Immanuel Kant, John Stuart Mill, and John Rawls all figure in these pages. But their order of appearance is not chronological. This book is not a history of ideas, but a journey in moral and political reflection. Its goal is not to show who influenced whom in the history of political thought, but to invite readers to subject their own views about justice to critical examination—to figure out what they think, and why.

2. THE GREATEST HAPPINESS PRINCIPLE / UTILITARIANISM

In the summer of 1884, four English sailors were stranded at sea in a small lifeboat in the South Atlantic, over a thousand miles from land. Their ship, the *Mignonette*, had gone down in a storm, and they had escaped to the lifeboat, with only two cans of preserved turnips and no fresh water. Thomas Dudley was the captain, Edwin Stephens was the first mate, and Edmund Brooks was a sailor—"all men of excellent character," according to newspaper accounts.[1]

The fourth member of the crew was the cabin boy, Richard Parker, age seventeen. He was an orphan, on his first long voyage at sea. He had signed up against the advice of his friends, "in the hopefulness of youthful ambition," thinking the journey would make a man of him. Sadly, it was not to be.

From the lifeboat, the four stranded sailors watched the horizon, hoping a ship might pass and rescue them. For the first three days, they ate small rations of turnips. On the fourth day, they caught a turtle. They subsisted on the turtle and the remaining turnips for the next few days. And then for eight days, they ate nothing.

By now Parker, the cabin boy, was lying in the corner of the lifeboat. He had drunk seawater, against the advice of the others, and become ill. He appeared to be dying. On the nineteenth day of their ordeal, Dudley, the captain, suggested drawing lots to determine who

would die so that the others might live. But Brooks refused, and no lots were drawn.

The next day came, and still no ship was in sight. Dudley told Brooks to avert his gaze and motioned to Stephens that Parker had to be killed. Dudley offered a prayer, told the boy his time had come, and then killed him with a penknife, stabbing him in the jugular vein. Brooks emerged from his conscientious objection to share in the gruesome bounty. For four days, the three men fed on the body and blood of the cabin boy.

And then help came. Dudley describes their rescue in his diary, with staggering euphemism: "On the 24th day, as we were having our breakfast," a ship appeared at last. The three survivors were picked up. Upon their return to England, they were arrested and tried. Brooks turned state's witness. Dudley and Stephens went to trial. They freely confessed that they had killed and eaten Parker. They claimed they had done so out of necessity.

Suppose you were the judge. How would you rule? To simplify things, put aside the question of law and assume that you were asked to decide whether killing the cabin boy was morally permissible.

The strongest argument for the defense is that, given the dire circumstances, it was necessary to kill one person in order to save three. Had no one been killed and eaten, all four would likely have died. Parker, weakened and ill, was the logical candidate, since he would soon have died anyway. And unlike Dudley and Stephens, he had no dependents. His death deprived no one of support and left no grieving wife or children.

This argument is open to at least two objections: First, it can be asked whether the benefits of killing the cabin boy, taken as a whole, really did outweigh the costs. Even counting the number of lives saved and the happiness of the survivors and their families, allowing such a killing might have bad consequences for society as a whole—weakening the norm against murder, for example, or increasing people's tendency to take the law into their own hands, or making it more difficult for captains to recruit cabin boys.

Second, even if, all things considered, the benefits do outweigh the costs, don't we have a nagging sense that killing and eating a defenseless cabin boy is wrong for reasons that go beyond the calculation of social costs and benefits? Isn't it wrong to use a human being in this way—exploiting his vulnerability, taking his life without his consent—even if doing so benefits others?

To anyone appalled by the actions of Dudley and Stephens, the first objection will seem a tepid complaint. It accepts the utilitarian assumption that morality consists in weighing costs and benefits, and simply wants a fuller reckoning of the social consequences.

If the killing of the cabin boy is worthy of moral outrage, the second objection is more to the point. It rejects the idea that the right thing to do is simply a matter of calculating consequences—costs and benefits. It suggests that morality means something more—something to do with the proper way for human beings to treat one another.

These two ways of thinking about the lifeboat case illustrate two rival approaches to justice. The first approach says the morality of an action depends solely on the consequences it brings about; the right thing to do is whatever will produce the best state of affairs, all things considered. The second approach says that consequences are not all we should care about, morally speaking; certain duties and rights should command our respect, for reasons independent of the social consequences.

In order to resolve the lifeboat case, as well as many less extreme dilemmas we commonly encounter, we need to explore some big questions of moral and political philosophy: Is morality a matter of counting lives and weighing costs and benefits, or are certain moral duties and human rights so fundamental that they rise above such calculations? And if certain rights are fundamental in this way—be they natural, or sacred, or inalienable, or categorical—how can we identify them? And what makes them fundamental?

Jeremy Bentham's Utilitarianism

Jeremy Bentham (1748–1832) left no doubt where he stood on this question. He heaped scorn on the idea of natural rights, calling them "nonsense upon stilts." The philosophy he launched has had an influential career. In fact, it exerts a powerful hold on the thinking of policy-makers, economists, business executives, and ordinary citizens to this day.

