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J.S. Mill's Re-Conceptualization of Liberty

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J.S. MILL'S RE-CONCEPTUALIZATION OF LIBERTY

by

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To my parents:

To John R. Garmong, without whose moral and material support this dissertation
could not have been completed,

and

To Janis R. Garmong, who taught me to ask questions

J.S. MILL'S RE-CONCEPTUALIZATION OF LIBERTY

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In this dissertation, I argue that John Stuart Mill does not defend a classical liberal, Lockean idea of liberty as freedom from coercion, especially governmental coercion. Rather, I argue that Mill has something much more radical in mind: for Mill, liberty requires freedom from the much broader idea of “the moral coercion of public opinion.”

Mill’s so-called “harm principle,” which is at the root of his defense of liberty, is often common-sensically interpreted according to what I term the *political interpretation* of the harm principle. On the political interpretation the harm principle is intended to restrict the use of coercion, especially governmental coercion. On the political interpretation the harm principle is intended to draw a line between those areas of life that are subject to moral sanctions, and those that are subject to the law. All the mechanisms of moral suasion, including even

boycotting, excommunication and shunning, are available to the moral realm; but when one's actions harm another, they become subject to legal punishment.

In contrast to the political interpretation, I urge an interpretation I call the *social interpretation* of the harm principle. According to the social interpretation, the harm principle is intended to restrict expressions of disapproval, such as boycotting or blacklisting. According to the social interpretation, the harm principle rules out any such notion as private morality/immorality: for something to be considered immoral, it must harm others.

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CHAPTER 1:
**THE SCOPE OF JOHN STUART MILL'S "HARM
PRINCIPLE"**

Two Conflicting Interpretations of the Harm Principle

John Stuart Mill's "harm principle," the idea that society must not interfere with an individual's freedom except to prevent harm to others, is clearly intended to protect the individual's actions in some privileged private sphere. This is central to Mill's socio-political project in *On Liberty*, a book Mill described in the *Autobiography* as

A kind of philosophic text-book of a single truth, which the changes progressively taking place in modern society tend to bring out into ever stronger relief: the importance, to man and society of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions. ¹

The harm principle² formalizes the limits of that "full freedom." Like any political theory worthy of the name "liberalism" (liberalism, in whatever form, being characterized by its advocacy of some concept of liberty), Mill's socio-political theory must take some limitations on social interference with the individual as a

¹ *Autobiography*, Chapter VII, ¶20.

² The same idea is sometimes called the "liberty principle." It should be noted that neither phrase, "harm principle" nor "liberty principle," appears in Mill's own works.

central feature. The harm principle, as the form that limitation takes in Mill's theory, is obviously at the core of his social philosophy.

It is not immediately clear, however, what sort of sanctions Mill means the harm principle to protect the individual from. It is often believed that Mill intends the harm principle as a limitation on coercion, specifically the activities of the government.³ This view, which I shall call the *political interpretation* of the harm principle, says that "governments may never regulate or prohibit conduct unless they can show that it definitely harms (or definitely risks harm to) other citizens."⁴

On the political interpretation, *On Liberty* draws a line between private immorality (such as frequent drunkenness, drug use, or sexual deviancy) and conduct susceptible to political control. The merely immoral is distinguished by its harming only (or primarily) the agent; that which harms non-consenting others, on the other hand, is potentially open to coercive intervention by the state. Individuals may criticize or even morally condemn behavior that does not harm others, may shun or boycott the person who acts immorally, but may not coercively interfere with his or her actions.

³ While an individual (a mugger) or an extra-governmental organization (the mafia) *may* exercise coercive power, I focus on the state as the primary wielder of such power. Those who have adopted the political interpretation have been concerned with the harm principle as a foundational principle of political theory, so this emphasis should do no injustice to their interpretation.

⁴ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: The Belknap Press of Harvard University Press, 1996), p. 235.

Gutmann and Thompson's formulation neatly combines two alternative readings: one, according to which the state may interfere only with actions that cause harm to others; the other, according to which the state may interfere with non-harmful actions in order to prevent harm to others, as when the law requires all drivers to obtain vehicle-safety inspections in order to prevent accidents. For my immediate purposes, the difference between these two readings is immaterial.

In this chapter, I argue that the political interpretation of the harm principle is not what Mill intends to defend; rather, I argue, Mill's harm principle should be understood according to an interpretation I call the *social interpretation* of the harm principle.⁵ The social interpretation holds that Mill intends the harm principle to restrict not just governmental actions but also the much broader, harder-to-define realm which he terms "the moral coercion of public opinion." The major line drawn in *On Liberty*, as Alan Ryan argues,

is not a distinction between law and morality, but between the sort of conduct subject to law-or-morality on the one hand and that which is subject to neither of these but to prudential or aesthetic appraisal on the other."⁶

The very point of *On Liberty*, according to Ryan, is to challenge the hard-and-fast, principled distinction between legality and morality.

According to the political interpretation, the harm principle is intended exclusively as a prohibition of coercion. As government is the agency with the primary means to initiate coercion, the harm principle then becomes primarily a check on the government. According to the social interpretation, on the other hand, the harm principle is every bit as much a check on private individuals and non-governmental organizations as it is on the state. The state is seen by the social interpretation as merely one of many institutions capable of inflicting harm, not in principle different from any church, political party or other voluntary association.

⁵ It should be noted that the topic of the present chapter is not the truth or falsity of either version of the harm principle. Instead, I am seeking to pin down Mill's usage. I ask not which version of the harm principle, if either, is true; but which is true to *On Liberty*.

⁶ "John Stuart Mill's Art of Living," in Gray and Smith, eds., *J.S. Mill On Liberty in Focus*. (New York: Routledge, 1991) Originally published in *The Listener* (Oct. 21, 1965), pp. 60-62.

On the political interpretation, the harm principle is intended to restrict the use of coercion, narrowly defined. (The exact boundaries of the class of actions to be deemed coercive need not concern us here, but it would include such actions as direct physical assault on one's person or destruction of property.) On the social interpretation, in contrast, the harm principle is intended to restrict the expression of moral disapprobation by individuals or institutions. It demands that disapprobation must be expressed only in forms not calculated to cause harm to their targets.

In its central idea, the social interpretation encompasses the political interpretation, rather than contradicting it. The social interpretation agrees with the political interpretation that coercion is an evil, but it seeks to extend the same understanding to certain non-coercive actions. However, the social interpretation does contradict the political interpretation in one important conceptual component: the status of so-called "private immorality."

On the political interpretation, the harm principle is intended to carve out an area of private morality/immorality, not to be interfered with by the state. It establishes a principled distinction between that which is prohibited by the government and that which is "prohibited" by morality. According to the social interpretation, however, such a principled distinction is precisely what the harm principle is intended to rule out. There may be some immorality which is *imprudent* for the state to make illegal, but none is in-principle off-limits.

The social interpretation holds that the harm principle is every bit as much a check on moral disapprobation as it is on coercion. A major theme of Mill's

discussion is that private expressions of disapproval must be governed by the same "one very simple principle" as the actions of the state. The harm principle is constitutive of both morality and politics, and both the immoral and the illegal are susceptible to punishment, the difference being only the kinds of punishment each employs.

According to the social interpretation, then, Mill *is* drawing a line in the sand; the purpose of the line *is* to protect certain actions from the interference of others; the basis of the distinction *is* whether or not a given action harms others. But morality, all of it, is on the side of that which may be socially controlled.

Here is the distinction, in graphic form:

<p style="text-align: center;">POLITICAL INTERPRETATION OF MILL'S "HARM PRINCIPLE"</p>	<p style="text-align: center;">SOCIAL INTERPRETATION OF MILL'S "HARM PRINCIPLE"</p>
HP is primarily a check on government.	HP is primarily a check on private individuals.
HP is intended to restrict the use of coercion (narrowly defined).	HP is intended to restrict the expression of moral disapprobation.
HP delineates the categories of private morality/immorality.	HP rules out the categories of private morality/immorality.

On the surface, this reinterpretation of *On Liberty* may seem to be a largely semantic issue. In fact, however, to see it this way would be a mistake.

The social interpretation, if true, has important implications for our understanding of John Stuart Mill's moral and political philosophy.

First, it helps us to understand what policies Mill is in fact urging. In the quest for greater social freedom, I argue, Mill in fact supports an expanded latitude for coercive interference with the non-coercive actions of the individual. If any instance of causing harm on the basis of self-regarding actions is tantamount to censorship, then a great many private actions become censorious. For example, boycotts and protests — central freedoms protected by traditional free speech theory — must be significantly limited if Mill's argument is to be put into practice. Indeed, such issues have become centerpieces of the debate over freedom of speech in the Twentieth and Twenty-First Centuries, via such issues as government funding for the arts, private blacklisting, and academic freedom.

Secondly, understanding more accurately what Mill meant by the harm principle clarifies Mill's relationship to the history of liberalism. Although both classical and contemporary liberalism uphold freedom, their understandings of that freedom, what it means and what it entails, diverge widely. Classical liberalism, represented by the works of John Locke, America's Founders, and such British Whigs as Trenchard and Gordon, held that freedom of expression requires only the freedom from coercive censorship. Contemporary liberalism, on the other hand, is based on a different idea, the one propagated by John Stuart Mill, that freedom of speech requires also that one be free from damaging social pressure. Once we understand that this is, indeed, the conception urged by Mill,

we can better understand Mill's role as a linchpin of the change from classical to modern liberalism.

Lastly, the social interpretation will help shed light on some of the seeming contradictions within Mill's political writings. For example, a point urged by the so-called "Two Mills" interpretation⁷ is that the liberal Mill who defends free speech in *On Liberty* contradicts the conservative Mill of "The Spirit of the Age" and other works that call for an intellectual elite to "punish" immoral conduct. This would be a breach of Mill's liberalism if one interpreted "punishment" to mean coercive punishment, and "immorality" to refer to "private immorality." But, as the social interpretation shows, Mill means "punishment" to include social sanctions, and immoral conduct refers exclusively to that which harms others. Thus, Mill's seemingly illiberal statement translates into an argument that the leaders of intellectual society should urge social sanctions against those who harm non-consenting others. This claim is by no means illiberal, nor is it a contradiction of Mill's form of liberalism.

John Locke's Understanding of Free Speech

Since Mill begins *On Liberty* by locating himself within the history of liberalism, it may be helpful to begin my investigation of Mill with some historical background. The concept of liberty being central to any liberal political theory (the word "liberal," of course, coming from the same Latin root as

⁷ As defended, for example, by Gertrude Himmelfarb and Joseph Hamburger.

"liberty), we may usefully categorize different liberal theories according to their respective definitions of liberty.

The classical liberal understanding of liberty is laid out especially clearly in the defense of free speech presented by John Locke, so I shall begin there. Ultimately, I think, *On Liberty* may be seen as an answer to the ideas central to Locke's first *Letter Concerning Toleration*.⁸ I shall argue that there is a crucial argument missing from Locke's *Letters*, a gap which Mill capitalizes on in *On Liberty*.

John Locke's argument for freedom of conscience sounds strikingly similar to one of Mill's core arguments: that liberty is a necessary condition for the pursuit of truth. Locke's central argument is that "such is the nature of the Understanding, that it cannot be compelled to the belief of anything by outward force."⁹ Like Mill's, Locke's is an activist epistemology: to understand a tenet, he

⁸The subject addressed by Locke, of course, is not liberty in general, but religious liberty. But there is no reason the central arguments cannot be applied, *mutatis mutandis*, to liberty in general. The point of Locke's *Letter* is to defend the thesis that the truth cannot be instituted by law. Insofar as the justification for censorship is the defense of truth, therefore, Locke's arguments apply whether or not the subject in question is specifically religious.

That said, I am aware that certain of Locke's arguments invoke particular features of (Judeo-Christian) religion, and will not apply directly to non-religious speech or conduct. I shall focus only on those arguments that are of general interest.

A final note of clarification: in regarding Locke as a defender of free speech I do not, of course, mean to imply that he understood free speech in the same way as modern theorists of free speech. Locke exempts Catholicism and atheism from free speech, on the grounds that both inherently imply lawlessness. He may well have understood free speech in the Blackstonian manner, as the mere absence of prior restraint on speech; a standard which leaves the government free to punish the speaker after the fact. My goal in comparing Mill to Locke is to point out only one central aspect of Locke's theory: his definition of free speech in strictly political, rather than broadly social terms.

⁹ *LCT*, p. 27. It should be noted, however, that Locke clearly does not mean "outward force" to include non-coercive forms of influence (such as cajoling or shunning), but only "confiscation of estate, imprisonment, torments."⁹

holds, means to process it rationally. One can mouth the words of a belief, but if it has not first been processed in the proper way it is not truly belief but "hypocrisy."¹⁰

This is a truly striking claim. It is easy enough to see that in order to believe a proposition, such as that taking zinc prevents one from catching the flu, it is not enough to memorize the words. Like the operator of Searle's Chinese room, one would not *believe* that zinc prevents one from catching influenza until one knew certain content, for example: what it means to "catch" the flu, what zinc is, what it means to "prevent" an occurrence. Otherwise, one is merely parroting sounds, not expressing propositional contents. But Locke's theory goes well beyond these relatively uncontroversial claims. According to Locke, one cannot be said to believe that taking zinc prevents one from catching influenza until one is aware of some fact or facts that *justify* the belief.

Locke writes:

[N]o man can so far abandon the care of his own salvation as blindly to leave it to the choice of any other, whether prince or subject, to prescribe to him what faith or worship he shall embrace. For no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consists in the inward and full persuasion of the mind; and faith is not faith without believing.¹¹

The importance and radical nature of this point are partially obscured by Locke's rhetoric. Locke sounds as if he were making a merely normative point: that "true religion" has more "life and power" if it is based on "inward and full persuasion."

¹⁰ *LCT*, p. 27.

¹¹ *LCT*, p. 26.

But the literal meaning of his point is that "no man *can*" believe an idea simply because someone else believes it, even "if he would." Locke's point is not that one *should* not accept an idea without understanding the evidence for it. The point is even more striking: that one *cannot*, in any significant sense, believe that for which one does not understand the evidence.

Locke certainly understands the too-real possibility of people framing their viewpoints based on others' beliefs, rather than on observation and reason — that they may "judge of things by men's opinions," rather than "opinions by things."¹² Indeed, Locke complains, that "by which men most commonly regulate their assent, and upon which they pin their faith more than anything else ... is, *the opinion of others*."¹³ His point is that such assent is not properly to be termed "understanding," but is a species of ignorance.

Obviously, Locke is not claiming that no one understands an idea except after complete and thorough understanding and processing of sufficient evidence by rigorous inductive and deductive logic. That is, it must be possible legitimately to *think* one has properly understood the evidence for a claim, when in fact its support is specious. Otherwise, there would be no room for error or for the learning process: either a given individual would have proven an idea beyond a reasonable doubt, or it would be meaningless in his or her mind. Considerable discussion in the *Essay* is dedicated to what Locke terms "degrees of knowledge"¹⁴ and "degrees of assent."¹⁵ What is required is to make "as full and

¹² *Conduct of the Understanding*, §24; *Works* II, 363.

¹³ *Essay Concerning Human Understanding*, IV, XV, 6.

¹⁴ IV, II.

exact an inquiry as [one] can make,"¹⁶ while "not entertaining any proposition with greater assurance than the proofs it is built upon will warrant."¹⁷ What is impossible is "illumination without search, ... certainty without proof and without examination."¹⁸

Merely professing to agree with a proposition does not stand as proof that one has made the "full and exact inquiry" demanded by the truth. Locke argues that "the external profession and observation, if not proceeding from a thorough conviction and approbation of the mind, is altogether useless and unprofitable."¹⁹ But as long as one cannot literally force a mind to think, external profession is the only thing that censorship can mandate. "For," as Locke wrote in an earlier essay, "punishment and fear may make men dissemble; but, not convincing anybody's reason, cannot possibly make them assent to the opinion."²⁰ Hence Locke concludes that censorship, even granting that it is exercised in the interest of true ideas,²¹ cannot promote understanding of the truth.

¹⁵ IV, XVI.

¹⁶ *Essay*, IV, XVI, ¶ 1.

¹⁷ *Essay*, IV, XIX, ¶ 1.

¹⁸ *Essay* IV, XIX, ¶ 8.

¹⁹ *Letter*, p. 22.

²⁰ "An Essay on Toleration," in *Political Essays*, ed. Mark Goldie (Cambridge: Cambridge University Press, 1997), p. 155.

²¹ It may well be that Locke is being ironic in granting the premise that the idea receiving governmental support is true. Horton and Mendus ("Locke and Toleration:," in *A Letter Concerning Toleration in Focus* (New York: Routledge, 1991)) suggest that, in fact, Locke's *Letter* is a thinly disguised discussion of the persecution of protestants under Louis XIV and Charles II, in which case Locke would clearly be talking about a case in which suppression is being exercised to suppress that which Locke considers true. It is interesting to note that the third *Letter* ventures far closer to an argument from skepticism than does the first.

The direct topic of the *Letter* is censorship of religious ideas, and Locke's discussion there focuses on whether insincere profession can be "well-pleasing unto God."²² However, the connection to the *Essay* indicates that the argument of the *Letter* would apply equally well to any abstract ideas (what Locke terms "demonstrative knowledge").²³

Locke draws a distinction between self-regarding and other-regarding action, the same distinction, of course, which is central to Mill's argument. "Care of every man's soul," Locke argues, "belongs to himself, and is to be left unto himself. Laws provide, as much as possible, that the goods and health of subjects be not injured by the fraud or violence of others; they do not guard them from the negligence or ill-husbandry of the possessors themselves."²⁴ However, for Locke the distinction between self-regarding and other-regarding is the means to distinguish between the illegal and the merely immoral. In other words, Locke is clearly defending something very close to the political interpretation of the harm principle.

The purpose of the first *Letter*, says Locke, is "to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other."²⁵ The business of the magistrate is "by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things

²² *LCT*, p. 18.

²³ *Essay*, IV, II, ¶ 2.

²⁴ *LCT*, p. 35.

²⁵ *LCT*, p. 17.

belonging to this life."²⁶ The means at the magistrate's disposal is "force,"²⁷ as established by law.²⁸

The business of religion, on the other hand, is "the public worship of God, and by means thereof the acquisition of eternal life."²⁹ Locke's emphasis is on the moral function of religion, which he considers indispensable for good conduct.³⁰ The powers available to a church are those "suitable" to cause real change in people's minds. "The arms by which the members of this society are to be kept within their duty, are exhortations, admonitions, and advice."³¹

The basis on which Locke draws the distinction between that which is the individual's responsibility and that which is open to social control is not whether or not an action harms others, but whether it is coercive. Whereas Mill differentiates according to the criterion of whether or not a given act affects others (with whatever restrictions on the kind of effect that counts), Locke distinguishes statecraft from soul-craft according to whether or not an act is coercive (whether or not it constitutes "fraud or violence").

Locke defends the right of a religious sect to excommunicate any of its members who fail to follow its teachings and/or practices — a policy that I shall later argue would be ruled out by Mill's prohibition against "the interference of collective opinion with individual independence."³² "No church," Locke writes,

²⁶ *LCT*, p. 17.

²⁷ *LCT*, pp. 27, 47.

²⁸ *LCT*, pp. 46, 48, 49.

²⁹ *LCT*, p. 22. See also p. 20.

³⁰ *LCT*, p. 46.

³¹ *LCT*, p. 22.

³² *OL*, Chapter 1, ¶5.

"is bound by the duty of toleration to retain any such person in her bosom, as, after admonition, continues obstinately to offend against the laws of the society."³³ The reason is that a church is "a voluntary society of men, joining themselves together of their own accord."³⁴ A church is not vested with the power of coercion, says Locke, therefore the threat of excommunication does not violate the liberty of its members. The notable exception to this claim would be if a church's members subjected its former members to "rough usage," by which Locke means "damnifi[cation] in body or estate..." in other words, coercion narrowly defined. "For all force... belongs only to the magistrate, nor ought any private persons, at any time, to use force; unless it be in self-defense against unjust violence."³⁵

If one were to translate Locke's argument into the terms of the harm principle, then, his would surely be in line with the political interpretation, not the social interpretation.³⁶ The means that Locke considers capable of violating religious liberty is coercion; the primary enemy from whom we are to be protected is the magistrate; the restriction on individuals is only that they may not take on the quasi-governmental power to coerce.

However, there is a crucial argument missing from Locke's account. Locke has provided a reasonably persuasive defense of the idea that coercion is

³³ *LCT*, p. 22. The context makes it clear that, by "laws of the society," Locke means the rules of the religious body in question, not the civil law.

³⁴ *LCT*, p. 20.

³⁵ *LCT*, p. 23.

³⁶ It is admittedly something of a stretch to attribute any sort of harm principle to Locke, since the pivotal issue for him is not harm but coercion.

inappropriate in the realm of ideas. However, he has not given an argument that coercion is *uniquely* inappropriate. If such "external penalties" as the threat of imprisonment can produce only hypocrisy, not understanding, why are non-coercive penalties — such as the threat of excommunication, black listing, and all the arsenal of moral conformism — any less pernicious? If "the care of souls is not committed to the civil magistrate *any more than to other men*,"³⁷ then what is the status of those other men? What of the religious leaders who seek to "care" for our souls by means of social pressure, boycotts and other non-coercive means? In other words, are there not forms of non-coercive action that have the same practical effects as coercive censorship?

This is a serious gap in Locke's argument. If the fundamental distinction between coercion and persuasion breaks down, then it may be the case that some churches use tactics that violate the freedom of their members every bit as much as state censorship. But then the kind of laissez-faire attitude by the state toward religion, which Locke advocates, would be unfounded. This, I argue, is precisely the move urged by John Stuart Mill.

Basis for the Political Interpretation

To be sure, it is tempting to read John Stuart Mill's harm principle according to the political interpretation, which Alan Ryan refers to as the

³⁷ *LCT*, p. 18. Emphasis added.

"received view of Mill's case."³⁸ In the context of the dominant judicial interpretation of America's First Amendment, we typically discuss free speech — by far the largest specific concern of *On Liberty* — as a limitation on the actions of the government; it is *Congress* that is restricted by the First Amendment, and the restriction is that it shall *pass no law* abridging freedom of speech.³⁹ The letter of the First Amendment is mute with regard to individuals exercising their choice in the marketplace, in their professional or personal associations, or any other non-coercive sphere of action.⁴⁰ It is only very indirectly, qua voters electing representatives, that the citizens are at all restricted by the First Amendment. It says only that we may not expect our electors to support our viewpoint or censor others.

Although, later, I shall note that Mill's central *theoretical* statements suggest the social interpretation, Mill's choice of examples in *On Liberty* focuses almost exclusively on the political. "Applications," the final chapter of *On*

³⁸ *Ibid.*, p. 162. It should be noted that the terminology of the political and social interpretations is my own, not Ryan's.

³⁹ See the first chapter of Mark Graber, *Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism*. (Berkeley: The University of California Press, 1991).

⁴⁰ Indeed, as some scholars have pointed out, the Framers seem not to have intended the First Amendment even to limit the actions of state governments. See Stanley C. Brubaker, "Original Intent and Freedom of Speech and Press," in Eugene W. Hickok, Jr., ed., *The Bill of Rights: Original Meaning and Current Understanding* (Charlottesville: University of Virginia Press, 1991). The *locus classicus* for this argument is Leonard Levy's *Legacy of Suppression* (New York: Oxford University Press, 1960).

It should be noted that some scholars of free speech, notably Cass Sunstein and Owen Fiss, argue for a more expansive interpretation of the First Amendment based on what they take to be the Founders' intent (what Sunstein terms "Madisonian ideals"). Even if this interpretation is true to the original purpose of the amendment, it seems unarguable that it requires us to go considerably beyond either the wording of the Constitutional text or the original intent of the Framers — at least if, by "original intent," we mean not the abstract goal but the concrete practices envisioned by the majority of those who cast relevant votes on the First Amendment.

Liberty, is given over entirely to a discussion of examples of governmental policy: alcohol prohibition, interference with free trade, regulations on the sale of poisons and other substances likely to be used for criminal purposes, legal restrictions on drinking alcohol, interference by the state with pimps and panderers, taxing drugs and alcohol to discourage consumption, governmental nonsupport of contracts for slavery, compulsory education, laws against the marriage of those incapable of supporting a child, governmental provision of goods and services, and mandatory education. With respect to none of these examples does he discuss the non-governmental sphere, nor even hint that there is any such aspect.

In addition, some crucial passages in Mill's theoretical discussion seem to treat the harm principle as primarily or exclusively a doctrine applicable to the state. For example, a paragraph before his famous statement of the harm principle, Mill complains that "there is, in fact, no recognized principle by which the propriety or impropriety of *government interference* is customarily tested."⁴¹ Most people support or oppose any particular governmental policy, he says according to their own expediency, rather than...

...any opinion to which they consistently adhere, as to what things are fit to be done by a government. And it seems to me that in consequence of this absence of rule or principle, one side is at present as often wrong as the other; the interference of government is, with about equal frequency, improperly invoked and improperly condemned.⁴²

If this were Mill's problematic, then the subject of *On Liberty* would be primarily governmental. His goal would be to get past pragmatic arguments for or against

⁴¹ *OL*, Ch. 1, ¶ 9. Emphasis added.

⁴² *Ibid.*

particular governmental policies, to define a basis for a principled distinction between proper and improper *governmental* actions.

Another theoretical statement suggesting the political interpretation comes in Mill's discussion of the argument that being the subject of religious persecution was in fact a benefit to the truth. Mill summarizes the argument as the view: "that persecution is an ordeal through which truth ought to pass, and always passes successfully, *legal* penalties being, in the end, powerless against truth."⁴³ Although Mill is summarizing an argument made by others (notably Samuel Johnson), he could surely have done so in such a way as to encompass both legal and social penalties.

Mill opens his famous discussion "Of the Liberty of Thought and Discussion" in chapter two by reference to *governmental* attempts to control the expression of opinion.

The time, it is to be hoped, is gone by, when any defence would be necessary of the "liberty of the press" as one of the securities against corrupt or tyrannical government.⁴⁴

Here, the liberty of the press is set against the tyrannical tendency of government. While social pressure may be brought to bear against the critic of government, it is to be presumed that the primary enemy from whom such criticism must be protected is the state itself.

Throughout most of this first paragraph, Mill refers to public opinion only as prompting governmental actions, not as a distinct and equivalent form of

⁴³ *OL*, Ch. 1, ¶ 17. Emphasis added.

⁴⁴ *OL*, Ch. 2, ¶1.

suppression. The agency which he considers ready to violate the liberty of the press is "a legislature or an executive," not the populace. "The best *government* has no more title to [the exercise of coercion] than the worst."

However, the problematic of the paragraph makes clear why Mill would place his emphasis there. *On Liberty* does battle with many opponents, from conservatives such as Comte to liberals such as Rousseau and the Benthamites. In this paragraph, Mill is concerned specifically to attack a majoritarian democratic view (held variously by Rousseau and the Benthamite radicals, among others) which holds that state power, exercised in accordance with the will of the people, can never be regarded as tyrannical. This theory, which Mill says is widely accepted, is set "against permitting a legislature or an executive, *not identified in interest with the people*, to prescribe opinions to them...." Government in his day attempts to control opinion only "when in doing so it makes itself the organ of the general intolerance of the public."⁴⁵

This discussion in Chapter Two echoes the introduction of *On Liberty*, with its historical breakdown of the case for liberty. Liberal society of Mill's day had rejected the right of an elite such as an established Church to impose its views by force, but the power to silence had been transferred to the hands of the majority. Mill intends to expand the doctrine of liberty, providing the individual protection from democratic regimes as well as non-democratic. The issue Mill is discussing in this passage is an entirely separate issue from the still-further step

⁴⁵ *Ibid.* Emphasis added.

that I believe Mill intends to take: the extension of protection also from the "tyranny" of public opinion.

