Between Autonomy and State Regulation: J.S. Mill's Elastic Paternalism

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Abstract
This paper analyses J.S. Mill's theory on the relationships between individual autonomy and State powers. It will be argued that there is a significant discrepancy between Mill's general liberal statements aimed to secure individual largest possible autonomy and the specific examples which provide the government with quite wide latitude for interference in the public and private spheres. The paper outlines the boundaries of government interference in the Millian theory. Subsequently it describes Mill's elastic paternalism designed to prevent people from inflicting harm upon others as well as upon themselves, from soft paternalism on issues like compulsory education to hard paternalism on very private matters such as marriage, having children, and divorce by consent.

> Human nature is not a machine to be built after a model, and set to do exactly the work proscribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.
>
> J.S. Mill, 1859

Introduction

Liberalism holds that autonomous individuals who are capable of acting rationally and deliberately, of being self-governed and self-controlled rather than subordinated to external forces and inspection, are entitled equally to a respectful treatment. Two requirements have to be fulfilled in order to enable the development of individuality: first, there is synergy between the ends of individuals and the ends of the State; the end of the State is the development of the character.[2]

[1] I thank Daniel Callahan, Wayne Sumner, Steve Newman and the editors of *Philosophy* for their constructive comments.

[2] Michael Freeden, *The New Liberalism* (Oxford: Clarendon Press, 1978), 171.

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Second, the individual must be able to share equally in deciding what is essential for the flourishing of society. She also must not view herself as an isolated object who is interested only in herself, but as an object who could satisfy her needs and ambitions, and accomplish self-realization in the community, through community and with the help of others. The individual lives within a certain social framework and has to respect those who share with her the benefits of democracy.[3] Extreme individualism, i.e. egoism, is rejected. As Hobhouse writes: 'Democracy is not founded merely on the right or the private interest of the individual. This is only one side of the shield. It is founded equally on the function of the individual as a member of the community. It founds the common good upon the common will, in forcing which it bids every grown-up, intelligent person to take a part.'[4]

Liberal social democracies assume responsibilities for many activities that were in the past under the control of separate organizations. The State provides social services and engages in economic activities that were formerly done by smaller associations. Governments take upon themselves to initiate and to perform policies designed to promote the welfare of their citizens, and to lead their societies to further progress. In their capacity as an umpire, social liberal democracies/welfare states assist other associations by giving them legal recognition and, when they see it right, impose on them certain limitations and duties. The justification that is usually given for these regulations is that they are necessary for the protection of the citizens' liberties. The creation of governmental monopolies is similarly vindicated by saying that it is being done 'for society's benefit'. Subsequent privatization of the same major companies is also done 'for society's benefit'.

Increasing the public good might thus entail the danger of limiting the liberty enjoyed by citizens to lead their lives as they choose. The difficulty lies in deciding the level of interference in the citizen's life. In this context, three major questions are pertinent: in what spheres interference in one's affairs may be warranted; for what reasons, and whether the citizen has a private sphere which is immune to interference.

[3] Ronald Dworkin, 'Liberalism', in *A Matter of Principle* (Oxford: Clarendon Press, 1985), 181–204.

[4] L.T. Hobhouse, *Liberalism* (London: Oxford University Press, 1945), 228. Hobhouse maintained that there is no thought except in the mind of an individual thinker, and there is no such thing as a unitary social mind or will: only individuals, not society, have a distinct personality.

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The claim or the right of society to exercise certain powers over the individual, as well as the counter-argument of the individual to have certain powers secured by the state, rest on the justification that these powers are necessary for the fulfillment of the citizen's vocation as a moral being, to the development of her capacities and liberties. The danger is, of course, that not only society via its social mores but also the government would invade every field and sphere of life, exploiting its powers to coerce the individual rather than allowing her sufficient latitude to pursue her conception of the good.[5] The following discussion is dedicated to this problem. I shall first consider the boundaries of state interference; I proceed by focusing on the subject of paternalism. These subjects are inter-related; both might introduce dangers to the citizens' well-being as well as to democracy itself.

In considering the complexity or, rather, the pros and cons involved in this issue, I shall avail myself of the Millian theory. Mill started by formulating in general terms his rejection of state interference in public life. Then, in the following discussion, he reviewed every sphere of action separately, adopting specific suppositions for every single case with the result of curbing his general principle to a considerable degree. Thus, while Mill was against extending the scope of political authority since he suspected that this might involve the use of compulsory powers, Mill nevertheless welcomed labour legislation, supported aid to voluntary groups, and advocated governmental responsibility for some services which concerned the public at large, services which individuals found no interest to run. Moreover, in specific matters Mill did not trust individuals to know how to conduct their personal affairs in a fully rational way, thus he allowed latitude for intervention. His elastic paternalism stretches from prescribing compulsory education to very personal matters such as preventing unripe marriage, prescribing birth control and discouraging divorce by mutual consent.

Mill carefully parsed the distinction between government and society and considered each to pose a distinctly different threat to individual freedom. In the opening chapter of *On Liberty* he explicitly warns against conflating the two. The tyranny of majority was

[5] A conception of the good comprises a basic part of our over-all moral scheme and that it is public in the sense that it is something one advances as good for others as well as oneself, consequently one would want others to hold a certain conception for their own sake. For further discussion on this issue, see John Rawls, 'The Priority of Right and Ideas of the Good', *Philosophy & Public Affairs* **17** (4) (1988), 251–276; R. Cohen-Almagor, 'Between Neutrality and Perfectionism', *Canadian Journal of Law & Jurisprudence* **VII** (2) (1994), 217–236.

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considered to be 'operating through the acts of the public authorities'[6] before insisting that 'reflecting persons' now see 'when society itself is the tyrant… its means of tyrannizing are not restricted to acts which it may do by the hands of its political functionaries.'[7] Moreover, this 'social tyranny' is not only distinct from 'political oppression' but is far more insidious, precisely because it leaves 'fewer means of escape, penetrating much more deeply into the details of life', and has as its objective the enslavement of the individual's 'soul'.[8] There is a limit to the legitimate interference of collective opinion in one's life, and while finding that limit is complicated yet it is most necessary as protection against political despotism.

Ideally, it is possible to discern between one's conduct that *affects only oneself*, and one's conduct that *may affect others*. If this distinction made possible, the guiding principle were quite simple: Individuals will be left free (with some qualifications, see below) to master all affairs that concern only the person in concern, and there will be room for interference when affairs are other-regarding. Alas, most affairs have *some* bearing on others. Indeed, it is almost impossible to think of pure self-regarding conduct. And then, 'As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion.'[9] Thus Mill opened a lengthy discussion on the complexity of the subject, providing many examples to clarify and untangle the entanglement but, at the end, achieved very modest success in his clarification attempts. While appreciating the Millian Herculean efforts, at the end of the day one wonders whether the distinction is at all viable and worth the effort.

