

III. RULES AND UTILITARIANISM

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ALTHOUGH moral rules have had a prominent place in recent moral philosophy, their character is not clear. One reason for this is the vagueness and ambiguity which infect the use of the term "rule": Philosophers tend to conceive of moral rules on some particular model, sometimes in a confused way, often innocently and without a clear view of the alternatives. J. Rawls called attention to one important instance of this: He pointed out that the tendency to regard rules as convenient guides, or as summaries of earlier experiences, seems to have blinded some philosophers "... to the significance of the distinction between justifying a practice and justifying a particular action falling under it. . . ."¹

Partly as a consequence, utilitarianism has been interpreted in a special way, as asserting that the rightness and wrongness of particular acts is decidable on general utilitarian grounds. This form of utilitarianism, so-called "act utilitarianism," is open to serious and well-known objections.²

The appeal of the recently more popular "rule utilitarianism" is that it is able to meet some of these objections, and still retain the tie between morality and "the general welfare," which is one of the most attractive characteristics of utilitarianism. I shall argue in this paper, however, that rule utilitarians (and some of their critics, and many others who view moral rules in the same general way) have also tended unwittingly to adopt a particular kind of rule as the model of a moral rule. When this kind of rule has been delineated, and alternatives noted, I think rule utilitarianism loses much of its initial appeal.

My object in this paper, however, is not so much to refute rule utilitarianism as to contribute to the clarification of moral rules. By distinguishing two kinds of rules I shall try to illuminate one of the fundamental options (as well as one of the funda-

mental confusions) open to moral theory. (1) The first kind of rule is exemplified by the rules which workers follow as part of their jobs; these rules may be used to describe a job. (2) The other kind of rule characterizes such common games as baseball, chess, and the like. Both kinds of rule define "practices," but the practices are very different. I think the easy tendency to confuse them may have blinded moral philosophers to significant distinctions between justifying a system of rules designed to contribute to some goal or product, justifying a system of rules which defines a "form of life," and justifying moral rules. Marking these distinctions should help clarify certain steps taken in recent moral philosophy: One should be able to appreciate more fully the point of Baier's assertion that although moral rules are "for the good of everyone alike," they are not designed to promote the greatest good of everyone.³ One should also be able to see more clearly why Rawls maintains that the decision on the rules of justice is not properly conceived on the utilitarian model, as an administrative decision on how to promote the greatest happiness.⁴ The analysis of rules is illuminating, moreover, not only because it helps mark major differences of this kind, but also because it shows what is behind some of the twists and turns of moral theory.

I

1.0 The first kind of rule which I shall describe belongs to a large class of rules which I call "instrumental." All rules in this large class are adopted or followed as a means to an end, in order to "accomplish a purpose" or "get a job done." The simplest of these rules is the "practical maxim" which one ordinarily follows at his own pleasure, such as "Be sure the surface to be painted is thoroughly dry" or "Do not plant tomatoes until after the last frost."⁵

¹ "Two Concepts of Rules," *Philosophical Review*, vol. 64 (1955), pp. 29-30.

² Cf. e.g., R. B. Brandt, *Ethical Theory* (Englewood Cliffs, N.J., 1959), chap. 15.

³ K. Baier, *The Moral Point of View* (Ithaca, N.Y., 1958), pp. 200-204.

⁴ "Justice as Fairness," *Philosophical Review*, vol. 67 (April, 1958), pp. 164-194. It will be clear that Rawls's analysis in "Two Concepts of Rules" does not support a utilitarian theory.

⁵ Cf. Max Black, "Notes on the Meaning of 'Rule'," *Theoria*, vol. 24 (1958), pp. 121-122; reprinted in his *Models and Metaphors* (Ithaca, N.Y., 1962), pp. 95-139.

The instrumental rule to which I call attention is more complex. On many occasions when one wants a job done, either he is not in a position or not able or not willing to do the job himself. If he is in a position of power or authority, or if he has money, he may simply order or hire others to "do the job" and leave it to them. In numerous cases, however, he himself lays down rules of procedure, and establishes "jobs" or "roles" in the institutional sense. A "job" in this latter sense is not a job to be "done," but a job to be "offered to" or "given" to a person. If a person "takes" or is "assigned" "the job" then we often think of him as under an obligation to "do his job," and this partly consists in his following rules. Instrumental rules of this kind, unlike practical maxims, have a social dimension: It *makes sense* to ask whether a job-holder (or role-taker) is *obligated* to follow a particular rule, or whether this is one of his *duties*, and the penalty attaching to a breach of the rules does not consist simply in his not "getting the job done."

Rules of this kind are found in very different institutions. Some are rules of a "job" in the ordinary sense. Others apply to anyone who voluntarily assumes a "role," such as "automobile driver." Others characterize a position which one is obliged to take by law, for example, that of private in the army. The goals which the rules are designed to serve may be ordinary products of labor, such as houses, steel beams, etc.; or fairly specific social goals such as "getting vehicles to their destinations safely and expeditiously"; or goals as general as "the national defense." In some cases the rules, differing from job to job, mark a division of labor, as the rules which say what factory workers, or the members of a platoon, are to do. In other cases, the same rules apply more or less equally to all, as in the case of (at least some) rules regulating traffic.

Notwithstanding their variety, these rules can be

classified together because they share two fundamental characteristics: (1) The rules prescribe action which is thought to contribute to the attainment of a goal. This is the "design" of such rules, at least in the sense that if the prescribed action does not effectively contribute to the attainment of the goal, for the most part, then the rule itself is subject to criticism. (2) The rules are "laid down" or "legislated" or "made the rule" by a party which has power or authority of some kind; one cannot learn "what the rules are" simply by determining what general procedures most effectively promote the goal. This latter characteristic sharply differentiates these rules from what I have called practical maxims, although both share the first characteristic and are "instrumental."⁶

I shall now consider each of these two characteristics in turn.

1.1 Since rules of this kind are designed to serve a goal, the "best" set of rules is that set, *other things equal*, which is most effective in promoting the goal. The qualification is important: One ordinarily asks the question, "Is this a good rule?" in order to determine whether or not the action to be prescribed by the rule, together with other acts, will most efficiently produce the goal, without violating certain other rules, and in a way that harmonizes best with other aims, assuming persons can be persuaded to follow the rule.⁷

Consider a factory planner designing an assembly line, or an army officer considering platoon reorganization, or a traffic planning commission trying to decide whether a street should be made a thoroughway. In each case rules are proposed, but there is no contradiction in saying that action on the rules will not contribute to the goal. Within its context the question "Is this a good rule?" is one of practical fact and experience. This indicates one sense in saying that the goal is "over and beyond" the action and the rules.

