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Interpreting Mill

Abstract

My paper will address some of the interpretative dangers that analytical moral philosophers face when they appropriate Mill to tackle contemporary conundrums such as the "coherence problem" of rule utilitarianism. I will suggest that appropriating Mill this way risks reading into him philosophical concerns and dilemmas that he would not have had. This is not to say that Mill and his 19th century readers did not anticipate some of the conceptual and logical problems allegedly plaguing rule utilitarianism and liberal utilitarianism that have preoccupied contemporary moral philosophers and Mill scholars. But I do wish to insist that whatever we have made out of these problems, we should avoid reading our often sophisticated and technical reformulations and elaborations back into Mill himself. Understanding Mill means not just reading him *in* context but also not reading carelessly him *from* our often differently motivated context. My paper's concerns obviously draw from Quentin Skinner and others.

Introductory

Utilitarianism is hardly a recent invention and so many of its shortcomings have a long history. Lamentably, far too few of its recent analytical advocates and detractors know enough about this history since they barely know much more about utilitarianism's earlier champions outside of Bentham and Mill. But even our ongoing infatuation with Mill has left too many of us "dumb" to Mill's contemporary critics, causing us to reinvent some of their criticisms as if they were innovative discoveries. Contemporary utilitarians and their critics act as if Mill was writing directly and exclusively to us. They remember their Mill but have forgotten his immediate audience. Consequently, they mistake what seems original criticism of him for what is really too often the ill-informed rediscovery of older ones.

I will forgo speculating at length as to *why* contemporary utilitarians and their critics too frequently repeat unawares many earlier quarrels between 19th century utilitarians, like Mill and Sidgwick, and their ardent detractors, like F. H. Bradley and James Fitzjames Stephen. But I will say that contemporary utilitarians and their foes suffer from nearsightedness brought on by too little interest in the complex vagaries of intellectual history. This goes for political theorists especially who tend to see liberalism as beginning with Hobbes and Locke, next reformulated classically by Mill and then receding into the wilderness of mere history of political thought thanks to the linguistic turn and the vogue of emotivism before being resurrected so magnificently by Rawls. For them, Rawls put an end to utilitarianism once and for all. Hence, few contemporary political theorists care much about utilitarian versions of liberalism.

I also strongly suspect that this disinterest is made worse by our proclivity for dichotomous conceptual theorizing that, for instance, pits Kantianism against consequentialism thus marginalizing interest in eclectic thinkers like Bradley who seem *to us* terribly confused because they fail to fit neatly into our conceptual dichotomies. That is, our current analytical categories have skewed our understanding of our philosophical past, causing us to discount predecessors whose arguments we then often blindly proceed to reinvent.

I will argue that we have ignored Bradley, in particular, much to the discredit of our understanding of the liberal tradition and of our efforts to enrich and reshape it. This holds particularly for our efforts to defend or attack utilitarian versions of liberalism. In assailing rule utilitarianism's incoherence, contemporary scholars like David Lyons repeat, albeit with greater analytical rigor and sophistication, Bradley's much earlier

accusation that Mill's utilitarianism was not "earnest" with its moral rules or with its end. The incoherence objection to rule utilitarianism is much older than most probably realize. But as old as it is, we should also guard against interpreting this older version of the objection as if it was as refined and as nuanced as contemporary analytical versions. Mill was not a rule utilitarian in our sense so we should avoid interpreting him as one. And we should equally avoid reading Mill as defending some kind of "over-specified," contemporary act utilitarianism that reduces the principle of utility to the "exclusive navigator of rational behavior."¹

Pleasure's Incoherence as an End

Bradley disparages utilitarianism for being doubly incoherent especially in Essay III, "Pleasure For Pleasure's Sake," *Ethical Studies*. All forms of utilitarianism are incoherent, first of all, because they advocate maximizing what cannot possibly be maximized, namely pleasure. Maximizing pleasure is a "wild and impossible fiction." That is:

Happiness, in the meaning of a maximum of pleasure, can never be reached; and what is the sense of trying to reach the impossible? Happiness, in the meaning of always a little more and always a little less, is the stone of Sisyphus and the vessel of Danaides – it is not heaven, but hell. Whether we try for it or not, we always have got a little more and a little less (than we might have), and never at any time, however much we try for it, can we have a little more or a little less than we have got.²

Striving to maximize happiness, then, is utterly pointless because maximum pleasure is an unrealizable goal since nobody can possibly experience it. Whether one thinks that morality requires maximizing personal pleasure (egoistic hedonism) or requires maximizing pleasure generally (Mill's universalistic hedonism), one's normative efforts will necessarily come to grief against the shoals of human psychology. There is no such experience as either individual or collective maximum pleasure. And what cannot possibly be experienced, cannot possibly be a credible normative goal. At least, we should never foolishly make it our normative goal.³

However, Bradley's claim that maximizing pleasure is incoherent because maximum pleasure is an experiential fiction is not my prime concern here. Instead, I prefer to concentrate on Bradley's allegation that Mill's utilitarianism is *practically* incoherent. The second accusation of Bradley's has been little discussed and, in my view, poses a far more daunting challenge to Mill's version of utilitarianism as well as contemporary versions of rule utilitarianism.

The Practical Incoherence of Mill's Utilitarianism

Rule utilitarianism's contemporary critics, following Samuel Scheffler, have reproached rule utilitarians for futilely striving to "occupy a non-existent middle ground" between moral rules and the principle of utility.⁴ Alan Ryan, John Charvet, John Gray and, most famously, David Lyons have dismissed rule utilitarianism for being intrinsically flawed.⁵ Rule utilitarians, like Mill, try to have their genuine liberalism and eat their utilitarianism too. For its detractors, rule utilitarians must choose between taking either moral rules seriously and taking the principle of utility seriously. Both cannot be taken equally

seriously. Both cannot be ultimate criteria of right action. There can only be one ultimate criterion. Either moral rules trump utility, in which case utilitarianism disappears, or utility supersedes moral rules, in which case moral rules lose their independent “moral force” as Lyons puts it.

In *Utilitarianism*, Mill says that to “inform a traveler respecting the place of his ultimate destination, is not to forbid the use of landmarks and direction-posts on the way.” Similarly, making happiness our end “does not mean that no road ought to be laid down to that goal, or that persons going thither should not be advised to take one direction rather than another.” Just as sailors go to sea with their “Nautical Almanack” already calculated and ready at hand, so we typically “go out upon the sea of life with” our “minds made up on the common questions of right and wrong...”⁶ But just because it generally pays to negotiate life’s moral dilemmas using our handy moral rules, we should nevertheless be prepared to improve and refine them depending upon the circumstances. Though our moral rules are “corollaries from the principle of utility, like the precepts of every practical art, [they] admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on.”⁷

For Mill, at least here, moral rules were “corollaries” of the principle of utility though they were not infeasible, making them overridable whenever the overall stakes in general utility were sufficiently large.⁸ Just the way it nearly always pays travelers to follow signs and observe the rules of the road, and just the way sailors should pretty much always follow their charts and abide by the rules of navigation, so should we routinely abide by the fundamental moral precepts dictated by utility. But because we should routinely follow basic moral rules as the preferred utilitarian strategy, we should

not fetishize these rules but instead should be prepared to break them if *really* necessary such as when *considerable* utility is at issue and when we are *absolutely certain* that breaking a rule will produce it.

Even before *Utilitarianism* was published in 1861, this kind of “indirect” utilitarian thinking was being attributed to Mill’s predecessors by his critics. In his 1852 *Lectures on the History of Moral Philosophy*, William Whewell criticized Paley and Bentham’s utilitarianism on several grounds including for futilely trying to accommodate the principle of utility with meaningful moral rules. We have no grounds for according moral rules “any greater rigour, than we can establish by showing such a subservience” to maximizing utility.⁹ Both Paley and Bentham, that is, inconsistently insist that we follow moral rules when breaking them produces more utility.

