

**Phil 114, April 24, 2007 until the end of semester**  
**Mill: Individual Liberty Against the Tyranny of the Majority**

*The aims of On Liberty*

- The subject of the work is “the nature and limits of the power which can be legitimately exercised by society over the individual” (5).
- The problem is no longer that of setting limits to the power that the ruler may exercise over the people, viewed as a corporate body. (Recall how this problem preoccupied Locke.)
- With the rise of democracy, the people, viewed as a corporate body, and the ruler are one.
- The problem, now, is that of setting limits to the power that the people may exercise over individuals. More precisely, the problem is protecting individuals in the minority from what Tocqueville called the “tyranny of the majority.”

The power that the people exercise consists not simply in legal penalties, but also in informal social pressures. Both have the same structure. If you don't do what the state or society says you must do, the state or society disadvantages you for that reason. For convenience, let's lump both together under the covering term, “social regulation.”

There must be some social regulation. Individual independence would be nonexistent or worthless otherwise. The question is where to draw the line.

*The Harm Principle*

At least part of Mill's answer is his famous Harm Principle:

“That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”

Mill then gives some examples of purposes that the Harm Principle disallows: “His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.” So we cannot justify social regulation on paternalistic, moralistic, or perfectionistic grounds.

- This does not mean that others may not try to change his behavior.
- Indeed, it is important for Mill that others *should* try to change his behavior.
- The point is that they must not do this *by means of social regulation*: by disadvantaging him, or threatening to disadvantage him, if he does not change.
- They must instead try to change his behavior by changing his mind, by presenting him with arguments for changing his behavior. “These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise.”

Notice several things about the Harm Principle:

- The principle governs the *reasons for which* power may be exercised. If power is to be exercised, then it must be *justified in a certain way*.
- The principle does not say that *if* an individual's conduct would harm others, *then* its social regulation is justified. The principle says only that if an individual's conduct would *not* harm others, then its social regulation is *not* justified.
- The principle applies only if the individual in question is “capable of being improved by free and equal discussion” (15). He must be a “member of a civilized community” who is “in the maturity of [his] faculties”: that is, not a savage or a child.

### *The List of Liberties*

Having said, negatively, what *isn't* free from social regulation, Mill says what, positively, *is* free from social regulation.

- (1) Firstly, “liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it.”
- (2) “Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong.”
- (3) “Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.”

We now face a question of interpretation. On the one hand, we have the HP. On the other hand, we have this “List of Liberties.” What is the connection between the two?

Many readers of Mill take the HP to be paramount: the basis of Mill’s whole defense of liberty. On this interpretation, the LL is supposed to follow from the HP. The LL is the list of actions that do not harm others: the list of actions that, according to the HP, cannot be socially regulated.

### *Problems with the Harm Principle*

On the one hand, the HP may seem too weak. Just about any behavior can harm others, on some plausible, ordinary conception of harm. Certain kinds of speech can be more painful to people, for example, than certain kinds of physical assault. An earnest religious believer might prefer to have her toe stepped on than to have to listen to the opinions of an atheist.

On the other hand, the HP may seem too strong. It seems that the government often justifiably regulates our actions even when those actions do not harm others, on some plausible, ordinary conceptions of harm: e.g., emissions standards.

### *First refinement of the Harm Principle: harming as violating duty*

One response is to refine what we mean by “harm”: I harm others whenever I *violate a duty* to them.

This helps with the too weak problem insofar as there are cases in which I “harm others” in some ordinary sense, but do not violate a duty to them. If the atheist is not violating a duty to anyone by speaking his mind, then the fact that he is “harming,” in a familiar sense, the theist does not make it acceptable, according to the HP, to regulate it.

It helps with the too strong problem insofar as there are cases in which I violate a duty to others, but do not “harm others” in an ordinary sense. If I would be violating my duty to do my fair share to make the air clean, then the HP permits the regulation of my action, even if it would not harm others in an ordinary sense.

Of course, whether we can avoid the too weak problem depends on what the “List of Duties” contains. If people have a duty to others not to speak their minds when this is painful to others, then the HP would not protect freedom of expression.

*Second refinement of the Harm Principle: applying solely to liberty of action*

Interpret the HP as governing solely interference with liberty of action, as understood by the LL.

First, some kinds of social regulation may not interfere with any of the listed liberties. In that case, they are not subject to the HP at all. We may regulate these actions even if they do not harm others. This might help with the too strong problem.

Second, if, as Mill's statement of the LL suggests, freedom of thought and expression is not a kind of "liberty of action," then the HP may not apply to freedom of thought and expression at all.

Expression should not necessarily be free, however, when it constitutes some other action, e.g., incitement to riot.

