

PHIL 167: Contemporary Political Philosophy
Fall 2005; David O. Brink
Handout #3: Mill on Utility, Liberty, and Rights

John Stuart Mill (1806-73) is perhaps the most famous and influential of the British utilitarians. He not only popularized and articulated utilitarianism, he also wrote extensively and influentially on individual liberties, the limits of government, the nature of representative democracy, the principles of political economy, and women's equality.

Mill was a member of the Philosophical Radicals – a group of political and legal reformers, led by Jeremy Bentham (1748-1832), James Mill (J.S. Mill's father) (1773-1836), and John Austin (1790-1859), among others. These radicals sought to design and reform political and legal institutions along utilitarian principles. The Philosophical Radicals initiated progressive reforms designed to extend the franchise and to improve working conditions, education, and healthcare for the lower classes. The progressive influence of utilitarianism was due to two aspects of its impartiality – its claim that everyone's interests matter morally and that their interests ought to be given equal weight ("everyone is to count for one and no one for more than one"). In historical context, utilitarian principles led to reforms that undid the benefits of class and privilege.

James Mill raised John Stuart Mill to be the ultimate utilitarian reformer. The relentless intellectual training to which the younger Mill was subjected ultimately led to his emotional breakdown at the age of twenty (in 1826). He came to view his own education as too intellectual and one-sided and became convinced of the need for a well rounded education that recognized the roles of feeling, culture, and imagination in the spiritual development of people. Though Mill never gave up the utilitarianism that he inherited from Bentham and his father, he transformed it in significant ways, chiefly by insisting that it employ a richer and more adequate moral psychology and theory of value. We can see some of Mill's innovations in his account of higher pleasures in chapter ii of [Utilitarianism](#).

UTILITARIANISM AND HIGHER PLEASURES

Mill explains his commitment to utilitarianism early in Chapter ii of [Utilitarianism](#).

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].

This sounds like Bentham. The first sentence appears to endorse act utilitarianism, while the second sentence appears to endorse a hedonistic conception of act utilitarianism.

In response to worries that hedonism is a doctrine fit only for swine (ii 3), Mill reassures readers that the utilitarian can and will defend the superiority of higher pleasures. The quantitative hedonist (e.g. Bentham) can defend higher pursuits as extrinsically superior on the ground that they produce more intense, durable, and fecund pleasures (ii 4). (Mill may have been right to claim that this could and should have been Bentham's view. But in comparing the value of voluptuary pursuits, such as the game of push-pin, and higher pursuits, such as music and poetry, Bentham actually defends the superiority of push-pin. See Bentham's "[Rationale of Reward](#)", bk. III, ch. 1.) While agreeing with the strict hedonist that the higher pleasures produce a larger quantity of pleasure and so are extrinsically more valuable, he also insists that

the greater value of intellectual pleasures can and should be put on a more secure footing (ii 4). He explains these higher 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 seems to claim here not just that higher pleasures are intrinsically more valuable than lower ones but that they are incomparably better (ii 6).

Mill's position here is hard to pin down, in part because he uses the term 'pleasure' sometimes to refer to (a) a certain kind of mental state or sensation and at other times to refer to (b) non-mental items, such as actions, activities, and pursuits that do or can cause pleasurable mental states (cf. the way in which someone might refer to sexual activity as a bodily pleasure). We might call (a)-type pleasures **subjective pleasures** and (b)-type pleasures **objective pleasures**. What's unclear is whether Mill's higher pleasures are subjective pleasures or objective pleasures.

Insofar as Mill's higher pleasures doctrine concerns objective pleasures, it is anti-hedonistic 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.

Even if Mill is concerned with subjective pleasures only, the higher pleasures doctrine is hard to square with hedonism. On this reading, higher pleasures are pleasures caused by the exercise of our higher faculties, whereas lower pleasures are pleasures caused by the exercise of our lower capacities. But conceding this difference among pleasures does not imply the qualitative superiority of the former.

It may help to focus on Mill's explanation of the preferences of competent judges for modes of existence that employ their higher faculties.

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 ... [ii 6].

But the dignity passage threatens to undermine hedonism. 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, Mill implies that her preferences reflect judgments about the value that these activities have independently of their being the object of desire or the source of pleasure. Here, Mill is making the same sort of point that Socrates does in discussing Euthyphro's definition of piety as what all the gods love.