Boundaries of interference

General Principles

The main question that Mill had put to himself to answer in *On Liberty* was: What were the limits of power which could be legitimately and justifiably exercised by society over the individual?

[6] J.S. Mill, *On Liberty,* 68. All references to *On Liberty* and to *Representative Government* are to the Everyman's edition of *Utilitarianism, Liberty and Representative Government* (London: J.M. Dent., 1948).
[7] Ibid.
[8] Ibid.
[9] J.S. Mill, *On Liberty*, 132.

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In Chapter IV, *Of The Limits to the Authority of Society Over the Individual*, Mill defended the right of the individual in the private sphere on utilitarian grounds, insisting that if society interfered it was bound to be in an erroneous way, and that it would not be for the citizen's benefit: 'But the strongest of all the arguments against the interference of the public with purely personal conduct is that, when it does interfere, the odds are that it interferes wrongly, and in the wrong place.'[10]

In Chapter V, *Applications*, Mill presented objections to government interference, arguing that there was no one so fit to conduct any business, or to determine how or by whom it should be conducted, 'as those who are personally interested in it'.[11]

Furthermore, it was desirable that citizens would conduct their own affairs, as a means to their own mental education – 'a mode of strengthening their active faculties, exercising their judgment, and giving them a familiar knowledge of the subjects with which they are thus left to deal.'[12] Education meant for Mill the cultivation of the intellect, of moral powers, and of aesthetic. Education is not to *teach,* 'but to fit the mind for learning from its own consciousness and observation'.[13] The reasoning is: A good government cultivates moral education; moral education makes human beings moral, thinking people who do not merely act as machines and, in the long run, makes people to claim control over their own actions and inspires them to intensely seek the truth.[14]

Finally, the most cogent reason for objection to such an interference was 'the great evil' of adding unnecessarily to the power of government, both in the form of authority, and still more, in the indirect form of influence: 'Every function superadded to those already exercised by the government causes its influence over hopes and fears to

[10] J.S. Mill, *On Liberty,* 140.

[11] Ibid., 164.

[12] Ibid. For further discussion, see R. Cohen-Almagor, 'Ends and Means in J.S. Mill's Utilitarian Theory', *The Anglo-American Law Review* **26**(2) (1997), 141–174.

[13] J.S. Mill, 'On Genius', in John M. Robson and Jack Stillinger (eds.), *The Collected Works of John Stuart Mill, Volume I – Autobiography and Literary Essays* (Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1981), http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=242&Itemid=28

[14] J.S. Mill, *Representative Government*, 207; *idem,* 'Civilization', in *Dissertations and Discussions* (N.Y.: Haskell House Publishers, 1973), Vol. I, 201.

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be more widely diffused…'[15] Mill, like many liberals, was suspicious of the government, very cognizant of its powers and tendency to exaggerate and to overstep its conduct beyond necessary when exaggeration deemed to yield partisan benefits.

Against the general principles against government interference Mill pitted government's responsibility to promote happiness. Generally speaking, whenever there was a probability that by interference the government would impede individual's development, it should not interfere. Since this probability was usually present, governments – as a rule – should not intervene in the business of the individual. Moreover, governments should encourage all segments of the community to manage their joint concerns by voluntary cooperation. Thus it appeared that the general principles supplement one another and can be reconciled. But then Mill went on to qualify his arguments, explaining that there were cases in which the reasons against interference did not turn upon the principle of liberty.

Qualifications

Mill wrote: 'the question is not about restraining the actions of individuals, but about helping them; it is asked whether the government should do, or cause to be done, something for their benefit, instead of leaving it to be done by themselves, individually or in voluntary combination.'[16] Moreover, against the 'evil' of adding unnecessarily to the power of government we need to weigh the 'evil' that someone might wish to impose on us which can be alleviated only by government interference. Mill consistently wrote that such interference was justified if the conduct to be deterred was harmful to others: '… the conduct from which it is desired to deter him must be calculated to produce evil to some one else.'[17] Mill insisted on the idea of prevented evil and harm to others, resorting to different phrases: 'affects prejudicially the interests of others',[18] and 'damage, or the probability of

[15] Mill, *On Liberty,* 165. In *Principles of Political Economy* (London: Longmans, Green, Reader and Dyer, 1869), Bk. V, Mill wrote: 'Every additional function undertaken by the government, is a fresh occupation imposed upon a body already overcharged with duties. A natural consequence is that most things are ill done.' (570)

[16] J.S. Mill, *On Liberty*, 164.

[17] Ibid., 73.

[18] Ibid., 132.

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damage, to the interests of others.'[19] Citizens and government alike have the freedom to unite for any purpose not involving harm to others, and to prevent harm to others.

Thus, one should not rule out governmental interference for the benefit of the individual as a rule of thumb. Instead, we should consider the specific applications as they conjoin with the given circumstances. Mill distinguished in *Political Economy* between two kinds of governmental intervention: first was the authoritative, meaning that government may interdict all persons from doing certain things; or from doing them without its authorization; or may order them certain things to be done, or a certain manner of doing things which it was left optional with them to do or to abstain from.

The second kind of interference was when a government adopted the course of giving advice or promulgating information, or when, 'leaving individuals free to use their own means of pursuing any object of general interest, the government… establishes… an agency of its own for a like purpose.'[20]

Mill maintained that the authoritative form of government interference had a much more limited sphere of legitimate action than the non-authoritative. It required stronger justification in every case, and from many instances of human conduct it was all together excluded.

There is a conflict between the Utility Principle when this meant enriching autonomy and individuality, and the Utility Principle when this meant government's responsibility to enrich general happiness. An orthodox utilitarian would agree to intervene with one's freedom against one's will if by this public happiness would be enriched. Although Mill generally resisted this opinion, he could not reject it altogether. He thought that the best way to qualify his general rule of non-interference was by proscribing specific spheres where interference was legitimate, though it might concern the most private life of the individual. Mill was careful to write that in 'the great majority of things' the individual should be left alone to take care of her own business.[21] 'Great majority' does not mean everything. There were prominent cases which preoccupied Mill, where government interference was even welcomed. On some issues, only the government acts for the public good. On some other matters, only the government knows a person's interests better than the person herself.

[19] Ibid., 150.
[20] J.S. Mill, *Principles of Political Economy*, 568.
[21] Ibid., 571.

