

# “Mill’s Extraordinary Utilitarian Moral Theory”\*

Excerpts for presentation at ISUS x

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## ABSTRACT

Mill’s moral theory, which holds that an act or omission is wrong if and only if it is deserving of punishment for the kind of harm it causes to others without their consent, must be integrated with the rest of his utilitarian ‘art of life’, which aims to maximize the general happiness as Mill conceives it. His notorious doctrine of ‘higher pleasures’ plays a crucial role in his extraordinary version of maximizing utilitarianism. As he indicates in *Utilitarianism*, V, the higher kind of utility associated with the moral sentiment of justice, namely, ‘security’ for vital personal concerns that ought to be recognized as claim-rights, is qualitatively superior to any competing kinds of utilities. The upshot is that a code of justice that distributes equal rights and correlative duties has absolute priority over competing considerations within his utilitarianism. Justice (more generally, morality) is conceived as a social system of rules and dispositions whose goal is the prevention of acts and omissions that, in the judgment of reasonable majorities, tend to cause grievous harm to another by injuring his vital concerns without his consent. Any agent is judged deserving of punishment if he intends to frustrate this social goal by ignoring his moral duties. But it is properly a separate issue which particular forms of punishment, including feelings of guilt, are generally expedient for enforcing moral duties in particular situations. An important corollary is that social coercion is not always expedient for the enforcement of morality.

\*A version of the complete paper will be published in *Politics, Philosophy and Economics* 8 (2009).

Draft of August 2008



## **I. Interpreting Mill's moral theory**

Donald G. Brown, in "Mill's Moral Theory: Ongoing Revisionism,"<sup>1</sup> defends a revisionist reading of Mill's moral theory in which the principle of utility is seen not as a practical guide to right action but merely as an axiological principle: the principle states that general utility is the sole ultimate good or intrinsic value of the general art of life, of which the art of morality is a subservient art. Mill is not committed to maximizing utilitarianism, Brown insists, despite various textual statements that may seem to suggest otherwise. Instead, Mill should be interpreted as an early proponent of so-called philosophical utilitarianism, a generic position that imposes two constraints on morality, to wit: (1) moral decisions must be based only on information about individual utilities, which in turn presupposes a conception of utility or well-being; and (2) the procedure employed to make moral decisions must be impartial between individuals. As John Skorupski, who also reads Mill along these lines, explains: "All that philosophical utilitarianism says is that every individual's well-being has absolute value, and that this value must be counted impartially in assessing overall good ... [In short,] the good is the well-being of all, impartially considered."<sup>2</sup> Philosophical utilitarianism thus understood is said to admit many different impartial decision-making procedures besides a traditional utilitarian calculus that aims to maximize the sum total of utility. Indeed, Skorupski makes clear that, for revisionists of his ilk, philosophical utilitarianism has appeal precisely because it allows those who admire Mill's liberal ideals to ignore as "unattractive" not only "the classical utilitarians' sum-total criterion" but also their hedonistic conception of utility.

Brown goes on to argue that Mill's moral theory, although it is compatible with philosophical utilitarianism, is a normative theory of collective self-protection which is

independent of maximizing utilitarianism. The goal of morality under this Millian theory, as interpreted by Brown, is to protect the individual from suffering harms, or certain types of harms, inflicted on him by others without his consent. In pursuit of this goal, common sense dictates giving special importance to minimizing these disutilities, as opposed to maximizing the sum total of utilities: “the disutilities, the negative utilities, are by far the most important morally.”<sup>3</sup> Common sense principles are used to derive impartial moral requirements on the basis of utility information, as philosophical utilitarianism demands: “Utilities and disutilities alone are being weighed throughout, and the aim pursued in various ways is to minimize the latter, so the rational constraint of philosophical utilitarianism is satisfied.”<sup>4</sup> But the common sense rules rely on conventional norms as opposed to any utilitarian maximizing criterion to derive the moral duties.

