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# Theism, Naturalism, and Liberalism: John Stuart Mill and the “Final Inexplicability” of the Self

John Lawrence Hill\*

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## I. INTRODUCTION

The British writer and philosopher Iris Murdoch once wrote, “It is easy to say there is no God. It is not so easy to believe it and to draw the consequences.”<sup>1</sup> By this she meant that our vision of reality, our understanding of the way the world works, cannot help but influence our moral and political beliefs. Politics is not so easily separated from metaphysics. And questions of metaphysics, it turns out, take us readily into the realm of theology. Whether one recognizes it or not, the position one takes on the question of God’s existence is inevitably linked to one’s position on a host of other moral and political issues.

Modern liberals deny this, of course. That is, they deny that metaphysics should have any relevance to political thought. For at least the past century, liberals have insisted that political issues can—and, indeed,

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1. Iris Murdoch, *Existentialists and Mystics*, in *EXISTENTIALISTS AND MYSTICS: WRITINGS ON PHILOSOPHY AND LITERATURE* 226 (Peter Conradi ed., 1997).

*must*—be bracketed from metaphysical questions.<sup>2</sup> The most influential of recent liberals, John Rawls, went so far in his later work as to insist that his constraints on public reason require the bracketing of any “comprehensive doctrines”—his term for any religious or even broadly philosophical view of the world.<sup>3</sup> Rawls argued that these constraints apply not only to officials in their public capacities, but to *everyone in the course of private discourse*.<sup>4</sup> However, whatever reasons there may be for separating political from ecclesiastical power, metaphysics will always have an inseparable *philosophical* connection to our moral and political judgments.

Consider some of the ways in which modern liberal political thought depends upon ideas integral to the God-centered conception of the world. We claim to believe in the idea of human rights, which, at least traditionally, means that there must be some moral standards that exist independently of the positive laws of any given state. To say that a Syrian dissident has a “right” to express his political opinion or that a member of a Chinese religious minority has the right to worship as she chooses cannot mean that they possess positive legal rights to do these things, since neither has such a right under their own legal regimes. Taking rights seriously means taking seriously the idea of a transcendent moral order that measures the positive

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2. Liberals sometimes respond to the very idea that metaphysics or theology could have import to our political ideals either with a sense of astonished incredulity or a studied *ennui*. Mark Lilla opened his book *The Stillborn God* in the spirit of incredulity: “We find it incomprehensible that theological ideas still inflame the minds of men, stirring up messianic passions that leave societies in ruin. We assumed that this was no longer possible, that human beings had learned to separate religious questions from political ones, that fanaticism was dead. We were wrong.” MARK LILLA, *THE STILLBORN GOD: RELIGION, POLITICS, AND THE MODERN WEST* 3 (2007).

And philosopher John Searle writes in the spirit of *ennui*:

Nowadays . . . it is considered in slightly bad taste to even raise the question of God’s existence. Matters of religion are like matters of sexual preference: they are not to be discussed in public, and even the abstract questions are discussed only by bores . . . . For us, the educated members of society, the world has become demystified . . . . The result of this demystification is that we have gone beyond atheism to a point where the issue no longer matters in the way it did to earlier generations.

JOHN R. SEARLE, *MIND, LANGUAGE AND SOCIETY: PHILOSOPHY IN THE REAL WORLD* 34–35 (1998).

3. JOHN RAWLS, *COLLECTED PAPERS* 489 (1999).

4. Rawls wrote:

Some might say that the limits of public reason apply only in official forums and so only to legislators, say, when they speak on the floor of parliament, or to the executive and the judiciary in their public acts and decisions . . . . But this does not go far enough. . . . As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines, they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality.

JOHN RAWLS, *POLITICAL LIBERALISM* 217–18 (1993). In other words, freedom and equality require, at least in the context of political discussion, that the theist and the agnostic can only argue on common ground, i.e., that the theist cannot appeal to any belief which the agnostic does not share. In sum, equality and neutrality require that the argument’s parameters are the *agnostic’s* parameters.

law of particular nations. We cannot have it both ways. We cannot claim to believe in the existence of human rights that exist independently of positive law while denying the existence of the transcendent moral order on which these rights must be based.

Still closer to home, many of our significant moral, political, and social ideals are predicated on the idea that persons are inherently free in the deepest metaphysical sense. Our capacity for freedom not only lies at the foundation of our ideas of responsibility, blame, and merit, but grounds as well our noblest political ideals, including our commitments to liberalism and democracy. Political rights in the liberal tradition have long been understood to protect our capacity to make self-constituting choices in the external world. This is why we use the word “freedom” to refer both to our internal metaphysical freedom of the will, and our external political rights and liberties. The two are connected: external liberty depends on freedom in the internal sense. Deny the reality of the latter and we can make no sense of the former. Freedom begins at home, within the interstices of the human self.

Contemporary agnostics and nontheists are typically philosophical naturalists or materialists.<sup>5</sup> As such, they are generally committed to a belief in determinism, the idea that the laws of cause and effect necessitate every human choice.<sup>6</sup> If the determinist is correct, no one has ever made a genuinely free choice, a choice in which he could have chosen other than he

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5. I will use the terms “naturalism” and “materialism” as synonyms throughout this essay. Naturalism is the view that there are no supernatural entities—that the world is the product of natural, rather than divine forces. In the history of philosophy, this view is closely related (though not identical) to materialism, the view that all things in the world must be explained in terms of mass energy. Most particularly, materialism denies that the mind or soul has any existence independent of physical brain states. See EDWARD FESER, *PHILOSOPHY OF MIND* (2006) (providing an introductory discussion of the problems associated with the philosophy of mind); BERTRAND RUSSELL, *Mind and Matter in Modern Science*, in BERTRAND RUSSELL ON GOD AND RELIGION 151–63 (Al Seckel ed., 1986) (discussing naturalism and materialism, and the materialistic conception of mind).

6. The free will-determinism problem is of ancient vintage, yet we seem no closer to solving the problem after 2500 years of debate. William James remarked that though some seemed to think the topic stale, he knew of no subject “less worn out” than the free will-determinism debate. WILLIAM JAMES, *The Dilemma of Determinism*, in THE WRITINGS OF WILLIAM JAMES 587 (John J. McDermott ed., 1977). More recently, John Searle, a naturalist, conceded:

After all these centuries of writing about free will, it does not seem to me that we have made very much progress. Is there some conceptual problem that we are unable to overcome? Is there some fact that we have simply ignored? Why is it that we have made so little advance over our philosophical ancestors?

JOHN R. SEARLE, *FREEDOM AND NEUROBIOLOGY: REFLECTIONS ON FREE WILL, LANGUAGE, AND POLITICAL POWER* 37–38 (2007).

did.<sup>7</sup> The creeping determinism in modern thought has contributed not only to liberalism's growing skepticism of personal responsibility but also makes it difficult for liberals to make coherent sense of their own commitments to political liberty. What sense does it make to accord an almost sacred status to our personal choices if these choices are simply the predetermined effects of the constellation of biological and environmental factors that make us behave as we do? If freedom of the will goes, so ultimately will political liberty. Totalitarianism is the most likely political denouement of determinism.

