

Social Morality in Mill

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INTRODUCTION

A leading classical utilitarian, John Stuart Mill is an unlikely contributor to the public reason tradition in political philosophy. To hold that social rules or political institutions are justified by their contribution to overall happiness is to deny that they are justified by their being the object of consensus or convergence among all those holding qualified moral or political viewpoints. For the utilitarian, the existence of consensus or convergence might be evidence of a tendency to overall happiness and help to establish conditions of security and coordination necessary for it, but it does not constitute the fundamental choiceworthiness of the rules or institutions. In this chapter, I do not mean to challenge that baseline utilitarian understanding of Mill's moral and political framework. But I do want to explore the surprising ways in which he nevertheless works to accommodate the problems and insights of the public reason tradition, and the extent to which he makes arguments that can help those working within that tradition. This is important not only for a richer understanding of Mill's utilitarian ethics and how consequentialists might address themselves to the public reason project, but also for those interested in the ongoing significance of Mill's liberal principles after the turn to public reason in the work of Rawls, Larmore, Gaus, and others.

In what follows I try to show how Mill's utilitarian theory incorporates the claim that the demands of social life require a publicly accepted set of normative expectations to govern judgments about when one has met one's obligations and, relatedly, about the appropriateness of blame or punishment. For Mill, such a social morality properly regulates these judgments even if it is not ideal, that is, even if it is not the set of rules the adoption of which would collectively maximize utility. Importantly, however, social morality is not static. It shapes our collective existence by defining the proper bounds of our practices of accountability even as it evolves

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over time. And, as we shall see, Mill identifies principles of public reason that he believes should guide the development of social morality.

Ultimately, I believe, Mill's account of social morality remains consistent with his act utilitarian commitment that what makes actions fundamentally choiceworthy is their expediency or contribution to overall happiness (whether or not they are blameworthy). But seeing how Mill's discussion of social morality fits within his overall ethical theory helps to resolve debates about passages in which he seems to endorse an account of moral right and wrong at odds with act utilitarianism. With this unified account of Mill's ethical theory on the table, we can explore the extent to which it allows him to offer arguments about the shape of our social practices and political institutions in the spirit of public reason liberalism, and not always by direct appeal to the principle of utility.

In section 2, I begin to examine those places where Mill expresses the need for social morality—publicly recognized social rules by which we appropriately hold each other accountable—and addresses what is required to maintain its integrity as it develops over time. It is hard to imagine anyone denying the value of such a social morality, but that is partly the point. Because act utilitarianism is commonly caricatured as failing to respect social rules as the appropriate governors of our actions, it is worth seeing how they are treated in a fully developed “sophisticated” act utilitarian system such as Mill's.² In fact, he makes a great deal of the fact that maintaining the integrity of publicly recognized social rules is necessary for cooperative society to exist at all.³ This justifies a general commitment, on one hand, to restrain our own actions in accordance with those social rules and, on the other, to appeal to them in assigning blame or punishment to others. Mill not only explores the historical circumstances necessary for stable social rules to persist—most interestingly, in a non-despotic, liberal system—but also argues that, except in exceptional cases, individuals' practical deliberation and judgments of holding each other accountable should extend no further than those social rules.⁴

1. EXPEDIENCY AND BLAMEWORTHINESS

It is important to appreciate a complication for interpreting Mill's overall ethical theory: that he sometimes uses the terms “morality,” “moral,” and the like to refer to the utilitarian standard of what makes actions fundamentally choiceworthy

² Peter Railton (1984) introduced the label “sophisticated” for consequentialist moral theories that distinguish between the standard of correctness and the appropriate decision-procedure for human conduct.

³ For elaboration of this point, see Turner (2015a), 728ff.

⁴ See his discussion in “Taylor's Statesman” (1837), CW XIX.640, co-authored with George Grote. Mill citations marked by “CW [volume #.page #]” refer to the *Collected Works*.

(namely, their *expediency* or actual contribution to overall happiness) and other times uses those same terms to refer to a standard of *blameworthiness* that does not involve direct appeal to the principle of utility (but rather to whether a person has met social expectations in deciding to act).

There are numerous examples of the first sense of “morality” in Mill’s work. In chapter 2 of *Utilitarianism* he summarizes his moral theory this way:

According to the Greatest Happiness Principle... the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality... *This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human conduct, by the observance of which an existence such as has been described might be, to the greatest extent possible, secured to all mankind; and not to them only, but, so far as the nature of things admits, to the whole sentient creation.* (CW X.214; emphasis added)

In other passages he similarly refers to “the principle of utility—which is a theory of right and wrong” (“Sedgwick’s Discourse” (1835), CW X.71) or notes in passing that “right means productive of happiness, and wrong productive of misery” (“An Examination of Sir William Hamilton’s Philosophy” [*Hamilton*] (1865), CW IX.456). In a summary of the argument of chapter 2 of *Utilitarianism* he writes, “The only true or definite rule of conduct or standard of morality is the greatest happiness” (Diary (1854), CW XXVII.663).

These and related passages place Mill within familiar utilitarian territory, according to which (ignoring some intramural disputes) actions are morally right insofar as they maximize overall utility, and wrong to the extent that they fail to do so.

But Mill then goes on to make rather different claims, appealing to a second sense of “morality” that is specifically about moral *obligation* or *duty*. He argues that moral duty is defined by those standards of conduct to which competent individuals are appropriately held accountable in any given state of society, even if reasons of expediency or overall utility speak against actually holding someone accountable in a particular case. To fail to fulfill one’s moral duties in this sense is to make oneself the appropriate target of blame or punishment:

No case can be pointed out in which we consider anything as a duty, and any act or omission as immoral or wrong, without regarding the person who commits the

wrong and violates the duty as a fit object of punishment... even if there are preponderant reasons of another kind against inflicting the suffering. (*James Mill's Analysis of the Phenomena of the Human Mind [Analysis]* (1869), CW XXXI.241-2)

We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience. This seems to be the real turning point of the distinction between morality and simple expediency... *Reasons of prudence, or the interest of other people, may militate against actually exacting it; but the person himself, it is clearly understood, would not be entitled to complain.* There are other things, on the contrary, which we wish that people should do, which we like or admire them for doing, perhaps dislike or despise them for not doing, but yet admit that they are not bound to do; it is not a case of moral obligation; we do not blame them, that is, we do not think that they are proper objects of punishment.” (*Utilitarianism* (1861), CW X.246; emphasis added)

