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Mill's Deliberative Utilitarianism

Whatever the appeal of particular strands in Mill's moral theory, it is commonly thought that he is not a very systematic moral philosopher. In particular, Mill's moral theory is usually thought to be seriously inconsistent in at least two ways. First, his version of utilitarianism is thought to be internally inconsistent. Though Mill appears to want to defend hedonistic utilitarianism, his doctrine of "higher pleasures" seems antihedonistic.¹ Second, Mill's strong defense of individual liberty in *On Liberty* seems inconsistent with his defense of utilitarianism in *Utilitarianism* for the perfectly general reason that utilitarianism cannot accommodate moral and political rights.² Nor is this second inconsistency

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1. See, e.g., Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Indianapolis: Hackett, 1981), pp. 93n, 94, 121; T. H. Green, *Prolegomena to Ethics* (New York: T. Crowell, 1969), secs. 162–63; F. H. Bradley, *Ethical Studies*, 2d ed. (New York: Oxford University Press, 1927), pp. 116–20; G. E. Moore, *Principia Ethica* (New York: Cambridge University Press, 1903), pp. 71–72, 77–81; C. L. Ten, *Mill on Liberty* (New York: Oxford University Press, 1980), pp. 34, 39; cf. Jerome Schneewind, *Sidgwick's Ethics and Victorian Moral Philosophy* (New York: Oxford University Press, 1977), pp. 185–86.

2. See, e.g., Robert Paul Wolff, *The Poverty of Liberalism* (Boston: Beacon Press, 1968), pp. 19–20; Gerald Dworkin, "Paternalism," in *Morality and the Law*, ed. R. Wasserstrom (Belmont, Calif.: Wadsworth, 1971); Alan Ryan, *J. S. Mill* (Boston: Routledge and Kegan Paul, 1974), pp. 131–33; Ten, *Mill on Liberty*, pp. 6, 27, 34, 77; H.L.A. Hart, "Natural Rights: Bentham and John Stuart Mill," reprinted in his *Essays on Bentham* (New York:

simply a matter of reconciling two individually consistent but jointly incompatible works, though this, of course, would be bad enough. In *On Liberty* Mill insists that his defense of liberty rests on utilitarian foundations (OL, I 11), and in *Utilitarianism* he attempts to account for rights on utilitarian grounds (U, V, esp. 25).³

I think that these two familiar charges of inconsistency are mistaken and that both mistakes rest on a misunderstanding of Mill's theory of value. Mill can be shown to reject hedonism consistently; instead, he defends (consistently) a conception of human happiness whose dominant component consists in the exercise of one's rational capacities. This deliberative conception of happiness not only provides a better account of his claims in *Utilitarianism* but also explains how he can provide a strong defense of an individual right to certain liberties on utilitarian grounds.⁴ If so, these interpretive claims are important not just for our understanding of Mill, but because they outline a distinctive and resourceful form of utilitarianism.

1. Interpretive Problems

It is unproblematic that Mill accepts some form of utilitarianism. What is problematic is the exact form of his utilitarianism.

Oxford University Press, 1983), pp. 94–104; David Lyons, *Ethics and the Rule of Law* (New York: Cambridge University Press, 1984), pp. 172–77.

3. References, parenthetical or otherwise, to Mill's texts have the following form. References to *On Liberty* (OL), ed. E. Rapaport (Indianapolis: Hackett, 1978) and to *Utilitarianism* (U), ed. G. Sher (Indianapolis: Hackett, 1979) are to chapters and paragraphs in any edition. I will refer by both chapter and page number to *Considerations on Representative Government* (CRG), reprinted in *Three Essays*, ed. Richard Wollheim (New York: Oxford University Press, 1975); *The Subjection of Women* (SW), also reprinted in *Three Essays*; and the *Autobiography of John Stuart Mill* (A) (New York: Columbia University Press, 1924). Other references are to natural divisions in the text (if any) and page numbers in the editions in the *Collected Works of John Stuart Mill* (Toronto: University of Toronto Press). I will refer by book, chapter, and section and page number to *Principles of Political Economy* (PPE), in *Collected Works*, vols. II–III, and *A System of Logic* (SL), in *Collected Works*, vols. VII–VIII. I will refer by page number to “Bentham” (B), in *Essays on Ethics, Religion and Society*, in *Collected Works*, vol. X; “Civilization” (C), in *Essays on Politics and Society*, in *Collected Works*, vol. XVIII; and “Chapters on Socialism” (CS), in *Essays on Economics and Society*, in *Collected Works*, vol. V.

4. My overall picture of Mill has benefited from Fred Berger's important study of Mill's moral and political thought, *Happiness, Justice, and Freedom* (Berkeley and Los Angeles: University of California Press, 1984), esp. chaps. 2, 3, and 5. But my interpretation differs from Berger's in significant ways, as will become clear. I have also benefited from James Bogen and Daniel Farrell, “Freedom and Happiness in Mill's Defence of Liberty,” *Philosophical Quarterly* 28 (1978): 325–38.

One problem, about which I will say little, concerns his theory of right action. Mill is not a straightforward act-utilitarian or rule-utilitarian, for in chapter V of *Utilitarianism* he construes an action's rightness or permissibility as consisting neither in the value of its consequences nor in its conformity to rules with positive or optimific acceptance value. Rather, he claims that an act is permissible just in case it is not wrong and that an action is wrong just in case some kind of external or internal sanction attached to it (punishment, blame, or self-reproach) would have good—perhaps optimific—consequences (V 14). Nonetheless, other passages point toward act-utilitarianism (II 2), and much of his discussion is neutral on these issues of right action. It will be simpler for our purposes and produce no relevant distortion if we assume that he accepts a familiar maximizing version of act-utilitarianism according to which an act is right or obligatory just in case its consequences for human welfare are at least as good as any alternative act available to the agent.⁵

Another problem, which will be my primary focus, concerns Mill's evaluative views and their effect on his utilitarianism. Mill is usually thought to accept a *subjective* conception of happiness or welfare in which a person's happiness or welfare consists in or depends importantly on certain of her contingent psychological states.⁶ When he introduces utilitarianism, he seems clearly to endorse *hedonism* and its claim that happiness consists in pleasurable mental states or sensations (*U*, II 1–2). However, he also makes claims that seem to imply a *desire-satisfaction* or *preference-satisfaction* theory that makes a person's happiness depend on what she wants and consist in the satisfaction of her desires or preferences. For he links higher value with the preferences of competent judges (*U*, II), and he takes desire to be proof of desirability or value (*U*, IV).

By contrast, Mill holds an *objective* theory of happiness or welfare if he claims that happiness or welfare consists in the possession of certain character traits, the exercise of certain capacities, and the development of certain relations to others and the world and that the value of these traits, activities, and relationships is independent of the amount of

5. This assumption should not distort my discussion; the reconciliation of utilitarianism and rights should be, if anything, most difficult on the sort of act-utilitarian assumption that I am making here.

6. Theories of value that are subjective in this sense need not be subjective in the further sense of claiming that a person's welfare is whatever he takes it to be. In *this* sense, hedonism and some desire-satisfaction theories are not subjective.

pleasure that they produce or their being the object of desire. And one reading of some of Mill's texts suggests an objective interpretation of his conception of happiness. For his version of utilitarianism rests on a conception of happiness appropriate to progressive beings (*OL*, I 11) in which the exercise of one's higher faculties seems to be a dominant component (*U*, II 4–8).

An objective conception of happiness may seem strange; it is easy for us to think of happiness in completely subjective terms. We usually count a person as happy insofar as she is contented, pleased, or meeting her own goals and aims. This may seem to be simply part of what we mean by calling someone "happy." But we also think of a happy life as a full life, a life that goes well, or a life well lived, and we can understand judging of someone that she did not lead a full life—indeed, that she was not really happy—even though she was contented or pleased and satisfying desires and preferences that she held at the time. This would be natural if the person's pleasure or desires were based on false beliefs, or if we thought that the activities that were the objects of her desires and the source of her pleasure were unimportant or inappropriate. If so, it is a substantive question whether the correct conception of happiness or welfare is subjective or objective, and we should not decide which conception Mill holds in advance of the evidence.⁷

2. Mill as a Hedonistic Utilitarian

Mill's apparent sympathy with hedonistic utilitarianism is clear; early in *Utilitarianism* (chap. II) he appears to endorse it and its claims that pleasure is the one and only good and that things are good and right insofar as they are pleasurable:

The creed which accepts as the foundations of morals "utility" or the "greatest happiness principle" holds that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure. (II 2; cf. II 1)

7. Cf. Richard Kraut, "Two Conceptions of Happiness," *Philosophical Review* 88 (1979): 176–96, and my *Moral Realism and the Foundations of Ethics* (New York: Cambridge University Press, 1989), pp. 220–31.

It is worth making explicit what Mill commits himself to in any endorsement of hedonistic utilitarianism.

