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Author(s): Richard J. Arneson

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Mill versus Paternalism*

Richard J. Arneson

Recent discussions of paternalism have tended toward brusque dismissal of J. S. Mill's classic opinion on the topic.¹ Still more recent discussions have tended toward carefully considered rejection or hedging of Mill's "one very simple" principle.² I have in mind especially Gerald Dworkin's "Paternalism," whose conclusion is roughly that paternalistic restrictions on liberty may be justified in order to heighten a person's ability to lead a rationally ordered life, and Joel Feinberg's "Legal Paternalism," which concludes that "the state has a right to prevent self-regarding harmful conduct only when it is substantially nonvoluntary or when temporary intervention is necessary to establish whether it is voluntary or not." I take the former as a rejection and the latter as a very severe hedging of the absolute ban on paternalism which Mill meant to assert. Among variant formulations of this ban the following words of Mill are typical and reasonably clear: "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."³ My goal in this paper is to show that

* This paper is a revised and shortened version of a paper with the same title that appeared in *Philosophy Research Archives*, 1979, and is published with permission of the *Archives*. Another version was read at the Pacific Coast APA meeting in the spring of 1979, and I am grateful for the valuable criticism contributed by Fred Berger on that occasion.

1. See H. L. A. Hart, *Law, Liberty, and Morality* (Stanford, Calif.: Stanford University Press, 1963), pp. 32–33.

2. Gerald Dworkin, "Paternalism," in *Philosophy of Law*, ed. Joel Feinberg and Hyman Gross (Encino, Calif.: Dickenson Publishing Co., 1975); and Joel Feinberg, "Legal Paternalism," *Canadian Journal of Philosophy* 1 (1971): 105–24. (The quote from Feinberg in this paragraph occurs on p. 113.)

3. John Stuart Mill, *On Liberty*, ed. Currin Shields (Indianapolis: Bobbs-Merrill Co., 1956), p. 13. Subsequent page references enclosed in parentheses are to this edition of this book. In what follows I ignore Mill's statements that his principle is historically conditioned, not meant to be timelessly true. I do this because Mill evidently believes the empirical conditions for the applicability of his antipaternalism principle hold very generally in the modern world.

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Mill's antipaternalist principle—on the best interpretation that can be given it—is capable of meeting the objections of recent critics and at any rate has more appeal than the substitute proposals of Dworkin and Feinberg.

I

Besides laying down a ban against paternalism, Mill's principle quoted above adumbrates a necessary condition for justified nonpaternalistic restriction of liberty. In this principle the phrase that occasions perplexities of interpretation is the "against his will" proviso. Drawing out that portion of the principle that is pertinent to the problem of paternalism, and supplying a partial interpretation of what it is to use power over someone against his will,⁴ I propose this reformulation of Mill's antipaternalist principle: Paternalistic policies are restrictions on a person's liberty which are justified exclusively by consideration for that person's own good or welfare, and which are carried out either against his present will (when his present will is not explicitly overridden by his own prior commitment) or against his prior commitment (when his present will is explicitly overridden by his own prior commitment). Mill's principle states that paternalistic policies so defined are always wrong.

This definition excludes from the category of paternalism some types of restriction on liberty ordinarily characterized as paternalistic.⁵ Thus a recent article on the topic offers as a case of *prima facie* justified paternalistic interference taking an unconscious injured person to the hospital.⁶ According to the definition just offered, rushing an unconscious accident victim to the hospital is not paternalistic. The same article suggests that shoving out of harm's way a man who unknowingly is in the path of a runaway truck is another case of *prima facie* justified paternalism. This example is only slightly problematic. Unless there is some reason to believe that a beneficial shove in this setting would conflict with the man's will, such a case likewise falls outside the category of paternalism. Consider also restrictions on dueling. Suppose every person in a society prefers most of all not to be confronted with dueling situations, and second prefers to preserve his honor by making the conventionally appropriate response to dueling situations when they arise. Assume that a legal ban on dueling prevents any dueling situations from arising. On these assumptions, and assuming further that persons have no other desires that are relevant to the issue of the desirability of dueling regulations, a legal ban against dueling would be nonpaternalistic, since nobody's freedom is being restricted against his will. (Of course, in any actual society not everybody will have this pattern of desires, but if it is this pattern of desires that generates reasons for forbidding dueling,

4. Further clarification of the "against his will" proviso appears in Section VI below.

5. Several of the alleged instances of paternalism here discussed appear on a list of examples supplied by Dworkin to illustrate his definition of the concept, p. 175.

6. John Hodson, "The Principle of Paternalism," *American Philosophical Quarterly* 14 (1977): 61–70, see p. 62.

then the antidueling law [even if it is unfair or unjust] is nonpaternalistic.)

Laws forbidding slavery contracts or the lending of money at usurious rates of interest may or may not be paternalistic depending on the motivation of the lawmakers. Suppose it is assumed that slavery contracts or high-interest loans will be agreed upon only when one of the parties to the contract is in a very weak bargaining position. In a time of famine Jones has a loaf of bread that he would be willing to part with for 75¢, while Smith desperately needs the loaf in order to stave off starvation and so would be willing to pay virtually any price for it. In this situation Smith benefits from the setting of a legal ceiling on the amount of money he is permitted to pay for the bread. It is not that the legislators need suppose that Smith is likely to make a foolish bargain if left to his own devices; it is rather that if Jones and Smith are both rational bargainers of equal skill, then the eventual bargain struck is likely to be highly unfavorable to Smith due to his weak bargaining position. A rational Smith will welcome legal limits on valid contracts since these strengthen his bargaining situation. In passing laws that withhold legal sanction from slavery contracts or usury contracts, if the legislators are motivated by a desire to benefit the Smiths of the world in situations like the imaginary bread bargain, then they are not envisaging any restrictions on liberty against the will of the persons being coerced, for their own benefit. My own feeling is that nonpaternalistic reasoning of this sort is sufficiently realistic to justify any antislavery or antiusury laws that are in fact justifiable.

