

MILL VERSUS PATERNALISM

Richard J. Arneson

July 1978

ABSTRACT

This paper attempts a defense of John Stuart Mill's absolute ban against paternalistic restrictions on liberty. Mill's principle looks more credible once we recognize that some instances of what are thought to be justified instances of paternalism are not instances of paternalism at all--e.g. anti-duelling laws. An interpretation of Mill's argument is advanced which stresses his commitment to autonomy and his suggestion that exactly the same reasons which favor absolute freedom of speech also favor an absolute prohibition of paternalism. Alternative expositions and appraisals of Mill by Gerald Dworkin and Joel Feinberg are criticized. Finally, consideration is given to two arguments that render Mill's principle trivial via the denial that there are any significant self-regarding actions.

"Mill Versus Paternalism"

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

¹Cf. H.L.A. Hart, Law, Liberty, and Morality (Stanford: Stanford University Press, 1963), pp. 32-33.

²Gerald Dworkin, "Paternalism," reprinted in Philosophy of Law, ed. by Joel Feinberg and Hyman Gross (Encino and Belmont: Dickenson, 1975), pp. 174-184; and Joel Feinberg, "Legal Paternalism," Canadian Journal of Philosophy, vol. 1, no. 1 (September, 1971), pp. 105-124. (The quote from Feinberg in this paragraph occurs on p. 113.)

³John Stuart Mill, On Liberty, ed. by Currin Shields (Indianapolis and New York: Bobbs-Merrill, 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 anti-paternalism principle hold very generally in the modern world. In passing, it should be noted that Mill's principle quoted above, besides ruling out paternalism, also rejects restrictions on liberty motivated by the desire to punish and prevent behavior thought to be intrinsically immoral though not harmful to others. Perhaps current marijuana laws fall in this category. In what follows I do not discuss Mill's rejection of legal moralism. I also assume without argument that Mill is right in thinking that there are good reasons for accepting paternalistic treatment of children, mentally incompetent adults, and mentally insane adults, which do not willy-nilly justify paternalistic treatment of sane, non-feebleminded adults.

My goal in this paper is to show that Mill's anti-paternalist 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.

My strategy of argument is to urge two claims: (1) a clarification of the notion of paternalism strengthens the case for Mill's principle by indicating that several policies that are most plausibly thought to be justified instances of paternalism are not instances of paternalism at all,⁴ and (2) once one distinguishes clearly among the concepts of autonomy, individuality, and freedom as these appear in Mill's On Liberty, it will become evident that neither an autonomy-maximizing nor a freedom-maximizing nor an individuality-maximizing argument for paternalism will justify serious modification of Mill's initial statement of his principle. These two claims form the topics of the first two sections of this paper. Section III considers and rejects the proposal that proper attention to the notion of voluntary action should motivate retreat from Mill's strong anti-paternalism. Section IV warns against two ways of trivializing Mill's principle, one derived from worries about charity and the other derived from worries about Derek Parfit. The four sections together give one interpretation of the slogan, "Individuals have the right to order their own lives." I believe this interpretation is plausible in its own right and dovetails with what Mill most wanted to assert. In developing this interpretation I try to defend Mill's principle and the policy conclusions he draws when he applies the principle,⁵ but I do not attempt to defend all the arguments which Mill adduces connecting his principle and his policy suggestions, for some of these arguments are inconsistent with his principle or otherwise muddled.

I.

Besides laying down a ban against paternalism, Mill's principle quoted above adumbrates a necessary condition for justified non-paternalistic 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 one possible interpretation of

⁴ A similar strategy is followed by Michael Bayles in "Criminal Paternalism," in The Limits of Law, ed. by J. Roland Pennock and John Chapman (New York: Lieber-Atherton, 1974), pp. 184-86, but his execution of the strategy appears to fail for reasons noted in a review by Joshua T. Rabinowitz, in The Philosophical Review, vol. 85, no. 2 (April, 1976), pp. 247-248.

⁵ With the exception of Mill's views on marriage contracts that fail to permit divorce.

what it is to use power over someone against his will,⁶ I propose this reformulation of Mill's anti-paternalist 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.⁷ 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.⁸ 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 duelling. Suppose every person in a society prefers most of all not to be confronted with duelling situations, and secondly prefers to preserve his honor by making the conventionally appropriate response to duelling situations when they arise. Assume that a legal ban on duelling prevents any duelling 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 duelling regulations, a legal ban against duelling would be non-paternalistic, 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 duelling then the anti-duelling law (even if it is unfair or unjust) is non-paternalistic.)