Hedonism claims that pleasure is the good (that pleasantness is the one and only good-making property) and that pain is the bad (that painfulness is the one and only bad-making property). Different versions of hedonism correspond to different theories of pleasure and pain. According to *simple hedonism*, pleasure is a simple qualitative mental state or sensation that varies only in duration and intensity, and the same is true of pain. According to *preference hedonism*, pleasure and pain are functional states: pleasure is a mental state or sensation such that the person having it wants it to continue and will, *ceteris paribus*, undertake actions so as to prolong it, while pain is a mental state or sensation such that the person having it wants it to cease and will, *ceteris paribus*, take action to make it stop. There is no apparent reason why mental states having one of these functional profiles need be qualitatively similar or have the same feel. These two versions of hedonism are different.⁸ Where the differences are important, I shall mark the distinction.

Hedonism implies that the mental state of pleasure is the only thing having *intrinsic* value—that is, the only thing good in itself, good whatever its consequences, or necessarily good (and the mental state of pain is the only intrinsic evil). All other things have only *extrinsic* value; they have value just insofar as they bring about, mediately or directly, intrinsic value (or disvalue). It follows that actions, activities, and so on can have only extrinsic value and that their value depends entirely on the *quantity* of pleasure that they produce. The quantity of pleasure that anything produces is a positive function of both the pleasure's *intensity* and its *duration*. This should be true on both simple hedonism and preference hedonism.⁹ One activity is more valuable than another if and only if it produces a greater quantity of pleasure than the other. So, as Bentham noticed, intellectual pursuits (e.g., poetry) are intrinsically no more valuable than voluptuous pursuits (e.g., push-pin); if the former are

8. For example, Bentham seems to be a simple hedonist, while Sidgwick is a preference hedonist. Cf. Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (London: Anthlone Press, 1970), esp. chap. IV, and Sidgwick, *The Methods of Ethics*, pp. 42–43, 127, 131.

9. The only difference between the two, as far as I can see, is that the intensity of a preference pleasure will be a function of the strength of the preference that it continue, while the intensity of a simple pleasure will be the vividness or intensity of the pleasurable sensation or feel.

more valuable than the latter, it can only be because, as it happens, the intellectual pursuits tend in the long run to produce a greater quantity of pleasure than voluptuous pursuits do.

3. Higher "Pleasures"

But in defending the value of higher pleasures against that of lower pleasures (II 4–8), Mill rejects these hedonistic claims. In discussing the greater value of intellectual pleasures, in comparison with voluptuous ones, he agrees with the strict hedonist that the former produce a larger quantity of pleasure and so are extrinsically more valuable, but he also insists that the greater value of intellectual pleasures can and should be put on a more secure footing (II 4). Mill explains these higher or more valuable pleasures, and links them with the preferences of a competent judge, in the following manner.

If I am asked what I mean by difference of quality in pleasures, or what makes one pleasure more valuable than another, merely as a pleasure, except its being greater in amount, there is but one possible answer. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality so far outweighing quantity as to render it, in comparison, of small account. (II 5)

Indeed, Mill appears here to claim not just that these higher pleasures are more valuable than lower pleasures, but that their value is infinitely or perhaps lexically greater than that of lower pleasures, because he claims that no quantity of lower pleasures could ever outweigh the value of higher pleasures (cf. *U*, II 6).

Now when Mill discusses higher and lower "pleasures," we might expect him to be discussing certain kinds of mental states or sensations, for instance, simple pleasures or preference pleasures. When hedonists say that pleasure is the one and only good, they use the word "pleasure" to refer to a mental state or sensation of some kind. But a more objective reading of Mill's claims about higher pleasures is appropriate here. On the more objective reading, "pleasure" refers to nonmental items, such as actions, activities, and pursuits that do or can cause pleasurable men-

tal states. Higher pleasures are those activities or pursuits that exercise our higher (e.g., intellectual) capacities.

This objective reading of “pleasures” may sound less natural than the mental state reading. But there is good reason to suppose that Mill intends the objective reading of the higher pleasures doctrine. First, he often does use “pleasure” to refer to activities and pursuits, especially those that typically cause pleasurable mental states—we might call these “objective pleasures.” (Compare the way in which someone might refer to sexual activity as a bodily pleasure.) As we shall see in Section 4, in the second part of the “proof” of the principle of utility Mill counts music, virtue, and health as pleasures (*U*, IV 5). These are objective pleasures. And elsewhere in his discussion of higher pleasures in chapter II, Mill equates a person’s pleasures with his “indulgences” (II 7) and with his “mode of existence” (II 8). Here too he must be discussing objective pleasures. Second, when Mill introduces higher pleasures (II 4) he is clearly discussing, among other things, intellectual pursuits and activities. He claims to be arguing that what the quantitative hedonist finds extrinsically more valuable is also intrinsically more valuable (II 4, 7). But what the quantitative hedonist defends as extrinsically more valuable is (intellectual) activities and pursuits, not mental states.¹⁰ Because Mill claims that these very same things are intrinsically, and not just extrinsically, more valuable, his higher pleasures would appear to be intellectual activities and pursuits, rather than mental states. Finally, in paragraphs 4 through 8 Mill links the preferences of competent judges and the greater value of the objects of their preferences. But among the things Mill thinks competent judges would prefer are activities and pursuits. And, in particular, in commenting on the passage quoted above (II 5), Mill writes:

Now it is an unquestionable fact that those who are equally acquainted with and equally capable of appreciating and enjoying both do give a most marked preference to the *manner of existence* which employs their higher faculties. (*U*, II 6; italics mine)

10. Pleasures (the mental states) can perhaps be extrinsically, as well as intrinsically, valuable if they cause other pleasures. (However, we may wonder whether pleasures, as contrasted with remembering or anticipations of pleasures, cause other pleasures.) So it is not certain that Mill’s quantitative hedonist is discussing activities, rather than mental states. But surely what quantitative hedonists usually defend the greater extrinsic value of is certain kinds of pursuits and activities (things that have only extrinsic value).

Here Mill is identifying the higher pleasures with activities and pursuits that exercise our higher capacities.

For these reasons, Mill's discussion of higher pleasures appears to be a discussion of the value of intellectual activities, rather than a discussion of the value of certain sorts of mental states. If so, his explanation of the greater value of these activities appears to be antihedonistic for two reasons. First, he claims that the intellectual pursuits have value out of proportion to the amount of contentment or pleasure (the mental state) that they produce. This contradicts the hedonist claim that the extrinsic value of an activity is proportional to the quantity of pleasure associated with it. Second, Mill claims that these activities are intrinsically more valuable than the lower pursuits (II 7). But the hedonist must claim that the mental state of pleasure is the one and only intrinsic good; activities can have only extrinsic value, and no activity can be intrinsically more valuable than another.

But perhaps we can salvage a hedonistic reading of the higher pleasures doctrine. This interpretation concedes that Mill's doctrine of higher and lower pleasures draws a distinction between kinds of activities. But this distinction may help him distinguish different kinds of pleasure (the mental state) if he picks out qualitatively different mental states in terms of different sorts of activities associated with them. On this interpretation, Mill might claim that higher pleasures, pleasures caused by higher activities, are intrinsically more valuable than lower pleasures, pleasures caused by lower activities.

If this proposal is to provide a hedonistic explanation of the fact that higher pleasures pick out activities, then it must presumably claim not just that we can describe pleasures in terms of their causes but that the causes of pleasure are constituents of pleasures. But there is an apparent problem with this interpretation if it holds that mental states have as constituents their own causes. For this appears to violate the independence we require between cause and effect.¹¹

11. Davidson considers a related worry about the individuation of actions in terms of their causes or effects. He argues that the first sort of epistemic dependence between cause and effect is compatible with the requirement that causal relata be independent. Donald Davidson, "Actions, Reasons, and Causes," reprinted in his *Essays on Actions and Events* (New York: Oxford University Press, 1980), pp. 10–11, 13–14. But this does not diffuse the worry about the dependence between cause and effect that arises when we treat activities as constituents of the mental states they cause. This proposal implies that the cause (the

However, the hedonist can respect the independence of cause and effect by treating different kinds of pleasures as mental states that are compounds of pleasure *simpliciter* (simple pleasure or preference pleasure) and different kinds of activities. On this view, different kinds of activities cause pleasure, and different kinds of pleasure (e.g., higher pleasure) are compounds of the pleasure caused by different kinds of activities (e.g., intellectual activities) and those activities. So intellectual activities (can) cause pleasure (simple pleasure or preference pleasure), but not higher pleasure; they are constituents of higher pleasure. The interdependent relata are the whole (higher pleasure) and its parts (intellectual activities and pleasures that these activities cause). But the parts are independent of each other. The causal relata are these independent parts of the higher pleasure. Hence, the hedonist can treat activities as constituents of kinds of pleasure without violating the independence required between cause and effect.

We may wonder whether the compound of an activity and the mental state that it causes is itself a mental state. If not, higher pleasures will not be mental states, and this interpretation will presumably not yield a hedonistic reading of the higher pleasures doctrine. However, we need not resolve this issue; there are other problems for this hedonistic reading of the higher pleasures doctrine.

First, even if there are qualitatively different kinds of pleasures, because of their different kinds of constituent activities, the hedonist should claim that the value of the activities or the compound ought to be proportional to the amount of simple pleasure or preference pleasure associated with them. But Mill denies this; as we have seen, the higher pleasures doctrine asserts that higher “pleasures” are valuable out of proportion to the amount of contentment or pleasure associated with them.

