

## MILL ON LIBERTY

### 1. Problem

▶ *On Liberty* is about “the nature and limits of the power which can legitimately be exercised by society over the individual” (1.1). More particularly, it is a defense of personal liberty against what Mills calls the “tyranny of the majority” (1.4).

▶ The phrase “tyranny of the majority” may suggest a concern with oppressive majority rule, *pursued through coercively enforced law*. But Mill was concerned more fundamentally with “social tyranny”—the ceaseless, invasive pressures to social conformity that are “more formidable than many kinds of political oppression.” This social tyranny compels conformity to conventional ideas and patterns of conduct—which commonly trace to the tastes of an “ascendant class” (1.6). To be sure, social tyranny operates “by other means than civil penalties” (1.5), and its penalties are less “extreme”—denunciation and ostracism rather than prison. But it “leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself” (1.5), and establishes a “despotism of custom” (3.17), a world in which people do not entertain the possibility of unconventional lives, much less aspire to lead them. So Mill aims not simply to limit the power of law over thought, conduct, and association, but to foster a public culture in which people recognize that “it is good there should be differences” (3.19).

Mill’s immediate focus, then, is on majority tyranny. But his larger questions are: What is the rightful limit to the sovereignty of the individual over

himself" (4.1)? And what are the limits of collective authority over individuals? The task, then, is to find a *principle* that expresses the limits of that collective legitimate power.

▶ Mill's Harm Principle states this general limit on collective authority. According to that "one very simple principle", we should only use coercion against a person "to prevent *harm to others*" (1.9). If conduct is not harmful to others, we ought not to compel or control it, either through legal sanctions or collective opinion. If conduct *is* harmful to others, then interference through legal and moral sanctions is legitimate, though not mandatory, and the decision whether to interfere or not depends on the kind of harm involved (see 4.3). In short, harm invites us to balance costs and benefits: if someone pollutes, for example, we can consider whether or not to restrict their conduct. Absent harm, there is no such invitation.

## 2. Harm

▶ What, then, is it to harm someone? The fundamental idea is expressed in Mill's distinction between regulating conduct because it is harmful to others, and regulating it because it is "foolish, perverse or wrong" (1.12). Conduct that is "foolish, perverse, or wrong" may be troubling—even disgusting. If we find it so, we may try to alter it through "advice, instruction, persuasion, and avoidance" (5.1), but not through compulsion and control.

▶ Of course, the same conduct may be both harmful to others and foolish (or perverse, or wrong): driving 150 MPH is foolish and harmful to others. So think of Mill not as distinguishing different sorts of action but as distinguishing

different sorts of considerations that we might be tempted to use to justify regulation. The Harm Principle, then, states that certain considerations do not provide acceptable reasons for interference: we ought not to regulate conduct on *moralistic* grounds—because the conduct is wrong (or sinful)—or on *paternalistic* grounds—because the conduct is foolish, or not in the agent’s own best interests—or on *perfectionist* grounds—because the conduct is perverse, or not in keeping with the highest ideals of human perfection or “personal excellence” (1.14). Rejecting those considerations, the Harm Principle makes each person “the proper guardian of his own health, whether bodily, or mental, or spiritual” (1.13), and permits interference only to prevent harm to others. It filters out moralist, paternalist, and perfectionist considerations from discussion.

▶ To illustrate the point: suppose we are asked to justify the application of criminal sanctions to sodomy. We might offer reasons founded on religious morality, and condemn sex that does not aim at procreation as a wrongful departure from the natural end of sexuality. Or we might offer paternalistic reasons, and argue that it harms people who engage in it. Or we might defend criminalization as a way to combat perversion, and understand that to imply that sex disconnected from procreation deviates from an ideal of human conduct. Each of these arguments—moralist, paternalist, and perfectionist—is offered in public debate, but none makes any reference to harms to others. According to the Harm Principle, none can be used to support a case for interference. In public argument aimed at supporting coercive interference—with sexual conduct, or with drugs, motorcycle helmets, or suicide—these considerations cannot play a role.