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1. Necessary and optional functions

In *Principles of Political Economy*, Mill distinguished between necessary and optional functions of government, explaining that by the term 'optional' it was not meant to imply that it could ever be a matter of indifference, or of arbitrary choice, whether the government should or should not take upon itself the functions in question; but only that the expediency of its exercising them did not amount to necessity, and was a subject on which diversity of opinion did or might exist. Mill went on saying that the ground of the practical principle of non-interference was that most persons took a just and more intelligent view of their own interest, and of the means of promoting it, than can either be prescribed to them by a general enactment of the legislature, or pointed out to them by any public functionary. Nevertheless, there were 'some very large and conspicuous exceptions to it',[22] which included taking care of lunatics, idiots, children, and animals as those who were not capable of rationally deciding upon their own interests; government intervention when owners decided to delegate authority to managers who had no interest in the success of the enterprise; legislation allowing legitimate interests of workers to be pronounced through the formation of trade unions; colonization; the maintenance of a learned class,[23] and a multitude of enterprises which were conducive to general convenience. These enterprises are of little interest to the general public or are such that people are unable to undertake due to their high cost. Yet they are absolutely essential for progress thus the government must make provision for them. These included coining money, prescribing a set of standard weights and measures, making and improving harbours, raising dykes, geographical and scientific expeditions, security for navigation, research involving assiduous devotion of time and labour, and the like.[24] In addition, public charity[25] and public services, such as

[22] J.S. Mill, *Principles of Political Economy*, 577.

[23] J.S. Mill, *Principles of Political Economy*, 482, 577, 578, 564–566, 580–581, 583, 585. Some of these cases are mentioned also in 'Coleridge', *Dissertations and Discussions* (N.Y.: Haskell House Publishers, 1973), I, 454. and in 'Thornton on Labour and Its Claims', in G.L. Williams (ed.) *J.S. Mill on Politics and Society* (Glasgow: Fontana, 1976), 303–334.

[24] J.S. Mill, *Principles of Political Economy*, 589–590. See also John M. Robson, *The Improvement of Mankind* (Toronto: University of Toronto Press, 1968), 217.

[25] J.S. Mill, 'The Grounds and Limits of the Laissez-Faire or Non-Interference Principle', in Ronald Fletcher (ed.), *John Stuart Mill* (London: Michael Joseph, 1971), 329.

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cleaning of the streets, lighting, paving, water supply, etc., all of which should be taken over by the State. Enterprises such as the operation of canals and railways should be the property of the State, but it was best to allow independent agencies to work them: '…they will almost always be better worked by means of a company, renting the railway or canal for a limited period from the state.'[26]

Mill concluded by offering the following generalization:

> … anything which it is desirable should be done for the general interest of mankind or of future generations, or for the present interests of those members of the community who require external aid, but which is not of a nature to remunerate individuals or associations for undertaking it, is in itself a suitable thing to be undertaken by government.[27]

Mill was quick to qualify his generalization by recommending:

> … though, before making the work their own, government ought always to consider if there be any rational probability of its being done on what is called the voluntary principle, and if so, whether it is likely to be done in a better or more effectual manner by government agency, than by the zeal and liberality of individuals.[28]

Thus, whenever the government provides services which people are free to use if they so choose, then its conduct does not restrict anyone's freedom; non-coercive government performances which are for the benefit of all are justified.

2. Education

Governments must provide proper facilities for education designed for the benefit of society as a whole, but it must not control all educational institutions: 'The case is one to which the reasons of the non-interference principle do not necessarily or universally extend.'[29] At the same time, Mill who objected to monopolies on principle was consistent in his objection also in this sphere. Private education should be allowed.[30] Mill was in favour of compulsory education which contradicted the freedom one enjoyed in choosing for oneself and one's children the form and level of education.

[26] J.S. Mill, *Principles of Political Economy,* Bk. V, 482, 581, 589.
[27] Ibid., 590.
[28] Ibid.
[29] J.S. Mill, *Principles of Political Economy,* Bk. V, 575.
[30] Ibid., 577.

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Education is both a means towards liberty and one of the ends for which liberty existed.[31] Education is essential for good government,[32] and for according equal rights to man and women.[33] Furthermore, education is beneficial to the child and also to society because it teaches the child social norms which are useful to all. Mill did not advocate compulsory education of adults.

Indeed, welfare states commonly reason today that they know better what is good for their citizens, thus enforcing a certain level of education upon them. This compulsory education may seem to be an invasion on the individual's rights, but it can be defended on the grounds that, in final analysis, it may guarantee more freedom than it destroys. For if ignorance may be viewed as a sort of unfreedom, education increases the number of alternatives open for a person to pursue her interests. This kind of governmental coercion is justifiable for it opens for the individual more paths for liberty in the long run.

At the same time, Mill insisted that the parents, especially fathers, were responsible for the proper education of their children. He suggested fixing a certain age at which every child must be examined, ascertaining reading ability. If the child was unable to read, the father must explain why his child was unable to meet the requirement, and if the explanation deemed to be unsatisfactory he 'might be subjected to a moderate fine.'[34] In Mill's time, people were not sufficiently cognizant of learning deficiencies. Present common problems such as dyslexia[35] were unknown and obviously were not diagnosed during the 19th Century.

3. Perpetual contracts

Governments may control, through legislation, contracts in general, especially those in perpetuity. For it is not enough that one person,

[31] G.C. West, 'Liberty and Education: J.S. Mill's Dilemma', *Philosophy* **40** (April 1965), 129–142.

[32] J.S. Mill, *Representative Government* and 'Thoughts on Parliamentary Reform', in *Dissertations and Discussions* (London: Longmans, Green, Reader & Dyer, 1859), Vol. **III**, 1–46.

[33] J.S. Mill, 'The Subjection of Women', in *Three Essays* (Oxford: Oxford University Press, 1975), 427–548.

[34] J.S. Mill, *On Liberty,* 162. See also Ibid., 160.

