THE MILL NEWS LETTER

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As the Mill News Letter is being laid to rest, news comes from Avignon of a resurrection--of JSM's piano, bought during the sale of his papers and effects at the Librairie Roumanille in 1905 by the flamboyant Jeanne de Flandreyse-Espérandieu, and housed since at the cultural centre that she established in the Palais du Roure. The restoration, financed by the city, was completed by Michel Brun of nearby Carpentras, who reports that the instrument, by Broadwood & Sons, London (No. 3603), was constructed between 1840 and 1850 of solid mahogany, and that now, once again, it has a beautiful silk "façade" in the colour "lie de vin." Madame Bosqui, the secretary/archivist of the Palais, describes it as having "une sonorité excellente." Last spring, Mill's birthday (20 May) was celebrated with a concert of works by Schubert, Cimarosa, and (his favourite) Mozart. On 20 June of this year, as part of the Music Festival of Avignon, works by Haydn and Schubert will be performed. Tickets, anyone?

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Though we hope that interest in things Millian will continue at the present robust and healthful rate, there is a time for all things, including ave atque vale. A seemly time would be the conclusion of the Collected Works, and that long sought goal is now in sight: we began our planning in 1959, so this is a thirtieth anniversary (pearls, please). Another landmark is the twenty-fifth anniversary of the publication of the first volumes, Earlier Letters, in 1963 (silver, of course, is always in good taste). But this is merely the twenty-third year of the Mill News Letter, and even Hallmark Cards cannot find a symbol for it (may we suggest china + leather, for twenty + three?). It is, however, a prime number, and we shall therefore assume that we are all in the prime, and say thank you for the encouragement, support, and general good humour that have marked

our relations.

We have grown in debts over the decades, and especially in the last dozen years, during which grants from the Social Sciences and Humanities Research Council of Canada have materially aided all activities connected with the edition. Deserving special mention are the stalwarts of the project, Marion Filipiuk, Jean O'Grady, and Rea Wilmshurst, whose minds and hands have kept us going and honest. Among the research assistants who have been particularly useful in gathering information for the lists of recent publications we recall with pleasure the following, all now fulfilling professional dreams: Martin Kreiswirth, Mary O'Connor, Maureen Clarke, Allison Taylor, Margaret Paternek, Michele Greene, and (still with us) Jonathan Cutmore and Jannifer Smith-Rubenzahl.

To continue the heartfelt if sloppy clichés, we note that every ending is a beginning: Utilitas will continue and develop the tradition, joining Jeremy with John again, both now ageless, and all their kin and ilk. We hope that you all take advantage of the offer of the new journal at reduced rates, and that you continue to think of us, not least in correspondence. Farewell and fare well from Robson and Laine in Toronto and Kinzer in North Carolina.

Our final issue consists of an article by Robert Schweik (SUNY at Fredonia) dealing with analogical and metaphoric inconsistency in On Liberty, and one by Bruno Rea (Ontario Ministry of Labour) discussing a conflict between justice and rights in JSM's utilitarianism. Then follows recent and forthcoming publications, announcements, two reviews and, finally, an index to all articles that have appeared in the News Letter since its beginning.

As we merge with Utilitas, which begins its twice-yearly publication in May 1989, subscribers of the Mill News Letter will note the enclosed flyer describing that publication and offering them the reduced rate.

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F.E.L. PRIESTLEY

Mill scholars will share with students of the history of ideas deep sorrow over the death of F.E.L. Priestley on 11 May, 1988. His wide interests, manifest in both teaching and writing, encompassed the literature of the seventeenth through nineteenth centuries, as well as the science and technology of the period, but here it is appropriate to concentrate on his work in Mill studies. FELP, as he was always known, was with A.S.P. Woodhouse and John M. Robson a co-originator of the Collected Works in 1959, and served as General Editor of the edition until his retirement from the University of Toronto in 1971. He was active both strategically and tactically, and contributed the general introduction to Volume X, Essays on Ethics, Religion, and Society, displaying there his fine talent for showing the connection between ideas and argument. He remained active on the Editorial Committee, wisely and pungently advising, and it is eminently fitting that one of his last writings, a review, should appear in this our final issue. Our world is shrunken by his loss.

MILL'S ANALOGIES IN ON LIBERTY: THE USES OF INCONSISTENCY

Robert C. Schweik

Since David R. Sanderson published "Metaphor and Method in Mill's On Liberty" in 1968, there has been no lack of response to his views that Mill's analogies in On Liberty are largely "vestigial or decorative" rather than argumentatively functional, that they "are badly mixed, thrown together haphazardly," and that "their relationships are unclear and highly tenuous."[1] Almost at once, John Grube pointed out Mill's artful rhetorical use of metaphors in On Liberty;[2] later, Charles Matthews argued that although Mill's metaphors are sometimes badly mixed, in other cases metaphorical inconsistency may be caused by a shift in Mill's point of view.[3] More recently, Gordon D. Hirsch has discussed the relations of the plant growth imagery in On Liberty to Mill's view of human psychology,[4] while Eugene R. August has extensively examined Mill's effective use of battle metaphors and his dramatization of the solitary truth-seeker as hero in On Liberty.[5] That analogy and other literary devices in On Liberty play an important rhetorical role is, then, scarcely a matter anyone would be likely to question today.