*The relationship between the Harm Principle and the List of Liberties:*

What, then, is the relationship between the LL and the HP? Suppose we want to know whether we may socially regulate the doing of X (some type of attitude or action) by Y (some group of people).

We ask: Do the members of Y either lack higher faculties, or exist in an uncivilized state?

—If yes, then we may regulate it.

If no, then we ask:

Does X belong to one of the three groups protected by the LL?

—If no, then we may regulate it.

—If yes, then we ask:

Is it liberty of thought (= (1)) or liberty of action (= (2) and (3))?

—If liberty of thought, then we may not regulate it.

—If liberty of action, then we apply the HP. That is, we ask:

Does the action harm others, in the sense of violating a duty to others? (Here we look to the LD to determine what these duties are.)

—If yes, then we may regulate it.

—If no, then we may not regulate it.

Note that the fact that we may regulate X doesn't settle whether we ought to regulate X. We need to weigh the costs and the benefits in each case.

*What justifies the List of Liberties?*

Last time, I argued that Mill's List of Liberties does not follow from the Harm Principle. So what justifies the LL?

For Mill, the LL, like all other principles, including the Harm Principle and the List of Duties, flows from the Principle of Utility. "I regard utility as the ultimate appeal on all ethical questions."

Again, however, utility isn't pleasurable feelings, in the way in which Bentham understood it. Instead, it is "utility in the largest sense, grounded in the permanent interests of man as a progressive being." That is, the fullest development and exercise of the highest human capacities, not just for one of us, but for all of us; not just now, but also in the future.

In deciding questions of social regulation, Mill thinks, we should have one basic goal in mind: the fullest development and exercise of the highest human capacities. His fundamental claim is that we will always better promote this goal by protecting the LL, constrained by the HP. The question is why he thinks this.

*The argument for liberty of thought and discussion:*

The *first argument* assumes that the belief protected by censorship might be false, whereas the belief censored might be true.

One might expect Mill to argue as follows:

- First, from where we now stand, we have reason to expect that the yield of true opinions will be greater if we censor no opinion than if we censor some opinions.
- Second, from where we now stand, we have reason to expect that the utility gained by the increased yield of true opinions will exceed whatever utility might be gained censoring some opinions.

However, Mill seems to argue in a different way:

- (i) If an authority censors other opinions on the grounds that the opinion that it is protecting is true, then that authority presupposes that it is infallible.
- (ii) No authority is infallible.
- (iii) Therefore, the presupposition of this argument for censorship is false.

Why accept (i)? Why must the censor assume that he is infallible? Why can't he say that he is entitled to proceed on the assumption that his opinion is true, not because he is infallible, but instead because he has sufficient reason to believe that it is true?

Mill's answer is that he cannot have sufficient reason to believe that his opinion is true, unless that opinion has been exposed to free discussion.

- Is complete liberty of discussion really necessary for rational assurance?
- Notice that Mill's argument, if sound, only shows that one (and the only?) argument for censorship does not work. It does not provide a positive argument against censorship.

The *second argument* grants, for the sake of argument, that the belief protected by censorship is true, whereas the belief censored is false.

Still, Mill argues, exposing the protected opinion to free discussion will lead those who hold it to understand better both the *justification* and the *content* of that opinion.

But supposing that people affirm the protected opinion, and that the protected opinion is true, then why should it matter whether people also understand its justification and content? What more does such understanding add?

For one thing, Mill argues, unless they understand the justification and content of the opinion, their affirming it—in the sense of their paying lip service to it—won't be of any use to them or anyone else. Otherwise, they won't act on the opinion; it won't have any practical effect.

More importantly, in making up their own minds about the opinion, people exercise one of their highest capacities. This is a good in itself, indeed one of the greatest goods in Mill's system. This good can be realized only under conditions of freedom. It is realized even if people arrive at false opinions.

*The argument for liberty of action:*

- (i) First, people may be mistaken about the best way to live. The only way to find out is to allow individuals to conduct "experiments in living." (Why isn't freedom of thought and discussion enough? Why can't we just argue about which way to live is best? Why do we need to prove it practically? Part of the answer may have to do with the Decided Preference Test. We need to experience the alternatives to be in a position to evaluate them.)

- (ii) Second, deciding for oneself how to live is itself the exercise of a higher faculty. There is no other way to realize this value than to give people the conditions to do it for themselves. Here the significance of free choice is *constitutive*; it is part of the very thing that is valuable.
- (iii) Third, there may be no single best way to live. Differences in circumstances and character may suit people to different lives. As it stands, however, this is an argument for permitting different ways of life to be pursued. It is not yet an argument that people should be *at liberty to choose* which of these ways of life to pursue (as opposed, say, to some central authority determining it for them). Mill needs the further claim, which he later makes, that individuals are the best judges of which way of life suits their circumstances and character (85, 92–93). The significance of free choice is *predictive*. Which life one chooses to pursue is a reliable *indicator* of which life best suits one's particular circumstances and character.

