https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

THE PARADOX OF JOHN STUART MILL

By Alan Charles Kors

I. The "Mill Problem"

It is only the individuals or thinkers one loves who truly break one's heart. In the case of those thinkers, who has broken more hearts than John Stuart Mill? For defenders of individual rights—those who value the self-sovereignty of the individual in those actions that concern only the individual directly—*On Liberty* (1859) stands as a singular work, whatever its apparent and diversely perceived problems and flaws. For some, it fails to address the problems of social order sufficiently. For some, while it rightly limits governmental direction of individual lives, it gives too much power to social judgment and the coercion of public obloquy. For some, its final chapters, on "Applications," give too much power to the state—for example, the ability to tax rather than ban what the public deems vices. Most of these problems arise when readers seek to apply Mill as a blueprint or (worse yet as a category mistake) a constitution. Mill establishes two poles—first, an individual's freedom of choice about what is best for him or her in the domain of self-regarding beliefs and activities, and second, the molding and coercing of adult individuals by society itself—and he believes that it is in our individual and our communal interest to move, where possible, toward the former pole.

On Liberty is Mill's celebration of individuality, personal responsibility, freedom of speech and expression, human diversity in belief and in ways of life, and, indeed, the utility and, he stresses, the loveliness of self-defined lives. It is a work that occupies a remarkable place in the canon of the literature of liberty. In generation after generation, students of all ages fall in love with its author. Then they discover the other lives of Mill. The thinker one loves has had relationships with others. Between the Mill of individual liberty and of limits on power that allow a voluntary, uncoerced civilization in matters of belief, expression, association, and lifestyle, on the one hand, and the Mill of political economy, on the other, there falls the shadow. He has been living a double life. To put the matter directly and without metaphor, he is the critical transitional figure between the ideas of the liberalism of limited government and the values of the liberalism of the active public-welfare state.

II. The Satisfactions of *On Liberty*

Every sympathetic reader of *On Liberty* has experienced moments in the text or in discussions with others—Could public support of virtue be

doi:10.1017/S0265052510000191
© 2011 Social Philosophy & Policy Foundation. Printed in the USA.

dangerous? Do his "Applications" betray his principles? Is he consistent about the coercive dangers of public opinion?—that have raised doubts, large or small, about Mill's commitment to liberty taken in the sense that the reader first admired. These doubts, however, should not cloud the unparalleled defense of liberty one encounters there.

Mill carved out, in the endless debate between rights theorists and utilitarians, a strong and luminous position: individual rights were of ultimate utility to the human species. Where his mentor, Jeremy Bentham, notoriously declared "natural rights" to be "nonsense on stilts" in his *A Critical Examination of the Declaration of Rights,*[1] Mill found rights that were protected from state and social action to be indispensable to utilitarian theory itself. Absent those rights, the human species would suffer and stagnate. Mill indeed famously refused any advantage that might accrue to his argument for expansive individual liberty—if consistent with the preservation of society and with preventing direct harm to others—from claims of abstract natural rights. He would rest his case on utility.

Nonetheless, unlike Bentham (the most celebrated English utilitarian of the prior generation), Mill rejected the traditional utilitarian formula of "the greatest happiness of the greatest number," which Bentham had taken from the Milanese Enlightenment legal reformer Cesare Beccaria's *On Crimes and Punishments* (1764) and from the French Enlightenment philosopher Claude-Adrien Helvétius's *De l'Esprit* (1758). For Mill, short-term or even intermediate-term calculations of happiness were a wholly inadequate means of making moral judgments about human governance and about intervention in the life of the individual. Rather, he insisted, his own criterion of utility would be "utility in the largest sense, grounded on the permanent interests of man as a progressive being."[2]

In that "largest sense," for Mill, the present and, more importantly, the future needed individuals who had experienced self-sovereignty and responsibility. From that perspective, what mattered above all was not the positive things men accomplished in any particular frame of time, but, rather, "what manner of men" accomplished them, because only free individuals, responsible (absent *direct* harm to others) for their thoughts, expressions, choices, behaviors, and associations, could learn from trial and error and thus be agents of human adaptation and improvement.[3] Mill was concerned that "harm to others" could be taken too broadly, justifying a great amount of public intervention, so he propounded his doctrine narrowly: "The liberty of the individual must be thus far limited;

[1] This essay was first published in 1843, in a collection entitled *Anarchical Fallacies.* See Jeremy Bentham, *The Works of Jeremy Bentham,* ed. John Bowring (Edinburgh: William Tait, 1838–43), vol. II, *A Critical Examination of the Declaration of Rights,* "Preliminary Observations," art. II.

[2] John Stuart Mill, *On Liberty,* in Mill, *On Liberty with The Subjection of Women and Chapters on Socialism,* ed. Stefan Collini (Cambridge and New York: Cambridge University Press, 1989), 14.

