

## Chapter 1

# Liberty: Why, for Whom, and How Much?

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*, 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, *On Liberty*, p. 220

### Individualism and choice

Mill's 1869 *On Liberty* made the case for three forms of freedom: thought, conscience, and expression; tastes, pursuits, and plans; and to join other like-minded individuals for a common purpose. Why did he care so much about these freedoms? He believed that self-governance—freedom—was an essential part of human happiness, how “human life... becomes rich, diversified, and animating” (*On Liberty*, p. 266; see Skorupski, 1989). Liberty holds a special place Mill's overall conception of happiness, serving both as a means to obtaining individual and societal happiness, and also as an essential component of being human. Mill grounds his discussion of liberty on “utility,” “the permanent interests of man as a progressive being” (*On Liberty*, p. 224). Chapter 3 will examine Mill's *Utilitarianism* in detail. For our present purposes, bear in mind that Mill's rationale for liberty and the “ultimate appeal on all ethical questions”

is utility in this wide sense of human thriving and development (*On Liberty*, p. 224). Accordingly, we begin with an examination of the role and significance of liberty for Mill, before turning to his views on threats to and legitimate limitations on freedom.<sup>5</sup>

Why is liberty so important to Mill? For one thing, the liberty to exercise choice is the means by which we develop our capacity to choose. By making choices we not only learn which ones are good and bad, but we also develop a range of abilities required to get along and succeed in life:

The human faculties of perception, judgment, discriminative feeling, mental activity, and even moral preference, are exercised only in making a choice. He who does anything because it is the custom makes no choice. He gains no practice either in discerning or in desiring what is best. (*On Liberty*, p. 262)

By making choices, we improve our decision-making skill:

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 to his deliberate decision. (*On Liberty*, pp. 262-63)

More than this, only when individuals freely choose diverse ways to live, and to live with others, will they truly flourish. Mill abhorred the dullness that in his mind results from “uniformity” and conformity. He defended the liberty that leads to diversity in thought, speech, and living almost 200 years before it became fashionable to do so, and he praised idiosyncrasy:

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating it, and calling it forth, within the

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<sup>5</sup> While there are nuances among how academics use “liberty” and “freedom,” in the treatment that follows we shall use the words interchangeably.

limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation ... furnishing more abundant aliment to high thoughts and elevating feelings, and strengthening the tie which binds every individual to the race, by making the race infinitely better worth belonging to. (*On Liberty*, p. 266)

What if we do not experience the liberty to choose, think, and develop ourselves? Mill worried that without a fulsome amount of liberty we become ape-like, less than fully human. Mill compares the absence of choice to slavery, forced uniformity. Those who do not choose are “yoked,” with “withered and starved” human capabilities:

Thus the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like in crowds; they exercise choice only among things commonly done: peculiarity of taste, eccentricity of conduct, are shunned equally with crimes: until by dint of not following their own nature they have no nature to follow: their human capacities are withered and starved: they become incapable of any strong wishes or native pleasures, and are generally without either opinions or feelings of home growth, or properly their own. (*On Liberty*, p. 265)

It is important to emphasize Mill's choice of words. In the quotation above, he described people who suffer from tyranny of opinion as “apes” who imitate fashionable opinions: “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” (p. 262). The alternative to a free person is stunted and non-human.

Liberty is not only beneficial to the individuals who are free. Mill also foresaw significant social spillovers from an unyoked people since free people are better able to help one another. Society as a whole benefits from individual liberty: “each person becomes more valuable to himself, and is therefore capable of being more valuable to others” (*On Liberty*, p. 266).

Thus, the first reason we do not choose for others in the private spheres outlined above is that in so doing we deny their personhood. Mill also insisted that when we try to choose for someone else, we frequently get things badly wrong. Anyone who is a parent knows that at some point we need to allow our children to develop into free human beings, making their own choices, rather than imposing our own desires and wants on them. It is so much the worse when we put the choice in the hands of someone altogether unrelated to us, a governing authority. In Mill's view, the problem of not actually knowing what is best for another person is the "strongest of all the arguments against the interference of the public with purely personal conduct": society, when it does interfere, "interferes wrongly, and in the wrong place" (*On Liberty*, p. 283).

