

PHIL 202: Ethics Core Course
Winter 2005; David O. Brink
Topic: Mill's Moral and Political Philosophy
Handout #5: Mill's Liberal Principles

Mill begins On Liberty (1859) by distinguishing old and new threats to liberty. The old threat to liberty is found in traditional societies in which there is rule by one (a monarchy) or a few (an aristocracy). Though one could be worried about restrictions on liberty by benevolent monarchs or aristocrats, the traditional worry is that when rulers are politically unaccountable to the governed they will rule in their own interests, rather than the interests of the governed. In particular, they will restrict the liberties of their subjects in ways that benefit the rulers, rather than the ruled. It was these traditional threats to liberty that the democratic reforms of the Philosophical Radicals were meant to address. But Mill thinks that these traditional threats to liberty are not the only ones to worry about. He makes clear that democracies contain their own threats to liberty – this is the tyranny, not of the one or the few, but of the majority (i 1-5). Mill sets out to articulate the principles that should regulate how governments and societies, whether democratic or not, can restrict individual liberties (i 6).

MILLIAN PRINCIPLES

In an early and famous passage in Mill offers one formulation of his basic principles concerning liberties.

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 can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence, is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign [i 9].

In this passage, Mill distinguishes paternalistic and moralistic restrictions of liberty from restrictions of liberty based upon the harm principle.

- A's restriction of B's liberty is **paternalistic** if it is done for B's own benefit.
- A's restriction of B's liberty is **moralistic** if it is done to ensure that B acts morally or not immorally.

- A's restriction of B's liberty is an application of the **harm principle** if A restrict B's liberty in order to prevent harm to someone other than B.

Here, Mill seems to say that a restriction on someone's liberty is legitimate if and only if it satisfies the harm principle (cf. iv 1-4, 6 v 2). Later, he distinguishes between genuine harm and **mere offense**. In order to satisfy the harm principle, an action must actually violate or threaten imminent violation of those important interests of others in which they have a right (i 12; iii 1; iv 3, 10, 12; v 5). So he seems to be saying that the harm principle is always a good reason for restricting liberty, but that mere appeals to morality, paternalism, or offense are never good reasons for restricting liberty.

MILL'S CATEGORICAL APPROACH

As this recounting of Mill's principles suggests, his defense of individual liberties appears to be part of what might be called a **categorical approach**. To decide whether an individual's liberty ought to be protected, we must ascertain to which category the potential restriction of liberty belongs. The main categories for potential restrictions are as follows.

- Offense (mere offense)
- Moralism (mere moralism)
- Paternalism (mere paternalism)
- Harm Principle

The potential restriction is permissible if and only if it is an application of the harm principle; if not, the restriction is impermissible and the liberty must be protected.

Sometimes Mill suggests that the harm principle is equivalent to letting society restrict other-regarding conduct (i 11; iv 2). On this view, conduct can be divided into self-regarding and other-regarding conduct. Regulation of the former is paternalistic, and regulation of the latter is an application of the harm principle. So on this view it is never permissible to regulate purely self-regarding conduct and always permissible to regulate other-regarding conduct. But this is over-simple. Some other-regarding conduct causes mere offense, not genuine harm (iv 3, 12). So Mill cannot equate harmful behavior and other-regarding behavior and cannot think that all other-regarding behavior may be regulated.

It is generally thought that by applying this categorical approach to liberty and its permissible restrictions Mill is led to offer a fairly extensive defense of individual liberties against interference by the state and society. In particular, it is sometimes thought that Mill recognizes a large sphere of self-regarding conduct which it is impermissible for the state to regulate. We might characterize this sphere of protected liberties as Mill's conception of **liberal rights**.

It is probably fair to say that Mill is traditionally interpreted as deriving his conception of liberal rights from a prior commitment to the categorical approach and, in particular, to the harm principle. Recently, this traditional claim about the priority of the harm principle has been challenged in an interesting way by Dan Jacobson ("Mill on Liberty, Speech, and a Free Society"). He claims that Mill does not in fact adhere to the categorical approach, because there are cases where Mill allows restrictions on liberty that do satisfy the harm principle and cases in which restrictions on liberty would satisfy the harm principle that Mill does not endorse. He suggests that Mill really has a prior commitment to a particular set of liberal rights and that it is these that determine what he is willing to count as a harm. If Mill isn't best read as simply abandoning the categorical approach, in general, and the harm principle, in particular, then we

should moralize our notion of a harm such that something counts as a harm iff it violates the rights of another.

Are these good reasons to abandon the categorical approach? Is there independent evidence for this moralized reading of the harm principle? Does this alternative reading commit Mill to a natural rights view? Would this be compatible with his defense of utilitarianism and his desire to avoid ultimate appeals to natural rights (i 11)?

THE CATEGORICAL APPROACH AND UTILITARIANISM

Recall the apparent conflict between rights and other categorical moral rules and direct utilitarianism. The apparent conflict between utility and rights, especially rights to liberties, poses an interesting test for Mill, because he not only endorses utilitarianism but wants to defend liberal rights. Moreover Mill insists that his arguments have utilitarian foundations.

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being [OL: i 11].

Is Mill able to reconcile his defense of utility and liberty without compromising either his utilitarianism or his defense of a right to liberties? There seem to be four possible resolutions of this tension.

1. The tension between utility and rights is inescapable, and Mill is simply inconsistent, endorsing both utilitarianism and individual rights to liberties.
2. The tension between utility and rights is inescapable, and Mill's utilitarianism prevents him from defending individual rights.
3. The tension between utility and rights is inescapable, and Mill defends individual rights only by abandoning his utilitarianism.
4. The tension between utility and rights is not inescapable; Mill succeeds in reconciling a form of utilitarianism with a defense of individual rights to liberties.