But whether or not Mill's use of analogy is deliberate and in what sense it is consistent are more complex questions. There are analogies in On Liberty so explicitly developed that they are obviously the products of conscious rhetorical effort, while others seem to have been used far less deliberately by Mill. Both kinds may seem haphazardly chosen and logically inconsistent. Consider, for example, Mill's well-known depiction of the spirit of conformity as a personified standard: "That standard, express or tacit, is to desire nothing strongly. Its ideal of character is to be without any marked character: to maim by compression, like a Chinese lady's foot, every part of human nature which stands out prominently, and tends to make the person markedly dissimilar in outline to commonplace humanity."[6] This is one of many examples that could be adduced to illustrate Mill's apparently deliberate yet inconsistent use of analogy in On Liberty. A simile that alludes to a practice intended to make a Chi-

[1] David R. Sanderson, "Metaphor and Method in Mill's On Liberty," Victorian Newsletter, 34 (Fall, 1968), 23.

[2] John Grube, "On Liberty as a Work of Art," Mill News Letter, V, No. 1 (Fall, 1969), 2-6.

[3] Charles Matthews, "Argument through Metaphor in John Stuart Mill's On Liberty," Language and Style, 4 (1971), 221-8.

[4] Gordon D. Hirsch, "Organic Imagery and the Psychology of Mill's On Liberty," Mill News Letter, X, No. 2 (Summer, 1975), 3-13.

[5] Eugene R. August, John Stuart Mill: A Mind at Large (New York: Scribner's, 1975), 141-59.

[6] John Stuart Mill, On Liberty, in Essays on Politics and Society, Vols. XVIII-XIX of Collected Works (Toronto: University of Toronto Press, 1977), XVIII, 271-2. Subsequent citations are given parenthetically in the text.

nese lady distinctly different from common people is embedded in an extended personification in which the standard of conformity is described as aiming to eliminate "every part of human nature which stands out prominently" and so to make people alike.

What first is important to note about Mill's uses of such analogies is that however logically inconsistent they may appear, they have an underlying rhetorical consistency. Mill's allusion to the Chinese practice of foot-binding among the wealthy classes on the one hand, and his concomitant personification of a rigid standard of conformity on the other, really serve a common rhetorical purpose: both put practices of restricting free personal growth and individual development in a pejorative light. The same rhetorical consistency may be found to underlie the inconsistencies notable in whole systems of less fully developed and less deliberate images in On Liberty--logically inconsistent images that Mill drew from commonplace analogies current in his day.[7] At different points in the development of his argument Mill will seize upon any of a variety of well-worn analogies with apparent indifference to consistency, but, on closer examination, his choice at any given point will in fact have been governed by whatever was his specific rhetorical need at the moment. Even metaphors and similes drawn from some common analogy are often subtly adjusted as Mill's argument moves from one point to another. In short, like many other writers of persuasive prose, Mill was more concerned with using an individual image to advance the point he was arguing than, as a poet might be, with the kind of intricate image patterns that resulted.

The opening of Charpter iii of On Liberty, "Of Individuality, As One of the Elements of Well-Being," provides, in the space of no more than five pages, a striking example of the way Mill's analogies--both those probably more consciously employed and those less so--fall into systems which may be inconsistent with one another but which nevertheless serve, each at its own point in the argument, a specific rhetorical need. Here Mill begins a sequence of arguments to support the general proposition that "to conform to custom, merely as custom, does not educate or develope ... any of the qualities which are the distinctive endowment of a human being" (262). What follows falls into three parts: Mill argues that to develop distinctively human qualities it is important

(1) that the mental and moral powers of individuals be strong (262-3),
(2) that their desires and impulses should also be strong (263-4),
(3) and that a Calvinist spirit favouring conformity in modern society tends to hinder personal development (264-6).

When Mill argues the first point--that the mental and moral powers of individuals must be strong--he supports his argument with one fully expressed simile and a number of less explicitly developed

[7]For an account of some of the variety of metaphors for mind current in the fiction and psychology of the nineteenth century, including discussion of Mill's metaphors in his System of Logic, see Michael S. Kearns' Metaphors of Mind in Fiction and Psychology (Lexington: University Press of Kentucky, 1987).

comparisons, all derived from the commonplace analogy that human mental and moral powers can be strengthened by being exercised like a muscle:

"The faculties ... are exercised only in making a choice."[8]
"The mental and moral, like the muscular powers, are improved only by being used."
"The faculties are called into no exercise by doing a thing merely because others do it ...."
"[H]is reason cannot be strengthened, but is likely to be weakened by his adopting it ...."
"... rendering his feelings and character inert and torpid, instead of active and energetic."
"And these qualities he requires and exercises ...."

It seems unlikely that Mill was fully conscious of this almost subliminal use of exercise as a continuing metaphor, for he concluded this section of the argument by shifting to a startlingly different analogy: "Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develope itself on all sides, according to the tendency of the inward forces which make it a living thing" (263). At first a shift in analogy like this--from muscle and exercise to tree and grow--would seem to support David R. Sanderson's characterization of Mill's metaphors as "badly mixed, thrown together haphazardly." In fact, however, they have an underlying consistency: both analogies support the desirability of unchecked development from within, and, at this stage in his argument, that tactic is appropriate because Mill can safely assume that his audience will at least concede and probably approve the unchecked development of human "mental and moral" powers.

When, however, Mill turns to his second topic--that human "desires and impulses" should also be strong--the metaphors he has just used will no longer serve. It is one thing to argue for the unchecked strengthening of intellect; it is quite another to urge upon a Victorian audience the unchecked development of desires and impulses. Hence, after announcing this second point, Mill temporarily abandons the muscle and tree analogies he had just been using, and adopts, instead, analogies implying some internal force to check or direct the strengthening of desires and impulses--specifically metaphors involving such terms as balance, government, discipline, and control. The shift occurs just when Mill states his second point: "Yet desires and impulses are as much a part of a perfect human being, as beliefs and restraints: and strong impulses are only perilous when not properly balanced ...."

