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REPLIES

Is Piecework a Private Concern? A Reply to Riley

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Abstract

In an earlier note in this journal, I located a contradiction in *On Liberty*. On the one hand, Mill describes piecework as a self-regarding "private concern" between employees and employers, one that does not harm other workers. On the other, he says that the competitors in economic markets harm each other. But workers compete in the labor market, and Mill does not deny that for some workers to accept payment by the piece may set back the interests of others. Jonathan Riley's recent reply fails to demonstrate that Mill does not contradict himself. Riley's argument depends on showing that in *On Liberty* Mill is presupposing that employers are employing a very specific model of piecework, one which Riley claims is self-regarding. However, Riley fails to establish that Mill is making this presupposition. Moreover, an employer's choice to adopt piecework would not be self-regarding even if they did employ Riley's model.

Keywords: J. S. Mill; Piecework; Liberty Principle; Harm Principle; Jonathan Riley

I am grateful to Jonathan Riley for his attention to my note on a contradiction that I believe that I've discovered in J. S. Mill's *On Liberty* (Riley 2024; Miller 2023). I'm especially grateful for the fairness with which he describes my argument and for the attention he calls to the various points on which we agree. However, Riley ultimately fails to show that Mill doesn't contradict himself.

In brief, my argument in the original note was that there's a contradiction between a claim that Mill makes about the labor market in particular and one that he makes about markets in general. The claim about the labor market is that an agreement between employers and workers that the workers should be paid "by the piece," based on how much they produce rather than by the hour or day, is a self-regarding "private concern" (Mill 1977: 283). As such, the liberty or harm principle (hereafter LP) forbids coercive interference with this practice, which allows more productive workers to earn greater compensation. On this basis, Mill charges that those "bad workmen" who "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" are guilty of illegitimately restricting the liberty of others. The claim about markets in general is that "trade is a social act," insofar as the losers in market competition are harmed by the winners (Mill 1977: 293). As trade isn't self-regarding, LP doesn't forbid society to regulate it.

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These claims are contradictory because the labor market is a market like any other; workers compete in this market, and trade in labor is as much a social act as trade in small appliances. If "bad workmen" are harmed by the practice of piecework – and Mill never denies that they are – then LP doesn't prevent society from forbidding its use. That LP permits society to forbid piecework doesn't mean that society should, of course. And it certainly doesn't mean that workers are justified in threatening violence to discourage their fellows from accepting payment by the piece. Mill could easily have defended the practice of piecework and criticized its opponents' use of intimidation without depicting attempts to prevent its use as violations of LP. This makes his self-contradiction a surprising unforced error.

Riley, however, denies that Mill is guilty of self-contradiction. In his view, if piecework takes the only form that Mill would endorse, for some workers to participate in the practice would not harm anyone else. Riley describes a version of piecework that he says qualifies as self-regarding:

> At the first stage, the worker sells his labor at the competitive market wage, over which he and the individual employer have no perceptible control. This hourly or daily wage rate is set by the multiple buyers and sellers of labor competing in the market, and the individual employer or worker must accept that wage rate if free and fair competition truly exists. It tends to be proportional to the marginal physical productivity of labor in the job at hand, which for convenience can be equated with average productivity (as Miller assumes) and normalized so that it equates to a market wage per unit of output produced by workers in the occupation. At the second stage, after the market trade is completed and he has secured a job at a competitive wage, the skilled worker can agree to do piecework at the invitation of his employer, without directly causing any non-consensual harm to anyone else. The piecework rate is at the same competitive market wage per unit and thus does not alter the market wage paid to skilled and unskilled workers alike. Nobody loses their job which has already been allocated in the market trade contract concluded between the employer and workers. And neither the employer nor the skilled worker is forced to do piecework: the employer only agrees to piecework if he estimates that demand exists for the increased units of output produced through piecework, and the skilled worker only agrees if he wishes to get the increased pay per hour or day which his superior productivity makes possible for him (Riley 2024: 307).

Riley adds that:

> There are really two distinct contracts at work in this situation. A trade contract exists according to which the employer hires workers at a competitive market wage of, say, $20 per hour .... Once the trade is completed and he has a job, a skilled worker can agree to a separate self-regarding piecework contract with his employer. Under the piecework contract, he might agree to produce, say, three units of output per hour at the same rate of $20 per unit as all workers receive under the trade contract. ... That the piecework contract is separate from the trade contract under competitive conditions is also clear from the fact that the employer is not obligated to offer piecework to all workers who have a job with him and, even if he does offer it to all, they are free to refuse the offer without any danger of losing their jobs secured under the trade contract (Riley 2024: 307).

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We can call this putatively self-regarding version of piecework the "two-contract" model.