Bentham, an English moral philosopher and legal reformer, founded the doctrine of utilitarianism. Its main idea is simply stated and intuitively appealing: The highest principle of morality is to maximize happiness, the overall balance of pleasure over pain. According to Bentham, the right thing to do is whatever will maximize utility. By "utility," he means whatever produces pleasure or happiness, and whatever prevents pain or suffering.

Bentham arrives at his principle by the following line of reasoning: We are all governed by the feelings of pain and pleasure. They are our "sovereign masters." They govern us in everything we do and also determine what we ought to do. The standard of right and wrong is "fastened to their throne."[2]

We all like pleasure and dislike pain. The utilitarian philosophy recognizes this fact, and makes it the basis of moral and political life. Maximizing utility is a principle not only for individuals but also for legislators. In deciding what laws or policies to enact, a government should do whatever will maximize the happiness of the community as a whole. What, after all, is a community? According to Bentham, it is "a fictitious body," composed of the sum of the individuals who comprise it. Citizens and legislators should therefore ask themselves this question: If we add up all of the benefits of this policy, and subtract all the costs, will it produce more happiness than the alternative?

Bentham's argument for the principle that we should maximize utility takes the form of a bold assertion: There are no possible grounds for rejecting it. Every moral argument, he claims, must implicitly draw on the idea of maximizing happiness. People may say they believe in certain absolute, categorical duties or rights. But they would have no basis for defending these duties or rights unless they believed that respecting them would maximize human happiness, at least in the long run.

"When a man attempts to combat the principle of utility," Bentham writes, "it is with reasons drawn, without his being aware of it, from that very principle itself." All moral quarrels, properly understood, are disagreements about how to apply the utilitarian principle of maximizing pleasure and minimizing pain, not about the principle itself. "Is it possible for a man to move the earth?" Bentham asks. "Yes; but he must first find out another earth to stand upon." And the only earth, the only premise, the only starting point for moral argument, according to Bentham, is the principle of utility.[3]

Bentham thought his utility principle offered a science of morality that could serve as the basis of political reform. He proposed a number of projects designed to make penal policy more efficient and humane. One was the Panopticon, a prison with a central inspection tower that would enable the supervisor to observe the inmates without their seeing him. He suggested that the Panopticon be run by a private contractor (ideally himself), who would manage the prison in exchange for the profits to be made from the labor of the convicts, who would work sixteen hours per day. Although Bentham's plan was ultimately rejected, it was arguably ahead of its time. Recent years have seen a revival, in the United States and Britain, of the idea of outsourcing prisons to private companies.

Rounding up beggars

Another of Bentham's schemes was a plan to improve "pauper management" by establishing a self-financing workhouse for the poor. The plan, which sought to reduce the presence of beggars on the streets, offers a vivid illustration of the utilitarian logic. Bentham observed, first of all, that encountering beggars on the streets reduces the happiness of passersby, in two ways. For tenderhearted souls, the sight of a beggar pro-

duces the pain of sympathy; for hardhearted folk, it generates the pain of disgust. Either way, encountering beggars reduces the utility of the general public. So Bentham proposed removing beggars from the streets and confining them in a workhouse.[4]

Some may think this unfair to the beggars. But Bentham does not neglect their utility. He acknowledges that some beggars would be happier begging than working in a poorhouse. But he notes that for every happy and prosperous beggar, there are many miserable ones. He concludes that the sum of the pains suffered by the public is greater than whatever unhappiness is felt by beggars hauled off to the workhouse.[5]

Some might worry that building and running the workhouse would impose an expense on taxpayers, reducing their happiness and thus their utility. But Bentham proposed a way to make his pauper management plan entirely self-financing. Any citizen who encountered a beggar would be empowered to apprehend him and take him to the nearest workhouse. Once confined there, each beggar would have to work to pay off the cost of his or her maintenance, which would be tallied in a "self-liberation account." The account would include food, clothing, bedding, medical care, and a life insurance policy, in case the beggar died before the account was paid up. To give citizens an incentive to take the trouble to apprehend beggars and deliver them to the workhouse, Bentham proposed a reward of twenty shillings per apprehension—to be added, of course, to the beggar's tab.[6]

Bentham also applied utilitarian logic to rooming assignments within the facility, to minimize the discomfort inmates suffered from their neighbors: "Next to every class, from which any inconvenience is to be apprehended, station a class unsusceptible of that inconvenience." So, for example, "next to raving lunatics, or persons of profligate conversation, place the deaf and dumb . . . Next to prostitutes and loose women, place the aged women." As for "the shockingly deformed," Bentham proposed housing them alongside inmates who were blind.[7]

Harsh though his proposal may seem, Bentham's aim was not punitive. It was meant simply to promote the general welfare by solving a problem that diminished social utility. His scheme for pauper management was never adopted. But the utilitarian spirit that informed it is alive and well today. Before considering some present-day instances of utilitarian thinking, it is worth asking whether Bentham's philosophy is objectionable, and if so, on what grounds.

