

Conscientious Utilitarianism; or, the Utilitarians Who Walk Away from Omelas

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Abstract

This essay offers a revisionist defense of classical utilitarianism from the infamous objection brought up by Ursula Le Guin's well-known short story, "The Ones Who Walk Away from Omelas." To that effect, the reply takes inspiration from Le Guin and John Stuart Mill in appealing to the natural law theoretical concept of conscience. I argue that a conscientious utilitarian ethic can escape Le Guin's objection more satisfactorily than other popular utilitarian ethics. Along the way, this essay discusses at length conscience and its place in moral epistemology, both as it occurs in the natural law tradition and in Mill. The natural law account of conscience is defended and Mill's account is critiqued. Consequently, this paper also provides an interesting synthesis of utilitarianism with natural law ethics.

Key Words: Utilitarianism, John Stuart Mill, Ursula Le Guin, Conscience, Natural Law Ethics, Moral Epistemology

I

Classical utilitarians hold that an action is good to the extent that it produces pleasure or alleviates pain for the community; better, to the extent that it produces more pleasure, alleviates more pain, or positively affects more members; and best, to the extent that it produces as much pleasure, or minimizes as much pain, as possible for the community. They hold further that an action is bad to the extent that it produces pain for, or deprives pleasure from, the community; worse, to the extent that it produces more pain, deprives of more pleasure, or negatively affects more members; and worst, to the extent that it produces as much pain, or deprives of as much pleasure, as possible for the community.

So understood, classical utilitarianism may be analyzed into three, logically isolable, component subtheses. The first is consequentialism. What makes an action good or bad? The utilitarian answers that it is the consequences of our actions. Good consequences make the action good, and bad make it bad (cf. Shafer-Landau 2010, Chs. 9-10; Sinnott-Armstrong 2021). The second is hedonism. What, then, makes a consequence good or bad?

The utilitarian answers that it is pleasure and pain. Pleasure is the *summum bonum*, and pain is the *summum malum* (cf. Mill 1863, Ch. 2; Epicurus c. 300 BC).¹ And the third subthesis of utilitarianism is impartialism. Pleasure and pain are subject-relative phenomena. Consequently, we must ask: The pleasures and pains of whom exactly? The utilitarian answers: The pleasures and pains of the entire community, impartially considered (cf. Singer 1972, 232; Driver 2014; Mozi c. 420 BC). These three theses together comprise the underlying moral metaphysics of utilitarianism, i.e. how the classical utilitarian understands the nature of moral reality.

A moral theory is complete only if it offers both a moral metaphysic and an accompanying moral epistemology as well. This is because a moral theory must not simply explain moral reality but also guide us in the pursuit of living well within it. Accordingly, classical utilitarians follow Jeremy Bentham (1780) in holding that the best way to live a moral life is to follow the dictates of the utility calculus. Bentham tells us that, when deliberating, we are to consider all of the actions currently available to us and evaluate each according to its expected consequences. Bentham thought that there were seven different dimensions of consequence we must consider in order to evaluate our alternative potential actions. He crafted a rhyme to help the practitioner memorize the dimensions of the calculus:

Intense, long, certain, speedy, fruitful, pure—
Such marks in pleasures and pains endure.
Such pleasures seek if private be thy end;
If it be public, wide let them extend.
Such pains avoid, whichever be thy view;
If pains must come, let them extend to few. (Ch. 4, 136)

Intensity refers to the amount of pleasure or pain the action is anticipated to produce in an instance (for whomever we are considering). “Long,” or *duration*, refers to the length of time during which the pleasure or pain endures. *Certainty* refers to each action’s likelihood of producing disparate effects. “Speedy,” or *propinquity*, refers to how far off in the future the anticipated pleasure or pain will occur.² “Fruitful,” or *fecundity*, refers to the tendency that the anticipated pleasure will lead to further pleasures; the anticipated pain, to further pains. *Purity* refers to the tendency that the anticipated pleasure will lead to further pains; the anticipated pain, to further pleasures. And finally, *extent* refers to how many members of the community will experience pleasure or pain as a consequence of performing the

¹ Note, though, that there are several different varieties of hedonism. In conjunction with the third thesis, the utilitarian is committed to a form of altruistic hedonism, in contrast to egoistic hedonism (cf. Kropotkin 1924, Ch. 10). Note also that we are speaking here of ethical hedonism, in contrast to psychological hedonism (more on this later).

² From a purely quantitative point of view, it is not clear that propinquity is especially important. Nonetheless, the utility calculus bears some resemblance to modern economic decision procedures; and money in the present is often considered more valuable than money in the future. Bentham seems to have a similar principle in mind here.

action.³ Bentham intended each element in the calculus to be purely quantifiable, such that by performing various mathematical operations, one can arrive at an expected utility of each action, a measure which takes into account all of the dimensions of consequence just stated and which will arrive at a final score for each of the potential actions. To (perfectly) follow the principle of utility, then, means to carefully perform these deliberative calculations and then to choose to perform that action which has the greatest expected utility per application of the utility calculus (cf. Bentham 1780, Ch. 4, 136-139; Bok 2010, Ch. 5).⁴ In this way, the utilitarian metaphysic and epistemology work hand-in-hand: The moral metaphysic tells us for what we ought to aim in action, and the moral epistemology tells us in what way we ought to aim for it in deliberation.

Classical utilitarianism has many friends and many foes. Some objections to utilitarianism target its commitment to consequentialism; some, its commitment to hedonism; others, its commitment to impartialism; and still others target the classical utilitarian commitment to Bentham's utility calculus. In another essay, I consider objections to classical utilitarian hedonism and attempt to offer a modified hedonist reply to them (cf. Bassford *ms*). In this essay, I hope to complete a similar task: I will consider certain objections to utilitarianism's commitment to both consequentialism and impartialism, taken together, which we can call "impartialist consequentialism," and I will once again attempt to offer a modified impartialist consequentialist reply to them. I will enlist St. Thomas Aquinas for help. I call the end product "conscientious utilitarianism." The thesis of this essay is that this utilitarian ethic can escape objections to utilitarian morality where other utilitarianisms fail. I will be especially concerned in this essay to respond to an objection derived from a short story by American author Ursula Le Guin.

II

As a form of impartialist consequentialism, classical utilitarianism contends that an action is good if it produces good consequences for the community, and bad if it produces bad consequences for the community. Critics demur, and it is not difficult to find popular objections to this position. Philippa Foot (1978) and Judith Jarvis Thomson's (1985) infamous Trolley Problem cases provide examples of an objection of this sort. The best way to introduce a trolley problem objection to impartialist consequentialism is by giving two cases. In the first, intuitions will probably align with the utilitarian's; in the second, they probably won't; and the best diagnosis of the divergence points to impartialist consequentialism as the problem.

In the Trolley Conductor version of the problem, we are to imagine that an agent is working as a trolley conductor. They are approaching a fork in the tracks when suddenly

³ Bentham supposed that impartiality could be built into the calculus by aggregating the pleasures and pains of the community's members. Note, though, that not everyone who accepts an impartialist moral metaphysic need also accept an *aggregationist* one. And so this adoption constitutes an important specification of the impartialist thesis.

⁴ Much more could be said on how this decision procedure works, but this suffices for present purposes. See Hacking (2001, Chs. 8-10), Jeffrey (1983), and Budziszewski (1997, Chs. 10-11).

they see that some villain has tied several people to the tracks. On one side of the fork, there is one member of the community; on the other side, there are five. All are clearly bound tight and cannot escape. The agent tries to stop the trolley, but the brakes have been cut. The only power that presently remains to them is either to flip a switch and divert the trolley to the other fork in the track, or to do nothing. If they do nothing, the trolley will hit and kill the five; but if they do something, it will hit and kill just the one. What should they do? Ought they flip the switch? Most agree that it would at least be morally permissible for the conductor to flip the switch and thereby doom the one instead of the five. After all, this is the decision which would have the best consequences for the community, impartially considered—which is to say, on average, over the aggregated sum of the members involved.

