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Book Author(s): EILEEN HUNT BOTTING

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**FOUNDATIONS OF UNIVERSAL HUMAN RIGHTS  
WOLLSTONECRAFT'S RATIONAL THEOLOGY  
AND MILL'S LIBERAL UTILITARIANISM**

*The Problem of Foundations, Revisited*

Natural rights theories—from the late medieval era to the late eighteenth century—had sidelined women for the most part. As shown in chapter 1, these theories had limited value for understanding women as rights-bearing subjects. The era of the French Revolution saw the rise of new theories of rights that conceived of women as moral, social, and political equals alongside men. Most notably, Mary Wollstonecraft revised the rational dissenting Protestant theology of her mentor Richard Price so that it explicitly justified the inclusion of women in the “rights of humanity.” Moreover, she theorized rights in deontological terms, like her contemporary Immanuel Kant, to fortify their status in ethics and politics. As correlates of moral duties prescribed by God’s rational and universal moral law, human rights were moral absolutes for Wollstonecraft. In this respect she anticipated the liberal philosopher Ronald Dworkin’s view of “rights as trumps,” in the sense that she ascribed to rights the power to override any competing ethical or political demands. In an alternative approach, John Stuart Mill sought to correct classical utilitarianism’s neglect of individual rights while accepting its secular frame and grounding of utility. Unlike Jeremy Bentham’s dismissal of the idea of justifying rights independently of positive law as “nonsense on stilts,” Mill’s liberal utilitarianism aimed to institutionalize in law the rationally justified moral rights of women and other historically oppressed groups as an indirect yet necessary step toward realizing the greatest happiness of all.<sup>1</sup>

Each of these revisions of earlier philosophies of rights came with their own problems. Wollstonecraft faced a dilemma born of the fact of religious pluralism. In its theoretical justification, her capacious metaphysics staked a big tent under which all members of human-

ity could be assured coverage for their rights. In rhetorical practice, however, the Christian elements of her system of thought made it more persuasive than not to people who shared those same or similar theological beliefs. Mill confronted a different problem, since the moral beliefs required for persuading people to accept his secular utilitarian approach to grounding human rights were minimalistic in comparison to Wollstonecraft's metaphysics. Mill's main issue was rather one related to the justification of rights: namely, the insecure status of rights within his liberal utilitarianism. Because he followed Bentham in understanding utility as the sole foundation for morality, Mill conceptualized rights as instruments for promoting the utility of the whole. Rights could not function as trumps for Mill. Rights could only serve as tools for realizing the greatest happiness through the indirect route of encouraging the free and full self-development of each and every individual. Although he sought to improve upon the classical utilitarian neglect of individual rights, his liberal utilitarianism nonetheless returned to the same moral problem that plagued his father, James, and Bentham. Can the good of any given individual be rightly sacrificed for the greatest happiness of the greatest number? Wollstonecraft could answer this question with a definitive no, because of her deontological grounding for human rights and theological view of the intrinsic worth of human creatures. While the secular Mill escaped Wollstonecraft's demanding metaphysics and theological biases, he failed to defend individual human rights in any absolute sense that would unconditionally protect people from personal sacrifice for the sake of the happiness of the majority. Whether such sacrifice was supererogatory—arising from a heroic sense of duty—or forced upon the individual from without, Mill's theory of rights could not completely rule out the moral validity of such an extreme utilitarian demand. As John Rawls argued, utility could potentially trump rights even in Mill's liberal revision of classical utilitarianism.<sup>2</sup>

Despite their different flaws and foundations, Wollstonecraft's and Mill's alternative justifications of human rights are examples of what Charles Beitz calls "naturalistic" theories of rights, which are

predicated on conceptions of the nature of the human being. Both Wollstonecraft's rational theology and Mill's liberal utilitarianism offer "naturalistic" theories of rights in the sense that they posit that all human beings hold equal rights "by virtue of their humanity," or what makes them human. The definition of the human person thus becomes crucial for both Wollstonecraft's and Mill's theories of universal human rights. In particular, their explicit inclusion of women in their respective definitions of the human gave Wollstonecraft and Mill each a basis for the idea of women's human rights. From Wollstonecraft's religious and metaphysical perspective, women's human rights were grounded in women's natures as human creatures made in the rational image of God. Regardless of sex, humans were equally subject to their divine Creator's universal, rational moral law. As moral equals, men and women were obliged to put the rational moral law of their divine Creator into practice through the dutiful respect of each other's human rights. From Mill's secular perspective, women's human rights were based on a conception of utility that was nonmetaphysical (meaning *a posteriori* and empirical) yet abstract and normative (specifically, eudaimonic or virtue oriented). Mill followed Bentham and Auguste Comte in rejecting the type of abstractions found in metaphysical and ontological philosophies in favor of proceeding with phenomenal and experiential data as the basis for the explanation of facts about the natural world. He thought that he had abstracted from the empirical study of sentient life a conception of utility that had strong, though nonmetaphysical, normative implications. His conception of utility revised classical utilitarianism by positing a eudaimonic or virtue-oriented conception of happiness as the normative end point of its ethical system. In Mill's liberal utilitarianism, the virtuous happiness of each individual human being, especially his or her robust sense of personal agency and self-development, would be maximized if the equality of the sexes was recognized in culture and law through the institutionalization of human rights for women and men alike. Although his naturalistic account of the human being derived from empirical observation rather than metaphysical speculation, it was a normative ideal in the sense

that it posited a thick moral conception of virtuous happiness as the goal of individual human development.<sup>3</sup>

From a contemporary liberal philosophical perspective, each of these views of the foundations of universal human rights is problematic for similar and different reasons. Similarly, Wollstonecraft's and Mill's theories today encounter the problem of foundations itself. Since Rawls made his turn toward a political liberalism that explicitly avoids appeals to any comprehensive doctrines (such as metaphysical or religious views, or other robust normative conceptions of human development, happiness, or the good life), a number of liberal thinkers have followed suit with nonfoundationalist approaches to justifying human rights. Such Rawlsian nonfoundationalist theories define human rights without relying on deep, demanding, or divisive moral doctrines. The purpose of these "purely political" definitions of human rights is to establish a broad yet thin consensus upon which a stable international conception of rights can be built. This consensus is historically rooted in legal practices of human rights but may also be projected into the future, as in the case of Rawls's hypothesis of an international league of liberal and decent peoples bound together by established human rights norms. Rawlsian approaches tend to proceed from the analysis of the ongoing public articulation and understanding of human rights in politics and law in the wake of the 1789 *Declaration of the Rights of Man and Citizen* and especially the 1948 Universal Declaration. For example, Beitz and Jack Donnelly have based their normative arguments about the appropriate scope and content of human rights upon the international legal consensus that has snowballed since 1948, rather than appealing to potentially divisive naturalistic foundations for rights as do Wollstonecraft's rational theology and Mill's liberal utilitarianism.<sup>4</sup>

By a nonfoundationalist approach to human rights, Donnelly means that he takes human rights as socially constructed "givens" from a particular historical and legal context. He begins his narrative of the evolution of universal human rights with the 1789 French *Declaration*, which established equal rights for most men in the revolutionary republic. Since then, national and international laws and policies

concerning the rights of humans have broadened, ever so gradually, to include blacks, women, and other marginalized groups.<sup>5</sup>

The problem with Donnelly's nonfoundationalist approach is that it fails to address the practical need (and historic practice) of appeals to naturalistic foundations for rights in a time prior to the institutionalization of such rights for marginalized groups. By 1789, women's human rights had only been barely and murkily conceptualized in European political thought. As Olympe de Gouges and Wollstonecraft demonstrated, the idea of the rights of woman was so visionary that just to change the gender of a pronoun or a noun in the dominant rhetoric of the rights of man was a radical move.

Yet de Gouges and Wollstonecraft both had to do more than change pronouns from masculine to feminine. Confronted with the fact of their social and political marginalization in even postrevolutionary republicanism, they felt pressed to appeal to a conception of the common humanity of the sexes in order to persuade men in power that women were in fact worthy of the same civil and political rights as men possessed. De Gouges grounded her arguments on the idea of human rights that grew out of the Rousseauian tradition of natural religion, while Wollstonecraft employed the Anglophone discourse of rational dissenting Christianity to make the case for women's human rights. Regardless of their belief (or possible nonbelief) in such foundations, their philosophical and rhetorical appeals to kinds of natural or metaphysical bases for women's human rights (such as their respective conceptions of the human being) were politically necessary in their contexts.

Rawlsian nonfoundationalist approaches take for granted a cultural and legal institutionalization of human rights that Wollstonecraft and even Mill could not presume, especially in the case of women. Back then, the idea of women's rights was just that—an idea, and a laughable one even in the wake of the French Revolution. In order for one to take rights as a “given,” those rights need to be recognized as a “societal given,” in culture and law. There is an important distinction between having rights and having those rights recognized and respected by other people or protected by state power. Woll-

stonecraft and Mill understood this distinction and the problems it raised for human rights advocacy. They were faced with the struggle of convincing people that women were humans with the same rights as men, and as such were deserving of popular recognition and legal protection of their rights like men. It made sense to them that they had to provide a solid moral foundation for this radical view, to give it philosophical validity. As masterful rhetoricians poised to fight a battle for the losing side, Wollstonecraft and Mill also knew that the coherence of their arguments for the foundations of universal human rights had implications for their persuasiveness in the public sphere. Their simple and elegant logic was in many ways their most powerful weapon in the rhetorical and political battle for the public recognition and legal institutionalization of women's human rights.