The grounds on which he rejects this extreme democratic viewpoint suggest Mill's real agenda. He could have argued merely that the democratic state has no more right to interfere with individual liberty than non-democratic states. In this case, the doctrine Mill is propounding would be a political theory of liberty; this is not the tack Mill takes. He does not argue that anything unique about the state (whether democratic or non-democratic) makes suppression evil; Mill "den[ies] the right of the people to exercise such coercion, either *by themselves* or by their government."⁴⁶ Clearly, he considers the power to "suppress" an idea to be one that can be exercised, in the relevant sense, outside the coercive power of the state.

However, Mill does not telegraph this, his most revolutionary doctrine. Given that Mill himself emphasizes the application of his theory to the state, it should not be surprising that, while noting Mill's language implying the social interpretation, most scholars fail to see the implications of that language.

For example, the 1960s debate over Britain's sodomy and prostitution laws, touched off by the report of the Wolfenden Committee, was dominated by the political interpretation.⁴⁷ In claiming that the government should not interfere with private immorality, only with that which harms others, the Committee was commonly taken to be defending a Millian idea. If my interpretation is correct,

⁴⁶ *Ibid.*, ¶ 2. Emphasis added.

⁴⁷ *Report of Committee on Homosexual Offenses and Prostitution* (1963).

however, Mill means the harm principle to assert that "private immorality" cannot exist — that only actions affecting others may properly be termed immoral.

Patrick Devlin, in his response to the Wolfenden Committee (and ultimately to *On Liberty*⁴⁸), also relies upon the political interpretation .⁴⁹ H.L.A. Hart, responding in turn to Devlin, names as the purpose of *On Liberty* to answer the question: "Is the fact that certain conduct is by common standards immoral sufficient to justify making that conduct punishable by law? Is it morally permissible to enforce morality as such? Ought immorality as such to be a crime?"⁵⁰

Zechariah Chafee considers Mill to be unambiguously in league with Milton, both of them holding that free speech is properly served if there is no governmental interference with speech. "In their simpler times, they thought it enough to remove legal obstacles like the censorship and sedition prosecutions." Indeed, he uses this as the basis of a criticism of Mill: the idea of free speech as freedom from government is, Chafee claims, too thin. "To us this policy is too exclusively negative. For example, what is the use of telling an unpopular speaker that he will incur no criminal penalties by his proposed address, so long as every hall owner in the city declines to rent him space for his meeting and there are no vacant lots available?"⁵¹ Writing in the face of post-war anti-communism and

⁴⁸ *The Enforcement of Morals*. New York: Oxford University Press, 1965 (first published 1959), p. 88.

⁴⁹ *Ibid.*, p. 103-4.

⁵⁰ *Law, Liberty, and Morality*. Stanford: Stanford University Press, 1963, p. 4.

⁵¹ *Free Speech in the United States*. Cambridge, Massachusetts: The Harvard University Press, 1946. P. 159. There is some reason to believe Chafee's interpretation of Milton is as mistaken as his reading of *On Liberty*, but this is a subject for another discussion.

intolerance of communists and fellow-travelers, Chafee argues that it should be considered insufficient to have a mere absence of coercion, given that non-coercive actions may affect others' ability to speak.⁵²

Chafee does not claim entirely to disagree with the basic conception he attributes to Mill and Milton, he merely calls for a qualification of it, a recognition "that friction is a much bigger drag on the progress of Truth than they [Locke and Milton] supposed. Efforts to lessen that friction are essential to the success of freedom of speech."⁵³ (The efforts Chafee has in mind include such things as public funding for arts and letters.) If the social interpretation is right, however, then Mill's motivation for the discussion of freedom of thought and expression in *On Liberty* is precisely to ameliorate the "friction" that comes from social intolerance of radical ideas. If the social interpretation is correct, then Chafee's critique misses Mill's point.

Popularized and introductory treatments of *On Liberty* almost invariably treat it as a merely political work. For example, Susan Leigh Anderson's *On Mill*, part of the popular Wadsworth Philosophers Series, states that the argument of *On Liberty* is restricted to "the proper relationship between the state, as the representative of society as a whole, and individual citizens."⁵⁴ While it is true, on the social interpretation, that the state is a particularly powerful representative

⁵² Although much of Chafee's 1946 book is borrowed from his earlier *Freedom of Speech* (New York: Harcourt, Brace and Howe, 1920), his criticism of Mill is new to the later *Free Speech in the United States*.

⁵³ *Free Speech in the United States.*, p. 562. Later, I shall argue that the attempt to expand the idea of liberty without contradicting the earlier, political interpretation, is shared by Mill.

⁵⁴ Belmont, CA: Wadsworth, 2000, p. 63.

institution, the doctrine of *On Liberty* is not restricted to the state. Indeed, the very purpose of *On Liberty* is to combat the restriction of the theory of liberty to state actions.

Occasionally, one finds reference to a social interpretation of Mill's harm principle, but its implications are largely unexplored. Frederick Schauer, in *Free Speech: A Philosophical Enquiry*, notes offhandedly in his discussion of the meaning of "freedom" that "To Mill, freedom of speech meant not only freedom from any form of governmental control, but also freedom from private social pressures that could also inhibit thought and opinion."⁵⁵ However, his purpose is not to explicate Mill's theory, but rather to discuss the general nature of free speech. Thus, although he provides some very interesting arguments in criticism of Mill on this issue,⁵⁶ he does little to draw out the implications of Mill's concept of liberty.

Despite this strong tendency of scholarly interpretation to adopt the political interpretation, Mill's own statement of the harm principle should incline us to resist it.

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or *the moral coercion of public opinion*. 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. That the only purpose for which power

⁵⁵ Cambridge: Cambridge University Press, 1982, p. 113

⁵⁶ *Ibid.*, p. 125.

can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.⁵⁷

Mill clearly means "compulsion and control" to cast a broad net, covering both "physical force in the form of legal penalties," which we common-sensically regard as coercion, and "the moral coercion of public opinion," which is not commonly so regarded.

The phrase "moral coercion" itself suggests that Mill intends to treat (at least some forms of) moral pressuring as equivalent to physical force, warranting the same treatment — inclusion under the harm principle. (I shall have more to say on precisely what counts as "moral coercion" in Chapter 4.)

Alan Ryan claims that "government and law are rarely mentioned [in *On Liberty*]; the tyranny feared is always the tyranny of opinion."⁵⁸ As I have noted above, this seems a considerable overstatement: in his discussion of examples, Mill focuses exclusively on the governmental. Nevertheless, Ryan is correct with regard to Mill's theoretical statements, in which he consistently treats adverse opinion and coercion as related forms of punishment. He speaks, for example, of "punishing" those who harm others, "by law, or, where legal penalties are not safely applicable, by general disapprobation."⁵⁹ He considers that "there is also in the world at large an increasing inclination to stretch unduly the powers of society

⁵⁷ *OL*, Chapter 1, ¶11. Emphasis added.

⁵⁸ "John Stuart Mill's Art of Living," in John Gray and G.W. Smith, eds., *J.S. Mill On Liberty in Focus*. New York: Routledge, 1991.

⁵⁹ *OL*, Chapter 1, ¶13. Cf. Ch1, ¶¶ 5, 7, 8, 9, 11, 17, Ch. 2, ¶¶ 24, 44, and less-clearly at Ch. 2, ¶14, Ch. 3, ¶ 14.

over the individual, both by *the force of opinion* and even by that of legislation."⁶⁰ He denies the people the right to suppress views "either by themselves or by their government."⁶¹

The same basic distinction is indicated by Mill's brief criticism of August Comte in *On Liberty*. Mill claims that Comte "aims at establishing... a despotism of society over the individual..." "Despotism," at first, sounds like a reference specifically to governmental interference with liberty. However, Mill indicates otherwise, admitting that Comte means to establish his despotism "by moral more than by legal appliances."⁶² It is this category of "moral despotism," according to the social interpretation, that Mill is primarily concerned with.

The Structure of *On Liberty*, Chapter I

I have noted many passages in which John Stuart Mill refers to "moral coercion" as a category under the harm principle. One might think that these references are unimportant side-notes. However, the structure of Chapter 1 of *On Liberty* suggests otherwise.

Mill begins the first chapter of *On Liberty* by announcing that a new and more fundamental analysis and defense of liberty are necessary because of some characteristic(s) of the age. He proceeds to give us a history of the defense of

⁶⁰ *OL*, Chapter 1, 17.

⁶¹ *OL*, Chapter 2, ¶1. This last is more equivocal, since it could cover either moral coercion or the private use of physical force, but in the context of the above, and given that Mill nowhere discusses the private use of force to censor ideas, it should be read as a reference to moral coercion.

⁶² *OL*, p.

liberty in two main stages, ending with the (nineteenth century) present. From that history, then, we might expect to glean an indication of what, precisely, about the world has changed to warrant a new exposition of liberty and what features that new account might turn on.

The first several stages Mill adumbrates in the development of the concept of liberty pertained to the proper limits (if any) on state power. Here, the major division is between the eras before and after the advent of representative government. The era before representative government, he says, is distinguished by the fact that the rulers were a separate class, "antagonistic... to the people whom they ruled."⁶³ Although recognizing that political authority was necessary, Mill says, the people were mindful of the need to protect their freedom. The form of protection appropriate to the form of the threat they considered themselves to face was to place limits on the government: first, by "obtaining a recognition of certain immunities, called political liberties or rights, which it was to be regarded as a breach of duty in the ruler to infringe," and second, by "the establishment of constitutional checks, by which the consent of the community, or of a body of some sort, supposed to represent its interests, was made a necessary condition to some of the more important acts of the governing power."⁶⁴ In these two solutions to the political problem, we can, of course, recognize the project of the Enlightenment liberals, notably Locke.⁶⁵

⁶³ *OL*, Chapter 1, ¶2.

⁶⁴ *Ibid.*

⁶⁵ It should be noted, however, that Mill presents only half the equation, at least as far as Locke's political theory is concerned. For Locke, rights existed not merely as negative limits on the

The era of representative government is defined by its means of restricting governmental power: now the state became "identified with the people" by being made ultimately answerable to them. In adopting this change, people began to minimize their concern for rights limiting governmental action, since "the nation did not need to be protected against its own will."⁶⁶ There is thus less restriction on state power under this system; nevertheless, this stage in the development of liberty is still defined according to the relationship between state and individual; representative government itself is intended as a means of ensuring liberty by bending state will to the choices of the individual citizens.

This was the state of liberal opinion, Mill says, during the previous generation of thinkers. However, Mill's contemporaries had discovered the possibility of the "tyranny of the majority" (a term Mill borrows from Alexis de Tocqueville). The problem, as Mill explains it, is the fact that

The "people" who exercise the power are not always the same people with those over whom it is exercised; and the "self-government" spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority; the people consequently may desire to oppress a part of their number; and

function of the state, but also as definitive of the positive actions of the state: the state exists, he claims, for the sake of protecting rights.

⁶⁶ *OL*, Chapter 1, ¶3. Cf. James Mill's "Essay on Government" (New York: Cambridge University Press, 1992), p. 8:

The Community within itself, and with respect to itself, can have no sinister interest. One Community may intend the evil of another; never its own.... The Community may act wrong from mistake. To suppose that it could from design, would be to suppose that human beings can wish their own misery.

precautions are as much needed against this as against any other abuse of power.⁶⁷

This tyranny of the majority is political, pertaining to the possibility that a majority may use "elective and responsible government"⁶⁸ to secure its own interests, and the lesson to be learned from it is that "The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein."⁶⁹

To this point, the problem of representative government seems to have an easy solution: a return to the notion of rights as a limitation on governmental authority, and a system of checks and balances. With division of powers among independent legislative, executive and judiciary branches, says Tocqueville, "there would be hardly any remaining risk of tyranny."⁷⁰ The tyranny of the majority, in its political manifestation, has a political solution.

But Mill opens *On Liberty* with the claim that "a different and more fundamental treatment" of the nature and proper extent of liberty is required by "the stage of progress into which the more civilized portion of the species have

⁶⁷ *OL*, Chapter 1, ¶4.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Democracy in America*, ed. J.P. Mayer, tr. George Lawrence (New York: Anchor Books, 1969), p. 253. It should be noted, however, that the very next section of *Democracy in America*, titled "The Power Exercised by the Majority in America over Thought," warns that "the majority is invested with both physical and moral authority" (p. 254), and thus "it leaves the body alone and goes straight for the soul" (p. 255). Thus, despite the relative absence of political tyranny (as indeed Tocqueville's list of conditions for freedom, all of which existed in the United States, implicitly admits), Tocqueville can still complain that "there is no freedom of the spirit in America" (p. 256).

now entered."⁷¹ Clearly, then, Mill considers the nineteenth century to be fundamentally different because of some feature of its historical character.

That unique feature is what we may call the "social tyranny" of the majority. Although, Mill says, the tyranny of the majority is often "vulgarly" considered to begin and end with the state, "when society is itself the tyrant...[i]ts means of tyrannising are not restricted to the acts which it may do by the hands of its political functionaries."⁷² Having recognized this further category of tyranny, Mill claims that

there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own.⁷³

It takes some work to ascertain precisely what forms of "compulsion" Mill has in mind; he clearly does not regard all attempts to persuade someone to change his ideas or conduct as instances of tyranny. "Considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others: but he himself is the final judge."⁷⁴ What he is concerned to eradicate are "penalties... deliberately inflicted on him for the sake of punishment" of self-regarding actions.⁷⁵

⁷¹ *OL*, Ch. 1, ¶1.

⁷² *Ibid.*

⁷³ *OL*, Chapter 1, ¶

⁷⁴ *OL*, Chapter 4, ¶4.

⁷⁵ *OL*, Chapter 4, ¶5.

It is the latter category, non-governmental restriction on liberty, that Mill seeks to establish as meaningful; this is the type of action that he regards as calling for his attention.⁷⁶ Without it, what would be required is a re-assertion of an old idea, roughly the Lockean liberal theory of rights and the separation of powers, not a supposedly radical new discussion. In his day, Mill claims, "social tyranny" is "more formidable than many kinds of political oppression, since, though usually not upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself."⁷⁷

Although Mill's chapter on "Applications" is (misleadingly, I believe) devoted to discussions of government, *On Liberty's* introductory chapter begins with the intriguing comment that "the principles asserted in these pages must be more generally admitted... before a consistent application of them to all the various departments of government *and morals* can be attempted with any prospect of advantage."⁷⁸ This stands as a quiet admission that Mill intends his principles to extend beyond the merely political realm and into the moral, even as he proceeds to discuss only examples of the governmental side.

⁷⁶ Mill's understanding of the social tyranny of the majority is clearly owed, at least in part, to Tocqueville — a debt Mill acknowledges in his review of *Democracy in America*. However, *On Liberty* treats social tyranny as a new concept needing to be established, not as an inheritance.

In part, this seems justified. Although Tocqueville had discussed social tyranny, he did not integrate it fully into his overall account of the tyranny of the majority. If political rights were established, Tocqueville wrote, "there would be hardly any remaining risk of tyranny." (*supra.*)

⁷⁷ *OL*, Chapter 4, ¶4.

⁷⁸ *OL*, Chapter 5, ¶ 1, emphasis added.

The discussion in the final chapter, Mill says, is intended "to illustrate the principles, rather than to follow them out to their consequences."⁷⁹ As Mill was aware, the acceptance of liberty was relatively well-established in the political realm.⁸⁰ "In England...", he writes, "there is considerable jealousy of direct interference, by the legislative or the executive power, with private conduct." However, this self-protectiveness comes "not so much from any just regard for the independence of the individual, as from the still subsisting habit of looking on the government as representing an opposite interest to the public."⁸¹ To consistently establish just regard for the independence of the individual, people must become as jealous of censure by extra-governmental organizations as they are of state coercion.

I think it is best considered a matter of rhetorical strategy for Mill to focus his attention deliberately on those applications of his theory that were, at the time, relatively uncontroversial, in the thought that alerting people to the deeper importance of "the independence of the individual" might lead them eventually to expand their concern for liberty to encompass a jealousy of social pressure. In a letter to Harriet Taylor Mill that has become popular with revisionists of all camps, Mill called *On Liberty* "concentrated thought — a sort of mental pemmican," referring to the tough, jerky-like food carried by native Americans.

⁷⁹ *Ibid.*

⁸⁰ See *OL*, Chapter 2, ¶¶ 8-9.

⁸¹ *OL*, Chapter 1, ¶ 8.

Like pemmican, Mill expected that *On Liberty's* value could be extracted only after considerable chewing by "thinkers, when there are any after us." ⁸²

Mill claims that a better appreciation for the true grounds of liberty will allow a subtler application of state power. Under the current regime of public opinion, he claims,

there is a considerable amount of feeling ready to be called forth against any attempt of the law to control individuals in things in which they have not hitherto been accustomed to be controlled by it; and this with very little discrimination as to whether the matter is, or is not, within the legitimate sphere of legal control; insomuch that the feeling, highly salutary on the whole, is perhaps quite as often misplaced as well grounded in the particular instances of its application.⁸³

That is, Mill believes that the spirit of liberty is misapplied "perhaps quite as often" as it is properly applied — expansions of government, proper to a true understanding of liberty, are opposed by the public. Within the pages of *On Liberty*, Mill never fully cashes in on this intriguing hint that a better appreciation for liberty may lead in certain instances to an *expansion* of state power.⁸⁴ However, an example of the kinds of state action Mill intends is his support for a governmentally-funded, secularized intellectual Establishment modeled after the Church of England.⁸⁵

⁸² Mill to Harriet Taylor Mill, 29 January [1854], *Collected Works*, vol. XIV, pp. 141-2.

⁸³ *Ibid.*

⁸⁴ The defense of state-mandated education (*OL*, Chapter 5, ¶ 12) is a partial exception.

⁸⁵ This idea is defended in the early newspaper article titled "Attack on Literature," *Works*, vol. XXII, pp. 318-327. Originally, this essay was published in 1831, shortly after Mill's recovery from the mental crisis that had much to do with reshaping his views in later life. The same idea is elaborated in much more detail in the article on "Coleridge" (in F.R. Leavis, ed., *Mill on Bentham and Coleridge* (Cambridge, 1980: Cambridge University Press) pp. 39-66.

Such support would be at best neutral with regard to liberty, and at worst a violation of liberty if, like John Locke, one considered free speech to mean merely the absence of coercion. (It would be a violation of liberty if one holds that liberty includes the liberty to dispose of one's money as one wishes.) But governmental support for the intellectual establishment is a means of protecting free speech, if one understands free speech to require the social freedom of speech from the moral coercion of public opinion.

Mill claims that gambling, frequent drunkenness, and other forms of dissolution, which are frequently regarded as self-regarding vices, are not per se immoral. It is, he says, only when a person's conduct leads him to violate "an assignable obligation to any other person or persons" — when it harms others⁸⁶ — that it "is taken out of the self-regarding class" and becomes "amenable to *moral* disapprobation in the proper sense of the term."⁸⁷ The distinction that Mill is drawing here is not between that which is amenable to political control and that which is merely a moral issue — which would be consistent with the political interpretation. Rather, Mill says that we ought to disapprove of intemperate behavior on many grounds, but our disapprobation does not become *moral* disapprobation until its subject-matter is a harm to others.

The political interpretation holds that Mill's primary distinction is between those immoral acts which are to be punished by the state (i.e., those which harm others) and those immoral acts which are not (i.e., "private immorality"). But

⁸⁶ The logic of the connection between harm and "assignable obligations" will be considered later.

⁸⁷ *OL*, Ch. 4 ¶ 6. Emphasis added.

elsewhere, Mill argues explicitly that no such sharp distinction exists, because all immorality, per se, is intended to be punished.

We do not call anything wrong [in a moral sense], unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency. It is part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfill it.⁸⁸

The notion of "private immorality," not susceptible to others' interference, is entirely alien to the doctrine of *On Liberty*. Indeed, Mill argues that the very basis of the distinction between morality and expediency is that morality may be implemented by the mechanisms of social control (including state coercion, where appropriate).

There is, Mill continues, no such thing as a moral duty to oneself. "self-regarding faults," per se, are "not properly immoralities and, to whatever pitch they may be carried, do not constitute wickedness." He is emphatic that what is not harmful to others is not to be regarded as immoral. Actions "are only a subject of moral reprobation when they involve a breach of duty to others."⁸⁹ Mill seems clearly to rule out any possibility of self-regarding immorality. What, then, can be said of "self-regarding faults"? Clearly, given the language of "faults," Mill does not mean to place the self-regarding above criticism. Rather, he argues that such matters should be treated under different headings, as breaches of "prudence" or of "aesthetics."

⁸⁸ *Utilitarianism*, C. 5, ¶17

⁸⁹ *LMS*, (LaSalle, IL: Open Court, 1988), P. 145.

Particular destructiveness of social tyranny

James Mill seems to anticipate his son's concern with the pressure of social disapprobation misapplied to punish the individual for that which does not properly concern anyone but himself. The discussion, part of the elder Mill's presentation of the advantages of a free press, is necessitated by his utilitarian premises. If the "business" of government is "to increase to the utmost the pleasures, and diminish to the utmost the pains, which men derive from one another,"⁹⁰ then James Mill's defense of free speech must show that a free press, on the whole, leads to a greater preponderance of pleasure over pain than does censorship.

There is no problem, according to James Mill, where the liberty of the press is applied to expose actions that are properly immoral (in a utilitarian sense), and therefore deserve censure.

If the hatred and contempt of the people, therefore, were always rightly directed, and rightly proportioned; if they never operated against any actions but those which were hurtful, either to the individual himself, or to others, and never, but in the degree in which they were hurtful, the case would be clear.⁹¹

Indeed, he considers a major benefit of the free press to be its role in promoting scrutiny of the private lives of public figures. "The prospect of the immediate and

⁹⁰ "Government," in *Political Writings*, ed. Terence Ball (New York: Cambridge University Press, 1992), p. 4

⁹¹ "Liberty of the Press," in *ibid.*, p. 106. It is interesting to note that the elder Mill, unlike John Stuart, includes harm to self in the equation for determining whether an action should be morally sanctioned or not.

public exposure of all [disreputable] acts... would be a most effectual expedient to prevent their being committed." Thus, where that exposure is directed toward actions that deserve to be sanctioned, it is beneficial.

However, it would be an embarrassment to James Mill's argument if the press could systematically use their freedom to inflict pain on those who have inflicted none. But we can predict that the press in a society ruled by aristocratic prejudices and an authoritarian church will use its power as readily to entrench established prejudices as to promote enlightened morality. For this reason, the elder Mill is forced to consider the possibility of misusing press power "a consideration of the highest importance."⁹²

In point of fact, James Mill believes, the England of his day does not suffer very much from the effects of misplaced antipathy. "In our own country, ... the classes of actions which, though they injure nobody, expose a man to the unfavourable sentiments of others, are not numerous."⁹³ Not only is the problem empirically quite small, Mill argues, the numbers of people thus affected is *necessarily* small. "Those who share in the antipathy, of course, abstain from the action," he argues (rather dubiously), and their antipathy can be injurious only if they "include almost the whole of the society."⁹⁴ Therefore, he thinks, necessarily only a relative handful of people can ever be undeservedly injured by social pressure.

⁹² "Liberty of the Press," in *Political Writings*, ed. Terence Ball (New York: Cambridge University Press, 1992), p. 107

⁹³ *Ibid.*, p. 109.

⁹⁴ *Ibid.*, p. 109.

Backing up this questionable deductive argument is an empirical argument appealing to the Classical economists' implicit trust in the power of markets. People, allowed to decide their own well-being freely, would eventually shake off prejudices and settle upon the truth. The problems that come from the erroneous condemnation of innocuous actions, Mill says, are "dependent upon an accidental circumstance, capable of being removed; upon a mental disease, requiring to be cured, ... and toward the cure of which truth is likely to operate as the most effectual of all expedients."⁹⁵ The assumption (which John Stuart Mill would later challenge) is that discussion free from governmental interference would be sufficient to cure the mental disease.

This assumption, in turn, rests on a classical assumption of free-speech activists: that the truth will necessarily win an intellectual competition with error. James Mill expected the free market for ideas to lead to truth for the same ultimate reason he thought the free market for economic goods would be efficient: the efficacy of individuals' exercise of reason.

Every man, possessed of reason, is accustomed to weigh evidence, and to be guided and determined by its preponderance. When various conclusions are, with their evidence, presented with equal care and with equal skill, there is a moral certainty, though some few may be misguided, that the greater number will judge aright.⁹⁶

This is a kind of efficient-markets hypothesis for the marketplace for ideas, and for it to work one must assume that the reasoning individual is likely to give reasonable consideration to relevant facts in his or her considerations.

⁹⁵ *Ibid.*, p. 109.

⁹⁶ *Ibid.*, p. 121.

Although John Stuart Mill began his writing career asserting that he had "no higher ambition than that of treading in his [James Mill's] steps" in his understanding of free speech as of economics,⁹⁷ in later life he evinced considerably less confidence in the efficiency of economic markets.

There are many things which free-trade does passably. There are none which it does absolutely well; for competition is as rife in the career of fraudulent pretence as in that of real excellence. Free-trade is not upheld, by any one who knows human life, from any very lofty estimate of its worth, but because the evils of exclusive privilege are still greater, and what is worse, more incorrigible. But the capacity of free trade to produce even the humblest article of a sufficient degree of goodness, depends on three conditions: First, the consumer must have the means of paying for it; secondly, he must care sufficiently for it; thirdly, he must be a sufficient judge of it.⁹⁸

John Stuart Mill is unwilling to grant the assumption that the ordinary person will be as independent-minded, as capable of seeing through "fraudulent pretence," as his father seems to have assumed.

With regard to the so-called "marketplace for ideas," Mill is especially dubious of the third condition for efficient markets: that the public must be a "sufficient judge" of ideas. Mill considers discussion to be generally efficacious in refuting errors: he owns that "wrong opinions and practices gradually yield to fact and argument,"⁹⁹ though they do so only to the extent that they are given a full hearing. (Presumably social pressure may interfere even with the refutation of a

⁹⁷ "Law of Libel and Liberty of the Press," *Westminster Review*, III, (Apr., 1825). Reprinted in *Works*, vol. XXI, p. 4. In the same article, JSM claims "That truth, if it has fair play, always in the end triumphs over error, and becomes the opinion of the world," a view he would later reject.

⁹⁸ "Endowments," *Fortnightly Review*, n.s. V (April, 1869), 377-90. Reprinted in *Works*, vol. V, p. 622

⁹⁹ *OL*, Ch. 2, ¶7.

negative, though it is less likely to do so.) But in establishing of a truth, Mill argues, discussion is far less efficacious.

As he writes in "The Spirit of the Age," by discussion

ancient doctrines are ... put upon their proofs; and those which were originally errors, or have become so by change of circumstances, are thrown aside. Discussion does this. It is by discussion, also, that true opinions are discovered and diffused. But this is not so certain a consequence of it as the weakening of error.¹⁰⁰

The reason, Mill argues, is that it takes much more to establish a truth than to refute a falsehood.

To be rationally assured that a given doctrine is *true*, it is often necessary to examine and weigh an immense variety of facts. One single well-established fact, clearly irreconcilable with a doctrine, is sufficient to prove that it is *false*.¹⁰¹

Much more can go wrong in considering a complexity of facts than in considering a single well-established fact, presumably leaving the process of debate more open to manipulation and social pressure. Given the potential influence of social pressures, Mill believes that a great number of people are in fact not "sufficient to judge" intellectual products.