⁶ Practical maxims should not be dismissed, however, as "mere rules of thumb" on the one hand, or as "simply stating relations between means and ends" on the other. When one follows a maxim the rule *directs* action and is a *criterion* of certain kinds of rightness and wrongness in acting.

In passing note that Rawls's "summary conception," as a whole, does not properly apply to practical maxims, although several features of this conception do apply. Rawls's analysis, admirable as it is, is very apt to mislead. For the "summary view," as he calls it, is a blend of two quite distinct conceptions: In part it is a confused conception or a misconception of a rule, as a summary or report. In other respects it is an accurate conception of what I have called a practical maxim. This may account for an ambivalence in Rawls's article: Cf. "... it is doubtful that anything to which the summary conception did apply would be called a *rule*." [(p. 23) "Two Concepts..."] with "Some rules will fit one conception, some rules the other; and so there are rules of practices (rules in the strict sense), and maxims and 'rules of thumb'." (p. 29). The point is that maxims are rules in a *different* sense from other kinds of rules, whereas no rule, *qua rule*, is a summary or report.

The importance of this point is that there are two possible confusions here, not one: A person may conceive moral rules as summaries or reports, or he may conceive moral rules on the model of maxims. The texts of Austin and Mill, which Rawls cites, together with Rawls's discussion, suggest that the latter, more than the former, was their mistake. *V.*, however, note 13 below.

⁷ Cf. my "Technical Ought," *Mind*, vol. 69 (1960), July issue.

There is another sense in saying this: In practice a goal is often described in terms of rules or procedures which are thought to produce it (when, for example, a beam is to be built according to procedural specifications). Moreover, at the time of action one may not be able to say just what he wants in other terms. Nevertheless, there is no contradiction, explicit or implied, in saying that this person got the goal (in the sense that he can truthfully say "This has all the desirable features of what I wanted") without anyone's having laid down or followed rules. Although the beam was not constructed according to specifications, tests may now show that it is as strong as one could have wished for. In this sense it is *logically* possible for one to attain the goal which a set of instrumental rules is designed to serve without these rules having been followed. I shall refer to this characteristic by saying that the goal of any set of instrumental rules is "logically independent" of these rules.

Although an instrumental action is *properly* described in many ways, depending on the context, it can always be *truthfully* described in terms of a goal, as a "trying to get or produce G." For a goal is essential to such action, and to the rules which guide it. Nevertheless, it is clear that it is logically possible to act and follow instrumental rules without attaining the goal, and to attain the goal without following rules.

Moreover, although obviously one cannot act *on* a rule of any kind if there is no rule, one can act *in the way* specified by a set of instrumental rules (as well as attain a desired result) without *these* rules having been adopted. A group of workers, for example, may hit upon certain procedures which are so effective that they are made "the rule"; in such a case we may say, somewhat misleadingly, that one discovered a good rule by observing the actual results of a line of action. In complex cases it is very unlikely that men will act in the way rules would prescribe if the rules have not in fact been enacted. Nevertheless, there is no contradiction in saying that men acted in this way but there were no rules prescribing this course of action.⁸

Thus in the case of instrumental rules the action as well as the goal may be said to be logically independent of the rules.

1.2 Now consider the second major characteristic of rules of this kind, namely, that they are "laid down," "legislated," "made," or "adopted."

It is clear enough that an employer, for example, who "informs" his employee of the rules, is not

simply "giving information." Moreover, this act or performance is very different from one's "adopting" a practical maxim or making a rule "a rule for himself." Note that in the case of a maxim the adoption of the rule is "incomplete" so long as one simply resolves to follow it. Rules of the present kind, however, are normally made for others to follow: To make their adoption complete, one must get at least some of these others "to agree," in some sense, to follow the rules.

This is so in spite of our sometimes speaking, in the sense indicated earlier, of one's "discovering a good rule" of this kind. We also speak of an administrator's "thinking of a good rule," "deciding on a rule," and "informing an employee of the rules decided on." It is quite clear, however, that "thinking of a rule" and "deciding on it" are steps taken *in the direction of* adopting a rule; the latter corresponds roughly to the stage of "resolution" in the case of a maxim. They are only steps; the rule will not become effective, and strictly speaking, will not *be* a rule, until it is "put in force" or "made a rule."

Legislation is one way of putting such a rule in force. In this case parents and guardians "teach" their children what the laws are; they do not ask for consent. In other cases the members of a group, working co-operatively, "decide on the rules," or an employer or a sergeant "tells one the rules." By such an act those subject to the rules are "directed to follow them," and the rules are then "in force." The rules serve on the one hand as guides to action—they tell one what to do—and on the other as criteria of correctness of action—acts in accord with them are said to be *right* and breaches of them are said to be *wrong*. The rules thus tell one both *what* to do, and *that* he should do it. They are useful just on this account: One may lay down rules of this kind to make use of unskilled labor, or to gain the benefits of a division of labor, or simply to co-ordinate activity as in the case of an efficient traffic system.

The analysis of what the various cases of adopting a rule have in common, and what it is to be subject to rules, takes one to the difficult problem of what constitutes an authority. For our purpose the following will suffice: A party seems to be constituted as a *de facto* authority when one accepts the fact, that this party prescribes an act, as a *reason* for following the prescription (a rule of the present kind being one form of prescription). This indicates the somewhat technical sense of saying that the rule follower

⁸ Cf. Rawls, *ibid.*, p. 22.

"agrees to" follow the rules.⁹ In the case of rules of the present kind authority is ordinarily constituted, and agreement to follow the rules obtained, by contract, law, convention, or the like. Some such arrangement is necessary to induce a person to follow rules of this kind, since persons other than the rule-follower "are interested in" the goal, and normally he himself does not get (more than a share of) the product of his labor. The contract, law, or convention both promises some reward to the rule-follower, and at the same time converts others' "being interested in" the goal to their "having an interest in it"—in a legal or quasi-legal sense. This, of course, is why one who follows rules of this kind, unlike one who adopts a maxim as his guide, is not free to alter or follow the rules "at his pleasure."