Some years later after *Utilitarianism* appeared, James Fitzjames Stephen mocked Mill’s utilitarianism for this same alleged inconsistency, complaining rhetorically:

Why should a man consult the general happiness of mankind? Why should he prefer obedience to a rule to a specific calculation in a specific case, when, after all, the only reason for obeying the rule is the advantage to be got by it, which by the hypothesis is not an advantage, but a loss in the particular case? A given road may be the direct way from one place to another, but that fact is no reason for following the road when you are offered a short cut. It may be a good general rule not to seek for more than 5 per cent in investments, but if it so happens that you can invest at 10 per cent with *perfect safety*, would not a man who refused to do so be a fool (my italics)?¹⁰

Stephen's mocking jibe exposes a potential flaw with Mill's utilitarianism and with what we have since come to call rule utilitarianism. Now contemporary critics of rule utilitarianism can perhaps be excused for ignoring or forgetting Stephen's passing quibble. After all, Stephen says nothing more against Mill on this score and what he does say appears in a brief "Note on Utilitarianism," which he appended to *Liberty, Equality and Fraternity*. But contemporary critics should not be excused for ignoring Bradley's subsequent, more sophisticated elaboration of Stephen's criticism of rule utilitarianism's purported incoherence in *Ethical Studies* first published in 1876 or two years after Stephen's *Liberty, Equality and Fraternity*.

For Bradley, Mill's utilitarianism, which he often simply refers to as "Hedonism," suffers from a "most serious difficulty." This difficulty "belongs to the essence of Hedonism" and is "*the* old question," namely what is the "nature of the authority of the Almanack, and are its rules laws?" (my italics)¹¹ Moreover, this difficulty is a problem for egoistic hedonism as much as for Mill's universalistic variety. Bradley insists:

For obviously, (1) circumstances get into strange tangles, which can not be provided against; and the course laid down in the Almanack as a law may, in peculiar cases, lead to pain instead of pleasure; and here I must disregard the Almanack. And obviously, (2) not outward situations only, but men's temperaments differ. What brings pleasure to one brings none to another; and so with pain. You can speak generally beforehand, but it may not apply to this or that man. And the consequence is, that the Almanack and its moral rules are no authority. It is right to act according to them. It is right to act diametrically

against them. In short they are *not laws* at all; they are *only rules* and rules, as we know, admit of and imply exceptions (my italics).¹²

Bradley next proceeds to quote fully the passage from Stephen's "A Note on Utilitarianism" cited above, adding that egoistic hedonism is therefore "not in earnest with its rules." Egoistic hedonists should break them whenever it seems to them that breaking a rule issues in more pleasure in a particular case than abiding by the rule. Egoistic hedonism is equally "not in earnest with its end" because aiming at pleasure "is not to get it, and yet the getting of it is a moral duty." That is, we must aim at pleasure "by the way, without caring or trying too much to get it."¹³

Likewise, for Bradley, Mill's utilitarianism is as flawed by being at odds with itself as egoistic hedonism is. The same incoherence plagues both, eliminating both as practical creeds. Millian utilitarians must answer whether or not my "private judgment" ought ever to override moral rules. If not, they must say why not. If it may, they must say why and when. If I may follow my private judgment once in some exceptional circumstance, why not twice? And if "here, why not there?" If anyone is ever permitted to use his "private judgement on any moral point, why may not I be the man, and this the case where I may?" In short: "To put the whole matter in two words; the precepts of Hedonism are *only rules*, and rules may always have exceptions; they are not, and, so far as I see, they can not be made out to be laws." And if they are mere rules, "I am not their servant, but they are mine" (my italics).¹⁴ Thus, Millian utilitarians either must insist that one always fanatically follow moral rules even when one is *convinced* that breaking them will promote general utility, in which case they concede the authority of the principle of utility. Or, alternatively, they must explain why breaking fundamental moral rules is

occasionally justified, in which case they concede the independent authority of their moral rules and effectively give up rule utilitarianism for just plain utilitarianism.

According to Bradley, if Millian utilitarians opt for the first alternative, insisting that one *never* violate moral rules, then they are committed to one of the two following assumptions: either 1) they must assume that following established moral rules always promotes utility without fail or 2) they must assume that one is never justified in violating these rules even when one knows that doing so will promote overall utility. In other words, I must assume that these moral rules are “infallible” or I must “sink my own view as to the right means to the given end,” taking these “rules as something which is not to be departed from.”¹⁵ Lyons, by the way and without appreciating that Bradley said exactly the same thing much earlier, says that Mill must “assume either of two things” if he regards rules as more than mere rules of thumb. He must suppose “either that, once the rules are justified, they must be followed; or else that particular cases simply cannot arise such that the justified rules require one thing and the direct application of the utilitarian standard to those cases requires another.”¹⁶

Now in Bradley’s view, both assumptions are unwarranted. We have no grounds for thinking that even the most carefully formulated system of moral rules will infallibly promote general utility regardless of exceptional circumstances. And, more importantly, there is no reason why utilitarians like Mill should not advocate breaking basic moral rules whenever they are sure that doing so will maximize utility. Consistency requires that they violate moral rules in such cases. Otherwise, their utilitarianism becomes incoherent or they have given it up. As Bradley rhetorically puts it:

I have taken all pains to form an opinion, and I am quite *certain* that my case is an exception. I have *no doubt* whatever that in this instance the breaking of a rule will increase the surplus [pleasure].... The moral end is clear; I, after having thought over all considerations up to my lights, am clear as to the means. What right have you, what right has the world to tell me to hold my hand, to make your uncertain opinion the standard rather than the certain end? How shall I answer for it to my own conscience if I do? *What is this rule that is to come between me and my moral duty?*.... Is it immoral then to break the rule; or rather is it not immoral to keep it, to sacrifice a real good to a mere idea (my italics)?¹⁷

In Bradley's view, then, Mill must regard utilitarianism's fundamental precepts as either rules or laws. If he regards them as mere rules, then they must be broken whenever breaking them unquestionably promotes utility, which saves the principle of utility as our overriding moral criterion. However, if they are indefeasible laws, then breaking them is never warranted regardless of *how* much utility is at stake and regardless of whether we are *certain* that breaking them will be for the utilitarian best. To quote Bradley again: "To put the whole matter in two words; the precepts of Hedonism are only rules, and rules may always have exceptions; they are not, and, so far as I see, they can not be made out to be laws. I am not their servant, but they are mine."¹⁸ In short, to make myself their servant is to abandon utility as the ultimate standard of right and to make them my servant amounts to depriving them of independent normative force as Lyons would much later say.

In his 1956 "Interpretation of Mill's 'Utilitarianism,'" J. D. Mabbott takes Mill to task exactly as Bradley did but without acknowledging his debts to Bradley. Like

Bradley, Mabbott refers to Mill's metaphor likening moral rules to land-marks or signposts and likewise asks what happens when we "cash" the metaphor? He writes: "The destination is the greatest happiness of the greatest number; the signpost the secondary rule. What happens when a signpost visibly fails to point the best route? Shall we neglect it?" According to Mabbott, Mill must say we cannot. He has to say that "there are occasions when, though, you see another route leads to the general happiness, you must follow the signpost—the secondary rule."¹⁹ That is, Mill must insist that we follow the rules of our utilitarian almanack without exception, which entails assuming either 1) that our almanack is "infallible" or 2) that even when our almanack's secondary principles fail to "provide sailing directions leading to the maximum happiness," we "should follow it" nevertheless.²⁰ And these assumptions are the very same ones Bradley, and Lyons subsequently, stipulated that Mill had to make as we saw above.

Notwithstanding Mabbott's unacknowledged debts to Bradley's criticism of Mill, the point of Mabbott's criticism is unmistakable. Mill's rule utilitarianism was simply incoherent in his view.. Either we never violate our secondary moral rules, thus compromising our commitment to utility as our overarching moral criterion, or we deny our secondary rules independent normative authority, rendering them merely toothless rules of thumb.

