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Cover Page Footnote

I would like to extend my gratitude to Professor Katherine Kim for the helpful comments she provided throughout the drafting process of this paper.

Mill on Paternalism and Happiness

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Abstract

One of John Stuart Mill's primary aims in *On Liberty* is to establish that power is illegitimate when used for paternalistic reasons. According to Mill, the individual's independence is "of right, absolute" when the conduct of the individual is purely self-regarding (*On Liberty* 8). There is, however, a tension between Mill's blanket rejection of paternalism and his commitment to utilitarianism: it is not clear that complete freedom from a paternalistic authority would generate maximal happiness in all cases. Assuming that classical utilitarianism is the relevant evaluative standard, the utility of such interference involves some degree of contingency. That is, whether paternalistic interference would promote maximal happiness in any given case depends, to some extent, on the particulars of that case. Why, then, is Mill's anti-paternalism so uncompromising? In this paper, I propose an interpretation of Mill's conception of happiness that renders his absolute rejection of paternalistic interference more plausible. Specifically, I argue that the perfectionist elements in *Utilitarianism* and *On Liberty* substantially reduce the tension between the anti-paternalist principle and the contingency of utilitarian assessments of paternalistic interference. I then argue that the proposed interpretation yields a satisfactory answer to the question of why Mill excludes the creation of slavery contracts from the protected domain of liberty generated by the anti-paternalist principle. I conclude by considering whether the principle can be properly regarded as absolute when the slavery contract exception is taken into consideration.

Keywords: Mill, utilitarianism, paternalism

Introduction

At the outset of *On Liberty*, John Stuart Mill says that the subject of his essay is "not the so-called Liberty of the Will . . . but Civil, or Social Liberty: the nature and limits of the power which can be legitimately exercised by society over the individual" (1). With the scope of the work defined, Mill proceeds to sketch the historical development of the concept of social liberty. He points out that although it has been widely accepted that there ought to be some socially recognized distinction between that which must be left to the discretion of individual persons and that which may be permissibly brought within the ambit of the state and society, there is, as a practical matter, little agreement concerning where the limit should be fixed: "There is . . . no recognized principle by which the propriety or impropriety of government interference is customarily tested" (7).

The lack of such a principle troubled Mill because although the democratic majority that was emerging in England at the time of *On Liberty's* composition had "not yet learnt to feel the power of the government their power, or its opinions their opinions," he thought that such identification with state power was, in the coming democratic age, inevitable. He worried that this would bring about a state of affairs in which social liberty would be "as much exposed to invasion from the government, as it already is from public opinion" (7). Thus the aim of *On Liberty* is to delimit the proper range of social and political power with the following principle:

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. He cannot be rightfully compelled to do or forbear because it will be better for him to do so, because

it will make him happier, because, in the opinion of others, to do so would be wise or even right (8).

As Gerald Dworkin has noted, Mill's principle of liberty really consists of two principles, one positive and one negative (64). The former, the harm principle, identifies the *only* consideration that is sometimes sufficient to justify interference with one's liberty of action: the prevention of harm to others. The latter, the anti-paternalist principle, identifies a consideration that is *never* sufficient to justify such interference: one's own good. In effect, this prohibition on paternalistic interference—that is, interference with an agent's liberty of action justified solely by reference to the agent's good—generates a protected domain of liberty that includes freedom of conscience, freedom to pursue tastes and projects that are of one's own choosing, and freedom of association.

We shall focus exclusively on the anti-paternalist principle. More precisely, we shall focus on the principle's absolute feature and one way that it can be understood in the context of the rest of Mill's moral and political theory. This is important because it is not clear that the anti-paternalist principle's absolute feature comports well with Mill's commitment to utilitarianism. Indeed, if Mill is read as a straightforward utilitarian, then his blanket rejection of paternalism is actually quite baffling; for the utility of paternalistic interference in any particular case involves some degree of contingency. Why, then, would Mill not regard the principle as presumptive, rather than absolute? Why would he not concede that there are at least some considerations that, in utilitarian terms, trump the principle? Mill admits as much with respect to, for example, the duty to tell the truth. While the duty of truth-telling is "sacred," it is one that "admits of possible exceptions" (Mill, *Utilitarianism* 23). In a case where, for example, a lie would save a person's life, it is clear that utilitarianism permits, and indeed may require, dishonesty. The contrast between this presumptive