Second, even if Mill can claim that intellectual pleasures (the mental states) are qualitatively *different* from voluptuous pleasures (the mental states), because of their constituent activities, he would have no hedonistic ground for asserting, as he does, that the former are *intrinsically superior* to the latter. For one kind of pleasure to be a superior pleasure to another is presumably for it to contain more simple pleasure or preference pleasure. But whether this is true of intellectual pleasures vis-à-

activity) is a part of the whole that is the effect (the pleasure); as such, cause and effect are distinct, but not independent.

vis voluptuous pleasures must be a contingent psychological matter and so could not establish the intrinsic superiority of intellectual pleasures.

Third, any version of hedonism must claim that the only intrinsic goods are pleasures (the mental states). But Mill denies this. As I have argued, his use of “pleasure” in his statement of the higher pleasures doctrine refers to certain activities and pursuits, rather than the mental states in which they are constituents or the mental states that they cause. If, as he claims, these “pleasures” are intrinsically more valuable than others, it is the activities and pursuits themselves that are intrinsically valuable. And this makes a difference. Higher activities can fail to produce simple pleasure or preference pleasure, even if when they do, there exists a higher pleasure that has the associated activity as a constituent.¹² If activities are valuable only as parts of higher pleasures, they will not be valuable when they do not produce pleasure. However, if, as Mill seems to claim, the activities themselves are valuable, then they have value when they do not produce pleasure and their value is independent of the pleasure they cause when they do produce pleasure (the pleasure, of course, representing additional value).

I conclude that we should read the higher pleasures doctrine as the claim that activities and pursuits that exercise our higher capacities are intrinsically more valuable than voluptuous activities and pursuits, rather than as a claim about the greater value of certain mental states. This reading explains Mill’s claim that the doctrine of higher pleasures transcends the quantitative hedonist claim about the greater extrinsic value of intellectual pursuits (II 4), but it also makes his position anti-hedonist. Higher activities have intrinsic, not simply extrinsic, value that is not dependent on their causing pleasure, though, of course, taking pleasure in such activities is also valuable.

4. *The Components of Happiness in Mill’s “Proof”*

Nor is the higher pleasures doctrine the only place in which Mill contradicts a commitment to hedonism. His claims about the nature of happi-

12. Mill seems to allow that higher activity can occur without producing pleasure, because he allows that higher activities can be attended with great discontent (*U*, II 5) and that Socrates’ pursuit of higher activities might have left him dissatisfied (*U*, II 6). If so, this would be one objection to an alternative hedonist strategy that construes higher activities as rational activities that give rise to pleasure. This alternative strategy individuates activities in terms of mental states, rather than individuating mental states in terms of activities, and so is the mirror image of the strategy discussed in the text.

ness in the second part of his “proof” of the principle of utility in chapter IV of *Utilitarianism* imply an apparently objective conception of happiness. Mill there claims that happiness consists of a number of distinct, nonmental components, such as virtue, health, and music. As *components* or *parts* of happiness, these things are intrinsic goods.

This opinion [that virtue is desired for its own sake] is not, in the smallest degree, a departure from the happiness principle. The ingredients of happiness are very various, and each of them is desirable in itself, and not merely when considered as swelling an aggregate. The principle of utility does not mean that any given pleasure, as music, for instance, or any given exemption from pain, as for example health, is to be looked upon as a means to a collective something termed happiness. They are desired and desirable in and for themselves; besides being means, they are a part of the end. (*U*, IV 5)

The proof itself raises difficult questions about how claims about what is desired support conclusions about what is desirable. But I am here concerned only with Mill's conclusions about what is desirable for its own sake or intrinsically good.¹³ His conclusion in the second part of the proof implies two antihedonistic claims.

Mill claims that there is a plurality of intrinsic goods. This is incompatible with the simple hedonist claim that the only intrinsic good is a homogeneous mental state or sensation. On a natural interpretation, it is also incompatible with preference hedonism, because the preference hedonist claims that there is only one intrinsic good, namely, pleasure. And in a certain sense, the preference hedonist thinks that all pleasures are homogeneous: those mental states are pleasures by virtue of a single common characteristic, namely, their functional role. So it is at least misleading for the preference hedonist to claim that there is a plurality of intrinsic goods. But the preference hedonist can perhaps think that there are qualitatively different preference pleasures, having different qualia

13. In fact, the objective reading of Mill's conception of happiness fits well with much of the structure of the proof. For the objective reading allows us to say that desire—especially appropriately informed desire—is defeasible evidence of what is objectively valuable (Section 6). This both explains how claims about what is desired or would be desired under certain conditions support claims about what is desirable *and* explains, in part, why Mill does not think that the evidential relation constitutes a proof in the usual sense (*U*, I 5).

or feels. If so, he could allow that the good—pleasure—is a complex notion that has distinct constituents.

But there is a second antihedonist claim here that undercuts preference hedonism as well. This is the claim that the components of happiness are not the sort of mental items that the hedonist requires. Rather, the term “pleasures” refers to objective pleasures, that is, activities, states, and abilities (e.g., music and virtue). And, as parts of happiness, Mill claims, they are intrinsic goods. But, as we have seen, neither form of hedonism can allow that such activities, states, and abilities are intrinsic goods.

5. *Mill's Deliberative Conception of Happiness*

Someone might agree that the doctrine of higher pleasures and the claims of chapter IV about happiness are inconsistent with hedonism but resist any commitment to objectivism, because it is (in chap. II) the *preferences* of competent judges and (in chap. IV) facts about what people *desire* that determine which activities are valuable. Mill may not distinguish hedonism and a desire-satisfaction theory, as he should, but perhaps these passages reflect his sympathies with desire-satisfaction theories of value and so allow us to represent him as a consistent subjectivist, even if not as a consistent hedonist.

In order to decide between objective and desire-satisfaction readings of Mill's antihedonistic aspects, it may help to look at his substantive evaluative views. In *On Liberty* Mill claims that his defense of liberty relies on claims about the happiness of people *as progressive beings* (OL, I 11; cf. chap. III) and about the abilities of progressive beings to form, revise, and implement plans, projects, and commitments. It is these abilities that distinguish fully human beings from nonhuman animals and whose exercise constitutes a major component of human happiness.

He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to

his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being? (*OL*, III 4)

Moreover, his contrast between higher pleasures and the pleasures of swine in chapter II of *Utilitarianism* suggests similar claims about human happiness. Happiness consists in large part in the exercise of those higher capacities that distinguish us from other animals. Our higher capacities include our rational capacities, especially our capacities for practical deliberation. Call this a *deliberative* conception of happiness or welfare.

A deliberative conception is also reflected in claims Mill makes elsewhere. In *Considerations on Representative Government* Mill claims that a principal aim of government is the improvement of its citizens and that this improvement consists in the development of their intellectual, deliberative, and moral capacities (*CRG*, esp. chaps. II–III). In *The Subjection of Women* he explains the unhappiness for women in their subjection in terms of the way sexist institutions and attitudes prevent them from developing their rational and deliberative powers (*SW*, IV/542–48). And in various places Mill also expresses reservations about charities that encourage dependence of the beneficiary on her benefactor and so undermine the beneficiary's self-development and self-respect (*SW*, IV/532; *PPE*, V.xi.13/960–62).

The most important exercise of deliberative capacities, Mill thinks, is in the reflective choice and implementation of structured plans. It is important *that* one form, revise, assess, choose, and implement one's own set of plans and projects and not simply that these plans and projects have certain kinds of *content*. This is why in *On Liberty* Mill defends the importance of diversity and experimentation in life-styles and the freedom to make substantively poor decisions.

Presumably, content is important too; one's projects should exercise one's higher capacities. But these capacities can be exercised in a wide variety of projects and life-styles (cf. *OL*, III 2; *A*, V/101). For example, the skilled craftsperson who controls important aspects of her own craft (e.g., production and distribution decisions) will exercise important creative and deliberative capacities in the regular pursuit of her craft every bit as much as the intellectual. Because Mill specifies the constituents

of happiness abstractly in terms of capacities for practical deliberation, which can be exercised in multiple ways, his theory allows for a kind of pluralism about the good life.

6. *An Objective Interpretation of the Deliberative Conception*

It is this deliberative conception of happiness that is the most important part of my interpretation of Mill's utilitarianism and the consistency of his moral and political views. But we may also wonder whether these deliberative activities are valuable because they are the object of desire, as a desire-satisfaction interpretation would claim, or because of their intrinsic nature and independently of their being the object of desire, as an objective interpretation would claim.

Because it is the preferences of competent judges that are in some sense determinative of higher pleasures, the value of an agent's activities is more or less independent not only of the pleasure *he* derives from those activities but also of *his* desires to perform those activities. The swine is failing to realize higher pleasures even if he is meeting self-imposed goals and satisfying his own desires. This shows that Mill believes that the value of an agent's activity is independent of its being the object of his *actual* desires.

However, these claims are compatible with the subjectivist claim that the value of an activity depends on its being the object of *informed* or *counterfactual* desire, that is, of desire the agent would have in a preferred epistemic state in which he was a competent judge.

But it is possible and reasonable to hold that the competent judges' preferences are *evidential*, rather than *constitutive*, of higher value. Mill can deny that these higher activities have comparatively greater value because competent judges prefer them and claim that competent judges prefer them because they have greater value. On this view, competent judges provide us with our most reliable access to those things that are objectively valuable.

