness but that the best means to it is for everyone to regard as a duty the maximization of his own happiness, it would be, as a matter of fact, absurd to maintain that "satisfying others' desires for happiness, so far as possible" is either identical with or the only means to individual happiness.⁹⁸ In addition, this would be theoretically objectionable, for it would be to presuppose that the question as to what happiness is or the question of the best means to it is closed--that individual happiness or the best means to it is, in fact, "satisfying others' desires for

⁹⁸This could be regarded as an answer to the question as to what happiness is if it were maintained that it is the only thing which is capable of being regarded as intrinsically good. It could be regarded as an answer to the question as to the best means to happiness if it were maintained that this life-style is the only way in which anyone could obtain happiness. Of course, both of these possible answers are absurd.

happiness, so far as possible." As previously noted, closure of these questions is not something that could be sanctioned by our theory. Finally, establishing the satisfaction of others' desires as a duty would be to accept the absurd suggestion that maximizing the general happiness is not desirable in every society, meaning that the principle of utility is not to be regarded as a universal ethical principle. For in other possible societies than A, requiring this as our duty would constitute an inconsistency with the principle of utility which requires as our general duty, maximizing the general happiness. For there are possible societies in which the situation in society A would not obtain and, yet, because of the universal character of the principle, if it were everyone's duty in A, it would be everyone's duty in these other societies as well, to do whatever possible to make other people happy. Therefore, to insist on this as a duty would, in many cases, make it theoretically impossible to maximize the general happiness. It must be concluded that the utilitarian theory we have been examining could never sanction, as a duty, satisfying others' desires for happiness.

The only conclusion that can be drawn from all of this is that although it would be right (and also praiseworthy) to give to people that which they legitimately desire, P_2 could never require that it be one's duty to

do so.⁹⁹ In fact, it is to be noted that even in Society A, above, the general happiness would be maximized on either the assumption that it was right or on the assumption that it was one's duty to satisfy others' desires. However, now that it has been established that P_2 could only sanction it as right, it is clear that its universal employment will not only allow for the maximization of the general happiness in Society A but in all other societies as well.

On the other hand, it is apparent that one thing which can be established as a duty, on the basis of P_2 , is not to interfere with others in their attempts to satisfy their legitimate desires and, whenever possible, to prevent others from engaging in this kind of interference. The justification for asserting this as an obligation can best be stated in terms of a universal right which can be sanctioned by P_2 . Because it has been established that what individual happiness is, in fact, and the best means to it, is an open question (or at least is to be regarded as such) it is apparent that anyone advocating a utilitarian theory in which this presumed to be true must also justify, as a right, that anyone be allowed to pursue his own individual conception of happiness, in any way he pleases, so long as his doing so

⁹⁹This is perhaps what Mill was referring to in Chapter V of "Utilitarianism" when he was speaking of imperfect obligations, to which there were attached no correlative rights; thus, it would sometimes be our duty to make others happy, but not always, which would be the case if they had this as a right against us.

does not interfere with others' doing the same (i.e., in the previous vernacular, as long as their desires for happiness are legitimate). Such a right is justified in the only way that any right can be justified by utilitarian theory--establishing it as a right is more conducive to the maximization of the general happiness than not establishing it as a right. If one then takes the usual route with reference to rights and assumes that for every right there is a correlative obligation for those against whom the right may be exercised, it is everyone's duty to prevent himself and others, whenever possible, from interfering with anyone's legitimate pursuit of individual happiness.¹⁰⁰

The utilitarian justification for establishing the right to the pursuit of individual happiness and requiring others to respect that right is stated by Mill as follows:

As much compression as is necessary to prevent the stronger specimens of human nature from encroaching on the rights of others, cannot be dispensed with; but for this there is ample compensation even in the point of view of human development. The means of development which the individual loses by being prevented from gratifying his inclinations to the injury of others, are chiefly obtained at the

¹⁰⁰That Mill had this concern for respecting the rights of others to pursue individual happiness is evident in a passage from Chapter II of "Utilitarianism:" "The great majority of good actions are intended, not for the benefit of the world, but for that of individuals, of which the good of the world is made up; and the thoughts of the most virtuous man need not on these occasions travel beyond the particular persons concerned, except so far as is necessary to assure himself that in benefiting them he is not violating the rights --that is, the legitimate and authorized expectations--of anyone else" (p. 220).

expense of the development of other people. And even to himself there is a full equivalent in the better development of the social part of his nature, rendered possible by the restraint put upon the selfish part.¹⁰¹

In opposition to this view, it has been argued by several philosophers that the general happiness cannot be maximized by allowing as much freedom as possible in the area of self-regarding actions, that maximizing utility and providing as much liberty as possible for the satisfaction of legitimate desires are incompatible objectives. However, all of the sources of this contention that I'm aware of base this objection on classical formulations of the theory;¹⁰² and, although the objection may be valid against classical forms of the theory, it is not applicable to the form of the theory being dealt with here. That is, given what is meant by 'individual happiness' and 'the general happiness,' it follows that the amount of liberty should be granted which would insure as many individuals as possible being enabled to pursue their own conceptions of happiness, meaning that as many as possible should be able to freely perform in the area of self-regarding actions.

Thus, for example, Robert Paul Wolff argues for interfering with self-regarding actions as follows:

¹⁰¹Mill, On Liberty, p. 63.

¹⁰²For what is meant by "classical formulations of the theory," see pp. 1-2.

...the very best way in the world to increase this social sum of happiness would be to interfere quite extensively in people's lives, prodding them to do the things that will bring them happiness, stopping them from imprudent or self-defeating actions which threaten to make them unhappy.¹⁰³

However, this kind of interference is justified only if we're dealing with a classical formulation of the theory, in which the question as to what comprises individual happiness and the best means to it is assumed to be closed; if so, it may well be true that the general happiness will be maximized by sometimes interfering with self-regarding actions; i.e., on the grounds that we assume that we know what will make people happy. However, if we're not permitted to proceed on the assumptions that the content of individual happiness is something other than "whatever is legitimately desired for its own sake" and that we know which are the best means for attaining happiness--something which is clearly disallowed by our theory--then one is not justified, as Wolff supposes, in interfering with self-regarding actions. For it is only by not preventing people from engaging in such actions, whenever possible, that the general happiness can be maximized.¹⁰⁴

¹⁰³Robert Paul Wolff, The Poverty of Liberalism (Boston: The Beacon Press, 1968), p. 8.

¹⁰⁴A much more extensive defense of the claim that people should have the right to pursue the objects of their legitimate desires (should have liberty in the area of self-regarding actions) can be found below in the sub-section titled "Mill's Commitment to the Right of Liberty," pp. 177-81, and especially the sub-section titled "The Justifiable Extent of Liberty," pp. 181-191. This position is also

It can be concluded, then, that insofar as non-interference with pursuing the objects of one's legitimate desires is a necessary condition for realizing individual happiness; and insofar as the latter's being possible for everyone is a necessary condition for maximization of the general happiness, it follows that the utilitarian using P_2 as his ethical principle must justify the pursuit of individual happiness as a universal right and respecting that right as a duty binding on everyone.

If our duty, as utilitarians, is to maximize the general happiness--where this is understood to be "the sum of individually happy people" and where individual happiness is to be regarded as "whatever is legitimately desired for its own sake"--it is obvious that we can do so only if we operate with a principle of utility which defines rightness and obligation in accordance with the above analyses. P_2 can now be more precisely formulated as follows:

X is right IFF X is intentional and X satisfies one or more legitimate desires of one or more persons.

Corresponding to the discussion of obligation above,

X is obligatory IFF X is right; the desire or desires to be satisfied by X is (are) a member(s) of the class of desires

briefly argued on pp. 158-59. The last-mentioned sub-section deals with another specific objection to utilitarianism--John Rawls' claim that the theory cannot justify the degree of liberty and non-interference required to account for certain principles of justice.

not to be harmed; among the real alternatives for the agent, X is the only action which will result in preventing the most harm.

This principle of obligation would seem to have the unfortunate result that one could be in a position of seeing someone who was unknowingly about to be harmed and yet not be obligated to do anything to try to prevent it because the person had no desire, at the time, not to be harmed. Consequently, we must add that what is intended here is that the person about to be harmed either has the desire not to be harmed or we have good reason to believe has the desire or would have the desire if sufficiently aware of the impending events, etc. Similar objections regarding the irrational and insane can be handled by adding, similarly, that we have good reason to believe one would have the desire if rational or sane. It should also be noted that by "desires not to be harmed" is merely meant desires which can, in fact, be characterized as those in which the actual content or object is "not to be harmed." What is not meant is that the content or the object of the desire is something else (e.g., food or money), and that desires like these are not to be harmed.¹⁰⁵ In other words, desires are satisfied or

¹⁰⁵In the first two pages of Chapter III the distinction is made between "justified desires not to be harmed" and "unjustified desires not to be harmed." It is also demonstrated early in the chapter that, for the purpose of dealing specifically with justice, our utilitarian theory regards "harm" as "a violation of rights," so that "desires not to be harmed"

unsatisfied; only people are harmed. By "real alternative" is meant "an alternative action which the agent is aware of and able to perform." With this qualification, the principle of obligation is in accordance with the "ought implies can" principle, and so does not require, as an agent's duty, something which he is unable to do.

It is essential to realize that one is not to infer from the above that the greater the number of legitimate desires satisfied, the greater the quantity of happiness produced. If we're not in the position, as finite moral agents, to say what happiness is, it seems obvious that we're also not in the position of being able to embrace the extremely simplistic view that if someone has more desires satisfied than another, he is the happier of the two. Consequently, we can say that it is always right, ceteris paribus, to satisfy legitimate desires, but it is not necessarily the case that the more legitimate desires that are satisfied, the greater the amount of happiness produced.¹⁰⁶

turn out to be "desires not to have one's rights violated." What these rights are is made more precise in the rest of the chapter.

¹⁰⁶Narveson makes this mistake on pp. 92-93 of Morality and Utility when speaking of "objective moral value," as part of the formulation of the principle of utility. Where X and Y are variables which range over any set of acts which are alternatives to each other on any particular occasion of choice, he says that X has more objective moral value than Y if, and only if, X produces a greater net amount of what is valued by those affected than Y produces. It should be noted that, although Narveson attempts to develop principles of rightness and obligation in Morality and

In conclusion, the relationship between P_1 and Objective Rightness₁ and P_2 and Objective Rightness₂ is as follows: Whereas P_1 indicates which actions (right and obligatory) will maximize the general happiness, as defined in the account of Objective Rightness₁, P_2 indicates which actions (right and obligatory) will maximize the general happiness, as defined in the account of Objective Rightness₂. The major difference between P_1 and P_2 is that by appealing to P_1 it is theoretically impossible for a finite moral agent to know which particular actions (right or obligatory) will maximize the general happiness in accordance with Objective Rightness₁; whereas by appealing to P_2 it is not theoretically impossible for a moral agent to know which particular actions (right or obligatory) will maximize the general happiness in accordance with Objective Rightness₂. Once again, P_1 merely serves to indicate possible discrepancies between what the agent judges as right or obligatory in accordance with P_2 and what is metaphysically right or obligatory in accordance with P_1 .

In other words, to operate with P_1 is to operate with a principle that a finite moral agent cannot employ for determining the rightness or wrongness of particular actions, etc., because in order to do so he would need to know both what happiness is in fact and what the nature and/or extent

Utility in some ways similar to those developed above, they are significantly different in that they are seriously inadequate in many respects and are not argued for in the same way.

of the consequences of his actions are. And as it has been argued that this is theoretically impossible for him, to employ P_1 is nothing other than to speculate (what has been referred to as metaphysical speculation). On the other hand, operating with P_2 , he is employing principles of rightness and obligation which are based on the empirical evidence available as to what individual happiness is ("whatever is desired for its own sake") and which enable him to determine which actions are right, wrong, or obligatory in accordance with those principles. Because P_2 is formulated on the basis of available empirical evidence and can be employed by agents for determining the moral status of particular actions, it is safe to say that, whereas to employ P_1 is a wholly speculative process, to employ P_2 is not; with P_2 there is no metaphysical speculation involved.¹⁰⁷

¹⁰⁷ Professor Robert Ackermann has noted a possible problem. If Objective Rightness₂ represents the attempts of finite (non-omniscient) moral agents to determine what is right in the sense of Objective Rightness₁, then, since P_2 and P_1 are formulated with reference to these senses of rightness, respectively, there may be a serious problem in determining which specific rights P_2 should be formulated with reference to. For two moral agents may legitimately disagree about what specific human rights should be established, because the best evidence for each suggests divergent sets of rights. If, in reply, it is insisted that the total evidence, if available to both, would resolve the problem, it's not clear how P_2 differs from P_1 , which has been argued is vacuous because of unascertainable metaphysical commitments. On the other hand, in the absence of more evidence or agreement as to what the evidence is, P_2 is still problematically vacuous with respect to the establishment of particular rights. And although this may not be so much of a problem with respect to the general

Sub-section III-F: Justice--associated with only one of the principles. Before concluding this chapter, it is to be noted that if we accept Mill's assertion that justice is the adherence to, and injustice is the violation of, a right or rights justified as such by the principle of utility,¹⁰⁸ the concept of justice we're concerned about is associated with P_2 and not at all with P_1 . First, P_1 is formulated only with reference to actions and specifies the conditions under which an action is metaphysically or objectively right. As such (and as previously noted) the only function P_1 serves in the theory is to indicate a possible discrepancy between what is right, in fact, and that which the agent judges as right on the basis of the only principle he can successfully employ, P_2 . Second, even if it makes sense to say that acts can also be judged metaphysically

rights to life and liberty, it might be so when one begins to consider particular liberties (which liberties there should be in a particular society, and/or how much, is discussed on pp. 181-91 of Chapter III). This may be a serious problem, but I think it can only be replied at this point that the theory I develop does rest on the assumption that, although there may be difficulty at times in resolving these disputes, there can be sufficient agreement about what the available evidence is, and what follows from it, with respect to the establishment of particular rights. This is the kind of problem which I think (and which I believe Mill thought) can only be resolved empirically (also see footnote on p.166). On the other hand, if it is maintained that metaphysical disputes may arise as to what "evidence" is and that these may be irresolvable, then P_2 could perhaps turn out, in the long run, to be as metaphysically problematic as P_1 .

¹⁰⁸See Chapter V of "Utilitarianism," pp. 240-259.

just according to P_1 and that it therefore makes sense to say that P_1 can be used to establish rights from a metaphysical perspective, it is theoretically impossible for a finite moral agent to know which acts are just, for the same reasons (noted previously) that it is impossible to know which acts are merely right. However, since P_2 is formulated for the purpose of specifying the conditions under which an action is right for an agent (on the basis of Objective Rightness₂) and so is formulated with reference to both acts and agents in a way that P_1 is not, P_2 is also capable of being used to establish and justify rights (as with the universal right to the pursuit of individual happiness, above). As rights can be derived and justified by P_2 , so can justice. Finally, there is a very significant consideration which has to do with punishment. If it is unjust to violate someone's right(s), it also constitutes an action which we ordinarily feel merits punishment of some kind (indeed, Mill advances this position in the last chapter of "Utilitarianism"). Now, as it would be absurd to consider punishing someone for not complying with obligations specified by P_1 but not at all for not complying with those derivable from P_2 , it is obvious, again, that justice can only be considered with reference to P_2 .

It must be concluded from all of this that it is not possible to consider any inferences from P_1 as incompatible with our intuitions regarding justice from anything other

than a metaphysical perspective--if at all--since P_1 can have nothing to do with justice in any other sense. Consequently, although it may be possible to reject the theory from considerations of justice based on P_1 (such as those in Section II of this chapter), this would be a rejection on metaphysical grounds alone. From the non-metaphysical perspective of the theory--which we are interested in as moral philosophers searching for an intuitively acceptable agent-oriented ethical theory--it is only with reference to P_2 that we can determine whether or not utilitarianism is compatible with justice. If it turns out that P_2 does not sanction agents' performing unjust actions, it must be concluded that the theory is unobjectionable in this respect. With this in mind, we proceed to Chapter III to consider P_2 in more detail and, finally, in Chapter IV, to deal specifically with the problems of distributive justice.

C H A P T E R I I I

THE PRINCIPLE OF UTILITY AND THE NECESSARY CONDITIONS FOR HAPPINESS

...it is a preliminary condition of rational acceptance or rejection, that the formula should be correctly understood. I believe that the very imperfect notion ordinarily formed of its meaning, is the chief obstacle which impedes its reception; and that could it be cleared, even from only the grosser misconceptions, the question would be greatly simplified, and a large proportion of its difficulties removed.¹

Section I

Harm as a Violation of Rights

As P_2 has been formulated, it would be right to satisfy legitimate desires but obligatory to satisfy, whenever possible, those legitimate desires which are of the class of desires not to be harmed. However, as it is a fact that there can be erroneous conceptions as to what is harmful and what is not, it is necessary to differentiate clearly within this category between those desires not to be harmed which are justified and those which are not. Roughly, we can say that a desire not to be harmed is justified only if it is held with respect to something which is, in fact, harmful; all other

¹Mill, "Utilitarianism," p. 208.

desires not to be harmed being correctly classified as unjustified.²

By definition of right action, it is also true that a desire not to be harmed is justified only if it is a legitimate desire, all illegitimate desires not to be harmed being unjustified.³ With this in mind, our principle of obligation can now be more accurately formulated:

X is obligatory IFF X is right; the desire or desires to be satisfied by X is (are) member(s) of the class of justified desires not to be harmed; among the real alternatives for the agent, X is the only action which will result in preventing the most harm.

Our principle of obligation is of little value until the meaning of a "justified desire not to be harmed" is made more precise. Since the problem of justice is the one we are specifically concerned about, the task is somewhat simplified. For although there are perhaps occasions on which one may be justly treated and yet harmed, we need only concern ourselves

²This distinction is in accordance with Mill, who wanted to disallow that something like disapprobation could be regarded as harm.

