

CHAPTER 4, On Liberty. Does Mill Qualify the Liberty Principle to Death? **Dick Arneson For PHILOSOPHY 166 FALL, 2006**

In chapter 1, Mill proposes "one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control." As described in chapter 1, the proposed Liberty Principle (LP) looks to be substantive and controversial. Question: Do the later chapters 4 and 5 qualify the LP to the point that it becomes toothless-nonsubstantive and uncontroversial?

To see the problem, consider the reading of Mill in the "Editor's Introduction" by Elizabeth Rapaport. She says that in chapter 1 Mill asserts

Principle I. The only legitimate ground for social coercion is to prevent someone from doing harm to others.

But in chapter 4, discussing objections, Mill denies Principle I and in its place asserts

Principle II. The only legitimate ground for social coercion is to prevent someone from violating "a distinct and assignable obligation to any other person or persons.

In other words, Principle II holds that the only legitimate ground for social coercion is to prevent someone from violating the rights of others.

What gives? Why assert in chapter 1 what you are going to retract later? Rapaport says "Mill's procedure is a model of open philosophical inquiry." This does not seem to suffice to excuse Mill from the obligation to explain in chapter 1 that Principle I is only provisional and not his real view.

Worse, Principle II does not look like a real principle, it looks like a blank check. One could know all the possibly relevant facts that bear on policy choice and still not know what are the legitimate grounds for coercion according to Mill. In this respect, the supposedly rejected Principle I is superior. Rapaport is untroubled. She writes, "Mill's principle is not designed to settle the question of what are our assignable obligations, what specifically are the rights that society is supposed to protect." But the problem is that as presented by Rapaport, Mill does not tell us how to go about deciding what obligations and rights people should be regarded as having. So far, acceptance of the Liberty principle seems to commit one to nothing.

Mill does not write as though for all that he has said, it is an entirely open question, what rights and obligations people have. Discussing the Alliance for temperance reform and its proposals about social rights (pp. 86-88), Mill writes as though anyone who accepts the Liberty Principle is committed to rejecting the expansive understanding of social rights propounded by some temperance reformers and to rejecting banning the recreational drinking of alcoholic beverages as a violation of this principle. If Rapaport's interpretation were correct, it would be hard to understand how Mill could think himself entitled to argue in this way.

Here is one possible way to put teeth back into the Liberty Principle, interpreted as Principle II. Add Mill's statement that he regards "utility as the ultimate appeal on all ethical questions" (p. 10), and interpret Mill as implicitly holding that society ought to recognize and enforce just those obligations and rights that are such that recognizing and enforcing them maximizes utility in the long run. Notice that on this way of interpreting Mill, the Liberty Principle itself does not protect broad individual liberty to live as one chooses. Everything turns on the question, recognizing and enforcing WHICH putative rights would be utility-maximizing? There is room for Peter Singer (an advocate of very demanding duties to aid distant needy strangers) to accept the LP but hold that it maximizes utility for society to recognize and enforce a strong duty to aid distant needy strangers of the shape that he proposes. The Liberty

principle would then NOT rule out enforced charity, contrary to chapter 1 appearances. What liberty the LP protects would depend on whether utilitarianism in particular circumstances implies that an extensive or a minimal set of individual obligations and corresponding rights should be recognized and enforced.

Let's turn to Mill's own elaboration and defense of the LP in chapters 4 and 5. On p. 78 Mill raises the objection, "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." The objection is that any action that is self-destructive is also at least indirectly harmful to nonconsenting others. Mill anticipates this objection in a comment on p. 11, lines 8-12 from the bottom of the page, chapter 1.

The objection might be put this way. If we try to divide actions into two categories, I, those that affect the interests of persons other than the agent and those who voluntarily consent to be affected, and II, those that affect nobody's interests except those of the agent and others who voluntarily consent to be affected, it turns out that either all actions or all nontrivial actions fall into category I. If the Liberty Principle throws a shield of protection around category II actions, what had looked like a substantive, controversial, and bold principle will turn out to be nonsubstantive and uncontroversial. Only utterly trivial actions such as no one ever bothers to propose restricting, such as whether I will put my sock on my right foot first or second, will fall into the protected category II.

Some conduct that is self-harming does not directly harm others, but indirectly, it does harm others. The objector says that since all self-harming action always does or may harm others eventually or indirectly, there will always be legitimate grounds for restricting liberty (namely, harm to others reasons) whenever there are significant harm to self reasons.

Notice that we don't want to say that if your action directly causes harm to others (causes harm via a short simple causal process) it may legitimately be restricted but that if your action indirectly causes harm to others (causes harm via a long complex causal process) it may not legitimately be restricted but is protected from restriction by the LP. Whether your act causes harm by a simple or by a complex causal process is surely not per se relevant to whether it should be allowed or not.