Further on, government becomes the metaphor: "If, in addition to being his own, his impulses are strong, and are under the government of a strong will, he has an energetic character."

And still further, Mill characterizes "desires and impulses" as "forces" sometimes in need of "discipline" and "control": "In some

[8]Italics in this and subsequent quotations are mine.

early states of society, these forces might be, and were, too much ahead of the power which society then possessed of disciplining and controlling them. There has been a time when the element of spontaneity and individuality was in excess, and the social principle had a hard struggle with it."

Not only do the dominant metaphors change in this part of Mill's argument, but his syntax itself--by a judicious use of such connectives as also and but--often has a kind of balance that is consistent with, and in its own way an analogue of, the controls and checks achieved by a balance of antagonistic forces: "The same strong susceptibilities which make the personal impulses vivid and powerful, are also the source from whence are generated the most passionate love of virtue, and the sternest self-control."

In the next two pages (265-6) Mill occasionally uses this kind of balanced syntax in such familiar passages as these: "'Pagan self-assertion' is one of the elements of human worth, as well as 'Christian self-denial'"; and "There is a Greek ideal of self-development, which the Platonic and Christian ideal of self-government blends with, but does not supersede." But by p. 264 Mill once again had shifted the focus of his argument--now to emphasize the current tendency of society to hinder rather than promote strong individuality--and, accordingly, the underlying substratum of analogy in On Liberty was once again adjusted.

One striking manifestation of this adjustment may be seen by tracing Mill's use of analogies drawn from plant growth, as he moves from one part of his argument to the next. In support of his first point --that the strengthening of human mental and moral powers should be unchecked--Mill used the metaphor, quoted earlier, that human nature is a tree which needs to grow on all sides according to the tendency of its "inward forces" (263). In support of his second point, where he needed to emphasize that strong impulses and desires were desirable only when appropriately balanced and controlled, Mill shifted his metaphor to cultivation--with its suggestion of beneficial intervention both to promote and control growth: "Those who have most natural feeling, are always those whose cultivated feelings may be made the strongest" (263-4). "It is through the cultivation of these [vivid and powerful personal impulses which are the source of passionate love of virtue and the sternest self-control], that society both does its duty and protects its interests ..." (264).

Then, when on pp. 264-5 Mill proceeds to develop this third point --that a Calvinist spirit in modern society tends to hinder personal development--he continues the cultivation metaphor but adds to it a host of very different analogies derived from plant growth: comparisons to the withering and starving, pinching, pollarding, cramping, dwarfing, and rooting out of plants. These, of course, would carry, for the majority of his British readers, negative attitudes that, by association, Mill wished to attach to the insistence on conformity he found so prevalent in society. And, not surprisingly, he also introduced new analogies, drawn from other sources, which also help to encourage disapproval of the spirit of conformity: "Thus the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of ...." "To one holding this

theory of life, crushing out any of the human faculties ... is no evil ...."

Finally, in the concluding passage of this portion of Mill's argument--the last paragraph on p. 266--he exploits a number of the various analogies he has just used, and, predictably, whether the analogy is drawn from cultivating, crushing, compressing, or exercising, in each case it is supportive of the particular argumentative point with which it is associated.

This shifting of analogies notable in the brief passage I have just analyzed is characteristic of Mill's use of analogy in On Liberty as a whole. Both in those cases where Mill seems to have deliberately created a comparison, and in those many others where he seems to have less consciously reached for an analogy, it is clear that he did so with a sure feel for the precise rhetorical effect he was after. In short, Mill's analogies in On Liberty are far from being badly mixed and thrown together haphazardly: rather, their very inconsistency testifies to the fine tact with which Mill marshalled and shifted them to provide a consistent support for his argument as he developed it.

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J.S. MILL: ON JUSTICE AND RIGHTS

Bruno Rea

The standard objections raised against a utilitarian theory of rights are familiar enough. The utilitarian, so the story goes, does not treat the individual as a unit of value per se. Man is thought of as a channel and a vehicle, a storehouse for what is highly prized, namely, experiences of pleasure, satisfaction, and happiness. He is valued as a temporary repository and transmitter of what will contribute to aggregate welfare. As such the theory is prepared to abnegate one man's happiness in order to obtain a greater happiness located in some other person(s). Given this state of affairs rights can have no place in the utilitarian schema.

In this paper I shall attempt a brief reconstruction of Mill's efforts to take account of rights in a broadly utilitarian system.[1] My conclusion will be that Mill does not succeed in this enterprise. However, I do not argue that Mill's failure is primarily due to the reasons listed above (though these are reasons which count against such an endeavour); rather, I maintain that it is largely a result of his views on justice and particularly his unwillingness to allow for the possibility of instances of justifiable injustice.[2] Thus, I

[1]For various reconstructions of Mill's theory of rights, see J.C. Rees, "A Re-reading of Mill on Liberty," Political Studies, 8 (1960), 113-29; David Lyons, "Human Rights and the General Welfare," Philosophy and Public Affairs, 6 (Winter, 1977), 113-28; and John Gray, Mill on Liberty: A Defence (London: Routledge and Kegan Paul, 1983).