attitude toward lying and the attitude toward paternalism expressed in *On Liberty* is stark: “In the part which merely concerns himself, [the individual’s] independence is, of right, *absolute*” (emphasis added) (Mill, *On Liberty* 8). Given the tension between the principle’s absolute feature and the broader theory in which it is supposedly embedded, how can we make sense of Mill’s view?

This is the question that I aim to answer in this paper. I shall argue that the perfectionist features in *Utilitarianism* and *On Liberty* substantially reduce the tension between the absolute feature of Mill’s anti-paternalist principle and the contingency of utilitarian assessments of paternalistic interference. Mill says that his defense of liberty is grounded in utility, but makes it clear that ‘utility’ must be understood “in the largest sense, grounded on the permanent interests of man as a progressive being” (9). My proposal, then, is that we explore this expansive conception of utility to see if it yields a more consistent result. Following Martha Nussbaum, I shall interpret Mill as holding a kind of middle position between Aristotle and Bentham (1). That is, I shall not try to interpret him as either a pure perfectionist or a pure utilitarian. Mill’s position does not admit of such a straightforward characterization.

I shall proceed in the following stages. First, I shall briefly touch on the classical utilitarian doctrine as it is presented by Bentham in *The Principles of Morals and Legislation*. This will provide us with both a reasonably perspicuous account of utilitarianism’s basic elements and a foil that will later make clear the ways in which Mill departs from the classical doctrine. Second, I shall discuss two of the arguments Mill himself provides for the anti-paternalist principle and the way in which these arguments are vulnerable to the contingency problem noted above. Third, I shall consider rule-utilitarianism as a solution to the problem and conclude that it is necessary but not sufficient to make sense of Mill’s position. Fourth, I shall discuss Mill’s conception of

happiness as it is presented in *Utilitarianism*. Fifth, I shall explain why Mill views freedom from paternalistic interference as a necessary condition of human happiness. I conclude by suggesting that the interpretation on offer yields a satisfactory answer to the question of why Mill excludes the creation of slavery contracts from the protected sphere of liberty created by the anti-paternalist principle.

Classical Utilitarianism

In the first chapter of *The Principles of Morals and Legislation*, Bentham provides an account of his principle of utility, which serves as a foundation for the rest of the work. He defines the principle as follows:

By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness (2).

There are two features of this definition that warrant a closer look. The first is what is meant by ‘happiness.’ Bentham endorses both ethical and psychological hedonism. That is, he thinks that only pleasure is intrinsically good, that only pain is intrinsically bad, and that only pleasure and pain are motivationally efficacious. For our purposes, the crucial doctrine is ethical hedonism, i.e., hedonism as a theory of the good. Consider, for example, goods such as food, shelter, and physical security. For the hedonist, the value of these things consists solely in the pleasure they generate and the pain they help to prevent.

The next thing to note is how Bentham defines ‘utility’: "By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness" (2). Utility is, in other words, a causal property of actions; the associated effect is the pleasure generated by an action's performance. Thus to assess the utility of an action is to assess the degree

to which the action will affect the total amount of pleasure experienced by the person or group of persons in question. These concepts enable us to make sense of utilitarianism's teleological conception of right. To say that an action is right, or as Bentham puts it, "conformable to the principle of utility," is to say that the action maximizes the total amount of pleasure experienced by those affected by the action's performance. An action that does not produce this result is wrong, or at least not right (4).

A final point about Bentham's utilitarianism is that it does not draw qualitative distinctions between pleasures. His felicific calculus considers only quantitative features of pleasure, e.g., intensity, duration, extent, etc. (30). It denies that the pleasure associated with, say, listening to a sophisticated piece of music is qualitatively superior to pleasures that we may intuitively regard as lower. For Bentham and his followers, higher pleasures have no more intrinsic value than the pleasures associated with scratching an itch or consuming food. With these basic elements of utilitarianism sketched, we shall now look at two of Mill's justifications for the anti-paternalist principle.

