

The Coherence of Mill's *On Liberty* and *Utilitarianism*

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The subject of Mill's *On Liberty* is not freedom in the metaphysical, but rather in the *political* sense; it is an examination of "the nature and limits of the power which can be legitimately exercised by [civil] society over the individual."¹ He sees much of his work in this treatise as prescribing the balance between political authority and human liberty – "how to make the fitting adjustment between individual independence and social control."² In this paper, I wish to examine his defence of the libertarian principle,³ and remark on the cogency of his argument and the plausibility of the principle independently. In particular I wish to evaluate the claim that his work on liberty is incompatible with his theory of Utilitarianism. This objection, I argue, is important to understanding Mill's thesis generally, and I will concur with Hamburger that that "*On Liberty* should be read in light of Mill's overarching purpose of bringing about moral reform."⁴

The motivation for *On Liberty*

It is typical in contemporary philosophy to allow that our actions are motivated by our reasons, and our reasons are constituted by our beliefs and desires. In particular, these beliefs and desires constitute our *values*. It follows that, since there might be a significant divergence in beliefs and desires from individual to individual, we should likewise expect a significant divergence in values. Indeed, what we value seems often to resist analysis, and is grounded in mere phenomenological inclination (whether such-and-such feels pleasant or unpleasant), though such feelings may inform powerfully one's views on important matters: "To an ordinary man, however, his own preference, thus supported, is not only a perfectly satisfactory reason, but the only one he generally has for any of his notions of morality, taste, or propriety."⁵ Mill

¹ (Mill, *On Liberty* 2003, Ch1, p73)

² (Mill, *On Liberty* 2003, Ch1, p76)

³ I use the term 'libertarian principle' here as something of a term of art, and I intend it simply to refer to the principle defended by Mill in *On Liberty*. Many commentators have called it the 'libertarian principle' or the 'liberal principle'. However, there are myriad conceptions of libertarianism and liberalism (some of which have little to do with Mill) which I do not wish to invoke here.

⁴ (Hamburger 1999, xi)

⁵ (Mill, *On Liberty* 2003, Ch1, p77)

observes that this discrepancy in the desires of the populace invites difficulty in answering the legal question of how to balance the individual's right to pursue his own desires with the power of the state to intervene against those of which it disapproves. This question would be neatly answered if there were an objective standard of justice or morality. However, Mill points to the dramatic divergences in views ardently held by various political regimes, both over the course of history and even contemporaneously. Such views are informed by such worrisome factors as the whims of the majority, religious inclination, and the machinations of unscrupulous but charismatic leaders. On Mill's analysis, the political mood, values, and dispensation appear both exceedingly transient and tenuously founded: "owing to the absence of any recognised general principles, liberty is often granted where it should be withheld, as well as withheld where it should be granted."⁶

Since the state is comprised by people whose preferences are the subject of flux, there is the unfortunate likelihood that laws will be crafted to suit the contingent and possibly unconsidered will of those in power. Yet these worries are by no means limited to the political arena; indeed, society "practises a social tyranny more formidable than many kinds of political oppression."⁷ Mill views the prospect of social (as opposed to legal) censure as highly dangerous to liberty, since there are fewer avenues of redress for those who are the victims of such pressure. His paramount concern here is the limitation of the warrant of intervention – how properly to limit the power of the majority to intervene against and punish practices it considers unsavoury. On this question, Mill seems correct in averring that "no two ages, and scarcely any two countries, have decided it alike; and the decision of one age or country is a wonder to another."⁸ Owing to the importance of the matter and the mercurial way in which it had been addressed prior, Mill advances a *systematic theory of liberty*, "one very simple principle, as entitled to govern *absolutely* the dealings of society with the individual in the way of compulsion and control."⁹

⁶ (Mill, On Liberty 2003, Ch5, p165)

⁷ (Mill, On Liberty 2003, Ch1, p76)

⁸ (Mill, On Liberty 2003, Ch1, p77)