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 law-makers. 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

⁶Further clarification of the "against his will" proviso appears in Section III below.

⁷Of the alleged instances of paternalism here discussed, five appear on a list of examples of paternalism supplied by Dworkin to illustrate his definition of the concept, op. cit., p. 175.

⁸John Hodson, "The Principle of Paternalism," American Philosophical Quarterly, vol. 14, no. 1 (January, 1977), p. 62.

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's not that the legislators need suppose that Smith is likely to make a foolish bargain if left to his own devices; it's 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 non-paternalistic reasoning of this sort is sufficiently realistic to justify any anti-slavery or anti-usury laws that are in fact justifiable.

Food and Drug Administration regulations which require accurate labelling of products and pre-marketing tests to determine the side effects of ingesting new or unfamiliar substances can for the most part take shelter under a similar non-paternalist rationale. We may draw a rough distinction between information relevant to an agent's choices which the agent can (readily) obtain for himself, and information which is either unobtainable by the agent or so difficult of attainment as to be for all practical purposes unobtainable. When the state requires drug companies to supply accurate information about the products they offer for sale, which the consumer would have grave difficulty obtaining on his own, the state is arguably not acting paternalistically. The state is enforcing requirements at which the will of the consumer may be presumed not to balk. (Naturally if this presumption proves false, the non-paternalistic appearances may prove deceptive.)

If there is practical doubt as to whether consumers really do want warning labels on their cigarette packages, truth-in-lending regulations that call to their attention the interest rates they are paying, and so forth, these laws can be drafted so as to apply only to those who explicitly consent to them (perhaps by checking a special box on their income tax form). Similar remarks would also apply to laws that specify stiff penalties for individuals who fail to fasten their automobile seatbelts, so long as the laws were worded so that they applied only to individuals who want this protection. Dworkin writes, unobjectionably, "I suggest that since we are all aware of our irrational propensities, deficiencies in cognitive and emotional capacities, and avoidable and unavoidable ignorance, it is rational and prudent for us to in effect take out "social insurance policies."" So far the waters are crystal clear, but the next sentence muddies them: "We may argue for and against proposed paternalistic measures," Dworkin continues, "in terms of what

fully rational individuals would accept as forms of protection."⁹ The line between restrictions that persons do accept, acknowledging their own propensity to irrationality, and restrictions that persons reject but which imaginary rational persons would accept, is the line between non-paternalistic and paternalistic restrictions.

Laws requiring people to spend a certain percentage of their income on Social Security retirement benefits provide another borderline example. Perhaps none would try to justify such laws on the ground that they effect a redistribution of income from the short-lived to the long-lived, but the laws as presently structured also redistribute income from those who have steady lifelong employment to those whose employment is intermittent, and this may motivate passage of the laws. Also, it may be felt that the effect of Social Security laws is to require employers to contribute to employee retirement plans without in practice reducing workers' take-home pay. Whether right or wrong, such reasonings are non-paternalistic.

Laws that preclude consent as a defense to a legal charge of assault or homicide can be non-paternalistically justifiable, as some commentators have noticed.¹⁰ 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. (Perhaps the law could be drafted so as to recognize the defense in a range of cases where the normal difficulty of assessing evidence of consent is not present, as for example in pacts between lovers in which each agrees that in case of adultery the aggrieved lover may take violent revenge against the other without penalty.)

Paternalism will look morally more inviting 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

⁹Dworkin, p. 181.

¹⁰Graham Hughes, "Morals and the Criminal Law," Yale Law Journal, vol. 71 (1961-62), p. 671; cited in C.L. Ten, "Paternalism and Morality," Ratio, vol. 13, no. 1 (June, 1971), p. 65.

that 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.¹¹

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. The second of these arguments Mill seems to endorse 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."¹²

¹¹It is hard to say whether it is right to attribute to Mill this view as to the nature of "good" or "happiness." When he is arguing against the objection that Benthamite Utilitarianism acknowledges only one motive, the desire for pleasure, Mill tends to talk as though a person's pleasure is just the satisfaction of his desires (cf. chapter 4 of Utilitarianism). When his attention is focussed on what he takes to be the unenlightened character of most people's desires, Mill tends to talk in ways that stress how Utilitarianism defines the good objectively, in terms of pleasurable experience; in this way his aims to forestall the necessity of asserting that if the vast majority of people happened to develop an intense desire, say, to burn Catholics, the satisfaction of that desire must appear as a very large plus in Utilitarian calculation. I think these diverse and apparently conflicting ways of talking can be reconciled around the view ascribed to Mill in the text, but I cannot argue the matter here.