[3] Ibid., 59–60.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost."[4] Later, Mill will ask society always to err on the side of self-sovereignty in deciding between direct and indirect harm: "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."[5]

For Mill, individual liberty and responsibility formed a *mode*—a manner, or form—of being human, and utility resided in that mode, not in any particular outcome. By analogy (mine, not Mill's), people might find a rightful outcome and satisfaction in frontier justice meted out to some miscreant. We preserve the more valuable form of justice, however—the civilized and civilizing mode of due process—in order to achieve a far greater good. Providing due process is a mode of administering justice that both elevates us and serves humanity deeply in the long run.

For Mill, such beneficial freedom ultimately was the unrestrained ability to act or abstain in all matters that did not affect others immediately and directly, however much Mill formally dissociated himself from any talk of theoretical right. In Mill's view, with respect to the part of conduct that does not directly harm others, a man's "independence is, *of right*, absolute."[6] Over things affecting only himself directly, "the individual is sovereign."[7] Neither government nor society could appropriately deny such liberty to the individual. As Mill revealingly phrased it, certain individual interests "*ought to be considered as rights*," a conclusion justified by long-term utility.[8] Individual self-government, individual choice, and individual responsibility for one's actions created better human beings, and better human beings, over time, created better societies. Paternalism might achieve its short-term goals, but it would kill the very spirit and dynamic that made for decent individuals and progressive societies. By analogy, to capture Mill's meaning, one well might achieve short-term happiness or avoidance of pain for one's children by means of frontal lobotomies, but their future intelligence, creativity, and self-fulfillment would be ruined. Thus, Mill offered a modal, long-term, utilitarian argument for individual rights in matters of belief, expression, association, and self-regarding behaviors.

[4] Ibid., 56–57.
[5] Ibid., 82.
[6] Ibid., 13 (emphasis added).
[7] Ibid.
[8] Ibid., 75 (emphasis added).

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

In *On Liberty,* Mill appreciated the necessity and value of the advance made by "democratic" theory and practice to restrict and overturn the despotic rule of the few over the many. Like the liberal French political theorist, historian, and political figure Alexis de Tocqueville, whose *Democracy in America* (1835–40) he read with admiration, Mill saw dangers in democratic governance that had been obscured by the positive struggle against tyrannies. Democracy was not self-government in the sense of each individual now governing his own life. Instead, it was the rule of all by those who democratically had assumed the agencies of power in society. This created an insidious danger, because individual or group despotism was generally visible to all, but democratic tyranny easily hid itself under the cloak of a people's "self-governance," even though there could be a vast discrepancy between the interests of the governors qua governors and the interests of the governed. Further, that cloak might allow for yet more tyranny to be exercised over an individual who sought to define himself and to live by his own voluntary choices.[9] In the midst of that danger, Mill called for a society of mutual forbearance in all matters that did not represent a direct threat to the lives, liberty, property, and peaceful enjoyment by others of the fruits of their labor. Men, in the long term, flourished by living in a society of voluntary choices, but they stagnated or regressed by making those choices, however wisely, for others. For Mill, "Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest."[10] Indeed, "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."[11]

Mill, in fact, worried that both the tyranny of public opinion and the tyranny of government might wage war on the enjoyment of property and the fruits of one's labor:

> We have only further to suppose a considerable diffusion of Socialist opinions, and it may become infamous in the eyes of the majority to possess more property than some very small amount, or any income not earned by manual labour. Opinions similar in principle to these, already prevail widely among the artisan class, and weigh oppressively on those who are amenable to the opinion chiefly of that class, namely, its own members. It is known that the bad workmen who form the majority of the operatives in many branches of industry, are decidedly of opinion that bad workmen ought to receive the same wages as good, and that no one ought to be allowed, through piece-

[9] Ibid., 5–9.
[10] Ibid., 16.
[11] Ibid.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

> work or otherwise, to earn by superior skill or industry more than others can without it. And they employ a moral police, which occasionally becomes a physical one, to deter skilful workmen from receiving, and employers from giving, a larger remuneration for a more useful service. If the public have any jurisdiction over private concerns, I cannot see that these people are in fault, or that any individual's particular public can be blamed for asserting the same authority over his individual conduct, which the general public asserts over people in general.[12]

Self-sovereignty, property, and enjoyment of the superior fruits of one's labor all depended upon private concerns remaining private and immune from public interference, suppositions that led Mill to his most celebrated principle for drawing the proper line between the individual's autonomy and the claims of social intervention:

> [T]hat the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That 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. His own good, either physical or moral, is not a sufficient warrant.[13]

Indeed, in Mill's judgment, when society does intervene in the voluntary choices of an individual, it almost invariably does so "wrongly."[14] Again, it is critical to a rightful judgment of Mill to understand that he is not attempting to provide a blueprint or utopian constitution in *On Liberty*, but, rather, defining the pole toward which he would have society move, however gradually, and with whatever compromises. When weighing alternatives, for Mill, we should move closer, whenever possible, to adherence to the harm principle as the only criterion for intervention and interference consistent with a limited government that permits the most dignity, peace, decency, moral freedom, responsibility, individual rights, safety, and security of rights of a civilized society. Intervention, in his view, not only was usually wrong in any particular case, but, above all, had the long-term effect of changing the manner of human beings we were—dulling, not improving, our moral senses.

