

# MILL, FREUD, AND SKINNER: THE CONCEPT OF THE SELF AND THE MORAL PSYCHOLOGY OF LIBERTY

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The student of politics must obviously have some knowledge of the workings of the soul, just as the man who is to heal eyes must know something about the whole body . . . . Thus, the student of politics must study the soul.

—Aristotle

[C]onceptions of freedom directly derive from views of what constitutes a self, a person, a man. Enough manipulation with the definition of man, and freedom can be made to mean whatever the manipulator wishes.

—Isaiah Berlin

The language of political theory has long influenced the development of psychological thought.<sup>1</sup> From investigations of the

<sup>1</sup> It began with Plato. In the *Republic*, Plato constructs a theory of the utopian state which is also a metaphor for human personality. PLATO, *The Republic*, in THE COLLECTED DIALOGUES OF PLATO (Edith Hamilton and Huntington Cairns eds., 1961). The *Republic* commences with a discussion of the just man. *Id.* Socrates then constructs his utopia as a model for the just man, arguing that justice is most easily seen in the macrocosm, the state. *Id.* at bk. II. The ideal society is modeled around the myth of gold, silver, and iron, which correspond both to the three classes of citizens—the rulers, the guardians, and the workers, *id.* at bk. III, and the tripartite division of human personality—the capacity to reason, the passions (as in courage), and the desires. *Id.* at bk. IV.

After describing the Republic in Books V through VII, Socrates returns in Book VIII to a discussion of the individual, again comparing various debased forms of political organization with degenerate forms of human personality. *Id.* Thus, just as true aristocracy degenerates into a timocratic (honor-loving) society where the warrior class dominates the ruling class, so too, the ambitious, glory-seeking individual is the person whose passions have usurped the priority of reason. The timocratic degenerates into oligarchy when the appetite or desire-seeking parts of the personality prevail over reason and the passions. Oligarchy, in turn, degenerates into the lowest pattern of government (and personality), the democratic. Oligarchy and democracy are both

so-called "authoritarian personality" arguably fostered by certain cultures,<sup>2</sup> to claims concerning the "democratic" character structure of the self-actualized individual,<sup>3</sup> psychologists and philosophers have routinely drawn upon political thought in describing the innermost workings of the human psyche.<sup>4</sup> Accompanying the use of these political metaphors for human personality are corresponding normative claims concerning the relative superiority of one type of personality to another—e.g., that it is the "democratic" character structure which is most advanced, psychologically.<sup>5</sup>

On the other hand, in modern times, social and political thinkers have largely ignored or dismissed the relevance to their disciplines of questions concerning human nature.<sup>6</sup> While classical

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motivated primarily by desire, but the oligarchic are still basically restrained by acting on only necessary desires. The democratic personality structure, on the other hand, gives free reign to all desires and outright licentiousness prevails. At this point, according to Plato, the way is clear for tyranny to establish itself. *Id.* at bk. VIII.

What is most fascinating about Plato's account is the parallel he describes between political structures and the psychological structures of individual men. As Part II argues, liberalism, the social corollary of political democracy, is largely a desire-driven psychology. *See infra* notes 58-158 and accompanying text. Further, the link between political and psychological organizations may not be coincidental. Erich Fromm, for one, argues that a causal relationship exists between the two. *See generally* ERICH FROMM, *ESCAPE FROM FREEDOM* (1941).

<sup>2</sup> FROMM, *supra* note 1, at 163-206.

<sup>3</sup> ABRAHAM H. MASLOW, *TOWARD A PSYCHOLOGY OF BEING* 26 (2d ed. 1968). The democratic character structure is one of several characteristics of the self-actualized individual. *Id.* It is interesting to recall that the democratic personality was the lowest form of psychological organization for Plato. Plato and Maslow have only overlapping similarities in their respective descriptions of the democratic character structure. *See* PLATO, *supra* note 1, at bk. VIII.

<sup>4</sup> Often the political and the psychological are closely linked causally, and it is difficult to determine in which direction the causality flows. From Marx's parallel between alienated labor and the psychologically-alienated individual, KARL MARX, *ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844* (Dirk J. Struik ed. & Martin Milligan trans., 1964), to the claim that colonized peoples develop a dependency complex, Frantz Fanon, *The So-Called Dependency Complex in Colonized People*, in *RADICAL PSYCHOLOGY* 257 (Phil Brown ed., 1973), political ideology has been both a metaphor for, and an alleged cause of, a variety of psychological conditions. Indeed, at least one psychologist has maintained that there is no "neurosis" at all, but only "sociosis," as all psychological maladies are in fact the internalized social and political conditions of whatever era in which the individual finds himself. J.H. VAN DEN BERG, *THE CHANGING NATURE OF MAN: INTRODUCTION TO A HISTORICAL PSYCHOLOGY* (1961).

<sup>5</sup> This is Maslow's claim. *See* MASLOW, *supra* note 3, at 25-27.

<sup>6</sup> For example, in *A Theory of Justice*, one of the most influential works of liberal social philosophy in the twentieth century, John Rawls said little regarding human nature. JOHN RAWLS, *A THEORY OF JUSTICE* (1971). Though Rawls discusses a rights-based liberal conception of the self, *id.* at 560-67, his analysis is devoted to making the philosophical, but not empirical, claim that the self is logically prior to character, inclinations, desires, and virtues. *See infra* note 19 (discussing Rawls's view of the self).

Roberto Unger has written that "[t]he idea that a view of human nature is neces-

political thinkers such as Plato<sup>7</sup> and Aristotle<sup>8</sup> drew heavily upon substantive conceptions of human personality in their social and political thought, claims regarding human nature generally are increasingly taboo in modern social theory. As Part I of this Article argues, the reluctance of modern thought to consider these core questions is the result of a number of trends endemic to recent intellectual history.<sup>9</sup> As a result, the philosophical psychology of modern political thought, particularly liberalism, is devoid of a coherent conception of the self.<sup>10</sup> This, in turn, undermines our substantive judgments concerning the best or most just social and political order.

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sary to advance the program of social theory is a disturbing one." ROBERTO MANGABEIRA UNGER, *LAW IN MODERN SOCIETY: TOWARD A CRITICISM OF SOCIAL THEORY* 42 (1976). Unger notes the reciprocal relationship between moral and political views and our view of human nature. *Id.* Nevertheless, he argues that we need a dynamic, rather than static, concept of human nature. *Id.* at 42-43.

See THOMAS FLEMING, *THE POLITICS OF HUMAN NATURE* 5 (1988) (arguing that, to the extent modern social thinkers elaborate their conception of human nature, it is a crude admixture of "cultural relativism combined with some form of hedonist psychology").

<sup>7</sup> PLATO, *supra* note 1, at bk. IV.

<sup>8</sup> ARISTOTLE, *Politica*, in *THE BASIC WORKS OF ARISTOTLE* bk. I, ch. 2, at 1129 (Richard McKeon ed., 1941) (asserting that "the state is by nature clearly prior to the family and to the individual, since the whole is of necessity prior to the part").

<sup>9</sup> See *infra* Part I notes 15-57 and accompanying text (discussing these trends).

<sup>10</sup> See *infra* Part II notes 58-158 and accompanying text (discussing the philosophical psychology of liberalism). Numerous psychologists and philosophers have pointed to the modern existential consequences of this lack of a coherent vision of the self. See, e.g., ROBERT JAY LIFTON, *THE LIFE OF THE SELF: TOWARD A NEW PSYCHOLOGY* 78, 138-49 (1976) (describing the "Protean" lifestyle, whereby the individual places emphasis on passing through a variety of experiences each different from the last, but where no substantial sense of core identity remains throughout the process).

The term "minimalist self" has been used to define both a philosophical outlook and a psychological mode of functioning—which reinforce one another. Philosophically, one experiences perceptions, sensations, beliefs, thoughts, and desires, but not the self. Hume was the first to make this observation. DAVID HUME, *A TREATISE OF HUMAN NATURE* bk. I, pt. IV, sec. II (L.A. Selby-Bigge ed., 1978) (1738). If, however, the self is considered to include the inner workings of the individual psyche, such as desires, perception, beliefs, and reason, among other mental states and processes, then as Part II argues *infra*, modern liberalism equates the self with the individual's desires. See *infra* notes 146-58 and accompanying text. See generally, CHRISTOPHER LASCH, *THE MINIMAL SELF: PSYCHIC SURVIVAL IN TROUBLED TIMES* (1984) (examining the modern psychological mode of existence, characterized by apathy, uncertainty, and, yet, self-aggrandizement).

Rollo May catalogues the modern panoply of psychological discontents, which he attributes partially to an overproliferation of choice. ROLLO MAY, *LOVE AND WILL* (1969). These include a sense of lacking an identity and the inability to make committed choices, along with feelings of apathy and emptiness. *Id.* at 18-33. According to May, these feelings are equated with, and explained by, a diminished capacity for choice and an eviscerated sense of selfhood. *Id.*

This Article will explore and compare the philosophical psychologies of John Stuart Mill, Sigmund Freud, and B.F. Skinner, and will survey the socio-political implications of their respective views of human nature. The Article will seek to demonstrate generally that we cannot arrive at a unified vision of the most suitable social and political order without answering fundamental questions concerning what may variously be called human nature, human psychology, or the nature of the self.<sup>11</sup>

More specifically, this Article will contend that liberalism is contingent upon the traditional view of the person as free, rational, characterized by a functional psychological unity with an authentic core personality which exists independent of, and perhaps prior to, social influences.<sup>12</sup> It will argue that psychoanalytic thought and behaviorism, the first two of three waves of modern psychology, both reject this view of the self.<sup>13</sup> Thus, to the extent that modern psychology rejects the view of the self as free, rational, unified, and authentic or original to the person, it undermines the moral-psychological case for liberalism, including the idea of the zone of personal liberty. Put simply, the case for political liberalism requires our adherence to this traditional view of the self.

In Part I, this Article will discuss the meaning of the concept of human nature and its significance to social and political thought. This Article also considers some of the recent trends in intellectual history which have contributed to modern social and political philosophy's retreat from questions of human nature.

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<sup>11</sup> These three terms designate slightly different objects, or at least varying approaches to the question of human personality. "Human nature" is the subject of a philosophical, or perhaps anthropological, inquiry while the "nature of the self" has a metaphysical or theological ring. I will use these terms interchangeably to designate both psychological questions concerning human attributes, inclinations, and behavior, and essentially metaphysical questions which invariably underlie the psychological (e.g., whether we are free or determined): See *infra* notes 15-21 and accompanying text (addressing the differences between psychological and metaphysical questions).

<sup>12</sup> The view of the self as free, rational, and unitary is perhaps the "common-sense" view of human nature, as well as that shared by most religious traditions. Romantic and modern existentialist thinkers have developed and elaborated upon the notion of an "authentic" core personality. This view has filtered into liberal thought and is represented by the popular dichotomy between expressions of the self and, social influences which are not wholly "ours." See *infra* notes 132-35 and accompanying text (discussing this aspect of Mill's thought) & notes 142-50 and accompanying text (providing a general discussion on the influence of romanticism upon liberalism).

<sup>13</sup> The third wave of contemporary psychology, humanistic psychology, is the modern psychological descendent of liberalism. As such, humanistic psychology reflects both the inspiring and sometimes inconsistent view of the self characteristic of modern liberalism. See *infra* notes 151-57 (discussing the relationship between liberalism and humanistic psychology).

Part II examines the rich yet deeply conflicted philosophical psychology of John Stuart Mill, the father of modern liberal thought. The Article surveys his views regarding personal freedom, happiness, and the nature of the self, and the implications of these views for his defense of liberty.<sup>14</sup> This will include a brief examination of the modern psychological corollary to liberalism, humanistic psychology. Here, the article discusses some of the parallels between Mill's thought and that of Abraham Maslow and Erich Fromm.

Parts III and IV investigate the psychological thought of Freud and Skinner, respectively, along with the broader social and political implications of psychoanalytic thought and behaviorism. I will argue that psychoanalytic theory and behaviorism may be viewed as reactions to the moral psychology of liberalism. Not only do these views reject traditional, liberal notions of the authentic or autonomous self, they cannot link together freedom, happiness, diversity, self-development, and social progress as liberalism does. For the Freudian, civilization in general, and law in particular, serve primarily to curb and sublimate our essentially self-aggrandizing nature. In contrast, the behaviorist's *tabula rasa* view of the person holds that there is no pre-social human nature, and that the best society is one which serves to maximize positive reinforcers while minimizing long-term negative reinforcers in utilitarian fashion. As such, the psychoanalytic conception of the role of the person in society is considerably darker than the basic optimism of liberalism. The behaviorist's vision of the self, on the other hand, inevitably leads to what the liberal would view to be a utopian-totalitarian state.

Finally, in Part V, this Article will seek to demonstrate exactly how views of the person influenced by psychoanalytic or behaviorist thought undermine the liberal ethic of choice and the zone of personal liberty. It will examine first the relationship between liberal theory and the concept of privacy, or in Mill's terms, a realm of self-regarding behavior beyond the reach of social interference. Next, it will trace the influences upon liberalism of three formidable philosophical traditions: Lockean notions of natural rights, utilitarianism, and romanticism, each of which is present in Mill's thought. These three traditions have contributed both to our pre-

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<sup>14</sup> Throughout this piece, I will distinguish "personal freedom" from "political liberty." The former emphasizes issues regarding internal freedom, such as freedom of the will. The latter signifies freedom from a particular form of external interference, that of freedom from control by the state.

vailing views of the just society and to our contemporary concept of the person. Finally, Part V will argue that, if anything like the psychoanalytic or behaviorist picture of human personality is accurate, then the moral-psychological basis for the liberal ethic of freedom of choice and the zone of privacy cannot be defended. In fact, a society predicated upon either of these views of the person cannot, even in principle, maintain a commitment to preserving the liberal zone of privacy. Indeed, if either of these views is correct, then even the benevolent state must regularly undertake what would be considered extraordinarily intrusive measures in order to ensure for its citizens the good life.

The aim of this piece is not to argue in favor of the modern psychological view of the person over that of traditional liberalism. Indeed, I think both the traditional and the modern notions of the self contribute significantly to our understanding of human nature. Rather, this piece has been written to demonstrate that, to the extent that modern liberal political theory and legal doctrine lack a consistent vision and generate often conflicting results, it is because of our underlying ambivalence in simultaneously affirming conflicting views of the self. In sum, in order to attain a unified vision of the just society, we must first arrive at a coherent notion of the self.

## I. THE RETREAT FROM HUMAN NATURE IN MODERN SOCIAL THOUGHT

### A. *What Is "Human Nature"?*

Through the course of intellectual history, human nature has come to be associated with two very distinct types of inquiry into the human condition. Issues of human nature sometimes concern what are ultimately *philosophical* issues, both metaphysical and epistemological. The metaphysical issues concern questions such as the nature of the "self," the connection between mind and body, the question as to whether we are basically free or determined, or the possibility of life after death.<sup>15</sup> Among the most significant epistemological questions for political theory are issues concerning the nature of rationality, how knowledge is possible, and whether there are objective moral truths.<sup>16</sup> While these issues are of funda-

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<sup>15</sup> See generally RICHARD TAYLOR, *METAPHYSICS* (1963) (providing an overview of these issues).

<sup>16</sup> See generally D.J. O'CONNOR & BRIAN CARR, *INTRODUCTION TO THE THEORY OF KNOWLEDGE* (1982) (providing an overview and readings on epistemology).

mental significance to social thought,<sup>17</sup> they are also not amenable to traditional methods of empirical observation, verification, or falsification.<sup>18</sup>

Alternatively, the second type of inquiry concerning human nature involves *psychological*, rather than philosophical, issues. While we will be concerned with psychological questions of human nature in this piece, it is important to recognize that various psychological theories inescapably presuppose certain fundamental philosophical, particularly metaphysical, conclusions which, with more or less consistency, underlie all systems of social thought.

Even psychological questions vary greatly in terms of their level of generality and amenability to empirical observation, from the quasi-philosophical, at one end of the continuum, to the specific and directly observable, at the other.<sup>19</sup> At the philosophical

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<sup>17</sup> In contract and criminal law, in particular, metaphysical conceptions are intimately and inescapably bound up with social and legal ascriptions of responsibility and blameworthiness. For example, what does it mean to be unfree with respect to a particular choice such that one's behavior should be excused? Concepts such as duress, irresistible impulse, or exploitation inevitably entail drawing metaphysical conclusions about the nature of free or voluntary choice. See John Lawrence Hill, *Exploitation*, 79 CORNELL L. REV. 631 (1994) (discussing the Anglo-American exculpatory paradigm and the reason/will dichotomy implied by discussions of duress and exploitation); see also Michael S. Moore, *Causation and the Excuses*, 73 CAL. L. REV. 1091 (1985) (giving an example of the relevance of the free will/determinism controversy in modern criminal law); Meir Dan-Cohen, *Responsibility and the Boundaries of the Self*, 105 HARV. L. REV. 959 (1992) (arguing that ascriptions of responsibility depend upon the way in which we define the self, metaphysically and psychologically).

<sup>18</sup> Metaphysical hypotheses cannot be tested by the method of experimentation and disavowal. Hume was perhaps the first to make this observation which, in short order, led to the undoing of metaphysics. As Hume maintained, the "most plausible objection against a considerable part of metaphysics, [is] that they are not properly a science, but arise . . . from the fruitless efforts of human vanity, which would penetrate into subjects utterly inaccessible to the understanding." DAVID HUME, AN INQUIRY CONCERNING HUMAN UNDERSTANDING 20 (Charles W. Hendel ed., 1955) (1748). He continues: "The only method of freeing learning at once from these abstruse questions is to inquire seriously into the nature of human understanding and show, from an exact analysis of its powers and capacity, that it is by no means fitted for such remote and abstruse subjects." *Id.* at 21.

The logical positivists of the mid-twentieth century have refined Hume's disdain for the metaphysical. Not only is the realm of metaphysics unknowable, it is downright meaningless. See CARL G. HEMPEL, ASPECTS OF SCIENTIFIC EXPLANATION, AND OTHER ESSAYS IN THE PHILOSOPHY OF SCIENCE 99-119 (1965) (arguing that the meaning of any empirical statement is equivalent to the operation by which the proposition may be observed to be true, and giving criteria for judging the cognitive significance of a particular statement). The upshot of this is that an empirical proposition is distinguished from a metaphysical one by the capacity to disavow the former, but not the latter.

<sup>19</sup> Indeed, it is often difficult to distinguish between nonempirical and empirical issues. Sometimes prescriptive assertions about the self are phrased as if they were empirical claims. For example, John Rawls argues that "moral personality is charac-



end of the spectrum of psychological questions are such issues as whether people are basically rational or irrational, competitive or cooperative, selfish or altruistic.<sup>20</sup> These questions are psychological, and so empirical, both to the extent that their answers depend upon operationalized definitions for such terms as "rational" or "competitive" and insofar as empirical observation is necessary to establish such claims; they are philosophical to the extent such terms raise epistemological questions (e.g., is rationality measured by a subjective or an objective standard) and to the extent psychological terms presuppose normative values (e.g., whether competitive behavior is viewed to be normal or abnormal).<sup>21</sup>

Near the middle of the continuum might be issues such as the relative causal significance of heredity and environment in various behaviors (e.g., drug or alcohol use or propensity to commit certain criminal acts), or whether men are by nature more aggressive (or promiscuous or self-aggrandizing) than women. Finally, the more specific and empirically analyzable questions would include whether viewing television violence leads to increased incidence of

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terized by two capacities: one for a conception of the good, the other for a sense of justice." RAWLS, *supra* note 6, at 561. This is not an empirical claim about human personality as such; it is difficult to see how this would be tested empirically, not to mention the problem with operationalizing terms such as "moral personality" or "a sense of justice."

Similarly, to the extent modern social philosophy has discussed the issue, disagreement concerning the "nature of the self" takes on a diaphanous quality. Thus, for example, the liberal-communitarian debate regarding whether the self is ultimately "unencumbered" or constitutive of the cultural institutions which serve to shape human personality are not about human personality in a psychological, and so an empirical, sense. They are essentially moral claims regarding how we ought to view the individual's relationship to society. See Michael J. Sandel, *Justice and the Good*, in LIBERALISM AND ITS CRITICS (Michael J. Sandel ed., 1984) (explaining that right-based liberalism posits an unencumbered self independent of individual attributes such as character) [hereinafter LIBERALISM AND ITS CRITICS].

<sup>20</sup> Another example is the claim made by John Stuart Mill, in *On Liberty*, that liberty is essential to human happiness. JOHN STUART MILL, *ON LIBERTY* 54 (David Spitz ed., 1975) (1859). While this proposition has a general empirical "ring" to it, it is again difficult to see how this might be tested. See RICHARD LINDLEY, *AUTONOMY* 112-13 (1986) (concluding that happiness is a vague concept which would make Mill's proposition difficult to test).

<sup>21</sup> Numerous psychologists and psychiatrists have argued that clinical psychology cannot be value-free. See, e.g., R. D. LAING, *THE POLITICS OF EXPERIENCE* (1967) (mental diagnoses are "political facts"); THOMAS S. SZASZ, *THE MYTH OF MENTAL ILLNESS* 262-63 (rev. ed. 1974) ("mental illness" must be explicitly recast as a moral science); Thomas Scheff, *Schizophrenia as Ideology*, in *RADICAL PSYCHOLOGY*, *supra* note 4, at 46-59 (schizophrenia is a label for the rule-breakers whose behavior is difficult to classify); see also Gerald C. Davidson, *Homosexuality: The Ethical Challenge*, 44 J. CONSULTING & CLINICAL PSYCHOL. 157 (1976) (arguing that homosexuality is not an illness, but has been stigmatized as such for moral reasons).

violence among children viewers in a particular group, or whether education or threat of criminal sanction most reduces the incidence of drug use in an inner-city neighborhood during a specified period of time.

But what do we mean, exactly, by "human nature"? Can questions of human nature be distinguished from other psychological questions?

B.F. Skinner maintained that human nature is nothing other than "what a person . . . would have been like if we could have seen him before his behavior was subjected to the action of an environment."<sup>22</sup> This is a promising start, but the definition is ultimately too restrictive. It is true that behavior explained in terms of human nature is typically distinguished from behavior purportedly resulting from environmental influences. The reason for this is obvious: Belief in human nature is tantamount to the view that behavior springs from "internal," as well as "external," causes. If human activity was entirely explainable in terms of environmental conditioning such that all behaviors were virtually completely malleable, then there would be no constant in human behavior, no core principle which is in some sense "inside" the individual. Belief that there exists some substantive human nature not only amounts to the view that there are minimally some inherent propensities or dispositions to act in certain ways independent of environmental influences, but that human behavior is not infinitely malleable—i.e., that external influences have only a limited causal efficacy upon human behavior.

Skinner's definition is too restrictive, however, because environmental influences might serve to make manifest inherent propensities or dispositions which would otherwise lie dormant. For example, if Lorenz is correct that humans possess an inherent aggression which is activated by external conditions such as overcrowding,<sup>23</sup> then this aspect of human nature cannot be explained or observed independently of the environment. Indeed, since it is likely that most behaviors result only from a combination of innate or internal conditions, on one hand, and external causes, on the other, much of what is human nature is systematically excluded by Skinner's definition.<sup>24</sup>

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<sup>22</sup> B.F. SKINNER, *ABOUT BEHAVIORISM* 150 (1974).

<sup>23</sup> KONRAD LORENZ, *ON AGGRESSION* (Marjorie Kerr Wilson trans., 1963).

<sup>24</sup> Skinnerian behaviorism is predicated upon a radical form of empiricism. It views only behavior as empirically observable. Thus, there is no place in Skinnerian behaviorism for internal mental conditions or some innate "human nature." See B.F. SKINNER, *BEYOND FREEDOM AND DIGNITY* 1-25 (1971).

Most basically, questions of human nature concern internal explanations for human behavior, whether or not environmental influences also contribute to such behavior. These internal conditions may be cast in terms of biological or genetic factors,<sup>25</sup> inborn psychological entities such as instincts, needs, or dispositions,<sup>26</sup> or underlying psychodynamic processes such as Freud's tripartite distinction of id, ego, and superego.<sup>27</sup>

It would be a mistake, however, to assume that the *effects* of these internal states or processes must be universally manifest in all persons of all cultures. Indeed, to the extent that environmental conditions are necessary to make manifest certain internal propensities, we would expect that certain propensities would not be observable in certain social contexts. Thus, to take one controversial issue, the claim that human males tend to gravitate to positions of power in society, and thus are inherently more aggressive or self-assertive than females, is not necessarily refuted by evidence that women hold dominant positions in some traditional societies.<sup>28</sup> There remains the empirical question whether these exceptions are due to the presence of social conditions which retard the otherwise general tendency of males to gravitate to these positions.<sup>29</sup>

The interrelationship of the internal and the external, the innate and the environmental, in producing behavior raises yet a further and much more fundamental difficulty: If human nature is conceived, as I am suggesting here, at least partially in terms of a plethora of innate propensities—some of which are actualized in certain social contexts while other propensities may be actualized in still other environments—which are the more “natural” behaviors? For example, to return briefly to the issue of gender and

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<sup>25</sup> EDWARD O. WILSON, *ON HUMAN NATURE* (1978) (arguing that successful social traits are the result of genetic predispositions which are themselves the result of natural selection).

<sup>26</sup> For an example of a need-based psychology, see MASLOW, *supra* note 3, at 21-22.

<sup>27</sup> SIGMUND FREUD, *THE EGO AND THE ID* (Joan Riviere trans., James Strachey ed., 1960) (providing a succinct discussion of the three components of personality).

<sup>28</sup> See GEORGE GILDER, *MEN AND MARRIAGE* 19-28 (1986) (where the evidence is considered, Gilder argues that there are basic biological differences which result in social and psychological differences between the sexes that cannot be explained away by evidence of primitive matriarchal cultures).

<sup>29</sup> This example evinces the difficulty in distinguishing and extricating internal from external or environmental factors. First, how do we determine whether behavior is the product of internal or external conditions? Second, even if the cause is putatively internal, to the extent that the expression of this condition may take a varied array of forms depending upon the environment, environmental factors are still determinative. See R.C. LEWONTIN ET AL., *BIOLOGY, IDEOLOGY, AND HUMAN NATURE: NOT IN OUR GENES* 272-77 (1984) (arguing that individual and environmental conditions cannot be so neatly distinguished).

power, if certain environments are conducive to matriarchy, while others tend to produce forms of patriarchy, what makes one or the other more "natural"?

We cannot appeal here to a numerical criterion—i.e., that most environments presently tend to lead to patriarchy, and thus, patriarchy is more natural—both because there may be an even larger number of possible but nonexistent environments which favor matriarchy and, more fundamentally, because matriarchy would still be more "natural" in those environments where it has existed. This leads to two necessary qualifications upon the concept of human nature. First, the expression of "human nature" may vary to a greater or lesser extent from environment to environment, depending upon which human trait is at issue. Differences in environment may have profound effects upon certain traits while other traits may be relatively fixed and resistant to environmental influence. Sexual behavior in diverse patterns, for example, may be universal while the expression of aggression may be more a function of environmental factors.