Laws that preclude consent as a defense to a legal charge of assault or homicide can be nonpaternalistically justifiable, as some commentators have noticed.⁷ The situations in which individuals are threatened with assault are also situations in which the perpetrators of assault have the means to coerce their victims into "consent" (to avert a threatened worse consequence). Since consent is likely to be bogus in the vast number of cases, and the possibilities of getting evidence that discriminates genuine from bogus consent are slight, the law may be justified in ruling out such a defense.

Paternalism will look more inviting morally than in fact it is, if we fail to separate actual cases of paternalistic restriction from cases which look similar but upon examination prove to be based on reasons of an altogether different sort.

II

Mill's argument against paternalism is woven of various strands, not all of which mesh smoothly together. One strand is straightforwardly Utilitarian, arguing that interferences with a person's liberty calculated to advance his own good always result in an overall diminution of that

7. Graham Hughes, "Morals and the Criminal Law," *Yale Law Journal* 71 (1961–62): 662–83, see p. 671; cited in C. L. Ten, "Paternalism and Morality," *Ratio* 13 (1971): 55–66, see p. 65.

person's good. Here a person's good is construed as maximizing the satisfaction of his desires, weighted in order of their importance or strength as perceived by the person.

Critics of Mill have raised reasonable doubts as to whether these straightforward Utilitarian arguments will suffice to justify Mill's absolute prohibition on paternalism. Interwoven with these arguments is an ideal Utilitarian strand of thought, which asserts that freedom of choice is intrinsically a very great good and that paternalistic interference with liberty always thwarts freedom of choice. This ideal Utilitarian argument appears to leave it open that paternalism, while sacrificing free choice, might succeed in gaining other goods that overbalance the loss of free choice, and that one may justifiably block a person's free choice at one moment in order to maximize his long-run index of free choices. Mill seems to endorse the second of these arguments in his puzzling discussion of voluntary slavery contracts, which concludes, "The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom" (p. 125). Translating this passage into less rhetorical language, Dworkin interprets Mill to be saying, "Paternalism is justified only to preserve a wider range of freedom for the individual in question."

Elaborating this view, Dworkin asserts that the best defenses of particular paternalist policies are formulated "in the terms which Mill thought to be so important—a concern not just for the happiness or welfare, in some broad sense, of the individual but rather a concern for the autonomy and freedom of the person. I suggest that we would be most likely to consent to paternalism in those instances in which it preserves and enhances for the individual his ability to rationally consider and carry out his own decisions."⁸

This way of reading Mill gives rise to difficulties. One is how we are to square Mill's intolerance of voluntary slavery contracts with his initial formulation of his antipaternalist principle, stated in terms of an absolute prohibition. Ascribing to Mill the principle that paternalist restrictions that maximize freedom may be justifiable, Dworkin tacitly abandons Mill's initial bold statement. In company with Dworkin, I believe that when Mill says "paternalism sometimes" in chapter 4 he is retracting the robust assertion of "paternalism never!" in chapter 1, and that consequently one or the other of these claims must be abandoned. But contrary to Dworkin, I believe we are better advised to hold onto the robust statement of principle and to discard the discussion that qualifies it to death. My suggestion as to what tempts Mill to this wavering on fundamentals is that he is led astray by a correct belief that prohibition of slavery is justifiable. Neglecting the possibility of nonpaternalist rationales for prohibiting even voluntary slavery, Mill is forced to the unwelcome conclusion that there must be a paternalistic justification, which flatly contradicts his earlier assertion of principle.

8. Dworkin, p. 184. The quote from the previous paragraph appears on p. 180.

What of Dworkin's positive suggestion that paternalism is justified only to preserve a wider range of freedom for the agent? It suffers from a disabling weakness. A difficulty attaches to the project of measuring freedom in order to apply the freedom-maximizing principle. Why not ban cigarettes and fried foods on the ground that these shorten the individual's life span and thereby shrink the range of his freedom? Perhaps one could avert this repressive consequence by stipulating that various freedoms must be weighted by their importance to the agent, so that a man who loves fried food may lose more by the denial of the freedom to enjoy a greasy diet than he would gain by the freedom to enjoy a longer, fat-free existence. But this gambit threatens to collapse freedom-maximization into utility-maximization.

Dworkin advances the freedom-maximizing test for paternalism somewhat diffidently, and he qualifies his assertion of it by offering two alternate suggestions. One, quoted above, is that "we would be most likely to consent to paternalism" when it heightens a person's ability to lead a rationally ordered life. A second suggestion is that paternalism is justified on those occasions when the individual being coerced would have consented to the restriction if he were rational. A common failing of both suggestions is that they fail to safeguard adequately the right of persons to choose and pursue life plans that deviate from maximal rationality or that hamper future prospects of rational choice.

This failing is manifest when proposed paternalistic coercion would enhance someone's capacity for rationality by means of uprooting an irrational trait that is prominent in his self-conception or even in his ideal of himself. Consider the project of forcing adult education upon a hillbilly who is suspicious of urban ways and identifies himself as a rural character. Somewhat similarly, the wild Heathcliff in *Wuthering Heights* would doubtless find his "ability to rationally consider and carry out his own decisions" considerably enhanced if psychotherapy coercively administered should extirpate his self-destructive passion for Catherine Earnshaw. Note that no taint of sympathy for rural parochialism or for grotesque romanticism need color the judgment that paternalism is unacceptable in such instances. Rather, these examples recall us to the conviction that rationality in the sense of economic prudence, the efficient adaptation of means to ends, is a *value* which we have no more reason to impose on an adult against his will for his own good than we have reason to impose any other value on paternalistic grounds. A vivid reminder that rationality may sometimes be alien to some humans is the circumstance that persons sometimes self-consciously choose to nurture an irrational quirk at the center of their personalities. Perhaps it is appropriate to deplore such choice but not to coerce it.

Dworkin is on the right track in discerning among Mill's arguments against paternalism "one which relies not on the goods which free choice leads to but on the absolute value of the choice itself." The freedom-maximizing principle he offers is not the only possible construal of this argument.