The objective or evidential reading of the relation between the preferences of competent judges and the comparatively greater value of the objects of their preferences helps explain a feature of Mill's higher pleasures doctrine that the subjective or constitutive reading does not. Higher pleasures, we saw, are those things (e.g., activities) that a competent judge would prefer, even if they produced less pleasure *in her* than the lower "pleasures" would (U, II 5). But *why* should competent

judges prefer activities that *they* often find less pleasurable unless they believe that these activities are more valuable? Mill does want to explain the fact that competent judges prefer activities that exercise their rational capacities, and he does so by appeal to their sense of *dignity*:

We may give what explanation we please of this unwillingness [on the part of a competent judge ever to sink into what he feels to be a lower grade of existence] . . . but its most appropriate appellation is a sense of dignity, which all human beings possess in one form or other, and in some, though by no means in exact, proportion to their higher faculties. . . . (U, II 6)

In claiming that it is the dignity of a life in which the higher capacities are exercised and the competent judge's sense of her own dignity that explains her preference for those activities that exercise these higher capacities, Mill defends the objective reading of the relation between the preferences of competent judges and the greater value of the objects of their preferences. Their preferences reflect judgments about the value that these activities have for beings such as themselves prior to and independently of their being the object of desire. If so, it is the (perceived) value of the activities that explains the preferences of the competent judge, rather than her preferences explaining the value of the activities.¹⁴

There is another argument for an objective interpretation of Mill's deliberative conception of happiness. As we have seen, both the higher pleasures doctrine and Mill's proof represent various nonmental items, including higher activities that exercise our deliberative capacities, as intrinsic goods. If higher activities are intrinsic goods, they must be good in themselves. If so, they must be necessarily good or good whatever else is true (even when they are outweighed by competing goods). While these conditions are met for higher activities on the objective interpretation, they are not on the subjective interpretation. For on the subjective interpretation, it must be a contingent psychological fact, assuming it is

14. One could claim that competent judges prefer A to B because they believe A is better or more dignified than B but insist that A is better or more dignified than B simply because competent judges prefer A. Though consistent, it would be peculiar for Mill to insist that competent judges are the measure of higher value but ignore the *evaluative grounds* for their preferences. I see no reason to interpret Mill's appeal to competent judges in this selective way.

a fact, that suitably informed people would prefer activities that exercise their deliberative capacities. Perhaps this is a deep psychological fact about human beings, but it is a contingent fact. This implies that on the subjective interpretation higher activities cannot be necessarily valuable, and this implies that they cannot be intrinsic goods, contrary to what Mill claims.¹⁵

Though it is the deliberative conception of happiness that is most basic to our understanding of Mill's utilitarianism, these are reasons to interpret the deliberative conception in objective as well as antihedonist terms.

7. *Mill's Consistency*

Do the antihedonistic elements reveal an inconsistency in Mill's utilitarianism? The apparently hedonistic formulation at the beginning of *Utilitarianism* (II 2), Mill insists, is only a first approximation that needs articulation. The passage continues as follows:

To give a clear view of the moral standard set up by the theory, much more requires to be said; in particular, what things it includes in the ideas of pain and pleasure, and to what extent this is left an open question. (II 2)

This should be a puzzling claim if we assume that "pleasure" refers to a simple, qualitative mental state or sensation, as the simple hedonist would so understand it. On this reading, no further analysis of happiness should be necessary or even possible (though we could identify these mental states ostensibly).¹⁶ This may be less of a puzzle for the preference hedonist, because she can recognize, at least in one sense, the existence of qualitatively different kinds of pleasure.

There is no puzzle if Mill is speaking of objective pleasures. Because he often uses the word "pleasure" to refer, not to any mental state, but to the activities that typically produce pleasurable mental states (II 1, 5, 7, 8; IV 5; cf. Section 3), he can consistently say that happiness consists in pleasure—objective pleasure—and offer an objective conception of

15. This suggests that on a desire-satisfaction theory it is the satisfaction of desire as such that is intrinsically valuable, while the satisfaction of particular desires must be extrinsically valuable.

16. Cf. Bogen and Farrell, "Mill's Defence of Liberty," pp. 334–35, and Berger, *Happiness, Justice, and Freedom*, pp. 37–38.

happiness whose dominant component is the exercise of deliberative capacities. And this is just what he does. His defense of higher pleasures in the paragraphs immediately following this initial statement of utilitarianism should be read as an important articulation of this initial statement that yields a nonhedonistic conception of happiness. Indeed, given Mill's other claims about happiness, the objective reading of "pleasure" in these passages is both a necessary and a sufficient condition of a consistent reading of his views. This objective conception of happiness may run counter to some common usage of the term "happiness," but this fact by itself should not and does not trouble Mill (*U*, IV 4; Section 1).¹⁷

Of course, Mill's break with hedonism would have been clearer if he had avoided defining utilitarianism in terms of pleasure and pain and eschewed talk of "higher pleasures" and simply argued for a conception of happiness that recognizes the intrinsic superiority of the higher activities. But, I have claimed, this is how we should understand the doctrine of higher pleasures. The fact that he uses the word "pleasure" to refer to activities as well as mental states allows us to recover a consistent and coherent doctrine from his somewhat misleading claims.

8. Utilitarianism, Rights, and Liberty

As we have seen, it is also claimed that Mill's defense of utilitarianism is incompatible with his defense of a right to liberty. This alleged difficulty is just a special case of the more general complaint that utilitarianism is unable to account for moral and political *rights*.

Notoriously, writers disagree over what rights we have. Some assert only *negative* rights to liberty and protection from harm from others, while others assert *positive* rights to particular goods and services. But there is rough agreement about what a right *is*. Rights are normative considerations that have a distinctive dialectical force in moral and political debate. They protect important or fundamental interests that individuals have by placing a limit on what may be done to individuals even in pursuit of otherwise valuable social goals. Nozick, for example, understands rights as "side-constraints" on the pursuit of the good, and Dworkin understands rights as "trumps" over considerations of policy or the

¹⁷ Notice also that Mill explicitly asks us to distinguish happiness and the mental state of contentment (*U*, II 6).

promotion of valuable goals.¹⁸ The basic idea is that if an agent has a right to something, then she cannot be deprived of it—it would be *wrong* to deprive her of it—merely on the ground that we could promote the general welfare by doing so. This conception of a right would explain why Mill thinks that a right is a claim that an individual has that society ought to protect and enforce (*U*, V 24–25); it also explains the apparent tension between utilitarianism and rights.

The apparent hostility between utilitarianism and rights presents a problem for Mill not only because *Utilitarianism* defends a version of utilitarianism and *On Liberty* seems to defend a strong right to liberty, but because in *On Liberty* Mill actually claims to base his defense of liberty on utilitarian foundations:

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being. (*OL*, I 11)

If we bear in mind this apparent conflict, there are three views about the compatibility of Mill's utilitarianism and his defense of liberty. First, the apparent conflict between utilitarianism and rights is genuine; Mill does defend rights to liberties, but, contrary to what he claims, this is incompatible with his utilitarianism. Second, the apparent conflict between utilitarianism and rights is genuine; Mill's claims about utilitarianism and liberty are compatible, because he does not defend *rights* to liberties. Third, the apparent conflict between utilitarianism and rights is only apparent; Mill's commitments to utilitarianism and rights to liberties are compatible. We can decide which view is appropriate only if we look at his claims about liberty and his defense of these claims.

9. *Mill's Defense of Liberty*

Mill distinguishes paternalistic restrictions of liberty from restrictions of liberty based on the harm principle. At one point he suggests that a restriction on someone's liberty is legitimate if and only if it satisfies the harm principle (*OL*, I 9, IV 1–4, V 2). The harm principle allows A to

18. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 28–33; Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978), pp. xi, 184–205.

restrict B's liberty in order to prevent harm to someone other than B. Exactly what, in Mill's view, will count as a harm for purposes of the harm principle is complicated. He clearly denies that any inconvenience or annoyance is a harm. Rather, in order to satisfy the harm principle, an action must actually violate or threaten imminent violation of those important interests of others in which they have a right (*OL*, I 12, III 1, IV 3, 10, 12, V 5). Major provisions of the criminal law (e.g., laws against murder, rape, assault), for example, satisfy the harm principle. Mill thinks that restrictions of liberty based on the harm principle are unproblematic (but see *OL*, V 3). By contrast, he sometimes claims, paternalistic restrictions of liberty are never justified.¹⁹ A's restriction of B's liberty is paternalistic if it is done in order to prevent B from harming himself or in order to provide B with benefits that B would not secure on his own.

10. Against Paternalism

Mill's position on paternalism already raises the question of the consistency of his overall position. He (sometimes) accepts a *blanket* prohibition on paternalism, but one would expect a utilitarian to take a more cautious attitude. A utilitarian might be able to explain why paternalistic restrictions on liberty often fail to promote the interests of the person whose liberty is restricted and so why there should be a presumption against paternalistic interference, but she ought to be prepared to override this presumption if the harms that paternalism would prevent or the benefits that it would secure would be great enough.

