

MILL ON LIBERTY

1. Problem. Mill's *On Liberty*, one of the great classics of liberal political thought, is about "the nature and limits of the power which can legitimately be exercised by society over the individual" (1.1). More particularly, it defends individual liberty against the threat of "majority tyranny."

To explain this threat, Mill begins historically, with a sketch of the struggle between "liberty and authority." Initially, that battle focused on the power of oppressive rulers, and the defenders of liberty argued for limiting the power of monarchs and oligarchs by rules or rights. Eventually, the view emerged that oppressive power is best constrained by subjecting rulers to popular control—with "periodical choice of the ruled" (1.3).

In the course of this fight for a government accountable to the governed, "some persons" Mill says, "began to think that too much importance had been attached to the limitation of the power itself." The nation, they said, "did not need to be protected against its own will" (1.3). If the people rule themselves, by electing representatives, then there is no need to limit public power: popular control is protection enough.¹ But experience showed that "the will of the people" means "the will of the largest number," and that the people itself "may desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power" (1.4).

This historical sketch suggests that the problem of "majority tyranny" is a specifically political problem, about majorities using law to oppress minorities. But Mill's concern (1.5) is far broader: with "social tyranny"—the ceaseless pressure

to conform to conventional ideas and conduct that are "more formidable than many kinds of political oppression." To be sure, social tyranny operates "by other means than civil penalties" (1.5)—shaming and social exclusion 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). So Mill aims not simply to limit the power of law, but to foster a more open public culture in which people recognize that "it is good there should be differences" (3.19).

Mill associates the threat of social and political tyranny with what Tocqueville called a "democratic society": with greater social equality, urbanization, industrialism, and popular media. Under these conditions, "there ceases to be any social support for non-conformity" (3.18). Thus "the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like in crowds . . . until by dint of not following their own nature, they have no nature to follow" (3.6). Not that Mill is opposed to equality: to the contrary, he favored greater economic equality, broader suffrage, women's equality, and workplace democracy. But he believed that the great political task was to create a society that was both more egalitarian and freer.

2. Harm Principle. So Mill asks: "What *is* the rightful limit to the sovereignty of the individual over himself" (4.1)? The answer he is looking for is a *principle* expressing the limits of collective power over individuals, and fixing the scope of "individual independence" (1.5).

And the principle he proposes is his Principle of Liberty or Harm Principle. 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 coerce it, either through law 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 extent of the harm (see 4.3). In short, harm is necessary but not sufficient for interference.

Mill’s view is not a counsel of selfish indifference. Conduct that does not harm others may still be “foolish, perverse or wrong” (1.12), and we may respond with “advice, instruction, persuasion, and avoidance” (5.1). But when there is no harm to others, the right response is persuasion, not coercion.

3. Harm. What, then, is it to harm someone? We get some help in answering the question by noting Mill’s distinction between regulating conduct because it is harmful to others, and regulating it because it is “foolish, perverse or wrong.” Of course, the same conduct may be both harmful to others and, say, foolish: if you need some light to read, it is foolish and harmful to others to cover yourself in gasoline and light a match. So think of Mill not as distinguishing different sorts of action—foolish and harmful—but as distinguishing different sorts of reasons we might be tempted to use to justify regulation.

The Harm Principle, then, states that certain considerations are not acceptable reasons for coercion: we ought not to regulate on *paternalistic* grounds—because the conduct is foolish, or not in the agent’s own best

interests—or on *moralistic* grounds—because the conduct is wrong (or sinful)—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 reasons for regulation, 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.

For example, 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 paternalistic reasons, and argue that it harms people who engage in it. Or perfectionist reasons, and argue that sex disconnected from procreation is a perverse departure from an ideal of human conduct. None of these arguments refers to harms to others. So the Harm Principle says that none can be used to support a case for interference.

4. How does Mill argue for the HP? Mill bases his argument for the Harm Principle, he says, on the principle of utility, not on “abstract right, as a thing independent of utility” (1.11). Thus, his case turns on the consequences for human welfare of protecting basic personal liberties, not on notions of right and wrong, or individual rights, that stand independent of those consequences.

Why, then, do the consequences for human welfare recommend that—once people are, as Mill puts it, “capable of being improved by discussion”—we avoid coercion, except to prevent harm to others? Why not try to improve lives through coercive means? Mill’s point is that, once people are capable of being

improved through discussion, the consequences are better when we try to improve them exclusively using methods of persuasion, and avoid concern for paternalist, moralist, and perfectionist reasons. Why? Because, Mill says, "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 benefits of liberty, explaining what is meant by "the greater good of freedom." The second shows how these benefits outweigh the costs. So lets start with the "greater good" of liberty, beginning with freedom of expression; then considering "tastes and pursuits."