Two Arguments for the Anti-Paternalist Principle

Mill's first argument hinges on the strong interest that persons have in their well-being:

He is the person most interested in his own well-being: the interest which any other person, except in cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has; the interest which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect (*On Liberty* 64).

Given that persons have this interest, Mill thinks it clear that the absence of paternalistic interference would leave all better off. Why, after all, would it be in one's best interest to accept the dictates of some disinterested authority? Suppose I come to think that pursuing a certain career

path is an ideal means to the end of happiness. It does seem strange to say that my plan could be permissibly interfered with on the grounds that it would be better for me to pursue something else. It is my good that is at stake, and I am the one most eager to advance it. I am thus better off when my liberty of action is not circumscribed by a paternalistic authority.

Mill's second argument is premised on the status that persons have as knowers of their desires: "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 any one else" (64). The thought here is that persons have a kind of first-person epistemic privilege with respect to their own preferences and aims, and are thus particularly well-positioned to further their own good. Since I, for example, am the only one capable of regarding my desires from the first-person, it seems reasonable to suppose that the intrusions of a paternalistic authority would only hinder the satisfaction of my desires and thus prevent me from having a maximally pleasurable set of experiences. In other words, there are constraints on the knowledge that the state and society can have with respect to the desires of any given person. Since individual persons are not subject to these epistemic constraints, all are better off when they are free to act in accordance with their own judgment. As Mill puts it, paternalistic interference must be grounded on "general presumptions," which "may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases" (64).

While plausible, these arguments do not suffice to show that a consistent utilitarian could completely reject paternalism. Each one rests on empirical assumptions that may or may not hold in any particular case. Take the argument from self-interest. Perhaps it is true that I am the person most interested in my well-being most of the time, but there is no reason to think that this is true *all* of the time. Indeed, Mill concedes that in cases of intense personal attachment, others may be

more interested in one's well-being than oneself. In such cases, it seems clear that one could be made happier by the intercession of the more interested party. Whether this is true is a contingent matter—it can be decided only by reference to the facts of the case. How, then, could a consistent utilitarian *categorically* reject paternalistic interference?

The epistemic argument has a similar problem. I may have first-person access to my desires, but this is of no use if I am, for example, confused about what I desire. Is it not, in such a case, possible that I could be made better off by obeying the commands of some wise and benevolent authority? Again, the answer to this question will turn on the particulars of the case. Thus, assuming that classical utilitarianism is the pertinent normative standard, Mill's arguments for a blanket rejection of paternalism are insufficient.

Actions, Rules, and Rights

At this point, one might object that a crucial feature of Mill's view has been omitted. Mill is a rule-utilitarian,¹ and thus far, we have not distinguished between rule- and act-utilitarianism, and we have therefore failed to take stock of the implications this carries for his theory. Let us, then, take this distinction into account and see if it renders Mill more consistent.

Act-utilitarians maintain that we should always perform the action that we believe will maximize the happiness of those affected by the action's performance. Hence this variant of the theory requires that we apply the principle of utility directly to each action performed on a case-by-case basis. Rule-utilitarianism, by contrast, requires that we establish norms, practices, and institutions—i.e., persisting, coordinated, rule-governed social practices—that maximize happiness when generally adhered to. Rule-utilitarians thus hold that we should apply the principle

¹ This interpretation is not universally accepted; some read Mill as an act-utilitarian. I cannot provide a full discussion of this debate here, so I shall simply say that I think the rule-utilitarian interpretation is more plausible.

of utility indirectly; that is, not to particular actions, but to the institutions and practices that govern our actions.