MILL'S THEORY OF DUTY

Many of Mill's claims suggest the act utilitarian claim that it is the agent's duty to maximize happiness. In Chapter ii Mill identifies utilitarians as "those who stand up for utility as the test of right and wrong" (ii 1) and describes their theory as holding "that actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness" (ii 2). He understands utilitarianism as a "standard of what is right in conduct" (ii 17) that requires that "utility or happiness [be] considered as the directive rule of human conduct" (ii 8). Indeed, at the beginning of Chapter v Mill insists on describing utilitarianism as "the doctrine that utility or happiness is the criterion of right and wrong" (v 1).

Some of Mill's language may also suggest that he recommends that people use the act-utilitarian principle in their deliberations or that they be motivated by disinterested benevolence. But it's a practical question how people should reason or be motivated, and utilitarianism implies that this practical question, like all practical questions, is correctly answered by what would maximize utility. Utilitarian calculation is time-consuming and often unreliable or subject to bias and distortion. For such reasons, we may better approximate the utilitarian standard if we don't always try to approximate it. He says that to suppose that one must always consciously employ the utilitarian principle in making decisions

... is to mistake the very meaning of a standard of morals and confound the rule of action with the motive of it. It is the business of ethics to tell us what are our duties, or by what test we may know them; but no system of ethics requires that the sole of all we do shall be a feeling of duty; on the contrary, ninety-nine hundredths of all our actions are done from other motives, and rightly so done if the rule of duty does not condemn them [ii 18].

In fact, Mill frequently appeals to the need to rely on **secondary principles** that function in our practical reasoning in lieu of direct appeals to the utilitarian first principle (ii 19, 24-25), which should be set aside in favor of direct appeal to the utilitarian first principle in unusual circumstances in which it is obvious in which adherence to the secondary principle would have suboptimal consequences and in cases of conflicts among secondary principles each of which has a utilitarian justification (ii 23-25).

So far, the picture we get is that Mill endorses act utilitarianism as a standard of right conduct or duty, even if he does not require it to be a decision procedure or to supply a set of motives. But in Chapter v of Utilitarianism Mill provides a utilitarian account of duty, justice, and rights that is in some ways at odds with act utilitarianism. There, Mill claims

We do not call anything wrong unless we mean to imply that a person ought to be punished in some way or other for doing it – if not by law, by the opinion of his fellow creatures; if not by opinion, by the reproaches of his own conscience [v 14].

Here Mill claims that one is under an obligation or duty to do something just in case failure to do it is wrong and that an action is wrong just in case some kind of external or internal sanction -- punishment, social censure, or self-reproach -- ought to be applied to its performance. This test distinguishes duty from expediency (v 14, 15); suboptimal or inexpedient acts are wrong only if one ought to apply some sort of sanction (at least, self-reproach) to them. Justice involves duties that are perfect duties -- that is, duties that are correlated with rights (v 15). An act is just in case it is not unjust, and it is unjust just in case it is wrong and violates someone's rights (v 23). Someone has a right just in case she has a claim that society ought to protect by force of law or public opinion (v 24). These relationships among duty, justice, and rights do not yet introduce any utilitarian elements. But Mill does think that whether sanctions ought to be applied to an

action (and hence whether it is wrong) and whether society ought to enforce an individual's claim (and hence whether she has a right) both depend upon the utility or expediency of doing so (v 25). Because this account of duty defines the rightness and wrongness of an act, not in terms of its utility, as act utilitarianism does, but in terms of the utility of applying sanctions to the conduct, it is an indirect form of utilitarianism. We might call it **sanction utilitarianism**.

What, if anything, hangs on this difference between direct and indirect utilitarianisms? Act utilitarianism implies that I do wrong every time I fail to do the very best action, even when the suboptimal act that I perform is very good indeed. That may seem harsh and overly demanding. Perhaps the act utilitarian has some reply (e.g. she might concede that suboptimal acts are wrong but deny that must therefore be blameworthy). Sanction utilitarianism, by contrast, does not imply that I act wrongly every time I perform a suboptimal act. On this view, I act wrongly only if it's expedient to blame me.