5. 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.²

Mill asserts his opposition to censorship in strong terms: "If all mankind minus one," Mills 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. Why don't numbers

count? What could be wrong with silencing people whose views are false, impious, or silly—so long as we don't do it to too many?

Mill's point is that costs do not significantly depend on numbers because the injuries of censorship are not borne principally by the suppressed speaker, but by the audience and third parties. If speakers were the only losers, numbers might matter. But censorship injures others, too: it "rob[s] the human race; posterity as well as the existing generation; those who dissent from the [suppressed] opinion still more than those who hold it" (2.1). So how do censors rob the human race? Mill has two answers.

Utility of truth³: (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 their own infallibility: 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—"there must be discussion, to show how experience is to be interpreted"—and that depriving people of the truth makes things worse (again, on the assumption of the utility of truth). Mill mentions the cases of Socrates, Jesus, and Marcus Aurelius (the persecution of Christians) to persuade us that the assumption of infallibility is wrong.

Though Mill mainly criticizes the false assumption of infallibility, his point is not simply that the assumption is false, but that it has bad consequences: the

assumption encourages censorship, censorship fosters error, and error reduces social welfare.⁴

Mental well-being: Mill's second anti-censorship argument focuses on the idea of "the mental well-being of mankind (on which all their other well-being depends)" (2.40). The argument moves in three steps: first, free expression permits the expression of views that challenge received ideas and encourages wide-ranging discussion. Such discussion, second, provokes listeners to use their intellectual powers to think more critically about their own views. Faced with open debate, we are better able to understand both the *grounds for* and even the *content of* our own views (2.21-23, 2.26-33). Without discussion, "there remain only a few phrases retained by rote" (2.26). Thus the liberty of thought and expression encourage the formation of an "intellectually active people" (2.20), who actively employ their intellectual capacities.

Then, third, being "intellectually active" 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 reigning orthodoxy is true*.⁵

Freedom of expression should be protected, then, because it generates a social climate that challenges us to think harder and respond to criticism. According to Mill's account of the human good, that is a basic human good both in itself and for the improved understanding that results.

So the evil of suppressing one is as great as the evil of suppressing the vast majority because the evil of suppressing one is not exhausted by the evil done *to that one*. The rest of the population also suffers also: even the orthodox

believers benefit from discussion. Mill's 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 injury that censorship does to the speaker, or because of some abstract right that we have to speak our minds, but it is better for human welfare overall.

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, Mill's argument 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).⁶ The case for a close connection between liberty and the development of our powers proceeds in two steps: First, the liberty of tastes and pursuits is required for *individuality*—for distinctive, self-directed patterns of development. Second, individuality 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).

- Is the tie between the development of human capacities and their *self*-development really so close?⁷ Maybe 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 produces depravity, not development.

Mill has three replies to this defense of custom-conformity: first, others may have it wrong about the best way to live; their interpretation of experience may be too narrow. Second, given human differences, no single model of life is appropriate to everyone (3.3, 3.14). Third, figuring out how best to live 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); instead, "human capacities are withered and starved" (3.6).

- Moreover, such liberties bring wider social benefit. They encourage "experiments in living" and "varieties of character." And this diversity provides models for others about ways to conduct their lives, and encourages individuals to develop along their own paths, rather than simply accepting custom as a guide (3.11-13). And diversity of choices encourages social progress—in politics, education, and morals (3.17-19). So we benefit both from our own liberty, and from the liberty of others, who provide models for us.⁸

8. What about costs and inconveniences?

- But what about the cost of a system of liberty? Even if protecting liberty has some very good results, the social benefits might be even greater if coercion were permitted for paternalist, moralist, and perfectionist reasons. People would be protected from the feelings of disgust, anger, or indignation that my choices cause in them, and that might increase the sum of happiness.

- Mill's response is, in effect, that the value of the liberties is rooted in their contribution to the development of human powers, a higher quality pleasure. In contrast, restrictions on harmless conduct may generate pleasure, and may protect people from certain pains, but the pleasures are, as general matter, lower quality pleasures: mere satisfactions.

Consider the suppression of disturbing speech or the enforcement of conventional morality: They remove disturbing conduct, and so contribute to contentment and social comfort. But they make, Mill claims, *no contribution to development*, even on the part of those who cleave to customary morality. On the contrary, enforced conformity may 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 higher quality pleasures.

¹ Thus, James Mill says that “The community cannot have an interest opposite to its interest.... The community within itself and with respect to itself, can have no sinister interest.” See his *Essay on Government* (1820), p. 52.

² 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.

³ 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).

⁴ 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.

⁵ “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).

⁶ 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).

⁷ “Individual spontaneity is hardly recognized by the common modes of thinking, as having any intrinsic worth....” (3.2)

⁸ “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.