For Mill, the best illustration of his central argument was seen in the protection of freedom of speech and expression.[15] Because of that, *On Liberty* is widely used and often read as primarily a work about that

[12] Ibid., 87–88.
[13] Ibid., 13.
[14] Ibid., 83–84.
[15] Ibid., 19–55.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

particular freedom. In fact, of course, Mill meant his defense of inward and expressive belief to be the hardest case he had to prove in order to win the case for his general principles, since so many of his contemporaries were convinced that the freedom to attack belief in God or religion would undermine the very foundations of society. As Mill explicitly argued, every argument on behalf of freedom of belief and expression applied also to the freedom to choose one's way of life, one's preferences, one's use of one's time, and one's voluntary associations. Provided that individuals did not directly harm others and that they assumed themselves the full consequences of their own behaviors—"their own risk and peril"—society had no coercive claims upon them. In Mill's words, "the same reasons that show that opinion should be free, prove also that he [the individual] should be allowed, without molestation, to carry his opinions into practice at his own cost."[16]

It is noteworthy how appealing Mill has been to American courts, and how deeply Mill's harm principle and his defense of freedom of expression as an instance of that principle have penetrated American jurisprudence, most explicitly at the state level. (The spirit of Mill might inform federal justices, but they almost never cite him specifically, let alone dispositively.) In *Patricia E. Brophy v. New England Sinai Hospital, Inc.* (1986), the Supreme Court of Massachusetts upheld the right of a patient to refuse medical treatment precisely on the basis of *On Liberty,* citing Mill as if he were part of the foundation of American law: "The right of self-determination and individual autonomy has its roots deep in our history. John Stuart Mill stated the concept succinctly: '[T]he only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. 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, because, in the opinion of others, to do so would be wise, or even right.' Mill, *On Liberty.*" The court stated freely that its decision was based upon the "recognition of these fundamental principles of individual autonomy," which required a shift in emphasis "away from a paternalistic view of what is 'best' for a patient toward a reaffirmation that the basic question is what decision will comport with the will of the person involved."[17]

In *Armstrong v. The State of Montana* (1999), the Supreme Court of Montana struck down a statute limiting the performance of abortions to physicians and granted to all in Montana the right to choose the medical care

[16] Ibid., 56–57.

[17] *Patricia E. Brophy v. New England Sinai Hospital, Inc.,* 497 N.E.2d 626 (Mass. 1986). References to Mill in court decisions can be found by a simple Google search of "Mill + Court." The decision here is relatively brief, and the online version (http://homepages.udayton.edu/~ulrichlp/brophy.htm) does not have page numbers. A search for "Mill" within the document leads directly to the material cited.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

of their choice, in this case (though the issue was decided more broadly) to choose to have an abortion performed by a certified physician-assistant. After citing federal and U.S. Supreme Court decisions, the court wrote of "modern legal notions" that governed the case, whose roots could be traced back to John Locke and the Founders, and that found expression in John Stuart Mill, the only author explicitly cited. In the court's words, "John Stuart Mill recognized this fundamental right of self-determination and personal autonomy as both a limitation on the power of the government and as a principle of preeminent deference to the individual." Correcting (with a *"sic"*) Mill's British spelling, it then quoted the full text of Mill's harm principle, "[T]he only purpose for which power can be rightfully exercised over any member of a civilised [*sic*] community, against his will, is to prevent harm to others," and so on to the end.[18]

In Mill's famous formula, stating the liberty of the individual with regard to free speech, "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." That sentiment, verbatim, also has found a place in American legal opinion. Thus, the Rhode Island Supreme Court, in *Cullen v. Auclair* (2002), ruled that statements based upon nondefamatory facts enjoyed the fullest protection. It cited the First and Fourteenth Amendments to the United States Constitution, and *On Liberty:* "This principle is eloquently illustrated by John Stuart Mill, who stated: '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.' . . . Thus, such opinions are not actionable however dishonest the speaker may be in publishing that opinion."[19]

A central part of Mill's argument for freedom of expression was that we could not assume our own infallibility, and thus we could never be certain that an opinion was wholly false. Even if it were, Mill argued, society would lose greatly by its suppression, given the value to truth of the clash of opinions. In 2000, the Rhode Island Supreme Court, in *Beattie v. Fleet National Bank,* refused to allow a jury to "correct" a derogatory opinion and punish those who aided in the dissemination of it. The court granted summary judgment, quoting directly from *On Liberty:* "We decline to do so, however, because this type of communication constituted an opinion based upon disclosed, nondefamatory facts, mindful that, in such circum-

[18] *Armstrong v. The State of Montana,* 989 P.2d 365 (Mont. 1999). The online version of the decision does not have page numbers, but a search for "Mill" within the document leads directly to the material cited: http://fnweb1.isd.doa.state.mt.us/idmws/docContent.dll?Library=CISDOCSVR01^doaisd510&ID=003726845.