Note that the first and second arguments are analogous to some of Mill's arguments for freedom of thought and discussion. The third argument, however, has no analogue. Why is this?

### *The structure of Mill's justification*

When combined with the distinction between higher and lower pleasures, the PU in effect recommends the following strategy:

- First, focus entirely on ensuring that people's basic needs are met to an adequate degree, that they have the requisite complement of the lower pleasures.
- Once you've done that, then shift your attention to ensuring that they cultivate and exercise the higher faculties, that they realize the higher pleasures.

What kind of social regulation best suits this two-part strategy?

There are things individuals can do to meet basic needs. They can refrain from injuring others physically or taking from them what they need. They can also provide assistance to others in emergencies, and do their part in collective projects designed to keep them safe and healthy. The basic needs of others can justify duties on others' part. Socially regulating these duties—compelling people to perform them—is not necessarily counterproductive. What matters is that others' basic needs are met; the fact that I was compelled to meet them doesn't detract from this.

There are also things that individuals can do to promote the cultivation and exercise of the higher faculties.

- Individuals can try to cultivate and exercise *their own* faculties. Social regulation of this would be counterproductive. Individuals need to do it for themselves in order to do it at all.
- For this very reason, individuals cannot directly cultivate and exercise the faculties *of others*. The most they can do is, first, to provide others with the freedom that others need to cultivate and exercise their faculties and, second, to engage others in discussion and present others with the example of their own "experiments in living." The social regulation of the first is not necessarily counterproductive. What matters is that others have the liberty; the fact that I was compelled to cede it to them doesn't detract from this. The second is simply the exercise of individuals' own liberties, seen from the outside, so we already have an argument against its social regulation.

From the standpoint of social planners, then, we have a kind of division of labor: the LD for lower pleasures, the LL for higher pleasures, and the HP for conflicts between the two.

- We socially regulate the LD to ensure that basic needs are met to such an extent that the higher faculties can then be cultivated and exercised.
- Having done this, the best we can do to promote the cultivation and exercise of the higher faculties (provided that we are dealing with civilized adults, who are capable of cultivating and exercising their higher faculties) is to protect the LL, by not socially regulating the exercise of

these liberties (and perhaps also socially regulating actions that would socially regulate the exercise of these liberties by others).

- The HP is needed because there can be conflicts between the lower pleasures of some and the higher pleasures of others. Suppose that by exercising what would otherwise be a liberty, one would violate a duty to another. Then there is a conflict between the cultivation and exercise of some higher faculty of one's own and the fulfillment of a basic need that the other requires in order to be in a position to cultivate and exercise her higher faculties. What the HP says is that when such conflicts arise, there is no general answer about how they should be resolved. We then need to weigh the two ends. It may be the case that the lower pleasure is more important, in which case the socially regulation of what would otherwise be a liberty is sanctioned.

*Do the numbers matter?*

Why is Mill so sure that the benefits of liberty always outweigh the costs? What if *one* person, by exercising his liberty, makes *many others* unhappy?

Because, Mill argues, *there are no costs*. There are *only benefits*. The others who are peeved by the one person's opinion have nothing to gain in silencing it. Their sense of satisfaction would not promote utility, as Mill understands it. Indeed, they have much to gain by not silencing it. Being confronted with the opinion engages their higher faculties.

*What about the harm to the intolerant?*

"There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it" (93).

- One's initial worry is that this begs the question. It *presupposes* that people have a right to their own opinions. Why should they have that right?
- Mill's answer must be that it promotes general utility. There is no cost to the bigot. Being confronted with a contrary opinion is not a bad thing for the bigot, however painful it may seem to him. If anything, it is a good thing; it stimulates his own faculties.

*Is some paternalistic interference justified?*

- Mill's underlying justification of his doctrine of liberty would seem sometimes to license paternalistic interference.
- What if we know that the way in which she is exercising her liberty now will undermine her ability to cultivate and exercise her higher faculties in the future?
- Mill grants that this is so in at least one case, that of voluntary slavery.
- Might other kinds of paternalistic interference be justified on the same grounds? What about activities that threaten one's own life or health?

*A moral of the story: the relation between tolerance and moral truth*

Many think that in order to believe in tolerance, it is necessary to deny that there are any moral truths. If there were moral truths—the thought runs—then, when we believed that others were not acknowledging these truths, we would be justified in forcing them down their throats.

Mill's argument, if it is successful, shows that denying that there are moral truths is not necessary for defending tolerance. Mill thinks that there are correct answers to questions about what is right and wrong, as well as to questions about what is of ultimate value. Nevertheless, he thinks that these truths support a principle of tolerance.