[2]For an extensive discussion of Mill's theory of justice and its relation to his concept of rights, see Fred R. Berger, Happiness,

argue that the failure of Mill's enterprise has little to do with the conventional objection that utilitarianism is unable to give more than token significance to rights which are made defeasible to moral considerations based on aggregate welfare. Rather, the reverse is true. Mill fails precisely because his theory does not allow for the defeasibility of rights.

Among the methods of exposing the incompatibility of utility and rights, the construction of scenarios intended to reveal the morally repugnant acts a committed utilitarian is forced to advocate under the imagined circumstances is perhaps the most common. Though this is a well-rehearsed and much used strategy, its familiarity does not diminish its potency, nor has it so exhausted the debate as to preclude new insights. Let us then proceed in this direction, careful at every turn to consider how Mill purports to defend an individual's rights in a situation in which they are pitted against the requirements of utility.

Imagine two gravely ill gentlemen confined to intensive care in a large urban hospital.[3] Alvin is in need of a heart transplant, while Bernard requires new kidneys. If the suitable organs cannot be found within a twenty-four hour period both will die. As it happens, in the early hours of the morning a bloodied man stumbles into the emergency ward. Cecil is by appearances a down-and-out, a street-walker in pauper's clothes with rough demeanour and offensive tongue. As the doctors administer their treatment they realise that his blood and tissue types coincide with those of Alvin and Bernard. We would not expect the average doctor in the course of his daily practice to be overly concerned with such coincidences, but then these are not ordinary physicians. They have been raised as good utilitarians, pledged to the cardinal rule of maximizing the general welfare. A directive which in this instance would seem to counsel them to sacrifice Cecil for the benefit of Alvin and Bernard.

Now, if Mill's desire to take rights seriously is to be taken seriously, he must side with Cecil. In a sense he must be prepared to incorporate what would seem to be non-utilitarian considerations into his utilitarian framework. That is, he needs to confirm the broadly consequentialitst underpinnings of the theory while subscribing to something like the moral primacy and inviolability of rights. This he attempts by distinguishing between the expedient, the moral, and the just.

An action may be appraised as just (or unjust), as morally right (or wrong), or as expedient (or inexpedient). Depending on the particular action it will be best described by one or a combination of the above, or perhaps by all three simultaneously. For instance, given a set of circumstances, the repayment of a debt will not only be the just and morally right thing to do, but also expedient. It is only true that all unjust acts will always be morally wrong; apart from this fixed relation it may be possible that an act is judged to

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Justice and Freedom: The Moral and Political Philosophy of John Stuart Mill (Berkeley: University of California Press, 1984).

[3]A similar example is given by R.M. Hare, Moral Thinking (Oxford: Clarendon Press, 1981), 130-4.

be morally wrong and not unjust, inexpedient without being morally wrong or unjust. To label an action or the refusal to act as morally wrong is to imply that the actor in question ought to be punished either through legal coercion, the opprobrium and indignation of his fellows, or by the reproaches of his own conscience and guilt feelings.[4] If an act is appraised as inexpedient without being regarded as immoral, it will not constitute a proper ground for punishment. There are things, Mill tells us, "which we wish that people should do, which we like or admire them for doing, but yet admit that they are not bound to do" (246). Such failings are regrettable but they do not constitute sufficient causes for punishment. Here we cannot compel but only persuade and exhort the individual to act in the desired manner.

As the moral may be distinguished from the expedient, so too may the just be distinguished from the merely moral. Justice is equated with duties of perfect obligation. It implies not only that which is the morally right thing to do, but that such an action (or omission) can be claimed by a specific individual from us as his moral right. Its performance can be demanded from us as one exacts a debt. An injustice, then, will consist in a wrong which is more than merely inexpedient and one which is committed against some assignable person (250). That which is morally right but not necessarily a matter of justice is best captured by duties of imperfect obligation. Imperfect duties are those which, though the act is obligatory, the occasion for performing them is left to the duty-bearer's discretion. In addition, they do not strictly correlate with the rights of any definite person--the standard example being duties of charity. Now, while it is true that actions which are appraised as morally wrong are those to which punishment is a fitting response, punishment need not always take the form of legal sanctions. While it is morally wrong for those who can afford to be charitable not to be, the suggestion is that in cases of this kind the appropriate punishment takes the form of public disapproval or the reprimands of one's conscience, but not that of legal sanctions. On the other hand, an act which is unjust will require, in addition to the above, legal penalties. Perfect duties and their correlative rights are thus linked to the concept of justice, which is for Mill the "chief part, and incomparably the most sacred and binding part, of all morality" (255). It is the name of certain classes of moral rules "which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life" (255).

According to Mill, when we call anything a person's right "we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law or by that of education and opinion. If he has what we consider a sufficient claim, on whatever account, to have something guaranteed to him by society, we say that

[4] Utilitarianism, in Essays on Ethics, Religion and Society, Vol. X of Collected Works (Toronto: University of Toronto Press, 1969), 246. Subsequent citations are given parenthetically in the text.

he has a right to it."[5] If it should happen that the law not only fails to enforce but actually contravenes such a right, the law will be thought unjust. As he states, when "a law is thought to be unjust, it seems always to be regarded as being so in the same way in which a breach of law is unjust, namely, by infringing somebody's right, which, as it cannot in this case be a legal right, receives a different appellation and is called a moral right" (249). For Mill, moral rights exist anterior to and independent of legal institutions, acting as a standard upon which the validity of positive law is measured. The point is that there exist both legal and moral rights, and failure to respect them warrants punishment of some sort.