It is important to remember that Mill's liberalism is a consequentialist liberalism. Liberty, for him, is to be valued fundamentally because it produces good consequences. This leads him to treat under the same heading any two social phenomena that are essentially similar in their consequences. And, as Mill says, the consequences of unfavorable opinion directed toward an unpopular idea can

¹⁰⁰ "The Spirit of the Age." *Works*, vol. XXII, pp. 233-4.

¹⁰¹ *Works*, vol. XXII, p. 234

be to silence the idea as effectively as if it had been subjected to coercive censorship. "Opinion, on this subject, is as efficacious as law; men might as well be imprisoned, as excluded from the means of earning their bread."¹⁰² Of course, it is a further question to identify under what circumstances Mill believes that their effects are, in fact, similar. That discussion will be undertaken in my final chapter. The point of the present discussion, however, is that in at least certain instances John Stuart Mill believes that force and unfavorable opinion should be treated as tantamount to each other.

This is a pragmatic argument pertaining to the economics of speech. If participants in the market discriminate against a given individual to the point at which he cannot make a living because of his intellectual viewpoint, then he is helpless to uphold his views. Indeed, this sort of punishment, in the extreme case, is more severe than the penalties typically imposed by state censorship (typical, at least in Mill's day). Better to be imprisoned for one's beliefs than to starve for them.

It is likely that the experience of James Mill looms large in his son's thinking. An intellectual at odds with the majority of his public, yet attempting to feed a growing family on the proceeds of his writing career, the elder Mill felt acute pressure to present his ideas in a way that soft-pedaled those views that "could not prudently be avowed to the world."¹⁰³ Despite having largely supported himself as a writer from the age of thirty, he made no significant

¹⁰² *OL*, Ch. 2 ¶19.

¹⁰³ *Autobiography*, Ch. 2, ¶4.

political or economic pronouncements until his writing career was well-established, five years later.¹⁰⁴ Although, under the protection of Bentham's reputation, James Mill later plunged into political activism, he never ceased to urge on his son, and to practice in his own writings, reticence with regard to his religious skepticism, religion being an issue he considered the public especially unprepared to re-think. The feeling of repression that resulted from "this lesson of keeping my thoughts to myself, at that early age" was likely a precursor to John Stuart Mill's later view that freedom requires more than the mere absence of coercion.

Note, however, that as far as this argument goes, the results of social punishment are identical to those of state censorship. A person is still capable of holding the unpopular view in the privacy of his or her own mind; he or she simply is powerless to express it in any public forum. In fact, however, Mill regards social tyranny as "more formidable than many kinds of political oppression."¹⁰⁵ Whereas governmental censorship can be and often is resisted, Mill suggests that if "the first men of the age" were to "join hands and be agreed, ... then there is no power in itself, on earth or in hell, capable of withstanding them."¹⁰⁶

The reason for this is a second argument, rooted in Mill's social psychology. Mill argues that,

¹⁰⁴ Michael St. John Packe, *The Life of John Stuart Mill* (New York: Macmillan, 1954), p. 11.

¹⁰⁵ *OL*, Ch. 1 ¶4.

¹⁰⁶ "The Spirit of the Age," In Ryan, 1997, p. 16. Mill is paraphrasing French author Joseph Fievec.

though not usually upheld by such extreme penalties, [the social tyranny of the majority] leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself¹⁰⁷

Unfortunately, Mill does little to clarify this argument, which requires considerable unpacking. I think, however, that it is possible to expand upon his argument in ways that are consistent with what he does say.

A major part of the explanation must be that social tyranny is enforced by society at large, which is necessarily a much larger group than the government. Governmental censorship is conducted by a single organization which, however powerful the state may be, has a limited reach. Even supposing, in the modern context, a government were to bug every conversation to take place within its borders, someone would have to listen and evaluate the conversations. But when the oppression is of a social form, every conversation involves a potential enforcer of society's moral views.

As a result of society's omnipresence, the influence of society "penetrates more deeply into the affairs of life." Not only is the state less able to investigate each detail of one's life, its interests vis-à-vis any particular member of society are limited. Private individuals or institutions, on the other hand, may have as many interests as they have moralistic viewpoints. One attacks premarital sex; another, drug and alcohol use; still another, homosexuality. Styles of dress and personal adornment (such as approved and disapproved sites for piercing), home and garden, artistic interests, appropriate and inappropriate books, even the race of one's marital partner – all are routinely subjected to social pressure.

¹⁰⁷ *OL*, Ch. 1 ¶4.

At this point, one might respond to Mill's claim that social tyranny is "more formidable" than governmental coercion by noting that most such matters are things that governments in fact *have* attempted to encroach on, even quite recently. However, Mill claims, when the government attempts to step beyond its proper bounds, it does not "enslave the mind itself." Just as John Locke had argued that coercion cannot change a person's mind, so Mill seems to believe that a person who is effectively silenced by censorship nevertheless can and likely will continue to believe his or her heretical idea. Mill would likely argue, with Locke, that being the object of repression often serves to entrench the heretic all the more.¹⁰⁸ Even when social stigma is backed by legal penalties, Mill argues, "it is that stigma which is really effective,"¹⁰⁹ not the legal penalties.

When society itself is the agent demanding conformity, on the other hand, its victim has powerful incentive to accept its viewpoint: most people do not want to be social pariahs. The desire to conform to society is so strong, Mill suggests, that most people will be unable to develop heretical views in the first place. The first goal of society in these instances is not to repress dissent, but to prevent its formation.¹¹⁰

In this sense, the very non-coercive nature of social tyranny is part of its danger, because the effects are less dramatic and obvious than those of overt censorship.

¹⁰⁸ Cf. Locke's posthumous "An Essay on Toleration," p. 156.

¹⁰⁹ *OL*, Ch. 2, ¶23.

¹¹⁰ *OL*, Ch. 1, ¶5.

Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them, or to abstain from any active effort for their diffusion.... [W]ithout the unpleasant process of fining or imprisoning anybody, it maintains all prevailing opinions outwardly undisturbed, while it does not absolutely interdict the exercise of reason by dissentients afflicted with the malady of thought.¹¹¹

Whereas the "unpleasant process of fining or imprisoning" dissidents may call forth a backlash, Mill suggests, social pressure at the hand of kindly inquisitors merely provokes its victims to cave in. "[W]here public opinion is sovereign," Mill writes elsewhere, "an individual who is oppressed by the sovereign does not, as in most other states of things, find a rival power to which he can appeal for relief, or, at all events, for sympathy."¹¹²

Ironically, John Stuart Mill's break with his father's sanguinity about the influence of social pressure upon the individual stem partly from premises inherited from his father's psychological theories. Among the impulses to action, the elder utilitarians had held, the desire for the approval of others is one of the strongest.¹¹³ It is thus the case that social pressure can exert a great deal of compulsion on the individual who is its subject.

James Mill had written that "where there is no motive to attach a man to error, it is natural to him to embrace the truth."¹¹⁴ But John Stuart Mill notes that, when the majority of society believes the same idea, the desire for approval *produces* a motive to attach a person to that idea, whether it be true or false.

¹¹¹ *OL*, Ch. 2, ¶ 19.

¹¹² *PPE*, Book V, Chapter IX, § 3.

¹¹³ See Bentham, *The Principles of Morals and Legislation*, Ch. X, § XXII.

¹¹⁴ "Liberty of the Press," p. 121.

This second argument for the importance of social coercion rests on the earlier argument. The desire to conform to society would make any sort of social pressure dangerous. Yet there are many ways society can express its disapproval, some of which Mill would clearly consider inappropriate (an insurance salesman is fired for being a member of the Communist Party), others of which he would consider appropriate (a minister delivers an impassioned sermon on the self-destructiveness of alcohol consumption). As subsequent discussion will show, what Mill seeks to ban is that sort of social pressure that he considers tantamount to coercion in its effects on the victim of the pressure.

Conclusion: The Purpose of *On Liberty*

Clearly, *On Liberty* is written to promote what, in another essay, he terms "the free and bold spirit of inquiry,"¹¹⁵ and elsewhere "free and manly enquiry."¹¹⁶ Mill holds an ideal of active, even contentious debate on important issues, especially issues of ethics and society. Vigorous debate is a means to promote and protect the creation of new ideas and independence of thinking by allowing even the most unorthodox viewpoints to be expressed, while encouraging each individual to judge the evidence for and against any important proposition.

However, Mill believes, the same vigor may tend to promote sectarianism. In the same section of *On Liberty* in which he defends the importance of debate, he acknowledges that "the tendency of all opinions to become sectarian is not

¹¹⁵ "On Punishment." *Works*, vol. XXI, p. 77.

¹¹⁶ "Inaugural Address Delivered to the University of St. Andrews," *Works*, vol. XXI, p. 250.

cured by the freest discussion, but is often heightened and exacerbated thereby; the truth which ought to have been, but was not, seen, being rejected all the more violently because proclaimed by persons regarded as opponents."¹¹⁷ The mechanism of free speech ought to promote independent thought by freeing the individual from the control of the state. But it is all too easy for the individuals freed from state control to harden into smaller groups, all the more servile for their notional independence.

The fear of conformism was a lasting theme of Mill's life. It appears, for instance, in an early newspaper writing on freedom of expression. There, he regards as a peculiar defect of the age "the mental cowardice which prevents men from giving expression to their conviction, and the insincerity which leads them to express what they do not think."¹¹⁸

The double-edged nature of debate is the subject of a conversation reported by Caroline Fox. Fox summarized Mill's comments on sectarianism as follows:

The spirit of sect is useful in bringing its own portion of Truth into determined prominence, and comfortable in the repose it must give, to be able to say, I am sure I am right; on the other hand, it not only walls up the opinions it advocates within the limit of its own party, but it is very apt to induce a pedantry of peculiarity and custom, which must be injurious to Truth.¹¹⁹

¹¹⁷ *OL*, Ch. 2, ¶ 39.

¹¹⁸ "The Debate on the Petition of Mary Ann Carlile." *Works*, vol. XXII, p. 21.

¹¹⁹ Caroline Fox: *Memories of Old Friends: Being Extracts from the Journals and Letters of Caroline Fox*. Ed. Horace N. Pym. (Philadelphia: J.B. Lippincott & Co., 1882), p. 115.

This concern is a very important one, for Mill. Indeed, it may not be an exaggeration to say that the project of *On Liberty* is to secure the blessings of free discussion, while avoiding that "pedantry of peculiarity and custom" which is the pitfall of sectarianism.

To achieve this happy balance, it is not enough to protect speech from political intervention. Speech must be protected — not from other speech — but from certain social pressures that might be brought to bear to encourage conformity.¹²⁰

This understanding of Mill's harm principle, however, raises some interpretive difficulties. First, I will discuss two alternative formulations which might attempt to explain the same aspect of Mill's thought that give rise to my social interpretation. Next, this way of looking at the harm principle raises an old question in a new way: if moral good requires that one promote the greatest happiness, and if one's own happiness in fact is a part of the greatest happiness, how is it possible for Mill to maintain consistently that there is a "private sphere" exempt from moral judgment? These questions will be the concerns of Chapter Two.

¹²⁰ It is important to note that Mill is *not* defending a doctrine that "fighting words" or "hate speech" constitutes a violation of liberty. Later, I shall discuss the reasons Mill stops short of such ideas.

CHAPTER 2:

MILL'S LIBERTY AS NEGATIVE LIBERTY

Introduction

It seems clear at this point that John Stuart Mill intends his "harm principle" to restrict certain non-coercive actions of private individuals, not merely what we typically regard as coercion. However, to provide a practical, detailed understanding of Mill's doctrine we must flesh out this understanding. This, in turn, requires us to face several interpretive difficulties. That is the goal of the rest of this dissertation: to go from a generalized understanding that *On Liberty* defends a doctrine different from that commonly attributed to it, to a precise formulation that will allow us to predict in detail how Mill would apply his harm principle.

I shall begin in this chapter with a challenge to my interpretation: two alternative formulations that might be raised in order to account for some of the features of *On Liberty* I have adduced to support my social interpretation of the harm principle. The first of these locates the issue within the definition of "coercion," arguing that Mill can be best understood as arguing for an expanded

definition of that term. On this understanding, then, Mill does intend the harm principle to apply only to coercive actions — but these he defines in a way that subsumes more actions than the restrictive idea of coercion I have relied on. I shall argue that this interpretation is tantamount to my own, leading to no difference in the practical meaning of the harm principle, but that it is less true to the way Mill uses the words.

The second alternative interpretation, which does differ substantively from mine, holds that Mill is in fact defending an idea of positive liberty: of liberty as an ability, rather than an absence of interference. While there is some language in *On Liberty* that sounds similar to the "a hungry man is not free" argument usually raised in defense of positive liberty, I argue that positive liberty does not ultimately fit Mill's theory. Mill clearly means liberty as a "freedom from" — freedom from the oppressive power of public opinion — not as a "freedom to." Mill unequivocally states that one's need of a certain good does not constitute a claim on society.

In the third chapter, I take on a significant problem for my interpretation. My way of looking at the harm principle raises an old question in a new way: if moral good requires that one promote the greatest happiness of society, and if one's own happiness in fact is a part of the social well-being, how is it possible for Mill to maintain consistently that there is a "private sphere" covered jointly by prudence and esthetics, exempt from moral judgment? While it is unlikely that the problem will ever be fully eradicated, I shall address it by appealing to Mill's rights theory, according to which it can be in the best interest of society for certain

actions which, in themselves, do not promote the greatest happiness of society, to be nonetheless placed beyond the sphere of morality. This argument is far weaker, however, when applied to the moral realm than when applied to the political.

Two Alternative Formulations

I have cast the distinction between the political interpretation and the social interpretation in terms of the distinction between "coercion" and "harm." The same general issue, however, might be recast in different ways that relocate the locus of dispute. The first reformulation, which receives some support from the text, is to cast the issue in terms of one's definition of coercion: the meaning of the social interpretation might be subsumed under the formulation of the political interpretation by defining "coercion" in a broad sense. The second reformulation would be to consider Mill to be defending a view of positive liberty, rather than negative liberty.

THE CONCEPT OF "COERCION"

So far, I have spoken as if the concept of coercion were easily defined. On the contrary there is, of course, a great deal of controversy around the definition of coercion. Outside of a number of core instances (mugging, assault, murder, rape), which anyone would accept as coercive, there are any number of disputed instances. These disputed instances include right-violating speech, such as slander and libel; overt or implicit threats; and the "coercive offer" (an offer which ordinarily would be unacceptable, but which one's circumstances render

irresistible, such as an offer to rescue a drowning person in exchange for a million dollars).

The political interpretation, as I have defined it, insists upon a restrictive definition of coercion. It takes coercion to mean the use or overt threat of physical force. The political interpretation is primarily concerned with what sorts of behavior may be punished by the mechanisms of the state: imprisonment, confiscation or destruction of property (such as book-burning), even loss of life. It says nothing about the vast majority of methods by which individuals or non-governmental organizations may interfere with each other's ability to act: methods such as remonstrance, boycotting, shunning, excommunication, public or private expressions of moral disapproval.

One way to read *On Liberty*, specifically those aspects that lead me to conclude that Mill intends the social interpretation, is to see it as an argument for an expanded view of coercion. One might take Mill to be defining coercion as the deliberate infliction of harm with the intent to change the victim's thoughts and/or actions. Such an understanding would be consistent with the theory defended in Alan Wertheimer's *Coercion*, for instance.¹²¹ According to Wertheimer, a proposal is coercive if the person receiving it is made worse off, relative to some baseline, by virtue of receiving the proposal.

Suppose that Sarah is a dedicated member of the Trinitarian Church, which holds a firm stance against abortion. Sarah considers it an important part of her well-being to be an advocate for abortion rights. Having considered the

¹²¹ Princeton: Princeton University Press, 1987.

abortion issue at some length, she concludes that abortion is at least sometimes morally permissible. Her church, however, considers anyone who supports the right to an abortion to be an apostate.

The Church presents Sarah with a threat to excommunicate her, should she continue publicly defending abortion. Either she must abandon her advocacy of abortion, or she must leave the church. Assuming that she considers both advocacy and being a member of the Trinitarian Church to be important parts of her well-being, the Church's proposal has reduced Sarah's future well-being: yesterday, she was able to have both, but now she can have only one. Thus, according to Wertheimer's theory, Sarah is being coerced.

When the issue is re-cast in this way, the social interpretation collapses into the political interpretation. The political interpretation argues that one should not impose coercive sanctions in response to that which does not harm others, while the social interpretation argues that one should not inflict harm in response to that which does not harm others. The two statements become equivalent, if one defines coercion as the deliberate infliction of harm. The political interpretation places limits on the use of coercion; the social interpretation places limits also on the expression of disapproval. Again, the two versions become equivalent, if one defines as coercive just those sorts of expression that are ruled out by the social interpretation. With this definition of coercion, in other words, the social interpretation proscribes precisely the same set of actions as the political interpretation.

Suppose a Hollywood screenwriter is blacklisted for his unpopular politics, with the result that he can no longer earn his living in Hollywood. The social interpretation would regard this as a non-coercive action, but one that constitutes the infliction of harm. And since, whatever we may believe a belief's results would be in practice, its mere espousal does no harm, the social interpretation would condemn this as an unjustified intrusion by society on the individual, to be punished at least by social disapproval and possibly by legal punishment. The expanded understanding of coercion would regard the screenwriter as the victim of coercion, since he was deliberately made worse off by the actions of others. It would thus be regarded as a violation of the political interpretation. Either way, the same action is ruled out, for the same ultimate reason.

I have chosen to locate the issue within the meaning of the harm principle, however, for two reasons. First, I think there are philosophical reasons to reject this wider notion of coercion. It seems to me that there is a crucial difference between a boycott, even a successful one, and a book burning. Likewise, the victim of a blacklisting, as much as he or she may be harmed, is in a different category from a person who is jailed for his or her beliefs. Even if Mill is right to claim that the successful use of social pressure is *tantamount* to censorship, it does less injustice to the language to retain separate concepts for the two. I think Mill's position is stronger if we do not attribute such an equation to him.

More importantly, I believe my approach is truer to Mill's intentions. Although his reference to "the moral coercion of public opinion"¹²² suggests this paraphrase, he uses this phrase only once in *On Liberty*. In all other passages, he has society "compel" agreement, "impose" its belief, "control" the individual, exercise "tyranny," "visit [the nonconformist] with evil," and the like. None of these is a clear synonym for coercion. In the passage which I regard as the central basis for the social interpretation, Mill argues only that opinion is "as *efficacious*" as law, not that it should be considered a *form* of coercion.

Although Mill intends to argue that social compulsion can be tantamount to coercion, he never claims that they are identical. Mill consistently draws a linguistic distinction between law and opinion¹²³, between "compelling" a man and "visiting him with any evil,"¹²⁴ between punishment "by law" and "by general disapprobation,"¹²⁵ between "moral" and "legal appliances,"¹²⁶ between "legal" and "social penalties,"¹²⁷ between "legal penalties" and "social stigma,"¹²⁸ between "hindrances, ... physical or moral,"¹²⁹ and so on. If Mill himself regards the distinction between social hindrances and physical hindrances as a significant one, worth preserving in the language, then Mill scholarship ought to do likewise.

¹²² *OL*, Ch. 1, ¶ 8.

¹²³ *OL*, Ch. 1, ¶5, Ch. 1, ¶15.

¹²⁴ *OL*, Ch. 1, ¶10.

¹²⁵ *OL*, Ch. 1, ¶12.

¹²⁶ *OL*, Ch. 1, ¶14.

¹²⁷ *OL*, Ch. 2, ¶19.

¹²⁸ *OL*, Ch. 2, ¶23.

¹²⁹ *OL*, Ch. 3, ¶1.

POSITIVE VS. NEGATIVE LIBERTY

A second way one might attempt to capture the same issue named by my distinction between the social interpretation and the political interpretation is to recast it in terms of the distinction between the ideas of positive and negative liberty. Broadly speaking, the concept of positive liberty is the idea that genuine liberty requires more than a mere negative (the absence of coercion), but that it requires some actual, existing state of affairs. To look at it another way, the concept of positive liberty holds that liberty can be violated by a mere absence (of the conditions necessary for meaningful freedom), while the concept of negative liberty holds that liberty can be violated only by an active interference.

Suppose Joe and Sarah are both unable to buy a bottle of wine: Sarah, because she is unemployed and has no money; Joe, because his money was taken in a mugging on his way to the wine shop. Sarah's inability to buy the wine is the result of an absence: no one has been willing to pay her the money it would require. Joe's inability, on the other hand, is the result of an interference: he had the money, but someone took it. Both the advocate of positive liberty and the advocate of negative liberty would agree that Joe is unfree to the extent that the mugger prevents his doing as he wishes. But the advocate of negative liberty would argue that Sarah is still *free* to buy the champagne, even though she is currently *unable* to do so.

The advocacy of positive liberty begins with the view that the purpose of liberty is to allow one to live as one wishes: in Mill's words, "the only freedom

which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it."¹³⁰ But it may be impossible to pursue one's own good in one's own way in any meaningful sense, absent certain conditions. Different theorists argue that different conditions are necessary, broadly falling into two different versions of positive liberty, depending on whether the important conditions they argue for are internal, psychological states, or material conditions such as food, clothing, and shelter.

I have argued that the social interpretation expands the idea of liberty, in the sense that it seeks to define a broader kind of actions and events from which we must be protected if we are to possess genuine liberty. A similar expansion takes place if one adopts the positive view of liberty. Many of the same actions (such as boycotting or blacklisting) that the political interpretation would protect but the social interpretation defines as violations of liberty, are accepted as legitimate by the negative view of liberty but ruled out by the positive view of liberty.

While the positive theory of liberty (in either version) finds some warrant in *On Liberty*, I argue that neither is ultimately true to Mill's intentions. Although Mill does wish to broaden liberty's protective powers, he still intends it to be defined as negative liberty.

¹³⁰ *OL*, Ch. 1, ¶13.

Psychological Positive Libertarianism

Psychological positive libertarianism is the version that Isaiah Berlin discussed and critiqued in his "Two Concepts of Liberty." It originates, says Berlin, with "the wish on the part of the individual to be his own master."¹³¹ In a sense the same could be said of any theory of liberty, but the psychological positive theory of liberty is based specifically on the desire to have mastery over the self, a desire for what Charles Taylor terms "the freedom of self-fulfillment, or self-realization according to our own pattern..."¹³² One is unfree to the extent that some factor(s), whether external intervention or the absence of enabling conditions, prevent one from carrying out what one wills. Psychological positive libertarianism holds that a basic condition of self-willed action is the absence of psychological compulsions that block the actualization of one's will. Again quoting Taylor, "we can fail to achieve our own self-realization through inner fears, or false consciousness, as well as because of external coercion."¹³³

Suppose George is a concert pianist of superb training and ability who wishes to make a career as a performer. Now suppose that George suffers frequent, severe psychotic episodes unresponsive to drug therapy, that make it impossible for him to keep to a touring schedule. George has done everything he can to bring his goal of being a concert pianist into reality, but he is unable to do

¹³¹ In Berlin, *Four Essays on Liberty* (New York: Oxford University Press, 1969), p. 131.

¹³² "What's Wrong with Negative Liberty," in David Miller, ed., *Liberty* (New York: Oxford University Press, 1991), p. 143.

¹³³ *Ibid.*

so. Does it make sense to say that George is free to be a concert pianist, even though psychological factors outside his control prevent it? Psychological positive libertarianism says no: that George should be described as unfree to pursue his chosen career.

It is not merely uncontrollable internal factors, however, that the psychological positive libertarian theory regards as threats to liberty. You are rendered unfree, says Taylor, "if you are motivated, through fear, inauthentically internalized standards, or false consciousness, to thwart your self-realization."¹³⁴ Being free does not mean merely being able to do what one wants, because one may want things that conflict with one's "basic purposes." One is free only if one's desires are *authentic* — that is, if one's wants are chosen to be consistent with one's ultimate sense of self. In other words, psychological positive-libertarianism identifies liberty with autonomy,

Although psychological positive liberty is sometimes termed the German concept of liberty, by association with Kant and subsequent German thinkers, its roots can be traced through Rousseau's discourses, to Augustine's *Confessions*, as far as Plato's *Republic*. This version of positive liberty finds warrant in Mill's emphasis on the importance of individuality. Quoting Wilhelm von Humboldt, Mill argues that

"the end of man ... is the highest and most harmonious development of his powers to a complete and consistent whole"; that, therefore, the object "towards which every human being must ceaselessly direct his efforts, and

¹³⁴ *bid.*, pp. 146-7.

on which especially those who design to influence their fellow men must ever keep their eyes, is the individuality of power and development."¹³⁵

The individual, says Mill, should develop his own character, strong and bold.

Where, not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress.¹³⁶

Mill insists that individuality is not merely a means to social well-being. To be sure, Mill does argue that when a person's desires are his own, not determined for him by society, society in fact benefits by learning from his example. At the same time, though, Mill considers the individual's self-realization an intrinsic value: it makes the person "a noble and beautiful object of contemplation."¹³⁷ For a person with "any tolerable amount of common sense and experience, his own mode of laying out his existence is the best, not because it is the best in itself, but because it is his own mode."¹³⁸ In other words, Mill seems to regard autonomy both as an instrumental value and as an end in itself.

Mill thus shares a crucial value with the advocate of psychological positive liberty, one hallmark of which is that "men's ruling themselves is seen as an activity valuable in itself, and not only for instrumental reasons."¹³⁹ Liberty is a value for Mill because it promotes that intrinsic value. From this, one might surmise that Mill would not consider the conditions of liberty to have been fully realized unless individuality were, in fact, made as widespread as possible. If so,

¹³⁵ *OL*, Ch. 3, ¶ 2.

¹³⁶ *OL*, Ch. 3, ¶ 1.

¹³⁷ *OL*, Ch. 3, ¶ 10.

¹³⁸ *OL*, Ch. 3, ¶ 14.

¹³⁹ *Op. Cit.*, p. 142.

perhaps it is the case that only psychological positive libertarianism would count as complete satisfaction of the requirements of a good theory of liberty.

However, it takes more than sharing a goal for Mill's theory to amount to psychological positive libertarianism. Psychological positive libertarianism does not merely value autonomy, nor does it merely claim that liberty should or must lead to autonomy. The hallmark of psychological positive libertarianism is that it *defines* genuine liberty as autonomy. To the extent that Mill treats liberty and autonomy as conceptually distinct, he is not truly defending a psychological positive libertarian theory.

There is one argument in Mill's discussion of individuality, the best reading of which is indeed to equate liberty with autonomy.¹⁴⁰ After arguing for the importance of individuality, Mill rather abruptly returns to his earlier theme, the dominance of custom over British life in his day. In a decidedly perplexing discussion, Mill introduces a new idea, which he terms "the progressive principle," defined as "that disposition to aim at something better than customary."¹⁴¹ This progressive principle is "called, according to circumstances, the spirit of liberty, or that of progress or improvement."¹⁴²

¹⁴⁰ I take it that Mill's usage of "individuality," which he describes as acting "according to his own inclination and judgement in those things which concern himself" (*OL*, Ch. 3, ¶ 1), is roughly the same as the idea of autonomy. Though contemporary autonomy theorists have refined the concept considerably, the core meaning is still considered to be that of acting on one's own judgment, not on values imposed by others.

¹⁴¹ *OL*, Ch. 3, ¶ 17.

