

BLACKBOARD NOTES ON *ON LIBERTY*, CHAPTER 1
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In chapter 1 of *On Liberty* Mill states that the problem of liberty has changed its aspect with the emergence of modern democratic societies. When society was ruled by a king or a few aristocrats, the struggle for individual liberty took the form of limiting the power and prerogatives of the rulers. Once the possibility of replacing minority rule with democratic rule became salient, reformers identified the struggle for liberty with the struggle for democracy. In the middle of the 19th century, we now have experience of democratic regimes, and can see that a democratic constitution of society is fully compatible with tyranny of the majority--laws favored by the majority that wrongfully restrict the liberty of individual citizens. The tyranny of society over the "separate individuals who compose it" can be exercised by laws and official acts of government officials, but can also be exercised through informal means. Tyranny of the majority can be political or social, and social tyranny may be "more formidable than many kinds of political oppression," since the former type of tyranny "leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself" (all the quotations in this paragraph are from p. 4). The last phrase registers Mill's concern that in democratic society those who suffer from wrongful restriction of liberty may not experience the restriction as onerous or believe it to be wrongful.

How do we draw the line between morally acceptable and unacceptable restrictions of individual liberty? Mill says we cannot merely rely on our prereflective judgments or sentiments about what is acceptable and what is not. Our prereflective views that strike us as just common sense or as intuitively obvious may simply reflect the fact that we have been socialized into the prevailing customs and traditions of our tribe and have internalized its dominant norms. Sounding a Marxian note, Mill writes that the norms dominant in a given society may be observed to differ greatly from the norms enforced in other societies, and in any given society the dominant norms are likely to reflect the interests of the dominant social groups. We cannot then rely on our gut feelings or untutored common sense. We need to think critically about the customs and morals of our own tribe and try to develop principles that can yield judgments about cases that make sense to us after critical reflection.

Mill's proposed "one very simple" principle concerning the social regulation of individual liberty is stated on page 9; it's often called the Liberty Principle or the Harm Principle. The principle is stated in what look to be two different versions on the same page:
Version 1: The only good reason to restrict individual liberty is to prevent harm to others. (Mill: "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.")
Version 2: The only good reason to restrict individual liberty is that the individual conduct that it is proposed to restrict causes or threatens to cause harm to others. (Mill: "To justify [compelling him or visiting him with any evil in case he do otherwise], the

conduct from which it is desired to deter him must be calculated to produce evil to someone else.")

An example that illustrates the difference between the versions: If I refrain from giving my money to overseas famine relief, many will die. But my refraining from giving does not cause harm to those who will die. Society might restrict my liberty, by requiring me to give my money to famine relief, in order to prevent harm to others, namely, those who would die from famine in the absence of aid.

Mill seems to be trying to deny the difference between the versions on page 11, where he writes, "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."

See the editor's introduction by Elizabeth Rapaport for a different interpretation of the basic liberty principle that Mill is asserting in this book. The entire discussion under the heading "Reading the Central Argument of the Text" in this Introduction is worth reading.

Limitations of the scope of the Liberty Principle. Mill does not assert the Liberty Principle as being timeless, universally valid for all persons. He asserts that the principle is to be applied only to sane nonfeebleminded adults (pp. 9-10). He also asserts that the principle should be applied only to modern, civilized societies, and that despotism may be "a legitimate mode of government in dealing with barbarians" (p. 10). He restates this qualification: the Liberty Principle should be applied only "when mankind have become capable of being improved by free and equal discussion." The relationship between the two formulations is unclear: surely members of nonliterate peoples can and do benefit from discussion of their common affairs and about how best to live. Perhaps Mill thinks they do not benefit enough, but how much is "enough"? Perhaps Mill's rough idea is that the Liberty Principle should be applied only to societies in which the population is educated and literate.