More specifically, the rules of Mill’s art of morality are said to rely on some conventional norms of fairness to identify which kinds of harms caused to others without their consent are deserving of punishment. Moral duties to refrain from causing the relevant disutilities are distributed impartially to all, and anyone who fails to do his moral duty is deserving of punishment. Punishment, which Brown equates with coercive measures such as legal penalties and public stigma as opposed to guilty feelings *per se*, is apparently justified only to the extent that it is needed to deter moral wrongdoing: “by the rules of self-defense by punishment it is unjust to inflict suffering beyond the minimum necessary for the deterrence.”<sup>5</sup> Even so, Brown explains, the deservingness of punishment does not imply that punishment should always be imposed to deter wrongdoing, because coercive measures may be inexpedient for discouraging violations of moral duties in some situations, all things considered.

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Brown and other revisionists are clearly correct that Mill is not plausibly read as a traditional maximizing utilitarian, for whom conduct is morally right if and only if that conduct maximizes the sum total of utility. No version of that utilitarian orthodoxy, however sophisticated, can capture Mill's approach. Mill's utilitarianism is an unorthodox version that stands outside the mainstream utilitarian tradition. Unlike mainstream figures such as Jeremy Bentham, Henry Sidgwick, Francis Y. Edgeworth, Richard M. Hare, and John C. Harsanyi, Mill's ultimate goal is not to maximize the total quantity of utility.

Nevertheless, Mill's unorthodox utilitarianism is best interpreted as an extraordinary version of maximizing utilitarianism, indeed, an alluring version that abandons the rash assumptions about utility information which are needed to run a traditional utilitarian calculus. More specifically, Mill rejects the assumption that utilities and disutilities are all homogenous in quality across their various sources and objects; and he does not suppose that it is feasible even in principle to gather rich cardinally measurable and interpersonally comparable utility information. From a Millian perspective, the orthodox picture of maximizing utilitarianism, in which different people's utilities and disutilities are treated as homogenous in quality and simply added together with the aim of selecting an outcome that maximizes the sum total of utility, is a bizarre perversion of genuine maximizing utilitarianism.

In what follows, I shall attempt to clarify how Mill's theory of morality fits consistently within his extraordinary maximizing utilitarianism as I understand it. My argument proceeds through several steps. The first step is to look more closely at philosophical utilitarianism. It seems to me that a philosophical utilitarian has no option but to adopt some version of

maximizing utilitarianism, although not necessarily maximizing utilitarianism as traditionally conceived. If I am correct, there is a contradiction between philosophical utilitarianism, according to which individual utilities impartially considered must be the sole determinants of moral decisions, and any art of morality which prescribes that moral requirements should be derived from utility information using independent norms or values (of, say, fairness) that assign different weights to identical amounts of utility or disutility. Any such art of morality, although it may exhibit impartiality between persons, fails to be impartial between equal amounts of utility, and this failure is at odds with philosophical utilitarianism as I understand it. Even if my interpretation is rejected, however, and philosophical utilitarianism is interpreted instead not to require impartiality between equal quantities of utility, there is conclusive evidence that Mill insists on impartiality in this strong sense. So, either a philosophical utilitarian must be a maximizing utilitarian, in which case Mill is both; or philosophical utilitarianism abandons Mill's idea of impartiality, in which case Mill is not a philosophical utilitarian.

## **II. Philosophical utilitarianism**

T.M. Scanlon, when he introduces the notion of philosophical utilitarianism, says that “once philosophical utilitarianism is accepted, some form of normative utilitarianism seems to be forced on us as the correct first-order moral theory.”<sup>6</sup> Unlike Skorupski or Brown, he is inclined to think that philosophical utilitarians must endorse some version of maximizing utilitarianism, direct or indirect. Philosophical utilitarians will find it difficult to avoid arriving at the classical sum total criterion, in his view: “If all that counts morally is the well-being of individuals, no one of whom is singled out as counting for more than the others, and if all that matters in the case of each individual is the degree to which his or her well-being is affected, then it would seem to

follow that the basis of moral appraisal is the goal of maximizing the *sum* of individual well-being.”<sup>7</sup>