In the second case, intuitions would seem to change. In the Transplant Surgeon version of the problem, we are to imagine that an agent is working as a highly skilled transplant surgeon. Five people lay dying in the adjacent room; one needs a heart, another needs a liver, another needs a lung, and two need kidneys. Each is bound to die by the day's end. Moreover, each is so low on the donors list that their death, absent some personal intervention on the part of the surgeon, is virtually certain. Now, some new patient has just come into the office in need of non-life-threatening surgery for which they have been anaesthetized, and they lay unconscious on the operating table. As it turns out, the patient is a perfect match for all five patients in the adjacent room, such that, if the surgeon so decides, then they could transplant that patient's organs into the other five with a high confidence of success. Though, of course, the one patient would die in the process. What should they do? Ought they transplant the unwitting patient's organs? In this situation, most would agree that the transplant surgeon ought not transplant the one's organs for the benefit of the five. The intuition remains firm, even when pointed out that, as in the previous case, transplanting the organs would be the decision which has the best consequences for the community, impartially considered. Consequently, the objection concludes, the moral status of an action cannot simply be determined on the basis of impartial consequences, since it would reach the same verdict in both cases. The ends do not always justify the means; something else besides impartially beneficial consequences is needed to make sense of moral reality.

In reply to this objection, the utilitarian could distinguish between act-types and act-tokens (cf. Wetzel 2018; Bentzen 2014). The utility calculus, so stated, is understood to apply to each act-token; but were it applied instead to act-types, the objection here may be circumvented. To apply the calculus to each act-token means to apply it to each and every individual action of whatever type that the agent faces. To apply it to act-types, on the other hand, means only to use the calculus to evaluate types of action—not this particular act of, say, theft, but rather thievery generically. Thieving on the whole tends to harm the community, impartially considered, even though there may be exceptions. Therefore, act-type utilitarianism would seem to forbid thievery, which seems like the right result. Just so, in the case at hand, the type of action that the surgeon is considering—redistributing a person's organs without their consent—is clearly one which on the whole would tend to harm the community. On the other hand, the type of action the conductor is considering—diverting an out-of-control trolley to save more lives—is not one which on the whole would

tend to harm the community. Therefore, act-type utilitarianism has the resources not only to block the objection but also to explain why one's intuitions might differ in the two cases. Act-type utilitarianism is sometimes also called rule-consequentialist utilitarianism (or simply "rule-utilitarianism"), rather than act-consequentialist utilitarianism (or simply "act-consequentialism") (cf. Sinnott-Armstrong 2021, Sect. 5).

The scope of this reply, however, is insufficient to circumvent all plausible objections of this sort to impartialist consequentialism. The premise of Ursula Le Guin's (1973) short science-fiction story, "The Ones Who Walk Away from Omelas," provides an even more problematic case. In the story, the people of Omelas have been presented with a deal such that, if they leave a small child locked inside of a broom closet under one of the public buildings, neglect him, and never let him out, then the town will be instantly converted into a utopia; and by continuing to imprison the innocent child, their utopia will thereby be sustained. In the utopian state, all disease, war, poverty—chief sources of pain—will be eliminated; additionally, Omelas will experience a cultural renaissance unrivaled in human history—chief sources of pleasure. What should they do? Ought the people of Omelas torture the small child for the sake of the promised utopia? Intuition here argues against this decision. But now notice that the action being considered—torturing a child for the sake of a utopia—is one which certainly has the greatest expected utility, both in type and in token. Consequently, even rule-utilitarian impartialist consequentialism would seem to reach the wrong verdict in this case.

In Le Guin's short science-fiction story, the people of Omelas decide to imprison the small child and leave it to a life of neglect. Le Guin describes the action's effect:

In a basement under one of the beautiful public buildings of Omelas, or perhaps in the cellar of one of its spacious private homes, there is a room. It has one locked door, and no window. A little light seeps in dustily between the cracks in the board, secondhand from a cobwebbed window somewhere across the cellar. In one corner of the little room a couple of mops, with stiff, clotted, foul-smelling heads, stand near a rusty bucket. The floor is dirt, a little damp to the touch, as cellar dirt usually is. The room is about three paces long and two wide: a mere broom closet or disused tool room...

In the room a child is sitting. It could be a boy or a girl. It looks about six, but actually is nearly ten. It is feeble-minded. Perhaps it was born defective, or perhaps it has become imbecile through fear, malnutrition, and neglect. It picks its nose and occasionally fumbles vaguely with its toes or genitals, as it sits hunched in the corner farthest from the bucket and the two mops. It is afraid of the mops. It finds them horrible. It shuts its eyes, but it knows the mops are still there...

[A]nd the door is locked; nobody will come. The door is always locked; and nobody ever comes, except that sometimes—the child has no understanding of time or interval—sometimes the door rattles terribly and opens, and a person, or several people, are there. One of them may come in and kick the child to make it stand up. The others never come close, but peer in at it with frightened, disgusted eyes. The food bowl and the water jug are hastily filled, the door is locked, the eyes disappear. The people at the door never say anything, but the child, who has not always lived in

the tool room, and can remember sunlight and its mother's voice, sometimes speaks. "I will be good," it says. "Please let me out. I will be good!" They never answer. The child used to scream for help at night, and cry a good deal, but now it only makes a kind of whining, "eh-haa, eh-haa," and it speaks less and less often...

They all know it is there, all the people of Omelas. Some of them have come to see it, others are content merely to know it is there. They all know it has to be there. Some of them understand why, and some do not, but they all understand that their happiness, the beauty of their city, the tenderness of their friendships, the health of their children, the wisdom of their scholars, the skill of their makers, even the abundance of their harvest and the kindly weather of the skies, depend wholly on this child's abominable misery... They would like to do something for the child. But there is nothing they can do. If the child were brought up into the sunlight out of that vile place, if it were cleaned and fed and comforted, that would be a good thing, indeed; but if it were done, in that day and hour all the prosperity and beauty and delight of Omelas would wither and be destroyed... The terms are strict and absolute; there may not even be a kind word spoken to the child. (281-282)

Le Guin herself leaves the reader with an additional paradox for the impartialist consequentialist. Suppose one were a citizen of Omelas. What ought they do? Le Guin writes that no one concludes that the child should be freed, since that would mean "[t]o exchange all the goodness and grace of every life in Omelas for that single, small improvement: to throw away the happiness of thousands for the chance of the happiness of one" (282); and one needn't be a utilitarian to agree with them on this point. But now, the rest of the community is divided. After visiting the child, Le Guin writes, most often "the young people go home in tears, or in a tearless rage, when they have seen the child and faced this terrible paradox. But as time goes on they begin to realize that even if the child could be released, it would not get much good of its freedom... Their tears at the bitter injustice dry when they begin to perceive the terrible justice of reality, and to accept it" (283). They then go on to enjoy their ambiguous utopia. But less often, Le Guin writes:

[O]ne of the adolescent girls or boys who go to see the child does not go home to weep or rage, does not, in fact, go home at all. Sometimes also a man or woman much older falls silent for a day or two, and then leaves home. These people go out into the street and walk down the street alone. They keep walking, and walk straight out of the city of Omelas, through the beautiful gates... They go on. They leave Omelas, they walk ahead into the darkness, and they do not come back. (283-284)

The important question, then, is this: Supposing one were a citizen of Le Guin's science-fictional society, ought one remain in Omelas or flee it after learning of the conditions on which the happiness of the community depends?⁵ Le Guin appears to favor the course of

⁵ Le Guin (1975) reports that she was partially inspired to write her Omelean story after reading William James's (1891) "The Moral Philosopher and the Moral Life." She was particularly inspired by James's remarks: "[I]f the hypothesis were offered us of a world in which Messrs. Fourier's and Bellamy's and Morris's utopias should all be outdone, and millions kept permanently happy on the one simple condition that a certain lost soul on the far-off edge of things should lead a life of lonely

action taken by the conscientious objectors, even though their decision, both in token and in type, means performing that action which does not have the greatest expected utility. I am inclined to agree. Moreover, I am inclined to conclude that a plausible moral theory ought also to arrive at this verdict. And so, the objection goes, since utilitarianism does not have the resources to block its agents from making moral sacrifices of other people, it too is implausible and warrants rejection.