Mill's ultimate allegiance. Mill declares on p. 10 that he is a utilitarian. The fundamental standard for assessing individual acts and social practices should be utility, the greatest happiness of the greatest number, according to Mill. He rejects the idea that abstract rights independent of utility are a reasonable guide for policy. One might say that the Liberty Principle expresses the idea that each person has a natural right of self-ownership, but Mill does not say this. He writes, "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." What is "utility in the largest sense"? Chapter 3 partially answers this question, but critics of *On Liberty* have queried whether Mill's argument for liberty as a whole does not implicitly appeal on a fundamental level to the idea of a natural right that Mill explicitly disavows. On p. 9 Mill writes, "In the part [of an individual's conduct] which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign." Mill's official utilitarian position must be that the individual should be regarded as sovereign over his own body and mind because so regarding the individual maximizes human happiness in the long run.

In *Utilitarianism*, chapter 2, Mill develops his idea of what "utility in the largest sense" amounts to. He identifies utility with happiness and happiness with pleasure and the absence of pain. But not all pleasures are created equal, according to Mill. He stipulates that one pleasure is qualitatively superior to another when qualified experts, those who have experienced both pleasures and are competent to assess both, would prefer to have the first rather than the second. The preference that here singles out one pleasure as superior to another emerges when one sets aside the extrinsic qualities of a pleasure such as the consequences of pursuing it and focuses on its intrinsic properties. So in comparing the pleasure of binge drinking and the pleasure of medical research, ignore the facts that drinking leads to hangovers and research to health gains for other people and concentrate on the quality of the experience as an experience. Mill claims that the application of this test for the superiority of pleasures yields the result that what he calls the mental pleasures are superior to the bodily pleasures, the ones we have in common with animals. We can say that for Mill utility is "fancy pleasure," a life filled with the high-quality pleasures the experts would choose.

Mill actually suggests a very strong "no trade off" principle. He writes, "Few human creatures would consent to be changed into any of the lower animals for the promise of the fullest allowance of a beast's pleasures; no intelligent human being would consent to be a fool, no instructed person would be an ignoramus, no person of feeling and conscience would be selfish and base, even though they should be persuaded that the fool, the dunce, or the rascal is better satisfied with his lot than they are with theirs. They would not resign what they possess more than he for the most complete satisfaction of all the desires which they have in common with him. If they ever fancy they would, it is only in cases of unhappiness so extreme that to escape from it they would exchange their lot for almost any other, however undesirable in their own eyes." Is Mill saying the tiniest amount of fancy pleasure is worth more than any amount of unfancy or foolish pleasure? The alternate position would say it is better to lead a normal cat's life of normal lifespan with a cat's feline pleasures and achievements than an extremely short Socratic life with just one moment of intellectual pleasure, lived by a competent human being.

One might hold that there are genuine goods that can occur in an individual's life, that make her life go better for her, even though the goods are not accompanied by pleasure. For example, one might think that your life goes better for you when your children prosper and you accomplish significant achievements (maybe especially when you desire these things) even if you get no pleasure at all from them. To take this position would be to disagree with Mill that the ultimate standard for judging acts should be happiness understood as fancy pleasure.

The Liberty Principle elaborated. The Liberty Principle is a rule that is supposed to guide the conduct of lawmakers and the assessment of laws, acts of government agencies, and social rules that are enforced by informal punishments not administered by government. The Liberty Principle does not directly specify what restrictions of liberty are

acceptable and which are not. It rules out certain reasons as legitimate reasons for the restriction of individual liberty. It does not directly prohibit the prohibition of consumption of dangerous drugs; it says that the only good reasons that could be invoked to justify such a prohibition would be harm to others. If no-harm-to-others reasons support a prohibition, the prohibition would be wrong, according to the Liberty Principle. The Liberty Principle is limited in another way: It says nothing about when restriction of individual liberty IS justified, all things considered. The Liberty states a necessary but not a sufficient condition for justified restriction of individual liberty. If a type of conduct causes harm to others, the Liberty Principle does not rule out its restriction. But nor does the Liberty Principle affirm that restriction would be a good idea. Some types of conduct that cause harm to others may be such that any social regulation to prevent or reduce the harm would itself do more harm than good. As a utilitarian, Mill will hold that a utilitarian calculation of costs and benefits determines whether restriction of liberty would be justified all things considered. In other words, the Liberty Principle does not purport to be a complete theory that tells society when to restrict liberty and when to refrain from restriction. But despite these limits and qualifications, the Liberty Principle is a powerful and controversial political doctrine.