Mill offers two general arguments against paternalism. First, state power is liable to abuse. Politicians are corruptible and will use a paternalistic license to limit the freedom of citizens in ways that promote their own interests and not those of the citizens whose liberty they restrict (*OL*, V 20–23). Second, even well-intentioned rulers will misidentify the good of citizens. Because an agent is a more reliable judge of his own good, even well-intentioned rulers will promote the good of the citizens less well than would the citizens themselves (*OL*, IV 4, 12).

These are the sort of strategic arguments against leaving paternalistic interference to the state's discretion that we might expect utilitarians to

19. As I shall discuss shortly (Section 12), even Mill's blanket prohibitions on paternalism apply only when the individual whose liberty is in question is a mature adult whose rational faculties are sufficiently developed (*OL*, I 10).

offer. They provide no *principled* objection to paternalism—no objection to successful paternalistic restrictions on B's liberty that *do* benefit B.

Though these are Mill's explicit arguments against paternalism, he has the resources for another, stronger argument. These resources are clearest in his defense of free speech. Indeed, Mill thinks that there is general agreement on the importance of free speech and that, once the grounds for free speech are understood, this agreement can be exploited to support a more general defense of individual liberties (*OL*, I 16, III 1).

11. *Against Censorship*

The usual justification of censorship, Mill believes, is the suppression of probable falsehood (and the social value that this represents) or the suppression of unpopular and offensive or annoying views.²⁰ Mill offers four reasons for maintaining free speech and opposing censorship.

- (1) A censored opinion might be true (*OL*, II 1–20, 41).
- (2) Even if literally false, a censored opinion might contain part of the truth (*OL*, II 34–39, 42).
- (3) Even if wholly false, a censored opinion would prevent true opinions from becoming dogma (*OL*, II 1–2, 7, 20–33, 43).
- (4) As a dogma, an unchallenged opinion will lose its meaning (*OL*, II 26, 43).

Like the two general arguments against paternalism, (1) and (2) represent liberty as extrinsically valuable: freedom of speech is valuable, because it tends to produce true belief or increase the ratio of true belief to false belief, which, Mill assumes, is (at least extrinsically) valuable. If, even if only contrary to fact, we had extremely knowledgeable and reliable censors who censored all and only false beliefs, (1) and (2) would provide no argument against censorship. Indeed, if the question is what policies are likely to increase the ratio of true belief to false belief, it would seem that we should employ conservative criteria of censorship and censor those opinions for whose falsity there is especially clear evidence. We would be on good ground in censoring flat-earthers.²¹

Reasons (3) and (4) really represent just one ground of freedom of

20. This justification of censorship need not presuppose the infallibility of the censor, as Mill sometimes suggests (e.g., *OL*, II 3).

21. Cf. Alvin Goldman, "Epistemic Paternalism: Communication Control in Law and Society," *Journal of Philosophy* 88 (1991): 113–31.

speech. They offer a more secure defense of freedom of speech and expression; they are supposed to rebut the case for censorship even on the assumption that all and only false beliefs would be censored (II 2). Mill's claim is that these freedoms are necessary conditions for the exercise of people's deliberative capacities and for fulfilling our natures as progressive beings (II 20). Here he can appeal to the conditions of exercising both (i) *intellectual* reason and (ii) *practical* reason.²²

(i) The justification of true beliefs is valuable, because it realizes our capacities for theoretical reason. Consideration of various possible opinions is necessary if one is to be justified in one's beliefs, and freedom of speech is a precondition of consideration of competing opinions (II 7, 23). Free discussion is essential for rational beings who are not cognitively self-sufficient if they are to justify their beliefs. Because we are individually limited cognitively, free discussion with others is essential to the *identification* of alternative positions, whose consideration is part of the justification of beliefs and values. But confrontation among and *discussion* of alternative positions, already identified, is also essential to the proper articulation of true beliefs and their grounds, and freedoms of speech are required for this discussion to take place. If so, censorship, even of false belief, robs both those whose speech is suppressed and their audience of resources that they need to justify their beliefs and values (II 1).

(ii) In a similar way, the exercise of practical reason in the assessment, selection, revision, and implementation of projects and plans requires that agents deliberate about alternative plans and projects and their appeal. Proper deliberation requires both identification and discussion of alternatives, and this requires various freedoms of thought and speech.

12. *The General Argument for Basic Liberties*

The defense of free speech is just an instance of a more general defense Mill offers for various liberties in chapter III of *On Liberty*. Those activities are more valuable that exercise a person's higher capacities (OL, I 11, II 20, III 1–10). A person's higher capacities include her deliberative

22. Ten, *Mill on Liberty*, pp. 126–28, brings out the importance of (i) to Mill's defense of free speech. While (i) is sufficient to show that Mill is not merely defending free speech as a way of promoting true belief, (ii) does this and plays a greater role in Mill's overall defense of liberty in *On Liberty*. Cf. T. M. Scanlon, "A Theory of Freedom of Expression," *Philosophy & Public Affairs* 1, no. 2 (Winter 1972): 204–26.

capacities, in particular, capacities to form, revise, assess, select, and implement her own plan of life. This kind of autonomous self-expression requires, among other things, various liberties of *thought* and *action*. If the choice and pursuit of projects and plans is to be reflective, it must be informed as to the alternatives and their grounds, and this requires intellectual freedoms of speech, association, and press. If there is to be choice and implementation of choices, there must be liberties of action such as freedom of association, freedom of worship, and freedom to choose one's occupation.

If this interpretation is right, Mill cannot be claiming that liberty is intrinsically valuable. He insists that his defense of liberty applies only to those who have rational capacities and are in a position to exercise them effectively:

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. . . . Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion.²³ (*OL*, I 10)

This restriction makes no sense if liberty itself is a dominant intrinsic good, for then it should always be valuable to accord people liberty—a claim that Mill here denies. This restriction makes perfect sense if the liberties in question, though not intrinsically valuable, are necessary conditions of realizing dominant goods, for then there will be, or need be, no value to liberty where, as in these circumstances, other necessary conditions for the realization of these higher values (namely, sufficient rational development) are absent.²⁴

As long as people have some rational capacities, Mill can claim that it is valuable that they be exercised, and this requires various freedoms of

23. Mill goes on to say that this threshold of rational development has been "long since reached in all nations with whom we need concern ourselves" (*OL*, I 10). Though this qualification can be read so as to signify the narrowness of Mill's concerns, it can also be read as signifying his belief that there are few such exceptions and so as signifying the breadth of his concerns.

24. Contrast my interpretation of the importance of liberty as a necessary condition of dominant value with suggestions that Mill thinks liberty and liberties are intrinsically valuable: Bogen and Farrell, "Mill's Defence of Liberty," and Berger, *Happiness, Justice, and Freedom*, pp. 41, 50, 199, 231–32. Though Berger discusses Mill's restrictions on the scope of the argument (pp. 269–70), he does not seem to see that they force Mill to deny that liberties have intrinsic value.

thought and action. This does not imply that everyone should have unrestricted freedom. Freedom can still be restricted when its exercise would harm important interests of others (harm principle) and perhaps when its exercise would cause substantial or irreversible self-injury or would otherwise substantially compromise the agent's ability to exercise her practical reason effectively in the future (weak paternalism).

Mill is forced to qualify his blanket prohibition on paternalism in these ways in order to maintain his claim that no one should be free to sell herself into slavery:

The ground for thus limiting his power of voluntarily disposing of his own lot is apparent, and is very clearly seen in this extreme case. . . . [B]y selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He, therefore, defeats in his own case, the very purpose which is the justification of allowing him to dispose of himself. (OL, V 11)

Because it is the importance of exercising one's deliberative capacities that explains the importance of certain liberties, the usual reason for recognizing liberties provides an argument against extending liberties to do things that will permanently undermine one's future exercise of those same capacities.

It would also seem that we can and should distinguish liberties that are *central* to the exercise of higher capacities from those that are not. For instance, restrictions on speech, writing, worship, association, and choice of profession violate liberties that are much more important than those restricted, say, by seat belt laws or traffic regulations, because the former restrict our practical deliberation about the sort of persons we will be, and so the exercise of our rational capacities, in much more significant ways than the latter restrictions do. If so, some liberties are more important than others, and it is these *basic liberties*, rather than *liberty per se*, that Mill's arguments defend.²⁵

This restriction on the scope of the argument is important if he is to be able to defend the permissibility of familiar kinds of social welfare legislation that generate revenue to be redistributed within the community and to be spent on community projects. And Mill does accept many

25. Though Berger does recognize limitations on Mill's defense of liberty, he seems to see that defense as a defense of liberty per se, rather than specific liberties; see *Happiness, Justice, and Freedom*, p. 230.

forms of social welfare legislation. He thinks that local and central government are empowered to enact various kinds of legislation pursuant to the community's interest (*PPE*, V. i.2/803–4; *CRG*, XV/368, 369). He explicitly includes the following items on the governmental agenda: the redistribution of wealth (through taxes on earned and unearned income and inheritance) so as to ensure a decent minimum standard of living,²⁶ Poor Laws that provide work for the able-bodied indigent (*PPE*, II.xii.2/359–60, V.xi.13/960–62), labor regulation (e.g., regulation of the hours of factory laborers) (*PPE*, V.xi.12/956–58), provision for a common defense (*OL*, I 11; *PPE*, V.viii.1/880), development of a system of public education (*OL*, V 12–13; *PPE*, II.xiii.3/374–75, V.xi.8/948–50; *CRG*, VIII/278; *A*, V/128), maintenance of community infrastructure (e.g., roads, sanitation, police, and correctional facilities) (*PPE*, V.viii.1/880; *CRG*, XV/368, 371, 373), and state support for the arts (*PPE*, V.xi.15/968–70).