¹⁴² *Ibid.*

While this formulation implies that the spirit of liberty is the same as that of progress or improvement, merely called by a different name, Mill intends these to be distinct principles.

The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people; and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporarily with the opponents of improvement.¹⁴³

Mill seems not to have worried overly much about keeping the ideas separate, because the spirit of liberty and the spirit of progress generally work together: "the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centres of improvement as there are individuals." Liberty and progress are distinct ideas that work together to combat the dead weight of custom on a society.

There is a curious omission from this discussion, however: the idea of individuality, which is the notional topic of Mill's chapter, has disappeared. Individuality is not in any obvious way synonymous with progress; might Mill be treating it as synonymous with liberty? The answer seems to be that he is. The idea of individuality re-appears in two places later in the paragraph, just where one would expect Mill to cash in on the discussion of the spirits of liberty and progress from the beginning of the paragraph.

The first comes at the end of Mill's argument that there is a link between liberty and progress. "A people" Mill writes, "may be progressive for a certain time, and then stop: when does it stop? When it ceases to possess individuality."

¹⁴³ *Ibid.*

Here, the word "liberty" from his earlier formulation has been quietly replaced by "individuality," a move that suggests that Mill is treating the two as synonymous.

The second re-introduction of the idea of individuality is less clear in equating liberty and individuality. "It is not progress," Mill writes, that the British object to. "On the contrary, we flatter ourselves that we are the most progressive people who ever lived. It is individuality that we war against."¹⁴⁴ This is less clearly an echo or extension of the earlier arguments, but it is nonetheless best construed as equating liberty and individuality. Having introduced the distinction between the spirit of liberty and the spirit of progress, having argued that the two cannot be persistently separated but may work against one another temporarily, he now places individuality in the position of ignored counterpart to progress. In order for the earlier part of the paragraph to have made any sense, we must assume that liberty and individuality are being considered as different words for the same idea.

If it is true that Mill defines liberty as individuality, then he truly is defending psychological positive libertarianism. However, I believe this passage is conceptually confused, in ways that make it a poor source for evidence on the details of Mill's view.

To begin with, there is the confusing relationship between the ideas of liberty and progress. Mill first speaks of the spirit of progress as synonymous with the spirit of liberty, but within a sentence he argues that they are different principles that can even come into conflict under certain circumstances. Mill

¹⁴⁴ *Ibid.*

speaks in authoritative tones about the relationship between the two ideas, as if he had a solid taxonomy in mind, even as he contradicts that taxonomy from one sentence to the next.

As if this were not confusing enough, there is the dual use of "progress," in "the spirit of progress" and "the progressive principle." The progressive principle is defined as "that disposition to aim at something better than customary" and treated as an overarching principle subsuming two subordinate principles: "the spirit of liberty" and "that of progress, or improvement." Later, he repeats that the progressive principle can take "either shape, ... as the love of liberty or of improvement."

Mill provides no basis to distinguish between the spirit of progress and the progressive principle. He provides a definition of the progressive principle, but not of the spirit of progress, and he seems not to distinguish them in practice. A people, he says, may "*be progressive*." The British "flatter ourselves that we are the most *progressive people* who ever lived." Neither of these uses indicates whether it refers to the progressive principle or the spirit of progress. Yet the two ideas clearly must be distinct, if the spirit of progress is supposed to be only one form of the progressive principle.

This conceptual sloppiness suggests that Mill does not intend to be drawing the precise and technical distinctions he initially appears to be drawing. The meat of this discussion is not any nice conceptual distinction, but Mill's sociologically interesting observation that the British society of his day sought to retain progress without individuality, together with Mill's claim that such an

attempt is ultimately self-defeating. The attempt to create a formal definition of liberty based on this discussion seems to push the text too hard.

Given the direction of Mill's entire discussion of liberty and individuality, it seems clear that he does not intend to equate liberty and autonomy. Although autonomy is a crucial justifying *goal* of liberty, it is not Mill's *definition* of liberty. Recall that Mill regards the harm principle as the "one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control...."¹⁴⁵ That principle has been variously described as a harm principle, or a Principle of Liberty, but it is clear that the principle is that society must not "interfere" with the liberty of the individual except to prevent him from harming others. "that the sole end for which mankind are warranted... in interfering with the liberty of action of any of their number, is self-protection." No matter how misguided a person might be, no matter how much he may voluntarily choose subservience to a Church or guru, "his own good, either physical or moral, is not a sufficient warrant" to interfere.

Suppose that David is a person living in a society that fully respects the harm principle as defined by Mill, and David chooses to join a cult. Suppose that we know with certainty that David is not acting autonomously, and we have assurances from a cult deprogrammer that, were we to kidnap David and force him to go through deprogramming, David could be returned to full autonomy. Nonetheless, according to Mill's harm principle we would be forbidden from interfering. According to Taylor, David's freedom would direct us to intervene

¹⁴⁵ *OL*, Ch. 1, ¶ 9.

when we knew David to be acting non-autonomously, and thus, unfreely (even if other, more important considerations might require us not to intervene in a particular case). According to Mill, on the other hand, David's freedom would require us to leave him alone. If that which could return David to autonomy would violate his liberty, then clearly Mill cannot be equating liberty and autonomy.

Persons living under the regime of Mill's harm principle could still choose to be non-autonomous, and Mill would have to say that they had freely chosen their lack of autonomy. The harm principle is intended to allow the maximum protection for individuals to make their own self-directed choices about ideas and values. It takes away one crucial impediment to autonomy, but it does not guarantee that individuals will be autonomous. If someone can be fully free (in the sense that the harm principle is being satisfied with respect to his or her choices), yet still be non-autonomous, it cannot be that Mill defines freedom as autonomy.

Consider Mill's famous example of a man about to cross a bridge without realizing it is unsafe. If "there were no time to warn him of his danger," a police officer or anyone else "might seize him and turn him back, without any real infringement of his liberty; for *liberty consists in doing what one desires*, and he does not desire to fall into the river."¹⁴⁶ This statement can be read to be consistent with psychological positive libertarianism, for it equates liberty with "doing what one desires."

¹⁴⁶ *On Liberty*, Ch. 5, ¶ 5. Emphasis added.

However, if we change the example it will become clear that Mill is not advocating psychological positive libertarianism. Suppose that the man *were* intending to commit suicide by falling into the water. Suppose further that the reason he desires to kill himself is inauthentic: he is momentarily depressed, say, over a break-up with a girlfriend he had been considering breaking up with anyway. I think it is clear that in this case, Mill would argue that the man's liberty *has* been denied if a police officer seized him and prevented his walking onto the bridge, even though the desire being thwarted was inauthentic.

Suppose there were a more moderate form of psychological positive libertarianism, according to which an action is free only if it is consistent with some desire, but not necessarily demanding that it be fully autonomous. Suppose I am prevented from rock climbing, which I want to do, by a paralyzing acrophobia. But suppose that rock climbing is not, for me, truly an authentic desire. Presumably, a full-fledged psychological positive libertarianism would hold my inability to rock climb as neutral with respect to liberty: the desire itself is not authentic, so my failure to actualize it is not an inability to act autonomously. But this modified psychological positive libertarianism would consider me unfree insofar as my inauthentic desire to rock climb is being thwarted. Even on this more moderate version of psychological positive libertarianism, however, Mill should not be read as a positive libertarian.

To claim that liberty consists in doing what one wants is not tantamount to positive libertarianism. Mill's claim is that preventing someone's doing that which he does not want to do is not a violation of liberty. From this, it does not follow

that *not* preventing someone's doing that which he does not want to do *is* a violation of liberty. It seems unlikely that Mill would make the claim that a man who was not prevented from crossing the bridge and fell into the water is unfree. If this were true, then Mill would not be able to claim, as he does in the chapter on applications, that an unsuccessful job-seeker has not had his freedom violated.

John Stuart Mill would consider positive liberty to be an unnecessary expansion of the concept of liberty, despite holding that the purpose of liberty is to encourage autonomy. Just as Mill's father had believed that freedom from governmental coercion is a sufficient condition to cause independence of mind, so John Stuart Mill believes that freedom from social pressure is, in the normal condition, a sufficient condition to provoke individuals to develop their own individualities. In previous generations, before "the despotism of custom"¹⁴⁷ set in, Mill believes that the development of individuality was not a problem – indeed, "there has been a time when the element of spontaneity and individuality was in excess, and the social principle had a hard struggle with it."¹⁴⁸ The problem is that the measures imposed to restrict antisocial individuality took on lives of their own, eventually becoming inappropriately dominant.

The reason Mill thinks the absence of social interference is sufficient to unleash individuality is indicated by his liberal use of organic metaphors for the development of individuality. For instance, he writes that if society wishes to have persons of genius, "it is necessary to preserve the soil in which they grow."¹⁴⁹

¹⁴⁷ *OL*, Ch. 3, ¶ 17.

¹⁴⁸ *OL*, Ch. 3, ¶ 6.

¹⁴⁹ *OL*, Ch. 3, ¶ 12.

Human nature "is not a machine to built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing."¹⁵⁰

Like any living thing, the individual contains "inward forces" that will tend to make him seek out that way of living most suitable to itself. Left to his own devices, like an acorn, he will grow into the unique character it is his nature to become. It is only when the outward forces of social interference try "to maim by compression, like a Chinese lady's foot, every part of human nature which stands out prominently,"¹⁵¹ that the typical person will fail to develop his uniqueness.

Note that these organic metaphors are used in a slanted way. For Mill, "preserving the soil" in which individuality flourishes consists chiefly in refraining from interference with its development, not in providing positive inducements to individuality. (Mill's advocacy of public funding for education is an exception.) But of course, the function of soil in a literal plant's growth is not merely to refrain from interference, but to provide sustenance necessary for proper growth. Yet Mill seems on the whole not to believe that society must provide positive encouragement for the flowering of individuality.

¹⁵⁰ *OL*, Ch. 3, ¶ 4.

¹⁵¹ *OL*, Ch. 3, ¶ 15.

Material Condition Positive Libertarianism

The paradigmatic statement of the second understanding of positive liberty is Proudhon's claim that "a hungry man is not free." In other words, a person who is working under the pressure of dire necessity does not, in a meaningful sense, have freedom. Suppose I have enough money to pay rent on a \$500 apartment, but no more. This version of positive libertarianism would say that I am free to choose among \$500 apartments, but I am *not free* to choose a \$700 apartment. To the extent that my choices are limited by material conditions, my freedom is restricted.

On this view, one's freedom increases with available resources. If my income increases such that I can now reasonably afford the \$700 apartment, I am now free to choose from a wider range of options. Material condition positive libertarianism equates freedom with ability to act (at least insofar as that ability is the result of human choices).

Note that this version differs significantly from the previous version of positive liberty. One may be perfectly free, on this view, even when acting under psychological necessity. Suppose I am very wealthy, but a neurotic fear of spending money leads me to choose only apartments for \$500 or less. The psychological-conditions version of positive liberty would argue that I am not free to choose a more expensive apartment, but the material-conditions version would argue that I am.

Support for this version of positive liberty may be found in the way Mill argues for freedom of expression. The goal of this liberty, Mill says, is to ensure

proper public debate by guaranteeing that every important viewpoint not only *can* be defended, but *is* defended, publicly and vigorously. Indeed, says Mill, "if opponents of all important truths do not exist, it is indispensable to imagine them, and supply them with the strongest arguments which the most skilful devil's advocate can conjure up."¹⁵² From this, one might well infer that a mere negative right to speak is not enough; that one should have guaranteed access to some media in order for one's freedom of expression to be fully realized.

One central feature of a positive liberty is that it imposes a positive duty on others vis-à-vis the holder of a positive right. If I have a positive liberty to speak, it is not enough for others to leave me alone: they must take some action to ensure that I am heard (give me access to media, for instance). And Mill does, in fact, argue that there is a positive obligation to expose oneself to all sides of every important issue. This view is implicit in Mill's arguments concerning the importance of intellectual conflict to the discovery of truth. If it is true that "no wise man ever acquired his wisdom in any mode but ... by hearing what can be said about it by persons of every variety of opinions, and studying all modes in which it can be looked at by every character of mind,"¹⁵³ then it must surely be the responsibility of any thinking adult to engage in that process. "There is always hope" that truth will triumph, Mill writes, "when people are forced to listen to both sides."¹⁵⁴

¹⁵² *OL*, Ch. 2, ¶ 23.

¹⁵³ *OL*, Ch. 2, ¶ 7.

¹⁵⁴ *OL*, Ch. 2, ¶ 39.

Mill has thus argued both sides: from the standpoint of the idea being discussed, it must be heard, and from the standpoint of the audience, we have a duty to hear it. Note, however, that neither of these arguments is truly an argument for the positive liberty of the exponent of an unpopular belief – indeed, according to the first argument, *ex hypothesi* there is no such exponent. Rather, both of these arguments are utilitarian arguments from social benefit.

Perhaps the strongest reason to read Mill as a proponent of material conditions positive liberty is found in his argument that "opinion" can be "as efficacious as law," at least under certain circumstances.¹⁵⁵ Mill argues that those whose means are settled, need not worry about the corrupting influence of public opinion. But for those who stand in need of money, "men might as well be imprisoned, as excluded from the means of earning their bread."¹⁵⁶ The absence of the ability to make a living, according to Mill, is indistinguishable from imprisonment: to deprive someone of a living is to violate his or her liberty.

Despite the seeming consistency of this viewpoint with material conditions positive libertarianism, however, I think it would be a mistake to attribute positive libertarianism to Mill.

Material conditions positive libertarianism holds that any choice one makes that limits another person's ability to act is a violation of that person's liberty. However, Mill does not: he expressly allows for a number of "very severe penalties" to be leveled against the individual on the basis of his self-regarding

¹⁵⁵ *OL*, Ch. 2, ¶ 19.

¹⁵⁶ *Ibid.*

conduct (including even the expression of opinion).¹⁵⁷ We may offer, or even "obtrude" on the person whose conduct we find odious but who has harmed no one, "considerations to aid his judgment, exhortations to strengthen his will," as long as we do not "constrain him" to our view of his good.¹⁵⁸ Not only may we feel contempt for a person for "lowness or depravation of taste," we may take actions that limit his ability to act: we may avoid his company, "stand aloof from a person as well as a thing that displeases us,"¹⁵⁹ "warn others against him," and "give others a preference over him in optional good offices."¹⁶⁰ To the extent that these "penalties" are "strictly inseparable from the unfavourable judgment of others," we do not violate the person's liberty, even as we restrict his ability to associate with us and to obtain "optional good offices" from us.¹⁶¹

When do our limitations on people's ability to act constitute violations of liberty? Only when they are punitive. That is, we violate a person's liberty only when we "inflict pain on him for the express purpose of punishment."¹⁶² There is, according to Mill, "not a merely nominal distinction," but "a vast difference" between "leaving [a person] to himself," which does not violate his liberty, and "control[ling] him" or "retaliat[ing] on him."¹⁶³ The difference is that leaving someone alone is a mere negative, whereas only positive, aggressive actions properly constitute violations of liberty on his theory. Mill does not hold that

¹⁵⁷ *OL*, Ch. 4, ¶ 4.

¹⁵⁸ *OL*, Ch. 4, ¶ 3.

¹⁵⁹ *OL*, Ch. 4, ¶ 7.

¹⁶⁰ *OL*, Ch. 4, ¶ 4.

¹⁶¹ *OL*, Ch. 4, ¶ 6.

¹⁶² *OL*, Ch. 4, ¶ 7.

¹⁶³ *Ibid.*

anyone has a right to be heard, only a right not to be punished for the contents of his or her speech. We may "leave a person to himself," which presumably would include the refusal to hear any arguments he wished to make, but we may not punish him.

An Ambiguity in the Concept of Negative Liberty

Some of the impetus to see Mill as a defender of positive liberty may stem from an ambiguity in the definition of negative liberty. The typical definition of negative liberty holds that freedom is

marked by the absence of ... some element of constraint which inhibits an agent from being able to act in pursuit of his or her chosen ends, from being able to pursue different options, or at least from being able to choose between alternatives.¹⁶⁴

As Isaiah Berlin puts the point, "I am normally said to be free to the degree to which no man or body of men interferes with my activity." I am *unfree*, on the negative view of liberty, to the extent that "I am prevented by others from doing what I could otherwise do"¹⁶⁵ – as is the case, for instance, if "my inability to get a given thing is due to the fact that other human beings have made arrangements whereby I am, whereas others are not, prevented from having enough money with which to pay for it."¹⁶⁶

¹⁶⁴ Quentin Skinner, "The Paradoxes of Political Liberty," in Miller, ed., *Liberty* (New York: Oxford University Press, 1991), p. 184.

¹⁶⁵ "Two Concepts of Liberty," in Berlin, *Four Essays on Liberty* (New York: Oxford University Press, 1969), p. 122

¹⁶⁶ *ibid.*, p. 123.

There is an ambiguity inherent in this definition, however. Clearly, not all forms of "interference" or "constraint" can count as violations of negative liberty. Others may constrain one's choices or interfere with one's actions in many different ways. The police forcibly escort a trespasser off my front lawn; a newspaper fires a columnist for espousing controversial views; a dictator hires goon squads to kill or threaten his critics. Which of these actions constitute(s) violation(s) of negative liberty depends on a consideration beyond the mere question of whether one person's actions interfere with another's ability to act.

One cannot fully explicate the nature of negative liberty without looking beyond the formal question of whether one's actions are limited by others' choices. One must ask the substantive question of *how* they are so limited. Some means of interference will have to be identified as consistent with negative liberty, while others are not.

Classical liberals in the tradition of John Locke argued that only coercive interference could violate liberty. That is, only the initiation of physical force (as against its self-protective or retaliatory use) could violate liberty. The police forcing a trespasser off my property, in Locke's view, would have been protecting me from the trespasser's initiation of force against me (indirectly, via the violation of my property rights). The newspaper editor, even if acting in some sense to punish me for publishing controversial views, would not be initiating force against me. Only the dictator acts coercively to suppress his opponents, and so only he would be considered to violate the liberty of his victims.

A positive libertarian would argue that all three examples abridge liberty. Even if certain abridgements of liberty might be justified by some greater social good (such as the protection of property, in the trespasser example), all three of the above actions are actions that limit another person's ability to act.

Mill would share with the classical liberal the view that eviction of a trespasser is a legitimate protection of the owner from interference (provided that my ownership claim is well-justified),¹⁶⁷ and therefore not a violation of liberty. Where he would disagree with the classical liberal is in his assessment of the punitive editor. That editor would be violating the columnist's liberty, because he is taking action to harm the columnist because of actions (publishing controversial ideas) that are not themselves harmful.

Mill's libertarianism may seem like positive libertarianism because it expands the idea of liberty beyond the strict bounds set by the classical liberal version of negative libertarianism, in a way that encompasses some of the same conclusions as positive libertarianism. However, this is a confusion of the issue. Mill agrees with the classical liberal that only actions intended to punish can count as violations of liberty; where he disagrees is on the substantive issue of which types of interference are considered to violate liberty. His is still a negative libertarianism, even though one of a very different flavor than the negative libertarianism of John Locke.

¹⁶⁷ See *Principles of Political Economy*, Book II, Ch. 2, § 6.

CHAPTER 3: UTILITARIANISM AND DUTIES TO THE SELF

JOHN STUART MILL'S AMBIGUOUS "ART OF LIVING"

The "Art of Living" is an overarching interpretation of all human actions to which John Stuart Mill attempts to give birth in the final chapters of *A System of Logic*. Although adduced by Alan Ryan in support of a thesis akin to my social interpretation of John Stuart Mill's harm principle, in fact the Art of Living causes several problems for the social interpretation.

The first difficulty lies in assessing precisely what Mill means by his Art of Living. As Ryan notes, Mill subdivides the Art of Living into three subcategories: morality, prudence, and esthetics. However, I argue that it is far from self-evident what Mill in the *System of Logic* means to be the dividing-line between morality, on the one hand, and prudence and/or esthetics, on the other – particularly in the light of the "clarification" Ryan alludes to in Mill's article on "Bentham." In the final analysis, I argue, the Art of Living does comport with the social interpretation of the harm principle. However, this can be understood only

after one has been convinced of the social interpretation, and therefore it cannot be used, as Ryan uses it, as evidence *for* the social interpretation.

Even granted that the Art of Living is consistent with the social interpretation, however, it highlights an interesting problem for that interpretation. The social interpretation argues that Mill intends morality to be concerned entirely with one's duty toward others, ruling out any such concept as a moral duty to oneself. But the stated standard of Mill's utilitarianism is the greatest happiness of all concerned in one's actions – and if one's own happiness is, as it generally must be, among the most directly concerned in one's actions, it would seem that one's own happiness should be among the chief concerns of the utilitarian standard. It would thus seem arbitrary to exclude concern for one's own well-being from the considerations of morality. Indeed, if one has an obligation to promote the good of all those affected by one's actions, then it would seem as though duties to the self should be among the chief concerns of what Mill terms "the happiness morality."

Although I shall argue that this problem is ultimately answerable by reference to Mill's interesting theory of rights, this is a serious challenge to the social interpretation. Answering it requires a deeper understanding of Mill's utilitarianism, particularly his utilitarian theory of rights. I shall now turn my attention to this task.

A challenge for the social interpretation

Utilitarianism and *On Liberty* argue for a sharp distinction between the realm of actions that substantially affect others' interests, and the realm of actions that affect primarily oneself. As I have noted, according to Mill the former is the exclusive domain of ethics/politics, while the latter is home to other categories of judgment, such as esthetics and prudence. "We do not call anything [morally] wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it."¹⁶⁸ And conduct is punishable only when it violates "an assignable obligation to any other person or persons."¹⁶⁹ "Self-regarding faults ... are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness."¹⁷⁰

Against such definitive statements, I can find only one place in Mill's entire corpus in which he obliquely allows for duties to the self: in the 1867 essay on "Sedgwick's *Discourse*," Mill writes that "morality, for all other people [than those who mingle in public transactions, or whose example is likely to have extensive influence] consists in doing good and refraining from harm, *to themselves* and to those who immediately surround them."¹⁷¹ But the doctrine of *On Liberty* and *Utilitarianism* is that harm to self is not a matter of moral concern.

The purpose of Mill's criticism of Sedgwick is to defend utilitarianism as such, not necessarily his own understanding of it, so the inclusion of concern for one's own good under the heading of morality may have been intended to apply to

¹⁶⁸ *Utilitarianism*, Ch. 4, ¶ 17.

¹⁶⁹ *OL*, Ch. 4, ¶ 6.

¹⁷⁰ *OL*, Ch. 4, ¶ 6.

¹⁷¹ *Works*, vol. X, p. 59. Emphasis added.

other versions than his own. In any event, a single, side comment cannot stack up against the weight of the many passages in his theoretical exposition of his own version of utilitarianism (from the *Logic*, the essay on "Bentham," *Utilitarianism*, and *On Liberty*), in which he expressly denies the existence of duties to oneself. (Indeed, he arguably denies it later in the essay on Sedgwick, when he distinguishes between one's "disapprobation" of "a vicious man" from that of "a person who blunders in a question of prudence."¹⁷²)

To clarify and support this aspect of what I have termed the social interpretation of the harm principle, Alan Ryan turns to the final chapters of Mill's *System of Logic* (also published separately under the title *The Logic of the Moral Sciences*). There, Mill argues that all practical arts may be divided into three general fields: "Morality, Prudence or Policy, and Aesthetics."¹⁷³ These fields, in turn, are subsumed by an omnibus "Art of Living," whose standard of value is "conduciveness to the happiness of mankind, or rather, of all sentient beings,"¹⁷⁴ According to Ryan, these arts line up neatly along the divide between self-regarding and other-regarding:

Morality is concerned with social relations, with dealings with other people. It is concerned largely with rules directing us to abstain from conduct calculated to harm others; thus, as we said, it is aimed at achieving *interpersonal* goods such as peace, justice, and honesty. For this reason, Mill says in the essay on Bentham that morality is essentially concerned with the business side of life, with preserving minimal

¹⁷² *Works*, vol. X, p. 71.

¹⁷³ *Logic*, Bk. VI, Ch. xii, § 6.

¹⁷⁴ *LMS*, p. 143.

forbearances. Prudence, by contrast, is concerned with the good of the agent, with his own happiness and misery, not that of other people.¹⁷⁵

The problem is that nowhere — not in the essay on Bentham nor in the *Logic* — does Mill tell us that this is the basis for his morality/prudence/aesthetics distinction. Other than naming the domain of each field in an unhelpful word or two, Mill in the *Logic* in fact says *nothing* about the means of distinguishing the three fields.

The fact that Mill distinguishes prudence from morality does not automatically establish that morality is supposed to be other-regarding. The difference between self-regarding and other-regarding is one axis according to which morality and prudence, or the right and the expedient, may be distinguished, but there are others. A perfectly reasonable means of distinguishing the morality and prudence would be between ends and means, where morality is the field that dictates the goals that are good or bad to pursue (be those ends self-regarding or other-regarding), and prudence concerns identifying the most expedient means to actualize these ends.

Mill considers this use of "expediency" (which I take to be roughly synonymous with "prudence" in Mill's usage) in discussing the objection that utilitarianism may be "stigmatized as an immoral doctrine of Expediency, ... taking advantage of the popular use of that term to contrast it with Principle." In this usage, Mill says, "it means that which is expedient for some immediate object, some temporary purpose, but which violates a rule whose observance is

¹⁷⁵ "John Stuart Mill's Art of Living," in John Gray and G.W. Smith, *J.S. Mill On Liberty in Focus* (New York: Routledge, 1991), p. 164.

expedient in a much higher degree." ¹⁷⁶ My point is not to argue for this as a better account of Mill's distinction (and in fact he argues that its more common meaning is to contrast the pursuit of public and private goods). My point is to show that Mill's account in the *Logic* requires explication – it does not, on its face, establish the social interpretation's claim that morality is intended to apply only to the other-regarding.

It will not help us to turn, as Ryan does, to the "Bentham." Ryan's use of this article is highly problematic. Nowhere in the article on Bentham does Mill say, as Ryan claims he does, that "morality is essentially concerned with the business side of life, with preserving minimal forbearances."¹⁷⁷ Rather, Mill attributes such a restrictive view of morality to Bentham, making it a basis for criticism. Bentham's strength was as a philosopher of law, and "law is a matter of business,"¹⁷⁸ but this is a *limitation* of Bentham's philosophy. Bentham "can teach the means of organizing and regulating the merely *business* part of the social arrangements," but is unhelpful in understanding "moral influences."¹⁷⁹ Again, Bentham "committed the mistake of supposing that the business part of human affairs was the whole of them; all at least that the legislator and the moralist had to deal with."¹⁸⁰ Mill argues that Bentham's approach leaves out one of the two parts which compose morality, namely "self-education: the training, by the human

¹⁷⁶ *Utilitarianism*, Ch. 2, ¶ 27.

¹⁷⁷ *Op. Cit.*, p. 164.

¹⁷⁸ "Bentham," p. 79.

¹⁷⁹ "Bentham," pp. 73-74.

¹⁸⁰ "Bentham," p. 74.

being himself, of his affections and will."¹⁸¹ Thus, while Bentham handles "the *petite morale* almost alone, and that with the most pedantic minuteness, and on the *quid pro quo* principles which regulate trade," he lacks "a sound treatment of any question the moralities of which require a profound knowledge of the human heart."¹⁸²

Furthermore, the essay on Bentham appeals to a tripartite distinction among the "aspects" of every action (not, here, different departments within the art of living), that differs significantly from the distinction in the *Logic*.