An example illustrates how Riley sees this model's working in practice:

> Suppose the owner of a textile factory wishes to hire workers to make shirts at a competitive hourly wage rate, which she learns is $30 for an eight-hour day from observing wage price signals in the competitive labor market. The average shirt-maker is assumed capable of producing two shirts an hour as a requirement of the job in this industry. Given her rough estimates of expected demand for her factory's shirts, the employer hires 100 workers at a total cost of $24K per day, expecting to earn a normal profit of $500 per day net of all expenses. . . . She soon learns that demand is higher than she expected, however, and so she offers to pay her skilled workers $15 per shirt if they produce four shirts an hour. A skilled worker who accepts the piecework contract and actually makes four shirts per hour now earns $60 per hour, twice what an unskilled worker earns. But this higher hourly rate reflects the same competitive per unit rate as the unskilled workers earn for producing two shirts per hour. No unskilled workers are harmed; none lose their jobs secured by the trade contract (Riley 2024: 309).

Even if one accepts that piecework is self-regarding when it follows this model, one might question whether this suffices to acquit Mill of self-contradiction. The two-contract model seems to be a special case, a complicated and cumbersome form that piecework *could* take but not one that it *must* take. It has several distinctive features that don't seem to be necessary parts of piecework, e.g., workers' being offered piecework only after they have already accepted payment by the hour or day, their having a free choice whether to be paid by the piece, and a specific way of determining the piece rate. Mill's characterization of piecework as a "private concern" seems to make a broader assertion that extends beyond this special case and still contradicts his characterization of trade as a social act.

Riley, however, takes Mill to be presupposing that piecework will follow the two-contract model when he calls it a private concern. The evidence for Riley's reading is indirect. Riley doesn't cite any passage, in *On Liberty* or elsewhere, where Mill describes the two-contract model. Nor does he offer any examples of the model's being employed that might have shaped Mill's understanding of piecework. In fact, Riley admits that he's not aware of any historical or current examples of the two-contract model's being implemented (Riley 2024: 309).

However, Riley correctly notes that Mill recognizes that piecework can become exploitative when the price per piece drops too low. Further, he makes the reasonable assumption that if an employer were treating their employees unjustly Mill would not regard this to be a private concern, so that when Mill describes piecework as self-regarding he must be presupposing that pieceworkers are being compensated fairly. Riley then makes a further assumption, which is that Mill believes that pieceworkers would be exploited unless they were paid as much per unit produced as an average worker paid by the hour receives, the same "competitive per unit rate." In consequence, Riley concludes, Mill must be assuming that the pieceworkers are being paid this much when he describes piecework as self-regarding (Riley 2024: 308–9). This is how much they're paid on the two-contract model, and at this rate per piece, an employer has no incentive to replace less-talented workers paid by the hour with more-talented workers paid by the piece. For an employer to pay her most talented workers by the piece therefore doesn't threaten anyone else's employment.

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Riley's analysis suffers from two fatal weaknesses. First, he fails to establish that Mill is implicitly presupposing the two-contract model when he labels piecework a private concern. Mill does recognize that piecework can be exploitative, with workers paid too little per piece, and no doubt he is presupposing in *On Liberty* that the workers being paid by the piece are being treated justly. However, Mill never says that workers would be exploited if their pay per unit is lower than that of an average worker receiving an hourly wage, and it's doubtful that he thinks so. He describes a scenario in which workers are exploited, but it's one in which their rate per piece is far less than this. In his posthumously published *Chapters on Socialism*, after observing that piecework is unpopular with the working class, Mill allows that

> there is really good ground for their dislike of piecework, if, as is alleged, it is a frequent practice of employers, after using piecework to ascertain the utmost which a good workman can do, to fix the price of piecework so low that by doing that utmost he is not able to earn more than they would be obliged to give him as day wages for ordinary work (Mill 1967: 743).

Suppose that in Riley's example the factory owner set a piece rate of only $7.50 per shirt, so that superior workers paid by the piece could make only the same $30 per hour that they were making when they were paid by the hour. *That* is what Mill calls exploitative. I don't mean to attach undue weight to that precise figure; Mill might consider $8 per shirt exploitative, too. But Riley offers us no reason to suppose that Mill would consider $14 per shirt to be an unjust rate, even though an owner paying this much would have an incentive to replace less-talented hourly workers with more-talented workers paid by the piece.[1]

Riley's example also illustrates the second problem with his analysis, which is that the factory owner's adoption of piecework wouldn't be self-regarding even if she did employ the two-contract model. People would still be harmed without their consent.[2]