III

There is an ambiguity in Mill's notion of freedom that substantially affects his argument, and that we may remove by distinguishing between autonomy and freedom. Mill says "freedom consists in doing what one wants" (p. 117), or in other words, a person lives freely to the degree that he has the opportunity to do what he wants. Let us say a person lives *autonomously* to the extent that he is not forcibly prevented from acting on his voluntary self-regarding choices except when his prior commitments bind him to accept such forcible preventions. The extent of a person's autonomy is measured by this guideline: the more important to the agent the desire that an autonomy-restricting interference frustrates, the greater the loss of autonomy; for adult agents, the more an autonomy-restricting interference causally affects the agent's primary or noninstrumental desires, the greater the loss of autonomy; and moreover, we stipulate that forcible or coercive interference with an agent's course of action, designed to prevent foreseeable consequences from eventuating, always lessens autonomy. Thus, suppose A proposes to make a public announcement of his plan to travel to the North Pole. His friend B knows that the trip to the North Pole will fulfill A's lifelong ambition, while the announcement is a trivial matter, and he also knows that if A makes the announcement the state authorities will, for paternalistic reasons, prevent A from embarking on his trip. In this situation, for B to coerce A from making his announcement in order to assure the fulfillment of A's lifelong ambition lessens A's autonomy. The root idea of autonomy is that in making a voluntary choice a person takes on responsibility for all the foreseeable consequences to himself that flow from this voluntary choice. (For simplicity here and throughout I consider autonomy only in relation to self-regarding acts whose consequences are presumed to fall entirely on the agent.) Paternalistic actions wrongfully usurp this responsibility.

Autonomy in this conception is closely akin to freedom but distinct from it. We may also distinguish between autonomy as a social benefit, something that institutional arrangements might secure for individuals, and autonomy as a character ideal, something that persons might achieve or fail to achieve. Autonomy as a character ideal is closely associated with the Rousseauian-Kantian tradition which prescribes (roughly) that to be autonomous a person must, so far as lies within his power, conform his actions to laws or principles that he has chosen for himself. Autonomy in this sense has very little directly to do with freedom, for a person straitjacketed and confined in prison may yet be autonomous, say, in declining to reveal information that would betray his comrades, where such betrayal would violate the prisoner's principles. However grim the circumstances of the agent, however restricted his freedom of action, he may resolve to act only in conformity with his principles. The extent of his success in fulfilling this resolve measures his autonomy in the character-ideal sense.

That we have a concept of autonomy distinct from this character-ideal sense is indicated by our linguistic habit of complaining that certain state or societal incursions against individual freedom constitute denials of autonomy. For example, the woman who objects that governmental restrictions on abortion are denials of her autonomy is not complaining that the government is altering her character, stripping away her virtue, or the like. It is this sense of autonomy as social benefit that I tried to specify above and wish to use to indicate what I take to be the strongest line of argument against paternalism that can be located in Mill's text.⁹

Mill in fact never mentions "autonomy" in all of *On Liberty*. Why is it not wanton meddling with his text to propose autonomy as a possible construal of the value Mill aims above all to defend in this libertarian classic? The answer is that although Mill does not mention the word, he at least flirts with the concept. The passages in which Mill extolls the value of liberty lend themselves more easily to interpretation on the assumption that Mill has in mind autonomy rather than freedom as the value to be held up for admiration.¹⁰ But none of the passages decisively forces this interpretation.¹¹ However, in one passage of great importance Mill does come very close to making the distinction between freedom and autonomy. This passage (pp. 111–13) concerns the Mormon practice of polygamy. Mill characterizes polygamous marriages as "a riveting of the chains of one half of the community." Much like the benighted person who voluntarily contracts himself into slavery, except on a smaller scale, the Mormon wife relinquishes her freedom over the long run. Mill explicitly traces his "disapprobation" of Mormon polygamy to his understanding that this institution constitutes a "direct infraction" of the principle of liberty. But while a Mormon wife does not live freely, she does live autonomously, if she is living out a fate she has chosen for herself without compulsion or coercion. Of Mormon marriage Mill says, "It must be remembered that this relation is as much voluntary on the part of the women concerned in it, and who may be deemed the sufferers by it, as is the case with any other form of the marriage institution." Mill's hesitation in this quotation must stem from a doubt as to how voluntary can be any person's choice to marry when the only alternatives society tolerates are one form of marriage or spinsterhood. Mill observes that the Mormons do not demand that other

9. For an interpretation of *On Liberty* which stresses Mill's commitment to the value of the human "capacity for choice," see Isaiah Berlin, "John Stuart Mill and the Ends of Life," in *Four Essays on Liberty* (New York: Oxford University Press, 1970), pp. 173–206, esp. sec. 3–5.

10. See esp. p. 70, lines 20–23; p. 82, lines 14–18; p. 92, lines 2–13; p. 93, lines 2–5 and 29–32.

11. I take it that when Mill limits the application of his doctrine to persons who possess "any tolerable amount of common sense" (p. 82) or who have "the ordinary amount of understanding" (p. 92) he is not opening the door to restrictions on anybody of less than average intelligence, but simply alluding nervously to his sanity and feeble-mindedness conditions. (That is, anybody who does not belong in an asylum should be free to choose his own life.)

countries should recognize the legitimacy of Mormon marriages or permit their own inhabitants to practice polygamy, and adds that in this manner the “dissentients have conceded to the hostile sentiments of others far more than could be justly demanded.” Mill is inexplicit as to exactly what could be justly demanded, but I take it the tactfully expressed implication of this passage is that in every country persons ought to be legally free to enter upon polygamous marriages if they so choose, the loss to their own freedom notwithstanding.