³In the formula for rightness, it now appears that one can have a legitimate desire which is other-regarding and harmful, since it is possible that a desire not to be harmed, if satisfied, may result in someone's being physically restrained, shot, etc. However, as harm is to be discussed in terms of a violation of rights, we can often speak of one who violates the rights of others as forfeiting his own right(s) not to be physically abused, etc. Consequently, since his rights are forfeited, there are none violated and he is not harmed.

with those harmful acts which can be categorized as injustices. Generally, we will regard an act of harm which is an injustice as Mill did--as the violation of someone's right(s). For our purposes, therefore, we will say that "A desire is a justified desire not to be harmed if, and only if, it is a desire which can correctly be described as a desire not to be treated unjustly," where "to be treated unjustly" is to be interpreted as "to have one or more of one's rights violated."⁴

Mill's adherence to the position that justice has to do with rights is made clear in Chapter V of "Utilitarianism." Referring to the distinction between what he refers to as "perfect" and "imperfect" obligations, he says:

Now it is known that ethical writers divide moral duties into two classes, denoted by the ill-chosen expressions, duties of perfect and of imperfect obligation; the latter being those in which, though the act is obligatory, the particular occasions of performing it are left to our choice; as in the case of charity or beneficence, which we are indeed bound to practise, but not towards any definite person, nor at any prescribed time. In the more precise language of philosophic jurists, duties of perfect obligation are those duties in virtue of which a correlative right resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be found that this distinction exactly

⁴Once again, the desire is one which has as its object "not to be harmed" or "not to be treated unjustly" or "not to have one or more of one's rights violated." Consequently, it is not to be interpreted as a desire, having something else as its object, which can be harmed or treated unjustly, etc. Again, it does not seem to make much sense to speak of desires in these ways; they are, among other things, either satisfied or unsatisfied; but only sentient beings can be harmed, treated unjustly, etc.

coincides with that which exists between justice and the other obligations of morality.⁵

To say that someone has a right is to say that:

...he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that he has a right to it. If we desire to prove that anything does not belong to him by right, we think this done as soon as it is admitted that society ought not to take measures for securing it to him, but should leave it to chance, or to his own exertions.⁶

Mill justifies rights in terms of general utility. "To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask why it ought, I can give him no other reason than general utility." In fact, the kind of utility that the assigning and protection of rights provides for is security, "...to everyone's feelings the most vital of all interests." Moreover, security is regarded by Mill as a necessary condition for happiness. "Nearly all other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without." It is not, however, a sufficient condition, as he goes on to mention physical nutriment as another.

⁵Mill, "Utilitarianism," P. 247.

⁶Mill, "Utilitarianism," p. 250.

"Now this most indispensable of all necessities, after physical nutriment, cannot be had, unless the machinery for providing it is kept unintermittedly in active play."⁷

Mill's position can be better understood within the context of the theory attributed to him in the previous chapter. If the concept of the general happiness is to be understood as the sum of all those who are individually happy, then a necessary condition for the maximization of the general happiness is as many people as possible attaining individual happiness (the ideal state of general happiness being one in which everyone is individually happy). However, because the theory is also committed to the position that what happiness is, in fact, is an open question (or should be treated as such), no one conception of happiness (within the bounds of legitimacy) is to be looked upon, for the purposes of morality, as better than any other. Consequently, the general happiness would be most effectively maximized by providing everyone--so far as possible--with an equal right to whatever conditions are necessary for the attainment, by anyone, of individual happiness. These conditions can more accurately be referred to as 'universally necessary conditions for happiness,' the conditions which every individual must have satisfied in order to be happy. We can say, then, that this is what it means to say (as was

⁷Mill, "Utilitarianism," pp. 250-251.

said on pp. 142-143) that everyone has an equal right to the pursuit of happiness, i.e., that they have an equal right to the conditions which are universally necessary for its attainment.⁸

As noted, one of the necessary conditions recognized by Mill is security. It is evident from several passages in the chapter that what he means by this is that a necessary condition for happiness is the knowledge that one will not be harmed unnecessarily⁹ and that a necessary condition for the latter is establishing not being harmed as a general right, such that anyone for whom this right is unjustifiably¹⁰ violated is also treated unjustly. However, to know that everyone has a general right not to be harmed is not very helpful so far as knowledge of specific obligations is concerned, and it is desirable to determine the specific rights everyone can

⁸Hereafter, the term 'necessary condition,' unless otherwise specified, will be used to mean 'universally necessary condition.'

⁹See Mill, "Utilitarianism," p. 255, in which reference is made, in this context, to "the moral rules which forbid mankind to hurt one another." Also, p. 256: "Thus the moralities which protect every individual from being harmed by others....Now it is these moralities primarily, which compose the obligations of justice."

¹⁰'Unnecessarily' and 'unjustifiably' are added as qualifications because, as will soon be noted in explanation of the principle of obligation, there is one condition under which utilitarian theory must sanction the violation of others' rights--when all of the alternative actions involve violating at least one right; in this case, one is obligated to choose the action which does the least amount of harm; i.e., usually, which violates the least number of rights.

be said to have, violations of which would constitute specific kinds of harm. In other words, the important question with which we must deal is, "What, specifically, are the necessary conditions for happiness which can be established as rights--as necessary conditions for the general right to security--and violations of which are to be regarded as injustices?" In answering this question we will be able to determine what some of the desires are which are such that they are 'justified desires not to be harmed,' thereby giving substantive content to both the general right to security and the principle of obligation.

The principle of rightness and the principle of obligation have been formulated so as to insure that, by acting in accordance with them, the general happiness (as defined for Objective Rightness₂) will be maximized. In the last three pages it has been argued that the general happiness can be maximized if, and only if, the "rights" referred to in the principle of obligation are interpreted as rights to the universally necessary conditions for individual happiness. Further on, a corollary to the principle of obligation will be formulated which will specify the conditions under which these rights can be violated. Although the above defense of rights as rights to universally necessary conditions for happiness provides a general utilitarian account of rights which I think is clearly not circular, it will be a significant part of the purposes of that which follows, in

speaking of the specific rights to the universally necessary conditions for happiness (life, liberty, etc.), to insure that the utilitarian account of them will continue to be non-circular. Given the particular utilitarian theory being worked with, I am confident that doing so will pose no major problem.

Section II

The Right to Life

Having noted in the last section that harm is to be regarded as a violation of rights and a right is a universally necessary condition for happiness, Sub-section II-A of this section will demonstrate that, with life as an obviously necessary condition for happiness, we can develop a corollary to the principle of obligation which specifies the conditions under which life can justifiably be taken. In Sub-section II-B, it will be demonstrated that no necessary condition for happiness can justifiably be sacrificed for conditions for happiness which are either not necessary or not universally necessary conditions; in other words, it will be shown why the corollary developed above with respect to life alone must be generalized so as to encompass all necessary conditions for happiness. As a result, violating rights only in accordance with the corollary results in no incompatibility with intuition.

Sub-section II-A: a corollary to the principle of

obligation. Though not mentioned specifically by Mill, one of the most obviously necessary conditions for happiness is life. No temporal being could be happy if it were not alive and nothing without life could possibly be happy. The proposition, "If one is happy then he is alive" is analytically true. Life is also a necessary condition for whatever other conditions are necessary for happiness. As a necessary condition for happiness, establishing life as a right for everyone allows us to deal with the problem of the right to life in a way which is intuitively unobjectionable. Before turning to other matters we will diverge for a time to consider this.

In the second section of Chapter II, it was noted that a strictly metaphysical view of actions from the standpoint of utilitarianism allowed us to infer that killing someone would be a right action whenever (generally speaking) the general happiness would be maximized by doing so.¹¹ This seemed to be grossly inconsistent with our moral intuitions until it was later pointed out (last part of Section III) that what the theory implies metaphysically about the rightness of actions is not necessarily identical with what it allows moral agents to do without reprehension. Consequently, when we made the distinction between P_1 , formulated with reference to metaphysical rightness (Objective Rightness₁)

¹¹For the specific conditions which allow this, turn back to pp. 71-72 of Section II of the last chapter.

and P_2 , formulated on the basis of the evidence a finite moral agent has regarding metaphysical rightness (Objective Rightness₂), it became apparent that whether or not the theory resulted in inconsistencies with intuition can only be judged on the basis of the latter; i.e., knowing what is right via P_1 is theoretically impossible, an agent's only being able to know what is right according to P_2 ; therefore, if applying the latter principle results in any incompatibility with intuition, we concluded that we are justified in rejecting utilitarianism as an unacceptable ethical theory; if it does not, we are not.

At this point, it has been established that among the 'justified desires not to be harmed' are desires, in general, not to have one's rights violated and that one of the specific rights that has been justified as a necessary condition for happiness is the right to life; moreover, the latter also serves as a necessary condition for every other condition which is necessary for happiness. The importance of the right to life being what it is, it is necessary to establish a corollary to the principle of obligation.

A right or rights to life can be violated if, and only if (1) all the alternative actions on the occasion of choice involve harms, and either (2) taking life results in the least amount of harm, where alternative harms are violations of the right to life or necessary conditions for life,¹² or

¹²By necessary conditions for life is meant subsistence items (food, water, shelter, sometimes medicine, etc.).

(3) there is sufficient evidence to indicate that taking life is the only alternative for obtaining one of the other necessary conditions for happiness and that production of this is sufficient compensation for taking life. In any situation in which these conditions are satisfied, it would be contrary to intuition not to take life; under any other conditions, taking life would be contrary to intuition. It is desirable to consider some examples.

Consider the following, which satisfies (1) and the first disjunct of (2). The president of a small country is aware of the fact that a much more powerful enemy is erroneously convinced that one of his cabinet officials has been a spy and so they are demanding that he must be surrendered for execution or they will engage a war, in the event of which the smaller nation will be inundated, and it is a certainty that thousands of its inhabitants will be killed. If, no matter what kind of evidence is produced to establish the official's innocence, the enemy disregards it, it would be irrational and contrary to intuition if the president did not decide to sacrifice the official. In other words, given that life is a necessary condition for whatever else is a necessary condition for happiness, that taking it is an irreversible action and that no one's life (according to the theory) is to be regarded as intrinsically better than another for moral considerations, this is the only alternative that can be sanctioned via P_2 --as it would clearly result in the least amount of harm--

and the only alternative that any morally sane person can regard as compatible with intuition.

The same example can be altered to satisfy (1) and the second disjunct of (2) if we suppose that the extrinsic worth of the cabinet official is such that he is the only man in the country possessing sufficient knowledge and skill to insure that the people of the nation can be assured of subsistence, i.e., enough of the staples of life to assure their continued existence. In this case, his execution at the hands of the enemy would mean that a very large number of the people of his country would eventually starve to death. Because his extrinsic worth is such that his continued existence in the country is necessary for maintaining a necessary condition for life, if there is a greater likelihood that more people in the country would starve to death than would be killed in an enemy attack, the justifiable move in this case would be to go to war.

Numbers (1) and (3) are satisfied if it is supposed that the official's extrinsic worth is such that his continued existence and service to his country are necessary for preserving certain liberties for the inhabitants of the country. This might be the case, for example, if someone opposing the president is desirous of becoming a tyrannical dictator and this man is the only one with sufficient prestige and power to prevent him from doing so. If these liberties are necessary conditions for happiness and if all or

most of the inhabitants would lose them if the official were surrendered, the president would be justified in choosing war if he could determine (in satisfying (3)) that there is sufficient evidence to indicate that this action is the only alternative for obtaining--in this case, maintaining--these liberties and that their production or maintenance is sufficient compensation for lives that will be lost.¹³

Sub-section II-B: violation of any right--justified only by the corollary. It is important to realize, however, that although an agent would on some occasions be justified in sacrificing life for one of the other necessary conditions for happiness, one would never be justified in sacrificing life or any other necessary condition for

¹³There is great difficulty involved in determining when (3) is satisfied, as the concept of 'sufficient evidence' is difficult--perhaps impossible in this case--to make precise. Although it is surely true that one would sometimes be justified in sacrificing life for actualizing or maintaining one or more of the other necessary conditions for happiness, decisions in these cases must, unfortunately, be left to the judgment of the moral agent deciding. I know of no way to set up a calculus on the basis of P₂ to equate so many lives to so much of other necessary conditions for happiness; it is only clear that sometimes such sacrifices would be necessary and morally justifiable. This points out, I suppose, that ethical theories are unlike mathematical theories in that it is not possible to calculate with the precision of the mathematician, and so mathematical theories are unrealistic models for ethical theories. However, as Mill pointed out, not being able to calculate in this way is not attributable to a defect of the theory, but to the complicated nature of the world: "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" ("Utilitarianism," p. 225).

the purpose of satisfying one or more conditions for happiness which are not necessary.

By a 'condition for happiness which is not a necessary condition,' is meant 'one for which there are adequate substitutes or for which there is some chance that it can be replaced by an adequate substitute.' This is in contrast to necessary conditions for happiness, for which there are no adequate substitutes and no chance that they can be adequately replaced. For example, Jones might adequately substitute love for money as a condition for his happiness, but there is nothing that can adequately replace his life as a necessary condition for happiness. Because of the absence of adequate substitutes, a utilitarian of the kind we have been discussing would not be justified in sacrificing one or more necessary conditions for happiness for one or more conditions for happiness which are not necessary.

I suppose it is possible that there are some conditions for happiness which are necessary conditions for some but not all people, i.e., that there are some necessary conditions which are not universally necessary conditions for happiness. However, knowing that universally necessary conditions for happiness cannot be adequately replaced but not knowing that any other condition claimed to be necessary for happiness (though not universally necessary) could not be adequately substituted, our utilitarian theory would not justify, on any occasion, sacrificing one or more of the former

for one or more of the latter. Thus, for example, Smith might claim that money is a necessary condition for his happiness and that, since Jones has enough to make him happy, he contends his killing Jones and taking his money is justified on utilitarian grounds; since there is only one happy man in either case, what difference does it make? However, a utilitarian proceeding rationally, on the basis of the evidence he has available to him, would reason that he knows Jones' life could not be adequately replaced but does not know that Smith's desire for Jones' money (or even his general desire for money) could not be replaced;¹⁴ consequently, his only justifiable choice would be to condemn Smith's action. And this reason is in addition to all the often-used utilitarian arguments that could be revived with respect to a diminishment of security if such actions were allowed; providing a greater chance that such actions will occur again because of the damage done to Smith's character, the bad example he sets for others, if seen, etc.

The last two paragraphs can perhaps be made clearer by the following considerations. If the necessary conditions for happiness are, like life, conditions that everyone must have satisfied in order to attain happiness, and if the general happiness is the sum of all those individuals who are

¹⁴Of course, it should be, if possible, since finding a suitable substitute--one which did not involve abusing others--would obviously be more conducive to the individual happiness of others, and, consequently, the general happiness.

happy, then the general happiness is at a maximum only when everyone is happy. This means that the general happiness can be maximized, in this sense, only if the necessary conditions for happiness are satisfied. In other words, when we speak of the necessary conditions for individual happiness, we are also speaking about the necessary conditions for maximizing the general happiness.¹⁵ Thus, for example, if we sanctioned killing Jones in order to take his property and give it to others because this would maximize happiness in the particular situation, this would constitute an extremely short-sighted approach to the maximization of the general happiness. Just as one advocating hedonism is not committed to maintaining that one should be satisfied with the pleasures of the moment but would sometimes be justified in concluding that future pleasures would be more worthwhile, so utilitarianism is not committed to maintaining that one should do whatever possible in particular situations to make as many people as happy as possible (even if this involves violating rights).

It must be remembered that utilitarianism requires that we maintain those conditions which will best serve to maximize the general happiness in the long run. As was previously

¹⁵With reference to the corollary above this means that if, as utilitarians, we say that violating the right to life is justifiable we mean that its violation is a necessary condition for maximizing the general happiness; which means, in turn, that the conditions specified by the corollary above are satisfied.

noted, after defining Objective Rightness₂, the best way (means) to maximizing the general happiness in the long run would be to allow everyone, so far as possible, to pursue individual happiness; what we are saying presently is that what this really amounts to (and what Mill really meant by this) is providing everyone, so far as possible, with the necessary conditions for happiness, and regarding them as rights which can only be violated when the conditions specified by the corollary above are met. In other words, on the basis of available evidence as to what is right (Objective Rightness₂), the general happiness can be maximized in the long run only if the necessary conditions for happiness are acquired or maintained for everyone, so far as possible; it cannot be if they are sacrificed for the maximization of the general happiness in the short run--in particular situations. What this means for our example is that, although the general happiness would be maximized in the particular situation for a short time, Jones' happiness could never be attained; by making Jones' happiness impossible, we also render impossible maximizing the general happiness in the sense in which it includes Jones' happiness and so constitutes maximization of the general happiness in this larger sense--in the long run.

Most importantly, if it is claimed, as it usually is, that utilitarians are under an obligation to provide for other people's happiness (which sometimes requires the

sacrifice of necessary for non-necessary conditions for happiness) it must be emphasized that our utilitarian theory is committed to maintaining that they are not.¹⁶ Yet, if we are to regard, as our obligation, violating rights to the necessary conditions for happiness in order to satisfy desires which are not directed toward necessary conditions for happiness, this would be to suppose that our duty is to make other people happy, that they have a right against us regarding happiness. Consequently, if we consider it an obligation to take life for the purpose of satisfying such desires, it is apparent that we are no longer subscribing to the utilitarian theory developed thus far, but rather, to some other ethical theory.¹⁷

Finally, we concluded in the last chapter that our obligation is not to make other people happy but rather to prevent them from being harmed whenever possible; i.e., to prevent them from having their rights violated. Again, asserting this as an obligation was justified--on the basis of Objective Rightness₂--as the best means for maximizing the general happiness in the long run. Consequently, we could not

¹⁶See pp. 137-142.

¹⁷For in any situation in which we regard this as our obligation, we are subscribing to the theory that not the general happiness, but some person's or group of persons' desires should be maximized. In fact, it would perhaps be correct to say that doing so would be to suppose that the question as to what happiness is, is closed, at least on particular occasions; that our duty on some occasions is to cater to particular conceptions of happiness, something which is clearly disallowed by the utilitarian theory which has been developed.

even say that sacrificing necessary conditions for happiness to provide others with the objects of other desires is right. To do so would be to disregard our obligation by satisfying illegitimate desires; for their satisfaction would involve harming others when it is not the case that all the alternatives involve harms.

To summarize, according to our utilitarian theory one would never be justified in sacrificing universally necessary conditions for happiness for conditions which are not necessary or not universally necessary because of the following reasons: (a) It could never be our obligation to do so, since we have demonstrated previously that no one has a right to be happy; consequently we have no correlative obligation to see that they are. (b) For those conditions for happiness which are not necessary, there are adequate substitutes or at least a chance that adequate substitutes can be found, whereas this is not the case for universally necessary conditions. Since we are interested in maximizing the general happiness in the largest sense--where everyone is happy in the long run--we could not be justified in sacrificing those conditions for which no adequate substitutes can be found. (c) If there are necessary conditions for happiness which are not universally necessary conditions, we could not be justified in sacrificing the latter for the former, because we don't know that they are necessary conditions (consequently, that adequate substitutes cannot be found). Whereas we do know that adequate substitutes

cannot be found for universally necessary conditions, we could not be justified in sacrificing them in this case for the same reasons advanced in (b) above. (d) As we have demonstrated that no one has a right against us to be happy but that everyone has a right against us not to be harmed,¹⁸ it could not even be right--let alone obligatory--to sacrifice universally necessary conditions for those which are not.