[19] *Cullen v. Auclair,* 809 A.2d 1107, 1110, p. 5 (R.I. 2002). The opinion is online at the website of the Rhode Island Supreme Court: http://www.courts.state.ri.us/supreme/pdf-files/01-588.pdf.

stances, '[w]e can never be sure that the opinion we are endeavoring to stifle is a false opinion; and even if we were sure, stifling it would be an evil still.' " The Rhode Island Supreme Court's conclusion has one footnote—Mill's *On Liberty.*[20]

Yale law professor Akhil Reed Amar analyzed Mill's view as indicative of a shift profoundly affecting American thought about government, law, and individual rights by the time of the Civil War, when fear of majoritarian tyranny at last overrode the understanding of liberty as majoritarian self-government, "as reflected in the publication in 1859 of John Stuart Mill's classic tract, *On Liberty*—on individual liberty."[21] In the opinion of some, U.S. Supreme Court decisions on privacy and personal choice have reflected more of Mill's thought than of American jurisprudence. Thus, Judge Henry J. Friendly and Judge A. Raymond Randolph, two distinguished American jurists, felt obliged to note that the authors of the Fourteenth Amendment (whose due process clause gradually led the Court to apply the First Amendment—prohibiting, among other things, laws that limited freedom of speech—to the states themselves) did not actually incorporate John Stuart Mill into the Constitution of the United States.[22]

Mill's influence is great, perhaps, not only because of the eloquence of his celebrations of individual liberty and autonomy, but because *On Liberty* can be appropriated both by casual rights theorists—individual sovereignty over one's life has a ring to it—and by casual utilitarians—Mill's stated goal is the long-term well-being of mankind as a species. What surely appears as a weakness to more philosophically minded moral and political theorists—a possible conflation of utility and rights—probably functions as a great source of Mill's enduring appeal.

For the philosophically ambivalent or skeptical, there seems to be something odd in a utilitarianism that can place no limits on what may be done to human beings if it increases future human happiness, raising the specter of Stalin's and Mao's use of the present, in theory, to secure the happiness of the future. One need not embrace the Golden Rule or Kant's celebrated categorical imperative—"Act only according to that maxim whereby you can at the same time will that it should become a universal law"—to have difficulty with that sort of utilitarianism. Equally, there seems to be something odd in a rights theory that ignores consequences,

[20] *Beattie v. Fleet National Bank,* 746 A.2d 717, p. 20 (R.I. 2000). The opinion is online at the website of the Rhode Island Supreme Court: http://www.courts.state.ri.us/supreme/pdffiles/98-338.pdf.

[21] Akhil Reed Amar, *The Bill of Rights* (New Haven, CT: Yale University Press, 1998).

[22] A. Raymond Randolph, "Before Roe v. Wade: Judge Friendly's Draft Abortion Opinion," *Harvard Journal of Law and Public Policy* 29, no. 3 (2006). Friendly's opinion of Mill and the Constitution was disclosed by Randolph (who had clerked for Friendly) in Friendly's unpublished papers, in the possession of Harvard Law School. Randolph's article was an extension of a talk that he had given to the Federalist Society in 2005: http://www.fedsoc.org/publications/pubID.368/pub_detail.asp.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

that disregards human well-being as a criterion, that proclaims, in effect, *Let justice be done though the world perish.* That, also, appears to entail a coldness and detachment from ordinary human lives that few share.

The extremes of rights without utility and of utility without rights seem troubling to most of us, and few writers venture to either extreme without trying somehow to reassure us. Thus, in one defense of free enterprise and a voluntary society, philosopher and novelist Ayn Rand's *Atlas Shrugged*—a work enthusiastically received by a legion of American admirers (though much less well known abroad)—Rand pointedly, for whatever purposes, shows readers a world of suffering, want, and unhappiness in her portrait of the dystopia produced by "the looters." Nonetheless, John Galt, the hero of the work, speaking for Rand, declares "utilitarianism" to be the philosophy of "prostitutes" and rebukes all notions of altruistic obligations to the well-being of others. The freedom to craft one's own life, to pursue one's own goals, and to enjoy the fruits and satisfactions of one's own efforts—if one grants that same freedom to all others—arises from human nature and objective reality themselves. Utility plays no part in it. Nonetheless, Rand portrays an immoral world whose consequence is indeed a world of pain and deprivation.[23]

In another defense of free enterprise and a voluntary society, the eminent Austrian economist and political philosopher Ludwig von Mises, like Bentham before him, dismisses all talk of "rights" and individual autonomy as the stuff of "muddleheaded babblers" who may therefore argue interminably over whether all men are destined for freedom. There is only one compelling objection to slavery itself: "namely, that free labor is incomparably more productive than slave labor." For Mises, "Only free labor can accomplish what must be demanded of the modern industrial worker." "What we [classical liberals] maintain," he insisted, "is only that a system based on freedom for all workers warrants the greatest productivity of human labor and is therefore in the interest of all the inhabitants of the earth." If freedom were not the most productive system, in terms of the goods and services it calls forth, there would be no argument for it. Nonetheless, Mises reassuringly informs us, it would be impossible for slavery to be as productive as freedom.[24]