Now social welfare legislation is a challenge to those who prize liberty per se, because, as Bentham noted, almost all legislation restricts liberty in some way; certainly, the tax measures to support such social welfare legislation do.²⁷ The challenge is to explain why these restrictions on liberty are permissible, while paternalistic, moralistic, and other restrictions on liberty are not.²⁸

26. Mill was concerned with redressing inequalities resulting from arbitrary social and natural circumstances (*PPE*, II.i.3/207, V.ii.3/808; *CS*, 710–14). Though he generally defended equal taxation of earned income, he claimed that earned income below a certain minimum should not be taxed at all (*PPE*, II.xiii.3/374–75, V.iii.3/809–10, V.iii.5/830–31). He defended the use of inheritance taxes to limit social and economic inequality (*PPE*, II.ii.1/216, II.ii.4/225, V.ii.3/811, V.vi.2/868, V.ix.1/887). He also linked (unearned) rental income with inherited wealth and argued that it may be heavily taxed (*PPE*, V.ii.5/819). The case for thinking that Mill thought government should pursue egalitarian redistribution of wealth through taxation is made in further detail by Berger, *Happiness, Justice, and Freedom*, pp. 159–86.

27. Cf. Jeremy Bentham, *Of Laws in General* (London: Athlone Press, 1970), chap. VI, para. 4.

28. A familiar manifestation of this challenge is the worry within constitutional theory about how to reconcile the rejection of *economic* substantive due process (e.g., the rejection of *Lochner v. New York*, 198 U.S. 45 [1905]) with the acceptance of *civic* and *personal* substantive due process (e.g., the acceptance of “selective incorporation” and privacy cases such as *Griswold v. Connecticut*, 381 U.S. 479 [1965]). The reconciliation must explain why the liberty of contract is not a fundamental liberty, while personal and civic liberties are fundamental liberties; cf. *Palko v. Connecticut*, 302 U.S. 319 (1937). A deliberative conception of happiness and a theory about the conditions of exercising deliberative capac-

Some of the goods provided by such social welfare legislation—in particular, personal security, a decent minimum standard of living, and education—are important preconditions of exercising one's capacities for practical deliberation well. In this way, Mill can defend the importance of access to certain positive conditions for realizing dominant components of happiness in much the same way that I have claimed he can and does defend claims to certain negative conditions—certain freedoms of thought and action (cf. *OL*, V 12–13; *U*, V 25; *A*, V/128). If Mill can defend negative rights to these liberties of thought and action (see Section 13), he can also defend positive rights to these basic goods. But the objects of other forms of social welfare legislation do not have this status. If Mill is to defend the latter form of social welfare legislation at all, and if he is to avoid a conflict between positive and negative rights in the case of social welfare legislation of the former type (granting access to basic goods), then he must also claim that the liberties restricted by these sorts of social welfare legislation are less important liberties than those restricted by paternalistic and moralistic legislation. He can begin to do this if he can distinguish, as I have suggested he can, the importance of different liberties in terms of their role in practical deliberation and if he can show that permissible social welfare legislation restricts less important liberties in small and predictable ways and does not constrain practical deliberation significantly. Social welfare legislation may restrict some people's freedom to dispose of their gross income and assets as they please, but it does not significantly constrain anyone's ability to choose or implement projects and plans that express her own deliberations, as paternalistic and moralistic legislation does.

Thus, a proper understanding of Mill's defense of liberty requires us to modify or better articulate some of his conclusions. Paternalism is not always impermissible; weak paternalism is defensible. The harm principle is not the sole legitimate ground for restricting liberty; various forms of social welfare legislation are acceptable.²⁹ And there are rights to basic liberties, but no right to liberty per se. These claims should seem well

ities begin to provide the basis for such a reconciliation (I hope to pursue these issues elsewhere).

29. However, Mill does claim that others can be compelled to supply some of these benefits, under the harm principle, because harm can result from inaction as well as action (*OL*, I 11); cf. David Lyons, "Liberty and Harm to Others," *Canadian Journal of Philosophy* 5 (suppl.) (1979): 1–19.

motivated once the nature of Mill's argument and its appeal to deliberative capacities is understood.

13. *A Deliberative Utilitarian Account of Rights*

Once we recognize the way in which Mill's defense of basic liberties relies on his deliberative conception of happiness, it is less clear that there is an inconsistency between his utilitarianism and his defense of a right to certain liberties. Mill holds a pluralistic theory of welfare in which higher activities are dominant components. Exercise of higher capacities has greater value than other intrinsic goods such as pleasure or the satisfaction of desire, and magnitudes of it cannot be exchanged one-for-one with magnitudes of these other goods without significant loss of value. Indeed, as we have seen (Section 3), Mill thinks that the higher activities have value that is infinitely or lexically greater than that of mere pleasures, because he claims that their value cannot be outweighed by any quantity of lower pleasures (*U*, II 5, 6).³⁰ Even though liberty is not intrinsically valuable, some liberties are necessary conditions to the realization of the dominant component in human welfare, namely, the exercise of rational capacities. For this reason the liberties that are essential to the exercise of rational capacities are themselves dominant (though not intrinsic) goods and have the status of rights; they trump or defeat claims that we could promote lesser goods (e.g., pleasure or preference satisfaction) by interfering with these liberties. Recognizing a right to these liberties, therefore, is the way to maximize value.

This interpretation of Mill's theory of rights should be contrasted with a "strategic" interpretation, according to which a right to liberties is a reliable strategy for promoting values that have no necessary or intrinsic connection with liberty.³¹ This strategy conception of rights is just a special case of the strategy conception of moral rules.

Appeal to a moral rule, rather than application of the utilitarian principle itself, is justified on utilitarian grounds, according to the strategy

30. Mill also claims that taxes on necessities, which are necessary conditions of exercising one's higher capacities, require a sacrifice "that is not only greater than, but incommensurable with" the sacrifices imposed by taxes on luxuries (*PPE*, V.ii.3/809–10).

31. Cf. Rolf Sartorius, *Individual Conduct and Social Norms* (Encino, Calif.: Dickenson, 1975), esp. chap. 8, sec. 3; David Lyons, "Human Rights and the General Welfare," *Philosophy & Public Affairs* 6, no. 2 (Winter 1977): 113–29; Berger, *Happiness, Justice, and Freedom*, chaps. 3–5, esp. pp. 70–73, 131–34, 247–48, 271, 291; and John Gray, "John Stuart Mill on Liberty, Utility, and Rights," *Nomos* 23 (1981): 108–9.

conception, if (a) acceptance of the rule generally, but not always, produces optimific acts, and (b) the suboptimific acts that adherence to the rule produces cannot reliably and efficiently be identified in advance. Rules that satisfy condition (a) often satisfy condition (b); there are a number of advantages to operating with fairly coarse-grained rules, even though adherence to them will produce some suboptimific acts. We may mistakenly identify cases in which adherence to the rule produces suboptimific results and so our deviations from the rule may be suboptimific; even when we get the calculations right, case-by-case calculation is itself costly; and a simpler, more coarse-grained rule will be easier to internalize and less subject to various forms of bias and self-deception in its application than extremely complex rules or case-by-case evaluation.

This strategy conception of moral rules explains Mill's regular insistence on the need for "secondary principles" that function in our practical reasoning in lieu of direct appeals to the utilitarian first principle (*SL*, VI.xii.7/951–52; cf. *U*, II 19, 24–25; *B*, 110–11; *A*, V/100).³² When conditions (a) and (b) are met, the associated moral rule should be appealed to and applied automatically in most cases and should be set aside in favor of direct appeal to the utilitarian principle only in very unusual circumstances (e.g., where it is obvious that adherence to the rule would have disastrous consequences) and in cases of conflicts among moral rules each of which has a utilitarian justification (cf. *U*, II 23–25).

The strategic interpretation of a right applies this strategy conception of rules to liberties and holds that a rule protecting these liberties meets conditions (a) and (b). This generates a *strategy-right* to these liberties.

Mill can recognize strategy-rights to certain liberties. But his deliberative account of happiness provides a stronger conception of rights than the strategic conception does. The strategic conception recognizes moral rules with the dialectical force of trumps as a practical necessity or false target justified by our cognitive and affective limitations. But strategy-rights are not *counterfactually stable*; they do not apply in those circum-

32. This strategic reliance on moral rules is compatible with *act-utilitarianism*. Acting on the best strategic rules will result in some wrong acts; but because these acts will be part of an optimific pattern of behavior, an act-utilitarian can represent them as cases of *blameless* wrongdoing. If so, Mill's reliance on secondary principles does not imply rule-utilitarianism. Contrast J. O. Urmson, "The Interpretation of the Philosophy of J. S. Mill," *Philosophical Quarterly* 3 (1953): 33–39. However, the act-utilitarian account of secondary principles is incompatible with the link Mill sees between wrongdoing and blame (*U*, V 14; cf. Section 1).

stances in which we can reliably and efficiently detect (sub)optimific acts. And it seems that genuine moral and political rights should be counterfactually stable. Where an agent's claim to something is protected by a moral rule or a right, it would be wrong to deprive her of that thing, even if we are perfect and costless calculators of utility and departure from the rules here had no bad spillover effects on our behavior elsewhere.