Objection 1: Individual Rights

The most glaring weakness of utilitarianism, many argue, is that it fails to respect individual rights. By caring only about the sum of satisfactions, it can run roughshod over individual people. For the utilitarian, individuals matter, but only in the sense that each person's preferences should be counted along with everyone else's. But this means that the utilitarian logic, if consistently applied, could sanction ways of treating persons that violate what we think of as fundamental norms of decency and respect, as the following cases illustrate:

Throwing Christians to lions

In ancient Rome, they threw Christians to the lions in the Coliseum for the amusement of the crowd. Imagine how the utilitarian calculus would go: Yes, the Christian suffers excruciating pain as the lion mauls and devours him. But think of the collective ecstasy of the cheering spectators packing the Coliseum. If enough Romans derive enough pleasure from the violent spectacle, are there any grounds on which a utilitarian can condemn it?

The utilitarian may worry that such games will coarsen habits and breed more violence in the streets of Rome; or lead to fear and trembling among prospective victims that they, too, might one day be tossed to the lions. If these effects are bad enough, they could conceivably outweigh the pleasure the games provide, and give the utilitarian a

reason to ban them. But if these calculations are the only reasons to desist from subjecting Christians to violent death for the sake of entertainment, isn't something of moral importance missing?

Is torture ever justified?

A similar question arises in contemporary debates about whether torture is ever justified in the interrogation of suspected terrorists. Consider the ticking time bomb scenario: Imagine that you are the head of the local CIA branch. You capture a terrorist suspect who you believe has information about a nuclear device set to go off in Manhattan later the same day. In fact, you have reason to suspect that he planted the bomb himself. As the clock ticks down, he refuses to admit to being a terrorist or to divulge the bomb's location. Would it be right to torture him until he tells you where the bomb is and how to disarm it?

The argument for doing so begins with a utilitarian calculation. Torture inflicts pain on the suspect, greatly reducing his happiness or utility. But thousands of innocent lives will be lost if the bomb explodes. So you might argue, on utilitarian grounds, that it's morally justified to inflict intense pain on one person if doing so will prevent death and suffering on a massive scale. Former Vice President Richard Cheney's argument that the use of harsh interrogation techniques against suspected Al-Qaeda terrorists helped avert another terrorist attack on the United States rests on this utilitarian logic.

This is not to say that utilitarians necessarily favor torture. Some utilitarians oppose torture on practical grounds. They argue that it seldom works, since information extracted under duress is often unreliable. So pain is inflicted, but the community is not made any safer: there is no increase in the collective utility. Or they worry that if our country engages in torture, our soldiers will face harsher treatment if taken prisoner. This result could actually reduce the overall utility associated with our use of torture, all things considered.

These practical considerations may or may not be true. As reasons to oppose torture, however, they are entirely compatible with utilitarian thinking. They do not assert that torturing a human being is intrinsically wrong, only that practicing torture will have bad effects that, taken as a whole, will do more harm than good.

Some people reject torture on principle. They believe that it violates human rights and fails to respect the intrinsic dignity of human beings. Their case against torture does not depend on utilitarian considerations. They argue that human rights and human dignity have a moral basis that lies beyond utility. If they are right, then Bentham's philosophy is wrong.

On the face of it, the ticking time bomb scenario seems to support Bentham's side of the argument. Numbers do seem to make a moral difference. It is one thing to accept the possible death of three men in a lifeboat to avoid killing one innocent cabin boy in cold blood. But what if thousands of innocent lives are at stake, as in the ticking time bomb scenario? What if hundreds of thousands of lives were at risk? The utilitarian would argue that, at a certain point, even the most ardent advocate of human rights would have a hard time insisting it is morally preferable to let vast numbers of innocent people die than to torture a single terrorist suspect who may know where the bomb is hidden.

As a test of utilitarian moral reasoning, however, the ticking time bomb case is misleading. It purports to prove that numbers count, so that if enough lives are at stake, we should be willing to override our scruples about dignity and rights. And if that is true, then morality is about calculating costs and benefits after all.

But the torture scenario does not show that the prospect of saving many lives justifies inflicting severe pain on one innocent person. Recall that the person being tortured to save all those lives is a suspected terrorist, in fact the person we believe may have planted the bomb. The moral force of the case for torturing him depends heavily on the assumption that he is in some way responsible for creating the danger we

now seek to avert. Or if he is not responsible for this bomb, we assume he has committed other terrible acts that make him deserving of harsh treatment. The moral intuitions at work in the ticking time bomb case are not only about costs and benefits, but also about the non-utilitarian idea that terrorists are bad people who deserve to be punished.

We can see this more clearly if we alter the scenario to remove any element of presumed guilt. Suppose the only way to induce the terrorist suspect to talk is to torture his young daughter (who has no knowledge of her father's nefarious activities). Would it be morally permissible to do so? I suspect that even a hardened utilitarian would flinch at the notion. But this version of the torture scenario offers a truer test of the utilitarian principle. It sets aside the intuition that the terrorist deserves to be punished anyhow (regardless of the valuable information we hope to extract), and forces us to assess the utilitarian calculus on its own.