Bradley All Over Again

Some years ago, in *Forms and Limits of Utilitarianism*, Lyons suggested that the "child of both houses" of utility and obedience to rules had finally "come of age" in the guise of rule utilitarianism.²¹ And if indeed the child has come of age, then so too have its

detractors (Bradley notwithstanding) and often with such force that its most recent defenders have had to work hard to keep it compelling. Yet despite their very best efforts, at least one recent defender has conceded that in one notable respect, rule utilitarianism “comes up short.”

According to Hooker, rule consequentialism, and not just rule utilitarianism, primarily falls short insofar as it is indeterminate about *when* fundamental moral rules may be overridden for the sake of maximizing general good. For Hooker, rule consequentialism’s “prevent disaster” rule does *not* prescribe that we should break a promise when breaking it would produce only *a little* more good.”²² However, rule consequentialism tolerates violating moral rules, at least those against lying and promise-breaking, whenever a disaster looms. While the destruction of humanity unquestionably constitutes a disaster for Hooker, he is less certain what else counts as one. Here, rule consequentialism lacks precision, becomes indeterminate and has “nothing to appeal to but judgement,” which is just what Bradley earlier insisted.²³

In “Utility and Rights,” Lyons complains that neither legal nor moral rights can be accommodated with the principle of utility just as moral rules cannot. If rights really matter and possess independent moral force, then we should never violate them for the sake of promoting utility. Either rights trump promoting utility or promoting utility trumps rights. If rights trump utility, then utilitarianism vanishes. If utility trumps rights, then rights lose their independent normative standing and become meaningless. As noted earlier, one cannot have two ultimate moral criteria. One cannot take *both* utility and rights seriously. One must choose between them. To borrow from Lyons’ “Mary and her driveway” example, if I ought not to convenience myself by violating Mary’s property

rights in her driveway by blocking it without permission for a few hours surreptitiously in the middle of the night with my car, then I have forsaken the principle of utility. I have failed to make the world a better place by conveniencing myself with no loss of utility to anyone including Mary. On the other hand, if I ought to sneak in a few late-night hours parking in front of her driveway because blocking it conveniences me at no expense to anyone thus making the world a marginally better place, then I have utterly forsaken rights. If rights cannot even stand up against the most marginal promotion of utility, then they are empty. And if one is a *consistent* utilitarian, why should they? Why respect rights when you know for *certain* that violating them promotes utility no matter how minimally? As Lyons' alleges, "we have no reason to believe that a satisfactory utilitarian theory of *moral* rights and obligations can be developed."²⁴

In *Forms and Limits of Utilitarianism*, Lyons anticipates his later claim that rights and utility are irreconcilable but by taking aim at what he regards as rule utilitarianism's fundamental incoherence instead. Rules are incompatible with maximizing utility for the same principal reason rights are. Rule utilitarians must either view rules as mere rules of thumb or as indefeasible ideal rules. Rule utilitarians must either commit to "ideal" rule utilitarianism or to what, in effect, Geoffrey Scarre calls "conditional" rule utilitarianism.²⁵ If one commits to the latter, then rules are merely *de facto*. They are *de facto* because they feature what Lyons calls an "escape clause: follow the rules, indeed, but not when you know or are quite certain that breaking one will have better effects on the whole than keeping to it."²⁶ But this escape clause shows that rules are not "determinants of rightness or wrongness" but merely rules of thumb or "practical aids," which makes rule utilitarianism just act utilitarianism in sophisticated and ingenious

masquerade. And if one opts for ideal rule utilitarianism, then one's rules "are not practical guides, they are themselves *determinants* of rightness and wrongness." (my italics)²⁷ Or in Lyons latter terminology, they possess independent moral force that constrains the direct pursuit of utility, making the principle of utility no longer determining.

Now Hooker, as we have seen, says that rule consequentialism permits, and perhaps requires, the breaking of rules in order to prevent disaster as in the destruction of our species. But rule consequentialism proscribes breaking rules when anything short of disaster is at stake. In Lyons' terminology, whereas "minimal increments" of extra utility are not normatively "determine[ing]," very massive increments would be. For instance according to Hooker, rule consequentialism, "does *not* prescribe that we should break a promise when breaking it would produce only *a little* more good."²⁸ And as we have seen, Hooker concedes that drawing the line between what counts as a disaster and what counts as anything less is deeply problematic. Here, rule consequentialism is indeterminate, leaving us with nothing but "judgement" to appeal to. Here, rule consequentialism "comes up short."

The difficulty of where to draw the line between disaster and anything less, between "minimal" and "more-than-minimal" increments of utility, is really the daunting challenge of drawing the line at all. And this challenge, it seems to me, is precisely what threatens rule utilitarianism (if not versions of rule consequentialism such as Sen's) with incoherence. And, of course, it threatens Mill's utilitarianism as incoherent assuming that Mill was 1) indeed what *we* call a rule utilitarian and 2) admitted, according to

Mabbott, “what all would admit, that when the consequences of keeping a secondary rule are very bad indeed (or of breaking it very good) an exception may be made.”²⁹

Now rule utilitarianism’s incoherence problem rests upon a contingency that its critics, whether Bradley or Lyons more recently, have discounted, namely whether or not we know with *certainty* if breaking a rule (or violating a right) will produce more utility. Hooker even concedes that rule consequentialism, and not just rule utilitarianism, *seems* incoherent because it instructs us “to follow a rule though breaking it would do more good, if even only a *little more* good” (my italics). He continues: “If the ultimate goal is the maximization of good, is not it incoherent to follow rules when one *knows* this will not maximize the good? If rules are really merely a means to an end, how can one coherently stick to rules when one *knows* they will not serve that end in the situation at hand” (my italics).³⁰ So even rule consequentialism risks incoherence insofar as it instructs us to follow rules when we *know for certain* that breaking them would promote more goodness not matter how slight. If we happen to be uncertain, then consistency does not oblige our breaking rules but, on the contrary, uncertainty will usually prescribe following them as the better gamble. But if we are certain, then, as consistent consequentialists, we must break rules even if the goodness at stake is marginal. And if we refuse, then we become irrational rule worshipers. The accusation that rule consequentialism entails rule worship is simply an alternative way of insisting that rule consequentialism is incoherent.³¹

In sum, rule consequentialism’s inconsistency by Hooker’s own account of it would seem to turn upon how *certain* we happen to be about whether violating a rule promotes goodness. If we are uncertain in a particular case, then we are not necessarily

acting inconsistently in following an established moral rule. But if we are *certain* absolutely that violating a particular rule will promote goodness, even just barely, then we have little choice but to swallow our tried and true moral decision procedure in this case and opt for breaking the rule. For rule consequentialists, then, the “moral force” of rules is a function of the degree of our knowledge or certainty about what follows from breaking them, which is to say that perfectly omniscient rule consequentialists would not need rules (or moral rights) as stand-in decision procedures at all. Being omniscient, following rules would be immoral at worst and redundant at best. No longer handicapped, we could throw away our rule crutches and stride proudly into the teeth of our moral dilemmas, unrepentant and enthusiastic act consequentialists, fully aware that our moral dilemmas were hardly dilemmas after all.

Smart has suggested that in the real world, act utilitarians will do well to follow moral rules most of the time even if breaking them might be occasionally the utility-promoting thing to do. Referring to McCloskey’s famous example of a small town, act-utilitarian sheriff framing an innocent person in order to forestall a riot in which hundreds might be killed, Smart concedes unhappily that the sheriff’s actions would be justified in principle. That is, it is contingently possible that such a predicament could arise in which the sheriff somehow knew absolutely that framing an innocent would prevent a deadly riot that he also somehow knew with certainty would otherwise occur. Smart concludes that to be “consistent, the utilitarian must accept McCloskey’s challenge,” adding that we should “hope that the sort of possibility which he [McCloskey] envisages will always be no more than a logical possibility and will never become an actuality.”³²

Now Smart's reluctant confession is just another way of averring that rule utilitarianism is deeply problematic. It seems that it cannot truly be "in earnest with its rules" as Bradley would say. It cannot take moral rules or moral rights seriously granting them independent moral force in principle. As Stephen remarked and Bradley concurred, a "given road may be the direct way from one place to another, but that fact is no reason for following the road when you are offered a short cut." And when we are *sure* about the short cut, then stubbornly following the road seems irrational. Short cuts in real life are rare and, if we are rule utilitarians, we should probably be thankful for that.