[35] *Dyslexia* is a common type of learning difficulty that primarily affects the skills involved in the reading and spelling of words. http://www.nhs.uk/Conditions/Dyslexia/Pages/Introduction.aspx; http://www.easyread-system.com/index/62.php; http://www.dyslexiaaction.org.uk/

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not being either cheated or compelled, makes a promise to another. There are promises by which it is not for the public good that persons should have the power of binding themselves, although this conduct is purely self-regarding in character. Thus there remain the questions 'Whether, for example, the law should enforce a contract to labour, when the wages are too low, or the hours of work too severe; whether it should enforce a contract by which a person binds himself to remain, for more than a very limited period, in the service of a given individual; whether a marriage vow, entered into for life, should continue to be enforced against the deliberate will of the persons, or of either of the persons who entered into it.'[36] Mill summarized his argument by saying that every question which could possibly arise as to the policy of contracts was a question for the legislator, which she could not escape from considering.[37]

Thus, in cases of perpetual contracts, the presumption that individuals know their own private interests better than others does not hold. Mill's most prominent example in this context concerned slavery contracts. He urged that one did not have the right to impede one's own freedom in an irreversible way, which definitely meant that one's self-development, one's personal sovereignty, would be damaged. Any contract of even a voluntary servitude would be null and void, for by selling oneself to slavery, one abdicates one's liberty, defeating the very purpose which is the justification of allowing one to dispose of oneself: 'The principle of freedom cannot require that he should be free not to be free. It is not freedom to be allowed to alienate his freedom.'[38] Liberty does not mean that

[36] J.S. Mill, *Principles of Political Economy,* Bk.V, 481. In *On Liberty*, Mill supported his argument by Humboldt's writings, reminding of the latter's statement that engagements which involved personal relations or services should never be legally binding beyond a limited duration of time, and that 'the most important of these engagements, marriage… should require nothing more than the declared will of either party to dissolve it' (158).

[37] J.S. Mill, *Principles of Political Economy,* Bk.V, 481. For further discussion, see G.L. Williams, 'Mill's Principle of Liberty', *Political Studies* **24** (1976), 132–140; Richard Wollheim, 'John Stuart Mill and the Limits of State Action', *Social Research* **40** (1) (1973), 1–30; Nadia Urbinati and Alex Zakaras (eds.), *J.S. Mill's Political Thought: A Bicentennial Reassessment* (Cambridge: Cambridge University Press, 2007).

[38] J.S. Mill, *On Liberty*, 158. For further discussion, see R.J. Arneson, 'Mill versus Paternalism', *Ethics* **90** (July 1980), 470–489; John D. Hodson, 'Mill, Paternalism and Slavery', *Analysis* **41** (1981), 60–62.

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every person, regardless of character or capacity, should claim to do as she pleases without respect to the common good.[39]

Mill implicitly assumed that one who decides to become a slave is not rational enough to have full responsibility of one's future life. Therefore, the State was legitimate in not respecting such contracts, and in liberating the individual from the situation in which she entered without realizing its absolute implications. The State is also justified to require people to accept upon themselves certain civic obligations that benefit all society. As always, Mill tries to merge between the collective benefit and individual benefit. In promoting the view that it is legitimate to ask people to participate in protective social institutions, such as juries, military and the militia, Mill explained that there is an obvious civic utility but also that this service would enhance people's own mental education, strengthening their active faculties, exercising their judgment, and providing them with the required knowledge of the subjects they need to address.

Mill maintained that an exception to the doctrine that individuals are the best judges of their own affairs when 'an individual attempts to decide irrevocably now, what will be the best for his interest at some future and distant time.'[40] From this we may possibly deduce that Mill would object to medical living wills and advance directives. One's directives should not be predetermined and unchangeable but flexible, in accordance with the changing circumstances. We are not able to say that values and priorities that are important to us now will be as important to us until the very last day. The notion of an unchangeable, unified personality is doubtful. People do change and these changes may become meaningful to us in circumstances that we cannot envisage. Indeed, the very ideas of self-development and self-reflections reflect our ability and desire to construct and reshape realities, to re-evaluate values and ideas, to renounce old beliefs, and to accommodate ourselves to new situations.

Contra Mill, Ronald Dworkin assumes that people, as rational agents, may have certain attitudes regarding dementia and decide beforehand that some forms of life are repugnant, meaningless, and not worth living. In his opinion, people may try to assess how their situation might look in the future and decide on their

[39] Mary Agnes Hamilton, *John Stuart Mill* (London: Hamish Hamilton, 1933), 76; John Gray, *Mill on Liberty: A Defence* (London: Routledge and Paul, 1983), 94.

[40] J.S. Mill, 'The Grounds and Limits of the Laissez-Faire or Non-Interference Principle', 322.

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destiny according to the data they currently have on the demented state.[41] Similarly, Wayne Sumner commented (January 20, 2012) that for Mill what was objectionable about perpetual contracts was that they alienated the individual's later freedom. This objection presupposes a person who will later have the capacity to exercise that freedom (i.e., who will be competent) and whose will would then be constrained by her own earlier choice. Advance directives, by contrast, come into play only when the individual is no longer capable of exercising her freedom. As such, Sumner does not see how Mill could have any objection to them or at least not the same objection.

However, with Mill I think that people are not only thinking creatures. Not all factors can be grasped by our rational faculties. Not all data can be digested by applying reason and judgment. Sometimes we do things we could not imagine doing. Sometimes people act in accordance with their sentiments, rather than their brains. Sometimes people are pushed to do something by their instincts, their impulses, factors that they find difficult to explain in rational terms. On some occasions people are overpowered, overwhelmed by the reality they confront. They accommodate themselves to situations imposed on them.[42] Living life in the present situation as one wills is more important than living the life now in accordance with a contract prepared in the past under very different circumstances.

Indeed, we should acknowledge that a person's priorities are not always fixed, and, therefore, we should not renounce the idea of having the ability to change them. People are **not** prophets. We can appraise possibilities upon evidence, data, and experience, but we cannot know with absolute certainty that these assessments will prove to be true for us. Mill, like Aristotle, was of the opinion that people are capable to alter their character, and that we do so under the influence of certain circumstances, some of which we can control; others we cannot.[43] There are mutual relationships between people and circumstances: People change circumstances, and circumstances change people.

[41] Ronald Dworkin, *Life's Dominion* (NY: Knopf, 1993).

[42] R. Cohen-Almagor, *The Right to Die with Dignity* (Piscataway, NJ.: Rutgers University Press, 2001), chap. 5.

[43] J.S. Mill, *A System of Logic* (London: Longmans, Green, 1961), VI, II; J.S. Mill, *The Logic of the Moral Sciences* (London: Duckworth, 1987). For further discussion, see Alan Ryan, *John Stuart Mill* (NY: Pantheom Books, 1970), 106–107, 173.