In these passages, moral wrongness is identified with blameworthiness, that is, with the failure to do that for which the agent is appropriately held accountable. Mill here seems to reject the utilitarian standard of moral wrongness because, surely, one is not always a fit object of blame or punishment for failing to maximize utility. Though some have wondered whether he thereby gives up his utilitarianism or holds two conflicting standards of moral rightness, I believe the difficulty here is merely verbal. We should not get hung up on Mill's use of “moral,” but rather accept that he has identified two non-conflicting categories of evaluation that are both always relevant and important to the assessment of any action. In the first category, we evaluate actions according to whether they are expedient or conducive to overall happiness. In the second, we evaluate actions according to whether they meet or exceed the expectations we have of each other (whatever happens to be expedient), which we may enforce against each other through practices of blame or other punishment.⁵ This is the standard of social morality, the shared set of normative

⁵ Peter Railton (1988, 2005) makes a similar distinction between what is expedient and what social morality requires, and similarly argues that both categories of evaluation are always applicable. For Railton, the fundamental level of evaluation for acts, practices, or institutions is their contribution to the overall good, which he calls *fortunateness* instead of expediency. He then introduces another standard: “The concept of ‘moral rightness’ comes to the consequentialist already well-embedded in our moral thought and practice. If ‘morally right’ meant ‘optimal from a moral point of view,’ ‘morally wrong’ would naturally be ‘less than optimal from a moral point of view’. But moral wrongness goes with notions of blameworthiness, condemnation, resentment,

expectations among competent persons in a given state of society.⁶ These shared normative expectations comprise those “acts which the general experience of life... warrant us in counting upon” (*Analysis*, CW XXXI.241) and define our moral duties. For most cases, they are encapsulated by general practical rules.

I want to emphasize three features of making this distinction between expediency on one hand, and social morality or duty or blameworthiness on the other. First, for Mill, the failure to perform an action that maximizes utility need not count as a failure of moral duty. An action might be inexpedient yet still not open someone to censure, given current social expectations. Conversely, one might fail one’s moral duty even when one has maximized utility. One might act rashly or otherwise fail to meet social expectations, yet perform the expedient action.⁷

Second, the distinction allows for a domain of supererogatory action in which an individual exceeds shared normative expectations. These actions Mill calls “meritorious,” and are part of a “region of positive worthiness” in which “there is an unlimited range of moral worth, up to the most exalted heroism, which should be fostered by every positive encouragement, though not converted into an obligation” (*Auguste Comte and Positivism* (1865), CW X.337, 339).

Third, for Mill, a person’s blameworthiness is not a matter of whether it would be *expedient to blame* that person in the particular case. As he indicates in both passages quoted above, a person can be blameworthy even if reasons of expediency or prudence ultimately tell against holding the person accountable. What matters is that the person is a “fit” object of punishment and “would not be entitled to complain” if he or she were held to account.⁸ For Mill, our deserving blame or punishment comes down to “our knowledge that punishment will be just: that by such conduct we shall place ourselves in the position in which our fellow creatures, or the Deity, or both, will naturally, and may justly, inflict punishment upon us” (*Hamilton*, CW IX.461). Mill emphasizes that the word “justly” here does not refer directly to what is expedient or *right*, but (as I read him) to the idea that others may *rightfully* decide this matter. It is true that, for Mill, any allocation of rightful authority over certain matters will ultimately be justified by expediency. But with respect to blameworthiness, his point is that others may rightfully judge a member

and guilt, and we do not typically dispense these for mere suboptimality” (2005, 495). This standard, of social morality, is relative to social expectations in a given place and time.

⁶ For the articulation and defense of social morality as shared normative expectations, see Gaus (2011), (2015), and (2016).

⁷ For discussion of these points, see Turner (2015a).

⁸ To my mind, Mill’s clarification that a person may be a fit object of punishment “even if there are preponderant reasons of another kind against inflicting the suffering” tells decisively against the indirect “sanction utilitarianism” reading of his account of the rightness of actions. Mill gives us two direct standards.

of the community in light of shared normative expectations. Within those limits it is under others' discretion whether to blame or otherwise punish that person. Thus, even if they hold that person accountable when doing so would not be expedient, it remains the case that their holding him or her to account was rightful.

One thought justifying this claim about our rightful authority to hold each other accountable is that any person "must recognise it as not unjust that others should protect themselves against any disposition on his part to infringe their rights" (Ibid.). Social morality is constituted in part by the shared standards that define rights and their corresponding obligations, and we are well placed to hold others accountable for violations of our own rights even if we might choose not to do so in certain cases and even if doing so might be inexpedient in certain cases.

In a passage unpublished in his lifetime, Mill makes the point that if there were no need to enforce shared expectations, there would be no need for "morality" in the second sense – of social morality.⁹ Writing to Harriet, his future wife and collaborator, and praising her "higher nature," he remarks that:

If all persons were like these [i.e., had higher natures], or even would be guided by these, morality might be very different from what it must now be; *or rather it would not exist at all as morality, since morality and inclination would coincide.* If all resembled you, my lovely friend, it would be idle to prescribe rules for them. By following their own impulses under the guidance of their own judgment, they would find more happiness, and would confer more, than by obeying any moral principles or maxims whatever... Where there exists a genuine and strong desire to do that which is most for the happiness of all, general rules are merely aids to prudence, in the choice of means; not peremptory obligations.

...All the difficulties of morality in any of its branches, grow out of the conflict which continually arises between the highest morality and even the best popular morality which the degree of development yet attained by average human nature, will allow to exist. ("On Marriage," CW XXI.39; emphasis added)

Note that in the imagined case, in the absence of practices of blame and punishment, the principle of utility would still provide a standard by which to praise our inclinations and decisions.

The rest of this chapter grapples with those passages in Mill that bear on the need for social morality, how it changes, and its place within his overall ethical theory. I do not claim to provide a complete account of this part of Mill's ethical theory, but

⁹ My reading does not depend on this passage. But, following Robson, who included this piece in the *Collected Works*, I believe we can treat it as providing some clue to Mill's thinking, when viewed in light of other evidence.