⁹ (Mill, On Liberty 2003, Ch1, p80), emphasis mine

Mill's articulation and defence of liberty

Mill advances the libertarian principle, that “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.”¹⁰ There is both a positive and a negative dimension to this thesis.¹¹ First, the positive aspect emphasises those matters which are properly the sole discretion of the agent, those thoughts and actions which are self-regarding and which ought not to be the subject of interference by the state. Mill writes that “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.”¹² The negative dimension concerns the *limitations* of this right to liberty – limitations which ought to obtain even within a state which fully respects the libertarian principle. Ten observes that such restrictions are crucial to Mill's thesis, as, for Mill, “no form of civilized life is possible without the enforcement of some restraints on conduct.”¹³ One may not, according to the Mill, act in a way which impedes or destroys the liberty of another citizen (or, as Posner pithily puts it, “my rights end where your nose begins”¹⁴). This restraint, in my opinion, is best understood as *giving effect to* rather than restricting the right to liberty: in other words, the liberty of the agent is of primary importance, and may be infringed upon *only in the interests of liberty overall*.

For Mill, the nature of liberty is bound up with notions of individuality and autonomy. While he recognises that there are circumstances in which it is proper for the state to intervene in an individual's affairs, he wishes primarily to consider “that portion of a person's life and conduct which affects only himself.”¹⁵ This demarcation of liberty is central to Mill's thesis: one's liberty extends only insofar as it does not impede the liberty of another. Within this

¹⁰ (Mill, On Liberty 2003, Ch1, p83)

¹¹ I am using the terms 'positive' and 'negative' in a conversational or natural sense here, and do not intend them to be confused with the technical sense of 'positive liberty' in which other authors (such as Semmel) have used them.

¹² (Mill, On Liberty 2003, Ch1, p81)

¹³ (Ten 2008, 2)

¹⁴ (Posner 2003, 197)

¹⁵ (Mill, On Liberty 2003, Ch1, p82)

“appropriate region of human liberty”¹⁶ Mill describes and defends three domains in which the individual may consider himself free.

The first is “the inward domain of consciousness.”¹⁷ By this Mill intends liberty of unimpeded thought and discussion, in other words, expressive liberties. Such expressive liberties, Mill supposes, could have any matter – “practical or speculative, scientific, moral, or theological”¹⁸ – as their objects. Tacitly presumed here is that a limitation on the objects or manner of thought would be an impediment to human liberty in this first respect. This liberty corresponds to what we might more naturally call “absolute freedom of opinion.”¹⁹ Thus it is understandable that Mill includes freedom of the press and freedom of expression under the same banner, since these freedoms are similarly justified.²⁰

Mill motivates for freedom of expression from the perspective of mutual edification and the preservation of truth. One ought not to censor true statements which go against the general feeling of the majority, as such censorship would deprive the populace “of the opportunity of exchanging error for truth.”²¹ In addition, even if it were the case that the statement were false, Mill argues that we should not censor it. Mill observes that it is only by challenging existing truths that we prevent them from being held dogmatically. Presenting alternative views, even if false, permits us a “clearer perception and livelier impression of truth.”²² Mill amusingly lives up to his code when he writes that “If even the Newtonian philosophy were not permitted to be questioned, mankind could not feel as complete assurance of its truth as they now do.”²³ Furthermore, Mill is aware that we are often not in a position absolutely to determine the truth of expressions at the time of utterance, and so we ought to remember our fallibility before curtailing someone’s freedom of expression.

¹⁶ (Mill, On Liberty 2003, Ch1, p82)

¹⁷ (Mill, On Liberty 2003, Ch1, p82)

¹⁸ (Mill, On Liberty 2003, Ch1, p82)

¹⁹ (Mill, On Liberty 2003, Ch1, p82)

²⁰ It is interesting to note with Brink that Mill’s defence of freedom of expression, opinion, and the press has informed a great deal of contemporary jurisprudence, including that of the First Amendment in US law (Brink 2008, 40).

²¹ (Mill, On Liberty 2003, Ch2, p87)

²² (Mill, On Liberty 2003, Ch2, p87)

²³ (Mill, On Liberty 2003, Ch2, p91)

When we consider that many views which at one point in time were considered heretical are now considered prescient (Mill cites Jesus and Socrates as worthwhile examples), it seems that we ought to temper our inclination to censor those with whom we disagree.