¹²Dworkin, p. 180 and p. 184.

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 anti-paternalist 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 four he is retracting the robust assertion of "Paternalism never!" in chapter one, 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 non-paternalist 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.

What of Dworkin's positive suggestion that paternalism is justified only to preserve a wider range of freedom for the agent? It suffers from disabling weaknesses. No explanation is given of how it is consistent for the Utilitarian Mill to assert that restrictions on freedom are permissible only to maximize freedom, rather than to maximize other values that may outweigh freedom. A related 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 lifespan 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 adequately to safeguard the right of persons to choose and pursue life plans that deviate from maximal rationality or that hamper future prospects of rational choice. Although Dworkin is careful and even grudging in allowing that putative instances of justified paternalism according to his principles are actually justified, nonetheless some of his examples are chilling. He does approve the following restrictions: (1) forbidding the driving of an automobile without a seat belt when we are sure the person we are coercing does not

have eccentric values but is just mistaken in calculating how slight probabilities of very grave harms ought to affect his behavior, (2) banning the sale of cigarettes to persons who know the relevant facts but fail to appreciate them when deciding whether or not to smoke, and (3) forcing those who would commit suicide to submit to a government-enforced cooling-off period and to appear before a Government Suicide Board to talk matters over in a cool hour. Taking just the last example, and recalling that according to our notion of paternalism a person worried about his tendency to extreme depression could voluntarily place himself under the coercive care of others, I want to query the legitimacy of forcing the individual in these circumstances. Let there be suicide prevention services that individuals may avail themselves of if they choose, but persons who come to have the desire to commit suicide on sudden impulse or in some other manner incompatible with bureaucratic procedure have a right to die as they choose.

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."¹³ The freedom-maximizing principle he offers is not the only possible construal of this argument.

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 choice—even if that choice threatens grave risk to himself, including the risk that he may be unable in future to act on or even formulate further voluntary choices. Thus, suppose A proposes to make a public announcement of his plan to travel to the North Pole. B, his friend, 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 his announcement the state authorities will, for paternalistic reasons, prevent A from embarking on his trip. B remonstrates with A but fails to convince him that B's fear of state intervention is reasonable. 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 consequences to himself that flow from this voluntary choice. Paternalistic actions wrongfully usurp this responsibility. Very simply put, the difference between freedom and autonomy is that in some circumstances one can increase a person's freedom in the long run by restricting it whereas in no circumstances can one increase a person's

¹³Dworkin, p. 180.

autonomy by restricting it.¹⁴ The principle never to interfere with autonomous choice and the principle to interfere with autonomous choice only to maximize autonomous choice yield equivalent practical recommendations for action.

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.

...it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. (p. 70)

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. (p. 82)

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it becomes open to question. But there is no room

¹⁴This may not be quite literally true. Suppose we alter the example above so that B is contemplating a minor paternalistic intervention timed to occur at just the moment when a major paternalistic intervention would otherwise occur, and the purpose of the minor paternalistic intervention is to avert the major one. I don't see that my definition suffices to guide a B whose purpose in acting in these circumstances is to maximize A's autonomy. Is my talk of autonomy a misleading way of dragging into Mill's argument an appeal to the notion of abstract right of the sort Mill claims to eschew at the outset of his essay? Clearly not, if Mill's assertion of the value of autonomy is grounded in straightforward Utilitarian considerations. The matter is not so clear if autonomy is taken to be intrinsically desirable in an ideal Utilitarian fashion. If abstract rights may never be overridden or infringed no matter what, then again Mill would surely be right in thinking that the assertion that "individual spontaneity" has "intrinsic worth" (p. 69) is not equivalent to the claim that individual spontaneity (autonomy?) is an abstract right.