Scanlon is on solid ground, I think, when he suggests that philosophical utilitarianism forces us to adopt some version of maximizing utilitarianism, although he seems to take for granted the traditional conception of maximizing utilitarianism.<sup>8</sup> For the moment, let us accept the traditional conception, although I shall argue in due course that it is a caricature of the far more credible version of maximizing utilitarianism suggested by Mill. In any case, as Scanlon says, philosophical utilitarianism holds that facts about individual utilities are “the *only* fundamental moral facts,” and that moral rules and decisions must be “impartially acceptable.”<sup>9</sup> But if facts about individual utilities are the only basic moral facts, and if morality must be impartial between individuals, then it seems that moral rules and decisions must be impartial between equal quantities of utility, whether experienced by different individuals or by the same individual. Otherwise, if morality assigns different weights to the equal quantities of utility, then some norm or value besides individual utilities, impartially considered, counts for morality. Facts about that non-utility norm or value are then “fundamental moral facts” that help determine moral outputs independently of the utility inputs. Perhaps certain norms of fairness dictate that the utility of a very poor individual is morally worth far more than the equal utility of a very rich one, for instance, or that the disutility suffered by a thwarted wrongdoer is worth far less than the equal disutility that would have been suffered by his intended victim. The problem is that factual information about these norms of fairness is apparently not allowed by philosophical utilitarianism to influence morality. Philosophical utilitarianism seems to exclude all non-utility information as morally irrelevant, and to insist that facts about individual utilities are the *only*

fundamental moral facts.

It may be helpful to illustrate the bite of philosophical utilitarianism thus understood with reference to the quasi-Rawlsian moral decision procedure known as “leximin.”<sup>10</sup> According to leximin, moral choices must give lexical (that is, absolute) priority to the worst-off individual’s utility, where the worst-off is determined by comparing utility levels. An outcome that maximizes the utility of the worst-off is morally required, even if this entails that a better-off individual must sacrifice a much greater amount of utility than is gained by the worst-off. The leximin procedure is incompatible with philosophical utilitarianism, as I understand it, because leximin implicitly relies on norms besides utility to generate moral choices: an overwhelming concern for the worst-off members of society, rooted in a sense of distributive justice which is independent of utility considerations, is built into the very form of the leximin procedure. This concern for the worst-off is thereby treated as a “fundamental moral fact,” whereas philosophical utilitarianism requires that facts about individual utilities are “the only fundamental moral facts” and that they must be impartially considered.

Philosophical utilitarianism thus understood is more demanding than the conditions known in the formal social choice literature as “welfarism” and “anonymity,” respectively, even if these conditions are combined.<sup>11</sup> Leximin is an anonymous and welfarist moral decision procedure yet it is at odds with philosophical utilitarianism as interpreted. It is important to be clear about this. Consider welfarism. Roughly, welfarism is a neutrality condition which stipulates that, for any given permutation of the possible outcomes over which the set of individual utility rankings is defined, such that  $x$  and  $y$  everywhere replace  $w$  and  $z$  respectively, and vice versa, within the individual rankings, the moral ranking of  $x$  and  $y$  in the one case must



be the same as the moral ranking of *w* and *z* in the other.<sup>12</sup> According to welfarism, then, the only information *about the possible outcomes* which matters for the process of moral decision-making is utility information, as opposed to non-utility information. Any welfarist moral choice process admits only individual utilities as inputs to generate moral outputs. So far, welfarism matches philosophical utilitarianism: both reject as irrelevant any non-utility information contained in a description of the possible outcomes.