Trust Within Reason

In *Trust Within Reason*, Martin Hollis wonders how social life can be possible at all if we are, in fact, truly rational individuals. Social life requires that we trust each other to keep promises and follow rules. If we only kept promises and obeyed rules as long as we could not do better by breaking either, then the institutions of promising and rule following would collapse and so would society in turn. Promising, for instance, "works only if promises are kept *just because they have been made.*" The "particular problem... is keeping promises even on occasions when an assessment of consequences, as measured by the expected utility of their pay-offs, bids us defect."³³ Echoing Hume, Hollis concludes that prudence makes us all sensible knaves who are "not be trusted when trust depends on a normative expectation that they will act contrary to the dictates of their overall utility, as when keeping a promise which prudence deems better broken." Hence, "promises and agreements [including moral rules which are agreements

presumably], when represented in consequential terms, lose their power to bind a rational agent.”³⁴

Now Hollis faults rule utilitarianism for their “all-but Kantian” justification of stringent duties. For rule utilitarians, our duties to follow moral rules are merely Kantian-like because they are grounded in whether or not fulfilling them promotes felicitous consequences. Hence, if they “recommend sticking to principles regardless of consequences, then they are no longer utilitarians” and if they don’t, the “artifice fails.”³⁵ Either rule utilitarians must mimic Kantianism by never violating moral rules, in which case they forgo utilitarianism or they must concede that violating rules is sometimes justified, in which case their Kantianism all but disappears. Either rule utilitarians must give up their consequentialism or they must cease posing as Kantians. Rule utilitarians, then, are impossibly “engaged in an artificial exercise to get philosophical egoists to adopt an impartial standpoint.”³⁶

Hollis’ dissatisfaction with rule utilitarianism is fundamentally no different from Lyons or Bradley’s for that matter. Rule utilitarianism is simply incoherent for the same reasons Lyons, and Bradley long before him, have insisted. But by taking up this incoherence problem as part of the larger problem of trust within reason, Hollis reveals how the former is really just a version of the latter. In other words, if we are truly rational egoists, then why abide by our agreements whenever it’s to our advantage not too. Why honor a promise or respect a rule in a particular case when violating either pays even if only marginally? After all, the *only* reason for keeping promises and respecting moral rules is that doing so generally pays in added utility. So trust is unreasonable for the very reason that rule utilitarianism is incoherent... unless, of course, we are really not

rational egoists after all! And even if we are not rational egoists, but universal hedonists instead, trust remains just as unreasonable for why honor promises or respect moral rules when doing so in a particular case is not so much to one's selfish advantage but is not to the advantage of general utility? All forms of rule utilitarianism, whether egoistic or universal, would thus seem incoherent. And refusing to admit this makes trust seemingly so irrationally paradoxical. Maybe we are no less universal hedonists than we are rational egoists!

Morality, Prudence and the Art of Life

What Mill has to say about the Art of Life in the last chapter of Book VI of *The System of Logic* may provide some insight into how he could have approached the incoherence objection, or at least early versions of it such as Bradley's. There Mill divides the Art of Life into 1) Morality or moral obligations consisting of perfect duties of justice and imperfect duties, 2) Prudence or simple expediency and 3) Aesthetics or beauty.³⁷ Insofar as Mill holds that we have perfect duties to respect the security and freedom of others and insofar as these perfect duties entail correlative rights, then all individuals have indefeasible rights to security and freedom that always trump whatever other obligations we may have. That is to say, these two fundamental rights may never be overridden for the sake of simple expediency as well as for the sake any other moral or aesthetic considerations. Hence, expedient shortcuts may *never* be taken if they

necessitate trampling basic rights to security and freedom. We must *always* navigate through life strictly following at least the most basic rules of our moral almanack.

Mill continues that while each of the three departments of the Art of Life is constructed around its own “paramount” normative end, these departmental ends may clash, requiring some “ultimate standard” to settle their incompatibility and rendering them consistent. Whatever it is, this standard must be “but one; for if there were several ultimate principles of conduct, the same conduct might be approved by one of those principles and condemned by another; and there would be needed some more general principle as umpire between them.” And “if that principle be rightly chosen, it will be found, I apprehend, to serve quite as well for the ultimate principle of Morality, as for that of Prudence, Policy, or Taste.” Not surprisingly, that “general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings...”³⁸

The principle of utility, then, resolves conflicts arising whenever the separate “paramount” ends of morality, prudence and aesthetics clash. In other words, considerations of morality, especially rights to security and freedom, always override considerations of prudence as well as considerations of aesthetics. But what are we to do when morality clashes with our “ultimate standard,” namely the principle of utility? What are we to do when basic rights to security and freedom commend us to one thing and our “umpire” instructs us to do the opposite?

Mill does not say though he insists that there may be occasions when we should cultivate Aesthetics (the Noble) at the cost of not promoting utility:

I do not mean to assert that the promotion of happiness should be itself the end of all actions, or even of all rules of action. It is the justification, and ought to be the controller, of all ends, but is not itself the sole end. There are many virtuous actions...by which happiness in the particular instance is sacrificed, more pain being produced than pleasure. But conduct of which this can be truly asserted admits of justification only because it can be shown that on the whole more happiness will exist in the world if feelings are cultivated which will make people, in certain cases, regardless of happiness. I fully admit that this is true: that the cultivation of an ideal nobleness of will and conduct should be to individual human beings an end, to which the specific pursuit either of their own happiness or of that of others...should, in case of conflict, give way. But I hold that the very question, what constitutes this elevation of character, is itself to be decided by a reference to happiness as the standard. The character itself should be, to the individual, a paramount end, simply because the existence of this ideal nobleness of character...in any abundance, would go further than all things else towards making human life happy, both in the comparatively humble sense of pleasure and freedom from pain, and in the higher meaning of rendering life...such as human beings with highly developed faculties care to have.³⁹

Now if considerations of nobility (Aesthetics) can sometimes override considerations of utility, then surely rights to security and freedom (Morality) can. And presumably they *always* do for those who interpret Mill as holding these rights absolutely sacrosanct.

But what if catastrophe looms? What if the only way to avoid some unmitigated disaster requires decisively taking a shortcut violating at least one person's rights to

security and freedom? Appealing to Mill's theory of the Art of Life, Alan Fuchs thinks that while Mill does not permit violating basic rights or moral rules to maximize utility on particular occasions, he nevertheless "would allow exceptions" if respecting them "would lead to a disaster or catastrophe."⁴⁰ So for Fuchs, basic moral rights are not indefeasible for Mill after all and we are left wondering how disastrous a disaster has to be to justify overriding them? How much expediency has to be at stake in order to excuse taking a rights-violating shortcut?