Neither Wollstonecraft nor Mill had the luxury of starting with the given of universal human rights; rather, each had to construct an argument for the establishment of rights as legal and cultural givens for all humans. Pablo Gilabert has defended the ongoing relevance of such foundationalist (or what he calls "humanist," and what Beitz calls "naturalistic") arguments as "working in tandem" with contemporary Rawlsian nonfoundationalist, or purely political, human rights approaches. Foundationalist arguments for human rights may productively work in tandem with such nonfoundationalist arguments in the sense that the former are better equipped to advance human rights prior to their cultural and legal institutionalization, while the latter are better suited for the articulation of human rights within positive law and official public policy. First, foundationalist arguments establish an abstract yet robust normative standard by which the deficiencies of current institutions, in culture and law, may be judged with respect to rights. In the words of Gilabert, a "humanist perspective is crucial to recognize the significance of institutions, frame their shape and impact, and explain why their creation or transformation is needed." In addition to such critical assessment of current institutions, foundationalist arguments enable a visionary perspective from which new or unrealized human rights might be imagined and demanded for "enjoyment" in the future. Alongside

Amartya Sen, Gilibert conceives of such foundationalist arguments for human rights as critical tools for “alleging” or advocating how new or unrealized rights ought to be prospectively specified and ultimately realized in law and policy. The justification of human rights via humanistic/naturalistic foundations therefore has important practical implications for persuasive allegation and subsequent dissemination of human rights.<sup>6</sup>

Wollstonecraft and Mill thus began with foundationalist approaches to the abstract rational justification of universal human rights. Their respective theological and secular methodologies continue to be relevant to contemporary politics, particularly because of their persuasive powers for audiences in different cultural contexts. Although Wollstonecraft’s particular brand of theological argument for women’s human rights is not as salient today, other religious variants of this type of metaphysical foundationalism have become important. Non-Western cultures, animated by religions such as Islam, Confucianism, and Hinduism, seek to incorporate the language of women’s human rights into their systems of religious and political beliefs. Some Western religious women have looked back to Wollstonecraft and other early women’s rights advocates as sources for their own bridging of feminism with Judaism, Christianity, and other world religions.<sup>7</sup>

But it is Mill’s secular liberal utilitarian foundation for human rights that continues to wield the most influence today, in both a negative and a positive sense. Positively, it has helped to produce a global idiom for arguing for women’s human rights in universalistic terms that do not necessarily privilege any particular religion and are easily adaptable in a variety of legal and political systems. Mill’s humanistic/naturalistic approach derived human rights from a secular yet normatively rich account of human individuality and its potential for virtuous yet varied moral development. His abstract definition of individual rights by way of a secular account of human nature allowed Mill to use rights claims as a critical tool for judging the insufficiency of current schemes of justice. Such political criticism, in turn, should generate positive claims for specific rights that society



ought to institutionalize for women in order to realize justice for the “disqualified half of the human race.”<sup>8</sup>

Negatively, the political influence of the Millian approach has been matched with its practical failures. First, secular naturalistic conceptions of human rights do not necessarily address the cultural preference of many humans for their deeply held religious beliefs to resonate with their principled political conception of the equal dignity of human beings. Second, liberal utilitarian foundations for human rights might also express (often latent) secular biases, especially for Western models of economic and civilizational progress. Both of these dimensions of Millian liberal utilitarianism may impede the nuanced and ethical application of universalistic women’s human rights arguments in situations of religious or other forms of cultural difference.

In what follows, I set forth analyses of Wollstonecraft’s theological and Mill’s secular approaches to justifying women’s human rights arguments, expounding their strengths as much as their weaknesses. Despite their flaws, Wollstonecraft’s and Mill’s foundationalist approaches to justifying human rights remain salient in different ways for liberal and feminist approaches to advocating for human rights. In particular, they offer distinct yet often complementary models for how to ethically and persuasively allege and defend women’s human rights in situations of religious or cultural conflict, by attending to those religious and other cultural differences in one’s approach to human rights advocacy. To test and compare their value for human rights advocacy, I assess the advantages and disadvantages of both approaches in the context of historic and contemporary debates on religious polygamy considered as a women’s human rights issue.

*Wollstonecraft’s Theological and Deontological  
Foundation for Universal Human Rights*

Two puzzles confront any reader who wishes to understand Wollstonecraft’s theory of rights. First, one finds a preponderance of references to duties, both general and specific, over references to specific

conceptions of rights, across Wollstonecraft's corpus of writings. In the *Rights of Woman* alone, Wollstonecraft used the term "rights" thirty-two times but employed the term "duties" about three times as often. This trend seems curious for a book that declares on its cover to be a vindication of the rights—not the duties—of woman.<sup>9</sup>

Second, readers notice Wollstonecraft's tendency to make consequentialist arguments for the benefits of granting rights to women. Wollstonecraft frequently discussed the extrinsic, social benefits of granting civil and political rights to women, often for men: "Would men but generously snap our chains . . . they would find us more observant daughters, more affectionate sisters, more faithful wives, more reasonable mothers—in a word, better citizens." As for the intrinsic, personal benefits of human rights for individuals, Wollstonecraft reverently spoke of the "sober pleasures" of thinking and acting as a rational moral agent and rights bearer. While these consequentialist forms of argument are not in themselves problematic, they seem to stand in tension with her overall concern with moral duty. If human beings have God-given duties to respect each other's human rights, then the performance of duty would matter far more than the consequences of performance. In other words, the obligation to provide human rights to others obtains independently of the intrinsic or extrinsic consequences of the act of provision. Yet Wollstonecraft often ostensibly argued the reverse: in particular, that the public benefits of granting rights to women are what justify their provision. On this reading, she paradoxically appears to defend rights for women on condition of their generating benefits for society at large, especially the men who currently run it.<sup>10</sup>

A common resolution to these twin puzzles can be found via a deontological and theological reading of Wollstonecraft's theory of human rights. Understanding Wollstonecraft's deontological (or duty-based) justification for human rights better accounts for her rhetorical and philosophical emphasis on the concept of duty, even in treatises that aim to vindicate the rights of men and the rights of women. By deontological, I mean the definition of moral rightness (what is absolutely right) as logically and ethically prior to the moral

good (what is contingently beneficial). Deontological conceptions of human rights are grounded on an idea of their moral rightness, first and foremost. Human rights are thus seen as derivative from an abstract, rational, universal, and obligatory moral rule or principle. In other words, people ought to recognize and respect human rights because it is their moral duty to do so.

Following Kant, such deontological theories of rights are typically justified in strict opposition to consequences. Under the Kantian view, one ought to recognize and respect rights because it is morally right to do so in an absolute and universal sense, not because they produce good social outcomes. Furthermore, one is morally obliged to recognize and respect rights even when the practice of such rights might produce bad social outcomes. Wollstonecraft shared the Kantian deontological conception of human rights as primarily defined by their absolute (and rational) moral rightness. Her mentor Price has been called a Kantian moral philosopher; I also situate Wollstonecraft within a family of Kantian approaches to ethics.<sup>11</sup>

Wollstonecraft distinguished herself from Kant and other strict deontological theorists, however, in her regular recourse to consequentialist arguments for the intrinsic and extrinsic benefits of granting human rights to individuals. At the same time, she agreed with Kant that rights are justified not in terms of their consequences but rather in terms of their derivation from universal, rational moral duties. And yet, both Wollstonecraft and Kant recognized that happiness and other beneficial consequences may be by-products of performing duties and respecting the corresponding rights of oneself and others. Although the performance of duty does not necessarily lead to happiness, and the expectation of happy consequences does not morally justify the performance of duty in the first place, the exercise of duty may be pleasurable (as in Wollstonecraft's aforementioned "sober pleasures" of thinking and acting as a rational being). Although Kant is often starkly caricatured as rejecting any relationship between morality and happiness, his *Groundwork for the Metaphysics of Morals* (1785) opened with the example of a man with painful gout who chose to take care of his health rather than indulge his love

of rich food, not because it relieved pain or increased pleasure, but because it was the right and rational thing to do. His consequent experience of health brought him a happiness that was a by-product of performing this self-regarding duty for the right reasons.<sup>12</sup>

Given their broad agreement on the relationship between morality and happiness, the key difference between their systems of deontological ethics was that Kant's metaphysical approach to defining duties and corresponding rights was *a priori* yet nontheological, whereas Wollstonecraft's was *a priori* yet theological. In Kant's epistemology, the human mind constructed its rational understanding of reality and morality without reference to the noumenal realm (which includes the fundamentally incomprehensible God's-eye point of view). Because she did not make such an epistemological distinction between the noumenal and the phenomenological, Wollstonecraft's metaphysical theory of rights could and did ground itself on theological principles. Her theologically informed metaphysics also allowed her to define humanity in broader terms than Kant's strictly *a priori*, nonempirical, nontheological, metaphysical approach to defining humans as rational and moral beings.<sup>13</sup>

Wollstonecraft's rational theology, as set forth in her two *Vindications*, provided the grounding for several levels of her theory of human rights. First, it provided Wollstonecraft with an *a priori*, metaphysical conception of the human being: humans are creatures of God, endowed with reason and the potential to use it to mentally access and put into practice the divine moral law. Second, this conception of the human being served as the starting point for her perfectionistic account of human development. Wollstonecraft understood the ultimate purpose of human life as the learning and practice of moral virtue in social and political relationships. Third, and most important for her ethical system, was her theological conception of the rationality and benevolence of God's providential plan for human development. Wollstonecraft affirmed this view of providence in chapter 1 of the *Rights of Woman*: "Firmly persuaded that no evil exists in the world that God did not design to take place, I build my belief on the perfection of God. Rousseau exerts himself to prove

that all *was* right originally: a crowd of authors that all *is* now right: and I, that all will *be* right.” This belief or article of faith, which Wollstonecraft professed at the time she wrote her two *Vindications*, provided a psychological basis or motive for the human pursuit of rational and virtuous self-development in society.<sup>14</sup>