So far we have only specified that life and the necessary conditions for life are necessary conditions for happiness. Before moving on to consider another, it would be helpful, perhaps, to provide an example of a situation in which it would not be right to sacrifice life in exchange for other non-necessary conditions for happiness.

For some reason, one is faced with the alternatives of taking the life of an inventor or two or more ordinary people. The inventor is responsible for creating many items of luxury that many people in the society of which he is a member enjoy, whereas the others combined do not equal his

¹⁸It must be remembered that the term "harm" is being used to refer only to "necessary conditions for happiness" and that this restriction is made because we are dealing specifically with justice. Consequently, what is not being argued for is that Mill maintained that everyone has the right not to be harmed, where the harm referred to includes those cases of harm where no right is violated (i.e., where no injustice is committed). First, it seems clear that Mill thought that people could be harmed without having any of their rights violated (see, for example, p. 75 of On Liberty). Secondly, it seems clear that Mill thought that it was sometimes justifiable to harm others in this sense (see, for example, p. 95 of On Liberty). Lastly, whether or not Mill really subscribed to these positions, it is beyond the scope of what is being argued here to be concerned about it.

extrinsic worth to the rest of society. However, because the inventor's efforts are such that only a portion of the population is able to benefit from them, and consequently do not constitute universally necessary conditions for happiness, it would be obligatory to save as many lives as possible in this case and not sacrifice the others to save the inventor.

Again, it is not our duty to make others happy, but it is our duty to abide by our principle of obligation and the corollary whenever possible, thereby violating as few rights as possible in this case.

We have observed that not only would it be wrong to sacrifice life in order to satisfy desires which are not directed toward necessary conditions of happiness; it would be wrong to violate any right for the purpose of satisfying such desires. The corollary above, which was restricted to life, can now be stated more generally so as to apply to the violation of any right whatsoever. Where rights are restricted to universally necessary conditions for happiness, where harms are violations of rights and X is a variable for rights:

X is justifiably violated IFF

- (1) all the alternative actions on the occasion of choice involve harms and either
- (2) violating X results in the least amount of harm, where all of the alternative harms are violations of X or necessary conditions for X, or
- (3) there is sufficient evidence to indicate that it is the only alternative for obtaining one of the other necessary conditions for happiness and that production of the latter is sufficient compensation for violating X.

What all of this ultimately means, regarding the right to life, is that all of the usual objections concerning scapegoats and sacrificing lives for the purpose of making other people happy cannot be leveled against the theory, as has previously been supposed. The principle of obligation and its corollary, specifying the conditions under which life can be taken by a moral agent, are in accord with moral intuition.¹⁹ Although P_1 seemed inconsistent with intuition, P_2 is not and, so far as acceptability of the theory is concerned with respect to this particular problem, this is all that can reasonably be required.²⁰

¹⁹As these principles also apply to all other rights, their application is in accord with intuitions concerning these as well. The intention in that which remains, at least in part, is to demonstrate this.

²⁰Professor Ann Brentlinger has commented that P_2 may be vacuous; that it would not, for example, enable one to decide whether one's duty is to do everything possible to stop the U. S. bombing of Cambodia or to continue living much as as one has been. Similarly, Professor Robert Ackermann has suggested that the principle could not clearly choose between a society based on a form of Marxism or a capitalist society. For example, many Marxists claim that in capitalist societies people are misled about what they desire and what is desirable, and there seems to be no way that the employment of P_2 could enable one to decide whether or not to accept this claim. In reply, it must be remembered that the utilitarian theory which has been developed here claims to do nothing more than provide the theoretical framework with which to approach the resolution of moral problems, that the solutions to problems as complicated as the above are found to be difficult due to the complicated nature of the world, not necessarily due to a defect in the theory (for Mill's statement of this position, see "Utilitarianism," pp. 225-226). In my judgment--and in accordance with what I think Mill clearly had in mind--what one must do in these situations is (as the theory prescribes) to judge as best he can the consequences which would result from the available alternatives and choose

Section III

The Right to Liberty

In this section it will be demonstrated in Sub-section III-A that Mill was committed to the position that liberty is a necessary condition for happiness and so is a right, the violation of which constitutes an injustice. In Sub-section III-B, the question is posed, "How much liberty is justifiable by our utilitarian theory?" and the answer is shown to be identical with one of John Rawls' principles of justice.

to act on the one for which there is the greater probability that it would produce the best consequences. For example, if the evidence available in the situation suggested that the general happiness would not be maximized if one did do everything possible to stop the bombing of Cambodia (such as destroying the U. S. government if the opportunity arose)--that more rights to the universally necessary conditions for happiness will be violated by doing the latter than something else (i.e., supposing that this conclusion is the result of appealing to the corollary to the principle of obligation)--then one should not regard as one's duty doing everything possible to stop the U. S. bombing of Cambodia. And whether a Marxist society is to be judged by a moral agent as better than a capitalist one is going to be dependent upon whether the evidence the agent considers leads to the conclusion that the Marxist society is better able to provide the conditions necessary for attaining individual happiness (and/or discovering what it is), and so maximizing, in the long run, the general happiness. (Historically, the evidence would seem to suggest that it is not, and Mill appealed frequently to the kind of empirical evidence in his defense of a democratic free-enterprise kind of society in On Liberty). Of course, one may choose wrongly (in the metaphysical sense), but as a finite (non-omniscient) moral agent, one can only make decisions on the basis of the best evidence one has available. Appealing to available empirical evidence was essential to the development of P₂ and is no less essential to its application. Given the empirically-based theory which has been developed, I know of no other way for the satisfactory resolution of these difficulties.

Sub-section III-A: Mill's commitment to the right to liberty. There is one other necessary condition for happiness to consider before turning specifically to the problem of distributive justice. C. L. Ten, in his essay, "Mill on Self-regarding Actions,"²¹ claims to understand what Mill means by utility which is "grounded in the permanent interest of man as a progressive being." He explains it in terms of liberty:

Liberty is necessary for "the free development of individuality," and without liberty "there is wanting one of the principle ingredients of human happiness, and quite the chief ingredient of individual and social progress." Thus Mill is still appealing to utility or the promotion of human happiness as the standard for appraising the value of liberty. He also argued that because of the diversity of the sources of human pleasures and pains and their different effects on different human beings, men will "neither obtain their fair share of happiness, nor grow up to the mental, moral and aesthetic stature of which their nature is capable" unless they are allowed freedom to pursue their own modes of life.²²

Ten is correct up to this point, but he goes on to claim that, according to Mill,

Liberty is not to be valued because it increases the sum of total human happiness, for this implies that the connection between the two is a contingent one, but because it is a necessary condition for the growth of individuality....Men must be allowed to choose for themselves not because this will lead to an increase in their happiness, but because this is in itself the most important ingredient of happiness.

And later,

²¹Philosophy, XLIII, No. 163 (January, 1968), pp. 29-38.

²²Ten, p. 35.

Mill's reason for allowing liberty in self-regarding actions was not that human happiness would thereby be increased, but that without such liberty there can be no "individuality." His defense of freedom is not in terms of utility, but of utility in "the largest sense," i.e., "individuality."²³

If the previous analysis of what Mill meant by individual happiness is correct, Ten is wrong in supposing that Mill did not consider liberty to be a necessary condition for increasing "the sum total of human happiness" (what we have noted to be what Mill meant by the 'general happiness'); that he interpreted it, instead, as only a necessary condition for individuality. According to our previous analysis, liberty is desirable only as a means to happiness because only happiness is intrinsically good; consequently, if liberty is a means to individuality, individuality is also most plausibly regarded as an extrinsic good, desirable only as a means to happiness. In fact, the passage above by Ten adequately summarizes Mill's concern for liberty as a necessary condition for individuality. "...because of the diversity of the sources of human pleasures and pains and their different effects on different human beings, men will 'neither obtain their fair share of happiness, nor grow up to the moral and aesthetic stature of which their nature is capable' unless they are allowed freedom to pursue their own modes of life."

To suppose that individuality could be regarded as an

²³Ten, p. 37.

intrinsic good is, at first glance, an absurd utilitarian thesis to attribute to Mill; for, according to Mill, only happiness is intrinsically good; meaning that, if individuality is not a part of happiness, then, if it is good at all, it could only be extrinsically good. This position is made clear in "Utilitarianism." Having explained that "by happiness is intended pleasure, and the absence of pain," Mill says:

...pleasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves, or as a means to the promotion of pleasure and the prevention of pain.²⁴

If we dispense with the suggestion that individuality is inherently pleasurable, it is clear that Mill could only have regarded individuality as extrinsically good, as a means to the only thing which is intrinsically good--happiness.²⁵

In all fairness, however, in our analysis of the second half of Mill's proof, it was pointed out that Mill held that many things could be (and are) held to be intrinsically good besides pleasure and that whatever was so regarded was thought by Mill to be a part of happiness.²⁶ Consequently, if we say that liberty is a necessary condition for acquiring whatever is held to be intrinsically good, if there might be

²⁴Mill, "Utilitarianism," p. 210.

²⁵See also On Liberty, p. 63 and the next few pages, where Mill speaks exclusively of individuality as having extrinsic worth.

²⁶See pp. 97-102.

some who hold individuality to be intrinsically good, then liberty is a necessary condition for their acquiring it. We can go this far with Ten. However, to maintain, as does Ten, that liberty is good as a necessary condition only for acquiring individuality is untenable. For it would entail, in this case, contending that only individuality is or would be held to be intrinsically good, something which is, as a matter of fact, false, and clearly denied by Mill (given his discussion of intrinsic goodness in the second part of the proof.) Even if Mill considered individuality to be "the most important ingredient of happiness," as Ten asserts at one point, it is obvious that there are others and that liberty is a necessary condition for acquiring these also.²⁷

Among other things, Ten has missed what Mill had in mind by individual happiness, that Mill regarded its content, for moral purposes, as "whatever is legitimately desired." Had he noted this, he would also have discovered that, as a consequence, Mill held that the best way to maximize the number of people who are individually happy (i.e., the general happiness) is to grant them whatever conditions are universally

²⁷It is worth mentioning that Ten's analysis rests on interpreting Mill as meaning by 'ingredient,' 'part,' rather than 'necessary condition.' However, in the passage Ten quotes in which Mill says that "without liberty 'there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress,'" it can be argued that it is much more plausible to interpret Mill, in this context, as using 'ingredient' to mean 'necessary condition.' Because it would constitute a lengthy diversion, it will not be argued here.

necessary for pursuing whatever it is they legitimately desire. As it turns out, liberty is one of the necessary conditions. With happiness understood in this sense, it is not at all "misleading to say simply that On Liberty provides a utilitarian defense of freedom," a defense grounded on the premise that liberty is a necessary condition for individual happiness, the maximization of the number of individually happy people, and, consequently, the general happiness. According to our present terminology, then, liberty is a right, and one which everyone has equally.

Sub-section III-B: the justifiable extent of liberty.

The question remains, however, as to how much liberty is necessary. Paradoxically, the general answer is provided by John Rawls, an anti-utilitarian. In several articles and his recent book, A Theory of Justice, Rawls argues for a kind of social contract theory of justice and defends a principle of justice which he claims utilitarianism can't account for: "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others."²⁸

²⁸John Rawls, A Theory of Justice (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1971), p. 60. The articles referred to are "Justice as Fairness," The Journal of Philosophy, LIV, No. 22 (October 24, 1957), pp. 653-662; "The Sense of Justice," Philosophical Review, 72 (July, 1963), pp. 281-305; and "Distributive Justice," Philosophy, Politics and Society (3rd Series), ed. Peter Laslett and W. G. Runciman (London: Billing & Sons, Ltd., 1967), pp. 58-83. The principle has been formulated somewhat differently in Rawls' articles and is reformulated on p. 250 of A Theory

It should be apparent, first of all, that this principle serves as a rather accurate description of the general position that Mill was defending in On Liberty.²⁹ For it was Mill's concern that everyone should be free--should have the right--to perform those actions which are self-regarding and should be restricted only at that point at which they became other-regarding and harmful. In other words, "the most extensive basic liberty compatible with a similar liberty for others" was, for Mill, restricted to the area of self-regarding actions. Rawls' principle is descriptive of only the general position which Mill was defending, however, for the line between self- and other-regarding actions was thought by Mill to be the major difficulty. As he says in the early part of the first chapter:

All that makes existence valuable to anyone, depends on the enforcement of restraints upon the actions of other people. 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

of Justice. As I am making only a general point regarding Rawls' principle, the slight differences between formulations are not significant enough to be concerned about. It should also be noted that, of his two principles of justice, Rawls gives priority to this one. As he says on p. 244 of A Theory of Justice, "The two principles are in lexical order, and therefore the claims of liberty are to be satisfied first. Until this is achieved no other principle comes into play."

²⁹It is apparent, that is, as soon as we realize that the "basic liberties" Rawls is referring to are almost identical with the liberties Mill was concerned about defending in On Liberty. (See A Theory of Justice, p. 61.)

be, is the principal question in human affairs; but if we except a few of the more obvious cases, it is one of those which least progress has been made in resolving.³⁰

Rawls' denunciation of utilitarianism is not surprising, as his contention is that "This conception of justice differs from that of the stricter form of utilitarianism (Bentham and Sidgwick), and its counterpart in welfare economics, which assimilates justice to benevolence and the latter in turn to the most efficient design of institutions to promote the general welfare."³¹ If this is the kind of utilitarian theory he is considering, then he is correct in maintaining that, although his principles of justice can sometimes be justified by utilitarianism,

As an interpretation of the basis of the principles of justice the utilitarian conception is mistaken. It can lead one to argue against slavery on the

³⁰On Liberty, p. 5. There is substantial confirmation in On Liberty that Mill was, in fact, arguing generally in this way for "an equal right to the most extensive basic liberty compatible with a similar liberty for others." A few passages from the essay will suffice as examples. "The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it" (p. 12). "The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry out his opinions into practice at his own cost" (pp. 55-56). "As much compression as is necessary to prevent the stronger specimens of human nature from encroaching on the rights of others, cannot be dispensed with..." (p. 63).

³¹Rawls, "Justice as Fairness," p. 660.

grounds that the advantages to the slaveholder do not counterbalance the disadvantages to the slave and to society at large burdened by a comparatively inefficient system of labor.

Whereas, he goes on to say, "The conception of justice as fairness, when applied to the offices of slaveholder and slave, would forbid counting the advantages of the slaveholder at all."³²

The utilitarian theory that has been developed thus far as the more explicit formulation of what Mill had in mind would also disallow "counting the advantages of the slaveholder at all." For, as has been made clear through explanation of the principle of obligation and its corollary, it would not be justifiable to deprive other human beings of one of the necessary conditions for happiness--in this case, liberty--in order to satisfy particular desires which must be classified as illegitimate. The utilitarian theories Rawls considers perhaps would sanction the objectionable reasoning concerning slaves and slaveholders. The one that has been developed in the preceding pages would not.

The situation can be explained somewhat differently. One of the criticisms of utilitarianism Rawls offers in A Theory of Justice is that "there is no reason in principle why the greater gains of some should not compensate for the lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the

³²Rawls, "Justice as Fairness," p. 661.

greater good shared by the many."³³ If we bear in mind that he is concerned about classical varieties of utilitarianism, we might agree that a metaphysical view of right actions according to these theories might justify this allegation. Thus, the "in principle" in the passage may be interpreted as referring to the principle of utility which was previously developed to specify the conditions for metaphysical rightness (P_1). However, our utilitarian theory, which does not employ this principle for the assessment of actions by moral agents, does not allow, "in principle," the kind of situation above which Rawls suggests. From a non-metaphysical perspective, and the principle of utility which corresponds to it, the theory is not subject to Rawls' objection.

Liberty, then, is another necessary condition for happiness. However, it might be objected that some people need very little liberty to attain happiness and that, in general, the degrees of liberty required are relative to the needs of particular individuals. Nevertheless, the amount of freedom that our utilitarian theory justifies having available to each individual in society is, in accordance with Rawls' principle of justice, as much as is compatible with everyone's having the same amount. The reasons for this are many. The major one is simply based on the many actual and possible conceptions of individual happiness. Because of the number of unique individuals and the consequent diversity of individual

³³Rawls, A Theory of Justice, p. 26.

conceptions of happiness, some are obviously going to require more liberty for realizing happiness than others. Consequently, because our utilitarian theory is committed to maximizing the happiness of the greatest number of individuals and regards no legitimate conception of individual happiness as intrinsically superior to any other; in a society in which the variance between individual conceptions of happiness is such that some require more freedom for realization than others, the more liberty it is possible to have available (i.e., within the bounds of compatibility), the greater is the probability that all of the people will be happy. Those requiring the maximum amount of allowable liberty will have this as a necessary condition for their happiness, as will those who require lesser amounts.³⁴

Other--perhaps no less important--reasons can be summarized from previous discussions of On Liberty:

- (a) If it is supposed that what happiness is, in fact, and the best means to it are in the category of open questions, people should have available to them as much opportunity as possible to experiment with different conceptions of happiness and styles of living. In accordance with Mill's arguments in On Liberty which favor the open society as the best means for attaining truth, only under these conditions is the possi-

³⁴See the quotation above on p.178 of this text, which very much supports the point being made in this paragraph.

bility maximized that the truth might someday be discovered. Insofar as truth in these matters is desirable, a maximum of liberty is the best means towards its discovery.

- (b) Even in a society in which what happiness is and the best means for attaining it are known, a diversity of conceptions of happiness and life-styles is desirable. For, according to arguments previously examined from On Liberty, only in an atmosphere where truth has opposition will it remain alive and not become mere dogma from the lack of necessity to defend it. Insofar as this is conducive to the maximization of happiness, it is desirable. Again, there is a much greater likelihood of this situation's existing in a society with a maximum of possible liberty.
- (c) A maximum of liberty is conducive to individual development, which is extrinsically good in that it provides the best chance for discovery of the conception of happiness and the means to it which best matches one's potential. In a manner of speaking, one might not be as happy in a society with little freedom as he could be in a society with a great deal more, because in the latter he is better able to discover the kind of life he is potentially most capable of enjoying.

Without further argument, I think it can be maintained that utilitarianism can deal adequately with Rawls' objections.

In addition, it may have a significant advantage over Rawls' theory. It perhaps allows one to avoid an important objection against a social contract theory of justice. In his reply to Rawls' paper, "Justice as Fairness," Everett W. Hall has noted a serious difficulty. He considers the problem of going from "a contract freely entered by individuals to their obligation to live up to it," as one involved with the "is-ought-distinction." Referring to the contract one enters into with respect to the principles of justice, Hall concludes, "Hume and Bentham played this up: the notion of a duty to keep a contract once entered must be there from the start on the social contract theory. What is its basis? Clearly, Mr. Rawls' modernized version is involved in this deduction of an 'ought' from an 'is.'"³⁵

In contrast, the principle of utility is a normative ethical principle which justifies one's obligation to abide by principles of justice, not by the antecedent fact that one has previously agreed to do so, but because doing so is more productive of general happiness in the long run. Insofar as a violation of the "is-ought-distinction" is a serious problem (as I believe, with Hall, that it is), utilitarian theory may have an important edge over Rawls' theory in possibly being able to avoid it.³⁶ In conclusion, perhaps

³⁵ Everett W. Hall, "Justice as Fairness: A Modernized Version of the Social Contract," Journal of Philosophy, LIV, 22 (October 24, 1957), pp. 667-668.