III

Curiously, both Le Guin and John Stuart Mill offer similar remarks which may be of service to the utilitarian in addressing Le Guin's objections. About the people who choose to reside in Omelas, Le Guin writes that: "One thing I know there is none of in Omelas is guilt" (279). I take this to be a criticism of the Omelean people, as well as a suggestion as to why the ones who walk away are taking the better course of action. The Omelean residents lack proper conscience. Conscience is responsible for our sense of guilt and remorse. It can, nonetheless, be silenced to some extent (more on this later). The Omelean people are those in whom conscientious feeling is absent, whereas the ones who walk away would seem to be instead following conscience's dictates. They experience the sense of guilt, and when faced with the option to follow conscience or snuff it out, they choose the conscientious action. Like one refusing to serve in an unjust war, they conscientiously abstain from living in an unjust paradise.

In Chapter 3 of his *Utilitarianism*, Mill discusses conscience at some length. His remarks suggest that he may agree with Le Guin on this point. If so, then a Millian strategy of reply to Le Guin's objection suggests itself. In Chapter 3, Mill is concerned to answer the question: What is the "ultimate sanction" of the principle of utility? Mill clarifies that, by this, he means to investigate: "What are the motives to obey it? Or more specifically, what is the source of its obligation? Whence does it derive its binding force?" (182; cf. Bittle 1950, Ch. 10). Mill offers a surprising answer. One would expect a utilitarian to say that the principle of utility is sanctified solely by its consequences, i.e. by rewards when following it in the form of pleasure for themselves and others, and by punishments when violating it in the form of pain for themselves and others.⁶ But this is not what Mill says. Instead, he writes: "The principle of utility either has, or there is no reason why it might not have, all the sanctions which belong to other systems of morals. Those sanctions are either external or internal" (183). About the former, he writes, "they are, the hope of favor and the fear of displeasure from our fellow creatures or from the Ruler of the Universe... The whole force...

torment, what except a specific and independent sort of emotion can it be which would make us immediately feel, even though an impulse arose within us to clutch at the happiness so offered, how hideous a thing its enjoyment when deliberately accepted as the fruit of such a bargain?" (Sect. 1, 188). The child in the basement, then, exemplifies a Jamesian Lost Soul (though, in some sense, the citizens who remain in Omelas are even more profoundly lost than the child). For more on the philosophical elements in Le Guin's story, see Simon (2004), Bartles (2022), and Burgess (2019).

⁶ After all, Mill writes that: "All action is for the sake of some end, and rules of action, it seems natural to suppose, must take their whole character and color from the end to which they are subservient" (Ch. 1, 151).

of external reward and punishment, whether physical or moral, and whether proceeding from God or from our fellow men, together with all that the capacities of human nature admit, of disinterested devotion to either, become available to enforce the utilitarian morality, in proportion as that morality is recognized” (183-184). This is clearly consistent with classical utilitarian epistemology. But then, about the latter type of sanction, Mill writes:

The internal sanction of duty, whatever our standard of duty may be, is one and the same—a feeling in our own mind; a pain, more or less intense, attendant on violation of duty, which in properly cultivated moral natures rises, in the more serious cases, into shrinking from it as an impossibility. This feeling, when disinterested, and connecting itself with the pure idea of duty, and not with some particular form of it, or with any of the merely accessory circumstances, is the essence of Conscience... Its binding force... consists in the existence of a mass of feeling which must be broken through in order to do what violates our standard of right, and which, if we nevertheless violate that standard, will probably have to be encountered afterwards in the form of remorse... The ultimate sanction, therefore, of all morality (external motives apart) being a subjective feeling in our own minds, I see nothing embarrassing to those whose standard is utility, in the question, what is the sanction of that particular standard? We may answer, the same as of all other moral standards—the conscientious feelings of mankind. (184-185)

In this passage, Mill identifies the internal sanction with conscience and then claims that it is ultimately *conscience* which gives the principle of utility its force of law as a first principle of morality. Mill: “No reason has ever been shown why [conscience] may not be cultivated to as great intensity in connection with the utilitarian, as with any other rule of morals” (185).

We will return to the subject of whether conscience does in fact sanctify the utilitarian calculus, and how, later on. For present purposes, what is significant is simply the fact that Mill gives higher subjective normative authority to conscience than to the Principle of Utility. (Only something of higher normative authority can sanctify something of lesser.)⁷ What, then, ought Mill say about putative cases in which the dictates of

⁷ Now, there are at least two different senses of the term “sanction” and its linguistic derivations. In the strictest sense—which Mill may have in fact had in view here—“sanction” is used in the sense of rewards or punishments associated with performing an action or refraining from performing it. In a looser sense, however, it is used in the sense of approving or making something right, as in the statement, “The board of directors sanctioned (or sanctified) the sale of the bonds” (Bittle 1950, 232). I say the reply I sketch here is “inspired” by Mill, because I will be interpreting his remarks about the “internal sanction” in both senses. This is because if Mill means “sanction” only in the strict sense, then his remarks will not be of any great assistance to the utilitarian in responding to Le Guin. However, taken in the looser sense, one might object that my interpretation of Mill is uncharitable, since it would seem to commit him to thinking that there are two chief moral principles regulating conduct—the utility calculus and, additionally, conscience. Nonetheless, only when taken in this latter sense of “sanction” are Mill’s remarks serviceable in the present dialectical context. (More on this later.)

conscience and the dictates of the calculus conflict, such as in the Trolley Problem cases or Le Guin's Lost Soul paradoxes? It would seem that Mill should say in those cases that the agent ought to follow their conscience, even if doing so would mean to perform some action which does not lead to the consequences which impartially benefit the community the most.⁸

Taking inspiration from Le Guin and Mill, I therefore suggest that the utilitarian respond to the objection as follows. Instead of affirming a version of utilitarianism which accepts unqualified impartialist consequentialism, I recommend the utilitarian affirm what we can call *conscientious impartialist consequentialism*. This is the position that, when deliberating about what to do, an agent ought to perform whatever conscientious action it is which most maximizes expected utility. If this position is affirmed instead, I believe the objections may be circumvented. The reason it is permissible for the trolley conductor to divert the trolley is because it maximizes expected utility without butting up against conscience. By contrast, the reason it is wrong for the surgeon to transplant the unwitting patient's organs, the reason it is wrong to take the utopian deal, and the reason it is wrong to remain in Omelas after learning of the cruel and unjust conditions upon which its prosperity depends, is because all three of these actions do butt up against the dictates of conscience. One ought only use Bentham's calculus to determine which action it is that one ought to perform out of those potential actions which are consistent with the dictates of one's conscience. This reply has a wide enough scope to deal with the major objections to impartialist consequentialism, and given Mill's remarks above, it would seem also to be (at least loosely) consistent with Millian utilitarianism.