Here Mill is dealing with a jural and/or moral relationship which is captured in terms of a claim-right. In this instance the general formula of a right may be expressed as follows: A has a right (valid claim) against B to X by virtue of Y. In addition to the right itself four inter-related elements are entailed: the subject of the right (A), the duty-bearer or respondent (B), the object of the right (X), and the justificatory basis (Y). The presumption is that all full-fledged rights will consist of these four elements. The statement "A has a right to X" not only tells us something of A's jural/moral standing (that he is warranted in doing or having X), it represents a claim against some other person, B. To have a right in this sense is to have a valid claim to something and against someone which when put forward allows us to manipulate our social environment.

Cecil then may be said to have a right to his life which is held against the doctors, who must respect it. If utility demanded in all instances nothing more than what is merely expedient for the general welfare, we would certainly expect that Cecil's life be sacrificed. But since we are not obliged to act in the most expedient manner--i.e., failure to do so does not constitute an injustice subject to punishment--the doctors are not obliged to sacrifice Cecil. The opposite would be true. The justificatory basis of his right (the claim's validity) appears to rest on something other than the maximization of aggregate welfare. In so far as rights are sanctioned by rules which, in Mill's phrase, address "the very groundwork of our existence" (251), Cecil may be said to have a right to his life because it represents such a vital interest and basic good. The general practice of rights may be further recommended because of its role in fostering those feelings of personal security so necessary for social stability. Rights are said to gather feeling around them "so much more intense than those concerned in any of the more common cases of utility that the difference in degree (as is often the case in psychology) becomes a real difference in kind" (251). We might say that Cecil's claim constitutes more than a descriptive commentary obtruding itself on our attention, though essentially devoid of force; rather, it has the power "to make thing happen." It is not merely a propositional claim, it is a performative one.[6] It demands the performance (or omission) of some action because after the evi-

[5]Lyons, 113-28.

[6]See Joel Feinberg, "The Nature and Value of Rights," Journal of Value Inquiry, 4 (1970), 250-4.

dence is weighed the balance of reasons favours the recognition of the claim as valid--as a right.[7]

Therefore, Cecil has a right to his life rather than a mere claim to the right which remains to be validated. And so the doctors are under a duty to respect a right and not at liberty to disregard a claim. Cecil's right is one which dictates the results which ought to be followed in cases to which it pertains. We might say that it is a right all things considered--at the very least it is not one which is susceptible to the intervention of other non-rights related considerations. Even if, prima facie, the general welfare would be better served in violating this right, on the present account the doctors are not morally justified in breaching it. Indeed, a violation would involve them in an injustice which would open them to the moral outrage of their fellows, the sanctions of positive law, and, if they have properly internalized all of the utilitarian values, the reproaches of their consciences. The morally right would seem to take precedence over the merely expedient, and it does so even when the disutility resulting from the punishment levied against the doctors, should they fail to fulfil their obligation, is averaged into the utilitarian calculus.

Rights thus appear to assume a character of absoluteness. The feelings for them are said to be so powerful "that ought and should grow into must, and recognized indispensability becomes a moral necessity" (251). Again, to stress the point further: "The moral rules which forbid mankind to hurt one another ... are more vital to human well-being than any maxims, however important, which only point out the best mode of managing some department of human affairs" (255). These latter maxims fall within the realm of the expedient, while the former rules are part of the very fabric of morality. It would seem that rights are identified quite independently of general utility, aimed, one might say at the protection and promotion of basic individual goods. The danger here, of course, is that in constantly choosing rights over utility when the two do not apparently coincide, there comes a point when the utilitarian inherits rights and bequeaths his theory. This would most assuredly be true of Mill had he actually provided a separate grounding for rights, but though his defence of them may have the appearance of being independent of the general welfare standard, it is in fact closely interwoven with it.

To have a right as Mill conceives it is "to have something which society ought to defend me in the possession of." But, if we go on to ask why it ought, Mill can give us "no other reasons than general utility" (250). On the one hand, then, rights are said to be grounded in individual interests and goods, and yet the reason these goods ought to be given rights-protection is defined in terms of general utility. We uphold "basic individual good" over what is of "ordinary expedience" to the general welfare precisely because their protection is more vital to the aggregate welfare. A conflict in which rights overrule utility turns out to be one in which important utilities

[7]Joel Feinberg, Social Philosophy (Englewood Cliffs: Prentice Hall, 1974), 66.

take precedence over lesser utilities. A claim's validity (rights status) is therefore a function of utility. Rights stand in so far as they are aligned with the more important utilities and not because of any criterion independent of utility.

Whatever moral force attaches to rights will wax and wane, at time receding altogether, at the mercy of our shifting human landscape. In a situation where the basic goods of individuals in a minority should act, or be perceived to act, as impediments to the attainment of some greater good, the ground beneath these individual's rights will have shifted so that they can no longer be viewed as protecting the most important or preferred utilities. Consequently, the reasons for extending rights-protection to these goods will have disappeared and with them the moral authority of the rights.

Now, Mill cannot appeal to the imperatives of justice to defend such rights, for they are without moral content and so outside of its perimeters. We must not forget that justice is not set up on some "imaginary standard" not grounded on utility. (255). It is for Mill a name connoting "certain moral requirements which, regarded collectively, stand higher in the scale of social utility" (259). When that which is normally demanded by justice is opposed by some other more weighty moral principle, as may be the case in extraordinary circumstances, we do not say that "justice must give way" to this principle, "but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case." Mill goes on to tell us that "By this useful accommodation of language, the character of indefeasibility attributed to justice is kept up, and we are saved from the necessity of maintaining that there can be laudable injustice" (259). Justice thus maintains its character of indefeasibility only by adapting itself to the exigencies of utility. What is problematic here is not that rights may be overridden in extraordinary circumstances but the idea that this does not constitute a justifiable injustice, that is, the denial that a wrong has been committed against the right-holder.