Catastrophe notwithstanding, Mill also implies in *A System of Logic* that Morality may not be so sacrosanct after all. Less than looming disaster might be enough to override basic rights. In the sub-section "Art Cannot be Deductive" of Chapter 12, Mill warns:

The error is therefore apparent of those who would deduce the line of conduct proper to particular cases from supposed universal practical maxims, overlooking the necessity of constantly referring back to the principles of the speculative science, in order to be sure of attaining even the specific end which the rules have in view. How much greater still, then, must the error be of setting up such unbending principles not merely as universal rules for attaining a given end, but as rules of conduct generally; without regard to the possibility, not only that some modifying cause may prevent the attainment of the given end by the means which the rule prescribes, but that success itself may conflict with some other end, which may possibly chance to be more desirable.⁴¹

Here moral rules are always defeasible depending upon whether they actually promote their end, presumably general happiness. Assuming that Mill means all moral rules, then

moral rights to security and freedom are defeasible, which risks stripping them of independent normative force though this defeasibility insures that Mill's utilitarianism remains coherent. But Mill may not be thinking of the Art of Life and its end, general happiness, at all but instead merely has in mind the subsidiary ends and rules of the departments of Prudence and Aesthetics. This saves the indefeasibility of rights to security and freedom but renews the worry that Mill is reasoning incoherently.⁴²

Utilitarianism, Consequentialism and Interpreting Mill

Contemporary rule utilitarianism is controversial not least for criticisms like Lyons'. But whether Lyons' criticisms, echoed by others as we have seen, apply to Mill depends upon whether Mill was indeed a rule utilitarian as we have since come to understand rule utilitarianism. Some contemporary scholars deny that he was and instead insist that he was fundamentally an act utilitarian for whom moral rules were merely conditional rules of thumb advising us how we ought to act but not irrevocably binding us in all circumstances. Being "provisional," they do not "supersede the propriety of going through (when circumstances permit) the scientific process requisite for framing a rule from the data of the particular case before us."⁴³

Other contemporary scholars agree that Mill was unquestionably a rule utilitarian, citing as Fuchs does for instance, *Utilitarianism* where Mill says that "in the case of...things which people forbear to do from moral considerations, though the consequence in the particular case might be beneficial--- it would be unworthy of an intelligent agent not to be consciously aware that the action is of a class which, if practiced generally, would be generally injurious, and that this is the ground of the

obligation to abstain from it.”⁴⁴ Agreeing with Richard Brandt, moreover, Fuchs also holds that Mill defended a form of rule utilitarianism that we now refer to as ideal moral code utilitarianism, which considers rules as “component parts of a more complex *ideal moral code*, a set of rules that together *would* maximize utility if it was adopted and followed by the overwhelming majority of the members of a society.”⁴⁵ But while Brandt interprets Mill as permitting violating fundamental moral rules in extreme circumstances whenever considerable utility is clearly at stake, Fuchs holds that Mill regarded certain basic moral rules as indefeasible, citing *A System of Logic* where Mill says: “Such, for example, is the rule of veracity; [or] that of not infringing the legal rights of others; and so forth; concerning which it is obvious that although many cases exist in which a deviation from the rule would in the particular case produce more good than evil, it is necessary for general security...that the rules should be inflexibly observed.”⁴⁶

Jonathan Riley is likewise convinced that Mill was a rule utilitarian for whom moral rules protecting our most vital interests were absolute and indefeasible. But in contrast to Brandt and Fuchs, Riley interprets Mill as giving absolute priority to a limited set of equal rights and liberties such as the unconditional right to act as one pleases in purely self-regarding ways.⁴⁷ For Riley, Mill successfully combines stringent moral rights with utility thus showing how utilitarianism need not forgo being robustly liberal. Certain rights (to security and freedom) may never be overridden whether in the name of marginal or even massive utility. And when used to modify and improve Harsanyi’s rule utilitarianism, which Riley finds otherwise compelling, Mill’s liberal utilitarianism reveals just how relevant and fecund it continues to be. For Riley, the most compelling version of contemporary liberal utilitarianism amends Harsanyi looking back to Mill:

“The idea (of Riley’s own version of liberal utilitarianism) is that the acts and omissions permitted by... basic claim-rights or compelled by the correlative obligations are of a far more valuable kind than any competing acts or omissions. A way to ensure that this extremely valuable kind of conduct receives such absolute protection within the code requires modification of the orthodox expected utility theory adopted by Harsanyi.”⁴⁸ Like Mill, Harsanyi is just as committed to a “comprehensive moral strategy, independent of action-by-action maximization of social utility” that recognizes the “morally protected individual rights and obligations.” But unlike Mill (or at least unlike Riley’s account of Mill), Harsanyi allows that considerations of social expediency can override even the most basic moral rights in “very exceptional conditions.” For Harsanyi, fundamental individual rights and obligations possess “*full* moral validity (my italics).” In contrast to act utilitarianism, rule utilitarianism “*fully* recognize(s) the moral validity” of essential moral rights and their correlative obligations (my italics).⁴⁹ But *full* moral validity for Harsanyi nevertheless does not constitute infeasible moral validity, which Riley, following Mill, insists it should if utilitarianism is to remain genuinely liberal. For Riley presumably, once we open the door to overriding rights in exceptional circumstances when enormous amounts of utility is at issue, then we open the floodgates of expediency, risking transforming rule utilitarianism into act utilitarianism. And once that happens, utilitarianism forfeits its liberal credentials. Why ever foolishly follow the “road when you are offered a short cut” no matter how extensive or small? Why stick to our nautical almanack when we can do better by some alternative course?

Now whether or not utilitarianism can successfully accommodate rights with independent moral force and whether or not liberal utilitarianism is therefore incoherent

may not hold for other varieties of consequentialism. Utilitarianism is after all one version of consequentialism among others albeit the most prominent and commonplace version. Amartya Sen has argued that utilitarians arbitrarily exclude respect for rights (as well as other goods) from states of affairs being evaluated. By artificially restricting the domain of evaluation to happiness or pleasure, they reduce rights to merely instrumental value, effectively stripping them of independent normative force. Hence, a “utilitarianism of rights would indeed be contradictory, whereas a “consequentialism of rights need not be.”⁵⁰ And this is as much to say that utilitarianism cannot take rights seriously after all. It may feign otherwise but in order to remain consistent and therefore coherent, rights must always give way to utility whenever respecting them is clearly counterproductive. So, in effect then, liberal utilitarianism may well be hopelessly problematic but not liberal consequentialism. As Sen reminds us, a state of affairs is “informationally” rich:

There is no particular reason to insist on an impoverished account of a state of affairs in evaluating it. Also, the reach of consequential reasoning can incorporate *processes* of choice, and not merely the narrowly defined ultimate outcomes. In the context of decision theory and rational choice, I have argued for the importance of paying particular attention to “comprehensive outcomes” (including actions undertaken, processes involved, and the like *along with* the final outcomes), instead of confining attention to only the “culmination outcome” (what happens at the very end).⁵¹

By “comprehensive” outcome “processes,” Sen clearly means basic rights. Whereas “culmination” outcome consequentialism excludes “process” rights from the state of

affairs assessed, “comprehensive” outcome consequentialism includes them. “Culmination” outcome consequentialism instrumentalizes rights, depriving them of independent normative value (or independent normative force as Lyons would say). “Culmination” outcome consequentialism, including especially its *utilitarian* varieties, therefore cannot take rights seriously, rendering *liberal utilitarianism* deeply problematic. And this is as much to say that while all versions of *liberal utilitarianism* may well be incoherent, some versions of *liberal consequentialism* need not be. But, of course, whether Mill was anything of the kind is an inappropriate question since these analytical distinctions were not available to him and might not have even made much sense to him. For us to interpret Mill as a liberal consequentialist in Sen’s sophisticated sense reads into Mill anachronistic analytical distinctions. Even interpreting him less ambitiously as some kind of liberal utilitarian risks reading him anachronistically since liberal utilitarianism is likewise a contemporary analytical preoccupation. But Mill should nevertheless have confronted what we now call the incoherence problem with liberal utilitarianism since his contemporary opponents like Bradley raised it but without deploying our analytical terminology.

Conclusion

While many contemporary Mill scholars (moral philosophers and *not* political theorists) have explored the purported incoherence of Mill’s purported rule utilitarianism with nuanced skill and logical rigor, Mill’s contemporary critics like Bradley had long before identified this problem as elemental for Mill. Though Bradley knew nothing of what *we* call rule utilitarianism and rule consequentialism so admirably defended recently with

great analytical precision by Hooker, Harsanyi, Brandt and others, he could see well enough that Mill's efforts to marry utility and stringent rights was problematic. Though philosophical analysis and, with it, sophisticated versions of both rule utilitarianism and rule consequentialism had yet to be invented, Bradley identified problems in Mill that contemporary rule utilitarians and rule consequentialists are still struggling to address.