### 3. How does Mill argue for the HP?

▶ How does Mill defend the Harm Principle? He bases his argument, he tells us, on the principle of utility, not on considerations of "abstract right, as a thing independent of utility" (1.11). Thus, his case rests on considerations about the balance of favorable and unfavorable consequences for human welfare that come from protecting basic personal liberties. His argument is not based on claims of right and wrong, or about individual rights, that stand independent of those consequences.

▶ Why, then, do the consequences for human welfare recommend that we abjure coercion, except to prevent harm to others? Why not try to make people's lives better by interfering for moralist, paternalist, and perfectionist? Mill's answer is that "Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest" (1.13). Or, more crisply: "the inconvenience [of the liberties] is one which society can afford to bear, for the sake of the greater good of human freedom" (4.11).

▶ The distinction between the "greater good" of liberty and the "inconveniences" it produces suggests a division of his argument into two steps. The first presents the social benefits of liberty, explaining what is meant by "the greater good of freedom." The second shows how these benefits outweigh the costs of protecting liberty. Let's now consider these steps in turn, beginning by exploring the "greater good" of liberty. Following Mill, we start with freedom of expression, and then consider "tastes and pursuits."

#### **4. What is Main Thrust of Mill's case for freedom of thought and expression?**

▶ Mill condemns censorship. He argues against censoring opinions (or their expression) because they are false, or blasphemous, or at odds with public morality. Preventing harm to others provides the only ground for restricting freedom of expression—more particularly, expression can be restricted only if it aims to harm others and directly threatens them with harm.<sup>1</sup>

▶ Mill asserts his opposition to censorship in strong terms: "If all mankind minus one," Mill says, "were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind" (2.1). This is a striking claim, especially for a utilitarian. If you think there are absolute natural rights that can be justified without reference to consequences, then the defense of this claim would be more straightforward. For if there are such rights, then whether the rights of one or many are violated, a wrong is committed—though you might think it worse to violate the rights of many than the rights of one. But while Mill asserts that the right to free expression is absolute, he denies that there are any rights independent of social utility. So why don't numbers count? What could be wrong with silencing people whose views we think are false, or impious, or silly—so long as we don't do it to too many?

▶ The nub of his answer is that costs do not significantly depend on numbers because the injuries from censorship are not borne principally by speakers who are suppressed, but by the audience and third parties. If speakers

were the only losers from censorship and intolerance, then "it would make some difference whether the injury was inflicted only on a few persons or on many" (2.1). But the evil of censorship is not exhausted by the injury to the speaker; it involves "robbing the human race; posterity as well as the existing generation; those who dissent from the [suppressed] opinion *still more* [emphasis added] than those who hold it" (2.1).

## 5. Two Arguments for freedom of expression

How do censors rob the human race? Mill has two answers, the first of which I will call the "utility of truth" argument.<sup>2</sup>

► **Utility of truth:** (1) Early in chapter 2 of *On Liberty*, Mill claims that censorship rests on a false assumption of infallibility. In the background is the assumption that true views are more useful than false (utility of truth); given that assumption, he thinks that the censors must be assuming that their own views are certainly true: otherwise they would not suppress potentially true — and therefore beneficial — alternatives.

2. If censors acknowledged their own fallibility, they would recognize that censorship could deprive people of the truth by restricting discussion that aids in the search for truth, and that depriving people of the truth makes things worse (again, on the assumption of the utility of truth). And he mentions the cases of Socrates, Jesus, and Marcus Aurelius (the persecution of Christians) to persuade us that the assumption of infallibility is wrong.

Mill's argument places nearly exclusive emphasis on criticizing the false assumption of infallibility. His point, however, is not simply that the assumption is

false, but that this assumption has bad consequences: the assumption of infallibility encourages censorship, censorship encourages error, and error reduces social utility.<sup>3</sup>

▶ Mental well-being argument: I don't propose to explore the force of the utility of truth argument because Mill has a different, more compelling anti-censorship argument, focused on the idea of mental well-being—"the mental well-being of mankind (on which all their other well-being depends)" (2.40). The argument moves in three steps:

1. Free expression permits the expression of views that challenge received ideas and sensibilities and encourages wide-ranging debate.