In observing the matter more closely, it becomes apparent that if Mill wishes to retain the concept of rights while simultaneously denying the possibility of a justifiable injustice, these rights will assume a character of absoluteness. That is, if there can never be an instance where infringement of a moral right (a moral injustice) is morally or legally justifiable, or where the infringement of a legal right (a legal injustice) is legally or morally permissible, then whatever rights exist must prevail in any actual or potential conflict. Where all rights are absolute and conflicts are restricted to claims (from which final rights issue) there must perforce exist a perfect harmony of rights. Now, while Mill makes no such claim, it is the logical outcome of his uncompromisng stand on the question of laudable injustice. Though desirable, such a harmony of rights is, for obvious reasons, unobtainable. The limits of our knowledge and the virtually limitless combination of circumstances make it inconceivable that all possible mitigating factors can be taken into account. There may be a number of unanticipated and as yet non-existent factors which will come to diminish further the scope of a right which is at present held as settled. We could never be certain

of having arrived at the absolute right. But even if, against all better judgment, we were to imagine that all possible exemptions could be known in advance, once the multitude of exemptive clauses have been taken into account we are left with a right which may provide an unconditional guarantee, though one which can guarantee uncommonly little.

Given that justice is said to consist in that most sacred part of morality, it is difficult to conceive of a particular case where some other social duty is so important as to overrule any one of the general maxims of justice. But let us imagine that such a situation would exist in Cecil's case if the stakes were raised so that his death would save not two but two thousand lives. To this we may add the proviso that knowledge of his death remains, as far as possible, the preserve of the doctors, thereby diminishing the possibility of socially adverse consequences (the undermining of people's feelings of security). If the particulars of this scenario are sufficient to defeat the general maxims of justice which apply in ordinary cases, it would appear that Cecil's rights must be overruled. They can no longer be defended by appeals to justice, for justice will have realigned itself with the opposing principle. And yet, if under these circumstances Cecil's rights are to be overridden, then this is tantamount to admitting that a moral wrong and injustice has been committed for, as we have seen, in Mill's view the violation of a right is always an injustice. Thus, if Mill wishes to deny the possibility of a justifiable injustice he has no recourse other than to deny that Cecil has the rights in question under the new circumstances. In order to save himself from infringing a right (which would involve him in an injustice) he must deny its very existence. As it turns out then, not only is Cecil's right not absolute, it is not a right at all. It represents a claim to a right which must be validated by considerations relating to the promotion of the general welfare. Because under the new conditions it cannot be, it therefore remains (or is reduced to) an expression of a mere claim.

Had Mill allowed for the possibility of justifiable injustices he could have quite consistently, and without compromising the general thrust of his utilitarianism, argued that Cecil has rights but that under the revised, more extreme circumstances, it is not at all inconceivable that they might be overridden--justifiably infringed. The overriding of a non-absolute right amounts to a morally justifiable injustice--an injustice outweighed by the greater injustice which has been prevented, nonetheless an injustice against the person whose right has not been fulfilled. The suggestion would then be that Cecil's right is not simply apparent or presumptive, it is one which further investigation cannot dispel as unreal or unfounded. It is not that the doctors' duty to Cecil disappears as circumstances alter. The duty remains intact and, depending on circumstances, the right may be overridden or it must be honoured. The point is that we cannot turn what may be appraised as a justifiable infringement into a non-infringement, which is exactly what Mill does.

It is not the case, then, as commonly held, that Mill is able to countenance only <u>prima facie</u> rights which can be infringed when it proves to the community's advantage not to keep its end of the bar-

gain. More accurately, Mill seeks to give rights the strength to withstand arguments from utility (expediency) by making their observation a requirement of justice. Unfortunately, in order to keep up the "character of indefeasibility" attributed to it, justice is made to align itself with the more important utilities. Therefore, there exists the real possibility that what in one instance and relation assumes the character of an absolute right will under different conditions be reduced to a mere claim.

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Announcements

The next conference of the Northeast Victorian Studies Association, "Evolution and Revolution: The Ringing Groves of Change," will be held April 28-30, 1989, at Providence College, Providence, Rhode Island. Address all papers to Dr. Jonathan Rose, Programme Co-ordinator, 340 East 81st Street, New York, NY 10028. Deadline for proposals and abstracts is October 21, 1988. For further information please call (401) 456-9842 or write Professor Earl E. Stevens, Secretary-Treasurer, NVSA, Rhode Island College, Providence, RI 02908.

Brill's Studies in Epistemology, Psychology, and Psychiatry, devoted to the publication of recent philosophical works in these disciplines and to interdisciplinary studies in the area, has called for manuscripts. Write to E.J. Brill, attention Elisabeth Erdman, P.O. Box 9000, PA Leiden, The Netherlands.

We have a number of complete sets of the MNL (some out-of-print issues are photocopied) available at $40 the set. Individual copies of those issues still in print can be supplied at one dollar per number, plus postage of a dollar per number to a maximum of five dollars.

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Reviews

James Gouinlock. Excellence in Public Discourse: John Stuart Mill, John Dewey, and Social Intelligence. New York and London: Teachers College Press, 1986. Pp. xiv, 173.