Nonetheless, the utilitarian might still have some reservations about accepting this reply. Two critical questions present themselves. The first is: What exactly is conscience? The plausibility of conscientious impartialist consequentialism depends in large part on the plausibility of the account of conscience offered to accompany it. And the second question is this. Importing conscience into utilitarianism will clearly make some difference to utilitarian epistemology, since conscience is a moral epistemic concept. But what implications does accepting conscience into the calculus have for utilitarian metaphysics?

⁸ A critic might say, perhaps this is what Mill ought to say, but whether or not he would actually say it is disputable. Bentham famously wrote that "Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do." With this statement, Bentham commits himself to both ethical and psychological hedonism; and most utilitarians have followed him here. In Chapter 3 of *Utilitarianism*, Mill is certainly concerned to defend ethical hedonism. And so, a different interpretation of what he is up to in Chapter 2 is that he is trying to defend a peculiar form of psychological hedonism to accompany his defense of ethical hedonism. So understood, one might say that his whole point of discussing the internal sanction of duty is that he needs to show how aiming at aggregate pleasure can in fact promote individual pleasure too, provided that individuals have been properly socialized, so that his ethics and psychology do not conflict. I concede that this is an alternative plausible interpretation of Mill in Chapter 2. But if that is all his remarks on conscience amount to, then, again, his remarks are of no use in the present dispute.

The plausibility of conscientious impartialist consequentialism also depends in large part on whether or not it is consistent with the spirit of utilitarian ethics. (One might even doubt that the resultant account is still truly utilitarian at all.) I will now take up both questions in turn.

IV

What exactly is conscience? Mill has his own answer to this question. But before detailing and evaluating Mill's account, I will start by first explicating the traditional concept of conscience, which derives from the natural law tradition of theology, (deontological) ethics, and jurisprudence. This will allow us to better analyze Mill's account, as well as point to ways in which his account may be found wanting. St. Thomas Aquinas is the primary representative from this tradition.

In the natural law tradition, conscience is understood to be essentially defined by both its psychological and epistemological functions. Conscience is a psychological faculty (or family of faculties, teleologically unified) which is intended to guide us in the correct moral evaluation of particular actions, especially during deliberation. Some of its functions are decidedly affective, some cognitive, some conative, some intuitive, and some are perceptual. I will detail the functions of conscience in two ways, first with an analogy to the American legal system, and second by illustrating their intended role in practical syllogisms, according to Aquinas.⁹

In the American legal system, there are three basic branches of labor, each defined by its distinct function. The legislative branch is tasked with producing the general laws which the public is compelled to obey. The judicial branch is tasked with interpreting those general laws, as well as applying them to specific cases presented to the courts. And the executive branch is tasked with executing the laws, principally by ensuring that the public actually obeys them. Now, the faculty of conscience has three similar functions. In the natural law literature, its different functions are recognized by the names "*synderesis*," "*conscientia*," and "*vermem conscientiae*" (cf. Budziszewski 2014b, Q94, A1). *Synderesis* (or what we might call "legislative conscience") is tasked with furnishing the mind with the most general moral laws (cf. Aquinas 1259: *De Veritate*, Q16; Aquinas 1273: *ST I-II*, Q94, A1; Budziszewski 2014a).¹⁰ This function is primarily intuitive, such that the means whereby it so furnishes the mind are said to be non-demonstrative and in some sense known by all (more on this momentarily). *Conscientia* proper (or what we might call "judicial conscience") is tasked with interpreting the laws provided to it by *synderesis* and

⁹ This is an unusual way of presenting the Thomistic theory of conscience, compared to the way it is usually introduced. For a more classical introduction to the natural law theory of conscience, see Bittle (1950, Ch. 7), Farrell (1930, Ch. 5, Sect. 3), and Garnett (1969). The account I detail here in many ways is an attempt to synthesize their remarks with Aquinas and Aristotle (more on this momentarily).

¹⁰ Though this analogy is somewhat imprecise. It is usually thought that legislators create the laws. But *synderesis* is tasked only with recognizing universal laws already created. But the analogy here is still illustrative, nonetheless.

then appropriately applying them to particular actions with which the person is confronted in deliberative experience (cf. Aquinas *De Veritate*, Q17; *ST* I-II, Q96, A4; Budziszewski 2014a). This function is primarily cognitive and perceptual, though intuition is involved too. To act in good conscience is to act in accordance with the verdicts of one's judicial conscience, whereas to act in bad faith is to act against *conscientia's* dictates. Finally, *vermem conscientiae* (or what we might call "executive conscience") is tasked with ensuring that we actually do what *conscientia* has pronounced as right for us (*De Veritate*, QQ16-17; *ST* I-II, Q96, A4; Budziszewski 2014a; Budziszewski 2014b: Q96, A4). This function is primarily affective and conative. In the external domain, we have legislators, judges, lawyers, jurors, and the bailiff; in the internal domain, we have conscience, which at once informs us of what ultimately matters, interprets those values and general indications of duty, attempts to apply them to our present circumstances, and finally goads us into performing some action, refraining from some action, or otherwise feeling the need to rectify some moral mistake previously made.

When all goes according to design, conscience successfully aids us whenever needed in practical reasoning. St. Thomas elucidates the role of each of the three departments of conscience by citing their influence in practical syllogisms. In a practical syllogism, we have a major premise, which cites some general moral principle; a minor premise, which cites some action currently being considered in deliberation (or some more specific type of action); and then the conclusion, which applies the general principle to the particular deliberative situation (cf. Aristotle, *Ethics*, Bk. 7, Ch. 3; *De Anima*, Bk. 3, Ch. 11; and *De Motu Animalium*, Ch. 7; Vaughn 2005, Ch. 11). An example:

1. Murder ought not be done. [Major]
2. This act, ϕ , would be an act of murder. [Minor]
3. Therefore, ϕ ought not be done. [Conclusion]

Conscience is tasked with ensuring that the premises of our deliberative reasoning are true and that the conclusion follows from them validly. It determines that the major premise is true by consulting *synderesis* and correctly interpreting its revealed dictates. It determines that the minor is true by again consulting with *synderesis* (if it is another general principle) or otherwise by appealing to empirical evidence about the case at hand. (But even in the latter case, the intuitive evidence of *synderesis* is still needed, since one requires intuition to see an action as an action of, say, murder—cf. Bassford *fc*-1.) Conscience then verifies that the conclusion licitly follows from the major and minor premises by consulting reason. Finally, once conscience reaches its particularized verdict in the conclusion, control is given over to *vermem conscientiae*, which is tasked with ensuring that the person whose conscience it is actually performs the act or refrains from performing the act which has been pronounced. To this effect, conscience influences our emotions, our desires, our aversions, and any other available psychological resources which have the power to motivate us to take action or avoid taking action (cf. Broad 1969). If our will obeys the dictates of conscience, *vermem conscientiae* encourages us, which takes the form of pleasure and general positive self-regard; but if our will disobeys, we get the karma police, which takes the form of feelings of guilt, shame, remorse, and general negative self-regard.

Let's say just a bit more about the three branches of conscience. Then we will turn our attention to Mill's theory of conscience.

1. *Synderesis* is the psychological faculty whereby conscience grasps the first principles of moral deliberation. Aquinas thought that everyone has their own legislative conscience but that nonetheless the verdicts of all are the same (*De Veritate*, Q16). The reason that we have such a faculty is in virtue of being human. (Possessing such a faculty is either a part of our essence or otherwise a necessary accident which flows from it—cf. Bassford 2021.) And the reason that the verdict is always the same is because *synderesis* provides its general verdicts to the intellect by way of intuitive induction (*epagoge*), and both Aristotle and St. Thomas held that this is an infallible method for obtaining knowledge (albeit not much) (cf. Aristotle, *Posterior Analytics*, Bk. 2, Ch. 19; *Ethics*, Bk. 6, Ch. 6ff).¹¹ Consequently, once a person gathers enough experience, they cannot help but know the most general principles of morality.