I hope to introduce the main features of it and (given the aims of the present volume) highlight a variety of his writings that are not often given their due. Why do we need social morality? Is it, in any interesting sense, independent of the principle of utility? What should I do when social morality conflicts with my understanding of what utility requires? In trying to answer these questions, I hope to show that Mill demonstrates a remarkable sensitivity to the demands of public reason.

2. PRIVATE CONFLICT AND A “COMMON SYSTEM OF OPINIONS”

We have already noted that the rules of social morality are relative to a given “state of society.” This is due in part to the fact that states of society differ in the prevailing beliefs, including moral beliefs, of those living in them:

What is called a state of society, is the simultaneous state of all the greater social facts or phenomena. Such are, the degree of knowledge, and *of intellectual and moral culture, existing in the community*, and in every class of it; the state of industry, of wealth and its distribution; the habitual occupations of the community; their division into classes, and the relations of those classes to one another; *the common beliefs which they entertain on all the subjects most important to mankind, and the degree of assurance with which those beliefs are held*; their tastes, and the character and degree of their aesthetic development; their form of government, and the more important of their laws and customs. The condition of all these things, and of many more which will readily suggest themselves, constitute the state of society or the state of civilization at any given time. (*A System of Logic [Logic]* (1843), CW VIII.911-12; emphasis added)

For Mill, then, the rules of social morality vary not only with different economic and political circumstances, but according to what the people in a given time and place commonly value and believe. This is important because Mill believes that, if society is to exist at all and to persist over time, it requires a widely-accepted set of opinions to serve as a public standard.

The problem, as Mill sees it, starts with a Hobbesian state of nature marked by “private conflict” and devoid of the cooperative benefits that social morality and law allow:

A rude people though in some degree alive to the benefits of civilized society, may be unable to practice the forbearances which it demands: their passions may be too violent, or their personal pride too exacting, to forgo private conflict, and

leave to the laws the avenging of their real or supposed wrongs. (*Considerations on Representative Government* [CRG] (1861), CW XIX.377)¹⁰

In Mill's account of social development, the path to "civilized" society—that is, to a cooperative society within which most individuals are motivated to compromise and to engage in joint endeavors¹¹—is uncertain. In fact, again echoing Hobbes, he suspects that cooperative society cannot get a foothold without the help of some external power, such as a powerful despot, to begin to train individuals to work together.

...a people in a state of savage independence, in which every one lives for himself, exempt, unless by fits, from any external control, is practically incapable of making any progress in civilization until it has learnt to obey. The indispensable virtue, therefore, in a government which establishes itself over a people of this sort is, that it make itself obeyed. To enable it to do this, the constitution of the government must be nearly, or quite, despotic. (Ibid., 394)

Individuals, he suggests, must initially be forced to cooperate in order to overcome "the difficulty of inducing a brave and warlike race to submit their individual *arbitrium* to any common umpire" (*Logic*, CW VIII.921).

Part of the significance of these passages is that Mill seems to accept the basic Hobbesian point that the state of nature is the worst state. Even living under a despot is better, because at the very least it lays the groundwork for future possible improvements ("Civilization," CW XVIII.120). Unlike Hobbes, however, Mill argues that eventually individuals who have developed cooperative tendencies will no longer require a despot to force cooperation. At that point, the despot should make way for democracy and the vision of liberal society defended in *On Liberty* and *The Subjection of Women*. But the need for a public standard or "common umpire" will always remain:

[S]ocial existence is only possible by a disciplining of those more powerful propensities, which consists in subordinating them to a common system of

¹⁰ For Mill's Hobbesian moments: "Civilization" (1836), CW XVIII.117–47; *Chapters on Socialism* (1879), CW V.749; and "Use and Abuse of Political Terms" (1832), CW XVIII.10–11.

¹¹ A "civilized" society is marked by: (1) "a dense population, therefore, dwelling in fixed habitations," (2) "agriculture, commerce, and manufactures," (3) "human beings acting together for common purposes in large bodies, and enjoying the pleasures of social intercourse," and (4) "the arrangements of society, for protecting the persons and property of its members, are sufficiently perfect... to induce the bulk of the community to rely for their security mainly upon social arrangements" ("Civilization," CW XVIII.120).

opinions. The degree of this subordination is the measure of the completeness of the social union, and the nature of the common opinions determines its kind. But in order that mankind should conform their actions to any set of opinions, these opinions must exist, must be believed by them. And thus, the state of the speculative faculties, the character of the propositions assented to by the intellect, essentially determines the moral and political state of the community. (*Logic*, CW VIII.926)

Without recognized general rules of social morality, we would be left with “perpetual quarrelling” (Letter to Grote (1862), CW XV.762) and the threat of social dissolution: “The people for whom the form of government is intended must be willing to accept it; or at least not so unwilling, as to oppose an insurmountable obstacle to its establishment” (*CRG*, CW XIX.376).¹²

Consistent with significant variations among social moralities and legal institutions in this social development, Mill identifies three general historical requisites for any “society that has maintained a collective existence” (*Logic*, CW VIII.920), each of which concerns the dispositions and beliefs of the people living in those societies. The first requisite he identifies is a “system of education” that, among other things, is able to carry on training each person in “restraining discipline,” i.e. “that habit... of subordinating his personal impulses and aims, to what were considered the ends of society” according to some shared or public standard (*Ibid.*, 921). It calls for compromise and deference to a common umpire in the form of recognized social or political rules and authorities. This is a negative requisite insofar as it involves mainly *forbearance* on the part of each individual.

The second requisite for social stability is more positive, namely, the existence of some unifying principle or object that grounds a “feeling of allegiance, or loyalty.” This may be generated by different things, such as a charismatic leader or national identity. In developed, non-despotic societies Mill hopes that this loyalty could “attach itself to the principles of freedom and political and social equality, as realized in institutions which as yet exist nowhere...” (*Ibid.*, 922). This suggestion expresses an idea at the very core of liberalism, that what could unite a people is equal respect for each other’s individuality.