Implications of the Liberty Principle. Mill's Liberty Principle strongly restricts the class of acceptable reasons for restricting liberty. Its main implications appear to be:

1. No paternalism. In this context, paternalism is restriction of an individual's liberty, against her will, for her own good. (To be more precise, it's restriction of an individual's liberty against her present will [unless her present will is preempted by her prior commitment], for her own good. The extra clause is needed to handle the case of Ulysses, who wants to hear the music of the Sirens but not to be seduced into crashing on the rocks, so he orders his men to tie him to the mast, so he can hear the Sirens' song and charmed to distraction without being able to steer his ship toward the Sirens's island where he would crash. The sailors restrict Ulysses's liberty, but not for paternalistic reasons. Paternalism involves overriding the judgment of another person about where his own good lies.)

2. No moralism. Moralism, let's say, is restriction of an individual's liberty to engage in a type of conduct on the ground that the conduct is either inherently immoral or constitutes an evil even though it is not claimed that the conduct causes harm to others. Laws restricting sexual conduct between consenting adults are sometimes claimed to be moralistic and hence in violation of Mill's Liberty principle and hence unacceptable. Notice that as stated, moralism violates the Liberty Principle, version 2. But restriction of individual liberty in order to prevent evils that are not claimed to be harm to others can also be regarded as moralistic (these laws would violate version 1).

3. No enforced charity. If one restricts individual liberty that is not itself threatening harm to others in order to benefit others or prevent harm to others, such restriction violates the Liberty Principle, version 2.

Each of these implications 1-3 is controversial. Many laws currently enforced or proposed for modern democracies are either paternalistic, moralistic, or enforced charity.

Harm to nonconsenting others. Suppose that Smith offers to sell a dangerous recreational drug to Jones, and the police interfere with the transaction on the ground that what Smith is doing threatens harm to others, namely to Jones. This case is significantly different from a case in which Smith, unprovoked, bashes the unwilling Jones with a club. The cases are different even if we assume the harm that comes to Jones is the same in the drug sale case and the bashing case. The difference is that Jones is a willing participant in the drug transaction; he consents to participate in the transaction and bear its consequences, good or ill. So to capture Mill's intended meaning, the statement of the Liberty Principle should be amended so that it forbids restriction of liberty except to prevent harm to nonconsenting others. Judged by this formulation of the principle, the police in the drug sale case are violating the Liberty Principle.

Voluntary consent and weak paternalism. The Liberty Principle as interpreted so far forbids restricting the liberty of one person to act in ways that threaten harm to a second person if the second person voluntarily consents to participate and bear the costs of the action. In Mill's words, the sphere of action that should be let alone includes "that portion of a person's life and conduct which affects only himself, or, if it also affects others, only with their free, voluntary, and undeceived consent and participation" (p. 11). The voluntary consent issue also affects the issue of what kind of restriction qualifies as paternalistic and so in violation of the Liberty Principle. If Smith is doing an action, but her choice of the action is not fully voluntary, restricting the person's freedom to perform the action for her own good may not qualify as paternalistic and hence not be in violation of the Liberty Principle. Mill in chapter 5 (p. 95) discusses the application of the Liberty Principle to the example of seizing a person who is about to venture on an unsafe bridge and who is unaware of the danger that the bridge may collapse. If there is no time to warn the person, it is permissible to seize the person, let him know about the danger, and then let him do as he chooses unless either it is certain that the bridge will collapse or the person is "a child, or delirious, or in some other state of excitement or absorption incompatible with the full use of the reflecting faculty." If the person's choice to do an act herself or consent to an act done by another is not sufficiently voluntary, the restriction of the individual's liberty to perform the act for her own good would not violate the Liberty Principle. The analysis of voluntary consent evidently needs further exploration. A choice can be more or less voluntary along several disparate dimensions. If I make a choice (a) on the basis of ignorance or false belief, or (b) under coercion or duress, or (c) through confused reasoning about what to do, or (d) under the grip of some distorting passion or emotional mood or drug-induced state, my choice is less than fully voluntary. All of these factors vary by degree. Joel Feinberg distinguishes between a strong and a weak version of paternalism "[a]ccording to the weaker version of legal paternalism, a man can rightly be prevented from harming himself (when other interests are not directly involved) only if his intended action is substantially nonvoluntary or can be presumed to be so in the absence of evidence to the contrary." Strong paternalism holds that a person can rightly be prevented from harming herself even if her choice that would be restricted would be substantially voluntary. One might roughly classify Mill as opposed to strong not weak paternalism.