Mill embarks on an interesting discussion on pp. 78-80. Its conclusion is stated on p. 80: "But with regard to the merely contingent or, as it may be called, constructive injury which a person causes to society by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself, the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom." Mill seems to be saying that if a person's act either (1) violates a specific duty to the public or (2) occasions perceptible hurt to any individual, it qualifies as causing harm to others. -But this does not seem to be responsive to the initial objection. The objector will say that any act that is significantly self-harming will also (indirectly or in the long run) occasion perceptible hurt to some individual or individuals, and thus count as causing harm to others. The triviality threat is so far not deflected successfully.

What are some possible responses Mill might make, against the objection that the Liberty Principle turns out under scrutiny to be an extremely weak requirement that prohibits at most only restricting a person's liberty to engage in utterly trivial actions? The objection in effect is that in any likely or actual controversy as to whether individual liberty should or should not be restricted, the LP is silent.

1. Among other things, the LP rules out moralism--restricting an individual's liberty to engage in actions on the ground that the actions are inherently immoral, without any showing that the actions cause harm to nonconsenting others. (Joel Feinberg (not a course author) broadens the category. Broad moralism holds that it is sometimes legitimate to restrict individual liberty to prevent certain free-floating evils that

do not include any harm to nonconsenting others.) In Mill's day and ours, people do propose to restrict individual liberty on moralism grounds. According to the LP, no proposal to restrict liberty on moralistic grounds is justified. So in this respect, the LP, be it right or wrong, is not toothless. It commits one to a particular stance in some real controversies.

2. The objection is limited to denying that the antipaternalism aspect of the LP has any practical significance. The claim is that wherever an individual's action would harm herself, it would indirectly or in the long run cause harm to others. Is this so?

a. One possibility is that self-destructive behavior always indirectly causes harm to others, namely, those sympathetic to the person who is behaving self-destructively. If Tom, a competent adult, engages in behavior that brings about significant harm to himself, via sympathy this act also brings about harm to his grandmother, who now feels terrible.

Reply: This harm via sympathy is a sometime thing. Some people are socially isolated, nobody significantly cares for them. In other cases, the harm to self is great, the harm to others via sympathy is slight. If we say, the only good reason to restrict liberty is to prevent harm to others, and we rule out harm to self as an inadmissible reason for restricting liberty, then it may be that the allowable residue—the harm to those who experience sympathetic sorrow—is just too slight to make a serious, credible case for restriction of liberty.

Notice that the reply switches from trying to isolate a category II of purely self-affecting behavior, and instead interprets the Liberty Principle as ruling out as reasons for restriction all putative reasons except harm-to-others reasons.

b. Another possibility is that what is envisaged is that by harming oneself, one thereby reduces the extent to which one will act throughout one's life to do good for others, act in ways that prevent harm to others. Example: If Sally would have become a doctor and saved many lives, but this career is cut short by her negligently riding a motorcycle without a helmet on an isolated road, leading to a fatal accident, her self-harming behavior harms those who would have been helped if she had lived. The example is supposed to generalize, and apply to any case of significant self-harming.

Mill might respond to this sort of case by denying that harming herself and thereby preventing herself from helping others in the future should count as causing harm to others. At most, Sally in the example fails to help others. She does not harm them if she fails to help. So, the reply would deny that associated with all significant harm to self there is indirect harm to others. At least, there is not always a link to causing harm to others.

There is a question as to whether the sort of distinction that is the basis for this reply to the objection should cut any ice, have any standing for a committed utilitarian. Suppose that if we ban riding a motorcycle without protective headgear, the Sallys of the world (likely to ride motorcycles without helmets if the law does not require protective headgear) will be more likely to lead long productive lives, providing much benefit to society. How can this not count as a good reason for restriction of liberty for a utilitarian? Utility is utility, by whatever route we produce it.

c. Mill himself wants to distinguish the case in which an individual's self-harming conduct prevents the individual from fulfilling some recognized social obligation from cases in which the individual's self-harming conduct, if it can be regarded as leading to harm to others, at least does not cause harm to others by violating any such obligation. .

Reading the entire text of *On Liberty*, the reader might suspect that Mill sometimes interprets "harming others" as just that, harming others, and sometimes seems to interpret "harming others" in a moralized way, as harming-others-by-violating-their-rights.