2. Such challenge and public debate provokes other people (the audience) to use their intellectual powers to think more critically about their own views. When we are challenged by religious, cultural, and political dissenters—as distinct from getting pretty much uniform inputs—we are better able to understand both the *grounds for* and *content of* our own views (2.21-23, 2.26-33). Thus the liberty of thought and expression encourage the formation of an "intellectually active people" (2.20)—not necessarily people who know more, but people who use their intellectual capacities more.

3. Being "intellectually active," however, is a basic human good, a higher quality pleasure. Lives are made worse, Mill supposes, when people passively internalize conventional beliefs and opinions and do not think issues through for themselves, *even if their beliefs and the reigning orthodoxy are true.*<sup>4</sup>

In brief, then, freedom of expression should be protected because it challenges to think harder and respond to criticism: and—according to Mill's account of the human good—that is a basic good, a higher quality pleasure.

We can now see why Mill thought that the evil of suppressing one is as great as the evil of suppressing the majority of all but one. The crucial point is that the evil of suppressing one person is not exhausted by the evil done *to that person*. The rest of the population suffers, too, from censorship, because even the orthodox believers are hindered in the use of their intellectual powers. Mill's utilitarian case for free expression, then, is that we should empower people to speak by protecting their right to expression because such expression confers great benefits on others, not principally because of the great harm that censorship does to the speaker, or because of some abstract right, apart from consequences, that we have to speak our minds.

## **6. Why a liberty of tastes and pursuits?**

A similar line of thought supports what Mill calls the liberty of "tastes and pursuits." Focused on liberty of conduct rather than ideas and speech, the liberty of tastes and pursuits requires individual autonomy in the choice and execution of a life plan. It requires that we interfere with such choice only to prevent harms, and not for moralistic, paternalist, or perfectionist reasons.

Mill's defense of this liberty turns on the claim that personal liberty is required for the development of human powers—the central element of human well-being (see 3.2, 3.8).<sup>5</sup> Mill's argument for the connection between personal liberty and the development of our powers proceeds in two steps:



1. Liberty of tastes and pursuits is required for *individuality*—for distinctive, self-directed patterns of development; and
2. Individuality or self-development is required for development:  
"Individuality is the same thing with development, and it is only the cultivation of individuality which produces or can produce well-developed human beings" (3.10).

The first step, connecting liberty and individuality, is relatively uncontroversial: liberty would not be "undervalued" (3.2) if people recognized "that the free development of individuality is one of the leading essentials of well-being." But the second may seem less compelling: Is there really such a close tie between the development of human capacities and their *self*-development?<sup>6</sup> Someone might agree that the development of human powers is an important good, but that our intellectual powers are best employed to understand social customs, that the development of our desires proceeds best if we desire conformity to social convention, and that liberation from tradition and custom—"peculiarity of taste, [and] eccentricity of conduct" (3.6)—produces depravity, not development.

Mill has three replies to the argument that defends development but not self-development: first, others may have it wrong about the best way to live; their interpretation of experience may be too narrow. Second, given differences of circumstance and character, no single model for the development of powers is appropriate to everyone (3.3, 3.14). Third, and this is Mill's fundamental point, figuring out how to live—one's own path—is itself a way to use one's powers, and indeed required for that use: "He who chooses his plan for himself, employs all

his faculties." (3.4). By contrast, "To conform to custom, merely *as custom*, does not educate or develop in him any of the qualities which are the distinctive endowment of a human being" (3.3); when we follow a fixed pattern, "human capacities are withered and starved" (3.6).

Liberty of tastes and pursuits, then, permits individuality or self-development; and *self*-development is a requisite for the development of human capacities and thus for higher quality pleasures. In particular, liberty enables individuals to choose a plan of life, which is itself a great good because it exercises our higher faculties (3.3,4).

Moreover, such liberties bring broader social benefit. They encourage "experiments in living" and "varieties of character." And this diversity will provide models for others about alternative ways to conduct their lives, and encourage individuals to develop along their own paths, rather than simply accepting custom as a guide (3.11-13). This diversity of choices encourages social progress—in politics, education, and morals (3.17-19). So we benefit both from our own liberty, and also from the liberty of others, who provide models for us. Here again, we come to a crucial idea in Mill's utilitarian argument: liberty promotes development not only for the person whose liberty it is. Both free expression and experiments in living provoke others to develop their powers as well.<sup>7</sup>

## **7. What about costs and inconveniences?**

We need one last step to complete the case: concerning the cost of a system of liberty. After all, even if protecting liberty has some very good results, the social benefits might be even greater if people were protected from the

feelings of disgust, anger, indignation, or repulsion that my choices cause in them, especially if such disgust, etc., is sufficiently widespread. And so the sum of utility might come out higher if I were suppressed.