In sum, for Mill, society has no business interfering with a person's right to choose how to live, at least up to the point where those choices do not cause harm to others. This is the famous "no-harm" principle: Mill distinguished between choices that affect oneself and choices that affect others (what he called self- and other-regarding choices) and held that one should be free to make self-regarding choices. Before we examine Mill's no-harm principle in more detail, we briefly consider his worry about threats to liberty and the question of liberty for whom.

### **Threats to liberty**

Mill worried a great deal about threats to self-governance—tyrannical rulers, tyranny of the majority, and tyranny of opinion. Indeed, as noted in the Introduction, he knew the cost of tyranny of opinion up close and personally. For his time, he had a very unusual co-living arrangement with his friend and companion, Harriet Taylor, an arrangement that caused his friends and family to abandon and isolate the couple. More generally, he held that "the despotism of custom is everywhere the standing hindrance to human advancement, being in unceasing antagonism to that disposition to aim at something better than customary" (*On Liberty*, p. 272).

In Mill's view, England had successfully emerged from the time when despots wielded unlimited power. Yet he worried such freedom would be short lived. The English had escaped political tyranny to rule themselves, only to have a new threat to liberty come to the fore: the rule of people over other people.

The potential and actual tyranny of one group over another, the majority over the minority, the strong over the weak, preoccupied much of his thinking in *Considerations on Representative Government*. We will examine that worry more fully in Chapter 8.

Mill also worried about a subtler form of oppression, the limitation placed on individuals by social pressure. This social influence was deeply dangerous to individual choice and social thriving: “a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more *deeply* into the details of life, and enslaving the soul itself” (*On Liberty*, p. 220). Mill worried about parental interference that did not enable the child to develop, and social pressure or laws that prevented people from making choices and learning to be fully developed humans.<sup>6</sup> Such social tyranny, rather than natural inclination, was the cause of being ape-like. By reducing persons to sub-human status, the tyranny of custom that prevented individuals from thriving also reduced their potential contributions to social well-being (*On Liberty*, p 266).

### Who can be free?

Mill’s position was that *all* people (including former slaves, the Irish, and women) possessed the capacity to be free and all could become fully-fledged individuals. He vigorously opposed those in his time who argued that some groups of people were incapable of being free. Thomas Carlyle, for instance, held that former slaves in Jamaica were unable to correctly decide on their own whether (or how much) to work or not. In his view, left unattended, they would sit around and squander their productive attributes and, consequently, they should be forced to work.<sup>7</sup> Others, such as political essayist W.R. Greg, attacked the Irish as incapable, and sought to deny them the right to political self-governance. In these accounts, the Irish were portrayed as too impulsive

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<sup>6</sup> There is a developmental element to Mill’s notion of full personhood. Children who have little experience with choice are imprudent and willful; as their parents offer them choices, they gain insight into how best to choose and lose their ape-like characteristics. We return to the case of children below.

<sup>7</sup> See Thomas Carlyle, 1849, “Occasional Discourse on the Negro Question.”

and too superstitious to govern themselves. We will examine Mill's views on Ireland in Chapter 5.<sup>8</sup>

It is important to stress just how radical Mill's egalitarianism was at the time. Mill fought hard against those who urged that one group or another was simply incapable of making reasonable choices without the direction of their supposed betters. To his former friend and colleague, Carlyle, he responded that former slaves were fully capable of making their own choices and if they decided not to work, it was because their wages were so low that it just did not make sense to do so!<sup>9</sup>

More generally, as noted, Mill held that it would stunt intellectual, creative, and moral development of individuals (and society) if some were not offered fulsome opportunities to make choices. Paternalism—making choices for others—harmed individuals and society and kept those who were not given opportunities to make choices unfree, in other words, slave- or ape-like.

As we will see in Chapter 4, Mill also fought to ensure that women—as noted, another group singled out at the time for a purported inability to choose correctly—had the right to choose when and whom to marry (and leave the marriage), whether or not to work outside the home, vote, and manage financial assets. In *On Liberty*, he remarked that the State had almost entirely neglected its obligation to ensure equal protection for women under the law; instead, it allowed husbands to exercise “almost despotic” control over their wives, a control he hoped would be eradicated by equal standing under the law (*On Liberty*, p. 301).

Mill fought hard against these stereotypes and against the abuses of authority that enabled one group of people to rule another.

Mill allowed one important, some would say problematic, qualification to the question of who is capable of choice. Social control over individual self-regarding action was justified, he argued, for those who are unprepared for adulthood. Mill's doctrine of liberty does not pertain to children, “[T]hose who are still in a state to require being taken care of by others,” and “those

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<sup>8</sup> For more detail on the Irish question, see Peart and Levy (2004).