¹² In some passages, Mill speaks directly to the need for social morality, and in others he speaks to the need for law or government. For our purposes, I am glossing over that distinction because he distinguishes them mainly in the *means* they employ and not in their basic justification. This, one might note, is true also of Mill’s liberty principle, which applies to both government and social authority, and concerns both “legal penalties” and “the moral coercion of public opinion” (CW VIII.223). I here leave aside the question of which social expectations should be enforced through formal mechanisms and which not.

The third general requisite for social stability is, he writes, “a principle of sympathy... a feeling of common interest among those who live under the same government” (Ibid., 923). This is not the same as the feeling of allegiance to a leader or ideal. It is the feeling of solidarity to *each other*, “that they are one people, that their lot is cast together” (Ibid., 923). It supports community and mutual concern, and opposes both invidious distinctions and free-riding. This is what Mill elsewhere seems to mean by “sociality” (Letter to Ward (1859), CW XV.650).

None of these conditions is sufficient on its own for social stability; remove any of them and the problem of conflicting propensities and judgments re-emerges. But together these conditions allow for the existence of “public authorities” in the form of stable laws or social rules, functioning tribunals, and “an organized force of some sort to execute their decisions” (Ibid., 920). Undoubtedly, there will still be disagreements, but these will occur against a backdrop that allows for a stable collective existence grounded in shared feelings, ideals, and procedures.

Not surprisingly, Mill also argues that the development of social morality and legal institutions will require taking account of people’s happiness. But the present point is that the three requisites make possible a kind of “fellow-feeling” around a shared set of beliefs and values, which—because of that very fellow-feeling or coming together—constitute the standard by which we may hold others accountable:

I feel conscious that if I violate certain laws, other people must necessarily or naturally desire that I shd be punished for the violation. I also feel that I shd desire them to be punished if they violated the same laws towards me. From these feelings & from my sociality of nature I place myself in their situation, & sympathize in their desire that I shd be punished; & (even apart from benevolence) the painfulness of not being in union with them makes me shrink from pursuing a line of conduct which would make my ends, wishes, & purposes habitually conflict with theirs. (Letter to Ward, CW XV.650)

In his own way, then, Mill introduces some of the basic elements of the public reason tradition: that people each have an interest in submitting their private judgments to a social morality (or other public authority); that a certain discipline of habit and thought is required to maintain that social morality; and that social morality appropriately governs our practices of holding each other accountable.

It will be wondered what Mill would say about a social morality that is not optimal from the utilitarian perspective. Consider a case in which a different a set of normative expectations, if widely accepted, would in fact be more expedient (and are known by some to be so) than the current social morality, taking people as they are. As I understand the picture, Mill is committed to the view that the less optimal social morality, if it is in place, must nevertheless provide the basis for our practices

of holding each other accountable. This is because the function of social morality is to solve the problem of private conflict. Without a solution to this problem, there would be no stable society at all. And to solve it, social morality must be publicly accessible and widely shared.¹³

Social morality grants individuals the right to enforce (through practices of blame or punishment) the expectations contained in the common set of opinions. Others may enforce those rules against you (and vice versa), and whether to do so is left to their discretion ultimately because they have a right to self-protection. As noted before, they might err in the sense that exacting a punishment might not be expedient in a given case, but so long as they are enforcing social morality you would not be entitled to complain. Whether punishment is fitting—whether you have done something “wrong” in that sense—is only a matter of whether others may *rightfully* blame or otherwise punish you, given social morality.¹⁴ If the expectations licensing these judgments were not widely shared, they would neither solve private conflict nor maintain social stability.

The reliance on common opinion does not mean, however, that the existing social morality is beyond criticism: “...bad as well as good institutions create moral obligations; but to erect these into a moral argument against changing the institutions, is as bad morality as it is bad reasoning” (“Newman’s Political Economy” [Newman] (1851), CW V.445). One important theme in Mill’s work is that the progressiveness of social morality depends on the availability of some external standard by which to criticize prevailing social morality. Following Bentham, this is one of his main arguments for utilitarianism and against the intuitionism of Whewell and others. Although intuitionists might be able to offer a social morality, they cannot provide a standard—at least not a publicly accessible one—by which to revise social morality: “The contest between the morality which appeals to an external standard, and that which grounds itself on internal conviction, is the contest of progressive morality against stationary—of reason and argument against the deification of mere opinion and habit” (“Whewell on Moral Philosophy” [Whewell] (1852), CW X. 179). He argues in similar terms that the feelings associated with social morality, such as guilt and resentment, should be shaped over time by the principle of utility:

We are as much for conscience, duty, rectitude, as Dr. Whewell. The terms, and all the feelings connected with them, are as much a part of the ethics of utility as

¹³ I will address this issue at greater length in the final section.

¹⁴ There will of course be disagreements about the content of social morality, its interpretation, and about the efficiency of each of us enforcing it and what enforcement measures are justified. These problems give us reason to introduce systems of adjudication and enforcement associated with what H.L.A. Hart called “secondary rules.”

of that of intuition. The point in dispute is, what acts are the proper objects of those feelings; whether we ought to take the feelings as we find them, as accident or design has made them, or whether the tendency of actions to promote happiness affords a test to which the feelings of morality should conform. (*Whewell*, CW X.172)

In appealing to the principle of utility, then, Mill the reformer advocates for changes to the social morality he shares with others. But he does not believe that blameworthiness—and moral “wrongness” in that sense—can be divorced from social morality. Rather, those judgments must evolve with social morality over time:

[I]nasmuch as every one, who avails himself of the advantages of society, leads others to expect from him all such positive good offices and disinterested services as the moral improvement attained by mankind has rendered customary, he deserves moral blame if, without just cause, he disappoints that expectation. Through this principle the domain of moral duty, in an improving society, is always widening. *When what once was uncommon virtue becomes common virtue, it comes to be numbered among obligations*, while a degree exceeding what has grown common, remains simply meritorious.” (*Auguste Comte and Positivism*, CW X.338; emphasis added)

Here is perhaps Mill’s clearest statement that moral duty develops over time with changes in shared social expectations. In an “improving society” we can expect more of each other, if we educate our habits and thoughts at the same time that we work to reform our rules and institutions.