Still more fundamentally, philosophical naturalism obviously requires the rejection of the idea of the human soul. Political theory has been able to dispense with the soul, but it has not been able to do without that modern psychological halfway house upon which so much of the rhetoric of "freedom of choice" depends—the idea of the *self*. Among philosophers, as the soul goes, so goes the self. David Hume sent the very notion packing by the middle of the eighteenth century,<sup>8</sup> yet liberal political theory, psychology, and social theory continue to harbor this enigmatic philosophical fugitive. They not only welcome him into their homes but, to the extent that modern liberalism has apotheosized the individual self, give him a place at the head of their table. It makes little sense to enshrine self-actualization, self-expression, or self-fulfillment as shibboleths of liberalism if the liberal no longer believes that there is a self to be expressed, fulfilled, or actualized. But if the self exists as something other than a "social construction"—as an enduring unity that makes us the same person throughout our lives—what is it?

The purpose of this essay is to explore what often is overlooked in political and constitutional discussions of the relationship between law and religion. Law and religion are not natural adversaries. They are thought to conflict today not simply because secular law must create a space for

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7. The famed criminal defense lawyer Clarence Darrow was a committed determinist who often employed deterministic explanations in closing arguments. As he put it in his autobiography:

No one attributes freewill or motive to the material world. Is the conduct of man or the other animals any more subject to whim or choice than the action of the planets? . . . We know that man's every act is induced by motives that led or urged him here or there; that the sequence of cause and effect runs through the whole universe, and is nowhere more compelling than with man . . . While cause and effect are not always easy to discover, our observations have been so general that we are warranted in the belief that every manifestation of matter, and what we call mind, is the result of some cause, or causes, most of them fairly obvious, but some of them still beyond the ken of man. That crime, so-called, stands out alone as an uncaused manifestation of human conduct is beyond the understanding of those who try to study and comprehend.

CLARENCE DARROW, *THE STORY OF MY LIFE* 76–77 (1996).

8. See *infra* notes 93-96 and accompanying text.

competing religious viewpoints. The source of the conflict runs much deeper. It is nothing if not *metaphysical*—a conflict of worldviews.

This essay explores the metaphysical conflicts between the religious and the secular-naturalist worldviews by examining the philosophy of John Stuart Mill. I chose Mill not only because he is arguably the most important liberal philosopher of all time, the thinker who transformed liberalism from the older, classical to the modern, progressive ideal, but because he also had a well-developed metaphysical conception of human nature which is so strikingly in tension with his political liberalism. Mill's "harm principle," developed in *On Liberty*, is the true philosophical source of the modern right of privacy.<sup>9</sup> And his overarching justification for liberty as a means of self-individuation is the dominant idea of freedom today. Yet Mill was a deeply conflicted thinker—a utilitarian who was drawn to romanticism, a political libertarian and a metaphysical determinist, a naturalist who rejected God, soul, and self, who nevertheless made self-individuation the real animating justification for political liberty.

The contradictions within Mill's thought are the contradictions of liberalism itself. They are ultimately *our* contradictions—and they derive from our own ambivalent attachments to theism and naturalism.

## II. THE ROMANTIC AGNOSTIC

Mill was educated by his father, James Mill, who was himself a close associate of Jeremy Bentham.<sup>10</sup> The elder Mill had decided to make of his son an archetype of enlightened intellectuality—a utilitarian, a philosophical skeptic, a reformer—or as the elder Mill wrote to Bentham, "a successor worthy of both of us."<sup>11</sup> Today we would say the elder Mill homeschooled him, but ruthlessly. Mill tells us that he was reading ancient Greek by the age of three, and studying the classics, learning Latin, and reading Plato in the original by seven or eight.<sup>12</sup> By twelve, he mastered much of

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9. See JOHN STUART MILL, *ON LIBERTY* (David Bromwich & George Kate eds., Yale Univ. Press 2003) (1863) [hereinafter *MILL, ON LIBERTY*].

10. The following events were recounted first by Mill in his autobiography. JOHN STUART MILL, *AUTOBIOGRAPHY* 3–39 (Jack Stillinger ed., Houghton Mifflin Co. 1969) (1873) [hereinafter *MILL, AUTOBIOGRAPHY*] (recounting his childhood and education); see also NICHOLAS CAPALDI, *JOHN STUART MILL: A BIOGRAPHY* 1–54 (2004); ALAN RYAN, *J.S. MILL* 10–28 (1974).

11. *MILL, AUTOBIOGRAPHY*, *supra* note 10, at xi (citing 10 *THE WORKS OF JEREMY BENTHAM* 473 (John Bowring ed., Russel & Russel Inc. 1962) (1843)).

12. See *id.* at 3–11.

philosophy, logic, mathematics, and political economy.<sup>13</sup> At thirteen, he prepared summaries of his father's discourses on the latter topic, and these were then used as paragraph resumes for James Mill's *Elements of Political Economy*, which was used as a text in universities for decades.<sup>14</sup> At fifteen, he began reading Bentham and decided then that the goal of his life should be "to be a reformer of the world."<sup>15</sup> Even his youthful antiauthoritarianism was appropriately directed toward good, progressive causes—at fifteen or sixteen he spent one night in jail for distributing birth control literature in the East End.<sup>16</sup> The pace of Mill's career only picked up from this point. Between the ages of sixteen and nineteen, he founded a debating club which he named "the Utilitarian Society"<sup>17</sup> (this was the first time the term "utilitarian" was used in its philosophical sense), he became a regular contributor to the *Westminster Review*,<sup>18</sup> a Benthamite journal of political and social criticism, and for eighteen months or so became Bentham's amanuenses.<sup>19</sup> Among other tasks, it was the young Mill's job to gather, collate, and massage into a coherent essay a multitude of scraps of paper with thoughts and references, which Bentham customarily pinned to the curtain behind his desk.

As part of his education, James Mill imparted his own agnosticism to his son. As Mill puts it in his autobiography:

It would have been wholly inconsistent with my father's ideas of duty, to allow me to acquire impressions contrary to his convictions and feelings respecting religion: and he impressed upon me from the first, that the manner in which the world came into existence was a subject on which nothing was known: that the question, "Who made me?" cannot be answered, because we have no experience or authentic information from which to answer it . . . I am thus one of the very few examples in this country, of one who has, not thrown off religious belief, but never had it: . . . I looked upon the modern exactly as I had the ancient religion, as something which in no way concerned me.<sup>20</sup>

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13. *See id.* at 12–18.

14. *See id.* at 18.

15. *See id.* at 80.

16. *See* JOHN STUART MILL, *CRITICAL ASSESSMENTS* 28 (John Cunningham Wood ed., Routledge 1999) (1988).

17. *See* MILL, *AUTOBIOGRAPHY*, *supra* note 10, at 49.

18. *See id.* at 120.

19. *See id.* at 50.

20. *Id.* at 27–28.