<sup>9</sup> Mill, *The Negro Question*, 1850. David Levy and I have written extensively on this exchange; see our online columns at <https://www.econlib.org/library/Columns/LevyPeartdismal.html> and the references therein.

backward states of society” (*On Liberty*, p. 224). He did not elaborate on how we are to know when another no longer needs to be taken care of. In the case of parental restraints, this may be less problematic: Mill would hold that the parent (rather than the State) knows best when to allow children the freedom to choose. However, in the case where the situation involves political control of those in “backward states,” the exception may be more problematic. Especially in light of his connection to the East India Company, Mill opened himself up to considerable criticism for insufficiently appreciating the sophistication of non-Western societies and insufficiently appreciating how rulers might *keep* the ruled in check using whatever means possible. Elsewhere, Mill provided a partial answer to the question of when a group is ready for freedom: people who are educated to the point of being able to discuss and discriminate amongst ideas are sufficiently “advanced” for self-government.

### **How much liberty? The no-harm principle**

As noted in the epigram at the start of this chapter, Mill’s *On Liberty* limits liberty to “self-regarding” actions that do not harm others. This no-harm principle allows for the full scope of liberty so long as one’s acts do not interfere with the happiness of others. As noted above, Mill used the no-harm principle to carve out three main areas of liberty: thought and discussion (the latter with a caveat, addressed in Chapter 2), tastes and pursuits, and association (pp. 225-26).

But what does Mill mean by “harm” and does the no-harm principle imply that individual liberty is circumscribed in all cases of harm? Recall that Mill tied this discussion to utility “in the largest sense” as the “ultimate appeal on all ethical questions,” “grounded on the permanent interests of man as a progressive being” (*On Liberty*, p. 224). By harm, Mill seems to have in mind something more than a transitory or trivial hurt (he uses the words “permanent” and “in the largest sense”), but rather something that can be expected to (or that does) significantly reduce the happiness of others. He also sees this as something we may anticipate—so he includes both expected harms, where by this he means something a reasonably informed person would anticipate, and, for the purposes of this discussion, harms that actually transpired. Finally, it is important to note that by grounding the rationale for liberty in Utilitarianism, Mill interjects a reciprocity

principle, whereby people are ethically constrained to treat one another as they would themselves. We will examine this more closely in Chapter 3.

Keeping these elaborations in mind, it is clear that not all harms would justify a prohibition on action. First, transitory and slight harms generally do not require a blanket, government-imposed prohibition on them. Simple conventions might arise to deal with these. In these cases, notwithstanding Mill's worry about social control, mutual approval might enforce a no-harm set of conventions. We agree, for instance, that I will use my arm to cover my cough (as will you) and our mutual worry about disapproving looks will help us remember to do so.

To examine whether more significant anticipated or realized harms justify intervention, Mill distinguishes between actions and inactions. If a person does something "hurtful" to another, there is grounds for punishment by law (if a law has been broken), or by general "disapprobation," if the action is not illegal. Examples of the former are straightforward: theft of property or unprovoked physical harm of another, both of which are punishable by law. Mill, though, was preoccupied with examples of the latter—cases such as the choice of how many children to have where one's duty to support them might warrant a delay of marriage, but the law did not compel such a delay. In such a case, again notwithstanding his worry about the tyranny of opinion, Mill allowed that public disapproval might kick in and perhaps induce the couple to behave more prudently. (We will return to Mill's views on population in Chapter 7.) He also urged that the response to lack of action (for instance, when one refrains from saving a drowning person), requires special care since compulsion might not be appropriate. A person might allow harm to come to another by not acting and yet, because circumstances vary (such as the current being too swift for any human swimmer), Mill urged a "cautious exercise of compulsion" (p. 225).

Additionally, mutual consent plays a significant role in Mill's thinking about actions and harm. He examines actions that affect and potentially harm others "with their free, voluntary, and undeceived consent and participation" (*On Liberty*, p. 225) and urged that here, too, compulsion is to be limited. There is no need for the State to step in, for instance, in cases where people strike a bargain that one party regrets, *ex post*.