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4. Birth control

Mill did not believe in the power of laws alone to shape society. The shaping of society is a matter of moral development. Birth control was both a matter for State interference and social stigma.[44] Mill was an ardent advocate of birth control. For him this was an issue about one's health, personal liberty and mental development. Mill suggested that society can be justified not only to prevent harm to others but also in requiring people to aid one another with various sorts of positive assistance. Indeed, in 1823, when Mill was seventeen, he went with a friend to visit the poor sections of London, professing and advocating the use of contraceptives.[45] From the fact that he did not mention this experience in his *Autobiography*[46] we can learn that he was not too proud of this act, or of the result, i.e., his arrest by the police for contravening laws on obscenity.[47] Mill held the view that one should consider the pros and cons in bringing children to the world in economical terms; that a family should bring children only if it had the means to support them. In his obsession with this issue, Mill rationalised that since no person had the right to bring creatures into life, to be supported by other people, laws which forbade marriage unless the parties can show that they had means of supporting a family, 'do not exceed the legitimate powers of the State' and 'are not objectionable as violations of liberty'.[48]

Mill's ideas should be considered in the context of his time, when young couples could not live together if they were not married. Such things were not to be done. Thus the State was able and, in Mill's

[44] J.S. Mill, *On Liberty*, 163.

[45] Josephine Kamm, *John Stuart Mill in Love* (London: Gordon & Cremonesi, 1977), 22–23; Jo Ellen Jacobs, *The Voice of Harriet Taylor Mill* (Bloomington: Indiana University Press, 2002), 13.

[46] J.S. Mill, *Autobiography* (Oxford: Oxford University Press, 1971).

[47] See the comprehensive work of Michael St. John Packe, *The Life of John Stuart Mill* (London: Secker & Warburg, 1954), Book 1, 56–58. See also R.J. Halliday, *John Stuart Mill* (London: George Allen and Unwin, 1976); William Thomas, *Mill* (Oxford: Oxford University Press, 1985); Nicholas Capaldi, *John Stuart Mill: A Biography* (Cambridge, UK: Cambridge University Press, 2004), and R. Cohen-Almagor, 'John Stuart Mill', in Clifford G. Christians and John C. Merrill (eds.) *Ethical Communication: Five Moral Stances in Human Dialogue* (Columbia, MO.: University of Missouri Press, 2009), 25–32.

[48] J.S. Mill, *On Liberty*, 163. For discussion on Harriet Taylor's views on marriage as related to J.S. Mill's views, see Jo Ellen Jacobs, *The Voice of Harriet Taylor Mill,* 21–23.

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opinion, legitimate to prevent unripe marriages. This is quite an intervention into one's private life. According to McCloskey, in a letter to Harriet Taylor, Mill also approved of social pressure to discourage the joint self-regarding act of divorce by mutual consent, where no other party is harmed.[49] The State knows better than the couples whether they should come into unity or divorce. The good of society precedes individual autonomy and liberty. Here, Mill's paternalism is hard, and is difficult to be reconciled with the grounds against government interference *supra,* and with Mill's statement that 'all restraint, *qua* restraint, is an evil'.[50]

Mill, the practical utilitarian, did not pay attention to emotional considerations which may lead to private priorities different from his. Sentiments such as 'children are joy', thinking that it may be of more importance for one to be surrounded with the noise of eight children and to live a modest life, than to live much more wealthy life with two kids and a dog, would have probably been rejected by Mill. He argued that Malthus was the great friend of the poor, for he showed them the 'right' way to live, and how they should help themselves in reducing their misery.[51] On this subject Mill implied that he and Malthus knew better than the common person what is good for her. We can safely assume that he would have welcomed the idea of paternalistic consulting offices for family planning.

Birth control is an important matter in which society and the government may intervene. Mill considered two other matters for social reproach on the individual and, if prove insufficient, might necessitate State intervention. Both have to do with offense, which supplements the Millian Harm Principle.

5. Social offences

The underpinning rational is that liberty is important but it must be contained. People cannot uphold liberty as a license to do as they

[49] H.J. McCloskey, *John Stuart Mill: A Critical Study* (London: Macmillan, 1971), 111. In *On Marriage*, Mill, however, objected to compelling a woman to remain in marriage if the perpetual contract between her and the husband enslaves the woman to her master. See http://oll.libertyfund.org/readinglists/print/177-john_stuart_mill_s_and_harriet_taylor_s_writings_on_women

[50] J.S. Mill, *On Liberty*, 150.

[51] John M. Robson, *The Improvement of Mankind* (Toronto: University of Toronto Press, 1968), 261. For discussion on utilitarianism and the classical economists – Adam Smith, Malthus and Ricardo – see John Plamenatz, *The English Utilitarians* (Oxford: Blackwell, 1966), 110–121.

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please with little thinking about the consequences of their conduct. If the conduct inflicts harm upon oneself, Mill advocated reproach. If the conduct inflicts harm upon others, then liberty needs to be restrained. Intervention in one's liberty is warranted if the benefits of doing so outweigh the costs. But from the slavery discussion it is clear that even if the benefits do not necessarily weigh the costs, still interference is justified because no one should be forced to surrender her liberty.

Mill also thought that the State may restrain individuals from thoughtless and irresponsible mistakes in major decisions of their lives that may concern others. While people should not be punished simply for being drunk, if they develop an addiction to such a bad habit (drinking, taking drugs, gambling, visiting prostitutes) they deserve reproach for their unkindness. Furthermore, if because of their addiction they are unable to pay their debts and could not undertake moral responsibility of their families, unable to support them and to educate their children, then they are deservedly reprobated and 'might be justly punished'.[52] People have some definite duties incumbent on them to the public and if they fail to perform them then they are guilty of a 'social offence'. In short, wrote Mill, whenever there is a definite damage, 'or a definite risk of damage', either to an individual or to the public at large, 'the case is taken out of the province of liberty, and placed in that of morality or law.'[53]

6. Indecent conduct

Mill allowed interference with indecent, offensive conduct which breaches good manners. It is one thing to undress in one's bedroom; it is quite another thing to appear nude in public. Indeed, Mill acknowledged that there are many actions that are not in themselves condemnable, nor supposed to be so, as long as they are done privately; but the moment they are done in public they come within the category of offences against others and then they rightly be prohibited.[54]

[52] J.S. Mill, *On Liberty*, 138.

[53] Ibid. Mill repeated this reasoning in p. 153. For further analysis, see D.G. Brown, 'Mill on Harm to Others' Interests', *Political Studies* **26** (1978), 395–399.

[54] J.S. Mill, *On Liberty*, 153. For discussion on the Harm and Offence Principles, see R. Cohen-Almagor, 'Harm Principle, Offence Principle, and the Skokie Affair', *Political Studies* **41** (3) (1993): 453–470; L.W. Sumner, 'Should Hate Speech Be Free Speech? John Stuart Mill and the Limits of Tolerance', in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance* (Ann Arbor: University of Michigan Press, 2000), 133–150.

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In reviewing Mill's abatements and exceptions to his apparent powerful general statement that 'neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it. He is the person most interested in his own well-being,'[55] it becomes quite difficult to determine exactly when the individual is *indeed* the best judge in her own interests; for even in the most private things the State is justified in interfering with the citizen's business. Moreover, the interference may not solely be to protect or promote the individual's own good, but also for the sake of society and future generations.