For Rand, Mises, and those who find one or the other compelling, there are no problems with each respective position. For Rand (and her admirers), the issue is an individual's rights, and it makes perfect sense that a world based on a false understanding of those rights would be dysfunctional and dystopian. One decides issues, however, on the basis of rights, and one concludes on behalf of a free and voluntary society. For Mises

[23] Ayn Rand, *Atlas Shrugged* (1957), 35th anniversary edition (New York: Signet Classic, 1996). For Galt on "the greatest good of the greatest number" as the moral standard of a "prostitute," see p. 943. For Rand on "rights," see pp. 972–73.

[24] Ludwig von Mises, *Liberalism: The Classical Tradition* (Indianapolis, IN: Liberty Fund, Inc., 2005), chap. 1, sec. 2.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

(and his admirers), it is patently obvious that a world in which individuals were not free to work for their own well-being would be unproductive and immeasurably less satisfying in its outcomes. One decides issues, however, on the basis of utilitarian calculations of productivity, and one comes down on the side of a free and voluntary society. For the less consistent among us, it seems, at the very least, difficult both to dismiss consequentialist arguments about the effect of social organization upon the lives of our fellow creatures, and to dismiss the notion that there are no limits on what one human being may do to another—slavery, for goodness sake!—except in terms of productive efficiency.

Mill appears to resolve these tensions by embracing his modal justification of freedom and rights. For Mill, living under freedom and the recognition of rights is *a way of being human* that enhances our lives, now and in the future, in multiple ways. In his view, liberty and rights are indispensable to the progress of humanity, both in terms of "what manner of men" liberty produces and in terms of our future well-being. The species cannot know its future, but if it allows individual self-sovereignty, it has chosen the only path to innovation, to learning from experience, and to an exercise of intellectual and moral faculties that produces human beings capable of adaptation and progress. Mill argues, in a language that sounds neither utilitarian nor rights-based, but that can appeal to both camps (philosophers excluded), that the cultivation of individuality, limited only by "the rights and interests of others" in not being directly harmed, can make of human beings something different and higher than what we today might imagine: "Among the works of man," he writes, "which human life is rightly employed in perfecting and beautifying, the first in importance surely is man himself." If liberty prevails, the men and women of today's civilized world "assuredly are but starved specimens of what nature can and will produce."[25]

Mill offers us liberty, individualism, progress, human well-being, an end to tyranny, and both men and women free to develop in ways now unimaginable. Utility is there. Rights are there. Something ineffably beyond them both is there. One falls in love with Mill.

III. Utility, Justice, and Economic Freedom

Mill's *On the Subjection of Women* (1869) makes the confusion or symbiosis (take your choice) of his moral criteria all the more apparent. He offers a stream of utilitarian justifications of the legal and political emancipation of women: more competition and productivity in the workplace; the benefits from interaction that flow to all from the intellectual and professional emancipation of women; fewer unhappy women; better marriages; the full energies, available to society, of half of the human popu-

[25] Mill, *On Liberty*, 59–63.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

lation. Mill does not stop there, though. There are high moral gains in and of themselves that would follow from the emancipation of women. He writes of "the morality of justice" that must replace the morality of submission or chivalry (*noblesse oblige* at the whim of the possessor of power). "Justice," he writes, must be "the primary virtue," based on "equality" and "cultivated sympathy."[26] He deplores "the peculiar injustice" of women's oppression and promotes "the dignity" of women if marriage were a contract between equals.[27] Even if society did not benefit as he anticipated it would, he notes, it would be "inconsistent with justice" to deny women "the equal moral right of all human beings to choose their occupation (short of injury to others) according to their own preferences, at their own risk."[28] Bridging (or obscuring) the usual distinction between justice per se and utility per se, Mill wants at times to argue simply that justice and utility are inseparable, both linked to our being higher, more civilized human beings: "The equality of married persons before the law is not only the sole mode in which that particular relation can be made consistent with justice to both sides, and conducive to the happiness of both, but it is the only means of rendering the daily life of mankind, in any high sense, a school of moral cultivation." It may take generations for society to realize it, Mill observes, but "the only school of genuine moral sentiment is society between equals."[29] Even when Mill is explicitly utilitarian in *The Subjection of Women,* the criterion is inextricably linked to the human heart. Ending the oppression of women would produce an "unspeakable gain in private happiness to the liberated half of the species," but the source of that happiness would be the fact that "after the primary necessities of food and raiment, freedom is the first and strongest want of human nature." The goal of emancipation is the enjoyment of "rational freedom" by women.[30] In short, the subordination of half of the species indeed is "now one of the chief hindrances to human improvement," but it is also "wrong in itself."[31] It reflects "the worse rather than the better parts of human nature."[32] It is a question of *both* "justice" and "expediency."[33]