³⁶ This position is further argued by Hall. Because this

Hall is right in concluding that

...what Mr. Rawls is up to differs from what he thinks he is; I am saying that he is doing an intuitional justification of fairness as basic to the concept of social justice as a normative idea, whereas he explicitly disclaims that he is.³⁷

There is one other objection by Hall that is worth noting. In addition to other criticisms of the social contract theory of justice, Hall also thinks that Rawls is incorrectly interpreting utilitarian theory when he claims that according to the theory,

Justice is interpreted as the contingent result of a higher order administrative decision whose form is similar to that of an entrepreneur deciding how

is a minor point in contrast with the major thrust of this sub-section, and is merely mentioned as a possible advantage over Rawls' theory, I do not wish to become involved in a lengthy discussion of the "is-ought" problem, relative to Mill's theory. Very simply, having concluded in the first part of the proof that "happiness is desirable," and in the second part that "happiness is the only thing desirable," Mill also (at least implicitly) accepted a further general premise which he thought to be acceptable to reasonable people--"whatever is desirable (i.e., good) ought to be maximized as much as possible." In fact, the question, "Why should we maximize what is good?" may be one of those highly skeptical queries which defies attempts at "proof" and so cannot be seriously or sensibly dealt with. Having accepted this general premise, it unproblematically follows that, if an action is more productive of good (happiness) than any alternative action, then one ought to perform it. What has been argued against Rawls is that a promise made on the basis of a social contract theory is not justified by anything independently good and, consequently, it is much more difficult--if not impossible--to derive from "the promise has been made" the conclusion that "the promise ought to be kept." That is, a premise like the above--"whatever is desirable ought to be maximized as much as possible"--is not available. At the very least, the "is-ought" problem appears to be much more of a problem for a social contract theory than a utilitarian theory like Mill's.

³⁷Hall, "Justice as Fairness," p. 668-669.

much to produce of this or that commodity in view of its marginal revenue, or to that of someone distributing goods to needy persons according to the relative urgency of their wants.³⁸

(Rawls makes a similar statement about the nature of these utilitarian decisions on p. 27 of A Theory of Justice.) As Hall astutely observes:

I think it does not in the least help when Mr. Rawls talks of acceptance by the parties involved and contrasts it with executive decision from above. In the first place, the latter method of implementing utilitarianism is not logically demanded by that doctrine. It might plausibly be argued that the greatest happiness can only be achieved in an essentially democratic society....³⁹

Insofar as a democratic society is thought of as one where everyone has at least some rights equally, what Hall is anticipating here is roughly the kind of society and the kind of social justice that results from the employment of our utilitarian theory. In other words, not only is Hall correct in asserting that Rawls' account is "not logically demanded by" utilitarianism, he is also correct in saying that "It might plausibly be argued that the greatest happiness can only be achieved in an essentially democratic society." In fact, what I am contending and what I believe Mill was maintaining is that "an essentially democratic society" is the only kind of society in which the greatest happiness can be achieved.

In summary, liberty, like life, is justified by utili-

³⁸Rawls, "Justice as Fairness," p. 661.

³⁹Hall, "Justice as Fairness," p. 668.

tarian theory as a universal right which everyone has equally and which can only be violated according to the conditions specified in the corollary to the principle of obligation; where, once again, not violating the right to liberty when these conditions are satisfied is as contrary to intuition as violating the right to liberty when they are not. In addition, it is obvious that the limit of liberty which Rawls has specified as a principle of justice is that which is necessary for maximizing the general happiness. Finally, in addition to the general happiness being maximized in "an essentially democratic society," the utilitarian theory we have developed may have a significant advantage over Rawls' theory, in that it may be able to avoid objections stemming from the "is-ought-distinction."

C H A P T E R I V

A UTILITARIAN ACCOUNT OF DISTRIBUTIVE JUSTICE

Having established life and liberty as rights, and having thereby avoided two objections to the theory--the one that it violates our intuitions concerning the right to life, and the other, Rawls' objection, that it cannot account for the principle of justice which requires equal liberty for all--it is time to consider the theory's capabilities for accounting for principles of distributive justice. One of the most forceful attacks against utilitarianism in this regard is Nicholas Rescher's book, Distributive Justice.¹ In order to narrow the scope of this topic within the bounds of manageability, much of the discussion which follows will be focused on Rescher's arguments.

Section I

Rescher's Objections to Utilitarianism

Distributive Justice is dedicated to demonstrating that utilitarian theory is inadequate alone to account for intuitively acceptable principles of distributive justice:

We shall base our inquiry into the principle of distributive justice upon an investigation of the doctrine of utilitarianism. This doctrine is founded

¹(New York: The Bobbs-Merrill Co., Inc., 1968).

upon the principle of utility...Exact as it sounds, this classic principle is imprecise and indeed inadequate. The first objective of our discussion is to exhibit these shortcomings in considerable detail. And when the necessary emendations are made, the resulting position will be such that the label 'utilitarianism' (as usually construed) can be pinned to it only with serious reservations, if at all.²

It is not difficult to demonstrate that, from the standpoint of the utilitarian theory that has been developed and defended as the most plausible interpretation of what Mill had in mind, Rescher's entire enterprise is ill-conceived. Generally, all of his objections to utilitarianism are made with reference to "classical" formulations of the principle of utility, and there is absolutely no indication that he was aware that, when considering justice, Mill spoke in terms of rights which are justified because their establishment is necessary for the maximization of the general happiness. Analysis of some of his objections will make it readily apparent that this is the case.

In the example referred to in the first part of Chapter I,³ Rescher asked us to suppose that there are three persons (A, B, and C) who are to be given the utility shares (a), (b), and (c), respectively, in accordance with either of two schemes, as follows:

<u>Share</u>	<u>Scheme I</u>	<u>Scheme II</u>
(a)	3 units	2 units
(b)	3	2
(c)	3	6

²Rescher, pp. 8-9.

³pp. 5-6, above.

It is his contention that because Scheme II yields "the greater good" and Scheme I yields the greater advantage in goods for "the greatest number," application of the principle of utility cannot result in a decision as to which scheme we should adopt. "The example brings out the fact that the principle of utility is a two-factor criterion ('greater good,' 'greater number'), and that these two factors can in given cases work against one another."⁴

First of all, it is obvious that if P_1 is the principle of utility which he has in mind in this example, it is true that employing it in this case would not allow us to choose one scheme rather than the other; but this is so quite irrespective of any specific difficulty inhering in the concepts of "greatest good" and "greatest number." As it has been demonstrated that P_1 only specifies the conditions under which an action can be said to be metaphysically or objectively right, that it is theoretically impossible for a finite moral agent to know what is right according to this principle, and that this principle has nothing whatever to do with justice,⁵

⁴Rescher, p. 25.

⁵That is, although P_1 may have something to do with justice from a metaphysical perspective, it has nothing to do with it in a non-metaphysical sense. Consequently, as argued previously (Subsection III-F), justice, in the only sense that can be interesting and relevant to finite moral agents, is associated with P_2 , not P_1 . I see no reason why this claim about P_1 does not apply generally to all kinds of justice (distributive, retributive, etc.), although the present concern is not to elaborate on this but only to demonstrate that P_2 can account for intuitively acceptable principles of distributive justice.

there is no way that P_1 can be employed for the purpose of determining which distribution scheme is just according to utilitarianism. As previously noted, the only function this principle can succeed in fulfilling is to point out what must be judged as the relatively trivial truth--that the judgments that moral agents make regarding the rightness of actions on the basis of P_2 are not necessarily in accord with that which the theory justifies as metaphysically right.

However, application of P_2 would allow us to decide which scheme is best; but since we are dealing with justice, it would allow us to decide only by a consideration of rights justified by P_2 .⁶ Presumably, in the situation described by Rescher, the individuals involved are to be thought of as having equal rights to the item in question, since he mentions nothing at all about any of them having a special claim to whatever is being distributed. In this case, our first reaction might be that he has presented us with what might well be regarded as an instance of a false dilemma. For,

⁶Rights have previously been spoken of only in connection with necessary conditions for happiness. Although it is not necessary to do so for the purposes of the argument, the examples Rescher employs can be adapted in this way, so that we can speak, for example, about his distribution schema in terms of subsistence items (necessary conditions for life), such as food. However, Rescher's examples need not be restricted to the rights we have spoken of thus far, since, later on, other rights will be justified as aspects of the general right to liberty. That Rescher has failed, throughout his entire book, to consider rights with reference to utilitarianism is sufficient evidence, I think, for concluding that he has not read Chapter V of "Utilitarianism" or, if so, that he has not read it carefully.

obviously, if we have ten items to distribute to three individuals, all of whom are presumed to have an equal right to the item in question, there are two other options available: (a) if the items are divisible, we could distribute according to a Scheme III, in which individuals A, B, and C each receive $3\frac{1}{3}$ of the items in question. (b) If the items are not divisible, and assuming there are no other considerations that could be employed which would enable us to decide who should have the tenth item, some sort of random selection procedure (e.g., coin-flipping) should be used to decide the issue, since this kind of procedure would recognize everyone's equal right to the item in question. Consequently, we have another scheme as an option in which either A, B, or C would receive four units, the other two receiving three.⁷ In any case, it would be irrational to consider one's options for distribution limited to Rescher's Schemes I and II, if all three of the individuals have an equal right to the items in question and there is another distribution which is possible.⁸

⁷Assuming A, B, and C are rational, it would be absurd for them not to agree on the use of a random selection procedure in this situation. It would also perhaps be absurd to suppose, in this particular situation, that happiness would not be maximized if they did so, since all would be assured that they were given equal consideration in accordance with their rights, and so would have no grounds for complaint. If they were utilitarians, they would also be assured that the decision as to who was to receive the tenth item was made in accordance with the principle of utility (P₂). Of course, there is also the possibility that one or two would abdicate their right in the situation and so execute a much more laudable--supererogatory--action.

⁸That A, B, and C have equal rights to whatever is being

However, if, for some reason, there is no possibility of employing another distributive schema and we are left with only Schemes I and II to choose between, P_2 will still allow us to make a selection. Because our principle of obligation tells us, generally, that we are to violate as few rights as possible on any occasion of choice, and since it is evident that A's and B's rights to the distributed item are both violated if we act in accordance with Scheme II (assuming everyone's rights are equal in this case), it is obvious that we should distribute in accordance with Scheme I, since no one's rights are violated (again, if we accept the somewhat absurd assumption that no alternative scheme of distribution is possible). To distribute in accordance with Scheme II would be to distribute in accordance with some other theory than utilitarianism, for it would be to presuppose that our sole concern

distributed in Rescher's schema is assumed on the grounds that Rescher does not indicate that any of the three have a special claim (right) to the distributed items. If C has a right to a greater share than A and B, then an unequal distribution like Scheme II will be justified, and there is no problem. It must be remembered that Rescher is concerned about distributive justice and that, for the utilitarian theory which has been developed, just actions are those which are in accordance with rights--as specified by the principle of obligation and its corollary. Consequently, it makes sense to speak about one distribution scheme's being more just than another only by considering the rights involved. In the absence of rights, one can distribute in any way he chooses (see pp.198 and 199) since one is not obligated to make others happy (argued on pp. 137-42). As mentioned in the footnote on p. 195, the major objections to Rescher's criticisms of utilitarian theory stem from the fact that he did not consider rights at all in connection with distributive justice in Mill's utilitarian theory. What is being argued, of course, is that, once the rights which are established by the theory are considered, the theory is not incompatible with distributive principles of justice.

should be that only C's happiness be maximized in this case, rather than that there should be equal concern for the happiness of A, B, and C. Whereas, if we choose Scheme I, and so distribute in accordance with their supposed equal rights, we demonstrate equal concern for the happiness of all three.

It is important to note at this point that, if justice has to do with rights, in the absence of anyone's having a right to something we possess, we may distribute in any way we please or not at all. We are to be reminded, once again, that it is not our duty, as utilitarians, to make other people happy; we are only obligated not to violate their rights whenever it is possible to do so. That we are obligated to distribute only in accordance with rights is noted by Jan Narveson in Morality and Utility:

That I have an obligation to give something to Jones entails that Jones has a right to the thing in question, and if the emphasis is on "I" then it entails that he has the right "against" me in particular.... What common sense tells us, surely, is that we do not in general have an obligation to distribute things: What we own is ipso facto, what we have a right to use and hence, normally, to dispose of, as we see fit. Being what it is for us to have these rights, and obligations being what we have said in Chapter V, it quickly becomes evident both that we do not normally suppose that we have obligations, in general, to distribute anything, and that there is good utilitarian reason for this belief. A fortiori, we would have no obligations in general to distribute equally.⁹

Narveson provides an illustration in which he claims that a millionaire who "takes it into his head to give a hundred thousand dollars to some beggar he meets on the street

⁹Narveson, p. 206.

one day, but not a single dime to the next one" could not be guilty of an injustice if none of the beggars has a right to the money in the first place. He then concludes that

...there is no sense in discussing the justice of distribution in a pure vacuum (as is usually done) at all. It is time to consider some reasonably genuine situations, of which I submit the above as a good example. And the lesson thus far is simply that in the absence of any special obligation, we have no general obligations to distribute anything at all, and thus no obligation to distribute it equally.¹⁰

This is obviously in accordance with our previous analysis of Mill's theory and means, for the Rescher example, that in the absence of rights to the item in question there could be no obligation to distribute in accordance with any schema of distribution. Consequently, Rescher's illustration can make sense to us as utilitarians concerned with adhering to the dictates of P_2 only if we assume that rights are involved. And if we suppose that each of the individuals being distributed to has an equal right to the item being distributed, appeal to our principle of obligation prescribes which schema should be chosen and, in doing so, avoids any alleged incompatibility with intuition.

As a final comment on Rescher's illustration, it can be concluded that, contrary to Rescher's assertion, "the greatest good of the greatest number" is not a phrase which can be thought to lead to difficulty for our utilitarian theory so far as distributive (or any other kind of) justice is con-

¹⁰Narveson, p. 207.

cerned. As noted previously, "the greatest good" is to be taken as referring to a theory of intrinsic value no more specific than the one which holds that happiness is intrinsically good. And as every legitimate conception of happiness is to be regarded as intrinsically good as any other, "the greatest number" refers to everyone. The result is that there is no ambiguity, for both have been referred to in the process of establishing as universal rights those conditions which are necessary for the realization and maximization of everyone's happiness, and for calling an action just only if it is in accordance with those rights. Although the phrase may be problematic if one is attempting to determine what is metaphysically right and so, like Rescher, attempting to determine what is just according to utilitarianism without a consideration of rights established by the theory, this cannot be our concern. From the perspective of the principle which is our concern, however, it poses no problem. With the correct theory in mind, it looks, at this point, as if Rescher's whole enterprise regarding justice and utilitarianism must be judged as entirely misconceived.

The same misunderstanding of utilitarianism is evidenced again a few pages later on where Rescher is considering "one of the standard textbook objections to the principle:"

Scheme I

(c)
(b)
(a)

Scheme II

(c)
(b)
(a)

Here Scheme II not only yields "the greater good," but works to the advantage of "a greater number," since two of the three people involved are obvious beneficiaries of its adoption. But is it reasonable that we should in all such cases be prepared to sacrifice an "individual interest" in "the general benefit," as the principle of utility says we must do? The answer to this question cannot be other than no! We would surely not want to subject one individual to unspeakable suffering to give some insignificantly small benefit to many others (even an innumerable myriad of them). Actual privation offends our sense of justice in a more serious way than do mere inequities.¹¹

Once again, in the absence of special rights which A and B have to the distributed item that C doesn't, there is no reason why we should prefer Scheme II over Scheme I.¹² If these distribution schemes are our only choices and it is assumed that A, B, and C each have an equal right to the items being distributed, it is clear that I is preferable to II on the grounds that II violates C's right to an equal distribution, whereas I violates no one's.¹³ However, where

¹¹Rescher, pp. 28-29.

¹²Again, the assumption of equal rights is made on the grounds that Rescher does not indicate that any of the three has a special claim (right) to the distributed items. And, as noted previously, we must be speaking about rights when referring to justice. See footnote on p. 196-197.

¹³This assumes, of course, that this is not a situation of scarcity, in which, for example, the item being distributed is a subsistence item (i.e., a necessary condition for life,

neither A, B, nor C have rights to the items being distributed, whoever is doing the distributing is justified in distributing in accordance with any scheme he wishes, including Scheme II. If, on the other hand, the much more plausible situation obtains whereby some other distribution scheme could be opted for which was preferable to either I or II (such as, in the last example, dividing a divisible item or adopting a random selection procedure for an indivisible item), it would be irrational and contrary to utilitarian theory to choose either I or II.

Of course, Rescher's insistence that the principle of utility demands that it is "reasonable that we should in all such cases be prepared to sacrifice an 'individual interest' in the 'general benefit'" is completely misguided. Because everyone's happiness is to count as much as any other's; in the interest of maximizing the general happiness in the long run, the theory justifies assigning everyone an equal right to all the necessary conditions for happiness. Contrary to Rescher's supposition, the principle of utility

such as food) and the amounts represented by Scheme I are not sufficient to do either A, B, or C any good (in this case, to sustain their lives). In such a situation, we would be able to justify dividing the item between only two of the three (probably via a random selection procedure), thus saving two lives instead of losing three. In this case, however, we would be choosing the least of two harmful alternatives, thereby acting in accordance with the principle of obligation. Moreover, it should be noted that, in this situation, Scheme II would have to be changed so as to represent only A and B--if they were selected--since C's life would necessarily be sacrificed.

does not regard this kind of sacrifice--a sacrifice of rights --as "reasonable...in all such instances." Although it might be the case that (all or some) sacrifices like this are metaphysically right, according to P_2 the only conditions under which they can be sanctioned are those specified by the principle of obligation and its corollary.¹⁴ Under these conditions, such sacrifices are justified as productive of the general happiness and are not incompatible with intuition.

Once again, to sacrifice anyone's right(s) for the purpose of satisfying others' desires for happiness when those desires are not directed toward universally necessary conditions for happiness is to erroneously suppose that one's duty as a utilitarian is to make other people happy. In situations like the above, in which we are presumable obligated to make some people happy at the expense of violating the rights of others, it has previously been concluded that we are not operating with utilitarianism but rather with some other ethical theory.