The concerns which underlie the writing of Professor Gouinlock's book are implied in his title, Excellence in Public Discourse, and elaborated particularly in his opening and closing chapters. They are concerns which would have interested Mill, and perhaps slightly surprised him, but perhaps also roused his own anxieties. For what this book is about is education for democracy: the excellence sought here is not simply verbal, but rather moral, and the public discourse is not political oratory, but the whole system of the meeting of minds, the disciplined order--emotional, moral, and intellectual--upon which democracy has to be based.

The starting point of this book lies, not in an academic examination of John Dewey's criticism of J.S. Mill, but in an agonized recognition of the present state of what pretends to be a democratic society: "Our characteristic practices and institutions are in a state of crisis. Perhaps it is the nature of democracy to be in perpetual crisis. ... We struggle over the question of what the responsibilities of democratic government ought to be. As ... the state becomes teacher, parent, entrepreneur, doctor, soldier, moralist, patron of the arts and sciences, and distributor of wealth, the greater the struggle becomes over how much the state ought to do, for whom, and at whose expense. ... The assertions of claim and counter-

claim readily become a Babel" (3). "The difficulty of being a democratic citizen is not just that of being adequately informed. ... There is also the need for a certain pervasive morale ... in which differences of aims and judgments will be tolerated and even respected, sincerely so. ... To the extent that this respect is lacking, the great and diverse groups in the nation see each other as threats and adversaries, ... rather than as participants groping for some kind of compatibility, trusting in a process of accommodation and growth" (4).

It is the urgent sense of social fragmentation into antagonistic sects and groups, of the abandonment of rationality and reasoned argument, the sad sense of what any thinking man now sees all around him, that gives this book its importance. From one point of view, from Dewey's, the decay of democratic morale can be seen as individualism run riot, with Mill's On Liberty as a main cause. From another point of view, this author's, Mill's sort of individualism, insisting on the respect mentioned above, can be a guide to true democracy. Similarly, Dewey's insistence on the social nature of education can be seen as creating part of the problem but also as offering guidance to the cure. In its treatment of these themes, in its examination of the problems of educating for democracy, of creating "excellence in public discourse" and in its deft use of the writings of Mill and Dewey as basic texts to be studied by students in schools and colleges, and in graduate courses in education, this book does indeed bring fresh insight, and a very sharp "relevance" for our stormy, disorganized times.

Professor Gouinlock, in a brief bibliographical note, mentions the Bibliography by MacMinn, Hands, and McCrimmon, and the lists in the News Letter. He also mentions the Collected Works, but in his own list of references he includes only Vols. III and IX out of eleven of Mill's works cited. His text, however, gives little evidence of close acquaintance with any of Mill's writings, with the sole exception of On Liberty: even with that work he concentrates on the second chapter, which he reprints in part as Appendix A. Appendix B reprints selections from seven different works of Dewey.

It may be that the author shares the view of his sponsor, who remarks in the Foreword that "These texts are difficult, yet they are also illuminating. While difficult to study, they reward hard work because as students begin to grasp the meaning of these ideas, they begin to see more with less, they experience the value of broad and meaningful connection-making." What we are given as an account of Mill's thought, consequently, is the vastly simplified and slanted version offered by Dewey, occasionally--but only occasionally--qualified and corrected by Professor Gouinlock.

Dewey apparently chose Mill as chief representative of what he terms classical liberalism, or classical empiricism, to which he offers in opposition his doctrines of pragmatism, or, as the Foreword describes it, "pragmatic liberalism, celebrating the social as the context for empowered individuality." Dewey himself soft-pedals the individuality, since he sees liberalism and Mill in terms of excessive individualism and laisser faire--atomistic in all areas, physical, psychological, and social. His interpretation of Mill owes more

to his conception of what he wishes to attack than to any extensive or close reading of Mill's own writings; many of his descriptions of Mill's thought would fit Bentham or even Helvétius more closely than J.S. Mill. The imitations of Dewey's approach are very evident in his comment on Mill's Logic, as paraphrased by Professor Gouinlock: "His System of Logic is an attempt to interpret all logic, inquiry, and proof as the operation of these processes of association. It is a dismal failure."

The serious and scholarly student of Mill will not find in this book any fresh insights won by intense brooding on and very close reading of Mill's texts. Nor will he find much real understanding of the historical context in which Mill wrote. He might be tempted to apply Johnson's remark about the book he was reviewing: that it contained much that is new and much that is true, but unfortunately what is true is not new, and what is new is not true. But this would be too harsh a judgment on a book which is quite definitely of some merit, even if the merit is not of the sort the academic reviewer normally looks for.

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Bernard Lightman. The Origins of Agnosticism: Victorian Unbelief and the Limits of Knowledge. Baltimore and London: Johns Hopkins University Press, 1987. Pp. xii, 249.

Mill's many statements, in the Autobiography and elsewhere, indicating that he was without religious belief and that he was rationally sceptical about the claims of Christianity and many other theistic arguments have encouraged the conclusion that he was an agnostic. Thus we might expect him to have a prominent place in this interesting book about Victorian agnosticism. The author, however, argues that Mill, although an unbeliever, was not, strictly speaking, an agnostic. Consequently Mill's views on religion are only peripheral to the main argument, and he is introduced into the book because of his Examination of Sir William Hamilton's Philosophy, in which he criticized important contributors to the agnostic argument.

Lightman's book traces the origin and growth of agnosticism as a movement and, since it had no formal organizaton, the author was directed to the intellectual biographies and close friendships of the major protagonists--Huxley, Spencer, Tyndall, Leslie Stephen, and Clifford. Their disillusionment with Christian doctrine is described; but, above all else, agnosticism is traced to developments in epistemology, notably to the influence of Sir William Hamilton and Mansel, who are also regarded as important agnostics.