The repercussion for economic policy of Mill's arguments for both "justice" and "expediency," for increase of bounty and satisfaction, on the one hand, and "rational freedom," on the other, is that all laws banning or "protecting" women from the workplace should be repealed, and that

[26] John Stuart Mill, *The Subjection of Women,* in Mill, *On Liberty with The Subjection of Women and Chapters on Socialism,* ed. Stefan Collini (Cambridge and New York: Cambridge University Press, 1989), 160.
[27] Ibid., 163–65.
[28] Ibid., 168. The "(short of injury to others)" is Mill's clarification, not mine.
[29] Ibid., 159.
[30] Ibid., 212.
[31] Ibid., 119.
[32] Ibid., 122.
[33] Ibid., 137.

the marketplace, not arbitrary laws and restrictions, should determine a woman's opportunities and rewards. It is time to bring women into modern civilization, he argues, and the hallmark of civilization is that merit, not birth or relationship to government, determines one's place.

The implications of this for Mill's view of economic freedom are dramatic and appear to commit him to an expansive view of a voluntary marketplace freed from governmental interference. For Mill, the rise of manufacturing, however pilloried, has produced inestimable improvements in human life, and that increase in the quality of our experience has depended on merit, not on station. In his view, the principle of improvement in production and the principle of women's freedom are the same: "Law and government do not undertake to prescribe by whom any social or industrial operation shall or shall not be conducted, or what modes of conducting them shall be lawful. These things are left to the unfettered choice of individuals." Prior to the age of improvement and greater freedom, the prevailing belief had been that "the least possible should be left to the choice of the individual agent," and that, in matters of economic activity, the individual's role "should, as far as practicable, be laid down for him by superior wisdom." The lessons of a millennium of human experience, however, are now known, Mill believes, after every imaginable opposition to recognizing and applying that experience, and after disastrous applications of precisely contrary theories. These lessons are, first, "that things in which the individual is the person directly interested never go right but as they are left to his own discretion"; and second, that "regulation of [those things] by authority, except to protect the rights of others, is sure to be mischievous," that is, harmful. Learning these lessons is a prerequisite of any future economic progress.[34]

The fact is, of course, that not all processes of manufacturing and production are equally good, Mill notes, nor are all individuals equally qualified. It is the marketplace, however, not the government or law, that should make the choices that follow from this. For too long, mankind thought that regulation should sort things out, but, at last, "freedom of individual choice is now known to be the only thing which procures the adoption of the best processes." In Mill's example, no government or law need decide that only strong men become blacksmiths: "Freedom and competition suffice to make blacksmiths strong-armed men," and to convince the weak-armed that they will earn more in occupations to which they are more suited.[35]

In short, generalizing from his grounds for the elimination of regulations that restrict the entry of women into the marketplace of labor and production, Mill concludes that a competitive, voluntary economy is both the most efficient and the most just means of production; that govern-

[34] Ibid., 134–35.
[35] Ibid.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

mental regulation of individual economic choice and responsibility is a discredited model that blocks human progress and liberation; and that no legislator or government agent can know what is required by circumstances better than the individuals directly engaged and involved. The economic conclusions of *The Subjection of Women* would appear to be an invitation to an economic life free of governmental interference. At a yet deeper level, they would appear to mirror in the economic domain what Mill urged in the social and intellectual domain in *On Liberty:* that government and society should leave individuals to chart their own courses; to take responsibility for their own lives; to innovate; to learn from trial and error; and to become the independent beings whose very autonomy is the best guarantee of a richer and more successful human future. What classical liberal would not be in love with him? Yet what illicit flirtations are to come!

IV. Redistribution and "Expediency"

Mill's *Principles of Political Economy,* first published in 1848 and then revised, often substantially, through a seventh and final edition (which I utilize here), is assuredly not the work that sets hearts joyfully aflutter among classical liberals. Each new edition, from the second of 1849 to the final one published in 1871, offered extensive revisions, each more open to the notion of social problems created by industrialization that required governmental intervention. The final edition is not, to say the least, the "socialistic" work that some critics find there. Nor is it a fundamental repudiation of Mill's fears of governmental mischief and his celebration of individual liberty. It is, however, a work foundational to the emergence of at least a welfare state in the modern, not nineteenth-century, vision of "liberalism," and it views the relationship of individuals to society in ways that are often sharply distinct from those articulated in *On Liberty* and *The Subjection of Women.* To stay with the metaphor of infidelities and broken hearts, *The Principles of Political Economy* constitutes an ultimate betrayal of liberty according to followers of those classical liberals who reject the redistribution of wealth: Bastiat, Spencer, Mises (and his many disciples), among others. Mill does not invite illiberalism to live with him, nor even, perhaps, to spend a week or two with him, but he gives it a key to the home that classical liberals thought they shared with him. The modern liberals waited until he had passed on, and then they used that key, and they claimed simultaneously *On Liberty* (in the social sphere), *The Subjection of Women* (in the sphere of women's rights), and *The Principles of Political Economy* (in the sphere of economic policies and expedient government) as their own.