Every human action has three aspects: its *moral* aspect, or that of its *right* and *wrong*; its *aesthetic* aspect, or that of its *beauty*; its *sympathetic* aspect, or that of its *loveableness*.¹⁸³

In this distinction, the realm of prudence has disappeared entirely, to be replaced by the rather odd category of "loveableness."

The moral aspect of an action, Mill argues, "depends on its foreseeable consequences," and nothing Mill says in the essay on Bentham indicates that the consequences to be considered by morality are exclusively other-regarding consequences. Rather, in this case the distinction is between those aspects of an action pertaining to its consequences and those pertaining to our evaluation of the agent himself. An action's "beauty, and its loveableness, or the reverse, depend on the qualities [of the agent] which it is evidence of." Thus, whereas evaluation of an action's morality is an evaluation of the action itself, of its tendency to produce

¹⁸¹ "Bentham," p. 71.

¹⁸² "Bentham," p. 72.

¹⁸³ "Bentham," p. 93.

good or bad consequences, evaluation of its beauty or loveableness is an evaluation of what it says about the agent acting.

Thus, [Mill continues,] a lie is *wrong*, because its effect is to mislead, and because it tends to destroy the confidence of man in man; it is also *mean*, because it is cowardly – because it proceeds from not daring to face the consequences of telling the truth – or at best is evidence of want of that *power* to compass our ends by straightforward means."¹⁸⁴

There is nothing in this discussion relevant to Ryan's claim that morality pertains to "the business side of life," nor to preserving "minimal forbearances." Morality is clearly not being distinguished from the self-regarding in this discussion.

Not only does the "Bentham" fail to support Ryan's reading of *The Logic of the Moral Sciences*, it raises a problem for it. If the morality of an action is a factor of its "foreseeable consequences," do any sort of consequences count, whether self-regarding or other-regarding? If self-regarding consequences are relevant to the moral assessment of an action, then Ryan's argument (and mine) that Mill intends morality to pertain only to the other-regarding, is sunk.

Here, as elsewhere, I think one must understand the context of the passage – which particular dragon Mill is slaying – in order to understand what Mill's claim does, and does not, mean. The discussion of the domain of morality in the article on Bentham is raised in the service of one specific criticism of Bentham's ethics: that Bentham's view of human nature is too thin, leaving out crucial aspects of the soul.

Nor is it only the moral part of man's nature ... that he [Bentham] overlooks; he but faintly recognizes, as a fact in human nature, the pursuit

¹⁸⁴ *Ibid.*

of any other ideal end for its own sake. The sense of *honour*, ... the love of *beauty*, ... the love of *order*, ... the love of *power*, ... the love of *action*, ... None of these powerful constituents of human nature are thought worthy of a place among the "Springs of Action"¹⁸⁵

It is from these sorts of character traits that Mill intends to distinguish morality in "Bentham," and this is a distinction to which the issue of prudence is irrelevant. With regard to prudence and "the business side of life," Mill sees no reason to differ from Bentham. The purpose of this discussion being entirely different from that of the discussion in *The Logic of the Moral Sciences*, it neither clarifies nor contradicts that discussion.

But what of Mill's emphasis on the cultivation of "the moral part of man's nature" in the essay on Bentham? If the cultivation of one's inward character is to be seen as a crucial part of morality, would that not count as a self-regarding virtue? If so, then again the social interpretation of the harm principle, with its claim that no such category fits with Mill's theory, is in trouble.

To approach this issue, I shall begin by relating it to Mill's discussion of character in *Utilitarianism*. It is a canard of the deontology/utilitarianism debate that, while deontology focuses on evaluating character to the exclusion of evaluating actions, utilitarianism focuses on evaluating actions to the exclusion of evaluating people's characters. Critics of utilitarianism, Mill writes, have "affirmed that utilitarianism ... makes [men] regard only the dry and hard consideration of the consequences of actions, not taking into their moral estimate

¹⁸⁵ "Bentham," pp. 67-8.

the qualities from which those actions emanate."¹⁸⁶ Whether or not this is true of other utilitarian thinkers, however, it is not true of John Stuart Mill.

Mill sees this as a false alternative, and he seeks to overcome it by incorporating a concern for character within his consequentialist morality. The evaluation of actions according to their consequences, he claims, in no way precludes one's separately evaluating a person's character: "there is nothing in the utilitarian theory inconsistent with the fact that there are other things which interest us in persons besides the rightness and wrongness of their actions."¹⁸⁷

How can a consequentialist theory incorporate the evaluation of character? By reducing the consideration of character ultimately to the evaluation of its consequences. What is true of utilitarians, says Mill, is that they "resolutely refuse to consider any mental disposition as good, of which the predominant tendency is to produce bad conduct."¹⁸⁸ The mental dispositions morally esteemed by utilitarians are those conducive to the general welfare.

The cultivation of an ideal nobleness of will and conduct should be to individual human beings an end, to which the specific pursuit either of their own happiness or that of others (except so far as included in that idea) should, in any case of conflict, give way. But I hold that the very question, what constitutes this elevation of character, is itself to be decided by a reference to happiness as the standard.¹⁸⁹

Mill freely admits that a hallmark of virtuous characters is that the virtuous possess "the power of sacrificing their own greatest good for the good of

¹⁸⁶ *Utilitarianism*, CW, pp. 220-1.

¹⁸⁷ *Utilitarianism*, CW, p. 221.

¹⁸⁸ *Utilitarianism*, CW, p. 221.

¹⁸⁹ *Logic*, Bk VI, Ch. 12, § 7, ¶ 7.

others."¹⁹⁰ But that virtuous character is not to be seen as an end in itself. Of the person who renounces his personal happiness for the sake of "virtue," Mill writes, virtue is to be understood as a matter of pursuing some goal. "I ask, would the sacrifice be made if the hero or martyr did not believe that it would earn for others immunity from similar sacrifices?" Virtue is a good, he argues, because it promotes happiness as its consequence.

All honour to those who can abnegate for themselves the personal enjoyment of life, when by such renunciation they contribute worthily to increase the amount of happiness in the world; but he who does it, or professes to do it, for any other purpose, is no more deserving of admiration than the ascetic mounted on his pillar.¹⁹¹

Mill thus makes room for the moral evaluation of character, character being an indispensable means of promoting the greatest amount of happiness in the world.

The fact that a theory calls for the evaluation of character does not necessarily make it non-consequentialist. For a theory to be non-consequentialist, it would have to evaluate one or another kind of character as *intrinsically* good, independent of the foreseeable consequences of that character in promoting happiness. This Mill clearly does not do. He defines a good character as one that tends, in the main, to lead to good actions, as measured by their outcomes. This solution allows Mill to avoid the simple dichotomy between consequentialism and the evaluation of character. He can provide an account that gives full credit to the importance of character and the ability to judge it morally, but only by reference to the consequences of character — Mill's account is, at root, thoroughgoing

¹⁹⁰ *Utilitarianism*, Ch. 2, ¶ 20.

¹⁹¹ *Utilitarianism*, Ch. 2, ¶ 18.

consequentialism, even while giving (he believes) full credit to the importance of character.

The same approach, in pattern, may be applied to Mill's discussion of self-cultivation. The mere fact that a virtue has, as its object, one's treatment of oneself, does not render it self-regarding in the relevant sense. It would be self-regarding only if its goal were the promotion of one's self-interest. And there is no reason to suppose that Mill's self-cultivation, insofar as it is a *moral* ideal, is directed at self-interest.

Mill considers it impossible to "judge in what manner many an action will affect even the worldly interests of ourselves or others, unless we take in, as part of the question, its influence on the regulation of our, or their, affectations and desires."¹⁹² This is an aspect of Mill's enriched utilitarianism. The error he seeks to avoid is that of reducing the utilities calculated to eminent pleasures and pains. To do so is to exclude a crucial category of consequences from consideration. However, this leaves entirely open the question of *why* it is a moral value to cultivate the right kind of affectations and desires.

To answer this question, we must look at what Mill means by moral self-cultivation. He characterizes it as "desiring, for its own sake, the conformity of [one's] own character to his standard of excellence, without hope of good or fear

¹⁹² "Bentham," p. 71. See also "Sedgwick's Discourse," *Works*, vol. X, pp. 55-56: "In estimating the consequences of actions, in order to obtain a measure of their morality, there are always two sets of considerations involved: the consequences to the outward interests of the parties concerned (including the agent himself); and the consequences to the characters of the same persons, and to their outward interests so far as dependent on their characters."

of evil from other source than his own inward consciousness."¹⁹³ That is, moral self-cultivation is the process of internalizing moral law.

Self-cultivation may be a value in any of the three fields of the art of living; as, for instance, developing one's musical talents is an esthetic form of self-cultivation. In the *Autobiography*, for example, Mill refers to the following as examples of self-cultivation: learning German; studying economics, logic and analytical psychology; and developing an appreciation for music and poetry. But insofar as it is a *moral* good, self-cultivation is consistently treated as a value because it facilitates acting on duties towards others.

There is an oft-noted paradox in the thought of the first-generation utilitarians. Although they held a general-welfare standard of morality, their psychological-egoistic theory of motivation allowed only self-interested motives.¹⁹⁴ Thinking, perhaps, of the "invisible hand" of economics, Bentham sought to overcome this problem by arranging social incentives in such a way as to align social/political incentive structures in such a way as to align private self-interest with the social good.

While not denying that "utility would enjoin, first, that laws and social arrangements should place the happiness, or ... the interest, of every individual,

¹⁹³ "Bentham," p. 66.

¹⁹⁴ See Mill's discussion of "The interest-philosophy of the Bentham School," *Logic*, Bk. VI, Ch. 8, § 3. Cf. "Remarks on Bentham's Philosophy," *Works*, vol. X, p. 14: "The extent to which Mr. Bentham was a believer in the pre-dominance of the selfish principle in human nature, may be seen from the sweeping terms in which, in his *Book of Fallacies*, he expressly lays down that predominance as a philosophical axiom."

as nearly as possible in harmony with the interest of the whole,"¹⁹⁵ John Stuart Mill recognized that, at least in "an imperfect state of society," more was needed.

There are, there have been, many human beings, in whom the motives of patriotism or of benevolence have been permanent steady principles of action, superior to any ordinary, and in not a few instances, to any possible, temptations of personal interest. ... There is nothing in the constitution of human nature to forbid [the motive of conscience or moral obligation's] being so in all mankind. Until it is so, the race will never enjoy one-tenth part of the happiness which our nature is susceptible of. I regard any considerable increase of human happiness, through mere changes in outward circumstances, unaccompanied by changes in the state of the desires, as hopeless. ... No man's individual share of any public good which he can hope to realize by his efforts, is an equivalent for the sacrifice of his ease, and of the personal objects which he might attain by another course of conduct. The balance can be turned in favour of virtuous exertion, only by the interest of *feeling* or by that of *conscience* – those "social interests," the necessary subordination of which to "self-regarding" is so lightly assumed [by Bentham].¹⁹⁶

The world of the present is such that interests do conflict and one's own happiness may be pursued at the expense of social well-being (and social well-being may, conversely, require the sacrifice of one's own happiness).

Furthermore, Mill argues, under any theory of morality there are always exceptions to every rule. This is the fault "of the complicated nature of human affairs," and it inevitably allows for "self-deception and dishonest casuistry," which can lead an individual to "make his own particular case an exception to moral rules, and, when under temptation, ... [to] see a utility in the breach of a rule, greater than he will see in its observance."¹⁹⁷ Thus, adherence to a moral

¹⁹⁵ *Utilitarianism*, Ch. 2, ¶ 21.

¹⁹⁶ "Remarks on Bentham's Philosophy," *Works*, vol. X, p. 15.

¹⁹⁷ *Utilitarianism*, Ch. 2, ¶ 31.

code requires that the agent have internalized its virtues, both their letter and their spirit, so that he will not be tempted to abuse provisions for exceptions.

Given both these circumstances, the fact that individuals may have an interest in acting against the social well-being and the ability to rationalize a breach of morality, it will not do to rely on the "impracticable chimera" of identity between private and public interests.¹⁹⁸ There needs to be a mechanism

to establish in the mind of every individual an indissoluble association between his own happiness and the good of the whole, ... so that not only he may be unable to conceive the possibility of happiness to himself, consistently with conduct opposed to the general good, but also that a direct impulse to promote the general good may be in every individual one of the habitual motives of action, and the sentiments connected therewith may fill a large and prominent place in every human being's sentient existence.¹⁹⁹

That mechanism is the operation of individual conscience, which is to be the joint object of "education and opinion," and of individual self-cultivation. It is in the service of this function of conscience that Mill consistently treats moral self-cultivation in *Utilitarianism*.

Consider, for example, Mill's discussion of "the cultivation in ourselves of a sensitive spirit, on the subject of veracity," the one moral sentiment Mill discusses at some length in *Utilitarianism*. Although, Mill says, "it would often be expedient, for the purpose of getting over some momentary embarrassment, or attaining some object immediately useful to ourselves or others, to tell a lie," to do so would be destructive of the spirit of veracity. This is to be taken as an evil,

¹⁹⁸ *Logic*, Bk. VI, Ch. 8, § 3, ¶ 8.

¹⁹⁹ *Utilitarianism*, Ch. 2, ¶ 21.

because the spirit of veracity is "one of the most useful, and the enfeeblement of that feeling one of the most hurtful, things to which our conduct can be instrumental." ²⁰⁰

The spirit of veracity is "instrumental," presumably, for many self-interested reasons ("honesty is the best policy"), but Mill does not adduce these self-interested motives. Rather, he attributes the importance of the spirit of veracity to

the trustworthiness of human assertion, which is not only the principal support of all present social well-being, but the insufficiency of which does more than any one thing that can be named to keep back civilization, virtue, everything on which human happiness on the largest scale depends.²⁰¹

It is "transcendent expediency," not the "convenience to himself or to some other individual," that gives moral conscience its importance and its strictly moral character.

Our abhorrence of lying, qua moral virtue, is not a means to individual well-being, but a reaction to the fact that the agent who lies "does what depends on him to deprive mankind of the good, and inflict upon them the evil, involved in the greater or less reliance, which they can place in each other's word, acts the part of one of their worst enemies." ²⁰² Whatever the costs or benefits to oneself of lying, therefore, according to Mill its *moral* significance lies in its social consequences.

²⁰⁰ *Utilitarianism*, Ch. 2, ¶27.

²⁰¹ *Utilitarianism*, Ch. 2, ¶27.

²⁰² "Bentham," p. 73.

If that is Mill's treatment of a particular instance of conscience, Mill is every bit as clear in discussing conscience more generally. The ultimate sanction of morality, according to Mill, is "a subjective feeling,"²⁰³ the feeling of "pain, more or less intense, attendant on violation of duty."²⁰⁴ This sanction is what allows mankind to be "removed from the state of savage independence" and to identify their interests with the interests of the whole.²⁰⁵

This conscience develops as a "powerful natural sentiment"²⁰⁶ because the experience of cooperative enterprises accustoms people to "proposing to themselves a collective, not an individual interest as the aim (at least for the time being) of their actions." It is not merely that the individuals *share* interests with those with whom they cooperate: "So long as they are co-operating, their ends are *identified* with those of others; there is at least a temporary feeling that the interests of others are their own interests."²⁰⁷

At first, it may be, those engaged in cooperation see the interests of others as a merely instrumental value: as a *means* to their own happiness, not as intrinsically valuable. The well-being of my business partners, let us say, is useful to me because it makes them more industrious in promoting the business which promotes my own well-being. There is, however, a tendency for that which is a frequent *means* of my happiness to become *part* of my happiness – to become, in my consciousness, an intrinsic good.

²⁰³ *Utilitarianism*, Ch. 3, ¶ 5.

²⁰⁴ *Utilitarianism*, Ch. 3, ¶ 4.

²⁰⁵ *Utilitarianism*, Ch. 3, ¶ 10.

²⁰⁶ *Utilitarianism*, Ch. 3, ¶ 10.

²⁰⁷ *Utilitarianism*, Ch. 3, ¶ 11, emphasis added.

Consider Mill's own example, the desire for money. Originally, money is a mere instrumental value, whose "worth is solely that of the things which it will buy; the desires for other things than itself, which it is a means of gratifying." However, through constant association with happiness money becomes part of happiness. "[M]oney is, in many cases, desired in and for itself; the desire to possess it is often stronger than the desire to use it, and goes on increasing when all the desires which point to ends beyond it, to be compassed by it, are falling off." Mill is referring, for example, to those very wealthy individuals who continue acquiring greater fortunes when, by their own admission, they have long surpassed their need or even ability to spend their accumulated fortunes. At this point, says Mill, "Money is desired not for the sake of an end, but as part of the end. From being a means to happiness, it has come to be itself a principal ingredient of the individual's conception of happiness." The same process occurs, says Mill, with respect to most of the "great objects of human life," objects including "power, for example, or fame."²⁰⁸

If a thing like money, which brings no pleasure in and of itself, can become by habit an intrinsic good, then certainly (says Mill) so can the well-being of others. Through the habit of considering others' well-being synonymous with his own, the individual "comes, as though instinctively, to be conscious of himself as a being who of course pays regard to others."²⁰⁹ Only then, when one has come to desire others' good "disinterestedly, for itself,"²¹⁰ can one be counted on to

²⁰⁸ *Utilitarianism*, Ch. 4, ¶ 6.

²⁰⁹ *Utilitarianism*, Ch. 3, ¶ 11.

²¹⁰ *Utilitarianism*, Ch. 4, ¶ 5.

promote the general well-being consistently, even when it conflicts with his own particular well-being, or even his life. Mill argues that "the mind is not in a right state, not in a state conformable to Utility, not in the state most conducive to the general happiness, unless it does love virtue ... [as] a good in itself, without looking to any end beyond it."²¹¹

Conscience is this state, in which the individual feels "a feeling of unity with all the rest; which, if perfect, would make him never think of, or desire, any beneficial condition for himself, in the benefits of which they are not included."²¹² This is the state sought after by the moral self-cultivation Mill speaks of in the article on Bentham.

Moral self-cultivation may be seen on the model of the economic role of capital investment. An industrialist takes in a certain profit, after paying for all the factors of production. Before distributing this profit (to himself or to stockholders), he diverts some percentage of it (typically, a very large percentage) to the purchase of capital improvements, but this in no way indicates that he is motivated by anything other than the profit motive. Capital investment is not an end in itself, but a means of future profitability.

Likewise, the moral consideration of self-development is not an indication that Mill intends anything other than other-regarding consequences of action as its *moral* justification. Qua moral good, the cultivation of a good character is valuable, for Mill, because it ensures that one will act in a way that is moral. And

²¹¹ *Utilitarianism*, Ch. 4, ¶ 5.

²¹² *Utilitarianism*, Ch. 3, 12.

to understand what that means, we return to the passages in *Utilitarianism* and *On Liberty* in which Mill unequivocally argues that acting morally, as opposed to prudently, means refraining from violating "assignable obligations," not to oneself, but to others. Thus, Mill maintains in his references to conscience the inward focus Bentham lacks, while at the same time retaining the view of morality as concerned with duties to others rather than duties to self.

In *On Liberty*, Mill does refer to certain types of self-regarding faults as "defect[s] of prudence." The kinds of responsibilities commonly considered duties to oneself, says Mill, are either dictates of prudence or of "self-respect or self-development,"²¹³ language that recalls his characterization of esthetics in the *Logic*. However, nowhere in *On Liberty* does Mill give prudence and esthetics the kind of philosophical baptism he gives it in the *Logic*.

Given the arguments in *On Liberty* and *Utilitarianism* that morality is concerned only with the other-regarding, it does seem likely that the best construction of the Art of Living is in line with Ryan's claim that self-regarding/other-regarding is the basis for the distinction between prudence and morality. Since the *Logic* does not in fact provide the support for this claim that Ryan believes it does, however, an interpretation of the art of living can be arrived at only by analyzing the relevant passages of *On Liberty*. It is therefore circular to use the distinction in the *Logic*, as Ryan does, to support an understanding of *On Liberty* in accordance with the social interpretation of the harm principle.

²¹³ *OL*, Ch. 4, ¶ 6

We should thus conclude that Ryan's reading of the Art of Living is correct: that what distinguishes morality from prudence and esthetics is, in fact, the other-regarding character of morality as opposed to the self-regarding character of prudence or esthetics. However, this view is an argued-for conclusion, based on my reading of *On Liberty* and *Utilitarianism*. It cannot, therefore, stand as evidence for that reading. Thus, although Ryan's conclusion ultimately proves correct, his reasoning for it must be rejected.

An Ambiguity in the Art of Living

There is an obvious sense in which for Mill's utilitarianism, morality is necessarily a social phenomenon. Although Mill is a *methodological* individualist – he defines the welfare of society always as an aggregate of individuals' happiness – the goal of morality, for Mill, is the good of all those concerned in one's actions, not of the acting individual, who may be called upon to sacrifice his or her own interests. The happiness promoted by utilitarianism, as Mill takes great pains to emphasize, is not the happiness of the agent, but of a greater collectivity: the group consisting of all those people affected by one's choices and actions.

[T]he happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator.²¹⁴

Note, however, that Mill calls for *impartiality* between one's own happiness and that of others; in this basic statement of the utilitarian standard, he does not urge

²¹⁴ *Utilitarianism*, Ch. 2, ¶ 22.

that one's own happiness be considered *irrelevant* to morality. The agent in a moral choice is himself quite obviously a person "concerned" with his or her actions, and therefore his or her welfare constitutes a part of the relevant social weal. Mill's later claim that there are no duties to oneself, therefore, is puzzling on its face.

Mill's claim that there is no such thing as a duty to oneself raises a problem for the common sense, pluralistic argument Mill regards as "the strongest of all the arguments" for the harm principle:

...when [the public] does interfere [with purely personal conduct], the odds are that it interferes wrongly, and in the wrong place. On questions of social morality, of duty to others, the opinion of the public, that is, of an overruling majority, though often wrong, is likely to be still oftener right.... But the opinion of a similar majority, ... on questions of self-regarding conduct, is quite as likely to be wrong as right; for in these cases public opinion means, at the best, some people's opinion of what is good or bad for other people...²¹⁵

The premise of this argument is epistemological: it arises from the unlikelihood that anyone but an agent can know his or her own good. But the agent, presumably, faces no such limitation: she is more likely to be right about her own good than anyone else is.

Suppose that Sarah has a choice between two actions, A_1 and A_2 , neither of which has any significant effects on the well-being of others. Suppose further that Sarah is so constituted that, whereas the majority of humanity would prefer A_2 Sarah would be brought more pleasure by A_1 . If we grant that such a scenario is possible, and we grant further that Sarah is generally a more competent judge of

²¹⁵ *OL*, Ch 4, ¶ 12.

her own happiness than others can be, then Sarah's happiness will be best served by allowing her to make her own choice between A_1 and A_2 . This is the gist of the above argument for allowing her the freedom to choose: if Sarah's happiness is a part of the general well-being, society itself is better served by allowing Sarah to make her own choice – even when most or all other persons would receive less pleasure if, under the same circumstances, they were to choose A_2 .²¹⁶

But it would seem as though the flip side of this argument is that Sarah has an obligation to make the choice that will, in the long run, bring her happiness. If it is true that society is best served by Sarah's being free to choose A_2 over A_1 — that the greatest happiness of the persons concerned in her action is promoted by her being left free to do so — then isn't it a straightforward implication of the idea that morality demands that one to act in such a way as to promote the greatest happiness of those concerned in one's actions, that Sarah is obligated to choose A_1 ?²¹⁷

If it is true that Sarah is the best judge of her own good, it may well follow that others cannot *judge* her choice between A_1 and A_2 to be immoral. But Mill's claim is stronger: he is committed to the belief that Sarah's self-regarding choice

²¹⁶ Though the argument of *On Liberty*, Chapter 1 ¶ 13 seems superficially similar to the argument I am here summarizing, I believe it is fundamentally different. At 1.13, Mill argues that: "Each [individual] is the proper guardian of his own health, whether bodily, or mental and spiritual. 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." The premise of 4.12 is that the well-being of the society as a whole is furthered by the *mere* fact of Sarah's choosing for herself. The argument of 1.13, on the other hand, seems to be that the rest of society gains collateral benefits from Sarah's self-actualization (such as her use as an instructive "experiment in living").

²¹⁷ The elder utilitarians, including James Mill, seem to have held this position. Cf. JM's article on "Liberty of the Press," in which he is prepared to endorse antipathy towards actions which cause "evil... to him who performs them." *Political Writings*, p. 107.

cannot *be* immoral. Mill's claim that "self-regarding faults ... *are not* properly immoralities, and to whatever pitch they may be carried, *do not constitute* wickedness"²¹⁸ is a claim about the fact of the matter, not about our epistemological ability or inability to judge.

This "strongest of all arguments" for the harm principle, therefore, is an argument for a claim different from the harm principle, as understood by the social interpretation. It provides no basis for the claim that Sarah has no self-regarding duties, no duty to choose that action which maximizes her own pleasure, and indeed, coupled with a straightforward interpretation of the utilitarian standard, it seems to provide an implicit argument *for* the existence of self-regarding duties.

It should be noted that the social interpretation does not require Mill to *approve* of all self-regarding choices. Such an interpretation would obviously do injustice to Mill's intentions: the language of "self-regarding *faults*" makes that clear. Such faults, Mill argues, may be regarded as "proofs of any amount of folly, or want of personal dignity and self-respect," but, as the social interpretation insists, they are "not properly immoralities."²¹⁹ Mill's *Art of Living* makes possible this sort of distinction among types of judgment: it allows self-regarding faults to be recognized as faults, but faults covered by prudence or esthetics, not by morality.

²¹⁸ *OL*, Ch. 4, ¶ 6. Emphasis added.

²¹⁹ *On Liberty*, Ch. 4, ¶ 6.

This does not solve the problem of duties to the self, however, it merely pushes it a level deeper. For the same unclarity itself is embedded in the structure of the Art of Living.

Mill's Art of Living is based upon what might be described as a faculty psychology, according to which human nature is composed of various drives which often yield contradictory particular results. Any human action, Mill writes, is determined by "a concurrence of causes,"²²⁰ each pushing the agent in a direction that conflicts with the others to a greater or lesser degree. In much the same way as a physicist might analyze the various vectors of force at work on an object in order to analyze or predict its behavior,²²¹ the moral or social scientist examines various vectors of influence on an individual or a society,

The explanation of individual or social behavior begins with examining these individual areas of life, such as economics, family responsibilities or the demands of self-cultivation,²²² each considered as if its end were the sole determinant of human action. For example, the science of political economy (the only sub-field of the Art of Living discussed at length in the *Logic*) deals with that portion of human conduct "in which the immediately determining causes are principally those which act through the desire of wealth."²²³ Although a political economist should recognize that there are other causes at work, qua political economist he "makes entire abstraction of every other human passion or motive,"

²²⁰ *Logic*, Bk. VI, Ch. 8, § 3, ¶

²²¹ See *Logic*, Bk. VI, Ch. 9, § ¶ 4

²²² See "The Quarterly Review on the Political Economists," *Works*, vol. XXII, p. 249.

²²³ *Logic*, Bk. VI, Ch. 9, § 3, ¶ 3.

an abstraction justified because it leads to "a nearer approximation ... to the real order of human affairs in those departments."²²⁴

The full understanding of human behavior proceeds, says Mill,

Deductively indeed, but by deduction from many, not one or a very few, original premises; considering each effect as (what it really is) an aggregate result of many causes, operating sometimes through the same, sometimes through different mental agencies, or laws of human nature.²²⁵

Once one has, like a physicist, deductively predicted the sum of influences on a particular person's or institution's behavior, one can attempt to form general principles of behavior – but such principles are always to be checked against reality by rigorous empirical testing.²²⁶ Social and psychological science is thus, for Mill, far more complicated than it had been assumed to be by thinkers previous to Mill (including the previous-generation utilitarian political economists from whom Mill drew inspiration).