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, especially sections III-V.

for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences. (p. 92)

Human beings owe to each other help to distinguish the better from the worse, and encouragement to choose the former and avoid the latter. They should be forever stimulating each other to increased exercise of their higher faculties and increased direction of their feelings and aims toward wise instead of foolish, elevating instead of degrading, objects and contemplations. But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years that he shall not do with his life for his own benefit what he chooses to do with it. (pp. 92-93)

All errors which he is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem his good. (p. 93)

What are called duties to ourselves are not socially obligatory unless circumstances render them at the same time duties to others. (p. 96)

I think it is a fair summary of the tendency of these passages to say that in them Mill is asserting that the value of individual choice does not reside so much in the further goods that choice leads to—not even the good of enhanced freedom for the individual—but rather it is the individual choice itself that is of value. But none of the passages decisively forces this interpretation.^{14a} However, in one passage of great importance Mill does come very close to making the distinction between freedom and autonomy. This passage (pp. 111-113) 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, for she is living out a fate she has

^{14a}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 doesn't belong in an asylum should be free to choose his own life.)

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 countries should recognize the legitimacy of Mormon marriages or permit their own inhabitants to practise 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.

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."¹⁵ 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

¹⁵Principles of Political Economy, Book II, chapter 1, section 3, in Collected Works, vol. 2, ed. by J.M. Robson (Toronto: University of Toronto Press, 1965), p. 208.

over the long run.¹⁶ 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 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 cannot increase a person's autonomy. (If it acts at all it must decrease autonomy.) Any reluctance we would feel, to assign robots to people if it lay in our power to do so, against their will, 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 whatever values it is programmed to secure, it realizes without fail. But we could vary the example by adding a randomizing device to the robot so that with any probability we like the machine will fail to intervene on any given occasion. 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.

¹⁶Cf. 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. by Peter French, Theodore Uehling, and Howard Wettstein (Morris: University of Minnesota, Morris, 1978), pp. 247-251.

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 are described with any great precision.¹⁷ In what follows I attempt briefly to sort out three kinds of individuality and to gauge the support each offers to anti-paternalism.

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.

¹⁷For a contrasting account of Mill on individuality, see Robert Ladenson, "Mill's Conception of Individuality," Social Theory and Practice, vol. 4, no. 2, pp. 167-182.

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 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. Perhaps it means that a person's desires are his own to the extent that the explanation of how they have come to be as they are must make reference to the individual's own actions and inherent dispositions rather than the influence of other persons. This leaves it mysterious why adult education and the influence of a Coleridgean clerisy, both of which Mill favors, are not in direct conflict with individuality. The most plausible view I can locate in Mill's words here is a notion of individuality that is roughly equivalent to self-culture--the uncoerced positing by the individual of an ideal of himself and the making of efforts to conform himself to that ideal. Mill's remarks on the "desire of perfection" in his 1838 essay on "Bentham" suggest this reading.¹⁸ 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 only 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

¹⁸John Stuart Mill, "Bentham," reprinted in John Stuart Mill on Bentham and Coleridge, introd. by F.R. Leavis (New York: Harper and Brothers, 1950), p. 67.

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 don't 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 anti-paternalist policy. (p. 67) By taking seriously the parallel between freedom of speech and freedom of self-regarding action which Mill urges we place ourselves in position to appreciate the reasons that most help to cohere the strands of Mill's argument.¹⁹ Mill wants a social milieu that will encourage persons to elaborate bold and original plans of life and to pursue them vigorously. The creation and sustaining of 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's 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's 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. Consider this characterization of self-regarding action.

. . .there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched around, and sacred from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question. . .I apprehend that it ought to include all that part which concerns only the life, whether

¹⁹An 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 vol. 13, pp. 238-253. This paragraph and the next owe much to Monro's essay.

inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example. (Mill ought to add: or through their own freely given consent.)²⁰

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 unshaky. 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 of paternalism are likely to be very bad—i.e. 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.

III

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

²⁰Mill, Principles of Political Economy, Book V, chapter 11, section 2, in Collected Works, vol. 3 (Toronto: University of Toronto Press, 1965), p. 938.

thing that no one else (and certainly not the state) has a right to interfere with it simply for the person's "own good."²¹ 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 practises which Mill would surely wish to reject.

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."²² Feinberg observes that fully voluntary acts so 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

²¹Feinberg, op. cit., p. 111.