Wollstonecraft’s rational theology, especially its premise of a benevolent and rational providential plan for human development, seamlessly accommodated the beneficial consequences of rights into her moral and political philosophy. Her broadly metaphysical/ethical view of human development allowed her to define human rights primarily as morally right and secondarily as personally and socially beneficial. Her consequentialist arguments for women’s human rights were therefore supplemental to her fundamental deontological justification for them. These dual, rank-ordered justifications of human rights rested on her metaphysical conception of humanity’s purpose within God’s creation. As Wollstonecraft wrote in the *Rights of Woman*, “The grand end of [human] exertions should be to unfold their own faculties, and acquire the dignity of conscious virtue.” This theologically informed ethical framework encouraged her to articulate how the recognition and respect of human rights generate benefits for people that are rational, right, and good for the development of the human species in both the short and long term.<sup>15</sup>

As with the Kantian view, Wollstonecraft’s deontological conception of human rights was correlative: “Rights and duties are inseparable.” Within this correlative account of rights, duty remained foundational. While all rights derived from duties, not all duties entailed rights. Moreover, for Kant as for Wollstonecraft, only rational beings had duties and therefore held rights. As she wrote to Talleyrand-Périgord in the dedication to the *Rights of Woman*, “a duty” cannot “be binding which is not founded on reason.” A rational being would only recognize a duty as binding if it was rational and universally applicable to all rational beings; furthermore, any rights derived from such a duty would belong only to rational beings.<sup>16</sup>

Moving far beyond Kant, Wollstonecraft pushed this correlative and rational account of the relationship between duties and rights

in an explicitly feminist direction, by addressing the practical asymmetry between empowered male rights bearers and disempowered female rights claimers. Near the end of the *Rights of Woman*, she argued that men have no basis for expecting women to perform any duties without acknowledging their rights. If “women have not any inherent rights to claim,” then “by the same rule, their duties vanish, for rights and duties are inseparable.” For Wollstonecraft, the concept of duty defined what our relational obligations are to others, as moral and rational equals governed by the same moral rules. These obligations included our duty to respect other people’s rights regardless of their social status (a step that Kant, disappointingly, did not take to its logical conclusion, particularly in the case of women).<sup>17</sup>

In the *Rights of Woman*, Wollstonecraft upheld rights as “the privilege of moral beings” but underscored that holding such privilege required the exercise of the duty to respect oneself. She particularly stressed to her female readership, who had often been degraded by the limited options for self-development afforded by patriarchal society, that their “first duty is to themselves as rational creatures.” The fundamental recognition and self-respect of one’s ontological status as a moral, rational, and equal human being, capable of rational assessment of one’s moral relationships with other human beings, was a psychological precondition for three dimensions of Wollstonecraftian ethics. First, it allowed one to understand oneself as a duty-bearing and rights-bearing subject. Second, it enabled understanding of one’s rights and duties as bearing on other people’s rights and duties. Third and ultimately, it promoted the exercise and realization of human rights and duties on a broader social and political scale.<sup>18</sup>

Wollstonecraft’s view of humans as “moral beings,” whose “first duty” was to respect themselves as such, parallels Kantian ethics. In his second formulation of the categorical imperative (or conception of universal duty), Kant set forth an influential view of humans as “rational beings,” who are moral ends in themselves and not mere means to other ends. As such moral ends in themselves, humans hold and are obligated to reciprocally respect “the rights of human beings.” In her reading of Kant’s ethics, Onora O’Neill has argued

that the primary content of his categorical imperative is this abstract ethical principle that humans ought to respect themselves and others as moral equals. It is this ethical principle that also stands at the core of Wollstonecraft's deontological theory of human rights and duties. In her *Rights of Men*, we find a negative formulation of this principle according to her Pricean moral theology: "Every thing looks like a means, nothing like an end, or point of rest, when we can say, now let us sit down and enjoy the present moment." Wollstonecraft went on to argue that if people consider themselves only in terms of their material needs or means, rather than as rational beings striving to follow the moral law, then they will exit this life without the "conscious dignity" of moral virtue.<sup>19</sup>

As we have seen, Wollstonecraft's rational theology furnished a view of human beings on a purely metaphysical level, as moral ends in themselves. At the same time, her theologically informed metaphysics opened up a wider perspective on humans, not solely as rational beings, but also as embodied, affective, yet rational creatures capable of both morality and happiness. Ensnared within her broader metaperspective on the nature of humanity, her view of the human-rights-bearing subject as embodied, affective, and rational was both empirically grounded and normatively rich. It was an account of sentient human bodies and their moral relationship to other sentient bodies in the divinely created natural world. For example, her practical theory of physical education began with empirical observation of girls as they are embodied, and then proceeded to the normative question of how they ought to experience embodiment: "If girls were allowed to take sufficient exercise," then they would exhibit a bodily and mental self-confidence that would thwart essentialist explanations of their supposed natural "imbecility."<sup>20</sup>

For Wollstonecraft, the affective capacities of humans, in particular their sympathy for other creatures' feelings, worked with reason to produce appropriate moral judgments, including rights claims. In her first *Vindication*, Wollstonecraft described her personal experience of "reverence" of the "rights of men" as a process in which she drew on both her mind and her body: "Sacred rights! for which

I acquire a more profound respect, the more I look into my own mind; and, professing these heterodox opinions, I still preserve my bowels; my heart is human, beats quick with human sympathies—and I FEAR God!” Abstract contemplation of human rights and their grounding in God’s moral law led her to sense her own embodiment as a human and capacity for heartfelt sympathy with other human beings.<sup>21</sup>

With this empirically grounded yet normatively rich approach to defining the human being in the natural world, Wollstonecraft situated the fact of human embodiment within her broader metaphysical/ethical system. Unlike Kant, who has been criticized by feminist philosophers for positing an “idealized” conception of a rational male agent at the core of his ethical theory, Wollstonecraft advanced an approach to ethics that remained abstract yet resisted such a built-in sex bias. Her philosophical anthropology of human beings and their rights specifically accounted for biological sex differences across the species. Girls and women, for example, had a right to education concerning reproduction, pregnancy, childbirth, and infant care. They might have faced the physical challenge of biological motherhood and the consequentially “grand” duty to intensively care for their dependent offspring “in their infancy” despite their own vulnerability while recovering from childbirth. The capacity for biological motherhood entailed women’s human right to know what to expect from such a physical and moral challenge, should it be posed.<sup>22</sup>

At the most abstract level, Wollstonecraft’s view of human rights bearers was purely metaphysical and theological: it was an account of human beings as rational and moral beings, subject to following God’s moral law via the faculty of reason. As shown in chapter 1, this view had its roots in Price’s rational theology, especially the universalism of his moral theology. From this religious context, Wollstonecraft crafted her own metaphysical vision of reality that was, at least in theory, open to accommodating a variety of theological positions within it. She made it clear in her two *Vindications* that the orthodox Christian ontological claim that Jesus was God was not a necessary premise for her account of human rights. She alluded to what was



likely her own Socinian view of Jesus as a man—not God or even a preincarnational creature of God—who was the greatest human exemplar of morality.<sup>23</sup>

The presentation in the *Vindications* of Jesus as a moral exemplar is now widely recognized as compatible with a variety of world religions, including Judaism, Islam, Hinduism, and Buddhism, which acknowledge him as such. Indeed, Christian denominations since the nineteenth century, including orthodox sects, have often emphasized the “human” or “embodied” Christ alongside other dimensions of his nature. The theological generality of Wollstonecraft’s metaphysical outlook made her argument for universal human rights potentially appealing to people from a variety of faith perspectives, especially within monotheistic traditions. Theoretically, her account of human rights was a big tent under which all people, religious or not, could find shelter. And yet, its rational dissenting Christian framework made it in rhetorical practice more persuasive to those who shared at least some of Wollstonecraft’s religious belief system, as the conclusion of this chapter explores with the example of her feminist followers in nineteenth-century Mormon Utah.<sup>24</sup>

Viewed from the vantage of either the empirically grounded or the most abstract metaphysical level of her thought, her conception of the human being allowed Wollstonecraft to apply the concept of subjective rights to each and every human due to his or her potential for rational agency. Her privileging of rationality as the defining trait of human beings understood as moral beings made her ethics vulnerable to several criticisms, however. Like Locke and Kant, Wollstonecraft appeared to idealize an adult rational human being as the model for her moral agent who bears rights and duties. Unlike in Locke and Kant, this agent was not an idealized male, nor was it an idealized disembodied being. Nevertheless, like Locke and Kant, Wollstonecraft in her presumption of the human agent’s potential for rational autonomy might lead one to think that her moral theory cannot accommodate a place for either the cognitively disabled or the uneducated. Are persons who are not yet capable of exercising reason—because they lack education—and persons who cannot

develop those capacities—due to disability—not entitled to rights? In fact, her distinction between the potential to use reason and the actual practice of reason enabled her theory of human rights to cover these cases. For Wollstonecraft, the potential for reason, not the actual use of reason, strongly but not exclusively defined the nature of humanity. For example, Wollstonecraft lamented that the mind of a woman of her time was “scarcely raised by her employments above the animal kingdom.” Despite their irrationality, the women of her day were nonetheless human because they had the potential to “acquire the qualities that ennoble a rational being.” Even if women did not develop their reason sufficiently to rise “above the animal kingdom,” they retained their moral status as human creatures made in the image of their rational God. Her metaphysical perspective on human beings and their purpose in the universe allowed Wollstonecraft to categorize even the most “degraded” people, women and slaves, as fully human despite society’s attempts to dehumanize them. Her 1798 novel *Maria, or the Wrongs of Woman* illustrated this point with the first-person testimony of a female servant, Jemima, who worked in an asylum where another woman, Maria, had been imprisoned by her husband. Recalling her destitute teenage years as a household servant, Jemima explained to Maria how her abusive family treated her like a “creature of another species.” Raped by her master at the age of sixteen, she was expelled from his home while pregnant, leaving her only the guilty and desperate choice to drink a potion for abortion. Nevertheless, such abuse and impoverishment could not actually strip Jemima of her moral status as a human being. Indeed, Jemima overcame her feeling of estrangement from the “human race” by fulfilling her moral duty to aid another woman in need. Using her powers of reason to strategize a way out of the asylum for both of them, she not only helped Maria escape but also heroically reunited her friend with her infant daughter.<sup>25</sup>