Although "the grounds of every rule of art are to be found in practical science,"²²⁷ the goal of the practical arts is different. When one moves from science, whose role is explanation, to "art," whose goal is to direct one's actions, one shifts from the indicative mood to the imperative: from explaining to guiding actions.²²⁸ The particular areas of life often lead to contradictory concrete

²²⁴ *Logic*, Bk. VI, Ch. 9, § 3, ¶ 5. The passage is a quote from Mill's earlier article, "Essays on some Unsettled Questions of Political Economy,"

²²⁵ *Logic*, Bk. VI, Ch. 8, § 3, ¶ 12.

²²⁶ *Logic*, Bk. VI, Ch. 9, § 1, ¶ 6. Cf. § 9, ¶ 4, § 6, ¶¶ 2-4, Ch 11, § 1,

²²⁷ *Logic*, Bk. VI, Ch. 12, § 5, ¶ 1. By "practical science," Mill seems to mean something on the order of applied science, whether the science be economics or engineering.

²²⁸ *Logic*, Bk. VI, Ch. 12, § 1, ¶ 1.

implementations, a kind of conflict for which there is no analog in the physical world.

For example, family responsibility may call on a parent to spend money on braces for his or her child, while the economic desire for wealth suggests that the same money should be invested for future wealth, and the desire for self-improvement would have the same resources spent, say, on books and education. Mill thus calls for a hierarchy of practical principles, in which contradictory practical goals may be resolved by appeal to broader and broader relevant principles. At the top of the hierarchy, there are the three branches of the art of living (morality, prudence, and esthetics).

Ultimately, Mill argues, there must be one standard to integrate even the broadest and most inclusive rules of conduct. "If there were several ultimate principles of conduct, the same conduct might be approved by one of those principles and condemned by another; and there would be needed some more general principle as umpire between them."²²⁹ This ultimate standard is provided by the art of living. "The general principle to which all rules of practice ought to conform, and the test by which they should be tried, is that of conduciveness to the happiness of mankind, or rather, of all sentient beings: in other words, ... the promotion of happiness is the ultimate principle of Teleology."²³⁰

Suppose that Joe Cammil is considering taking up cigarette smoking in his own home, where it can affect only those who consent to be there.

²²⁹ *Logic*, Bk. VI, Ch. 12, § 7, ¶ 1.

²³⁰ *Logic*, Bk. VI, Ch. 12, § 7, ¶ 4.

Cigarette smoking is clearly an action whose direct and primary effects are on one's own personal health. Although smoking involves social issues, if only because cigarettes must be bought on the market, such indirect effects are matters for social policy, not for individual morality. Therefore, Mill would surely argue that *morality* says nothing against it.

Aesthetics, I think, would have little to say on the matter. The pleasures and pains associated with smoking would be considered by Mill (though perhaps not by a confirmed smoker) to be of the lower, physical kind, and therefore outside the province of "nobility."

To find a basis for determining whether Joe's choice is a legitimate one, we must look to issues of prudence. For many reasons, financial, social and health-related, it seems clear that smoking is not in one's best interest. The pleasure Joe receives from his nicotine high is almost certain to be outweighed by the physical discomfort and the lost pleasure from shortening his life. Presumably, therefore, Mill would consider smoking imprudent.

In this case, then, Mill's evaluation of Joe's decision is clear. Prudence condemns smoking, and neither of the other fields endorses it, so smoking cigarettes must be considered a bad choice, an instance of imprudence (though not of *immorality*).

The picture becomes considerably more confusing, however, when there is an actual conflict between two of the fields.

Suppose that Theresa is deciding whether to put her annual bonus into her IRA or donate it to a worthy charity. In the normal case, prudence would

obviously favor saving the money; but utilitarian morality would presumably favor donating it. Because her decision has impacts that cross the borders of two fields, Theresa cannot choose without appealing to the broader standard of the Art of Living.

Here we have a problem, however, because this ultimate standard is the same as the standard Mill claims for morality: the greatest happiness of those affected by one's actions. If it is to adjudicate the conflict between morality and prudence, the Art of Living would seem to be a bought judge, guaranteed to side with morality. If true, this would wipe out any possibility for a legitimate, separate realm of self-regarding conduct.

Mill cannot accept this answer, because it would inappropriately expand the demands of morality. Mill clearly does not wish utilitarianism to demand that one's sole guide of action should be social – he does not wish utilitarianism to demand a level of sacrifice such that everyone is morally obligated to be like Mother Theresa. But if it is true that the art of living, which is to be the ultimate standard for all conduct, is guided by the general welfare, then how can Mill condone any choice that places one's own good above that of the collective?

One might try to answer this question by saying Mill intends prudence to cover only those actions that have no direct effects on others, and therefore respecting which the greatest happiness standard does not contradict the happiness of the individual. In this case, however, the Art of Living is not anything separate from morality, and its standard is not a means of adjudicating contradictions —

there would be no contradictions. But in laying out the need for an overall standard he argues that there will be conflicts among areas of life.

This problem is not unique to Mill's theory. The problem of the relationship between morality and the rest of life is a problem for any non-egoistic moral theory. It is discussed in the New Testament ("render unto Caesar..."), and has been discussed by philosophers from Augustine (in *The City of God*) to Peter Singer. On the one hand, morality seems to hold a central place in life, in some sense governing all one's actions. On the other hand, given that a dominant theme in moral theory since the ascendancy of Christianity has been the virtuousness of sacrificing one's own happiness for the welfare of others (or of God, in the case of a religious hermit), anyone who is unwilling to live the life of an ascetic must make room for some part of life dedicated to the pursuit of goods other than moral goods. It may well be that the ambiguous role of the happiness standard in Mill's moral theory is the result of just this tension.

Mill makes an unconvincing attempt to address this problem in *Utilitarianism*, in response to the argument that utilitarianism is too "exacting" a moral theory. Mill argues that "the occasions on which any person (except one in a thousand) has it in his power ... to be a public benefactor, are but exceptional; and on these occasions alone is he called on to consider public utility; in every other case, private utility, the interest or happiness of some few persons, is all he has to attend to."²³¹

²³¹ *Utilitarianism*, Ch. 2, ¶ 23.

This answer is satisfactory, only if one considers each action in a vacuum. If one is thinking only of the difference between doing X and not doing it (paying for one's child's college education, for example), then indeed the vast majority of actions may be seen as having no measurable effects beyond a very few people. However, if one sees an action in relation to all other actions possible to an agent under a given set of circumstances, Mill's answer becomes untenable. For even such a seemingly meritorious action spends resources (such as the ever-larger price tag of college) that could surely be used to produce greater social well-being (by saving the starving poor, for example).

To find a more convincing solution to this problem, we must turn to Mill's intriguing theory of rights. For Mill, rights determine, not the bounds merely of political authority (as they were in such classical liberal theories as that of John Locke), but first and foremost the bounds of moral obligations.

The Centrality of Rights to Mill's Moral Theory

The final chapter of *Utilitarianism* is dedicated to reconciling utilitarianism with the "powerful sentiment" of justice, a sentiment that provides "one of the strongest obstacles to the reception of the doctrine that Utility or Happiness is the criterion of right and wrong."²³² Feeling the binding force of their sense of justice to be stronger than that of the expedient, Mill notes, people find it impossible to believe that justice is grounded in utility.

²³² *Utilitarianism*, Ch. 5, ¶ 1.

Mill's answer to this line of reasoning takes two broad steps. First, he argues that the feeling of justice, far from being a primary, is in fact reducible to the concept of rights. Next, he argues that the notion of a right is based on utility-calculations. Both of these arguments are interesting for our purposes.

After briefly surveying the *endoxa* with regard to justice, Mill traces the idea etymologically and conceptually to the idea of law. He considers this connection to be demonstrated by the fact that, no matter how much people may differ in their conceptions of justice, everyone desires punishment for whichever acts he or she deems unjust.

It would always give us pleasure, and chime in with our feelings of fitness, that acts which we deem unjust should be punished, though we do not always think it expedient that this should be done by the tribunals.²³³

Although we apply the idea of justice to many things that are by common agreement outside the realm of law, Mill says, we exclude the state from such realms only as a matter of expediency, and with some regret.

If we see that its enforcement by law would be inexpedient, we lament the impossibility, we consider the impunity given to injustice as an evil, and strive to make amends for it by bringing a strong expression of our own and the public disapprobation to bear upon the offender.²³⁴

However, Mill argues that this cannot be the ultimate distinguishing characteristic of justice, because it applies equally well to the entire field of morality. "We do not call *anything* wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it."²³⁵

²³³ *Utilitarianism*, Ch. 5, ¶ 13.

²³⁴ *Utilitarianism*, Ch. 5, ¶ 13.

²³⁵ *Utilitarianism*, Ch. 5, ¶ 14. Emphasis added.

What distinguishes justice from the rest of morality, says Mill, is the idea of a right. The duties that constitute justice, he equates with "perfect obligations" —i.e., "those duties in virtue of which a correlative right resides in some person or persons."²³⁶ Moral obligations that do not form part of justice are no less obligatory, but they are not obligatory in a particular case: one may be a person of charity, but not give money to a particular panhandler. For an obligation to be an obligation of justice, there must be some "assignable person" with "a claim on the part of one or more individuals, like that which the law gives when it confers a proprietary or other legal right."²³⁷ That is, a claim of justice must involve a specific person or persons, who have a legitimate claim on a specific person or persons under a particular set of circumstances.

There is a curious tension between this account of justice and Mill's idea that "duty is a thing which may be extracted from a person, as one extracts a debt."²³⁸ Mill wishes to reserve space for "imperfect duties," those duties that do not carry with them a specific obligation to a specific person. If so, then no *particular* action, taken by itself, can be said to violate an imperfect duty. What, then, could it mean to say that an imperfect duty "can be extracted from a person, as one exacts a debt"²³⁹?

Either a particular uncharitable act (such as refusing to give money to a panhandler) can be punished, or it cannot. If it can, then Mill would have to

²³⁶ *Utilitarianism*, Ch. 5, ¶ 15.

²³⁷ *Utilitarianism*, Ch. 5, ¶ 13.

²³⁸ *Utilitarianism*, Ch. 5, ¶ 14.

²³⁹ *Utilitarianism*, Ch. 5, ¶ 14.

conclude that it is a perfect duty (that the panhandler has a right to one's money) – a conclusion Mill denies. If it cannot, then an uncharitable act cannot be judged wrong. But if so, and if the violation of any duty is to be judged wrong, then what can it mean to say that charity is a duty?

One possible solution is to consider imperfect duties to be another way of looking at virtuous qualities of character, a category which, as I have argued in a previous section, Mill does allow for. He writes that "not only these [harmful] acts, but the dispositions which lead to them, are properly immoral, and fit subjects of disapprobation which may rise to abhorrence." Such dispositions include:

Cruelty of disposition; malice and ill-nature; that most anti-social and odious of all passions, envy; dissimulation and insincerity, irascibility on insufficient cause, and resentment disproportioned to the provocation; the love of domineering over others; the desire to engross more than one's share of advantages (the *pleonexia* of the Greeks); the pride which derives gratification from the abasement of others; the egotism which thinks self and its concerns more important than everything else, and decides all doubtful questions in its own favour

Such antisocial characteristics are to be considered "moral vices," Mill writes, because they give rise to immoral actions.²⁴⁰

However, in distinguishing between justice and the rest of morality, Mill is clearly discussing actions, not dispositions. That which we consider wrong, he writes, is something one can be punished for "doing" – not a disposition one can be punished for having. The dispositions that Mill considers to be morally significant are such because they lead to immoral actions; they line up with those

²⁴⁰ *On Liberty*, Ch. 4, ¶ 6.

actions that can be considered duties. But there is no such correlation between imperfect and perfect duties: imperfect duties, such as charity, are duties whether or not they lead to violations of rights.

Mill does allow for certain violations of charity, for example, to be punishable: such as the failure to bear one's share "of the labours and sacrifices incurred for the society or its members from injury and molestation."²⁴¹ (Presumably, Mill would consider this the foundation for some sort of coercive taxation.) However, these are just those cases in which society's interest in one's conduct is so pressing that society should be considered to have a right to one's participation – that is, these are cases in which the duty has become a perfect duty, rather than an imperfect one. Imperfect duties, as such, seem never to be open to punishment; thus, it seems, they should not be considered morally obligatory under any circumstances. Mill effectively writes imperfect duties out of the sphere of moral consideration.

Mill notes that there are moralists who, in effect, reduce all claims of morality (both those involving perfect and those involving imperfect duties) to claims of rights, thus in effect assimilating the concept of imperfect duties to the concept of perfect duties. He would, presumably, accuse Peter Singer of this error in his famous essay on world hunger. Mill objects to this sort of move as rendering morality too demanding: it would demand of everyone that he or she behave as a kind of Mother Theresa figure, giving his or her entire concern to the common good.

²⁴¹ *On Liberty*, Ch. 4, ¶ 3.

It seems, however, that Mill's attempt to make morality less intrusive makes the same sort of move from an opposite motive. Rather than expanding perfect duties to fill all of morality, Mill contracts morality to perfect duties. And in so doing, Mill makes the concept of rights definitive of the sphere of morality.

The Foundation of Rights in Utility

Mill's comment in the introductory chapter of *On Liberty* that he intends to "forgo any advantage, which could be derived to my argument, from the idea of abstract right as a thing independent of utility,"²⁴² may lead the incautious reader to the mistaken notion that Mill rejects the idea of rights. It should be obvious, however, that rejecting "abstract right" is not the same as rejecting rights. Moreover, rejecting the idea that right (and/or rights) is independent of utility is not the same as rejecting the idea(s) outright.

In the first place, Mill intends his rejection of abstract right as a rejection of the intuitionist school of morality that was a frequent target of his criticism, throughout his career as an ethicist.²⁴³ Mill considers appeals to abstract right as the foundation of morality as an intuitionist's hand-waving, akin to the appeal to a "moral sense" as the root and rationale of ethics. It is a means of defending without argument whatever it is that the intuitionist happens to believe are right and wrong.

²⁴² *On Liberty*, Ch. 1, ¶ 11.

²⁴³ See "Sedgwick's *Discourse*," *Works*, vol. X, p. 51.

There is also a more specific goal behind this claim of Mill's. That is to re-define rights theory on the basis of utilitarianism. For Mill, rights are not based on ontological investigations of human nature. Although Mill seems to believe that ultimately, the rights we have are based in abstract human nature, as a matter of epistemological fact we cannot justify them by deductive reasoning from knowledge of human nature.

For something to which one possesses a right means, according to Mill, that "he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion."²⁴⁴ What is it that can make one's claim on society valid? "I shall give ... no other reason than general utility."²⁴⁵

There are any number of claims that an individual person might wish to make on society. He might wish for: the right to his property; the right to own slaves; a particular job to which he has applied; a guaranteed market for his products; to advocate abstinence; to solicit for prostitution; to gamble in a private card game; to run a public gambling house; to drink liquor; to advertise liquor. Which of these should and which should not be protected, is demonstrated by appeals to the general welfare: with regard to the person who fails to gain a particular job or the company that loses its market, for example, Mill argues that "it is, by common admission, better for the general interest of mankind that persons should pursue their objects undeterred by this sort of consequences." For

²⁴⁴ *Utilitarianism*, Ch. 5, ¶ 25.

²⁴⁵ *Utilitarianism*, Ch. 5, ¶ 26.

this reason, "society admits no right, either legal or moral, in the disappointed competitors to immunity from this kind of suffering."²⁴⁶

We should note Mill's claim that "the so-called doctrine of 'free trade' ... rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this essay," because "trade is a social act."²⁴⁷ However, both economic freedom and individual liberty involve rights claims, and both rest on the same *ultimate* grounds, the welfare of society. A person may be said to have a right to do X if and only if society would be better served by allowing a general liberty to do X. And so, if rights are indeed constitutive of morality, we may say that a given action A is morally wrong if and only if it prevents another person's doing some action X, where X is an action to which the person has a right.

The Right to Individual Liberty

If rights are based in utility, then we shall look for the argument that individual liberty is a right (in other words, that self-regarding faults are not be regarded as immoral) in a claim that society profits by refraining from moral judgment of that which does not harm others.

Mill notes that our judgment that another person is imprudent, or failing in esthetic sense, can carry "very severe penalties." We can, and presumably, if we are prudent we will, avoid such a person's company, warn others against the

²⁴⁶ *On Liberty*, Ch. 5, ¶ 3.

²⁴⁷ *On Liberty*, Ch. 5, ¶ 4.

person's example, and refrain from giving the person "optional good offices."²⁴⁸ However, Mill argues, such penalties are different in kind from the sorts of penalties to which we subject the person we regard as immoral. Precisely how they differ is a practical matter I shall discuss in a later section. However, there is a degree of opprobrium reserved for the object of moral vilification.

Suppose that Mary regards homosexuality as a moral abomination, but considers promiscuity merely imprudent. She may make strong arguments against promiscuity, she may avoid hiring a promiscuous person, and she may generally avoid the company of promiscuous people. But she will not feel the abhorrence toward the promiscuous person that she feels toward homosexuals.

Instead of punishing him, [she will] rather endeavor to alleviate his punishment by showing him how he may avoid or cure the evils his conduct tends to bring upon him. He may be to [her] an object of pity, perhaps of dislike, but not of anger or resentment; [she will] not treat him like an enemy of society; the worst [she will] think [herself] justified in doing is leaving him to himself.²⁴⁹

The distinction Mill is drawing is between simply avoiding a person (a negative) and desiring to inflict harm on him (a positive). From the person we regard as imprudent or esthetically repugnant, we withdraw a positive; from the person we regard as evil, we seek to extract punishment.

Surely the two approaches have very different effects on the persons at whom they are directed. One is far more likely to resist a rational argument, or indeed be persuaded rationally by it; but a moral crusade is likely to produce mere

²⁴⁸ *OL*, Ch. 4, ¶ 6.

²⁴⁹ *OL*, Ch. 4, ¶ 7.

obedience. With regard to that which harms others, Mill would say, mere obedience is sufficient (though reasoned agreement would be preferable) – but with regard to that which does not harm others, only reasoned agreement is worth pursuing. And since that is more likely to be undermined than to be gained through the mechanism of punishment, it is socially advantageous to define self-regarding faults out of the realm of morality. For this reason, Mill believes there are good utilitarian grounds for considering self-regarding faults to be outside the province of morality – that is, for considering a person to have a moral right to engage in actions that we regard as harming the self, insofar as they do not harm others. "For none of these [self-regarding faults] is anyone accountable to his fellow creatures, because for none of them is it for the good of mankind that he be held accountable to them."²⁵⁰

Thus, Mill argues that, even if we could know without a doubt that Sarah's choice of A_1 would bring her more pleasure than A_2 – and would, by increasing her well-being, contribute to the happiness of society – Mill believes that there are good utilitarian grounds for considering her choice between A_1 and A_2 to be outside the province of morality.

²⁵⁰ *OL*, Ch. 4, ¶ 6.

CHAPTER 4:

NUANCES OF MILL'S THEORY

Introduction

I have now presented and argued for the social interpretation of John Stuart Mill's harm principle, in the face of the strongest objections I am aware of. In Chapter One, I laid out the basic case for the social interpretation. In Chapter 2, I considered some potential re-interpretations of the same data I had adduced to support the social interpretation. In Chapter 3, I considered the vexed relationship between Mill's claim that self-regarding faults are "not properly immoralities" and his "greatest-happiness" standard of ethics.

In my view, the social interpretation has withstood all of the potential problems I have considered. However, it remains to work out several of the nuances of Mill's theory, in order to ascertain precisely what he means by liberty. Failing this, the harm principle would not be a workable theory.

First, I shall consider the question of precisely what Mill means by "harm." I argue that Mill defines "harm" as prevention of the satisfaction of a certain type interests, especially economic interests – specifically, those interests protected by rights. In sum, what the harm principle intends to prohibit is any violation of rights, especially as an organizational or institutional policy, for the purpose of punishing actions that do not themselves violate the rights of another person or organization.

Next, I shall examine precisely what actions constitute "moral coercion." Clearly, this cannot be synonymous with any form of social pressure, for Mill defends a wide range of "remonstration" and heated argumentation. Rather, I argue, what Mill wishes to rule out is the infliction of harm for the purpose of compelling a person or group to change an idea or way of life that does not itself harm others. Most especially, Mill is concerned with such organized or institutional policies as hiring/firing decisions and boycotting. Although I argue that Mill intends to draw the line at the infliction of harm (as opposed to "hate speech"), I acknowledge that certain features of his argument for the importance of moral coercion make this line difficult to maintain, tending

The Definition of "Harm"

The goal of the present chapter is to go from a generalized defense of the social interpretation of Mill's harm principle to a precise, actionable principle that captures Mill's intentions. The first step in this process of definition and clarification must be to specify precisely what constitutes a "harm." As we shall see, precisely what sorts of conduct may be ruled out by Mill's theory, and how we may respond to that conduct, will vary significantly according to different definitions of "harm."

This project is made problematic by the fact that Mill never gives a precise definition of "harm." The problem is compounded by the fact that some of the cryptic statements Mill does give seem flatly contradictory. At times, Mill speaks

as though anything that negatively affects others may be considered a "harm." At others, Mill seems to define harm as interference with the pursuit of one's "interests," where interests are connected with the more important facets of human nature.

Furthermore, some of the above formulations have led to multifarious interpretations. Drawing upon the view of harm as "injuring certain interests which ought to be considered as rights," Roger Crisp considers that harm is "conduct which violates the rules of customary morality."²⁵¹ John Gray, beginning with the same passage, considers harm to be interference with the individual's pursuit of "vital interests."²⁵²

The difficulties of interpreting Mill's varied statements of the harm principle have led John Skorupski to conclude that no definition of harm is possible or necessary.

Terms such as "harm," "cause evil," "injure," "damage" or "hurt" are not used by Mill in a technical way. On the contrary, he relies on their ordinary range of meaning, adding such further explanations or qualifications as become necessary along the way, and closing the essay with a chapter of specimen applications.

This straightforward approach has produced unnecessarily vexed questions of interpretation. Had it been Mill's object to minimise misunderstanding among specialists, instead of maximising understanding among an intelligent general public, he might have done well to proceed otherwise. He might have fixed on a single statement of the principle, for example "An action which does not harm the interests of others must not be interfered with," given words like "harm" technical meanings in the

²⁵¹ *Routledge Philosophy Guidebook to Mill on Utilitarianism*, New York, 1997.

²⁵² *Mill on Liberty: A Defense*, 2nd ed. New York: Routledge, 1996.

light of an examination of difficult cases, and so forth. But this is not Mill's approach, and one should not read the essay as if it was.

There is therefore no such thing as *Mill's* "concept of harm," and hence nothing which needs to be "pieced together from some of his general remarks" by exercises of interpretative ingenuity.²⁵³

Skorupski's argument is that Mill's varied statements should be treated as a virtue, not as a problem for his social morality. The statements cannot be reduced to a single principle, because the notion of harm is itself too complex to be captured by a single principle.

This answer cannot be adequate, however. If the harm principle is to have any use, it must be possible to apply it in some meaningful way. Without some stable notion of harm, the principle risks being lost in a Babel of different meanings and interpretations. Although one may hold that the harm principle applies differently in different contexts, the principle loses its proscriptive force if it may be applied according to a fluid version of "harm," unconstrained by a well-defined core meaning.

The harm principle, after all, is intended as a guide for the reader's thinking, not mere autobiography. It should, if it is doing its job, lead the person who holds it to some definite conclusions. If one can attach one's own meaning to the notion of "harm," the principle risks becoming nothing more than a rationalization for one's moral prejudices — and the question of why we should ignore the "harm" done to a Christian by atheistic speech, returns with a vengeance.

²⁵³ *John Stuart Mill*. New York: Routledge, 1989), p. 342.

In the final analysis, I argue, Mill does have a technical definition of harm. Mill intends "harm" to be defined as the interference with certain types of interests, those which are properly protected as rights. This is the only formulation that consistently captures Mill's usage, and it helps to explain the confusion raised by the other interpretations.

"HARM" AS PAIN

At times, Mill speaks as if "any evil" done by one person to another may be considered a harm, and anything "which concerns others" is thus subject to regulation.²⁵⁴ On this very broad view of harm, only an agent's action which "merely concerns himself" is free from regulation.²⁵⁵ This loose notion of harm has provoked much criticism of the harm principle, on the grounds that it circumscribes a vanishingly-small area of human conduct, thus in fact justifying massive regulation of the individual's conduct.

The famous paragraph in which Mill states the harm principle restates it as the principle that "the only part of the conduct of anyone for which he is amenable to society is that which concerns others."²⁵⁶ Based on this restatement, the first guess at a definition of "harm" might be: harmful conduct is any conduct that

²⁵⁴ *OL*, Ch. 1, ¶ 9.

²⁵⁵ *OL*, Ch. 1, ¶ 9.

²⁵⁶ *OL*, Ch. 1, ¶ 9.

causes pain (in the broad, utilitarian sense that encompasses both physical pain and emotional discomfort).

This interpretation lies behind the traditional complaint that Mill's "private sphere" of conduct that cannot harm others is impossible. After all, nearly anything can be argued to "concern" others. My eating pork might "concern" a Muslim; a Muslim woman's wearing a veil might "concern" a feminist. If Brian and I both apply for the same job, I have been negatively "concerned" if he is hired over me. Yet obviously, these are all cases in which Mill believes no one has been "harmed" in the relevant sense.²⁵⁷ The best way to construe this statement as a rhetorical introduction, a useful over-simplification to be modified and clarified later. Mill's subsequent uses of the harm principle, particularly those which especially call for precision, are more carefully qualified.²⁵⁸

This interpretation would render the harm principle blatantly toothless. All conduct has *some* impact on others, even if it is only the minimal impact of its esthetic attractiveness or ugliness. Even a thought in one's mind impacts others, should it be expressed and acted upon, or even should one use some of one's time thinking about it (time that could be spent on other pursuits with different effects on others). If any impact on others thus becomes potentially a harm, it would seem as though Mill's traditional critics were right: the harm principle marks out a meaningless category for protection, leaving the rest of human action subject to invasion by others.

²⁵⁷ See *OL*, Ch. 4, ¶ 14 and Ch. 5, ¶ 3.

²⁵⁸ See Rees, "A Re-Reading of Mill on Liberty," in *J.S. Mill On Liberty in Focus*, ed. John Gray and G.W. Smith, p. 174.

A somewhat more plausible version of the view that harm is equivalent to anything that causes pain is to consider harm to be a "perceptible hurt."²⁵⁹ This would certainly narrow the range of actions that fall afoul of the harm principle – the fundamentalist's offense at seeing *Penthouse* on the shelf, for example, is clearly not a "perceptible hurt." However, it is still too broad for Mill's usage. A person may legitimately be made to suffer "very severe penalties," such as loss of social opportunities and "optional good offices." Presumably, some such losses would constitute "perceptible hurt."

"HARM" AS INTERFERENCE WITH THE SATISFACTION OF INTERESTS

At other times, Mill connects "harm" with interests. Re-stating his harm principle in Chapter 5 of *On Liberty*, Mill writes an individual is "accountable to society" for "such actions as are prejudicial to the *interests* of others."²⁶⁰ This might lead us to believe that Mill means a "harm" to be any conduct that unnecessarily interferes with the pursuit of one's interests. "Interests," in turn, seem to be closely connected to a general notion of well-being and the nature of "man as a progressive being."