But welfarism does not otherwise constrain the moral choice procedure: norms besides utility values may permissibly be embodied within the very form of the procedure used to translate the utility inputs into moral outputs. The internal structure of the choice process is left open by welfarism, and this structure may incorporate norms that give different weights to equal amounts of utility for one reason or another.<sup>13</sup> In the case of the leximin rule, the form of the procedure incorporates a fairness norm that gives absolute priority to the worst-off position in society, such that utility for any individual who occupies the worst-off position is treated as far more important than an equal amount of utility for anyone else.

The anonymity condition, even when combined with welfarism, does not take leximin any closer to philosophical utilitarianism as I understand it. Roughly, anonymity is an impartiality requirement which stipulates that moral decisions must not be affected by any permutation of the individual identities attached to the utility rankings: the moral ranking of any pair of outcomes *x* and *y* must remain invariant, for example, if individual *i*'s utility is transformed into individual *j*'s, individual *j*'s is transformed into *k*'s, and *k*'s is transformed into *i*'s.<sup>14</sup> According to anonymity, then, morality must be impartial between individuals: information about individual identities does not matter for moral outputs. But anonymity does not imply that

morality must be impartial between equal quantities of utility, even when non-utility information about the possible outcomes is proscribed by welfarism. Anonymity still permits (as does welfarism) the moral decision-making process to incorporate independent norms of fairness that discriminate between equal amounts of utility.

Welfarism in combination with anonymity does not imply that morality must be impartial between equal quantities of utility. Thus, in contrast to philosophical utilitarianism which, as interpreted, does demand this, anonymous welfarism is compatible with myriad moral choice procedures, including the leximin procedure, beyond traditional maximizing utilitarianism. Maximizing utilitarianism is special because it is the only anonymous and welfarist choice procedure that invariably counts equal quantities of utility equally. There are not any norms independent of utility built into the form of a utilitarian maximizing procedure. This remains true even if the traditional conception of maximizing utilitarianism is replaced with the unorthodox Millian conception to be discussed later in the text (Sections III-VIII), although the traditional understanding of utility's nature, and of the richness of our information about it, is rejected by the Millian conception.

The conclusion that some version of maximizing utilitarianism is the sole option for philosophical utilitarians can be avoided, however, by jettisoning the understanding of philosophical utilitarianism defended so far. Brown, Skorupski, and others apparently have in mind a less demanding interpretation of philosophical utilitarianism. More specifically, perhaps philosophical utilitarianism should be weakened so that it becomes equivalent to the combination of welfarism and anonymity. Procedures such as leximin, and the rules of the Millian art of self-defense as interpreted by Brown, are compatible with such a weakened variant of philosophical

utilitarianism.

An objection to this move of weakening philosophical utilitarianism is that it allows norms independent of utility to count as “fundamental moral facts” which must be taken into account to arrive at moral decisions. Given that the independent norms are helping to determine morality, however, why continue to call the weakened generic view a version of philosophical *utilitarianism*? Moreover, if quantities of utility and independent norms are both allowed to count, then philosophical utilitarianism does not exclude in principle any sources of value. Rather, it requires merely that non-utility values must be built into the form of the moral choice procedure so that the procedure can then restrict its attention to utility information about the possible outcomes. This seems to be a matter of convenience, or perhaps an aesthetic requirement, instead of a substantive moral constraint.

Another objection is that the weakened version of philosophical utilitarianism seems ill-suited, at least from a consequentialist perspective, for accommodating independent norms of fairness and the like. Recall that its welfarist component excludes any role for non-utility information about the possible outcomes of the moral choice procedure. Yet norms independent of utility may nonetheless be built into the form of the procedure. What are these independent norms based on? How can they be justified? They cannot be based either on utility information or on non-utility information about the possible outcomes. Thus, they must have their status independently of any factual information about the consequences of moral rules and decisions. In short, the weakened version of philosophical utilitarianism can only regard the independent norms as self-justifying deontological norms. The implication seems to be that morality is a hodge-podge of plural irreducible values, including utility and independent norms, the relations

among which can only be mediated by intuition. Whatever its merits, such an approach appears to boil down to what Mill calls intuitionism, an approach to which he repeatedly takes exception throughout his writings.