Direct and indirect harm to others. In chapter 1 Mill clarifies that when he speaks of conduct that affects only the individual himself, he means "directly and in the first instance; for whatever affects himself may affect others through himself" (p. 11). Mill here alludes to an objection which he states later, in chapter 4 (p. 78): "The distinction here pointed out between the part of a person's life which concerns only himself and that which concerns others, many persons will refuse to admit." Mill discusses the objection on pages 78-80. In the editor's Introduction to our edition, it is suggested that Mill there substitutes for the chapter 1 version of the Liberty Principle another Principle called "Principle II: A person ought to be subject to social coercion only to prevent the violation of a `distinct and assignable obligation to any other person or persons'."

If Mill is forced by argument to replace his chapter 1 formulation of the Liberty principle with Principle II, the question arises whether Mill is not here implicitly building some notion of abstract individual right independent of utility into the foundation of the Liberty Principle. If we must know what obligations people have in order to interpret the Liberty Principle, and we must know what rights individuals have in order to know what obligations others have toward them, is the ultimate justification of the Principle plausibly viewed as an appeal to utility? The answer will be negative if what ultimately determines what rights people have, according to Mill, is the degree to which endowing people with one or another set of rights works to maximize human happiness (utility in the largest sense) in the long run.

This question seems pertinent even though it does not seem that Mill in fact embraces Principle II. What Mill seems to assert is more complex: An individual should be left free to do whatever he chooses unless his chosen conduct either "occasions perceptible hurt to any assignable person except himself" or "violates any specific duty to the public" (p. 80). That is to say, the Liberty Principle protects from interference conduct that neither directly harms others nor, if it indirectly harms others, does so in a way that also violates any "distinct and assignable obligation to any other person or persons." The question also arises how Mill is interpreting the distinction between directly and indirectly harming others.

A broader issue raised by this chapter 4 discussion is whether Mill's qualifications in later chapters of the bold and controversial Liberty Principle announced in chapter 1 qualify the Principle to the point of rendering it weak and insignificant.

Individuality. The main arguments for the Liberty Principle are stated by Mill in chapter 3. They invoke an ideal of individuality which that chapter elaborates. The individuality ideal is an interesting political ideal quite apart from its value in arguing for the Liberty Principle.

In chapter 3 Mill associates individuality with development of one's talents, having desires of one's own, and not slavishly following custom but deciding for oneself what is

worthwhile. He argues that individuality is valuable, an essential component of happiness, but for those who cannot be brought to see that developing their individuality would benefit them, Mill in the latter part of the chapter argues that they would do well to tolerate the development of individuality in others, since the flowering of individuality in a society tends to bring about uncontroversial social progress, especially material progress.

Mill is less explicit as to the exact connection between individuality and the liberty principle, but seems to hold that to promote happiness in society, the development of individuality is necessary, and to develop widespread individuality, strict adherence to the liberty principle is necessary.