This argument was advanced in John Rees's 1966 article "A Re-Reading of Mill on Liberty."²⁶¹

²⁵⁹ *OL*, Ch. 5, ¶ 11.

²⁶⁰ *OL*, Ch. 5, ¶ 2. Emphasis added.

²⁶¹ *Op. cit.*, p. 174.

If we look carefully at the two passages quoted above where Mill is explicitly stating his principle, it will be noticed that, although in the first case he writes of conduct which "merely concerns" the agent and of conduct which "concerns others," he introduces the word "interests" in the second passage. He says that the individual is to be held accountable only for those actions which "are prejudicial to the *interests* of others." ...

My case in this chapter is that we ought not to gloss over those different modes of expression, that there is an important difference between just "affecting others" and "affecting the interests of others"

Rees takes Mill's second statement, the association of harm with prejudice to interests, to be his more settled viewpoint.

According to Rees, the view that "harm" means harm to interests has the advantage of making "harm" more objective. Typically, we think of an interest as more permanent and stable than a desire. One may be offended, upset, angered, rankled by another's conduct — but still not have one's *interests* affected. "Interest," in common usage, is less dependent upon one's tastes.

How one is affected by a theatrical performance depends partly on one's tastes, but the interests of a businessman would be affected by a tax on business property no matter what his tastes or susceptibilities. (p. 175)

The objectivity of "interests" would allow Mill to rule out certain claims of harm, such as the desire of a fundamentalist Christian to be harmed by seeing soft-core porn on a convenience store shelf. If "harm" is defined as interference with satisfaction of interests, Rees believes, Mill can admit that the Christian is pained by his neighbor's reading *Penthouse*, but he is not harmed by it.

Although this view is a much more plausible version of harm than the naïve "harm-as-pain" view, it raises some problems. Some of the difficulties seem to be unique to Rees's elaboration of the nature of interests; some, however, seem

endemic to any account that bases the harm principle entirely on the idea of interests.

In order to flesh out this interpretation of harm, one must specify what constitutes an interest. Rees claims that interests "depend for their existence on social recognition and are closely connected with prevailing standards about the sort of behaviour a man can legitimately expect from others"²⁶² Presumably, if social recognition is crucial for something to be an interest, interests would change according to changes in prevailing standards of conduct; yet Mill claims to base his system on "the permanent interests of man as a progressive being."²⁶³

Furthermore, making this aspect of Rees's definition seems to throw "interest" back into a degree of subjectivity that Mill would object to. If establishing something as an interest is "closely connected with prevailing standards about the sort of behaviour a man can legitimately expect from others," what is to stop society from claiming an "interest" in having people obey its dictates in self-regarding matters? (Indeed, this is one of the arguments made by Patrick Devlin against the Wolfenden Committee.)

Suppose a society arose whose "prevailing standards" held that society could legitimately expect others to refrain from premarital sex. Would that then make abstention an "interest," and therefore premarital sex a harm? If so, then one could claim complete adherence to the harm principle while prohibiting premarital sex. Clearly, this would not be consistent with Mill's intent.

²⁶² *Op. Cit.*, p. 175.

²⁶³ *OL*, Ch. 1, ¶ 11.

Furthermore, this aspect of Rees's definition of interests would render the harm principle circular. The harm principle, after all, is supposed to be the "one simple principle" by which to judge what should be the prevailing standards about the sort of behavior that can be legitimately expected from others. Thus, one would need the harm principle in order to determine what is an interest, in order to determine what is a harm.

In addition, more must be said to show that "interests" are as universal and value-neutral as Rees suggests. Mill's discussion of individuality suggests that, he considers interests to be at least partly individualized. "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"²⁶⁴ What one needs, the form of conduct proper to a given individual, is determined at least partly by reference to his "circumstances and character"²⁶⁵ It may be that one's interests – at least some of one's interests – can be defined only relative to the individual, in which case "interests" loses its virtue as an objective basis for ascertaining when harm has been committed.

In common sense, it seems reasonable to think that what is in my interest depends at least partly upon my choices and opinions. Consider Rees's example, quoted above, of a businessman whose interests are affected by a tax on business, "no matter what his tastes or susceptibilities." This example is plausible because most businessmen are relatively "conservative" in their political leanings — but

²⁶⁴ *OL*, Ch. 3, ¶ 17.

²⁶⁵ *OL*, Ch. 3, ¶ 4.

what of a businessman whose "susceptibility" is pro-socialist, such as Friedrich Engels? Surely such a person would consider his interests to be furthered by a new tax on business.

One might expect that Rees could argue that, whatever the businessman's *belief* about his interests, *in fact* he has an interest in lower taxes. This would be in keeping with Rees's view that "interests" are relatively more objective than other forms of desire, and it fits with Mill's emphasis on the "permanent interests of man as a progressive being." However, it conflicts with the idea that "interests" are defined, at least in part, by the ideas and values of an individual or of his society.

This difficulty seems to be inescapable if we consider the harm principle to be based on the idea of interests. Assuming that interests are entirely independent of one's beliefs seems to fly in the face of the individualized nature of man, which is a crucial element of Mill's defense of liberty. The experimenters among us should be left free to pursue their own ways of living in order to advance our knowledge of which ways of life work and which do not; and as that knowledge grows, presumably our interests change. "Human nature," Mill writes,

Is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the inward forces which make it a living thing.²⁶⁶

The interest of a tree, Mill suggests, is as different from the interest of all other trees as its "inward forces" are different from theirs.

²⁶⁶ *OL*, Ch. 3, ¶ 4.

Assuming that interests are at least partly agent-relative, however, raises the same inflation of harms the idea of interests was supposed to prevent. If my way of living gives me interests unique to myself, then I may claim "harm" if I am prevented from following that way of living. We need a further standard to determine which interest-claims a way of living supports.

I do not wish to imply that, for Mill, what counts as a harm must be unchangeable across time or universal across societies. Mill recognizes that different cultures and different eras have different needs, so he would likely allow that what would harm a "savage tribesman" would not necessarily harm a "civilized" person. But for Mill, the concept would need to have a good deal more stability than would be afforded by the concept of an interest.

"HARM" AS VIOLATION OF RIGHTS

The idea of an interest had certain advantages as an explanation of the concept of harm, in that it moves away from admitting anything which subjectively pains an individual, toward an idea that "harm" must touch us more profoundly. However, as the idea of an interest turns out to be too variable to ground Mill's harm principle. Perhaps, then, the solution lies in restricting the class of interests under consideration. Perhaps only interfering with the pursuit of certain types of interests, ones marked out as especially important, should be considered a harm.

Indeed, Mill seems to connect "harm" with violations of rights. Mill suggests that a harm is "injuring... certain interests which, either by express legal

provisions or by tacit understanding, ought to be considered as rights."²⁶⁷ This argument dovetails nicely with the discussion of justice in *Utilitarianism*, in which justice is connected to the idea of punishment,²⁶⁸ and that which is punished is described as the violation of rights.²⁶⁹

Mill seems to present his harm principle more carefully and precisely in Chapter 4 than in Chapter 1 of *On Liberty*. And although he occasionally speaks of harm as "conduct [that] affects prejudicially the interests of others,"²⁷⁰ he also frequently qualifies those statements: "or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights."²⁷¹ Conversely, in carving out those measures that it is appropriate to take in response to "self-regarding faults," Mill speaks consistently in terms of what we have a "right" to do.²⁷²

In distinguishing between the person guilty of merely "self-regarding faults" and the person whom society may punish, Mill defines the latter case in a very telling fashion. Punishment is merited (i.e., the person may be said to have harmed others) "if he has infringed on the rules necessary for the protection of his fellow creatures."²⁷³ This passage closely mirrors Mill's characterization of rights in *Utilitarianism*. There, Mill argues that "[w]hen we call anything a person's right, we mean that he has a valid claim on society to protect him in the

²⁶⁷ *OL*, Ch. 4, ¶ 3.

²⁶⁸ *Utilitarianism*, p. 304

²⁶⁹ *Utilitarianism*, p. 303.

²⁷⁰ *OL*, Ch. 4, ¶ 3. Cf. ¶¶ 6, 10, 15.

²⁷¹ *OL*, Ch. 4, ¶¶ 3, 6, 7,

²⁷² *OL*, Ch. 4, ¶ 5.

²⁷³ *OL*, Ch. 4, ¶ 7.

possession of it, either by the force of law, or by that of education and opinion."²⁷⁴ The claim of a right is "the claim we have on our fellow-creatures to join in making safe for us the very groundwork of our existence."²⁷⁵ Later in the same discussion of self-regarding versus other-regarding faults, Mill describes the later as the violation of "a distinct and assignable obligation."²⁷⁶

Consider Mill's discussion of the "many positive acts for the benefit of others" that a person "may rightfully be compelled to perform." These acts include testifying in court, "bear[ing] his fair share in the common defense or in any other joint work necessary to the interest of the society of which he enjoys the protection," and performing certain limited "acts of individual beneficence." Although these are "positive acts," they place far less sweeping demands on the individual than a full-fledged idea of positive liberty.

The reason for this is that Mill defines such positive acts in terms of harm to others. "A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury."²⁷⁷ Why may it be considered an "injury" to refuse to testify in court, for example, as opposed to refusing to give to charity? Because these are things which "it is obviously a man's duty to do."²⁷⁸ And the corollary to a duty, we know from *Utilitarianism*, is a right. A "positive act" the failure to perform which constitutes

²⁷⁴ *Utilitarianism*, Ch. 5, ¶ 24

²⁷⁵ *Utilitarianism*, Ch. 5, ¶ 25.

²⁷⁶ *OL*, Ch. 4, ¶ 10.

²⁷⁷ *OL*, Ch. 1, ¶ 11.

²⁷⁸ *Ibid.*

a harm is so defined because it is an act that some individual or group can claim as a right.

We may say, then, that an action causes "harm" if and only if it violates a right held by some other person or group. Although Mill does not consistently formulate the issue in this manner, this is the only formulation that can do the theoretical work Mill intends the idea of harm to do.

Remonstrance, Argument, and "Moral Coercion"

Mill's goal clearly is to produce a vibrant intellectual culture, one in which debate rages over all relevant social issues. Mill champions "remonstration" and "exhortation" as means to implement moral ideals and to promote prudential goals such as temperance and industry.²⁷⁹ On the other hand, such exhortations must not proceed to the point of becoming "moral coercion." Where, then, is the line to be drawn between proper and improper means of expressing and acting on intellectual disagreement? Discord seems to be central to intellectual culture (at least in what Mill terms a "transitional era"); but it must be kept within certain bonds, lest it become "moral coercion." Where, precisely, are the limits to be drawn?

One facile interpretation might read the social interpretation as demanding that one avoid expressing disapproval of self-regarding actions. Indeed, this is the

²⁷⁹ Cf. *Autobiography*, Ch. 2, ¶7.

construction adopted by R.M. Hutton in his critique of *On Liberty*.²⁸⁰ While appreciating that "moral monotony," not coercion proper, is the object of Mill's concern, Hutton understands Mill's view to require that self-regarding actions be completely "exempted from social criticism."²⁸¹ But this interpretation flies in the face of Mill's own statement that "it would be well indeed" if "one person could honestly point out to another that he thinks him in fault [with regard to his self-regarding actions], without being considered unmannerly or presuming."²⁸²

Mill's defense of free speech rests on an adversarial view of the speech system. One primary role of speech, he writes, is to provide that "collision of adverse opinions" that both strengthens one's understanding of the truth and allows one to correct half-truths.²⁸³ Obviously, any debate which may be properly regarded as a "collision" of ideas is a debate that generates, not merely light, but considerable heat. And indeed, Mill rejects the suggestion that "free expression of all opinions should be permitted, [only] on condition that the manner be temperate, and do not pass the bounds of fair discussion."²⁸⁴ If Mill is to support such vigorous debate, if indeed he relies upon it as a requirement of a well-working system of speech, then he must provide a principled means of distinguishing it from the "moral coercion" he deplores.

²⁸⁰ *National Review*, 8 (1859), 393-424. Reprinted in *Mill: Texts and Commentaries*, ed. Alan Ryan (New York: Norton, 1997).

²⁸¹ P. 231.

²⁸² *OL*, Ch 4, ¶5.

²⁸³ *OL*, Ch. 2, ¶ 42.

²⁸⁴ *OL*, Ch. 2, ¶57.

Furthermore, some forms of "remonstration" — a term that implies a fair degree of social pressure — are clearly valued by Mill. If a self-regarding action "will make [an individual] happier," or "would be wise, or even right,"²⁸⁵ then those around him have "good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him." What self-regarding actions do not warrant is "compelling him, or visiting him with any evil in case he do otherwise."²⁸⁶

A related interpretation, also implicit in Hutton's argument, considers the culprit to be "that severity of popular condemnation"²⁸⁷ which might silence "those who tremble to assert their own individual convictions."²⁸⁸ According to this interpretation, it is not the fact that criticism is misplaced, but the strenuousness of it, that takes a statement from legitimate argumentation into moral coercion.

Clearly, this cannot be Mill's view. As he argues in *On Liberty*, one possesses freedom of thought and action only "subject to such consequences as may follow."²⁸⁹ And the consequences may include considerable social penalties.

We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him in optional good offices, except those which tend to his improvement. In

²⁸⁵ Although Mill typically reserves the term "right" for *moral* right, he clearly means it in a nonmoral sense in this passage.

²⁸⁶ *OL*, Ch. 1, ¶ 9.

²⁸⁷ P. 230 in the Ryan volume.

²⁸⁸ P. 228.

²⁸⁹ *OL*, Ch. 1, ¶14.

these various modes a person may suffer very severe penalties at the hands of others for faults which directly concern only himself²⁹⁰

Clearly, there is a fine line (Hutton and his recent counterparts²⁹¹ would argue, a fuzzy line) between what Mill considers to be the laudable sorts of social interference with the individual and the dangerous sorts. Mill's description of the system of speech at its best (passionate, vigorous debate in which each important view on social issues receives the strongest defense it can be given) bears remarkable similarity to the system at its most dysfunctional (rancorous sectarian hostility). However, I believe that Mill does give us a principled way to distinguish the legitimate from the illegitimate, in the distinction between judging an idea and judging its adherent.

Although he curiously hedges his bet, in the main Mill rejects the view that "vituperative language" necessarily violates the harm principle. It would be a worthy charge, he suggests, if it could in practice be made to stick equally on both sides of important controversies. However, in practice the defender of prevailing opinions is praised for the use of vituperative language, while "this weapon is, from the nature of the case, denied to those who attack a prevailing opinion." Typically, according to Mill, "opinions contrary to those commonly received can only obtain a hearing by studied moderation of language, and the most cautious avoidance of unnecessary offence, from which they hardly ever deviate even in a slight degree without losing ground."²⁹² (Like many of Mill's empirical claims,

²⁹⁰ *OL*, Ch. 4, ¶ 5.

²⁹¹ Cf. Joseph Hamburger's posthumous *John Stuart Mill on Liberty and Constraint*. (Princeton, NJ: Princeton University Press, 1999).

²⁹² *OL*, Ch. 2, ¶ 44.

this one was perhaps more plausible before the experience of twentieth century radicalism.)

Because of the difficulty of defining precisely what counts as a violation of proper argumentative temperance, Mill argues that one should not suppress an opinion because of the vehemence with which it is presented. However, Mill accepts that it is possible in principle for one's argumentative method to cross the line and become a violation of another's rights. While law must be silent even in such cases, opinion should condemn "every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candour, or malignity, bigotry or intolerance of feeling manifest themselves." ²⁹³

Even this admission, however, does not amount to a condemnation of ardor in debate. It is not the zeal with which one denounces an idea that constitutes "malignity." "The real morality of public discussion" consists of

condemning every one, on whichever side of the argument he places himself, in whose mode of advocacy either want of candour, or malignity, bigotry or intolerance of feeling manifest themselves; but not inferring these vices from the side which a person takes, though it be the contrary side of the question to our own: and giving merited honour to every one, whatever opinion he may hold, who has calmness to see and honesty to state what his opponents and their opinions really are, exaggerating nothing to their discredit, keeping nothing back which tells, or can be supposed to tell, in their favour.²⁹⁴

Even "[t]he worst offence of this kind which can be committed by a polemic," which according to Mill is "to stigmatize those who hold the contrary opinion as

²⁹³ *OL*, Ch. 2, ¶ 44.

²⁹⁴ *Ibid.*

bad and immoral men,"²⁹⁵ is not a matter of vituperation toward an idea, but toward the person who holds it.

Mill considered a degree of emotional intensity to be inherent in earnest concern for ideas. Those who hold strong commitments to opinions about issues of moral and political importance "will necessarily dislike, as a class and in the abstract, those who think wrong what they think right, and right what they think wrong." ²⁹⁶ Such ideological judgments must, of course, be made with a sensitivity to the rest of a person's character, but they can, and should, be made. The alternative, he says is that "liberality in matters of opinion" becomes nothing more than "a polite synonym for indifference between one opinion and another."²⁹⁷

Mill endorsed a certain degree of moralizing ideas, as long as one did not indiscriminately treat that which one disapproved of as the entire character of the person being judged. His attitude is captured in an early newspaper article, in which he claimed to be "one of those who look at *measures* rather than *men*, and who reprobate the former when I conceive them to merit reprobation, without feeling any peculiar animosity against the latter."²⁹⁸ Mill praised St. Simonians and other socialists for the boldness with which they critique traditional political economy, even as he regards their systems as flawed. Similarly, he praised the

²⁹⁵ *Ibid.*

²⁹⁶ *Autobiography*, Ch. 2, ¶9.

²⁹⁷ "Coleridge," in F.R. Leavis, ed., *Mill on Bentham and Coleridge* (Cambridge, 1980: Cambridge University Press) p. 104.

²⁹⁸ *Morning Chronicle*, September 25, 1823, p. 2. Reprinted in *Collected Works*, vol. XXII, p. 62.

early Benthamites for "the air of strong conviction with which they wrote."²⁹⁹ And he expressed no disapproval of his father's "aversion to many intellectual errors, or what he regarded as such," an attitude which "partook, in a certain sense, of the character of a moral feeling."³⁰⁰

The *Autobiography's* discussion of James Mill's attitude toward ideas is very telling for the distinction between appropriate and inappropriate debate. Mill's father, whose attitudes in this regard John Stuart Mill never criticizes, was a great moralizer of ideas. Concerning religion, for example, James Mill accused the Christians of his day of "slovenliness of thought, and subjection of the reason to fears, wishes, and affections."³⁰¹ Since "on religion in particular, ... the current opinions are not only false but hurtful,"³⁰² James Mill "regarded [religion] with the feelings due not to a mere mental delusion, but to a great moral evil."³⁰³

Not only religion received James Mill's opprobrium.

He disliked, for instance, a fanatic in any bad cause, as much or more than one who adopted the same cause from self-interest, because he thought him even more likely to be practically mischievous. And thus, his aversion to many intellectual errors, or what he regarded as such, partook, in a certain sense, of the character of a moral feeling. All this is merely saying that he, in a degree once common, but now very unusual, threw his feelings into his opinions.³⁰⁴

²⁹⁹ *Autobiography*, Ch. 4, ¶ 6.

³⁰⁰ It should be noted that James Mill was capable of considerable respect for his intellectual adversaries. Consider, for example, his treatment of an objection consistent, he believes, with Hobbes and the French economists, in *Government*. Published in *Political Writings*, ed. Terence Ball (Cambridge: Cambridge University Press, 1992), Chapter IV, ¶4.

³⁰¹ *Autobiography*, Ch. 2, ¶ 2.

³⁰² *Autobiography*, Ch. 2, ¶ 5.

³⁰³ *Autobiography*, Ch. 2, ¶ 2.

³⁰⁴ *Autobiography*, Ch. 2, ¶ 9.

John Stuart Mill regarded this attitude of his father's as a manifestation of virtue, not as a violation of anyone's right to his own opinion. This kind of acting on one's "unfavourable opinion of anyone," presumably, Mill would consider to be "not to the oppression of his individuality, but in the exercise of ours."³⁰⁵

"None but those who do not care about opinions," writes John Stuart Mill, "will confuse [his father's] attitude with intolerance."³⁰⁶ What, then, would those who do care about opinions consider to be "intolerance," in the objectionable sense?

"[T]he only tolerance which is commendable, or, to the highest moral order of minds, possible," Mill writes, is "the forbearance which flows from a conscientious sense of the importance to mankind of the equal Freedom of all opinions." One is intolerant toward dissenters only if he "does them any ill office" or "connives at its being done by others."³⁰⁷

PUNISHMENT AS THE INTENTIONAL INFLICTION OF HARM

However puzzling we may find Mill's distinction between "the loss of consideration which a person may rightly incur by defect of prudence or of personal dignity, and the reprobation which is due to him for an offense against the rights of others," according to Mill this is "not a merely nominal distinction."

³⁰⁵ *On Liberty*, Ch. 4, ¶ 5.

³⁰⁶ *Autobiography*, Ch. 2, ¶ 9.

³⁰⁷ *Autobiography*, Ch. 2, ¶ 9.

It makes a vast difference both in our feelings and in our conduct towards him, whether he displeases us in things in which we think we have a right to control him, or in things in which we know that we have not.³⁰⁸

The difference between acting "to the oppression of [someone's] individuality" and "the exercise of ours" seems to be that in the former case one is deliberately punishing the object of one's actions, whereas in the latter case one simply remains "aloof," and one's victim suffers only "natural penalties,"³⁰⁹ i.e., "the inconveniences which are strictly inseparable from the unfavourable judgment of others."³¹⁰

But what, precisely, does it mean for an inconvenience to be strictly inseparable from a person's unfavorable judgment? Surely it is *possible* for a person to treat someone he dislikes in much the same manner as someone he likes – as one might do if stuck, for a time, in a job with an unpleasant supervisor. Surely it is impossible to muster personal enthusiasm or love for a person of whom one holds an unfavorable judgment, but this is a "considerable inconvenience" only to the person who must not act on his feelings. It thus seems as though the connection between one's unfavorable judgment of another person and one's treatment of the person is always a matter of choice – in which case no inconveniences could be said to be "strictly inseparable" from the judgment.

Mill claims that the inconveniences which we are justified in inflicting on the person who manifests self-regarding faults are those that "incidentally follow from our using the same liberty in the regulation of our own affairs, which we

³⁰⁸ *On Liberty*, Ch. 4, ¶ 7.

³⁰⁹ *OL*, Ch. 4, ¶ 11.

³¹⁰ *On Liberty*, Ch. 4, ¶ 5.

allow him in his." This formulation, too, requires unpacking. The person who is applying undue social pressure could claim to be acting on the same liberty in his own affairs that he allows his victim in his. The question at hand is how we distinguish between the legitimate expression of our own liberty from oppression, and Mill's express formulations give us no means to make this distinction.

Let us begin by surveying the actions and attitudes which Mill does and does not consider appropriate in response to a self-regarding fault. Once we have discussed each in its turn, we may be better equipped to draw out the principle(s) by which Mill makes the distinction between legitimate and illegitimate.

Perhaps the least problematic response to self-regarding faults Mill allows for is to feel disapproval for the person's actions

There is a degree of folly, and a degree of what may be called (though the phrase is not unobjectionable) lowness or depravation of taste, which, though it cannot justify doing harm to the person who manifests it, renders him necessarily and properly a subject of *distaste*, or, in extreme cases, even of *contempt*.³¹¹

It is interesting that Mill regards such distaste or contempt to be not merely "proper," but "*necessary*," a much stronger claim. He continues: "a person could not have the opposite qualities in due strength without entertaining these feelings."³¹² This phrasing echoes his claim in the *Autobiography* that only a person who does not himself value ideas could disapprove of James Mill's disliking proponents of opposing viewpoints.

³¹¹ *On Liberty*, Ch. 4, ¶ 5. Emphasis added.

³¹² *Ibid.*

Even with regard to the merely affective response to an individual's self-regarding conduct, Mill believes there are limits to the appropriate. "He may be to us an object of pity, perhaps of dislike, but not of anger or resentment." However, this restriction seems to be stressed because of its consequences in action: "we shall not *treat* him like an enemy of society."³¹³ Presumably, anger and resentment are appropriate only to an enemy of society, and would lead us to treat the person as such.

We need not, Mill says, seek the society of someone who is lacking in self-regarding virtues, and we may even avoid it.³¹⁴ (Though we may not "parade" our avoidance of the person.) "Society," I think, should be read in the most limited sense of purely social interaction. This seems to be a minimal kind of avoidance: avoiding someone's society does not, per se, permit refusing to employ him, to work with him, or to avoid him in any way that affects his interests.

Why would Mill consider it inappropriate to "parade" one's avoidance of another person? Although Mill does not elaborate, presumably it is because doing so would cross over into the real of affecting one's interests. If Jill is avoiding Tom in a publicly-declared manner, others are likely to follow her example whether or not they know the reason or would, left to themselves, consider it a strong enough reason to avoid his company. As I shall argue, Mill considers the difference between an individual's action and that of a more or less organized group of individuals to be significant.

³¹³ *OL*, Ch. 4, § 7. Emphasis added.

³¹⁴ *OL*, Ch. 4, § 5.

On the other hand, Mill argues that "we have a right, and it may be our duty, to caution others against him."³¹⁵ The difference between our warning others against a person and parading our avoidance of him is presumably that in the former case, we are giving information relevant to the others, not a mere unreasoned conclusion. In the former case, it is entirely a matter of their rational choice whether to agree with our assessment; we are placing no undue social pressure on them to follow our example.

This point raises an important element of Mill's understanding of social pressure. As I noted in Chapter One, John Stuart Mill sees his concept of liberty as an extension, not a contradiction, of the Classical Liberal idea of liberty, notably that defended by John Locke. For Locke, the defining evil of coercion is that it stymies thought and judgment: one may think as one pleases, but the results are irrelevant to one's actions when one is subject to coercion. Likewise, for Mill a defining difference between social tyranny and allowable forms of remonstrance is that, in the latter case, a person is being given "considerations to aid his judgment," perhaps even having them "obtruded on him," but in the end "he himself is the final judge."³¹⁶ Even though the person may be judging in the face of "very severe penalties," Mill believes that there is some feature of certain kinds of "interference of society" – the interference that constitutes social tyranny – that "overrules" the judgment of the agent concerned³¹⁷ in the attempt to

³¹⁵ *Ibid.*

³¹⁶ *OL*, Ch. 4, ¶ 4.

³¹⁷ *OL*, Ch. 4, ¶ 4.

"control him."³¹⁸ The contradictories of "compulsion" are "conviction and persuasion."³¹⁹

The next sort of "penalty" which one may inflict because of self-regarding faults, we are told, is to "give others a preference over him in optional good offices, except those which tend to his improvement."³²⁰ This may be Mill's most problematic formulation, one that could potentially open a large area of discrimination against the person guilty of self-regarding faults (depending upon how we define "optional good offices").

Mill's qualification concerning optional good offices that tend toward the person's improvement seems relatively clear: it would be absurd, for example, to deny a man access to a drug-treatment program because he is a drug addict. (Even here, more could be said: might any "optional good offices" give an addict incentive to go straight, therefore tending toward his improvement?) But the deeper problem is with the concept of optional good offices. What makes a "good office" optional, and to what are *optional* good offices to be contrasted?

Here again, Mill's theory of rights seems to be the operative concern. Optional good offices may be distinguished from "distinct and assignable obligations,"³²¹ where distinct and assignable obligations are those things an individual may claim by right. A good office that is optional, then, would be one that cannot be claimed by right.

³¹⁸ *OL*, Ch. 4, ¶ 11.

