J.S. Mill, *Utilitarianism*, Chapter Five (page notations are 'p. x/y' where x = first edition, y = 2nd edition)

In this chapter Mill’s main goal is to reconcile his utilitarian moral theory with the common intuition that justice—presumably one of our deepest and substantive moral concerns—is not reducible to our concerns for overall social utility. This issue has traditionally been one of the most important for utilitarian theorists because it appears that some actions are morally wrong or unjust regardless of any positive effect they might have on overall social utility. We seem to reserve the term ‘injustice’ to refer to especially morally wrong actions where these actions cannot be justified even if they best promote overall wellbeing. This is the challenge that Mill faces in Chapter Five—can he provide an account of justice that captures our intuitive judgments about justice and also shows that, in the end, our concern for justice is really just a special way of caring about overall utility?

Here are some points you should keep in mind and some questions whose answers you should be seeking while reading (and reflecting on the reading).

1. At the bottom of p. 42/43, Mill starts to identify the various situations in which we describe something as unjust. Why is he doing this? This is the first step in his strategy for this chapter—try to isolate the common property (properties) in ALL the VARIOUS actions we normally describe as just or unjust. (The subsequent steps are to then ask (a) whether the common element in the idea of justice could come to occupy the special psychological strength that we associate with cases of justice and injustice and then ask (b) if this common element is nothing more than a special concern for overall social utility.) What are the various actions we call unjust? (Look for answers from p. 42/43 through p. 46/47.)

2. After Mill tries to catalog all the cases of injustice, he turns his attention (p. 46/47) to identifying the common element, and for this he appeals to the history of the word (etymology) ‘justice’. What is the basic element (the ‘primitive notion’) in the origin of the idea of justice, according to Mill?

3. Mill refines the answer to the above question by explaining what constitutes the essence of law. What is this essential element of law, according to Mill?

4. Mill identifies what he thinks is at the heart of the basic distinction between what is (morally) right and wrong—what do we mean when we call an action wrong? [It is important to note here that the idea of moral wrongness is broader than the notion of injustice—some actions are wrong but are not injustices, while the opposite is not true—any action that is unjust is also, by that very fact, wrong.] What is the range of punishment Mill identifies as appropriate to all wrong actions?

5. Mill next tries to narrow down the account of moral wrongness to what is essential to injustice more particularly. What are the two elements of an injustice? [Look for the connection between the elements of an injustice and what Mill calls a perfect obligation; what is the distinction between a perfect and an imperfect obligation?]
6. On the bottom of p. 49/50 (the bottom of the page in both versions) Mill signals that he can, having just identified what is built into our idea of justice and injustice, investigate whether or not the peculiarly strong emotions associated with justice and injustice might nevertheless be grounded in a concern for utility. Recall that there are TWO elements of the idea of justice; Mill is now turning his attention to the feeling associated with justice, what he calls the sentiment of justice. The sentiment of justice, Mill thinks, is likely to be traced to two natural sentiments that ground the desire to punish. What are these two sentiments? How are they related? What does Mill mean when he says that even though the sentiment of justice is not directly tied to utility, whatever is moral in the sentiment DOES connect to utility?

7. On p. 51/53, Mill summarizes ('recapitulates') his conclusions so far, and talks about the rules of justice. How is what he says here connected to what he said in Chapter Two about rules and the principle of utility? (See questions 13, 15, and 17 from the set of questions on Chapter Two.)

8. Mill takes special care to explain what he means when he talks about rights. This is because some people who rejected utilitarianism and adhered to Natural Law Theory (or Divine Command Theory) thought that individuals generally had rights and these rights served to restrict what sorts of treatment at the hands of others they could be subjected to. If persons have rights and if these rights preclude treating the person in such a way that overall utility is maximized (think here of the homeless person in the hospital administrator case), then rights seem to be a moral factor that has priority over utility, and utilitarianism could not be the basic principle of morality. So, can Mill explain why we talk about rights in a way that is perfectly consistent with utilitarianism? Are rights ultimately grounded in utility? Mill hopes he can show that they are. How does he do this? [Once again, think of the Rule Utilitarian view in relation to this account; Mill’s answer runs all the way through p. 62/63, as he illustrates how utility lies at the bottom of each of the particular instances of justice and injustice that he talked about at the beginning of chapter five.] Is Mill’s story plausible?

9. Look closely at the last two paragraphs of Chapter Five. What does Mill’s discussion here imply about whether or not Mill is a Rule Utilitarian?

10. Do you think Mill provides good enough reasons to accept utilitarianism in the face of the common objection that utilitarianism doesn’t capture our everyday judgments about justice? Do you think Mill is justified in saying that justice ultimately is grounded on utility? Why or why not?