Mill's defence of the expressive liberties rests on the idea that such expressions are generally self-regarding, in the sense that they affect only the individual who has them; Mill suggests that "with the personal tastes and self-regarding concerns of individuals the public has no business to interfere."²⁴ Nevertheless, Mill observes that there are circumstances in which, certain expressive liberties ought to be curtailed when they cease to be self-regarding and begin threaten the interests of liberty overall. In Mill's words, "even opinions lose their immunity, when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act."²⁵ Mill's example is an early and useful instance of hate speech: it is permissible perhaps to opine in the press that corn-dealers rob the poor, but such an opinion "may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer."²⁶ In such a case the opinion may be legitimately curtailed, since it plausibly incites violence, and thus threatens the liberty of the corn-dealer. However, it is important to recognize that this matter begins to transcend the boundary between thought and action, which is the second domain of freedom Mill considers.

"Secondly," Mill continues, we recognize a "liberty of tastes of pursuits; of framing the plan of our life to suit our own character; of doing as we like."²⁷

This form of freedom is a freedom of *individuality*, that one may behave as one wishes and to whichever end one values – the liberty to give effect in action to one's opinions. Ten suggests that "individuality is a value that can be realized only when each person freely chooses her own plan of life for herself."²⁸ Again, this liberty is thoroughgoing and should be not be limited except where one's

²⁴ (Mill, On Liberty 2003, Ch4, p149)

²⁵ (Mill, On Liberty 2003, Ch3, p121)

²⁶ (Mill, On Liberty 2003, Ch3, p121)

²⁷ (Mill, On Liberty 2003, Ch1, p83)

²⁸ (Ten 2008, 8)

actions or purposes harm the liberties of other citizens, “even though they should think our conduct foolish, perverse, or wrong.”²⁹

Individuality is of vital importance to the progress of society. Much as Mill fears the tyranny of the majority, he fears the stagnation of social progress – a state of affairs he thinks imminent if only “the traditions or customs of other people are the rule of conduct.”³⁰ Mill argues that “individuality should assert itself”³¹ to the extent that it promotes liberty overall. Much the same argument is mounted as for the liberty of expression: society will be better off for having a heterogeneous populace, and a wide range of lifestyles. As Riley notes, society at large “might benefit as new warranted opinions (including opinions about lifestyles) are put into practice.”³² Furthermore, Mill thinks that cultivating an individual lifestyle is ultimately beneficial both for the moral character and the overall happiness of the individual. Owing to the wide range of preferences and the unique character of each individual, “unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable.”³³ Insofar as one’s actions are really self-regarding, according to Mill, they should be protected. However, in the event that one’s actions cause harm to another – or in some way detract from the liberty of another – those actions and agents ought to be “controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind.”³⁴

It is important to mount an objection against the ostensible link between self-regarding actions and liberty. Mill advances the notion of ‘self-regarding’ thoughts or actions as demarcating those matters which concern or affect only the subject and which ought not to be interfered with. However, it appears that ‘self-regarding’ and ‘other-regarding’ are terms which cut across thoughts and actions and may correctly be applied to both. Certainly many thoughts and opinions may be self-regarding and these ought not to be the subject of social or political intervention, but obviously many may not be. When I express an

²⁹ (Mill, *On Liberty* 2003, Ch1, p83)

³⁰ (Mill, *On Liberty* 2003, Ch3, p122)

³¹ (Mill, *On Liberty* 2003, Ch3, p122)

³² (Riley 1998, 84)

³³ (Mill, *On Liberty* 2003, Ch3, p132)

³⁴ (Mill, *On Liberty* 2003, Ch3, p121)

opinion in the newspaper about the moral dearth of some politician, my opinion is other-regarding both in that it is *about* someone else, and because I intend it to *affect other people* (both the readers of the paper and the politician himself). Mill wishes to maintain that freedom of the press is vitally important, but he plainly cannot justify this on the grounds that the opinions expressed there are self-regarding. While there are other ways in which Mill may successfully justify such expressive liberties, this objection marks a significant blow to his thesis overall as the 'self-regarding' argument forms such a central part of his argument.