The city of happiness

The second version of the torture case (the one involving the innocent daughter) brings to mind a short story by Ursula K. Le Guin. The story ("The Ones Who Walked Away from Omelas") tells of a city called Omelas—a city of happiness and civic celebration, a place without kings or slaves, without advertisements or a stock exchange, a place without the atomic bomb. Lest we find this place too unrealistic to imagine, the author tells us one more thing about it: "In a basement under one of the beautiful public buildings of Omelas, or perhaps in the cellar of one of its spacious private homes, there is a room. It has one locked door, and no window." And in this room sits a child. The child is feeble-minded, malnourished, and neglected. It lives out its days in wretched misery.

> They all know it is there, all the people of Omelas . . . They all know that it has to be there . . . [T]hey all understand that their happiness, the beauty of their city, the tenderness of their friendships, the health of their children, . . . even the abundance of their harvest and the kindly weathers of their skies, depend wholly on this child's abominable misery. . . . If the child were brought up into the sunlight out of the vile place, if it were cleaned and fed and comforted, that would be a good thing, indeed; but if it were done, in that day and hour all the prosperity and beauty and delight of Omelas would wither and be destroyed. Those are the terms.[8]

Are those terms morally acceptable? The first objection to Bentham's utilitarianism, the one that appeals to fundamental human rights, says they are not—even if they lead to a city of happiness. It would be wrong to violate the rights of the innocent child, even for the sake of the happiness of the multitude.

Objection 2: A Common Currency of Value

Utilitarianism claims to offer a science of morality, based on measuring, aggregating, and calculating happiness. It weighs preferences without judging them. Everyone's preferences count equally. This nonjudgmental spirit is the source of much of its appeal. And its promise to make moral choice a science informs much contemporary economic reasoning. But in order to aggregate preferences, it is necessary to measure them on a single scale. Bentham's idea of utility offers one such common currency.

But is it possible to translate all moral goods into a single currency of value without losing something in the translation? The second objection to utilitarianism doubts that it is. According to this objection, all values can't be captured by a common currency of value.

To explore this objection, consider the way utilitarian logic is applied in cost-benefit analysis, a form of decision-making that is widely used by governments and corporations. Cost-benefit analysis tries to bring rationality and rigor to complex social choices by translating all costs and benefits into monetary terms—and then comparing them.

The benefits of lung cancer

Philip Morris, the tobacco company, does big business in the Czech Republic, where cigarette smoking remains popular and socially acceptable. Worried about the rising health care costs of smoking, the Czech government recently considered raising taxes on cigarettes. In hopes of fending off the tax increase, Philip Morris commissioned a cost-benefit analysis of the effects of smoking on the Czech national budget. The study found that the government actually gains more money than it loses from smoking. The reason: although smokers impose higher medical costs on the budget while they are alive, they die early, and so save the government considerable sums in health care, pensions, and housing for the elderly. According to the study, once the "positive effects" of smoking are taken into account—including cigarette tax revenues and savings due to the premature deaths of smokers—the net gain to the treasury is $147 million per year.[9]

The cost-benefit analysis proved to be a public relations disaster for Philip Morris. "Tobacco companies used to deny that cigarettes killed people," one commentator wrote. "Now they brag about it."[10] An anti-smoking group ran newspaper ads showing the foot of a cadaver in a morgue with a $1,227 price tag attached to the toe, representing the savings to the Czech government of each smoking-related death. Faced with public outrage and ridicule, the chief executive of Philip Morris apologized, saying the study showed "a complete and unacceptable disregard of basic human values."[11]

Some would say the Philip Morris smoking study illustrates the moral folly of cost-benefit analysis and the utilitarian way of thinking that underlies it. Viewing lung cancer deaths as a boon for the bottom line does display a callous disregard for human life. Any morally defensible policy toward smoking would have to consider not only the fiscal effects but also the consequences for public health and human well-being.

But a utilitarian would not dispute the relevance of these broader consequences—the pain and suffering, the grieving families, the loss of life. Bentham invented the concept of utility precisely to capture, on a single scale, the disparate range of things we care about, including the value of human life. For a Benthamite, the smoking study does not embarrass utilitarian principles but simply misapplies them. A fuller cost-benefit analysis would add to the moral calculus an amount representing the cost of dying early for the smoker and his family, and would weigh these against the savings the smoker's early death would provide the government.

This takes us back to the question of whether all values can be translated into monetary terms. Some versions of cost-benefit analysis try to do so, even to the point of placing a dollar value on human life. Consider two uses of cost-benefit analysis that generated moral outrage, not because they didn't calculate the value of human life, but because they did.

Exploding gas tanks

During the 1970s, the Ford Pinto was one of the best-selling subcompact cars in the United States. Unfortunately, its fuel tank was prone to explode when another car collided with it from the rear. More than five hundred people died when their Pintos burst into flames, and many more suffered severe burn injuries. When one of the burn victims sued Ford Motor Company for the faulty design, it emerged that Ford engineers had been aware of the danger posed by the gas tank. But company executives had conducted a cost-benefit analysis and determined that the benefits of fixing it (in lives saved and injuries prevented) were not worth the eleven dollars per car it would have cost to equip each car with a device that would have made the gas tank safer.