To see the difference, consider the question of when it is right to tell the truth. For an act-utilitarian, the answer depends on the immediate consequence of what one says. If, for example, an interlocutor of mine would be made happier by my telling a lie, then act-utilitarianism requires that I lie. Rule-utilitarianism provides a different answer. The practice of truth-telling may occasionally generate pain, but on balance, this pain is outweighed by the greater sum of pleasure generated by the existence of the practice. In order to uphold the integrity of the practice, I should be honest with my interlocutor, even if the immediate consequence of my utterance is less than ideal. The rule-utilitarian can hold that there are exceptions. If I lied to an ax murderer who showed up at my front door looking for a person whom I had agreed to hide, the rule-utilitarian would hold that the lie was justified. The point here is that there is a general presumption in favor of that which is required by pleasure-conducive norms, practices, and institutions.

This rule-utilitarian framework serves as the basis for Mill's conception of rights, both moral and legal. In his discussion of rights, Mill appeals to the familiar distinction between perfect and imperfect duties—the former being those that are correlated with the rights of others, the latter being those that are not so correlated. To explain: perfect duties impose fairly absolute behavioral requirements on the duty-bearer. The duty to refrain from killing others, for example, is a perfect duty because it is correlated with a right to life. Duties of charity, by contrast, are imperfect because another person cannot claim one's charity as a right. These duties thus involve some discretion on the part of the duty-bearer as to when and how the duty will be discharged. Mill's thought is that when moral practices and legal institutions recognize certain fundamental human interests as rights and ensure that the correlative perfect duties are discharged, net happiness will be maximized. To

be sure, some may use the freedom conferred by their rights unwisely and suffer as a consequence, but this suffering is outweighed by the greater good produced by the existence of rights-protecting institutions.

This conception of rights yields the following possible solution to the contingency problem. In effect, the anti-paternalist principle's protection of the three domains of liberty mentioned above—freedom of conscience, freedom of tastes and pursuits, and freedom of association—generates rights, that, when given institutional recognition and support, redound to the good of most persons. On balance, happiness will be maximized when individuals have the right to choose, say, their religion, career path, and marriage partner.

Unfortunately, this does not solve the problem. While it is reasonable to think that these rights would make most individuals better off on balance, this solution still rests on a slew of empirical assumptions, e.g., the assumption that individuals will generally make wise choices. Consider, for example, a society in which a large segment of the population routinely chooses careers or marriage partners that make them unhappy. In such cases, an absolute right to make choices with respect to these matters would not maximize pleasurable experience. It is thus at least conceivable that the rights derived from the anti-paternalist principle could fail to be congruent with that which is required by the principle of utility. A consistent utilitarian would then have to concede that the rights derived from the anti-paternalist principle are presumptive rather than absolute.

While it is therefore clear that this appeal to rule-utilitarianism is not sufficient to render Mill consistent, it is obvious from what has been said above that it is an important feature of his view. In trying to understand how the anti-paternalist principle coheres with the rest of his theory, it is necessary but not sufficient to point out that Mill is concerned with the utility of practices and

institutions, rather than particular actions. In the next section, we shall turn to the ways in which Mill's conception of happiness differs from that of the classical utilitarians.

Happiness in *Utilitarianism*

In the second chapter of *Utilitarianism*, Mill attempts to rebut several objections to the doctrine. One of the first that he addresses is the charge that utilitarianism is a doctrine "worthy only of swine," that it provides "no better and nobler object of desire and pursuit" than pleasure, and that it is thus committed to a conception of the person that is "utterly mean and groveling" (7). In countering the objection, Mill distinguishes between pleasures according to their source and quality. He also rejects Bentham's conflation of pleasure and happiness. In so doing, he introduces a dose of perfectionism into his theory of the good. As we shall see, these modifications cast some light on Mill's rejection of paternalism.

Recall that Bentham and his followers deny that qualitative dimensions figure into assessments of utility. All other things being equal, a pleasure is a pleasure; the only salient considerations are quantitative. Mill flatly denies this:

It is quite compatible with the principle of utility to recognize the fact that some kinds of pleasure are more desirable and more valuable than others. It would be absurd that, while in estimating all other things quality is considered as well quantity, the estimation of pleasure should be supposed to depend on quantity alone (8).