Many contemporary moral philosophers have criticized rule utilitarianism for being normatively schizophrenic, sometimes if not often, instructing us to obey a rule or respect a right when we know, or are convinced we know, that doing so will not maximize goodness regardless of how marginally. For them, it directs us to do what we shouldn't. It stipulates that we maximize goodness and that we not maximize it. Why should we follow a rule or obey a right when we are absolutely certain that doing otherwise is for the consequentialist best? Why shouldn't we break the rule or violate the right when we are convinced that either great benefit will ensue or enormous disaster will be avoided? And why not as well break the rule or violate the right when we are just as convinced that very small benefits will follow or very small penalties will be evaded?

So rule utilitarianism, whether Mill's early version or later more sophisticated kinds, may founder on "strange tangles" as Bradley long ago said and as its more recent critics have reminded us though without ever acknowledging Bradley. Still, rule utilitarianism, and most certainly sophisticated versions of rule consequentialism such as Sen's, are surely no worse than their rivals and probably better. As Mill reminds us, "Though the application of the standard [of utility] may be difficult, it is better than none at all: while in other systems, the moral laws all claiming independent authority, there is no common umpire entitled to interfere between them" thus affording "free scope for the

action of personal desires and partialities.”⁵² We may well be fated to irreconcilable values as liberal value pluralists like Berlin and Galston, as well anti-foundationalist liberals like Rorty, hold. But following Mill (and Sen just as surely), this does not in itself excuse us from trying to bring a measure of system and coherence to our practical reasoning especially with respect to major moral dilemmas we face.⁵³

Rule utilitarianism, then, may indeed be incoherent when either the stakes are *high* or when we are *certain* that marginal utility can be promoted by violating some fundamental moral rule though, paradoxically, it may be no less problematic than rival moral theories. For rule utilitarians, notwithstanding whether Mill was or was not one, some actions, especially *low-stake* ones, may be “both the right one to have chosen and the wrong one to have done” *as long as we don’t know for certain* what the right thing to have done was.⁵⁴ But when and if we do, which fortunately may be rare, then we may have no choice but to violate our rules by choosing wrongly in order to do rightly, revealing rule utilitarianism’s incoherence problem in plain view.

Whether such occasions will be as bizarre as they rare, as Smart and Hare insist, is less than certain. We should feel even more fortunate if they also happen to be bizarre. Being both bizarre and rare *hardly* “proves nothing” contrary to Hare. Even so, and happily for us, “a sound moral upbringing is designed to cater for cases that are likely to occur, and a well-brought-up man will be in some perplexity if confronted in real life (not in philosophy books) with bizarre examples.”⁵⁵

Interpreting liberalism renarrates it continuously for every interpretation is a rational reconstruction. And this goes for Mill’s liberalism as much as anyone’s. Moreover, because the liberal tradition is so conceptually rich and flexible, as Michael

Freeden has insisted repeatedly, interpreting it is never easy and always fraught with risks and temptations. I would add that the liberal tradition's richness and flexibility makes it exceptionally unwieldy thus understandably tempting many of its contemporary proponents and critics to streamline and telescope it according to their favorite analytical preoccupations. This goes for Rawlsian liberals, particularly political theorists, whenever they bother with utilitarianism or remember that Mill wrote much else besides *On Liberty*. Mill, so they have mostly forgotten, was a utilitarian liberal above all else though not a "rule" utilitarian quite the way we have come to understand, defend and criticize rule utilitarianism. And those of us who look back to him for guidance in trying to accommodate stringent moral rules (or stringent moral rights) with utility should not be surprised that Mill's contemporary critics like Bradley anticipated many of later rule utilitarianism's problems, like the incoherence objection, that its opponents continue to press against it with such false novelty.

But even as we look to Mill for guidance in our efforts to formulate more complex versions of liberal utilitarianism, we should guard against reading our improved versions back into Mill. Moreover, contemporary critics of liberal utilitarianism should be no less wary of transforming Bradley's criticisms of Mill into duplicate anticipations of their own criticisms. Mill and Bradley's philosophical context was other than our own. How could Mill's thinking not seem tangled, if not confused, from our much later analytical philosophizing about liberal utilitarianism? How could he not seem confused at times to us for after all he lacked some of the analytical apparatus that we now take for granted and deploy in defending and taking rule utilitarians to task?⁵⁶ We should not pretend that Mill was somehow speaking directly to us armed as we are with conceptual

distinctions and categories which he was not armed with. Hence, maybe Mill was neither a rule utilitarian nor a liberal utilitarian, and certainly not a liberal consequentialist, as *we* now use these terms. Much recent debate about what Mill was or was not has therefore been anachronistically misconceived in all likelihood.

Too much Mill scholarship today confuses what Mill actually said with what he might have said had he read not just his contemporary critics like Bradley but 20th and 21st century critics of liberal utilitarianism like Lyons. We should not read *our* improvements of Mill, such as Brandt, Hooker or Riley's, as if this improved Mill was in fact Mill. And we certainly should avoid reading non-utilitarian versions of consequentialism, such as Sen's "comprehensive" consequentialism, back into Mill. As compelling as Sen's efforts in combining liberalism and consequentialism may be, Mill was not doing anything of the kind. He could not have been doing anything of the kind simply because consequentialism had yet to be invented as a broad category of contemporary practical reasoning. This is not to say that we cannot find things in Mill that seem to *anticipate* Sen, or that Sen causes us to read Mill critically in new ways. But it is to affirm that Mill was not really a consequentialist however much he looks like one to us in retrospect.

Endnotes

¹ Amartya Sen, *Rationality and Freedom* (Cambridge: Harvard University Press, 2002), 46 and 51.

² F. H. Bradley [1876], *Ethical Studies* (Oxford: Oxford University Press, 1988), 104.

³ For a more comprehensive discussion of Bradley's claim that maximizing pleasure is incoherent and therefore futile, see my *Utilitarianism and the New Liberalism* (Cambridge: Cambridge University Press, 2007), especially chapter 1.

⁴ Samuel Scheffler, "Introduction," in *Consequentialism and Its Critics*, ed. Samuel Scheffler (Oxford: Oxford University Press, 1988), 8.

⁵ See Alan Ryan, *The Philosophy of John Stuart Mill* (London: Macmillan Press, 1987), 223 and 228; John Charvet, *A Critique of Freedom and Equality* (Cambridge: Cambridge University Press, 1981), 94-5; John Gray, "Mill's and Other Liberalisms," in *Liberalisms: Essays in Political Philosophy*, ed. John Gray (London: Routledge, 1989),

218-24; John Gray and G. W. Smith, "Introduction," in *J. S. Mill on Liberty in Focus*, eds. John Gray and G. W. Smith (London: Routledge, 1991), 12; David Lyons, *Forms and Limits of Utilitarianism*, (Oxford: Oxford University Press, 1965), 136-60 and David Lyons, "Utility and Rights," in *Ethics, Economics and the Law*, eds. John W. Chapman and J. Roland Pennock (New York: New York University Press, 1982), *Nomos* 24.

⁶ J. S. Mill [1861], *Utilitarianism*, in *Collected Works of John Stuart Mill*, vol. X, ed. J. M. Robson, (Toronto: University of Toronto Press, 1969), 224-5.

⁷ *Ibid.*, 224.