Thus, depending upon the variability of any particular trait, we can come to predict that, given what we know about ourselves internally, a particular environment will have a specified influence upon us while another environment would actualize other human inclinations and propensities. We still, however, have to decide *which* environment and *which* consequences we should collectively seek. This leads to the second qualification upon our concept of human nature: Knowledge of human nature can tell us both how human behavior will vary from context to context and what the substantive limitations on human variability are, but within the potentially broad spectrum of possible human behavior, there is none which is more "natural" than another. Ultimately, only an appeal to human values will permit us to choose which of the various possibilities we should seek to actualize in the world. In general, there is no one true expression or representation of human nature, but rather, a series of propensities representing different human traits, some more static (or resistant to environmental variation) than others, where some of these propensities are realized in the form of human behavior in certain social contexts while other traits are realized under other environmental conditions.

Just as the expression of certain traits will vary from society to society depending upon the environmental factors which serve to favor or disfavor their expression, so too, within a given society, there may be broad variation of expression of certain traits from

one individual to the next. This variation in the frequency, intensity, or manner of expression (whether we are discussing rationality, altruism, or sexual behavior) is a natural consequence of the limited variability of human behavior. This variability does not imply that there is no "human nature," but only that human nature and human behavior should be expressed along a continuum of variation.

Finally, even if it is true, as should be expected, that human nature may change gradually over the long haul of evolutionary history, this does not preclude our arriving at a general understanding of who we are at present. Thus, the concept of human nature should be conceived of as lying along a continuum not only spatially, permitting for the variability from trait to trait across various individuals and cultures, but temporally as well.

In sum, propositions regarding human nature need not be universalizable, but only generalizable, both with respect to individuals and societies. Claims about human nature consist of accurate general propositions to the effect that, at the present time and under certain conditions, people tend to act in a particular manner, within a certain degree of variation, in virtue of specified internal psychological states or processes. As we learn more about human behavior, we may learn that certain propensities are largely or completely amenable to environmental manipulation, in which case "internal" causes will be of little or no importance. In other instances, certain dispositions may be univocal either in their demand for, or manner of, expression. In either case, however, there are likely to be profound consequences for ignoring our internal nature.<sup>30</sup>

#### *B. Human Nature in Recent Social and Political Thought*

It has been said that in the realm of modern psychology, human personality first lost its soul, then became unconscious and, finally, completely lost its mind. To the extent this is true, modern

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<sup>30</sup> Modern liberal intellectual history holds what appears to be two conflicting views: first, that we are all very similar internally (and, thus, there should be little or no account taken of differences in gender or race) and, second, that we are all very different (and these differences, as represented in sexual orientation, must be recognized and respected).

Much of the resistance to the concept of human nature stems from this second belief. The fear may be that by generalizing about human nature, those who do not fall neatly into the "general" category with respect to a certain trait may be branded "unnatural" or "aberrant" in their behavior. Thus, there is an underlying unease about the consequences of the *logic* of generalization.

social theory has gone one step further: Modern political and social discourse have altogether dispensed with the person. Discussion of human nature is viewed as a curious intellectual atavism, the construct of a primitive social ideology;<sup>31</sup> modern social, political, and legal thought proceed largely or completely from abstract moral principles, economic variables, or social and political determinants apparently independent of internal human considerations.<sup>32</sup> Thus, all human problems are viewed to be social or institutional in origin. There are at least three discernible trends in modern intellectual history which have encouraged the retreat of recent social thought from questions of human nature.

### 1. The Rejection of Essentialism

First, philosophically, modern thought has rejected various forms of "essentialism," the view that everything in the universe has some core nature or essence which serves to define it and which explains its purpose or function in the world.<sup>33</sup> Insofar as the case for human nature has been associated with essentialist thinking, an

<sup>31</sup> See LEWONTIN ET AL., *supra* note 29, at 37-61 (discussing forms of biological determinism as a function of bourgeois ideology).

<sup>32</sup> This can be witnessed in many of the great intellectual movements of the modern era. These include all theories which place causal priority for human behavior upon the environment, such as Marxian, behaviorist, and social learning theories. It includes much of modern moral theory which has contributed to the theoretical cleavage between what we are and what we should be, with emphasis upon what we should be. For example, Kant argued that all inclinations, dispositions, and biological influences are "heteronomous"; therefore, genuine moral discourse falls within the realm of reason alone. Thus, the nonrational aspects of human nature are irrelevant to moral and legal philosophy. IMMANUEL KANT, *GROUNDING FOR THE METAPHYSICS OF MORALS* (James W. Ellington trans., 1981) (1785). Finally, modern subjectivist economic theory places priority upon human choices to the exclusion of considering why humans choose the things they do. As von Mises wrote:

Philosophers had long since been eager to ascertain the ends which God or Nature was trying to realize in the course of human history. They searched for the law of mankind's destiny and evolution. But [they] . . . failed utterly in these endeavors because they were committed to a faulty method.

LUDWIG VON MISES, *HUMAN ACTION: A TREATISE ON ECONOMICS* 1 (3d rev. ed. 1963) (1949). He goes on to argue:

Choosing determines all human decisions . . . . All human values are offered for option. All ends and all means, both material and ideal issues, the sublime and the base, the noble and the ignoble, are ranged in a single row and subjected to a decision which picks out one thing and sets aside another. Nothing that men aim at or want to avoid remains outside this arrangement into a unique scale of gradation and preference.

*Id.* at 3. In sum, to understand humankind, it is necessary only to understand our actions, the choices we make in everyday life.

<sup>33</sup> See *Essence and Existence*, in 3 THE ENCYCLOPEDIA OF PHILOSOPHY 59-60 (Paul Ed-

attack on the latter is, by association, an attack on the former.<sup>34</sup>

Historically, essentialism came under attack from various schools of philosophy, most notably nominalism, empiricism, and existentialism. Nominalism, the philosophical antithesis of essentialism, holds that there is no core essence to anything, that each thing is nothing but the sum of its properties,<sup>35</sup> and that these properties themselves may be contingent, impermanent, and context-dependent.<sup>36</sup> Thus, to say, for example, that the "essence" of human beings is rational animality, as Aristotle argued,<sup>37</sup> is to focus upon two properties of humans to the exclusion of all others.<sup>38</sup> Further, insofar as persons are often far from rational, the property of rationality is not even necessary, and appears to vary in its manner and extent of expression from person to person and culture to culture. Metaphysical nominalism is closely associated with epistemological empiricism.<sup>39</sup>

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wards ed., 1967) (defining essence and existence and discussing Aristotle's concept and the attack on it by early empiricists, including Hobbes and Locke).

<sup>34</sup> If the essence of a thing represents the underlying unchanging nature of the thing, and if "human nature" is taken to characterize the unchanging qualities of the human condition, then human nature will be equated with the concept of essence. In summary, the doctrine of essence implies both permanence and necessity. On the other hand, if by "human nature" we simply mean the contingent set of general psychological propositions regarding the underlying internal conditions of human conduct, the classical notion of essence is inappropriate in describing the concept of human nature.

<sup>35</sup> According to the nominalist, essences or universals are simply terms for predicates such as "blue," "large," or "intelligent." These properties do not exist in themselves; only real objects exist, "there being nothing in the world Universall [sic] but Names; for the things named." THOMAS HOBBES, *LEVIATHAN* 102 (C.B. MacPherson ed., Penguin Books 1968) (1651).

<sup>36</sup> In other words, even these properties may be merely appearances, rather than reality, as when one submerges her right hand in snow and the left hand in hot water. When the right hand is placed in tepid water afterward, it feels "hot," while the left hand will feel the same water as "cold." It was in recognition of the fact that the experience of properties depends as much upon the instrument of perception as the perceived object that some empiricists distinguished primary (real) and secondary (apparent) properties. JOHN LOCKE, *AN ESSAY CONCERNING HUMAN UNDERSTANDING* bk. II, ch. XXII (1690).

<sup>37</sup> ARISTOTLE, *The Categories*, in *THE BASIC WORKS OF ARISTOTLE*, *supra* note 8, at 7-37.

<sup>38</sup> One story has it that Diogenes the Cynic overheard a group of philosophers arguing, seeking a replacement for Aristotle's definition of man. They finally agreed that a better definition would be "a featherless biped," whereupon Diogenes went to a local butcher, had a chicken plucked and returned to the scene of the debate. He is reported to have thrown the chicken over the fence saying, "There's your featherless biped."

<sup>39</sup> Basically, empiricism is the theory which holds that all knowledge of the world is gained through experience or through the senses. It is contrasted with rationalism which holds that humans inherently possess certain knowledge such as moral knowledge and metaphysical truths. See *Empiricism*, in 2 *THE ENCYCLOPEDIA OF PHILOSOPHY*,

Empiricists have attacked essentialism on the ground that, even if each thing had a core essence or nature, we could never know it independently of its observable properties. To the extent that the essence of a thing represents the underlying unobservable substratum in which the observable properties inhere,<sup>40</sup> the essence of a thing cannot be sensed or known independently of its properties. Thus, we have no epistemological basis for the claim that anything possesses an essence. Insofar as modern thinkers have overwhelmingly rejected rationalism for an empiricist view of the world, these arguments are widely accepted.

It is with modern existentialism, however, that the rejection of essentialism is most pointedly linked to the view that there is no human nature. Jean-Paul Sartre's famous dictum, "Existence precedes essence,"<sup>41</sup> captures the existentialist conviction that human beings are not cast in any unalterable image and that we are free to define ourselves as we choose. As such, our "essence" is the self-creation of each one of us and is not some destiny to which we are preordained, nor some preexisting characteristic which invariably defines us.

The rejection of essentialism, however, does not commit one to the rejection of human nature. Indeed, there is at most only a loose relationship between essentialism and the commitment to a substantive view of human nature, an association which is itself an intellectual remnant of Aristotelian and natural law thought.<sup>42</sup> In sum, one can believe that humans have a generally identifiable nature without believing that this nature is philosophically essential to us. Our nature may be comprised of those contingent characteristics, predispositions, and mental states which represent the

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*supra* note 33, at 499; see also STEPHEN PRIEST, *THE BRITISH EMPIRICISTS: HOBBS TO AYER* (1990) (providing a very readable general exposition of the thought of Hobbes, Locke, Berkley, Hume, Mill, Russel, and Ayer). Because universals are usually thought to be unverifiable entities, empiricists typically embrace some form of nominalism.

<sup>40</sup> Essence is sometimes viewed as a kind of metaphysical pin cushion in which the properties of a thing inhere. But the underlying essence—the pin cushion—is necessary to hold all of these properties together. Thus, the notion of essence and substance are interchanged. Aristotle claimed that the most fundamental mark of substance was its ability "while remaining numerically one and the same, it is capable of admitting contrary qualities." ARISTOTLE, *Categories*, in *THE BASIC WORKS OF ARISTOTLE*, *supra* note 8, ch. 5, at 14.

<sup>41</sup> JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS: AN ESSAY ON PHENOMENOLOGICAL ONTOLOGY* (Hazel E. Barnes trans., 1956).

<sup>42</sup> To the extent that human nature implies a fixed, unchangeable identity, it is consistent with the concept of an essence. See FLEMING, *supra* note 6, at 45-70 (examining natural law and human nature).



human condition at this particular stage of human evolution. Whether this condition consists of our fundamental rationality or irrationality, our altruism or selfishness, our social or anti-social propensities, it can be empirically observed and confirmed. As for the existentialist claim that there is no human nature because we are free to define ourselves, it is not certain how this should be interpreted. If this is simply a hortatory affirmation of our dignity and autonomy as choosing beings, there remains the empirical question regarding the extent to which we can overcome this nature—and, if so, whether this is not itself an aspect of our nature.<sup>43</sup>

## 2. Behaviorism and Social Learning Theory

The rise of empiricism has also contributed to a second general trend in modern thought which is antipathetic to the notion of human nature: the development of modern environmental psychology in the form of behaviorism and social learning theory. Both behaviorism and social learning theory, which have become preeminent forces in mid and late twentieth-century social thought,<sup>44</sup> view human behavior as largely, if not completely, a function of environmental conditioning with little recognition accorded to innate or internal causes of behavior.

John Locke was perhaps the first modern, systematic empiricist.<sup>45</sup> Central to his theory of human nature is the notion that we are born *tabula rasa*, blank slates upon which the world writes.<sup>46</sup> While this view was developed as part of Locke's epistemology, it may be read to have certain *psychological* implications as well. From the epistemological claim that all we *know* is a function of the external world, it is a very short (but not inevitable) step to the view that all we *do* and all we *are* is similarly the result of external conditions.<sup>47</sup>

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<sup>43</sup> Seeking to refute various forms of biological determinism, one group of authors has written: "This is why about the only sensible thing to say about human nature is that it is 'in' that nature to construct its own history." LEWONTIN ET AL., *supra* note 29, at 14.

<sup>44</sup> Both behaviorism and social learning theory are forms of "cultural reductionism," meaning that each gives ontological and causal primacy to the social over the individual. Social learning theory gives priority to general social forces—e.g., social roles and stereotypes. Behaviorism gives primacy to individual environmental factors. *Id.* at 75-81.

<sup>45</sup> LOCKE, *supra* note 36.

<sup>46</sup> *Id.* at bk. II, ch. 7 (attacking the notion of innate ideas and arguing that all ideas arise from sensations).

<sup>47</sup> Thinkers such as B.F. Skinner have made this leap. See SKINNER, *BEYOND FREEDOM AND DIGNITY*, *supra* note 24 (arguing that behavior is virtually completely deter-

Again, one can be a committed empiricist without being a behaviorist or social learning theorist. But, to the extent that these theories view human behavior largely or solely as the product of environmental conditioning, their acceptance poses a significant challenge to all but a minimalist view of human nature. Since behaviorism in one or another guise represents one of the major paradigms of modern psychology, we will return to a consideration of this theory in Part IV.

### 3. Social Egalitarianism

While the first two intellectual trends mentioned above reflect paradigmatic changes in our fundamental metaphysical, epistemological, and psychological assumptions, the third trend is the result of changing moral intuitions and social aspirations; most particularly, it is a by-product of the quest for the truly egalitarian society. Commitment to a belief in human nature may be associated with two propositions which run counter to various forms of social utopianism,<sup>48</sup> whether the theory is predicated upon behavioristic,<sup>49</sup> socialist, or Marxist<sup>50</sup> precepts.

First, the belief that there exist generalizable propositions concerning human nature implies that there may exist inherent limitations upon human perfectibility, i.e., that the perfect environment may not be enough to create the perfect person. Second, it may be associated with elitist or hierarchical forms of social organization or, most generally, with the view that certain classes of persons may be more or less suited to occupy certain positions socially, professionally, or politically.<sup>51</sup> It is this second implication in particular

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mined by environmental contingencies which the individual learns and to which it habitually responds).

The jump from *tabula rasa* empiricism to *tabula rasa* psychology might result from the following assumptions: If all behavior is the result of some form of knowledge, and if all knowledge results from external sensory sources, then empiricism could entail radical behaviorism. It is the first premise, however, which the empiricist need not accept. Human behavior may originate from noncognitive sources such as desires, aggression, and unconscious motivation.

<sup>48</sup> By "social utopianism," I mean any theory which holds that human nature or human behavior can be more or less perfected by the appropriate arrangement of social institutions or environmental contingencies.

<sup>49</sup> See generally B.F. SKINNER, *WALDEN TWO* (1948) (describing a fictional account of a utopia founded upon behaviorist principles).

<sup>50</sup> See RANDALL COLLINS & MICHAEL MAKOWSKY, *THE DISCOVERY OF SOCIETY* 20-31 (1972) (discussing the nineteenth-century social utopian movement).

<sup>51</sup> See LEWONTIN ET AL., *supra* note 29, at 63-82 (explaining how various brands of biological determinism have been utilized to legitimize social inequality).

which runs afoul of modern social egalitarian thought.<sup>52</sup>

Historically, there can be little doubt that claims about human nature have been used to justify reactionary, aristocratic, and unjust forms of social and political organization.<sup>53</sup> From the ancient notion that certain classes were superior "by blood" and, thus, had a right to rule, to nineteenth-century social Darwinism,<sup>54</sup> arguments from human nature have often been the response to democratic and egalitarian impulses. Indeed, there is a similarity between these arguments and the "natural place" theories of Aristotelian science.<sup>55</sup> Thus, in reaction to these views, twentieth-century egalitarianism has developed concomitantly with behaviorism and social learning theory on the view that individual differences are explainable by contrasting environments. Moreover, these views hold that such differences can be offset by equalizing diverse environmental influences.

Two things must be noted in response to the apparent tension between egalitarianism and the belief in human nature. First, depending upon the substantive content of our view of human nature, commitment to a belief in human nature may actually support, rather than contradict, egalitarianism. It may turn out that we are much more alike than it is now assumed, either in positive or negative respects.<sup>56</sup> And even if it turns out that there are differences which merit social recognition—e.g., that there are genuine, innate psychological differences between the sexes—this

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<sup>52</sup> I distinguish social egalitarianism from moral egalitarianism. Moral egalitarians argue that all human beings (or rational creatures) are inherently morally equal in virtue of some quality—usually our status as rational beings. KANT, *supra* note 32. A moral egalitarian may nevertheless justify social inequality on the basis of merit, or market success. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974) (enunciating a libertarian defense of the market economy and its consequences). A social egalitarian, on the other hand, argues that all significant forms of social or political participation should be open to all; this entails a rejection of formal equality in favor of *actual* equality. Similarly, the social egalitarian favors economic parity among individuals. Theoretical Marxism, then, represents the ultimate form of social egalitarian thought.

<sup>53</sup> LEWONTIN ET AL., *supra* note 29, at 131-63 (discussing the subjugation of women to illustrate this concept).

<sup>54</sup> *See id.* at 26-28 (discussing the political consequences of Social Darwinism in the United States).

<sup>55</sup> By this view, it was in the nature of a rock to fall to the ground, while it was in the nature of smoke to rise. Aristotle argued that all things tend to go where they naturally ought to go. So, too, by analogy, there is a natural order within human society which is represented by the differing social or economic strata of society. Thus, people tend to hold the position in society that befits their nature.

<sup>56</sup> For example, we may all possess the capacity for violent aggression which formerly was thought to inhere only in the "evil" or the "sick."

should not affect policies which protect formal equality between the sexes. It might, however, suggest that policies which serve affirmatively to guarantee numerical equality—e.g., representation in various occupations proportionate to each sex's representation in the overall population—are misguided.<sup>57</sup>

With respect to these three currents in modern thought, only radical versions of the second—behavioristic psychology—stand in opposition to acceptance of a definable notion of human nature. Belief in human nature neither commits one to an essentialist metaphysics nor to a conservative social philosophy. Indeed, it is only in virtue of the historical association between certain forms of natural law theory and the concept of human nature that these confusions persist. At the same time, recognition of a set of general propositions regarding the internal causes of human behavior will serve to guide social policy on virtually every issue and, more fundamentally, to inspire a deeper understanding of the relationship between the individual and civilization.

The next three sections explore, in broad strokes, the question of human nature and, in particular, the nature of the relationship between individual and civilization. The object of this comparison is not to argue in favor of one view as against the others. Rather, the purpose is twofold: to offer a philosophical critique of the underlying psychological assumptions of modern liberalism and to demonstrate the radically different implications each view has for social policy.

## II. MILL: THE PHILOSOPHICAL PSYCHOLOGY OF LIBERALISM

### A. *The Meaning and History of Liberalism*

If it is true that the term "freedom" has more than 200 meanings,<sup>58</sup> then it is easy to see why the concept of liberalism has come to be associated with an ever-expanding—and quite often contradictory—plethora of policies, commitments, and values.<sup>59</sup> It has been argued that liberalism is "without coherent content . . . [and

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<sup>57</sup> George Gilder takes a slightly different tack. He argues that government programs which usurp the role of the male provider, either through welfare or by encouraging greater numbers of women to enter the work force, displace the male in his only socially meaningful role. Bereft of this function, the modern male turns to a plethora of socially and self-destructive behaviors. GILDER, *supra* note 28, at 137-54.

<sup>58</sup> Isaiah Berlin, *Two Concepts of Liberty*, in LIBERALISM AND ITS CRITICS, *supra* note 19.

<sup>59</sup> Even decades ago, C. Wright Mills wrote that "liberalism has been banalized; now it is commonly used by everyone who talks in public for every divergent and contradictory purpose." C. WRIGHT MILLS, *Liberal Values in the Modern World*, in POWER,

that] in the process of its banalization, its goals have been so formalized as to provide no clear moral optic."<sup>60</sup> The remark is fitting. While the history of liberalism may be seen generally as a philosophical, political, and social revolution against the imposition of arbitrary authority, liberalism has taken numerous guises and progressed through a series of justificatory stages from the time of the first liberal.<sup>61</sup> These stages have coalesced into a spiritual, rather than a philosophical, coherence.<sup>62</sup>

Indeed, even the attempt to define the term "liberalism" has often appeared to be a function of *which* liberalism it is we are discussing. Thus, Ronald Dworkin defines liberalism in a way that is simultaneously too narrow and too broad, as a political arrangement by which "political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life."<sup>63</sup> While this description might provide one criterion of *modern* liberalism with respect to legislating in the realm of so-called "self-regarding" behavior, as a definition it excludes early liberals including Montesquieu, Kant, Adam Smith, and Jefferson, all of whom argued for restrictions of freedom based upon substantive assumptions about human nature and normative assumptions about the good life.<sup>64</sup> And the definition is too broad in that even the liberal state institutes measures and policies to carry out a wide range of objectives according to what gives value in life.<sup>65</sup>

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POLITICS AND PEOPLE: THE COLLECTED ESSAYS OF C. WRIGHT MILLS 189 (Irving Louis Horowitz ed., 1963).

<sup>60</sup> *Id.*

<sup>61</sup> John Locke was the first to give liberalism a systematic defense. GOTTFRIED DIETZE, *LIBERALISM PROPER AND PROPER LIBERALISM* 2 (1985). Dietze notes that the term "liberal" appeared for the first time, according to Hayek, in the writings of Adam Smith. *Id.* (footnote omitted); F.A. HAYEK, *THE CONSTITUTION OF LIBERTY* 405 n.13 (1960).

<sup>62</sup> By a "spiritual" coherence, I mean that liberalism continues to stand for certain general commitments in theory, if not always in application: for individual freedom over arbitrary authority, for appeal to reason over the fiat of fixed dogma, for equality of persons over the privilege of status, and for the notion, generally, that the state exists for the benefit of the individual and not vice versa. See Edward Shils, *The Antinomies of Liberalism*, in *THE RELEVANCE OF LIBERALISM* 135-200 (Research Institute on International Change ed., 1978) (recounting the historical and ideological drift of liberalism and defending classical liberal values over modern "collectivist" liberalism).

<sup>63</sup> Ronald Dworkin, *Liberalism*, in *LIBERALISM AND ITS CRITICS*, *supra* note 19, at 127.

<sup>64</sup> DIETZE, *supra* note 61, at 220.

<sup>65</sup> No society, liberal or otherwise, could follow Dworkin's conception to the letter. Even in proscribing harm to others, in mandating education to youth and in redistributing income for the benefit of the disadvantaged, a society explicitly implements its notion of the "good life."

The most convincing definition of liberalism has been spelled out not in the idiom of politics or philosophy, but in terms of psychological metaphor: It was Hobhouse who wrote that "[l]iberalism is the belief that society can safely be founded on this self-directing power of personality."<sup>66</sup> He maintained that:

The progress of society like that of the individual depends, then, ultimately on choice. . . . [Society's progress] is natural only in this sense, that it is the expression of deep-seated forces of human nature which come to their own only by an infinitely slow and cumbersome process of mutual adjustment . . . . The heart of Liberalism is the understanding that progress is . . . a matter of . . . the liberation of living spiritual energy.<sup>67</sup>

Note that there is virtually a natural law implication embedded within the argument for liberalism: If the most just social and political arrangement reflects what is most "natural" from a human standpoint, and if what is most natural for us as human beings is reflected in what we desire and choose, then liberalism is the most just political and social arrangement insofar as it seeks to enshrine and facilitate free choice, the satisfaction of human desires, and the pursuit of human happiness generally.<sup>68</sup>

The history of liberalism can be seen as a series of attempted accommodations between two conflicting principles—on one hand, the liberal (and utilitarian) imperative to maximize satisfaction of desires and, on the other, the understanding that freedom is often best served by restraining the satisfaction of desire, i.e., either that my freedom is best served by limiting your range of action or that my own greater freedom in the future is best served by limiting that same range of freedom in the present. A function of this fluctuating *modus vivendi* between these two simple considerations, liberalism may be viewed to have progressed roughly

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<sup>66</sup> L.T. HOBHOUSE, *LIBERALISM* 66 (1964) (1911).

<sup>67</sup> *Id.* at 73. Note that there is almost a natural law implication embedded within the notion that what is desired or chosen freely is what is most natural, and thus, most just.

<sup>68</sup> The most interesting problems with this view arise with the second premise: that what is most natural is what we desire most. Two problems persist here. First, it may not be desire, but reason, happiness, or human perfection, all of which at least sometimes conflict with the satisfaction of desire, which is the touchstone of the "natural." Second, even if desire satisfaction is the most "natural" goal for the state, which desires count where there are conflicting desires? Is it the addict's desire for his next "fix" or his desire to be free of the effects of the drug? Is it the consumer's desire for idle distraction or sensual engagement, or her desire for artistic self-expression or spiritual self-perfection? In the light of conflicting desires, to the extent we must appeal to some concept to break the tie, we dilute our primal liberalism.

through three disparate stages.<sup>69</sup>

The initial point of development was with the social contract thinkers, particularly Locke. With an emphasis on natural rights which exist independent of, and prior to, government, the conviction that there exists a felicitous harmony of enlightened self-interest with social progress, and the belief in limited government along with the corresponding notion of negative<sup>70</sup> freedom, the early liberals were the most radical in their individualism.<sup>71</sup>

The second stage of liberalism is marked by a normative shift away from individual rights to a utilitarian basis for social ordering.<sup>72</sup> This move had two significant implications: First, rights were no longer conceived as absolute, but could be overridden for collective reasons; and second, liberty in particular would be conceived not as an end in itself but as a means to happiness. This was significant in that, if it could be shown that happiness could be maximized by restricting liberty, the consistent utilitarian would have to favor the restriction on liberty. Similarly, utilitarians were more likely to justify negative freedom in broad areas of public and private life not by appeal to the right of individuals to be free at all costs, but because they believed each person is her own best judge as to what makes her happy and, consequently, that permitting general freedom is the best way to maximize happiness. The old individualism was eroded not only by the collectivist moral implications of utilitarianism, but by the increasing emphasis placed on equality implicit in utilitarianism.<sup>73</sup>

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<sup>69</sup> See HOBHOUSE, *supra* note 66, at 30-43 (detailing these three historical stages of liberalism).

<sup>70</sup> See generally, BERLIN, *supra* note 58 (comparing negative and positive freedom, and defending the former).

<sup>71</sup> One author describes individualism as follows:

Humans are conceived as nomads protected by individual rights, with self-selected ends and interests, whose relationships and group membership are entered voluntarily for the purpose of attaining those ends and advancing those interests, and whose standards for choice and judgment are rational and abstract and lie within.

