

Intro: We've discussed the nature of legitimate punishment, and part of our discussion focused on what you might call the rights of offenders (i.e. we discussed certain restrictions on how we can treat offenders). One objection to Alex' treatment was that he wouldn't be *reformed* in the proper way. But another glaring objection didn't come up much in our discussion (though Humi raised it sort of): There's a problem, perhaps, with irreversibly conditioning people so that they can't act in accordance with their own desires. Why is that?

*We need to be wary of the tyranny of the majority.* Suppose you lived in a country where it was illegal (because of a majority vote) to engage in consensual sex with your spouse involving birth control. Suppose now that you have been caught using birth control with your spouse, and that you have been incarcerated. Might you not have some legitimate complaint here? Does this seem like the kind of thing that the state, even if endorsed by the majority, should prevent you from doing?

Whether you think so or not, I hope the case has been made: There seem to be some limits that we need to set on the kinds of interference that the state can have in our individual lives.

## Mill Liberty Notes

Mill is neither an anarchist nor a totalitarian; his view falls somewhere between these two. He thinks that *absolute* freedom would bring about bad results, because he believes that some individuals will inevitably abuse it.

Now, clearly, governments *do* interfere with the lives of their citizens. Our question, since we're engaged in political philosophy here, is to determine whether they *should*, and if so, to what extent.

Famous formulation of the **Harm Principle (Liberty Principle)**:

“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm from others. His own good, either physical or moral, is not a sufficient warrant.”

“You may justifiably limit a person's freedom of action only if they threaten harm to another.” (Wolff's paraphrase)

This looks like it may be a plausible principle for us to follow. But it may have some problems. We'll need to consider it more carefully:

### **Exceptions to the principle:**

- Children
- People living in “backward states of society”—uncivilized people

**Question:** Why do we want to limit the freedoms of children more than adults? Why do we “protect” them from things like pornography, sexual relations with adults, the use of alcohol, gambling, and the choice to avoid education?

What justification can we give that won't leave *us* without these liberties?

-Introduce Paternalism

Paternalism may be a big problem for governmental involvement in private life. Before we attack Mill on this point, though, let's make sure that we have a solid understand of how the Liberty Principle is really supposed to work. Following Wolff, let's consider how it applies to the freedom of thought.

Mill thinks it's *crucial* that the state allow the expression of unpopular and even false views. He feels strongly enough that he says this:

“If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”

He has an argument that we have good reason to welcome the expression of unpopular views. First such expression can serve to *correct* us, if our popular view is **false**. Even if the popular view is **true**, though, there can be some benefit in allowing the expression of a contrary position.

-Our true opinion will become more *stable* and more *vivacious*  
-We're better able to defend the truth against promising counterarguments  
-Consider scenario like *Idiocracy*

Finally, what if the opinion expressed contains elements of truth *and* falsehood? These seem to provide instances where free expression is *most* important.

He *does* think, though, that we need to have some restrictions:

“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 the corn-dealer, or when handed out among the same mob in the form of a placard.”

So the idea seems to be that outright censorship is never permissible, but that there may be some situations where we should restrict expression—namely, when we can prevent harm by so doing.

**Rousseau's Criticism:**

Is it *always* better for us to know the truth than to remain in ignorance?

-Think about Oedipus

-Think about nuclear capabilities

-Discussion: Excessive rationality leads to irrational results  
(Marcuse)

Mill's response: "The usefulness of an opinion is itself a matter of opinion"

-The idea seems to be that the prevalence of the truth is a means of achieving happiness. Is that right?

-If the idiocracy case is plausible, then at least the truth can prevent some significant harm

Thought Q for notes: Can you think of a circumstance where it might be better to suppress an opinion? (will all suggestions be instances of harm?)

### **Another crit of Lib. Principle: What is Harm?**

We're trying to appeal to *harm* as a way of distinguishing the private sphere of acts (where the state can't intervene) from the public sphere (where the state can intervene). If we aren't able to give a satisfactory *intuitive* account of harm, the Liberty Principle doesn't do what it's intended to do. We need a way of determining *what kind of harm* to others will justify state intervention in my behavior.

Is it mere offense? Pretty much anything you do is bound to be potentially offensive to *someone*.

-think about really offensive expressions: public sex acts, racist/sexist ideas, swastikas

Should we suppress these?

Here's a suggestion: it's a matter of minding your own business. Self-regarding acts shouldn't be interfered with, but other-regarding acts may be.

It can't just be a matter of minding one's own business, because it's difficult to adequately distinguish self-regarding acts from other-regarding acts.

It does no good to frame the issue in terms of *interests*: Harming the interests of others can't be sufficient grounds for justifying constraint (we harm the interests of competitors in business, and this seems ok)

*So why is it ok to prevent me from financially harming my neighbors by robbing their house, but not ok to prevent me from financially harming them by defeating them in the free market?*

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New suggestion: Distinguish the private sphere from the public sphere by focusing on *rights*.

So the idea now is this: We should only prevent individuals from behavior that will harm the rights-based interests of others.

Does this work? Let's see...

One problem is this: It's hard to know what my rights *are*. It doesn't help to appeal to notions of self-evidence, or "natural rights" for two reasons: 1) It doesn't seem like there's a lot of universal agreement about what these rights are, so they can't be all that self-evident. 2) Even if we feel strongly that they *are* self-evident (even if our intuitions are strong about them), calling them "natural, fundamental" rights seems to compromise our ability to justify them to others. So if I say I have a fundamental right to free assembly, for example, and you say I don't, what grounds do I have to argue with you?