Intuitive induction in Aristotelian epistemology is a type of non-demonstrative inductive process. It is non-demonstrative just as sense perception is non-demonstrative, in that its products are immediate and primary data of experience. And it is inductive in the sense that it imparts to us knowledge of generals through particulars. In theoretical reasoning, our goal is truth, or the adequate representation of reality. But in order to reach truth, we must assume some norms of reasoning, such as the principle of non-contradiction. Now, if we are to assume this, it must be justified somehow. But it cannot be justified by reasoning, since reasoning depends on it. Consequently, if it is justified at all (and it seems to be), then it must be justified non-demonstratively. But no principle nor any other episode of experience is more general in scope than this (and similar) principles. Therefore, we must somehow glean from particular experiences that this more general principle must be true (cf. Aristotle, *Metaphysics*, Bk. 4, Chs. 3-4; Bittle 1939: Ch. 5). Aristotle assigns a faculty to this role—*nous*—and he posits that through *nous*, we engage in acts of *noetic epagoge* (intuitive induction via *nous*) to glean the first principles of theoretical logic. Moreover, he adds, through *nous* we also come to engage in acts of thick perception. In a thick speculative perception, we see some particular as belonging to a certain form. That is, we do not simply hear a series of pitches, say, but rather we hear that the oboe is out of tune (cf. Bassford *forthcoming*). Similarly, we do not simply see a series of scenes, but rather we see a movie. In this way, *epagoge* also plays a central role in Aristotelian ideogeny, i.e. in Aristotle's theory of from what origin and process our theoretical concepts of the world arise, both generally and as applied to the more particular sciences (cf. Aristotle, *Posterior Analytics*, Bk. 2, Ch. 19; Bittle 1945, Ch. 14; McDowell 1994, Lecture 1).

¹¹ *Epagoge* is a difficult concept. In what follows, I attempt to detail the basic features of it for the unfamiliar reader. But for a more thorough discussion of intuitive induction (esp. within Aristotelian logic, epistemology, and philosophy of science), see Bassford (*forthcoming*), Engberg-Pederson (1979), Upton (1981), Groarke (2009, Ch. 4), Hankinson (2011), and Aquinas (1270).

Aquinas contends that we have a similar faculty with respect to the first principles of practical deliberation (cf. *De Veritate*, Q16). We learn the first principles of morality through a process of *epagoge*. But whereas with respect to theoretical principles, we have the faculty of *nous*, with respect to normative principles, we have conscience (i.e., *synderesis*, specifically). *Nous* is concerned with truth value, but conscience is concerned with moral value. The most immediate dictate of *nous* is likely as William James says (1896: Sect. 7, 17): Pursue truth, avoid error. Similarly, the first dictate of conscience, Aquinas says, is: Pursue goodness, avoid evil (cf. Bittle 1950, 144). Moreover, just as *nous* is required in order to see, say, a dog as a dog, conscience is required to see, say, an act of deceit as an act of deceit. To see something as a dog is to see it as an adequate basis on which to make many deductive and inductive inferences. Similarly, to see an action as an act of deceit is to see it as a suitable basis on which to judge its moral status (at least partially—more on this later) (cf. Lange 2004; Bassford *forthcoming*).

Now, both Aristotle and Aquinas thought that all sciences, whether theoretical or practical, must rely on first principles which are more certain than all subsequent scientific principles. For this reason, both held that *epagoge* is unerring. Consequently, once we start having experiences, all of us come unerringly to know the most basic principles of speculation and deliberation through spontaneous acts of intuition. In this way, Aquinas holds, the dictates of *synderesis* are “written on the hearts” of all human beings (cf. Budziszewski 1997; Augustine, *Confessions*, Bk. 2, Ch. 4), and to live a good life depends crucially on following our conscience. To act contrary to conscience in deliberation is equivalent in normative severity to believing contrary to the principle of excluded middle in speculation.

Aristotle holds that *noetic epagoge* is unerring, and Aquinas holds similarly that *conscientious epagoge* is unerring too. Nonetheless, it is obviously possible for theoretical reason to err; so too it is obviously possible for practical reasoning to err. In cases of practical reasoning, Aquinas contends that this is the result of an error with the judicial or executive branches of conscience (i.e., *conscientia* or its worm), never with the legislative branch (i.e., *synderesis*) (cf. *De Veritate*, QQ16-17). In errors of practical judgment, perhaps *conscientia* has misunderstood or misinterpreted the edicts of *synderesis* and consequently posited a false major; perhaps *conscientia* has failed in correctly classifying the particular action and consequently posited a false minor; perhaps *conscientia* has made an error of inference and consequently inferred a conclusion on an AAA-2 syllogism rather than, say, an AAA-1 (cf. Kelley 1998, Pt. 3, Ch. 9); or perhaps *vermem conscientiae* has slacked in its duties and consequently allowed the person to will into existence an action which fails to conform with its applied verdict (e.g., as happens in cases of *akrasia*—cf. Davidson 1969; Broad 1969). The first case is analogous to a judge who appeals to false laws; the second is analogous to a judge who has failed to collect the correct evidence and consequently failed to recognize a case’s relevance to some law; the third is analogous to a judge who incorrectly condemns an innocent person or incorrectly liberates a guilty one; and the final is analogous to a police officer who fails to punish someone breaking the law or punishes someone who in fact failed to break one. Because of its resemblance to legal practice, Aquinas sometimes refers to the total proceedings which take place during conscientia’s activity as the “*foro conscientiae*,” the court of conscience” (*ST I-II*, Q96, A4).

2. *Conscientia* is the psychological faculty whereby we apply the general pronouncements of *synderesis* to some specific action encountered in deliberation. As St. Thomas notes, completing this task demands completing two sub-tasks: a process of discovery and a process of evaluation. This is again analogous to contemporary American judicial proceedings. In the discovery phase, conscience first consults the edicts of moral intuition. If all goes well in this phase of discovery, then conscience discovers a relevant moral principle to apply to the case at hand. Then conscience attempts to categorize the action in a way which classifies it under the scope of the principle. In some cases, intuition is able to assist in immediately categorizing the act for us in an instance of thick moral perception, such as in cases where I immediately witness a mugger mug a victim. Absent firsthand experience, conscience then prompts us to seek out further information to aid in reaching a verdict. Having secured a suitable major and minor premise, conscience then enters an evaluation stage and attempts to determine whether the inference is or is not sound (or inductively cogent, as the case may be). As can be discerned from this explanation, several distinct types of psychological processes are involved or possibly involved here. This would appear to be the most heterogeneous function of conscience.

3. *Vermem conscientiae* is the psychological faculty whereby we are influenced to carry out the verdicts of *conscientia* (ST I-II, Q96, A4). It is the part of the faculty of conscience which issues conscientious feelings, those peculiar emotions we experience related to judgments of obligation, prohibition, supererogation (cf. Urmson 1969), suberogation (cf. Driver 1992), and which are silent in our judgments of an action's permissibility. It is called "the worm of conscience" to call to mind an image of a worm (vermin) gnawing inwardly on an apple core (i.e., the soul), because many of the most vivid encounters with *vermem conscientiae* in ordinary experience are of the punishments which it imposes on us for acting unconscientiously.¹² *Vermem conscientiae* is specifically the origin of guilt, remorse, and moral shame. But it is also the origin of that conative force in us which tames us in those situations in which we want to act one way, but we are compelled instead to take a higher road and act better than we want. In this way, the worm of conscience is also experienced as a kind of internal, conative resistance, or "limiting principle," in deliberation (cf. Aristotle, *Ethics*, Bk. 6).