Mill fully embraced his father's skepticism. In his autobiography he unleashed a surprisingly vitriolic broadside against religious belief and Christianity in particular.<sup>21</sup> Organized religion was an "obstinate prejudice which makes men unable to see what is before their eyes"<sup>22</sup> and Christianity is "not . . . a mere mental delusion, but . . . a great moral evil."<sup>23</sup> But the best was reserved for the Christian idea of God Himself whom Mill calls "eminently hateful."<sup>24</sup> And this is only a representative sample. For some five or six remarkable pages in a work otherwise largely destitute of strong personal feeling, he decried what he took to be the irrationality and venality of orthodox Christianity.<sup>25</sup>

Mill held these views unabated to the end. In his essay *Theism*, written toward the end of his life, he followed the Comtean line that religion was destined to pass into metaphysics and metaphysics into science.<sup>26</sup> Confident that the old monster of religion was finally dying, he could afford to take the more conciliatory view than some of his fellow-materialists—thinkers like d'Holbach or Marx—who insisted that religion was an affirmative evil. Religious belief, Mill conceded, was "once [a thing] of great value but which can now be done without."<sup>27</sup> He predicted that traditional religious beliefs were "destined to disappear" at the hands of progress and secularization.<sup>28</sup> In the essay, he subjected every aspect of religious belief to withering criticism, trashed the immortality of the soul as a deluded form of wishful thinking,—for who, he asked, would really want to live forever?—and excoriated the account of the miracles in the Bible.<sup>29</sup> He attacked the traditional philosophical arguments for God's existence including the cosmological or "first cause" argument and the ontological argument, though he thought the argument from design slightly more promising for believers.<sup>30</sup> He thought it possible that an impersonal God of the Philosophers exists—a cosmic ordering force in Nature—even though the evidence falls far short of proof and amounts "only to one of the lower

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21. *See id.* at 25–29.

22. *Id.* at 29.

23. *Id.* at 26.

24. *Id.*

25. *Id.* at 25–30.

26. JOHN STUART MILL, *Theism, in* THREE ESSAYS ON RELIGION 123 (Gregg Int'l Publ'rs Ltd. 1969) (1874).

27. *Id.* at 126.

28. *Id.* at 126–27.

29. *See id.* at 196–211.

30. *See id.* at 142–54.



degrees of probability.”<sup>31</sup> But as for the personal God of Christianity—a God who is omniscient, omnipotent, and supremely good—Mill had only contempt: “The notion of a providential government by an omnipotent Being for the good of his creatures must be entirely dismissed.”<sup>32</sup> Though he obviously doubted Christ’s divinity, like Bentham before him and secular humanists afterward, he was deeply impressed with Jesus’s character and wisdom, and gave him high marks as an enlightened moral sage:

But about the life and sayings of Jesus there is a stamp of personal originality combined with profundity of insight, which . . . must place the Prophet of Nazareth, even in the estimation of those who have no belief in his inspiration, in the very first rank of the men of sublime genius of whom our species can boast. When this pre-eminent genius is combined with the qualities of probably the greatest moral reformer, and martyr to that mission, who ever existed upon earth, religion cannot be said to have made a bad choice in pitching on this man as the ideal representative and guide of humanity . . . .<sup>33</sup>

But notwithstanding these concessions, Mill was moved to outrage by what he took to be the sheer moral contradiction of a God who was omnipotent, omniscient, and supremely beneficent with a world so full of evil.<sup>34</sup> He sounded themes similar to those found in Rawls’s private correspondence a century later.<sup>35</sup> The surplus of moral pain in the world left

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31. *Id.* at 242.

32. *Id.* at 243.

33. *Id.* at 254–55.

34. *See id.* at 250–52 (describing moral contradictions of Christianity).

35. When Rawls died in 2002, discovered among his papers was a short essay he had written in 1997, entitled *On My Religion*. JOHN RAWLS, A BRIEF INQUIRY INTO THE MEANING OF SIN AND FAITH: WITH “ON MY RELIGION” 259 (Thomas Nagel ed., 2009). The essay tracks his changing views of Christianity over the course of his life. *Id.* at 261. In this paper he described himself as a young man as a conventional Episcopalian who lost his faith while fighting in World War II. *Id.* Revelations of the Holocaust were the last straw: “How could I pray and ask God to help me, or my family, or my country, or any other cherished thing I cared about,” Rawls asked, “when God would not save millions of Jews from Hitler?” *Id.* at 263. After the war, he writes:

The following months and years led to an increasing rejection of many of the main doctrines of Christianity, and it became more and more alien to me. . . . I came to think many of them morally wrong, in some cases even repugnant. Among these were the doctrines of original sin, of heaven and hell, of salvation by true belief . . . . These doctrines all became impossible for me to take seriously, not in the sense that the evidence for them was weak or doubtful. Rather, they depict God as a monster moved solely by God’s own power and glory. As if such miserable and distorted puppets as humans were described could glorify anything! I also came to think that few people really accept these doctrines or even understand them. For them, religion is purely conventional and gives them comfort and solace in difficult times.

*Id.* at 263–64.

no doubt in his mind that if there was a God, He was either a bumbler or a moral monster.<sup>36</sup> This sense of moral outrage reached the pitch of a Promethean defiance in his *Examination of Sir William Hamilton's Philosophy*.<sup>37</sup> It was here that Mill observed that while we may not know what it means to be *infinitely* good, we certainly know what it means to be “good.”<sup>38</sup> If God’s moral principles are inconsistent with our own understanding of minimal goodness, then so much the worse for God’s principles.<sup>39</sup> Then came the flourish that raised the eyebrows of even some of Mill’s more tolerant supporters:

Whatever power such a being may have over me, there is one thing which he shall not do: he shall not compel me to worship him. I will call no being good, who is not what I mean when I apply that epithet to my fellow-creatures; and if such a being can sentence me to hell for not so calling him, *to hell I will go*.<sup>40</sup>

Mill’s militant agnosticism was at one with his materialism, as we will see, but it clashed badly with the heart of his political philosophy which was always groping for something more—spiritual—in the human condition. If there is no God, there can hardly be a soul. But what, then, of the “self”? Mill would make self-realization the *raison d’être* of liberalism,<sup>41</sup> but what is it that we are to realize? It is little wonder that Mill turned to romanticism to fill the yawning void between his materialism and his political ideals.

Romanticism was not so much a movement as an eruption—the nineteenth-century reaction to the excessive rationalism of the Enlightenment.<sup>42</sup> The romantics rejected the empiricism of Locke and Hume, and the rationalism of Descartes and Kant, along with the religious orthodoxy which these latter thinkers had supplanted, drawing instead from

36. See generally MILL, *supra* note 26.

37. 9 JOHN STUART MILL, *An Examination of William Hamilton's Philosophy and of the Principal Philosophical Questions Discussed in His Writings*, in THE COLLECTED WORKS OF JOHN STUART MILL (J.M. Robson ed., 1974) [hereinafter MILL, *Examination of William Hamilton's Philosophy*].

38. *Id.* at 96.

39. *Id.* at 103.

40. *Id.* (emphasis added).