But even if my objections to the weakened version of philosophical utilitarianism are considered unpersuasive, there remains a decisive objection against any attempt to read Mill as a philosophical utilitarian in this weakened sense, to wit, he is explicit that equal quantities of utility must be counted equally for moral outcomes. As he says, “the principle of utility ... may be more correctly described as supposing that equal amounts of happiness are equally desirable, whether felt by the same or by different persons.”<sup>15</sup> But this implies that he endorses some version of maximizing utilitarianism, because maximizing utilitarianism alone always counts equal quantities of utility equally. True, he registers the caveat that “proper allowance” must also be made for different kinds or qualities of utility, and this caveat is of central importance for any appreciation of the difference between his extraordinary conception of maximizing utilitarianism and the traditional conception. But the point remains that his extraordinary maximizing utilitarianism continues to count equal amounts of utility *of the same kind* equally. Like traditional maximizing utilitarianism, his doctrine is impartial between equal quantities of utility, provided the utility can be assumed homogenous in quality.<sup>16</sup>

Brown’s sweeping claim that Mill is not a maximizing utilitarian cannot stand, even though I agree that Mill is not a maximizing utilitarian as traditionally conceived. Mill may or may not be a philosophical utilitarian: it depends on whether a strong or weak interpretation of that generic view is adopted. Given the strong interpretation, a philosophical utilitarian must also be a maximizing utilitarian, as Scanlon suggests, in which case Mill may be read as both. Given

the weak interpretation, a philosophical utilitarian need not endorse maximizing utilitarianism. But then Mill is not a philosophical utilitarian in this weakened sense, because he explicitly endorses the strong idea of impartiality, according to which morality must be impartial between equal quantities of utility of the same kind.

It follows that Mill's art of morality must be integrated within his extraordinary version of maximizing utilitarianism. This Millian art of collective self-protection cannot be viewed, as Brown would have it, as an art that relies on independent norms of fairness to assign different values or weights to equal amounts of utility or disutility in the course of determining which kinds of disutilities are deserving of punishment. But to see how Mill's moral theory fits within his maximizing utilitarianism, it is necessary to say more about the extraordinary structure of his maximizing doctrine as I understand it. I shall only provide a brief sketch of it here, however, because I have discussed it at length elsewhere.<sup>17</sup>

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## **VI. Guilt as a form of punishment**

When asserting that "we do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it," Mill says that punishment includes "the reproaches of [the person's] own conscience."<sup>18</sup> He never says otherwise, as far as I am aware, and it does not appear to be an abuse of language to say that feelings of guilt are a form of punishment, even if self-inflicted.

Nevertheless, Brown refuses to accept that Mill means what he says. Instead, Brown argues that guilty feelings are not a genuine form of punishment. A guilty conscience merely indicates an offender's recognition that he deserves punishment: "The reproach of conscience, by

which the offender acknowledges wrongdoing, and accepts that he deserves punishment, is what remains when *every* actual penal sanction is inexpedient.”<sup>19</sup> Genuine punishment is some form of coercive interference, such as legal imprisonment or a public display of humiliation. To avoid incurring such penal sanctions, an individual is forced to refrain from performing some wrongful act or omission. The sanctions are often described as “external” because they are harms deliberately inflicted on an offender *by others* with society’s authorization or permission. If a wrongdoer only suffers feelings of guilt instead of external sanctions, Brown says, then he “got away with his wrongdoing” scot free, without suffering any genuine punishment.<sup>20</sup>

An important implication of Brown’s view of punishment is that immoral conduct may sometimes legitimately escape actual punishment, even though punishment is deserved. Given that punishment means coercive interference, and that coercive measures against wrongdoing are not always expedient, it is sometimes expedient to let wrongdoing go unpunished. Thus, Brown argues that it is “a mistake to attribute to Mill the view that expediency of punishment is a necessary condition of moral wrongness.”<sup>21</sup>