To calculate the benefits to be gained by a safer gas tank, Ford estimated that 180 deaths and 180 burn injuries would result if no changes were made. It then placed a monetary value on each life lost and injury suffered—$200,000 per life, and $67,000 per injury. It added to these amounts the number and value of the Pintos likely to go up in flames,

and calculated that the overall benefit of the safety improvement would be $49.5 million. But the cost of adding an $11 device to 12.5 million vehicles would be $137.5 million. So the company concluded that the cost of fixing the fuel tank was not worth the benefits of a safer car.[12]

Upon learning of the study, the jury was outraged. It awarded the plaintiff $2.5 million in compensatory damages and $125 million in punitive damages (an amount later reduced to $3.5 million).[13] Perhaps the jurors considered it wrong for a corporation to assign a monetary value to human life, or perhaps they thought that $200,000 was egregiously low. Ford had not come up with that figure on its own, but had taken it from a U.S. government agency. In the early 1970s, the National Highway Traffic Safety Administration had calculated the cost of a traffic fatality. Counting future productivity losses, medical costs, funeral costs, and the victim's pain and suffering, the agency arrived at $200,000 per fatality.

If the jury's objection was to the price tag, not the principle, a utilitarian could agree. Few people would choose to die in a car crash for $200,000. Most people like living. To measure the full effect on utility of a traffic fatality, one would have to include the victim's loss of future happiness, not only lost earnings and funeral costs. What, then, would be a truer estimate of the dollar value of a human life?

A discount for seniors

When the U.S. Environmental Protection Agency tried to answer this question, it, too, prompted moral outrage, but of a different kind. In 2003, the EPA presented a cost-benefit analysis of new air pollution standards. The agency assigned a more generous value to human life than did Ford, but with an age-adjusted twist: $3.7 million per life saved due to cleaner air, except for those older than seventy, whose lives were valued at $2.3 million. Lying behind the different valuations was a utilitarian notion: saving an older person's life produces less utility than saving a younger person's life. (The young person has longer to live, and therefore more happiness still to enjoy.) Advocates for the elderly did not see it that way. They protested the "senior citizen discount," and argued that government should not assign greater value to the lives of the young than of the old. Stung by the protest, the EPA quickly renounced the discount and withdrew the report.[14]

Critics of utilitarianism point to such episodes as evidence that cost-benefit analysis is misguided, and that placing a monetary value on human life is morally obtuse. Defenders of cost-benefit analysis disagree. They argue that many social choices implicitly trade off some number of lives for other goods and conveniences. Human life has its price, they insist, whether we admit it or not.

For example, the use of the automobile exacts a predictable toll in human lives—more than forty thousands deaths annually in the United States. But that does not lead us as a society to give up cars. In fact, it does not even lead us to lower the speed limit. During an oil crisis in 1974, the U.S. Congress mandated a national speed limit of fifty-five miles per hour. Although the goal was to save energy, an effect of the lower speed limit was fewer traffic fatalities.

In the 1980s, Congress removed the restriction, and most states raised the speed limit to sixty-five miles per hour. Drivers saved time, but traffic deaths increased. At the time, no one did a cost-benefit analysis to determine whether the benefits of faster driving were worth the cost in lives. But some years later, two economists did the math. They defined one benefit of a higher speed limit as a quicker commute to and from work, calculated the economic benefit of the time saved (valued at an average wage of $20 an hour) and divided the savings by the number of additional deaths. They discovered that, for the convenience of driving faster, Americans were effectively valuing human life at the rate of $1.54 million per life. That was the economic gain, per fatality, of driving ten miles an hour faster.[15]

Advocates of cost-benefit analysis point out that by driving sixty-

five miles an hour rather than fifty-five, we implicitly value human life at $1.54 million—much less than the $6 million per life figure typically used by U.S. government agencies in setting pollution standards and health-and-safety regulations. So why not be explicit about it? If trading off certain levels of safety for certain benefits and conveniences is unavoidable, they argue, we should do so with our eyes open, and should compare the costs and benefits as systematically as possible—even if that means putting a price tag on human life.

Utilitarians see our tendency to recoil at placing a monetary value on human life as an impulse we should overcome, a taboo that obstructs clear thinking and rational social choice. For critics of utilitarianism, however, our hesitation points to something of moral importance—the idea that it is not possible to measure and compare all values and goods on a single scale.

Pain for pay

It is not obvious how this dispute can be resolved. But some empirically minded social scientists have tried. In the 1930s, Edward Thorndike, a social psychologist, tried to prove what utilitarianism assumes: namely, that it is possible to translate our seemingly disparate desires and aversions into a common currency of pleasure and pain. He conducted a survey of young recipients of government relief, asking them how much they would have to be paid to suffer various experiences. For example: "How much would you have to be paid to have one upper front tooth pulled out?" Or "to have the little toe of one foot cut off?" Or "to eat a live earthworm six inches long?" Or "to choke a stray cat to death with your bare hands?" Or "to live all the rest of your life on a farm in Kansas, ten miles from any town?"[16]

Which of these items do you think commanded the highest price, and which the least? Here is the price list his survey produced (in 1937 dollars):