The point which needs particular emphasis here, however, is that the contract, law, or convention is essential to the rule's being a rule; it is not "external" to the rule, since without it one's "laying down the rules" would be only so much rhetoric. When a contract is simply "to do a job," notice that the criterion of correctness is simply "getting the job done." If I hire a person to paint a house, he has done what he is supposed to do when the house is painted. On the other hand, to the extent to which a contract lays down rules specifying how the job is to be done, the rules are the criterion. If a painter contracts to follow certain procedures, and then fails to follow them, he has not done what he is supposed to do. This should make it quite clear that it is the contract, law, or convention which determines in a given case that rules will be the criterion of correctness. The "agreement" secured by contract, law, or convention thus makes a rule a rule, and without something like it there could be no rules of this kind.

1.3 The discussion of the two major characteristics of these rules reveals two criteria of correctness. On the one hand, there is the criterion of a "good" rule. On the other, there are rules *in force* constituting a criterion in certain respects of the *right thing to do*. In the case of these rules there is thus a clear distinction between the justification of a rule or practice and the justification of a particular action falling under it. Perhaps on this very account some have been led to view moral rules as rules of this kind.

1.3.1 Before going on to moral rules let us notice that this distinction is not important simply because acts are judged by rules which are judged in turn in another manner, in this case by reference to a goal. The significance of the distinction derives more from the fact that the two criteria are "independent" in the following way: One may do the thing which most contributes to the goal, yet violate the rules in force; and one may act according to the rule in force when the rule is a poor one.

Moreover, the rules *in force*, not the rules which are *best*, constitute (at least under certain conditions) the criterion of right and wrong acts. This is evident in practice: A worker who does his job is *entitled* to his pay, whether or not the rules he follows in doing his job are *good* rules. This question, whether or not the rules in force are "good," ordinarily does not have to be settled for them to serve as a criterion of right action. Normally it does not even arise.

Of course, one might criticize the rules *in force* as "illegitimate" or as laid down by one who lacks rightful or proper authority, and *on this account* argue that they are not the "true" criterion of right action. However, the question of the "legitimacy" of the rules is not settled by determining which rules are best. To try to have it this way would be to invite disagreement concerning which rules *are* best, and to have no effective rule at all.¹⁰ It would be wholly impractical to accept as authoritative or binding, and as the criterion of right action, only "the rules which are best." Who, for example, would lay down, or contract to follow under penalty, rules characterized only in this way?

Thus, even though rules of the present kind are explicitly designed to promote a goal, the rule follower is not generally at liberty to use the goal as his criterion of the right thing to do. The distinction between the two criteria so far remains firm.

1.3.2 Nevertheless, the independence of these two criteria can be overemphasized. For one thing, the criterion of a good rule, in virtue of its being used by those who adopt rules, is an indirect criterion of right action. The rules which are the criterion of right and wrong action do not prescribe action which just *as a matter of fact* contributes or fails to contribute to the goal; the rules are *criticizable* if they are not good rules. Thus it does not "just so

⁹ Cf. Black, pp. 120-121. Black's analysis of the "laying down of rules" in terms of "promulgator activities" and "subject activities" (pp. 139-146) is illuminating, as is H. L. A. Hart's recent analysis of the complex idea of "acceptance" in the case of the law. *V. The Concept of Law* (Oxford, 1961), chaps. IV-VI, esp. pp. 107-114.

¹⁰ Cf. Hume's remarks on the need of a "determinate rule of conduct," or "general rules," in his discussions of justice, both in the *Treatise* and *Inquiry*. Hume, however, does not make precisely the same point.

happen" that the right act *tends* to contribute to the goal. If it did not generally do this it would not be called "right," for there would be no such rules.

Second, no statement of a rule includes reference to all conditions pertinent to its application; one would not wish so to encumber it, even if every contingency could be foreseen. This implies that every rule follower is expected to know "what he is doing" in a sense larger than "following the rules"; and if the rules are instrumental he is often expected to know the goal to which his rule-directed action supposedly contributes—to know "what he is doing" in this sense. Not always, to be sure, but often he could not make a sound judgment of when and how to apply the rule without this knowledge.

For both of these reasons it is a mistake to say, in a pedestrian and casuistical way, that "the criterion of right acts is the rules." It is a mistake to think of *every* exception and *every* case as somehow included in the rule. The motive for doing so, presumably to preserve the authority of rules, is mistaken: There is an important difference between interpreting a rule, or violating it *in special circumstances*, and deciding each individual case just as if there were no rules. A person subject to rules who follows the latter course merits a special kind of criticism. Although it is difficult to specify conditions in which the violation of an instrumental rule is proper, surely the bare fact, "that by doing so one can better promote the goal," is not sufficient. The rule follower is not the sole or final authority on the propriety of breaking a rule, even when it is for the benefit of the other party.

This brings us back to the independence of the two criteria. However, it should now be clear that these criteria are interrelated and operate together. Moreover, since there are two criteria in the case of rules of the present kind, it always *makes sense* to ask if an action right by the rules is also right in the

respect that it is good that a rule prescribes it. It not only *makes sense* to speak of its being proper to violate a rule, "successful violations" tend to be commended.

II

2.0 As soon as rules of the foregoing kind have been described it is rather obvious that many moral theorists, intentionally or not, have cut moral rules to their pattern. Anyone who regards the standard of morally right action as itself a means to an end will have this tendency, and this is typically true of rule utilitarians: The distinctive characteristic of their theory is that a system of rules is the criterion of morally right action, and these rules in turn are to be judged good or bad according to the consequences which action on the rules either generally produces as a matter of fact, or would produce if people could be persuaded to follow them.¹¹ The consequence which has been thought to be critical in assessing the soundness of a system of rules has been variously identified, as "the happiness of all," "public utility," "security," "the general welfare," etc. Nevertheless, in spite of the difference in name and even in conception, this has been taken to be a consequence, real or possible, and as an end or goal which a good system of rules would first promote and then ensure. The question of which system of rules will be most successful in this respect generally has been thought to be, at least broadly speaking, empirical: Fact and practical experience will decide which system is best. The theory thus implies that the goal, and goal promoting action, both, in senses indicated earlier, are *logically* independent of any system of rules. This fundamentally instrumental and telic character of the system of rules, and indirectly of rule-directed action as well, is a distinctive feature of utilitarianism.¹² Moreover, as

¹¹ See, for example, J. O. Urmson's "The Interpretation of the Moral Philosophy of J. S. Mill," *Philosophical Quarterly*, vol. 3 (1953), pp. 33–39. By and large I agree with this interpretation of Mill, although Mill showed other tendencies, not only toward a more radical utilitarianism but, in the opposite direction, toward the ethics of Bradley. John Austin is sometimes said to be a good representative of this point of view, but his conception of moral rules as commands, learned in the way we learn practical maxims, is a hodgepodge (see *The Province of Jurisprudence Determined*, Lectures I–III). In some respects Hume's discussion of the artificial virtues, especially justice, is a much better (and perhaps the best) classical example of this type of theory.