The third liberty corresponds to contemporary notions of freedom of assembly and association. In Mill's words, this is the liberty "of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived."³⁵ This liberty has a social rather than solely individual flavour, though it is aptly characterised as the *public expression* of the *individual's* desires and values. It will suffice here to note briefly that Mill viewed the exercise of this liberty as similarly important to the construction of a flourishing state. In order for civil society to be properly founded, it requires the opinions and actions of fully-fledged moral agents to enter the political arena without impediment. Just as there is a liberty which allows the agent to act according to his conscience, Mill argues that there should be protection for those of like conscience to associate politically without interference.

Liberty on the one hand, and Utilitarianism on the other

I wish for the remainder of the paper to discuss the relationship between the foregoing defence of liberty and Mill's Utilitarianism. Mill's thesis in *On Liberty* is informed by the theory of Utilitarianism and his commitment to the greatest happiness principle. Utilitarianism incorporates a theory of value as well as a normative decision-making procedure. According to Utilitarianism, it is pleasure alone which has final (or intrinsic) value, and all other things have only instrumental (or extrinsic) value, that is, value insofar as they bring about pleasure.³⁶ Accordingly, Mill suggests that money, art, or honesty (or any other

³⁵ (Mill, *On Liberty* 2003, Ch1, p83)

³⁶ "Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. Pleasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either

thing to which we usually ascribe value) is valuable only in a derivative sense, insofar as they contribute to happiness. This theory of value grounds the *moral* theory of Utilitarianism, that one ought (in the moral sense) to act in that way which will maximise utility: one's actions are morally virtuous (or vicious) insofar as they promote pleasure (or pain).

Mill anticipates that there will be questions raised about the utility of liberty, and he asserts positively that liberty admits of a solely Utilitarian justification: "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."³⁷ If Mill avers that only pleasure is intrinsically valuable, it seems that he must concede as a matter of logic that liberty must be merely *instrumentally* valuable. At first blush, this seems to be quite a natural suggestion, and we may consider both the positive and negative dimensions to the libertarian principle as squaring with a Utilitarian paradigm. Certainly, Mill defends the libertarian principle (in the positive sense) on Utilitarian grounds since it secures freedom to do and think what one likes; in other words, to pursue whatever it is makes one *happiest*. Likewise, the negative or restrictive aspect of the libertarian principle may be viewed as a *Utilitarian* restriction: if liberty tends to promote happiness, and the restrictions are designed to protect the principle of liberty from being infringed, then the restrictions appear thereby to have an obviously Utilitarian basis in promoting happiness and guarding against pain. Mill makes this plain when he writes that "to justify [compelling someone to act other than they would freely choose], the conduct from which it is desired to deter him, must be calculated to produce evil to some one else."³⁸

However, the objection is that Mill's conception and defence of liberty appears at times far closer to that of a *rights* theory than a theory of utility, despite what he may say to the contrary. For example, when discussing whether it is permissible to intervene in another's affairs, Mill writes "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."³⁹ This argument appears most plainly to cast liberty as a *right*, and

for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain (Mill, *Utilitarianism* 2004, 196)."

³⁷ (Mill, *On Liberty* 2003, Ch1, p81)

³⁸ (Mill, *On Liberty* 2003, Ch1, p80)

³⁹ (Mill, *On Liberty* 2003, Ch1, p80)

as something which has final (rather than instrumental) value. This seems *prima facie* to flout the Utilitarian principle, which presumably would not endorse such an absolute restriction: Utilitarianism would encourage a hedonistic analysis of intervening or refraining from intervention, and would endorse that action which maximised utility under the circumstances. While this might square with the libertarian principle in some cases, it seems that it very well may not. Furthermore, even if the Utilitarian principle and the libertarian principle in every instance *happen to coincide*, we would still desire some *principle* uniting the two – some principled argument which explains how those actions which accord with liberty maximise utility.

I wish to propose, however, that Mill can be made consistent, and that it is proper to take him at his word when he suggests that his theory of liberty may be defended entirely on Utilitarian grounds. If this claim is to succeed, I must show that Mill's allows that liberty is an instrumental good, and I must explain why he defends liberty if he already has a perfectly comprehensive moral system in Utilitarianism.