JACK CRITTENDEN, *BEYOND INDIVIDUALISM: RECONSTITUTING THE LIBERAL SELF* 3 (1992). As we shall see shortly, more recent strands of liberalism place greater emphasis on the collective nature of society, both in that individuals are products of the social order psychologically and in the sense that collective goals may outweigh individual rights as a normative matter.

<sup>72</sup> HOBHOUSE, *supra* note 66, at 37.

<sup>73</sup> See Shils, *supra* note 62, at 162-64 (explaining that while classical or early liberalism insisted upon equality before the law and equality of opportunity, modern liberalism has moved to equality of reward).

Implicit in utilitarianism is the notion that everyone is equal in the sense that my happiness is no better or worse, no more or less significant, than your happiness.

This emphasis on equality eventually led to a third stage which took more seriously the notion that freedom is contingent upon restraint of the more powerful. This broadened the class of "harms" for which restraint could be employed to include various forms of economic inequality. In addition, it replaced the older notion of freedom as absence of governmental authority with the radical (from a traditional liberal standpoint) idea that government should equalize freedom by using its power to restrain others.<sup>74</sup> Along with the greater emphasis upon equality, third-stage liberalism has moved further away from the individualist conception of the first-stage liberals to an interactive, organic view of social life. On the modern view, our lives are essentially relational, in that even individuality is firmly grounded in social conditions.<sup>75</sup>

While the past twenty years have witnessed a reversion on the part of liberal theory to rights-based views, often with a modified social contractarian emphasis,<sup>76</sup> the substantive commitments of third-stage liberalism to social equality have remained intact. Notwithstanding the general historical tendency of liberalism to pass through these stages, each stage carries within it certain remnants of the past which serve to confound any attempts at systematizing liberal thought. Underlying the antinomies of liberalism are fundamental issues concerning the way in which each era has

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Particularly in crude versions of utilitarianism, since the only thing which makes any moral difference is the quantity of happiness to be gained from an act, and since each person is presumed to be inherently capable of a similar quantity of happiness, this is all that matters. Differences in privilege predicated upon rank, status, or achievement are irrelevant to reward. Thus, without some independent utilitarian justification for disproportionate distribution of reward based on merit, for example, equality of distribution is presumed.

<sup>74</sup> As one writer put it, "the state might be needed to render individuals *more* autonomous . . . by removing or inhibiting the power of other social forces to captivate and bewitch [them]." RONALD BEINER, *WHAT'S THE MATTER WITH LIBERALISM?* 27 (1992). While Beiner makes this statement by way of criticizing liberalism, modern liberalism has anticipated this criticism and has long justified numerous social institutions and policies from drug criminalization to curbs on cigarette advertising, on these grounds.

Another question which arises, and which must be postponed for now, is whether such moves are ways of protecting negative freedom or whether, on the other hand, the government has gone into the business of promoting positive freedom. See BERLIN, *supra* note 58 (distinguishing between negative and positive freedom).

<sup>75</sup> This is Hobhouse's view. HOBHOUSE, *supra* note 66, at 67-78.

Partially anticipating Rawls, Hobhouse argues that inequality is justified only if, on the whole, inequality works to the benefit of the common good, including the least advantaged. *Id.* at 70. Unlike Rawls, Hobhouse would justify any system in terms of the utilitarian net gain. See RAWLS, *supra* note 6, at 75-83 (describing the "difference principle," predicated upon rights rather than utilitarian reasoning).

<sup>76</sup> The great influence, of course, has been Rawls. See RAWLS, *supra* note 6.



viewed the nature of the self and its relation to the social world. The thought of John Stuart Mill is an archetypal example of liberalism, not because of its coherence, rigor, and internal consistency but, rather, because his thought is expansive, rich, and often contradictory. The tensions and ambiguities in Mill's thought are the tensions and ambiguities of the modern era concerning the most fundamental political, social, and spiritual questions: the nature of the human self.

### B. *Human Nature in Mill's Thought*

This section focuses on three antinomies in Mill's thought representative of liberal thought today; each serves to render the philosophical psychology of liberalism problematic. The three issues concern Mill's view of the self, his concept of the nature of human happiness and his position regarding the possibility of personal freedom (i.e., freedom of the will).<sup>77</sup>

#### 1. Mill's View of the Self

In *On Liberty*, Mill outlines a conception of human flourishing in which freedom, individuality, and self-development are intimately intertwined, so much so that some have argued that the three concepts are interchangeable.<sup>78</sup> For Mill, the signs and consequences of self-development are manifest in one's individuality:<sup>79</sup> the greater the development, the more pronounced is one's uniqueness.<sup>80</sup> Explicit in this view is the notion that each individual possesses some core identity which must be nurtured and brought out. As Mill wrote:

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

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<sup>77</sup> See, e.g., Isaiah Berlin, *John Stuart Mill and the Ends of Life*, in J.S. MILL "ON LIBERTY" IN FOCUS (John Gray & G.W. Smith eds., 1991) (arguing that Mill's position in *On Liberty* is not reconcilable with his utilitarianism) [hereinafter IN FOCUS]. I shall forego an examination of the more frequently traversed tension, or outright conflict, between Mill's utilitarianism and his libertarianism; already a great deal has been written on this latter topic.

<sup>78</sup> Indeed, as John Gray argues, "some of Mill's critics have suspected that the relation he argues for between liberty, self-development, and happiness are no more than a series of analytical equivalences." JOHN GRAY, *MILL ON LIBERTY: A DEFENSE* 14 (1983).

<sup>79</sup> In *On Liberty*, Mill states that "individuality is the same thing with development, and . . . it is only the cultivation of individuality which produces, or can produce, well-developed human beings." MILL, *supra* note 20, at 60.

<sup>80</sup> "In proportion to the development of his individuality, each person becomes more valuable to himself, and is therefore capable of being more valuable to others." *Id.* at 59-60.

requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.<sup>81</sup>

Two ingredients are necessary to the process of self-unfolding: freedom and variety of situations.<sup>82</sup> With the requisite freedom and variety, the process of self-development is simultaneously a process of creation and discovery.<sup>83</sup> The developing individual must distinguish his own native impulses and temperament from those implanted in him by culture. Mill wrote that:

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>84</sup>

Personal happiness is only possible by cultivating this inner nature: "Where, not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress."<sup>85</sup> This internal nature, however, is fragile and easily lost forever through conformity where "by dint of not following their own nature they have no nature to follow."<sup>86</sup>

It is commonplace today to speak of individuals as having a core identity which distinguishes them from others, the discovery of which is a part of the process of "finding oneself."<sup>87</sup> This picture of human personality, however, is strange indeed for a nineteenth-century empiricist such as Mill. It implies that each individual has some core uniqueness, some "quiddity or essence,"<sup>88</sup> which she possesses prior to experience and which exists independent of external conditions. It has been argued that, as an empiricist, Mill had to be committed to a Humean notion of the self as a bundle of perceptions.<sup>89</sup> On such a view, it makes little sense to talk about

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<sup>81</sup> *Id.* at 56.

<sup>82</sup> *Id.* at 54-55.

<sup>83</sup> Mill has an "essentialist" view of human nature that combines the claim that man is his own maker with the claim that he discovers himself in the process of self-realization. GRAY, *supra* note 78, at 86.

<sup>84</sup> MILL, *supra* note 20, at 57.

<sup>85</sup> *Id.* at 54.

<sup>86</sup> *Id.* at 58.

<sup>87</sup> See *infra* notes 100-06 and accompanying text (discussing the modern psychology of identity and self-discovery).

<sup>88</sup> GRAY, *supra* note 78, at 73. See *supra* notes 44-47 and accompanying text (explaining empiricist psychology and its rejection of an *a priori* human identity).

<sup>89</sup> G.W. Smith, *Social Liberty and Free Agency: Some Ambiguities in Mill's Conception of*

self-development because there is no enduring, persisting self to develop.<sup>90</sup> Nor, it may be argued, can the concepts of character or internal nature make sense to the nineteenth-century empiricist; these are the constructs of a rationalist, not an empiricist, psychology.<sup>91</sup>

Mill's conception of the self was not, strictly speaking, Humean in nature.<sup>92</sup> His view was much more complex. Mill was influenced in his theory of the self by nineteenth-century romanticism, with its conviction that each person does indeed possess some core identity which renders her essentially different from all others, and with its enshrinement of the cult of genius and the idea that the true genius cannot help but be eccentric, uniquely different from all others.<sup>93</sup> Mill writes that persons of genius are more individual than other people and less capable to conform themselves without harm to their natures.<sup>94</sup> It is strikingly ironic that, notwithstanding his reputation for arid empiricism, such romantic currents underlie much of his thought.

The problem with Mill's theory of self is not primarily epistemological, as has been argued.<sup>95</sup> He can be defended from charges of inconsistent empiricism by arguing that the concepts of character and self-development can be spelled out in behavioral terms—i.e., that character is a habitual mode of behavior which can be observed, while self-development is a means by which subjectively felt inclinations, talents, and desires are nurtured and cultivated, where again, the results can be observed in the individual's behavior. One's self or "internal nature" may be similarly salvaged by describing it in terms of a complex of strongly-felt subjectively experienced desires, inclinations, and propensities which the individual routinely encounters upon introspection, and which may be

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*Freedom*, in *IN FOCUS*, *supra* note 77, at 249. See *HUME*, *supra* note 10, at bk. I, pt. IV, sec. II (analyzing the concept of self).

<sup>90</sup> G.W. Smith examined the problem and concluded that Mill's concept of the self is "a void at the center of his philosophical system." See Smith, *supra* note 89, at 249.

<sup>91</sup> The idea here, again, is that "character" and "internal nature" cannot be empirically observed. Indeed, radical empiricist psychologists such as B. F. Skinner would consider such concepts to be constructs of a pre-scientific psychology. See *infra* notes 276-308 and accompanying text (describing Skinner's radical empiricism).

<sup>92</sup> See *infra* notes 96-142 and accompanying text.

<sup>93</sup> See generally CARL PLETSCHE, *YOUNG NIETZSCHE: BECOMING A GENIUS* 1-16 (1991) (discussing the nineteenth-century cult of genius and its application to the life of Nietzsche). The author suggests that the myth does not fit well with Nietzsche's life insofar as the then-prevailing view provided that genius is born, while Nietzsche made himself a genius through sheer self-will. *Id.* at 13-16.

<sup>94</sup> MILL, *supra* note 20, at 61.

<sup>95</sup> Smith, *supra* note 89, at 249.

a function of genetic or constitutional influences. While Mill does not spell the theory out as such, his view can be made consistent with empiricism in a fashion similar to the one suggested here.

The difficulty with Mill's theory of the self is more fundamental than that which is suggested by the charge of inconsistent empiricism. More problematic are the following set of issues: What defines the "self" and serves to distinguish it from external or heteronomous influences? What makes a particular inclination, desire, or character trait "mine," in a sense that distinguishes it from other external influences upon me? And how does Mill know that what he describes as the discovered self is not itself the product of social conditioning or other external conditions?

Mill was a reductionistic materialist who rejected the notion of mind as an independent substance; in other words, for Mill, mind was reducible to the physical brain.<sup>96</sup> Thus, use of the term "self" to describe his view does not imply that he believed, Cartesian style, in a separate self ontologically distinct from the brain. Nevertheless, Mill appears to have believed that each person possesses a core complex of impulses, inclinations, talents, and desires which are peculiarly her own. As such, these impulses and inclinations are not reducible to, or explainable by, cultural factors. While Mill probably would have explained these constituents of selfhood in genetic or other physical terms, the above-mentioned questions remain.

First, what distinguishes these constituents of the self from those which are externally implanted? If we may assume for the moment that one's native desires are those with which one is born, as opposed to being the result of external factors such as social conditioning, what renders the former more an aspect of the self than the latter? In other words, why is the inborn desire, talent, or inclination more "mine" than one which is the result of social factors? Indeed, it might be argued in Kantian fashion that certain inborn inclinations may be less autonomous in that we do not choose them.<sup>97</sup> Mill suggests that our true nature will be represented in stronger impulses and desires than those which are socially created.<sup>98</sup> This, however, may not be accurate. It may be that, with the help of the behavioral sciences, it is possible to im-

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<sup>96</sup> JOHN STUART MILL, *A SYSTEM OF LOGIC: RATIOCINATIVE AND INDUCTIVE* (8th ed. 1872) [hereinafter *A SYSTEM OF LOGIC*]; see also PRIEST, *supra* note 39, at 189 (discussing Mill's reductionism).

<sup>97</sup> For Kant, true autonomy is realized only in following the dictates of reason—in acting in accordance with duty, for the sake of duty. KANT, *supra* note 32, at 13.

<sup>98</sup> "To say that one person's desires and feelings are stronger and more various

plant in the person a network of desires and inclinations which do not exist at birth and which are stronger still than one's innate influences.<sup>99</sup>

The problem becomes poignant when we pose the question: What if Mill, and the romantic tradition he followed, is wrong in asserting that each person possesses a core nature which can be discovered by exposure to diverse life situations? What if our sense of self is, as behaviorists and others maintain,<sup>100</sup> a product largely or solely of external, social influences? It appears that the psychological consequences of the romantic view might be outright devastating.

What would be the likely psychological result of prescribing as a means of discovering one's identity a diet of varied lifestyles, options, and modes of interacting in the world to persons who derive their identities largely from the external world? Might the result be a sense that one is without a core identity altogether? Or that one has numerous selves? In *Love and Will*, the psychologist Rollo May suggests that the most fitting appellation for our era is the "age of the disordered will."<sup>101</sup> He points ironically to the fact that, at a time when choice is at its apex, there is an overwhelming sense of emptiness, ennui, and apathy. He states bluntly that "in this failure of will lies the central pathology of our day."<sup>102</sup> Discussing the modern attitude toward sexual involvement he states:

What we did not see in our short-sighted liberalism in sex was that throwing the individual into an unbounded and empty sea of free choice does not in itself give freedom, but is more apt to increase inner conflict.<sup>103</sup>

Other psychologists and philosophers echo these sentiments. Robert Jay Lifton characterizes the modern style of existence as "protean," represented by endlessly changing styles of existence

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than those of another, is merely to say that he has more of the raw material of human nature. . . ." MILL, *supra* note 20, at 57.

<sup>99</sup> See *infra* Part IV, notes 268-332 and accompanying text (defining social conditioning).

<sup>100</sup> Not only behaviorists but social interactionists maintain that our identity is the result of our experiences. The social interactionist position is more complex than the behaviorist in that, for the social interactionist, it is not simply behavior which is learned, but our self-identity. This occurs as a function of the way we view the world to be viewing us. See GEORGE HERBERT MEAD, *MIND, SELF AND SOCIETY FROM THE STANDPOINT OF A SOCIAL BEHAVIORIST* (Charles W. Morris ed., 1934) (providing the classic statement of this position).

<sup>101</sup> MAY, *supra* note 10, at 16 (footnote omitted).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 42.

which serve to disguise an identitiless self.<sup>104</sup> Alan Bloom maintains:

[A] young person today . . . begins *de novo*, without the givens or imperatives that he would have had only yesterday. His country demands little of him and provides well for him, his religion is a matter of absolutely free choice and . . . so are his sexual involvements. He can now choose, but finds he no longer has a sufficient motive for choice that is more than whim . . . .<sup>105</sup>

The point here is not that persons do not subjectively experience inclinations and drives of various sorts, from professional callings to one or another sexual orientation, which appear to the individual *a priori*, with an existence independent of social influences. The point is that, to the extent an individual does *not* have a particular sense of felt identity in one or another respect, the romantic notion of the native self may pose pernicious psychological and social consequences. It may be that, to the extent the self is the product of external conditions, autonomy and self-actualization are best conceived as being a function of psychological *integration*, rather than *authenticity*.<sup>106</sup>

Before closing, one troubling consequence of Mill's own theory, which he apparently overlooked, should be noted. If it is true, as Mill maintained, that genuine freedom requires the expression of one's own native impulses, and that most persons in our own culture either fail to nurture and develop these impulses, or permit

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<sup>104</sup> LIFTON, *supra* note 10. Shils juxtaposes the classical liberal conception of the self with the modern liberal view:

[From classical liberalism, with its view of the self as] both disciplined and aesthetically aristocratic; the new ideal has become more discontinuous and momentary, and the attainment of states of sensation has become the end. Being creative . . . does not require the development of a "unique life style," as much as it involves trying out all sorts of "lifestyles" in succession.

Shils, *supra* note 62, at 170.

<sup>105</sup> ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 109 (1987).

<sup>106</sup> "Authenticity" might be characterized as the state of choosing spontaneously without any pretext, guidelines, or standards outside of the imperatives of the self. Integration, on the other hand, is characterized by a coherence of beliefs, desires, goals, and attitudes toward the world. The test for authenticity is: Is the decision or action truly *your own*? The test for integration is: Do your beliefs, goals, and attitudes internally cohere so that cognitive dissonance is minimized? Authenticity requires a principle for distinguishing acts or choices which are genuinely mine from those which are the result of external influences; it requires that a line must be drawn between the internal and the external, the self and the world. Integration requires only that there is a minimal consistency in the network of beliefs, desires, and goals that is "the self." See Hill, *supra* note 17, at 670-71 (1994) (relating the concept of integration to social conditioning).

them to dwindle and ultimately die on the vine,<sup>107</sup> then it is arguable that Mill's Liberty Principle does not even apply to these individuals, who constitute the great bulk of our society. A good argument can be made that, like children, barbarians, and the mentally infirm, to whom the principle does not apply,<sup>108</sup> the masses who fail to develop their authentic selves are similarly not subject to the protection of Mill's principle. Minimally, it might be argued that the principle exists only as a defensive measure to protect the self-developed few from the stultifying dictates of the herd, rather than as a liberating force for future generations. More controversially, it may be the case that those who fall beyond the ambit of the Liberty Principle are the proper subjects of paternalistic coercion—to coerce their greater freedom and individuality.<sup>109</sup>

To conclude, there are three related problems with Mill's concept of the self. First, there is no way to distinguish on principle that which is an aspect of the self from that which merely appears to be. The reason this is important is that, for Mill, the exercise of freedom is contingent upon acting in accordance with our self, rather than as a consequence of heteronomous influences. Second, if Mill and the romantic tradition have misconstrued the self as a core complex of native dispositions unique to the individual such that true freedom and authenticity can be achieved only by developing this native self, the social and psychological consequences may be far-reaching. If what we call the self is instead the result of external influences, as behaviorists such as Skinner or social interactionists such as George Herbert Mead would maintain, the exhortation to the less than fully-developed self to experience variety may actually hinder or preclude the process of self-development and integration. Finally, Mill's theory implies that those who have been unwilling or unable to develop the self should be treated like other classes of persons—children, the precivilized, and the mentally handicapped—such that the Liberty Principle does not apply to them. Mill leaves these issues unanswered.

## 2. Mill's Notion of Happiness

If Mill's theory of the self is plagued by an underlying tension

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<sup>107</sup> See generally Smith, *supra* note 89, at 258 (arguing that when Mill's optimism in human nature waned, as it often did, he tended to the view that the bulk of mankind was doomed to mediocrity).

<sup>108</sup> MILL, *supra* note 20, at 11.

<sup>109</sup> See generally, Smith, *supra* note 89 (contending that Mill's notion of freedom is positive, not negative, and asserting that Mill failed to see the authoritarian implications of his theory).

that happiness should not be confused with contentment<sup>121</sup> and suggests, in a very Aristotelian manner, that happiness comes with the actualization of inner capacities and is found in self-realization.<sup>122</sup> But if happiness is satisfying one's desires, or getting what one wants, what if one prefers the "lower" pleasures, a life of push-pin to poetry? It is at this point that Mill makes a most startling claim:

But I do not believe that those who [sink into indolence and selfishness] voluntarily choose the lower description of pleasures in preference to the higher. I believe that before they devote themselves exclusively to the one, they have already become incapable of the other. . . . Men . . . addict themselves to inferior pleasures, not because they deliberately prefer them, but because they are either the only ones to which they have access, or the only ones which they are any longer capable of enjoying.<sup>123</sup>

Mill settles the apparent contradiction between his view that people are happiest in the pursuit of individuality and self-realization with the obvious fact that most people appear to prefer the "lower" to the "higher" pleasures, by claiming that this preference is not a "voluntary" one. The troubling implication here is, of course, that if a person chooses to pursue some path diverse from that which Mill would have deemed superior, not only is the decision a bad one, it is an outright involuntary one.

The conflict in Mill's view of happiness can be expressed in a number of ways. He appears to endorse both a subjective notion of happiness as the satisfaction of a person's desires and an objective concept of happiness as hierarchical, dependent upon a normative framework of "higher" and "lower" pleasures. On this objective account, the person who chooses the lower pleasure must be considered less happy than one who chooses the higher pursuit. Alternatively, in defense of the subjective account, Mill argues that every individual is unlike all others, with manifold desires and diverse inclinations and aspirations which are unique to that person. Mill's appeal to the majority to settle the question of qualities of pleasures is at odds with his individualism and with his claim that everyone has unique desires and inclinations. Finally, the individual who chooses what most deem to be a less noble pursuit is liter-

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<sup>121</sup> *Id.*

<sup>122</sup> See LINDLEY, *supra* note 20, at 104 (comparing Mill's Aristotelian concept of happiness with that of Benthamite utilitarianism).

<sup>123</sup> MILL, *supra* note 110, at 9-10.



ally characterized as acting involuntarily or, at least, as exhibiting a kind of moral, aesthetic, or intellectual incapacity.

The contradictions in Mill's theory of happiness are reflected in the moral-psychological ambivalence of modern liberalism. Either happiness is defined by reference to some external standard or it is completely a matter of subjective judgment. Acceptance of the former undermines our commitment to individualism and to moral neutrality in private life; accommodation to the latter may very well altogether undermine any shared social vision.

### 3. Mill's Theory of Personal Freedom

Perhaps the most complex and troublesome aspect of Mill's thought yet concerns his theory of personal freedom. If we distinguish personal from political freedom,<sup>124</sup> issues arise both with respect to the antinomies inherent in Mill's notion of personal freedom and in the relationship between personal freedom and political liberty in his thought.

Mill was both a materialist and a determinist.<sup>125</sup> In *A System of Logic*, he defines determinism as the doctrine which holds that the law of causality applies to human actions, with the implication that the human will is a product of causal antecedents.<sup>126</sup> He defines personal liberty as "the thesis that the will is not determined by other phenomena, by antecedents, but determines itself."<sup>127</sup> Clearly, as defined, determinism and liberty are mutually exclusive alternatives: Human behavior cannot be both self-caused and the product of causal antecedents. Because Mill is a determinist, it appears that he is foreclosed from affirming the freedom of the will, which may appear particularly ironic for one of the greatest defenders of political and social liberty.

Nevertheless, Mill may be grouped with earlier British empiri-

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<sup>124</sup> Personal or internal freedom concerns issues of freedom of the will, while political or external freedom concerns issues of political liberty such as the right to self-government, the right of free speech, the right to be free from unreasonable searches, etc. In the very first line of *On Liberty*, Mill distinguishes the two: "The subject of this Essay is not the so-called Liberty of the Will . . . but Civil, or Social Liberty: the nature and limits of the power which can be legitimately exercised by society over the individual." MILL, *supra* note 20, at 3.

<sup>125</sup> See *supra* MILL, *A SYSTEM OF LOGIC*, note 96, at 413-14 (detailing his concept of determinism); *id.* at 427-30 (explaining his view of the mind-body problem).

<sup>126</sup> *Id.* at 413. This means both that every event has a set of causes which produce it, and that these causes *necessitate* the event such that no other event could have occurred but that which did occur. See PRIEST, *supra* note 39, at 187-88 (articulating Mill's view of the problem).

<sup>127</sup> MILL, *supra* note 96, at 413.

between his empiricism and romanticism—a tension, incidentally, which continues to animate and confound modern liberal thought—his theory of human happiness is conflicted by his utilitarianism and populism, on one hand, and his perfectionism and aristocratism, on the other. Mill follows Benthamite utilitarians, and Epicureans before them, in arguing that happiness is the sole end of life; it is all that we should, and usually do, seek.<sup>110</sup> He similarly follows the earlier utilitarians in equating happiness with pleasure, and unhappiness with pain.<sup>111</sup> He appears at first blush to embrace philosophical hedonism and, indeed, he would maintain that he does.<sup>112</sup>

Mill has been criticized for the vagueness of his concept of happiness. For instance, Berlin argues that for Mill “‘happiness’ came to mean something like realization of one’s wishes, which is vague to the point of vacuity.”<sup>113</sup> The charge is well-founded. Not only did Mill equate happiness with pleasure, he equated desiring something and finding it pleasant. Specifically, Mill maintained that “desiring a thing and finding it pleasant . . . are phenomena entirely inseparable, or rather two parts of the same phenomenon.”<sup>114</sup> Thus, happiness is equated with finding a thing pleasant, finding a thing pleasant is the same as desiring it, and achievement of one’s desires is tantamount to happiness. The three concepts appear virtually interchangeable in Mill’s thought.

A further problem with Mill’s theory stems from the tension between the utilitarian and perfectionist strains inherent in his thought. At points, Mill’s philosophy of life appears egalitarian and anti-elitist. His view implies that different individuals will find diverse things pleasant, that the attainment of these diverse objects of pleasure will lead equally to happiness and that all desires, whatever their object, are equivalent in this respect. Yet nothing could be further from the core of Mill’s philosophy.

Like Epicureanism before it, utilitarianism was criticized for having a base view of human nature—namely, for believing that

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<sup>110</sup> “The utilitarian doctrine is, that happiness is desirable, and the only thing desirable, as an end; all other things being desirable only as means to that end.” JOHN STUART MILL, *Utilitarianism*, in *UTILITARIANISM, LIBERTY, AND REPRESENTATIVE GOVERNMENT* 32 (1910).

<sup>111</sup> “By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure.” *Id.* at 6.

<sup>112</sup> See notes 113-23 and accompanying text (examining whether Mill is consistent on this point).

<sup>113</sup> Berlin, *supra* note 77, at 138.

<sup>114</sup> MILL, *UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT*, *supra* note 110, at 36.

the highest goal in life is the pursuit of pleasure.<sup>115</sup> It is in his response to this charge that a strong undercurrent of perfectionism appears in Mill's philosophy. He begins by arguing that the life of the intellect is superior to the life lived for bodily sensations. He comments that "there is no known Epicurean theory of life which does not assign to the pleasures of the intellect, of the feelings and imagination, and of the moral sentiments, a much higher value as pleasures than to those of mere sensation."<sup>116</sup> Mill then draws his famous distinction between the *quantity* of pleasure and the *quality* of it:

It is quite compatible with the principle of utility to recognize the fact, that some *kinds* of pleasure are more desirable and more valuable than others. It would be absurd that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone.<sup>117</sup>

This was a significant break from Benthamite utilitarianism, in its goal to provide a scientific—indeed, mathematical—basis for morality. What made early utilitarianism attractive was its claim to quantitative objectivity. In moving away from this model, Mill was abjuring the quantitative appeal of utilitarianism in order to respond to the charge that it fostered a base view of human conduct.

