



Mill's Harm Principle: A Study in the Application of *On Liberty*

by Sandra J. Peart

The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”

—J.S. Mill, *On Liberty [OL]* (1859), p. 223

“The practical question, where to place the limit—how to make the fitting adjustment between individual independence and social control—is a subject on which nearly everything remains to be done.”

—J.S. Mill, *OL*, p. 220

Introduction

English philosopher and political economist John Stuart Mill argued that people learn by choosing: this is how they become creative and productive individuals. For this reason, and because he felt that individuals are typically the most capable people to make their own choices, Mill was highly skeptical of restrictions on choice placed by a third party, such as the state.

Mill famously separated actions into two categories: (1) self-regarding actions that do not affect others; and (2) other-regarding actions that do affect, and may harm, others. In the former category he placed

thought and discussion, tastes and pursuits, and association, and these were to be entirely unrestrained (*On Liberty*, pp. 224-25).¹ *On Liberty* is especially concerned with other-regarding actions, which might impose harm on others, since it is here that social control might “rightfully” be exercised over the individual.

It is worthy of note that Mill identified two sources of control, the state and social opinion, and he worried that protection against State interference was insufficient to guarantee individual liberty since social opinion might also greatly proscribe choice. Only after carefully proceeding through the following thought experiment might restrictions occur.

¹ Mill was aware that an association, once formed, might act to harm those outside the association or a taste might induce a choice that harms others, but he separated such actions from thoughts and desires.

Considerations on individual and social control

Mill outlined the following considerations for restricting other-regarding actions.

1. Forbidding an act is *actually* (rather than potentially) harmful, since it restricts choice and treats the adult as a child. By reducing choice, we reduce the ability of those affected to learn how best to choose and we therefore increase the chance that people will make poor choices (Peart, 2021). For instance, if we do not allow our children to gain some experience making financial decisions, we increase the likelihood that they will be poor financial planners as adults.
2. Thus, there is no immediate step from the realization that an act might potentially harm others to prohibition. Not all potentially harmful other-regarding acts will justifiably be proscribed.
3. We must weigh the harm associated with blanket interventions that treat individuals as children against the potential for harm if the act is allowed.
4. Intervention is a blunt instrument. It restricts everyone's choice, even those who may not intend to harm others. For instance, if a good is both potentially harmful and potentially beneficial—e.g., a drug may have medically indicated reasons for its use but may have negative effects when used for non-medical reasons—a blanket prohibition obviously restricts all uses.
5. Keeping all this in mind, actions that might be circumscribed are ones where the potential harm is foreseeable, permanent rather than fleeting, and widespread—i.e., to a large number of people—and significant.
6. In short, we must weigh the harm associated with the blunt instrument against the potential significance of predictable, unchecked harm.

Applications

Mill devoted a full chapter of *On Liberty* to how these considerations play out in practice and here he focused mainly on potential State encroachments on individual actions. While he allowed many interventions that circumscribe liberty—even going so far as to suggest that the State might require parents to ensure their children are educated—he remained generally skeptical of State restrictions on individual choice. Even when he allowed that a restriction is warranted, and consistent with the position that people benefit from a wide array of choice, Mill advocated for measures to circumscribe how goods are supplied rather than a straight-up limitation on consumer choice.

Mill begins *On Liberty* by reminding the reader that some harms may be unavoidable. Some economic situations, such as when we compete with each other to obtain a prize or a position, are zero-sum—there can only be one winner. By virtue of the set-up of this situation, one person's actions will harm another: If one person earns the prize or obtains the position, another must lose by not being awarded it. Mill concludes, however, that there are benefits associated with this type of competition—it yields strong candidates for desired positions—and as such intervention is not warranted.

On positive-sum interactions such as trade, Mill allows that these interactions, too, are social and thus might warrant interference. He begins by insisting, first, that the social aspect of trade is insufficient to justify government regulation of prices. He turns next to more complex situations where the trade in some goods may result in a cost in addition to that associated with the price of the good. In such cases he carves out a number of potential interventions. For instance, he suggests that there is a proper role for government intervention in imposing regulations to prevent fraud by adulteration and protect workers in the workplace. Such State-imposed regulations, in his view, are not violations of liberty.

However, restrictions that limit consumers' access to goods, such as prohibitions on the sale of poisons, do properly involve liberty, and here Mill weighs the harm associated with using the blunt instrument of prohibition against the potential harm associated with purchases of such goods. He writes that it is proper to "guard against accidents": "If either a public officer or any one else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they 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." Even so, Mill worries that government officials may abuse this authority.