Three clarifications are called for before we consider Mill’s account of the way we should engage each other within social morality. First, although Mill believes (following Bentham) that one advantage of the principle of utility itself is its public accessibility, he also recognizes that it is controversial. As we shall see, he therefore introduces mid-level principles that he believes can win support not just from those who share his views, but from anyone who is sensitive to the main lessons of history.

Second, although I have sometimes referred to social morality as a system of rules, the shared normative expectations need not all be captured by rules. For Mill, the rules of social morality are *general* rules not expected to cover every circumstance. Rather, he emphasizes that there are cases in which individuals are rightly held accountable for failing to *violate* a general rule, and the individual “cannot discharge himself from moral responsibility by pleading that he had the general rule in his favor” (“Taylor’s Statesman,” CW XIX.640):

What should we say to a physician, who communicated an agonising piece of family intelligence, in reply to the inquiry of our sick friend, at a moment when the slightest aggravation of malady threatened to place him beyond all hope of recovery? In a case like this, surely there is no man of common sense or virtue, who would think for a moment of sheltering himself under the inexorable law of veracity, and refusing to entertain any thought of the irreparable specific mischief on the other side. (Ibid.)

Some thorny cases involve conflicting general rules, but sometimes they involve only “peculiarities of circumstances” (*Utilitarianism*, CW X.225). In what follows, I will sometimes refer to social morality as a set of rules, but it should be understood that for Mill the rules of social morality may have exceptions that are also part of our shared expectations.

Third, the social rules might themselves express normative expectations that vary for individuals according to differences in position, influence, or capacity:

There are times when the grandest results for the human race depend on the public assertion of one’s convictions at the risk of death by torture. When this is the case martyrdom may be a duty; & in cases when it does not become the duty of all it may be an admirable act of virtue in whoever does it, & a duty in those who as leaders or teachers are bound to set an example of virtue to others, & to do more for the common faith or cause than a simple believer.” (Letter to Young (1867), CW XVI.1328)

The fact of shared normative expectations does not imply that the expectations for each of us are, in all ways, the same. Unfortunately, Mill does not develop this point in detail.

In general, then, the moral or social reformer has two projects: first, to propose new general rules of social morality for individuals as they are currently constituted; second, to help educate individuals to become capable of inhabiting an even better social world.

As we shall see, Mill argues that the first reform project must begin by critically evaluating prevailing social morality. The main practical consideration is not where we start, but whether we have the means to progress from where we are. Above all, Mill argues, in a civilized society, the social conditions allowing for criticism and learning through experience must be protected against interference: “the source of everything respectable in man either as an intellectual or as a moral being,” he writes, “[is] that his errors are corrigible. He is capable of rectifying his mistakes, by discussion and experience” (*On Liberty* (1859), CW XVIII.231). Because revising our beliefs is “predominant, and almost paramount, among the agents of social

progression,” Mill concludes that “the order of human progression in all respects will mainly depend on the order of progression in the intellectual convictions of mankind” (*Logic*, CW VIII.926, 927). Ensuring the conditions for moral improvement through “discussion and experience” thus becomes the leading theme of his moral and political philosophy, and shapes his account of the practice of public reason.

3. THE PRACTICE OF PUBLIC REASON

So far, then, we have seen that Mill regards social morality as more than a merely sociological or descriptive phenomenon. Social morality must govern much of our moral decision-making, specifically our holding each other accountable. Mill accepts a version of the practical problem that animates the public reason tradition, the problem of conflicting private judgments, and the corresponding need to establish a publicly justified standard or procedure by which to regulate our social and political lives together.

But how are we supposed to accommodate disagreement about what social morality should be, and how can we revise social morality, while maintaining its integrity? This is the question of the practice of public reason, in which social morality is an ongoing construction project for a community.¹⁵ It is particularly important for Mill because he argues that we are never justified in believing that our current social morality—even if it is unanimously accepted—is the best it could be.¹⁶

As I suggested at the end of the last section, Mill’s approach to the practice of public reason begins with the observation that at any given time and place there are certain “received opinions.”¹⁷ These, he seems to say, must be our starting points. But what emerges from his discussion of public reasoning is that he is less concerned with the specific content of prevailing beliefs than he is with preserving the conditions necessary for the effective criticism of those beliefs. Unlike some public reason views, for Mill it is not problematic in itself that the prevailing beliefs are controversial, so long as they can be, and are, sincerely held open to revision.¹⁸ The continued openness to discussion and social experimentation is what keeps social morality and legal institutions within reason—what makes them reasonable—on Mill’s view. Call this Mill’s *legitimacy constraint*. A prevailing social morality violates that constraint by removing itself from those processes of public reasoning

¹⁵ For a partly Mill-inspired approach to morality along these lines, see Kitcher (2011).

¹⁶ This is the basic point of his “assumption of infallibility” argument in chapter 2 of *On Liberty*.

¹⁷ See extended quotation later in this section from “Lord Brougham’s Defence of the Church Establishment” (1834), CW VI.228.

¹⁸ See Eric MacGilvray (2004) for development of this important thought.

that might lead it is own revision.¹⁹ This is why he criticizes the French Assembly in 1848 for placing restrictions on the press.

It denies them free discussion. It says they shall not be suffered to bring their opinions to the touchstone of the public reason and conscience. It refuses them the chance which every sincere opinion can justly claim, of triumphing in a fair field. It fights them with weapons which can as easily be used to put down the most valuable truth as the most pernicious error. (“The French Law Against the Press” (1848), CW XXV.1118).

A good government, then, puts freedom of discussion first: “In government, perfect freedom of discussion in all its modes—speaking, writing, and printing—in law and in fact is the first requisite of good because the first condition of popular intelligence and mental progress. All else is secondary” (Diary (1854), CW XXVII.661). A prevailing morality might be controversial in many ways, but it is not illegitimate as long as it is sincerely held open to the processes of criticism and social experimentation that could lead to its improvement.