Among contemporaries (and apart from useful textbook presentations: see Brandt, loc. cit., and J. Hospers, *Human Conduct*) S. Toulmin in *The Place of Reason in Ethics* and P. H. Nowell-Smith in *Ethics* have come closest to an explicit statement of the theory.

An examination of actual cases of this kind of theory, with all the proper qualifications, especially if the theory is extended beyond utilitarianism, would require considerable space. I do not undertake the historical investigation here. In my judgment, the theory has a popularity which exceeds its merit, and some tendencies which are pernicious (see Section IV below). By isolating the germ, the disease may be better understood—its valuable antibodies notwithstanding.

¹² It would be a mistake to say that utilitarians maintained this deliberately, after considering alternatives, or even that they did so consistently. John Stuart Mill, in Chapter IV of *Utilitarianism*, seems to have been unaware of the issue when he discussed happiness as "a concrete whole" and virtue as one of its "parts." Cf. below 4.5.

I pointed out above, it is an essential feature of rules of the foregoing kind that persons other than the rule follower are "interested" in the product; this "interest" is expressed in some kind of contract, convention, or law which gives the rules authority. In utilitarian theory the "party-in-authority" tends to be "the people"; directly or indirectly they enter conventions, "adopt" rules, then enforce them, so that all may share the fruits of the rule-directed action. The product is shared, the goal is the good of all.

2.1 Moral rules on the rule utilitarian view thus have the basic characteristics of the rules which I discussed in (1). When the two are compared, and the analysis in (1) is brought to bear, it quickly reveals that rule utilitarianism is faced with a fundamental problem. If the position is to have the advantage over act utilitarianism that is claimed for it, then the criterion of right action must be a system of rules and not general utility. Rules are a criterion of right action, however, only on condition that they are "rules-in-force" and in some sense "agreed to." But obviously the rules which are "in force" or "agreed to" may or may not be the rules which maximize utility; and to the extent that they are not, then the "best rules" by the utilitarian standard, not having been "adopted," are not the criterion of right action. The best rules may not even be known. The "rules" and the "utilitarianism" in "rule utilitarianism" thus constitute two independent criteria, and they may not be in much accord.

2.1.1 The analysis in (1) not only clearly shows the nature of this difficulty, but also helps one to understand some of the directions in which utilitarianism has moved in an effort to avoid it. Some good utilitarians, mindful of evil in ordinary conventions, tend to say that just as men *ought* to adopt a rule only if it maximizes utility, so one is *obligated* to follow a rule only if it maximizes utility. This doctrine implies that one may freely disregard a rule if ever he discovers that action on the rule is not maximally felicitous, and in this respect makes

moral rules like "practical maxims." It deprives social and moral rules of their authority and naturally is in sharp conflict with practice. On this alternative rule utilitarianism collapses into act utilitarianism.¹³

2.1.2 Other rule utilitarians, equally concerned to avoid an ethical conventionalism, either close their eyes to the difficulty or else overlook it. They either just declare an ideal set of rules to be the criterion, or else say that the criterion of right action is the system of rules which, *if* adopted, *would* maximize utility, or something of the sort. Such a formulation clearly does not acknowledge that rules must be adopted if they are to be rules: The "if adopted" is only a way of describing the ideal and actually obscures the necessity of a rule's being adopted.

The fact that it is commonly the case that some moral principles and rules to which a person subscribes are not "in force" in his society raises important issues for *any* moral philosophy of rules. I cannot even try to do them justice here. Nevertheless, surely it is a mistake to maintain that a set of rules, thought to be ideally utilitarian or felicitous, is the criterion of right action. If the rules are simply described in this way, and are not enumerated, we so far do not have any rules and are not likely to get any.¹⁴ On the other hand, if we are presented with a list, but these are not rules in practice, the most one could reasonably do is to try to get them adopted. A manager in the quiet of his office may dream of a system of rules which will maximize production, and a utilitarian may build a theory around the set of rules which will maximize utility. Surely the latter would be as foolish as the former if he said that these ideal rules are the criterion of right and wrong acts. As previous analysis has shown, acts are not judged by proposed rules, ideal rules, and rules-in-theory: for these do not fully qualify as rules.¹⁵

2.1.3 Other rule utilitarians show a finer appreciation of the logic of their position: They interpret moral rules on analogy with the rules in (1), even

¹³ For a clear recent statement of this position, see J. J. C. Smart, "Extreme and Restricted Utilitarianism," *Philosophical Quarterly*, vol. 6 (1956), pp. 344-354. Notice that Smart argues explicitly that moral rules are "rules of thumb."

¹⁴ Cf. above, 1.3.1.

¹⁵ See 1.2 and 1.3.1 above. Since utilitarianism is rather often associated with reform, it tends to be formulated in ideal terms. See, for example, J. S. Mill's most explicit statement of his position in Ch. II, paragraph 10 of *Utilitarianism* ". . . 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 . . ." In this passage, how is "possible" to be taken? Does it mean "possible, within the framework of existing institutions?" For one attempt to avoid in this way the difficulties inherent in an ideal formulation, see R. B. Brandt, *op. cit.*, pp. 396-400. This attempt goes only part of the way in meeting the difficulty. On the difficulty itself cf. H. J. McCloskey, "An Examination of Restricted Utilitarianism," *Philosophical Review*, vol. 66 (1957), esp. pp. 475-481; and J. Austin, *op. cit.*, Lecture III.

if it forces them to admit that the criterion of right action is not the set of rules which maximizes utility. This alternative seems to be popular with those whose primary allegiance is to a "morality of rules," and who are utilitarian only because they suppose that "welfare" *must* have something to do with morality. (After all, what else *can* serve as a criterion of rules?)