41. See *infra* note 60 and accompanying text.

42. See Christopher J. Borgen, *Triptych: Sectarian Disputes, International Law, and Transnational Tribunals in Drinan's Can God and Ceasar Coexist?*, 45 J. CATHOLIC LEGAL STUD. 11, 25 (2006) (discussing romanticism as a reaction to the Enlightenment).

a dizzying mélange of alternative philosophies.<sup>43</sup> From Rousseau, they borrowed the notion that natural man is beneficent at heart, that he wants only to love and be loved, and that our natural goodness is only warped and corrupted by the trammels of social convention.<sup>44</sup> From German idealism they inherited the notion that uniqueness is one with genius, and that the development of the authentic self is the most pressing ethical imperative on the individual.<sup>45</sup> From Gnosticism, they took the insight that the profoundest spiritual truths are buried in the depths of the human soul, and that all customs, rules, habits, and conventions are obstructions to the life of the true self.<sup>46</sup> In general, they exalted nature over convention, imagination over reason, the aesthetic over the ethical, spontaneous energy over systematic order, and the particular over the universal.<sup>47</sup> They hated all things that had to do with business, the economic realities of life, the bourgeois order, and anything that smacked of balance or compromise.<sup>48</sup> Conformity, bureaucratization, and industrialization—all the offspring of cold scientific reason, in their view—were the nemeses of the romantic imagination.<sup>49</sup>

Yet romanticism was nothing if not a sentimentalized and secularized recrudescence of religion.<sup>50</sup> In lieu of God it offered Spirit; in place of the immortal soul, the authentic self. If there was moral truth to be had in life, it had to come from within, not from the external commands of some distant Law-Giver.<sup>51</sup> Writing in the 1840s, Ralph Waldo Emerson—who had given up his Unitarian ministry to embrace a similar cacophony of romanticism, idealism, and Buddhism—gave wing to these instincts in his essay, *Self-Reliance*:

To believe your own thought, to believe that what is true for you in  
your private heart is true for all men,—that is genius. Speak your

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43. See William Ewald, *Comparative Jurisprudence (I): What Was It Like to Try a Rat?*, 143 U. PA. L. REV. 1886, 2004–12 (discussing the influence of romanticism on Herder and his rejection of the ideas of Locke, Hume, Descartes, and Kant).

44. See IRVING BABBITT, *ROSSEAU AND ROMANTICISM* 111–37 (1919).

45. See John Lawrence Hill, *Law and the Concept of the Core Self: Toward a Reconciliation of Naturalism and Humanism*, 80 MARQ. L. REV. 289, 328–29 (1997) (noting connections between German idealism and romanticism).

46. See generally JAMES A. HERRICK, *THE MAKING OF THE NEW SPIRITUALITY: THE ECLIPSE OF THE WESTERN RELIGIOUS TRADITION* 270 (2004) (explaining Gnosticism).

47. See Herbert M. Schueller, *Romanticism Reconsidered*, 20 J. AESTHETICS & ART CRITICISM 359, 359–60 (1962) (discussing the basic tenants of romanticism).

48. See Frank Thilly, *Romanticism and Rationalism*, 22 PHIL. REV. 107, 114 (1913) (discussing romantic teachings of discontent in modern life).

49. See generally *id.*

50. See N. LEE ORR, *DUDLEY BUCK* 95 (2008) (explaining that in nineteenth-century America, romanticism was religiously sentimentalized and fused with Puritanism).

51. See Anne C. Dailey, *Holmes and the Romantic Mind*, 48 DUKE L.J. 429, 434 (1998) (noting that according to Romantics, moral truth comes from “the creative and unconscious processes of the individual mind”).

latent conviction, and it shall be the universal sense; for the inmost in due time becomes the outmost,—and our first thought is rendered back to us by the trumpets of the Last Judgment.<sup>52</sup>

He extolled his hearers to “Insist on yourself; never imitate. . . . Every great man is a unique.”<sup>53</sup>

There was a self, after all, but it is given to us neither by God nor by society.<sup>54</sup> It is at once a discovery and a creation—of ourselves, by ourselves.<sup>55</sup> Self-individuation—this was to become the alpha and the omega of the liberal conception of freedom.<sup>56</sup> This is what inspired Mill’s picture of the individual as it took shape in *On Liberty*.<sup>57</sup>

### III. THE MILL OF *ON LIBERTY*

Mill is most remembered today for his essay *On Liberty*, a work that rethought the foundations and implications of liberalism.<sup>58</sup> Where Locke had rested his case for liberty on the authority of natural rights, and Bentham on utility, Mill took a very different tack.<sup>59</sup> The true heart of liberalism, he argued, rested on the centrality of freedom in achieving self-individuation, a state of character in which the individual has most developed his personality in accordance with the inner springs of his own individual nature.<sup>60</sup> In the spirit of humanism he wrote, “Among the works of man, which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself.”<sup>61</sup> Self-development, individuality, and genius were largely coextensive, realized in pursuit of one another.<sup>62</sup> “Individuality is the same thing with development, and . . . it is only the cultivation of individuality which produces, or can produce, well-developed human

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52. RALPH WALDO EMERSON, *Self-Reliance*, in *SELECTED ESSAYS, LECTURES AND POEMS* 148 (1990).

53. *Id.* at 168.

54. *See id.* at 163 (noting that self-existence comes from the soul).

55. *See id.*

56. *See* JOHN LAWRENCE HILL, *THE POLITICAL CENTRIST* 24 (2009).

57. *See infra* Part III.

58. *See* MILL, *ON LIBERTY*, *supra* note 9.

59. *See* ELDON J. EISENACH, *NARRATIVE POWER AND LIBERAL TRUTH: HOBBS, LOCKE, BENTHAM, AND MILL* 111 (2002) (discussing differences between Locke and Bentham).

60. MILL, *ON LIBERTY*, *supra* note 9, at 82.

61. *Id.* at 124.

62. *See id.* at 128.

beings.”<sup>63</sup> The cultivation of individuality depends upon the ability of every individual to discover and develop his true, authentic self.<sup>64</sup> Freedom was both a means to, and a constitutive element of, self-individuation.<sup>65</sup>

The spiritual heart of *On Liberty* is Chapter III, titled “Of Individuality, as One of the Elements of Well-Being.”<sup>66</sup> It is here that the force of Mill’s romanticism comes into its full glory. There is a self, he contends, and it is something more than the residue of customs and habits, a mere social construction, as we might refer to the self today:

A person whose desires and impulses are his own—are the expression of his own nature, as it has been developed and modified by his own culture—is said to have a character. One whose desires and impulses are not his own, has no character, no more than a steam-engine has a character.<sup>67</sup>

There is more than a hint of Aristotle’s old teleology in Mill’s remark that “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 develop itself on all sides, according to the tendency of *the inward forces which make it a living thing*.”<sup>68</sup>

Freedom of choice is not simply a means to an end or a way of satisfying particular desires as Hobbes or Hume would have conceived it.<sup>69</sup> Freedom was part means and part end in itself. Mill thought that choice-making was literally *constitutive* of our self-creation. In other words, our choices do not merely emanate from the already fully-formed self. Rather, *we create ourselves through the choices we make*:

The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom, makes no choice. He gains no practice either in discerning or in desiring what is best. The mental and moral, like the muscular powers, are improved only by being used.<sup>70</sup>

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63. *Id.*

64. *See id.* at 127–28.

65. *Id.* at 136–37.

66. *Id.* at 121.

67. *Id.* at 125.

68. *Id.* at 124 (emphasis added).

69. *See* THOMAS HOBBS, *LEVIATHAN* 159–68 (Michael Oakeshott ed., Collier Books 1962) (1651) (detailing Hobbes’s views on liberty); DAVID HUME, *A TREATISE OF HUMAN NATURE* 399–407 (L.A. Selby-Bigge ed., Oxford Univ. Press 1978) (1739) (detailing Hume’s views on liberty).