MILL'S PROOF

Mill claims that the utilitarian must claim that happiness is the one and only thing desirable in itself (iv 2). He claims that the only proof of desirability is desire and proceeds to argue that happiness is the one and only thing desired. He argues that a person does desire his own happiness for its own sake and that, therefore, happiness as such is desired by and desirable for its own sake for humanity as a whole (iv 3). He then turns to defend the claim that happiness is the only thing desirable in itself, by arguing that apparent counterexamples (e.g. desires for virtue for its own sake) are not inconsistent with his claim. Let's see if we can reconstruct the steps in this argument.

1. Utilitarianism is true iff happiness is the one and only thing desirable for its own sake (and not for the sake of something else).
2. The only proof of desirability is desire.
3. Each person desires his own happiness for its own sake (and not for the sake of something else).
4. Hence, happiness, as such, is desired for its own sake (and not for the sake of something else) from the point of view of humanity.
5. Hence, happiness, as such, is desirable for its own sake (and not for the sake of something else).
6. Happiness is the only thing desired for its own sake (and not for the sake of something else).
7. Hence, happiness is the only thing desirable for its own sake (and not for the sake of something else).
8. Hence, utilitarianism is true.

This reconstruction follows Mill's text pretty closely, and something like it represents the received interpretation of the proof. But this argument is thought by many to be embarrassingly bad. They typically assume that the proof is intended to be a deductive proof of utilitarianism and they see various spots to question the soundness of the argument. Here is a partial list of worries about the argument, so reconstructed.

- First, (2) mistakenly conflates the psychological fact of desire and the evaluative fact of desirability; desire is not proof of desirability.
- Second, (3) appeals to psychological egoism, which is false. Indeed, Mill himself rejects psychological egoism in claiming that agents can and do desire virtue for its own sake.

- Third, even if psychological egoism were true, it would not show that happiness as such was desired for its own sake by a collective. Collectives don't have desires, and, even if they did, you could not deduce their desires from the desires of their constituent members.
- Fourth, the move from (4) to (5) is fallacious. Even if something were desired or desirable for its own sake for a group, it wouldn't then follow that it was desired or desirable as such.
- Fifth, (6) seems to be a claim about individuals, but that would be inconsistent with the psychological egoism assumed in (3).

It's worth remembering Mill's introductory remarks in Chapter I that provide caution about the kind of proof available for first principles.

... I shall ... attempt to contribute something toward the understanding and appreciation of the "utilitarian" or "happiness" theory, and toward such proof as it is susceptible of. It is evident that this cannot be proof in the ordinary and popular meaning of the term. Questions of ultimate ends are not amenable of direct proof. ... We are not, however, to infer that its acceptance or rejection must depend upon blind impulse or arbitrary choice. There is a larger meaning of the word "proof," in which this question is as amenable to it as any other of the disputed questions of philosophy. The subject is within the cognizance of the rational faculty; and neither does that faculty deal with it solely in the way of intuition [I 5].

So it seems that Mill is looking for arguments that may be rationally persuasive without providing incontrovertible proof.

Consider another interpretation of Mill's argument. On this reading, Mill is not trying to derive utilitarianism from egoism; rather, he is assuming that the moral point of view is impartial in a way that prudence is not. If so, just as prudence aims at the agent's own happiness, so too morality, which is impartial, aims at happiness as such. On this reading, the structure of Mill's proof looks something like this.

1. Prudence is partial.
2. Because prudence is partial, it aims at the agent's own happiness.
3. Morality, by contrast, is impartial.
4. Because morality is impartial, it aims at happiness as such.

If this is the right way to understand Mill's proof, then his justification of utilitarianism consists in assuming that the moral point of view is impartial and claiming that utilitarianism is the right way to understand impartiality. It is a virtue of this reading of the proof that it identifies the defense of utilitarianism with the feature of it that made it a progressive influence historically. Morality is impartial, and impartiality requires taking everyone's interests into account – and not just those of some select few – and weighing them equally – and not with a thumb in the scales for some select few.