²²Feinberg, pp. 110-111. 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.

intervention is necessary to establish whether it is voluntary or not."²³ 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."²⁴ 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 nonvoluntary 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 anti-paternalism 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

²³Feinberg, p. 113.

²⁴Feinberg, 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 practise of a profession "for alleged deficiency of qualifications."

leaving themselves liable to legitimate restrictions of their freedom by others. I conclude that Mill would resist the assimilation of his anti-paternalism 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 anti-paternalism 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,²⁵ 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 better advised to consult novels of family life and sociological studies of marriage than his own romantic feelings, for guidance about his decision, and these sources are as available to state authority as to the individual. If taken seriously, however, the argument undermines more of Mill's anti-paternalism than he cares to admit. As a matter of fact it is often 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 often 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's best for another).

²⁵Op. cit., in Collected Works, vol. 3, pp. 953-954.

The suggestion here developed for construing Mill's position is that his false belief that people generally 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.^{25a} 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 internal tension in Mill's view is to strike the wayward passages that give rise to it.

There is warrant in Mill's text for supposing that the acts which a principle of anti-paternalism 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 ascribing to Mill anything resembling Feinberg's expanded notion of the voluntary, and no evidence at all for attributing to Mill a denial of what I take to be fundamental to anti-paternalism, viz. the claim that people have a 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.

^{25a}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. 120-122 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.)

Although Mill does not explicitly say what he understands by "voluntary" and indeed the occurrences of the term in On Liberty are few,²⁶ 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) is not dictated by substantial factual error beyond his power to correct, (b) is not accompanied by 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.

Condition (a) implies that if a person sees a warning sign on a highway, does not bother to read it, and subsequently crashes, his driving is voluntary. Whereas, a person who is fraudulently deceived, or who had no opportunity to learn the true 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 non-delirious non-excited 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.

²⁶In 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 chapter 5 gives a better clue to Mill's conception of the voluntary as he means it to modify his principle. Cf. H.L.A. Hart and A.M. Honore on their favored use of 'voluntary,' which they say "depends, no doubt, on a conception of a human agent as being 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." From Causation in the Law (Oxford: Clarendon Press, 1959), pp. 38-39. 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).

Another complication must be appended to this thumbnail account of voluntary action. An action that, taken by itself, appears nonvoluntary, may be rendered voluntary by the circumstance that it falls within the scope of a previous voluntary choice. Let us say that an act of an individual falls within the scope of a previous voluntary act of that same individual if the former is a foreseen consequence of the latter. For example, a man in a state of depression may drink himself into oblivion, aware that he might attempt suicide while in this unsober state. While drunk, he does attempt suicide. His act of committing suicide, while not itself satisfying the conditions of voluntariness, may fall within the scope of a previous voluntary choice, and therefore ought not to be tampered with by state authority.^{26a} But we invoke this complication only in cases where it is not the intervention of other agents that threatens the voluntariness of the act. A person who chooses to travel on a highway thickly infested by robbers, or to purchase a car from a used-car dealership widely known for fraudulent misrepresentation, does not act voluntarily in submitting to the robber's threat or the salesman's fraudulent blandishments.

This weak account of voluntariness needs to be defended against Feinberg's strong account. Why ought we extend a prohibition on state interference to the class of acts that is fully voluntary in our 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."²⁷ 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

^{26a}The view in the text is too simple. For one thing, probabilities affect our willingness to accept that an action falls within the scope of a voluntary choice. Compare a person who knows there is a 50% chance of his committing suicide if he drinks, with a person who knows there is a .00005% chance of a suicide attempt following his drinking.

²⁷Feinberg, p. 111.

of deliberate choice. This is easiest to see in cases where one's actual character traits and ideal self-image center around such features as impetuosity, recklessness, foolhardiness, unthinking bravery, spontaneity, etc. The story is told of a famous rockclimber 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.²⁸ 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. I believe this anecdote is compatible with the claim that the climber's foolhardy act, though substantiantially nonvoluntary in Feinberg's sense, is fully voluntary in the weak sense that is closer to the intent of Mill's text. I also believe that examples of this sort, in which the only reason that Feinberg gives to support his account of the voluntary fails to obtain, are statistically common. In this range of cases the weak sense of voluntary directs us to correct, libertarian policies.