Unlike Brown, I accept at face value Mill’s statements that the reproaches of conscience are a form of punishment, even if self-inflicted. This has important implications for my reading. I maintain that if immoral conduct is deserving of punishment, then *some* form of punishment, even if only a guilty conscience, must be expedient to deter the conduct. If punishment is deserved, then punishment is required by justice to promote general security. But *which* particular forms of punishment, whether legal penalties, organized social stigma, or feelings of guilt, are expedient to inflict is properly a separate question. Thus, I reject Brown’s way of distinguishing between the deservingness of punishment (understood as coercion) and the

expediency of inflicting it, because his distinction suggests that immoral conduct might expediently go unpunished altogether, all things considered. My reading accommodates the insight that particular forms of punishment, such as coercive legal penalties, may be inexpedient in some situations, whereas other forms of punishment, such as public stigma or self-inflicted feelings of guilt, may remain expedient in those situations. But it can never be expedient to exempt immoral conduct from all forms of punishment, because punishment of wrongdoing is required to promote security.

Actually, it is not entirely clear why Brown is so concerned to reject Mill's statements that guilty feelings are a form of punishment. Brown seems especially bothered by the suggestion that "the reproaches of conscience" are "the centrally relevant form of punishment," so that "blame, even merely self-blame" is "the universally appropriate medium, the expediency of which must be shown against all odds to be implied by moral wrongness."<sup>22</sup> I agree that one form of punishment is no more "relevant" than another for promoting security: there is no good reason to assign more, or less, general importance to guilty feelings than to legal penalties or to public stigma as instruments of justice. Nevertheless, it does seem expedient for society to encourage every individual to develop a powerful conscience because, if acquired, this strong desire to do right would, in a sense, *compel* the person internally to obey the rules of the optimal security-maximizing code. There would be no need for external sanctions, which are relatively costly and unwieldy implements. The conscientious individual might sometimes desire to break the rules and violate another's rights, but any such preference would be overwhelmed by his more powerful desire to do right, whose frustration promises to bring him the misery of self-loathing and guilty feelings. Thus, from society's perspective, the internal sanctions of

conscience promise to be the least-costly and most direct form of punishment on all occasions, *if* a powerful conscience can be instilled. With this in mind, children should be duly encouraged by parents and schools to learn their recognized rights and duties, for instance, and everyone should be repeatedly reminded by social and political leaders of the importance of complying with the code of justice.

But the obvious problem is that, despite society's encouragement, many people fail to develop a sufficiently powerful conscience to deter them from wrongdoing in the absence of external sanctions. The historical record is unequivocal on this point, and there is no guarantee that societies can do better in the future. In addition to encouraging people to develop a strong desire to do right, therefore, society must take steps to force them, if necessary, to comply with the code of justice, whenever external sanctions can be expediently applied. Indeed, it is often expedient for society to use every form of punishment at its disposal, including legal penalties, public stigma, and feelings of guilt, to deter violations of equal rights.<sup>23</sup> But not always. There are "often good reasons" for not employing external sanctions against an offender: "either because it is a kind of case in which he is on the whole likely to act better, when left to his own discretion, than when controlled in any way in which society have it in their power to control him; or because the attempt to exercise control would produce other evils, greater than those which it would prevent."<sup>24</sup> As Mill goes on to say, society expediently relies on the reproaches of conscience alone to deter wrongdoing in such cases: "When such reasons as these preclude the enforcement of responsibility, the conscience of the agent himself should step into the vacant judgement-seat, and protect those interests of others which have no external protection; judging himself all the more rigidly, because the case does not admit of his being made accountable to



the judgement of his fellow creatures.”<sup>25</sup>

The upshot is that society cannot always expediently rely on any one form of punishment to deter violations of equal rights. The internal sanctions of conscience are not always expedient because some people do not acquire a powerful conscience. But legal penalties and public stigma are not always expedient either. Thus, although Mill’s criterion of moral wrongness holds that wrongdoing is justifiably punished so that some form of punishment is always required by justice, it is a separate issue which forms of punishment are expedient in any given situation. The expedient forms vary from case to case. No one form of punishment, including guilty feelings, can be expediently relied upon on all occasions to deter wrongdoing.