What is the nature of folk moral rules (such as 'do not lie' or 'keep your promises') to a Utilitarian? As JJC Smart points out, such rules are *rules of thumb*; they are useful guides to making choices which generally tend to maximize utility.⁴⁰ Frequently, the Utilitarian will have to rely on such rules of thumb, when he may not have all the required information or time to perform the hedonic calculus. Such cases illustrate that Utilitarianism may be the correct moral theory even though it cannot always be used as a decision-making procedure. Consider a folk rule such as 'do not lie.' It seems easy to come up with moral counterexamples to such a rule, and only those of Kantian humour would disagree. If a murderer asks me which way his intended victim ran, I am permitted (nay obliged) on Utilitarian grounds to lie. The Utilitarian will maintain that (a) such counterexamples show that truth-telling is not a final good, and (b) that truth-telling is nevertheless a good rule of thumb since in general it tends to maximise utility. One could argue that (a) is true since there seem to be cases (like the one described) where truth-telling may be trumped by the balance of utility in favour of lying. In arguing for (b), one must refer to empirical data, that it is true as a matter of empirical fact that truth-telling tends to bring about pleasure (one could point to the disutility caused if, e.g., newspapers told lies rather than truths).

⁴⁰ (Smart 1956, 346)

I wish to suggest that liberty admits of a similar ‘rule of thumb’ analysis. Consider a putative counterexample to the libertarian principle. At airports, following a spate of terrorist attacks, we must forego some civil liberty in the interests of our welfare, that is, our overall happiness – we must, say, refrain from wearing headscarves or dark glasses (which are, let us suppose, some important part of our individuality). What does this tell us about liberty and utilitarianism? Such a case, I suggest, demonstrates similarly that (a’) such counterexamples show that liberty is not a final good, and (b’) that liberty is nevertheless a good rule of thumb since in general it tends to maximise utility.

Though Mill speaks occasionally as though liberty is a final good⁴¹ I contend that *On Liberty* generally endorses (a’), that liberty is an instrumental good. This is most clearly seen in the *restrictions* placed on liberty: Mill defends liberty of action only to the extent that no one is harmed. Now, it may be replied that this proves only that *liberty* is so important that one may not act to infringe upon the liberty of another. However, consider that one’s liberty could not extend to harming a baby, even though a baby, according to Mill, does not enjoy the rights to liberty which adults do. In such a case it is the balance of *utility* rather than liberty which decides the matter. Crucially, if there are circumstances in which control is to be preferred to liberty *on grounds of utility*, then (a’) is correct – liberty has only instrumental rather than final value, with utility as the final measure of moral propriety.

Concluding remarks

I take much of Mill’s work in *On Liberty* to be a cogent and thoughtful argument for (b’) – that liberty is an important moral principle since it tends to maximise utility. As mentioned, those reasons in favour of (b’) must be empirical, so may it be agreed *as a matter of empirical fact* that liberty is generally in the interests of welfare, both for the individual and society? Considered from the perspective I suggest, *On Liberty* mounts an impressive catalogue of empirical reasons in favour of an affirmative answer. Mill argues that the expressive liberties tend to promote happiness as they foster lively debate, alerting us to hitherto unknown truths, or by clarifying what is good in existing truths. There is also some sheer utility in the mere evincement of one’s opinion, or in the solitude of one’s unbounded thoughts. Furthermore, it seems true that one is most happy when

⁴¹ Occasionally, for example, he speaks of it as having ‘absolute’ value, such as “In the part which merely concerns himself, his independence is, of right, absolute” (Mill, *On Liberty* 2003, Ch1, p81).

one pursues one's desires in life without external impediment. Indeed, Mill's defence of liberty takes very seriously his remarks about higher pleasures in *Utilitarianism*: the higher pleasures are those which are richer than mere brute pleasure, and so involve those moral, political and intellectual elements which are the province of fully-fledged humans. As Gray notes, "it is these forms of life, distinctively human but peculiar in each case, that Mill sees as expressing individuality and as being open to all only in a society in which the Principle of Liberty is respected and enforced."⁴² I suggest that *On Liberty* is neither a replacement for nor an opponent towards Utilitarianism. Rather, it is a useful adjunct, an explication of liberty as one of the most salient means by which to achieve Utilitarian ends both for the individual and society at large.

⁴² (Gray, Mill's Conception of Happiness and the Theory of Individuality 1991, 191)

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