How is the quality of two pleasures to be compared? Simply by asking people who have experienced both to rate them:

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.<sup>118</sup>

Mill then contends that while "a being of higher faculties requires more to make him happy" than that which is required for an "inferior type," the superior being would never trade his place for that of the inferior even if the lowling appeared happier.<sup>119</sup> He argued that "[i]t is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied."<sup>120</sup>

How does this square with his earlier hedonism? Mill claims

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<sup>115</sup> Mill notes that the lives of Epicureans were commonly compared to those of animals. *Id.* at 7.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 8.

<sup>119</sup> The reason for this is the sense of dignity which all human beings possess. *Id.* at 8-9.

<sup>120</sup> *Id.* at 9.

cists, including Hobbes and Hume, in attempting a kind of accommodation between the apparent truth of determinism and its troubling moral implications.<sup>128</sup> The compatibilist or "soft determinist" position<sup>129</sup> holds basically that freedom is contrary not to causation, but to compulsion or external constraint.<sup>130</sup> The fundamental idea is that if the individual acts in accordance with her own desires, she must be free in the only sense which makes sense of the term "freedom," notwithstanding the truth of determinism. Mill modifies this view in one important respect: it is not acting in accordance with *any* desire which is equivalent with freedom; rather, the way in which the desire arises is important. Most basically, the desire must be *one's own*, rather than the result of external influences.<sup>131</sup>

Two problems arise with this account of personal freedom: one is particular to Mill's view while the other plagues all compatibilist solutions to the free will/determinism problem. The peculiarity of Mill's view is a function of the ambiguity inherent in his theory of the self.<sup>132</sup> Because it is not clear what renders a particu-

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<sup>128</sup> If determinism is true, then nothing could occur other than it actually does occur. But if this is true, traditional notions of moral responsibility, which require the possibility that the actor could have done otherwise than he did, cannot be maintained.

<sup>129</sup> The distinction between "hard" and "soft" determinism was first drawn by William James. WILLIAM JAMES, *The Dilemma of Determinism*, in *THE WRITINGS OF WILLIAM JAMES* 590 (John J. McDermott ed., 1967).

<sup>130</sup> For example, Thomas Hobbes maintained at the beginning of Chapter 14 of *Leviathan*: "By Liberty, is understood . . . the absence of externall Impediments: which Impediments may oft take away part of a man's power to do what he would. . . ." HOBBS, *supra* note 35, at 189.

Similarly, in the *Inquiry*, David Hume argues that freedom is nothing other than "a power of acting or not acting according to the determinations of the will." HUME, *supra* note 18, at 104. Thus, freedom was equated with acting in accord with one's wishes, with desire. But there are problems with this view, both philosophically and psychologically. See Hill, *supra* note 17, at 668 n.224 (explaining the relationship between freedom and desire).

<sup>131</sup> See Smith, *supra* note 89, at 246-47 (examining Mill's view on the relationship between desire and freedom).

<sup>132</sup> See *supra* notes 78-99 and accompanying text (addressing Mill's view of the self). One's notion of freedom is intimately connected with one's theory of the self. Ambiguities with respect to one's view of the self will translate to difficulties with one's view of personal freedom. This is because the very concept of freedom is contingent upon a dichotomy between self and world. When a theory is ambiguous with respect to the question as to where to draw the line between self and world, it will be ambiguous concerning the question as to whether any act is the product of the free self or the external world. One example of this problem is characterized by the way in which desire is treated. If desires are part of the self, as the Hobbes-Hume line would maintain, acts motivated by desires are free. On the other hand, desires are sometimes viewed to be heteronomous, external and compelling, as with the heroin addict who

lar desire or motivation "my own," other than the general idea that genuine, autonomous desires<sup>133</sup> are supposed to arise spontaneously and may be carefully cultivated, Mill's view cannot give a coherent account of which acts are free. Additionally, his view has the implication that acts which result from heteronomous desires are unfree. If most human behavior, given our current state of development, is indeed motivated by these external forces, as Mill implies,<sup>134</sup> it follows that most human actions are essentially unfree. This is borne out by Mill's conclusion that only the virtuous, a small minority, are free.<sup>135</sup>

More troubling still is the problem which confronts all soft determinist theories. The soft determinist admits that all behavior is determined but maintains that acts which result from desires, inclinations, or other internal elements of the self are "free."<sup>136</sup> Yet determinism entails that even these desires, inclinations, and other internally motivating factors are causally determined. This places the soft determinist in the awkward position of contending that we are free in acting from desires and motivations which are themselves caused by external forces. Mill cannot escape the conundrum. He maintains that the virtuous are those who are free from internal and external constraint to alter their own character, yet he

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is at war with his own desires. See Wright Neely, *Freedom and Desire*, 83 PHIL. REV. 32 (1974) (giving two views of the relationship between freedom and desire).

<sup>133</sup> Note that Mill's view is distinct from Kant's on this point. For Kant, desires are always heteronomous — external to our capacity for rationality. In contrast, Mill believed that desires were an important part of our decision-making capacity. Thus, "autonomous desire" is an oxymoron for Kant, but not for Mill. See LINDLEY, *supra* note 20, at 13-27 (Kant's view of the self and human freedom); *id.* at 28-43 (Hume's view); *id.* at 44-62 (Mill's view).

<sup>134</sup> See *supra* note 107 and accompanying text (describing Mill's pessimism regarding human freedom). Mill wrote, in *On Liberty*, that:

But society has now fairly got the better of individuality; and the danger which threatens human nature is not the excess, but the deficiency, of personal impulses and preferences . . . by dint of not following their own nature they have no nature to follow: their human capacities are withered and starved: they become incapable of any strong wishes or native pleasures, and are generally without opinions or feelings of home growth, or properly their own.

MILL, *supra* note 20, at 57-58.

<sup>135</sup> This is one of the central points made in chapter three of *On Liberty*. The "virtuous," in Mill's view, are coextensive with those who act autonomously. They are those free of internal constraints to virtue, including bad habits or the incapacity to appreciate the nobler pleasures of life. See Smith, *supra* note 89, at 256 (examining the connection between Mill's view of freedom and his view of virtuous character).

Again, the perfectionistic implications of Mill's theory of freedom should be noted. Freedom requires the exercise of virtue and vice-versa.

<sup>136</sup> See A. J. AYER, *PHILOSOPHICAL ESSAYS* ch. 12 (1954) (providing a modern version of compatibilism).

admits that "the will to alter our own character is given us, not by any effort of ours, but by circumstances we cannot help; it comes to us from external causes or not at all."<sup>137</sup> This is a peculiar sense of the term "freedom."<sup>138</sup>

Assuming, alternatively, either that the doctrine of determinism is true, or simply that the majority of persons lack the internal capacity to develop their own natures, what function can political liberty have? In other words, without personal freedom, what value does political freedom possess? At least one commentator has argued that determinism altogether negates political liberty, that if there is no freedom, there is no freedom *tout court*.<sup>139</sup> This, however, appears to conflate the two distinct types of freedom.

The traditional view of liberalism is predicated upon a negative view of freedom.<sup>140</sup> On the other hand, at least one commentator has argued that Mill's theory supports a positive conception of freedom.<sup>141</sup> In actuality, Mill's view cannot be reduced to one or the other. Most basically, Mill endorses a negative view of political liberty while recognizing that the achievement of true personal freedom, autonomy, and individuality requires much more than negative liberty and cannot be achieved by simply removing the external barriers to free choice.<sup>142</sup> His hope is that genuine political freedom may assist individuals in achieving inner, personal freedom.

Only on a positive view of freedom does the state have the duty to promote personal happiness and freedom. The next sec-

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<sup>137</sup> MILL, *supra* note 96, at 89-90. Mill goes on to argue that we are nevertheless "free" in the only sense of the word which is coherent.

<sup>138</sup> Smith, *supra* note 89, at 256.

<sup>139</sup> PRIEST, *supra* note 39, at 194-99.

<sup>140</sup> Negative freedom or freedom *from*, as it is sometimes called, is the idea that the state, or society in the larger sense, poses no external impediments to the exercise of free choice. Positive freedom or freedom *for*, is freedom to achieve some goal. It requires not only the absence of external constraints, as with negative freedom, but the absence of internal constraints and, possibly, the enlistment of positive external measures to achieve one's goal. See Berlin, *supra* note 58 (providing the definitive analysis of the distinction and defending Mill's view as a defense of negative freedom).

<sup>141</sup> Smith, *supra* note 89, at 247-48 (arguing that Mill's view of freedom is positive in four ways: 1) it involves the notion of self-mastery, 2) it requires not only the absence of external constraints, but the presence of internal powers, 3) self-development is not value free, and 4) impediments to freedom may be internal, as with weakness of will).

<sup>142</sup> One can have either external freedom without being internally autonomous, as is the case with those who fail to achieve self-mastery, or one can have achieved internal autonomy while being prevented by external factors from exercising one's choices. LINDLEY, *supra* note 20, at 68-70; GRAY, *supra* note 78, at 74.

tion considers the function of law in the liberal state as the promoter of personal freedom.

*C. Modern Liberalism and The Function of Law in the Liberal State*

Liberalism is a doctrine which appears to entail manifold, even contradictory, conclusions concerning social policies precisely because the underlying assumptions embedded within the philosophical psychology of liberalism are rich, diverse, and typically contradictory. Anything and everything follows logically from a contradiction.

Contemporary liberals are torn between following Mill in affirming the existence of a core identity unique to each individual and rejecting the notion of the authentic self. Influenced by behaviorist and social learning theories, liberals increasingly accept notions such as the social construction of the will, which leave little or no room for individual initiative in the process of self-creation.<sup>143</sup> The implications of these more recent views regarding the possibility for authenticity, individuality, and freedom<sup>144</sup> make Mill appear, even in his most pessimistic moments, downright Panglossian.

Often liberals simply embrace the contradiction, which can be a promising alternative depending upon the social policies one endorses. Holding contrary views on the nature of the self permits the liberal to argue that people should be free to pursue and satisfy their various wishes and desires (on the theory that such desires are the most authentic expression of the self) and to argue for a panoply of moral excuses—where the self is viewed to be nothing but a function of social forces and influences.<sup>145</sup> The antinomy purports to preserve the self while shrinking it into a meaningless point. Thus, self, freedom, and individuality are simultaneously affirmed

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<sup>143</sup> See generally NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* (1978) (examining the process of social construction of the maternal image). This is merely one example of the general view that self-identity has its origin in social interaction.

<sup>144</sup> Authenticity is, on principle, impossible insofar as there is no authentic self which is reflected in the behavior. Spontaneous freedom of the self is similarly ruled out. And individuality becomes not a matter of expressing the true self, but of reflecting one's own combination of experiences which serve to make up the socially constructed self.

<sup>145</sup> Traditional deontological conceptions of moral responsibility, as opposed to utilitarian theories, require an individual self to be responsible. Where the self is nothing but a complex of external contingencies which are partially integrated into the psyche of the individual, to hold the "person" responsible is merely to sanction the social factors which have formed the personality. Punishment, in such a case, may make sense from a utilitarian standpoint, but is ludicrous from a traditional moral perspective.

with the ubiquitousness of unalterable social determinants of individual identity and behavior.

Alternatively, modern liberals take one of two diverse paths. One strand of modern liberalism has attempted a kind of accommodation between these tensions by accepting a philosophical psychology which places the pursuit of happiness at the apex of its system, but which is in other respects a regression from Mill's thought. The new model of personhood purports to settle the liberal antinomies by combining a banalized conception of the core self with the view that personal identity is inescapably the product of external social forces. This view redefines the "core self" as a standing will which is intimately connected with the desires we experience and which is manifest in the choices we make.<sup>146</sup> Most basically, the core self in this strand of modern liberalism is represented by our desires; these are the only things about which we can be certain.<sup>147</sup>

And even our desires are viewed as the product of external, heteronomous influences. Gone from the landscape of much of modern liberalism is Mill's commitment to an objective moral order which might otherwise serve to prioritize our desires and inform our conception of happiness. Gone is the commitment to the objectivity of reason; we have traded Mill's recognition of the importance of rationality for the earlier Humean notion of reason as possessing instrumental value only, of reason as a slave to the passions.<sup>148</sup> This more Benthamite strand of modern liberalism has opted largely for one side of Mill's thought at the expense of the other. It has confused his defense of pluralism in the name of social progress and individual self-realization for a moral relativism which can be justified only in the name of desire-satisfaction.

In the absence of a core self-identity, which exists independently of the external social influences that produce human behavior, much of the case for liberalism falters. Without an authentic

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<sup>146</sup> Empiricist psychology equates the will with our desires, or with resulting behavior. It says that "willing" is nothing but acting on desire. Rationalist psychology, on the other hand, holds that the will is distinct from our desires, something which may refuse to act on desires. Compare SKINNER, *supra* note 22, at 54-55 (stating that desire is propensity to behave; there is no will) with KANT, *supra* note 32, at 44 (contrasting will with inclination). Mill ultimately falls in with the rationalists, as he held that will was separate from desires.

<sup>147</sup> In other words, desire has a sense of immediacy and incorrigibility which cannot be claimed for other psychic elements. Moreover, to the extent that desires are expressions of need, they have *prima facie* physical importance to the individual.

<sup>148</sup> HUME, *supra* note 10, at 415, bk. II, pt. III, sec. III ("Reason is, and ought only to be, the slave of the passions . . .").



self, the distinction between autonomous and heteronomous desires collapses. Freedom as the realization of the self degenerates into freedom to satisfy our desires, to gratify the appetitive side of human nature. If no core self exists, the dichotomy between education and indoctrination, usually conceived as the difference between "bringing out" knowledge and assisting in the unfolding of the person's true character versus implanting a set of heteronomous values cannot be maintained.<sup>149</sup> All instruction becomes indoctrination in the sense that all learning must be conceived as the social construction, *ex nihilo*, of the values, beliefs, and desires which will make up the identity of the constructed self. Most fundamentally, in the absence of a core self, there can be no real freedom as Mill or earlier liberals or, for that matter, as traditional theologians would have conceived it: without a core self, there can be no subject who exercises freedom.

The philosophical psychology of this first brand of modern liberalism purports to settle the antinomies within its own tradition by fixing the locus of personal identity in desires. The antinomy of selfhood—what makes a particular desire, value or inclination "mine" in some ultimate sense—is settled by abolishing the distinction between the internal and the external, autonomous and heteronomous desires. All desires are expressions of the socially constructed self. The antinomy implicit in Mill's notion of happiness is similarly cleared away by combining a psychology of desire with a moral relativism which equates happiness with desire-satisfaction and which abstains from any moral claims concerning the superiority of one desire or type of pursuit to another. The problem of personal freedom is similarly "solved" by redefining freedom as the satisfaction of desire and by abandoning Mill's distinction between authentic and heteronomous desires, though even here there is tension.<sup>150</sup> In sum, the antinomies of Mill's

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<sup>149</sup> Again, rationalist psychology holds that there is something essential to the person which the process of education unfolds. Extreme rationalists, such as Plato, went so far as to argue that all knowledge is already "inside" us, waiting to be brought out. Thus, Plato analogized the educator to a midwife. See PLATO, *Meno*, in THE COLLECTED DIALOGUES OF PLATO, *supra* note 1, at 353 (following this view).

<sup>150</sup> Thus, the modern feminist may deny that a woman who enters a surrogate contract is truly free, even though she acted from her desires. These desires, it will be argued, are themselves the product of a male-dominated culture. See, e.g., CHODOROW, *supra* note 143 (discussing this view); GENA COREA, *THE MOTHER MACHINE: REPRODUCTIVE TECHNOLOGIES FROM ARTIFICIAL INSEMINATION TO ARTIFICIAL WOMBS* 227-28 (1985) (same).

Similarly, in the context of criminal law, some attempt to excuse criminal behavior where the subject's apparently voluntary act is a product of social forces. In both

thought are solved only by trading away the philosophical locus of liberalism—the authentic and autonomous person.

The second strand of modern liberalism steadfastly maintains its commitment to the existence of the genuine self against the onslaught of determinism, empiricism, and the philosophical deconstruction of the self. This current in modern liberal thought finds its expression in recent forms of humanistic thinking, particularly the theories of humanistic psychologists such as Abraham Maslow<sup>151</sup> and Erich Fromm.<sup>152</sup> Indeed, the similarities between the views of Maslow and Fromm, on one hand, and that of Mill, on the other, leave little doubt that psychological humanism is a direct descendant of Millian liberalism. Both Mill and the later humanists are essentially optimistic regarding human nature. Both traditions believe that persons are intrinsically free, that we tend in our natural state toward self-development, and that the pursuit of individuality is the highest (and most natural) human goal.<sup>153</sup>

Maslow's prescription for self-actualization reads like a spiritual primer for the psychologically upwardly-mobile liberal, down to his claim that self-actualization requires that we be true to our inner natures by being honest with ourselves and others about what we really desire, and that we not permit our own preferences to be swamped and overwhelmed by public opinion.<sup>154</sup> Fromm echoes Mill's concern that modern society has traded political oppression for more subtle forms of social oppression, as manifest in modern mass culture and the caprice of social consensus. His psychological analysis of "automation conformity," a socially constructed defense mechanism to the anxiety produced by freedom of choice, which he argues is characteristic of modern consumeristic culture, is a classic of liberal psychology.<sup>155</sup>

This second strand of liberalism "psychologizes" the liberal philosophy of the self by reducing desires to presumably objectively

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these cases, the liberal still implicitly invokes the autonymous/heteronomous distinction by claiming that heteronomously-produced desires should be excused.

<sup>151</sup> ABRAHAM H. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* (1971) [hereinafter *THE FARTHER REACHES*]; ABRAHAM H. MASLOW, *RELIGIONS, VALUES, AND PEAK-EXPERIENCES* (1970); MASLOW, *TOWARD A PSYCHOLOGY OF BEING*, *supra* note 3.

<sup>152</sup> ERICH FROMM, *ON BEING HUMAN* (1994); ERICH FROMM, *THE SANE SOCIETY* (1955); FROMM, *ESCAPE FROM FREEDOM*, *supra* note 1.

<sup>153</sup> For example, Maslow argues that some traits of the truly healthy personality include: increased acceptance of self, increased spontaneity, increased autonomy and resistance to enculturation, and a "more democratic character structure." MASLOW, *TOWARD A PSYCHOLOGY OF BEING*, *supra* note 3, at 26.

<sup>154</sup> See *THE FARTHER REACHES*, *supra* note 151, at 45-47 (discussing, in various ways, the need to be honest about what one prefers).

<sup>155</sup> FROMM, *ESCAPE FROM FREEDOM*, *supra* note 1, at 185-206.

quantifiable needs, thereby giving desire-satisfaction the seal of scientific legitimacy. Nowhere is this accomplished more credibly than in the thought of Maslow, who postulated a hierarchy of needs, each level of which must be satisfied in order for the individual to achieve self-actualization.<sup>156</sup> Maslow's thought has been so popular precisely because it preserves the notion of the authentic self while purporting to demonstrate the scientific basis for self-actualization through need (desire) satisfaction. This second strand of liberalism preserves the self as the philosophical basis for modern liberalism, but only by overlooking or rejecting the recent arguments which cast in doubt the existence of the core self.<sup>157</sup>

If the function of political freedom in the liberal state is to facilitate the wholesale satisfaction of personal desires, and if political freedom is conceived in the negative sense, then the antinomies within the philosophical psychology of liberalism—the contradictions concerning the nature of the self, happiness, and personal freedom—are almost irrelevant to our political program. If the function of law is simply to remove the external social and legal barriers to the satisfaction of desires in the sphere of self-regarding behavior,<sup>158</sup> it matters little whether these desires are free or determined, the product of the authentic self or a function of social influences. If negative freedom can be justified on utilitarian terms to the effect that people are the best judges of their own happiness, and thus, the greatest happiness of the greatest number is best achieved by nonintervention into the private realm, then it does not matter how each person defines her own happiness. Nor does it matter whether that happiness arises in the satisfaction of authentic, spontaneously arising desires or desires which are the product of social influences. If, however, we drop the dubious assumption that the greatest happiness is always achieved by nonintervention into the private realm, then any intrusion into the private realm can be justified, a problem to which we shall return in Part V.

On the other hand, if the pursuit of true happiness involves something more than the satisfaction of desires, if there is some greater purpose in life than that which is embodied in an ever-escalating cycle of production and consumption, the conception of freedom as noninterference will serve only to defeat the achieve-

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<sup>156</sup> MASLOW, *TOWARD A PSYCHOLOGY OF BEING*, *supra* note 3, at 152-60.

<sup>157</sup> Maslow is explicit on the existence of the self: "[w]e have, each one of us, an essential, inner nature." *Id.* at 190. The very process of self-actualization implies the nurturing of this inner nature. Throughout the book, Maslow makes this point.

<sup>158</sup> MILL, *ON LIBERTY*, *supra* note 20, at 3-4.

ment of this greater social goal. It may even be that, contrary to the most fundamental precepts of liberalism, true social progress and individual self-realization require the frustration of a broad class of desires in a manner which requires active social intervention. Indeed, it may be that, in contrast to the liberal conception of the relationship between person and state, a primary function of the state is to block the expression of various desires and to rechannel human impulses to more suitable social outlets. The next section examines such a conception of human nature, and the resulting conception of the relationship between the individual and the state.

### III. FREUD'S PSYCHOANALYTIC THOUGHT: EROS, THANATOS, AND CIVILIZATION

In the most general sense, Sigmund Freud's thought can be viewed as a reaction to the political and psychological assumptions of liberalism. Early in life, Freud took an avid interest in politics and planned to study law. He was, by disposition, a liberal; in fact, he had read and translated John Stuart Mill before becoming interested in medicine and, ultimately, psychology.<sup>159</sup> In his personal views concerning social policy, Freud's thought manifests the cross-currents of compassion and a limited hope for the human condition, with a seemingly ineluctable pessimism and elitism. He was concerned for the poor and supported liberal social welfare programs;<sup>160</sup> yet his view of human nature was sometimes utterly bleak, and his disposition to humankind occasionally downright hostile.<sup>161</sup>

These tensions surface throughout his writings: on one hand, he argued in favor of greater sexual permissiveness while, on the other, he vouchsafed the interest of society in restricting the spontaneous impulses of the individual.<sup>162</sup> Indeed, modern commentators on Freud often overlook the strong flavor of asceticism which runs through much of Freud's thought.<sup>163</sup> His thought represents

<sup>159</sup> ERICH FROMM, *SIGMUND FREUD'S MISSION: AN ANALYSIS OF HIS PERSONALITY AND INFLUENCE* 96 (1959) [hereinafter *SIGMUND FREUD'S MISSION*].

<sup>160</sup> See PAUL ROAZEN, *FREUD: POLITICAL AND SOCIAL THOUGHT* 242-51 (1968) (describing Freud's personal and philosophical views of social policy).

<sup>161</sup> In one letter, Freud wrote: "I have found little that is 'good' about human beings on the whole. In my experience most of them are trash . . . ." *Id.* at 245 (footnote omitted).

<sup>162</sup> *Id.* at 255.

<sup>163</sup> Dr. C. Macfie Campbell, president of the American Psychiatric Association during 1936-37, called psychoanalysis "Calvinism in Bermuda shorts." MAY, *supra* note 10 at 49.

the death knell to Cartesian rationalism, yet he was a genuine son of the Enlightenment who believed in the possibility of limited salvation through reason.<sup>164</sup> Further, while he repeatedly claimed to march under the banner of science and empiricism, his thought is pregnant with nineteenth-century romanticism and is often informed and inspired mythically.<sup>165</sup>

Politically, Freud's work is both an outgrowth from, and a reaction to, liberalism. As one author has put it, Freud's view could be characterized by asserting that liberalism sacrifices psychological insight, minimizes our asocial and destructive impulses, and greatly overemphasizes the role of reason in human behavior.<sup>166</sup>

A comprehensive overview of Freud's thought is beyond the scope of this Article. Instead, I shall organize this section around a number of centrally important themes in modern social thought. Here we will develop the broad outlines of Freudian thought in the context of a discussion of the social and political implications of his theory.

#### A. *Freud's View of the Self*

In virtually every respect, Freud's conception of the self can be radically contrasted with that of early liberalism. To the extent that liberalism is heir to the Judeo-Christian tradition in depicting the self as a unitary, spiritual substance which is rational, free, and innately social in nature, Freud's view of the self is the opposite. Freud posits a picture of the self which is hopelessly conflicted, reducible to the laws of physiology; irrational, the product of causally determined forces; and innately asocial. This subsection explores the numerous and oft-conflicting components of human personality. The following subsection examines Freud's views regarding rationality, personal freedom, and human happiness.

The first and most important great divide of human personality in Freud's thought is between that of the conscious, the preconscious, and the unconscious.<sup>167</sup> While the terms "conscious" and "unconscious" are sometimes employed in a topographical manner

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<sup>164</sup> See FROMM, SIGMUND FREUD'S MISSION, *supra* note 159, at 115 (stating that Freud represents the synthesis of rationalism and romanticism).

<sup>165</sup> See, e.g., Freud's discussion of Eros in *Beyond the Pleasure Principle*. SIGMUND FREUD, *Beyond the Pleasure Principle*, in XVIII THE STANDARD EDITION OF THE COMPLETE WORKS OF SIGMUND FREUD 57-58 (James Strachey trans., 1963) [hereinafter STANDARD EDITION].

<sup>166</sup> ROAZEN, *supra* note 160, at 249. Roazen argues that Freud combines the insight of Burke, Marx, and St. Augustine in his view of the human condition. *Id.*

<sup>167</sup> FREUD, THE EGO AND THE ID, *supra* note 27, at 3-10.

to imply that each can be spatially located in the cerebral cortex, Freud is explicit that consciousness is simply a *quality* of the psychical which may be present or absent with respect to a thought, desire, or other mental existent.<sup>168</sup>

Freud adverts to a preliminary philosophical problem regarding the unconscious: From an orthodox philosophical standpoint, the notion of unconscious mentality appears self-contradictory.<sup>169</sup> Since at least the time of Descartes, Western philosophy distinguished between material and mental substance, body and mind, by characterizing the latter in terms of thought—i.e., *conscious* thought.<sup>170</sup> If something could not be perceived via consciousness, by definition it could not be “mental” in nature.<sup>171</sup> Freud’s response is to the effect that such processes (thoughts, desires, and motives, etc.) are mental in the sense that they perform the same function as other (conscious) mental processes<sup>172</sup> and explains that such thoughts are unconscious as the result of psychic repression and resistance during analysis.<sup>173</sup> Freud worked out an extensive theory in explaining how mental entities become unconscious and how they may be restored to consciousness.<sup>174</sup>

Freud asserted that a significant majority of thoughts, desires, and other mental entities—the great bulk of the constitutive per-

<sup>168</sup> *Id.* at 3.

<sup>169</sup> *Id.*

<sup>170</sup> RENE DESCARTES, *Mediations on First Philosophy*, in THE PHILOSOPHICAL WORKS OF DESCARTES 131-200 (Elizabeth S. Haldane & G.R.T. Ross trans., 1911) (1641).

<sup>171</sup> An orthodox Cartesian confronted with Freud’s evidence for unconscious mental processes would relegate these to the realm of the physical, asserting that it is a category mistake to call a process mental and unconscious simultaneously.

<sup>172</sup> FREUD, THE EGO AND THE ID, *supra* note 27, at 5; *id.* at 7 n.4.