UTILITARIANISM, IMPARTIALITY, AND RIGHTS

However, we might raise questions about the aggregative character of the utilitarian conception of impartiality. Utilitarianism tell us to balance benefits and harms both within and across lives, where necessary, in order to secure the best outcome overall. The sort of interpersonal balancing that utilitarianism requires is like the sort of intrapersonal balancing that prudence requires. Prudence requires a person to be concerned about her own overall good and to balance benefits and harms at different points in her life so as to produce the most happiness

overall. Just as prudence is impartial or neutral about the temporal location of benefits and harms within an agent's life, so too utilitarianism is impartial or neutral about the distribution of benefits and harms across lives. But whereas it may seem acceptable to balance goods and harms **within** a life, as prudence requires, balancing goods and harms **across** lives appears to ignore the **separateness of persons**. Both Rawls and Nozick insist that the separateness of persons gives individuals rights that should trump or defeat considerations of collective good (Rawls, A Theory of Justice, pp. 27-28 and Nozick, Anarchy, State, and Utopia, pp. 28-30). Nozick, in particular, understands rights as side constraints on the pursuit of individual or collective goals.

So both Rawls and Nozick insist that rights are not ordinary goods to be factored into routine cost-benefit analysis. However, Nozick notes that that there is something paradoxical about treating rights as side constraints, rather than as especially important goods.

Isn't it irrational to accept a side constraint C, rather than a view that directs minimizing the violations of C? If nonviolation of C is so important, shouldn't that be the goal? How can a concern for the nonviolation of C lead to the refusal to violate C even when this would prevent other more extensive violations of C? What is the rationale for placing the nonviolation of rights as a side constraint upon action instead of including it solely as the goal of one's actions? [30]

Perhaps it's fair to say that it's not clear whether rights should be understood as side constraints or especially important goals. However, it does seem clear that rights are barriers to simple utilitarian reasoning and that they trump ordinary or unqualified appeals to collective good.

The apparent conflict between utility and rights, especially rights to liberties, poses an interesting test for Mill. For he is famous not just for defending utilitarianism in Utilitarianism but also for defending individual liberties in On Liberty (1859). Moreover Mill insists that his arguments have 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].

Is Mill able to reconcile his defense of utility and liberty without compromising either his utilitarianism or his defense of a right to liberties? There seem to be four possible resolutions of this tension.

MILLIAN PRINCIPLES

In addition to his important role in the utilitarian tradition, Mill exerted an enormous influence on our understanding of the liberal tradition in moral and political philosophy, which recognizes individual rights against the state and other individuals, and, in particular, our understanding of the moral limits of the state and the criminal law. Mill's On Liberty is the most influential statement of his liberal principles.

Mill begins by distinguishing old and new threats to liberty. The old threat to liberty is found in traditional societies in which there is rule by one (a monarchy) or a few (an aristocracy). Though one could be worried about restrictions on liberty by benevolent monarchs or aristocrats, the traditional worry is that when rulers are politically unaccountable to the governed they will rule in their own interests, rather than the interests of the governed. In particular, they will restrict the liberties of their subjects in ways that benefit the rulers, rather than the ruled. It was these traditional threats to liberty that the democratic reforms of the Philosophical Radicals were

meant to address. But Mill thinks that these traditional threats to liberty are not the only ones to worry about. He makes clear that democracies contain their own threats to liberty – this is the tyranny, not of the one or the few, but of the majority (i 1-5). Mill sets out to articulate the principles that should regulate how governments and societies, whether democratic or not, can restrict individual liberties (i 6).

In an early and famous passage Mill offers one formulation of his basic principles concerning liberties.

The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence, is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign [i 9].

In this passage, Mill distinguishes paternalistic and moralistic restrictions of liberty from restrictions of liberty based upon the harm principle.

- A's restriction of B's liberty is **paternalistic** if it is done for B's own benefit.
- A's restriction of B's liberty is **moralistic** if it is done to ensure that B acts morally or not immorally.
- A's restriction of B's liberty is an application of the **harm principle** if A restrict B's liberty in order to prevent harm to someone other than B.

Here, Mill seems to say that a restriction on someone's liberty is legitimate if and only if it satisfies the harm principle (cf. iv 1-4, 6 v 2). Later, he distinguishes between genuine harm and **mere offense**. 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 (i 12; iii 1; iv 3, 10, 12; v 5). So he seems to be saying that the harm principle is always a good reason for restricting liberty, but that mere appeals to morality, paternalism, or offense are never good reasons for restricting liberty.

MILL'S CATEGORICAL APPROACH

As this recounting of Mill's principles suggests, his defense of individual liberties appears to be part of what might be called a **categorical approach**. To decide whether an individual's liberty ought to be protected, we must ascertain to which category the potential restriction of liberty belongs. The main categories for potential restrictions are as follows.

