Mill on conscience and justice

This handout follows the one on ‘Utilitarianism’. You should read that handout first.

MILL, UTILITARIANISM, Ch. 3

An important part of moral motivation is a feeling of obligation, of duty. We feel bound not to murder or steal. We want to avoid violating our duty. But the same feeling doesn’t mark thoughts about producing the greatest happiness. What would motivate us to act in accordance with the principle of utility?

People can be motivated to be moral by either ‘external sanctions’ or ‘internal ones’. When someone does the right thing to avoid punishment or disapproval, or to gain some reward (from others or God), they are motivated by external sanctions. The internal sanction is a sense of duty, which Mill understands as the pain that we feel when we do not do what we believe we morally should do. This takes its ‘purest’ form when the thought is of doing one’s duty whatever that is, just because it is one’s duty, without regard to any other interests. This, Mill says, is the ‘essence of conscience’. To avoid this pain, we do our duty.

As things stand, our conscience doesn’t prod us to maximise happiness the way it prods us to avoid murder and theft. But that is because of how it has been cultivated. Conscience as it actually exists in each of us is ‘encrusted’ with all sorts of experiences - of sympathy, love, fear, religious teachings, and so on - acquired as we grow up. But human psychology is highly flexible and we could cultivate conscience to be associated just as strongly with the greatest happiness.

We already have a strong, natural emotion on which to base such an association, namely our social feelings, our desire to be in unity with others, our sympathy for others and need to live among them. Thus, we already grow up unable to disregard other people’s interests, and this shapes not just what we think but how we feel and our character traits (as sympathetic, thoughtful, benevolent, etc.). If all the forces that shape conscience, including education and external sanctions, were directed to associating our conscience with the general happiness, then our feelings of duty would apply just as strongly to promoting the general happiness as they do to customary morality at the moment.

In this way, the motive of duty - the desire to do good and avoid evil for its own sake - would not only become part of happiness, it would also be directed towards the general happiness.
MILL, UTILITARIANISM, Ch. 5

Mill calls giving an account of justice ‘the only real difficulty in the utilitarian theory of morals’.

First, he analyses what justice is and argues that it is at its heart the concept of the moral rights of the individual. We think of each of the following kinds of action as a violation of justice:

1. violating someone’s legal rights;
2. violating someone’s moral rights (laws are sometimes wrong, so their legal rights are not always the rights they should have in law);
3. not giving someone what they deserve, in particular, failing to return good for good and evil for evil;
4. breaking a contract or promise;
5. failing to be impartial when this is required, e.g. in relation to respecting rights, desert or cases of public interest;
6. treating people unequally.

What is distinctive about justice is that it relates to actions that harm a specific, identifiable individual, who has the right that we don’t harm them in this way. Duties of justice are ‘perfect’ duties. We must always fulfil them, and have no choice over when or how, because someone else has the right that we act morally. There are other cases of wrongdoing, e.g. not giving to charity, in which no specific person can demand this of us. Instead, we have some choice in how we fulfil the obligation to help others. These are ‘imperfect’ duties.

But why do we have the rights that we have? Mill says that ‘[w]hen we call anything a person’s right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion.’ The reason why society should protect us in this way is the general happiness. The interests that are protected as rights are ‘extraordinarily important’. They are interests concerned with security. We depend on security for protection from harm and to be able to enjoy what is good without fearing that it will be taken from us. The rules that prohibit harm and protect our freedom are more vital to our interests than any others. And so we protect these interests with rights, and these become the subject of justice. This contributes most to happiness in the long term. Hence, Mill says, ‘I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality’.

DISCUSSION

On Mill’s view, we only have a right if our having that right contributes to the greatest happiness in the long run. We may wonder whether the rights that we usually take ourselves to have, e.g. related to individual liberty, really do this. Would society be more happy if people had less freedom in some cases? This is an important debate in political philosophy.
A clearer objection is that Mill’s theory of rights doesn’t offer a strong
defence in particular cases. Suppose there is an occasion where violating my
rights will create more happiness than not. A right protects the individual’s
interest against what may compete with it, e.g. the greater happiness on
this occasion. Hence, my right to life prevents my being murdered to save
the lives of many others. But if the ground of rights is the general
happiness, this protection seems insecure. On the one hand, we have the
demands of the greatest happiness. On the other hand, we have the
individual’s right, which turns out to be just the demands of the greatest
happiness as well. If my rights are justified by general utility, then doesn’t
the happiness created by overriding my rights justify violating them?
Utilitarianism can’t offer any other reason to respect my right in this
particular instance.

Mill can argue that this approach to conflicts between rights and happiness
in individual cases doesn’t understand utilitarianism in the right light. We
need to consider happiness ‘in the largest sense’. Rights protect our
permanent interests, and thus serve the general happiness considered over
the long term. We should establish that system of rights that would bring
the most happiness, and then defend these rights.

But now we can object that Mill has given up on act utilitarianism. Mill
seems to recommend that we don’t look at the consequences of each act
taken individually to see whether it creates the greatest happiness. He
recommends that we create rights, which are a kind of rule, and enforce
them even when they conflict with happiness in certain situations. Thus, he
says, ‘[j]ustice 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 the essence of the idea of justice, that of
a right residing in an individual, implies and testifies to this more binding
obligation’. When rights are involved, the right action is not the one that
creates the greatest happiness, but the one that respects the right. It seems
that, in the end, Mill must adopt rule utilitarianism to provide his account
of rights and justice.