It might be objected that this analysis of Rescher's illustration takes no account of degrees of happiness and that not to do so is contrary to utilitarianism. Thus, in adapting the illustration somewhat, one might argue as follows: If we suppose that A, B, and C are the only three individuals in the world, Scheme I can be taken to represent

¹⁴For an example in which a violation of rights is justified by the principle of obligation, see the preceding footnote.

the situation in which all three are equally happy; whereas Scheme II can be taken to represent the greater degree of happiness for A and B if they were to take something of C's against his will, thereby slightly diminishing C's happiness. Our critic would contend, with Rescher, that surely the utilitarian must justify the action of A and B, since it would obviously maximize the total amount of happiness (even in the long run, we might suppose).

In reply, we must recall two prior conclusions: (a) We do not know what happiness is, in fact. (b) We do not have knowledge of the nature and/or extent of the consequences of our actions. This means that we cannot know, for any particular action, whether it is metaphysically right or obligatory, whether performing it will maximize the general happiness (as defined for Objective Rightness₁). Considering the fact that it makes sense to speak and make judgments about degrees of happiness only if we have this kind of knowledge, it must be concluded that we cannot make this kind of judgment; to do so is to assume that we have more knowledge about happiness than we really have. We must proceed on the basis of the evidence we do have--that which was used to formulate P₂--and, consequently, can only justify being concerned about the obligation of protecting rights to the universally necessary conditions for happiness.

In short, any situation can be imagined from a metaphysical perspective (such as Rescher's illustration); but

as we have seen, this kind of speculation is not the sort of thing we can be concerned about as utilitarians interested in the non-metaphysical agent-oriented aspect of the theory. As we have previously noted, metaphysical rightness (Objective Rightness₁) serves only to point out the possible discrepancy between what is metaphysically right and what a finite moral agent judges to be right using P₂.

If the objector turns instead to talk of "desires satisfied," Rescher's illustration might be adapted as follows: If A and B took something from an unwilling C, even though they harm him, more desires would be satisfied than if they didn't. That is, if we suppose that two desires are satisfied for each of the three in Scheme I, we might suppose in Scheme II that only one of C's desires is satisfied, whereas three are satisfied for both A and B. Our critic would now argue that, even though there is a satisfaction of illegitimate desires, the general happiness is maximized by choosing Scheme II over Scheme I because more desires are satisfied by doing so.

However, to argue in this way is again to indulge in metaphysical speculation. For to imagine that we can equate happiness with the number of satisfied desires is again to suppose that we know much more about happiness than we do. Scheme II may represent what is metaphysically right but, as far as we know, the two satisfied desires gained by A and B in Scheme II may not be sufficient to compensate for

C's loss of one satisfied desire, and so not maximize the long run general happiness (as defined for Objective Rightness₁). We cannot with assurance say that, if Jones has more desires satisfied than Smith, Jones is happier than Smith. Equating numbers of desires satisfied with happiness is a simplistic supposition and is something we are in no position to do. Again, operating with P₂, which is formulated on the basis of the evidence we have available with respect to happiness, we can only justify protecting rights to the necessary conditions for happiness; but we cannot justify the assumption that the greater the number of desires satisfied (legitimate or illegitimate) the greater the degree of happiness produced; operating with P₂, it makes no sense to speak about degrees of happiness. We have formulated P₂ on the basis of what we know. Operating with it, the general happiness (as defined in accordance with Objective Rightness₂) is maximized and, as finite moral agents, maximizing the general happiness in this sense is all we can plausibly be concerned about.¹⁵

From his illustration, Rescher concludes that "These considerations suggest adding to the principle of utility

¹⁵The really difficult problem arises for Rescher's illustration if we suppose that A and B are able to take advantage of C without his knowledge. In this case, Scheme II would represent C's happiness in the same amount as in Scheme I, while A's and B's is significantly increased. This kind of situation will be dealt with subsequently in Chapter IV.

another qualifying clause, a 'principle of catastrophe-prevention' stipulating a minimal utility floor for all individuals below which no one should be pressed." He thinks, therefore, that we should add to the principle of utility the proviso, "...provided that nobody receives less of 'the good' than a certain (i.e., some plausible) minimum amount." For "Clearly one of the most basic elements of our concept of justice is to minimize the number of persons in a state of genuine deprivation regarding their share in the available pool of utility."¹⁶

If the utilities referred to by Rescher are universally necessary conditions for happiness, then we can agree that, if at all possible, no one should be placed in a state of deprivation, for everyone has an equal right to them. In this case, then, our utilitarian wholeheartedly agrees with Rescher; but this proviso is, contrary to Rescher's allegation, already part of his theory. On the other hand, if the utilities Rescher refers to are not universally necessary conditions for happiness, then not everyone has a right to them and no one without a right to them is treated unjustly if he does not receive a share of them. As utilitarians we can conclude that a "utility floor" makes sense if we are speaking of necessary conditions for happiness, but is senseless if taken to refer to anything else capable of being distributed. There is no problem here, however, for

¹⁶Rescher, p. 29.

P₂ provides a "utility floor" in the former sense.¹⁷

Rescher does consider rights when, in another major section of his book, he discusses legitimate claims but, again, he fails to note the fact that utilitarian theory accounts for justice in terms of them. His whole enterprise here he conceives as a more explicit reiteration of "...one of the standard objections to utilitarianism on the part of nineteenth-century critics." He cites a passage from Herbert Spencer's The Data of Ethics as representative of the position he is defending:

"Everyone to count for one, nobody for more than one." Does this mean that, in respect of whatever is proportioned out, each is to have the same share whatever his character, whatever his conduct? Shall he if passive have as much as if active? Shall he if useless have as much as if useful? Shall he if criminal have as much as if virtuous? If the distribution is to be made without reference to the natures and deeds of the recipients, then it must be shown that a system which equalizes, as far as

¹⁷That Rescher, in his discussion of a "utility floor," is referring to necessary conditions for happiness is evidenced in a footnote in which reference is made to a passage from John Hospers' book, Human Conduct (pp. 29-30). The passage is concerned with the problem of having sufficient food to prevent starvation and it is concluded that it would be foolish to divide equally in a condition of scarcity when the resulting shares would not be sufficient to sustain life. It is concluded by Hospers that this "...would really be running the equality principle into the ground." It should be noted that the utilitarian theory that has been developed does not condone strict egalitarianism, and that even where everyone concerned has an equal right to the item in question, situations like the one described by Hospers constitute exceptions. This problem will be delved into in greater depth later on, where it will become apparent that a wholly egalitarian principle of distribution is not only contrary to intuition but to the principle of utility (P₂) as well.

it can, the treatment of good and bad, will be beneficial. If the distribution is not to be indiscriminate, then the formula disappears. The something distributed must be apportioned otherwise than by equal division. There must be adjustment of amounts to deserts; and we are left in the dark as to the mode of adjustment--we have to find other guidance.¹⁸

In light of the theory that has been developed, we will only say, at this point, that it is absurd to maintain that utilitarianism entails that we must distribute equally to everyone under all conditions, meaning that there is no such thing in utilitarianism as the forfeiture of a right to a distribution, and that the principle of utility cannot be used to make any discriminations whatever on the basis of merit. Rescher is right in an important sense when he concludes that

...the decisive and fatal objection to any straightforward adoption of the classical principle of utility as a rule of distribution is this: it leaves wholly out of account that essential reference to claims, merit, and desert without which no theory of distributive justice fulfills the requisite for serious consideration....¹⁹

That is, insofar as "the classical principle of utility" is concerned, his judgment is probably correct. His fatal oversight, however, is having failed to realize that there is a utilitarian theory (the basic structure of which is found in the work of J. S. Mill) which can successfully account for intuitively acceptable principles of distributive justice,

¹⁸Rescher, pp. 42-43

¹⁹Rescher, p. 48.

including those which take account of claims, merit, and desert. We will proceed to consider these issues in the next section.

Section II

Frankena's Theory of Social Justice

Rather than continue with a detailed analysis of Rescher's objections to utilitarianism concerning claims, it is best at this point to take a more general, and what will prove to be an ultimately more fruitful, approach to resolution of these so-called difficulties. I wish to turn attention to a theory of social justice propounded by a non-utilitarian, William K. Frankena, which I think can be demonstrated as capable of accounting for many--if not all--of our intuitions regarding distributive justice and which can be shown to be derivable from our utilitarian theory. Sub-section II-A will be concerned with a brief account of Frankena's theory, focusing specifically on a comparison of Frankena's and Ch. Perelman's views on equality as the basic concept of justice. Sub-section II-B will attempt to show that, contrary to Frankena's assertion, his basic theory is derivable from the utilitarian theory that has been developed and attributed to Mill.

Sub-section II-A: Frankena and Perelman--equality as the basic concept of justice. Frankena has concluded, after some preliminary considerations on the topic of "Equality

and Justice," that "The modern concept of social justice is complex and includes a meritarian as well as an egalitarian element. It recognizes the demand to respect differences between persons as well as the demand to respect person-ality as such."²⁰ Strictly egalitarian theories of justice, which maintain that no inequality is ever justified and that justice calls for a strict equality in the treatment of all individuals no matter who they are, regard "every departure from complete equality...as beyond the pale of justice, though not beyond that of the morally right or obligatory." Re-garding such theories, Frankena concludes that they

are possible and have an apparent simplicity, but they limit the usual scope of justice. Not every departure from equality is ordinarily regarded as a departure from justice, let alone from morality. For one thing, such departures are allowed on the ground of differences in ability, merit, or desert. Certain other departures from a direct or simple equality, called for by differences in need, or involved in carrying out agreements, covenants, contracts, and promises, are also recognized as just, and not merely as justified or right.²¹

It is the purpose of the remainder of his essay to reconcile these other principles of justice with the concept of equality.

In recognizing the importance of the concept of equality in all other principles of justice, but in rejecting strictly egalitarian theories as inadequate, Frankena is not alone.

²⁰William K. Frankena, "The Concept of Social Justice," Social Justice, ed. Richard B. Brandt (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1962), p. 12.

²¹Frankena, pp. 12-13.

Ch. Perelman sees the problem in a similar fashion:

To everyone the idea of justice inevitably suggests the notion of a certain equality. From Plato and Aristotle, through St. Thomas Aquinas, down to the jurists, moralists and philosophers of our own day runs a thread of universal agreement on this point. The notion of justice consists in a certain application of the notion of equality. The whole problem is to define this application in such fashion that, while constituting the element common to the various conceptions of justice, it leaves scope for their divergencies.²²

In fact, it is Perelman's contention that the egalitarian formula of justice--"To each the same thing"--is merely another way of framing what he refers to as "formal" or "abstract" justice. He arrives at the latter by noting that, despite all their differences, all formulas of justice "have something in common in their attitude." Those who require merit to be taken into account want "the same treatment for persons having equal merits." The same is true for those who want need or social rank or any other characteristic taken into account. Whatever their disagreement regarding characteristics that should be taken account of, "They are all agreed that to be just is to give the same treatment to those who are equal from some particular point of view, who possess one characteristic, the same, and the

²²Ch. Perelman, The Idea of Justice and the Problem of Argument (London: Routledge and Kegan Paul, 1963), p. 12. Rescher's demand (noted on p. 209 of this text) that an adequate theory of distributive justice must account for "... that essential reference to claims, merit, and desert..." evidences his agreement that a wholly egalitarian theory of justice is unsatisfactory.

only one to which regard must be had in the administration of justice." Perelman refers to this characteristic as essential:

If the possession of any characteristic whatever always makes it possible to group people in a class or category defined by the fact that its members possess the characteristic in question, people having an essential characteristic in common will form part of one and the same category, the same essential category.

He then defines formal or abstract justice as "a principle of action in accordance with which beings of one and the same essential category must be treated in the same way."²³

The egalitarian formula of justice is formulated as an equivalent second definition of formal justice as follows: "All that is necessary is to specify that by 'each one' is meant the members of the same essential category. Thus we get the formula 'to each member of the same essential category, the same thing,' which is equivalent in every point to the definition of formal justice...."²⁴

Frankena accepts Perelman's definition of formal justice but recognizes its limitations in that "This formula as purely formal. It says only that a society to be just must have rules and act on them. It does not say what the rules should be, or how cases of any given sort should be dealt with." Therefore, although agreeing with Perelman's

²³Perelman, p. 16.

²⁴Perelman, p. 18.

rule of justice as "a requirement of reason," Frankena is interested in "the content of social justice;" he wants to determine what the rules should be and how we should go about dealing with specific situations.²⁵

As his own general position, Frankena asserts that much more reasonable than a strictly egalitarian conception of justice, and much closer to ordinary thinking,

...is the conception of social justice as the equal treatment of all persons, except as inequality is required by relevant--that is, just-making--considerations or principles....It takes equality of treatment to be a basic prima facie requirement of justice, but that it may on occasion be overruled by other principles of justice (or by some other kind of moral principle).

As he is careful to note, however, this view is not necessarily very egalitarian. "It does hold that all men are to be treated equally and that inequalities must be justified. But it also allows that inequalities may be justified, and everything depends on the ease and the kinds of considerations by which they may be justified."²⁶

In Section VII of his essay, "Basic Theory of Justice," Frankena develops his theory of social justice more precisely. After stating once again the need for "a plausible line of thought that will explain both the role of equality in the concept of justice and those principles of justice which are not derivable from the ideal of equality," he proposes to argue that "The principles of the family of justice, insofar

²⁵Frankena, pp. 8-9.

²⁶Frankena, p. 13.

as they go beyond the requirements of equality, direct or indirect, go beyond them only because they express a certain limited concern for the good lives of individual persons as such."²⁷ He has thereby opposed the classical meritarian view of justice, and has accepted as part of his own view,

...the principle that all men are to be treated as equals, not because they are equal in any respect but simply because they are human. They are human because they have emotions and desires, and are able to think, and hence are capable of enjoying a good life in a sense in which other animals are not.... By the good life is meant not so much the morally good life as the happy or satisfactory life. As I see it, it is the fact that all men are similarly capable of enjoying a good life in this sense that justifies the prima facie requirement that they be treated as equals.²⁸

He describes the just society as one concerned, as much as possible, with the equal treatment of everyone:

A just society, then, is one which respects the good lives of its members and respects them equally. A just society must therefore promote equality; it may ignore certain differences and similarities but must consider others; and it must avoid unnecessary injury, interference, or impoverishment--all without reference to beneficence or general utility. The demand for equality is built into the very concept of justice. The just society, then, must consider and protect the good life of each man equally with that of any other, no matter how different these men may be, and so it must allow them equal consideration, equal opportunity, and equality before the law. The equal concern for the good lives of its members also requires society to treat them differently, for no matter how much one believes in a common human nature, individual needs and capacities differ, and what

²⁷Frankena, pp. 18-19.

²⁸Frankena, p. 19.

constitutes the good life for one individual may not do so for another. It is the society's very concern for the good lives of its members that determines which differences and which similarities it must respect (and which are relevant to justice). A society need not respect those differences which have only an ad hoc bearing or none at all, on the good lives of their possessors--for example, color of skin. But it must respect differences like preferring one religion to another, which do have a bearing on the individual good life.²⁹

Sub-section II-B: the derivability of Frankena's basic theory from utilitarianism. Frankena denies that the just society he describes can be justified by utilitarian theory.³⁰ Although this may be true for any of the classical versions of the theory, it is this kind of a society which is sanctioned by the formulation of the theory we have been arguing for. Frankena has argued that "The just society...must consider and protect the good life of each man equally with that of any other, no matter how different these men may be, and so it must allow them equal consideration, equal opportunity, and equality before the law." We have argued that each member of any society is to be treated equally on the grounds that his conception of happiness (his view of the "good life" Frankena speaks about) is to be regarded as intrinsically good as any other, with the consequence that each individual is to be provided, so far as possible, with an equal opportunity to pursue his own conception of happiness. Frankena has argued that "A just society...is one which respects the

²⁹Frankena, pp. 19-20.

³⁰Frankena, pp. 15-16.

good lives of its members and respects them equally. A just society must therefore promote equality." We have argued that once we hold each legitimate conception of happiness of equal value, the only way to maximize the general happiness is to promote equality of opportunity by assuring each of the members of society of equal rights to the necessary conditions for happiness. Furthermore, we have argued that the closer any society approximates the ideal of placing everyone in the position of having an equal opportunity for the pursuit of happiness, the more certain will be the possibility that the general happiness will be maximized. It follows from this that every deviation from the equal treatment of everyone must be justified on the grounds that it enhances or at least does not violate equality of opportunity, which is precisely what Frankena has argued.³¹

Although there is a striking similarity between our theory and the description Frankena provides of his, there

³¹This means, for example, that although giving more food to the impoverished than to the rich is unequal treatment, it is justified in that it serves to equalize the opportunity to pursue happiness. In addition, this would be the justification in a society for taking more tax money from the rich than the poor, a problem Mill dealt with in the last chapter of "Utilitarianism." In fact, Rescher seems to agree with this way of justifying unequal treatment when speaking about the "Canon of Need," his second "Canon of Distributive Justice:" "...recognizing that as things stand, men come into the world with different possessions and opportunities as well as differences in natural endowments, the principle professes to treat them, not equally, but so as to make them as equal as possible" (p. 75). For a more detailed utilitarian justification of unequal treatment, see pp. 222-33, especially pp. 228-29.

is an important difference, and one which constitutes an advantage for utilitarianism. Whereas both Frankena and Perelman have regarded the egalitarian element in principles of justice as purely formal or abstract--as "simply a requirement of reason"--this aspect of justice is justified by utilitarianism because adherence to it as a prima facie right is conducive to the maximization of the general happiness. It is no longer a formal principle but is justified as a basic right, deviations from which must be justified (as Frankena agrees) only on the condition that they result in more equality for everyone--equality of opportunity for the pursuit of happiness.

Considering Perelman for a moment, utilitarianism also represents a significant advantage over his position on "essential categories." Perelman regards their establishment as based on an arbitrary selection of values:

If we regard a rule as unjust because it accords pre-eminence to a different value, we can only note the disagreement. No reasoning will be able to show that either one of the opponents is in the wrong. Be it noted that while such a state of affairs occurs most often in discussions of the division of beings into essential categories, it is possible for questions of value to arise even when the subject under discussion is the treatment to be provided for the members of certain categories.³²

There is no objective basis, then, for determining when a rule or law is just or unjust, for, according to Perelman, any basis chosen for determining this could only rest on an

³²Perelman, p. 53.

arbitrary selection of values. Although Perelman's conclusions are of no value to us for making such judgments--as we often must--according to utilitarianism, decisions about the justness of rules are possible, as they are based on a consideration of the consequences of adhering to them. That is, if employing a rule results in a greater equality of opportunity for the pursuit of happiness and consequently results in a greater possibility that the general happiness will be maximized, it is just.