[1]Riley mentions what might be seen as another reason for thinking that Mill is presupposing the two-contract model. This is that while LP allows society to regulate trade, it does not allow it to prohibit the self-regarding "post-trade" use of commodities once they have been purchased. Riley writes that "Miller fails to appreciate the crucial distinction between trade of labor, which is social conduct, and post-trade use by the buyer of the labor he has purchased, which can be self-regarding conduct" (Riley 2024: 307). His point seems to be that while LP permits society to regulate factory owners' initial "purchase" of employees' labor via an hourly contract, it does not permit it to prevent owners from later converting hourly workers to pieceworkers, since this is a self-regarding use of what had already been purchased. This distinction seems like a red herring in this context, however, for three reasons. First, converting hourly workers to pieceworkers would not be the post-exchange consumption of something already purchased, like drinking the wine one bought. Rather, it would be cancelling one exchange and initiating another on new terms, and so still on the "trade" side of the distinction. Second, whether paying some workers by the piece would harm others in no way depends on whether the practice is limited to workers who were initially hired by the hour. Finally, third, if this distinction really were the key to understanding why Mill believes that LP protects piecework from social interference, then it is hard to account for the fact that not once in his several references to piecework does Mill ever allude to the importance of hiring workers to hourly or daily contracts initially.

[2]I presuppose here that negative effects on individuals' finances constitute harms. I take this to be a point of agreement between Riley and myself, and in general I do not believe that there are any major disagreements between us in terms of how Mill understands harm. In earlier work, Riley states that Mill believes that

> harm is something other than mere dislike, namely, "perceptible damage." It may appear in myriad forms, including physical injury (not excepting death), forcible confinement, financial loss, damage to reputation, broken promises (contractual or otherwise) and so on (2015: 125).

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When Riley asserts that no unskilled workers would be harmed if the owner offered her more capable workers the option of piecework via the two-contract model, he restricts his attention to her current employees: "No unskilled workers are harmed; none lose their jobs secured by the trade contract" (Riley 2024: 309). Yet her current employees aren't the only people who might be affected. If Riley's factory owner hadn't turned to piecework to meet her increased demand, she would have needed to hire additional workers. The losers from her adoption of piecework therefore include the individuals who would have filled these new jobs. It may not be possible to know precisely who would have been hired under counterfactual conditions, but we can know that someone would.[3]

Contra Riley, the factory owners' less skilled current employees would likely be harmed as well. The best workers' moving to piecework will tend to lower the hourly wages of the remainder. I made this point in my original note, albeit in a compressed footnote (Miller 2023: 317, n. 26). It may be useful for me to spell it out in more detail.

Imagine Riley's shirt factory at the time when all workers are paid by the hour. On average, workers make two shirts an hour, but some make a bit more and some a bit less. Probably no one makes four shirts an hour; even the talented workers who could sew that quickly aren't motivated to work so hard. But likely they are sufficiently motivated to do more than the bare minimum that will let them keep their jobs. In the early editions of the *Principles of Political Economy*, Mill observes that workers have incentives to demonstrate that they are more capable than average even when employers don't pay by the piece: "They have a strong inducement, that of gaining a character as workmen, which may secure them a preference in employment; and they have often a hope of promotion and of rising in the world" (Mill 1965: 980). So perhaps they make two and a half shirts per hour, or even three.

Now suppose that the most skilled workers convert to being paid by the piece. Consider the pool of workers who are still paid by the hour. It won't be true any longer that they produce two shirts per hour on average, since the fastest-working workers are no longer part of the pool. But when you have a pool of workers paid the same hourly wage, their average productivity will put an upper limit on what their employer is willing to pay. So when the pool's average productivity drops, because the best workers have been taken out of it, the bargaining position of the workers paid by the hour worsens. Over time, this will likely result in their real wages declining.[4]

In earlier work of my own, I contend that Mill understands harm in terms of damage or definite risk of damage to a person's interests, including financial interests (Miller 2010: 117–22). If the conceptions of harm that we attribute to Mill aren't identical they're at least in the same neighborhood, and both support the conclusion that if an employer's adoption of piecework would have the effects that I contend then it would harm some individuals without their consent.

[3]If she couldn't hire more unskilled workers for some reason, then this would create an opening for her competitors, and so these competitors would be harmed by her adoption of piecework. If no shirtmaker could meet the demand then consumers who were disappointed in their desire to buy a shirt would have money to spend on other goods, and so her adoption of piecework would harm the purveyors of these goods (and perhaps the consumers as well).

[4]Note, by the way, that even if a single employer's conversion of their best workers to piecework didn't tend to lower the wages of their remaining workers, since they could still demand the prevailing market wage, the widespread adoption of piecework by many employers would tend to drive down the market wage of inferior workers. So it would remain true that a social prohibition on piecework would do something to protect individuals from being harmed without their consent (whether or not this prohibition would be justified on balance).

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In sum, we have no reason to believe that Mill has Riley's two-contract model in mind when he characterizes piecework as a private concern. Moreover, an employer's adoption of piecework wouldn't be self-regarding even if they conformed to this model. Thus, I reach the same conclusion that I did previously: Mill's characterization of piecework as a private concern contradicts his characterization of trade as a social act.

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