Tooth	$4,500
Toe	$57,000
Worm	$100,000
Cat	$10,000
Kansas	$300,000

Thorndike thought his findings lent support to the idea that all goods can be measured and compared on a single scale. "Any want or satisfaction which exists at all, exists in some amount and is therefore measurable," he wrote. "The life of a dog or a cat or a chicken . . . consists largely of and is determined by appetites, cravings, desires and their gratification. . . . So also does the life of man, though the appetites and desires are more numerous, subtle, and complicated."[17]

But the preposterous character of Thorndike's price list suggests the absurdity of such comparisons. Can we really conclude that the respondents considered the prospect of life on a farm in Kansas to be three times as disagreeable as eating an earthworm, or do these experiences differ in ways that don't admit meaningful comparison? Thorndike conceded that up to one-third of the respondents stated that no sum would induce them to suffer some of these experiences, suggesting that they considered them "immeasurably repugnant."[18]

St. Anne's girls

There may be no knock-down argument for or against the claim that all moral goods can be translated without loss into a single measure of value. But here is a further case that calls the claim into question:

In the 1970s, when I was a graduate student at Oxford, there were separate colleges for men and women. The women's colleges had parietal rules against male guests staying overnight in women's rooms. These rules were rarely enforced and easily violated, or so I was told. Most college officials no longer saw it as their role to enforce tradi-

tional notions of sexual morality. Pressure grew to relax these rules, which became a subject of debate at St. Anne's College, one of the all-women colleges.

Some older women on the faculty were traditionalists. They opposed allowing male guests, on conventional moral grounds; it was immoral, they thought, for unmarried young women to spend the night with men. But times had changed, and the traditionalists were embarrassed to give the real grounds for their objection. So they translated their arguments into utilitarian terms. "If men stay overnight," they argued, "the costs to the college will increase." How, you might wonder? "Well, they'll want to take baths, and that will use more hot water." Furthermore, they argued, "we will have to replace the mattresses more often."

The reformers met the traditionalists' arguments by adopting the following compromise: Each woman could have a maximum of three overnight guests each week, provided each guest paid fifty pence per night to defray the costs to the college. The next day, the headline in the *Guardian* read, "St. Anne's Girls, Fifty Pence a Night." The language of virtue had not translated very well into the language of utility. Soon thereafter, the parietal rules were waived altogether, and so was the fee.

John Stuart Mill

We have considered two objections to Bentham's "greatest happiness" principle—that it does not give adequate weight to human dignity and individual rights, and that it wrongly reduces everything of moral importance to a single scale of pleasure and pain. How compelling are these objections?

John Stuart Mill (1806–1873) believed they could be answered. A generation after Bentham, he tried to save utilitarianism by recasting it as a more humane, less calculating doctrine. Mill was the son of James Mill, a friend and disciple of Bentham. James Mill home-schooled his

son, and the young Mill became a child prodigy. He studied Greek at the age of three and Latin at eight. At age eleven, he wrote a history of Roman law. When he was twenty, he suffered a nervous breakdown, which left him depressed for several years. Shortly thereafter he met Harriet Taylor. She was a married woman at the time, with two children, but she and Mill became close friends. When her husband died twenty years later, she and Mill married. Mill credited Taylor as his greatest intellectual companion and collaborator as he set about revising Bentham's doctrine.

The case for liberty

Mill's writings can be read as a strenuous attempt to reconcile individual rights with the utilitarian philosophy he inherited from his father and adopted from Bentham. His book *On Liberty* (1859) is the classic defense of individual freedom in the English-speaking world. Its central principle is that people should be free to do whatever they want, provided they do no harm to others. Government may not interfere with individual liberty in order to protect a person from himself, or to impose the majority's beliefs about how best to live. The only actions for which a person is accountable to society, Mill argues, are those that affect others. As long as I am not harming anyone else, my "independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."[19]

This unyielding account of individual rights would seem to require something stronger than utility as its justification. For consider: Suppose a large majority despises a small religion and wants it banned. Isn't it possible, even likely, that banning the religion will produce the greatest happiness for the greatest number? True, the banned minority would suffer unhappiness and frustration. But if the majority is big enough and passionate enough in its hatred of the heretics, its collective happiness could well outweigh their suffering. If that scenario is possible, then it appears that utility is a shaky, unreliable foundation for

religious liberty. Mill's principle of liberty would seem to need a sturdier moral basis than Bentham's principle of utility.

Mill disagrees. He insists that the case for individual liberty rests entirely on utilitarian considerations: "It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being."[20]

Mill thinks we should maximize utility, not case by case, but in the long run. And over time, he argues, respecting individual liberty will lead to the greatest human happiness. Allowing the majority to silence dissenters or censor free-thinkers might maximize utility today, but it will make society worse off—less happy—in the long run.

Why should we assume that upholding individual liberty and the right to dissent will promote the welfare of society in the long run? Mill offers several reasons: The dissenting view may turn out to be true, or partially true, and so offer a corrective to prevailing opinion. And even if it is not, subjecting prevailing opinion to a vigorous contest of ideas will prevent it from hardening into dogma and prejudice. Finally, a society that forces its members to embrace custom and convention is likely to fall into a stultifying conformity, depriving itself of the energy and vitality that prompt social improvement.