<sup>173</sup> The theory is a familiar one: The ego forces from conscious awareness those thoughts, desires, and other mental entities which are too painful or threatening to confront openly. *Id.* at 5. The ego then diverts into consciousness a certain quanta of energy in opposing the reentry of these entities. Thus, the ideas which have been shut out “stand in opposition to the ego.” *Id.* at 8. The task of analysis is to remove these hindrances, to bring the ideas back into consciousness. Resistance is the obstacle to this; it is the ego’s attempt to maintain the repression. *Id.*

<sup>174</sup> *Id.* at 8-13. Repressed ideas can be made conscious by bringing them to the preconscious, the reservoir of ideas, thoughts, and desires which may be made conscious at any point. The ideas are brought to the preconscious by connecting them with words which correspond to them. *Id.* at 12. Thus, for Freud, capacity for language was central to the process of psychoanalysis. See REUBEN FINE, THE DEVELOPMENT OF FREUD’S THOUGHT: FROM THE BEGINNINGS THROUGH ID PSYCHOLOGY TO EGO PSYCHOLOGY 35-61 (1973) (discussing the unconscious, including the topographical, metapsychological, and economic aspects of the unconscious, the cathexes, or emotional charges, attached to various objects, and the primary and secondary process).

sonality—is unconscious.<sup>175</sup> The implications for our more traditional notions of autonomy are profound. If Freud is correct, not only does this undermine personal freedom insofar as it indicates that most of our behavior is “beyond our control” in the usual sense of the expression, but it goes further still. Not only is personality hopelessly conflicted and fragmented between the conscious and unconscious realms, but we usually cannot know what motivates our behavior. Worse still, we are often deluded into believing that we do understand our motivations as conscious “reasons” for behavior which are constructed by the ego to rationalize that which will occur independently of any conscious deliberation.<sup>176</sup>

The personality is split along yet a second dimension. In his tripartite distinction between id, ego, and superego, Freud posits three structural components of personality<sup>177</sup> inevitably in conflict with one another. The personality at birth is represented wholly by the id, the primary reservoir of psychic energy with the single function of satisfying the organism’s primary instinctual drives.<sup>178</sup> While the id is entirely inwardly directed in that it is, so to speak, unaware of the external world,<sup>179</sup> the ego develops to negotiate external reality and is, Freud maintains, the inevitable influence of the organism’s interaction with the world.<sup>180</sup> Thus, even primitive organisms possess the id and the ego.<sup>181</sup>

Finally, the superego develops as a mechanism of internalized morality or authority, a manifestation of the parental figure.<sup>182</sup> The superego, however, is no ideal moderator of the just; it is itself

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<sup>175</sup> Freud asserts that the id and superego are completely unconscious, while the ego is also mostly unconscious.

<sup>176</sup> See *infra* notes 198-209 and accompanying text (discussing reason and freedom in Freud’s view).

<sup>177</sup> Again, Freud did not believe these corresponded to actual structures in the brain. He did hope that one day all three components of personality could be explained in physiological terms.

<sup>178</sup> Freud takes the term, which is translated into English as the “id,” from George Groddeck. FREUD, *THE EGO AND THE ID*, *supra* note 27, at 178; see also *id.* at 178-79 (discussing the id); see FINE, *supra* note 174, at 172-81 (providing an overview of the development of Freud’s thought regarding the id).

<sup>179</sup> Freud states that “the ego seeks to bring the influence of the external world to bear upon the id and its tendencies and endeavors to substitute the reality principle for the pleasure principle that reigns supreme in the ‘id.’” FREUD, *supra* note 27, at 19.

<sup>180</sup> *Id.* at 35.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 30-33. The superego is the result of two processes—the Oedipal complex, the resolution of which causes the child to internalize the parent in its own psyche, and the interruption of libidinal development in the latency period. *Id.* at 31.

a product of the id, consisting of compelling reaction-formations<sup>183</sup> against the object choices of the id.<sup>184</sup> As Freud's thought developed, he came to believe that the superego was maintained largely on aggressive energy turned inward.<sup>185</sup> Guilt, the fundamental psychological problem of civilization, is the result of the psychic tension between the demands of the superego and the acts of the ego.<sup>186</sup> On the other hand, sublimation, necessary to the development of civilization, occurs when the ego, at the behest of the superego, renounces instinctual gratification in primary sexual objects, replacing them with less satisfying but socially more productive objects such as work, art, and spirituality.<sup>187</sup>

While I will discuss shortly the implications of Freud's view of the ego as it concerns freedom and rationality,<sup>188</sup> and the role of the superego in counteracting aggressive impulses<sup>189</sup> and in sublimating libidinal energy to constructive social pursuits,<sup>190</sup> it should suffice to note now that the three components of the self are interminably at war with each other. The ego plays simultaneously to three different pipers, and must continuously gratify, defer, transform, or reject the demands of three conflicting influences, two of them internal in nature.<sup>191</sup> If the ego fails in managing this three-way balancing act, it may completely disintegrate.<sup>192</sup>

And there is yet a third way in which the self is divided: In addition to the qualitative distinction between conscious and unconscious mental processes and the structural heterogeneity of id, ego, and superego, there also exists a fundamental conflict regarding the function or goal of psychic existence itself. In Freud's later thought, he distinguished between two primal drives which under-

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<sup>183</sup> Reaction-formation is the process by which feelings for attachment to an object are replaced with their opposite—revulsion, disgust, or fear. SIGMUND FREUD, *THE COMPLETE INTRODUCTORY LECTURES ON PSYCHOANALYSIS* (James Strachey trans. & ed., 1966) [hereinafter *THE COMPLETE INTRODUCTORY LECTURES*].

<sup>184</sup> FREUD, *THE EGO AND THE ID*, *supra* note 27, at 30.

<sup>185</sup> The more one suppresses one's external aggression, the more aggressive he becomes, through his superego, to himself. *Id.* at 56. See also SIGMUND FREUD, *CIVILIZATION AND ITS DISCONTENTS* 84-90 (Jean Riviere trans., 1930) (discussing the superego's use of aggression).

<sup>186</sup> FREUD, *THE EGO AND THE ID*, *supra* note 27, at 33.

<sup>187</sup> SIGMUND FREUD, *MOSES AND MONOTHEISM* 148-56 (Katherine Jones trans., 1939) (describing the development of spirituality as the result of instinctual renunciation).

<sup>188</sup> *Infra* notes 198-209 and accompanying text.

<sup>189</sup> *Infra* notes 244-57 and accompanying text.

<sup>190</sup> *Infra* notes 221-41 and accompanying text.

<sup>191</sup> The ego must negotiate three sources of danger—from external reality, from the id's libido, and from the superego—and three corresponding types of anxiety. FREUD, *MOSES AND MONOTHEISM*, *supra* note 185, at 26.

<sup>192</sup> *Id.* at 35-36 (retreat into psychosis).



lie all of creation: Eros and Thanatos, or the life and death instincts.<sup>193</sup> These two forces represent countervailing psychological—indeed *metaphysical*<sup>194</sup>—tendencies in nature.

While these two forces will be discussed at some length shortly,<sup>195</sup> they came to represent in Freud's thought the fundamental tendency of living things to build up and to break down, to amalgamate and to disintegrate as represented by the processes of anabolism and catabolism, respectively.<sup>196</sup> From the molecular to the cellular to the social, these two processes animate the development and disintegration of all organisms, social systems, and, perhaps, the evolution of the cosmos itself. While they often combine forces in particular activities,<sup>197</sup> their ultimate ends are diametrically opposed. Human personality is most fundamentally the result of the interplay between these two inherent and conflicting impulses. In three ways—qualitatively, structurally, and functionally—Freud's conception of the self is diametrically opposed to the unitary, rational self of post-Cartesian liberalism.

#### B. *Freud on Reason, Freedom, and Human Happiness*

If we are to make sense of the claims that persons possess freedom of the will and the capacity for rationality in any significant sense of the terms, these attributes must be a function of the con-

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<sup>193</sup> FREUD, *Beyond the Pleasure Principle*, in XVIII STANDARD EDITION, *supra* note 165. There are two instincts, "those which seek to lead what is living to death, and others, the sexual instincts, which are perpetually attempting and achieving a renewal of life." *Id.* at 46. See also FREUD, THE EGO AND THE ID, *supra* note 27, at 37-38 (describing Eros and Thanatos).

<sup>194</sup> Freud speaks as if all of evolution is a process of the unfoldment of the results of these instincts. For example, in *Civilization and Its Discontents*, he states that "civilization is a process in the service of Eros to combine human individuals into families, races, peoples and nations." FREUD, *supra* note 185, at 81.

In *Beyond the Pleasure Principle*, Freud goes so far as to suggest these instincts may even be present in inanimate matter:

Shall we follow . . . the hypothesis that living substance at the time of its coming to life was torn apart into small particles, which have ever since endeavored to reunite through the sexual instincts? That these instincts, in which the chemical affinity of inanimate matter persisted, gradually succeeded, as they developed through the kingdom of the [protazoa], in overcoming the difficulties put in the way of that endeavor . . . that these splintered fragments of living substance in this way attained a multicellular condition and finally transferred the instinct . . . to the germ cells [sperm and ova of higher animals].

FREUD, *supra* note 165, at 58.

<sup>195</sup> *Infra* notes 221-41.

<sup>196</sup> FREUD, THE EGO AND THE ID, *supra* note 27, at 38.

<sup>197</sup> See FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 78 (maintaining that the two instincts "seldom appear in isolation").

scious, deliberative component of human personality. In Freud's thought, only the ego is (partially) conscious.<sup>198</sup> Consequently, the ego is the only structure in human personality which can potentially fulfill these functions.

Freud's view of the ego and its capacity for freedom and reason, however, is ambivalent at best. Most characteristically, the ego is the pawn of unconscious forces. He argues that the ego behaves essentially passively in life and claims that we "are lived by unknown and uncontrollable forces."<sup>199</sup> Freud employs a striking metaphor in this respect: The ego to the id is similar to a man on horseback; the ego goes where the id wants to go.<sup>200</sup> At another point, apparently recognizing a modestly-expanded role for the ego, he maintains that "the ego's position is like that of a constitutional monarch, without whose sanction no law can be passed but who hesitates long before imposing his veto on any measure of Parliament."<sup>201</sup>

Freud's ambivalence to the possibility of reason is seen in his view of the defense mechanism of rationalization, on the one hand, and his vision of the goal of psychoanalysis, on the other. At various points, Freud maintains not only that the ego is tied to the id, but that the ego often transforms the id's goals into its own mission by substituting false reasons to justify unconscious impulses which exist independently of any decision on the part of the conscious ego.<sup>202</sup> Reason, here, is truly a slave to the passions, but in an even more pernicious manner than Hume would ever have imagined.<sup>203</sup> It is as if the ego must remain convinced of its own omnipotence by erecting a false edifice of autonomy as it carries out actions which it is compelled to undertake as a minion of the id.

Yet Freud holds out hope for the eventual triumph of reason over passion. Indeed, this is the goal of psychoanalysis itself. He proclaimed that:

The development of the ego progresses from the recognition of the instincts to their domination, from obedience to them to

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<sup>198</sup> FREUD, THE EGO AND THE ID, *supra* note 27, at 17-18.

<sup>199</sup> *Id.* at 17.

<sup>200</sup> *Id.* at 19.

<sup>201</sup> *Id.* at 57.

<sup>202</sup> *Id.* at 19.

<sup>203</sup> For Hume, reason has only an instrumental significance: it cannot tell the agent what its ultimate goals are, but can only assist the agent instrumentally in getting what is desired once the goal has been decided upon. For Freud, however, the ego not only is moved by unconscious forces, it may refuse to recognize its subordinate role.

their inhibition. The Superego, being partly reaction-formation against the instinctual processes in the Id, participates greatly in this achievement. Psychoanalysis is an instrument to enable the ego to achieve a progressive conquest of the Id.<sup>204</sup>

Freud evinces a similar ambivalence with respect to personal freedom. Two obstacles stand in the way to a commitment to the possibility of freedom in Freud's view: his determinism and, again, the role of the unconscious in decision-making. Like Mill and most other nineteenth-century scientists and natural philosophers, Freud was committed to a scientific world view which included reductionistic materialism.<sup>205</sup> Thus, for Freud, all psychological processes, including the interaction of id, ego, and superego, could be reduced, on principle, to neurochemical processes in the brain. If this precludes genuine freedom of choice, as some believe, freedom in some ultimate sense is an illusion. Moreover, Freud's view also embraces a form of *psychic* determinism. To the extent that our behavior is controlled by unconscious forces over which we have little or no control—whether or not these unconscious processes are themselves reducible to a physical determinism—we cannot be said to deliberate, to choose or to act freely. Again, if there is such a possibility as freedom, it must inhere in the capacities of the conscious portion of the ego.

Yet Freud appears to have believed that there is some *therapeutic* value in the notion of free will. He said at one point that "you nourish the illusion of there being such a thing as psychical freedom . . . you will not give it up."<sup>206</sup> At another point, in a more promising tone, he asserts that "analysis does not set out to make pathological reactions impossible, but to give the patient's ego *freedom* to decide one way or the other."<sup>207</sup> Undoubtedly, what Freud had in mind here was that analysis could assist in removing the internal compulsions and unconscious obstacles to what the patient might otherwise decide to do. Thus, Freud's determinism does not necessarily conflict with his therapeutic goals: A person's awareness of his own motives can influence the resulting action.<sup>208</sup>

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<sup>204</sup> FREUD, *supra* note 27, at 58.

<sup>205</sup> Freud's study of medicine and his commitment in theory, to positivistic methods, were such that he hoped to the end of his life to find a physiological basis for his psychological theory. See Peter Gay, *Sigmund Freud: A Brief Life, Introduction to THE EGO AND THE ID*, *supra* note 27, at xii-xv (discussing Freud's hope to reduce psychology to physiology).

<sup>206</sup> FREUD, *Introductory Lectures on Psycho-Analysis*, in XV STANDARD EDITION, *supra* note 165, at 49.

<sup>207</sup> FREUD, *THE EGO AND THE ID*, *supra* note 27, at 50 n.1.

<sup>208</sup> ROAZEN, *supra* note 160, at 297.

In a sense, psychoanalysis can be viewed as a means to overcome psychical, if not physical, determinism as an impediment to freedom.

Freud's view is perhaps the first to suggest that the attainment of rationality and personal freedom may be a matter of degree. The ego mounts its progressive conquest of the id—a campaign waged by diverting the id's own energies and directing them against it—by becoming aware of the id, and by coming to understand its influence upon our motivations and behavior. Thus, Freud lends a deeper psychological significance to the Socratic maxim to "know thyself." If, however, the self-transcendence of human personality is inevitable, it is also incomplete. As we shall soon see, Freud was much more skeptical than Mill in his hope for the universal betterment of humankind and for the attainment of freedom and rationality.<sup>209</sup>

Freud's view of the human condition generally, and the prospect for happiness in particular, is characterized by a subdued pessimism. Unlike the progressives, including Mill, Freud rejected the idea that human beings have an inherent tendency to strive for self-perfection, nor did he believe that civilization offers the prospect that it may promote individual self-development on a grand scale:

It may be difficult, too, for many of us, to abandon the belief that there is an instinct towards perfection at work in human beings, which has brought them to their present high level of intellectual achievement and ethical sublimation and which may be expected to watch over their development into supermen. I have no faith, however, in the existence of any such internal instinct and I cannot see how this benevolent illusion is to be preserved. The present development of human beings requires, as it seems to me, no different explanation from that of animals. What appears in a minority of human individuals as an untiring impulsion towards further perfection can easily be understood as a result of the instinctual repression upon which is based all that is most precious in human civilization.<sup>210</sup>

Freud shares with Hobbes an antipathy to the view that humankind is basically social.<sup>211</sup> For Freud, man is a social animal not because of any intrinsic need for relatedness to other per-

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<sup>209</sup> See *infra* notes 210-14 and accompanying text.

<sup>210</sup> FREUD, *Beyond the Pleasure Principle*, in XVIII STANDARD EDITION, *supra* note 165, at 42.

<sup>211</sup> FROMM, SIGMUND FREUD'S MISSION, *supra* note 159, at 98.

sons,<sup>212</sup> but only as a result of the drive for mutual satisfaction of our needs. More striking still, both Hobbes and Freud argue in their own way that civilization is the result of our exchange of freedom for security.<sup>213</sup> In renouncing our instinctual gratification with the advent of civilization, "the task of avoiding suffering pushes that of obtaining pleasure into the background."<sup>214</sup>

Superficially at least, Freud defines happiness as do the utilitarians: the absence of pain and the presence of pleasure.<sup>215</sup> In contrast to Mill, and Epicurus before him, however, Freud maintains that we derive the most intense pleasure from a sudden contrast—most particularly, from the build-up and sudden release of sexual tension.<sup>216</sup> In contrast, any feeling of satisfaction which is prolonged over a long period of time produces only a mild contentment.<sup>217</sup> Thus, the intensity of artistic and intellectual pleasures is mild in comparison with that of sexual release.<sup>218</sup>

Freud argued that the search for happiness was the ultimate pursuit imposed upon humankind by the pleasure principle; nevertheless, achieving and retaining true happiness is impossible within civilization.<sup>219</sup> In the limited sense in which it is possible, however, Freud provides a psychoanalytic justification for liberal tolerance of diversity:

Happiness, in the reduced sense in which we recognize it as possible, is a problem of the economics of the individual's libido. There is no golden rule which applies to everyone: every man must find out for himself in what particular fashion he can be saved.<sup>220</sup>

To explore more fully Freud's ambivalent view of the pursuit of happiness, the following section considers the role of Eros in the development and maintenance of civilization.

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<sup>212</sup> Cf. FROMM, *ESCAPE FROM FREEDOM*, *supra* note 1, at 26-27 (stating that "contrary to Freud's viewpoint . . . the key problem of psychology is that of the specific kind of relatedness of the individual towards the world and not that of the satisfaction or frustration of this or that need").

<sup>213</sup> Compare HOBBS, *supra* note 35, at 227, chap. 17 ("I Authorize and give up my Right of Governing my self[ ] . . . on this condition, that thou give up thy Right . . . in like manner.") with FREUD, *CIVILIZATION AND ITS DISCONTENTS*, *supra* note 185, at 61 n.5 (we trade sexual freedom for security). See generally JEAN ROY, *HOBBS AND FREUD* (1984) (comparing the two thinkers).

<sup>214</sup> FREUD, *supra* note 185, at 77.

<sup>215</sup> *Id.* at 25.

<sup>216</sup> *Id.* at 25-26.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.* at 30.

<sup>219</sup> *Id.* at 34.

<sup>220</sup> *Id.*

### C. *Eros and Civilization*

As Freud's thought matured, he came to distinguish two instincts which underlie all of human behavior: Eros and Thanatos, the life instincts and the death instincts. This subsection examines Eros and the role played by the process of sublimation. The following subsection explores the social implications of the death instinct.

Freud defines instincts generally as:

an urge inherent in organic life to restore an earlier state of things which the living entity has been obliged to abandon under the pressure of external disturbing forces; that is it is a kind of organic elasticity . . . the expression of the inertia inherent in organic life.<sup>221</sup>

He maintains that the role of Eros is to combine, to bring together that which is separated, from the cellular level to the interpersonal.<sup>222</sup> Eros draws upon the libido, the great storehouse of sexual energy.<sup>223</sup> Two aspects of the libido are of greatest significance here. First, libidinal energy is finite and, thus, must be "economized."<sup>224</sup> There is only so much to go around.<sup>225</sup> For this reason, Freud believed that the ego, under pressure from the id, the super-ego, and the external world, must make its choices regarding allocation of these resources. Second, and following from the first principle, a certain portion of this libidinous energy may be redi-

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<sup>221</sup> FREUD, *Beyond the Pleasure Principle*, in XVIII STANDARD EDITION, *supra* note 165, at 36. He adds that "all the organic instincts are conservative, are acquired historically and tend toward the restoration of an earlier state of things." *Id.* at 37-38.

<sup>222</sup> *Id.* at 57-58; FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 81; FREUD, THE EGO AND THE ID, *supra* note 27, at 38 (Eros is the "combining principle").

<sup>223</sup> FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 80. The term "libido" comes from the Latin, meaning "lust." FINE, *supra* note 174, at 64-65. The following principles are associated with the libido: 1) that there is a predetermined process of libidinal development through discrete stages; 2) that object choices result in the transformation (and sublimation) of libido; 3) that libido can be gratified, repressed, sublimated, or transformed into an opposite emotion via the process of reaction-formation; and 4) that character structure is the result of the allocation of libidinous energy between different object choices. *Id.* at 64-65.

<sup>224</sup> Freud himself used the economic metaphor. FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 34. As Rollo May put it: "The basis of Freud's doctrine of sublimation lies in this belief that libido exists in a certain quantity in the individual, that you can . . . 'economize' emotionally in one way to increase your enjoyment in another." MAY, *supra* note 10, at 50. It is precisely this doctrine, and Freud's life itself, which led May to characterize Freud's theory as a modern brand of Puritanism. *Id.* at 48-52.

<sup>225</sup> Thus, Freud argues that the Christian injunction to "love thy neighbor" is misplaced. FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 65-69.

rected to objects other than primary sexual objects.<sup>226</sup> This is the process of sublimation, a process necessary to the development of civilization itself.<sup>227</sup> As Freud proclaimed:

The very incapacity of the sexual instinct to yield complete satisfaction as soon as it submits to the first demands of civilization becomes the source, however, of the noblest cultural achievements which are brought into being by ever more extensive sublimation of its instinctual components.<sup>228</sup>

Freud did not invent the concept of sublimation. Indeed, a similar idea can be traced back to the philosophical and mystical literature of the Vedas.<sup>229</sup> In *Beyond Good and Evil*, Nietzsche, writing only a few years before Freud, was the first to use the term in its modern sense.<sup>230</sup> Freud psychologized the concept by making sublimation a function of the erotic instinct.

Perhaps the most important implication of this theory for modern social policy in the liberal state is Freud's warning that a condition of unlimited (or nearly unlimited) choice in sexual mat-

<sup>226</sup> Sublimation is the displacement of libidinal energy by which the instinctual aims are shifted away from their usual object to another which is not as subject to the frustrations of the physical world. *Id.* at 29.

<sup>227</sup> Civilization drains off sexual energy, redirecting it from its primary sexual objects to more constructive social objects—to work, family, and identification with the broader community. *Id.* at 51-52, 65.

<sup>228</sup> FREUD, *On the Universal Tendency to Debasement in the Sphere of Love*, in XI STANDARD EDITION, *supra* note 165, at 190 [hereinafter *On the Universal Tendency*].

<sup>229</sup> See SWAMI AJAYA, *PSYCHOTHERAPY EAST AND WEST: A UNIFYING PARADIGM* 249-51 (1983) (discussing the Yogic view of the chakras, and the concept of spiritual evolution through sublimation).

<sup>230</sup> FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL* (Walter Kaufmann trans., 1989) (1886). Aphoristically, Nietzsche proclaimed: "The degree and nature of a man's sensuality extends to the highest altitudes of his spirit." *Id.* at 74. More explicitly, he wrote:

There have to be fasts of many kinds; and wherever powerful drives and habits prevail, legislators have to see to it that intercalary days are inserted on which such a drive is chained and learns again to hunger. Viewed from a higher vantage point, whole generations and ages that make their appearance, infected with some moral fanaticism, seem to be such times of constraint and fasting during which a drive learns to stoop and submit, but also to *purify* and *sharpen* itself. A few philosophical sects, too, permit such an interpretation (for example, the Stoa in the midst of Hellenistic culture with its lascivious atmosphere, over charged with aphrodisiac odors).

This is also a hint for an explanation of the paradox: why it was precisely during the most Christian period of Europe and altogether only under the pressure of Christian value judgments that the sex drive sublimated itself into love (amour-passion).

*Id.* at 102. A century before Nietzsche, Rousseau discussed the same idea, though not by the same name. JEAN-JACQUES ROUSSEAU, *EMILE: or ON EDUCATION* bks. IV & V (Allan Bloom trans., 1979) (1762).

ters poses ominous consequences for the continued existence of civilization. As sexual satisfaction is rendered easily obtainable—and is no longer limited to the designated orthodox pattern of monogamous heterosexuality within the confines of marriage—the effects of sublimation are undercut and the “noblest cultural achievements” are jeopardized. In 1912, he wrote:

It can easily be shown that the psychical value of erotic needs is reduced as soon as their satisfaction becomes easy. An obstacle is required in order to heighten libido; and where natural resistances to satisfaction have not been sufficient men have at all times erected conventional ones so as to be able to enjoy love. This is true both of individuals and of nations. In times in which there were no difficulties standing in the way of sexual satisfaction, such as perhaps during the decline of the ancient civilizations, love became worthless and life empty, and strong reaction-formations were required to restore indispensable affective values. In this connection it may be claimed that the ascetic current in Christianity created psychical values for love which pagan antiquity was never able to confer on it.<sup>231</sup>

Freud's position here is complex. As already demonstrated, he argued in favor of greater sexual permissiveness than that which existed in Victorian times. He believed that monogamous, heterosexual morality limited to marriage was unsuited to many.<sup>232</sup> He apparently also believed, however, that a balance must be struck between prohibition and license.<sup>233</sup> Thus, while the individual retains an interest in acting reasonably in conformity with the dictates imposed by her own psychological constitution, society reserves an interest in restricting widescale sexual license as such. In essence, society must both avoid creating unbearable neurosis while preventing a general sexual regression which taps the sources of sublimation. Moreover, to the extent that society plays a fundamental role in shaping the libidinal structure of human personality, it has an interest in foreclosing certain avenues of sexual expression before they become permanently instantiated in individual personality. In this fashion, at least one commentator has argued along Freudian lines for censorship of pornography.<sup>234</sup>

There is yet another fundamental implication of Freud's view for purposes of social policy. One of the most significant societal

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<sup>231</sup> FREUD, *On the Universal Tendency*, *supra* note 228, at 187-88.

<sup>232</sup> FREUD, *CIVILIZATION AND ITS DISCONTENTS*, *supra* note 185, at 60.

<sup>233</sup> ROAZEN, *supra* note 160, at 254-55.

<sup>234</sup> Irving Kristol, *Pornography, Obscenity and the Case for Censorship*, in *PHILOSOPHY OF LAW* (Joel Feinberg & Hyam Gross eds., 1986).



consequences of sublimation is the creation of strong bonds within the group. As libido is redirected from primary sexual objects to the more diffused love of one's clansman, neighbor, or fellow-citizen, social identification is enhanced.<sup>235</sup> From friendship to patriotism, the result of sublimation is heightened social cohesion.

In contrary fashion, a return to sexual license is a return to the radical individualism of the precivilized state of nature, as the psychic forces which promote cohesion are subverted to their primary aim.<sup>236</sup> Thus, it may be that modern liberalism's commitment to promoting maximum free choice and guaranteeing the widescale satisfaction of desires (sexual and otherwise), actually fosters the social individualism which is the first pillar of liberalism. Carried to an extreme, however, this same individualism threatens to disintegrate once again into the "war of all against all." This deep psychological insight may have been the basis for Plato's claim that any form of government primarily moved by the quest to satisfy the appetitive side of human nature is bound to degenerate into anarchy.<sup>237</sup>

At first, it may appear that Freud's view of the economics of the libido counsels the necessity for restriction along the lines of *quantity* of sexual expression, but not the *mode* or *manner* of such expression. The implication appears at first to be that a certain amount of libido must be reserved for higher social purposes, but that the remainder, which is to be enjoyed fulfilling the primary sexual aim, may be dissipated in whatever manner the individual desires. This, however, is not the case.