In full view, Mill’s defense of the legitimacy constraint is grounded in his account of what is required for social improvement, and our never being in a position to say *here progress ends*.²⁰ As early as the age of eighteen, he criticizes the *Edinburgh Review* for seeming to argue “that morality will never be better understood than at present; that morality will never be better practised than at present; that mankind will never be more prudent than they now are; that vigour of intellect and sound views of human affairs are oftener found and better listened to at this moment, than they are likely to be at any future period” (“Periodical Literature: Edinburgh Review” (1824), CW I.318). This constant refrain in his work culminates in his “assumption of infallibility” argument in *On Liberty* and the claim that the power to silence discussion is “illegitimate”: “The best government has no more title to it than the worst” (CW XVIII.229). Mill argues that, to the extent that a government undermines free discussion, it removes itself from the means of criticism and intellectual improvement that allow for its own future decision-making to improve. Insofar as it does this, it takes up a position of epistemic superiority toward posterity which it is not entitled to adopt – as if its decisions could not be improved upon (Turner 2013a). In a characteristic passage, he concludes:

¹⁹ This might happen in more or less significant ways. But to become separated from those processes is to make the prevailing social morality a matter simply of the preferences of the dominant group. This will undermine its tendency toward improvement and, relatedly, its claim to offer a fair field of play to those who disagree.

²⁰ For examples, see Turner (2013a, section 3).

Until... somebody else can point out any existing state of society which it is desirable to have stereotyped for perpetual use, we must regard as an evil, all restraint put upon the spirit which never yet since society existed has been in excess—that which bids us “try all things” as the only means by which with knowledge and assurance we can “hold fast to that which is good.” (*Newman*, CW V.457; but see 454-7)

As individuals, then, our participation in the practice of public reason is exhibited fundamentally by our ongoing support for the social conditions required for free, critical discussion and associated experiments of living on a fair field of play. Call this Mill’s *basic norm of public reason*. The practice of public reason is one in which we may propose any idea we like so long as it remains open to criticism, and collectively we may adopt any new set of institutions so long as they are consistent with, and responsive to, the ongoing critical enterprise. The core public reason commitment just is to maintaining those (liberal) practices and institutions that facilitate that enterprise. In this way, social and political arrangements are made consistent with the possibility of progress, and ensure that any future “permanence” in those arrangements “will be the effect of reason and free choice, not of irrevocable engagements” (*Ibid.*, 456).²¹

Undoubtedly, we will need formal mechanisms for settling disputes, and in *Considerations on Representative Government* and related writings Mill designs a set of democratic institutions to do just that. But the crucial thing for our purposes is understanding that those institutional designs must be consistent with his underlying commitment to preserving the conditions that allow for public criticism, reasoned decision-making, and progress.

What the basic norm of public reason entails in practice for particular individuals is expressed nicely by some of Mill’s writings on education, particularly those concerning the spirit in which a teacher should present controversial material and the intellectual discipline that should then shape the classroom discussion. In these passages, he emphasizes that controversial views are not problematic as long as the

²¹ Gaus has claimed that Mill’s “master argument” in *On Liberty* is the broadly social epistemic argument for open society that helps to justify what I call his legitimacy constraint and his basic norm of public reason. Gaus argues that, despite differences in values and beliefs, openness to discussion and social experimentation is a value shared “among all citizens who think that some ways of living are better, that we have an interest in finding out which they are, and that we can have justified beliefs about what they are” (Gaus 2008, 100; see also Turner 2017, 576-9). After Mill, perhaps the most prominent versions of this argument are in Dewey (1927, 1939) and Popper (1945, 2008).

material is taught in a way that is meant to engage and develop students' critical capacities:

It is true mankind differ widely on religion; so widely that is impossible for them to agree in recommending any set of opinions. But they also differ on moral philosophy, metaphysics, politics, political economy, and even medicine; all of which are admitted to be as proper subjects as any others for a national course of instruction. The falsest ideas have been, and still are, prevalent on these subjects, as well as on religion. But it is the portion of us all, to imbibe the received opinions first, and start from these to acquire better ones. All that is necessary to render religion as unexceptionable a subject of national teaching as any of the other subjects which we have enumerated, is, that it should be taught in the manner in which all rational persons are agreed that every other subject should be taught—in an inquiring, not a dogmatic spirit—so as to call forth, not so as to supersede, the freedom of the individual mind. We should most strongly object to giving instruction on any disputed subject, in schools or universities, if it were done by inculcating any particular set of opinions.

...Let the teaching be in this spirit, and it scarcely matters what are the opinions of the teacher: and it is for their capacity to teach thus, and not for the opinions they hold, that teachers ought to be chosen.” (“Lord Brougham's Defence of the Church Establishment,” CW VI.228)

The principle itself of dogmatic religion, dogmatic morality, dogmatic philosophy, is what requires to be rooted out; not any particular manifestation of that principle.

...the object is to call forth the greatest possible quantity of intellectual power, and to inspire the intensest love of truth: and this without a particle of regard to the results to which the exercise of that power may lead, even though it should conduct the pupil to opinions diametrically opposite to those of his teachers. We say this, not because we think opinions unimportant, but because of the immense importance which we attach to them...

...We are not so absurd as to propose that the teacher should not set forth his own opinions as the true ones, and exert his utmost powers to exhibit their truth in the strongest light... As a general rule, the most distinguished teacher is selected, whatever be his particular views, and he consequently teaches in the spirit of free inquiry, not of dogmatic imposition. (“Civilization,” CW XVIII.144)

In *On Liberty* and other writings, Mill goes on to articulate a “real morality of public discussion,” emphasizing candor, openness, and “giving merited honour to every

one, whatever opinion he may hold” (*On Liberty*, CW XVIII.259), while condemning intolerance, exaggeration, “casuistry and imposture,” and “hypocrisy” (“Perfectibility” (1828), CW XXVI.433). If we could imagine a community of public reasoners engaging each other in this spirit—each with their own beliefs and values, but also fundamentally committed to the practice of free inquiry—we would go a long way toward appreciating his vision of how social morality might improve over time without undermining (and perhaps reinforcing) the requisites of social stability addressed above.

4. JUSTIFYING INTERFERENCE

To this point, I have tried to show, first, that Mill solves a version of the problem of private conflict by appealing to the idea of social morality, and that he introduces a legitimacy constraint and basic norm of public reason that are justified by the need to revise social morality over time. In this section I want to examine three practical principles that Mill argues should enjoy public support and shape revisions to social morality: the presumption in favor of individual liberty, the presumption in favor of equality, and the liberty principle.²² Consistent with his own utilitarian commitments, but not dependent on them, he recommends these principles to the public conscience as the fruits of common human experience.