As I have already indicated, though, it would be most efficient for society to be able to rely solely on the reproaches of conscience to deter every act deserving of punishment, if this were feasible. This would be possible if, and only if, every individual developed a sufficiently powerful conscience to monitor and guide his own behavior in accord with the optimal code. In that ideal case, costly and unwieldy external sanctions would become unnecessary. By contrast, in the present stage of social advancement, many individuals do not acquire a suitably intense desire to do right. Moreover, to the extent that most people do develop a conscience, however weak, this is largely due to the visible operation of external sanctions against wrongdoing. The individual is spurred to develop a wish to do right because he repeatedly sees that wrongdoers are imprisoned, fined, and stigmatized for their violations of others’ rights. He fears that others will inflict the same forms of punishment on him if he also breaks the rules. This means that his wish to perform his duties is not a pure self-determined moral will, of course, but maximizing utilitarianism does not insist that people’s motives must be pure: what matters is that they

perform their recognized duties.<sup>26</sup>

It may well be true, as Mill apparently believes, that humans have only acquired a conscience after living in a civil society under the rule of law.<sup>27</sup> If so, the desire to do right and to comply with a code of justice, is only generated by the visible working of external sanctions. Mill does seem to subscribe to some such view: “There can, I think, be no doubt that the *idée mère*, the primitive element, in the formation of the notion of justice, was conformity to law.”<sup>28</sup> The internal sanctions of conscience are then, in effect, reflections of prior external sanctions rather than the reverse. Even so, this is fully compatible with his claim that feelings of guilt are a form of punishment. The origin of the individual’s desire to do right is irrelevant to that claim.

## NOTES

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1.D.G. Brown, “Mill’s Moral Theory: Ongoing Revisionism,” forthcoming in *Politics, Philosophy, and Economics* 8 (2009). All page references to Brown’s article are to an April 2008 draft that may differ to some extent from the published version..

2.John Skorupski, *Why Read Mill Today?* (London: Routledge, 2006), pp. 24, 101. The term “philosophical utilitarianism” was introduced by T.M. Scanlon, “Contractualism and Utilitarianism,” in *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982), pp. 103-28. According to Scanlon, “‘philosophical utilitarianism’ is a particular philosophical thesis about the subject matter of morality, namely, the thesis that the only fundamental moral facts are facts about individual well-being” (p. 108). He adds that “moral principles must be impartially acceptable” (pp. 121-22).

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3. Brown, "Mill's Moral Theory," p. 23.

4. Ibid., p. 40.

5. Ibid.

6. Scanlon, "Contractualism and Utilitarianism," p. 109. He recognizes that maximizing utilitarianism might be endorsed as a first-order moral theory even by those who reject philosophical utilitarianism. His main concern is to show that philosophical contractualism as he understands it (an alternative to philosophical utilitarianism) does not lead to any form of maximizing utilitarianism.

7. Ibid., p. 110, emphasis original). Scanlon does not consider the "further question" of whether this maximizing standard "is to be applied to the criticism of individual actions, or to the selection of rules or policies, or to the inculcation of habits and dispositions to act" (ibid.). Nor does he consider the appeal of hedonism.