- Offense (mere offense)

- Moralism (mere moralism)
- Paternalism (mere paternalism)
- Harm Principle

The potential restriction is permissible if and only if it is an application of the harm principle; if not, the restriction is impermissible and the liberty must be protected.

Sometimes Mill suggests that the harm principle is equivalent to letting society restrict other-regarding conduct (i 11; iv 2). On this view, conduct can be divided into self-regarding and other-regarding conduct. Regulation of the former is paternalistic, and regulation of the latter is an application of the harm principle. So on this view it is never permissible to regulate purely self-regarding conduct and always permissible to regulate other-regarding conduct. But this is over-simple. Some other-regarding conduct causes mere offense, not genuine harm (iv 3, 12). So Mill cannot equate harmful behavior and other-regarding behavior and cannot think that all other-regarding behavior may be regulated.

It is generally thought that by applying this categorical approach to liberty and its permissible restrictions Mill is led to offer a fairly extensive defense of individual liberties against interference by the state and society. In particular, it is sometimes thought that Mill recognizes a large sphere of self-regarding conduct which it is impermissible for the state to regulate. We might characterize this sphere of protected liberties as Mill's conception of **liberal rights**. On this reading, Mill is deriving his conception of liberal rights from a prior commitment to the categorical approach and, in particular, to the harm principle.

MILL'S ANTI-PATERNALISM

Why the blanket prohibition on paternalism? Mill offers two explicit 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 (v 20-3).

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 (iv 4, 12).

These arguments 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 (i 16; iii 1).

MILLIAN PRINCIPLES AND FREEDOM OF EXPRESSION

Mill's discussion of censorship in Chapter ii focuses on censorship whose aim is to suppress false or immoral opinion (ii 1-2). He mentions four reasons for maintaining free speech and opposing censorship.

1. A censored opinion might be true (ii 1-20, 41).
2. Even if literally false, a censored opinion might contain part of the truth (ii 34-39, 42).
3. Even if wholly false, a censored opinion would prevent true opinions from becoming dogma (ii 1-2, 6, 7, 22-23, 43).
4. As a dogma, an unchallenged opinion will lose its meaning (ii 26, 43).

The first two claims represent freedom of expression as instrumentally valuable; it is valuable, not in itself, but as the most reliable means of producing something else that Mill assumes is valuable (either extrinsically or intrinsically), namely, true belief. Of course, the most reliable means of promoting true belief would be to believe everything. But that would bring a great deal of false belief along too. A more plausible goal to promote would be something like the ratio of true belief to false belief. Freedom of expression might then be defended as a more reliable policy for promoting the ratio of true belief to false belief than a policy of censorship. This rationale for freedom of expression is echoed by Justice Holmes in his famous dissent in Abrams v. United States when he claims that the best test of truth is free trade in the marketplace of ideas.

But this rationale for freedom of expression is pretty weak. We would be on good ground in censoring flat-earthers. In any case, if, even if only contrary to fact, we had extremely knowledgeable and reliable censors who censored all and only false beliefs, this rationale for freedom of expression would provide no argument against censorship. We might say that this rationale for freedom of expression provides no objection to **successful** or **competent** censorship.

However, Mill also suggests that freedom of expression is needed to keep true beliefs from becoming dogmatic. In this suggestion, I think, lie the resources for a more robust defense of freedom of expression, in part because it is intended to rebut the case for censorship even on the assumption that all and only false beliefs would be censored (ii 2, 21). Mill's argument is that freedoms of thought and discussion are necessary conditions for fulfilling our natures as progressive beings (ii 20). Here Mill is appealing to his perfectionist assumptions about 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 [iii 4]?

Mill makes similar claims about the role of deliberative capacities in the happiness of progressive beings in his discussion of higher pleasures in Chapter ii of Utilitarianism where he contrasts the examined life Socrates led and the life of a contented swine and accords the former incomparably greater value (ii 6).

