

PHI 202 | Notes on Mill on freedom and paternalism

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Readings:

Mill, J. S. '*On Liberty' and other writings*. Cambridge University Press.

1. Overview

In *On Liberty*, Mill aims to identify which actions of the individual can be regulated through legal means or collective sanctions, and on what grounds. He first considers freedom of expressions and later moves on to freedom of action. He argues against *paternalistic* restrictions on freedom. Ultimately, he defends *the Harm Principle* which says that restriction of X's liberty is legitimate only if it is done to prevent harm someone other than X.

2. Two threats to liberty

The old threat to liberty was the tyranny of the *one* (a monarchy) or the tyranny of the *few* (an aristocracy). In many such societies, the rulers were politically unaccountable to the people, so they could rule in their own interests and restrict the liberties of their subject in ways that were harmful to the ruled ones. The solution to the old threat could take the form of a charter of basic liberties and constitutional protections.

The new threat to liberty is the tyranny of the *majority*. Here, the majority can be understood as the most numerous, but also as the most active or otherwise most influential part of the society. They could impose self-serving legal or social sanctions on the individuals.

Question: Couldn't the new threat be solved in the same way as the old threat?

3. Freedom of expression

Mill wants to establish a *prima facie* case for freedom of expression. If he succeeds, the burden of proof will be shifted on those who want to limit freedom of expression.

First, freedom of expression is valuable as a means of producing true beliefs.

- (1) **The argument from fallibility:** Freedom of expression can be restricted through censorship. But censors are not infallible, so a censored opinion might be true. Thus, censorship can impair the pursuit of truth in the society.
- (2) **The argument from partial truth:** Even if a censor does not make a mistake and censors an opinion that is *literally* false, that opinion might contain *part* of the truth. This can still impair the pursuit of truth in the society.

Questions about this part of the argument:

- (A) What examples could we use to illustrate the two of argument above?
- (B) Surely, what's valuable in itself is not just having many true beliefs. After all, one could achieve this goal by believing everything, including (i) that is snowing right now, and (ii) that it is *not* snowing right now. It is more plausible to claim that what is valuable is having a high ratio of true beliefs to false beliefs. Do Mill's arguments still apply then?
- (C) Would there be a principle objection to successful and competent censorship? Can you think of examples of contemporary practices of censorship which are desirable?

Second, freedom of expression is valuable because it is necessary for having valuable and fulfilling lives. To appreciate this line of argument, we need to recognise that Mill accepts *perfectionism* (objective list theory) about well-being. In particular, Mill thinks that exercising our deliberative capacities is an essential aspect of well-being. He makes two specific arguments:

- (3) **The argument from dogmatism:** Even if *wholly* false, a censored opinion might help prevent true opinions from becoming a "dead dogma" which is accepted without argument and without awareness of counter-arguments.
- (4) **The argument from meaning:** Even if wholly false, a censored opinion might help prevent true opinions from losing their meaning and being held without comprehension.

The bottom line is that even if all and only false opinions were censored, it would not be desirable because it would deprive people from opportunities to exercise their deliberative capacities.

Questions about this part of the argument:

- (A) What examples could we use to illustrate the two arguments above?
- (B) Do you agree with Mill that exercising one's deliberative capacities is an important component of one's well-being?
- (C) Is it really important to exercise one's deliberative capacities in all domains, or are there subject matters in which it is just fine to have merely true beliefs?
- (D) What if there is a trade-off between *quality* of belief and *quantity* of belief? That is, what if we could provide opportunities for people to exercise their deliberative capacities only at the expense of having a very large portion of the society hold false beliefs?

4. **Freedom of action**

Again, Mill aims to establish a *prima facie* case for freedom of action. The arguments here are similar.

First, freedom of action is valuable as a means of producing a better understanding of what's good for us. Mill rejects the idea that we can just sit in an armchair and figure out what makes our lives good in general and in particular. Instead, it is important that we and other people engage in *experiments in living*, and thus put options on the menu that we can choose from and deliberate on.

Second, freedom of action is valuable because it is necessary for having valuable and fulfilling lives. Again, we need to keep in mind Mill's perfectionism and the importance of exercising our deliberative capacities. In particular, it is important to form, revise, and implement plans for our own life. This seems impossible in the absence of liberty.

Questions about this part of the argument:

- (A) What examples could we use to illustrate the two arguments above?
- (B) Even if we agree that 'experiments in living' are generally valuable, aren't we (already) in a position to know that some of them are bound to 'fail'?
- (C) Exercising our deliberative capacities is clearly incompatible with *complete* absence of liberty. But wouldn't *some limited degree* of liberty be enough to secure it?

5. Against paternalism

Now that we have a *prima facie* case for freedom of thought and action, we can ask about the grounds for restricting it. Mill famously rejects limiting freedom on paternalistic grounds.

He offers three arguments.

- (1) The state power is liable to abuse. The thought here is that the state could advertise certain regulations and policies as intended to serve the interest of the citizens, whereas they would in fact serve the interests of the rulers.
- (2) Even if the rulers were well-intentioned would promote the good of the citizens less well than the citizens themselves. This is because an individual is typically a more reliable judge of, is in a better position to know, what's good for them.
- (3) Even if the rulers were well-intentioned and were in a position to know what's good for the citizens, Mill sees the exercise of one's deliberative capacities as necessary for a valuable and fulfilling life.

Mill thinks there are two exemptions from anti-paternalism

- (i) *Missing information*: "If either a public officer or anyone else saw a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back, without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river"
- (ii) *Selling yourself into slavery*: "The reason for not interfering, unless for the sake of others, with a person's voluntary acts, is consideration for his liberty ... [But by selling himself for a slave, he abdicates his liberty ... He, therefore, defeats in his own case, the very purpose which is the justification of allowing him to dispose of himself"

Question: Can you think of examples of paternalistic actions which are conducive (rather than detrimental) to exercising one's deliberative capacities?

6. The Harm Principle

According to Mill, the restriction of X's freedom of expression and action can be legitimate only if it is done to prevent harm to others.

Note a few things about this claim.

- (i) Harm to others is a merely *necessary* but not a sufficient condition. Whether a regulation is all-things-considered appropriate depends on the utilitarian calculation of whether the benefits exceed the costs.
- (ii) Harms may include acts of omission. E.g., you may be compelled to pay your debts.
- (iii) For something to be counted as a harm, it must be a setback to *important* interests of *particular* people. A setback to trivial interests of particular people or to the society at large is a mere offence.
- (iv) The principle is supposed to apply to *competent adults* only. Paternalistic restrictions may be legitimate in cases of children or mentally ill people.

Questions about this part of the argument:

- (A) The harm principle is envisioned as something that we can apply prospectively to prevent someone from acting in a particular way. But in many such cases we merely know that an action carries a risk of harming others. Is mere presence of risk a legitimate ground for preventing harm to others? What if the risk of harm is very low (say, 1%)?
- (B) What about consensual harm? Is the harm two boxers are about to inflict on one another a legitimate ground for preventing them from participating in a consensual boxing match?
- (C) Where is the line between important and trivial interests, and thus harm and offence?