In chapter 5 Mill says explicitly that trade is a social act, and thus in principle falls in the jurisdiction of society. My liberty to sell fish in the marketplace is NOT protected behavior under the Liberty Principle. Mill goes on to say that even though the act is within the jurisdiction of society, and is not protected by the LP, still, it turns out that all things considered, we are better off if we do allow individuals wide freedom to trade on any mutually agreeable terms. To say that the act is within the jurisdiction of society is to say it causes harm to others in some way. So, it is not protected by the LP. Yet the trading behavior in question does not harm-people-by-violating-their-rights. Here Mill is clearly interpreting "harming others" in the neutral nonmoralized way. Other passages seem to suggest a different reading.

Maybe Mill is saying the following. If your act directly causes harm to others, that is, causes harm to others but not via harming yourself and indirectly harming others as a consequence, it is not protected by the Liberty principle. If your act causes harm to yourself (and consenting others) and then indirectly to nonconsenting others, a distinction must be made. If this act that harms others via first harming yourself violates any obligation to others that a utilitarian moral theory should recognize, then the act counts as harming others and is not protected by the Liberty principle. If this act that harms others via first harming yourself does not violate any obligation to others that a utilitarian moral theory should recognize, then the act does not count as harming others and is protected by the Liberty Principle. Mill adds that he thinks there are strong utilitarian reasons not to multiply the kinds of obligations that a utilitarian theory should recognize. In the long run, utility or human happiness is maximized if the set of these social obligations is kept to a small number. (If your act harms yourself and thereby harms others who are sympathetic to you and upset by the harm you suffer, Mill will insist that it would not be conducive to the general welfare to impose on you a distinct and assignable obligation not to cause harm to others via their sympathetic attachment to you.

Perhaps the underlying central tension in Mill's account is that he proposes that utilitarianism justifies the Liberty Principle. The Liberty Principle prohibits among other things (hard) paternalistic restriction of liberty. But surely we can describe cases in which restriction of liberty that counts as hard paternalism will do more good than anything else we might do instead in the circumstances. So how can Mill the utilitarian be dogmatically opposed to paternalism? One possibility is that Mill believes that since we are not good at distinguishing particular cases in which paternalistic restriction of liberty in violation of the Liberty Principle is really justified from cases in which such restriction is really not justified, on the whole and over the long run we will do better in utilitarian terms to treat the Liberty Principle as a strict taboo: "Don't ever violate the LP!"

In conclusion I mention three further issues that raise worries as to whether Mill interprets his Liberty principle so it is both plausible and offers substantive protection to individual liberty (is not toothless).

1. **Offense and harm** Some of Mill's examples involve people suffering unpleasant sensations or sentiments as a result of the behavior of others. One finds the behavior of others offensive. The question arises whether Mill can allow some offense to qualify as harm without sliding to the position that the Liberty Principle does not forbid restricting the liberty of any person if anybody else dislikes what that first person is doing.

2. Risky behavior that imposes risk of harm to others only via an existing web of social welfare provisions. Suppose Smith appeals to the Liberty Principle to justify her claim that society has no right to prohibit her from participating in a voluntarily chosen risky activity such as an extreme sport. The reply is that if Smith is endangered, society by its rules is bound to mount an expensive rescue effort, or if Smith is injured and can be restored to health only by very expensive medical care, society is obligated to extend the needed care. So Smith's risky activity actually is not merely self-affecting but may impose harm on others as well, hence restricting Smith's liberty in this sort of case is not ruled out by the Liberty Principle. How should one respond? (Notice first of all that although Mill talks about conduct that causes harm to nonconsenting others, conduct that excessively risks causing harm to nonconsenting others arguably should also count as not protected from restriction by the Liberty Principle.) Regarding harm to others via triggering the web of social provision requirements, one might interpret the Liberty principle as requiring that if society establishes such a web of assistance provision, it must allow an individual who wants to opt out to do so ("let me engage in my chosen activity and I waive any claim to further rescue efforts or provision of assistance to repair injury"). A society that does not allow such opting out violates the Liberty Principle.

3. Mill on the enforcement of voluntary slavery contracts. On pp. 101-102 Mill discusses whether refusal by society to enforce voluntary contracts whereby one person becomes the slave of another would violate the Liberty Principle. He argues that refusal to enforce such contracts would not violate the Liberty Principle. Is Mill's position here consistent with his characterization of the Liberty Principle up to this point? Notice that in the case envisaged society does not merely decline to use its contract enforcement mechanisms but also does not allow self-help enforcement. So even if I would voluntarily choose to sign a contract making me Smith's slave and waiving all my rights against any action Smith might take to enforce this contract in case I should later act against its terms, society does not give any force to this waiver and if Smith threatened me with assault to enforce me to comply with the contract, he would be in violation of the law forbidding assault. Mill extends the discussion to a broader issue: should refusal by government to society to enforce long-term voluntary contracts restricting the individual liberty of the contracting parties count as violations of the Liberty principle or not?