Beyond the potential for reason, Wollstonecraft had an expansive understanding of the variety of capabilities that define the human experience, such as sympathy, love, play, and bodily integrity. This complex view of the physical joys and freedoms of embodied human

life was captured in her Rousseau-inspired account of child development: “Every young creature requires almost continual exercise, and the infancy of children . . . should be passed in harmless gambols, that exercise the feet and hands, without requiring very minute directions from the head, or the constant attention of a nurse.” According to this wide-ranging conception of human development, a cognitively disabled child might actualize her love of play and bodily integrity alongside other human capabilities even if reason never manifested in her adult self.<sup>26</sup>

Although Wollstonecraft could find shelter for nonrational and uneducated people under the big tent of human rights, her insistence that reason is the basis of human morality made her theory of education open to the charge of paternalism. If a girl lacks reason, and yet reason is necessary for directly accessing the law of God, then the girl is dependent upon the moral judgment of her rational superiors to instruct her about right and wrong. In accepting such paternalism as a necessary part of educating a child toward the autonomy of adulthood, Wollstonecraft ran the risk of reinforcing the very patterns of male domination that her egalitarian theory of rights sought to undercut. Her answer to this problem was practical: establishing a free public system of “national education” that treated boys and girls identically from age five through nine. If children were treated as equals in primary school, then they would be equally subject to paternalism. Such equitable paternalism was fully justified only insofar as it limited itself to developing reason and other human capabilities such as play during childhood and adolescence, so that the girls and boys would grow up to become self-governing and mutually respectful adults.<sup>27</sup>

Wollstonecraft’s capacious metaphysical/ethical system enabled the emergent Enlightenment-era conception of human rights to become universal. All humans, viewed from Wollstonecraft’s broad metaphysical perspective, have the potential to use reason to grasp the moral law; therefore all humans have the rights that derive from the moral law. These rights are universal in another sense: they are morally universal, insofar as they apply in all times and

places, regardless of what positive law, culture, or religion says about particular people's eligibility for claiming them. Humans hold these rights even if their societies do not recognize and respect them as holding them.

Wollstonecraft, as a human rights advocate, was faced with the political predicament that arises from the application of such an abstract and universalistic moral view. She neatly summarized this predicament as "asserting the rights which women in common with men ought to contend for" in the hostile context of a patriarchal society that educated women to be subordinate to men, and encouraged men to treat women as their subordinates. Speaking as a voice in the wilderness, she had no choice but to cultivate the sympathy of men in power—"O ye men of understanding!"—in the hope that they might grant at least some of the rights (such as equality of education) to which women had claim as humans. One of her rhetorical strategies was to supplement her abstract, duty-based demands for human rights with pragmatic appeals to the beneficial consequences that men would reap from extending such rights to women.<sup>28</sup>

Wollstonecraft preceded Sen in treating the "allegation" of rights as a moral step toward justice, regardless of the "feasibility" of the "fulfillment" of rights claims. For Sen as for Wollstonecraft, this step is ethically valuable no matter whether people are actually granted such rights in law or policy, but it might also prompt the beneficial consequence of their establishment in the short or long run. The allegation of women's human rights has moral value independent of the consequences of asserting such rights. Even if women were never given the same education as men, it would always be morally right to provide an argument for their right to education. Conversely, if women were given the same education as men, the beneficial consequences would indicate to Wollstonecraft the working of divine providence in the world to direct human development toward its proper ends of reason, virtue, and knowledge. Despite appearances to the contrary, Wollstonecraft's rational theology allowed her deontological justification for human rights to be consistently supple-

mented with consequentialist (as well as pragmatic) reasoning for the establishment of such rights.<sup>29</sup>

*Mill's Complex Consequentialist Foundation  
for Universal Human Rights*

Much as in the case of Wollstonecraft, a set of puzzles faces any interpreter of Mill's theory of rights. First, scholars have noted the relatively diminished place of rights in Mill's political philosophy as compared to ideas such as individuality, liberty, and self-control. Although Mill used the term "rights" or "moral right" twenty-one times in his *Subjection of Women*, the concept of individuality more frequently appeared in this extended defense of the free and full self-development of women. On the face of it, this is an unexpected rhetorical pattern for a book that aims to justify women's provision of "equal rights" with men in order to overcome their historically subjected status.<sup>30</sup>

Second, many a reader of Mill's *On Liberty* (1859) and *Utilitarianism* (1861) has reasonably wondered whether the texts have incompatible objectives. Mill's favorite work, *On Liberty* sought to establish "one very simple principle" by which the liberty of the individual is secured from unjustified interference by law and government. According to the harm principle, the only reason for placing "legal penalties" upon the actions of an individual is "to prevent harm to others." *Utilitarianism*, first published as a series of essays in *Fraser's Magazine*, aimed to defend utilitarianism against some common criticisms, including the charge that its "Greatest Happiness Principle" undermined justice by prioritizing the utility of the greatest number over individual rights. Such critics asked how, if utility is taken to be "the foundation of morals," can utilitarianism serve as a basis for securing rights and liberties for the individual? Rights cannot function as trumps if their beneficial consequences determine their value, for then the utility of the greatest number could legitimately override the rights of the individual. In this light, it seems that utilitarianism—whether

Bentham's classical formulation or Mill's liberal revision—is at best a shoddy foundation for either positive rights already enshrined in law or alleged rights that have yet to be instituted.<sup>31</sup>

The solution to these two puzzles lies in understanding how Mill's liberal revision of classical utilitarianism relied upon the "principle" of "the free development of individuality" set forth in the opening paragraphs of chapter 3 of *On Liberty*. Just as Wollstonecraft's more frequent references to duties than to rights can be explained by her deontological conception of morality, Mill's relative lack of "rights talk" can be explained by the foundational place of individuality in his moral and political philosophy. As he argued in *On Liberty*, "It is only the cultivation of individuality which produces, or can produce, well-developed human beings." Whereas for Wollstonecraft we claim rights as moral absolutes, for Mill we claim rights pragmatically as tools for the realization of individuality. In Mill's liberal utilitarianism, the "principle" of individuality established a "rule of conduct" by which the greatest happiness of the greatest number was best achieved through the indirect route of respecting the liberty, free and full self-development, and equal rights of individuals. If Mill can be thus understood as an indirect utilitarian who maximizes utility via the principle of individuality, then his version of utilitarianism succeeds in providing a more secure foundation for human rights than the classical formulation of Bentham. In addition, Mill's indirect utilitarianism steered clear of the metaphysical speculations and theological demands of Wollstonecraft's deontology, rendering it more useful for human rights advocacy from a secular and empirical perspective. Both Mill's definition of the good as happiness and his definition of the right as the maximization of the good were nonmetaphysical claims in the sense that they are grounded on his secular, *a posteriori*, empirical conception of utility. In the tradition of David Hume and other British empiricists, Mill sought to define morality by way of sensory experience and empirical observation of the natural world. He abstracted from these experiences and observations the idea of utility as the maximization of pleasure and the minimization of pain for all sentient life via the principle of indi-

viduality. Though abstract and richly normative, Mill's empirically grounded conception of utility is not metaphysical because it is not based on supernatural ideas or *a priori* reasoning.<sup>32</sup>

Unlike Wollstonecraft, who favored deontology, Mill continued in the utilitarian tradition of justifying morality in terms of the consequences of actions (making individuals free and happy), not in terms of intentions (individual attempts to do the right thing). His *Utilitarianism* began with a consequentialist critique of Kant's metaphysical, *a priori*, and nonempirical ethics. According to Mill, the Kantian categorical imperative generated universal moral rules for rational beings (such as "don't lie") that are impractical due to their abstract, strictly deontological form. In contrast, a utilitarian would productively judge such rules as right or wrong in terms of their projected consequences. For example, a Kantian would legislate that every rational being, including herself, ought always to tell the truth. Yet a utilitarian would helpfully evaluate the morality of this rule by judging its potentially "outrageously immoral" social consequences. For example, take Kant's own hypothetical case of the duty to respond truthfully to a murderer at the door who wishes to confirm that her intended victim is inside your home. Mill would argue that an "outrageously immoral" consequence could be to enable the murderer's crime. Contra Kant, Mill held that consequentialist reasoning is a necessary facet of determining the right thing to do, and utility is the ultimate standard by which such reasoning is done. If the consequences of truth telling will cause suffering or enable wrongdoing, then lying (or at least opaqueness) is in those cases justified for Mill. Furthermore, any rule of morality against lying ought to be nuanced in light of these outcomes. Mill was not claiming that Kant's moral theory indirectly requires consequentialist reasoning but rather claiming that Kantian ethics fails to generate "actual duties of morality" precisely because it does not engage in moral assessment of outcomes.<sup>33</sup>

Having rejected Kantian deontology, Mill turned to his refinement of the idea of utility. He followed Bentham in taking utility to be the "ultimate appeal," or deciding principle, "on all ethical

questions.” From his secular and empirical perspective, there was no advantage to invoking “the idea of abstract right”—such as a Kantian categorical imperative or a Wollstonecraftian moral law—“as a thing independent of utility.” In addition, Mill shared Bentham’s general hedonistic view of utility as the greatest happiness (or pleasure) for the greatest number of sentient beings. Bentham and Mill held that “the whole sentient creation,” including nonhuman animals, is capable of pain and pleasure. While humans, as rational animals, gauge the maximization of utility on behalf of all sentient life, their calculations ought to include nonhuman animals in the effort to reduce pain and increase pleasure globally, “so far as the nature of things admits.” Because animals, like children, “require being taken care of by others,” they “must be protected against their own actions as well as against external injury.” Putting this inclusive principle of benevolent paternalism into practice, Mill advocated for the “rights of animals” to be conferred by humans to prevent “any practice” that “causes more pain to animals than gives pleasure to man.”<sup>34</sup>