On this alternative it always makes sense to ask whether or not a "moral or social convention" subscribed to in practice is best, and this gives sense to the question, sometimes asked, whether a people who follow their conventions act in the best way they could. At the same time the question, whether an individual ought to do something in particular—for example, repay money borrowed—is quite a different question, to be answered by referring, at least in part, to the practices and conventions of that society. Such a view does not make the blunder of taking an ideal system of rules as the criterion of which particular acts are right, and yet it does not endorse conventions which are obviously questionable. One may seek earnestly to reform the moral conventions of a people, and yet insist that these conventions, some of which are in need of reform, are the general criterion by which a man must decide what in particular he ought to do, and by which his acts are to be judged. At the same time, such a view need not dichotomize the two criteria. As we found above, rules of this kind have an open texture which permits the criterion of the rules to enter into their proper interpretation. I think we may presume, moreover, that there are instances in which one should violate the letter of a moral rule when following it would clearly be to the detriment of the general welfare, or the welfare of all parties concerned. Rule utilitarians could no doubt take instances of this sort to support their theory. As we also found above, one may admit this without depriving rules of their authority.¹⁶

III

3.0 A careful development and criticism of rule utilitarianism, as just outlined, would be worth while, but it is outside the range of this paper. Even without this development, however, it can be shown that rule utilitarians, by using the kind of rule in (1) as a model, have exercised a definite option, and I want to indicate the general character of this option. To do this, I shall first consider briefly the rules of certain kinds of games.¹⁷

3.1 Rules of common competitive games, such as baseball, chess, and the like, say how a game is to be played. They state the "object of the game," "the moves," "how the counting should go," etc. Often they are stated in "rule books," and sometimes they are enforced by referees appointed by an acknowledged authority. These formalities, however, are not at all necessary. The rules must be "laid down" or "adopted" in some sense, but all that is required (in the case of those games being discussed) is that a group of players "agree" on a set of rules. This agreement may consist simply in their following and enforcing rules which they all have learned: Think, for example, of a group of small boys playing baseball, and think of the difference between one's knowing the rules and playing the game. In such cases there is no formally agreed-upon authority; each player—in principle—is both rule-follower and rule-enforcer. No player has the authority to modify the rules at will, but the players together can change them in any way they see fit. As one should expect, there are many variations.

In the latter respects game rules of this kind are quite like the rules in (1). These game rules, however, noticeably lack the first major characteristic of those rules: They are not designed to yield a product. More precisely, they are not adopted to promote the attainment of a goal which, in the

¹⁶ I think this is the most favorable interpretation which can be given to the utilitarianism of the nineteenth century reformers: They framed a theory which would make sense of reform, but at the same time had too much practical (if not always philosophical) sense to advocate the use of the criterion of rules as the criterion of acts. It is as if they perceived the importance of moral rules and practices but were unable fully to accommodate these to their theory. I think that the presence of the two criteria, which the analysis of the rules in (1) clearly reveals, explains for example the "tension" between chapter two of Mill's *Utilitarianism* on the one hand, and chapters three and five on the other.

¹⁷ I can be brief because rules of this kind have been discussed by others. I shall mostly confine myself to points not previously mentioned, or at least not emphasized. I am perhaps most indebted to Rawls's acute analysis of what he calls the "practice conception," and on the whole agree with it. The name is misleading since very many "practices," as we ordinarily think of them, are defined by rules (e.g. by job rules) which are quite unlike those to which his "practice conception of rules" properly applies. Although unimportant in itself, it is just this kind of thing, I suspect, which has led moral philosophers into serious error. One can sympathize since it is almost impossible to find a conventional expression which is not misleading in some important respect.

senses indicated earlier, is "over and beyond" the rules.¹⁸ They do not serve a goal which is "logically independent" of the game which they define.

3.1.1 Of course people who play games do so with various motives, and some of the goals which motivate them are logically independent of the game; for example, exercise, recreation, the opportunity to talk to friends or make a conquest. Undoubtedly games are popular because they serve so many ends. Nevertheless, motives and goals of this kind are not essential. Many players participate (so far as can be determined without psychoanalyzing them) "just because they want to" or simply "from love of the game." Actually this kind of motive, even if it is not typical, is that which is most distinctive of players: One who "loves a game" commonly regards another, who lacks the motive, as poorly appreciating "the quality of the game." This is apt to be missed just because games have been turned into instruments, for exercise, diversion, etc., to such a great degree. The point is, they *need* not be.

Moreover, games *qua* games do not seem to have a design or goal *different* from the motives of the rule-followers, in the way rules of jobs commonly do. What is this goal? One who most appreciates a game speaks about it rather as if it were an aesthetic object, worth playing on its own account and apart from any product or result; and if he is asked to justify his claim that it is good, he seems to have a problem analogous to that of justifying an aesthetic judgment.¹⁹ Sometimes, to be sure, the rules of games are changed, and in particular instances violated, in order to change the consequences. Many official rules, for example, have been changed in order to lessen player injuries; and particular persons may find a game played by the official rules too strenuous, or pursuit of the ball after a bad drive too troublesome. These facts, however, do not imply that the rules are designed to produce consequences, such as the right amount of exercise or exertion, or the good health of the players. Changes of the kind mentioned simply indicate that the rules of a game, like the rules of a job, are adopted in a context by persons who have many desires and many obligations other than "to play the game" and "follow its rules." Games are often altered to make them harmonize better with

such contextual features. It is true, of course, that persons who have turned games into instruments change or violate the rules more readily. As we say, these people do not take the game as seriously.

Some philosophers are inclined to say that even when one plays a game "just because he wants to" or "for love of the game," the game is still an instrument—to "his enjoyment" or "pleasure." This stand depends for its cogency on our being able to describe this pleasure or enjoyment without referring to the game, which should be possible if the pleasure or enjoyment really were something separate from playing the game. However, although it is clearly possible to play a game and not enjoy it, the converse does not appear plausible. To be sure, one sometimes says that he gets about the same enjoyment from one game as another, especially when the two are similar. But this is apt to mean that he has no strong preference for one game over another, that he likes one as well as the other, not that there is a kind of pleasurable feeling which in fact results from both, more or less equally, and which *conceivably* could be had from very different activities or even from being acted *on* in some way. (Similarly, when one says that he "likes to talk to one person about as much as another," this clearly does not mean that talking to the two persons produces the same kind of pleasure in him.) Moreover, when we speak of getting about the same enjoyment from two games, sometimes the "enjoyment" does not appear to be, strictly speaking, the enjoyment "of playing the game," but rather the enjoyment of exercising, talking to friends, etc. I do not deny, however, that games can become instruments. I want to argue that they need not be, often are not, and that in calling them games we do not imply that they are instruments.