IV

If autonomy and freedom are different, why should a Utilitarian value autonomy more highly and prefer it when the two come in conflict? Of course an ideal-Utilitarian might simply declare autonomy to be more intrinsically desirable, without further ado. Such a declaration may be correct, but it smacks of the ethical intuitionism Mill always fought against. One pertinent straightforward Utilitarian consideration is that once freedom and autonomy are clearly distinguished, individuals may come to prefer autonomy, and this preference must affect Utilitarian calculation. Mill somewhere makes the Rawlsian conjecture that, after the material wants are provided for, “next in strength of the personal wants of human beings is liberty.”¹² Subsequent remarks indicate that Mill here has in mind what I have called autonomy as much as freedom.

Mill’s text suggests a stronger argument to supplement the preceding. Mill tries to elicit our assent to the conclusion, “It really is of importance, not only what men do, but also what manner of men they are that do it” (p. 72). He offers this thought-experiment: supposing it were possible to accomplish the business of life by machine labor, leaving humans passive and indolent, would it not be preferable to shift labor to humans so that good human beings are produced along with good houses, corn, battles, churches, and so forth? A variant of Mill’s thought-experiment will help discriminate our response to the closely related values of freedom and autonomy. Imagine that the development of technology permits society to equip each person with a mechanical robot capable of monitoring the individual’s behavior and gently but coercively correcting it whenever it threatens to lessen his freedom over the long run.¹³ The mechanical guardian angels interfere with freedom only to maximize freedom. Let us stipulate that the mechanical robot is small and unobtrusive, so that persons can live out their lives without persistent awareness that their behavior is under surveillance. Or at any

12. *Principles of Political Economy*, book 2, chap. 1, sec. 3, in *Collected Works*, vol. 2, ed. J. M. Robson (Toronto: University of Toronto Press, 1965), p. 208.

13. See J. J. C. Smart’s articulation of a somewhat similar example in his contribution to *Utilitarianism: For and Against* (Smart and Bernard Williams [Cambridge: Cambridge University Press, 1973]), p. 20; Robert Nozick’s discussion in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 42–45; and Smart’s reconsideration in “Hedonistic and Ideal Utilitarianism,” in *Midwest Studies in Philosophy*, vol. 3, ed. Peter French, Theodore Uehling, and Howard Wettstein (Morris: University of Minnesota, Morris, 1978), pp. 247–51.

rate we find that people quickly become accustomed to their mechanical shadows, so that we may ignore the possibility that the presence of the mechanical companion is itself felt as unpleasant. The mechanical robot so described can increase a person's freedom, but it cannot increase a person's autonomy. (If it has any effect at all it must decrease autonomy.) Any reluctance we would feel to assign robots to people, against their will, if it lay in our power to do so, must rest on a value preference for autonomy over freedom.

This conclusion may seem glib. What is it about ordinary human life which we prize that life guarded by robots would deny us? One is tempted to say we prize the riskiness of human life. The troubling feature of the robot is that it realizes without fail whatever values it is programmed to secure. But we could vary the example by adding a randomizing device to the robot so that on any given occasion suitable for interference there is some chance the robot will fail to intervene. Perhaps what we value that robot-protected life denies us is the experience of risks whose overcoming is up to us. But of course we could set the machine so that it supplies any preferred number of such risks. Notice that the robot allows us to live out our own lives, subject to some restriction. We could feel pride in making a rational self-regarding decision and implementing it successfully without triggering interference by our robot-guardian. All that the robot denies us is the opportunity to live out our lives without paternalistic control. This emerges even more clearly when we reflect that in a technologically advanced non-paternalistic society persons would enjoy the freedom to place themselves under robot guardians *if* they so chose. Indeed, individuals with some bizarre preferences would be irrational not to accept such guardianship. Consider a person whose sole value is freedom-maximization, in relation to a robot set to maximize freedom, or a person whose sole value is experiencing pleasure, in relation to a robot set to maximize pleasure. For such persons, the disinclination to accept mechanical guardianship would be no more rational or admirable than a person's stubborn insistence on opening a bottle with bare hands, refusing to use a bottle opener or other handy technological aid, when his only goal in view is to quench his thirst. If we are content to leave *these* individuals to their chosen fate that again confirms our underlying commitment to autonomy.

V

It remains to place Mill's implicit valuation of autonomy in relation to the explicit argument on which Mill relies most confidently for defending freedom of action against paternalistic incursion. This is the argument that liberty is necessary for individuality and individuality is itself a main constituent of happiness. To begin with, it would be wrong to suppose that Mill possesses some clear unitary notion of individuality, so that his stress on this concept must indicate that autonomy is for him of correspondingly less importance. Mill's characterizations of individuality

range over a number of distinct notions, none of which is described with any great precision.¹⁴ In what follows I attempt briefly to sort out three kinds of individuality and to gauge the support each offers to antipaternalism.

Mill comments: "It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it and calling it forth . . . that human beings become a noble and beautiful object of cultivation" (p. 76; see also p. 87). Here a fair synonym for "individual" is "unique" or "idiosyncratic," and the cultivation of individuality will be identical with the cultivation of variety or diversity in human natures. This idea of individuality has puzzled commentators. So construed, individuality can hardly buttress a strong argument against paternalism. In the absence of all pressure of coercion or undue influence, persons may and in fact often do choose to imitate others rather than to make themselves unique; this tendency to conformity could be countered by authoritative order requiring the cultivation of diversity. The human results of this policy might not be pleasant to contemplate, but would surely be various.

Another conception of individuality prominent in the "Of Individuality" chapter is individuality as human perfection, or the development of traits that are "the distinctive endowment of a human being." In this sense "individuality" contrasts with "mediocrity." We may agree with Mill that this sort of individuality is worth securing without agreeing that a policy of freedom and wide tolerance is the best means of securing it. Mill says, "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" (p. 71). Surely whether this is so depends on the nature of the life plans that the world is enforcing. Mill was worried about the "pinched and hidebound type of human character" which Victorian customs sanctioned, but better customs could dictate that each individual strive to achieve as much excellence in art and science as he is capable of. Mill's target here really seems to be not so much paternalism as philistine paternalism. One can be overly glib about the extent to which government coercion can successfully foster human perfection, but the difficulty is that Mill says so little in defense of his own controversial view on this issue.