Mill responds to this challenge by arguing that the value of the liberties is rooted in their contribution to the development of human powers, and the value of development is a higher value (a higher quality pleasure). In contrast, restrictions on harmless conduct may be sources of pleasure, and may protect people from certain pains, but the pleasures are, as general matter, lower quality pleasures. Moreover, permitting such restrictions does not make a significant contribution to development.

Consider the suppression of disturbing speech or the enforcement of conventional morality: They remove disturbing conduct, and so contribute to contentment, ease, and social comfort. But they make, Mill claims, *no contribution to development*, even on the part of those who cleave to conventional views and customary morality. On the contrary, enforced conformity may actually encourage a taste for conformity. Since conformity as such withers the higher faculties, the suppression of speech and the enforcement of morality are, on balance, bad for human happiness and therefore wrong. And since the higher quality pleasures take precedence over mere contentment, we must not restrict liberty for the sake of mere preferences no matter how intensely or widely felt. Permitting such intrusions may promote contentment and satisfaction. But it does not enhance genuine happiness: the better modes of existence, involving the higher quality pleasures.

## 8. What distinguishes Mill's argument from Bentham's?

Mill and Bentham both endorse the harm principle. Moreover, both rest their moral liberalism on an appeal to overall consequences: on balance, greater happiness in the aggregate results when we protect people from moralism, paternalism, and perfectionism. But Bentham and Mill offer different accounts of those net benefits.

Bentham emphasizes that the abridgment of liberty frustrates people by restricting the extent to which they can pursue their de facto desires.

Mill sees the costs differently. He argues that abridging liberties can stifle the development and exercise of human powers partly by obstructing higher activities that people choose to pursue. More deeply, censorship and moralistic regulation can produce a "despotism of custom" (3.17) that stifles even the aspiration to independent thought and conduct.<sup>8</sup> The desire for independent self-development is a "tender plant." Stifle it, and you may find people adapting to their circumstances and experiencing contentment, even in the absence of real opportunities for living the better, self-governing lives that liberty helps to make possible.

Mill defends toleration, then, because toleration will promote better human lives, in the aggregate. He is no skeptic about the best way to live. Nor is his defence of toleration simply pragmatic, about keeping the peace. But he is also not proposing a Bentham-style cost-benefit analysis, with pleasures and pains distinguished only by quantity. Instead, the idea is: Let people govern their own conduct in light of their own ideals; keep them from harming others but don't coerce them to be better: once people are "capable of being improved by

discussion,” those protections of liberty, Mill argues, are the surest path to human improvement. Mill’s point is not: “it is your life, and you have a right to do with it as you please, and waste it if you want.” Instead, he thinks that we should care about how good the lives of others are. But he rests his case of the hopeful assumption that the best way to express that concern and improve their lives is to ensure their basic liberties: and that’s partly because self-improvement is itself a basic human good.

## Appendix on Harm

▶ The point about the unacceptability of moralist, paternalist, or perfectionist reasons goes some distance to clarifying the Harm Principle. More needs to be said, however, because the unacceptable reasons we have noted thus far make no reference to any effects on others. But what about cases where an action affects others negatively, but does not harm them? Suppose, for example, that it disgusts them—Mill takes up such cases in a discussion of whether feelings of revulsion, anger, or disgust can serve as reasons for interfering with conduct (4.14-15).

Mill gives two relevant examples in chapter 4. Assume the majority in an Islamic society experience revulsion when Christians eat pork—not mere religious disapproval, but palpable revulsion. Mill tells us that this revulsion provides no reason for the social or political imposition of dietary restrictions on the minority. Nor do the "sincere feelings" (4.15) of disgust that Iberian Catholics have for married Protestant clergy suffice to justify legally-imposed celibacy requirements. But why? What is the distinction between harming a person and causing revulsion, anger, and disgust?