²⁸Chris Jones, Climbing in North America (Berkeley and Los Angeles: University of California Press, 1976), p. 285. This anecdote suggests another point that is unrelated to the voluntariness issue. Suppose the climber's foolhardy adventure is bizarrely out of character. For the sake of argument, let us concede that perhaps an intimate friend of the climber would be justified in restraining him on this occasion. Still, even granting so much, we need not accept that state interference in these circumstances could be justified, because the state is not and should not be privy to the special and private information that perhaps legitimizes a friend's interference. As Mill remarks in the context of welfare relief policy, "the state must act by general rules," and state officials "have no business to be inquisitive." This argument could be run in reverse: since the state cannot have access to the information that would permit it to discriminate in such cases, a paternalistic justification for the bizarre case willy-nilly justifies coercion in the non-bizarre cases. What blocks running the argument in reverse is the high value Mill wants us to place on autonomy: it is better to leave alone the bizarre choices of many persons than to restrict the autonomy of a few.

Still more important, I think, is this: when a person's weakly voluntary acts fail to express his settled preferences, state interference is still wrongful, so if we are defining "voluntary" for the purpose of delimiting the limits of state interference, we should adopt my weak analysis in preference to Feinberg's strong view. Weak voluntariness guarantees that a person was capable of exercising his full rational powers without being led astray by misinformation at the time he makes his choice. A person who is capable of thinking matters out and does not should be held responsible for his choice. In the area of self-regarding action this means he should be let alone. Particularly when we recall that a person can voluntarily commit himself to the coercive care of others, 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,

From Feinberg's expanded definition of "voluntariness" or "deliberate choice" we can reconstruct one further reason for preferring his definition over mine. According to Feinberg, a deliberately chosen act does not proceed from compulsion or neurosis. This suggests the following reason for adhering to strong voluntariness: even in cases where a person's choice of action faithfully represents his strongest desire, the process by which one's strongest desire is formed may be so erratic or inimical to the self as to alienate a person from that strongest desire. Consider in this regard a drug addict with conflicted desires. Suppose the addict wants to take the drug but also wants not to want to take the drug. Supposing we can characterize the addictive desire as compulsive, do we not have good reason to intervene paternalistically on behalf of the addict's "real will" abjuring the desire to take drugs? I think not, for at least three reasons. First, from the description given it does not follow that the addict's higher-order desire is allied with his true self or "real will." One's higher-order desires may be disreputable or for some other reason not the desire one most identifies with. In most cases the strength of a desire correlates very well with the degree of a person's identification with it. Second, even assuming we can sensibly characterize the addict as identifying his "real will" with his weaker higher-order desire, from the description given it does not follow that he has no way of satisfying that desire. For example, the addict can enroll himself in a drug rehabilitation program in which he will be coerced from acting on his stronger desire, to take the drug. The courts have rightly ruled that a person who commits himself to such a program may be forcibly kept to it without being the victim of paternalistic deprivation of liberty.²⁹ Third, as mentioned previously the addict's act of taking drugs now may fall within the scope of a prior voluntary act, and be exempt from paternalistic interference on this ground. For all these reasons we should draw the conclusion that even in this hard case the standard of weak

²⁹See the case cited by David B. Wexler, "Therapeutic Justice," Minnesota Law Review, vol. 57, no. 2 (December, 1972), p. 331.

voluntariness gives more acceptable results than the standard of deliberate choice or strong voluntariness urged by Feinberg.

IV.

In this final section I consider two arguments that trivialize Mill's anti-paternalism.

One insidious argument threatens to render the anti-paternalistic principle trivial by showing that acts that seemingly could be defended only by paternalistic reasoning, can secure a quite independent justification by recourse to pressing hard on the self-regarding/other-regarding distinction. Assume that any act that is prima facie justifiable only through appeal to a paternalist principle will concern conduct that threatens serious harm to the agent. If such conduct is permitted, and the serious harm eventuates, then (unless the harm is death) the individual will be in grave need of assistance. If there are charitable obligations that require us to provide assistance to those in grave need, no matter how the grave need originates, then these acts of individuals that threaten serious harm to themselves also threaten harm to others via the spawning of these charitable obligations. In other words, there are virtually no significant self-regarding actions, so the anti-paternalist principle is vacuous.