When it comes to goods that may (or may not) be used to harm others, and here Mill's example is that of poisonous substances, Mill sides with warnings rather than proscribed choice:

Nevertheless, when there is not a certainty, but only a danger of mischief, no one but the person himself can judge of the sufficiency of the motive which may prompt him to incur the risk: in this case, therefore, (unless he is a child, or delirious, or in some state of excitement or absorption incompatible with the full use of the reflecting faculty) he ought, I conceive, to be only warned of the danger; not forcibly prevented from exposing himself to it. Similar considerations, applied to such a question as the sale of poisons, may enable us to decide which among the possible modes of regulation are or are not contrary to principle. Such a precaution, for example, as that of labelling the drug with some word expressive of its

dangerous character, may be enforced without violation of liberty: the buyer cannot wish not to know that the thing he possesses has poisonous qualities. (OL, p. 294)

In such cases, additional record keeping requirements, including keeping records on the date and time of sale, name and address of purchaser, and purpose of the purchase, might be justified. Mill also noted the possible use of third-party witnesses.

For goods that are used *only* for harm, for example to commit murder, Mill allows that "It would be right to prohibit their manufacture and sale." Perhaps because there are few goods of this sort, Mill did not elaborate. We'll return to this tough problem when we consider gun control. However, for goods that have several purposes, the government may require labels that inform consumers of the dangers associated with the good.

Contracts, too, are properly subject to regulations to ensure they are offered in good faith. Attestations and signatures are correctly required, Mill argued, in order to provide the requisite evidence that a contract was legitimately and voluntarily agreed upon. Buyer's remorse is not sufficient to justify additional State intervention: If you agree to purchase my used car, as long as I have truthfully disclosed available information about the car, neither of us has recourse to re-do the bargain after the fact. Mill adds that "Precautions of a similar nature might be enforced in the sale of articles adapted to be instruments of crime" (OL, p. 295).

Mill opposed taking steps to prevent people from hearing poor advice.² While he allowed that offering bad advice may cause harm, he also insisted that the benefits associated with learning to make decisions in the context of having received bad advice generally

² "If people must be allowed, in whatever concerns only themselves, to act as seems best to themselves at their own peril, they must equally be free to consult with one another about what is fit to be so done; to exchange opinions, and give and receive suggestions. Whatever it is permitted to do, it must be permitted to advise to do" (OL, p. 296).

outweigh the potential harm. To this, he added an exception: if someone makes a living from offering bad advice, that person may be subject to restriction. In this context he did not address liability; as we will see next, however, Mill endorsed restrictions on the behaviour of those who make a living by encouraging intemperance.

Along similar lines, Mill suggests that while there should be no prohibition on fornication, it is a less clear whether people should freely be allowed to be pimps. In his view this is a case that “lie[s] on the exact boundary line between two principles, and it is not at once apparent to which of the two it properly belongs. There are arguments on both sides” (*OL*, p. 296). Mill opts to regulate those who run “public houses” (bars), “because the class of dealers in strong drinks, though interested in their abuse, are indispensably required for the sake of their legitimate use. The interest, however, of these dealers in promoting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty”³ (*OL*, p. 297). Mill opposed restrictions on the supply of liquor, by contrast, because they treat consumers as children:

Any further restriction I do not conceive to be, in principle, justifiable. The limitation in number, for instance, of beer and spirit houses, for the express purpose of rendering them more difficult of access, and diminishing the occasions of temptation, not only exposes all to an inconvenience because there are some by whom the facility would be abused, but

is suited only to a state of society in which the labouring classes are avowedly treated as children or savages, and placed under an education of restraint, to fit them for future admission to the privileges of freedom. (*OL*, pp. 297-98)

What about drunken acts that may impose harm on others? Mill wrote that the alcoholic (or the chronically idle) who fails to fulfill family obligations may be forced to do so by the State and, if a drunken person is once convicted of a violent crime, the State may take steps to prevent such violence from occurring in the future.⁴ Drunkenness, for Mill, is not an excuse for the commission of a crime. In addition, he allowed that some acts (he mentions acts of indecency) “are a violation of good manners” and thus come within the harm principle and “may rightfully be prohibited” (*OL*, p. 296). In such cases, social norms may emerge as people voluntarily agree not to impose such harms on each other. We will return to this point when we consider the issue of choosing to wear masks in the course of a pandemic.

In what is perhaps his most surprising assertion in this chapter, Mill argues that having children is a social act and thus subject to potential intervention: he suggests that the state can force parents to educate their children “up to a certain standard.” Mill famously argued against a State monopoly in the provision of education. He also maintained that marriage laws which made it extremely difficult for women to leave the marriage gave husbands an “almost despotic power” over their wives (*OL*, p. 301). Here, he suggested that “nothing more is needed for the complete removal of

³ In this context, Mill suggested that while the State should not directly limit people's choices with respect to alcohol consumption, it should tax stimulants. His thinking here was that the State needs tax revenue in any event and so it might make sense to tax a good that is associated with causing harm.