The kind of goal the pursuit of which to some degree *is* essential to the playing of the game is the "object of the game," as defined by the rules, and the various sub-goals which promote this object according to the rules. Such goals as these, for example, "to score the most runs," "to get the batter out at second base," obviously are not logically independent of the rules of the game—if there were no rules it would be logically impossible to try to do these things. It is just nonsense to speak of

¹⁸ Some games have become instruments to such a considerable degree, and some instrumental activities have become so much like games, that no description will prevent the intrusion of dubious and borderline cases.

¹⁹ This reminds one of the ancient distinctions between "doing" and "making," and between (what the medievals called) "immanent" and "transitive" activity. I do not mean to deny that some jobs are worth doing "on their own account," but even when "one enjoys a job," there is a discernible purpose which it is designed to promote.

changing the rules so that one can better attain the object of the game.

3.1.2 Since the action within a game is designed to attain goals defined by the rules, the action as well as the goal logically depends on the rules: In important respects a move in the game has the consequences it has because the rules say it has; *in these respects* the rules define the consequences and determine the character of the action.²⁰ Since the character of instrumental action is fixed at least partly by the goal which the action is designed to serve, the action can be described in this essential respect, as a "trying to get the goal," without referring to or presupposing rules. In the case of play in a game, unless the game has become an instrument, this is not possible; if one describes the action in a game apart from the rules, as a "trying to catch a ball," he leaves out the design. On account of this difference one may feel inclined to say that whereas rules of the kind described in (1) *may* be used to describe an action, game rules by defining new kinds of action just constitute "forms of life."²¹

3.2 However, this is but one side of the story, and if it were the only one it is not likely that the two kinds of rules would be confused. To see the other side, which is equally important, one should attend to the fact that the play in a game is not wholly defined by the rules of the game. "The kind of game he plays" ordinarily does not refer to the game as defined by the rules; "to play a game" ordinarily means more than following the rules. The point is that although the object of the game is defined by the rules, since the action in a game normally consists in "trying to attain that object," and since the game rules do not determine success in this respect, the action in *this* respect is instrumental. Players often develop tactics and strategies and skills in playing. Sometimes they follow what I have called practical maxims, and at other times they follow team rules agreed on among themselves or laid down by the "manager." The latter are, of course, examples of the rules described in (1). Obviously they should not be confused with rules

of games, as I have described them. For one can be said to play a game without his following any particular set of instrumental rules.

The point of greatest importance here is that although game rules are not themselves instruments, they support, as it were, a considerable amount of instrumental activity, much of which logically could not be carried on without them. To play a game is typically to follow the rules of the game *and* engage in this instrumental activity; a "good player" does more than just follow the rules. Even one who "loves the game for its own sake" derives his satisfaction from the kind of *instrumental* activity which the rules of the game make possible. Games make new goals, new pursuits, and new skills available to men.

In this situation it is not surprising that some should regard games themselves as instruments. To regard them in this way, however, would be to confuse their function.

IV

4.0 The rules of games just considered differ most significantly from the rules described in (1) because they are, by our criterion, "non-instrumental." This point of difference between the two kinds of rules is one of the most important to be found. I have been concerned to mark it here to focus attention on the thesis, maintained by many utilitarians, that moral rules and social institutions are instruments designed to promote a goal logically independent of the rules and institutions. The thesis is only rarely discussed, and I think that failure to discuss it helps account for the recurrent popularity of utilitarianism. However, morality is obviously not a game, and if the thesis is to be fully assessed, moral rules must be carefully analyzed and alternatives considered. This is out of the question here. In the remainder of this paper I shall note a complexity which is too often overlooked, and just indicate the critical force of certain recently developed lines of argument. However, the fundamental issue here is not at all new.²²

²⁰ This is the point which Rawls emphasized.

²¹ Cf. A. I. Melden, "Action," *Philosophical Review*, vol. 65 (1956), pp. 523-541.

²² Historically one perhaps first senses the issue in his reading of Plato and Aristotle. Is man's end somehow "writ in his nature" in such a way that it can be determined apart from a determination of virtue? If so, it might be reasonable to regard virtue as a *means* to the end, and instruction in virtue as a matter of learning from practical experience the best means. On the other hand, if man's end cannot be determined without the determination of virtue—if man's end is properly defined in terms of virtue, as activity in accordance with it, and man's nature is defined as potentialities for this end—then virtue is not a means and its discovery in practical experience must be understood differently. Although the second interpretation is the sounder, there were tendencies in medieval thought to favor the first—undoubtedly deriving from the fact that God, who is certainly different from man, was said to be man's end. Moreover, the desire of God was said to be implanted in man's nature. This inclination was said to be a natural participation of the eternal law, and natural virtue was said to be an insufficient means to

4.1 Consider the rule "Do not cheat." Often it is taught in the context of a game, and it acquires a rather specific sense in this context. The rule in this use can be paraphrased as "Do not violate the rules of the game in order to gain an advantage for yourself." In this use the rule logically presupposes games as social institutions; if there were no games, the rule could not have this use and this meaning.

The same general point applies to many other moral rules, such as "Keep your promises," "Do not steal," and "Do not lie." Each of these logically presupposes institutions and practices, such as "promising," "a system of property," "a language." Since these moral rules presuppose such practices, they cannot be understood apart from them; the practice, constituted by its own rules, makes the moral rule meaningful. Philosophical analyses which have attempted to clarify moral rules apart from institutionalized practices have surrounded them with theoretical perplexities and turned them into "mere forms" of morality.²³

However, the fact that these moral rules presuppose institutions or practices does not *in itself* decide the question whether or not they are instrumental and utilitarian. In some respects the rules "Do not cheat," "Do not lie," etc., are like the rules "Do not violate traffic lights," "Do not drive on the wrong side," etc. These rules obviously presuppose practices, and the rules and practices appear to be primarily instrumental and utilitarian. We can easily conceive of the practices being changed in order to provide a more effective system of traffic control.

On the utilitarian view moral rules and the institutions which they presuppose are rather like a system of this kind. The assumption is that men have various destinations which they want to reach and the social aim is to provide the system of institutions which will be most effective in helping them along. As men together devise such public instru-

ments as roads and bridges, which no one alone could construct, and then regulate the use of these instruments for the "public good," so on this view men together have developed such institutions as "promising," "a system of property," etc. These institutions may not have arisen through deliberate design, although (there often seems to be the assumption that) if an institution or practice has arisen, then it *must* have been rewarding, and consequently *must* have served some purpose. The instrumental character of these institutions is evidenced more directly, however, by the fact that persons hold and dispose of property, make promises, and, quite generally, engage in the life of their institutions with goals in mind. If these reasons are decisive, moreover, one's language, too, should be viewed as a social tool.²⁴ Certainly men have purposes in speaking.