In short, utilitarianism means by equality, equality of opportunity for the pursuit of happiness, which means equal access to the conditions universally necessary for the pursuit of happiness. Therefore, for utilitarianism, inequalities in distributions are justified as long as they result in equal access to the necessary conditions for happiness, at least in the long run. And a just society is one which will do what it can to provide everyone with these necessary conditions; that is, it will acknowledge everyone's equal right to the necessary conditions for happiness and will do whatever possible to fulfill its obligations respecting those rights.

Though Frankena does not speak directly of necessary conditions for the pursuit of happiness, it is apparent he agrees that providing for them is one of the primary obligations of the just society. First, he maintains:

A just society must protect each member from being injured or interfered with by others, and it must not, by omission or commission, itself inflict evil upon any of them, deprive them of goods which they might otherwise gain by their own efforts, or restrict their liberty--except so far as is necessary for their protection or the achievement of equality.

Having thereby sanctioned the protective function we have already seen is justified by utilitarianism, he states the following:

Although we are speaking of the just society, and not of the good society, its concern with the goodness of the lives of its members need not be considered merely negative and protective. It seems reasonable to assign to the just society a more positive interest (though one which falls short of beneficence) by saying that it must, so far as possible, provide equally the conditions under which its members can by their own efforts (alone or in voluntary associations) achieve the best lives of which they are capable. This means that the society must at least maintain some minimum standard of living, education, and security for all its members.³³

In conclusion, although Frankena claims that his theory of social justice is non-utilitarian, this conclusion is based on a short-sighted view of the theory. When he argues that differences in treatment based on considerations of equality cannot be derived from the principle of utility

³³Frankena, p. 21. It should also be noted that he is in agreement with utilitarianism in maintaining that a society is not unjust which is not beneficent. In the same paragraph he says that to think of a society as just "... does not involve direct action on the part of society to promote the good life of its members, whether this be conceived of as pleasure, happiness, self-realization, or some indefinable quality. Such direct action is beneficence, not justice." In conjunction with P₂, therefore, beneficent actions are right but not obligatory.

(because "...the differences in treatment involved are not justified simply by arguing that they are conducive to the general good life...but by arguing that they are required for the good lives of the individuals concerned."³⁴), he has failed to take account of our theory and, consequently, to note that the general good--"the general happiness"--can only be maximized when the individuals responsible for making it up are treated in accordance with the dictates of justice; that this kind of consideration "for the good lives of the individuals concerned" is the only way to maximize the general happiness and to accord thereby with the principle of utility. Finally, whereas Frankena says that "Unless we depart from our ordinary understanding of the term 'justice,' social justice cannot be defined merely by saying that a society is just which acts, distributes, and so on, in accordance with valid moral principles,"³⁵ we can now disagree by maintaining that "a society is just which acts, distributes, and so on, in accordance with" rights established by the valid moral principle which has been argued for--the principle of utility. Furthermore, acting in accordance with this principle does not offend our intuitions regarding justice.

³⁴Frankena, p. 15.

³⁵Frankena, pp. 4-5.

Section III

The Utilitarian Theory of Distributive Justice
--Other Considerations

The utilitarian theory of distributive justice will be discussed in more detail in three sub-sections. In Sub-section III-A, it will be argued that Rescher's "Canon of Claims" is consistent with utilitarian theory and is made far less abstract than Rescher's conception of it by doing what we must as utilitarians--subordinating six of Rescher's seven "Canons of Distributive Justice" to the one which corresponds to the principle of utility. Sub-section III-B will deal specifically with the problem of merit as a distributive principle of justice, concluding, with Narveson, that there is no general obligation to distribute according to merit; and developing as an implication of the right to liberty that people should have the freedom to distribute things in accordance with any criterion of distribution they wish, so long as doing so is right. Finally, Sub-section III-C will emphasize that justice can never give way to other right-making considerations, and that Mill agrees.

Sub-section III-A: a utilitarian analysis of Rescher's "Canons of Distributive Justice." The theory of distributive justice which utilitarianism is committed to can be made more precise if we turn back, for a moment, to Rescher. In Chapter IV of *Distributive Justice*, Rescher begins by listing seven "Canons" of distributive justice:

In the course of the long history of discussions on the subject, distributive justice has been held to consist, wholly or primarily, in the treatment of all people:

- 1) as equals (except possibly in the case of certain "negative" distributions such as punishments).
- 2) according to their needs.
- 3) according to their ability or merit or achievements.
- 4) according to their efforts and sacrifices.
- 5) according to their actual productive contribution.
- 6) according to the requirements of the common good, or the public interest, or the welfare of mankind, or the greater good of a greater number.
- 7) according to a valuation of their socially useful services in terms of their scarcity in the essentially economic terms of supply and demand.

Correspondingly, seven "canons" of distributive justice result, depending upon which of these factors is taken as the ultimate or primary determinant of individual claims, namely, the canons of equality, need, ability, effort, productivity, public utility, and supply and demand.³⁶

Upon concluding that neither of these canons is sufficient by itself to account for distributive justice ("These canons all suffer the aristocratic fault of hyper-exclusiveness"), Rescher puts forward "...as representing (in essentials) our own position on the issue of distributive justice, the CANON OF CLAIMS: Distributive justice consists in the treatment of people according to their legitimate claims, positive and negative."³⁷

³⁶Rescher, p. 73.

³⁷Rescher, p. 82.

Although having previously admitted that "The question of how 'claims' come about--how merit and desert spring into existence--seems to me among the most difficult and complex issues in ethical theory,"³⁸ it is apparent that what he means generally by "legitimate claims" is those claims which are members of the class of claims which accord with intuition.

Bearing in mind Perelman's warning that "...each man advocates a different system. No system is capable of securing the adherence of all,"³⁹ it would be unrealistic to expect that the utilitarian theory of distributive justice developed below will be accepted by everyone. Nevertheless, it will be maintained that the theory of distributive justice sanctioned by utilitarianism is largely--if not wholly --plausible from the perspective of intuition.⁴⁰

³⁸Rescher, p. 61.

³⁹Perelman, p. 15.

⁴⁰The question of the reliability of moral intuition is, of course, highly controversial. It is debatable how reliable a guide it is in particular situations or to what extent it should be appealed to for judging the acceptability of ethical theories. It is well to remind ourselves, consequently, of the caution with which we should proceed when appealing to it. For example, Alan Donagan has said, "It must be confessed that when, as with rule-utilitarianism, moral theory contradicts moral intuition only in a few farfetched cases, moral intuition is far from a safe guide." ("Is There a Credible Form of Utilitarianism?" Contemporary Utilitarianism, ed. Michael D. Bayles [Garden City, New York: Doubleday & Co., Inc., Anchor Books, 1968], p. 198.) Similarly, Rawls alludes to the difficulty of depending on the illusive nature of intuition in the last section of his essay, "Distributive Justice," (Philosophy, Politics and Society [3rd series], ed. Peter Laslett and W. C. Runciman [London: Billing & Sons, Ltd., 1967], pp. 79-82.)

We can make sense of Rescher's "Canon of Claims" by considering his "Canons of Distributive Justice" in light of our utilitarian theory. It is only by doing so that his notion of "the treatment of people according to their legitimate claims" can be removed from the realm of the uselessly abstract and enabled concrete application in particular situations.

Of the seven canons listed by Rescher, utilitarianism must, of course, subscribe to the sixth canon, the canon of public utility. Bearing in mind, however, that so far as justice is concerned our principle of obligation is formulated with reference to rights, a more precise way of stating what this canon requires is to say that a distribution is just if it consists in "the treatment of all people according to their rights." That is, to say that distributive justice consists in the treatment of all people "according to the requirements of the common good" (Canon six) is to say that it is to treat them "according to the rights they have to the items of distribution." Moreover, since their rights have previously been noted as being rights to the universal conditions necessary for happiness, our reformulation of canon six is, in effect, a particular formulation of canon two, which requires "the treatment of all people according to their needs."⁴¹ Our utilitarian theory,

⁴¹To be somewhat more accurate, we might qualify these as "essential needs," since they are needs for which it is

then, sanctions, as just, those distributions which are distributions of items in accordance with rights to them; conversely, distributions of items which violate rights to them must be judged to be unjust.⁴²

We can now state more precisely that a society is to be characterized as 'socially just' if, and only if, 'it does whatever possible to distribute whatever is necessary for providing its members equally with the necessary conditions for happiness (life and liberty) in accordance with the principle of obligation and its corollary.'⁴³ As previously noted in agreement with Frankena, a just society is obligated to do everything possible to provide for the equal

essential (i.e., necessary) to satisfy in order to enable anyone to pursue happiness.

⁴²See R. E. Ewin, "On Justice and Injustice," Mind (April, 1970). He discusses distributive justice in terms of Perelman's concept of "essential categories" and regards "need" as the basic one, by means of which he is able to give an account of two others, "merit" and "worth." See especially p. 212: "I want to suggest, then, that essential categories are needs or contributions to the satisfaction of needs;" also p. 213, where he discusses reasons why one should regard distribution as just: "Reasons of a certain sort are needed and I suggest that they are reasons to do with essential categories, i.e., reasons to do with characteristics related to needs in the ways described." I am obviously in agreement with Ewin's basic approach. In the same paragraph, however, Ewin denies that utilitarianism can account for distributive justice, as he interprets it.

⁴³Of course, this is meant to include not only material things like food and sufficient shelter but other necessary conditions for the preservation of life and liberty, such as equal treatment before the law, equal police protection, and so forth.

opportunity of all its members to pursue happiness by assuring them, so far as possible, of the necessary conditions for happiness. This means that inequalities of treatment (e.g., giving more food to the poor than to the wealthy) are sometimes necessary but can be said to be just only insofar as the ultimate result is more actual equality relative to the necessary conditions for happiness. What is now being claimed is that acting in accordance with the principle of obligation and its corollary will justify unequal treatment of the members of society only under these conditions.

That both individuals and societies can be just or unjust means that everyone has rights against everyone else and also against society. Some of these rights overlap; e.g., both society and every individual, whenever capable of doing so, are obligated to save lives and protect people from unprovoked bodily injury. However, not all the rights overlap; e.g., one may have a right against society to provide unemployment compensation in the event he is unemployed, but does not have this right against every individual. In fact--though it won't be argued for here in detail--this might serve to point out at least part of what Mill had in mind when he distinguished between perfect and imperfect obligations.⁴⁴ That is, one might be said to have an imperfect obligation, as a member of society, to pay his taxes

⁴⁴ Mill, "Utilitarianism," Chapter V, p. 247.

to make possible society's fulfilling, for example, its obligation to provide its members with unemployment compensation when they need it. This would then, perhaps, constitute part of what is meant by one's imperfect obligation to be beneficent; something which, according to Mill, one is not obligated to do with reference to any particular person or obligated to do on any particular occasion. Thus, we might plausibly say that some or all of society's so-called perfect obligations to its members may also be its members' imperfect obligations with respect to each other.

We can now deal effectively with Rescher's other canons of distribution. They can be employed by a just society as means for effecting distributions of necessities in accordance with canon six (as amended and qualified above). For example, in a society that does not produce enough subsistence items to assure everyone of life, it would be just to stimulate their production by rewarding producers "according to their actual productive contribution" (canon five) or in accordance with canon seven, three, or four, or any combination thereof. Similarly, if the only way to assure adequate protection against crime were to pay very large salaries to people with the ability to become good policemen, this would also be justified. Consistent with our acceptance of Frankena's basic theory above, as long as the eventual result is more overall equality (or there is good reason to believe that this will

be the result) in the society for everyone, relative to the necessary conditions for happiness, inequalities of treatment resulting from the other canons of distribution are justified; they are in accord with the principle of utility.⁴⁵

Rescher also seems to advocate a justification of unequal treatment in terms of its resulting utility:

If we are willing--as I think we must be--to permit considerations of justice in the narrower sense of fairness to be overshadowed by considerations of justice in a wider sense that takes into account the common good, then we have to be prepared to recognize the superiority of "unfair" distributions whose unfairness "pays for itself" by bringing greater advantage to all.⁴⁶

Yet, he has claimed, when speaking of "true justice" in the paragraph preceding, that "its ultimate arbiter" is not "the general good alone without reference to claims, rights and desert: its determination requires the appropriate conjoint coordination of these two at-times-divergent factors."⁴⁷ And a few pages later, "Our thesis is that justice (in the narrow sense) and the general good of utilitarianism must be coordinated with one another, and that just

⁴⁵ Compare with Rawls' second principle of justice: "Inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage and unless the offices to which they attach, or from which they may be gained, are open to all" ("Justice as Fairness," pp. 653-654). Though it won't be argued here, there is little doubt that this principle is roughly equivalent to Frankena's position--the one we have been arguing is justified by the principle of utility.

⁴⁶ Rescher, p. 93.

⁴⁷ Rescher, p. 92.

this constitutes justice in the wider sense."⁴⁸

Suffice it to say that "claims, rights and deserts" are justified by our theory in terms of their productiveness of "the general good" (what we refer to as the 'general happiness'). Consequently, the coordination Rescher speaks of between considerations of "fairness" (justice in the narrow sense) and "the common good" (justice in the wider sense) is not only uselessly abstract but, for our theory, completely unnecessary. What is entailed by our theory is that justice (or fairness) can never give way to a distinct principle--the principle of utility--or vice-versa; for what is just is determined to be so by the principle of utility.⁴⁹

Before concluding our analysis of Rescher, one other issue deserves our attention. In the section, "Special Problems of an Economy of Abundance," Rescher states:

In an economy of abundance it becomes not only possible but plausible, and indeed at a certain point imperative, to elevate one's conception of a minimally tolerable share of utility. The fact that as a utility economy rises from a condition of scarcity to one of sufficiency to one of abundance the elevation of the minimal level inevitably becomes warranted, is of crucial importance for the theory of distributive justice. The

⁴⁸Rescher, p. 102.

⁴⁹Rescher elaborates on this distinction in the section "Justice and Inequality" of Distributive Justice, pp. 101-104, and especially on pp. 102-103. His position here, however, is no less confusing and unsatisfactory. Most seriously, how we are to "coordinate" principles is not at all adequately accounted for.

minimum is raised from bare survival to at-least-modestly-pleasant survival to a share in the good life. As society--and the economy that is its productive sector--becomes able to "afford" more and more in the passage from adequacy to abundance, an elevation in the level of expectation of its members becomes inevitable, and our levels of "tolerable minimality" are revised drastically upward.⁵⁰

In an economy of abundance, our utilitarian theory may also require that the members of such a society be apportioned larger shares of its wealth, on the general utilitarian ground that, in such a society, assuring everyone of more than merely subsistence items is a necessary condition for assuring everyone, so far as possible, an equal opportunity for the pursuit of happiness, and so is a necessary condition for maximizing the general happiness. It would be plausible to argue that, although distributing in this manner is not a necessary condition for life, it is a necessary condition in such a society for assuring that everyone has equal liberty for the pursuit of happiness; for it is apparent that this would not be the case for those who--compared with many others, or the majority--were assured of only subsistence items. A society, then, should be considered unjust according to utilitarianism which does not do everything possible to eliminate such a disparity of advantage whenever it is clearly possible to do so and more overall equality of opportunity for the pursuit of happiness will be produced in the long run.

⁵⁰Rescher, pp. 98-99.

As has often occurred in societies with an economy of abundance,

The very terms of reference...have undergone a qualitative change, because the economists' concept of a "living wage" has undergone substantial escalation. For example, their concept now includes not only the minimalities of food, clothing, and shelter--in respect of which there has also been escalation--but also entirely new means for protections against illness and accidents. The "living" at issue here is no longer to be taken as mere living, as bare survival, but is to be construed in terms of some measure of "the good life."⁵¹

In conclusion, the "Canon of Claims," as Rescher elaborates on it, remains problematically abstract throughout his book, and, consequently, does not provide us with an adequate means for discriminating between legitimate and illegitimate claims or for adjudicating situations in which legitimate claims conflict. On the other hand, the theory of distributive justice sanctioned by our utilitarian theory not only accepts the "Canon of Claims," but interprets it in such a way as to allow us to deal with these problems in an intuitively unobjectionable manner. For example, in one of his typically abstract passages, Rescher says,

In espousing the Canon of Claims we may note that the search for a canon of distributive justice is carried back to the Roman jurist's view that the definitive principle of justice is inherent in the dictum suum cui que tribuens--"giving each his own." To the question "What is his own?" we have given the answer "What he deserves." That is, a share

⁵¹Rescher, p. 101.

ideally equal--or at any rate proportional--to his legitimate claims.⁵²

In contrast, the principle of utility provides substantive content to this passage by interpreting legitimate claims as rights to the necessities for the pursuit of happiness and by sanctioning, as just, inequalities of treatment insofar as they serve as the best means of fulfilling the obligations which are correlative to those rights.

Finally, we find ourselves in the position of affirming what Rescher has denied--"that considerations of justice and fairness are of subordinate status to considerations of utility because they can be derived from the principle of utility." As a result, it is not the case that utilitarian theory must be qualified by recognizing them as "needed supplements drawn from an entirely different set of considerations, and not as merely subordinate derivatives at all."⁵³

Sub-section III-B: the problem of merit. Something should be said specifically about merit. I think, as utilitarians, we must agree with Narveson's observations:

Critics have also complained of the inability of utilitarianism to account for the principle of distribution in accordance with "merit." Here, too, confusion and muddle have obstructed progress. To begin with, the objection is usually voiced in such a way as to imply that there is some sort of general quality called "merit," assessable independently of any considerations of special purposes or activities ...but the briefest inspection shows that such a

⁵²Rescher, p. 83.

⁵³Rescher, p. 116.

notion is nonsense. There is no such thing as "general human merit." There is moral merit, athletic merit, pianistic merit, ditch-digging merit, and what-have-you, and the reasons for "rewarding" each of these things are specifically different.⁵⁴

As an example, he supposes that a group of people get together to form an athletic organization, for the purpose of holding contests to see who can run fastest, jump highest or farthest, etc. The rules for each contest determine what "merit" is for the particular case (in a foot race, merit is proportioned to speed, etc.). Narveson concludes:

To classify these abilities as "merits" is to say that these are the activities which the participants and supporters of the activity are interested in, and which therefore they will be disposed to praise or otherwise reward. The proposition that "merit should be rewarded" is, in other words, simply analytic.⁵⁵

Agreement with Narveson's remarks has two implications for our theory. First, distributing in accordance with merit --like any other form of distribution--is obligatory when doing so will result in more equal access to the necessary conditions for happiness. Second, one of the liberties

⁵⁴Narveson, p. 216.