Suppose you and I enter into an agreement, voluntarily and without deceit, for me to sell you my car for \$5,000. Some months after the trade I come to you and ask for the car back, as I have learned it is actually worth more than the \$5,000 you paid me for it. Since the trade was voluntary and made with no deceit, there is no reason for the State to limit, or unwind, the transaction. The next time I make a transaction of that sort, however, I will do some additional research on the value of the item for sale! If, by contrast, you forged documents or otherwise hid from me the fact that the car is a priceless antique, there *might* (but might not, depending on how egregious is the deceit) be a role for the State. Laws against fraud fall in this category, but so, too, might a law specifying a short period of time in which buyer's remorse applies. In Chapter 4 we will consider an interesting case of buyer's remorse in some detail: marriage contracts.

Remember that Mill argues that by choosing, including by choosing poorly, we learn to make better choices. Thus, his presumption is that if you and I agree to a bargain with no deceit involved, the act is part of a beneficial learning exercise. Again, the case of parents who allow their children to make mistakes comes to mind: if they fail to allow their children to err, they stunt their children's development *and* very likely choose poorly for them!

Significantly, Mill does not go so far as to suggest that the State *must* or *should* intervene in all cases in which actions might cause harm, only that "power *can rightfully* be exercised" in such cases. Given the overall importance of liberty in his thought, there are still presumptive hurdles to overcome before intervention is warranted.

What about the tough problem of harm to one's self? Mill insisted, first, that one cannot be free to sell one's self into non-freedom. His position, noted above, that liberty has a special place in the utilitarian calculus as a key component of happiness, comes to the fore: "by selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free; but is thenceforth in a position which has no longer the presumption in its favour, that would be afforded by his voluntarily remaining in it. The principle of freedom cannot require that he should be free not

to be free. It is not freedom, to be allowed to alienate his freedom” (*On Liberty*, pp. 299-300).

In cases where the harm to one’s self is less severe than the full surrendering of liberty, Mill is anti-paternalist. He is unwilling to endorse a blanket State-sponsored prohibition in cases where one’s choices *might* harm one’s prospective or actual self: “[One] 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” (*On Liberty*, pp. 223-24). In such instances, society or the State might persuade or remonstrate—perhaps a label on the carton of cigarettes is warranted or information might be disseminated regarding the danger associated with playing football, but State intervention is to be limited to remonstrance, licenses, taxes, and so on, rather than prohibition. In the main, people are to be granted liberty to make the choice to play football or smoke cigarettes with the knowledge that they are likely harming themselves when they do so.

What of the situation where an act may or may not harm another—as when a person purchases poison, which has several uses? Here Mill’s position is that, as the poison has more than one potential and legitimate use, its prohibition is unjustified. Again, he allows for licensing and record keeping. Whether Mill would allow for the prohibition of weapons that apparently are designed for one and only one purpose—killing people—is an open question. Another open question for the application of the no-harm principle that has come to the fore in recent years relates to infectious diseases, where one’s face-to-face interactions with others may subject them to grave and often undisclosed risk. As this is a violation of reciprocity, there may well be a case for intervention. The form of that intervention, however, is open to debate. It is conceivable that Mill might not endorse forced vaccination where the public health risk is low, but he might favour regulations that prohibit the unvaccinated from mingling and putting others in harm’s way.

When it comes to harming others, Mill provides another example of interest to educators—that of inciting violence against corn dealers. Interestingly, he allows here that speech can incite physical harm and, as such, it is an act that can be restricted:

An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. Acts, of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind. (*On Liberty*, p. 260)

Indeed, inasmuch as public speech can be construed as an incitement to riot, it would not be allowable.

Consider a situation where an unpopular visitor is invited to speak on a college campus. In Mill's view, it would be allowable for students and faculty to oppose the visit, to write and speak against the views put forward by the speaker. Using his reasoning as well, however, the university would be justified to take measures to protect the speaker from harm and in disciplining those who incite and cause harm to the speaker. The no-harm principle then kicks in: If protesters incite violence against the speaker, their speech is no longer allowable. As with all of his writings and as Mill recognized in the second epigram at the opening of this chapter, the devil is in the details.<sup>10</sup> Our next chapter turns to a detailed look at Mill on speech.

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<sup>10</sup> As Alan Ryan (1975/1997) notes, "it is likely that Mill would allow much less freedom of speech to, say, anti-abortion protesters parading up and down outside an abortion doctor's house than the U.S. Supreme Court has done" (pp. xxxiii).