Mill's elastic paternalism

Traditionally, the term 'paternalism' has been used to refer to practices of treating individuals in the way that a father treats his children. The two assumed features of the paternal role are the father's beneficence, i.e., the father is assumed to hold the interests of his children paramount; and the father's authority, that is, that he makes certain decisions for his children and controls certain affairs rather than letting them make the decisions or take control.[56]

Loyal to his methodology which sets out simple underpinning principles, Mill believed that paternalism, as a general rule, was counterproductive, and that in the long run general welfare would be best served by non-interference. He also believed that paternalism tends to degrade people, to delay their growth and self-development, and to put obstacles on the discovery of truth.[57] However, we have seen

[55] J.S. Mill, *On Liberty*, 133.

[56] Cf T.L. Beauchamp, 'Medical Paternalism, Voluntariness, and Comprehension', in J. Howie (ed.), *Ethical Principles for Social Policy* (Carbondale, IL: Southern Illinois University Press, 1983). See also H.L.A. Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963); G. Dworkin, 'Paternalism', *The Monist* **56** (1972), 64–84; G. Dworkin, 'Moral Paternalism', *Law and Philosophy* **24** (3) (May 2005), 305–319; Cass Sunstein and Richard Thaler, 'Libertarian Paternalism Is Not an Oxymoron', *The University of Chicago Law Review* **70** (2003), 1166–1187; 'Paternalism', *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/entries/paternalism/.

[57] For critic of Mill's Truth Principle, see R. Cohen-Almagor, 'Why Tolerate? Reflections on the Millian Truth Principle', *Philosophia* **25**, Nos. 1–4 (1997), 131–152; K.C. O'Rourke, *John Stuart Mill and Freedom of Expression: The Genesis of a Theory* (London and NY: Routledge, 2001).

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that Mill allowed quite comprehensive criteria for interference. Thus it is difficult to view Mill as an anti-paternalism theorist. A helpful device for clarification in this context may be Joel Feinberg's distinction between weak and strong forms of paternalism.[58]

Feinberg asserts that the basis of paternalistic intervention is confined to the interests of the person with whom we interfere. According to the weak version we are justified in interfering with a self-harming conduct only when a person is not fully capable of grasping the meaning of her act; whereas by strong paternalism we are justified in interfering to prevent a person from harming herself even when her decision is fully voluntary.

From Mill's arguments and examples we may learn, adopting Feinberg's terminology, that he sometimes favoured a degree of weak, or it may be preferable to call it *soft paternalism,* but on some matters, such as unripe marriage and irresponsible divorce, he did not shrink from strong (or *hard*) paternalism. Thus, I suggest that Mill's paternalism may be best described as *elastic*. Mill endorsed soft paternalism when he exempted children and barbarians from his Liberty Principle and also when he allowed stopping a person from crossing an unstable bridge when we suspect that that person is oblivious to the risk.[59] But if the person, after being warned, choose nevertheless to cross the bridge, then we need to respect her decision. In the spirit of liberalism, Mill supported regulation rather than coercion or outright prohibition.

Another example with a similar reasoning relates to the use of poisonous articles. Mill acknowledged that those substances can be abused but an outright ban on their sale would make legitimate use impossible. Regulation, however, is in place due to the nature of the articles. Thus registration of purchasers, including a statement of intended use, is permissible. This is interference in one's freedom that does not challenge autonomy.[60] As long as such regulation is no material impediment to obtaining the dangerous articles, people are free to make their own decisions.[61] Mill held that the State had the right to prevent self-regarding harmful conduct only when it was substantially non-voluntary, or when temporary intervention was necessary to establish whether it was voluntary or not. He

[58] Joel Feinberg, 'Legal Paternalism', *Canadian Journal of Philosophy* **I** (1971), 105–124.

[59] J.S. Mill, *On Liberty,* 151–152. See also Dale E. Miller, *J.S. Mill* (Cambridge: Polity Press, 2010), 153.

[60] J.S. Mill, *On Liberty*, 152–153.

[61] Ibid., 151.

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generally opposed the strong version: 'with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else.'[62]

Mill's elitism

Mill maintained that interference of society to overrule one's judgement and purposes in what only concerned oneself must be grounded on general presumption, which might be altogether wrong, and even if right, it was as likely as not to be misapplied to individual cases. Mill seemed to have struggled with this issue as his liberalism came into conflict with his elitism. The common people, by virtue of being common, are prone to err, and they need some guidance offered by not-so-common people, i.e., the legislators who see the good of society and understand the broader, complex picture. Thus, Mill wrote, it is quite possible that people may demand the legislator's intervention in their affairs, and the 'regulation by law of various things which concern them, often under very mistaken ideas of their interest.'[63] Still, Mill maintained, this kind of intervention does not negate their liberty and autonomy because 'it is their own will, their own ideas and suggestions.'[64] For Mill, it is natural for the common people to respect superiority of intellect and knowledge and to defer to the intellectuals and society's knowledgeable people. Again, this is absolutely fine and does not negate the Liberty Principle and the fundamental belief in human autonomy because the people judge for themselves who are the persons who are entrusted by the powers to make decisions for them. Mill wrote in his straightforward, elitist fashion that was so natural to him:

> It is not necessary that the many should themselves be perfectly wise; it is sufficient if they be duly sensible of the value of superior wisdom. It is sufficient if they be aware, that the

[62] Ibid., 133. For further discussion, see C.L. Ten, 'Mill on Self-Regarding Actions', *Philosophy* **43** (1968), 29–37; Richard Wollheim, 'John Stuart Mill and Isaiah Berlin', in Alan Ryan (ed.), *The Idea of Freedom* (Oxford: Oxford University Press, 1979), 253–269.

[63] J.S. Mill, *Principles of Political Economy,* 459.

[64] Ibid. Although Mill did not use the term 'autonomy', he certainly had in mind a concept that relates to the ability to reflect upon beliefs and actions, and the ability to form an idea regarding them, so as to decide the way in which to lead a life.

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> majority of political questions turn upon considerations of which they, and all persons not trained for the purpose, must necessarily be very imperfect judges; and that their judgment must in general be exercised rather upon the characters and talents of the persons whom they appoint to decide these questions for them, than upon the questions themselves.[65]

Maurice Cowling explained that Mill wished to maximize happiness but not just any happiness; instead he wished to promote the higher forms of happiness, which is creative, imaginative, free from prejudice and from customary, habitual, conventional doctrine. People should be free to recognize reasoned authority. Liberty is designed to propagate the individuality of the elevated by protecting them against the mediocrity of opinion as a whole.[66] Domination by the higher minds is not hostile to utility but essential to it.[67] Convention, habit and custom were Mill's enemies. Mill dreaded them as they were recipes for mediocrity, which was Mill's true nightmare. Mediocrity hinders genius (i.e. people like him) and inhibits progress.