Mill's speculations about the salutary social effects of liberty are plausible enough. But they do not provide a convincing moral basis for individual rights, for at least two reasons: First, respecting individual rights for the sake of promoting social progress leaves rights hostage to contingency. Suppose we encounter a society that achieves a kind of long-term happiness by despotic means. Wouldn't the utilitarian have to conclude that, in such a society, individual rights are not morally required? Second, basing rights on utilitarian considerations misses the sense in which violating someone's rights inflicts a wrong on the individual, whatever its effect on the general welfare. If the majority persecutes adherents of an unpopular faith, doesn't it do an injustice *to them*, as individuals, regardless of any bad effects such intolerance may produce for society as a whole over time?

Mill has an answer to these challenges, but it carries him beyond the confines of utilitarian morality. Forcing a person to live according to custom or convention or prevailing opinion is wrong, Mill explains, because it prevents him from achieving the highest end of human life—the full and free development of his human faculties. Conformity, in Mill's account, is the enemy of the best way to live.

> 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 . . . He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties.[21]

Mill concedes that following convention may lead a person to a satisfying life path and keep him out of harm's way. "But what will be his comparative worth as a human being?" he asks. "It really is of importance, not only what men do, but also what manner of men they are that do it."[22]

So actions and consequences are not all that matter after all. Character also counts. For Mill, individuality matters less for the pleasure it brings than for the character it reflects. "One whose desires and impulses are not his own, has no character, no more than a steam engine has character."[23]

Mill's robust celebration of individuality is the most distinctive contribution of *On Liberty*. But it is also a kind of heresy. Since it appeals to moral ideals beyond utility—ideals of character and human

flourishing—it is not really an elaboration of Bentham's principle but a renunciation of it, despite Mill's claim to the contrary.

Higher pleasures

Mill's response to the second objection to utilitarianism—that it reduces all values to a single scale—also turns out to lean on moral ideals independent of utility. In *Utilitarianism* (1861), a long essay Mill wrote shortly after *On Liberty*, he tries to show that utilitarians can distinguish higher pleasures from lower ones.

For Bentham, pleasure is pleasure and pain is pain. The only basis for judging one experience better or worse than another is the intensity and duration of the pleasure or pain it produces. The so-called higher pleasures or nobler virtues are simply those that produce stronger, longer pleasure. Bentham recognizes no qualitative distinction among pleasures. "The quantity of pleasure being equal," he writes, "push-pin is as good as poetry."[24] (Push-pin was a children's game.)

Part of the appeal of Bentham's utilitarianism is this nonjudgmental spirit. It takes people's preferences as they are, without passing judgment on their moral worth. All preferences count equally. Bentham thinks it is presumptuous to judge some pleasures as inherently better than others. Some people like Mozart, others Madonna. Some like ballet, others like bowling. Some read Plato, others *Penthouse*. Who is to say, Bentham might ask, which pleasures are higher, or worthier, or nobler than others?

The refusal to distinguish higher from lower pleasures is connected to Bentham's belief that all values can be measured and compared on a single scale. If experiences differ only in the quantity of pleasure or pain they produce, not qualitatively, then it makes sense to weigh them on a single scale. But some object to utilitarianism on precisely this point: they believe that some pleasures really are "higher" than others. If some pleasures are worthy and others base, they say, why should society weigh all preferences equally, much less regard the sum of such preferences as the greatest good?

Think again about the Romans throwing Christians to the lions in the Coliseum. One objection to the bloody spectacle is that it violates the rights of the victims. But a further objection is that it caters to perverse pleasures rather than noble ones. Wouldn't it be better to change those preferences than to satisfy them?

It is said that the Puritans banned bearbaiting, not because of the pain it caused the bears but because of the pleasure it gave the onlookers. Bearbaiting is no longer a popular pastime, but dogfighting and cockfighting hold a persistent allure, and some jurisdictions ban them. One justification for such bans is to prevent cruelty to animals. But such laws may also reflect a moral judgment that deriving pleasure from dogfights is abhorrent, something a civilized society should discourage. You don't need to be a Puritan to have some sympathy with this judgment.

Bentham would count all preferences, regardless of their worth, in determining what the law should be. But if more people would rather watch dogfights than view Rembrandt paintings, should society subsidize dogfight arenas rather than art museums? If certain pleasures are base and degrading, why should they have any weight at all in deciding what laws should be adopted?

Mill tries to save utilitarianism from this objection. Unlike Bentham, Mill believes it is possible to distinguish between higher and lower pleasures—to assess the quality, not just the quantity or intensity, of our desires. And he thinks he can make this distinction without relying on any moral ideas other than utility itself.