A third conception of individuality that figures in "Of Individuality" concerns the development of traits that are "properly one's own" or of "home growth." Of desires, Mill says that they are "one's own" when they are "the expression of his own nature, as it has been modified and developed by his own culture" (p. 73). This is vague in the extreme, but perhaps two conditions for individuality are being asserted. One is *self-culture*, achieved when a person freely posits a character ideal and makes efforts to conform himself to that ideal. The second requirement for individuality is *appropriateness*, achieved when the character ideal posited by the individual is chosen in the light of some accurate

14. For a contrasting account of Mill on individuality, see Robert Ladenson, "Mill's Conception of Individuality," *Social Theory and Practice* 4 (1977): 167–82.

perception as to his own basic proclivities and talents. A rough synonym for "individuality," when that term refers to what is attained by one who is appropriately self-cultured, is "distinctiveness of character." Mill's remarks on the "desire of perfection" in his 1838 essay on "Bentham" suggest this reading.¹⁵ It is a merit of this interpretation of Mill's third sense of individuality that according to it the reason why freedom is thought to be prerequisite to individuality is plain. Without freedom the individual cannot pursue self-culture. However, the connection between freedom and individuality, while plain, is not tight. Individuals make choices against self-culture, and they even make choices that irrevocably destroy possibilities of pursuing self-culture at some later date. So far as individuality is concerned, then, it might be justified to restrict a person's freedom paternalistically in order to maximize his long-range opportunities for individuality.

(Parenthetically we may remark that autonomy may only be a great value for beings capable of individuality in this last sense. The capacity for individuality elevates humans into the class of creatures which ought to be treated as autonomous. But autonomous life does not cease to be a good for such persons even if they live autonomously in ways that diminish their individuality. We rightly feel much greater qualms about coercing a lazy human beachcomber than about coercing a dog who lazes about the beach in identical fashion but could not be said to have chosen his style of life. This is so even when we are most certain we know better how to improve the beachcomber's life than the dog's.)

Once the reader is struck by the different ways in which Mill characterizes individuality and the difficulty of working any of them into a plausible argument for an absolute ban on paternalism, he may wonder whether in some passages, including some of the most convincing, Mill does not render individuality tantamount to what I have called autonomy. That is, a person achieves individuality to the degree that he lives out a life of his own choosing, not selected authoritatively for him by others. Assuming that we are speaking of an adult who has benefited from a modicum of education and reasonable upbringing, to the extent that the individual is free to live out his own life he is the maker of his own personality. I do not say that individuality-as-autonomy fits everything Mill writes in this chapter, but I do say that no single characterization of individuality fits everything Mill writes in this chapter because in different passages Mill clearly has in mind a variety of ill-sorted-out ideals.

If we ignore the occasional hints that individuality in some sense may be identical with autonomy, the question arises, How are individuality and autonomy related? Their relation might seem adversary, because individuals can exercise autonomy in ways that frustrate the growth of individuality. Mill says that the *same reasons* that justify an exceptionless policy of free speech also justify an exceptionless antipaternalist policy

15. John Stuart Mill, "Bentham," in *John Stuart Mill on Bentham and Coleridge*, intro. F. R. Leavis (New York: Harper & Bros., 1950), p. 67.

(p. 67). By taking seriously the parallel between freedom of speech and freedom of self-regarding action which Mill urges, we place ourselves in a position to appreciate the reasons that most help to cohere the strands of Mill's argument.¹⁶ Mill wants a social milieu that will encourage persons to elaborate bold and original plans of life and to pursue them vigorously. Creating and sustaining this milieu are delicate matters. Paternalistic restrictions have widespread repercussions, nearly all of which militate against an atmosphere of free experimentation. In wondering whether paternalism is justifiable, it is wrong to focus just on the harms and benefits that accrue to the individual from a single intervention. The consequences of coming to rely on the dispensation of paternalistic aid are mischievous, as are the consequences of dispensing paternalistic aid and the consequences of observing paternalistic aid dispensed to others. It is wrong to think that when the issue is whether to regulate self-regarding action only the interests of the would-be agent need be consulted in deciding what to do. In one characterization of self-regarding action, Mill says it includes all actions that affect others "only through the moral influence of example."¹⁷

On analogy with freedom of speech, freedom of action is justifiable (in part) because the practical execution of diverse life plans by free individuals yields a store of information which everybody needs in order to make rational decisions about his own plan of life. Disastrous life plans can set an instructive example for others as well as life plans that turn out favorably. Even in extreme cases where individuals voluntarily choose catastrophe for themselves, intervention will weaken the general atmosphere of freedom that we know is as difficult to maintain as it is necessary to human flourishing.

So far my argument has been that on either a straightforward or ideal Utilitarian reading, distinguishing autonomy and freedom more explicitly than did Mill renders his position more credible. Since paternalistic restrictions always decrease a person's autonomy, upholding that value of autonomy helps defend an absolute prohibition against paternalism. The extent of the help thus rendered will depend on how autonomy is weighted against other values. It would seem that nothing short of a lexicographic ordering of values placing autonomy first would suffice to guarantee that one's condemnation of paternalism will not admit of exceptions. Short of that extreme weighting, one can say that the more one values autonomy, the less Mill's espousal of libertarianism is subject to contingency. My last suggestion is that insofar as Mill relies on firm contingency his position is secure. Perhaps we could summarize Mill so: given that autonomy is a great value, paternalistic restrictions will never (or hardly ever) advance the interests of the individuals they are intended to benefit. Moreover, the long-run indirect consequences

16. An excellent account of Mill's position on freedom of expression appears in D. H. Monro's contribution to a discussion of "Liberty of Expression: Its Grounds and Limits," *Inquiry* 13 (1970): 238–53. This paragraph and the next owe much to Monro's essay.

17. Mill, *Principles of Political Economy*, book 5, chap. 11, sec. 2 (*Collected Works*, 3:938).

of paternalism are likely to be very bad—that is, inimical to social progress—for just the same reasons that the long-run indirect consequences of suppression of speech are likely to be very bad. The two arguments subtly reinforce one another, and do not contradict obvious facts such as that in specific circumstances coercing an individual may make him more unique, more rational, or even more self-cultured than would the alternative of letting him be.