Forms of sexuality which are regressive, infantile, excessively autoerotic, or linked to some form of debasement of the sexual object may pose equally dangerous consequences for society.<sup>238</sup> For example, patterns of sexuality which deemphasize strong bonds of familial love in favor of placing a primary emphasis upon

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<sup>235</sup> FREUD, *CIVILIZATION AND ITS DISCONTENTS*, *supra* note 185, at 65.

<sup>236</sup> "[S]exual love is a relationship between two individuals in which a third can only be superfluous or disturbing, whereas civilization depends on a relationship between a considerable number of individuals." *Id.* at 64.

<sup>237</sup> PLATO, *supra* note 1, at bks. VIII, IX.

<sup>238</sup> See, e.g., FREUD, *On the Universal Tendency*, *supra* note 228 (arguing that as a result of unresolved Oedipal feelings men dissociate love and sex). Freud wrote:

the man almost always feels his respect for the woman acting as a restriction on his sexual activity, and only develops full potency when he is with a debased sexual object.

*Id.* at 185. Thus, full satisfaction of sexual aims may, according to Freud, require the subversion of the socialized impulse of love and nurturance, the "higher" forms of erotic expression.

individual sexual satisfaction may constitute a psychical threat to the family structure.<sup>239</sup> Similarly, Freud's claim that most men must debase their sexual partners in order to achieve full sexual satisfaction entails that the pursuit of such satisfaction is antithetical to the development of genuine, long-term romantic relationships.<sup>240</sup> Most generally, the implication is that, just as society has an interest in prohibiting incest,<sup>241</sup> there may be compelling psychoanalytic justification for regulating or prohibiting adultery, fornication, and bestiality, as well as any social influences which may contribute to excessive sexual aggression, autoeroticism, or debasement among a significant portion of the population.

Of course, effecting these aims would entail a level of government restriction, censorship, and intrusion which would be outright Orwellian in scope. Freud certainly never called for such measures and, as previously discussed, argued for greater permissiveness. Freud, however, did not live in the present era; certainly, modern psychologists have argued along Freudian lines that we have moved too far in the opposite direction, that a corrective is necessary to remedy the ethos of unlimited choice, with all the psychological hazards created by this modern ethos.<sup>242</sup>

Can one consistently adopt a Freudian view of the human condition while simultaneously holding to liberalism? In the absence of the psychological assumptions of liberalism, including its claims that the individual is inherently rational and potentially altruistic, and that she possesses the inborn propensity for self-development, the *psychological* case for liberalism is swept away. Part V demonstrates that both utilitarian and rights-based justifications for liberalism are severely compromised once we have relinquished liberalism's view of human nature.<sup>243</sup>

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<sup>239</sup> See generally MAGGIE GALLAGHER, *ENEMIES OF EROS* (1989) (arguing that a restricted view of eroticism, limited to genital sexual satisfaction, undermines the family, as the more extended sense of eroticism includes procreation).

<sup>240</sup> FREUD, *supra* note 228, at 185.

<sup>241</sup> See SIGMUND FREUD, *TOTEM AND TABOO* (1913) (discussing the psychodynamic predicate for the incest taboo). Today, the chief justifications for the incest taboo concerns the effects of incest on the child-victim and possible biological consequences of interbreeding. But exogamy may have a still more fundamental effect in furthering the work of Eros. *Id.*

<sup>242</sup> See MAY, *supra* note 10, at 42 (opining that increased free choice has led to a dehumanization of sex); *id.* at 72 (rejecting Marcuse's claim that the nonrepressive society will come to fuse love and sex). Cf. HERBERT MARCUS, *EROS AND CIVILIZATION: A PHILOSOPHICAL INQUIRY INTO FREUD* (1955).

<sup>243</sup> *Infra* Section V, notes 333-82 and accompanying text.

*D. Aggression*

In 1920, perhaps as a result of the influence of the destruction Freud witnessed in World War I, he wrote *Beyond the Pleasure Principle*, where he first introduced the concept of Thanatos, the death instinct.<sup>244</sup> In its more metaphysical manifestation, Thanatos functions to lead life back to its original state—inanimacy.<sup>245</sup> In animal and human behavior, the death instinct is the progenitor and vehicle for social strife, war, and destruction. In short, it is the psychic catalyst for aggression. And with regard to human behavior, Freud is unequivocal in his assessment: Aggression is the greatest impediment to civilization.<sup>246</sup> His view of the lot of humankind is, at bottom, unflinchingly bleak:

The element of truth behind all this, which people are so ready to disavow, is that men are not gentle creatures who want to be loved, and who at the most can defend themselves if they are attacked; they are, on the contrary, creatures among whose instinctual endowments are to be reckoned a powerful share of aggressiveness. As a result, their neighbor is for them not only a potential helper or sexual object, but also someone who tempts them to satisfy their aggressiveness on him, to exploit his capacity for work without compensation, to use him sexually without his consent, to seize his possessions, to humiliate him, to cause him pain, to torture and to kill him. *Homo homini lupus.*<sup>247</sup>

In underscoring his assertion that human aggression is instinctual and not social in origin, Freud takes issue with Marxist philosophy. He argues that Communists have misunderstood human nature, that aggression is not the result of the ownership of private property or a function of the class system generally; rather, it is inherent in the human condition.<sup>248</sup> He asserts that even if society mandated joint ownership of all material means and permitted complete sexual freedom, aggression would persist.<sup>249</sup> He remarks wryly: "One only wonders, with concern, what the Soviets will do after they have wiped out their bourgeois."<sup>250</sup>

Society converts the instincts to the cause of restricting aggression in three ways. First, as already noted, Eros is diverted to create bonds of social solidarity which serve to limit aggression within the

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<sup>244</sup> FREUD, *Beyond the Pleasure Principle*, in XVIII STANDARD EDITION, *supra* note 165.

<sup>245</sup> FREUD, THE EGO AND THE ID, *supra* note 27, at 38.

<sup>246</sup> FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 81.

<sup>247</sup> *Id.* at 68-69.

<sup>248</sup> *Id.* at 70-71.

<sup>249</sup> *Id.* at 72.

<sup>250</sup> *Id.* at 73.

group. Of course, the out-group then takes on special significance as the permissible recipient of the hostility which is diverted away from members of the in-group.<sup>251</sup> In this respect, the superego acts in a positive capacity by building up the bonds of social solidarity.

The other two psychic devices by which aggressive impulses are held in check employ the considerable resources of the superego in a *negative* capacity. First, the superego simply acts as a counter-balance to aggression.<sup>252</sup> The aggressive impulses of the id are met with the countervailing forces of the superego in a clash of psychic forces which takes place on the battlefield of the ego. At least one way in which this occurs within conscious experience is in the situation where a person deliberately restrains himself from acting in a violent manner on pang of conscience. What originates in early childhood as fear of external punishment is internalized and incorporated into the superego. Feelings of conscience are the ego's apprehension of the internalized authority and the psychic punishment it produces.<sup>253</sup> Interestingly, every renunciation of instinct, including aggressive impulses, increases the power of the superego.<sup>254</sup> Thus, like an army divided against itself, the superego subverts aggressive impulses, turning aggression against itself.

The second and more insidious way in which the superego operates is by directing aggressive energy inward via the process known as introjection.<sup>255</sup> Freud asserts that the more one suppresses one's external aggressive impulses, the more one directs these same impulses inward.<sup>256</sup> Thus, while aggression must be limited in the interest of civilization, self-destruction results if it is restrained to too great a degree.<sup>257</sup>

As with the erotic impulses, society must manage aggression in a balanced fashion. It must provide a suitable outlet for this aggression, as well as continuing to provide for the internal check of the superego. It cannot, however, rely too heavily upon this internal check, as the likely result is depression or self-destructive behavior.

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<sup>251</sup> FREUD, *TOTEM AND TABOO*, *supra* note 241.

<sup>252</sup> FREUD, *CIVILIZATION AND ITS DISCONTENTS*, *supra* note 185, at 84.

<sup>253</sup> *Id.* at 89-90.

<sup>254</sup> *Id.* at 90.

<sup>255</sup> *Id.* at 84.

<sup>256</sup> *Id.* at 91.

<sup>257</sup> *Id.* at 78; FREUD, *THE EGO AND THE ID*, *supra* note 27, at 56.

E. *Freud, Political Liberty, and Society*

Notwithstanding his youthful inclination to liberalism, the developed thought of the mature Freud is much closer to Nietzsche than to Mill. Like both Nietzsche and Mill, who were each influenced by nineteenth-century romanticism, Freud abhorred the psychological poverty of the group. Unlike Mill, however, his reason for this was not so much that the herd mentality prevented the full flowering of individuality, but that strong bonds of identification prevent genuine leaders from emerging.<sup>258</sup> Thus, in *The Future of an Illusion*,<sup>259</sup> Freud's thought reached its most aristocratic and authoritarian:

It is just as impossible to do without control of the mass by a minority as it is to dispense with coercion in the work of civilization. For the masses are lazy and unintelligent; they have no love for instinctual renunciation, and they are not to be convinced by argument of its inevitability.<sup>260</sup>

He continues in a tone that could have been mistaken for Nietzsche himself:

It is only through the influence of individuals who can set an example and whom the masses recognize as their leaders that they can be induced to perform the work and undergo the renunciation on which the existence of civilization depends. All is well if these leaders are persons who possess superior insight into the necessities of life and who have risen to the height of mastering their own instinctual wishes. But there is a danger that in order not to lose their influence they may give way to the mass more than it gives way to them, and it therefore seems necessary that they shall be independent of the mass by having the means to power at their disposal.<sup>261</sup>

In stark contrast to the liberal understanding that freedom is a necessary prerequisite to individual flourishing and social progress, Freud considers the desire for freedom retrogressive. In *Civilization and Its Discontents*, he wrote that the yearning for freedom is not simply a reaction to existing social injustice but is in fact a consequence of our persisting hostility to civilization itself. Basically, the craving for freedom is not a manifestation of the quest for self-

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<sup>258</sup> FREUD, *supra* note 27, at 74. Freud maintained that this was the state of affairs in America. *Id.*

<sup>259</sup> SIGMUND FREUD, *THE FUTURE OF AN ILLUSION* (W.D. Robson-Scott trans., 1953).

<sup>260</sup> *Id.* at 7-8. Cf. NIETZSCHE, *supra* note 230, at 73 ("Asceticism and puritanism are almost indispensable for educating and enabling a race that wishes to become master over its origins among the rabble and that works its way up toward future rule.").

<sup>261</sup> FREUD, *supra* note 259, at 7-8.

actualization, but the "remains of . . . the original personality"—of humankind in its precivilized condition.<sup>262</sup> Thus, "freedom is no gift of civilization,"<sup>263</sup> nor is it conducive to the maintenance of civilization.

Concomitant with this view, Freud had little hope in the liberal commitment to the preestablished harmony between individual self-betterment and social progress. Rather, there is a genuine antipathy between individual and society:

Every individual is virtually an enemy of civilization, though civilization is supposed to be an object of universal human interest. It is remarkable that, little as men are able to exist in isolation, they should nevertheless feel as a heavy burden the sacrifices which civilization expects of them in order to make communal life possible. Thus, civilization has to be defended against the individual, and its regulations, institutions and commands are directed to that task.<sup>264</sup>

Indeed, Freud had little faith in the very concept of social progress, and he did not believe that the advances of science and technology resulted in any genuine amelioration of the human condition.<sup>265</sup> In the end, it is Freud's rationalism which prevails as he wrote that "[t]he ideal condition of things would . . . be a community of men who had subordinated their instinctual life to the dictatorship of reason."<sup>266</sup>

As with the thought of John Stuart Mill before him, it is difficult to miss the tensions and contradictions in Freud's views. He inveighed against Victorian morality, yet he defended the interest of society in imposing restrictions upon the instinctual existence of the individual. He dealt a death blow to the liberal faith in human rationality while continuing to hold out faith in that same rationality as the goal of psychoanalysis and human striving generally. He was a humanitarian who apparently did not think very highly of actual people. And with his view of the economics of the libido, he defended the need for each individual to work out his own salvation in his own way while nevertheless vouchsafing the role of society in regulating and restricting the impulses of the individual.

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<sup>262</sup> FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 49-50.

<sup>263</sup> *Id.* at 53.

<sup>264</sup> FREUD, THE FUTURE OF AN ILLUSION, *supra* note 259, at 6.

<sup>265</sup> See FREUD, THE EGO AND THE ID, *supra* note 27, at 39-40 (arguing that the march of technology has created as many problems as it has solved). He analogizes the pleasure created by scientific progress to sticking one's foot out of bed on a chilly night to feel how cold it is before withdrawing it in again. *Id.* at 40.

<sup>266</sup> FREUD, *Why War?*, in XXII STANDARD EDITION, *supra* note 165, at 213.

Perhaps, throughout his life, Freud was seeking to strike a balance on behalf of humanity between the dichotomous poles of liberty and coercion, rationality and irrationality, personal freedom and heteronomy. Or perhaps, with age, his thought simply became progressively more elitist and authoritarian. But if Freud's views are accurate even in their general outlines—as evidenced by the fact that post-Freudian and even so-called non-Freudian schools of psychology usually do not question these broad outlines<sup>267</sup>—then Freud's theory stands as a decisive rebuke to the psychological naïveté of liberal thought.

#### IV. B.F. SKINNER: BEHAVIORISM, TABULA RASA, AND THE SOCIAL ENGINEERS

Behaviorism developed in the late nineteenth century as a reaction to the introspectionist psychology of Wundt and James.<sup>268</sup> The underlying impetus for the new movement was to free psychology from philosophy and to enlist the methods of observation and experiment in creating a scientific psychology which would stand in contrast to the “mentalistic” conceptions of the earlier schools of psychology.<sup>269</sup>

The core principle underlying behaviorism—the elimination of all mental concepts such as intentions, desires, beliefs, and purposes—was carried out by asserting that such entities actually do not exist, or by maintaining that they have no functional significance in the world of human action.<sup>270</sup> In short, only behavior and its external precipitating causes can be observed and studied;<sup>271</sup>

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<sup>267</sup> See FINE, *supra* note 174, at 248-54 (arguing that much of Freud's work has been accepted even by schools of psychology which are purportedly non-Freudian); see *id.* at 257-58 (discussing post-Freudian schools of psychoanalysis).

<sup>268</sup> See SKINNER, ABOUT BEHAVIORISM, *supra* note 22, at 16-18 (describing methodological behaviorism's attack on Wundt and Titchner); see WILLIAM JAMES, THE PRINCIPLES OF PSYCHOLOGY (Harv. Univ. Press 1981) (1890) (providing an example of introspectionist psychology and discussing the stream of thought).

<sup>269</sup> Behaviorism rejected the “mentalism”—the view that thoughts, desires, and purposes, etc., have a causal role in human action—of other schools of psychology. See, e.g., SKINNER, BEYOND FREEDOM AND DIGNITY, *supra* note 24, at 3-25 (describing the traditional view and the behaviorist's reasons for rejecting it).

<sup>270</sup> Skinner maintained that he did not deny the existence of mental entities as such, but asserts that they are observations of the subject's own body. *Id.* at 18-19. See also GILBERT RYLE, THE CONCEPT OF MIND (1949) (for a thorough-going philosophical attempt to argue that mental entities can be reduced to behavior).

<sup>271</sup> In other words, only behavior and the environmental conditions which cause behavior are observable. See B.F. SKINNER, SCIENCE AND HUMAN BEHAVIOR 11-22 (1953) (describing the characteristics of genuine science and asserting that only behavior is scientifically observable and explainable).

the inner sanctum of mind was left to theologians and metaphysicians.

Behaviorism shares certain fundamental assumptions with liberalism, on the one hand, and with Freudian thought, on the other. With the Freudians, behaviorism's claimed status as an empirical science committed it to the view that all human behavior could be predicted, explained, and controlled; thus, all human actions were determined. Along with its conceptual antipathy to the notion of personal freedom, behaviorism casts grave doubts upon traditional liberalism's beliefs in human rationality and the unity of the self.<sup>272</sup> On the other hand, behaviorism shares with liberalism a commitment to the belief in social progress and individual self-development.<sup>273</sup> Distinct from both liberalism and psychoanalytic thought, however, behaviorism posits no core self or authentic individual personality independent of social influences.<sup>274</sup> Along with its determinism, this will pose baleful consequences to any lingering hope in salvaging a cogent concept of personal freedom within the framework of behaviorism.<sup>275</sup>

B.F. Skinner is perhaps the most well-known modern behaviorist. He wrote widely on social and philosophical topics in a manner which far transcended the more typical, technical work of other behaviorists. It is for these reasons, as well as because his radical behaviorism takes the implications of behaviorism to their consistent, logical extreme, that I have chosen to examine his thought here.

#### A. Skinner's Concept of the Person

This section focuses on two aspects of behavioristic philosophy: its assertion that mental entities such as thoughts, beliefs, and desires have no functional significance as a cause of human action and its emphasis upon the environment as the primary determinant of human behavior. These two dimensions of behaviorism do

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<sup>272</sup> *Infra* notes 321-25 and accompanying text.

<sup>273</sup> See SKINNER, *supra* note 24, at 138-74 (discussing the design of culture).

<sup>274</sup> See *infra* notes 301-08 and accompanying text (explaining Skinner's view of the self).

<sup>275</sup> If there is no "core self"—if the self is always a function of social forces—the claim can always be made that our behavior is, by definition, always a product of these external social forces. Thus, we are not free.

I believe that a commitment to personal freedom is possible even if the self is a "social construction." This would require defining freedom not as a function of authenticity, but as a consequence of self-integration. Social conditioning can then be viewed either to enhance or obstruct the process of self-development and integration. See Hill, *supra* note 17, at 667-69 (describing social conditioning and authenticity).



not necessarily rise and fall together. It is possible to reject the former, metaphysical claim while upholding the validity of the behaviorist's psychological contention that behavior is learned, a product of social conditioning.

The traditional view of the person as a soul or mind in command of a physical body views human behavior to be a function of thoughts, purposes, desires, and choices, etc.: We think (or desire or choose) and then we act accordingly. We are responsible for our actions because we are free to act upon our thoughts or to disregard them. Whether we view these mental states, processes, and entities, as the Judeo-Christian religious tradition does, as a function of the state of our soul, or simply, as secular tradition has it, as constituents of the mind, we are nevertheless autonomous agents who are in control of our behavior and responsible for our actions.<sup>276</sup> Anglo-American law has accepted and enshrined this traditional, mind-over-body view of the person.<sup>277</sup>

From Descartes onward, Western philosophy has sought to come to terms with the implications of this view of the person; indeed, the so-called "mind/body problem" is perhaps the most all-encompassing and fundamental issue of modern philosophical thought.<sup>278</sup> Descartes accepted the traditional view of the person but generated the mind/body problem by defining "mind" and "body" in a manner which made it difficult to understand how the two could ever affect one another. He defined "mind" as a nonspa-

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<sup>276</sup> See C.A. Campbell, *Has the Self Free Will?*, in REASON AND RESPONSIBILITY (Joel Feinberg ed., 1968) (enunciating a modern defense of the traditional view of the self). It is striking that the mind/body problem is intimately enmeshed with the free will/determinism controversy. Materialists are generally determinists while dualists are committed to the belief that persons are free. Thus, both the mind/body and the free will/determinism problems are aspects of fundamentally opposed paradigms of human behavior.

<sup>277</sup> As H.L.A. Hart has written: "[A]n act is not *just* a muscular contraction, but one which has a special psychological cause. It is caused by a preexisting desire, which Austin called a 'volition' or 'act of will.'" H.L.A. HART, *Acts of Will and Responsibility*, in PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 97 (1968). Similarly, in tort law, an "[a]ct is a combination of muscular movement and the state of mind of volition to make that movement." W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS 35 (5th ed. 1984).

<sup>278</sup> The problem is in fact a nest of related issues which include the questions of personal identity and survival, the problem of mind-body interactionism, epistemological issues related to the subjective/object distinction and the status of the mind as knower in relation to the objective world, and the free will/determinism problem. See RICHARD RORTY, *PHILOSOPHY AND THE MIRROR OF NATURE* 17-127 (1979) (providing an excellent discussion of the relationship between these various problems and for the claim that the mind-body issue is a pseudo-problem).

tial substance characterized by the property of awareness.<sup>279</sup> (Thus, mind could be conceived as something similar to, or a function of, the immaterial soul.) In contrast, "body" was viewed as part of the physical or material world; it exists in space and time.<sup>280</sup>

While Descartes's view, subsequently dubbed "interactionism,"<sup>281</sup> held that the mind does affect the body (through the pineal gland, no less),<sup>282</sup> his solution has been universally rejected by modern philosophy on the ground that a nonphysical entity cannot have physical effects.<sup>283</sup> In sum, modern philosophy has asked: How can a thought (e.g., to get a drink of water) which does not exist in space have any effect upon the spatially-located brain and body (e.g., to cause me to get a drink)? The overwhelming answer has been that it cannot have any such effect. What has followed in the succeeding three centuries has been an array of attempts to get beyond the problem by reducing all mental constructs to physical phenomena in one or another fashion.

Behaviorism has followed the epiphenomenalist solution to the mind-body problem.<sup>284</sup> Most basically, behaviorism holds that

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<sup>279</sup> DESCARTES, *Mediations on First Philosophy*, in THE PHILOSOPHICAL WORKS OF DESCARTES, *supra* note 170, at bk. IV.

<sup>280</sup> *Id.*

<sup>281</sup> So called because the mind and body are believed to interact with one another.

<sup>282</sup> *Id.*

<sup>283</sup> In sum, modern philosophy rejects the "ghost in the machine" view of human personality. Various alternative theories include the following: 1) idealism, where the material world is reduced to the mental; 2) parallelism, first systematically asserted by Spinoza, that mind and body are in fact two distinct attributes of reality, and that both proceed in parallel with one another such that, for example, the intention to drink water does not *cause* the action, but rather, occurs along with it; 3) various forms of materialistic reductionism. It is the third "solution" which is prevalent among contemporary philosophers. Materialism includes epiphenomenalism, the view that mental states are a causally inefficacious by-product of brain states, and the identity thesis, which claims not only that mental states are causally dependent upon brain states (as epiphenomenalism holds) but that mental states are ontologically equivalent to brain states. The identity thesis is particularly radical because it holds that there are no mental properties whatsoever. See generally KEITH CAMPBELL, *BODY AND MIND* (1970) (providing an introductory overview of these positions); see RORTY, *supra* note 278, at 70-127 (providing a more advanced discussion of the problem with the various materialist positions).

<sup>284</sup> Skinner's behaviorism at first appears epiphenomenalist insofar as he does not deny the existence of mental states as such. SKINNER, *ABOUT BEHAVIORISM*, *supra* note 22, at 18-19. But, in fact, his view that they are either reducible to behavior or meaningless appears to deny the existence of mental properties. *Id.* at 19. Skinner was not a philosopher and, consequently, he may have waffled on this question. See generally RYLE, *supra* note 270 (arguing that there is a necessary connection between mental states and dispositions to behave in certain ways). The issue as to whether one is an epiphenomenalist or a complete reductionist (of the identity thesis variety) amounts to whether one holds that mental states are ontologically distinct from physical brain processes, even if they are causally parasitic upon the brain (epiphenomenalism) or

mental constructs such as thoughts, desires, beliefs, intentions, emotions, purposes, goals, volitions, and, indeed, even consciousness generally, are the remnants of a prescientific psychology—they either do not exist as such, or they are causally insignificant in producing behavior.<sup>285</sup> As Skinner wrote, believing that mental states cause behavior (as when we say, for example, that I ate because I was hungry or I ran because I was afraid) is an instance of the *post hoc, ergo propter hoc* fallacy.<sup>286</sup> Skinner maintains that mental states either must be translated into observable behavior<sup>287</sup> or must be discarded as unnecessary or meaningless.<sup>288</sup>

Some examples are in order here. According to Skinner and other radical behaviorists, intentions, goals, and purposes, all forms of what would, in nonbehaviorist terminology, be called forward-looking motivational states are simply “reports of strong covert behavior likely to be emitted publicly when the occasion arises.”<sup>289</sup> To “exercise a choice” is simply to act.<sup>290</sup>

Beliefs are not to be viewed as cognitive information which the individual subjectively understands to reflect some state of affairs in the real world; rather, they are dispositions to act.<sup>291</sup> Thinking might be viewed to pose a particularly difficult problem for the behaviorist. While the father of modern behaviorism, John Watson, interpreted thinking as a form of subvocal speech,<sup>292</sup> later behaviorists including Skinner analyze thought as a form of “covert behavior.” As such, “thinking does not explain overt behavior; it is

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whether one contends that there are no mental states in any ontologically discernable manner.

<sup>285</sup> SKINNER, ABOUT BEHAVIORISM, *supra* note 22, at 19.

<sup>286</sup> “[A]fter this, therefore because of this.” *Id.* at 9.

<sup>287</sup> “Observable” behavior may include “covert” behavior, Skinner’s term for mental processes which appear to have some functional significance (such as thinking through a problem). See *id.* at 27 (thinking is a form of covert behavior). The problem with this view is that it brings mental operations back into the analysis while classifying them as behavioral.

<sup>288</sup> *Id.* at 19.

<sup>289</sup> *Id.* at 27-28.

<sup>290</sup> *Id.* at 113.

<sup>291</sup> RYLE, *supra* note 270 at 133-35 (beliefs are dispositions to act). There are two responses to this view. First, dispositions cannot be translated into behavioral terms. Thus, the view cannot be squared with the logical positivism which undergirds the behaviorist position. Second, a belief may result in an infinite number of different behaviors depending upon the other considerations. My belief that I have money in my pocket may ‘dispose’ me to spend it, to save it or to give it away, depending upon other beliefs and desires. Thus, my belief is not a disposition to act in any particular way, or to act at all.

<sup>292</sup> SKINNER, ABOUT BEHAVIORISM, *supra* note 22, at 6.

simply more behavior to be explained.”<sup>293</sup> Similarly, Skinner described wishing,<sup>294</sup> mnemonic search and recall,<sup>295</sup> selective attention,<sup>296</sup> problem solving<sup>297</sup> and creative behavior<sup>298</sup>—all mental operations which appear to precede and cause behavior—in behavioristic terms.

There are numerous difficulties with behavioristic reductionism, particularly the behaviorist’s analysis of mental concepts in terms of probabilistic dispositions to behave, their deliberate disregard for the role played by functional brain states in mediating behavior, and their attempt to classify various mental processes as “covert behavior.”<sup>299</sup> Even many modern materialists reject behaviorism’s entirely externalized approach to mental states in favor of other forms of reductionism.<sup>300</sup>

The behaviorist analysis of human action describes all behavior in terms of a complex set of learning processes, including re-

<sup>293</sup> *Id.* at 115.

<sup>294</sup> Wishing is a report of probable behavior. *Id.* at 58.