⁴ “I should deem it perfectly legitimate that a person, who had once been convicted of any act of violence to others under the influence of drink, should be placed under a special legal restriction, personal to himself; that if he were afterwards found drunk, he should be liable to a penalty” and “if, either from idleness or from any other avoidable cause, a man fails to perform his legal duties to others, as for instance to support his children, it is no tyranny to force him to fulfil that obligation, by compulsory labour, if no other means are available” (*OL*, p. 295).

the evil, than that wives should have the same rights, and should receive the protection of law in the same manner, as all other persons." He also allowed that in "over-peopled" countries,⁵ laws that required "the parties" to demonstrate "that they have the means of supporting a family" are within the proper exercise of State authority.

While the cases Mill uses in *On Liberty* clearly pertain to nineteenth century concerns and thus seem dated, his blueprint for how we think about and possible intervene over potential harms nevertheless sheds light on contemporary issues.

Mill's relevance today

Gun control

How would Mill approach contemporary issues such as gun control? It seems likely that he would favour restrictions such as record keeping and waiting periods for gun sales, rather than full abolition of such items that can be used for multiple purposes, including hunting. In line with his position on poisons, above, he would insist that purchasers be offered full information about the weapon in question, and might resort to testimonials by third parties. His treatment of the drunkard who harms others, noted above, also suggests he would sharply curtail alcohol purchases by persons with a history of harmful behaviour. The foregoing suggests as well that Mill might go as far as to recommend stringent restrictions on the sale of weapons that are meant solely for killing people with speed, such as automatic weapons. Of course, Mill was aware that the devil would be in the details, where "nearly everything remains to be done": in his

day it would have been difficult to imagine the array of deadly (semi-automatic) weapons that now exists.

Free speech

Because speech is important for learning how best to choose, Mill favours an environment in which there is much unregulated discussion. He famously declared that "The fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful, is the cause of half their errors. A contemporary author has spoken of "the deep slumber of a decided opinion" (*OL*, p. 250). But Mill also recognized that speech may cause harm. In this context, he discusses inciting violence through speech. Interestingly, he allows here that such speech (his example is speech that incites riots against corn dealers) ought to be restricted first by public opinion and, "when needful," by "the active interference of mankind" (*OL*, p. 260). Inasmuch as public speech can be construed as an incitement to riot, it would not be privileged. Insofar as speech entails widespread and significant harm—when a speaker uses a racial slur, for instance—it seems plausible that Mill envisaged the emergence of social sanctions to prevent such harms.

How might Mill approach the issue of free speech on college campuses? From the foregoing it seems clear that he would favour an environment rich in viewpoints and discussion and he would be unsurprised at the emergence of group norms limiting the use of problematic words. He might also endorse the imposition of campus-wide rules prohibiting the use of words that are known to cause significant and widespread harm. As with all applications in *On Liberty*, the devil is in the details.⁶

⁵ But "over population" is often the result of poor institutions: in Ireland, for instance, Mill argued that land tenancy arrangements, including absent landlords, induced pauperism.

⁶ See Alan Ryan, who noted, "it is likely that Mill would allow much less freedom of speech to, say, antiabortion protesters parading up and down outside an abortion doctor's house than the U.S. Supreme Court has done" (1975/1997, pp. xxxiii).

COVID

In the case of measures to prevent the spread of a communicable disease such as COVID-19, Mill would most certainly endorse the provision of information—as well as some discussion of the validity of the information—and warnings and remonstrances as ways to reduce the spread. In addition, despite his worry about the despotism of social control, he might again lean heavily on public opinion for reinforcing various norms of behaviour such as the wearing of masks and self-isolation of the infected. While attentive to the bluntness of the instrument, Mill might nonetheless also consider, and possibly endorse, mask and vaccine mandates if there were evidence that these measures reduce the spread of a deadly disease. Such a step, however, would be a last and rarely used resort for Mill. The foregoing suggests he would anticipate that informed people would attempt to reduce the risk of spreading the disease to their neighbours and colleagues by voluntarily opting to wear masks.

Conclusions

Many of Mill's suggestions form the basis for accepted measures of today's public policy. As noted, he emphasized the provision of information, record keeping, warnings, and, when interference seemed justified, limitations on the providers of the good rather than the purchasers of it. Rarely was a good to be entirely off limits. When it came to the question of whether the State was to play a more active role in helping (or nudging) people to make good choices, Mill remained a skeptic. He provided three reasons for his skepticism. First, the person who makes a choice is typically the most capable of doing so, in his view, and a third party would frequently get things wrong. Second, people learn nothing when the State steps in to do the thing and, as noted at the outset, Mill was a firm believer in learning by choosing and doing. Third, ever the skeptic about social control, Mill worried about adding to the power of those already in authority.



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