Despite his fundamental hedonistic concern with increasing the pleasure and decreasing the pain of the whole sentient creation, Mill privileged the well-being of human individuals in his “theory of life.” Chapter 2 of *Utilitarianism* sets forth his reasoning for the “elevated” moral status of human individuals over nonhuman animals: the benevolent calculation of utility for all creatures depends upon the free and full self-development of people into rational, self-governing, yet other-regarding adults. To clarify why human individuals held an elevated place in his liberal utilitarianism, Mill gave the concept of utility more specific meaning beyond the generic greatest happiness principle. In chapter 1 of *On Liberty*, Mill defined utility “in the largest sense, grounded on the permanent interests of man as a progressive being.” In the next sentence, he identified these interests to be “individual spontaneity” and freedom from unnecessary “external control” so that spontaneous self-development is possible. His use of the masculine noun “man” was generic, not gender specific. He later stated in chapter 3 of *On Liberty* that the principle of individuality applied to “all human existence.” In fact, until individuals of both



sexes had an equal opportunity for free and full self-development, the principle would apply in practice “to man, and still more the woman,” because females historically had been subjected to the tyrannical force of custom to a greater degree than males.<sup>35</sup>

In chapter 2 of *Utilitarianism*, Mill further refined the definition of utility with his distinction between the higher and the lower pleasures. The higher pleasures were “mental,” or “derived from the higher faculties” of the mind, and thus were “preferable in kind” to the lower, or merely “sensual” or “bodily,” pleasures. He famously summed up the practical difference between these kinds of pleasure by saying, “It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied.” Although the higher, Socratic pleasures may not be felt at the same intensity, duration, or quantity as the lower, swinish pleasures, it was rational to prefer the former to the latter once one experienced the qualitative difference. The moral goal of Mill’s liberal revision of utilitarianism was not a crude and brutish hedonism but rather a process of dignifying humans as progressive beings who are capable of rational preference of the higher pleasures over the lower pleasures.<sup>36</sup>

Mill proceeded to reformulate Bentham’s greatest happiness principle so that it employed the distinction between the higher and the lower pleasures: “According to the Greatest Happiness Principle . . . the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality; the test of quality, and the rule for measuring it against quantity, being the preference felt by those who, in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison.” This, his second and more precise definition of the governing principle of his liberal utilitarianism, made it clear that the greatest happiness was measured not only by how many sentient beings felt pleasure but also in terms of the quality of the pleasure felt, and the

quantity of such pleasure felt by individuals. The “test of quality” ought to be performed by people with the “experience” and “habits” of mind requisite for comparing, judging, and ranking pleasures in qualitative terms. The “verdict” of such “competent judges” of the higher pleasures would contribute to the development of subsidiary “rules and precepts for human conduct” that, when followed, would lead people on the indirect path to realizing the greatest quality and quantity of happiness for the whole sentient creation.<sup>37</sup>

As Rawls argued in *A Theory of Justice* (1971), Mill’s refined definition of utility presumed “circumstances of liberty” for women and men to choose a way of life befitting a progressive being. According to Rawls, these Millian circumstances of liberty included an education toward individual freedom, legal protection of equal rights, and living under free institutions of government. In chapter 3 of *On Liberty*, Mill gave a trio of reasons why free institutions were necessary for realizing the “permanent interests” of humans as progressive beings. First, free institutions (such as representative government or the option of public schools) provided the political and cultural infrastructure for the development of human capabilities on the broadest scale. Second, the experience of participating in free institutions gave individuals an opportunity to develop rational preferences for liberty and self-control and to make good choices accordingly. Third, people in all times in history have rationally preferred freedom to subjection. Rawls concluded that Mill believed “a considerable degree of liberty is a precondition of the rational pursuit of value,” or the pursuit of utility properly understood. In this way, Mill’s normative commitment to liberty guided and animated his indirect pursuit of the permanent interests of progressive beings—namely, spontaneity and freedom from unnecessary external control. Rawls went on to show, however, that Mill’s arguments for free institutions did not “justify an equal liberty for all,” although they “might justify many if not most of the equal liberties.” He concluded that the basic utilitarian requirement to maximize happiness on the greatest scale meant that “it is liable to find that the denial of liberty for some is justified in the name of this single end.” Although he admired the

force of Mill's reasoning for the necessity of free institutions in order to realize utility "in the largest sense," he did not think it sufficient to justify the equal rights of individuals. Having rejected Mill and other forms of utilitarianism as viable options for justifying equal rights, Rawls turned to the social contract tradition as a resource for his liberal theory of justice.<sup>38</sup>

Mill understood his indirect and therefore complex form of consequentialism to be the best available approach to reconcile utilitarianism with a secular though "sacred," or paramount, commitment to equal rights. Although in theory utility could trump rights, the definition of utility in terms of the permanent interests of man as a progressive being made the freedom of individuals a paramount moral value. Assuming this value could be inculcated in people and institutionalized in law, equal rights would eventually prevail in practice. Although he remained vulnerable to the abstract philosophical criticism that his liberal revision of utilitarianism failed to justify equal rights as trumps, Mill thought that his theory of rights—when pragmatically applied in culture and law—would secure rights sufficiently for guaranteeing norms of justice for individuals. Indeed, his *Utilitarianism* went so far as to say that "a right residing in the individual" was "essential" to "justice," which was "the chief part, and incomparably the most sacred and binding part, of all morality." By establishing such rights in culture and law, a society protected "the most vital of all interests." Competent judges of the higher pleasures, like Mill himself, had concluded over time and through experience that reciprocal respect for rights improves both the quality and the quantity of the happiness of the whole.<sup>39</sup>

Rawls's critique of Mill raises the question of whether Mill should be understood as an act utilitarian or a rule utilitarian. These two versions of utilitarianism are products of twentieth-century moral philosophy and thus can only be read back upon Mill's thought. This anachronistic application of rule utilitarianism and act utilitarianism to interpret the case of Mill might explain why there is not yet a scholarly consensus on which school he best fits. Because of the supremacy of utility over other standards of right in his political theory,

Mill has often been interpreted as an act utilitarian. On this reading, he followed Bentham in defining the morality of each and every act in terms of its maximization of pleasure and minimization of pain for the greatest number of sentient beings. Although Mill appealed to the principle of individuality as a rule of conduct to establish a place for equal rights in his utilitarianism, he plainly stated that utility is the ultimate appeal for deciding right from wrong, including the scope of rights. The latter view of utility could be described as act utilitarian. It is famously suspect for its allowance of what Derek Parfit called the “repugnant conclusion” that the overall quality of life may be sacrificed for the more equal, yet minimalistic, distribution of utility across a larger population. If rights are understood as instrumental to utility, then the minimization of rights could be justified in the name of a more equal though minimal distribution of utility overall. The even spread of utility would thereby justify the erosion of the quality of life for all, including their access to rights.<sup>40</sup>

To avoid these grave problems, Mill’s complex consequentialism defined utilitarian moral outcomes by way of a variety of intermediary practical rules for social behavior: first and foremost, the principle of individuality, whereby the “person’s own character” and not “the traditions or customs of other people” were the “rule of conduct.” Mill argued that following this principle or rule of conduct was “the principal ingredient of human happiness, and quite the chief ingredient of individual and social progress.” Ideally, culture should be shaped in a way that encouraged people to develop according to this principle, such that they grew in diverse and eccentric ways, displaying a range of talents and capabilities within society. A related practical rule, more narrowly tailored by Mill for the domain of law, was the harm principle. This “one very simple principle” defined wrong in terms of “interfering with the liberty of action” of any individual except when such interference would “prevent harm to others.” Mill’s harm principle strove to draw a bright line between individual behavior that could be subject to legal penalties versus individual behavior that would be merely subject to disapprobation in the court of public opinion or condemnation by one’s own con-

science. If an action unnecessarily interfered with the self-regarding actions of another individual, then it was both wrong and subject to legal penalties. If an action refrained from such interference, then it was not wrong and was not subject to legal penalties, and was at least right in the thin sense of allowing individuals freedom from direct harm. For Mill, “tastes and modes of life” that were primarily self-regarding (such as choosing to drink alcohol at a restaurant) should be informally regulated by public opinion and/or conscience and not be subjected to legal penalties. Hence, Mill’s harm principle, though focused on the question of determining fair legal regulation of the individual by the state, helped to demarcate an alternative cultural space in which respect for individuality served as the prevailing rule of conduct. Although one’s free and full self-development might be appropriately reigned in by public opinion or personal conscience, one’s behavior could not rightfully be punished by the state except to prevent harm to others.<sup>41</sup>

Such cultural and legal noninterference in the self-regarding actions of the individual might also generate right outcomes in the thick sense, especially if practiced on a broad scale and for the long run. Nancy Hirschmann has argued that Mill’s complex consequentialism posited a thick conception of positive liberty (freedom to be self-sovereigns) as at least one moral by-product of a thin conception of negative liberty (freedom from unnecessary interference). For Bentham as for Mill, the consequences always determined the morality of the act. Yet Mill’s principle of individuality (and its legal cognate, the harm principle) established constraints on the set of utilitarian outcomes that were both moral and beneficial. Following these practical rules of social conduct and legal regulation would enable us to take the indirect yet individually oriented route to realize the permanent interests of humans as progressive beings, by asking us to prioritize the value of the individual’s self-development in our calculations of what is good and bad for sentient life. The moral result should be the realization of self-sovereignty, or virtuous individual self-development across the human species, for the benefit of all sentient creation.<sup>42</sup>