As in the case of a traffic system, however, on occasion it is to a person's advantage to break the rules of their institutions. Men must be taught not to; they must be made to realize that temporary advantage is far outweighed by the more permanent benefits to be gained if all can be depended on to follow the rules. Moral rules, such as "Keep your promises," "Do not steal," "Do not lie," like the rules "Always obey traffic signals," "Do not drive on the wrong side," seem to be conceived as deriving from the occasional but recurrent conflict between private advantage and public institutions. Utilitarians commonly make the point that if a person in his own interest is sometimes led to violate a rule, he will nevertheless insist, also in his own interest, that others follow the rule: The "security" which derives from a system of public institutions is given an important place in moral theory. Moral rules of this kind thus seem to be conceived as supports for and ancillary to the public institutions which they presuppose. If these rules could only be made to serve a system of truly

God. I think myself, however, that the second interpretation gives a sounder account of the ethics not only of Augustine but also of Aquinas. Yet it is not surprising that out of this tradition there should have come the contrary (Lockian) doctrine that natural law applies to man in a "state of nature," and that men by compact make societies as a remedy for natural evils and as a means to natural goals. This doctrine in turn, by way of reaction, stimulated theories according to which the distinction of right and wrong is not founded in nature, but in contract, convention, or rules. In the nineteenth century the opposition between the two general points of view assumed more of its original form when idealists worked out their own interpretation of the social contract, and opposed utilitarianism. (See, for example, Bradley's "Pleasure for Pleasure's Sake" in *Ethical Studies* and Bosanquet's *Philosophical Theory of the State*.) Very recent philosophy in some respects strongly resembles idealism, undoubtedly because it itself is a reaction to a kind of philosophy which arose in reaction to idealism. For one example, cf. Bosanquet, *op. cit.*, with A. I. Melden, *Rights and Right Conduct* (Oxford, 1959).

This is, of course, only a fragmentary account of the historical origins of the issue.

²³ This misinterpretation accounts for some criticisms of a morality of rules. Cf. A. Macneil, *Experiments in Living* (London, 1952), Lecture XIII.

²⁴ Cf. Hume's *Treatise*, III, II, II. Esp. p. 490 in Selby-Bigge edition.

rational (i.e., utilitarian) institutions, the aforementioned conflict would be minimized, as the happiness of all was promoted. The negative morality of rules would be lost in liberal affection for the general welfare.

4.2 Moral rules of this kind in a sense do *tend* to support the institutions and practices which they presuppose: They *tend* to receive their effective interpretation from the character of the institutions, and they are both taught and reaffirmed most vigorously when persons from self-interest show an inclination to violate the rules of the institutions. As a consequence (and for an additional reason which will soon be apparent²⁵) these institutions and practices have, as it were, a "moral dimension" or a "moral part." Nevertheless, in assessing rule utilitarianism it is important to distinguish moral rules on the one hand from other rules which also define and characterize the underlying institutions and practices. For it is possible to learn the rules of a game, and to play the game, without being tempted to cheat, without grasping the concept of "cheating," and without learning the moral rule "Do not cheat." It is not uncommon for children to do this. Children ordinarily also learn to speak correctly, in the sense of learning many rules of the language, without learning the rule "Do not lie," thus without grasping the moral concept of a lie. It may not be so evident, but it is also the case that one can learn many rules governing property, can learn to make a promise, etc., without grasping the moral force of the rules "Do not steal," "Keep your promises," etc. There are surely legal experts on property and contract who have, as we say, very little moral understanding.²⁶

In considering the soundness of rule utilitarianism, there are thus two interrelated questions. The first is whether or not the institutions of promising, property, language, etc., are instruments serving goals logically independent of these institutions. This bears on the question of the soundness of utilitarianism not only as a *moral* but as a *social* theory. Then there is the more restricted question

whether rule utilitarianism offers a sound account of moral rules.

4.3.1 Several lines of thought, some recently developed, bear on these questions. To take one example, primarily as it applies to the first of the questions: Utilitarians, as already indicated, have put considerable emphasis on "security," if not as *the* goal, nevertheless as an important "part" of the goal. A person cannot be "secure," however, without being able to *count on* others to act and refrain from acting in a variety of ways. His counting on others, moreover, is in a great many cases not "an expectation" based on an ordinary induction. For most often the expectation involved in one's counting on another is based on the fact that the action or restraint in question is governed by rules which define rights, obligations, duties, etc.: One can count on another because the other (presumably) is acting on such rules.²⁷ For this reason the expression "counting on another" in many occasions of its use makes no more sense apart from rules than "deciding to act" or "acting" makes apart from reasons for acting. There is also the related point that the action which one counts on another to do, itself, in many cases presupposes rules; for example, just as one could not count on a person to "play first base" if there were no game of baseball, so one could not count on another to "keep his promise" or "respect property" if there were no practice of promising or institution of property.²⁸ Although "security" is an ambiguous term, in the sense in which it refers to a significant social goal it could not mean what it does without rules which define institutions and practices.

For both these reasons "security" just does not appear to be a goal which is logically independent of the rules of institutions and practices like property, promising, language, etc. Moreover, it would seem very strange to think of the greatest number having the greatest happiness or pleasure or welfare without being fairly secure. The utilitarian position thus appears to be quite vulnerable, even apart from the fact that its proponents have

²⁵ See 4.5 below.

²⁶ Although an adequate description of property and promising in a sense implies that theft and promise-breaking are morally wrong, a person may fail to "see" the implication. When we teach a child what property and promising are, we commonly say that it is wrong for him to take what belongs to another and wrong for him not to do what he has promised to do. So far, however, the child is not guilty of theft or promise-breaking, and until he has witnessed them, or an inclination thereto, in himself or another (since he has not yet had occasion to *use* the rules "Do not steal" and "Keep your promises"), he will have little practical understanding of these rules. Before he reaches this point, however, he may have learned enough of the underlying rules to exchange property, make promises, etc. Growth in moral understanding is long and complex and participation in ordinary practices does not wait upon it.

²⁷ Cf. Hart, *op. cit.*, pp. 54-7.

²⁸ Cf. Hume, *loc. cit.* Black and many others make the same point.

notoriously failed to give "happiness," "pleasure," "welfare," and the like the clarity of meaning which they must have to function as goals.