VI

Having identified paternalistic policies with restrictions on a person's liberty which are carried out *against his will*, we have only a vague idea of what a ban on paternalism amounts to until we can explicate that italicized phrase. In an interesting essay Joel Feinberg writes, "The central thesis of John Stuart Mill and other individualists about paternalism is that the fully voluntary choice or consent of a mature and rational human being concerning matters that affect only his own interests is such a precious thing that no one else (and certainly not the state) has a right to interfere with it simply for the person's 'own good.'"¹⁸ This is unexceptionable, so long as we gloss "voluntary" correctly. Unfortunately Feinberg sets the requirements for fully voluntary choice so high that his use of the voluntariness standard in applying Mill's principle results in the endorsement of state regulation of the traffic in medical drugs, state prohibition of dangerous drugs, and by extension myriad other practices which Mill would surely wish to reject.

In this section and the next my strategy is to defend a weak notion of voluntariness that I claim is more in line with Mill's best intentions and anyway necessary in order to preserve the results won earlier in this essay—namely, that a reasonable opposition to paternalism must encompass opposition to coercing irrational self-regarding choices.

Although Mill does not explicitly say what he understands by "voluntary," and indeed the occurrences of the term in *On Liberty* are few,¹⁹ I suggest the following account is consonant with what Mill does say. Assuming a restriction of attention to adults who are neither severely mentally retarded nor emotionally deranged, we may say that a person acts voluntarily if and only if his choice of the act (*a*) would not be abandoned if he were apprized of all the act's unforeseeable consequences, (*b*) does not proceed from an emotional state so troubled as to preclude the full use of the reasoning faculty, and (*c*) does not occur under conditions of external coercion or compulsion.

The consequences of an act are *foreseeable by the agent*, I shall say, when at some time prior to the act he has the opportunity and power to

18. Feinberg, p. 111.

19. In some occurrences of the term Mill appears to understand by "voluntary" simply "not involuntary," as on p. 16 where he speaks of actions that affect others only with their "free, voluntary, and undeceived consent and participation." But I agree with Feinberg that the bridge passage of chap. 5 gives a better clue to Mill's conception of the voluntary as he means it to modify his principle.

ascertain these consequences by taking normal and reasonable means. Other unforeseen consequences count as unforeseeable. Condition *a* then implies that if a person sees a warning sign on a highway, does not bother to read it, and subsequently crashes, his driving-so-as-to-crash is voluntary. A person who is fraudulently deceived, or who had no opportunity to learn pertinent facts of the situation in which he acts, acts in a less than fully voluntary manner. Condition *b* follows closely Mill's admonition that if one is "a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflective faculty," he may be forcibly restrained from performing actions that a nondelirious, nonexcited adult ought to be at full liberty to do. I take it that "full use of the reflective faculty" is not meant to be tantamount to "maximum rationality," nor is it ruled out that a person in an excited state, while capable of settling down and deliberating, might decide to act impetuously—without thereby rendering his conduct nonvoluntary or making himself susceptible to justified state interference. Condition *c* excludes from the realm of the voluntary my act of handing over my wallet to the robber who threatens me, but includes as voluntary my act of handing over my wallet to a stranger out of some neurotic craving or personality quirk.

Of this thumbnail sketch of the concept of voluntariness I claim only that it accords with Mill and that it is appropriate for formulating a principle of paternalism. One might compare Hart and Honore on their favored use of 'voluntary,' which, they say, "depends, no doubt, on a conception of a human agent as being most free when he is placed in circumstances which give him a fair opportunity to exercise normal mental and physical powers and he does exercise them without pressure from others."²⁰ The concept of voluntariness I ascribe to Mill is satisfied if a person of normal mental powers is placed in circumstances which give him a fair opportunity to exercise those powers (whether or not he does in fact exercise them).

Feinberg gives the following by way of a definition of *voluntary choice*: "One assumes a risk in a fully voluntary way when one shoulders it while fully informed of all relevant facts and contingencies, with one's eyes wide open, so to speak, and in the absence of all coercive pressure of compulsion. There must be calmness and deliberateness, no distracting or unsettling emotions, no neurotic compulsion, no misunderstanding. To whatever extent there is compulsion, misinformation, excitement or impetuosity, clouded judgment (as e.g. from alcohol), or immature or defective faculties of reasoning, to that extent the choice falls short of perfect voluntariness."²¹ Feinberg observes that fully voluntary acts so

20. H. L. A. Hart and A. M. Honore, *Causation in the Law* (Oxford: Clarendon Press, 1959), pp. 38–39n.

21. Feinberg, pp. 110–11. Feinberg is here defining only "voluntary assumption of risk," not voluntary choice generally, but his comments in the paragraph after the one from which this quotation is taken indicate that his definition is meant to apply *mutatis mutandis* to the broader notion.

defined are acts for which the agent can take full responsibility, since they “represent him faithfully” by expressing “his settled values and preferences.” This further observation appears to render the standard of voluntariness even more stringent, for it would seem that after calm and informed deliberation conforming to Feinberg’s strictures, a man of mature reasoning faculties can make a bad error in reasoning and proceed to act on its basis—voluntarily, I should have thought, even on Feinberg’s strict account of what is to count as voluntary. Feinberg’s further comment rather suggests that whenever a man acts on a mistaken judgment about the best means for achieving his goals, his act is to that extent nonvoluntary. The comment also suggests that whenever a man, even after deliberate reflection, temporarily misidentifies his most important values and acts out this mistake his action is to that extent nonvoluntary. “Fully voluntary” has here become almost equivalent to “fully rational.” Feinberg then proceeds to acknowledge that the Mill of *On Liberty* would want to protect the liberty of individuals performing acts that are less than fully voluntary in this ramified sense. (For convenience I will sometimes alternate the phrases “strongly voluntary acts” and “deliberately chosen acts” in place of Feinberg’s “fully voluntary acts.”) The principle Feinberg eventually asserts and thinks would be acceptable to Mill, is that “the state has the right to prevent self-regarding harmful conduct only when it is substantially nonvoluntary or when temporary intervention is necessary to establish whether it is voluntary or not.”²² Any doubts one might feel as to whether this principle accurately reflects Mill’s thinking are confirmed on examining Feinberg’s application of it. Feinberg imagines a factual disagreement between a doctor and his client as to the harmful properties of a prescription drug, and notes approvingly that “the state, of course, backs the doctor.”²³ The allegedly Millian justification of denying the patient access to the drug he wants is that restricting him from taking a drug that will harm him does not infringe his liberty to perform voluntary self-regarding acts because this act is not voluntary.