Mill explains that these qualitative distinctions are rooted in the human person's higher faculties: "Human beings have faculties more elevated than the animal appetites and, when once made conscious of them, do not regard anything as happiness which does not include their gratification" (8). The higher faculties to which Mill is referring are those of "intellect . . . imagination, and the moral sentiments", which are distinguished from lower, bodily pleasures that generate "mere sensation" (8). Pleasures that have their source in the cultivation and exercise of these higher

faculties are, Mill insists, more valuable than those that are attached to the exercise of the lower faculties.

He justifies this differential weighting of pleasures by invoking the judgment of competent agents, i.e., agents acquainted with a sufficient number of both higher and lower pleasures. When given a choice between two pleasures, the one for which competent agents display a decided preference is the more valuable of the two. The pleasures associated with the exercise of the higher faculties are, according to Mill, pleasures toward which competent agents display this preference: “it is an unquestionable fact that those who are equally acquainted with and equally capable of appreciating and enjoying both do give a most marked preference to the manner of existence which employs their higher faculties” (8-9).

The last thing to note about the higher faculties and the pleasures with which they are connected is the way that Mill relates them to the notion of human dignity, which he assumes is an essential element of human well-being. As rational creatures, human beings have a sense of their self-worth that is, at least to some extent, "proportionate to their higher faculties." A life that is bereft of their exercise and enjoyment can only be experienced as a "lower grade of existence" (9). Thus Mills thinks that human beings cannot rationally desire a life constructed solely around the pursuit of bodily sensations. Our sense of self-worth is too wrapped up in the cultivation and exercise of that which makes us human for Bentham's hedonism to be the correct account of what is good and valuable.

Taking all of these considerations together, it is clear that Mill cannot be a pure utilitarian. For a classical utilitarian like Bentham, the principle of utility is the ultimate ethical standard. It is the principle in terms of which all ethical judgments and subsidiary principles must be justified. The same cannot be said of Mill, for a normative standard is *built into* his conception of happiness,

i.e., not justified by reference to the principle of utility. This deeper standard is used to select the kinds of pleasures that are to be accorded greater weight by social and political institutions. It thus seems that Mill is, at least implicitly, committed to a form of normative justification that is more fundamental than the principle of utility.

With the distinction between higher and lower pleasures thus explained, we can now discuss Mill's conception of happiness. He defines happiness as "an existence made up of few and transitory pains, many and various pleasures, with a decided predominance of the active over the passive" (13). There are several features of this definition that require analysis. We shall begin by comparing and contrasting Mill's conception of happiness with the conceptions of Bentham and Aristotle. Certain features of his conception will receive treatment in the next section.

Let us take Bentham first. The first thing to note is that Mill denies that happiness and pleasure amount to the same thing. For Mill, happiness is largely constituted by the right kinds of pleasures, but pleasure and happiness are not identical. Pleasure is ephemeral, while happiness is more stable and involves variegated pleasures and interestingly, a few pains.

Further, since Mill imposes a normative constraint on the concept of happiness, he does not necessarily take human desires as they are. Whereas Bentham simply provides a description of human nature and the pleasures "of which human nature is susceptible," Mill seems to be appealing to human desires as they might be (Bentham 33). Consider, for example, Mill's response to the objection that individuals often choose lower over higher pleasures:

Men lose their high aspirations as they lose their intellectual tastes, because they have not time or opportunity for indulging them; and they addict themselves to inferior pleasures, not because they deliberately prefer them, but because they are either the only ones to which they have access or the only ones which they are any longer capable of enjoying (*Utilitarianism* 10-11).

Thus the normativity embedded in Mill's account of happiness carries with it an idealized conception of the human person's desires. These perfectionist ideals are not ones that a straightforward utilitarian could endorse.