The Principles of Political Economy is about a myriad of things, large and small, but the heart of its contribution to the evolution of liberalism lies in one factor above all: the separation of production and distribution. Mill

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

analyzes the laws of production as natural and independent of human volition, but he believes, empirically, that the distribution of wealth and the rules concerning property are in largest part man-made, arbitrary, and rightly subject to the political process. He warns readers that there is a point beyond which redistribution of wealth might, in effect, kill the goose that lays the golden eggs, sapping initiative and risk, but before society reaches that boundary, it may do with the fruits of production what it will. Further, he wishes to see both active redistribution of wealth and reconsiderations of the rules of property. In short, once capital and labor have produced wealth, society is free to redistribute it as it sees fit.

In his "Preliminary Remarks" to *The Principles of Political Economy,* Mill makes clear his distinction between the phenomena of "production" and "distribution." Production of wealth has "its necessary conditions," some purely physical, and "is evidently not an arbitrary thing." While political economy can trace the "secondary and derivative laws" of production that, tied to human nature, account for the diversities of circumstance of wealth in the world, it "assumes" the primary laws of production, referring for knowledge to "physical science or common experience."[36]

By contrast, the laws of distribution "are partly of human institution," and always will reflect "the statutes or usages" of a given society. While "governments or nations" cannot control how institutions will, in fact, work, they nonetheless "have the power of deciding what institutions shall exist," decisions that ultimately depend upon "the various modes of conduct which society may think fit to adopt."[37]

When Mill clarifies this point as he turns in the text from production to distribution, he makes the distinction yet more sharply. The laws of production, Mill asserts, "partake of the character of physical truths." Indeed, "There is nothing optional or arbitrary in them." Whatever men might wish, production will be determined "by the constitution of external things, and by the inherent properties of their own bodily and mental structure." Three times, Mill repeats that "whether they like it or not," these various laws of production obtain. "Opinions or wishes" do not and cannot determine outcomes here.[38]

In matters of "the Distribution of Wealth," however, things stand categorically otherwise: "That [i.e., distribution] is a matter of human institution solely." Mill may have intended this merely as an empirical inference, but it entailed a veritable invitation:

> The things once there, mankind, individually or collectively, can do with them as they like. They can place them at the disposal of whom-

[36] John Stuart Mill, *The Principles of Political Economy,* in *Collected Works of John Stuart Mill,* vols. II–III (Indianapolis, IN: Liberty Fund Inc., 2006), II, 21.
[37] Ibid.
[38] Ibid., 199.

> ever they please, and on whatever terms. Further, in the social state, in every state except total solitude, any disposal whatever of those can only take place by the consent of society, or rather of those who dispose of its active force. Even what a person has produced by his individual toil, unaided by any one, he cannot keep, unless by the permission of society.[39]

For Mill, schemes of distribution have objective consequences, some knowable and some unknown, but that does not alter the wholly arbitrary nature of any particular scheme. For example, in terms of the state of current knowledge, the Communists' proposed system—an economy of equal distribution in which everyone works as hard as possible for the public good—might depend on an unobtainable public-spiritedness, but we do not know that: "To what extent, therefore, the energy of labour would be diminished by Communism, or whether in the long run it would be diminished at all, must be considered for the present an undecided question."[40]

Mill is, to say the very least, profoundly skeptical of almost all fundamental Communist and Socialist proposals for the redistribution of wealth, and he rejects various contemporaneous schemes for minimum wages, but these are all on the table, to be weighed solely in the light of what one believes would be their actual consequences. Mill is far more open to—indeed, at times, persuaded by—notions that wages could be raised by various means: by the education of the working classes toward voluntary limitation of population growth, by the sending of workers to the colonies, by the encouragement of emigration in general, and by the allocation of common land to poorer individuals.[41] There is still a Malthusian influence on Mill—a belief that gains in production never will keep up with population growth—which leads him to explore broad avenues of public intervention in economic life.

Mill also would prefer to have government enact some restrictions on the right of inheritance, noting that "I see nothing objectionable in fixing a limit to what any one may acquire by the mere favour of others." This would prevent wealth from "over-enriching a few" and make certain that wealth benefited more rather than fewer individuals.[42]

Although an ardent advocate of free trade and critic of protectionism, even here Mill sees an instance where "protecting duties [i.e., protectionist tariffs] can be defensible," namely, when they are "imposed temporarily . . . in hopes of naturalizing a foreign industry, in itself perfectly suitable to the circumstances of the country." Although individuals could,

[39] Ibid., 199–200.
[40] Ibid., 200–205.
[41] Ibid., 351–79.
[42] Ibid., 224–26.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

in theory, attempt a new manufacture of such a sort "at their own risk," that would be an unreasonable expectation. "A protecting duty," therefore, might well be "the least inconvenient mode in which the nation can tax itself for the support of such an experiment."[43]