V

Mill's account of conscience differs in several ways from the traditional, (neo-)Thomistic account just sketched. I will first state the essential features of his account, noting the ways in which it diverges from Aquinas. Then I will critique Mill's account, both insofar as it is an account of conscience just considered on its own, and then insofar as his account might work within a conscientious reply to the objections to impartialist consequentialism stated earlier. I find Mill's account of conscience wanting in both respects.

¹² The *vermem conscientiae* would seem also to be that function of conscience which is most susceptible to corruption and malfunction. In its most severely disordered state, it can plague the agent with bouts of morbid guilt and regret. For further study, compare this concept to Freud's concept of the *superego* and its malfunctions (cf. Freud 1927a, Ch. 3; 1927b; Hall 1954, Ch. 2).

St. Thomas held that conscience is a multifarious faculty, cutting across the affective, cognitive, conative, intuitive, and perceptual dimensions of psychological life. Mill, on the other hand, holds that conscience is essentially just affective and conative. As quoted before, he holds that conscience is ultimately “a feeling in our own mind; a pain, more or less intense, attendant on violation of duty, which in properly cultivated moral natures rises, in the more serious cases, into a shrinking from it as an impossibility... Whatever theory we have of the nature or origin of conscience, this is what essentially constitutes it” (1863, Ch. 3, 184). Here, he seems to think that the essence of conscience is exhausted by the *vermem conscientiae*, that faculty in us which issues moral feelings and which is tasked with motivating us to perform or refrain from performing certain actions. Like the tradition, Mill holds that conscience is the source of feelings of guilt, remorse, shame, etc.; but unlike the tradition, Mill holds that conscience is responsible for positive moral feelings too, i.e. “the social feelings of mankind” and “the desire to be in unity with our fellow creatures” (189-190).¹³

Mill’s account of conscience has apparently no place for *synderesis* or *conscientia* (proper). In Chapter 1 of *Utilitarianism*, he does briefly consider the possibility that we may have a “natural faculty, a sense or instinct, informing us of right and wrong,” i.e., *synderesis* (151). But he is skeptical of its existence. Moreover, he writes, even if such a faculty exists, it is of no use in applied ethics, since it would supply us only with the most “abstract doctrines of morality” (152). In Chapter 1, he also briefly considers the possibility that we may have a faculty for engaging in thick moral perception, i.e., *conscientious epagoge*. But again, he is skeptical of the existence of such a faculty and writes that “the morality of an individual action is not a question of direct perception, but of the application of a law to an individual case” (151-152).

Mill’s account of the epistemic significance of conscience likewise differs markedly from the natural law tradition. Both Aquinas and Mill hold that conscience is in some sense a part of human nature.¹⁴ However, whereas Aquinas thought that *synderesis* (legislative conscience) is unalterable and directed towards some objective, transcendental moral reality (more on this later), Mill holds that conscience is both highly mutable and entirely subjective—moreover, it is a kind of mystification, produced in us by the association of ideas. About conscience’s mutability, he writes:

¹³ Mill’s addition of this element is likely an improvement on the traditional account, which has tended to focus very heavily on negative moral emotions, such as what is sometimes called “Catholic guilt.”

¹⁴ Cf. Mill (1863, Ch. 3, 187-188): “[I]f the feeling of duty, when associated with utility, would appear... arbitrary; if there were no leading department of our nature, no powerful class of sentiments, with which that association would harmonize, which would make us feel it congenial, and incline us not only to foster it in others... but also to cherish it in ourselves; if there were not, in short, a natural basis of sentiment for utilitarian morality, it might well happen that this association also, even after it had been implanted by education, might be analyzed away... But there is this basis of powerful natural sentiment; and this it is which, when once the general happiness is recognized as the ethical standard, will constitute the strength of the utilitarian morality.”

In that complex phenomenon as it actually exists, the simple fact is in general all encrusted over with collateral associations, derived from sympathy, from love, and still more from fear; from all the forms of religious feeling; from the recollections of childhood and of all our past life; from self-esteem, desire of the esteem of others, and occasionally even self-abasement. This extreme complication is, I apprehend, the origin of that sort of mystical character which, by a tendency of the human mind of which there are many other examples, is apt to be attributed to the idea of moral obligation, and which leads people to believe that the idea cannot possibly attach itself to any other objects than those by which, by a supposed mysterious law, are found in our present experience to excite it. (Ch. 3, 184)

But also:

[T]he moral faculty, if not a part of our nature, is a natural outgrowth from it; capable... in a certain small degree, of springing up spontaneously; and susceptible of being brought by cultivation to a high degree of development. Unhappily it is also susceptible, by sufficient use of the external sanctions and of the force of early impressions, of being cultivated in almost any direction: so that there is hardly anything so absurd or so mischievous that it may not, by means of these influences, be made to act on the human mind with all the authority of conscience. (187)

About conscience's epistemic subjectivity, Mill writes:

There is, I am aware, a disposition to believe that a person who sees in moral obligation a transcendental fact, an objective reality belonging to the province of "Things in themselves," is likely to be more obedient to it than one who believes it to be entirely subjective, having its seat in human consciousness only. But whatever a person's opinion may be on this point of Ontology, the force he is really urged by is his own subjective feeling, and is exactly measured by its strength... The sanction, so far as it is disinterested, is always in the mind itself; and the notion therefore of the transcendental moralists must be, that this sanction will not exist in the mind unless it is believed to have its root out of the mind... (185-186)

But, Mill says, this is not so: "This which is restraining me, and which is called my conscience, is only a feeling in my own mind" (186). Nonetheless, he contends:

To those who possess [this feeling], it possesses all the characteristics of a natural feeling... This it is which makes any mind, of well-developed feelings, work with, and not against, the outward motives to care for others, afforded by what I have called the external sanctions; and when those sanctions are wanting, or act in an opposite direction, constitutes in itself a powerful internal binding force, in proportion to the sensitiveness and thoughtfulness of the character. (191)

And so, in sum, Mill holds that conscience is ultimately a "mass of feeling" in us (184), which is responsible for both our positive and negative moral feelings, compelling us or restraining us to perform some action, which is entirely subjective and tracks no

independent moral reality, is highly mutable (but also highly educable), but which is nonetheless natural to human beings.¹⁵

Now let's evaluate Millian conscience. I believe Mill's account of conscience is problematic in three respects. First, Mill says that conscience is ultimately just a subjective feeling in our minds. But Bentham's calculus, on the other hand, is intended to track objective moral reality (1780, Ch. 1). Consequently, to appeal to conscience when using the calculus could only function as a kind of unwarranted bias in deliberation if Mill's account is correct (an appeal to emotion). But the utilitarian should not merely want to bias their deliberative process, but rather correct it. Therefore, if conscience is to serve its intended function within utilitarian epistemology, it cannot be supposed merely to be a subjective feeling. It must also track something objective. I take it that this is the importance of the cognitive, intuitive, and perceptual elements in the traditional account of conscience.¹⁶

In response, Mill might say that it would be epistemically optimal if there were a faculty in us which is capable of perceiving the moral status of individual actions; but there is none: "For—besides that the existence of such a moral instinct is itself one of those matters in dispute—those believers in it... have been obliged to abandon the idea that it discerns what is right or wrong in the particular case in hand, as our other senses discern the sight or sound actually present" (Mill 1863, Ch. 1, 151-152). But I do not think this defense is very satisfying. Thomas Reid (1785) certainly did not feel obliged to abandon the idea that we engage in moral perception of this sort. He calls our faculty responsible for this power "Moral Sense," the "Moral Faculty," or, most notably, "Conscience" (Ch. 3, Sect. 6, 319; cf. Stecker 1987). More recently, Robert Audi (2013) has argued at length that we are capable of moral perception. He theorizes that we are capable of perceiving the moral status of an individual action (perfectly or imperfectly) in virtue of being able to see the grounds of moral status. In this way, moral perception would seem to be similar to color perception. In both cases, we perceive the phenomena by virtue of perceiving the phenomenon's ontological grounds. Even so, what is presented to our minds is never mere raw sense data, or just the grounds themselves, but rather the phenomena which is grounded by the grounds (cf. Audi 2013, Ch. 2ff; Austin 1959; Bittle 1936, Chs. 11-12).