This emphasis on the epistemological dimension allows the author to modify the definitions of agnosticism most commonly used. He regards it as a consequence of the notion that there are limits on knowledge. He traces the idea to thinkers who were reacting to the controversy over the issue of "God's knowability" (31). Those who denied that God was knowable argued that knowledge was restricted to the phenomanal realm; any object in the transcendental realm was

regarded as beyond the limits of human knowledge. Such persons held that "there are inherent and constitutive limits of human cognition" (16). This view was held by notable defenders of Christianity; indeed, Lightman argues that such theologians unwittingly provided important support and encouragement to anti-Christian agnostics. Lightman's definition in epistemological terms allows him to shift the focus of his inquiry away from the conventional perceptions of agnosticism as a by-product of the warfare between science and religion, biblical criticism, disillusionment with Christianity, and Darwin's Origin of Species. All of these wrongly suggest that agnosticism was anti-religious and necessarily anti-Christian. "The catastrophist position in Victorian intellectual history, that 1859 represents a gigantic upheaval in the English philosophical framework, may be losing the struggle for existence" (5). Instead the author would have us recognize a greater complexity than this view allows, and this means a recogniton of Christian origins for agnosticism and a religious component in agnostic thought.

From this perspective Lightman rightly attaches considerable importance to Henry Mansel, whose agnosticism was derived from Hamilton and Kant. In his Bampton Lectures, published as Limits of Religious Thought (1858), Mansel held that because of the constitution of the human mind, absolute knowledge, including knowledge about God, was unattainable. This was a position philosophically not different from Huxley's. Thus, by defining agnosticism in epistemological terms, the Christian apologist Mansel and the anti-Christian agnostic stood on the same philosophic ground. Huxley, when he read Mansel's lectures, recognized their congeniality with his own views. His explanation of the term agnostic, which he coined, is in keeping with Mansel's epistemology; Huxley explained that the word "came into my head as suggestively antithetic to the 'gnostic' of Church history, who professed to know so much about the very things of which I was ignorant" (12). Thus Mansel's position on the limits of human knowledge, although not original, was important because he became the subject of controversy in the 1860s and '70s and elicited considerable debate on epistemological questions (in which Mill took part). He "created an intellectual atmosphere that provided Huxley with new opportunities to use the notion of the limits on knowledge to attack the false pretensions of Christian theologians" (106). Of course this was not what Mansel wanted. He entered the fray to counter empiricism, liberalism, biblical criticism, and with a wish to uphold Church and Bible. Yet he "unintentionally helped to found the Victorian agnostic school of thought" (71).

In keeping with his wish to correct the stereotype of the agnostic as an enemy to religion, Lightman points to the religious dimension of their outlook. Many were raised as evangelicals and never threw off the attitudes associated with it. They had religious natures, recognized the value of religion, and some (Tyndall and Spencer) affirmed the existence of God. They attacked Christianity, not religion, and looked for a new religion to replace a decaying Christianity. The structure of underlying assumptions of their scientific thought is cast in religious terms by Lightman, who describes their three scientific axioms--causation, uniformity in nature, and the

existence of an objective, external world--as the holy trinity of agnosticism.

Mill's relationship to agnosticism is complicated. As an empiricist, Mill was a congenial figure to the non-Christian agnostics (Huxley et al.) who were, for the most part, scientists. They regarded their position, however, as an extension of, but distinct from, Mill's. The agnostic's belief in the limitations on knowledge was not part of Mill's epistemology. Thus the non-Christian agnostics shared Mill's unbelief with regard to Christianity but not his opposition to Hamilton and Mansel, whose agnosticism in an epistemological sense they shared. Mill sought to provide a non-Kantian ground for unbelief, whereas the non-Christian agnostics traced their intellectual ancestry through Mansel to Hamilton and Kant. Leslie Stephen, speaking for agnosticism, regretted the inadequacy of Mill's knowledge of Kant.

Mill enters agnostic deliberations in another way. Mansel's view that God was unknowable arguably could be extended to claims of scientific knowledge, and therefore the scientific agnostics were eager to establish the plausibility of their assumption about the existence of the external world. Mill's proposed solutions for this problem of "the reality of Matter" in the Examination of Sir William Hamilton's Philosophy, which rested on the law of association, was rejected by the agnostics. It is worth quoting from a song that lampooned Mill's position: "But had I skill, like Stuart Mill / His own position, I could shatter: / The weight of Mill, I count as Nil / If Mill has neither Mind nor Matter" (174). This was sung at the banquet following Carlyle's speech as rector of the University of Edinburgh in 1866. The entire company joined in the refrain, led by Carlyle, who waved his knife as if it were a conductor's baton. Tyndall was present and listened with approval, and the other agnostics were pleased as the critic of Hamilton was depreciated.

Lightman's book is a useful and sophisticated study of the philosophical origins of Victorian agnosticism. By emphasizing the epistemological dimension it corrects a stereotype. Its discussion of connections between Mansel and Hamilton and the non-Christian agnostics such as Huxley is especially illuminating. It also contains an interesting discussion of the implications of agnosticism in an epistemological sense for the agnostics' philosophy of science. It is necessary, in passing, to express regret about the two attempts (29, 31) to explain scientific and epistemological positions in ideological terms, that is, as serving the needs of the middle class. In all other ways the book is informative, persuasive, and refreshing by virtue of its exploration of the complicated connections between agnosticism and Christian theology and contemporary religious feelings and attitudes.

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