By contrast, the account of rights provided by a deliberative conception of happiness seems counterfactually stable. We protect particular liberties, on this account, because these liberties are necessarily, and not just contingently or epistemically, connected with the realization of dominant components of value; we cannot maximize value without securing these liberties. And an objective version of the deliberative conception of happiness (Section 6) will secure greater counterfactual stability for rights to these liberties insofar as it does not hold the value of exercising deliberative capacities hostage to contingent conative facts.³³

This interpretation of Mill's conception of rights is confirmed by his discussion of the connections among justice, rights, and utility in chapter V of *Utilitarianism*:

Justice is a name for certain classes of moral rules which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice—that of a right residing in an individual—implies and testifies to this more binding obligation. (V 32; cf. V 33, 37–38)

That some of these “essentials of well-being” are necessary conditions of realizing value is clear in Mill's discussion of the foundation in security that many of our basic rights have (V 25). Just as security from attack is a necessary condition of pursuing other goods, so too are basic liberties necessary conditions for exercising those higher capacities whose exercise is a dominant component in human happiness.

33. As a general matter, Mill's reconciliation of utilitarianism and rights depends only on his deliberative conception of happiness and does not require the objective interpretation of the deliberative conception. Thus, a suitably informed desire-satisfaction interpretation of the deliberative account can effect much the same reconciliation. However, it would not provide the same degree of counterfactual stability for utilitarian rights. This may be an advantage of the objective interpretation.

A basic liberty can be infringed, according to this interpretation, if and only if its exercise would more seriously infringe other important intrinsic goods or other necessary conditions of intrinsic value (e.g., liberties or basic well-being) held by others or by the agent herself. These things too act as trumps over considerations of lesser goods, and so should be construed as rights; they constrain what the agent may do to herself or others.³⁴ Indeed, these restrictions on liberty apply in just those cases where the agent's exercise of freedom would constitute "harms," in Mill's technical sense. That is, he thinks that someone can have her basic liberties interfered with only if doing so is necessary to prevent her from depriving someone of interests in which that person has rights (*OL*, IV 3, 10, 12).³⁵ Though rights act as trumps, they are not absolute; they can be overridden if they conflict with other rights.³⁶

14. The Distribution of Dominant Goods

Mill can represent certain liberties and goods necessary to the realization of higher capacities as trumping the promotion of lesser intrinsic and extrinsic goods. But perhaps this fails to recognize sufficiently robust rights. Mill's hierarchical theory of value allows basic goods to trump nonbasic goods; for instance, it allows basic liberties to trump mere preferences or pleasures. But while it allows trumping *across* ranks of goods, it does not allow trumping *within* a rank of goods. Mill must apparently allow one claim to pursue higher pleasures to be defeated by a greater number of claims to pursue comparable pleasures or another claim to pursue greater pleasures.

This objection is hard to assess in the abstract. While Mill must concede the possibility of conflicts among such liberties and goods, there seems nothing wrong with this in principle, because we do want to recognize the possibility of conflicts among rights. But some conflicts

34. I assume that people can hold rights against themselves; Mill certainly believes that people have duties to themselves (*OL*, IV 6).

35. This interpretation makes Mill's own harm principle and his acceptance of weak paternalism out to be just special cases of a more general harm principle that insists that liberty be restricted if its exercise would cause (or pose an imminent threat of causing) harm to *someone*, the agent or others. This interpretation threatens the self/other asymmetry that Mill appears to draw in *On Liberty*. But once we see his acceptance of weak paternalism and remember that he will count as a harm only damage to dominant goods, it is not clear that Mill's claims about liberty require any self/other asymmetry.

36. Cf. Dworkin, *Taking Rights Seriously*, pp. 191ff.

among dominant goods may not seem properly resolved by maximizing value. For example, Mill seems committed to allowing an intellectual elite to deprive others of basic liberties or goods in order to provide this elite with the leisure and resources to deliberate in ways that realize higher capacities. Provided the elite is large enough or exercises their rational capacities well enough, this sort of exploitation would seem to be permissible, indeed, obligatory. But surely genuine rights to basic liberties should constrain such exploitation.³⁷ If Mill's theory cannot account for this, then it faces an important distributional problem.

As far as I know, Mill does not explicitly consider this worry. But he discusses related issues, and his claims here and his deliberative conception of happiness provide the resources for a reply. To block the sort of exploitation imagined in the example, Mill must claim that the value that the elite realizes in these circumstances could not outweigh the costs to themselves and others of denying others basic liberties and goods. Part of this reply relies on claims that we have already examined and defended.

First, in discussing Mill's deliberative conception of happiness (Section 5), we noted that the same sort of deliberative capacities can be exercised in a variety of different activities. For example, I exercise many of the same sort of capacities in organizing a charity benefit or a cooperative business enterprise as in organizing a bank robbery. If so, it is unclear whether a closed society enables the elite to exercise deliberative capacities that it could not exercise equally well in more socially harmonious ways. No doubt, the closed society enables them to engage in different activities, but this does not show that they exercise their rational capacities any more fully by these activities than they would by the activities allowed them in a free society. If so, it is not clear that the elite gain anything by their exploitation.

Second, by denying basic liberties to others the elite insulate themselves intellectually. But cooperative discussion and exchange exercise deliberative capacities (Sections 11–12). If so, the isolation of the elite deprives them of input from those they exploit, and so compromises the quality of their own deliberations. The exploited also lose the benefit of

37. Cf. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 210–11, 329–30; Hart, "Natural Rights," pp. 96–97.

cooperative discussion with the elite. These two costs must be added to the more obvious damage done to the exploited when they are denied the goods and liberties necessary to exercise their deliberative powers effectively. This means that in a closed society the elite themselves lose and the exploited lose twice over, even if the elite gain in one way.

Third, we have seen that Mill can and should distinguish some liberties as more central to the exercise of higher capacities than others (Section 12). One way to understand the centrality of goods or liberties to the exercise of rational capacities is in terms of the number of rational activities to which those goods or liberties are necessary and the structural importance of those activities to the person's character and rational agency. If so, the goods and liberties denied the exploited in this closed society are much *more central* than those goods and liberties that the closed society enables the elite to possess. Freedoms of speech, association, and occupational choice and a level of material well-being necessary to secure physical and psychological health and stability just have a more central role in the exercise of people's rational capacities than do the leisure and resources that such an elite might use in the pursuit of rational activities that they could engage in only in such a closed society.

Mill can strengthen this defense of rights to basic liberties if he can argue that certain sorts of cooperative *social capacities* are among our higher capacities and that the sort of exploitation involved in the example is incompatible with the right sort of exercise of these capacities both on the part of the elite and on the part of the exploited. The relevant social capacities would presumably involve mutual concern and respect and would be realized in, among other things, cooperative activities conducted on terms of mutual advantage.

Mill does think that the exercise of such social capacities is a significant good. In various places he asserts the role of social sentiments and social relationships in the happiness of progressive beings (cf. B, 91; C, 120–24; U, II 18, III 10, V 20; A, V/106). And he appeals to this fact to address a related problem. In chapter III of *Utilitarianism* Mill addresses, among other things, the rational authority of utilitarian moral demands, in particular, the apparent conflict between the individual's own good and the other-regarding demands of utilitarianism (and other moral theories). He argues that the conflict is, for the most part, illusory by appealing to the role of social sentiments and cooperative social rela-

tionships in each individual's good. Mill thinks we come increasingly to recognize these social aspects of our nature and welfare as civilization advances (*U*, III 10). Indeed, he commits himself to a very strong claim about the interdependence of people's interests:

In an improving state of the human mind, the influences are constantly on the increase which tend to generate in each individual a feeling of unity with all the rest; which, if perfect, would make him never think of, or desire, any beneficial condition for himself in the benefits of which they are not included. (*U*, III 10)

Here Mill describes how progressive beings increasingly come to conceive of the relations between their own good and that of others. But he presumably also intends to claim, and our objective interpretation of his conception of happiness licenses us in concluding, that their preferences are reliable evidence of what is good for them. And what is good for a progressive being, Mill believes, is good for human beings. So, even if these social components of a person's welfare will be fully recognized only as civilization advances, they are components of human welfare now.

Mill's claims here make his theory of value *distribution-sensitive*. If forbearing and cooperative social relations are a part of each person's good, then the inequalities in basic goods and liberties and social relations characteristic of the closed society cannot be a way of maximizing his set of weighted values, in part because they will frustrate an important component of the welfare of both the exploited and the elite.³⁸

But we may wonder whether a moral theory that is distribution-sensitive can be teleological. For instance, Rawls claims that "if the distribution of goods is also counted as a good, perhaps a higher order one, and the theory directs us to produce the most good (including the good of distribution among others), we no longer have a teleological view in the classical sense."³⁹ This constraint follows from the assumption that teleological theories must define the moral property of rightness in terms of the promotion of some nonmoral value(s). And this assumption is sometimes taken to follow from the claim that teleological theories, unlike de-

38. The theme that exploiters and oppressors are themselves harmed by exploitative relationships, because such relationships are inconsistent with beneficial personal and social interaction, is explicit in *The Subjection of Women* (SW, IV/522–25, 541).