Mill begins by pledging allegiance to the utilitarian creed: "Actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure." He also affirms the "theory of life on which this theory of morality is grounded—namely, that pleasure and freedom from pain are the only things desirable as ends; and that all desirable things . . . are desirable either for pleasure inherent in themselves or as means to the promotion of pleasure and the prevention of pain."[25]

Despite insisting that pleasure and pain are all that matter, Mill acknowledges that "some kinds of pleasure are more desirable and more valuable than others." How can we know which pleasures are qualitatively higher? Mill proposes a simple test: "Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure."[26]

This test has one clear advantage: It does not depart from the utilitarian idea that morality rests wholly and simply on our actual desires. "[T]he sole evidence it is possible to produce that anything is desirable is that people actually desire it," Mill writes.[27] But as a way of arriving at qualitative distinctions among pleasures, his test seems open to an obvious objection: Isn't it often the case that we prefer lower pleasures to higher ones? Don't we sometimes prefer lying on the sofa watching sitcoms to reading Plato or going to the opera? And isn't it possible to prefer these undemanding experiences without considering them to be particularly worthwhile?

Shakespeare versus The Simpsons

When I discuss Mill's account of higher pleasures with my students, I try out a version of his test. I show the students three examples of popular entertainment: a World Wrestling Entertainment fight (a raucous spectacle in which the so-called wrestlers attack one another with folding chairs); a *Hamlet* soliloquy performed by a Shakespearean actor; and an excerpt from *The Simpsons*. I then ask two questions: Which of these performances did you enjoy most—find most pleasurable—and which do you think is the highest, or worthiest?

Invariably *The Simpsons* gets the most votes as most enjoyable, followed by Shakespeare. (A few brave souls confess their fondness for the WWE.) But when asked which experience they consider qualitatively highest, the students vote overwhelmingly for Shakespeare.

The results of this experiment pose a challenge to Mill's test. Many students prefer watching Homer Simpson, but still think a *Hamlet* soliloquy offers a higher pleasure. Admittedly, some may say Shakespeare is better because they are sitting in a classroom and don't want to seem philistine. And some students argue that *The Simpsons*, with its subtle mix of irony, humor, and social commentary, does rival Shakespeare's art. But if most people who have experienced both prefer watching *The Simpsons*, then Mill would be hard pressed to conclude that Shakespeare is qualitatively higher.

And yet Mill does not want to give up the idea that some ways of life are nobler than others, even if the people who live them are less easily satisfied. "A being of higher faculties requires more to make him happy, is capable probably of more acute suffering . . . than one of an inferior type; but in spite of these liabilities, he can never really wish to sink into what he feels to be a lower grade of existence." Why are we unwilling to trade a life that engages our higher faculties for a life of base contentment? Mill thinks the reason has something to do with "the love of liberty and personal independence," and concludes that "its most appropriate appellation is a sense of dignity, which all human beings possess in one form or other."[28]

Mill concedes that "occasionally, under the influence of temptation," even the best of us postpone higher pleasures to lower ones. Everyone gives in to the impulse to be a couch potato once in a while. But this does not mean we don't know the difference between Rembrandt and reruns. Mill makes this point in a memorable passage: "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question."[29]

This expression of faith in the appeal of the higher human faculties is compelling. But in relying on it, Mill strays from the utilitarian premise. No longer are de facto desires the sole basis for judging what is

noble and what is base. Now the standard derives from an ideal of human dignity independent of our wants and desires. The higher pleasures are not higher *because* we prefer them; we prefer them because we recognize them as higher. We judge *Hamlet* as great art not because we like it more than lesser entertainments, but because it engages our highest faculties and makes us more fully human.

As with individual rights, so with higher pleasures: Mill saves utilitarianism from the charge that it reduces everything to a crude calculus of pleasure and pain, but only by invoking a moral ideal of human dignity and personality independent of utility itself.

Of the two great proponents of utilitarianism, Mill was the more humane philosopher, Bentham the more consistent one. Bentham died in 1832, at the age of eighty-four. But if you go to London, you can visit him today. He provided in his will that his body be preserved, embalmed, and displayed. And so he can be found at University College London, where he sits pensively in a glass case, dressed in his actual clothing.

Shortly before he died, Bentham asked himself a question consistent with his philosophy: Of what use could a dead man be to the living? One use, he concluded, would be to make one's corpse available for the study of anatomy. In the case of great philosophers, however, better yet to preserve one's physical presence in order to inspire future generations of thinkers.[30] Bentham put himself in this second category.

In fact, modesty was not one of Bentham's obvious character traits. Not only did he provide strict instructions for his body's preservation and display, he also suggested that his friends and disciples meet every year "for the purpose of commemorating the founder of the greatest happiness system of morals and legislation," and that when they did, they should bring Bentham out for the occasion.[31]

His admirers have obliged. Bentham's "auto icon," as he dubbed it, was on hand for the founding of the International Bentham Society in the 1980s. And the stuffed Bentham is reportedly wheeled in for meetings of the governing council of the college, whose minutes record him as "present but not voting."[32]

Despite Bentham's careful planning, the embalming of his head went badly, so he now keeps his vigil with a wax head in place of the real one. His actual head, now kept in a cellar, was displayed for a time on a plate between his feet. But students stole the head and ransomed it back to the college for a charitable donation.[33]

Even in death, Jeremy Bentham promotes the greatest good for the greatest number.