Mill's own agenda for government—its obvious role to him, in addition to security and justice—included protection of infants, lunatics, and imbeciles; coining money; prescribing standard measures and weights; maintaining and cleaning the streets and roads; building or improving harbors; conducting surveys for maps and charts; and building dykes and embankments. That was, relatively speaking, a modest list, but it was determined not by any sense of categorically appropriate and inappropriate activities to be undertaken by political power, but solely by the principle of utility—and *not* the long-term utility of *On Liberty.* Indeed, Mill immediately added, "Examples might be indefinitely multiplied without intruding on any disputed ground," and one should be certain to avoid "the ring-fence of any restrictive definition." It would be a dangerous error "to limit the interference of government by any universal rule," since the only operative principle is "general expediency." Whenever "the case of expediency is strong," the government has reason to interfere.[44]

For Mill, then, the distribution of wealth was separated from its production, which means that, in Mill's world, in principle, one might well live in a democratic capitalist society, with essentially voluntary and competitive modes of production, whose voters choose redistribution of wealth to suit what they deem "fit." Government, in that society, should not intrude for the sake of intrusion, but the principle of its action or inaction should be expediency alone. That, indeed, is the very world, of course, in which much of humanity currently finds itself. *The Principles of Political Economy* does not ask "what manner of men" such a society will produce.

V. Conclusion

In his posthumously published *Chapters on Socialism* (1879), Mill presented the Socialists' proposals for and criticisms of "the present order of society" fully and untendentiously. Indeed, he showed a strong sympathy toward their complaints both that the accident of birth determined almost everyone's position in life and that most of these positions were quite unfortunate.[45] He argued with the Socialists empirically, however, on some of their most essential claims. Wages were insufficient, he agreed, but they were not diminishing, and they were probably rising. Technological improvements had eased the influences of population growth that

[43] Ibid., III, 918–19.
[44] Ibid., 802–4.
[45] John Stuart Mill, *Chapters on Socialism,* in Mill, *On Liberty with The Subjection of Women and Chapters on Socialism,* ed. Stefan Collini (Cambridge and New York: Cambridge University Press, 1989), 228–48.

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press

Malthus had feared and that the Socialists stressed. Economic competition was not a bad thing for workers, and was probably improving their lot, although the government needed to enact and enforce more effective laws against fraud. Profits and the distribution of capital in society were not unreasonable, given the wealth that was being tied up to create industry and jobs, the low rates of return that capital actually received, and the skill and superintendence that the owners of industry brought to their work. Capitalist society had expedients that might well prove to be in everyone's interest, from piece-work wages to profit sharing. Socialism was a profound risk as an economic system, and we had no experimental proof whatsoever of its possible success. The expansion of production depended upon vast accumulations of capital that Socialism most probably could never produce in a nation. It was extremely difficult to see how a motive for efficiency could exist under Socialism. Equality of remuneration would leave no incentives for effort. An end to economic competition would merely redirect ambition to the pursuit of power. The animating principle of too many Socialists was hatred, and if coupled with violence, that hatred posed the danger of a return to what Thomas Hobbes had described as the brutal state of nature. Mill was no friend of Socialism.[46]

Nonetheless, he simultaneously accepted the Socialists' view that the condition of the working class was, on the whole, wretched, that it was in the interest of all to alter the scheme of things in expedient ways, and (in his vastly influential *The Principles of Political Economy*) that it was wholly up to those who gained the reins of power to determine the distribution of wealth in society. Even if Socialism were "valuable as an ideal, and even as a prophecy of ultimate possibilities," Mill wrote, it could not work now, and private property probably had a long future ahead of it, even if provisional. What we could do now, he urged, even if just from prudence, was to reform our laws and customs concerning property, and, with proper remuneration, appropriate what was necessary for "the public good." Society must be made "to work in a manner more beneficial to that large portion of society which at present enjoys the least share of its direct benefits."[47] If that were expedient, then it followed from *The Principles of Political Economy* that achieving such an end was the proper and necessary role of government.

Mill had no vision of economic growth and progress that paralleled his sense in *On Liberty* of what free men and women would achieve in modal circumstances of individual liberty, individual responsibility, voluntary actions, sovereignty over self, and minimal coercion. The author who articulated the most compelling view of liberty ever penned could not extend that model to the economic sphere, and, ultimately, he encouraged precisely the formation of a political society that exercises more power

[46] Ibid., 248–74.
[47] Ibid., 275–79.

over individual lives than any force he feared in *On Liberty.* The paradox of John Stuart Mill is a striking one, and it explains to a very large degree the change in "liberalism" from the nineteenth century to the modern world. He feared the tyranny of the majority—above all, its stultifying effect upon the adaptive, self-reliant, and creative powers of free individuals—but he was instrumental in delivering that tyranny to his heirs.

History, University of Pennsylvania

https://doi.org/10.1017/S0265052510000191 Published online by Cambridge University Press