At least part of Mill's idea is that whereas the mere possession of true beliefs need not exercise one's deliberative capacities, because they might be the product of indoctrination, their justification would; one exercises deliberative capacities in the justification of one's beliefs and actions. This is because justification involves comparison of, and deliberation among, alternatives (ii 6, 7, 8, 22-23, 43). Freedoms of thought and discussion are essential to the

justification of one's beliefs and actions, because individuals are not cognitively self-sufficient (ii 38, 39; iii 1). Sharing thought and discussion with others, especially about important practical matters, improves one's practical deliberations. It enlarges the menu of options, by identifying new options worth consideration, and helps one better assess the merits of these options, by forcing on one's attention new considerations and arguments about the comparative merits of the options. In these ways, open and vigorous discussion with diverse interlocutors improves the quality of one's deliberations. If so, censorship, even of false belief, can rob both those whose speech is suppressed and their audience of resources that they need to justify their beliefs and actions (ii 1).

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MILL'S PERFECTIONIST DEFENSE OF BASIC LIBERTIES

This perfectionist rationale for freedoms of thought and discussion is a special case of a more general defense of basic liberties of thought and action that Mill offers in ch. iii of On Liberty. To account for the robust character of the argument, it is tempting to suppose that Mill thinks these basic liberties are themselves important intrinsic goods. But limitations in the scope of Mill's argument show that this cannot be right.

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 [i 10].

These restrictions make no sense if basic liberties are dominant intrinsic goods, for then it should always be valuable to accord people liberties -- a claim that Mill here denies. These restrictions make perfect sense if the liberties in question, though not intrinsically valuable, are necessary conditions to 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 -- in particular, sufficient rational development -- are absent.

LIMITS ON LIBERTY

The rationale for basic liberties is robust, even if it represents them as necessary conditions of higher values. For instance, it explains why censorship would be bad even if all and only false beliefs were censored. But it is also important to see that Mill is not endorsing an unqualified right to liberty; he is no anarchist or libertarian.

First, it is important to see that Mill is not endorsing an unqualified right to liberty. For one thing, he can distinguish the importance of different liberties in terms of their role in practical deliberation. Some liberties are more central to the exercise of deliberative capacities than others. It seems plausible that liberties of speech, association, worship, and choice of profession are more important than liberties not to wear seat belts or to dispose of one's gross income as one pleases, because restrictions on the former interfere more than restrictions on the latter with our deliberations about what sort of person to be. If so, Millian principles, properly understood, defend rights to basic liberties, rather than a right to liberty per se.

Second, despite some of Mill's claims to the contrary, his opposition to paternalism is not complete. Mill's simple statement of his own view is over-simple; he is forced to qualify his blanket prohibition on paternalism 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 [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. In this case, an exception to the usual prohibition on paternalism is motivated by appeal to the very same deliberative values that explain the usual prohibition.

Finally, even the exercise of basic liberties is limited by the harm principle; my liberty can be restricted in order to prevent me from harming others.

UTILITY, RIGHTS, AND LIBERTIES

Does Mill succeed in reconciling utilitarianism and recognition of rights to liberties? It's hard to say. He is attracted to at least three different utilitarian conceptions of rights.

(1) Rights can be thought of as secondary principles whose observance is generally but imperfectly optimal. On this view, it's best to observe rights, even if this sometimes requires foregoing optimal actions. Nonetheless, the principle of utility should be consulted in unusual cases where observing rights would have obviously bad consequences and to resolve conflicts among secondary principles (including rights).

(2) Rights are pre-eminent goods. In Utilitarianism he says that they concern the essentials of well-being (v 32). The argument of On Liberty suggests that they are necessary conditions to the realization of higher forms of value. As such, they will trump other lesser goods, but respecting rights will typically be part of maximizing (weighted) value.

(3) In Utilitarianism Mill says that a right is a claim by an individual that society ought to protect (v 24-25). Though (1) and (2) do not treat social enforcement as definitional of rights, perhaps Mill does. If so, he might treat the importance of rights to right holders as the chief reason for social enforcement. But this leaves open just which things such an indirect form of utilitarianism should recognize rights to, and whether the protection that society ought to accord rights should be absolute.

None of these utilitarian conceptions of rights says that individual liberties should enjoy absolute protection or that rights should be understood as side constraints on pursuit of the good. Nonetheless, they do give special significance to rights, denying that rights are fungible with ordinary goods such as the lower pleasures. This means that protecting individual liberties can be part of promoting perfectionist happiness and that such liberties can constrain or trump routine appeals to collective good.