70. MILL, *ON LIBERTY*, *supra* note 9, at 123–24.

In all this there are distinct traces of Aristotle's and Aquinas's ideas that actions, repeated habitually, coalesce into one's character.<sup>71</sup> We form our own characters and literally become what our choices make us. Mill parts ways from Aristotle and the conservatives only in exaggerating the cleavage between choice and tradition.<sup>72</sup> Against the conservative view that time-tested customs and mores provide an important social framework for character formation, Mill sided with the romantics in holding that true character can only be won in opposition to social influences—that social influences are the enemy of true self-formation because they threaten to overwhelm the authentic self.<sup>73</sup>

Though Mill was in so many ways the harbinger of modern progressive liberalism, the most striking contrast with contemporary liberalism was his conviction that freedom and equality are values that will always be in tension with each other.<sup>74</sup> Mill associated equality with social conformity and with a lack of individuality. From Tocqueville he imbibed a fear of the tendency of democratic government to expand and to impose a stultifying equality of condition on its citizens.<sup>75</sup> “It is not by wearing down into uniformity all that is individual . . . but by cultivating it and calling it forth . . . that human beings become a noble and beautiful object of contemplation . . . .”<sup>76</sup>

Mill's conception of political liberty depends crucially on a sense of freedom in the inward sense. External political liberties permit self-individuation by opening up spaces of social and personal experimentation—“experiments in living” as he called them.<sup>77</sup> But it was the discovery, development, and expression of this inner self, the unfoldment

71. See 2 ARISTOTLE, *THE NICOMACHEAN ETHICS OF ARISTOTLE*, at 34–36 (F.H. Peters trans., London, C. Kegan Paul & Co., 5th ed. 1893); THOMAS AQUINAS, *AQUINAS ETHICUS 151–53* (Joseph Rickaby trans., London, Burns & Oates, Ltd. 1892).

72. See MILL, *ON LIBERTY*, *supra* note 9, at 124 (disparaging those who let the world choose their plan of life for them, while promoting those that choose their plan for themselves).

73. *Id.*

74. Modern liberals, on the other hand, usually hold that freedom and equality are codependent variables. Ronald Dworkin makes them virtually synonymous: “What does it mean for the government to treat its citizens as equals? That is, I think, the same as the question of what it means for the government to treat all its citizens as free . . . .” RONALD DWORIN, *A MATTER OF PRINCIPLE* 191 (1985). The essence of liberal government, he concluded, is to treat all citizens with “equal concern and respect.” *Id.* at 195.

75. See 3 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 887–94 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund 2010) (1835) (discussing the conflict between freedom and equality).

76. MILL, *ON LIBERTY*, *supra* note 9, at 127.

77. See *id.* at 144.

of a rich, many sided, and autonomous personality, that is the true end of liberty.<sup>78</sup> Mill made much the same argument in his essay, *The Subjection of Women*.<sup>79</sup> Only when women are freed from their subordinate social and political position will they be able to develop truly autonomous wills.<sup>80</sup> Social liberty is both instrumental to and constitutive of the development of autonomous human personality, but it was the development of this authentic individuality itself that represents the highest mark of humanity and the surest guarantee of human happiness.

Mill uses neither the terms autonomy nor authenticity, but his conception of human striving for self-individuation shows the unmistakable influences of Aristotle, Kant, and nineteenth century romanticism. From Aristotle, we find the instance that this striving is a driving part of human personality and that happiness is virtually dependent on our achieving our *telos* as self-individuating beings.<sup>81</sup> From Kant's influence, among others, the idea that human beings must distance themselves from their heteronomous influences—desires, customs, habits, etc.<sup>82</sup> But from the romantics, there is the idea that the individual must live a life of sufficiently varied experiences so that he can identify and follow those which resonate with his own innate character.

All of this was Mill the liberal political philosopher, but it is all strangely at odds with how Mill the metaphysician conceived of the self or mind, freedom, and responsibility.

#### IV. MILL THE METAPHYSICIAN

Mill was both a materialist and an heir to the British empiricist tradition which included Hobbes, Locke, and Hume. With other materialists he thought that what we call the “mind” is at best an enigmatic side effect, of physical processes in the brain. He developed his philosophical materialism in such places as his *System of Logic*<sup>83</sup> and in his *Examination of the Philosophy of Sir William Hamilton*.<sup>84</sup> In his *System of Logic*, Mill defended

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78. John Gray, *Mills Conception of Happiness and the Theory of Individuality*, in J.S. MILL ON LIBERTY: IN FOCUS 190, 198–99 (John Gray & G.W. Smith eds., 1991).

79. JOHN STUART MILL, *THE SUBJECTION OF WOMEN* (Forgotten Books 2008) (1869).

80. See *id.* at 122–23 (noting the ways that women were denied liberty).

81. See 1 ARISTOTLE, *THE POLITICS OF ARISTOTLE* 229 (B. Jowett trans., Oxford, Clarendon Press 1885) (discussing the relation of *telos* to happiness).

82. See IMMANUEL KANT, *CRITIQUE OF PRACTICAL REASON AND OTHER WORKS ON THE THEORY OF ETHICS* 294 (Thomas Kingsmill Abbott trans., London, Longmans, Green & Co., 5th ed. 1898).

83. 7 JOHN STUART MILL, *A System of Logic: Ratiocinative and Inductive*, in *THE COLLECTED WORKS OF JOHN STUART MILL* (J.M. Robson ed., 1974) [hereinafter MILL, *System of Logic*].

84. MILL, *Examination of William Hamilton's Philosophy*, *supra* note 37.

a cautious version of materialism according to which all mental states are causally dependent upon brain states:

According to this theory, one state of mind is never really produced by another: all are produced by states of body. When one thought seems to call up another by association, it is not really a thought which recalls [sic] a thought; the association did not exist between the two thoughts, but between the two states of the brain or nerves which preceded the thoughts . . . . On this theory the uniformities of succession among states of mind would be mere derivative uniformities, resulting from the laws of succession of the bodily states which cause them. There would be no original mental laws, no Laws of Mind . . . and mental science would be a mere branch, though the highest and most recondite branch, of the science of physiology.<sup>85</sup>

This hypothesis is more controversial than it may at first appear. If true, it entails that the traditional conception of the self as the “captain of the ship” is an entirely misleading picture of human psychology. The traditional view associated with nonmaterialist accounts of human nature holds that the mind is autonomous and in control of the body—that we decide what we think, that we can call up thoughts, divert a train of consciousness, or put some intention into effect by acting upon it. According to the traditional view, the mental causes the physical. But materialism holds that this has it backwards: mind is at best the epiphenomena of our physical brain states which themselves occur deterministically in accordance with the physical laws of neurophysiology. Thoughts and intentions are a product of brain states. And so, in the deepest sense, are *each of us*. What each of us calls our “self” is simply a bundle of thoughts and perceptions, which flow from our brain states.

This, in turn, winds up having pernicious consequences for traditional ideas of free will. The materialist thesis implies not only that mind is matter, but that the material processes in the brain operate strictly in accordance with the laws of cause and effect. Contemporary philosophers have come to call this “the causal closure of the physical domain.”<sup>86</sup> The idea is that

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85. MILL, *System of Logic*, *supra* note 83, at 850.