The doubtful premise in the above argument is the premise that asserts that charitable obligations arise whenever individuals are in grave need. Even if for the sake of argument we allow that obligations of charity are very strong, they are not so strong as to extend to individuals who considered the possibility that their acts might go awry and place themselves in grave need and who disavowed in advance any claim to assistance should this possibility come about. Perhaps all of us are thoroughly tangled in webs of charitable obligation. But to preserve liberty we must at least permit individuals to disentangle themselves from the web, to divest themselves of any responsibility for behaving prudently so as to avoid placing others under the risk of incurring charitable obligations.

Elaborating the view that charity can justify repression, Feinberg urges that to allow persons to gamble away their life prospects recklessly and suffer the consequences "would be to render the whole national character cold and hard.. It would encourage insensitivity generally and impose an unfair economic penalty on those who possess the socially useful virtue of benevolence. Realistically, we just can't let men wither and die right in front of our eyes."³⁰ Another writer comments, ". . .being put in a position where one must undertake some burden or expense if one is to satisfy one's moral obligations (as

³⁰Feinberg, p. 119.

opposed to reacting on the basis of one's feelings of pity or horror) is harm."³¹

It is only the failure to keep in mind morally relevant distinctions that would render the national character cold and hard in the circumstances envisioned. When we refrain from supplying expensive medical care to a cyclist who crashes without a crash helmet and injures himself in consequence, we are respecting that cyclist's right to live out his own life free of coercive restraint so long as he can arrange matters such that his acts do not affect others besides himself without their consent. Feinberg should worry that the national character will grow cold and hard if we give individuals the Catch-22 admonition that they are not free to live out their lives as they choose because their proposed life-choices unavoidably threaten harm to others--even though the "harm" to others consists in the requirement that those others supply benefits that the beneficiary would prefer not to have in exchange for the freedom to live out his own life as he chooses. Feinberg's allusion to the horror of letting persons die "right in front of our eyes" is on a par with any argument in favor of restraint on freedom which alludes to the horror of allowing behavior that offends our sensibilities right in front of our eyes. Mill would be as suspicious of the one argument as of the other, and rightly so.

I propose the following principle in order to prevent excessive reduction of the scope of the anti-paternalism doctrine by extension of the domain of charity: If there is a general charitable obligation to render assistance to those in grave need, that obligation does not apply in circumstances where (a) the person comes to grave need as a consequence of pursuing self-regarding action, and (b) prior to engaging in this course of action the person agrees that in the event of his act misfiring and placing him in grave need he will renounce any claim to the emergency assistance customarily tendered in accordance with the requirements of charity.

An interesting variation of the notion that the sphere of self-regarding action may have near-zero volume queries the idea of personal identity that underlies the judgment that it is unjustified to coerce a man to prevent harm befalling him at some later date. By what right do we assert that for instance the man who experiments with dangerous drugs in 1978 is the same person as the junkie of 1979 whose addiction is caused by these experiments: the paternalism issue will shrink to insignificance if this paradigm of paternalist intervention--preventing a man from using drugs that may turn him into an addict--can be re-described correctly as a situation in which we coerce one person to prevent harm to another. (Inasmuch as Mill accepts with reservations an empiricist bundle theory of the self, he can hardly be indifferent

³¹Donald Regan, "Justification for Paternalism," in The Limits of Law, op. cit., p. 203.

to issues of personal identity as these impinge on the paternalism question, though to my knowledge Mill never discussed the matter from this vantage.³²)

Adapting some work of Derek Parfit on personal identity, one might reason as follows.³³ Personal identity consists in certain psychological continuities that are matters of degree; in this respect the identity of persons is like the identity of nations. The factual element in judgments of personal identity just consists in these continuities. Beyond this, judgments of identity express the attitudes of persons toward "their" pasts and futures and the attitudes of observers toward the successive states of persons. When persons do not identify with their past states, when for example I do not regard Richard Arneson at t_1 as identical with Richard Arneson at t_2 , there is no ground for overriding this judgment in the sense of proving it false. Thus, when a convicted criminal truthfully reports he is not identical with the man who committed the crime, and this report is consistent with the rest of his behavior (e.g. the convict does not display newspaper clippings of his criminal exploits or show other signs of pride or remorse at his past life), no violation of justice would occur if we freed the convict because the man now in prison is not the man who deserves punishment. Similarly, when a young adult voices a desire to commit himself to a dangerous course of action and it is our estimation that the man the young adult will mature into will not identify with his earlier self, we may non-paternalistically coerce the young adult to protect the person his acts threaten.