They are, however, fairly consistent with the ethical doctrine of Aristotle. Much like Mill, Aristotle thinks that the human good involves a certain kind of activity: the cultivation and use of the higher faculties. For Aristotle, a happy or flourishing person is one who acts in accordance with the "rational principle" of the human soul, or alternatively put, "in conformity with excellence" (*NE* 1090a1 4-5; 16-17). It is, of course, important not to overstate the similarity. Mill's view is still significantly utilitarian in that he is primarily concerned with the kinds of pleasures generated by excellence. The notion of pleasure does not figure as prominently in Aristotle. Pleasure, for Aristotle, is *a* good, but it is not, nor does it constitute, *the* good (*NE* 1172b1 27-28). On the Aristotelian view, happiness is the excellent performance of the human function. To be sure, Aristotle thinks that the excellent performance of this function is pleasurable, but again, this pleasure does not *constitute* happiness. Mill, of course, does not follow him in this regard.

A further point of agreement between the two seems to be that happiness is something more abiding than a mere mental state. According to Aristotle, the happy person is one who acts in accordance with reason "in a complete life" because "one day, or a short time, does not make a man blessed and happy" (*NE* 1098a1 17-20). Mill seems to be saying something similar when he speaks of happiness as a "manner of existence" (*Utilitarianism* 9). Whether one is happy depends on the pleasures that one experiences over the course of a lifetime.

What, I think, is sufficiently clear at this point is that Mill's doctrine possesses characteristics that are both utilitarian and perfectionist. He is a utilitarian in that he thinks social and political institutions ought to be arranged so as to maximize happiness, but what he means by

'happiness' is inseparable from a certain set of perfectionist ideals. He is a utilitarian in that he thinks pleasure matters a great deal, but he seems to appeal to a deeper normative standard to rank pleasures according to their source and intrinsic value. His theory of the good, then, is complex—not entirely subsumable under either label.

Individuality, Happiness, and Paternalism

In the third chapter of *On Liberty*, Mill supplements his account of happiness as it is presented in *Utilitarianism* by adding to it his ideal of individuality: "it is only the cultivation of individuality which produces, or can produce, well-developed human beings" (*On Liberty* 53). To ascertain the sense in which he means this, we must begin by noting that Mill maintains that individuals have vastly different characters and potentialities:

Human beings are not sheep . . . The same things which are helps to one person towards the cultivation of his higher nature, are hindrances to another. The same mode of life is a healthy excitement to one, keeping all his faculties of action and enjoyment in their best order, while to another it is a distracting burden, which suspends or crushes all internal life (56).

Individuals may be interested in such diverse activities as "music, or athletic exercise, or chess, or cards, or study," or indeed, something that falls entirely outside of the sphere of customary activity (57). The desires that one has and the pursuits to which one naturally takes are rooted in one's unique character. Thus Mill thinks that an ineliminable aspect of one's good is using one's higher faculties to form, assess, revise, and pursue a rational plan of life that satisfies these character-specific desires.

This means that one must engage with activities and pursuits actively, rather than passively. It requires that persons view their ends and actions as a consequence of their own deliberation and effort, rather than as a consequence of, for example, mere custom or tradition. If I regard, e.g., my

commitment to certain religious or spiritual practices as completely explainable in terms of the fact that my family or culture engages in those practices, I cannot at the same time take those practices to be expressive of who *I* am. How could I? *My* judgment does not enter the picture. It is important to not misrepresent Mill here. We must not impute to him the preposterous view that *all* received social practices are to be rejected. His point is that if these forms of life are to have a salutary effect on human happiness, they must be sustained by the voluntary commitment of those who engage in them.

We are now in a position to see what is, for Mill, wrong with paternalism. Institutions that circumscribe one's liberty of action and justify that circumscription by appealing to one's good remove conditions necessary to satisfy Mill's conception of happiness. Freedom from paternalistic interference is necessary both to become competent in the domains of life that suit one's character and to engage in the kind of activity that makes happiness possible. A person whose liberty of action is restricted by the paternalist's interference cannot exercise his faculties in a manner consistent with his character-specific desires and thus can neither acquire the knowledge and skills necessary for happiness nor experience the higher pleasures associated with being an autonomous agent. By contrast, a person who is free from these intrusions "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 to his deliberate decision" (49). Thus Mill thinks that paternalism necessarily fails to maximize happiness. For this reason, it is impermissible.