86. This means that only physical things (such as brain processes) can have physical effects (such as bodily actions). A thought is not a physical thing; thus, it cannot bring about any real physical actions such as me raising my arm. The causal closure of the physical means not only that thoughts do not cause bodily movements but, as William Hasker puts it, “the mind cannot vary



thoughts and intentions themselves are causally irrelevant in determining human behavior. Instead, one brain state leads to the next, and the corresponding thoughts produced by these brain states follow ineluctably in their train. What we think, feel, and want are projections of the material brain processes—processes which are not under our control and which operate according to immutable laws of nature. In sum, like most other naturalists, Mill was a determinist. He insisted that “the law of causality applies in the . . . strict sense to human actions.”<sup>87</sup> While he drew a verbal distinction between moral and physical causes—the causes of human behavior and the causes of physical phenomena—in the end, the former is simply a special case of the latter. “A volition is a moral effect, which follows the corresponding moral causes as certainly and invariably as physical effects follow their physical causes.”<sup>88</sup> When confronted with the common-sense reply to determinism: that each of us regularly has the subjective experience of being able to make a different choice than we did—e.g., that we could have gone to a concert but chose to go to a movie instead—Mill explained this away as a fluke of our experience.<sup>89</sup>

Mill thought this hypothesis about how the brain operates was “extremely probable, [though it] cannot hitherto be said to be proved.”<sup>90</sup> He did not go quite the full way with modern “eliminative” materialists, who maintained that the advance of neuroscience was likely to completely eliminate mental language; and that some day, perhaps in the not-too-distant

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independently of the body.” See WILLIAM HASKER, *THE EMERGENT SELF* 59 (1999). Or as Jaegwon Kim, a rigorous materialist characterizes the view, “any physical event that has a cause at time *t* has a physical cause at *t*.” JAEGWON KIM, *The Myth of Nonreductive Materialism, in SUPERVENIENCE AND MIND: SELECTED PHILOSOPHICAL ESSAYS* 265, 280 (1991).

87. MILL, *System of Logic*, *supra* note 83, at 836. Mill elaborated:

[T]he doctrine called Philosophical Necessity is simply this: that given the motives which are present to an individual’s mind, and given likewise the character and disposition of the individual, the manner in which he will act might be unerringly inferred: that if we knew the person thoroughly, and knew all the inducements which are acting upon him, we could foretell his conduct with as much certainty as we can predict any physical event.

*Id.* at 836–37.

88. MILL, *Examination of William Hamilton’s Philosophy*, *supra* note 37, at 446–47. He followed Hume in doubting that there is any true *necessity* connecting causes and effects, adding that “whether it *must* do so, I acknowledge myself to be entirely ignorant . . . . All I know is, that it always *does*.” *Id.* at 447.

89. Mill thought that we are misled by our experience in this way. When we imagine the counterfactual “might have been” scenario, it always involves a different set of antecedent conditions—I would have gone to the pub *if* I had not given up beer for Lent or *if* I wasn’t trying to lose a few pounds. Because we can imagine that things were different than they are and might then correctly imagine that we would have acted differently under those other conditions that doesn’t mean that we could or would have acted differently under the conditions as they are. Given that things are what they are, we do what we do, and we do it without fail. See *generally* MILL, *Examination of William Hamilton’s Philosophy*, *supra* note 37, at 437–69.

90. MILL, *System of Logic*, *supra* note 83, at 851.

future, we will look back upon our entire mentalistic vocabulary of thoughts, desires, beliefs, and intentions as we now look back on spiritual explanations of physical events. Instead he concluded that mental states have an important, if secondary, status all their own. “If the word mind means anything,” Mill wrote, “it means that which feels. Whatever opinion we hold respecting the fundamental identity or diversity of matter and mind, in any case the distinction between mental and physical facts, between the internal and the external world, will always remain as a matter of classification . . . .”<sup>91</sup> This gives introspective psychology a kind of provisional, “for the time being” status as a science. Our understanding of human psychology “must continue, for a long time at least, if not forever,” to be pursued at the level of psychology.<sup>92</sup> Mill seems not to have doubted in the least that mental events were caused by and closely correlated with brain states.

All this winds up having disastrous consequences for the traditional idea of the self. If the mind is reducible to matter and if all of our choices are predetermined by physical laws, then what is left of the self, let alone the immortal soul? These metaphysical considerations were underscored by Mill’s empiricism. As an empiricist, Mill followed Locke, Berkeley, and Hume, each of whom had their own difficulties with the self. But it was David Hume, the most ruthlessly skeptical of the empiricists, whom Mill followed most closely. It had been Hume who insisted that our mental lives consist simply of a fleeting “bundle of perceptions,” the stream of consciousness as it unfolds in our moment-to-moment consciousness.<sup>93</sup> Hume dismissed the idea that there was a self, an enduring core of human personality that underlies and ties together these momentary experiences:

For my part, when I enter most intimately into what I call *myself*, I always stumble on some particular perception or other, of heat or cold, light or shade, love or hatred, pain or pleasure. I never catch *myself* at any time without a perception, and never can observe any thing but the perception.<sup>94</sup>

Mill’s view was closest to Hume’s. In his most detailed treatment of the concept of the self, his *An Examination of William Hamilton’s Philosophy*,

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91. *Id.* at 849.

92. *Id.* at 851.

93. See HUME, *supra* note 69, at 265 (noting that the “succession of perceptions . . . constitutes our self or person”).

94. *Id.* at 252.

he observed, as Hume had, that our mental lives consist of “a succession of feelings, a thread of consciousness.”<sup>95</sup> Yet he could not fully agree with Hume’s total reduction of the self. Underlying the bundle of perceptions was, he thought, this uncanny sense of permanence, a continuity that connects these thoughts and feelings together as thoughts and feelings of *one and the same subject*.

[O]ur notion of Mind . . . is the notion of a permanent something, contrasted with the perpetual flux of the sensations and other feelings or mental states which we refer to it; a something which we figure as remaining the same, while the particular feelings through which it reveals its existence, change.<sup>96</sup>

But here Mill came to the final stumbling block of the Humean picture, a vicious circularity: I have one perception at one moment, and another at a different moment—but what makes each perception, one moment to the next, *mine* without presupposing a self to which each belongs and that provides the continuity?

If, therefore, we speak of the Mind as a series of feelings, we are obliged to complete the statement by calling it a series of feelings which is aware of itself as past and future; and we are reduced to the alternative of believing that the Mind, or Ego, is something different from any series of feelings . . . or of accepting the paradox that something which *ex hypothesi* is but a series of feelings, can be aware of itself as a series.<sup>97</sup>

In sum, either each thought and perception must somehow possess a germ of self-awareness—a strange hypothesis to be sure—or the self must be distinct from the bundle of perceptions which it experiences. Mill’s intellectual honesty prevented him from giving full assent to the Humean account of the self. He wound up his discussion by calling this the “final inexplicability” of the self.<sup>98</sup> Mill concluded, “I think, by far the wisest thing we can do, is to accept the inexplicable fact, without any theory of how it takes place; and when we are obliged to speak of it in terms which assume a theory, to use them with a reservation as to their meaning.”<sup>99</sup>

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95. MILL, *Examination of William Hamilton’s Philosophy*, *supra* note 37, at 190.

96. *Id.* at 189.

97. *Id.* at 194.