In this light, Mill's indirect utilitarianism looks more like rule utilitarianism than act utilitarianism. According to J. O. Urmson's groundbreaking interpretation, Mill understood the moral rightness of any given action to be determined by its accordance to a rule (or what Mill often called a "secondary principle"). Mill provided a list of such rules in chapter 5 of *Utilitarianism*, including "the moral rules which forbid mankind to hurt one another," such as "breach of friendship" and "breach of promise." These practical rules of conduct were correct for Mill insofar as they tended to promote utility. Any conflicts between these practical rules of morality could be adjudicated only by reference to the ultimate standard of rightness, the greatest happiness principle. Consequently, Mill allowed for reform of rules (such as "the aristocracies of colour, race, and sex") that failed in practice to maximize the quality and quantity of happiness for the whole. He furthermore argued that widely accepted rules of morality (such as "don't break a promise") were the best practical indicators of what people took to be happiness. A utilitarian could thus rely on such moral rules, alongside legal rules such as justly instituted rights, as means toward achieving the greatest happiness. In his *Methods of Ethics* (1874), Henry Sidgwick criticized the aforesaid argument for its conflation of moral preferences (such as "promise-keeping is good") with beliefs about effects on happiness (such as "promise-keeping produces happiness"). Nevertheless, Sidgwick assumed like Mill that the greatest happiness principle could only be applied in practice via a "fairly detailed and specific set of directives or rules." Even if common moral rules were not in themselves expressions of people's preferences concerning happiness, rules in general (both moral and legal) were necessary practical instruments for the successful application of the greatest happiness principle.<sup>43</sup>

The use of subsidiary moral rules to determine right from wrong produces a dilemma for the utilitarian, however. On the one hand, it becomes unclear how rule utilitarianism is practically different from act utilitarianism. If moral rules can be revised in light of the demands of utility, then the former would seem to collapse into the latter, making each and every act subject to evaluation according to the

greatest happiness principle. Rule utilitarianism would then seem to be as vulnerable as act utilitarianism to producing Parfit's "repugnant conclusion" in practice. On the other side of the dilemma, strict compliance with rules appears to be inconsistent with the ultimate goal of utilitarianism. If following a rule is taken to be right, despite generating less utility than another action, then it would seem to contradict the overriding utilitarian requirement to pursue the greatest happiness for the greatest number.<sup>44</sup>

As for the first horn of the dilemma, Mill would respond that while the best rules aim to apply to all cases, they must be open to revision on the basis of their consequences in order to be cemented as general and correct standards of right and wrong. Such revision of rules would not be arbitrary but rather be guided by people's experience of pain and pleasure, and gradually regulated by institutions of culture and law. Furthermore, this experiential revision of rules over time would indirectly lead to the greatest happiness in the long run. As Mill argued in different ways across his *Autobiography*, *On Liberty*, and *Utilitarianism*, a "permanent" happiness for each and all can only be achieved through the indirect path of the human pursuit of virtue and, in this pursuit, learning to prefer the higher pleasures over the lower ones. The subsidiary rules that come to govern this complex process of consequentialist moral reasoning might be best envisioned as nested within Mill's ultimate commitment to the greatest happiness principle. Rights are the most "sacred" form of such nested moral rules because their cultural acceptance and legal enforcement are paramount for individual liberty and thus offer the opportunity to make the moral choices necessary for virtuous self-development. Rights and other rules achieve political inertia over time: while subject to revision with respect to consequences, rules gain a kind of stability through the social process of their moral refinement. For Mill, this stability provided enough security for human rights on the whole, while allowing for the necessary revision of unjust yet legal rights (such as a husband's total ownership of his wife's property under the law of coverture) that had been unreflectively accepted for centuries.<sup>45</sup>

To navigate past the second horn of the rule-utilitarian dilemma, Mill would similarly appeal to his theory of the necessarily indirect path to utility. The indirect realization of utility through adherence to rules (such as respect for equal rights) means that one may justifiably sacrifice short-term pleasure for the sake of the permanent interests of humans as progressive beings. For example, if the granting of women's rights to property ownership in marriage would initially decrease the freedom and power of husbands yet potentially increase the liberty of both sexes, the choice of the latter, complex consequence would be better than simply avoiding the former, short-term outcome. For example, Mill chose the more complex path to happiness in establishing the egalitarian terms of his late-life marriage to Taylor, by signing a document that promised her equal rights to the proceeds of the books published under his name. The complex good of recognizing their collaborative intellectual relationship outweighed any short-term benefits he could have derived from merely keeping the proceeds for himself.<sup>46</sup>

Thus read as a subtle rule utilitarian, Mill can be understood as offering a complex consequentialist foundation for universal human rights. It is complex in the sense that it has several mutually reinforcing levels of moral concerns. The beneficial outcome is the far-reaching concern; the application of the principle of individuality and its legal cognate, the harm principle, is the more immediate and practical concern; and the flourishing of individuality remains the underlying concern at each stage of the process. In this multilevel moral framework, rights function as moral and legal tools that facilitate the permanent happiness of human individuals. Mill defined human (or "moral") rights as fundamental rules of morality that derive from self-regarding and other-regarding duties, requiring that obligations be paid and justice be done to the individual. Over time, some conceptions of moral rights become institutionalized as "legal" rights. The realization of utility through the recognition and respect of moral rights and the legal rights justly instituted from them is the only sure path toward a genuine happiness for everyone, not solely a minority or majority of the whole.<sup>47</sup>



Mill's overall moral system was secular and empirical, not theological and metaphysical like Wollstonecraft's. Nonetheless, both Mill and Wollstonecraft presented normatively rich accounts of the human being as the basis of their theories of rights. While Wollstonecraft's moral view of the embodied human being in nature was ensconced within her metaphysics, Mill's conception of individuality began and ended with humans as they were in the natural world but imagined how they might develop in a moral way if allowed the right constellation of social conditions in which to grow in "eccentric" diversity. As Mill poetically expressed it in chapter 3 of *On Liberty*, "Different persons also require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants can in the same physical, atmosphere and climate." People, like plants, required diverse environments and the freedom to thrive in those personally suitable conditions. Mill's principle of individuality indirectly cultivated a diversity of human capabilities through the social construction of a broader "moral climate" in which people learn to abide by each other's equal rights.<sup>48</sup>

In their respectively secular and theological approaches to grounding human rights on abstract and robust normative conceptions of the human being, Mill and Wollstonecraft both represent versions of what Rawls called "comprehensive liberalism." According to Rawls, Mill's theory of individuality may even be read as "metaphysical," in the sense that it makes controversial moral claims about what all human beings are and should become. Such universalistic normative claims about human nature look "metaphysical" from Rawls's strictly "political" perspective, which accepts the "fact of reasonable pluralism" on morality and religion even among peoples who at least respect basic international human rights norms. The problem with this broad use of the term "metaphysical" is that it neither accounts for the differences between *a priori* and *a posteriori* approaches to reasoning nor distinguishes between theological and secular, or even supernatural and empirically grounded, ideas. It assumes rather than any abstract normative idea that may be subject to moral debate is metaphysical. To better capture the similarities and differences

across Wollstonecraft's theory of rights and Mill's, I describe Mill's abstract conception of the human being and its free and full self-development as secular, nonmetaphysical, empirically grounded, yet normatively rich. Wollstonecraft's metaphysical/ethical system, on the other hand, affords a multilevel view of the human being: at the most abstract level of analysis, it is a theological and purely metaphysical conception of the person as a moral and rational being made in the image of God; but from an empirically grounded vantage point, it is a richly normative conception of the embodied human being as ensconced within the divinely created natural world. Although Mill also used an abstract and normative conception of the person as the basis of his theory of rights, he made no appeal to metaphysical ideas.<sup>49</sup>

For Mill, the rights held by human beings are either moral or legal. A "moral right" is derived from a duty, or a widely accepted moral rule that entails the fulfillment of a "perfect," or mandatory, "obligation" toward self or others. For example, the duty to keep promises to others generates the corresponding right not to have one's own promises breached. With this correlative theory of the basis of moral rights, Mill coincided with both Wollstonecraft and Kant, without sharing their metaphysical/deontological foundations for the view. Rather, in the concluding chapter of *Utilitarianism*, Mill theorized duty in complex consequentialist terms as grounded upon utility "in the largest sense": "I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality. Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation, than any other rules for the guidance of life; and the notion we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation." This passage provides the best evidence of Mill's rule-utilitarian conception of justice, since it conceives the following of "certain classes of moral rules" as producing the "essentials of human well-being" better than "any other rules." The rights "residing in an individual" are one such

class of utility-enhancing moral rules. As such, moral rights “testify” to the “binding obligation” we have to abide by the rules of justice, because moral rights are derived from duty. Rights are thus “the essence of the idea of justice” because they are correlates of duties or obligatory moral rules that are justified by way of a conception of utility in the broadest sense.<sup>50</sup>

Mill understood moral rights as rationally justified independent of positive law because they need not have a formal means of enforcement to be justly held and demanded by individuals. Claims of moral rights may hypothesize how the marginalized or powerless (such as women) need access to public goods that would enable their individual self-development, when society has in fact failed to recognize its duty to provide such rights. Wollstonecraft had predominantly made such moral arguments (or what Sen calls “allegations”) for women’s rights as humans, since women in Britain and beyond had relatively few socially or legally recognized rights as compared to men in the late eighteenth century. By the time Mill embarked on his political career in the 1860s, Britain had institutionalized more legal rights for women (such as divorce in cases of domestic violence as of 1857), but even then most rights claims for women (such as national-level suffrage) were moral and thereby alleged.