⁵⁵Narveson, pp. 216-217. Frankena says something about "virtue," one of the traditional concepts of "general human merit," which is in agreement with the position that we are under no general obligation to distribute in accordance with merit. "Social justice then does not, as Ross thinks, consist simply in the apportionment of happiness or good life in accordance with the recipient's degree of moral goodness. In fact, society must for the most part allow virtue to be its own reward, else it is not virtue." (Frankena, p. 21.)

people should have--one which is compatible with a like liberty for all--is devising contests and making contracts (agreements) which are not harmful to others; i.e., which do not violate their rights. Although a society may be obligated, on occasion, to employ these as means for acting in accordance with the rights of its citizens, societies and individuals should be allowed to do so whenever it is not wrong to do so, whenever it is merely right. In other words, they should be allowed to distribute in accordance with merit or any of the other canons of distributive justice whenever no one's rights are violated. To say that they shouldn't be allowed to do this would, I think, be to maintain that everything should be distributed in accordance with some particular principle or principles of distribution; which would be to suggest, either that every distributable item is a universally necessary condition for happiness or that, as utilitarians, we are obligated to make other people happy. To the contrary, every distributable item is not a universally necessary condition for happiness, and we have concluded that it is merely right to make ourselves and others happy.

In conclusion, any contest in which a particular merit is to be rewarded, or any contract made between individuals in a society or between society and individuals which is other-regarding but non-harmful, is right, and societies and individuals should both be granted the liberty to deal

with each other in this way. For in this way many of the items which make people happy--which satisfy their legitimate desires--are produced and, although no one is obligated to participate for the purpose (direct or indirect) of satisfying their legitimate desires, clearly it is within the bounds of rightness to do so. In other words, this is merely one of the opportunities for pursuing conceptions of happiness which people should be allowed--in accordance with the right to liberty--to take advantage of. In a society with liberties such as these, people have the rights necessary for the pursuit of happiness, and actually are enabled thereby to become happy.⁵⁶

With this in mind, we can agree with Narveson's concluding remarks about the above example:

⁵⁶The problem of breaking contracts (e.g., promises) without good reason can perhaps be handled by suggesting that this is not a liberty that would be compatible with a like liberty for all. Simply, if people were allowed to break contracts indiscriminately whenever they felt like it or at the slightest provocation, the consequences for all of society would be disastrous. It would therefore be correct to say, as utilitarians, that people do not have a right to this kind of liberty, but what their right to liberty does entail is that they have a prima facie right to have the terms of their non-harmful contracts enforced; i.e., this is an essential aspect of liberty--a liberty compatible with a like liberty for all--and so is a necessary condition for maximizing the general happiness. In other words, we can say that one has a prima facie right against others to keep the promises (comply with the terms of the contracts) made with them; consequently, breaking a promise is the violation of a right and therefore a harm which must be dealt with by the principle of obligation and its corollary. This problem will be dealt with in more detail in the next section, on "Fair Procedures."

Next, let us point out that people who are uninterested in athletics need not bother to come, and of course will not cheer the winners, nor participate in the other rewarding activities for these particular endeavors. All of this is obviously sanctioned by utilitarianism: The rewarders are doing what they want to, the contestants are doing what they want to, and those who stay home for lack of interest are doing what they want to. Where is the difficulty?⁵⁷

Sub-section III-C: the preemptive status of justice.

Early in his essay, "The Concept of Social Justice," Frankena describes a position on justice which he later rejects:

Just-making considerations are only one species of right-making considerations. And, theoretically, at least, a consideration of one kind may over-rule a consideration of the other. In particular, a just-making consideration may be over-ruled by a right-making one which is not included under justice.⁵⁸

Not only is this clearly not allowed by the theory we have developed; it also could not have been accepted by Mill. After a brief summary of the theory's position, we will argue that Mill was in agreement with it.

The principle of utility of our theory allows us to distinguish between acts which are merely right and those which are obligatory, but the corollary to the latter clearly disallows that a merely right action could ever take precedence over a right action which is just (and so obligatory). As has been emphasized throughout, to suppose that this would ever be justified would be to presuppose that our duty, as utilitarians, is at least sometimes to

⁵⁷Narveson, p. 217.

⁵⁸Frankena, p. 5.

provide for the happiness of others rather than only to do whatever possible to assure them of the rights necessary for the pursuit of happiness. Accordingly, since justice can never give way to other considerations, beneficence, etc., is something we can be concerned about only if our obligations stemming from justice are fulfilled; only if, in being beneficent, no injustices are done. Once again, this means that it would be right to make other people happy, and the theory encourages us to do so, but we cannot, as utilitarians, ever regard it as our duty to do so.

Frankena's conclusions in this area state our position quite well (bearing in mind, of course, that he regards principles of justice as independent of the principle of utility--not derivable from it.)

...it will not do to say, as Brandt does, that justice consists in treating people equally except as unequal treatment is justified by moral considerations of substantial weight in the circumstances. If I am right, this description should be revised: justice is treating persons equally, except as unequal treatment is required by just-making considerations (i.e., by principles of justice, not merely moral principles) of substantial weight in the circumstances. With this emendation, the description seems to me to be correct, both in theory and as a reflection of the ordinary notion of justice.⁵⁹

Frankena's position is merely another way of stating what has already been established by the corollary to the principle of obligation.

It has been maintained that Mill regarded as rights

⁵⁹Frankena, p. 10.

whatever were universally necessary conditions for the pursuit of happiness and thought of acts as just if, and only if, they did not involve violations of those rights. It is not immediately apparent, however, that he thought that justice could never give way to other considerations of social utility (what Frankena has referred to above as "right-making considerations"). For example, at first glance, the second to the last paragraph of "Utilitarianism" appears to pose a problem:

It appears from what has been said, that justice is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others; though particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case. By this useful accommodation of language, the character of indefeasibility attributed to justice is kept up, and we are saved from the necessity of maintaining that there can be laudable injustice.⁶⁰

There are several reasons why this passage should not be interpreted as sanctioning the overthrow of principles of justice, on occasion, by other (i.e., merely right-making) considerations. First, as he is speaking of only

⁶⁰Mill, "Utilitarianism," p. 259.

"general maxims of justice" being overruled, this is not incompatible with interpreting this as meaning that "general maxims of justice" may sometimes be overruled by "particular maxims of justice." Thus, although it would generally be unjust "to steal or take by force" food or medicine, and generally unjust "to kidnap the compel to officiate the only qualified medical practitioner," it would sometimes constitute a particular act of justice to do so; for example, when the preserving of a life requires such actions. Second, the example provided clearly falls into the category of a "perfect obligation." If there are any rights that anyone has against every other individual, surely the right to life is one, meaning that not to save a life when one has the opportunity would constitute an obvious case of injustice. As Mill says regarding every instance of injustice, "...in each case the supposition implies two things: a wrong done, and some assignable person who is wronged."⁶¹ The example Mill provides clearly satisfies both conditions. Third, that part of the passage which says, "...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," is unfortunate in that it is not precisely formulated. Though it appears to refer to "some other moral principle" than a principle of justice,

⁶¹Mill, "Utilitarianism," p. 247.

I think it would more correctly be read as follows, and would thereby be more closely in accord with what the rest of Chapter V implies about Mill's intentions: "...we usually say, not that justice must give way to some other moral principle than a principle of justice, but that which is just in ordinary cases is by reason of that other principle of justice, not just in the particular case." Fourth, to interpret Mill as maintaining that justice can sometimes be overruled by other moral considerations is inconsistent with that interpretation of Mill, previously expounded on, which shown that Mill was concerned that one's only obligation should be providing people with equal access to the necessary means for the pursuit of happiness and not with sacrificing these, on occasion, to satisfy other desires. Finally, in any ordinary account of the meaning of "indefeasibility," to call principles of justice "indefeasible" is to say that they could not be overruled by other considerations; i.e., no principle of justice could ever be overruled by some other moral principle which was not also a principle of justice.

In conclusion, if the passage does not, in a final analysis, bear this interpretation, suffice it to say that Mill was unfortunately inconsistent. Having previously maintained that justice has to do with rights, that rights are established by utilitarianism as necessary conditions for the pursuit of happiness, and that adhering to them

over other considerations is the best way to maximize the general happiness, perhaps he has here lapsed into maintaining that the general happiness can sometimes be maximized when they are subordinated to other moral considerations.⁶² However, that his example could not have been concerned with conflicting rights (e.g., the right to life) and could not, thereby, have been regarded by him as one evidencing conflicting principles of justice, as would have to be the case with this interpretation, is somewhat incredible.

Section IV

Fair Procedures

In Chapter V of Distributive Justice, Rescher deals with some problems that are susceptible to solution through an appeal to "fair procedures," a concept which David Lyons discusses in the final chapter of his book, Forms and Limits of Utilitarianism.⁶³ However, as Lyons maintains that "fair

⁶²i.e., that in cases like this the issue is not whether justice or injustice is done. "...what is just in ordinary cases is, by reason of that other principle, not just in the particular case." If we interpret "the other principle" as one other than a principle of justice, the interpretation that adhering to the other principle in this case maximizes the general happiness (and has nothing to do with justice) is the only plausible explanation of its intended meaning. However, as noted in the previous paragraph, that this is the correct interpretation of the passage is doubtful.

⁶³(London: Oxford University Press, 1965).

procedures" are something that must be appealed to in addition to the principle of utility in order to accommodate justice, this section will be devoted to the demonstration of two points in Sub-section IV-A and IV-B, respectively: (a) Lyons' concept of "fair procedures" is derivative from our utilitarian theory. (b) Rescher's problems in Chapter V of Distributive Justice, as well as some other problems having to do with distributive justice, can be solved by employing "fair procedures."

Sub-section IV-A: a utilitarian principle of distributive justice. Contrary to Lyons' claim that the most significant result of his book is the establishment of the "equivalence thesis,"⁶⁴ Richard E. Flathman has pointed out, in a review of Lyons' book, that it is actually his final chapter which must be taken as containing his really decisive arguments against utilitarianism.⁶⁵ Whereas the "equivalence thesis" is meant to substantiate the claim

⁶⁴ Lyons asserts the importance of the "equivalence thesis" on p. xi of the preface to Forms and Limits of Utilitarianism: "The thesis of extensional equivalence...seems to me the main result." On the page preceding, he has summarized briefly what he means by it: "...contrary to widespread misapprehensions, two formally different kinds of utilitarianism, simple and general, and along with the latter one kind of rule-utilitarianism, are extensionally equivalent; that is, analogous principles of the various kinds necessarily yield equivalent judgments in all cases; or, in other words, it makes no difference in theory whether the simple or generalization test is applied to acts or--within limits--whether an appeal is made to rules grounded in utility."

⁶⁵ "Forms and Limits of Utilitarianism," Ethics, 76 (July, 1966), pp. 311-312.

made in the preface that "little is gained by choosing one form [of utilitarianism] rather than another," this conclusion is best regarded as subsidiary to his more general claim--evidenced in the last chapter of the book--that no pure form of utilitarianism can provide an adequate meta-ethical or moral theory, because of not being able to account for fairness and promise-keeping, the two moral practices Lyons uses to make his point. If this latter claim is true, the "equivalence thesis" must be regarded as of only secondary importance, for its result is only to have demonstrated that several presumed alternatives to act-utilitarianism (itself, theoretically objectionable) are either equivalent to or no better than it; so we are left, in the final analysis, with what we had in the beginning: a theoretically inadequate ethical theory.

Flathman provides an adequate summary of Lyons' general argument about fairness:

Arguments from fairness are relevant when (1) there is an existing cooperative practice (2) which actually achieves and distributes (3) total benefits that could not be produced without the practice, (4) benefits that outweigh the total burdens imposed by participation in the practice, and (5) which could be produced and distributed despite (partial?) non-cooperation by some who benefit from the practice. Parasitic non-cooperation, which the utilitarian would sometimes have to approve on the grounds that it maximized utility, is condemned by a non-utilitarian argument from fairness. "Under such circumstances [the argument from fairness] demands universal cooperation by enjoyers."⁶⁶

⁶⁶Flathman, p. 312. For the argument in the detail in which Lyons presents it, see Forms and Limits of Utilitarianism, pp. 164-167.

Rather than argue generally that judgments about fairness are derivative from utilitarian judgments, I wish to consider, specifically, Lyons' notion of "fair procedures," which he regards as part of the solution to the problem as to whether or not "we want fairness (just distribution) always to weigh more heavily than utility."⁶⁷ Although his objective is to demonstrate that "fair procedures" are, in an important sense, not reducible to utilitarian considerations, it is doubtful that he succeeds.

As an example of a fair procedure, he asks us to imagine a college of one thousand students with a fifteen-hundred capacity cafeteria which must operate at a capacity in order to avoid services being cut or prices raised; students must invite guests but it is obvious that if all or no students invited guests, the situation would be less than satisfactory. Obviously, cautions Lyons, "It would be absurd to say that no one should have guests (or that everyone should have guests) because the results of no one's (everyone's) having guests would not be as bad as the results of everyone's (no one's) having guests. To argue this way is to miss the point." And he concludes:

What is required instead is an arrangement whereby the facilities could most efficiently be used. What is required is the establishment of a fair procedure for determining which students at which times may bring guests, a procedure designed to maximize utility without infringing upon the equal claim with

⁶⁷Lyons, p. 168.

which each student begins....The details are not important here. What is important is that the procedure be fair.⁶⁸

First, it is essential to note that the procedure devised in Lyons' example is wholly defensible on utilitarian grounds. Lyons agrees. As he says about this situation, "Here one does not outweigh the other: fairness is applied in order to maximize utility."⁶⁹ As we have seen in other situations where everyone has an equal claim (right) to something, the best way to maximize utility is to devise some procedure which best acknowledges them as such.⁷⁰ It is difficult, if not impossible, to imagine any other procedure for Lyons' example which would do more to maximize utility.

Although the "fair procedure" is established in this case for the purpose of maximizing utility, Lyons asserts that "...after the system has been established, the answer to the individual student's question, 'Should I invite a guest?' presupposes considerations of fairness and not just those of utility."⁷¹ This is preposterous, however, since

⁶⁸Lyons, p. 169-70.

⁶⁹Lyons, p. 170.

⁷⁰In fact, if to argue for "fair procedures," is to argue for the obligation to distribute items in accordance with legitimate claims (rights) to them--and this seems to be Lyons' position--this is precisely what our utilitarian theory requires as essential to the maximization of the general happiness.

⁷¹Lyons, p. 170

it is obvious that anyone's deviating from the fair procedure Lyons describes would result in a decrease in the amount of resulting utility. One has perfectly good utilitarian grounds for acting in accordance with the procedure as it has been set up. If the argument is that one can also justify not deviating from the procedure on grounds of fairness, this is merely to say that this approach to justification is equivalent to the utilitarian. If this is the case, however, clearly either serves as a sufficient reason for not deviating from the procedure and an appeal to fairness is not an additional necessary condition for justifying such a decision. The distinction Lyons is trying to maintain exists between fairness and utility is a distinction without a significant difference, as an appeal to utility justifies the procedure he describes as well as any appeal to fairness.

Lyons' position here seems to stem from the fact that he is dissatisfied that we think it sufficient in these cases that utilitarian theory accord with our intuitions regarding justice (and fairness). He seems to think that, irregardless of its accord with intuition, not sanctioning a separate non-utilitarian criterion of fairness--although this would be absurd in the circumstances (because unnecessary)--is a sufficient basis for judging the theory inadequate. In fact, what seems to be held as a necessary condition for the acceptability of any ethical theory, according to Lyons, is that it recognize and employ a distinct

non-utilitarian criterion of fairness. This somewhat incredible position is evidence in the following passage:

In general, it is necessary to distinguish between our reasons for criticizing certain modes of behavior, on the one hand, and the consequences of that behavior, on the other. We need not suppose that uncooperative (or unfair) behavior is not harmful. It can be disastrous in its long-range effects. But reasons based upon utility are only one relevant kind of reason.⁷²

In reply, we can only say that if we can accommodate intuitions by a utilitarian consideration of consequences alone (as we have above), Lyons' contention that "reasons based upon utility are only one relevant kind of reason," can only sensibly be construed as meaning, in those situations in which intuition can be appealed to, that an appeal to intuitions about fairness will yield the same conclusions as an appeal to utilitarianism. His thesis amounts to saying only that the separate criteria are, in these cases, equivalent. To this the utilitarian can only reply, "I told you so."⁷³

⁷²Lyons, p. 72.

⁷³Lyons again insists on the necessity of a separate appeal to fairness in the second of two reasons for rejecting any attempt to "reduce" fairness to utility. "...some of our reactions presuppose considerations of fairness. For example, one who violated the rules of a fair procedure and thus failed to cooperate would be subject to criticism for acting wrongly, not because his act was harmful (for it need not be), but because it was unfair" (p. 172). Recognizing that he insists on the appeal to fairness even when the consequences are harmful (we might add, no matter how harmful), we can say again that, regardless of the fact that the basis of some of our reactions may be considerations of fairness, this is not really significant if an appeal to

Lyons' contention that "reasons based upon utility are only one relevant kind of reason" results in his claim that another basis for the evaluation of acts is motives:

We must consider...motives independently of the utilities or disutilities connected with them.... It seems clear that in one use of the term "fair," an unfair act is primarily one performed by an individual who tries to get (for himself) something for nothing, who tries to avoid contributing while he consumes, who tries to take advantage of the efforts and restraints, sacrifices and burdens, hardships and inconveniences of others. The question relevant to fairness is, then, not whether one's act produces good or bad effects, but whether one acts in the kind of way I have just generally described.⁷⁴

Without elaborating, I think it is necessary to make only two comments about this suggested approach to the judgment of acts. (a) To argue that an action is to be judged right or wrong (fair or unfair) on the basis of the motive of the agent is to beg the question against the utilitarian and, consequently, to ignore the useful distinction he insists on between the appraisal of the action and the agent. That is, whereas the agent is deserving of praise or blame on the basis of his intention (motive) prior to the act, the action is best considered independently, in terms of its consequences. (b) It is not at all obvious that categorizing a motive as good or bad is a process independent of accounting for its consequences. For apart

utilitarianism will also result in intuitively acceptable conclusions. And this is what we are maintaining.