98. *Id.*

99. *Id.*; see also RYAN, *supra* note 10, at 255–56 (analyzing Mill’s conclusion).

## V. MILL THE MORALIST

If Mill the metaphysician was a materialist and a determinist who was profoundly skeptical of the self, Mill the moralist and political philosopher had to find a way to cabin the ethical consequences of his naturalism. At the extreme, naturalistic accounts of human personality lead in the direction of a Skinnerian conception of psychology and a managerial-interventionist form of government. Recall that the influential behaviorist B.F. Skinner thought that the “self is not essential” and is “simply a device for representing *a functionally unified system of responses*.”<sup>100</sup> Following from this, Skinner insisted that the traditional idea of freedom is a complete illusion, that human beings are ultimately controlled by their environment, and that the problem of government “is not to free men from control but to analyze and change the kinds of control to which they are exposed.”<sup>101</sup> Skinner’s view may sound extreme to most of us today, but he was simply drawing the logical consequences of one form of psychological naturalism—behaviorism. While contemporary liberals rightly reject Skinnerian conceptions of personality and government, the managerial-deterministic idea of government has nevertheless crept insidiously into the sinews of contemporary liberal theory.<sup>102</sup>

Closer to the ground, determinism obviously spells real problems for traditional notions of moral and legal responsibility.<sup>103</sup> For example, it is hard to see how we can hold responsible the criminal offender for acts, which he was determined to commit. Indeed, to punish him for these acts seems to be doubly unfair since it amounts to condemning him a second time for acts which, from the beginning of time, he was destined to endure

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100. B.F. SKINNER, *SCIENCE AND HUMAN BEHAVIOR* 285 (1953).

101. B.F. SKINNER, *BEYOND FREEDOM AND DIGNITY* 43 (1971).

102. A good example is the work of Cass Sunstein, who has argued for years that an important function of government must be to “correct” the distorted preferences of individuals whose decisions do not comport with those deemed rationally acceptable by social engineers. See Cass R. Sunstein, *Legal Interference with Private Preferences*, 53 U. CHI. L. REV. 1129 (1986). Sunstein questions the fundamental liberal assumption of individual autonomy in this article. *Id.* at 1133 n.16; see also RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2004) (an updated and expanded development of these ideas). Traditionalists, it must be noted, certainly do not assume that human decision making is always perfectly rational. Far from it. But they insist that perfecting the individual’s decision making is not a function of government and that, indeed, it leaves too much power in the hands of bureaucrats and social engineers.

103. See BENJAMIN LIBET ET AL., *CONSCIOUS WILL AND RESPONSIBILITY* xi (Walter Sinnott-Armstrong & Lynn Nadel eds., 2011) (discussing determinism as the main challenge to moral and legal responsibility).

committing.<sup>104</sup> Perhaps even more paradoxically, an undiluted determinism appears to make even the prospect of moral reform quixotic. After all, if determinism is an accurate picture of the way the world works, it should be no more possible to get society to change its approach to the offender than it is to get the offender to alter his actions toward society. In this sense a strict determinism is a double-edged sword.

Determinism also has pernicious implications at the other end of the ethical spectrum. It inevitably threatens our ideas of merit and virtue just as surely as it undermines our conception of basic responsibility since it seems no more fair to reward a person for the accomplishments he was fated to achieve than it is to punish him for nefarious acts he was destined to perpetrate. A consistent determinism is the great moral equalizer. It threatens to undercut every claim to merit even as it excuses the most heinous act. It should not surprise us, then, that contemporary liberalism is largely an equality-driven ethic.<sup>105</sup> If everything that each of us has and does is a function of factors well beyond our individual control, then nothing—no punishment and no accolade—is ultimately deserved in the grand cosmic sense. Genuine praise and blame require that we assume individuals are genuinely free and responsible for their actions.<sup>106</sup>

Mill's determinism left him in a potential quandary concerning each of these issues. How are responsibility and punishment, merit, and political liberty reconcilable with a deterministic account of human behavior? It is precisely at this point that Mill's ethical theory—his utilitarianism—shifts the emphasis away from the problem of freedom and onto the question of the efficacy or utility of merit, responsibility, and punishment as means of social engineering.

We can now pose two questions about Mill's philosophy. First, as a determinist, was there any sense in which Mill really thought we are "free" in the inward sense—in the traditionalist's sense of possessing a free will? Second, how did he square his determinism with notions of self-creation, merit, responsibility, and punishment—all notions which seem to presuppose our inward freedom?

To the first question: Are we free in the inward sense—Mill essentially answered "yes and no." To be more precise, he subtly redefined the ideas of "freedom" and "responsibility" to make them compatible with determinism.<sup>107</sup> He adopted and refined a position previously developed by

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104. Of course, this is exactly what some social scientists have contended for some time. See KARL MENNINGER, *THE CRIME OF PUNISHMENT* (1968).

105. See L.T. HOBHOUSE, *LIBERALISM* 20 (2009) (discussing how liberalism can be viewed as a movement towards equality).

106. See TERENCE IRWIN, *THE DEVELOPMENT OF ETHICS: FROM KANT TO RAWLS* 26 (2009) (noting that praise or blame requires a free will).

107. See generally MILL, *Examination of William Hamilton's Philosophy*, *supra* note 37.

Hobbes, Locke, Hume, and Bentham, among others—a position William James derisively called “soft determinism,” but which its twentieth-century defenders have renamed “compatibilism.”<sup>108</sup> Determinism can be made compatible with freedom by insisting that a person still acts “freely” if she acts from her own desires and preferences, *even though these preferences have been causally determined*.<sup>109</sup> For example, a person may love chocolate cake as the result of a complex set of genetic and environmental factors that have shaped his preference. Given this preference and the right external conditions—e.g., that he now finds himself at the pastry counter of his favorite lunch shop with some extra money in his pocket—he will buy the chocolate cake. While his act of buying the cake is determined by all the background conditions that have shaped his preferences, his act is nonetheless “free” on compatibilist accounts because the preference is *his* and because he has done exactly what he wanted to do. Acts are only unfree when they have coerced or compelled, i.e., when internal or external conditions override the will and force the actor to do what he would not otherwise do of his own accord.<sup>110</sup>

Of course, no traditionalist denies that our preferences are shaped by our genetic and environmental conditions.<sup>111</sup> To some extent we are all obviously formed by our condition and circumstances in the world, but we are not *bound* by our conditions to act in one way only. What the traditionalist denies and the determinist affirms is that, given the conditions which pertain to a particular moment in time, the actor *had to do* exactly

108. He wrote that hard determinists:

[D]id not shrink from such words as fatality, bondage of the will, necessitation, and the like. Nowadays we have a *soft* determinism which abhors harsh words, and . . . says that its real name is freedom; for freedom is only necessity understood, and bondage to the highest is identical with true freedom.”

JAMES, *supra* note 6, at 590. Soft determinism is “a quagmire of evasion.” *Id.*

109. John Martin Fischer, *Compatibilism*, Four Views on Free Will 44–84 (2007) (discussing compatibilist conceptions of freedom.)