8. Scanlon is led to the sum-total criterion, I think, because he takes for granted that maximizing utilitarianism by definition conceives of individual utility, or well-being, as cardinally measurable, interpersonally comparable, and homogenous in quality, independently of its sources or objects. That traditional utilitarian view of well-being seems to be implicit in his statement that "*all that matters* in the case of each individual is the *degree* [or amount] to which his or her well-being is affected" (ibid., p. 110, emphasis added). But maximizing utilitarianism is not necessarily tied to such a traditional view of utility. If this is right, then Scanlon, despite

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his intentions, does not fully leave open “the question of how ‘well-being’ itself is to be understood” (ibid.). Rather, he shuts the door against any unorthodox view, such as that suggested by Mill, according to which utility is not cardinally measurable, not interpersonally comparable, and not homogeneous in quality. But Scanlon does leave open the question of whether utility should be conceived in terms of pleasure, desire-fulfilment, choice behavior, dispositions, or whatever..

9.Ibid., pp. 108, 121-22, emphasis added.

10.For further discussion of the leximin procedure, including its formal axiomatization and its relation to the well-known maximin principle of John Rawls, see Kenneth J. Arrow, “Some Ordinalist-Utilitarian Notes on Rawls’s Theory of Justice,” ; Peter Hammond, ; Louis Gevers and; and Amartya Sen, “

11.Strictly speaking, a precise statement of the welfarism and anonymity conditions depends on how rich the given utility information is assumed to be. But such complications do not affect the point at issue.

12.Sen, “Weights and Measures,” p.

13.Even leading social choice theorists sometimes leave the impression that welfarism excludes *all* non-utility information as irrelevant. But this is not quite true, or so I argue. Rather, welfarism only excludes all non-utility information about the possible outcomes. It permits norms besides utility values, impartially considered, to be built into the form of the moral choice rule, without

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reference to the possible outcomes. Factual information about these non-utility norms is thereby permitted to influence moral outputs, even though the choice rule only takes account of utility information with respect to the outcomes.

14. *Ibid.*, p.

15. John Stuart Mill, *Utilitarianism*, in *Collected Works of J.S. Mill*, vol. X, ed. John M. Robson (London and Toronto: Routledge and University of Toronto Press, 1969), chapter V, paragraph 36, p. 258, note. All references are to this edition. Henceforth, I shall provide references in abbreviated form, as follows: *Util* V.36, p. 258.

16. Indeed, Mill makes clear that he believes the principle of impartiality between persons *is implied by* the principle of utility which, as he understands it, must count equal amounts of utility equally. Given that utility is the sole basic value, it is merely a “truth of arithmetic” that equal quantities of utility must be counted equally, whether experienced by the same person or by different persons (*Util* V.36, p. 258, note).

17. See, for instance, Jonathan Riley, “The Interpretation of Maximizing Utilitarianism,” forthcoming in *Social Philosophy and Policy* 26 (Winter 2009); Riley, “Millian Qualitative Superiorities and Utilitarianism, Parts 1 and 2,” forthcoming in *Utilitas* 20 (September & December 2008); Riley, “Classical Ordinal Utilitarianism,” unpublished working paper; and Riley, “Justice as Higher Pleasure,” to be published in Paul J. Kelly and Georgios Varouxakis, eds., *John Stuart Mill: Thought and Influence: A Bicentennial Reappraisal*.

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18. *Util* V.14, p.

19. Brown, “Mill’s Moral Theory,” p. 27, emphasis original.

20. *Ibid.*, p. 26.

21. *Ibid.*, p. 27.

22. *Ibid.*, p. 28.

23. Consistently with this, Mill argues that it is never expedient for society to inflict legal penalties to deter people from failing to perform their “imperfect obligations” that do not correlate to anybody’s rights. See Section VIII of the paper.

24. *OL* I.11, p. 225.

25. *Ibid.* As Mill says, it is often inexpedient for society to rely on external sanctions to deter violations of rights. Many cases arise in which one friend grievously betrays the trust of another by breaking an oral promise, for instance, without anyone else being aware of the situation.

26. See Mill, *Util* II.19, pp.

27. Mill says his “own belief” is that “the moral feelings are not innate, but acquired” (*Util* III.8, p.). Whether or not any element of conscience is innate, a *powerful* desire to do right is clearly not implanted in all people, either by a divine being or by biological evolution.

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28. *Util* V. 12, p.