⁷⁴Lyons, p. 175.

from regarding some motives as intrinsically good or bad (at least a problematic and perhaps an implausible suggestion), judgments concerning motives are at least in some cases grounded in past experience with the consequences of acting upon them. Once again, it seems that one is justified in suspecting that Lyons is not successful in his attempt to demonstrate the independence of factors in the judgments about actions which are not derivative upon considerations of utility; for the most forceful--if not the only--reasons to be offered for motives being good or bad are most probably in terms of their consequences. As Flathman concludes:

Lyons is right that motives, established procedures and other formalistic considerations play a role in morality; but he does not show that their development to a place of moral standing can be explained independently of utilitarian considerations or that the use we make of them could be defended without recourse to utilitarian considerations.⁷⁵

Setting up a "fair procedure," as in the cafeteria example above, can be done on the basis of utilitarian considerations alone, and acting in accordance with such a procedure can also be justified in this way. Perhaps, however, as Lyons suggests, the more interesting cases are those in which there is an existing situation which satisfies the conditions for an argument from fairness but in which there is no fair procedure to appeal to. As Lyons

⁷⁵p. 316. Flathman develops some of the points made in (b) on pp. 314-316.

says about the establishment of fair procedures, "...this is only a partial answer to the question originally raised, about utility perhaps outweighing fairness."⁷⁶ For, as he says further on,

In any actual case an argument from fairness will most likely occur within a more or less inefficient, more or less inhumane, more or less unjust and unfairly administered set of rules. There is no simple, readily definable set of calculations through which we can run in order to determine whether we should cooperate, instead of doing something else. (The alternative to cooperation is not simply a failure to cooperate; many sorts of actions are open in either case.)

And he concludes in the next paragraph that,

Because of such factors, it might be best to say that one's obligation to cooperate is not perfect or absolute, but rather prima facie. For there may be conditions--not just utilitarian considerations now--which justify a refusal to cooperate in a practice which satisfies the conditions, outlined above, for the application of an argument from fairness.⁷⁷

The crucial question with respect to such situations is whether or not what utilitarian theory determines as to when one should or should not cooperate in such practices is consistent with intuitions about fairness. If so, the "conditions...which justify a refusal to cooperate" can be fully accounted for by utilitarian theory. First of all, from the perspective of the utilitarian theory being considered, if an existing situation, practice or procedure is unfair, this means that rights are being violated and

⁷⁶Lyons, p. 170.

⁷⁷Lyons, p. 171.

that what one should do in this case is dependent on the harms resulting from the alternative actions available (i.e., one should appeal to the principle of obligation and its corollary). In some cases, it would be best-- would result in the least amount of harm--not to cooperate and to work, instead, for the establishment of a better (fairer) practice or procedure; in others, it would be best to continue cooperating (e.g., it might be best not to break a bad law in a generally good system). In any case, as Lyons has noted above, "The alternative to cooperation is not simply a failure to cooperate; many sorts of actions are open in either case."

In short, Lyons insists that there are other considerations than utilitarian ones which moral agents must appeal to in order to determine whether they should continue to cooperate in an unfair practice, refrain from cooperating, or do something else. However, Lyons has not only not made explicit whatever other criterion (or criteria) one should employ for judging what we ought to do in such a situation, he has not attempted to show that employment of the utilitarian criterion is inconsistent with intuition. We will only say that it has been shown that establishing a fair procedure and complying with it is justified by utilitarianism, in addition to being compatible with intuition; and it is not at all clear that what the theory prescribes we do in these situations is not also in

accord with intuition. Granted that the complexity of possible situations of this kind often militates against simple solutions, the utilitarian insists that one must always do his best to choose that action which will result in the least amount of harm; i.e., one must do his best to act in accordance with the principle of obligation and its corollary. Not to do so would be irrational, and, I submit, contrary to intuition.⁷⁸

Sub-section IV-B: a solution to some problems of distributive justice. Now that it has been concluded that fair procedures are justified by utilitarian theory, it is apparent that they can be appealed to for the purpose of solving many other problems having to do with distributive justice. For example, prior to his discussion of fair procedures, Lyons has considered the familiar "lawn-crossing case" and has concluded that to take advantage of others' cooperativeness (i.e., their not crossing the lawn) is to act unfairly, and that utilitarian considerations play no part in condemning such actions. It seems apparent, however, that fair procedures can be successfully employed here as well.

Commenting on the cafeteria example above, Lyons has said, "...the appeal to utilitarian generalization to

⁷⁸See Lyons' example of an unfair tax law, p. 171. A utilitarian would be obligated to consider the questions Lyons thinks are important. The major difference between Lyons' theory and utilitarianism, however, is that the latter provides a plausible way for deciding what to do, whereas Lyons' theory does not.

determine what an individual should do before the fair procedure is established is inappropriate. The question is not 'Should I (or should I not) invite a guest?' but rather 'How can we set things straight?'"⁷⁹ Now we can sensibly ask why the same sort of consideration can't apply in the lawn-crossing case (and others like it) as well; viz., the proper question is not "Should I (or should I not) cross the lawn?" but rather "How can we set things straight?" For, surely, if utility is maximized by allowing some people to cross the lawn (the number depending upon what the lawn will bear prior to the damage threshold), rather than asking that everyone refrain, the sensible thing to do might be to establish a "fair procedure" to maximize utility. Then, because a fair procedure is designed to maximize utility, the reasons for acting in accordance with it are utilitarian also; i.e., any violation of the procedure will damage the lawn and so result in a loss of utility.⁸⁰

⁷⁹Lyons, p. 170.

⁸⁰This situation reminds one of a familiar objection to rule-utilitarian theories; that is, it is contrary to the maximization of utility to insist that, because most actions of a certain category (X) are bad, we should regard them all as governed by the general rule, "Do not do actions of type X." Here, we see that, in some cases, an appeal to "fair procedures" is open as an alternative and, when it is, is more productive of utility than would be everyone's adherence to a prohibitive rule. Narveson does not employ the term "fair procedures," but evidences a similar approach for dealing with problems like these on p. 136 of Morality and Utility.

However, although a loss of utility would result if one violated what might be called a paradigm example of a fair procedure (one such that any single violation would result in obvious utility loss), a more interesting problem arises if we ask what utilitarian reasons would compel one to abide by a less-than-perfect fair procedure, in which there might be several violations without a noticeable loss of utility. For example, it might be too much trouble (not worth the effort) to set up a perfect fair procedure for lawn-crossing; and so the individuals concerned might all promise to refrain from lawn-crossing under normal conditions (e.g., in the absence of emergency situations), even though the lawn would not be damaged, say, if several crossed it every week. In such a situation, it might be argued that a utilitarian could justify crossing the lawn when he was certain that no one would find out and when there would consequently be no utility loss in the form of after-effects, such as distrust among citizens, etc.⁸¹

In reply to this objection, if it is intended to mean that we are obligated to increase our own happiness in this case, and so increase, thereby, the general happiness, we must remind ourselves, first, that no utilitarian is obligated to make himself or anyone else happy. Though

⁸¹Note that the kind of situation described in the footnote on p.206 of this text can be considered as a variation of this and so can be regarded as being dealt with at this time also.

it is right to do so when no avoidable harm results, the best way to maximize the general happiness is to regard, as one's only obligation, respecting others' rights to the necessary conditions for happiness. Secondly, as there has presumably been a promise made that one would not lawn-cross in secret, and we have previously established that those to whom the promise was made have a prima facie right to expect compliance, to break the promise is to violate this right and so to harm them.⁸² That is, insofar as people can be harmed without their knowing it (which is surely possible), and insofar as one has no special right to cross the lawn when no one else will notice, etc., appeal to the principle of obligation informs us that many rights are violated if one crosses the lawn in secret, but no rights are violated if one doesn't.⁸³ Thirdly, it might be argued that if one knows he

⁸²See footnote on p. 236 of this text. This takes care of the utilitarian justification for keeping promises, and so accounts for the other moral practice Lyons denies that the theory can handle. Again, it is most important to note that under some conditions it would be right (also obligatory) for a utilitarian not to abide by a previous agreement, which accounts for it's being only a prima facie obligation. For example, he should not abide by its terms if more harm would result from his doing so. For a rather detailed defense of promise-keeping as a prima facie obligation, see Narveson, Morality and Utility, pp. 189-197.

⁸³Narveson hints that there are at least some circumstances in which we should regard satisfying the legitimate desires of others--even when they can't know about it--as justified by utilitarian considerations. "We sometimes have desires which can only be satisfied by the creation of conditions we will never know about, e.g., for our manuscripts to be published posthumously, our roses to be

will never be found out, he should cross the lawn anyway-- even if rights are violated--because to do so will maximize the amount of pleasure produced and, consequently, the general happiness. In this case, it must be objected that to argue this way is to once again engage in a bit of metaphysical speculation. It might be the case that, metaphysically speaking, more general happiness will ultimately be produced (one can imagine anything he wishes from this perspective), but from the evidence we have about happiness, we are not entitled to conclude that if more pleasure is produced, more overall happiness will result. To do so is automatically to presuppose that 'happiness' is identical with 'pleasure,' a presupposition we have already dispensed with as being beyond the realm of justification.⁸⁴ Given the

tended, etc. The satisfaction of these desires cannot, of course, produce feelings of satisfaction in us; and this might be a reason for thinking these desires unreasonable. Nevertheless, it is worth pointing out that if you tend your friend's roses in the case where he has died after you have promised to take care of them after his death, you are doing it in order to satisfy his desires, and if you default, you will have left this desire unsatisfied. Such 'satisfactions' come within the purview of utility as I have specified it, but surely we all feel that these are pale ghosts of satisfactions, and not to be counted for very much." (p. 196.)

⁸⁴Of course, rejection of this specific presupposition would also extend to other attempts to equate 'happiness' with any particular 'intrinsic good(s).' Therefore, equating 'happiness' in this case, for example, with 'taking advantage of one's neighbors when one has good reason to believe they will not find out,' must be rejected on the same grounds. In addition, it should be recalled that we are prevented from having knowledge of metaphysical rightness and wrongness, not only because we are not allowed to

evidence available with respect to the question of happiness, as utilitarians we can only sanction the establishment of rights to the necessary conditions for happiness and not violating them whenever possible. Phrased somewhat differently, this means that the satisfaction of illegitimate desires is precisely the kind of thing that utilitarianism cannot sanction, whenever it is possible not to do so.

Returning to Rescher, problems that he deals with in Chapter V of Distributive Justice are also susceptible to solution via fair procedures. One of these problems is discussed in the section, "indivisible goods and 'Equality of Opportunity,'" which Rescher outlines as follows:

An important facet of the role of distributing procedures comes to the fore whenever in the nature of things a straightforwardly equitable pattern of distribution is impossible of realization. This occurs inter-alia whenever the object of the division is an indivisible (or not a sufficiently divisible) good.⁸⁵

This happens, for example, if two individuals have perfectly equal claims to an item which cannot be divided or shared in any satisfactory way. As Rescher says about circumstances like these:

The interests of "distributive justice" cannot here --in the very nature of the case--be served by dividing the "expected utility," but only by resorting to a stochastic method for dividing the "expected utility," by equalizing the chances of the equally

presuppose that we know what happiness is, but also because we do not know what the nature and/or extent of the consequences of our actions are.

⁸⁵Rescher, pp. 93-94.

matched claimants to carry off the whole of the indivisible prize.⁸⁶

In fact, Rescher claims that this random-distribution method is the standard procedure in everyday life when such problems arise.

Recalling the utilitarian justification for providing everyone, so far as possible, with an equal opportunity for happiness, it becomes immediately apparent that the random selection procedure urged by Rescher as the only fair way to solve the problem is exactly what our theory would prescribe. In any situation in which there are equal claims to an indivisible or unsharable item, the right of each to an equal opportunity for obtaining the item is respected by adopting a decision procedure which assures an equal advantage to each. The only procedure that the theory could sanction is some kind of random selection procedure, such as the tossing of a coin.

When Rescher concludes about these situations that "a distribution that does not give all equally deserving claimants an equal share must, in the interests of justice, at least preserve an 'equality of opportunity' (and, of course, one of risk also)," we can reply that preserving an equality of opportunity in these situations is also in the interests of maximizing utility.⁸⁷ We can conclude, in

⁸⁶Rescher, p. 94.

⁸⁷Rescher, p. 94. That is, we can draw this conclusion

other words, that utilitarian theory, through the adoption of fair procedures, is able to handle another so-called problem of distributive justice.⁸⁸

Finally, exactly the same kind of procedure can be employed for resolving the problems of distribution in Rescher's next section, "Special Problems of an Economy of Scarcity."⁸⁹ Thus, for example, where there is not enough food to go around to sustain life for everyone with an equal claim, some would have to be selected by a random procedure to receive an amount sufficient to live. It is obvious that this represents a choice between harms, the least harm resulting from appealing to a fair procedure which acknowledges everyone's equal claim to be spared; in other words, to do so

if we interpret, as we have been, 'equal claims' with 'equal rights' and regard 'rights' as 'necessary conditions for the pursuit of happiness.'

⁸⁸Though it won't be argued for, there is good reason for supposing that all other problems of justice, which are usually thought to be distinct from problems of distributive justice, are really distributive in principle. If so, success in dealing with problems of distributive justice can be extended to deal successfully with these other problems of justice as well. However, as some of these problems have already been dealt with (e.g., the right to life and associated problems), and as it is not difficult to imagine how our utilitarian theory could be applied for the resolution of other problems of justice, without having to demonstrate that they are really instances of distribution, it does not seem necessary to argue for the hypothesis that all problems of justice are derivative upon the concept of distribution. For allusions to the plausibility of this hypothesis, see the following: Rescher, p. 9; Narveson, p. 155; Frankena, "The Concept of Social Justice," pp. 4 and 9; and Ewin, p. 201.

⁸⁹Rescher, pp. 95-98.

would be to act in accordance with the principle of obligation and its corollary.

ADDENDUM

Something needs to be said about whether the theory that has been discussed is an act- or rule-utilitarian theory.⁹⁰ David Braybrooke has maintained that acceptance of rule-utilitarianism implies that "Circumstances may appear in which particular moral rules ought to be upheld, even though the harm done by single violations, taking them as single instances, independently of actions done independently from them, would be outweighed by the good that the violations achieve."⁹¹ If this is true, it can safely

⁹⁰In fact, it should be noted that Professor Robert Ackermann has voiced the suspicion that the utilitarian theory which I have developed and attributed to Mill is so radically different from what have traditionally been regarded as utilitarian theories that it may be misleading to regard it as a utilitarian theory at all. I'm not certain how to reply to this, except to say that it does seem to be a unique moral theory and that, whatever it is called, it clearly seems to be a much better theory than so-called traditional utilitarian theories (see the discussion of "classical formulations" of utilitarianism in the first part of Chapter I). I do not find it problematic to refer to it as a utilitarian theory, however, and suggest that the disagreement between us could only be resolved by determining the necessary conditions which must be met by a moral theory in order for it to be correctly categorized as utilitarian.

⁹¹David Braybrooke, "The Choice Between Utilitarianisms," American Philosophical Quarterly, 4, 1 (January, 1967), p. 28. Braybrooke's assertion is typical of many who have commented on the implications of accepting rule-utilitarianism. For example, see Narveson, Morality and Utility, p. 128; Jonathan Harrison, "Utilitarianism, Universalism, and Our Duty to be Just," Contemporary Utilitarianism, ed.

be said that our theory is not committed to such a position, and consequently, is not a rule-utilitarian theory. This can be very simply demonstrated by pointing out that in any particular moral situation, a moral agent employing the theory is not limited to an appeal to moral rules justified by the principle of utility.

According to the theory, in any particular situation in which a moral agent is trying to decide about the moral status of particular actions, he is obligated to determine whether they will result in harm (i.e., the violation of rights). Any action which will result in no harm is morally right; any action which will result in harm, one is obligated not to perform--unless it is the action which results in the least amount of harm in a situation where all the alternatives involve harms. Knowing what harms are and that some are generally more serious than others (e.g., the taking of life as opposed to a deprivation of liberty), no agent is restricted to a list of moral rules--though he can use them as rules of thumb--but can determine the moral status of actions by referring only to the principle of utility. In no case must he resign himself to the production of avoidable harm, as seems to be implied by any rule-

Michael D. Bayles (Garden City, N. Y.: Doubleday & Co., Inc., Anchor Books, 1968), p. 32; and from this same anthology, J. J. C. Smart, "Extreme and Restricted Utilitarianism," p. 107; and H. J. McCloskey, "An Examination of Restricted Utilitarianism," p. 117.

utilitarian theory (if Braybrooke's claim is correct).

This does not mean, however, that the theory cannot or should not be formulated and used as a rule-utilitarian theory, that it cannot or should not be instituted in a society as a form of rule-utilitarianism. That this might be desirable in some societies has been suggested by Braybrooke. Having described the paradigm community ("The Community-In-Session") in which it would result in maximum advantage (utility) to the community if everyone functioned as an act-utilitarian, he turns to a more realistic appraisal of communities. In these communities, the form of utilitarianism which is preferable is dependent on a number of factors.

Communities find themselves in distinctive historical environments. In certain environments, given certain courses of events, it is possible that a policy of giving agents full discretion to act as act-utilitarians would give better results in the long run than binding them not to use such discretion--even if common suspicions about the proportion of agents who would abuse discretion are fully vindicated. For the aggregate gain in happiness from the cases in which discretion is properly used may outweigh the aggregate loss from the cases in which it is not. In this respect also rule-utilitarianism, so far as concerns the obvious reasons for preferring it...rests on empirical foundations that are by no means perfectly settled for all times and places.⁹²

After proceeding further to point out that rule-utilitarianism does not imply the use of non-changing rules (since rules originally selected may have defects or become

⁹²Braybrooke, p. 30.

obsolete) and that in some communities it might maximize utility to have some who are act- and some who are rule-utilitarians, Braybrooke concludes at the end of his article that, "Whatever its difficulties, rule-utilitarianism is not to be surrendered to act-utilitarianism at all times and all places. In some circumstances, depending on the state of the world and on the state of information, act-utilitarianism would displace rule-utilitarianism. In other circumstances, a consistent utilitarian will have to stand by rule-utilitarianism."⁹³

It seems to me that Braybrooke's contention that rule-utilitarianism would sometimes be more desirable than act-utilitarianism is substantially correct. However, what is most significant to realize is that what all of this means for the long debate between advocates of act- and rule-utilitarianism is that, since the utilitarian theory we have developed can function as an act-utilitarian theory which is not subject to theoretical objection (at least from the standpoint of justice), the decision to adopt one or the other is not one that must be made on theoretical grounds at all, but merely for reasons of expediency.⁹⁴

⁹³Braybrooke, p. 38.

⁹⁴We thus avoid having to reject utilitarianism on grounds of theoretical objections advanced, for example, by Richard B. Brandt on pp. 109-110 of his article "Toward a Credible Form of Utilitarianism," and Alan Donagan on p. 188 of "Is There a Credible Form of Utilitarianism?"

Depending on the community, one or the other (or a combination) will work to best advantage.

In conclusion, then, without arguing the point further, I think it can be safely claimed that utilitarianism can be employed in either an act or rule form, that the decision as to which is best can be made without having to determine which form is theoretically least objectionable, i.e., most compatible with intuition. In the context of the concern of the dissertation, either form of utilitarianism is able to account for intuitively acceptable principles of distributive justice.

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