110. *See id.*

111. Soft determinism is plausible because we understand that our desires and motives obviously do influence our behavior while coerced behavior is clearly not free. It is also attractive from an empiricist standpoint because it avoids the murky problem of freedom of the will by shifting freedom’s locus: freedom becomes an attribute not of the will, but of *physical bodies* or, in its more sophisticated form, *actions*. In its cruder Hobbesian form, men are free in exactly the same way that a falling object is free to reach the ground, or an undammed river is free to run its course: freedom is simply unobstructed physical movement. “[F]rom the use of the word *free will*, no liberty can be inferred of the will,” as Hobbes declared, “but the liberty of the man; which consisteth in this, that he finds no stop in doing what he has the will, desire, or inclination to do.” HOBBS, *supra* note 69, at 159.

what he did. For the traditionalist, there is an “openness” in the fabric of reality that leaves future possibilities contingent. This is what all determinists deny.

This leads us to the second question. Given his determinism (even in the compatibilist form), how could Mill hope to preserve some conception of self-creation, which was so essential to his ideal of political liberty? And how could he salvage the notion of personal responsibility central to our most basic notions of praise, blame, and punishment? As to the problem of self-creation, Mill argued that our actions are determined by our will, our will by our desires, our desires by our motives, and our motives by our character.<sup>112</sup> All this is consistent with his determinism. But then comes the problem: *How is it that we have control over our own character?*

The true doctrine of the Causation of human actions maintains . . . that not only our conduct, but our character, is in part amenable to our will; that we can, by employing the proper means, improve our character; and that if our character is such that while it remains what it is, it necessitates us to do wrong, it will be just to apply motives which will necessitate us to strive for its improvement, and so emancipate ourselves from the other necessity: in other words, we are under a moral obligation to seek the improvement of our moral character.<sup>113</sup>

In sum, we can change our character if we have the desire to do so. And if we do not have the desire to do so, we must martial other (second-order) motives to change our (first-order) desires.

The problem with this, as every freshman philosophy student sees, is that it is all viciously circular. My desires flow ultimately from my character but my character flows from my desires. Put differently, I can only change my character given the right motives and desires, but how can I change my desires and motives if they have been causally determined? Determinists hold that my desires and motives have to be exactly what they are given the antecedent causes—my genetic predispositions, the environment, and other formative conditions—that have brought them about.<sup>114</sup> To suggest that I can change these is to step outside the deterministic web that enshrouds all human actions. If, from a cosmic standpoint, everything that happens had to happen—and had to happen exactly as it has happened—in what sense can we be responsible for our own character?

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112. See MILL, *Examination of William Hamilton's Philosophy*, *supra* note 37, at 465.

113. *Id.* at 466.

114. See *supra* notes 6–7 and accompanying text.

The same problem reappears in Mill's theory of responsibility and punishment.<sup>115</sup> The traditionalist holds that punishment can only legitimately be imposed when the actor is responsible for his act, and that actor can only be responsible for his act if it was free—i.e., if he could have chosen and acted other than he did.<sup>116</sup> The traditionalist's view of responsibility is “backward looking” in the sense that one's responsibility for an outcome requires that we look back to the nature of the act itself—to whether the actor could have done other than what he did.<sup>117</sup> Since Mill denied that there is this kind of freedom in the world, he relocated the emphasis.<sup>118</sup> As a utilitarian, Mill reversed the order of priority between the questions of responsibility and punishment.<sup>119</sup> Rather than “looking backwards” to the freedom of the act, the utilitarian “looks forward” from the question of responsibility to the question of whether punishment serves some utilitarian purpose.<sup>120</sup> On utilitarian accounts, an actor is “held responsible” for his act if punishing him will increase the net utility or happiness of society.<sup>121</sup> As Bentham argued before Mill, the real function of punishment is not retribution but deterrence—detering similar bad acts on the part of the offender (specific deterrence) or among others who might be tempted to commit similar acts (general deterrence).<sup>122</sup> On utilitarian accounts of responsibility and punishment, whether the actor was actually “free” in performing the act appears to lose its significance.

I say that the question of freedom *appears* to lose its significance because Mill was not able to fully escape the question of freedom after all. For how can an act be deterred by threat of punishment unless the offender is in some sense free to alter his behavior in response to the threat of punishment? In sum, even deterrence seems to require some measure of real freedom in the sense that the offender “could have done otherwise.”

It is here that Mill's account grows murky. He argued that punishment is justified “if the expectation of punishment enables [the offender] to help

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115. See *supra* notes 109–12 and accompanying text.

116. See *supra* note 112 and accompanying text; see also J. ANGELO CORLETT, RESPONSIBILITY AND PUNISHMENT 11 (3d ed. 2009).

117. See John L. Hill, *Freedom, Determinism, and the Externalization of Responsibility in the Law: A Philosophical Analysis*, 76 GEO. L.J. 2045, 2057 (1988).

118. See *infra* notes 123–24 and accompanying text.

119. See *infra* notes 123–24 and accompanying text.

120. See JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 33–38 (5th ed. 2009) (explaining the utilitarian justifications of punishment).

121. See *id.* at 34.

122. See *id.* at 33–36.



it . . . . If . . . the impression is strong in his mind that a heavy punishment will follow, he can, and in most cases, does, help it.”<sup>123</sup> In other words, where the traditionalist assumes that threat of punishment operates by giving the offender an additional reason not to commit a crime, Mill describes the threat of punishment not as a reason, but as a *cause*—another determinant of human behavior:

Punishment proceeds on the assumption that the will is governed by motives. If punishment had no power of acting on the will, it would be illegitimate, however natural might be the inclination to inflict it. Just so far as the will is supposed free, that is, capable of acting *against* motives, punishment is disappointed of its object, and deprived of its justification.<sup>124</sup>

The threat of punishment, on Mill’s account, is one determinant of the actor’s behavior: without the threat, he would commit the crime, but in virtue of the threat, he is deterred. But isn’t this what the traditionalist calls “making a choice?” For the traditionalist, who believes in a conception of free will rooted in a nonnaturalistic idea of the self, the threat of punishment operates by remedying the defect of better motives—i.e., by offering the bad man an external inducement to behave himself. To insist that this must be a cause is to beg the question that lies at the center of the whole debate about whether materialism is true.

## VI. CONCLUSION

Mill’s conception of the individual self and the central human importance of freedom cannot be harmonized with his metaphysical materialism. He was a political libertarian and a metaphysical determinist. Yet, what sense can a materialist make of the “inward forces” of the authentic self? What is this self, and how are we to distinguish one’s “authentic” desires from those that are merely the product of social conditioning? Moreover, how can a strict determinist possibly exalt the values of freedom and the self-creating propensities of choice? What sense can it make, after all, to protect and enshrine as the highest object of our social life human choices that have been fated to occur from the beginning of time?

The tensions in Mill’s thoughts are the tensions of modern liberalism. It is no coincidence that modern liberals vacillate between deterministic accounts of human psychology—behaviorist, social constructionist, or

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123. See MILL, *Examination of William Hamilton’s Philosophy*, *supra* note 37, at 458.

124. *Id.*

Freudian—and accounts which trade heavily on the romantic and Millian notions of authenticity, self-realization, and self-individuation. These tensions are fundamentally metaphysical in nature. And they are ultimately connected with whether we accept an essentially naturalistic worldview or one that leaves space for freedom, responsibility, and genuine self-individuation. The latter possibility, I have suggested, is only approachable from the perspective of a nonnaturalistic metaphysic—a metaphysic that leads us, ultimately, to the threshold of theism.

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