39. *A Theory of Justice*, p. 25.

ontological theories, must specify the right in terms of the good and specify the good independently of the right.⁴⁰

But teleological theories should eschew these constraints; they need only define the right in terms of the good and conceive of the good as *distinct* from the right. Unless the good is distinct from the right, defining the right in terms of the good will be circular. But if the right that the teleologist defines in terms of the good is all-things-considered obligation, then she can define the good in any other way, without circularity. In particular, she can define the right as the promotion of the good and give an account of the good in terms of distributional moral properties.

But not all teleological theories are utilitarian; utilitarian theories are teleological theories that take the good to be human (or sentient) welfare or happiness. If Mill's reply requires assuming that the distribution of benefits and harms to people is itself a good—in addition to the benefits and harms to people themselves—then it must have value that cannot be explained by its contribution to people's welfare or happiness. This would make Mill's commitments nonutilitarian, even if they are teleological.

Though Mill's theory of value is distribution-sensitive, the value of distribution is theoretically derivative. It is not that distribution is a good independently of any contribution it makes to human welfare; it is a good because it is a constituent of human welfare. Part of the good of a progressive being, Mill claims, consists in exercising his social capacities. If so, his doing well cannot be achieved at the expense of other people's welfare. Thus, certain distributional properties are intrinsically good, and they are so because of the role they play in human happiness. If so, a teleological theory that incorporates such assumptions will be utilitarian.

But even if this is a possible form of utilitarianism, its evaluative assumptions may seem *ad hoc*. Are these assumptions independently plausible? Mill thinks so. As we have seen, he thinks the correct conception of happiness must take the exercise of our higher capacities to be a dominant component. And Mill thinks that the sort of social capacities whose exercise we have been discussing are among these higher capacities. This is clear from the discussion in chapter III of *Utilitarianism*. There

40. See William Frankena, *Ethics*, 2d ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1973), pp. 14–17, and Rawls, *A Theory of Justice*, pp. 24–25, 30–31.

he asserts that mutual concern and commitment and common projects are characteristic of progressive beings and that this sort of social interaction is in large part responsible for the development of what we think of as civilization. This is a theme that Mill articulates in several other places as well. For instance, in his essay "Civilization" he writes that "wherever . . . we find human beings acting together for common purposes in large bodies, and enjoying the pleasures of social intercourse, we term them civilized" (C, 120; cf. C, 120–24). And in *Principles of Political Economy* Mill frequently remarks that economic development goes hand in hand with greater economic cooperation and interdependence and that these aspects of modern economic life create a school of social sentiments in which economic actors, especially laborers, develop common interests and deliberative powers (*PPE*, IV.vii.1/763; cf. II.i.3/205, IV.vii.6/792–94). These claims show that Mill's assumptions about the social components of human happiness reflect well-considered evaluative views that rest, in part, on his views of human nature and social theory.

On this view, Mill takes certain distributional properties to be good because of their relation to the social components of human happiness. And the exercise of the relevant social capacities may be part of our good as progressive beings in exactly the same way that the exercise of rational capacities is part of our good as progressive beings. But there would be even greater explanatory unity in Mill's view if the exercise of the relevant social capacities could be represented as an important special case of the exercise of deliberative capacities. In that case distributional considerations would be valuable because of their role in certain social relations, which would be valuable because of their role in the exercise of people's rational capacities.

Mill often says that social cooperation and interaction breed identity of interests (e.g., *U*, III 10). We can make sense of this claim if in the process of exercising these cooperative virtues we *extend our interests* by engaging in new and more complex forms of practical deliberation than those available to us individually.⁴¹ When I interact with others on a footing of mutual concern and commitment, I learn of and share in their

41. For fuller elaboration of this idea, see my "Rational Egoism, Self, and Others," in *Identity, Character, and Morality*, ed. O. Flanagan and A. Rorty (Cambridge, Mass.: MIT Press, 1990), esp. secs. 5–10; cf. T. H. Irwin, *Aristotle's First Principles* (Oxford: Clarendon Press, 1988), pp. 393–95.

experiences and activities, and this allows me to participate in (if only vicariously) and benefit from a wider range of experiences and activities than I could on my own. This wider range of experiences and activities will expand my knowledge, but it will also expand and aid my practical deliberation about my own projects and activities in the future. For, as we have seen, Mill claims that deliberation and discussion of my own projects with others will force me to consider and assess new alternatives, and this will also enhance my deliberation about my own projects and activities. Furthermore, cooperation with others on projects of mutual advantage will allow me to pursue larger and more complex projects and goals than I could working on my own, and this will expand the range of my deliberative powers and control.

Indeed, these considerations argue for the kinds of social and political organization that Mill defends. As we have seen, Mill argues for a form of democratic equality, where democratic equality is understood to involve democratic institutions against a background of personal and civic liberties and comparative social and economic equality that establishes a decent minimum standard of living. And, in particular, he thinks that the principal justification of this sort of democratic government is that it improves the intellectual, deliberative, and moral powers of its citizens (CRG, esp. chaps. II–III). Now a society will extend the interests of its members roughly in proportion to the extent of its democratic equality. Democratic decision-making affords the opportunity for widespread participation in a process of mutual discussion and articulation of ideals and priorities. Because deliberation will be improved, and interests extended, by input from diverse perspectives, Mill rightly recognizes the role of proportional representation in a deliberative democracy (CRG, VII/260–62). Democratic processes thus establish common projects more widely and in so doing exercise new deliberative capacities in the members of such a society.⁴² A background of personal and civic liberties with comparative social and economic equality makes possible more widespread development of individual talents and capacities, and this will expand the range of experiences, values, and perspectives that individuals can enjoy vicariously and draw on in their own deliberations.

42. Not coincidentally, Mill thought it a virtue of the sort of workers' associations that the Cooperative Movement supported that they would introduce democratic processes into the workplace and so expand common interests and deliberative powers (PPE, IV.vii.6/792–94).

In these ways, Mill might think that the right sorts of interpersonal and social interaction will expand the deliberative powers of parties to such interaction. He does not make all these claims explicitly. But they are available to him and lend a greater unity to his moral and political views than they would otherwise enjoy.

Whether we take the value of exercising these social capacities to be theoretically derivative from the value of exercising rational capacities or on a par with the exercise of rational capacities, their value will constrain the ways in which practical or theoretical deliberation can be pursued. Appeal to the higher value of fair and cooperative social relationships can serve as a tiebreaker. When, as we saw, the same set of rational capacities can be exercised in more and less socially harmonious ways, a commitment to the exercise of social capacities, as part of exercising one's higher capacities, will require the fair and cooperative realization of these rational capacities. Moreover, these social capacities have an importance not simply as a tiebreaker. So in our example, even if exploitative social arrangements can uniquely promote some aspects of rational deliberation, this higher-order value will be outweighed by greater higher-order costs. Both the exploited and the exploiters lose by their lack of cooperative interaction with each other, whereas at most only the exploiters gain.

In these ways, exploitation necessarily involves social and private higher-order costs to both exploiters and exploited that must offset any marginal higher-order benefits that exploitation uniquely permits exploiters to reap. If so, basic liberties do constrain would-be exploiters' pursuit of higher-order, deliberative goods. Does this mean that Mill's theory can represent rights that are constraints on the pursuit of the good? In one sense, no. Insofar as he is an act-utilitarian, he does and must represent the recognition of rights as part of maximizing the good, properly understood. But he can recognize rights as constraints on the pursuit of various *goods*. And this, I argue, promises to deliver a fairly robust account of rights. In particular, Mill's deliberative conception of the good allows him to respect important distributional aspects of rights that teleological theories are alleged not to be able to accommodate. This account does not represent rights as nonteleological side-constraints. But this fact cannot by itself be thought to be an objection to that account without begging the question against the possibility of an adequate teleological account of rights.

This discussion obviously raises large issues about the nature of deliberative powers and the social dimensions of these powers. But perhaps we have said enough about these issues to show that Mill's version of utilitarianism has no obviously insuperable difficulty accounting for the distributional character of rights.

15. Conclusion

Mill's deliberative conception of happiness drives his version of utilitarianism and accounts for its most distinctive features and resources. His version of utilitarianism promises to accommodate rights—both negative rights to particular liberties and to protection from harms and positive rights to the conditions of basic well-being. These positive and negative conditions are necessary to the realization of dominant goods, namely, the exercise of deliberative capacities. As such, claims to these conditions have the dialectical force of trumps in moral and political debate; this will be part of promoting Mill's weighted set of values. If so, Mill's deliberative views about happiness promise a plausible explanation of the logic and content of individual rights on a utilitarian basis. Here, his version of utilitarianism has resources not available to traditional (e.g., hedonistic) forms of utilitarianism. These resources make his moral and political theory both more distinctive and more coherent than is generally recognized.