If one thinks of voluntariness as relative to the description of an act, then I may be acting voluntarily in putting what I believe to be salt on my food and involuntarily at the same moment in putting what is in fact deadly poison on my food. However, while it seems correct to say that the act under the description that exhibits its mistaken quality is nonvoluntary, it does not follow that the act *tout court*—however described—is nonvoluntary. For purposes of assigning legal responsibility, as in negligence cases, it makes sense to say the act was voluntary in one respect but not in another, but when the question at issue is whether to uphold or withdraw the liberty of a person to do some (variously describable) act, some overall determination of the voluntary or non-

22. *Ibid.*, p. 113.

23. *Ibid.*, p. 114. Mill’s contrary discussion of this issue occurs on p. 117. See also p. 131, where he attacks the governmental exclusion of a person from the practice of a profession “for alleged deficiency of qualifications.”

voluntary character of the act seems requisite. Feinberg uses an example similar to that described above to argue that the act of one who poisons himself by mistake is at the extreme end of the scale of nonvoluntariness, and so presumably liable to justified paternalistic intervention. I cannot see how to accept this view without committing oneself to the distinctly un-Millian position that all acts involving mistakes are nonvoluntary and as such fall beyond the protected scope of the antipaternalism principle.

Mill clearly believes that in the sphere of self-regarding action people have the right to make their own mistakes and suffer the consequences, without interference by society. For example, he asserts, "If a person possesses any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode." Mill is quite prepared to tolerate deviations from rationality that occur through a person's exercise of autonomous choice. Also, his entire discussion of how it is fitting to treat persons whose self-regarding faults render their company odious, granted that neither threat of punishment nor other coercion would be appropriate behavior, presupposes that persons have a right to choose even stupid and degrading life courses without leaving themselves liable to legitimate restrictions of their freedom by others. I conclude that Mill would resist the assimilation of his antipaternalism principle to Feinberg's formulation incorporating a much expanded sense of *the voluntary*.

Two passages in *On Liberty*, and a parallel passage elsewhere, seem to allow that mistakes can place self-regarding acts beyond the protection of Mill's antipaternalism principle. One is unproblematic for my interpretation. Mill urges that it is permissible temporarily to detain a man about to venture on an objectively unsafe bridge, in order to inform him of its unsafe condition. Here there would be no grounds for even temporary interference if the bridge were plainly marked "unsafe" in letters visible to the man approaching. It is the circumstance that the man walking on the bridge lacks information he may be presumed to need, and cannot gain by himself, that justifies restraint.

The other two passages, one in *On Liberty* and the other in *Principles of Political Economy*,²⁴ concern the mooted refusal of the state to enforce contracts whose terms call for a long-term irrevocable forfeiture of liberty by one party. The two examples which Mill discusses are slavery contracts and marriage vows that disavow the possibility of divorce.

Mill argues that in such cases the normal presumption that individuals know their own interests better than outsiders does not obtain, because individuals are making judgments about what their future interests will be at some remote future time. This argument is not without force. A young adult contemplating permanent marriage is well advised to consult novels of family life and sociological studies of

24. In *Collected Works*, 3: 953–54.

marriage in addition to his own romantic feelings for guidance about his decision, and the former sources are as available to state authority as to the individual. If taken seriously, however, the argument undermines more of Mill's antipaternalism than he cares to admit. As a matter of fact it is sometimes the case that persons other than the agent are in a better position to judge the individual's present as well as future interests. Mill says, "With respect to his own feelings and circumstances the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by anyone else," but sadly it is sometimes the case that the young adult's psychiatrist, his parents, relatives, peer-group friends, even passing acquaintances and back-fence neighbors have more insight into his true motives for contemplating marriage and his true interests in the matter than the young adult himself has. If it is a truism that people are very different from one another (and so often unable to judge one another's interests), it is no less a truism that people are very much alike (and so sometimes able to make strikingly accurate judgments about what is best for another).

The suggestion here developed for construing Mill's position is that his false belief that people nearly always are better able than outside observers to know their own interests leads him to the further false belief that in the limited range of cases where this generality fails to hold one can accept paternalistic incursions on liberty without committing oneself to approval of widespread paternalism.²⁵ Mill's arguments regarding long-term forfeiture of liberty prove too much, establishing reasons for intervention that apply far beyond the sphere in which Mill apparently hoped they could be contained. A further anomaly in Mill's position is that his discussions fail to establish that while taking account of all the reasons that weigh against paternalism in general, one can find paternalism acceptable in this class of cases. The slavery discussion in *On Liberty* points out only that paternalistic restrictions can here maximize freedom, and the long-term contract discussion in *Principles of Political Economy* points out only that forbidding long-term irrevocable contracts can boost the utility of the agents involved. Assessing the balance of Mill's claims, I reiterate my suggestion that the best way to ease this

25. There is one sort of case that is indeed troubling and may be at the back of Mill's mind when he treats "contracts in perpetuity." In William Faulkner's novel *The Hamlet*, Flem Snopes agrees to lend a dollar in exchange for payment of a nickel per week, for life. Assuming that this unfortunate borrower knows elementary arithmetic, but fails to utilize his knowledge on this occasion, we notice that this contract is at least weakly voluntary from each party's point of view. The troubling feature is that Snopes deliberately takes advantage of another's mistake for his own extraordinary gain. At least in extreme cases the state or public opinion may rightly refuse to honor a contract in which there is deliberate exploitation of this kind. Mill discusses a closely related point at pp. 120–22, and Feinberg thoughtfully remarks on this issue, p. 118. However, this problem has no special connection to the permissibility of long-run contractual forfeitures of liberty. (Consider a man and a woman who commit themselves irrevocably to lifelong marriage in order to avoid endless fretting about choice of spouse and the flitting from mate to mate that this worrying motivates.)

internal tension in Mill's view is to strike the wayward passages that give rise to it.