⁸ According to Michael Freeden, for whom Mill was "pivotal" to the development of modern liberalism, Mill "shifted rights to a relatively peripheral and marginal position." Their "inviolability was not central to a universal theory of political society; rather, their broad utility was proportionate to their role in fostering individuality." Rights were "no longer fastened to the core concept of liberty in such a way as to protect the latter from redefinition." See Michael Freeden, *Ideologies and Political Theory* (Oxford: Oxford University Press, 1996), 163. Presumably, then for Freeden, rights were peripheral because they were merely instrumental in promoting "individuality" and "general interest," which are two of Freeden's seven core liberal concepts. Thus, promoting the latter would seem to trump respecting rights whenever respecting rights was sub-optimal, turning rights into mere rules of thumb. Freeden therefore does not seem to regard Mill's liberalism as being at war with his utilitarianism though he seems to see Mill as a liberal much more than as a utilitarian. Freeden may be reading Mill too much through the lens of Hobhouse, who was much influenced by Mill. For Mill's view that fundamental moral rights singled out our most important moral rules and therefore constituted justice, see

Mill, *Utilitarianism*, 255, where he says: “Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation.” How obligations can be “*more* absolute” is unclear. Either they are “absolute” or they are not just like someone is either pregnant or not. Perhaps Mill means to say here that certain obligations are very stringent though ultimately not indefeasible insofar as they can occasionally be overridden in extreme circumstances. But what makes a circumstance sufficiently extreme is precisely the problem, which goes to the heart of the allegation that Mill’s utilitarianism is incoherent.

⁹ William Whewell [????????????], *Lectures on the History of Moral Philosophy* (Cambridge: Deighton, Bell, 1862), [????] For Mill’s response to some of Whewell’s criticisms, though not the inconsistency objection, see J. S. Mill, “Dr. Whewell on Moral Philosophy,” in *Collected Works of John Stuart Mill*, vol. X. Also see J. B. Schneewind, *Sidgwick’s Ethics and Victorian Moral Philosophy* (Oxford: Oxford University Press, 1977), 168-74, for Whewell’s criticisms of Paley, Bentham and Mill.

¹⁰ James Fitzjames Stephen, “Note on Utilitarianism,” in James Fitzjames Stephen [1874], *Liberty, Equality and Fraternity* (Chicago: University of Chicago Press, 1990), 277.

¹¹ Bradley, *Ethical Studies*, 105 and 108.

¹² *Ibid.*, 102. One should note that Mill did not respond to Bradley’s criticisms of him because *Ethical Studies* was published in 1876 or three years after Mill died. And though

Stephen's *Liberty, Equality and Fraternity* also appeared in 1874 after Mill's death, a version of "A Note on Utilitarianism" was nevertheless published in the *Pall Mall Gazette* in 1869. So Mill was probably familiar with Stephen's version of the incoherence objection.

¹³ Ibid., 102. In sum, egoistic hedonism is neither "in earnest" with its rules nor its ends because we "are not to think about the rules, except as servants which may be useful or worthless; and about the end perhaps the less we think the better." (102).

¹⁴ Ibid., 109. Bradley immediately adds: "And, so far as my lights go, this is to make possible, to justify, and even to encourage, an incessant practical casuistry; and that, it need scarcely be added, is the death of morality."

¹⁵ Ibid., 106.

¹⁶ Lyons, "Utility and Rights," 125.

¹⁷ Bradley, *Ethical Studies*, 107-8.

¹⁸ Ibid., 109. Earlier in the same paragraph, Bradley complains: "The relation of the means to the [Hedonist] end is matter of opinion, and it can not be more than matter of opinion. The opinion of any number of persons is still only an opinion. The end I am certain of. As to the means, I have nothing but the opinion of myself and others. The last appeal is to my private judgement (as Brad Hooker has likewise recently conceded as we shall momentarily see). Now my private judgement may assure me that in 999 cases out of 1,000 it contributes more to the end that I should not exercise my private judgement. It *may* assure me that, being what I am, it will contribute to the surplus if I never use my private judgement. But it need not so assure me. It may assure me that in the thousandth case I had better use my private judgement.... The question is one of morals; *ought* my

private judgement ever to come into collision with general opinion, as in fact it sometimes does and must? If not, why not? If it may, then ought I in such cases ever to follow it? and, if not, why not? If I may follow it in my own case once, why not twice?"

¹⁹ J. D. Mabbott, "Interpretations of Mill's 'Utilitarianism,'" *The Philosophical Quarterly* 23 (April, 1956): 117.

²⁰ *Ibid.*, 117. Also see 116 where Mabbott criticizes Mill's rule utilitarianism on two additional grounds. First, Mabbott wonders what Mill means when he allows that we may appeal directly to the principle of utility when two moral rules conflict. Does he mean that keeping one rule over the other would "in general" promote more good or does he mean that keeping one over the other merely promotes more good "on this particular occasion?" If Mill means the latter, then he could just as well ignore any reference to moral rules, asking simply whether "act A which happens to accord with rule X will do more good than act B which happens to accord with rule Y." In other words, if Mill means the latter option, then moral rules are merely unauthoritative rules of thumb. Secondly, Mabbott says that Mill also allows that moral rules may be overridden if the consequences of not doing so are "very bad indeed." But he wrongly assumes, according to Mabbott, that whenever high stakes are at issue, some secondary moral rule is always opposed to acting in accordance with protecting or promoting these high stakes, which is erroneous. Mabbott also might have wondered *how* high the stakes had to be to warrant overriding moral rules. I shall address this criterion problem in a subsequent section.

²¹ Lyons, *Forms and Limits of Utilitarianism*, vii.

²² Brad Hooker, *Ideal Code, Real World* (Oxford: Oxford University Press, 2000), 131

²³ *Ibid.*, 133.

²⁴ Lyons, "Utility and Rights," 135. Also see 128 where Lyons says: "For nothing in the idea that welfare is to be promoted restricts the application of the standard of utility to social rules or institutions. If such a restriction is *adopted* by a theorist who sees himself as working within the utilitarian tradition, that involves the *addition* of a factor that a utilitarian is not obliged to accept, either by the constraints of logic or by the normative implications of his theory. In the absence of such a factor, a utilitarian cannot ignore direct utilitarian arguments."

²⁵ Geoffrey Scarre, *Utilitarianism* (London and New York: Routledge, 1996), 125-4.

²⁶ Lyons, *Forms and Limits of Utilitarianism*, 148-9.

²⁷ *Ibid.*, 150.

²⁸ Hooker, *Ideal Code, Real World*, 131.

²⁹ Mabbott, "Interpretations of Mill's 'Utilitarianism,'" 116.

³⁰ Hooker, *Ideal Code, Real World*, 99-100.

³¹ See "An Outline of a System of Utilitarian Ethics," in J.C.C. Smart and Bernard Williams, *Utilitarianism For and Against* (Cambridge: Cambridge University Press, 1973), 10. Smart writes: "Briefly they (the objections to rule utilitarianism) boil down to the accusation of rule worship: the rule-utilitarian presumably advocates his principle because he is ultimately concerned with human happiness: why then should he advocate abiding by a rule when he *knows* that it will not in the present case be most beneficial to abide by it? The reply that in most cases it is most beneficial to abide by the rule seems irrelevant.... Hence to refuse to break a generally beneficial rule in those cases in which it is not most beneficial to obey it seems irrational and to be a case of rule worship" (my italics). For Smart, then, rule utilitarianism's irrationality, or incoherence, turns on

whether we are absolutely *certain* that breaking a particular rule will maximize utility. If we know for certain that it will and we nonetheless stubbornly follow the rule, then we are acting irrationally insofar as we claim to be utilitarians. Smart also concludes that “adequate” rule-utilitarianism is therefore not simply “extensionally equivalent” to act-utilitarianism as Lyons argues but that it is actually “identical” to it. (11-2). I am inclined to agree. Also see Allan F. Gibbard, “Rule-Utilitarianism: Merely an Illusory Alternative,” *Australasian Journal of Philosophy* 43 (1965): 215, where Gibbard says that insofar as “we can imagine a situation where all actions are AU-right, but not RU-right, then reduction of rule-utilitarianism to act-utilitarianism does not hold....” That is, rule utilitarianism would be incoherent. See, as well, L.W. Sumner, *The Moral Foundation of Rights* (Oxford: Oxford University Press, 1987), 196, where Sumner says that because “constrained” utilitarianism “accords independent deliberative weight to rights, it seems to acknowledge their moral force.” By “seems,” I take it that Sumner is suggesting that “constrained” utilitarianism really cannot take moral rights seriously if it wants to avoid inconsistency. It just feigns taking them seriously. Whether this holds as well for rule consequentialism, we shall shortly see.