³¹⁹ *OL*, Ch. 4, ¶ 4.

³²⁰ *OL*, Ch. 4, ¶ 5.

³²¹ *OL*, Ch. 4, ¶ 10.

Suppose that Richard and Becky are equally-qualified applicants for the same job, and their potential employer knows that Richard is profligate. Presumably (at least as long as Richard has other employment opportunities) the employer has the right to select Becky over Richard for no reason other than Richard's profligacy. Hiring Becky is an "optional good office," in that neither can claim the job as a right.

This, I think, is the first element of Mill's distinction between the legitimate and illegitimate penalties to be suffered due to self-regarding faults: whereas we may legitimately violate a person's rights in response to the other-regarding, in regard to the self-regarding we may not. All the penalties that are "inseparable" from self-regarding actions are those that pertain to things to which one cannot claim a right. ("harm"/right connection.)

The second element of the distinction between legitimate and illegitimate "inconveniences" inflicted on someone because of self-regarding actions has to do with the intention of the agent. In a case of inappropriate social pressure, the agent is deliberately striving to punish the victim. In responding to the self-regarding actions, Mill says, it is not our desire to "make his life uncomfortable."³²² The active verb *make* is important to this formulation: the victim's life may in fact be made uncomfortable because of those penalties he suffers due to self-regarding actions, but it is not our intention to *make* him uncomfortable.

There is a kind of laissez-faire attitude inherent in the proper approach to the self-regarding. In the legitimate case, the agent is acting only to avoid the

³²² *OL*, Ch. 4, ¶ 7.

person, not attempting to impose a punishment on the person guilty only of self-regarding faults. The orientation of our treatment of the merely self-destructive is inward: our action is motivated only by our own desires and interests, not by the desire to improve him.

"Remonstrance" and other attempts to exhort the person to proper conduct may be partial exceptions to this laissez-faire attitude. But even the attempt to persuade, Mill thinks, is fundamentally different in its motivation than the desire to punish: if our attempt to punish is unsuccessful, we feel it as a personal failure; whereas if we fail to persuade an imprudent person to change his ways, we are inclined merely to shrug our shoulders. "The worst we shall think ourselves justified in doing is leaving him to himself."³²³

Here, then, is how I would define the difference between remonstrance and moral coercion: moral coercion consists in the infliction of harm – that is, the violation of a person's rights – for the purpose of punishing him for his self-regarding faults. Both halves of this equation, the violation of rights and the intent to punish, are in principle legitimate responses to that which harms others, but they become moral coercion when applied to an individual who is guilty only of self-regarding faults.

³²³ *OL*, Ch. 4, ¶ 7.

OFFICES AND THE OFFICIAL IN TOCQUEVILLE AND MILL

The concept of "offices," good and ill, is key to the understanding of Mill's harm principle. It comes up both in the *Autobiography* and in *On Liberty* when Mill distinguishes between the punishment that is appropriate to those who harm others and the exhortation appropriate to those who do not harm others.

The word "office" derives from the Latin *officium*, meaning a service or duty, and the relevant English senses include

a special duty, charge, or position conferred by an exercise of governmental authority and for a public purpose: a position of authority to exercise a public function and to receive whatever emoluments may belong to it. A position of responsibility or some degree of executive authority.³²⁴

"Office" is a term that unites governmental authority and quasi-governmental "executive authority." The implication is of a clearly-defined responsibility to an institution with some social significance, the fulfillment of a defined role which bears authority over others.

Mill follows Tocqueville in treating many non-political institutions as bearing quasi-political force. *Democracy in America* is notable for the extent to which it breaks down traditional boundaries between the political and the non-political: democracy in America is treated, not as a political association merely, but as a nexus of political institutions, non-governmental institutions, and the character of America's people. Many of Tocqueville's most interesting arguments

³²⁴ *Webster's Ninth New Collegiate Dictionary* (New York: Merriam-Webster, 1991).

concern the effects of democratic institutions on the character of America's people, and vice versa.

Consider, for example, Tocqueville's discussion of "public associations," under which heading he includes "commercial and manufacturing companies," as well as associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive." Such associations are formed by the Americans "to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they [the Americans] found hospitals, prisons, and schools."³²⁵ Besides religions (especially Catholicism), the major exemplar of non-political associations discussed by Tocqueville is the temperance league.³²⁶

What is interesting, for our purposes, is the quasi-political role Tocqueville ascribes to such associations. They are quasi-political, in the sense that they take on many of the roles that had been played by the political aristocracy in the nations of Europe, but more importantly in that they shape and are shaped by the functioning of political institutions and in the political character of the Americans. If the increasing equality of men is a universal trend, Tocqueville believes, then such associations are necessary, for it is in such associations that citizens vested with equality "learn to surrender their own will to that of all the rest and to make their own exertions subordinate to the common impulse, things which it is not less necessary to know in civil than in political

³²⁵ *Democracy in America*, tr. Henry Reeve, revised by Francis Bowen, ed. Phillips Bradley, vol. 2, Ch. V, ¶ 1.

³²⁶ *Democracy in America*, vol. 2, Ch. V, ¶ 13.

associations." Such associations "may therefore be considered as large free schools, where all the members of the community go to learn the general theory of association."³²⁷

Tocqueville considers associations primarily in their salutary effects on the political culture of the Americans, but he is also well aware of the sort of danger Mill worries about. The prominence of associations is intimately connected to the power of the press, because any association requires a means to communicate its message to existing and potential members. "This can be habitually and conveniently effected only by means of a newspaper; nothing but a newspaper can drop the same thought into a thousand minds at the same moment."³²⁸ The enormous power of the press in America, he thus traces to the power of these quasi-governmental associations. As Tocqueville adds as "a last reflection" on the power of associations, herein lies the potential danger, for:

The more equal the conditions of men become and the less strong men individually are, the more easily they give way to the current of the multitude and the more difficult it is for them to adhere by themselves to an opinion which the multitude discard. A newspaper represents an association; it may be said to address each of its readers in the name of all the others and to exert its influence over them in proportion to their individual weakness. The power of the newspaper press must therefore increase as the social conditions of men become more equal.³²⁹

Although it is not his focus in the chapters on associations, Tocqueville notes that it is difficult to "adhere by themselves to an opinion which the multitude discard."

³²⁷ *Democracy in America*, vol. 2, Ch. VII, ¶ 6. The remark is directed at political associations such as political parties, but in the context it is clearly apposite of non-political associations as well.

³²⁸ *Democracy in America*, vol. 2, Ch. VI, ¶ 1.

³²⁹ *Democracy in America*, vol. 2, Ch. VI, ¶ 11.

This the subject of Tocqueville's concern about the social tyranny of the majority, which, as I have noted above, is a crucial source for Mill's concern about the same issue.

Like Tocqueville, Mill is very concerned about the power of non-governmental associations. In "Civilization," he lists some of the same powerful institutions as Tocqueville had (business associations, newspapers, charitable institutions, an endowed intellectual class³³⁰), and some that Tocqueville did not discuss (trade unions, universities, marriage customs, even the institution of primogeniture).³³¹ These institutions seem to hold an especially important place in Mill's understanding of social tyranny because their intolerance has greater consequences than that of an individual. For Mill, it is particularly those in positions of moral authority – in *On Liberty*, especially religious authority – who are to be guarded against.

In the article on Bentham, Mill relates an interesting incident from Bentham's matriculation to Oxford. Receiving no answer to his scruples concerning some of the Thirty-nine Articles of the Church of England, he was nevertheless required to sign an oath of agreement with them. As Mill reports

³³⁰ The endowed class may not be supported by any governmental institution, as Mill makes clear in "Civilization." There, he considers the possibility that a booksellers guild may produce the same sort of effect. Likewise, in his "State of Society in America," he treats Washington and Jefferson as members of the "leisure class," though their leisure was not bought at governmental expense.

³³¹ To be sure, Mill's concern with institutions is narrower than that of some recent thinkers (such as Douglass North and the "New Institutional" school of economics) – although he discusses the kinds of social mores that the New Institutionalists term "informal institutions" (such as the spirit of self-interest in societies where the middle class is dominant), he treats them as the more or less direct consequences of formal institutions. Nevertheless, his emphasis on the importance of non-governmental institutions is a considerable expansion from the focus of earlier liberal thought strictly on governmental actions.

favorably, Bentham "never relaxed in his indignant denunciation of all laws which command such falsehoods, *all institutions which attach rewards to them*."³³² Substantially the same critique, without specific reference to Bentham's experience, is the basis of Mill's extended criticism of the universities in "Civilization,"³³³ where he considers it to be a leading cause of "a moral effeminacy, an inaptitude for every kind of struggle"³³⁴ he considers endemic to British society.

Note that admission to a university fits the formula for an "optional good office" according to the doctrine of Chapter 5 of *On Liberty*. There, Mill writes:

Whoever succeeds in an overcrowded profession or in a competitive examination, whoever is preferred to another in any contest for an object which both desire, reaps benefit from the loss of others, from their wasted exertion and their disappointment. But it is, by common admission, better for the general interest of mankind that persons should pursue their objects undeterred by this sort of consequences. In other words, *society admits no right, either legal or moral, in the disappointed competitors to immunity from this kind of suffering*, and feels called on to interfere only when means of success have been employed which it is contrary to the general interest to permit – namely, fraud or treachery, and force.³³⁵

Suppose that a devout Protestant wished to run a business while employing only Protestants. That choice would seemingly be protected by the above doctrine, as long as neither the employer nor a Protestant applicant engaged in fraud, treachery or force. The person who was excluded from employment because of a religious loyalty test could not, on this formula, claim to have had his moral or

³³² *Bentham*, p. 46. Emphasis added.

³³³ *Works*, vol. XVIII, pp. 138-46.

³³⁴ *Works*, vol. XVIII, p. 131.

³³⁵ *OL*, Ch. 5, ¶ 3. Emphasis added.

legal rights violated. Yet seemingly Mill applies a different standard to an institution such as a university.

There is an interesting ambiguity in this account. Elsewhere, as I have noted, Mill treats businesses as "institutions," akin to a university. Yet in the *Autobiography* he condemns "all institutions" that attach benefits to loyalty oaths. I cannot fully resolve this seeming contradiction, but a likely explanation is that institutions themselves vary along a spectrum, facing greater or lesser restrictions on their actions according to the amount of power they possess. Any particular employer on a competitive market would thus be held to a lower standard insofar as a potential employee faces realistic alternatives, while a flagship university would face greater restrictions relevant to its greater power.

Likewise, at several points in *On Liberty* Mill suggests that one should receive greater protection, the less power one has. For example, he writes that "if either of ... two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority."³³⁶ Just as the person or institution adopting policies against a certain viewpoint or a kind of self-regarding action may be held to a higher standard according to the extent of its power, it may well be that Mill intends the target of those policies to receive greater protection the less power he holds.

This suggests that Mill's harm principle will resist re-statement in terms of a simple, universal formula. Rather, it will have to take the form of a principle

³³⁶ *OL*, Ch. 2, ¶ 36.

admitting of different applications according to contextual considerations depending upon who is enacting a policy and against whom.

Re-Statement of the Harm Principle

I am now in a position to produce a precise and detailed re-statement of John Stuart Mill's harm principle. If my analysis is correct then Mill intends the harm principle to apply as follows:

It is wrong (bad, immoral) for any individual or group to interfere with certain interests properly protected as rights (i.e., those interests the protection of which conduces, in the long run, to the welfare of society), especially economic interests, except in response to actions which themselves interfere with another person's rights.

EPILOGUE: MILL'S IMAGE OF THE FREE SOCIETY

Introduction

The harm principle, for Mill, is not an end in itself: it is a means toward the creation of a free society. Now that I have analyzed Mill's harm principle according to the social interpretation, it is worth asking in broad terms what that liberal society should look like, according to Mill. While this is not part of an interpretation of Mill's harm principle, and thus of his core conception of liberty, it helps to flesh out our understanding.

Mill himself provides a detailed discussion of one important policy implication of his harm principle: governmental support for an intellectual establishment. Mill considers this to be a necessary antidote to the potential intolerance of the masses. Because it is an implication that Mill discusses, I analyze it at some length here.

There are other implications of this theory which Mill himself did not discuss. I have chosen just one example of this sort of implication: The social interpretation of the harm principle brings Mill into contemporary debates over such issues as hate speech and pornography. Because these are not part of Mill's own discussion of liberty, I present them in much briefer form, as indications of the broad scope of the implications of the social interpretation.

“Suspicious and Intolerant Mediocrity”

Tocqueville had argued that the social tyranny of the majority is caused by an inherent feature of democracy. Whereas in an aristocracy the people are inclined to believe in the authority of a leisured class endowed with superiority of power and intellect, in a democracy people have no such faith; they are thus led inevitably to replace faith in the aristocracy with a faith in public opinion. While Mill disagrees that the social tyranny of the majority is a unique feature of democracy, he agrees that it is worsened by the power of the masses.

There is undeniably a spirit of elitism that runs through all John Stuart Mill’s socio-political writings. It is front-and-center in “The Spirit of the Age” and “Civilization,” but it can be found as well in less emphasized passages throughout Mill’s corpus. In the essay on “Coleridge,” for example, Mill praises Coleridge for having seen “in a very strong light the need which the great mass of mankind have of being ruled over by a degree of intelligence and virtue superior to their own.”³³⁷ This elitism has often been regarded as a contradiction to the liberalism of *On Liberty*. However, I believe that it is ultimately consistent with *On Liberty*, and indeed that the harm principle cannot be fully understood without understanding its relation to Mill’s elitism.

The reviews of Tocqueville’s two volumes indicate that Mill regarded these two elements of his thought to work together. Within each article, Mill provides both early expressions of concern over the social tyranny of the majority,

³³⁷ “Coleridge,” ¶ 6.

and his interest in ensuring that public opinion will be shaped and even created by a kind of intellectual elite.

Mill credits Tocqueville with the discovery of the social tyranny of the majority. In his review of Tocqueville's first volume, he writes that

It is a tyranny exercised over opinions, more than over persons, which [Tocqueville] is apprehensive of. He dreads lest all individuality of character, and independence of thought and sentiment, should be prostrated under the despotic yoke of public opinion.³³⁸

In the review of the second volume, Mill notes that democracies are unlikely to suffer from legalized persecution, nor even from lawless mob violence, but from social pressure.

This fact is paradoxical, as both Mill and Tocqueville note.

The Americans, according to M. de Tocqueville, not only profess, but carry into practice, on all subjects except the fundamental doctrines of Christianity and Christian ethics, the habit of mind which has been so often inculcated as the one sufficient security against mental slavery – the rejection of authority, and the assertion of the right of private judgment.³³⁹

And yet,

It is the complaint of M. de Tocqueville, as well as of other travelers in America, that in no country does there exist less independence of thought. ... On every other subject [than religion], when the opinion of the majority is made up, hardly any one, it is affirmed, dares to be of any other opinion, or at least to profess it. ... [W]hen public opinion considers a question as settled, no further discussion of it takes place; and ... not only nobody dares (what everybody may venture upon in Europe) to say anything disrespectful to the public, or derogatory to its opinions, but ... its wisdom

³³⁸ Review of *Democracy in America*, vol. II, *Works*, vol. XVIII, p. 81.

³³⁹ *Works*, vol. XVIII, p. 178.

and virtue are perpetually celebrated with the most servile adulation and sycophancy.³⁴⁰

The explanation of this paradox is crucial to our understanding of the meaning of social tyranny of the majority.

Why is it that, having cast off one kind of authority (the claims of aristocracy), would a people give in to another (public opinion)? Because, according to Mill, obedience to some sort of authority is inevitable for most people in any society.

It is impossible, as our author truly remarks, that mankind in general should form all their opinions for themselves: an authority from which they mostly derive them may be rejected in theory, but it always exists in fact.³⁴¹

Most people have not enough time available to give their opinions the full consideration that would be necessary to form all of them first-hand. The more profound and far-reaching an opinion, the more difficult it is to establish rigorously. Therefore, the most important issues in any given society are always to be determined by authority. “It is true,” writes Tocqueville, “that whoever receives an opinion on the word of another does so far enslave his mind, but it is a salutary servitude, which allows him to make good use of freedom.”³⁴²

According to Tocqueville, with Mill’s concurrence, it is the very condition of equality that gives public opinion its power. When every person considers himself the equal, and only the equal, to all the others, it becomes inconceivable

³⁴⁰ *Works*, vol. XVIII, p. 178. It should be noted that Mill tempers his endorsement of this critique in “The State of Society in America,” where he quotes from several testimonials to the “good-natured equanimity” of the Americans in the face of criticism. *Works*, vol. XVIII, pp. 112-5.

³⁴¹ *Works*, vol. XVIII, p. 179. Cf. Tocqueville, *Democracy in America*, vol. 2, Bk. 1, Ch. V.

³⁴² *Democracy in America*, Bk. 1, Ch. II, ¶ 4.

that the established views of the majority might be wrong. As Tocqueville puts the point:

The same equality that renders him independent of each of his fellow citizens, taken severally, exposes him alone and unprotected to the influence of the greater number. The public, therefore, among a democratic people, has a singular power, which aristocratic nations cannot conceive, for it does not persuade others to its beliefs, but it imposes them and makes them permeate the thinking of everyone by a sort of enormous pressure of the mind of all upon the individual intelligence.³⁴³

In a democracy *vox populi* becomes, in the individual citizen's mind, *vox dei*.

The solution to this problem, according to Mill, is the creation of “endowed institutions for education, and ... a leisured class offices moderately paid, and without a particle of irresponsible authority.”³⁴⁴ Such a class, Mill argues, would be capable of withstanding the partisanship of particular interests and, when they united against the prevailing opinion, “would command the respect of the people, even in combating their prejudices – such a class would be almost irresistible in its action on public opinion. In the existence of a leisured class, we see the great and salutary corrective of all the inconveniences to which democracy is liable.”³⁴⁵

In the essay on “Coleridge,” Mill “honour[s]” Coleridge for his defense of “the principle of an endowed class, for the cultivation of learning, and for the diffusing of its results among the community.” On the subject of “endowed establishments,” Mill writes, “we are entirely at one with Coleridge.”³⁴⁶

³⁴³ *Democracy in America*, Bk. 1, Ch. II, ¶ 9

³⁴⁴ *Works*, vol. XVIII, p. 85.

³⁴⁵ *Works*, vol. XVIII, p. 86.

³⁴⁶ “Coleridge,” ¶ 45.

The form of “endowed establishment” that Coleridge had defended was the established church – a point on which Mill pointedly departs from Coleridge. Mill, of course, was sharply critical of religion (both in his posthumously-published but polished essays on religion, and indeed even in “Coleridge”³⁴⁷). Mill considered placing the endowed establishment in the hands of “the established clergy as at present trained and composed,” which he considered “perhaps the most unfit body for the exclusive charge of it that could be found among persons of any intellectual attainments,” to be “a serious evil.”³⁴⁸ However, Mill notes, Coleridge did not believe its functions were exclusively religious – nor even that it was necessarily to take the form of a “religious corporation.”³⁴⁹ Rather, its essential purpose was “for the advancement of knowledge, and the civilization and cultivation of the community.”³⁵⁰ And on both the purpose and the structure of such a (secularized) endowment Mill claims no disagreement with Coleridge.

The structure of the establishment promoted by Coleridge was patterned after the hierarchical structure of the Church. A small, selective group – an elite within the larger elite — was to “remain at the fountainheads of the humanities, in cultivating and enlarging the knowledge already possessed, and in watching over the interests of physical and moral science.”³⁵¹ This group was to play the dual roles of creating new knowledge and disseminating old, within both the physical

³⁴⁷ ¶ 66.

³⁴⁸ ¶ 43.

³⁴⁹ “Coleridge,” ¶ 40.

³⁵⁰ “Coleridge,” ¶ 39.

³⁵¹ “Coleridge,” ¶ 29.

sciences and the humanities. Perhaps their most important role was to be in promoting “the *prima scientia*, as it was named – philosophy, or the doctrine and discipline of ideas.”³⁵²

“The remaining more numerous classes of the order” of this intellectual elite were to be instructed by the smaller group who guarded the intellect. “The members of this latter and far more numerous body were to be distributed throughout the country, so as not to leave even the smallest integral part or division without a resident guide, guardian, and instructor.”³⁵³ Just as the local clergy were supposed to be the instructors, in moral and other matters, of the local public, the endowed class of intellectuals were to perform a similar function.

Such an endowed class, Mill argues, will carry an inherent respect – just as the opinions of the Church carry a great deal of sway over the laity. As he writes in the review of Tocqueville’s first volume, such a “highly instructed class ... raised sufficiently above the common level, in education, knowledge, or refinement,” will “inspire the rest with ... reverence for distinguished mental superiority, ... [and a] salutary sense of the insufficiency of their own wisdom.”³⁵⁴ For this reason, “Such a class, too, would be able, by means of combination, to force upon the rest of the public attention to their opinions.”³⁵⁵

The reverence of the public for the opinions of the intellectual elite is had, Mill believes, simply by virtue of the very fact of the educated class’s mental

³⁵² “Coleridge,” ¶ 40.

³⁵³ “Coleridge,” ¶ 39.

³⁵⁴ “Tocqueville [I],” *Works*, p. 84.

³⁵⁵ “Tocqueville [I],” *Works*, p. 86.

superiority – and thus it can be counted upon to inform public opinion without the trappings of the demagogue, excommunications and other forms of “punishment” for those who nonetheless hold ideas it disagrees with or disapproves of. It should be noted that the intellectuals can “force,” not agreement with, but “attention to” their opinions. One feature of the educated is that they are far less likely than the representative of the various factions of public opinion to engage in punishment against contrary opinions. They are likely “not only to protect in themselves, but to encourage in others, the enjoyment of individuality of thought.”³⁵⁶ The problem with the American system, he writes, is that “in America, all large minorities exercise this power”³⁵⁷ of forcing public attention to their ideas – and this power, in the hands of the uneducated, tends to give rise to demagogues and petty intellectual tyrants.

Nevertheless, the effect of the public’s mere attention to the ideas of their intellectual superiors is an extremely powerful force:

A class composed of all the most cultivated intellects in the country; of those who, from their powers and their virtues, would command the respect of the people, even in combating their prejudices – such a class would be almost irresistible in its action on public opinion. In the existence of a leisured class, we see the great and salutary corrective of all the inconveniences to which democracy is liable.³⁵⁸

Thus Mill can assimilate his concerns with social tyranny and his desire for an “almost irresistible” intellectual elite. The intellectuals can govern public opinion without tyrannizing over the minds of those who disagree with them.

³⁵⁶ “Tocqueville [I],” *Works*, pp. 85-6.

³⁵⁷ “Tocqueville [I],” *Works*, p. 86.

³⁵⁸ “Tocqueville [I],” *Works*, p. 86.

It is not the fact that public opinion rules over the mind of the individual that worries Mill. Indeed, Mill agrees that Tocqueville that (at least under conditions of equality) “public opinion ... is and must be the ruling power.”³⁵⁹ The power that worries Mill is the tyranny of “a spirit of suspicious and intolerant mediocrity.”³⁶⁰

In a sense, then, Mill agrees with John Locke that liberty is incompatible with “license,”³⁶¹ where license is represented by the oppressive power of the uninformed public over the individual. For Mill, as for Locke what prevents *liberty* from becoming *license* is to submit one’s judgment to reason – something accomplished, for Mill, by ensuring that the opinions of the masses will be checked, to the greatest extent possible, by a powerful informed class.

The image of the free society that emerges from Mill’s discussion of the role of an established intellectual elite is not one in which everyone forms his or her opinions and character entirely independently of authority, something he regards as impossible. Rather, a free society for Mill is one in which the governing voice is a well-informed public opinion, informed by regular contact with the liberal minds of the intellectuals.

³⁵⁹ *Works*, vol. XVIII, p. 198.

³⁶⁰ From an 1846 review of M. Charles Duveyrier’s *Lettres Politique*, appended by Mill to the review of Tocqueville’s second volume. *Works*, vol. XVIII, p. 202.

³⁶¹ Cf. Locke, *Second Treatise of Government*, Ch. 2, ¶ 6.

Hate Speech and Pornography

A further policy implication of the social interpretation of the harm principle is that it gives Mill an interesting position in the debate over the regulation of hate speech and pornography. Although this is obviously not an issue that was alive in Mill's day (Mill's arrest for distributing information on contraception, which was then considered pornography, notwithstanding), Mill's theory has important implications for the issue.

With respect to hate speech, the issue is relatively clear. As difficult as it is to draw the boundaries of hate speech precisely, it is at least the case that certain speech (such as the mere hurling of a racial epithet) seems clearly not intended to communicate, but to wound. The difficult question is whether the degree of wound rises to the level at which it constitutes a harm. If hate speech can be shown to cause harm in the sense relevant to the harm principle, then it is a form of action intended to cause harm for the sake of punishing something that does not itself harm others.

Some have attempted to argue that one could make a case for the regulation of hate speech and pornography based on Mill's harm principle as commonly understood (i.e., according to the political interpretation). However, the case is a difficult one to make. Because the political interpretation treats harm a basic notion, not defined in terms of rights but definitive of rights, it must hold a relatively fixed standard for judging harms. And if the offense caused by speech cannot be said to harm the religious person offended by pornography, then it is

difficult to argue that the offense of a victim of a racial epithet can constitute harm.

The social interpretation as I have elaborated it, however, provides a more elastic notion of harm. If, as I have argued, Mill intends harm to be defined as the interference with the pursuit of an interest which it is in the best interest of society to protect, then harm must be judged on a much more pragmatic, case-by-case basis. It may well be the case that the offense produced by hate speech is of a severe enough type that society would benefit if we were protected from it. Hate speech can be argued to be a harm much more readily when it is considered to be a form of "moral coercion" than if it must be compared to physical harms.

Furthermore, the fact that the social interpretation allows for a more nuanced notion of the consequences of "harming" others has the effect of lowering the bar for our definition of "harm." The political interpretation gives a binary choice: either a given type of conduct should be allowed, or it should be suppressed by coercive means. Faced with such an alternative, one is inclined to adopt a much higher standard for assessing a claim of harm. The social interpretation, on the other hand, allows for a more subtle distinction between forms of "prohibition." It may well be the case, on the social interpretation, that hate speech should be punished by social disapprobation rather than by governmental or other coercive means. It is likely that a person with a Millian bent would be prepared to accept "restrictions" on hate speech in the broader sense, who would reject the idea of coercively banning it.

The issue with regard to pornography is complicated by the fact that the harm claimed is not just the direct pain of being offended. It includes also indirect harms, such as the encouragement of rape and violent behavior by men toward women. However, it is fundamentally the same sort of argument: if one result of pornography is to interfere with interests that should be protected as rights, then a case could be made for banning or restricting it based on the harm principle.

On the other hand, with regard to pornography the social interpretation as I have elaborated it provides an interesting difficulty for arguments in defense of regulation of pornography. It is, I believe, essential to Mill's distinction between proper and improper forms of pressure that can be applied to an individual that the improper is that which is intended to punish the person for that which does not harm others. This is crucial, for instance, in distinguishing the pain one may cause by excluding a person with self-regarding faults from social functions or other "optional good offices" from the pain one may cause by firing him from a job on which he performs well.

But it would be very difficult to argue that pornography is *intended* to punish non-consenting others. Isn't pornography – even violent pornography – created for the much more mundane motive of profit? And since the harm principle, on any reasonable reading of Mill's text, must exclude indirect consequences from consideration, it will not help to argue that *in fact* pornography or certain types of pornography punishes non-consenting others: the punishment must be part of the intention if it is to be restricted by the harm principle.

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