Feinberg's own discussion of Mill on voluntary slavery contracts is illuminating in pointing out that this passage is wayward relative to the remainder of Mill's text. Because what Mill says here does not cohere well with his overall position, one cannot appeal to that passage to substantiate the claim that Mill implicitly subscribes to anything resembling Feinberg's highly restrictive account of voluntary action.

There is warrant in Mill's text for supposing that the acts which a principle of antipaternalism should be concerned to protect comprise just the class of voluntary self-regarding actions. Reverting to Mill's initial articulation of his principle, we may say that when we forcibly prevent a person from carrying out nonvoluntary acts we are not coercing him "against his will." However, there is scant evidence for attributing to Mill a notion of the voluntary that imputes to him a denial of what I take to be fundamental to antipaternalism, namely, the claim that people have the right to make their own mistakes and live out their own lives in accordance with them, however disastrous (we might say) are the consequences to themselves.

VII

One issue in dispute, discussed above, is how one ought to interpret Mill. Exegesis aside, another issue is where the truth of the matter lies: what account of the voluntary is most appropriate for the purpose of formulating a principle regarding paternalism? My weak account of voluntariness requires defense against Feinberg's strong account. Why ought we extend a prohibition on state interference to the class of acts that is fully voluntary in my sense but not in Feinberg's?

Feinberg supports his conception of the fully voluntary by noting that such acts represent the agent "faithfully in some important way: they express his settled values and preferences."²⁶ Deliberately chosen acts are expressive of a person's steady conception of himself, more so than impetuous acts or acts that proceed from clouded judgment, defects of reasoning, agitated emotional states, or neurotic motivation.

Part of the answer to this gambit we have already given: unless Feinberg adds other conditions his notion of the fully voluntary does *not* guarantee that fully voluntary acts represent a person's settled values, and if he does add such conditions his notion of voluntary choice appears very nearly to collapse into the notion of rational choice.

More important, I think, is this: a person's actions may be authentic expressions of his personality without being deliberately chosen. A person's actions may express his fundamental character traits or may represent to the fullest his self-conception without being the product of deliberate choice. This is the easiest to see in cases where one's actual character traits and ideal self-image center around such features as

26. Feinberg, p. 111.

impetuosity, recklessness, foolhardiness, unthinking bravery, spontaneity, etc. The story is told of a famous rock climber who, arriving late one day at a climbing area he had not previously explored, proceeded to drink beer and eat ice cream at a local climbers' haunt until, inebriated and stuffed, he wandered off to the cliffs to try a hard climb by flashlight.²⁷ No doubt this was a foolhardy act. But suppose the famous climber is notorious for his foolhardy character, so that if he falls from the cliffs a mourner could truly say at his funeral, "As he lived, so he died."

The anecdote shows that an act can express a person's settled values and preferences without being deliberately chosen. We assume a person normally bears responsibility for his settled values, his dominant character traits, and his ideal self-image even though none of these need have been the object of deliberate choice. They may simply have evolved through his actions over the years. A person is responsible in the normal case since it lay within his power to have subjected his values and traits to deliberation and to have altered them if he chose.

Since the circumstance that an act that is strongly voluntary in Feinberg's sense is neither a necessary nor a sufficient condition of the act's expressing faithfully the settled values of the agent, if faithful expression is our concern, then perhaps we should simply stipulate that only acts that faithfully express the agent's settled values are to count as voluntary, and only voluntary acts are properly guaranteed immunity from paternalistic interference. This revision of Feinberg will not improve his argument. Acts that are impulsive, careless, mistaken, or that otherwise display infidelity to the agent's settled values may still be among those one has a right to perform without coercive interference. Taken strictly, the "faithful expression" rendering will count as non-voluntary all irrational acts except those whose irrationality stems from incoherence in a person's settled values. Once again, the suggested amendment of Mill veers too far in the direction of allowing paternalistic interference when a person proposes to act in a manner that is irrational.

One minor problem is that the suggested criterion of *the voluntary* attaches excessive weight to a person's settled values. It would be easy to produce puzzle cases in which a man's impulsive choices are clearly better, by our lights, than his settled convictions. Perhaps the suggestion will be forthcoming that it is only when (a) a person's acts do not faithfully express his settled values, and (b) his unsettled choice is not superior to his settled choice, that paternalism is advisable.

If a person's act is weakly voluntary, that implies he was capable of exercising his full reasoning powers without being led astray by misinformation at the time he made his choice. A person who is capable of thinking matters through and does not should be held responsible for his choice. In the area of self-regarding action this means he should be let alone. Notice that a person who is afraid of his rash temper, his

27. Chris Jones, *Climbing in North America* (Berkeley and Los Angeles: University of California Press, 1976), p. 285.

impulsiveness, his compulsive urges, his proneness to irrationality would have the option, in a nonpaternalistic society, of placing himself under the coercive care of others.²⁸ I suspect that given a clear choice, most persons would choose to take their chances with their own propensities to irrationality. If this is so, then we should not view a person's disposition to be irrational, to make mistakes, or to misidentify his most cherished values as an external force directing choice, alien to the self.

Mill's absolute ban against paternalism may be right or wrong, but nothing in recent philosophical literature gives reason for rejecting it.

28. See the case cited by David B. Wexler, "Therapeutic Justice," *Minnesota Law Review* 57 (1972): 289–338, see p. 331.