<sup>295</sup> *Id.* at 108-10.

<sup>296</sup> *Id.* at 115-18. “We pay attention or fail to pay attention . . . depending upon what has happened in the past under similar circumstances.” *Id.* at 105.

<sup>297</sup> Problem solving “is a matter of taking steps to make that response more probable.” *Id.* at 111. Implausibly, Skinner asserts that when one has an idea—e.g., to try the rear door—“What is ‘had’ is the behavior of trying the rear door.” *Id.* at 58-59. This is obviously not satisfactory. What happens when one decides not to act on the idea? How is the behavior “had” in this case?

Skinner attempts to salvage the behaviorist interpretation of problem solving by calling it “covert behavior.” Thus, in picking the next move in a chess game, we think through the possible alternatives. Skinner writes: “We can act without committing ourselves; we can revoke the behavior and try again if private consequences are not reinforcing.” *Id.* at 114. Extending the definition of “behavior” to include thinking concedes the real argument: that unobservable mental processes have functional significance in our behavior.

<sup>298</sup> See *id.* at 113-15 (defined as operant behavior).

<sup>299</sup> I have briefly discussed the problem with dispositions *supra* at note 291. The problems associated with covert behavior are discussed *supra* at note 297. Finally, a good counterexample to the behaviorist claim that mental states have no impact on behavior is attributed to the philosopher C. D. Broad. He posed the example of a young male teacher who is spending a good deal of time tutoring a particular female student. A colleague points this out to him and suggests that he may be attracted to the woman. The young teacher realizes that the colleague is correct and moderates his behavior. Thus, becoming aware of his motives influenced his subsequent actions. Even if awareness is causally dependent upon brain states, it appears that mental states (such as becoming aware of one’s motives) may in turn influence behavior.

<sup>300</sup> One prevalent view is the identity thesis, which holds that brain states and mental states are equivalent. See U.T. Place, *Is Consciousness a Brain State?*, in *PHILOSOPHY OF MIND* (Vere C. Chapell ed., 1962) (arguing in favor of the thesis); see Thomas Nagel, *What Is It Like To Be A Bat?*, 1974 *PHIL. REV.* 435 (Oct. 1974) (arguing against the identity thesis).

flexes, conditioned responses, and operant behavior.<sup>301</sup> Skinner does not deny that our genetic endowment plays a role in shaping human behavior; indeed, he argues that, in one important sense, all behavior is inherited in the sense that predispositions to behave in certain ways are a result of natural selection.<sup>302</sup> Nevertheless, he also maintains that while human nature is what a person is before being subjected to the action of the environment, "genetic endowment is nothing until it has been exposed to the environment, and the exposure immediately changes it."<sup>303</sup> Further, while human beings may possess certain, genetically-grounded inclinations to various forms of behavior (e.g., sex and aggression), Skinner's antipathy to mentalistic concepts compels him to refrain from calling such dispositions instinctual.<sup>304</sup>

The core of behaviorism, of course, is the claim that all that we do—and, indeed, almost all that we *are* — is a function of conditioning. With the exception of reflexes and certain fundamental predispositions, which are the result of our genetic endowment, human behavior is a product of the "environment."<sup>305</sup> Moreover, each individual is subjectively a product of these same environmental contingencies insofar as our values, beliefs, perceptions, desires, and goals are the result of the unique set of contingencies with which each of us has interacted. Accordingly, Skinner maintained that the "self is simply a device for representing *a functionally unified system of responses*."<sup>306</sup> In essence, a person is nothing more than what a person *does*.

For the behaviorist, there is no self or character from which action flows, there is only the action. The same person may exhibit apparently conflicting behavior at different times because of the manner in which she was conditioned. Skinner is explicit on this point: The traditional psychological view of the unified self is misleading because it "may lead us to expect consistencies and func-

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<sup>301</sup> For a discussion of these processes, see SKINNER, *SCIENCE AND HUMAN BEHAVIOR*, *supra* note 271, at 45-58 (reflexes and conditioned responses) and 59-90 (operant behavior).

<sup>302</sup> SKINNER, *ABOUT BEHAVIORISM*, *supra* note 22, at 148-49.

<sup>303</sup> *Id.* at 165.

<sup>304</sup> *Id.* at 39-42. He argues, for example, that claiming that aggressive behavior is the result of an aggressive instinct does not explain the behavior. *Id.* at 40. On the other hand, it is difficult to understand the conceptual advantage of "a disposition to aggression" vis a vis an aggressive instinct.

<sup>305</sup> The environment is simply the sum total of all contingencies which serve positively and negatively to reinforce our behavior.

<sup>306</sup> SKINNER, *SCIENCE AND HUMAN BEHAVIOR*, *supra* note 271, at 285.

tional integrities which do not exist."<sup>307</sup> There is no core ego or liberal unencumbered self who stands apart from the rest of the world, passing judgment upon, and making decisions about, it. There is only the complex network of dispositions and conditioned responses which are manifest in behavior. Nor is there room for the notion of self-development in the usual sense. If we wish to make people better, Skinner exhorts us to make the environment which shapes human behavior better.<sup>308</sup> Most basically, for the behaviorist, we *are* our behavior and our behavior is a function of the world which shapes it.

If this view of the person as a product of his environment at first appears "liberal" in the peculiarly modern sense of the term, it is ultimately anti-liberal in the most significant sense. The theory which holds, for example, that growing up under impoverished social conditions should serve to exculpate the criminal for his behavior militates equally powerfully in favor of a compelling social interest in overriding privacy concerns and in reengineering even the most personal aspects of those same social conditions to produce exactly the kind of behavior that is deemed socially desirable. Similarly, if all of an individual's choices and her very will itself is simply a function of social conditions such that no decision is objectively rational or truly *her own*, the way is opened up for the most all-encompassing forms of paternalism and authoritarianism. Herein lies the central antinomy of modern liberalism.

To fill out this view of the person, the next section considers at greater length the behaviorist's view of personal freedom.

### *B. Beyond Freedom and Dignity*

Like all other organisms, human beings seek to escape or avoid all forms of aversive stimuli. Skinner argues that we may have a genetic predisposition not only to escape, but to turn upon and attack the source of the aversion.<sup>309</sup> When aversive stimuli are generated by other people, rather than by the natural environment, our mechanisms for avoidance or outright aggressive "countercontrol" are designated as the pursuit of freedom.<sup>310</sup>

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<sup>307</sup> *Id.* at 286.

<sup>308</sup> What is wrong, for example, is not the student but the educational environment. SKINNER, *BEYOND FREEDOM AND DIGNITY*, *supra* note 24, at 149.

<sup>309</sup> *Id.* at 27.

<sup>310</sup> *Id.* at 25. Similarly Michael Bayles has argued that natural or nonpersonal forces cannot be said to coerce. Coercion requires the existence of an interpersonal relationship. Michael D. Bayles, *A Concept of Coercion*, in *COERCION* 16, 17 (J. Roland Pennock & John W. Chapman eds., 1972).

Skinner surveys the traditional meanings of freedom as absence of constraint or coercion and as the absence of prior determination.<sup>311</sup> Ultimately, however, he locates the *feeling* of freedom in being rewarded (at least in the short run) by the consequences of our behavior: "The critical condition for the apparent existence of free will is positive reinforcement, as the result of which a person feels free and calls himself free. . . ."<sup>312</sup> Not only is free will illusory,<sup>313</sup> but the feeling of freedom can be downright deceptive.<sup>314</sup> Skinner maintained that control is inevitable in that all human behavior is a function of the environment, whether environmental contingencies are orchestrated and intentional or random and accidental.<sup>315</sup> Control through positive reinforcement, however, does not lead to countercontrol; instead, it may be interpreted as the feeling of freedom:

The important fact is not that we feel free when we have been positively reinforced but *that we do not tend to escape or counterattack*. Feeling free is an important hallmark of a kind of control distinguished by the fact that it does not breed countercontrol. The struggle for freedom has seemed to move toward a world in which people do as they like or what they want to do, in which they enjoy the right to be left alone. . . . It would appear to be a world in which people have fulfilled themselves, have actualized themselves, and have found themselves. . . . It is a world in which the control of human behavior is wrong. . . . Unfortunately the feeling of being free is not a reliable indication that we have reached such a world.<sup>316</sup>

In *Beyond Freedom and Dignity*, Skinner warns that we live in a world where the forms of control are increasingly of this more insidious variety, where inducement<sup>317</sup> and persuasion<sup>318</sup> are utilized more efficiently today than were the whip or stockade a century

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<sup>311</sup> "'Freedom' usually means the absence of restraint or coercion, but more comprehensively it means a lack of any prior determination." SKINNER, *ABOUT BEHAVIORISM*, *supra* note 22, at 54.

<sup>312</sup> *Id.*

<sup>313</sup> Skinner endorses determinism: "We cannot prove of course, that human behavior as a whole is fully determined, but the proposition becomes more plausible as the facts accumulate, and I believe that a point has been reached at which its implications must be seriously considered." *Id.* at 208. Even operant behavior, which is said to be voluntary, is still caused. "[T]he cause is simply harder to spot." *Id.* at 54.

<sup>314</sup> *Id.* at 217-18.

<sup>315</sup> *Id.* at 221.

<sup>316</sup> *Id.* at 197-98.

<sup>317</sup> See SKINNER, *BEYOND FREEDOM AND DIGNITY*, *supra* note 24, at 30-31 (recounting the way in which government, education, and religion have moved to control through positive reinforcement). Moreover, government and industry utilize fixed and variable reinforcement schedules where the quantity of reinforcement is not proportional

ago. The prevailing notion of freedom as getting what one wants, Skinner maintains, has "failed to rescue the happy slave."<sup>319</sup> Thus, by emphasis upon short-term feelings and upon the satisfaction of desires as the *sine qua non* of freedom, the literature of freedom may play into the hands of those seeking control.<sup>320</sup> In sum, we must relinquish the quest for freedom and acknowledge the inevitability of control, supplanting the pursuit of freedom with the hope of creating "a more natural and social environment."<sup>321</sup> Control is inevitable and freedom an illusion: "The problem is to free man, not from control, but from [aversive] control."<sup>322</sup>

But if we are all controlled, what distinguishes the "happy slave" from the nonslave in Skinner's view? The answer appears to be simply that the happy slave suffers aversive consequences for his behavior in the long-term, while the other does not. For example, Skinner suggests that the happy slave is the gambler who is subjected to reinforcement on a variable-rate schedule notorious for producing repetitive behavior in the face of little long-term reward,<sup>323</sup> or the wage earner who is paid on a "piece-work" basis (a fixed ratio reinforcement schedule) which permits the owner of capital to exploit the worker.<sup>324</sup> If we are all equally controlled, it appears that all that distinguishes the slave, happy or not, from anyone else is simply whether, on balance, the rewards he receives are proportionate with the aversive consequences he must endure. It is not a difference in freedom, then, which distinguishes the free man from the slave, but, rather, the long-term cost-benefit consequences of each one's behavior.

In its denial of an authentic self, its adherence to determinism, and its rejection of the mental, the behaviorist view of the person poses a triple obstacle to various conceptions of personal freedom. If freedom is interpreted as absence of causal necessity, then behaviorism, with psychoanalytic thought, denies the possibility of this kind of freedom insofar as it adheres to determinism.

A fallback position from the notion of freedom as absence of causation is that of freedom as expression of the authentic self.

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to the ultimate rewards, or where these rewards are outweighed by long-term aversive consequences. *Id.* at 32.

<sup>318</sup> SKINNER, ABOUT BEHAVIORISM, *supra* note 22, at 218.

<sup>319</sup> SKINNER, BEYOND FREEDOM AND DIGNITY, *supra* note 24, at 37.

<sup>320</sup> *Id.* at 39-40.

<sup>321</sup> *Id.* at 221.

<sup>322</sup> *Id.* at 39.

<sup>323</sup> *Id.* at 36.

<sup>324</sup> *Id.* at 32.



Thus, it may be argued, even if human behavior is determined, this does not necessarily preclude the existence of an authentic self emanating behavior which, though causally determined, is a manifestation of the genuine self. In this fashion, freedom as absence of necessity is replaced by freedom as *authenticity*. But behaviorism's claim that there is no core self, that we are nothing but the confluence of environmental contingencies which constitutes our past, precludes the possibility of freedom as the expression of the authentic self.

Nevertheless, perhaps it might be thought that we can fall back on yet a third possibility: freedom as self-integration. On this account, even if the self is the predetermined residue of external influences, perhaps we can arrange the environmental contingencies in such a manner so as to maximize internal, psychological harmony. In other words, perhaps it is possible to create a world where the environmental contingencies which shape our behavior do so in a way which serve to harmonize each person's desires, goals, values and talents. In sum, even if we can neither free ourselves from the bonds of causal necessity nor defend the existence of an authentic self whose acts we nurture and develop as manifestations of our authentic being, is it not at least possible to foster a kind of psychological freedom from cognitive dissonance such that each person's desires and aspirations do not conflict internally with one another?<sup>325</sup>

Not even this position, however, is left open to the behaviorist. Because we are only behavior, and because there is no room, on the behaviorist account, for mental constructs such as desires, values, and goals, there can be no values and goals to harmonize. Thus, for the behaviorist, even the limited notion of freedom as psychological integration cannot be maintained. In this respect, behaviorism is more thorough-going in its rejection of the possibility of personal freedom than even Freudian thought.

### C. *Political Liberty in the Behaviorist Utopia*

As previously discussed, the function of the state in the beha-

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<sup>325</sup> This notion of freedom as self-integration comes from recent philosophical accounts which seek to reconcile the prevailing notion of freedom as satisfaction of desire with our intuition that freedom is not always synonymous with the satisfaction of desire. Thus, our intuition that the heroin addict is not free—*notwithstanding* his ability to satisfy his craving for the drug—leads us to understand freedom at least partially as the process of self-integration. The addict cannot integrate or reconcile the desire for the drug with his desire to be free from the drug. See Neely, *supra* note 132 (proffering a theory of freedom which involves self-integration).

behaviorist utopia is to create a social environment where people are secure and happy<sup>326</sup> and where they are free not only from coercion and aversive means of control, but from manipulation in the form of short-term inducement which imposes long-term aversive consequences.<sup>327</sup> Such an environment would be created partially through law<sup>328</sup> as well as through other social institutions which might themselves be legally regulated.

Interestingly, Skinner argues at one point in Millian fashion that the successful culture must permit its members to experiment in order to guarantee flexibility and social progress.<sup>329</sup> Yet this raises only the first of a number of paradoxes inherent in Skinner's view—most essentially, the normative imperative of the benevolent behaviorist is utilitarian.<sup>330</sup> In other words, because we cannot avoid control, the goal of the good society must be to maximize the greatest amount of positive reinforcers for the greatest number.

As with criticisms of other forms of utilitarianism, however, where the greatest happiness principle can be satisfied only by limiting liberty (or, because liberty is a fiction for the behaviorist, by intruding into the private domain), such intrusive measures would be warranted. Thus, the behaviorist utopia might provide for only limited privacy, diversity or individual experimentation, contrary to Skinner's pretensions to liberalism. Of course, if the behaviorist is correct in her psychological assumptions, we can create a world where people do not crave privacy, diversity or individuality. Indeed, as Skinner has maintained, a culture must be designed not for people as they are, but for people as they will be.<sup>331</sup> Thus, an environment can be fashioned in which people seek order and security, rather than freedom.

Numerous other questions remain: Who controls the controllers? And what values should guide the future evolution of our culture? In other words, if we can refashion humanity to be any-

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<sup>326</sup> Skinner defines "happiness" as "a feeling, a by-product of operant reinforcement, the things which make us happy are the things which reinforce us." SKINNER, ABOUT BEHAVIORISM, *supra* note 22, at 78. As with Mill's definition of happiness, this is virtually circular.

<sup>327</sup> See *supra* notes 323-24 and accompanying text (discussing the use of this type of manipulation).

<sup>328</sup> "A law is thus a *statement of a contingency of reinforcement maintained by a governmental agency*." SKINNER, SCIENCE AND HUMAN BEHAVIOR, *supra* note 271, at 339.

<sup>329</sup> SKINNER, BEYOND FREEDOM AND DIGNITY, *supra* note 24, at 145.

<sup>330</sup> See *supra* text following note 324 (where I argue that it is maximization of pleasure, and not greater freedom, which distinguishes the "free man" from the "happy slave" on Skinner's account).

<sup>331</sup> SKINNER, BEYOND FREEDOM AND DIGNITY, *supra* note 24, at 156.

thing that we want—to be competitive or cooperative, diligent or pleasure-seeking, highly rational and ordered, or spontaneous and emotionally demonstrative—how shall we decide? Indeed, will not the values we ultimately choose themselves be a function of our present state as conditioned creatures?

In sum, it appears that the behaviorist cannot consistently maintain that there are any values which exist independently of a given set of conditioned responses. Even our experience of pleasure and pain are relative to what we have learned to enjoy, a point Skinner makes in discussing the effects of the literature of freedom.<sup>332</sup> Moreover, the notion of political liberty has no meaning or significance in the behaviorist state. There may be checks upon the consolidation of power to prevent the resurrection of regimes which utilize aversive means of control, but where these same regimes are able to implement measures which, on balance, utilize positive reinforcement to maintain control, there can be no objection. Indeed, this is, for the behaviorist, the best of all possible worlds.

The case for political liberty, where political liberty means something more than the utilitarian maximization of happiness or the behaviorist endorsement of positive reinforcers, requires a theoretical commitment to the notion of something internal to the person which must be nurtured and developed, something which exists prior to, and independent of, the environment in which it finds itself. Modern psychology, particularly behaviorism, entirely undermines the case for liberalism to the extent that it casts a shadow over the prospect of this internal world. The following section examines in greater detail the relationship between the psychological assumptions of liberalism and the political and moral case for political liberty.

#### V. PERSONAL FREEDOM AND THE ZONE OF PRIVACY: A CRITIQUE OF THE LIBERAL ETHIC OF CHOICE

The modern psychological conception of the person, in either its psychoanalytic or behavioristic manifestations, dramatically undercuts the basic moral-psychological premise for personal freedom. But what is the relationship between this traditional conception of personal freedom and the case for political liberty? Put differently, can one fruitfully and consistently adhere to some

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<sup>332</sup> The literature of freedom makes the conditions of the oppressed state more aversive by comparing them to the conditions of the free state. *Id.* at 28.

coherent variant of Freudian or behaviorist thought and yet remain a political liberal?

My aim in this last section will be to demonstrate that the modern psychological conception of personhood is anathema to liberalism. Because I cannot presume to provide a full analysis here, I have chosen to focus on one central social and political component of modern liberal thought—alternatively, the notion of negative rights or the concept of the zone of privacy.<sup>333</sup> I hope to demonstrate here that, if modern psychology (and its underlying metaphysical theory) is correct, one cannot defend on principle the notion of a realm of private conduct beyond state intervention. If Freud, Skinner, or their modern followers are generally correct in their view of the person, state intervention into the realm of self-regarding behavior is not only morally defensible, it may be routinely necessary.

#### A. *Liberalism and Privacy*

Whether predicated upon libertarian or utilitarian principles, the *summum bonum* and central unifying goal of all liberal political institutions is the proliferation of free choice. From free market economics to political democracy to such long-standing common law doctrines as freedom of contract, and from the liberalization of divorce law to increasing deference on the part of the criminal law to putatively self-regarding behavior,<sup>334</sup> freedom of choice has been the single unifying shibboleth of the liberal era. Even where liberals advocate some restrictions on freedom, this is typically done in the interest of even greater long-term freedom.<sup>335</sup> It is

<sup>333</sup> The central idea here is the familiar one that there is a realm of self-regarding behavior into which the government may not intrude. This idea was central to Mill's liberal thought. MILL, *supra* note 20, at 53-54. This concept is the very core of liberalism in that it entails that certain choices are beyond the reach of government interference. The idea is easily traced to Lockean notions of limited government. JOHN LOCKE, THE SECOND TREATISE ON GOVERNMENT (John Weidhoffs Gough ed., 1966) (1690).

<sup>334</sup> Particularly over the last 30 years, the criminal law has witnessed a marked departure from enforcement of "self-regarding" crimes. Louis B. Schwartz, *Morals Offenses and the Model Penal Code*, in MORALITY AND THE LAW 86 (Richard A. Wasserstrom ed., 1971). Morals legislation has grown increasingly anathema to liberal commentators and jurists. See H.L.A. HART, LAW, LIBERTY AND MORALITY, 77-81 (1963) (arguing that democracy should not be confused with the right or power of the majority to dictate their moral beliefs to others); HERBERT L. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 296-331 (1968) (arguing that the criminal law should not negatively sanction sex offenses, bigamy, incest, obscenity, or prostitution).

<sup>335</sup> Paternalistic laws are typically justified on these grounds, on the assumption that a breakdown in human rationality will result in decisions which do not maximize freedom in the long term. Ronald Dworkin, *Paternalism*, in MORALITY AND THE LAW, *supra*

with the concept of negative rights, however, or some equivalent notion of a zone of privacy in which the person remains free from government interference,<sup>336</sup> that the aspirations of the liberal ethic of choice are most fully realized.

It is no coincidence that the rise of liberalism in the late eighteenth and early nineteenth centuries was concomitant with the development of a secularized twist on the Judeo-Christian conception of personhood. This view of the person placed an even greater emphasis upon reason and freedom as attributes of selfhood than had earlier Christian thought, while transforming our prevailing notions of life's purpose from a supernatural to a human-centered view.<sup>337</sup> The pursuit of happiness replaced conformity to the will of God as the chief end in life. A natural accompaniment to this transition was the radical and recent view that the central function of the state was to promote human happiness.<sup>338</sup>

Perhaps somewhat ironically, liberal philosophy held that the state fulfilled this function best by governing least. From Locke's notion of limited government to Mill's harm principle to the modern right of privacy, the unifying thread through the various evolutionary stages of liberalism has been the idea of a realm free from government regulation. Accordingly, liberalism stands in stark contrast to classical political philosophy, where even defenders of democracy such as Aristotle maintained such very anti-liberal notions as the priority of the state over the individual and the legitimate power of the state to intrude into even the most 'private'

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note 334, at 107-26. Even Mill argued that persons should not be permitted to sell themselves into involuntary servitude for this reason: "But by selling himself for a slave, he abdicates his liberty; he forgoes any future use of it beyond that single act." MILL, ON LIBERTY, *supra* note 20, at 95.

<sup>336</sup> The modern constitutional right of privacy may be viewed to be a highly diluted version of this principle. While privacy is intimately tied to notions of personal autonomy, the Supreme Court has repeatedly cautioned that privacy is not to be taken as an unlimited right to do with one's body as one wishes. See, e.g., *Roe v. Wade* 410 U.S. 113, 154 (1973) ("The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some *amici* that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy . . .").

<sup>337</sup> See generally CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY (1989) (providing an excellent discussion of the evolving concept of the person which influenced modern liberal thought).

<sup>338</sup> This idea grew out of humanistic theories which held human happiness to be the true end in life. Later, the rise of liberalism witnessed the shift from a state-centered view of political theory, characteristic of classical thinkers such as Aristotle, to an individual-centered theory central to Locke and later liberal thinkers. See *id.* at 143-76 (exploring Descartes's and Locke's individualism).

aspects of personal life.<sup>339</sup>

In contrast to the classical defense of democracy, liberal political philosophy justifies political liberty principally on grounds that it is the most certain way of protecting personal freedom and ensuring happiness, even self-realization. Thus, modern political freedoms such as freedom to vote, freedom of speech, or freedom of association may be defended on democratic, as opposed to liberal, principles on the ground that they are necessary to prevent political tyranny. The right of privacy, in contrast, is essentially a liberal, rather than a democratic, institution.<sup>340</sup> Nonliberal democracy, such as that in ancient Athens, had nothing which corresponds to our modern conception of a private realm beyond the sanction of the state.<sup>341</sup>

In the modern era, privacy has become virtually synonymous with choice, and choice with notions of autonomy and self-realization. Thus, inner and outer freedoms are intimately bound together in liberal thought. The philosophy of privacy has radically transformed not only traditional areas of state law, but has been the single most important force in recent constitutional law as well.<sup>342</sup> It is perhaps ironic that in distinguishing the private from the public realm, liberalism ties them more tightly together than any other general political philosophy by justifying political freedom as a means of ensuring personal freedom. Thus, an attack on the traditional conception of the self and its core concept of per-

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<sup>339</sup> Aristotle, for example, held that the ultimate object of the state is to ensure the good life for its citizens. ARISTOTLE, *Politica*, *supra* note 8, at bk. I, ch. 2. The state, however, is still prior to the individual in terms of importance. *Id.* In addition, the state may direct a variety of personal choices, including determining the scope of citizens' education, *id.* at bk. VII, chs. 13-15, and setting the time and conditions of marriage, *id.* at bk VII, ch. 16.

<sup>340</sup> The distinction I am drawing here is between liberty as a defense to political tyranny versus liberty as a buffer against social oppression. Thus, the modern privacy right is viewed not so much as a means to protect political democracy as it is a defense to social forms of oppression which take political form. The right to abortion, for example, is less directly linked to preserving democracy than is, for example, the right of free speech. There have been democracies without the abortion right, but no true democracy would exist without a right of free speech. See generally NORBERTO BOBBIO, *LIBERALISM AND DEMOCRACY* (Martin Ryle & Kate Soper trans., 1990) (examining the tensions and interrelationship between liberalism and democracy).

<sup>341</sup> Book VII of the *Politica* makes clear Aristotle's view that the state should be involved in education, family planning, religion, and other aspects of personal life that would clearly violate principles of liberalism. ARISTOTLE, *supra* note 8, at bk. VII.

<sup>342</sup> "The principle of the right to privacy is not the freedom to do certain, particular acts determined to be fundamental through some ever-progressive normative lens. It is the fundamental freedom not to have one's life too totally determined by a progressively more normalizing state." Jed Rubenfeld, *The Right of Privacy*, 102 HARV. L. REV. 737, 784 (1989).

sonal freedom undercuts the justificatory basis for the liberal ethic of choice in general, and the concept of the zone of privacy in particular.

Before considering how the modern psychological view of the person undercuts liberal thought generally, the next section examines the way in which the liberal ethic of choice requires a coherent version of personal freedom as the *raison d'être* for political liberty.

### *B. Three Undercurrents to the Liberal Ethic of Choice*

Three philosophical traditions have contributed to modern liberalism: rights theory, utilitarianism, and nineteenth-century romanticism.<sup>343</sup> While conflicts between these diverse undercurrents routinely account for the contradictions inherent in modern liberal thought, all three share a basic commitment to the moral priority of freedom of choice. Moreover, each of these three philosophical sources has been used to defend broadly the right to a zone of privacy while, significantly, each exhibits a unique concept of personal freedom, as opposed to political liberty, *vis à vis* the others.