Mill's insistence that persons without the means to support a child may be prevented by the State from having children exhibits both paternalism and elitism. In conformity with his Liberty Principle, Mill could have insisted that parents have a responsibility for supporting the children they bring into the world. But Mill understood the facts of economic life to be such that in some (and perhaps many) instances the poor laborer would not be able to find any employment or employment at a wage adequate to the maintenance of a family. But this was not the only reason, for if it were Mill could have suggested that the State create a jobs program or be the employer of last resort. Mill, the elitist, did not trust the common people to be responsible enough to cater for their children, thinking that they would prefer satisfying their immediate pleasures (drinking, gambling etc.) over responsible parenthood.

[65] J.S. Mill, 'Appendix', in *Dissertations and Discussions*, Vol. I, 470. See also J.S. Mill, 'On Genius', 329–339, http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=242&chapter=7739&layout=html&Itemid=27.

[66] Maurice Cowling, *Mill and Liberalism* (Cambridge: Cambridge University Press, 1963), 104. For further discussion, see Rex Martin, 'A Defence of Mill's Qualitative Hedonism', *Philosophy* **47** (1972), 140–151; Robert F. Ladenson, 'Mill's Conception of Individuality', *Social Theory and Practice* **4** (2) (1977), 167–182.

[67] Cowling, Ibid., 36.

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Private v. public good

There are certain activities of the government which restrict the people's freedom to a certain extent but nevertheless are implemented so as to contribute to the civic society in general. When a certain government is trusted to act for the benefit of society, without exploiting its authority at the expense of its citizens, and its reasons are to increase the individual safety, to contribute to her well-being, and to defend her interests, then paternal acts would not harm the autonomy of the individual, but rather be instrumental to its improvement.

Moreover, the role of the State is not only to prevent one from inflicting harm upon others, but also from inflicting harm to oneself. Thus, for example, it has been argued that paternalism designated to affect matters that are regarded by all as having merely instrumental value, such as improving safety, makes the activities affected more likely to realize their aim, rather than interfering with one's autonomy. Such restrictions of liberty do not only have positive characteristics, but also carry some essential benefits for the maintaining of public good. Let me illustrate this assertion by considering the following quite simple but much to-the-point example.

Suppose that the Beverley Municipality decides to set a new traffic light near my home. In a certain sense, this act would restrict my freedom because now I cannot cross the road whenever I wish; now I have to consider the changing of lights. Nevertheless people (included myself) do accept this limitation on our freedom because people do understand that the decision was made for their own safety and for ensuring the public good. Even if they think that they know how and when to cross the road, and they believe that the setting of traffic lights would be a nuisance for them, they are willing to accept this regulation because they recognize that some people are not blessed with the capacity of making rational and safe judgement; this introduction of restriction on their freedom will be regarded as a trivial one in comparison to its contribution to the public good.

A much more complicated issue is the concern for the fastening of seat belts. Here the claim is that the State should take upon itself to secure one's life, health and security, even if one does not recognize, nor believes in the importance of certain policies, designed for one's own good. This subject may be considered as one of the striking examples of the idea of 'force her to be free', since here we are talking about matters of life and death. In many countries today seat-belts are installed in every car, and they are considered to be an indispensable part of the machine. But this is a relatively recent

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development. Up until the 1980s, many liberal democracies left this issue to the people's discretion. Every individual, as a rational adult who knows what is best for her, was left to decide for herself whether or not to use the seat-belt. Statistics from many Western democracies showed that during the 1970s many did not use the belt, and that people in general were not aware of the efficiency of this device and preferred not to bear the inconvenience involved in fastening themselves to their seats. Even today, some drivers see seat-belts as a nuisance that restricts their liberty and are not convinced that the belts are effective despite concrete evidence that seat-belts significantly decrease human fatalities.[68]

In most of these countries the governments have decided that they know better what is good for the health and lives of their citizens, and special ordinances were enacted that made the fastening of seat-belts compulsory. The high costs involved in caring for the injured in car accidents certainly played a significant part in putting the legislation in motion. Seat belts relieve public care systems of some of the costly burdens. Another common paternalistic act widely performed in welfare states which was discussed earlier and exemplifies that view is the concern for a certain level of education.

On the other hand, paternalism will raise active objection when a government would intervene in the very private spheres, where the individual alleges to know how to perform her own conduct better than any other person willing to do it for her, and even if she does not, still no evil is committed nor to others, neither to herself. Thus, while in the case of safety-belts paternalistic regulations are justified since they concern lives of others, not only the performer's life, in matters such as pornography the State is legitimate to encourage, and even to fight against this phenomena, but it cannot coerce individuals not to enjoy it in their private homes, as long as no

[68] See the data introduced by Karin Berard Anderson regarding the efficiency of seat-belts in securing lives, and the patterns of the use of safety belts prior to and after the enforcement of law. *Use and Effects of Seat Belts in 21 Countries* (Oslo: Inst. of Transport Economics, 1978); Gunilla Fhaner and Monica Hane, *Seat Belts: Relations between Belief, Attitude and Use* (The Swedish Road Safety Office, February 1973); L. Evans, 'The Effectiveness of Safety Belts in Preventing Fatalities', *Accid Anal Prev*. **18** (3) (June 1986), 229–241; Alma Cohen and Liran Einav, 'The Effects of Mandatory Seat Belt Laws on Driving Behavior and Traffic Fatalities', *The Review of Economics and Statistics* **85** (4) (November 2003), 828–843; Rocco Pendola, 'The Effects of Wearing Seat Belts', *eHow* (2010), http://www.ehow.com/list_6374409_effects-wearing-seat-belts.html

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personal harm to others is done.[69] For paternalistic activities in such spheres make the self-imposition of duties and morals an impossible performance for the individual, thus coming into contradiction with her fundamental freedoms.[70] Here we are facing the basic question concerning the inner discrepancy that lies between caring for one's well being, and restricting one's freedom. In any event, it should be emphasized that in any case of paternalistic legislation, the burden of proving the necessity of these laws lies on the government. The government has to explain what would be the effects of the legislation on society. This was Mill's stand regarding government interference with the economy, stating that in every instance the burden of making a strong case should be thrown not on those who resist but on those who recommend government interference. Non-interference, Mill maintained, should be the general practice, while every departure from it, unless required by some greater good, was a certain evil.