At least one writer has deemed Parfit's thinking relevant to the justification of what is ordinarily called paternalism.³⁴ It strikes me that even if for the sake of argument one accepted almost all of Parfit's empiricist claims (as Mill might feel constrained to do), his

³²See John Stuart Mill, An Examination of Sir William Hamilton's Philosophy (London: Longmans, Green, Reader, and Dyer, 1867), pp. 234-257. Consider also that to my knowledge the only true exceptions to his absolute ban on paternalism endorsed by Mill all involve individuals who are bound against their present will by commitments made at a much earlier date.

³³See Derek Parfit, "Personal Identity," The Philosophical Review, vol. 80, no. 1 (January, 1971), pp. 3-27; "On 'The Importance of Self-Identity'," The Journal of Philosophy, vol. 68, no. 20 (1971), pp. 683-690; and "Later Selves and Moral Principles," in Philosophy and Personal Relations, ed. by A. Montefiore (London: pp. 137-169. See also Terence Penelhum, "The Importance of Self-Identity," The Journal of Philosophy, vol. 68, no. 20 (October 21, 1971), pp. 667-678.

³⁴Regan, pp. 203-206.

thinking has scant relevance to the problem of classifying restraints as paternalistic.

Parfit arbitrarily stipulates what will count as the psychological continuities that form the objective component in personal identity judgments. He says: "Let us call 'direct' the psychological relations which hold between: the memory of an experience and this experience, the intention to perform some later action and this action, and different expressions of some lasting character-trait."³⁵ Parfit offers no argument for the view that only these relations are important in personal identity. I suggest several additions to Parfit's list. If these additions are accepted, there is much less scope for the re-description of paternalist acts of the sort described three paragraphs back. Let us also call 'direct' the psychological relations which hold between: (i) the intention to act so as to change one's character and the character change that results, (ii) the intention to perform some act and changes in one's character that are the foreseen consequences of that act, (iii) the intention to perform some act and changes in one's character that are foreseeable consequences of that act. And let us continue to say, with Parfit, that the greater are the direct psychological relations obtaining between successive states of (purportedly the same) person, the greater the factual basis for asserting personal identity.

Of the suggested additions, (i) is easiest to defend. Suppose one undergoes psychotherapy in order to effect a drastic personality change, and this intention is successfully realized. A sufficiently drastic personality change can make it unlikely that any of Parfit's direct psychological relations hold between the pre- and post-therapy person. But surely one's intention to make just these changes binds together these successive person-states and grounds a judgment that the two are one person. Somewhat less compelling but still intuitive is acceptance of (ii). Suppose a person chooses to emigrate to Switzerland, aware that there is a strong likelihood that his move will cause him to be similar in personality to some Swiss citizens he knows. The fact that at the very least the person accepts these personality changes in advance as side effects of an action that he voluntarily embraces serves to provide continuity sufficient for identity. Many cases of drug addiction would seem to fall within this category. Perhaps more tendentious is (iii). Suppose a person chooses to ride a motorcycle bareheaded while wilfully ignorant of the statistics on accidents involving unhelmeted cyclists. A statistically likely accident occurs and the cyclist's body and, eventually, his personality are permanently disabled. I believe the fact that the cyclist could have foreseen the consequences to himself of his act had he chosen to do so provides a

³⁵Parfit, "Later Selves and Moral Principles," p. 139. A more extended analysis appears in "Personal Identity," section III.

psychological connection between the pre- and post-accident person that deserves to be labelled 'direct.' Contrast this last case with one in which a person is seized from his home and involuntarily subjected to psychosurgery or simply pushed off a cliff. Afterwards the person comes to have a radically disordered personality which is psychologically discontinuous with the personality of his earlier self. Here I suspect one could muster a strong argument to the conclusion that for certain moral purposes this unfortunate victim should not be regarded as the same person as the man who earlier sat peacefully in his home (e.g. consider whether the person should be obliged to fulfill his promises). But such cases as interpreted by the modified empiricist view of personal identity will not generate any new restrictions on liberty that could not equally be generated by Mill's anti-paternalism principle plus "ordinary" views of personal identity. In short, my tinkering with Parfit eliminates any threat that his ideas will render Mill's principle trivial.

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

Richard J. Arneson
Department of Philosophy
University of California, San Diego
La Jolla, CA 92093