#### 1. Rights: Choice as a Manifestation of Autonomy

The first major tributary to liberal theory is the earliest and perhaps the purest: it is typified by the line of thought running from Locke<sup>344</sup> through Kant<sup>345</sup> which places ultimate moral priority on our status as free and rational beings. This is the view most closely associated with the tradition of rights, whether cast in the form of Lockean natural rights or Kantian moral rights.<sup>346</sup> For Locke, rights are grounded in the dictates of nature—our fundamental needs in the natural world—but they are also conditioned

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<sup>343</sup> All three of these traditions are comingled in Mill's thought. See Part II, *supra* (discussing Mill's thought). While rights theory and utilitarianism are routinely discussed as integral to liberalism, the role of the romantic influence in liberal thought is less well understood. See TAYLOR, *supra* note 337, at 355-90 (studying the natural law and expressivist underpinnings of romanticism, and the romantic influence on modern thought).

<sup>344</sup> LOCKE, *THE SECOND TREATISE ON GOVERNMENT*, *supra* note 333.

<sup>345</sup> IMMANUEL KANT, *The Metaphysics of Morals*, in *ETHICAL PHILOSOPHY* (trans. James W. Ellington ed., 1983) (1797).

<sup>346</sup> Kant's view rejects natural rights as such. One cannot go from factual statements about what one desires or needs to moral statements about what is morally obligatory upon actors. In another sense, however, duties and rights are, for Kant, predicated upon our natural status as rational creatures. See generally TIBOR R. MACHAN, *INDIVIDUALS AND THEIR RIGHTS* (1989) (providing an overview of the philosophical foundation of rights).

upon our status as reasoning agents who have natural claims upon the world in virtue of this status.<sup>347</sup> Kant rationalized the basis for rights, more thoroughly grounding them in the status of persons as autonomous agents. In contrast to Locke, Kant believed that rights are not a function of such natural contingencies as human desires or needs, but are founded solely upon each subject's status as a reasoning agent worthy of respect and never to be used as a means to someone else's end.<sup>348</sup>

Following the traditional Christian view, both Locke and Kant were staunch defenders of freedom of the will. As such, each interpreted personal freedom to choose as absolute and unconditional. Both rejected the view that human choices and acts are part and parcel of the natural web of causal determinism: In sum, human acts which conform to rational principles are self-caused and unconditionally free.<sup>349</sup>

Traditional rights theory is thus intimately intertwined with a concept of personhood which views the agent as basically rational and intrinsically free. Both Lockean and Kantian concepts of rights must be interpreted as negative rights, or as freedom from unwarranted interference. Particularly for Kant, the boundaries of freedom are marked off by our duties to other persons as autonomous agents, and to ourselves.<sup>350</sup>

Modern freedom of choice as a manifestation of human dignity finds its most direct intellectual descendent in the idea that our choices should be respected because they are the result of rational decisions made by free agents. Even where these choices may be mistaken, or downright self-destructive, modern defenders of negative liberty argue for the absolute inviolability of human decisions within the sphere of self-regarding behavior.<sup>351</sup> On this view, political liberty is none other than the breathing space allotted to individuals to exercise their natural freedom as autonomous agents.

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<sup>347</sup> See RICHARD ASHCRAFT, *LOCKE'S TWO TREATISES OF GOVERNMENT* 126-29 (1987) (surveying Locke's theory of natural rights and its basis in human nature).

<sup>348</sup> KANT, *Elements of Ethics*, in *ETHICAL PHILOSOPHY*, *supra* note 345, pt. 2, sec. 38, at 462.

<sup>349</sup> See KANT, *supra* note 32, at 45 (arguing that when the will seeks the basis for its actions in objects, rather than in reason, heteronomy always results).

<sup>350</sup> See generally KANT, *The Metaphysical Principles of Virtue*, in *GROUNDING FOR THE METAPHYSICS OF MORALS*, *supra* note 32 (classifying and discussing the duties owed to ourselves and to others).

<sup>351</sup> MILL, *ON LIBERTY*, *supra* note 20, at 70-86 (expounding on the limits of state power).



## 2. Utilitarianism: Choice as a Means to Happiness Maximization

As the discussion of Mill's thought in Part II explained, the transition from the first to the second phase of liberalism was marked by a shift from natural rights theory to utilitarianism.<sup>352</sup> Bentham, the elder Mill, and the other philosophical radicals rejected the notion of natural rights on moral and epistemological grounds.<sup>353</sup> Nevertheless, these thinkers, particularly Bentham, were staunch liberals who played the largest role in reforming and liberalizing the law of England along utilitarian principles.<sup>354</sup>

While much can, and has, been made of the potential conflict between utilitarian and libertarian philosophy,<sup>355</sup> the philosophical radicals adopted a position which sought on principle to reconcile these two doctrines: While the bedrock normative principle around which law should be predicated moved the primary focus from freedom and rights theory to the maximization of the greatest good for the greatest number, the utilitarians argued that, as a rule, happiness maximization was achievable by expanding social liberty.<sup>356</sup> On the twin assumptions that people generally know best what will make them happy and possess the reason, foresight, and restraint to achieve happiness if given the requisite liberty, liberty conduces to utility. (Of course, implicit in this view is also the notion that, through a kind of preestablished harmony between individual and collective ends, the pursuit of freedom and happiness by the individual eventuates in the greatest happiness for everyone overall.)<sup>357</sup> All of these claims, of course, converge in Mill's thought<sup>358</sup> and are even more fully blended in modern preference

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<sup>352</sup> *Supra* notes 71-73 and accompanying text.

<sup>353</sup> Bentham called rights "nonsense on stilts." JEREMY BENTHAM, *Anarchical Fallacies*, 2 THE WORKS OF JEREMY BENTHAM 501 (1962); see MARY MACK, JEREMY BENTHAM: AN ODYSSEY OF IDEAS 176-77, 297-98, 303-04 (1963) (discussing Bentham's view of rights).

<sup>354</sup> JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION 156-86 (J.H. Burns & H.L.A. Hart eds., 1970) (1789) (examining Bentham's ideas on the criminal law).

<sup>355</sup> See, e.g., MACHAN, *supra* note 346, at 121-22 (arguing that utilitarian thought is inconsistent with natural rights).

<sup>356</sup> See *supra* notes 72-73 (discussing the utilitarian argument for increased liberty).

<sup>357</sup> See TAYLOR, *supra* note 337, at 266-84 (discussing the desist-influenced view, which influenced such diverse thinkers as Adam Smith and Alexander Pope, which held that by pursuing our own individual ends, we take part in the "providential order" that unites individual ends with social progress).

<sup>358</sup> See MILL, ON LIBERTY, *supra* note 20, at 53-54 (arguing that freedom conduces to social progress).

utilitarianism.<sup>359</sup>

Accompanying the movement from rights to utility was an important shift in the view of the nature of personal freedom. In contrast to the notion of unconditional freedom of the will characteristic of libertarian and rights-based thinkers, the utilitarians gravitated to a view closer to the line of thought which runs from Hobbes through Hume to Ayer, or what today is called "soft determinism."<sup>360</sup> Personal freedom is viewed as absence of external constraint, rather than as a function of the uncaused will.<sup>361</sup> Of course, utilitarianism does not entail determinism. Indeed, it is possible to hold both a utilitarian normative philosophy and a view of the self as unconditionally free. But utilitarians have tended to the soft deterministic view, perhaps because utilitarians were generally more favorably disposed to empiricism, and belief in determinism may have appeared more "scientific," and thus more compatible with empiricist sympathies.

For this reason, two additional observations may be made concerning the significance of the utilitarian view of personal freedom to the liberal ethic of choice. First, insofar as personal freedom is associated with absence of constraint, early utilitarians conceived political freedom along similar lines as had libertarian thinkers in terms of negative conceptions of liberty. Second, the utilitarian view tends to deemphasize the significance of personal freedom and responsibility, at least as it was traditionally conceived,<sup>362</sup> but retains a central place for the concept of disengaged reason as an instrumental force in assisting the individual in achieving happiness. Thus, the traditional notion of the self is preserved to the

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<sup>359</sup> The modern preference utilitarian seeks to reconcile freedom and happiness by defining the *summum bonum* in terms of maximized preferences or choice.

<sup>360</sup> William James was the first to use the term "soft determinism." JAMES, *supra* note 129.

<sup>361</sup> The will might still be determined, but to the extent that these determinants could be viewed as internal to the person, one was considered free. Thus, even if our choices are caused, what else could one mean by "freedom" than that we can act in accord with our choices and desires? See PRIEST, *supra* note 39, at 154-57 (examining Hume's unorthodox soft determinist view and distinguishing "strong" and "weak" determinism).

<sup>362</sup> While a traditional thinker of either a religious or deontological bent requires that a person be found to be responsible before he may be punished, for the utilitarian, if it makes (utilitarian) sense to punish the person, he should be "held responsible." For the deontologist, the question of freedom and responsibility are factual inquiries, dependent upon the actor's moral-psychological state at the time she acted. For the utilitarian, the agent is held responsible when doing so maximizes the net utility. See H.J. McCloskey, *A Non-Utilitarian Approach to Punishment*, in CONTEMPORARY UTILITARIANISM 239 (Michael D. Bayles ed., 1968) (criticizing the utilitarian theory of punishment).

extent that it emphasizes the ability of the person to know herself by knowing what will make her happy, and by understanding how to attain happiness. In this respect, utilitarian thought is closer to a Cartesian than a Freudian view of the self.

To the extent that utilitarianism continues to underwrite the modern liberal ethic of choice, this influence is observed in our notion that freedom and happiness are mutually reinforcing, rather than conflicting normative goals. Echoes of the libertarian ethic of noninterference are inherent in the utilitarian position, but with a slight modification: Persons should be free to pursue their own ends in the self-regarding realm not because of some inviolable right predicated upon the concept of human dignity but because, as an empirical matter, we are most able to act as happiness-maximizers when left alone to pursue our own ends.

### 3. Romanticism: Choice as a Manifestation of the Authentic Self

Perhaps the most overlooked undercurrent in modern liberal thought is that of the influence of continental romanticism, which flourished from the late eighteenth to the middle of the nineteenth century and which continues to influence our modern notion of the self. While there are no clear boundaries for what I am describing as romantic thought here, the central core of romanticism is the view that each of us is unique, that underlying the various levels of acquired habits and social influences is an authentic self which represents our true being. As such it is innate to us, different from all others. This self is associated with authenticity, spontaneity, freedom, and a sense of looking at the world from each person's singularly unique perspective. The romantic world view exalts passion over reason, tends to be skeptical on questions of truth and morality, and otherwise emphasizes our differences as individuals. It underlies the modern ethos of personal style, the notion that our manner of dress and speech, habits, and preferences—our lifestyle generally—should reflect this inner being, the authentic self.<sup>363</sup>

Romantic influences are found throughout late eighteenth- and nineteenth-century art, literature, and philosophy. From Blake to Goethe, and from Coleridge to Wordsworth, from Emerson and Thoreau to Nietzsche and Kierkegaard, and even into twentieth-century existentialist thought, romantic influences are

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<sup>363</sup> See *Romanticism*, in 7 THE ENCYCLOPEDIA OF PHILOSOPHY, *supra* note 39, at 206-09 (outlining the romantic temperament).

evident. From Rousseau, the romantics adopted the distinction between the social aspect of personality, which is wholly artificial to the self and which largely desensitizes our innate goodness, and the presocial self.<sup>364</sup> And from diverse influences romanticism fed from, and again nourished, the cult of individuality, with the notion that each individual is unique.<sup>365</sup>

While romantics tend to follow the libertarians in affirming the unconditional freedom of the human will,<sup>366</sup> their notion of personal freedom has an important twist: Freedom is viewed as a function of authenticity, rather than autonomy, thereby deemphasizing reason and morality and enshrining in their place emotion and aesthetic fulfillment as the hallmark of freedom. Thus, quite independent of the free will/determinism argument is the romantic notion that, for an act to be free, it must be an expression of the authentic self, rather than a manifestation of external social influences. The view can be carried so far as to portend, as Mill did, that this original, authentic self can be entirely swamped by, and ultimately lost to, social influences.<sup>367</sup> This Rousseauian strand of thought continues to exercise its influence upon commentators from left-liberal, feminist, and Marxist orientations, among others. Such writers often argue that choices made by the poor, women in a male-dominated society, or workers in a capitalist society are the product of social conditions; as such, the argument runs, these choices are not truly free, but are instead the product of exploitation, the social construction of the will or false consciousness, respectively.<sup>368</sup> Implicit in such arguments lies the idea that there is an authentic self which, but for these powerful social influences, would have asserted itself, resulting in a better decision.

Another aspect of at least some romantic thought links this notion of the authentic self to nature by claiming that authenticity is the most natural mode of human expression, or that uninhibited human choices are an expression of nature in human behavior.

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<sup>364</sup> ROUSSEAU, *supra* note 230.

<sup>365</sup> This is reflected in the writings of Humboldt. WILHELM VON HUMBOLDT, IDEEN ZU EINEM VERSUCH DIE GRENZEN DER WIRKSAMKEIT DES STAATS ZU BESTIMMEN [ON THE LIMITS OF STATE ACTION] (1791). Humboldt greatly influenced Mill's *On Liberty*. MILL, *supra* note 20, at 54-55.

<sup>366</sup> "[T]he great thinkers who emerged out of the expressivist [romantic] stream in this period all strove to unite radical autonomy and expressivist unity. . . ." TAYLOR, *supra* note 337, at 385.

<sup>367</sup> MILL, ON LIBERTY, *supra* note 20, at 53-56.

<sup>368</sup> Many of these views are united under the rubric of "exploitation," a term carrying both economic and moral-psychological implications. See Hill, *supra* note 17, at 661-79 (discussing the moral psychology of exploitation).

This idea underlies Rousseau's notion that education should foster our innate, natural, and beneficent impulses<sup>369</sup> or the complimentary Freudian view that repression—the inhibition of our natural impulses—is in some sense unnatural and leads to profound psychological harm.<sup>370</sup> Today, various forms of popular psychology influenced by existential and humanistic, as well as neo-Freudian, sources advocate the psychological necessity of authenticity, or that each person should heed his natural impulses, where the failure to do so may cost him his very self.<sup>371</sup>

To the modern ear, romanticism provides an even more palpable justification for the liberal ethic of choice than do libertarianism or utilitarianism. In contrast to abstract notions of dignity or rights, or dubious empirical propositions to the effect that people generally know and act in a manner that maximizes happiness, liberal arguments that stem from romantic sources stress the unnaturalness of repression or restrictions, and counsel against conformity not only on grounds that it stifles social progress, but that it jeopardizes our very psychological health.

Thus, contemporary liberal arguments in favor of legalizing drugs or prostitution frequently point to the universal occurrence of these practices in various forms in diverse societies throughout history.<sup>372</sup> The claim is that the universality of these practices demonstrates that they are a natural response to the human condition, and that a society in which people may not freely alter their minds or engage in sex for hire, notwithstanding a natural desire to do so, is a society in which people are less than whole. Thus, authenticity is linked to health, and freedom to harmony with the natural world. It is a compelling combination and probably exercises a more powerful influence in contemporary debates concerning morals legislation than either of the earlier two undercurrents of liberal thought.

As previously argued, all three of these influences—libertarianism, utilitarianism and romanticism—are blended both in Mill's thought and in modern liberal critiques of social and moral restrictions upon free choice.<sup>373</sup> In contrast to these influences stands the modern scientific world view which, in twentieth-century psy-

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<sup>369</sup> ROUSSEAU, *supra* note 230.

<sup>370</sup> FREUD, *THE COMPLETE INTRODUCTORY LECTURES*, *supra* note 183.

<sup>371</sup> MASLOW, *supra* note 3, at 3-8. For an intriguing comparison of modern psychology and existentialist thought, see *id.* at 9-17.

<sup>372</sup> DAVID A. RICHARDS, *SEX, DRUGS, DEATH AND THE LAW: AN ESSAY ON HUMAN RIGHTS & OVERCRIMINALIZATION* (1982).

<sup>373</sup> See *supra* notes 343-72 and accompanying text.

chology, is represented by Freudian and behaviorist schools and their followers. It is time to examine the way in which this outlook undermines the liberal conception of the self and, with it, the liberal ethic of choice.

C. *The Psychological Critique of Choice and its Implications for the Zone of Privacy*

To this point, I have argued that the case for a zone of privacy beyond the realm of government control is perhaps the most characteristic manifestation of the liberal ethic of choice generally. And the moral basis for the liberal ethic of choice is itself predicated upon a certain conception of human personality—the notion of the free and rational self, unitary and unique, capable of autonomous or, minimally, authentic choices and acts. In the following subsections, I will consider, first, exactly how modern psychology calls this view of the self into question and, then, whether political liberalism can be made compatible with the modern view of the self.

1. Modern Psychology's Attack on the Self

The modern psychological view of the self, in either its Freudian or behavioristic manifestations, posits a conception of human personality in vast contrast to that of the traditional (Judeo-Christian and early liberal) view of the self. Distinguished from the free, rational, unitary, and authentic self of liberalism is an entity which is hopelessly determined, whose motives and goals are far from transparent, and who is a product of external forces, either conceived as biological or social factors. Perhaps most importantly, there is no unitary self on the scientific view.

For the behaviorist, there is no "functional unity," only a matrix of potentially conflicting behaviors which have been acquired as the result of diverse learning contingencies. For the Freudian, the center of gravity in the human personality lies in the unconscious id, while the psychoanalytic equivalent of the liberal self, the ego, is little more than a rubber stamp for the aims of the id.

To the extent that persons are not intrinsically autonomous, as the scientific view suggests, their actions are the product of external forces—our instinctual urges, the environment, advertising, the media, the social conditions in which we are raised, etc. In a sense, it is these forces, and not our autonomous will, which act in us to produce our choices and our actions. As such, these choices and acts cannot be accorded the same moral priority as those which

issue from the autonomous self. To give these heteronomous forces such moral priority would be to dignify the macrocosm in the microcosm, to sanction any decision, no matter how potentially banal, base, or destructive it might be, as worthy of respect. To put it differently, we cannot unconditionally dignify nonautonomous choices any more than we should hold their authors morally responsible for them in some deontological sense, should they even-tuate in criminal behavior.

The point may be made slightly differently by evaluating the liberal zone of privacy. The zone of privacy may be viewed as providing a presumption, on some views, such as Mill's, an irrebuttable presumption, that all "self-regarding" behavior is to be permitted, even if it happens, in the estimation of others, to be incoherent, self-destructive, or otherwise morally sanctionable. The attack on what modern psychology deems to be the illusion of autonomy serves to undercut this presumption. It is not that modern psychology necessarily entails totalitarianism. There may be good reasons for permitting the individual wide latitude in choosing to pursue widely divergent life pursuits. Indeed, Freud argues for such freedom in arguing that different individuals possess different "libidinal economies,"<sup>374</sup> while Skinner follows Mill in espousing the essentially Darwinian notion that social evolution depends upon a certain amount of chance variation within the context of the broader culture.<sup>375</sup>

Rather, modern psychology serves to undercut the unconditional nature of the presumption in favor of individual choice. Where it can be demonstrated, for example, that habitual drug use is a manifestation of self-destructive impulses or a conditioned response to poor social conditions, the presumption in favor of non-intervention for this putatively self-regarding act would be rebutted. In sum, while there may indeed be compelling reasons for noninterference in vast realms of human behavior, if the modern psychologist's worldview is correct, the libertarian-Kantian case for an inviolable zone of privacy is founded upon dubious empirical or philosophical propositions regarding human will and reason.

The utilitarian case for choice, and for the zone of privacy, is likewise challenged. To the extent that psychoanalysis is correct, we act largely from motives about which we have little knowledge. More profoundly, we often act in ways which are clearly self-de-

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<sup>374</sup> FREUD, CIVILIZATION AND ITS DISCONTENTS, *supra* note 185, at 34.

<sup>375</sup> SKINNER, ABOUT BEHAVIORISM, *supra* note 22, at 75.

structive, the product of the influence of Thanatos. From the behaviorist perspective, reason, as such, is not a force in our actions at all. Thus, the utilitarian concept of the subject as a disengaged happiness-maximizer is rejected both on the ground that we do not understand what motivates us, and what will make us happy, and on the premise that we are not, by nature, happiness-maximizers in the first place. Indeed, Freud's most fundamental conclusion regarding the development of civilization is that it is the product of a trade of happiness for security,<sup>376</sup> an exchange which might not be justifiable from a utilitarian perspective.

Finally, modern psychology, particularly on the behaviorist side, also undercuts a number of romantic notions central to liberal thought. First, the *tabula rasa* conception of human personality characteristic of behaviorism eviscerates the romantic notion of the authentic self. Because behaviorists, social learning theorists, and thinkers of a similar ilk believe our selves are a product of the external world, no priority can be given to certain desires, impulses, or inclinations over others on the ground that the former are authentic. Self-destructive or otherwise sanctionable decisions are thus explainable in terms of external forces which can be re-worked; the individual can be reconditioned to produce different decisions. Most importantly, if this conception of personhood is correct, there is nothing inherent to the individual which is offended by such reconditioning. Even Orwellian-type attacks which claim that purposeful social conditioning is, by nature, totalitarian assume the existence of an authentic self whose integrity is violated by such procedures.

Both Freudian and behaviorist views of personality reject the romantic-liberal (and, ultimately, Aristotelian) idea that persons exhibit an inherent propensity or need toward differentiation, individuality or self-realization. As evidenced in the discussion of Mill, the zone of privacy is justified partially on the ground that it provides a haven for the delicate, nascent self.<sup>377</sup> Freedom permits the individual to grow into what she is, to achieve her inherent potential. If the behaviorist, or to a lesser extent the Freudian, is correct, however, there is neither an inherent potential waiting to be realized nor an innate process of self-unfoldment. Freud is ex-

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<sup>376</sup> See *supra* notes 211-14 (for a discussion of this and a brief comparison of Freud and Hobbes on this point).

<sup>377</sup> "It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it, and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation. . . ." MILL, ON LIBERTY, *supra* note 20, at 59.



PLICIT on this point: While some individuals seek self-betterment for a variety of psychodynamic reasons, this is rare—there is no universal drive to actualization.<sup>378</sup>

In different ways, depending upon the theoretical orientation, the psychoanalytic and behaviorist views of the self cast grave doubts upon the picture of the self assumed by traditional liberal thought. Autonomy, authenticity, self-realization, and the unity of the self—each of these concepts is a product of the essentially optimistic world view of liberalism, a view challenged by two of the three branches of modern psychology.

## 2. Can Liberalism Be Reconciled with the Modern View of the Self?

In the prior section, I attempted to show that by rejecting the traditional notion of the self, modern psychology undercuts the case for liberalism by demonstrating that liberalism is not morally obligatory, contrary to the conclusions of defenders of liberalism. In this section, I will argue that true liberalism cannot even be reconciled with a psychological reading of the self as a discretionary matter. In sum, while a political regime which accepts the tenets of behaviorist or Freudian psychology may permit great freedom in the self-regarding realm, it cannot do so as a matter of principle. Each such regime must accept the conclusion that possibly extraordinary intrusion into the private realm may be justified, even necessitated, by their view of human personality. One cannot consistently be both a psychological Freudian or Skinnerian and a moral or political liberal.

Let us begin with any view generally sympathetic with behaviorist principles, or any view which holds overall that persons are largely or wholly a function of environmental influences. Two important considerations must be recalled here. First, the behaviorist holds that control is inevitable.<sup>379</sup> Government control cannot be distinguished from private control—whether that private control is exercised through the media, the market, religion, or some other 'private' social institution. Second, as argued in Section IV, the only type of moral system worthy of the name which can be generated by behaviorist psychology is a kind of utilitarianism.<sup>380</sup> The benevolent behaviorist state is one that ensures for its subjects max-

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<sup>378</sup> FREUD, *Beyond the Pleasure Principle*, in XVIII STANDARD EDITION, *supra* note 165, at 42.

<sup>379</sup> SKINNER, *BEYOND FREEDOM AND DIGNITY*, *supra* note 24, at 221.

<sup>380</sup> *Supra* notes 330-31 and accompanying text.

imized positive reinforcers with the fewest short or long-term aversive consequences. Together, these two implications entail that the state may have to engage in modes of state-sponsored countercontrol (control to combat destructive forms of nongovernmental control) which are potentially highly intrusive into the private domain.

For example, to the extent that nongovernmental modes of control lead to behavior with long-term aversive consequences (e.g., gambling, habitual drug use, unhealthful diets, dangerous sexual practices, tobacco use—all types of activity which fall within the self-regarding realm), the state would be *morally required* to step in and to correct the situation. At a minimum, this might require totally reconditioning the person engaged in such practices. The more likely long-term implication, however, is that the (liberal) great divide between the private and the public sectors will completely disappear. Because it would be too costly for the state continually to correct the 'errors' of the market (e.g., such as advertising unhealthful or dangerous products), the state itself would be required to assume these functions. In this fashion, thorough-going acceptance of the behaviorist paradigm of human nature leads inevitably to omnipresent state control of all human activities.

Of course, the same old troubling questions remain: In the behaviorist state, who controls the controllers? And, because for the behaviorist positive reinforcement can be effected through a variety of different social alternatives, within certain limits, which alternatives should be chosen? Should the state seek to create a world where people are cooperative or competitive, rational or feeling-oriented, altruistic or self-preserving? Should the state itself be democratic or oligarchic, hierarchical or egalitarian, collectivist or individualistic? (Again recall that the behaviorist cannot appeal to human nature to choose one alternative over the other, because "human nature," for the behaviorist, is itself a construction of society.)

In sum, the thorough-going behaviorist cannot be a liberal. To the extent that liberalism implies a realm beyond government control, acceding to the existence of such a realm would require a compromise on psychological utility and, again, this loss in terms of utility cannot be offset by a gain in personal liberty since personal liberty is itself illusory.

Nor, for slightly varying reasons, can a follower of Freud remain a committed liberal. As we have seen, Freud argued that Victorian constraints on morality ignored the variation among human

behavior and, thus, Freud sought a liberalization of then-prevailing sexual standards.<sup>381</sup> Nevertheless, the underlying thesis to which Freud frequently returns in such works as *Civilization and Its Discontents*, is that our social and political culture are directly tied to our mode of sexual expression.<sup>382</sup> Left to his own devices, the individual may dissipate the spiritual energy otherwise destined for expression in higher social pursuits. Law, morality, and social standards generally serve to prevent regression and to promote sublimation to the good of civilization. And while Freud was undoubtedly favorably disposed to striking a balance between regression and degeneration, on one hand, and neurosis via excessive sublimation, on the other, the point remains that society cannot afford completely to loosen its grip on the private life of the individual. For the Freudian, as for the behaviorist or social learning theorist, there can be no unconditional realm of privacy.

#### CONCLUSION

Perhaps on the assumption that one cannot go from as "is" to an "ought," modern moral and political philosophers have ignored questions of human nature on the ground that the *moral* elaboration for the just society cannot depend upon contingent statements of *psychological* fact concerning human behavior. Yet psychological assumptions, often implicit, are routinely made in the context of political philosophy. Nowhere is this more evident than with the argument for liberalism. If, however, twentieth-century psychology is accurate even in its most general principles, liberalism must be viewed as an anachronistic remnant of eighteenth century rationalism. On the other hand, if liberalism, in anything but the debased moral and philosophical condition in which it presently exists, is to be salvaged, this can only be accomplished by rediscovering the original self.

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<sup>381</sup> *Supra* note 233 and accompanying text.

<sup>382</sup> See *supra* Part III, C (for a discussion of the relationship between Eros and civilization).