Second, again, Mill says that conscience is merely a (highly mutable) subjective feeling in our minds. It is experienced as a kind of "pain, more or less intense, attendant on violation of duty" (Ch. 3, 184). But if this is so, then it is unclear why the conscientious

¹⁵ At least, it is natural "to those who possess" it. Mill uses similar hedging language in all of his works whenever he is discussing the natural.

¹⁶ *Objection:* But wait, in what sense can the inclusion of feeling in the utility calculus be a kind of bias? After all, the utilitarian is a hedonist and thinks that it is precisely subjective feelings which ought to be considered when making decisions about what to do. *Reply:* That is true, but we must distinguish between two senses of feeling. "Feeling" is used as a descriptor for feelings of pleasure and pain, and in general for all sensations; but "feeling" is also used as a descriptor for emotions, moods, and in general for all affections. Of course the utilitarian wants the former sort of feelings to enter into rational deliberation, but they should not want the latter to do so, except insofar as affections are causes or effects of pleasure and pain.

impartialist consequentialist ought not simply to silence their conscience when it disagrees with the calculus. If conscience were silenced, then every action an agent considers would thereby be consistent with conscience, if consistency with conscience merely means that one experiences no internal pain in performing it. But now consider the implications this would have in our conscientious reply to Le Guin. We said that it seems best to walk away from Omelas. But it is unclear that Mill could say as much. In fact, if conscience is merely experienced pain of a distinct sort, then it would appear that the best course of action available to the Omelean people is instead to remain in Omelas and work to silence or otherwise stifle their conscientious feelings, as Le Guin suggests they have done: “One thing I know that there is none of in Omelas is guilt” (279). But suppressing conscience here is intuitively the wrong result. Consequently, if conscience is merely a subjective feeling, then a conscientious reply to Le Guin loses its plausibility.

Mill has a ready reply to this objection. He writes: “But is this danger [of having feelings antithetical to what is morally required] confined to the utilitarian morality? Does the belief that moral obligation has its seat outside the mind make the feeling of it too strong to be got rid of? The fact is so far otherwise, that all moralists admit and lament the ease with which, in the generality of minds, conscience can be silenced or stifled” (186). Mill offers us a partners-in-crime defense here (cf. Mackie 1977, Ch. 1, Sect. 9). Partners-in-crimes defenses (sometimes also called “companions in guilt” defenses) do not attempt to resolve an issue. Nonetheless, if Mill is correct and that there is no problem with his conscientious utilitarianism which is not also a problem for other normative theories, then his reply may be taken to dialectically suffice. But in this case, there is a unique problem with his account, at least once we distinguish between *synderesis*, *conscientia*, and *vermem conscientiae*. A Thomistic conscientious utilitarian theory does not face this same problem. Therefore, a partners-in-crime reply is insufficient in our present dialectical context.¹⁷

And third, Mill says that conscience is highly mutable. But if this is so, then one might rightly doubt whether conscience can really sanctify the principle of utility in the way which Mill claims it does. Perhaps my conscience differs from yours; in which case, maybe my conscience sanctions the utility calculus, but yours does not. But the conscientious utilitarian should not wish to say that whether or not conscience sanctions utilitarianism is a contingent matter, but rather holds for each person necessarily. Mill can say that the faculty of conscience flows from human nature, but his account cannot

¹⁷ Alternatively, Mill might try to escape the objection by offering a rule-theoretic criticism of the people of Omelas—perhaps the rule, “Do not torture children for pleasure.” In this case, it would not be the truly utilitarian course of action to torture the child, so educators in Omelas should shape Omeleans’ sense of duty in such a way that each of them would feel intense displeasure for doing so. But, of course, for Mill, the only possible defense of such a rule as “Do not torture children for pleasure” would be that on the whole, following it increased aggregate pleasure—and the problem with this reply is that in Omelas, it does not. So perhaps the truly utilitarian course of action really is to torture the child. In this case, Mill would have to say that educators in Omelas should shape Omeleans’ sense of duty in such a way that each of them would feel intense pleasure in the child’s torture. But then, morally speaking, this would seem to make the choice to remain in Omelas even worse.

maintain that the dictates of conscience are the same for each person (because so mutable), which is problematic if we want the utility calculus to be sanctioned for each person.¹⁸

By contrast, adopting Aquinas's account of conscience instead of Mill's would not cause similar problems for the utilitarian. Aquinas does not hold that conscience is merely an affective and conative faculty, but rather contains also functions which are cognitive, intuitive, and perceptual. In this way, Aquinas would contend that appealing to conscience in deliberation is not merely a bias but rather provides genuine data about objective moral reality. Moreover, since conscience for Aquinas is not merely a "mass of feeling," he would deny that it is possible to silence or stifle it (ST I-II, Q96, A4). *Vermem conscientiae* can sometimes be silenced to some extent, but *synderesis* and *conscientia* cannot. Consequently, even if the people of Omelas have no guilt, their choice to remain in Omelas is still not one which is consistent with proper conscience. Finally, Aquinas holds that, whereas *vermem conscientiae* may be mutable, *synderesis* is by no means mutable and is the same for everyone (*De Veritate*, Q16). For this reason, the utilitarian who follows Aquinas over Mill can continue to maintain that the principle of utility is sanctioned by conscience for everyone, since sanctioned by *synderesis* or *conscientia*, not merely by *vermem conscientiae*. Therefore, Aquinas's account of conscience seems to be superior to Mill's, both in itself and insofar as it may be appealed to in responding to the objections to utilitarian impartialist consequentialism.

VI

We are now in a position to address the second question: What implications does importing conscience into utilitarian epistemology have for utilitarian metaphysics? The utility calculus is intended to track expected aggregated pleasures and pains in the community, which is consistent with consequentialism, hedonism, and impartialism, taken together. But conscience is not intended to track this, since otherwise the dictates of conscience could in no way differ from the dictates of the utility calculus; but clearly they can and sometimes do, as Le Guin's Omelean paradox vividly illustrates. So what exactly is conscience tracking? What ought the conscientious utilitarian say about the nature of moral reality? Given that the concept of conscience arose in its most developed form from within the natural law tradition of ethics, I (tentatively) recommend the utilitarian reply that conscience tracks the Natural Law. The concept of natural law is in need of some explication. To explicate it, I will again follow Aquinas. The concept is complex. It is at once theological, deontological, and jurisprudential.

Theologically speaking, natural lawyers have traditionally understood the natural law to be intimately related to God and divine providence (cf. Bittle 1953, Ch. 15). In that context, the natural law is distinguished from the eternal law. In creating the world, natural lawyers hold that God created everything according to a rational plan. Moreover, since he is omnibenevolent, he designed creatures, specifically, such that they would have a faculty for knowing what is best for them, given the nature and the structure of the rest of creation.

¹⁸ The reader is encouraged to revisit my earlier note in Section III on the different senses of "sanction" in interpreting my critique here.