³² Smart, “An Outline of a System of Utilitarian Ethics,” 72.

³³ Martin Hollis, *Trust Within Reason* (Cambridge: Cambridge University Press, 1998), 23. Hollis continues: “The stronger the bond of trust, the more a society can progress; the more it progresses, the more rational its members become and hence the more instrumental in their dealings with one another; the more instrumental their relations, the less trustworthy they are. So the progress of reason erodes the bond which made it possible and which it continues to need.”

³⁴ Ibid., 69-70.

³⁵ Ibid., 91.

³⁶ Ibid., 91. In other words, “Hence, self-interested individuals are not congruent with Kant’s autonomous individuals.” (97).

³⁷ J. S. Mill [1872], *A System of Logic*, in *Collected Works of John Stuart Mill*, vol. VIII, ed. J. M. Robson (Toronto: University of Toronto Press, 1974), 949. Mill also refers to these three departments respectively as “the Right, the Expedient and the Beautiful or Noble.”

³⁸ Ibid., 951.

³⁹ Ibid., 952.

⁴⁰ Alan E. Fuchs, “Mill’s Theory of Morally Correct Action,” in *The Blackwell Guide to Mill’s Utilitarianism*, ed. Henry R. West (Oxford: Blackwell, 2006), 154. Also see Brandt, “Utilitarianism and Moral Rights,” 4. Fuchs also speculates that a “Millian” rule utilitarian could avoid appealing to act utilitarianism (and thus avoid reasoning incoherently) when disaster looms simply by building disaster-avoiding exceptions into their rules. The exception thus “becomes a part of the correct moral precept, and therefore invoking it would not really constitute a violation of the optimific, revised rule at all.” (154). Similarly, Jonathan Riley has suggested to me that rule utilitarianism can avoid inconsistency simply by including the rule that rules may be overridden in exceptional circumstances. But this kind of rule utilitarianism, it seems to me, risks collapsing into single rule utilitarianism, namely always follow the rule of maximizing utility. This version of rule utilitarianism avoids incoherence by making rule utilitarianism hard to distinguish from act utilitarianism. In any case, whether Mill, as

opposed to subsequent “Millians,” actually made these moves recommended by Fuchs and Riley is another matter. And if he did not, then these moves can’t be part of his “theory of morally correct action” as Fuchs’ essay title suggests. Adding, as Fuchs does, that “one still could argue that Mill need not revert to act-utilitarian grounds for making the exception” hardly helps unless Mill himself actually did not by following the move that Fuchs says Millians could make. When practicing intellectual history, always avoid confounding what a particular philosopher *actually* said with what he *could have said* or with what his or her followers *said or could have said*.

⁴¹ Mill, *A System of Logic*, 946. Rules of conduct should only be regarded as “provisional.” They “point out the manner in which it will be lest perilous to act” most of the time “where time or means do not exist for analyzing the actual circumstances of the case, or where we cannot trust our judgment in estimating them.” (946).

⁴² For additional evidence that Mill considered moral rights to security and freedom defeasible, see my *Equal Freedom and Utility* (Cambridge: Cambridge University Press, 1998), chapter 4. There, I show that Mill regarded his version of utilitarianism as fundamentally identical to Herbert Spencer’s except that, according to Mill, moral rights were defeasible for him whereas they were indefeasible for Spencer.

⁴³ Mill, *A System of Logic*, 946. For accounts that interpret Mill as an act utilitarian, see Fred Berger, *Happiness, Justice and Freedom* (Berkeley: University of California Press, 1984); D. G. Brown, “Mill’s act-utilitarianism,” *Philosophical Review* 24 (1974) and Roger Crisp, ed., *J. S. Mill’s Utilitarianism* (Oxford: Oxford University Press, 1998). Also see Fuchs, “Mill’s Theory of Morally Correct Action,” for arguments for and against interpreting Mill as either an act or rule utilitarian.

⁴⁴ Mill, *Utilitarianism*, 220.

⁴⁵ Fuchs, "Mill's Theory of Morally Correct Action," 145.

⁴⁶ Mill [1843], *A System of Logic*, Appendix H, 1155. For Brandt's account of Mill, see Richard B. Brandt, "Utilitarianism and Moral Rights," *Canadian Journal of Philosophy* XIV (1984): especially 3-4 and 19. Also see Richard B. Brandt, "Some Merits of One Form of Rule-Utilitarianism," *University of Colorado Studies* 3 (1967).

⁴⁷ Jonathan Riley, "Rule Utilitarianism and Liberal Priorities," in *Justice, Political Liberalism and Utilitarianism*, eds. Marc Fleurbaey, Maurice Salles and John A. Weymark (Cambridge: Cambridge University Press, 2008), 414.

⁴⁸ *Ibid.*, 415.

⁴⁹ John C. Harsanyi, "Rule Utilitarianism, Rights, Obligations and the Theory of Rational Behavior," *Theory and Decision* 12 (1980): 125-6.

⁵⁰ Amartya Sen, "Consequentialist Evaluation and Practical Reason," *The Journal of Philosophy* 9 (2000): 499.

⁵¹ *Ibid.*, 491-2. Also see 502 where Sen concludes: "Some of the *alleged* limitations of consequential reasoning can be seen to be generated not by the discipline of consequential evaluation itself, but by additional assumptions---entirely separate and by no means necessary---with which a consequential approach is frequently combined.... There is, in fact, no necessity to combine consequentialist evaluation with these supplementary assumptions, and then to damn consequential evaluation for the company it is forced to keep." For Sen, these assumptions include arbitrarily excluding rights from our outcome calculations.

⁵² Mill, *Utilitarianism*, 226. See also the 1927 edition of *Ethical Studies* where Bradley concedes in a note inserted on the bottom of page 108: “On the other side *no* moral law is absolute, and hence all are liable to ‘exceptions’ (where there is a collision of duties), and this point I should not have slurred [in earlier editions].”

⁵³ For Galston, see William A. Galston, *The Practice of Liberal Pluralism* (Cambridge: Cambridge University Press, 2005), especially 112 where Galston warns against the “tunnel vision” of monistic versions of liberalism, which “seek to gratify our understandable desire for moral harmony by obliterating our awareness of unavoidable moral costs.” For Rorty, see Richard Rorty, *Contingency, Irony and Solidarity* (Cambridge: Cambridge University Press), especially chapter 3, “The Contingency of a Liberal Community.” According to Rorty, we need to cure ourselves of our natural “deep metaphysical need” to ground and completely systematize our moral principles. But whereas for Berlin and Galston, values are *objective* even though they unavoidably conflict, for Rorty, values are *contingent* as well as inescapably conflictual. Nonetheless and surprisingly, Rorty invokes Mill as the final great turning point in liberal thinking: “Indeed, my hunch is that Western social and political thought may have had the last *conceptual* revolution it needs. J. S. Mill’s suggestion that governments devote themselves to optimizing the balance between leaving people’s private lives alone and preventing suffering seems to me pretty much the last word.” (63).

⁵⁴ Wayne Sumner, *The Moral Foundations of Rights* (Oxford: Oxford University Press, 1987), 179.

⁵⁵ R. M. Hare, “Utility and Rights: Comment on David Lyon’s Essay,” in *Ethics, Economics and the Law*, *Nomos* 24, 156.

⁵⁶ Even if we forgo judging Mill from our sufficiently different analytical context, we should not fear conceding that Mill was sometimes just confused and inconsistent. Bradley's criticisms of Mill may have been correct though they might not hold for contemporary accounts of liberal utilitarianism such as Brandt, Hooker and Riley's.