Mill's paternalism is exemplified also on the issue of gambling. Mill recognized that gambling might harm the individual as well as her family because this addiction might come at the expense of supporting the family. Mill thus advocated a responsible State conduct, prohibiting public gambling houses, yet he argued that people should be able to gamble in their own or each other's houses, or 'in any place of meeting established by their own subscriptions, and open only to the members and their visitors.'[71] Mill was struggling with this matter, and his proposed formula may be contested by liberals. After all, people freely choose to enter this institution, and no undue pressure on them can be said to be used. Mill's paternalism

[69] Feminists argue that pornography undermines the status of women in society and degrades them. Liberals insist on having a substantive proof that tangible harm was inflicted on an individual to prohibit such speech. All agree that no person should be coerced to participate or watch pornography. See the debate between Andrew Altman, 'The Right to Get Turned On: Pornography, Autonomy, Equality', in Andrew I. Cohen and Christopher Heath Wellman (eds.), *Applied Ethics* (Oxford: Blackwell, 2005), 223–235, and Susan J. Brison, '"The Price We Pay"? Pornography and Harm', in the same volume, 236–250. See also Ronald Dworkin, 'Do We Have A Right to Pornography?', in *A Matter of Principle* (Oxford: Clarendon Press, 1986), 335–372.

[70] For further discussion on the issue of pornography, see T.M. Scanlon, 'Freedom of Expression and Categories of Expression', *University of Pittsburgh Law Review* **40**(3) (1979), section V, and David Dyzenhaus, 'John Stuart Mill and the Harm of Pornography', *Ethics* **102**(3) (1992), 534–551.

[71] J.S. Mill, *On Liberty*, 155.

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accords himself and the State the right and competence to decide what is evil. But the formula enables people to gamble in private forums. The formula tries to juggle between State responsibility, personal freedom, and not conferring legitimacy on a practice that might waste one's resources at the expense of one's family, acknowledging that one's autonomy is not complete when it comes to gambling as addiction may come to play.

I spoke of restricting the individual's liberty by the State, emphasising the evils that it might bring on its citizens by excessive invasion of one's life. However, the tension between individuality and the collective might be increased not only as a result of too much activity on the part of government at the expense of the citizens, but also as a result of lack of activity on the part of the citizens. Practicing of one's individuality demands not only participation but also cooperation: it requires that one would find one's place within the community in which one lives, learn the give-and-take in sharing communal life, and then one would be able to see that one's individuality would not be endangered, but conversely, that through community it would be increased to levels which otherwise one would not be able to achieve.

Thus, the citizen must not view herself selfishly, but as an object that could satisfy her needs and ambitions through community and cooperation with others. Following Mill's distinction between self- and other-regarding conduct, a distinction can be made between *private* liberty and *civil* liberty, arguing that governments should develop both of these types of liberty, and not prefer the one over the other. Private liberty includes only those issues that concern the individual and her close spheres (family, work, friends and alike business); whereas civil liberty refers to her involvement and participation in the community level, on a scale which varies from participation on election days, to active involvement in public life, whether in voluntary organizations, pressure groups or organized parties. In developing and encouraging the latter the government has a very significant part. Though it might be more convenient for a governing party that people will be preoccupied with their own business, thus would not 'bother' the system with overwhelming demands that would require efforts and time to reconcile, democracies should sustain and encourage both types of liberty. Democracy that encourages only the individual liberty might find itself at some future point in difficulties to survive, for people would neglect their civic duties, and by their lack of involvement and, in turn, lack of control, would encourage undemocratic trends and opinions.

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In addition, the *isolated island reasoning* is emphasised as an attempt to bridge the tension between individuality and community. Mill wrote: 'No person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them.'[72] This reasoning, as employed here, focuses not only on the affects of one's conduct but also on the *drives* of human beings. Each and every person is seeking to develop her inherent capacities and to realize her ends and interests to the point of maximal satisfaction, restrained by the circumstances within which we live. Most of us do not wish to live all our lives in an isolated island. Human beings are social creatures who wish to live in a community with others, to feel that they belong to some larger entity. Therefore, one has to find the mode of action which would allow one self-development as well as self-realization, while still respecting the rights and liberty of others, practicing one's individuality within the community, through communication and the help of others.

Conclusion

The idea that the liberty granted by democracy is not to injure and to prejudice someone else's liberty is the idea of *significant liberty*, in the sense that one's liberty is significant for creating and maintaining one's views and actions as long as one does not interfere with, and damages the other's liberty. People are free and autonomous creators but they do not live in isolation, nor in a vacuum; they live within humanity and need to consider the effects of their deeds on the liberties of others. Only if people have absolute and substantive reason to believe that their liberty is in jeopardy, could they delimit the liberty of fellow citizens.

As for the role of the State, the impression that the reader may receive from the opening pages of *On Liberty* about the limits of interference in individual dealings is quite misleading. Mill wrote that 'The object of this Essay is too assert one very simple principle,'[73] indeed so simple that even most (average people) may understand, 'that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action

[72] J.S. Mill, *On Liberty*, 136.
[73] J.S. Mill, *On Liberty,* 72.

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of any of their number is self-protection'[74] or, in other words, to prevent harm to others. From this one may infer that the State is analogous to a traffic warden of sort, whose duty is to help law-abiding motorists to travel where they like, and to intervene and punish whenever they infringe the prevailing rules. But we have seen that the role of the State is far more complex and comprehensive, as Mill ascribed it significant powers of elastic paternalism to enhance the end of utilitarianism. While Mill was suspicious of the government tendency to abuse its powers for personal gains, he still expected decision-makers to weigh short and long-term implications of any given conduct, to interfere directly and indirectly in maintaining a well-ordered liberal society, to take special interest in the upbringing of future generations, and to protect society's moral codes. Modern-day liberals have adopted Mill's anxieties of government abuse and belittled the trust they are willing to confer on politicians. Liberals are ever so suspicious of politicians who might promote their own partisan interests at the expense of the public good. There are historical grounds for this healthy distrust. Unfortunately, many governments did not act in accordance with Mill's expectations and lofty, other-regarding paternalistic aspirations.[75] Theoretical principles should always be tested against the brute facts of reality.

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[74] Ibid., 72–73.

[75] See, for instance, Albert Fried, *McCarthyism, The Great American Red Scare* (NY: Oxford University Press, 1996); Ellen W. Schreker, *The Age of McCarthyism* (Bedford: St. Martin's, 2001); David M. Oshinsky, *A Conspiracy So Immense: The World of Joe McCarthy* (NY: Oxford University Press, 2005).

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