So it doesn't seem like we'll get much traction by relying on "natural rights". We also don't want to appeal to *conventional* rights, because this means we're essentially condemned to the status quo for whatever society we find ourselves in. The Liberty Principle, after all, is supposed to work as an *independent tool* for telling where the state can interfere in our lives.

Mill has a different kind of justification for spelling out our rights: Utilitarianism. Remember the general principle of utility: We should act only in such a way as to maximize the amount of happiness overall.

Is this a good strategy? Consider the following case: The angry mob and the scapegoat. Doesn't the principle of utility seem to indicate that we should incarcerate the scapegoat? Doesn't that seem *directly opposed* to rights?

DISTINCTION: Direct and Indirect (Act and Rule) Utilitarianism

If we interpret Mill as a *rule* utilitarian, then maybe we can give some account of rights: Rights will be those liberties of persons that, when violated *as a general rule*, provide lesser long-term overall happiness. This protects the scapegoat, and it gives us (perhaps) a tool for distinguishing the private and the public spheres.

Wolff: "What makes the difference between rights-based interests (my interest in personal safety) and other interests (my interest in no being struck out of my aunt's will)? The answer to this question is given by the theory of (rule) utilitarianism. It will serve the general happiness if we pass a law which protects people's interests in walking down the street free from attack, but it will diminish general happiness if we set out restrictions about whether aunts can or cannot strike their nephews out of their wills." 120

Question: Does this strategy protect us from paternalism? Does it allow the government to interfere in parts of my life where it shouldn't? Why think that more overall happiness will result from a liberal society than from some other kind of society?

Moreover, are there any behaviors that this system will *not* allow the state to interfere with, but should?

Review: Mill's liberalism has a hard time explaining what kind's of "harms" the state should prohibit. The best explanation we've seen looks a protection of *rights*, where rights are understood according to indirect (rule) utilitarianism.

Discuss:

Prostitution

Incest

Public Sex Acts

Euthanasia

Difficult case: Ashcroft vs. Free Speech Coalition: Virtual Child Porn/Second

Life: discussion—should this be allowed by the state?

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2 More criticisms of liberalism:

**Marx:**

Mill is looking at the *wrong kind of freedom*. This is best understood by making a distinction between two kinds of “emancipation”

Political emancipation: A possession of equal rights among citizens, protecting bodily security, property, expression, and the like.

-What do we notice about these kinds of rights? According to Marx, they are *self-directed* rights. They are rights predicated on *distinctions* or *separations* among persons.

-My freedom of expression allows me to say what *I* want

-My property rights secure *my* property, and protect it from the unsanctioned use of others

What if there’s another *kind* of freedom that isn’t addressed or guaranteed by these rights? What if there’s a *human freedom* that’s more important: A freedom from hatred, bigotry, ignorance, social discrimination?

The liberal state can protect my political rights, but it doesn’t seem like it can assure that I will live a life free of these things.

To the extent that liberalism fails to protect us from *these* kinds of things, liberalism is a “shallow, superficial doctrine”.

We don’t get a clear description of what “human emancipation” means, but I think we can build some kind of *intuitive* understanding.

Discussion: What kinds of things make life *good*?

(love, intellectual work, discovery, amusement)

**Communitarianism:**

Communitarians also challenge the presuppositions underlying rigid liberalism, claiming that liberals fail to take into account the importance that community plays in our lives.

Notice another thing about the kinds of protections that the liberal is concerned with: You get the sense that the liberal individual somehow develops and maintains her interests and values in a vacuum. We tend to concern ourselves with preserving non-harmful practices, leaving room for individuals who have values that radically oppose

those of the communities in which they live. Is this really the *best* kind of state to perpetuate?

Consider this: What if it turns out that humans are thoroughly social beings? What if it turns out that our senses of self, our *identities*, are inextricably bound up with the social settings we live in? What if it turns out that we don't really *have* a sense of self independent of our social framework?

Consider the importance of families, groups of friends, cultural identities. Strip all that away and what have you got? Anything worth protecting anymore? Are *you* really anything distinctive anymore?

Liberals seem to think that "no particular end or commitment should be beyond critical reflection and open to revision". But is that true?

Communitarians have argued that there are some values that we don't choose, but which are nevertheless fundamentally valuable. What might these include?

- Feminist crit: Mother/child relationship
- An Inuit's desire to remain Inuit
- Our sexual "orientation"
- Each of these seem to constitute a constitutive feature of self that cannot be denied. To deny or question these things might be to ignore fundamental features of self. We don't make ourselves—at least, not entirely.

But what exactly would this show? If we show that the strong view of the "liberal self" is ultimately untenable, does it show that we should reject liberalism as a political position?

If this is plausible to you, then maybe liberal freedoms aren't as important as they looked at first. If we focus too much on the well-being of the *individual*, then we might create a society full of profound alienation. In effect, many critics of contemporary western culture think that this is precisely what we're experiencing now.

Alienation from our interests, from our work, and even from our own bodies?

Maybe customary morality and the values of our culture are more important than some of the liberties that Mill wants to protect. Maybe we *should* allow the state to interfere with the individual choices that we make.

But *how*? Here's a suggestion: By educating or shaping persons so that they'll make the "right" choices about how to live.

Any objections to this scheme?

Contrast two views of what liberty really is

Negative liberty: An individual is free to make *her own* choices about how to live, independent of the desires of her community

Positive liberty: An individual is free to make only those choices that a rational agent would make (kind of like license/liberty distinction)

Discussion: On Wolff's view, "If Mill's negative definition leads to isolation and alienation, then the communitarian's positive definition leads to repression in the name of freedom."

What's the best world to live in: The world where I'm allowed to pursue my interests regardless of community values and rationality, or the world where I can only pursue those interests that promote my society?

Are we always better off with Mill's liberty?