The eternal law is God’s providential plan as it exists in his mind. The natural law is God’s providential plan as we come to know it through conscience (ST I-II, QQ93-94; Budziszewski 2014a; Bittle 1950, Ch. 9). For this reason, Aquinas sometimes refers to conscience (and *synderesis*, specifically) as a “spark of the divine,” which exists in every creature, prompting them to live their best lives, in accordance with the nature given to them by God (*De Veritate*, Q16).

Deontologically speaking, natural lawyers have traditionally conceived of the natural law as being both descriptive and normative. That is, the natural law, applied to human beings, describes what would make a human life go well; but for us human beings, it also has the force of the highest normative law. That is, natural lawyers say that the natural law just is the moral law. In this way, natural law ethics may be classified as a kind of deontological ethics, like Kantianism. However, whereas Immanuel Kant holds that we come to know the law through a synthetic *a priori* process (cf. Mill 1863, Ch. 1, 152ff; Wiredu 1970), Aquinas holds that we come to know the moral law through a synthetic *a posteriori* process—i.e., through *conscientious epagoge*. The dictates of conscience, then, when accurately made conscious, just are the dictates of the moral law (cf. Maritain 1943, Ch. 2).

Jurisprudentially speaking, natural lawyers have traditionally held that the natural law is also the proper basis on which legislators ought to erect all human law (ST I-II, Q95; King 1963). What does it mean for a law to be just? According to Aquinas, human laws are just to the extent that they accurately reflect the natural law. Consequently, he held that the primary task of lawmakers is to know and understand the natural law and then to put that understanding into practice in the form of moral legislation. There are two ways of codifying our intuitive grasp of the natural law via conscience: what Aquinas calls the method of “conclusion” and the method of “determination” (sometimes also called “specification”). Conclusion is direct. In the method of conclusion, conscience tells us, say, that murder is wrong; and so, the legislator simply outlaws murder. Determination, however, is indirect. In the method of determination, conscience again tells us, say, that murder is wrong. But it is not enough to simply outlaw murder. We must also determine punishments for those who violate the law.¹⁹ The natural law, in itself, is apparently silent on whether for some given crime, a person ought to spend three or four years in prison—or, indeed, whether imprisonment is an appropriate form of punishment at all. It tells us only that crimes must be punished. And so, the method of determination amounts to “filling in the details” of the natural law, so that we can create specific legislative practices and policies (cf. Budziszewski 2014a and 2014b, Q95, A2). Aquinas offers us no precise way of carrying out the method of determination, and this is no doubt the most epistemically obscure (but logically interesting) element of received natural law jurisprudential methodological theory.

¹⁹ Cf. Aquinas (ST I-II, Q95, A2, trans. Regan 2014, 656): “The first way [i.e., conclusion] is like the way in which we draw conclusions from first principles in theoretical sciences. The second way [i.e., determination] is like the way that craftsmen in the course of exercising their skill adapt general forms to specific things. For example, a builder needs to adapt the general form of a house to this or that shape of a house.”

More could be said about all three aspects of the natural law according to traditional, Thomistic natural lawyers, but this exposition suffices for present purposes. Now, here is how I think the conscientious utilitarian ought to accommodate a Thomistic, conscientious moral epistemology within their moral metaphysics. The conscientious utilitarian need not accept any of the usual theological theses about conscience or natural law, and for the sake of maximum ecumenicity, I recommend they leave this feature of the natural law strictly optional.²⁰ The conscientious utilitarian should, however, accept the natural lawyer's claim that conscience tracks the natural law, and that the natural law just is the moral law. In this way, conscientious utilitarianism is best construed as a hybrid moral metaphysic—partly consequentialist, but also partly deontological. A classical utilitarian may complain about this aspect of the metaphysic. But on that point, I do not think that my conscientious utilitarian theory is significantly more divergent from the utilitarian tradition than is rule-utilitarianism, which is also both consequentialist and deontological.²¹

Finally, I think the conscientious utilitarian would also be wise to accept certain conceptual resources from the jurisprudence theory of natural law. At the same time, I think it is here where we can find a suitable place for the utility calculus and see how the conscientious utilitarian may continue to hold, with Mill, that conscience in some sense sanctifies the principle of utility. The conscientious utilitarian should say that there is a natural law, and whatever can be derived from our grasp of it via the method of conclusion ought to be taken as a strict rule governing our conduct. But when it comes to “filling in the details” of the natural law in order to put into practice some specific action or policy, I think the utilitarian ought to advise that we use the utility calculus. How long, for example, ought one suffer punishment for committing murder? The natural law, as we said, is silent on this subject, instead prompting us only to enact some reasonable policy. But the utility calculus is not; and it has always been regarded as one of the virtues of the calculus that it has the resources to eliminate all possible moral dilemmas and offer guidance in every specific case of deliberation (cf. Williams 1972: Ch. 10, 84-85). Therefore, in those cases in which the dictates of conscience are not clear enough to know specifically what we ought to do in some specific case, we ought appeal to the utility calculus and take as fundamental determiners of our action expected utility for the community. In this way, our course of

²⁰ If the utilitarian wishes to avoid importing any theological tenets into their ethos, they might instead appeal to a secular metaphysic of natural rights, for example.

²¹ Of course, there are many different varieties of rule-utilitarianism, as well as many different motives for adopting it, rather than act-utilitarianism. Some are closer to act-utilitarianism than others. What I have in mind here is that version of rule-utilitarianism which contends that we just should apply the calculus at the level of act-type rather than act-token. Critics of this account object that this revision to classical utilitarianism is undermotivated. Alternatively, some go in for what can be called second-order act-utilitarianism, the thesis that applying utilitarianism at the type level increases utility even at the token level, because, e.g., it saves us the enormous pains and displeasures of having to calculate utilities over and over again. Mill may have held this particular act-utilitarian view, which probably explains why some think he was an act-utilitarian and others think he was a rule-utilitarian. But there are problems with this view too (cf. Budziszewski 1997, Ch. 11).

action will be both consistent with conscience and the utility calculus, and our underlying metaphysics in support of our choice will cite consequentialism, hedonism, impartialism, but also the natural law (however this latter thesis is explicated). I do not think this suggestion is contrary to the spirit of classical utilitarianism. After all, Bentham titled his work on the utility calculus, an introduction to “The Principles of Morals and Legislation,” apparently thinking that his calculus would be useful both in personal and public ethics for knowing what precisely to do; and Mill famously held that all previous ethicists and legislators had been tacitly using the utility calculus in their methods of determination all along (cf. Mill 1863, Ch. 1, 152ff).

Let’s conclude by looking back at Omelas one last time. About those who choose to walk away from the unjust paradise of Omelas, Le Guin (1973) writes:

These people go out into the street, and walk down the street alone. They keep walking, and walk straight out of the city of Omelas, through the beautiful gates. They keep walking across the farmlands of Omelas. Each one goes alone, youth or girl, man or woman, Night falls; the travelers must pass down village streets, between the houses with yellow-lit windows, and on out into the darkness of the fields. Each alone, they go west or north, towards the mountains. They go on. They leave Omelas, they walk ahead into the darkness, and they do not come back. The place they go towards is a place even less imaginable to most of us than the city of happiness. I cannot describe it at all. It is possible that it does not exist. But they seem to know where they are going, the ones who walk away from Omelas. (283-284)

Just so, in this essay, I have spent much time discussing the importance of following conscience and little discussing the natural law. More would need to be said here to complete the conscientious utilitarian moral metaphysic. (I cannot describe it at all. It is possible that it does not exist.) Nonetheless, if more utilitarians were to accept a conscientious utilitarian theory, rather than a simple act or rule utilitarianism, then finally we may imagine even utilitarians who would walk away from Omelas too.²²



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