On the political level, Mill understood legal rights to be just when they derived from a correlative moral obligation, rather than from a bad law. In his 1869 treatise *The Subjection of Women*, he contrasted the unjust but legal rights of husbands to commit regular “bodily violence” against their wives with the moral rights of individual women to be free from “personal violence.” Here, he strongly implied that sexual violence against women in marriage was shamelessly and unjustly treated as an exception to the criminal law against rape. Through practical applications of the harm principle, legislators could gradually replace such bad patriarchal laws with egalitarian laws that prescribed legal penalties for unjustified interference with the rights of individuals, regardless of color, race, or sex. Examples of the establishment of such legal rights in Britain were the 1830s acts of Parliament that expanded working men’s suffrage and set slaves

free in most regions of its empire. Allegations for moral rights might still be made in reference to these legal rights. If some but not all groups enjoy a legal right, then the excluded groups might make moral claims for social or legal inclusion in the use of such rights. If access to legal rights for some groups is more extensive than others, then the group with less access might make moral claims for legal inclusion in the full use of such rights. In his early 1830s unpublished correspondence with Harriet Taylor on marriage, Mill had alleged women's equal right to divorce, at a time when only men, such as his friend's husband, legally held this right. Dramatizing the gap between moral rights and legal rights on the political stage, Mill alleged women's human right to vote by formally representing in Parliament the 1867 suffrage petition signed by thousands of disenfranchised women. His *Subjection of Women* alleged the "equal moral right of all human beings" to the free choice of occupation, so that women would no longer be subjugated to the opinion that their proper roles belonged only in the family. Such public and private, written and oral, political and personal allegations of women's human rights contributed to the growth of individual, elite, and popular concern with their institutionalization.<sup>51</sup>

Both moral rights and the legal rights that are based on them are human rights for Wollstonecraft and Mill, because both types of rights are grounded upon their respective conceptions of the human being as a moral being. Although Wollstonecraft takes a theological and metaphysical approach and Mill a secular and nonmetaphysical one, they both offer robust normative accounts of the human being's organic and ethical development through freedom and rights. This is the most important commonality in their theories of universal human rights: their joint grounding of rights claims on normatively rich accounts of what it means to be human. Their respective conceptions of humanity gave them strong normative standards by which they could judge the defects of culture and law with regard to the rights of humans, and subsequently advocate for reform that would advance justice for each and all through the equal provision of rights. We now turn to a comparative assessment of the practical

value of their two foundationalist schools for advocating the moral rights of women that are not yet recognized or respected by people within a culture or protected by the law.

*Theological and Secular Approaches to Alleging Women's Human Rights: The Issue of Religious Polygamy*

Rawlsian nonfoundationalist approaches to justifying human rights assume rights as cultural and legal givens that ought to be articulated and developed further in law and policy, particularly in the context of the post-1948 international political landscape of the Universal Declaration and the other institutions and policies of the United Nations. From a feminist perspective, the problem with this assumption is that many human rights of women have not yet achieved the status of cultural or legal givens. Women's human rights have not even been fully realized in the domain of international law, in which the U.N. Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, is taken more seriously than in nation-states such as the United States and Iran, which are still among the mere seven countries in the world that have yet to ratify it. In contrast to Rawlsian nonfoundationalist approaches to justifying human rights, foundationalist approaches to justifying women's human rights allow for extralegal and extracultural claims about women's desert of rights on the basis of their human nature. Such naturalistic claims about women's shared humanity with men have been politically instrumental in the allegation and advancement of women's human rights, especially since the time of de Gouges and Wollstonecraft.<sup>52</sup>

Moving beyond an analysis of the role of naturalistic foundations in Wollstonecraft's and Mill's rational justifications for human rights, I now respond to a practical moral and political question raised by each of their systems of feminist thought. When women's human rights are not yet recognized in law or policy, or are culturally or religiously controversial even to allege, which of these foundationalist approaches works best as a moral basis for advocacy and political

persuasion? Religious polygamy poses a serious test of both the ethical and the rhetorical value of these approaches for human rights advocacy, as it has been morally controversial in a variety of cultures since Wollstonecraft's time and often has been seen as incompatible with women's rights. Furthermore, practices of religious polygamy continue to raise questions of which women's rights (for example, the right to divorce) ought to be respected in culture and protected under the law. By applying Wollstonecraft's and Mill's theories to assess the human rights of women within religious polygamy, I illuminate how their respectively theological and secular foundations may serve as ethical and effective platforms for alleging the rights of women in distinctive yet complementary ways that are sensitive to religious and other cultural differences. When I speak of polygamy, I mean a kind of plural marriage in which a man has more than one wife. This is technically called polygyny.

Wollstonecraft advanced moral views on polygamy early in her writing career. When she wrote for the *Analytical Review* in London from 1788 to 1792, she acquired a taste for travel memoirs, especially those concerning North African Muslim peoples. She researched works by the German explorer Johann Reinhold Forster and the English theologian James Cookson, who discussed the practice of polygamy in Africa. Following the French Enlightenment philosopher Montesquieu, Forster even made theoretical claims about why polygamy seemed to be more prevalent in warm climates. In her *Rights of Woman*, Wollstonecraft philosophically challenged Forster's argument that the natural environment determined polygamy. By rejecting the natural necessity of polygamy, she sought to discredit the patriarchal view that woman "must be inferior to man, and made for him" and his sexual pleasure. This critique of polygamy supported her general moral argument in favor of monogamous marriages in which women were respected as ends in themselves, not merely used as means to other ends.<sup>53</sup>

In her *Rights of Woman*, Wollstonecraft set forth an extended moral justification of marriage as primarily a relationship between equal moral beings and secondarily a relationship that concerned

natural functions such as sexual reproduction. She defended marital pairs over multiple spouses, for the reason that marriage is ideally a dyadic, perfectionistic (or virtue-oriented) friendship. Polygamy or polyandry might be permissible if marriage was meant to be like a business or corporate contract, in which maximum productivity for the group was the goal. In a perfectionistic friendship, however, the goal was the mirroring and mutual inspiration of the higher virtues in one another.<sup>54</sup>

Like Aristotle, Wollstonecraft upheld the dyadic form to be the best, or virtue-oriented, friendship, but she explicitly and unequivocally extended this idea of higher friendship in an egalitarian way to male-female marital relationships. Beyond the practical consideration that such lofty virtue might prove more difficult to achieve in plural marriages, her defense of the smaller dyadic form belied her normative assumption that the process of sexual reproduction itself produced supplemental reasons for the moral practice of monogamy. The best evidence of this assumption is found in her 1797 *Lessons*, which envisioned and even idealized the active roles of biological parents in joint childcare of their toddler. More broadly, her metaphysical perspective allowed for Cookson's view that divine providence mandated monogamy as a beneficial moral ideal for humanity. Wollstonecraft disagreed, however, with Forster's culturally biased and morally relativistic claim that God ordained monogamy for Europe, while nature dictated polygamy for Africa.<sup>55</sup>

In theory, Wollstonecraft's metaphysics should accommodate a variety of religious and secular conceptions of monogamous marriage, under the condition that all people are treated as ends not means within marriage and the broader laws of their societies. Wollstonecraft's novel *Maria, or the Wrongs of Woman* vividly represented how her deontological theory of human rights would absolutely prohibit any exploitation of women by their husbands, regardless of the cultural or religious context. When her husband attempted to sell her into prostitution, Maria finally sought a way out of the bad relationship. Her escape symbolically alleged for the eighteenth-century audience a married woman's human right to protect her bodily

integrity. As illustrated by Maria's response to her predicament, Wollstonecraft's deontological approach to defending women's human rights would be an appropriate basis for strong criticism of any cases of marriage, whether monogamous or polygamous, which are exploitative of women's bodies.

Wollstonecraft's broader theological approach uncovers a deeper level from which polygamy could be strongly judged: the immanent feminist perspective on patriarchal oppression. Such an immanent feminist perspective speaks against a patriarchal practice from within a culture for the benefit of women in that culture and potentially beyond it. For example, when a Muslim woman, such as the Iranian feminist lawyer Shirin Ebadi, challenges polygamy on metaphysical grounds—as in, the Koran states I am equal to man, thus I should be legally treated as a moral equal to man and not as “half” a human being—she is enacting a broadly Wollstonecraftian critique of the institution from within. Islamic polygamy as it is practiced in her homeland of Iran requires that polygamous wives be legally subsumed under and subordinate to their husband, thus undercutting the Koran's theological view of the sexes as moral equals. Interestingly, Wollstonecraft had used a mathematical metaphor similar to Ebadi's to critique how Rousseau's theory of education perversely turned woman into a “half-being” who was primarily defined by her marital relationship to her husband rather than her independent ontological status as a moral, rational, and equal human being made in the image of God.<sup>56</sup>

As the Indonesian Muslim feminist activist Lily Munir explains, the Koran supports polygamy only as a “privilege” of widows and children in times of need, not a general “right” of men. Striving to return her Muslim culture and Islamic religion to their moral roots, the 2003 Nobel Peace Prize winner Ebadi continues to criticize Iranian laws as “discriminatory and misogynist” for allowing “a man to marry four wives . . . and divorce his wife at will,” while women do not have the same access to divorce. In her Muslim feminist view, these laws are “not Islamic” because they “cannot be found in the Koran.” She advises her fellow Muslim feminist critics of religious



polygamy: “It is essential for women to master religious discourse because patriarchal culture is usually protected and strengthened in the name of Sharia law, and by political forces who exploit Muslims’ ignorance of various interpretations.” Such a sacred-text-based approach may not, however, work as well for religious and other cultural outsiders, who run the risk of seeming imperialistic by making such arguments from without.<sup>57</sup>

Mill’s secular approach to justifying and subsequently alleging women’s human rights poses its own set of challenges for judging the issue of religious polygamy. Mill shared Wollstonecraft’s philosophical view of marriage as ideally conceptualized and practiced as a perfectionistic, or virtue-oriented, friendship between moral equals. On a nonideal and personal level, Mill appeared to be tolerant of polyamory, if sexual intercourse is not understood as essential to its practice. Harriet Taylor was married to another man for most of their platonic and perfectionistic friendship. This was a forced choice for Mill, as he would have preferred to have an exclusive relationship with Harriet under ideal circumstances. Harriet and Mill appear to have refrained from intercourse for the duration of their intellectually and emotionally passionate affair and late-life marriage. Harriet ceased to have a sexual relationship with John Taylor once their last child was born, soon after she met and fell in love with Mill. Mill’s awkward domestic situation with the Taylors compelled his toleration of a type of sexually restrained, Victorian polyamory even when he personally considered it morally deficient.