4.3.2 Furthermore, as the earlier analysis of games revealed, the fact that one does many things as a means to an end when engaging in a practice gives no support to the claim that the practice itself is a means. The fact that one uses various devices to win a game does not imply that the game is an instrument, and similarly, the fact that one uses words as tools, or makes a promise or deals in property for some purpose, does not support the view that institutions and practices such as language, promising, and property are instruments for the promotion of goals logically independent of these institutions and practices. Nor does this appear plausible: It seems rather to be the case that institutions and practices create or establish most of the goals which men pursue, in the sense that these goals, like the object of a game, would be logically impossible without the institutions and practices. It also appears that persons who engage in business, or make speeches, or follow intellectual pursuits ultimately because "they just enjoy doing these things" are rather like players who enjoy a game for its own sake—in the respect that they derive their enjoyment from instrumental activity which is also made possible by institutions and practices.

At this point, however, it becomes apparent that much requires to be worked out before one can replace the utilitarian view of social institutions with another which is more adequate.

4.4 When one turns to consider utilitarianism as a theory of moral rules, *to some extent* the same arguments apply. For some moral rules *are* in some respects ancillary to the practices and institutions which they presuppose, and in so far as this is the case, then generally speaking moral rules are just as utilitarian as, and no more utilitarian than, these practices and institutions. Notice that the most common uses of the moral rules "Do not lie," "Do not steal," and the like presuppose not only underlying institutions and practices, but also, as suggested above, a tendency or inclination of some persons at some times not to conform to the institutions and practices. This seems to explain why persons living in a law-abiding community use these moral rules so little. This in turn suggests that moral rules are "protective devices," rather like a police system, which also is little used in a law-abiding community and which also presupposes both institutions and an inclination on the part of some persons to violate them. The "police" view of

moral rules is partial, but it is also partly true: It helps one see why moral rules are so often conceived as "external" to an individual, imposing restraints on him (and why some philosophers tend to pattern moral rules on rules in a prison!) At the same time it helps one understand why some people "internalize" moral rules in the way they do. For some insist on the importance of following moral rules only because they value a system of institutions and the "happiness and security" which the institutions afford. Seeing that valued institutions would cease to exist if people generally did not act in the way moral rules prescribe, they teach these rules—although morality for them is primarily a matter of promoting individual or public welfare, and it would be better if moral rules had little use. This interest in morality is epitomized in the person who regards moral rules as a protector of life, liberty, and property; breaking the rules breeds fear, ruins business, and disrupts the game. This is the internalization of moral rules as ancillary to institutions; it tends to characterize utilitarians past and present.

4.5 Moral rules, however, may be internalized in quite another way, and on this account utilitarianism as a *moral* theory is open to an additional criticism specific to itself.

For a person who values an institution constituted by rules may come to see that rules by nature apply to all members of a class. One who sees this may then be led to look upon the rules which characterize some particular institutions and practices not simply as "applying to all," but at the same time as constituting "a common standard of correctness." And in this way one may be led to the abstract but practical conception of "a community of men living under the idea of law," of which particular institutions afford so many possible examples. In so far as one thinks that others as well as himself act under this conception, he will no doubt value a particular game or language or any other such institution not only *qua* game, *qua* language, etc., but also as a particular instance and a particular form of such a community.

When the idea of such a community is attained and made to govern practice (as it seems to have been, for example, by the Socrates of the *Crito*) then the moral rules "Do not lie," "Do not steal," etc., will appear in a new light. One who acts under such an idea will teach these rules neither as primarily negative and restraining, nor primarily as supports or protections for particular institutions. For although he may view the rules in these

ways, he will regard them primarily as affirming in so many different ways the fundamental principle "Live under the idea of law." The principle may be stated negatively, in the form "Do not make an exception of oneself," but his primary aim in teaching the rules will be to raise one to the conception of a moral community. Since such a community potentially includes all men, part of the challenge may be to find particular institutions in which the conception can be realized.

Moral rules regarded in this way of course still presuppose particular institutions and practices. However, they are no longer, properly speaking, "ancillary to" the institutions and practices: They now "add something" to the institutions and practices which they presuppose; the institutions and practices now have a new dimension. Cheating comes to be deplored not primarily because it tends to disrupt a game but because it detracts from the quality which a game can have. If there is cheating, one may simply prefer not to play. In a similar way, lying may be deplored because it detracts from the quality of speech, theft because it detracts from the quality of exchange, etc. Put affirmatively, the idea of a moral community is realizable analogically—only in a variety of forms—in sportsmanship, morally mature speech, honest argument, etc. It should be evident that common institutions and practices are often not in fact logically independent of morality; one has to form a limited or abstract conception of them to make them so.

When moral rules are regarded in this way,²⁹ then obviously they do not serve a goal logically independent of themselves. In the language of Mill, virtue has now become a "part" of the end, a "part of happiness." Only it is clear that when Mill said this, with his usual willingness to sacrifice theory to good sense, he deserted utilitarianism.

The instrumental and utilitarian pattern just will not fit.

V

Further discussion of moral rules is beyond the aim of this paper. My primary purpose has been to contribute to the clarification of moral rules by clarifying a fundamental option open to moral theory. To this end I have both analyzed the general utilitarian view of social rules and practices, along with some variations, and I have tried to lay bare the (largely implicit) utilitarian view of moral rules. I have analyzed moral rules, however, only to the point where the character and significance of the option, and the force of some of the arguments which apply, will be fairly clear. I do not want to suggest that all moral rules are like those which I have considered. The analysis of games, in distinguishing the moral player from the good player, may remind one that there are two traditions in the history of ethics, one emphasizing an exoteric ethic and a moral law known to all, the other an esoteric ethic and a virtue reserved for the wise. I have been concerned, almost exclusively, with the former, and not all of that.

In the course of the discussion attention has been called to the fact that moral rules can be (and thus tend to be) conceived as summaries, reports, practical maxims, rules designed to promote a goal, rules which define institutions, rules which protect institutions, and as particular forms of the fundamental principle of justice.³⁰ Marking the important differences between these alternatives should remove more than one confusion and at the same time provide *some* of the subtlety which will be needed if the discussion of moral rules is to make genuine advances in the future.

²⁹ Cf. K. Baier, *op. cit.*, pp. 200–204, and W. D. Falk's comments on "natural obligation" and "mature moral thinking" in "Morality and Convention," *Journal of Philosophy*, vol. 57 (1960), pp. 675–685.

³⁰ The list is not meant to be exhaustive. Cf. e.g., D. S. Shwayder, "Moral Rules and Moral Maxims," *Ethics*, vol. 67 (1957), pp. 269–285.