If in the last section we glimpsed how Mill handles controversy within public reason, here the question is the extent to which people can come to agree on certain principles. In an early essay, Mill is very optimistic that there could be significant convergence on social rules, despite foundational differences:

The grand consideration is, not what any person regards as the ultimate end of human conduct, but through what intermediate ends he holds that his ultimate end is attainable, and should be pursued: and in these there is a nearer agreement between some who differ, than between some who agree, in their conception of the ultimate end. When disputes arise as to any of the secondary maxims, they can be decided, it is true, only by an appeal to first principles; but the necessity of this appeal may be avoided far oftener than is commonly believed; it is surprising how few, in comparison, of the disputed questions of practical morals, require for their determination any premises but such as are common to all philosophic sects. (“Blakey’s History of Moral Science” (1833) CW X.29)

²² My discussion in this section is indebted to Gaus (2008).

We might wonder what overlap of “intermediate ends” Mill has in mind – what are the “secondary maxims” that allow for a relatively stable social morality? Obvious candidates include general rules such as those against taking innocent life and arbitrary violence, or in favor of truth-telling and tending to the sick. Surely such widely accepted rules would be part of any social morality. But Mill also spent much of his career addressing issues on which there was vigorous disagreement, including (just to name some of his preoccupations) women’s rights, slavery, domestic violence, free trade, and population control, some of which promised to cause significant social strife.

In the rest of this section, I argue that Mill introduces three main public principles to help us navigate disagreement. This is not to ignore Mill’s own utilitarian arguments for various practical conclusions, but to highlight the principles he thought could help us find common ground. Two of them are stated in the following passage:

The *à priori* presumption is in favour of freedom and impartiality. It is held that there should be no restraint not required by the general good, and that the law should be no respecter of persons, but should treat all alike, save where dissimilarity of treatment is required by positive reasons, either of justice or of policy. (*The Subjection of Women [Subjection]* (1869), CW XXI.262)

The first principle expressed here, the “presumption in favor of liberty,”²³ is a general “non-interference” principle according to which “the onus of making out a case always lies on the defenders of legal prohibitions” (*Principles of Political Economy [Principles]* (1848), CW III.936, 938). In the context of free discussion and social experimentation, the presumption in favor of liberty can help us choose among candidate social rules and legal arrangements. It is justified, he argues, by at least two widely accepted considerations. First, the freedom to live one’s life as one sees fit—at least in many respects—is a good felt by most or all individuals: “He who would rightly appreciate the worth of personal independence as an element of happiness, should consider the value he himself puts upon it as an ingredient of his own” (*Subjection*, CWXXI.336-7). Whether a utilitarian or not, our commonly felt irritation at being interfered with reveals that we all care about preserving a range of personal freedom. Second, Mill believes history has shown that leaving activities to the voluntary action of individuals usually leads to better outcomes than placing them under the control of government or social authority: “...freedom of individual

²³ See Gaus (2008, 91-2).

choice is now known to be the only thing which procures the adoption of the best processes, and throws each operation into the hands of those who are best qualified for it” (Ibid., 273). Mill’s own social and political conclusions show that the presumption in favor of liberty can be overcome in a great many cases, but he considers it an important guidepost in considering revisions to social morality.

An important extension of the presumption in favor of liberty is Mill’s claim that coercive (what he calls “authoritative”) interference requires more justification than non-coercive interference. The upshot of this extension is that social authority should be aware of when a non-coercive measure—one that merely provides us options or encourages us to do something—would obviate the need for an authoritative measure that constrains our options: “When a government provides means for fulfilling a certain end, leaving individuals free to avail themselves of different means if in their opinion preferable, there is no infringement of liberty, no irksome or degrading restraint. One of the principal objections to government interference is then absent” (*Principles*, CW III.938-9). The hope is that non-coercive measures could be widely accepted as a path toward social reform, even if the content of those reforms is otherwise controversial. Recently, this has been revived and developed as a public principle in the libertarian paternalism of Sunstein and Thaler (2008), which seeks to “nudge” us, instead of coerce us, to make better choices for ourselves.

The second public principle expressed in the above passage is the presumption in favor of equality. What Mill calls “impartiality” there is the principle that social morality and the law should not make distinctions among persons except where there is good reason for it. This is a central theme, for instance, in his rejection of women’s inequality:

...the course of history, and the tendencies of progressive human society, afford not only no presumption in favour of this system of inequality of rights, but a strong one against it; and that, so far as the whole course of human improvement up to the time, the whole stream of modern tendencies, warrants any inference on the subject, it is, that this relic of the past is discordant with the future, and must necessarily disappear. (*Subjection*, CW XXI.272)

The new default for all groups, Mill argues, should be a presumption of equality – it is inequalities that require justification. He is aware of the motivated reasoning keeping certain prejudices in place, but he argues that as social morality has developed, and whatever concrete rules we might endorse concerning particular matters, it has increasingly been understood to embody respect among equals:

[C]ommand and obedience are but unfortunate necessities of human life: society in equality is its normal state. Already in modern life, and more and more as it progressively improves, command and obedience become exceptional facts in life, equal association its general rule. The morality of the first ages rested on the obligation to submit to power; that of the ages next following, on the right of the weak to the forbearance and protection of the strong. How much longer is one form of society and life to content itself with the morality made for another? We have had the morality of submission, and the morality of chivalry and generosity; the time is now come for the morality of justice. Whenever, in former ages, any approach has been made to society in equality, Justice has asserted its claims as the foundation of virtue. (*Subjection*, CW XXI.293-4)

In his clearest expression of an ideal of social morality—though, again, consistent with varying social rules—Mill argues that complete equality offers something of an end-point:

[T]he true virtue of human beings is fitness to live together as equals; claiming nothing for themselves but what they as freely concede to every one else; regarding command of any kind as an exceptional necessity, and in all cases a temporary one; and preferring, whenever possible, the society of those with whom leading and following can be alternate and reciprocal. (*Subjection*, CW XXI.294)

At the very least, Mill rejects authoritarian arrangements and inequalities based on race, ethnicity, religion, and gender, and he calls instead for respect for each other as free and equal citizens, in a way that is that is characteristic of the public reason tradition. He suggests a picture of holding each other accountable that respects the logic of reciprocity. Educating a community capable of sustaining a social morality in this way would be a great achievement.