In both examples, the undesirable feelings are caused in part by religious beliefs that condemn the behavior. More generally, the disgust and revulsion are themselves a consequence of preferences and opinions about the appropriate conduct of others: an essential link in the causal chain between conduct (eating pork) and feeling (revulsion at same) are beliefs about the appropriateness of certain kinds of conduct. But the Harm Principle states that those preferences and opinions (the mediating beliefs) do not *themselves* provide reasons for interference. I do not harm others if I act in ways that conflict with their preferences and opinions about how I should act. The point of the harm principle is precisely to rule out regulations based on such preferences and opinions. But if the preferences and opinions are unreasonable grounds for interference, then it is not permissible to interfere because of undesirable feelings that arise from

them. The feelings would not be present were it not for the demands on others that the Harm Principle condemns as unreasonable grounds for interference. So the undesirable feelings result from an unreasonable demand; no harm results from the conduct of the other person apart from that unreasonable demand. And for that reason, we can exclude the feelings themselves as acceptable bases for restriction.

So let's say, then, that A harms B (for the purposes of the harm principle) if and only if A causes B to be in an undesirable state and that state is brought about, at least in part, independently from any judgment by B about the foolishness, immorality, or lack of excellence of A's conduct (without the mediation of such judgment between the action and the undesirable state).

▶ An implication of this account is that some conduct that is conventionally regarded as offensive but not harmful will come out as harmful for the purposes of the harm principle. Consider a couple having sex in public, or—to take a more extreme example—someone who defecates on a bus. In neither case do we have harm, as conventionally understood. But the public character of the conduct imposes a burden on others, and puts them in an undesirable state, quite apart from their beliefs about the appropriateness of the conduct. The fact that such conduct comes out as regulable according to the harm principle fits with Mill's intentions, as his discussion of public offenses against decency makes clear (5.7).

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<sup>1</sup> There are great complications about just when it is permissible to regulate expression by reference to its harmful consequences. As an example of permissible suppression, Mill offers the case of a speech about how corn dealers are "starvers of the poor" addressed to an "excited mob assembled before the house of a corn-dealer." See *Liberty*, 3.1. The example suggests that he may want to limit suppression to cases in which there is an imminent danger of harm ("excited mob") and the expression aims to produce such harm ("starvers of the poor"). For this reason, I include the phrase "aims to threaten and does directly threaten" in the text.

<sup>2</sup> It is reconstructed from Mill's initial statement of a "common argument" that condemns censorship for assuming infallibility (*Liberty*, 2.3), together with his response to the objections to that argument stated in 2.5 (that the censor does not assume infallibility but simply relies on his/her best judgment) and 2.9 (that censorship assumes the usefulness of the dominant opinion, not its truth).

<sup>3</sup> Mill acknowledges that censorship need not claim infallibility, but only say that he or she is relying on the best available judgment (2.5). Mill responds that it is only reasonable to rely on judgment that is tested through discussion. If censors prevent discussion, then they are in effect assuming infallibility.

<sup>4</sup> "It is not the mind of heretics that are deteriorated most, by the ban placed on all inquiry which does not end in the orthodox conclusions. *The greatest harm is done to those who are not heretics*, and whose whole mental development is cramped, and their reason cowed, by the fear of heresy" (2.20).

<sup>5</sup> Apart from connecting development with individuality (self-development), Mill also offers some case for the value of development in *Liberty*, chap. 3. Thus he argues against those who value the development of the understanding but not of desires and impulses (2.5-6), and also against the Calvinist who denies the value of development in favor of the good of obedience (2.7-8).

<sup>6</sup> "Individual spontaneity is hardly recognized by the common modes of thinking, as having any intrinsic worth...." (3.2)

<sup>7</sup> "Those who do not desire liberty, and would not avail themselves of it," may nevertheless be "in some intelligible manner rewarded for allowing other people to make use of it without hindrance" (3.10)—for example, they may "learn something" from those who use their liberty to introduce new thoughts and ways to live.

<sup>8</sup> In the despotism of custom, people do not "choose what is customary, in preference to what suits their own inclination. It does not occur to them to have any inclination, except for what is customary" (3.6)