It's worth bearing these possibilities in mind as we consider and evaluate Mill's defense of basic liberties.

The reconciliationist conclusion in (4) would be the most desirable from the point of view of sympathetic interpretation. Our previous discussion of Mill's conception of rights suggests three distinct reconciliationist strategies: (a) treating liberal rights as secondary rules; (b) treating liberal rights as incomparable goods or necessary conditions for incomparable goods; and (c) adopting an indirect utilitarian account of liberal rights. As we examine the arguments of On Liberty we might look for evidence that one or more of these strategies is at work.

MILL'S ANTI-PATERNALISM

Why the blanket prohibition on paternalism? Mill offers two explicit arguments against paternalism. First, state power is liable to abuse. Politicians are corruptible and will use a paternalistic license to limit the freedom of citizens in ways that promote their own interests and not those of the citizens whose liberty they restrict (v 20-3). Second, even well intentioned rulers will misidentify the good of citizens. Because an agent is a more reliable judge of his own good, even well intentioned rulers will promote the good of the citizens less well than would the citizens themselves (iv 4, 12). These arguments provide no **principled** objection to paternalism - no objection to **successful** paternalistic restrictions on B's liberty that do benefit B.

Though these are Mill's explicit arguments against paternalism, he has the resources for another, stronger argument. These resources are clearest in his defense of free speech. Indeed, Mill thinks that there is general agreement on the importance of free speech and that, once the grounds for free speech are understood, this agreement can be exploited to support a more general defense of individual liberties (i 16; iii 1).

MILLIAN PRINCIPLES AND FREEDOM OF EXPRESSION

Mill's discussion of censorship in Chapter ii focuses on censorship whose aim is to suppress false or immoral opinion (ii 1-2). He mentions four reasons for maintaining free speech and opposing censorship.

1. A censored opinion might be true (ii 1-20, 41).
2. Even if literally false, a censored opinion might contain part of the truth (ii 34-39, 42).
3. Even if wholly false, a censored opinion would prevent true opinions from becoming dogma (ii 1-2, 6, 7, 22-23, 43).
4. As a dogma, an unchallenged opinion will lose its meaning (ii 26, 43).

The first two claims represent freedom of expression as instrumentally valuable; it is valuable, not in itself, but as the most reliable means of producing something else that Mill assumes is valuable (either extrinsically or intrinsically), namely, true belief. Of course, the most reliable means of promoting true belief would be to believe everything. But that would bring a great deal of false belief along too. A more plausible goal to promote would be something like the ratio of true belief to false belief. Freedom of expression might then be defended as a more reliable policy for promoting the ratio of true belief to false belief than a policy of censorship. This rationale for freedom of expression is echoed by Justice Holmes in his famous dissent in Abrams v. United States when he claims that the best test of truth is free trade in the marketplace of ideas.

But this rationale for freedom of expression is pretty weak. We would be on good ground in censoring flat-earthers. In any case, if, even if only contrary to fact, we had extremely knowledgeable and reliable censors who censored all and only false beliefs, this rationale for freedom of expression would provide no argument against censorship. We might say that this rationale for freedom of expression provides no objection to **successful** or **competent** censorship.

However, Mill also suggests that freedom of expression is needed to keep true beliefs from becoming dogmatic. In this suggestion, I think, lie the resources for a more robust defense of freedom of expression, in part because it is intended to rebut the case for censorship even on the assumption that all and only false beliefs would be censored (ii 2, 21). Mill's argument is that freedoms of thought and discussion are necessary conditions for fulfilling our natures as progressive beings (ii 20). Here Mill is appealing to his perfectionist assumptions about happiness.

He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is

possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being [iii 4]? Mill makes similar claims about the role of deliberative capacities in the happiness of progressive beings in his discussion of higher pleasures in Chapter ii of Utilitarianism where he contrasts the examined life Socrates led and the life of a contented swine and accords the former incomparably greater value (ii 6).

At least part of Mill's idea is that whereas the mere possession of true beliefs need not exercise one's deliberative capacities, because they might be the product of indoctrination, their justification would; one exercises deliberative capacities in the justification of one's beliefs and actions. This is because justification involves comparison of, and deliberation among, alternatives (ii 6, 7, 8, 22-23, 43). Freedoms of thought and discussion are essential to the justification of one's beliefs and actions, because individuals are not cognitively self-sufficient (ii 38, 39; iii 1). Sharing thought and discussion with others, especially about important practical matters, improves one's practical deliberations. It enlarges the menu of options, by identifying new options worth consideration, and helps one better assess the merits of these options, by forcing on one's attention new considerations and arguments about the comparative merits of the options. In these ways, open and vigorous discussion with diverse interlocutors improves the quality of one's deliberations. If so, censorship, even of false belief, can rob both those whose speech is suppressed and their audience of resources that they need to justify their beliefs and actions (ii 1).

THE PERFECTIONIST DEFENSE OF BASIC LIBERTIES

This perfectionist rationale for freedoms of thought and discussion is a special case of a more general defense of basic liberties of thought and action that Mill offers in ch. iii of On Liberty. To account for the robust character of the argument, it is tempting to suppose that Mill thinks these basic liberties are themselves important intrinsic goods. But limitations in the scope of Mill's argument show that this cannot be right.

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. ... Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion [i 10].

These restrictions make no sense if basic liberties are dominant intrinsic goods, for then it should always be valuable to accord people liberties -- a claim that Mill here denies. These restrictions make perfect sense if the liberties in question, though not intrinsically valuable, are necessary conditions to realizing dominant goods, for then there will be, or need be, no value to liberty where, as in these circumstances, other necessary conditions for the realization of these higher values -- in particular, sufficient rational development -- are absent.