Mill's third public principle, the most famous of them, is the liberty principle (aka the harm principle). It introduces a strict anti-paternalism constraint on "authoritative" interference with competent individuals, according to which "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (*On Liberty*, CW XVIII.223). While the presumption in favor of liberty is quite broad and defeasible, the liberty principle is much narrower and absolute. Properly understood, it does not make a claim about when social interference is justified, but about the scope of society's rightful authority: coercive interference may not even be considered by some social or governmental authority except to protect others from harm. To the

extent that the actions of competent adults concern only themselves, they are “sovereign” and should be left free from authoritative interference.

The justification of this principle is disputed territory, but I think it is important to see that Mill offers it up, at least in part, as a principle of public reason to help direct our revision of social morality in other respects. Gaus has argued that Mill’s strategy to justify this and other liberal principles is to appeal to a “wide array of citizens’ beliefs and values” (2008, 84; see also Rawls 2007, 284–91). My view is that the liberty principle is justified primarily by a shared interest in competent decision-making, and by evidence that individuals are the best judges of their own good (Turner 2013b). However it is justified, the liberty principle has been an incredibly influential public principle, shaping our notions of the appropriate limits of government and social interference with personal choices – including, most notably, sexual morality.

Each of these three principles plays a significant part in Mill’s thinking, yet accepting them does not require taking up the utilitarian perspective. Rather, they demonstrate the extent to which he believes that we can collectively learn from experience and adopt principles to help us fashion an ever-improving social morality that maintains its integrity over time, despite ongoing disagreement on concrete matters.

CONCLUSION: THE CONNECTION TO UTILITY

I have tried to show that Mill recognizes both the problem of private conflict and the need for social morality to solve it, that he articulates a practice of public reason to revise social morality over time, and that he introduces certain public principles that he believes can enjoy broad public support to shape that process. Despite this, Mill’s basic commitments undoubtedly remain utilitarian. Social morality may define our moral obligations, but he also writes of “moral obligation, which in itself, and independently of the purposes for which it exists, cannot be accounted a good” (*Newman*, CW V.455). In this last section, then, I want to sketch how Mill’s commitment to social morality fits within his utilitarianism and, in particular, what sort of independence it has as a guide for individual moral agents.

Although Mill rejects rule utilitarianism (or so I have argued in Turner 2015a), his account of social morality shares with it the thought that a practice could be justified on utilitarian grounds and that subsequent decisions *within* that practice should then generally proceed without direct reference to the principle of utility (see Rawls 1955). Unlike the rule utilitarian, Mill expects us to appeal directly to utility

in exceptional cases.²⁴ But he argues that our commitment to social morality—to abiding by a shared set of normative expectations—is itself justified by the principle of utility and that the integrity of social morality over time requires us to form of a habit of deference, a sense of allegiance, and fellow-feeling. Moreover, because he believes that the state of nature is the worst state, keeping our commitment to social morality outweighs most any other utilitarian consideration. This is, I think, the significance of the following passage:

Scarcely any degree of utility, short of absolute necessity, will justify a prohibitory regulation, unless it can also be made to recommend itself to the general conscience; unless persons of ordinary good intentions either believe already, or can be induced to believe, that the thing prohibited is a thing which they ought not to wish to do. (*Principles*, CW III.938)

New coercive measures that risk social unrest, and so the dissolution of social morality, can be justified only in extreme circumstances. The effect of this is to give great weight to maintaining our shared normative expectations. It means generally following the rules widely recognized in society, and being aware of when an exception to those rules would also be expected. In some cases, violating a social expectation might be justified—but it is important that doing so would not threaten the general practice of conforming to social morality.

Certainly, at least in the great majority of circumstances, it entails a rejection of revolutionary attempts at reform. Thus, despite endorsing socialist ideas, Mill strongly objects to the “revolutionary Socialists” of the 19th century:

[T]hose who would play this game on the strength of their own private opinion, unconfirmed as yet by any experimental verification—who would forcibly deprive all who have now a comfortable physical existence of their only present means of preserving it, and would brave the frightful bloodshed and misery that would ensue if the attempt was resisted—must have a serene confidence in their own wisdom on the one hand and a recklessness of other people’s sufferings on the other. (*Chapters on Socialism*, CW V.737)

One way to consider the place of social morality in Mill’s overall ethical theory is to think of his utilitarianism being applied stepwise. In the first step, it justifies the move from the state of nature to a state of society. And because it is hard to imagine that a return to the state of nature could be justified, Mill’s basic commitment to

²⁴ E.g. “Thornton on Labour and its Claims” (1869), CW V.659. For other relevant passages, see Turner (2015a).

utility is expressed practically by our support for the social morality that keeps us out of the state of nature. We might accept *some* risk of return, but Mill argues that the consequences of that would be so dire that we normally do better keeping to social morality and to piecemeal reform efforts through the practice of public reason.

In the second step, then, Mill's commitment to utility is extended as a practical matter to the basic norm of public reason required for the rational revision of social morality. This is part of the force of his claim in *On Liberty* that "I regard utility as the ultimate appeal on all ethical questions: but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being" (CW VIII.224). Mill does not have in mind a fully-formed, ideal social morality that would allow us to reverse engineer social reforms. We can concentrate our attention on "the *immediate* impediment to progress" (CRG, CW XIX.396; emphasis added), but beyond that the key thing is to defend the free discussion and social experimentation that alone give us hope of learning from experience and the assurance that future changes to social morality will constitute improvements.

It bears repeating that, at any given point in time, social morality is unlikely to be optimal from the perspective of any particular person. But it provides what Gaus calls a "moral constitution" – a public standard that each of us has sufficient reason to endorse even though, like our legal constitution, it is "not to be equated with any specific moral perspective, with its particular understanding of values, rightness, and the morally relevant nature of the social world" (Gaus 2016, 179). On the view I have been defending, Mill accepts this basic picture and then emphasizes that the moral constitution, like a legal constitution, must allow for its own revision through free discussion and social experimentation. This latter thought animates his vision of the practice of public reason.²⁵

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