In chapter 4 of *On Liberty*, Mill’s application of the individuality and harm principles to the issue of Mormon polygamy explained his tolerance of this particular plural form of religious marriage under two conditions. First, the practice may be tolerated at “a remote corner of the earth” where such “barbarism” or cultural backwardness may be practiced without becoming widely institutionalized. His use of the culturally biased, liberal imperial language of “barbarism” was consistent with his *Subjection of Women*, in which he identified patriarchal marriage as a “relic of primitive barbarism” that caused women’s oppression worldwide.<sup>58</sup>

Apart from his belittling attitude toward Mormonism, Mill's moral concern with polygamy centered upon the inverse relationship between women's tendency to adapt to their culture and the heterogeneity of that culture. In other words, the more that women conformed to their culture, the less varied that culture would be; conversely, the more uniform a culture, the less diverse women's life choices would be. It followed that if, generally, patriarchal culture teaches women "to think marriage the one thing needful," then, in a polygamous community, women "should prefer being one of several wives, to not being a wife at all." Consideration of this problem of adaptation elicited Mill's second condition for the toleration of polygamy: its practitioners must "allow perfect freedom of departure to those who are dissatisfied with their ways." In these cases, his complex consequentialist justification for human rights provided a strong ground for alleging women's human right to exit polygamy when the religious institution harmed their self-development. Education about exit options, likely provided by outsiders to the polygamous community, would be one way to combat the problem of women's adaptation to conditions of patriarchal domination.<sup>59</sup>

Mill's secular liberal utilitarian approach to advocating for women's human rights might be most useful to reformers from outside the polygamous community. *On Liberty* proposed such reformers could use educational writings to shape Mormon polygamists' critical understanding of the ethical implications of their own religious practice, just as women's rights advocates used education to challenge their own brands of patriarchal "barbarism" in Britain. Wittily playing both sides of the argument, Mill inveighed, "Let them send missionaries, if they please, to preach against it; and let them, by any fair means (of which silencing the teachers is not one), oppose the progress of similar doctrines among their own people." If taken, this secular educational approach would rely not on controversial religious or metaphysical views to make its moral claims but rather on a comparatively thinner, nonmetaphysical and nontheological, set of values such as human individuality and freedom. It would also need

to be applied to similar problems in the outsider's own culture, in order to be morally consistent and not hypocritical.<sup>60</sup>

For societies that do not value individuality or freedom in a liberal sense, this secular educational approach to women's human rights advocacy may not work from without or within. In these cases, Mill's secular liberal utilitarianism theoretically generates a long-term reformist approach to human rights advocacy: observation of the issue from afar, so as to ensure that women's human rights are not sacrificed for the utility of the patriarchs of the commune. This remote observational model is implicit in Mill's recommendation of toleration of polygamy on the Utah frontier instead of making it "a scandal to persons some thousands of miles distant." Although his spatial appeal to distance had imperial implications (as in, the unconquered frontier was the nadir of civilization), it also may be read in more abstract psychological terms: maintaining a reasonable sense of cultural and emotional distance from other people's cultural practices.<sup>61</sup>

The latter mode of reasonable psychological distance might animate the work of a Millian reformer who is monitoring a polygamous religious culture from without. Mill did not assume that polygamy was inherently incompatible with women's rights, but he remained concerned with protecting women against potential violations of their rights in this and other historically oppressive marital arrangements. Consequently, he supported reformers' remote observation of polygamy in Utah as a moral means of judging whether the practice was in fact harmful to women. If violations of female self-sovereignty were tracked and verified, then the monitoring Millian reformer faced a predicament: alleging women's human rights on naturalistic grounds that might seem culturally insensitive or imperial to the people she sought to aid. The allegation of women's human rights, in these cases, is a Millian outsider's last-resort act of political instigation. Ideally, this instigation would stir the local community to discussion of the ethics of their practice of polygamy and provoke critical reflection on similar issues in the reformer's home culture.

Mill's secular liberal utilitarianism produces indirect models of women's human rights advocacy, such as toleration, education, observation, and instigation. In contrast, Wollstonecraft's theological and deontological approach to justifying rights generates strong and direct moral judgments on the best content and scope for women's human rights. It also enables the allegation of women's human rights in universalistic terms that may resonate with a variety of religious worldviews. Mill's indirect strategies for reform are better suited for cultural or religious outsiders to a morally controversial issue such as polygamy, whereas Wollstonecraft's direct approach to rights advocacy would fare better with cultural and religious insiders who seek to effectively criticize or defend a morally controversial practice from within.

From 1872 to 1914, a group of female Latter Day Saints (LDS) in Utah modeled the latter mode of immanent defense. Their newspaper, the *Woman's Exponent*, made pro-polygamy arguments based on Mormon theology and contemporary women's rights discourse. Its editor, Emmeline Wells, was a reader of Wollstonecraft, and, in 1874, the paper defended the feminist ethical logic of the *Rights of Woman* against charges of its irreligion and immorality: "Eighty years ago Mary Wollstonecraft published her 'Vindication of the Rights of Woman.' It was a book laid under ban as irreligious and immoral. Yet it consists simply of a forcible and logical plea for the higher education of women, and an exposure of the false sentimentality of Rousseau [*sic*]." Wells blended Wollstonecraft's rational theological and deontological style of women's human rights advocacy with her own Mormon conviction in the sacredness of women's everyday work, starting in the family. In a relief society handbook, Wells argued that Mormon women's duty in life was to help restore humanity's original, God-given equality: "Woman must be instrumental in bringing about the restoration of that equality which existed when the world was created. Perfect equality then and so it must be when all things are restored as they were in the beginning." The slogan of the *Woman's Exponent* also fused Mormonism and women's human

rights: “The Rights of the Women of Zion, The Rights of Women of All Nations.”<sup>62</sup>

These LDS women’s internal support for Mormon polygamy from a gospel and feminist perspective warranted Mill’s cautionary approach to judging their community from the outside. Indeed, the women’s rights leaders Susan B. Anthony and Elizabeth Cady Stanton—who opposed polygamy on much the same grounds as Wollstonecraft—chose such a Millian pragmatic route in working with LDS women on their common cause of universal suffrage in Utah. An avid reader of *On Liberty*, Stanton criticized those feminists who opposed the involvement of Mormons such as Wells in the national women’s suffrage convention of 1878: “I should think Mormon women might sit on our platform without making us responsible for their religious faith.”<sup>63</sup>

The *Woman’s Exponent* suggested the rhetorical and political power of Wollstonecraft’s theological approach to defending women’s human rights for cultural insiders who sought to reconcile religious commitments, such as to polygamy, with other normative commitments, such as women’s right to suffrage. Plural marriage and universal suffrage had coexisted in Utah from 1870 to 1887. In 1887, the passage of the Edmunds-Tucker Act in the U.S. Congress took away women’s right to vote and the right to polygamy in Utah—partly because male legislators from other states were angry that LDS women did not “free themselves” from polygamy through the vote. In response to the government’s attempt to strip their rights as women and as religious people, Wells and others argued in the *Woman’s Exponent* that polygamy and women’s suffrage were both morally consistent and socially beneficial in the context of democratic, feminist, and gospel values.<sup>64</sup>

The historic and contemporary controversies surrounding religious polygamy illustrate the ethical complexities of making arguments for the institutionalization of the moral rights of women, especially in cases where law and culture do not yet provide guides for reformist action. Because of these complexities, allegations of

women's human rights must often refer to some kind of moral foundation as a justification for their broader public recognition as a valid claim for reform. A conception of humanity itself is one such foundation.

Foundationalist approaches to justifying human rights run into the problem of the pluralism of values across peoples, cultures, and nations, however. Not all peoples will agree on what it means to be human, or wish to dissociate religion or other cultural traditions from their definitions of humanity. Not all women will agree on policies that affect them, such as laws concerning marriage, suffrage, or health care. For example, a liberal pluralistic society such as the contemporary United States sees significant gaps in public opinion emerge between women who primarily identify as religious and women who primarily identify as feminist. When faced with what Rawls called "the fact of reasonable pluralism," a human rights advocate must attend to reasonable differences among people's world-views (or comprehensive doctrines) in adopting an ethical approach to judging how to respond to the disputed issue at hand. Understanding one's own basic relationship to a contested issue is a crucial first step toward making rationally justified and culturally respectful claims for human rights.<sup>65</sup>

To allege women's human rights in cases of strong disagreement may be a morally courageous act for a cultural insider such as Ebadi, but it is also a political step toward justice. Since 2009, Ebadi has been forced to live in exile from Tehran due to her successful yet controversial feminist activism; worse, the Iranian government has persecuted her family in order to try to stop her work for women's rights in her Islamic nation. Such brave and persistent activism by cultural insiders puts the issue on the national or global agenda for cultural outsiders. This is Wollstonecraft's gift to human rights activism: modeling the value of people speaking up for women's human rights from the foundations of their own cultural and religious traditions.<sup>66</sup>

With a comparatively thinner set of moral foundations than Wollstonecraft's approach, Mill's liberal utilitarianism lends itself more

to the outsider perspective for advocating women's human rights. Pragmatically akin to Rawlsian nonfoundationalist theorists of human rights yet philosophically grounded in his foundational value of individuality, Mill provides another compelling secular model for judging and alleging women's human rights. This liberal utilitarian approach to rights-based reform begins with a basic stance of tolerance toward other people's cultural practices. If necessary, it educates people directly and indirectly affected by a women's human rights issue. It proceeds to monitor violations of those human rights. The last resort is invoking a thin set of secular yet foundationalist human rights values in order to instigate reform. This outsider perspective on contentious women's human rights issues ultimately strives to resist the strong imposition of one's most contestable moral standards on different cultures. In the long run, the dynamic interplay of a variety of insider and outsider perspectives on human rights may lead to reform of laws and policies concerning controversial women's human rights issues, such as those on religious polygamy. This dynamic of insider and outsider reforms might make liberalism more accommodating to practices that at first look incompatible with its principles of justice, while encouraging people to adapt their cultural practices such that they resonate with basic human rights values, both moral and legal.