Now one might raise the objection that social and political institutions that satisfy the requirements of the anti-paternalist principle might fail to engender the kind of excellence that Mill regards as so important. If his conception of happiness involves the cultivation and exercise

of the human person's rational capacities and the pursuit of higher pleasures, why would he reject state interference designed to attain those ends? There are at least two responses to this objection. First, his conception of happiness takes into account the source of the pleasures that constitute happiness. For the actions that one performs to be experienced as pleasurable, they must be grounded in one's character. Since the actions associated with externally imposed forms of life necessarily fail to meet this condition, they cannot have a positive effect on human happiness. Even if one recognizes a certain kind of excellence as valuable, being forced to imitate it cannot make one better off.

Second, state action that is aimed at the promotion of excellence is self-defeating. It robs persons of opportunities to deliberate, weigh options, render judgments, and act on those judgments. In so doing, it inhibits the cultivation of the faculties that are necessary for one to lead a happy life. I cannot learn to be an agent who uses these faculties well if I am restrained because an authority deems my choices unwise. I would gain "no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used" (48-49). Because this kind of state action precludes the cultivation and exercise of these mental and moral powers, it cannot achieve the aim it is designed to bring about.

One might object that the mistakes one makes in learning to use one's higher faculties are sometimes painful. Surely this observation is correct. But recall that Mill *includes* certain kinds of pains in his definition of happiness. One way of understanding this inclusion is to see it as making room for the kinds of errors one makes in acquiring the requisite capacities. When Mill speaks of the need for "experiments in living," there is no reason to assume that he thinks all such experiments will be successful (49). Freedom from paternalistic interference necessarily includes the freedom to make mistakes. Since these mistakes are the only way in which one can learn to

use one's faculties, they are necessary for a life well-lived.

The Slavery Contract Exception

In the final chapter of *On Liberty*, Mill qualifies his anti-paternalism by allowing for one exception to his principle: individuals should not be free to sell themselves into slavery. Any “engagement by which a person should sell himself, or allow himself to be sold, as a slave” ought to be “enforced neither by law nor by opinion” (86). Why the exception? Mill justifies it by pointing out that such contracts preclude any further exercise of one’s liberty:

. . . by selling himself for a slave, he abdicates his liberty; he forgoes 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 . . . 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 (87).

If Mill is read as a straightforward utilitarian, this justification is unsatisfactory. Why would a utilitarian ascribe so much value to the future use of liberty if allowing individuals to abdicate it would maximize happiness? Further, does this exception to the principle render it non-absolute?

The answer to the first question should, at this point, be clear. As we have seen, Mill is simply not a straightforward utilitarian. Given that one's good largely consists in the pleasure associated with using one's higher faculties to engage in activities that are in accord with one's character, he simply thinks that the freedom to make slavery contracts cannot have a positive effect on human happiness. Such contracts preclude the kind of activity that makes human happiness possible.

Somewhat anticlimactically, it must be conceded that this renders the anti-paternalist principle non-absolute. But on the reading I have proposed, the exception at least follows naturally from his view. It is thus not as *ad hoc* or arbitrary as it appears when he is read as a pure utilitarian.

On the contrary, it is a principled restriction on the kind of agreements that our institutions may permissibly recognize as binding if those institutions are to have the desired effect. This special form of paternalism is consistent with Mill's ultimate aim because slavery annihilates the social conditions necessary for human happiness. It seems that this cannot be said of other forms of paternalism. Assuming, then, that society is not filled with individuals eager to sell themselves into slavery, the anti-paternalist principle is, practically speaking, but not actually, absolute.

Admittedly, the exception raises further questions. Isn't there something suspicious about a *sole* exception to any principle? Can the reasons that justify the exception be used to justify forms of paternalism that Mill would reject? I cannot provide answers here—I have no settled view on these matters. Notwithstanding these potential issues, I think it is clear that once Mill's conception of happiness is properly understood, there is no fundamental incompatibility between his anti-paternalism and his broader moral and political theory.

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